

CRITICAL ANALYSIS OF MALIMATH COMMITTEE ON CRIMINAL JUSTICE REFORMS

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INTRODUCTION

The Malimath Committee on Criminal Reforms was set up by the Government of India, Ministry of Home Affairs by an order dated November 24 2000, to suggest reforms and improvements in the current Criminal Justice System. The Committee had majorly six objectives, i.e.-

1. To examine the fundamentals involved in Criminal Justice System,
2. To check if there is any need to reform the current criminal legislation,
3. To make recommendations for faster delivery of Justice,
4. To establish smooth coordination among the Judiciary, Prosecution and the Police,
5. To manage and make a plan related to the pendency of the cases in Judiciary and
6. To examine the feasibility of Federal Crime so as to put in Seventh Schedule to the Constitution.¹

To fulfil these objectives, the committee had the task to review the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. The Committee had an onerous task of revamping the entire age-old Criminal Justice System.

The Committee was constituted under the Chairmanship of Justice V.S.Malimath, former Chief Justice of Karnataka and Kerala High Courts, Chairman, Central Administrative Tribunal and Member of the Human Rights Commission. There were other members. Thus, the Committee had the participation of all kinds of expertise from all relevant fields.

There were no special reasons for the Committee's establishment, however, according to the Committee's opinion, it is self-evident since the system is not in lines with the modern aspects of crime and that it is on the verge of collapse.² Moreover, the Criminal Law of the country is the age-old law that was made by the British for India is now inefficient and is unable to meet the demands of the contemporary era.

¹V.S. Malimath ET AL., Report of the Committee on Reforms of the Criminal Justice System (2003) [hereinafter "Malimath Committee Report"]

²*Id.*

This Committee is the first committee setup by the state in order to look after the system and amend it appropriately so that this improved system could lead to Justice to common-man. Some of the reforms laid down are important to implement to gain the trust of the public in the administration of justice. Hence, this research project aims to focus on some of the major reforms and whether those reforms are feasible or not.

MALIMATH COMMITTEE ON CRIMINAL REFORMS

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METHODOLOGY USED BY THE COMMITTEE

A Criminal Justice fails not only when an innocent is punished or a criminal is acquitted but also when there is a delay in the proceedings which also is a sense of injustice to the victims of the crime. Thus, in view of the failure of the criminal mechanism, the committee had to look after these loopholes and fill these gaps effectively.

The Committee had to examine and study the basic principles of Criminal Jurisprudence and then if there is any conflict or improvement that can be made to get in tunes with the Jurisprudence by making the people better-off, the committee had the task of recommending and suggesting any improvement in the three legislations.³ However, it did not have to review them generally.

The Committee prepared a questionnaire and sent it to around 3,164 persons, out of which only 284 responses were received.⁴ These questionnaires were sent to experts and the people of high posts and that is why the report is to some extent based on that. That is why the report is not according to the needs of the Common Man.

³ The Malimath Committee.

⁴*Id.*

In addition to it, the committee also participated in seminars, organized seminars, contacted State Governments, High Courts and Judges all the major expertise involved in our Criminal Justice System.⁵ Moreover, they researched about important topics involved and also studied the other Committees work on this line.

The Committee had given 158 recommendations based on the questionnaire and their research. There were 19 major pointers on which these recommendations and amendments were given.

The report was divided into VI parts. The first part dealt with the Fundamental Principles, the second with the Investigation, the third with the Prosecution, the fourth with the Crime and Punishment, the fifth deals with the future virtues and the last sixth part deals with the Recommendations under the various heads.

The task of the Committee was to find ways and means to reform the system to ensure that every innocent person is protected and every guilty person is punished with utmost expedition.

ADVERSARIAL AND INQUISITORIAL SYSTEM

Adversarial System is a system where “A Judge decides on a case argued by a Prosecutor who is suing the Plaintiff and the Defense Attorney who defends their Plaintiff.”⁶ Therefore, the Judge has no role to play and has no idea of the case until it is presented in front of him.

