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Assessing the Impact of Justice Malimath Committee Report 2003 on Policies of India

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Introduction

In lieu of determining whether or not the current Criminal Justice System required changes or not, the Committee of Reforms was constituted by the Ministry of Home Affairs. The committee was established on the 24th of November of 2000 and the chairperson of the committee was to Justice Malimath, the chief justice of both Kerala and Karnataka. The reasons for the constitution of the committee in essence was to dig deep and to analyze whether the current Code of Criminal Procedure required amendments or changes in order to improve the system that was prevalent in India via the said code. The committee was also to set up in order to examine valid changes that could be brought into the Indian Penal Code as well as the Indian Evidence Act. The examination would require the committee to make laws in time and in concurrence with the people of the country at the prevalent period and pace of cases coming into courts. They were also required to make essential recommendation on ease of trial. Ease of trial would include improving procedures and making it more expeditious and fast. This would help in the speedy disposal of cases and reduce the burdens that were being placed upon the courts of the country. The procedure during the stages of investigation, police procedures in general, protection of witnesses and victims, prosecution procedures and so on were to be discussed in the report that eventually did come out in the year of 2003. After a certain period of viable scrutiny, the committee came out with its 158 recommendations via the said report, out of which a certain number of recommendations have been included in the Code of Criminal Procedure, Indian Penal Code and the Indian Evidence Act. The current paper shall look into features that the committee recommended and in introduced with regard to the Code of Criminal Procedure. In the code, the paper shall primarily focus on changes that were brought in for witness protection, smoother and faster investigation and improvement in quality of investigation, the changes brought about in trial and procedure, changes brought about in Public Prosecution. Although the paper shall cover the various recommendations of the committee, it shall lay emphasis largely on the investigation portion of the report. The recommendations in witness statements, distinction of offences in criminal law and increasing time period in cases of remand. The reasons for which they were found to be faulty which led to non-adoption of the recommendations with primary reference to these investigation changes. The gaps and problems shall also be stated in order to substantiate the reasons for non-adoption of the said recommendations.

Research Questions

I. **What was the requirement and need for the Malimath Committee for the Criminal Justice System?**

The introduction of the Malimath Committee primarily was to look into whether the Criminal Codes were aligned with the aspiration that India sought to achieve through the Criminal Justice system that was prevalent. The sought to understand whether there was a need to rewrite the codes. The aims of the committee included to ensure that through recommendations, they could ensure faster, cheaper and efficient delivery of justice to the people of India. They further looked into the reasons for delay and the pendency of cases at investigation and trial stages and in order to tackle the same, provide viable solutions to increase the pace of investigation and reduce pendency of cases. They also sought to make the police as well as the judicial agencies accountable for causing such delays in cases.

II. **What were the recommendation that the Malimath Committee Report bring in for Criminal Procedural Law in terms of witness protection and investigation procedure?**

Witnesses- The committee thoroughly went through the manner in which witnesses are treated and the need for protection of the rights of witnesses and proper treatment of witnesses. The committee in the reports recognized that in several cases witnesses are recalled many times when matters are adjourned which leads to witnesses incurring a huge amount of expenses. When the court is ordered to compensate the witnesses, it has also been observed that such funds do not reach the witnesses. These witnesses take out their time and perform their public duty to recognize the offender and provide evidence against him. It is the duty of the Criminal Justice System to provide for proper care and security of witnesses. The lives of witnesses often are at stake as well. Before the trial or investigation has begun, witnesses have been subject to threats by the accused party not to testify against him by pressing threats such as to murder, rape of a family member etc. In light of the issues listed, the committed suggested the following changes:

The primary duty on part of the Court is to ensure that there is an official designate who is required to attend to needs of the witnesses at courts. The Courts must in order to reduce the duplication of evidence as well as to save the time of the court, if required by the form

of medical evidence under Section 291, 292 and 293 of the Code of Criminal Procedure, the court shall do the same through video conferencing if it is not practical to summon the medical witness the court. The committee also stated that the evidence of such witnesses must be collected on a priority basis. They also suggested that there was a requirement for holding judges accountable for delays and ill treatment of witnesses. In several situations, witnesses are caused annoyance by lawyers which is not duly objected by the judges of the Court. Therefore, judges are to be trained and educated in the manner in which they are to step in during such situations and protect the rights of the witnesses. The committee also suggested that the witnesses must treated well inside the court room by providing seating facility to the witnesses. The round up here was the requirement of Courts to sensitize themselves to the needs of the witnesses and act in accordance to such needs.

