

# Critical study of Malimath Committee Report on Indian Criminal Justice System

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## Abstract

The Malimath Committee Report, officially known as the Report of the Committee on Reforms of the Criminal Justice System, was a significant document in India's criminal justice system. The committee was chaired by Justice V.S. Malimath, a former Chief Justice of the Karnataka and Kerala High Courts, and its recommendations aimed to address various challenges and issues faced by the criminal justice system in India. The committee was formed in 2000 by the Ministry of Home Affairs, Government of India, with a mandate to study the existing criminal justice system and propose reforms to make it more effective, efficient, and fair. The committee comprised legal experts, judges, police officials, and other professionals from different fields related to the criminal justice system. The Malimath Committee Report, submitted in 2003, covered a wide range of topics and made comprehensive recommendations for reforming different aspects of the criminal justice system.

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

## Introduction

To study the requirement of Reforms in the Indian Criminal Justice System, the Ministry of Home Affairs constituted a committee on 24<sup>th</sup> Nov 2000 which was headed by Justice V S Malimath<sup>1</sup>, the former Chief Justice of the Karnataka High Court. The main task of the committee was to examine the fundamental principles of criminal law of India and to study and give recommendation for changes (if required) in existing criminal justice system of India<sup>2</sup> so as to restore the confidence of the Indian citizens in the criminal justice system. The committee was also given the task of reviewing the existing Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872. Furthermore the committee was also required to look into the reasons of large number of back log of criminal cases, reasons for delay in disposal of criminal cases and reasons for low rate of conviction in those cases that involved serious crimes.

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<sup>1</sup> K Deepa Lakshmi, The Malimath Committee's recommendations on reforms in the criminal justice system in 20 points, available at, <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article61493071.ece>, last visited on 15/5/22

<sup>2</sup> Jaya Vats, Reforms needed in the Indian criminal justice system, available at, <https://blog.ipleaders.in/reforms-needed-indian-criminal-justice-system/>, last visited on 17/5/22

This, Malimath committee was required to discharge an onerous task in overhauling of the entire criminal justice system of India. To discharge this burden Malimath Committee was called upon the carefully analyse the basic principles pertaining to Criminal Law enshrined in the Indian Constitution. Furthermore, the Malimath committee was also required to carefully study the fundamental principles of criminal law<sup>3</sup> as laid down in Indian Constitution and to examine whether there was a need to re-draft the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act. Some other terms of reference that were given to this committee was to make necessary suggestions for fast disposal of cases and to see to it that police, prosecution and police work together.

It is worth mentioning that the notification pertaining to constituting the Committee never stated the reasons for its brining into existence. However, it is submitted that the reason for creating the Malimath Committee was very clear since there are several grey areas in existing criminal justice system of India that requires serious attention.

### **What is Criminal Justice System**

The term criminal justice system refers to the collection of institutions, laws, and processes involved in maintaining social order, preventing and investigating crimes, adjudicating legal disputes, and administering punishments or rehabilitative measures to individuals who have been found guilty of criminal offenses. It is a fundamental component of any functioning society and serves the purpose of upholding the rule of law and ensuring justice.

The key components of the criminal justice system in India are:

- **Law Enforcement:** Law enforcement agencies in India are responsible for maintaining public order, preventing crime, and investigating offenses. The police forces at the national, state, and local levels are involved in law enforcement activities.
- **Investigation:** When a crime is reported, the police are responsible for conducting investigations. They gather evidence, interview witnesses, and prepare a case file to present to the prosecution.
- **Prosecution:** The prosecution represents the government in criminal cases. Public prosecutors, appointed by the state, present the case against the accused in court. They review the evidence gathered during the investigation and present it before the court.
- **Courts:** India has a hierarchical system of courts. The Supreme Court of India at the top, followed by High Courts of respective states with District Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.<sup>4</sup>

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<sup>3</sup> Patil Amruta, Malimath Committee - Indian Polity Notes, available at, <https://prepp.in/news/e-492-malimath-committee-indian-polity-notes>, last visited on 18/5/22

