



Post-Crime Justice and Human Rights Protection during Criminal Proceedings

Dr. Tehreem Farrukh

Associate Professor, Shaheed Zulfiqar Ali Bhutto University of Law

tehreemfarrukh@szabul.edu.pk

Abstract

Crime is a direct violation of interests that are legally guaranteed, but its consequences frequently create secondary and systemic human rights issues. This paper analyses the studies on the connection between the criminal process and safeguarding human rights in the post-crime settings, and its application to the victims, individuals accused, and the community at large. As victims are faced with procedural complexity, institutional, and re-victimization risks, accused persons are often threatened with fair trial assurances, dignity, and due process. At the same time, the reaction of society to crime can lead to punitive policies which can threaten constitutional protection. Basing on the international human rights law, modern legal studies, and comparative criminal justice, the paper suggests a rights-based framework of post-crime governance. It claims that justice should not be equated merely with punishment but should incorporate mechanisms to support victims, procedural fairness, rehabilitative pathways, and structural reform in legal institutions. This study finds that criminal processes can be legitimized and can be combined with the constitutional and international obligation to comply with human rights, which can restore trust in the community and provide social stability in the long term.

Keywords: Post-Crime Justice, Protection of Human Rights, Criminal Process, Rehabilitation of Victims, Fair Trials Ensuring Justice, Reform of Justice.



Introduction

It is not just lives of people that are disrupted by crime. It disturbs the status quo within which a legal community is held together. The right to life, dignity, property, security is infringed by a particular right in immediate moment. The subsequent legal reaction that would follow would resolve whether justice would revive equilibrium or cause distortion further.

The post-crime justice stands at a crossroad in the constitution. It has to balance between three conflicting needs: responsibility in maleficence, safeguarding of personal liberties and maintenance of social unity. Lack of success in one dimension leads to instability in others.

Victims submit themselves to the criminal process with a request of recognition, reparation and protection. Nevertheless, the justice system has procedural formalities, delays in investigations, and institutional inefficiencies that tend to make it another cause of distress¹. When legal processes aggravate traumas, secondary victimization, has been a growing issue in most jurisdictions.

At the same time, the accused is in the centre of the constitutional protection. Presumption of innocence, equality before the law, and fair trial presumptions act as structural protection against the overreach of the state². These protections are however often undermined by pretrial detention practices, sensationalism in the media and systemic bias. Without proper control, the criminal process becomes a possible cause of the transfer of the criminal procedure to the political instrument of pressure.

Outside the courtroom, the social impacts of crime cause fear, polarization and the demand of more punitive action. The violence in the community can lead to the degradation of trust in governmental institutions, the destruction of social network, and stigmatization of the weak people in the community³. The pressure of the masses may push political authorities toward the impulsive reformation of the law facilitating the expansion of the enforcement capabilities and constraining the civil liberties.

This paper holds the view that post-crime justice should be perceived as a human rights governance problem, but not just a criminal law problem. It shifts the focus of the analysis to a model that is more rights-centered based on constitutionalism and the international law rather than a punishment-focused model. Through this form of restructuring, it is hoped that this paper

can prove that protection of victims and protection of accused persons are not conflicting goals; they are mutually reinforcing structures of an effective justice system.

The research follows four steps. First, it lays the conceptual base of the connection of crime, state power and human rights. Second, it assesses rights vulnerabilities of victims, accused individuals and communities. Third, it evaluates institutional channels of reform, such as legal reorganization, victimization rehabilitation system, restorative justice frameworks, and procedural protection. Lastly, it suggests that an integrated model of post-crime justice be based on international human rights and constitutional supremacy.

Theoretical Perspective: Crime, State Power, and Human Rights.

To conceptualize post-crime justice, it is first important to make clear the conceptual triangle between the crime, the state authority and human rights.

Crime is another breach of safeguarded standards. Nevertheless, the reaction of the state to crime includes the use of coercive authority research, detention, apprehension, prosecution, and penalty. This type of coercive power is acceptable as long as it is within the bounds of the law. The human rights law is a restrictive principle. It makes sure that the state in acting on wrongdoing does not repeat the argument of violation by acting in disproportion or arbitrarily. This doubleness generates an internal conflict: the state needs to be powerful enough to administer law, but is moderate enough to safeguard freedom. This framework is supported by international legal instruments. The main procedural safeguards that are known worldwide are the right to the fair trial, the right to be not arrested arbitrarily and the right to be not tortured. Meanwhile, the rights of victims to participation, protection and reparations are being recognized more and more in international standards.