In contrast to this system, an Inquisitorial System is, “A method of legal practice in which the judge endeavours to discover facts while simultaneously representing the interests of the state in a trial.” Therefore, in this type of system, a more active role is given to Judges.

The method followed in India is the Inquisitorial System of Common Law as inherited by the Britishers.

However, this system has many lacunas in it which is used by the offender to escape from his liability. One of the shortcomings highlighted by the Committee was that the scope of the dispute in such a system is dependent on the parties and the truth would be ascertained based

⁵*Id.*

⁶ The Law Dictionary, <https://thelawdictionary.org/adversary-system/>, (Visited on June 18, 2019).

on their facts and therefore generally leads to injustice.⁷ However, in the inquisitorial system, the Police and the Judicial Officers undertake an investigation and if they find any substance in the case, the Prosecutor takes up further investigation.⁸ Therefore, there is the active involvement of the Judiciary in the system resulting in a check on abuse of power by police and therefore, the serious and sensitive cases are investigated under the supervision of the Judicial Officer.

Both of these models are to be judged on the criteria of fairness. Wherein in the Inquisitorial System, the Judge keeps a check on the investigation and ensures that everything that happens is helping the proceedings. In the Adversarial System, fairness is maintained when there is no apprehension of biasness and that is why the judges are anonymous to the case and the parties unless it is presented.

According to the Committee, our present system does not focus on the ethos of truth which is against our very principles. Therefore, changes must be made regarding the insertion of such provisions which would help reach us to the truth.

Even the SC has criticized the passive role played by the Judiciary. In *Ram Chandra v. State of Haryana*, the Supreme Court has said that:

“There is an unfortunate tendency for a Judge presiding over a trial to assume the role of referee or umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortion flowing from combative and competitive elements entering the trial procedure.”⁹

Moreover, in *Mohanlal v. Union of India*, the Prosecution did not bring the best possible evidence and Supreme Court observed that:

In such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the

⁷ The Malimath Committee.

⁸ UNODC, <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html>.

⁹ *Ram Chandra v. State of Haryana* 1981 AIR 1036.

*parties to take an active role in the proceedings in finding the truth and administering justice?*¹⁰

Therefore, the Judiciary has a larger function to not just sit and decide but get involved in the process and ascertain whether the advocates justify their clients need and if not they have to ensure that the parties get justice in the best possible way. The following recommendations were made-

RECOMMENDATIONS

1. The Committee had made suggestions with regard to changing the wordings of the Preamble of CrPC (Code) and Section 311 of the Code to insert “Quest for Truth”.
2. It also made changes to Sec 311, 255, 482 of the Code to give power to the court in respect of investigation, examining or make orders for the discovery of truth.
3. It also made a suggestion w.r.t Sec 54 of the Indian Evidence Act by substituting on following lines-

“In criminal proceeding the fact that the accused has a bad character is relevant”.

These recommendations were much needed to ensure that the Judiciary uses their skill and knowledge to secure justice for the people in case their advocates fails to do so. However, the researcher does not agree with the last recommendation wherein the character of the accused was relevant because sometimes people commit crime because of unexpected circumstances or unavoidable situations. Moreover, an offender cannot be punished for the same crime twice and hence a past conviction or bad character should not be relevant. But a habitual offender can come under this ambit.

RIGHT TO SILENCE

Art. (14)(3) g of the International Covenant on Civil and Political Rights guarantees the right, “Not to be compelled to testify against himself or to confess guilt”.¹¹ This principle is also embodied in Art. 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.”¹² These

¹⁰ *Mohanlal v. Union of India* Criminal Appeal No.652 OF 2012.

¹¹ The International Covenant on Civil and Political Rights 1966, Article (14)(3)g.

¹² The Constitution of India, Article 20(3).

provisions have been incorporated keeping in mind the probable abuse of power by the Police officer wherein he can be compelled to accept things which he hasn't.