<sup>4</sup> Singhania & Partners, India: Civil Courts System, available at, <https://www.mondaq.com/advicecentre/content/2808/Civil-Courts-System>, last visited on 20/5/22

- **Trial Process:** Criminal trials in India follow an adversarial system<sup>5</sup>, where the prosecution and defense present their cases before the court. The trial process involves the examination and cross-examination of witnesses, presentation of evidence, and legal arguments.
- **Sentencing and Punishment:** If the accused is found guilty, the court determines the appropriate punishment based on the severity of the crime and relevant laws.
- **Appellate Process:** The criminal justice system in India allows for appeals against the verdicts of lower courts.<sup>6</sup> Higher courts, including high courts and the Supreme Court, review the evidence and legal arguments presented during the trial and can uphold, modify, or reverse the decisions of lower courts.

The overall goal of criminal justice system is to maintain social order, protect the rights of individuals, and to provide impartial justice to both victims and the accused and the basic objectives of criminal justice system revolve around community, law enforcement agencies, the prosecution machinery and lastly the court.

Further, the criminal justice system can be divided into two parts viz,

- Adversarial Criminal Justice System and
- Inquisitorial Criminal Justice System

India typically follows adversarial criminal justice system which has been established way back by Britishers on the basis of their common law. This adversary system is based on two simple principles viz firstly, presumption of innocence of accused and secondly, the prosecution has to prove his case against all reasonable doubts.

According to Black's Law Dictionary, 'Adversary system is the court 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. A jury has also been used to decide such cases.'<sup>7</sup>

According to Black's Law Dictionary, the inquisitorial system is: 'Proof taking used in civil law, whereby the judge conducts the trial, determines what questions to ask, and defines the scope and extent of the inquiry'.<sup>8</sup>

The adversarial criminal justice system has several advantages that help in pursuit of justice. Some key advantages are:

<sup>5</sup> Harman Jyot Kaur, How did India decide between the 'adversarial' and 'inquisitorial system' of criminal justice : in light of plea bargaining and Article 20(3), available at, <https://blog.ipleaders.in/how-did-india-decide-between-the-adversarial-and-inquisitorial-system-of-criminal-justice-in-light-of-plea-bargaining-and-article-203/>, last visited on 20/5/22

<sup>6</sup> See, Appeal to High Court, available at, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_2\\_2\\_00032\\_198845\\_1517807326369&sectionId=32903&sectionno=49&orderno=49](https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00032_198845_1517807326369&sectionId=32903&sectionno=49&orderno=49), last visited on 12/5/22

<sup>7</sup> The Law Dictionary, available at, <https://thelawdictionary.org/adversary-system/>, last visited on 12/5/22

<sup>8</sup> Inquisitorial System Law and Legal Definition, available at, <https://definitions.uslegal.com/i/inquisitorial-system/>, last visited on 18/5/22

- **Protection of Individual Rights:** The adversarial system places a strong emphasis on protecting the rights of the accused. The presumption of innocence and the burden of proof on the prosecution ensure that the accused is afforded opportunity to defend himself.
- **Testing the Prosecution's Case:** The adversarial system allows the defense to vigorously challenge the prosecution's case through cross-examination and legal arguments.
- **Independent and Impartial Adjudication:** In an adversarial system, the judge serves as an independent and impartial decision-maker, ensuring unbiased assessment of the case.
- **Promotion of Transparency and Accountability:** The adversarial process takes place in open court, allowing the public to observe and scrutinize the proceedings.
- **Safeguard Against Abuse of Power:** By having opposing parties actively contesting each other's positions, the adversarial system acts as a safeguard against abuses of power.

