

RIGHTS AND CONSTITUTIONALISM – A BIAS TOWARDS OFFENDERS?

by

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PNM

## **Abstract**

The South African Constitution, with its Bill of Rights, represents a decisive break with the past and a great advance by South Africans in reclaiming their human dignity and fundamental freedoms. Before 1993 punishment of crime was defined by the social order which had been designed under the *apartheid* government; prisoners were generally subjected to cruel and degrading treatment while criminal suspects could be detained indefinitely and without trial. The penal system was to some extent directed at controlling and regulating the conduct of Blacks. The constitutional dispensation has resulted in a re-look at our penal policy and has placed great emphasis on the rights of prisoners. These rights flow from the rights to equality, dignity and liberty. The Constitution has entrenched certain rights of criminal suspects, including the right to a fair trial. Legislation has been introduced to ensure compliance with the constitutional imperatives.

The new dispensation has given rise to debate on many issues, and facilitated a rise of a victims' movement seeking to promote victim interests. This movement has noted that offenders and alleged offenders enjoy a series of constitutional rights, and that corresponding rights for crime victims need to be introduced. Victims are unlikely to be accorded rights in the literal sense of the word; nevertheless, they need to be accommodated within the criminal justice system. This need has given birth to a charter for crime victims, a document that seeks to empower crime victims. The perception remains, however, that offenders and crime suspects still enjoy too much protection, to the detriment of victim interests. The development of victim rights is hampered by the adversarial nature of the country's criminal justice system and the perception that victims have no role to play within the criminal process, other than as witnesses.

The purpose of the thesis is to analyse the extent to which our Bill of Rights strikes a balance between the interests of alleged offenders and offenders on the one hand, and crime victims on the other. It also seeks to create awareness about the plight of crime victims and to make suggestions on possible solutions.

**Key words**

Arrested, detained and accused persons,  
constitution,  
crime victims,  
criminal justice system,  
offenders,  
punishment,  
restorative justice,  
retributive justice,  
rights,  
criminal procedure,  
victim empowerment.

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