However, Art. 20(3) should not forbid interrogation of the accused during an indictment or prosecution. When confronted, the accused may either deny or admit. When asked if he pleads guilty to the crime at trial, the accused can confess and plead guilty. If the accused is able to make a confession during the investigation, the Magistrate will report it under Section 164 of the Code.¹³ According to Section 27 of the Evidence Act, a voluntary disclosure made by the accused that leads to the discovery of some incriminating fact is admissible.¹⁴ In *R.K. Dalmia v. Delhi Administration*, it was held that “if any incriminatory statement is voluntarily made by the accused in answer to the question put by a police officer, it cannot be regarded as one made under compulsion.”¹⁵ Thus, voluntary and consensual statements even though can incriminate a person would be valid. But if an accused chooses to stay silent and does not wish to speak, no negative inference can be drawn to that effect.

RECOMMENDATIONS

1. The Committee has recommended changes in Sec. 313 of the Code by suggesting that this section may be substituted by Sec. 313-A, 313-B and 313-C wherein the accused has to take his stand on the case and that he has to disclose his personal matters.
2. The committee also made specific recommendations regarding the Statement of Prosecution and their replies by the Defense and further procedures as to the denial of allegations.

According to these recommendations, if the accused does not disclose his stand it will give a negative inference of his guilt. This is done to ensure that the burden on Prosecution does not grow and that it does not impede the search for truth. These recommendations will surely speed up the process of litigation. However, according to the researcher, there is a need to establish a balance between both of these things so that nobody misuses their power.

¹³ The Code of Criminal Procedure 1973, Section 164.

¹⁴ How much of information received from accused may be proved- Provided that, when any fact is proved as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

¹⁵ *R. K. Dalmia v. Delhi Administration* 1962 AIR 1821.

RIGHTS OF ACCUSED

In India, the Criminal Justice System ensures rights to the accused so that the accused or suspects are not treated inhumanly and that the International Treaty standards are met. Our Constitution provides the accused the following rights –

1. Right against Double Jeopardy –“No person shall be prosecuted and punished for the same offence more than once.”¹⁶
2. Right against Self-incrimination –“No person accused of any offence shall be compelled to be a witness against himself.”¹⁷
3. Right to life –“No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁸
4. Right to the assistance of a Counsel –“No person shall be denied the right to consult a legal practitioner.”¹⁹
5. “Person should be produced before the nearest magistrate within a period of twenty-four hours of such arrest or detention.”²⁰

Moreover, the Hon’ble Supreme Court in *D.K Basuv. State of West Bengal*²¹ and *Joginder Kumary. State of Uttar Pradesh*²² has laid down additional guidelines for the protection of the accused in case of arrest or detention. These rights were read with Art 21 of the Constitution of India which guarantees the right to life. Thus, the accused has a right not to be put to any torture or violence.

Moreover, handcuffing or other fetters is not allowed by the Police Personnel. Section 49 of CrPC states that “The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.”²³ Thus, an officer can only handcuff the accused if there is an apprehension of escaping and it is necessary to handcuff to prevent that.

It is brought to notice that handcuffing is permitted in many countries for ensuring that the person does not escape. But in India, handcuffing is treated as prima-facie inhuman and

¹⁶ The Constitution of India, Article 20(2).

¹⁷ The Constitution of India, Article 20(3).

¹⁸ The Constitution of India, Article 21.

¹⁹ The Constitution of India, Article 22(1).

²⁰ The Constitution of India, Article 22(2).

²¹ *D.K Basu v. State of West Bengal* (1997) 1 SCC 416.

²² *Joginder Kumar v. State of Uttar Pradesh* 1994 AIR 1349.

²³ The Code of Criminal Procedure 1973, Section 49.

unreasonable under Art. 21 of the Constitution of India.²⁴ Therefore, the accused are prevented from handcuffing or any other restraint.

However, the committee is of the view that appropriate provision in the Code should be made prescribing the conditions for handcuffing and providing an in-house mechanism to correct the aberrations including punishing the Officer for misusing the power.²⁵ This is to establish a balance between preventing any abuse by the Police officer and the person arrested.

RECOMMENDATIONS

The Committee had laid down the following recommendations w.r.t the rights of the accused

1. That the guidelines which are laid down by the Supreme Court be clarified and crystalized in Criminal Procedure Code.
2. That reasonable situations should be laid down permitting and regulating handcuffing including the liability in case of misuse of power by the Police-officers.