The committee also felt that the compensation of the victim was necessary to reduce the effect of the crime so committed. The committee suggested a Victim Compensation Fund for cases where in the offender may not be apprehended. The committee also focused on witness protection system where in they recommended that the judges must be allowed to step in if witness harassment were to take place during the cross examination.

Investigation- The committee suggested several changes out of which some are to be looked into and analyzed. The committee submitted that India adopt an inquisitorial system wherein the judicial magistrate would also be able to contribute by looking over the investigation. The committee observed the need for changes to be brought about the investigation procedures present in the Criminal Justice System. It was stated in the report that while police look to administer justice and in the pursuit for the truth, the subject themselves to several short cut methods and depict negative traits. The committee looked into the role of Sections 161 and Section 162 of the CrPC which does not allow admissibility of statements of witnesses due to the third degree techniques used by police agencies. The position is however different from other countries. The problems that investigating officers face have been recognized to be due to factors such as lack of manpower, inadequacy in training, inadequacy in forensics, lack of coordination, political interference and so on.

The report dealt in detail with the lack of quality and staff through survey reports and suggested that the number of cases that an Investigating Officer takes up at a time should not exceed 10 cases at a time. To ensure the quality of investigation that is being done, rather

than allowing lower ranked officers to take up the position of the IO, the committee suggested that officers at least of the rank of an SI of inspector must take up the case in order to uphold the quality of investigation in the case. Section 36 of the CrPC recognizes the role that senior officers are required to play in a case. They are required to look over cases and play an important steering role which has found to be missing on several instances. Due to such absences, it has been observed that witnesses and victims even provide faulty statements u/s 164 of the CrPC. The lack of guidance of the officers has resulted in such a situation. It has been recommended that the National Police Commission as suggested in this report supervise the investigation procedure as the IO who itself is in a lowly rank would fail to do the necessary.

The committee also suggested that necessary training institutions be developed for officers in order to familiarize them with modern forensics, cyber issues and so on. The committee also suggested changes in forensic areas through involvement of forensics especially in cases of violence, to monitor the evidence that has been brought out and use the same for investigation, to provide investigation kits in police stations, provide facilities to store the evidences of such nature, provide finger print machines to store such data and provision of polygraph machines and lie detectors for the investigation process. Another aspect of investigation that was looked into by the committee was the filing of FIR's. The committee observed that it was often the SHO's who were required to record the FIR u/s 154 of the CrPC who are usually busy in the investigation of other cases. Witnesses in such cases were subject to harassment as they were required to wait until the officers returned. The committee in accordance to this suggested that in the absence of the SHO, the senior most officer is required to record the complaint. The committee also looked into the fact that complainants were required to file written complaint and oral complaints were often ignored. The same would lead to a waste of time and the complainant has the option of then changing his mind which is why there must be a proper registration process of the complaints made.

The next critical aspect that the committee analyzed in their report dealt with the distinction between cognizable and non-cognizable offences. A basic understanding as to which offence is cognizable has been duly listed. The police officers in cases of non-cognizable offences, are not required to get orders from the magistrate regarding investigation and arrest of the

accused.[3] However, such a power is not granted to the police officers in cases which are non-cognizable. The committee also spent time analyzing the list of non-cognizable offences and observed that these offences also include punishments that could go up till life imprisonment and also death with regard to Section 194 of the IPC. In such cases, the rationality of the division of cognizable and non-cognizable is lost. Further, the committee has also observed that in certain cases, police officers try to twist and manipulate the facts in order to fit the offence into non-cognizable as they would not have to start investigation but merely adhere to Section 155 of the CrPC.[4] In the light of these arguments, it was suggested by the committee that the distinction between cognizable and non-cognizable offences be removed and the investigation procedure shall be uniform in application to all cases.