This complication comes about due to the fact that criminal processes are not morally neutral places. They include the intensity of emotions, the social attention and political pressure. Rights are the most vulnerable in such places. The legal scholarship starts to embrace the idea that justice systems have to be run on a balanced paradigm where the accountability mechanisms exist alongside the rights protections. Too much attention can be paid to punishment, and this will jeopardize the principle of dignity and due process. On the other hand, lack of accountability is a degrading factor to social trust and it dares impunity.

Thus post crime justice should be based on equilibrium. This equilibrium demands:

- 1) Identification of the procedural and reparative rights of the victims.
- 2) Effective implementation of fair trial guarantees.
- 3) Transparency and accountability at the institution.
- 4) Correctional policies that are rehabilitation oriented.

This combined strategy is the only way in which the process of criminal proceedings can meet its constitutional goal.

Human Rights Weaknesses under Post-Crime.

The act of committing a crime is not the end of crime. It causes a sequence of institutional reactions that challenge the ethical and legal boundaries of state power. The criminal process enters a level at which there is an interaction of three groups of rights, including the rights of victims, the rights of accused and the rights of society. Unless this form of interaction is well formulated, even the administration of justice will result in the violation of rights.

Postulates of a rights-based criminal system, therefore, require a criminal system that is restraint-based, proportionate and procedural fair. This balance is afforded through the international human rights law⁴.

A. Victims: Recognition, Dignity and Reparative Justice.

The act of crime does not conclude with the act of crime. It triggers a series of institutional reactions to the ethical and constitutional boundaries of state power. The place where the three sets of rights collide is the criminal process since the victims, the accused persons, and the entire society in general have their rights. Unless this interaction is precisely controlled, the quest of justice can become the source of rights violation on their own.

A rights-based criminal justice system should thus act within the limits of the proportionality, legality as well as procedural fairness which are enshrined in international human rights law.

A. Victims: Reparative Justice, Recognition, and Dignity.

Victims of crime directly suffer infringement of interests which are legally safeguarded. Traditionally, though, criminal law treated victims as evidence principals as opposed to rights-holders on their own. The shift in this paradigm started with the implementation of the United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) that first established the rights of victims in terms of accessing justice, restitution, compensation, and assistance⁵.

These values represent a normative shift: justice should not merely recompense a vice, it should also heal damage. Lack of institutional victim support mechanisms will lead to secondary victimization where insensitivity to procedures will increase trauma instead of reducing it.

This framework is also supported by the restorative justice theory. The UNODC Handbook on Restorative Justice Programmes focuses on accountability with dialogue approach by recognizing harm and community involvement⁶. Restorative models aim at bringing humanity to the criminal proceedings without compromising the procedural protection.

This is supported by the communicative theory of punishment by R. A. Duff who proposes that punishment must operate as part of a moral dialogue in a political community, rather than as an act of causing suffering in victims (excluding which they are excluded in the communicative process of punishment). The dignity of victims is therefore not a fringe issue, but rather it is at the centre of post-crime adjudication legitimacy.

B. Accused Persons: The Limits of State Power and Due Process.

In case victims fear marginalization, accused individuals are exposed to the sole coercive power of the state. Arrest, detention, interrogation, and prosecution are all forms of sovereign power that should be limited by the constitutional and international standards.

International Covenant on civil and Political rights (ICCPR) guarantees initial rights, such as equality before the courts, presumption of innocence and entitlement against arbitrary detention⁷. These protections are the structural support of the guarantees of fair trial. These standards have been supported by judicial interpretation. In *Salduz v. The European court of human rights, Turkey*, was of the opinion that the right to have access to legal counsel during the initial stages of interrogation is a basic part of a fair trial. The judgment highlights the fact that procedural breaches on the investigative level will have an irreparable impact on the integrity of the proceedings.

Nevertheless, the modern criminal justice systems often work under the pressure of security. As explained by David Garland, the analysis of the current penal policy shows how the societies with an increased level of insecurity tend to transition to a more control-based approach.⁸ This change can either standardize the increased authorities of detention or restrain the procedures.

Lucia Zedner cautions that once security is turned into the dominant political discourse human rights protections become eroded over time in the veil of people protection. The conflict is

institutional: the enforcement should be efficient but limited by the law⁹. A justice system that compromises due process in the name of efficiency defeats itself in the final analysis.

C. Societal response: Security, Fear and democratic Legitimacy.

Crime creates a sense of anxiety among people. States respond by using more aggressive enforcement mechanisms as a way to protect the people. Though security is a valid goal, the international human rights law dictates that the measures that the country may employ to achieve it must be reasonable and not discriminatory¹⁰.