According to the researcher, crystalizing the guidelines will be beneficial as it will get a written statutory form making it easy for the Judges to implement them. Moreover, more people will be aware of such rights. However, the situations permitting handcuffing can amount to a situation of misuse of power by police. The present law lays down that if there is no need, no restrictions should be imposed which is a self-sufficient provision in itself.

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

In India, the burden of proof is on the Prosecution to establish the guilt of the accused. The burden of proof is defined as, "On an issue, there is an obligation on one party to convince the tribunal of the truth of some proposition of fact which is in issue and which is vital to his case."²⁶

Every man is presumed to be innocent until proven guilty. This is a universally recognised right. Art. 14(2) of ICCPR which provides that, "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."²⁷ In

²⁴ *Prem Shankar Shukla v. Delhi Administration* 1980 AIR 1535.

²⁵ Para. 4.7 The Malimath committee.

²⁶ S.L Phipson & D.W Elliot, *MANUAL OF THE LAW OF EVIDENCE*, 11th ed. 2001, p. 51.

²⁷ The International Covenant on Civil and Political Rights, Article 14(2).

addition to it, Sec. 103 of Evidence Act states that “The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.”²⁸

However, there are certain deviations from this fundamental principle wherein the presumption can be shifted to the accused. Section 105 to section 106 of the Evidence Act lays down the burden of proof.²⁹ These deviations have been upheld by the Court.

In *K. Veeraswamy v. Union of India*³⁰, the SC has upheld the validity of sec 5(1)(e) and sec 5(3) of the Prevention of Corruption Act wherein the Act places the burden of proof on the accused rather than the Prosecution.

Keeping in view the above practices, the Committee was of the view that the proof beyond a reasonable doubt is not an absolute principle and that deviations can be made if it is deemed fit to do so.³¹ The Committee also recommended that the proof beyond reasonable doubt should be shifted to a mid-level standard of proof known as “courts conviction that it is true”.³² The committee was of the view that the proof beyond reasonable doubt raises a very heavy burden of proof on the Prosecution and it so happens that the wrongdoers or offenders are often acquitted because of this reason.

In *State of West Bengal v. Orilal Jaiswal*, the SC has stated that,

“There is no absolute standard of proof in a criminal trial and the question must depend upon the facts and circumstances of the case. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man.”³³

As a result, it is clear that there is no absolute adherence to “proof beyond reasonable doubt” and the Judiciary has modified the standard of burden of proof as justice demands. Therefore, the committee gave the following recommendations –

RECOMMENDATIONS

²⁸ The Indian Evidence Act, Section 103.

²⁹ The Indian Evidence Act, Sections 105-114.

³⁰ *K. Veeraswamy v. Union of India* 1991 SCC (Cri) 734.

³¹ Para. 5.8 The Malimath Committee.

³² *Id.*

³³ *State of West Bengal v. Orilal Jaiswal* (1994) 1 S.C.C. 73.

1. The Committee stated that the present standard of proof should be substituted.
2. It should be higher than the one described as probable but less than “beyond a reasonable doubt.”
3. Accordingly, the Committee suggested the addition of a clause in Section 3 which is:
“In criminal cases, unless otherwise provided, a fact is said to be proved when, after considering the matter before it, the court is convinced that it is true”.

The Malimath Committee refers to the standard of clear and convincing proof applied in cases of fraud in the US³⁴ but it does not lay down how, when and why will it be effective in India. Moreover, this standard without proper clarification will result in more severe problems and thus, would create more chaos.

However, it is to be noted that the situations mentioned by the Committee when the burden of proof was relaxed or was shifted was due to some unique and peculiar situations and circumstances not in the ordinary course.

Thus according to the researcher, it is fair that the burden of proof is on the Prosecution and that the accused has to be proved guilty beyond a reasonable doubt so that there are no chances of error by the Court. The Court has also asserted that even though 10 offenders are acquitted but one innocent should not be punished.³⁵ Thus the current system is fair in this regard.

