
A CRITICAL STUDY ON THE MALIMATH COMMITTEE REFORMS IN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The Ministry of Home Affairs of the Government of India established the Committee on Reforms of the Criminal Justice System on November 24, 2000, to devise strategies for its comprehensive reform. The Committee was established under the leadership of Justice V.S. Malimath who was Karnataka's former Chief Justice and Chief Justice of Kerala High Courts. The purpose of this committee is to enhance the efficiency of criminal laws and procedures. The report or recommendations of this committee implies that how the criminal justice system in India faced the challenges and issues. The Committee on Reforms of the Criminal Justice System submitted its report in 2003. The researcher has conducted a critical analysis of the Committee's recommendations regarding various aspects, such as the risk associated with the hybrid criminal justice system that incorporates both adversarial and investigative elements, and its suitability for India's current criminal justice framework. Furthermore, the researcher has expanded on the problems and worries in light of the suggestions made, which, on the one hand, support victim rights while, on the other, restrict the rights of the accused.

Keywords: Criminal Justice System, Malimath Committee, Malimath Committee report.

Introduction:

The purpose of criminal law is protection of the right to life and personal liberty and other basic human rights against others. The law should protect the citizen's rights. As a result of this, the state should enforce some regulatory mechanisms and sanctions for violations. This is the first time the State has established a committee of this kind to conduct an exhaustive and comprehensive examination of the entire Criminal Justice System in order to make the required improvements and improve the system's overall health through the implementation of effective, systematic reforms.¹ The criminal justice system should maintain some balance between the rights granted to perpetrators and the victims of crime, safety for society and preventing crime. Two important problems were addressed by the committee in the criminal justice system. One of the major problems is that a huge number of criminal cases were pending in the court and because of that justice is delayed and another one is low conviction rate in cases of serious crimes. Therefore, the Committee on the Reforms of Criminal Justice System was established by the Government of India's Ministry of Home Affairs in order to conduct a thorough analysis of all the criminal justice system's components, as well as its guiding principles and pertinent legal framework.² The present paper critically deals with the reforms of the malimath committee in the criminal justice system.

Criminal Justice System:

The criminal justice system is the branch of government that deals with the agencies that uphold the country's legal system, preserve peace and harmony, and control criminal activity. The goals of the criminal justice system are to uphold the rule of law, punish offenders, and ensure that trials are completed quickly to preserve witness testimony. Upholding social order, defending individual rights, and delivering fair justice to both accused and victim equally are the main objectives of the criminal justice system. The criminal justice system's primary goals focused on the community, law enforcement, the prosecution machinery, and the court. In a criminal trial, justice is served not only to the accused but also to the victim and the community. So that law and order is maintained. In addition to ensuring that no innocent person is convicted, a

¹ See, Committee on Reforms of Criminal Justice System, available at, https://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system%5B1%5D.pdf, (last visited Feb. 25, 2024)

²The Report of Malimath Committee on Reforms of Criminal Justice System, Legal Service India, <https://www.legalservicesindia.com/law/article/1983/39/The-Report-Of-Malimath-Committee-On-Reforms-Of-Criminal-Justice-System?id=1983&u=39> (last visited Feb. 25, 2024)

judge presides over a criminal trial to ensure that the guilty party is not allowed to escape punishment. The judge must fulfil both of these civic obligations.

Recommendations of Malimath Committee:

Adversarial and Inquisitorial System:

Numerous proposals made by the committee received severe criticism. The committee's recommendation to incorporate some elements of the Inquisitorial System into India's current adversarial criminal justice system is one of its most contentious recommendations.