The right to security and protection of basic freedoms are some of the rights acknowledged in the Universal Declaration of Human Rights (UDHR)¹¹. These two principles are in the same breath as it speaks of an underlying truth of liberty and security that exist side-by-side, and neither can supersede the other without a reason. The sociological framework of Garland proves that constant fear can re-adjust the legal systems towards punitive expansion . Exceptional measures can also be normalized overtime and slowly reduce civil liberties.

Democratic legitimacy is not only based on effectiveness in crime control but it is also based on observable compliance with fairness and legality¹². The procedural justice theory helps to arrive at this conclusion: people tend to be more contented with the judicial outcomes in case they see the process as fair and respectful.

Therefore, fostering the sense of trust among the citizens is not done by compromising the rights protection, but by placing protective elements on conspicuous display.

D. The Interdependence of Rights in the Criminal Process.

This is analytically fallacious to approach the rights of victims and accused as mutually exclusive. The international frameworks of human rights take a combined model in which accountability, dignity, and procedural fairness coexist¹³.

A system, which ignores due process, cannot be able to vindicate victims. On the other hand, a system that lacks recognition of the victims runs the risk of being morally disconnected with the evil that it is trying to solve.

Post-crime justice should consequently be at equilibrium. Recognition of a victim in the absence of procedural fairness is dangerous of causing vengeance. Victimless procedural fairness is subject to abstraction. Proportionate security may lead to repression. Criminal

proceedings can meet its constitutional and human rights responsibilities only by means of structuring balance.

The International Human rights law as a heading of framework of post-crimes justice.

Post-crime justice is not a designable option that can be identified as a domestic policy. Contemporary criminal practices are conducted in an intricate network of legal requirements at the global level. The human rights law does not substitute criminal law; it regulates it. It provides the lower limit within which the state power can be used in reaction to crime. Post-crime justice legitimacy is thus determined by correspondence to the binding international standards.

A. Statutory Spanking Laws.

Modern human rights protection architecture commences with the Universal Declaration of Human Rights (1948)¹⁴ which, however, was not originally legally binding, nevertheless set fundamental principles that now play a role in shaping the customary international law such as the equality before the law (Article 7), presumption of innocence (Article 11), and the right to a fair and public hearing (Article 10).

This was binding force in the International Covenant on Civil and Political Rights (ICCPR) (1966)¹⁵. The procedural guarantees in criminal proceedings are based on the articles 9 and 14 of the Covenant. Article 9 outlaws arbitrary detention and arrest. Article 14 formalizes the rights to fair trial, such as, the right to be presumed innocent, the right to counsel and the right to examine witnesses. The important factor here is structural reasoning: the ICCPR expects that even following the commission of serious crime, the state is legally held back. Dignity is not set on hold by criminal accusation.

In its General Comment No. 32 (2007) on Article 14, the Human Rights Committee explained that fair trials guarantees extend to all the processes of criminal procedure including the pretrial investigations¹⁶. This understanding squarely confronts systems which move procedural safeguards until formal trial stages.

B. Jurisprudential development of fair trial standards

These protections have been developed by the international courts using binding jurisprudence. In *Salduz v. The European Court of Human Rights (ECTHR), Turkey* (2008) declared that the right to receive legal assistance since the beginning of the first interrogation by police is the key

of safeguarding against coercion¹⁷. The Court believed that the procedural breach committed in early-stages may inadvertently cause the impartiality of the whole process.

Equally, in *Barbera, Messegue and Jabardo v. The ECTHR* pointed out that the presumption of innocence expects the courts not to prejudice the establishment of guilt; however, courts should treat the prosecution and the defense equally in the process (Spain 1988)¹⁸.

Those are examples of an essential principle that fairness is not a technicality. It is a state of legitimacy. A conviction that is reached after a corrupted procedure contravenes the rule of the law despite the fact that the accused is truly guilty. It is not abstract formalism. According to the argument of legal philosopher H. L. A. Hart, punishment has to be ruled by rules publicly known and constantly applied or it turns into arbitrary force¹⁹.

C. Rights of the victims in International law.

The international law has developed to appreciate the fact that the interests of victims should also be served by justice. Rights to restitution, compensation and assistance were formally defined in the Basic Principles of Justice to Victims of Crime and Abuse of Power (1985)²⁰.