The next aspect dealt with by the committee was with respect to Sections 161 and 162 of the CrPC which talk about statements of witnesses that are recorded by a police officer. Prior to the report, it was observed that statements that were made to the police officer could be recorded by the police officer at his behest.[5] It was not mandatory for him to do so and the position was also that the sign of the witness was not required as these statements were merely used for contradiction of a statement and not its corroboration.[6] The view of the committee in this regard was seen to be in concurrence with the view of the Law Commission that was expressed in its 41st report.[7] The committee went onto suggest that the statements made by witnesses must be mandatorily reduced into writing whether or not that particular witness was to be presented for examination. They also suggested that the statement must be read over to the witness and his signature must be duly obtained by the police officer and a copy of the same to given to the witness. In such a manner, Section 162 of the CrPC was to be amended whereby both, purposes of corroboration and contradiction could be met with using such a statement. Regarding statements of witnesses, the committee also recommended the adoption of modern technology to be used in evidence. They suggested that statements of that are video or audio recorded, dying declaration must be given admissible value as evidence in a court of law and the law must be duly amended to accommodate the same.

[3] *S.N. Sharma v. Bipen Kumar Tiwari and others*, AIR 1970 SC 786.
[4] Law Commission of India, 14th Report on Reforms of Judicial Administration.
[5] *Emperor v. Aftab Mohd. Khan*, AIR 1940 All 291.
[6] *Deepak Kumar Chaudhary v. State*, 2019 SCC OnLine Del 11321.
[7] Law Commission of India, 41st Report on the Code of Criminal Procedure, 1898.

The scope and misuse of arrest by police officers has also seen to be a matter that has been dealt with by the committee. It was observed that in several cases, the power to arrest in cases of cognizable and non bailable offences was largely misused. In light of the situation, the committee recommended that an arrest shall not be made by a police officer without warrant if the punishment for an offence is fine or if fine is an alternative penalty prescribed for imprisonment. They sought to replace the distinction of cognizable and non-cognizable offences with crimes that may be "arrestable with warrant or order" or "arrestable without warrant".

Based on the submissions that were put forth by the National Police Commission for the requirement of a new Police Act which would replace the Police Act that was enacted during the British Era was also suggested by the Malimath Committee in their report as they felt the need for professional attitude, removal of external influences upon police officers and so on. The committee suggested that a Police Act must be drafted based upon the recommendations of the National Police Commission.

For proper completion of investigation procedure and in order to make the investigation procedure effective, the committee sought to amend the period of time for remand and to increase the time from 15 days to 30 days in cases of offences where the punishment is deemed to be more than a period of five years.[8] The committee sought it to be justified in also increasing the amount of time for releasing a person against whom a charge sheet has not been filed within 90 days as u/s 167 of the CrPC. The reason for the same was stated to be that, in some cases it would be possible to complete the investigation within 90 days with regard to interstate cases. Thus, there is a requirement to increase the time period for filing a charge shit and provide another period of 90 days to the police.

The provision providing for anticipatory bail u/s 438 of the CrPC was deemed to have been misused by various courts without hearing the Public Prosecutors and granting the accused person anticipatory bail. In light of this particular reason, the committee suggested that such a bail must be granted only once the Public Prosecutor has been heard and when the matter has been posed before a court of competent jurisdiction.

[8] Amnesty International, *The (Malimath) Committee on Reforms of Criminal Justice System: Premises, Politics and Implications for Human Rights*, September, 2003.