Adversarial system means, "A Judge decides on a case argued by a Prosecutor who is suing the Plaintiff and the Defense Attorney who defends their Plaintiff".³ Inquisitorial system means, a style of practicing law where the judge looks for evidence while also trying to advocate the state's interests in court. Judges are therefore given a more active role in this kind of system. The adversarial common law system, which India adopted from the British colonial rulers, is the method used to administer criminal justice.⁴ The committee used the adoption of the Inquisitorial system in France, Germany, and Italy as examples. However, the committee failed to take into consideration the difference in the political, historical, structural and ideological context of all the countries, which have led to the development of their respective criminal justice system.⁵ Also, the committee did not mention that the creation of a European Standard of Human Rights Law has led to a recent, extensive overhaul of the criminal justice systems in nations such as France.

Regarding Detainees:

In its report, the Malimath committee suggested that Section 167 of the Criminal Procedure Code, which provides a 15-day "Remand" period, be extended to 30 days in circumstances when the sentence exceeds five years.

Further, section 25 of the Indian Evidence Act which deals with 'confession', lays down that any confession that is made before the police officer shall not be admissible as evidence in the

³The Law Dictionary, <https://thelawdictionary.org/adversary-system/>, (last visited on Feb, 26,2024)

⁴See, Committee on Reforms of Criminal Justice System, available at, http://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system%5B1%5D.pdf, (last visited Feb. 26, 2024)

⁵ Ravi Nair, *The Malimath Committee's Proposal for Reforms in Criminal Justice System in India; A Human Rights Reflection*; K. I. VIBHUTE, *CRIMINAL JUSTICE: A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA* (Eastern Book Company, 2004).

court of law.⁶ In response, the committee suggested that this section be amended and that sections 32 of the Prevention of Terrorism Act of 2002 and section 15 of the Terrorist and Disruptive Activities (Prevention) Act of 1985 be added. These sections specify that any confession made in front of a superintendent of police or other officer of a higher rank—regardless of whether the subject is in custody or not—is admissible as evidence in court. The committee also recommended that the Identification of Prisoners Act, 1920 should be amended on the basis of Section 27 of POTA. The committee believed that by implementing this reform, the investigating authorities would be able to collect samples of hair, blood, saliva, footprints, fingerprints, and other bodily fluids for DNA testing. If the accused denies, the authorities would then be able to draw adverse inferences against him.

Justice to victims of crime:

Justice to victims of crime is one of the recommendations of this committee. Ensuring justice for the victims of the crime is one of the main goals of the criminal justice system. The committee determined that victims of crime are deprived of some rights. The victim's right should include the ability to appeal any unfavorable decision made by the trial court. The appellate court currently has the authority to hear appeals against conviction, and it ought to have the same authority to hear challenges against acquittal. There's no justifiable reason to limit appeals against acquittals to the High Court.⁷

In addition to the prosecution, the victim or his legal representative shall also have the right to be involved in the proceedings and be able to request information, submit evidence, and ask questions as well as learn the progress of the investigation. The victim should get reasonable compensation through victim compensation laws and the Victim Compensation Fund, regardless of the accused's conviction. Victim compensation is the responsibility of the state.

Reforms regarding fair trial:

The committee recommended some reforms fair trial in the criminal justice system. They are;

- As far as filing of the charge-sheet is concerned, the committee proposed that the time

⁶ M A Safee, Critical Analysis Of Confessional Statements And Their Admissibility In Criminal Proceedings, Especially When Made To A Police Officer, available at, <https://www.legalserviceindia.com/legal/article-10795-critical-analysis-of-confessional-statements-and-their-admissibility-in-criminal-proceedings-especially-when-made-to-a-police-officer.html> , (last visited on Feb. 27, 2024)

⁷ Ibid 3

period of filing the charge-sheet should be increased from 90 days to 180 days.⁸ The committee also suggested that the detainee be released on bail if the charge sheet was not filed within the specified 180 days.