A more recent innovation, however, by the Rome Statute of the International Criminal Court (1998) was direct victim participation in any proceedings, and the ability to issue reparations orders²¹. Article 68 and 75 Statute indicates an emerging assertion by the international community that victims are not bystanders in accountability processes but stakeholders. This is a development that is normative. In the past, the conceptualization of crime in criminal justice mostly viewed crime as an offence to the state. The modern international law considers crime to be injury to individuals and societies.

But, this growth does not reduce accused rights. The Rome Statute also strengthens the strong procedural protection, such as the presumption of innocence and beyond reasonable doubt (Article 66). The system is a result of integrating the two dimensions.

The two-structure is educative to domestic legal reform.

D. Proportionality security and derogation.

States often defend restrictive acts on the ground of security, especially after some serious or violent crime. Human rights law does not reject the validity of the public safety at the international level. However, it regulates it.

Article 4 of the ICCPR only allows the derivation of some obligations during a period of public emergency which threatens the life of the nation and even during that period, derogations must be only by strict necessity necessitated by the situation²². Some rights such as the right against torture and individual status before the law are non-derogable. The jurisprudence of the Human Rights Committee has always emphasized that even the counterterrorist or high-crime circumstances do not warrant the indefinite detention in the absence of the judicial review²³.

The discussion of the connection between security and liberty made by Lucia Zedner represents yet another instance of the similar trend: emergency regulations, once in place, tend to become standard characteristics of everyday criminal law²⁴. The threat is not accelerated reaction, but long-term growth of extraordinary authorities.

Therefore, proportionality serves as a law. Any limitation of rights should be legal, required and relevant to a legitimate objective.

E. Towards an integrated rights based criminal process.

The model of criminal procedures is not prescribed by the international human rights law. Rather it sets minimum standards that the systems should meet.

These standards suggest a number of structural promises:

- a. To begin with, prompt counsel and judicial control of custody.
- b. Second, effective involvement and safeguarding systems against victims.
- c. Third, openness and fair judicial hearing.

Fourth, rehabilitative correctional regimes, in line with Article 10(3) of the ICCPR that says the penitentiary system should be therapy towards reformation as well as social rehabilitation²⁵.

This is the last point that is neglected. The end of post-crime justice does not occur at the time of conviction. It spills over to incarceration policy and strategies on reintegration. Human rights protection in criminal proceedings should hence relate to the philosophy of punishment in general. The global system has shown that one does not always need to compromise accountability and dignity. The democratic legitimacy is enhanced by the provision of a system that upholds the rights and respects the law. A system that compromises rights to enhance security undermines its authority of morality.

Reform of institutions and the operationalization of human rights in the process of criminal proceedings

The issue of human rights protection during criminal proceedings rests not only on their formal acknowledgment but the design of an institution. The existence of legal guarantees is relevant only when the procedural systems incorporate them throughout all the levels of the justice process. The consequences of crime usually create political pressure to punish and provide rapid justice, but the international law of human rights demands that the necessity should not supersede the justice and dignity.

The most vulnerable stage is the investigative stage. Pre-trial detention and arrest put coercive power into the hands of the state. In the International Covenant on Civil and Political Rights (ICCPR), article 9 provides that the deprivation of liberty should not happen arbitrarily and it must be reviewed by a court as soon as possible²⁶. In The General Comment No. 35, Human Rights Committee explained that even pre-trial detention should be only the exception and not the rule and must be reasoned by certain factors like flight risk or tampering with evidence²⁷. Overuse of pre-trial detention hurts the presumption of innocence and presents a disproportionately negative impact on disadvantaged populations.

These principles have been strengthened by the regional human rights courts. In McKay v. The European Court of Human Rights in United Kingdom pointed out that the judicial control of detention should be substantive and not merely procedural²⁸. The Court emphasized how it is in breach of Article 5 of the European Convention on Human Rights to have a person detained long without adequate justification. Such decisions show that checking institutions should be operational and operate as a check and not a show.

It is also important that there is the right to have a legal representation at the most initial stages of the criminal process. Empirical studies have proven that prompt access to counsel has a significant impact in minimizing coerced confessions and miscarriage of justice²⁹. According to the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012), states are supposed to provide legal assistance at all crucial points and especially, during police interrogation³⁰. The lack of a proper defense engagement means that procedural equality fails.

Although the protection of the accused is a necessity, the inclusion of the rights of the victims in the institutions should be given equal treatment. In the past, victims were marginalized by the

adversarial systems that put crime as the main offense against the state. This has been an unequal distribution. The rights of the victims to information, participation, protection, and compensation are listed in the UN Declaration of Basic Principles of Justice to victims of crimes and abuse of power (1985)³¹. The declaration emphasizes the fact that justice should be concerned with the wrongdoing done to individuals, but not just the violation of the public order.