The right to Silence has formed an integral portion of the Indian Criminal Justice System and acts as a right that is guaranteed to an accused person under article 20(3) of the Indian Constitution. It recognizes that a person, has the right to remain silent during investigation under this section.[9] The committee however, proposed that this right requires modification and in light of admissibility of statements made to police officers, it was stated that certain inferences could be drawn where the accused chose to remain silent. They also suggested that the accused shall submit a defense statement which may be used by the prosecution and the same would not be violative of article 20(1) of the Constitution.[10]

Public Prosecution- The prevalent issues with regard to prosecution has been discussed by the committee. In analyzing the issues with regard to prosecution, it was observed that India strived towards adopting provisions which created a separate Director of Prosecution in lieu of the fact that in the earlier days, the prosecution fell under the watch and directory of the Police in the state. With the achievement of establishing laws for a separate section for prosecution[11], it has come to the notice of the committee that as there is an inherent lack of supervision, Public Prosecutors tend to take their work lightly which has resulted in an inefficient and ineffective disposal of several cases. The essential issue that was recognized by the committee was that there seemed to be a lack in communication between the prosecution as well as the defense which led to the problems of slower disposal and cases with the conviction rates falling. The committee sought to introduce changes in this regard in order to strengthen the Prosecution system in the country and adopt procedures which would further enhance the functioning of the Prosecution. The committee firstly, spoke about the personality who would occupy the position of the Director of Prosecution. It was recommended that that a person who is of the post of IPS officer as Director General in states where there is no separate Director of Prosecution. It was urged that the Home Ministry take a greater responsibility in engaging the departments of Prosecution as well as the Investigation. The committee observed that certain states had adopted patterns where in the IGP or DGP would act as the Director of Prosecution and enhance the communication

[9] *Nandini Satpathy v. Dani (P.L.) And Anr*, 1978 AIR 1025.
[10] K. Deepalakshmi, THE HINDU, The Malimath Committee's recommendations on reforms in the criminal justice system in 20 points, (January 17, 2018), https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article22457589.ece.
[11] *S.B. Shahane and Ors v. State of Maharashtra*, AIR 1995 SC 1628.

between the two wings. The States of UP as well as Orissa have adopted the abovementioned technique which has led to enhancement of results in the two states. While acknowledging the same, the committee stated that the Prosecution wing must fall under the Attorney General. The committee recommended that the Government would appoint a police officer who is required to hold the post of Director General as the Director of Prosecution. The same must also be done in consultation with the Attorney General. The duties of the Director would be to enhance the communication gaps between the investigation agencies as well as the Prosecutors. They would also be required to review the work of the Public Prosecutors, Assistant Public Prosecutors and Additional Public Prosecutors along with the work of the investigation department. The committee also recognized that the appointment of a Public Prosecutor or Assistant Public Prosecutors from the existing cadre and not outside would result to a lack of representation from senior lawyers and would lead to a lack of expertise in certain situations. The committee recognized the need to create ex cadre posts which would enable prosecutors from outside the cadre which would allow and enhance the functioning of the prosecution. The committee also suggested that certain training programs to the prosecution lawyers which would enable their effectiveness in cases. In this manner, the number of delays in cases would also reduce and speedier disposal would be possible with a viable conviction rate from the end of the Prosecution.

Trial and Procedure- It came to the notice of the committee, the issues pertaining to Sections relating to summary proceedings including Sections 262 and 263 of the CrPC. The essence of this particular provision is that it allows for certain matters to be tried summarily by magistrates. It has been established that as per Section 262, in cases of summary trials, a sentence of larger than 3 months cannot be given by the concerned magistrate. It has been recognized that there must not be a limitation to certain judges being allowed to try cases summarily and must extend to all magistrates which allow the process of summary proceedings to be fully utilized. Other magistrates too must be allowed to try cases summarily u/s 262 of the CrPC. The issue about the enhancement of the limit of punishment imposed by the statute on magistrates was also noticed by the committee. The committee believed that in several instances, metropolitan magistrates have the ability to dispose cases summarily upto a period of 3 years as provided u/s 355 of the code. It was regarded that there is no explanation as to why the same punishment could not also be extended to section 262 of the