JUSTICE TO THE VICTIMS

One of the important aims of the Criminal Justice System is to ensure justice for the victims of the crime. The victims of a crime have some rights which according to the committee they are deprived of. Thus, the committee had made certain recommendations to secure justice for such victims.

RECOMMENDATIONS

1. The victim or his legal representative should have a right to participate in the proceedings with the power to produce evidence or to ask questions or to know the status of the investigation, etc. in addition to the Prosecution.

³⁴ Para. 5.16 The Malimath Committee Report.

³⁵ Blackstone’s ratio, Sir William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS, Vol. 2 [1753].

2. Legal services in special circumstances should also include psychiatric and medical help.
3. Victim's compensation is the duty of the state and thus irrespective of the conviction of the accused, the victim should be compensated fairly through specific Victim's Compensations Laws and by Victim's Compensation Fund.

These recommendations, according to the researcher are very correct. It is to be noted that these loopholes in providing Justice to the victims are due to the lack of implementation of it. Thus, steps must be taken to serve justice to the victims in true terms rather than just talking about it.

INVESTIGATION

The report discussed various challenges in the Investigation wing of our country, such as lack of staff, inadequate training etc. However, the most important aspect discussed in the report was w.r.t the Separation of Investigation Wing from Law and Order wing. The Committee stated that this model is now expired and it is the need of the hour that new amendments are brought keeping in view the needs of the present scenario.

It is to be noted that the police have a combined duty to investigate and maintain law and order at the same time. This is the main reason behind some provisions restricting the use of certain information. Section 161 of the CrPC gives power to the Police to examine and interrogate a person and to reduce those statements in writing.³⁶ But section 162 of CrPC imposes a condition that such statements cannot be used other than to contradict the earlier statements of the person.³⁷ This restriction to the system is only due to the fact that there are chances of imposing third-degree by the police leading to abuse of power. According to the Committee, these restrictions acts as a loophole to the investigation of the case and it results in delay in the proceedings.

The Committee had found out that following are the difficulties faced by the officers in securing a speedy investigation –

1. Excessive workload
2. Lack of public cooperation

³⁶ The Code of Criminal Procedure, 1973, Section 161.

³⁷ The Code of Criminal Procedure, 1973, Section 162.

3. Inadequately trained personnel
4. Lack of laws
5. Misuse of the bail system
6. Dual duties of maintaining law and order and investigating, etc.³⁸

Due to these many reasons, our current system is defeated again and again. Also, due to the additional burden on the police, the quality of investigation is often compromised. This is the reason for the delayed and poor standard of investigation.³⁹ Thus, there is a dis-balance between the workload and the staff involved in the investigation leading to a poor standard of investigation. To make an efficient system, the committee gave some recommendations.

RECOMMENDATIONS

1. The Investigation wing should be a separate wing from the Law and order wing of the Police.
2. National Security Commission and State Security Commission should be constituted.
3. New posts on various levels to be created to ensure that the quality of investigation is maintained.
4. Infrastructural Facilities like accommodation, training facilities to be provided to the Investigating Officers.
5. Audio/video recording of witness testimony, dying declarations, and confessions should be legalised.
6. There should be mechanisms to facilitate coordination among the investigators, forensic experts and prosecutors at the state and district level for effective investigations.
7. The Indian Police Act, 1861 to be replaced by another act on the lines of the draft prepared by the National Police Commission.
8. Many different changes and provisions were recommended for different legislations incorporating structural changes which included changes in the functioning of Police and some substantial law.

³⁸ Para. 7.6 The Malimath Committee.

³⁹ Para. 7.7.3 The Malimath Committee.

COURTS AND JUDGES

There are major two challenges that the Judiciary faces. First is the huge pendency of cases and second is the poor rate of convictions. Therefore, the committee has paid attention to the adequacy of quality Judges.

In *India Judges Association and others v. Union of India*, it was directed by the SC to increase the number of Judge Population ratio from “10.5 or 13 Judges per million people to 50 Judges per million people.”⁴⁰ Moreover, the right to a speedy trial is a fundamental right under Article 21 of the Constitution of India.⁴¹ Therefore, the committee was of the view that if this direction of the Supreme Court is implemented, it will solve the problem of inadequate Judges.⁴² This was particularly with respect to the subordinate courts.