- Regarding section 54 of the Indian Evidence Act, the committee expressed its opinion. As things stand, the clause states that unless there is proof that the accused has a good character, it is irrelevant that the accused has a bad character during criminal proceedings. The committee suggested amending Section 54 of the Evidence Act to classify an accused person's prior conviction as "Bad character" and to make it relevant information in criminal proceedings. The burden of proof for the accused's good character only applies when the prosecution can present proof of his bad character.⁹
- The committee's recommendation about questioning the accused was that questions be limited to the court's free will in order to get the truth and any other pertinent information. The accused should face negative consequences from the court if they refuse to provide information.
- Even in cases where the defence is weak, the committee has suggested that the defendant be required to defend himself from the outset of the trial. If the defense's answer is ambiguous, broad, or lacking in supporting evidence, the court may allow the accused to clarify their remarks before determining that the claim is not refuted.¹⁰
- The committee has suggested that in order to expedite the process, the summary trial procedure described in sections 262-264 of the Criminal Procedure Code should be modified. Furthermore, in summary trials, the current maximum sentence of three months should be extended to three years. The committee has also suggested that the court try cases summarily when the witness purposefully or intentionally provided false or fraudulent testimony. The current statute states that the court may select the procedure at its discretion.

⁸ Tailor R M, Malimath committee report on Criminal justice system in perspective of human rights, available at, <https://ijrcs.org/wp-content/uploads/IJRCs201903015.pdf>, (last visited on Feb. 28, 2024)

⁹ Rupaben Tailor, An analysis of Malimath Committee Report on Criminal Justice System in Perspective of Human Rights, available at, <https://ijrcs.org/wp-content/uploads/IJRCs201903015.pdf>, (last visited on Feb. 28, 2024)

¹⁰ Ibid 4

- In order to generalise particular laws and add safety measures, the committee has suggested adding certain clauses to the IPC, Cr.P.C, Evidence Act of India of POTA, and TADA. Further, the committee suggests that the definition of terrorist acts, disruptive activities and organized crimes should be included inclusively and comprehensively.¹¹
- The committee recommended that the offence of cruelty be made both compoundable and bailable with regard to section 498A of the Indian Penal Code, which deals with cruelty.

Police investigations:

It should be mentioned that the police have an obligation to both keep the peace and conduct investigations. Section 161 of the CrPC gives power to the Police to examine and interrogate a person and to reduce those statements in writing.¹² But section 162 of CrPC imposes a condition that such statements cannot be used other than to contradict the earlier statements of the person.¹³ The Committee recommended separating Law and Order's investigative branch from it. The committee also suggested that State Security Commissions and a National Security Commission should be established. The committee also insisted upon appointment of Additional SP in each district to maintain crime data, organization of specialized squads to deal with organised crime, and a team of officers to probe inter-State or transnational crimes.¹⁴

Witness protection:

A witness is a crucial component of the criminal justice system's operation. They provide evidence that aids in the administration of justice for both criminal defendants and victims. They aid in the court's quest for the truth. That is why, before delivering testimony, he either takes an oath in God's name or gives a solemn affirmation that he will tell the truth, the whole truth, and nothing but the truth.¹⁵ The Committee also raised serious concerns regarding the protection and safety of the witnesses and their families. Important witnesses are frequently hurt or threatened before they may speak in court. There is no where protection for the witnesses.

¹¹ Ibid 5

¹² The Code of Criminal Procedure, 1973, Section 161.

¹³ The Code of Criminal Procedure, 1973, Section 162.

¹⁴ Ibid 6

¹⁵ The Oaths Act 1969, Section 4.

Several nations have implemented legislation aimed at safeguarding witnesses, such as the United States, whose Federal Witness Protection Programme has served as a model for other nations. However, there is no legislation protecting witnesses in India. The committee also brought up the issue of the witness's harsh treatment and the need for them to be treated with dignity.¹⁶

Arrear Eradication scheme:

The goal of the Arrears Eradication Scheme is to handle cases that have been pending for longer than two years. The cases ought to be heard daily and resolved through Lok Adalats in order of priority.

Courts and Judges:

There are two main obstacles that the judiciary must overcome. The first is the enormous backlog of cases, and the second is the low conviction rate. The committee has therefore given careful consideration to the sufficiency of competent Judges.