code. The recommendation made by the committee were largely based off of the suggestions that were proposed by the Law Commission in its 154th Report.[12] They suggested the enhancement of the punishment period u/s 162 to 3 years and certain definition amendments. Cases that would fall under 3 years would hence, fall under the scope of Summons cases could be tried summarily. In light of petty offences as described to be offences that would make the accused incur not greater than a fine of one thousand rupees was also recommended to be dealt with speedily. The committee stated that the magistrate would be allowed to summarily dispose of cases with regard to Petty offences in light of section 320 of the CrPC. In such cases, petty offences would also be tried in the same manner summarily and disposed of which would lead to a faster process of disposal. The accused person once giving himself or submitting to the offence, the procedure of appointing a lawyer and paying up expenses for the same, could also be avoided if petty offences are tried in the manner recommended. The committee seeks to let the accused person appear and represent himself with the absence of a lawyer for a faster procedure and avoidance of delays.

Has the Malimath Committee left out gaps or in the report submitted thereof?

Certain recommendations made by the Malimath Committee report laid down a foundation for certain aspects such as witness protection in India. Although the committee talks about the need for protection of witnesses, it fails to shed any light on the procedure required for the same. It does not quite tell us exactly how these witnesses whose lives are under threat must be protected. They simply state in their report that protection must be granted to witnesses and their family members like given in the USA but they fail to provide any real structure or procedure for the same.

With regard to investigation, several issues could be made out for the non-acceptance of the changes that were put forth by the committee with regard to investigation. The changes brought about to remove the distinction between cognizable and non-cognizable offences, the admissibility of section 161 and the remand period are not in adherence with the current issues prevalent which shall be explained further.

I. Is it essential to club cognizable and non- cognizable offences as per the recommendation?

[12] Law Commission of India, 154th Report on Code of Criminal Procedure, 1973.

One of the gaps that have been left out by the committee is regarding cognizable and non-cognizable offences. The entire rationale behind the distinction is in order to check with the magistrate and be assured that an investigation would be necessary in cases of non-cognizable offences[13]. In such cases where offences are petty in nature or of minimal consequence, it would not be justified in wasting time or resources on directly investigating these matters without any merit in the claim. Lack of evidence as well would not justify crimes to be further investigated and proceeded against.[14] Although the reasons stated by the Committee in relation to the amalgamation of both cognizable and non-cognizable cases may be valid to a certain extent, the committee does not address the rationale for distinction given in the first place. They also do not address the issues of minimal offences which would not require such immediate action to be pursued by the police. Therefore, there is a clear gap in the proposal and recommendation made by the committee regarding the same and the reason for not adopting the same would be justified. The idea of such a distinction has not been adopted by the Criminal Justice System due to the inefficiencies in the idea proposed by the committee.

II. Is the corroborative value provided to Section 161 justified by the committee in its report?

The very rationale behind making Section 161 of the CrPC a mere contradictory form of evidence is so as to ensure that no victim or witness is harassed by the police officers and made to give false statements under duress and is compelled to sign such statements[15]. The rights of such people need to be protected and their interests must be looked into. It is often regarded that police officers use third grade techniques in order to bring out what they want from the witnesses. The current recommendation which has not been adopted in the Criminal Justice System by way of an amendment is due to this very fact that police officers could misuse their powers and bring out what they wish for from witnesses. The statements that are made under this particular section are still to this date considered inadmissible in a court of law[16]. Thus a mere

[13] *Hazari Lai Gupta v. Rameshwar Prasad*, AIR 1972 SC 484.
[14] *R.P.Kapur v. State of Punjab*, AIR 1960 SC 866.
[15] *Parmananda v. State of Assam*, 2004(2) ALD Crl 657.
[16] *State of U.P v. MK Anthony*, 1985 SCC (Crl) 105.

contradictory value has been attached to this particular section and no form of corroborative evidence may be given to the same.