However, it is to be noted that the posts for High Court Judges remain vacant for a long time even though there is a formula given by Arrears Committee for High Court.⁴³ In addition to the problem of inadequate Judges, there is also an issue with the quality of Judges.

The Committee had laid down certain characteristics that a Judge must have. For example, good character, knowledge of substantive and procedural law, should not be vindictive, have an analytical mind, should have patience, etc.⁴⁴ Thus, the quantity and quality both should be maintained.

RECOMMENDATIONS

1. To ensure the quality of Judges, there should be a review before the appointment of Judges with respect to their qualifications.
2. The background of the Judges should be checked and they should be persons of proven integrity and character.
3. Training should be imparted to the Judges which should include theoretical, practical and in court.
4. In Supreme Court and High Court, the Chief Justice should constitute a special criminal bench comprising of specialised Judges in Criminal Law.

⁴⁰ *India Judges Association and others v. Union of India* (2002) 4.S.C. 247

⁴¹ *Katar Singh v. State of Punjab* 1994 SCC (3) 569, *Hussainara Khatoon v. State of Bihar* 1979 AIR 1369, *Abdul Rahman Antulay v. R.S. Nayak* 1988 AIR 1531.

⁴² Para. 9.2 The Malimath Committee.

⁴³ SUPREME COURT OF INDIA DETAILS OF THE COMMITTEES OF HON'BLE JUDGES, <https://www.sci.gov.in/committees/>, (Visited on June 20, 2019).

⁴⁴ Para. 9.4 The Malimath Committee.

5. In Urban areas where there are several trial courts, there must be lady Judges who must be assigned for cases related to women.
6. A high-powered committee should be formed to determine the credentials, qualities, and characteristics of character and integrity that the applicant for the High Court Judgeship should possess, as well as the facts or evidence required to meet these criteria.

WITNESSES AND PERJURY

Witness plays a very important role in the working of the Criminal Justice System. they give evidence which helps in the administration of Justice to the victims as well as the suspects of a crime. They help the court in discovering 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.⁴⁵ He performs a public duty to help the court in achieving Justice. He sacrifices his time to achieve the goal and therefore he should be respected and treated well.

However, the opposite happens currently. The Committee is of the view that the witnesses don't get proper facilities and there are no proper arrangements for seating and resting for the persons who come from faraway places.⁴⁶ They do not even get the assistance as to what court do they have to go to and give evidence. In addition to it, the toilet facilities, drinking water and food and refreshments are not available.⁴⁷ They are not adequately compensated for the amount of money spent on travelling and staying in a town where the court is located. According to the Committee, As a result, steps should be taken to review the scales of transport and other allowances, taking into account the prevailing rate in the area where the court is situated.⁴⁸

Another major problem that the Committee brought forward was about the safety and security of the witnesses and their family members.⁴⁹ Many times crucial witnesses are threatened or injured prior to their testifying in the court. The witnesses do not get any protection.

⁴⁵ The Oaths Act 1969, Section 4.

⁴⁶ Para. 11.1 The Malimath Committee.

⁴⁷ *Id.*

⁴⁸ Para. 11.2 The Malimath Committee.

⁴⁹ Para. 11.3 *Id.*

Some countries have enacted laws for the protection of witnesses like the United States i.e. United States Federal Witness Protection Program which has served as a model for others.⁵⁰ However, India doesn't have a law to protect witnesses. Moreover, the witness also goes through inconveniences when the case is adjourned.

Another point raised by the committee was that the witness is treated harshly and that they must be treated with dignity.⁵¹ Therefore, steps must be taken that they are treated with Honor and Dignity.

PROBLEM OF PERJURY

The Court is constantly faced with a huge problem of lying of witnesses. The witness has a primary public duty to speak the truth but it is not happening in many cases. According to the Committee, One of the primary factors for the high percentage of acquittals in criminal cases were witnesses turning hostile and providing false testimony in criminal cases.⁵² There may be many reasons for such lies. One of the reasons can be that the witness is threatened to give false testimony.