Comparative jurisprudence demonstrates that jurisdictions that incorporate victim involvement measures like impact statements, compensation packages, and protection measures increase the perception of procedural fairness without interfering with the rights of defendants³². The international criminal court jurisprudence also goes further to show how structured victim participation may co-exist with stringent due process requirements³³. This trend represents the changing concept of justice as being relational but not punitive.

The issue of human rights protection or not is also dependent on post-conviction practices. Article 10 of the ICCPR provides that the persons, who have been deprived of their liberty should be treated in a humanitarian and dignified manner³⁴. Minimal standards of care in terms of medical care, discipline, and banning of torture or cruel treatment are codified in the UN Standard Minimum Rules on the Treatment of Prisoners (the Nelson Mandela Rules)³⁵. The criminological empirical studies reveal that the education programs of rehabilitative approaches, psychological treatment and reintegration planning have a better impact in minimizing recidivism than the retributive policies alone.

Accountability is what legitimizes criminal justice institutions in the end. Effective remedies on violation of rights, independent oversight bodies and appellate review cannot be done away with. ICCPR, in article 2(3) requires states to offer effective redresses to victims of infringements of their rights. In the absence of enforceable remedies, rights protection turns out to be a dream, and not realistic³⁶.

In the post-crime world, the societies tend to be faced with the fear-based needs of more drastic action. But history proves that the loss of procedural protection often does not lead to long-lasting security³⁷. Sustainable justice comes instead as a result of balanced institutional structures that incorporate accountability, dignity, and fairness.

The issue of post crime human rights protection is thus not an opposing interest to security; it is the structural precondition that justifies the state authority. Justice transcends being a reaction to restoration of social trust in institutions in which the principle is internalized.

Conclusion

Crime is an interruption of the social order. It hurts people, disrupts societies and puts undue burden on the state machines to act decisively. But quite the real test of justice is not the speed or the severity of punishment. It is whether the reaction against the wrongdoing will rest upon the safeguard of the human dignity.

This paper has revealed that the consequences of crime present two human rights dilemmas. The first violation of the rights of the victims and the second one is often the secondary harm in the form of the lack of attentiveness to the case or the lack of access to the remedies. Simultaneously, subjected accused persons are exposed to the immense authority of the state, at which the degradation of guarantees including presumption of innocence, right to a fair trial, and the right to avoid arbitrary arrest, can take place in the name of society protection. The conflict between the defense of rights and responsibility is not thus an incidental issue of criminal justice it is its bone-shattering problem.

The international human rights law provides a normative guide on how to resolve this tension. The ICCPR and the UN Basic Principles for Victims are examples of instruments that express minimum standards which commit state action even in time of collective panic. International and regional court jurisprudence supports the fact that procedural guarantees cannot be remote but tangible. Rehabilitation principles also alert us that individuals should not be deprived of the innate dignity through punishment.

What is brought out in this analysis therefore is that justice since crime is not a straight path of crime to punishment. It is a composition in the structure. The presence of institutional protections, legal access, mechanisms to participate in the victims, humane prison conditions and successful remedies constitute an interrelated system. Weakness of any of them will lead to instability of the whole.

A historical theme is repeated here: times of greater insecurity usually tend to produce demands of extraordinary action. Nonetheless, history also shows that states become weak when they undermine rights protection in the quest of security, as legitimacy will be destroyed and citizens

will lose trust. Heavy justice only comes in the enlargement of coercive power, but not disciplined compliance with principled boundaries.

Human rights protection in criminal proceedings is not therefore a hindrance to effective justice. Justice is credible because of this condition. One which not only serves to correct individual cases but also to enforce the rule of law is a system which vindicates the victims and protects the rights of the accused.

Properly understood, post-crime justice is not reactive. It is restorative in the most extensive of terms: restoring dignity to the victims, restoring procedural fairness to the accused individuals, restoring trust in the institutions of society. In the areas of its coincidence, the shift between violation and vindication is not a dream, but a fact.

Suggestions and Reforms

- 1) Laws: Provide expedient trials and qualified legal counsel to the victims and the accused.
- 2) Victim Support: Extend the services of emotional, medical, and legal support to recover and reintegrate.
- 3) Restorative Justice: Support a dialogue and reconciliation between the community, victims, and offenders.
- 4) Public Awareness: Educate the society on human rights, decrease stigma, and enhance social cohesion.
- 5) Monitor and Evaluation: It is important to monitor and review justice processes to eliminate gaps and bring fairness and transparency.

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