III. Period of remand to be increased from a period of 15 days to 30 days.

The issue with this particular recommendation by the Malimath Committee lies in the very fact that it fails to recognize the already prevalent problems that prisoners face. The lack of treatment with human dignity and torture methods that are used by police officers will be furthered if the span of remand would be increased to 30 days. The Supreme Court has well realized that these rights are imperative to any accused person[17] after his arrest has been made and such rights at no cost, shall be ignored.[18] The committee seems to have failed to recognize the problems that such people could face in case such a recommendation was made as law. Due to the illegal detention issues, bringing about such a change would have been rather detrimental to such persons which is why it was not adopted by the committee.[19]

IV. With regard to the problems associated to the changes brought about in article 20(3) of the Indian Constitution, the essence of the changes recommended would largely violate basic rights of the accused persons. In a country like India, where the assistance to legal aid and representation is still lacking, drawing such inferences against the accused and requiring the accused to write a statement of defence would only further tamper his chances of acquittal as he would lack the basic understanding of the law. Therefore, the right to silence is to be recognized in concurrence with the pertinent issues in India and the aforementioned changes would violate article 20(1).[20]This expression has also been furthered by eminent jurists and the law commission[21] in order to protect the rights of the accused.[22]Although the recommendation was not expressly put into force, there have been instances where the Supreme Court have allowed for such inferences to be drawn[23], it is imperative to follow the principle that the accused does have a right to silence or to not make

[17] *Nimeon Sangma v. Govt. of Meghalaya*, 1979 CrLJ 941.
[18] *Gauri Shankar v. State of Bihar*, AIR 1972 SC 711.
[19] Amnesty International, India – Words into action: recommendations for the prevention of torture, (January 2001).
[20] *Sri Sujit Biswas v. State of Assam*, 2013 CrLJ (SC) 3140.
[21] Law Commission of India, 180th Report on Article 20(3) of the Constitution of India and Right to Silence.
[22] DD Basu, Commentary on the Constitution of India, vol. 2, 9th ed.
[23] *Ramnaresh & Ors v. State of Chattisgarh*, 2012 4 SCC 257.

statement against his will[24] which cannot be used to draw inferences of any sort against him.

[24] MP Jain, Indian Constitutional Law, 7th ed. 2016.

Conclusion

The Malimath Committee sought provide apt solutions to the problems in the Criminal Justice System with regard to procedural as well as substantive law. While they recognized the various issues in the current system, in various instances, they left gaps in their analysis of a particular problem and have failed to include all that is necessary in a certain situation which resulted in gaps. The recommendations made by the committee has been largely criticized by Amnesty International who looked into the various flaws that the committee made in its proposals. The effective violation of fundamental rights, the current issues with the police system and their treatment of victims and witnesses are just a few of the key aspects that the committee has missed out on.

In such a situation, it would rather futile to take up the suggestions that have been proposed by the committee through its report. It has been noticed that, no major changes were brought about as a result of this particular report. The recommendations on the distinction of cognizable and non-cognizable offences, the admissibility of statements made u/s 161, the extension of remand time have not been put into the letter of law. Therefore, the committee's report although was recognized, did not provide any substantial change to the Criminal Justice System.

Recommendations

III. The first change with regards to the distinction of cognizable and non-cognizable offences, the recommendation made by the Malimath Committee should not stand as they do not address certain aspects, but offences must be distinguished by way of punishment limits which would give us a better definition of what a heinous offence would be.

IV. The admissibility of Section 161 cannot be adopted, because in India today, one cannot deny the faulty or unlawful techniques that police agencies use while getting out statements u/s 161 of the CrPC.

V. The remand period as well should not be extended in order to protect rights under article 21 and to avoid ill treatment of persons who have been locked up. The current 15 day period should be duly followed in cases of remand.

VI. With reference to the right to silence, the recommendation made by the Committee have been adopted by courts in recent judgments[25], but is urged that such inferences shall not be allowed as it would be violative of article 20(3) of the Constitution of India. There should be no requirement for the accused to file a statement of defense as the accused has an inherent right to remain silent.

[25] *Munish Mubar v. State of Haryana*, (2012) 10 SCC 464.