Although Perjury is a criminal offence under Section 193-195 of the IPC and punishment term is prescribed.⁵³ There are certain legal impediments in enforcing these provisions. For instance, section 195(1) of IPC states that "*No court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196.*"⁵⁴ Section 340 of the Code of Criminal Procedure lays down the procedure to be followed in Perjury cases.⁵⁵ The procedure to follow is a complex one that has certain requirements which consume a lot of time.

However, section 344 of the Code prescribes an alternate summary procedure.⁵⁶ The committee is of the view that such procedures are rarely resorted to.⁵⁷ Therefore, giving false

⁵⁰ Witness Protection Programs in Selected Countries Research Brief no. 43
<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rngnzd-crm-brf-43/index-en.aspx>.

⁵¹ Para. 11.5 The Malimath Committee.

⁵² Para. 11.7.1 The Malimath Committee.

⁵³ The Indian Penal Code 1860, Section 193 reads- Punishment for false evidence.

The Indian Penal Code 1860, Section 194 reads- Giving or fabricating false evidence with intent to procure conviction of capital offence.

The Indian Penal Code 1860, Section 195 reads-Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

⁵⁴ The Code of Criminal Procedure Code 1973, Section 195(1).

⁵⁵ The Code of Criminal Procedure Code 1973, Section 340.

⁵⁶ The Code of Criminal Procedure Code 1973, Section 344.

evidence is becoming routine and the criminal trials are not successful. It can lead to an innocent being convicted and a wrongdoer being acquitted affecting the Criminal Justice System negatively.

RECOMMENDATIONS

1. A separate place should be provided to the witness wherein they could avail the facilities such toilets, proper drinking water, resting etc.
2. Rates of travelling and other allowance to the witness should be reviewed so as to compensate him for the expenses that he incurs.
3. A law should be enacted for giving protection to the witnesses and their family members on the lines of the laws in the USA and other countries.
4. The Judge should be vigilant and regulate cross-examination to prevent the witness from being subjected to harassment, annoyance or indignity.
5. Section 344 of the Code should be suitably amended to compel the court to try the case summarily if it believes the witness intentionally or willfully gave false evidence or fabricated false evidence with the intent that such evidence is included in such proceeding.
6. A provision should be included requiring the Judge administering the oath or affirmation to warn the witness that he is obligated to speak the truth under Section 8 of the Oaths Act⁵⁸ and that whenever he makes a false statement in violation of the oath or affirmation that has been administered to him, the court has the power to punish him for perjury.

IMPLEMENTATION

The Supreme Court has approved Witness Protection Programme 2018 to ensure the protection and safety of witnesses. The bench comprising of Justice A.K. Sikri and Justice S. Abdul Nazeer identified the rights of the witness to testify within the ambit of Article 21 of the Constitution and said “The right to testify in courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the

⁵⁷ Para. 11.7.5 The Malimath Committee.

⁵⁸Persons giving evidence bound to state the truth- Every person giving evidence on any subject before any court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject.

Constitution.”⁵⁹ The Court in its landmark judgement *Mahendra Chawla v. Union of India* stated that-

*“The right to testify in courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and fear, and the right of witnesses to testify in courts without fear or pressure.”*⁶⁰

It is the first attempt to bring the protection of witnesses under the ambit of the law.

RESEARCHER’S COMMENT

In India, only 16% of people booked for criminal offences are finally convicted. This inefficiency of the Criminal Justice system leads to a situation of injustice. It is resulting in people losing faith in the current criminal justice system. Therefore, Government was considering revisiting the Malimath Committee to revamp the system.

Many of the recommendations are already been implemented by the Government. The Government has expanded the meaning of rape in the Indian Penal Code and Victim Compensation is now a reality. The Government has drafted a new Memorandum of Procedure for the appointment of High Court and Supreme Court Judges. However, the implementation of it would still take time.⁶¹ The Government has also implemented the umbrella scheme of ‘Modernization of Police Forces’. The main focus of the scheme is to strengthen police infrastructure at a cutting edge level by the construction of secure police stations, training centres, police housing (residential), equipping the police stations with the required mobility, modern weaponry, communication equipment and forensic set-up etc.⁶²

⁵⁹ Shrey Verma, WITNESS PROTECTION SCHEME IN INDIA, <https://blog.ipleaders.in/witness-protection-scheme-india/>, (Visited on June 21, 2019).