In India **Judges Associated and others v. Union of India**, it SC directed to increase the number of Judge Population ratio from “10.5 or 13 Judges per million people to 50 Judges per million people.”¹⁷ The committee thought that if the Supreme Court's order was obeyed, the problem of not enough judges would be corrected. This was especially relevant to the lower courts.¹⁸ The Chief Justice should appoint a separate criminal bench made up of judges with expertise in criminal law to the Supreme Court and High Court. Lady Judges should be allocated to cases pertaining to women in urban regions with several trial courts.

Right to Silence:

The Committee proposed to amend Section 313 of Code of Criminal Procedure, and suggested to add a clause under which “if the accused remains silent, when faced with a question by the court, or refuses to answer any question put to him by the court which he is not compelled by law to answer, the court may draw such appropriate inferences including adverse inference as it considers proper in the circumstances.”¹⁹ Article (14)(3) g of the International Covenant on

¹⁶ Ibid 7

¹⁷ India Judges Association and others v. Union of India (2002) 4.S.C. 247

¹⁸ Ibid 8

¹⁹ Ibid 9

Civil and Political Rights guarantees the right, “Not to be compelled to testify against himself or to confess guilt”.²⁰ This principle is also embodied in Article 20(3) of the Constitution of India wherein it is stated that “No person accused of any offence shall be compelled to be a witness against himself.”²¹ A committee analysis of Article 20(3) of the Indian Constitution served as justification for this change. It was argued that article 20(3) protects the accused from being forced to testify against himself, but it says nothing about protecting the accused from being subjected to proper inferences when they choose not to. The committee contended that there would be less incentive for the police to resort to compulsion to obtain a confession, if the court can draw an adverse inference against the accused from his silence.²²

Reclassification of offences:

The committee suggested categorizing offenses under the codes for economic, criminal, social welfare, and corrections.

Drawbacks of Malimath Committee Reforms:

- The Malimath Committee Report has drawn criticism for what is seen as an emphasis on punitive methods as opposed to restorative justice or rehabilitation. A comprehensive criminal justice system must include both offenders' reformation and rehabilitation, according to several experts, who felt that both topics were not adequately covered in the reports
- The report's main focus was on procedural improvements, and critics have noted that it fell short in addressing the systemic, social, and economic issues that underlie crime. They contend that successful change would require a more all-encompassing strategy that takes social and economic inequalities into account.
- The way in which human rights issues are handled in the criminal justice system in the study has drawn criticism from certain specialists. They contend that the

²⁰ The International Covenant on Civil and Political Rights 1966, Article (14)(3)g.

²¹ The Constitution of India, Article 20(3).

²² Rachna Mishra and Utkarsh Mishra, Malimath committee's reforms in criminal justice system: a critical analysis, available at, https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_c1774d48bc5e47728f126a18d8340b81.pdf, (last visited on Mar. 1, 2024)

recommendations did not place enough emphasis on guaranteeing fair trials, defending the rights of those accused, and avoiding basic rights violations.

- It was pointed out that the report did not sufficiently address the particular issues raised by marginalized communities—like Dalits, Adivasis, and religious minorities—who frequently experience prejudice in the criminal justice system.

Conclusion:

The Committee provided over 158 recommendations to update the ancient criminal justice system that the British had instituted when it filed this report about two years ago. The Committee addressed several issues pertaining to our criminal justice system that require improvement. The majority of them have previously been covered. Furthermore, it failed to take international human rights into account. As a result, the report approaches some topics in an ambiguous and unworkable way. Certain basic, systemic flaws in the criminal justice system were left unaddressed by the Committee. The Malimath Committee Report provoked a great deal of discussion and debate among the general public, legislators, and legal professionals. While some of the proposals were carried out, others were met with opposition or were not accepted for a variety of reasons, such as differing viewpoints and practical viability. It is crucial to remember that the Malimath Committee's findings and recommendations were tailored specifically for the Indian criminal justice system. In order to improve the system's operation and guarantee justice for all parties concerned, the committee's conclusions and suggestions were designed to address the particular difficulties and demands of the Indian system.