⁶⁰ *Mahendra Chawla v. Union of India* Writ Petition (Criminal) No. 156 OF 2016.

⁶¹ Finalization of MoP for Appointment Of Judges Will Take More Time: Govt In Lok Sabha, <https://www.livelaw.in/finalization-mop-appointment-judges-will-take-time-govt-lok-sabha/>, (Visited on July 16, 2019).

⁶² Ministry of Home Affairs, Modernisation of State Police Forces Scheme, https://mha.gov.in/division_of_mha/Police%20Modernisation%20Division/modernisation-of-state-police-forces-mpf-scheme, (Visited on July 16, 2019).

The Legal Service Authority Act was enacted by the Parliament with an object to provide free and competent legal service to the weaker section of society.

However, The Malimath Committee proposes reducing the burden of proof to less than “beyond a reasonable doubt.” It implies that if a proof is sufficient to convince a court that something is true, it may be called standard proof. Such a measure would have negative consequences for criminals and would necessarily require extensive deliberation. Moreover, one of the controversial recommendations wants confessions to the police admissible in court as evidence if senior police officer of Superintendent of Police (SP) rank or above signs off on the statement. Confessions to police have repeatedly come under scrutiny because of allegations of custodial torture, instances of custodial deaths, fake encounters and tampering with evidence. Therefore, these recommendations must not be implemented.

The ideals upon which the Justice System was built should not be jeopardized by reforming the Criminal Justice System. To make it easier for the average person, the rules and processes must be streamlined. The main emphasis must be on police reforms, including the appointment of more judges, the use of research tools, the expansion of forensic laboratories, and other infrastructure and capital investments. Some of the recommendations are already been implemented while others are in process of implementation. Therefore, the Government should revisit the report to implement such recommendations which would be beneficial for the Criminal Justice System of India.

In addition to that, the government should stop unprincipled criminalization and instead work on establishing a governing principle for reclassifying offences. This is due to the fact that unprincipled criminalization often results in not only the development of new offences based on unscientific grounds but also arbitrariness in the criminal justice system.

There is widespread understanding that laws that provide for arbitrariness end up treating minorities more harshly. In the United States, Blacks and Hispanics are overwhelmingly under trial prisoners. In India, Muslims, Dalits, and Backward sections are disproportionately represented among under trial prisoners.⁶³ Nonetheless, criminal justice policy should not be left hostage to a few unfair clauses of an otherwise excellent report arguing for the police and

⁶³ Jiby J Kattakayam, Malimath Committee recommendations on criminal justice reform are good, TOI Opinion (2018), <https://timesofindia.indiatimes.com/blogs/jibber-jabber/most-malimath-committee-recommendations-on-criminal-justice-reform-are-good-the-few-bad-ones-must-be-ignored-and-the-rest-taken-up/> (visited on July 30, 2019).

prosecutors to be free of undue government controls and calling for systemic changes in the courts, police, and prosecution. Therefore, Human rights and practical difficulties should be kept in mind before adopting any recommendations.

CONCLUSION

The Committee submitted this report after almost two years in which it gave almost 158 suggestions to revamp the age-old criminal system that was established by the Britishers. The Committee had dealt with a variety of topics related to our criminal system which should be reformed. Most of them are already dealt with above. The remaining suggestions and reforms were related to Trial procedures as dealt with in the Code of Criminal Procedure, Arrears Eradication Scheme, Vacations of the Courts, Offences and sentences, reclassification of offences, economic crimes, etc.

Some of the reforms have already been implemented such as Victim Compensation Fund, Witness Protection Scheme, etc. However, some of the reforms suggested by the Committee fails to deal with some important concerns of the criminal justice system. Also, it failed to consider International Human Rights. Therefore, the report gives us an unclear and impractical approach to certain issues. The Committee failed to deal with some fundamental systematic failings in the criminal justice system.