### **Reasons for formation of Malimath Committee**

The Malimath Committee, officially known as the Committee on Reforms of the Criminal Justice System<sup>9</sup>, was constituted in India for several reasons. The primary objective of the committee was to study the existing criminal justice system in the country and propose comprehensive reforms to make it more efficient, effective, and responsive to the needs of society. Below mentioned are some of the specific reasons for constituting the Malimath Committee:

- **Need for Reform:** The criminal justice system in India faced various challenges, including delays in trials, overcrowded prisons, and a lack of efficiency. There was a recognized need for comprehensive reforms to address these issues and ensure timely and fair justice.
- **Public Confidence:** The criminal justice system plays a crucial role in maintaining public confidence and trust in the rule of law. The government recognized the importance of a system that is transparent, accountable, and capable of delivering justice effectively.
- **Evolving Legal Landscape:** The legal and social landscape in India was changing, with emerging challenges such as organized crime, terrorism, and increasing complexity of criminal cases. The existing criminal justice system needed to adapt to these evolving circumstances and effectively address new types of crimes.
- **Expertise and Recommendations:** Justice V.S. Malimath, the former Chief Justice of the Karnataka and Kerala High Courts, was widely respected for his legal acumen

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<sup>9</sup> 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](https://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system%5B1%5D.pdf), last visited on, 13/5/22

and experience. By constituting the committee under his leadership, the government sought to tap into his expertise and benefit from the committee's recommendations for reform.

- **Judicial and Government Collaboration:** The constitution of the Malimath Committee aimed to foster collaboration and cooperation between the judiciary and the government. The committee provided an opportunity for both entities to come together and work towards common goals of improving the criminal justice system.
- **Addressing Public Concerns:** There were concerns among the public and legal fraternity regarding the efficiency, fairness, and accessibility of the criminal justice system. The formation of the committee was seen as a response to these concerns, with the intention of bringing about positive changes and addressing the issues raised.

### **Major Recommendations of Malimath Committee**

The Malimath Committee came up with 158 recommendations in its report which called for significant changes in existing Criminal Justice System of India. Below discussed are some of the major recommendations:

#### **1. Mix of Inquisitorial and Adversarial System**

One of the most disputed recommendations of the Malimath committee is on addition of certain features of Inquisitorial System under the existing Adversarial Criminal Justice System of India. As per present Adversarial System, a judge is required to act like a neutral person and responsibility is imposed upon the prosecution to prove the case beyond reasonable doubt. The committee opined that due to several loopholes in existing Adversarial System there are large numbers of criminals who are able to escape from convictions. In such case if certain features of Inquisitorial system are adopted then it would be a better alternative. The committee took the example of countries like France, Germany and Italy where Inquisitorial system is being adopted. But the expert committee failed to take into consideration the difference in historical, structural, political, and ideological context of all these countries which have played an important role in development of their respective criminal justice system.<sup>10</sup> Further, the committee failed to address that the criminal justice system of countries like France has recently been the subject of widespread reform as the consequence of the development of a European Standard of Human Rights Law.<sup>11</sup>

#### **2. Reforms pertaining to detainees**

Malimath committee in its report has recommended that Section 167 of Criminal Procedure Code which provides for 15 days of 'Remand' should be increased to 30 days in those cases where the punishment is more than 5 years.

<sup>10</sup> 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).

<sup>11</sup> Ibid 3

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 court of law.<sup>12</sup> To this, the committee recommended that this section be reframed and section 32 of POTA (Prevention of Terrorism Act 2002)<sup>13</sup> and section 15 of TADA (Terrorist and Disruptive Activities (Prevention) Act 1985) should be incorporated which lays down that the confession made before the superintendent of police or any officer of above this rank, whether in the form of audio/video, irrespective of the fact whether the person is in custody or not, is admissible as evidence in court. The committee further added that the person would have a right to counsel.

Pertaining to The Identification of Prisoners Act 1920, the committee recommended that it should be amended on the basis of section 27 of POTA. The committee opined that incorporating this reform shall enable the investigating authorities to take saliva, footprints, fingerprints, hair, blood samples etc. for DNA and if the accused is denying then the authority shall have a right to make adverse inference against him.

### **3. Reforms regarding Fair Trial**

Malimath Committee has proposed several reforms in its report pertaining to fair trial. Some of the proposed reforms are:

- As far as filing of the charge-sheet is concerned, the committee proposed that the time period of filing the charge-sheet should be increased from 90 days to 180 days.<sup>14</sup> The committee further recommended that if the charge-sheet is not filled within the said period of 180 days then the detainee must be released on bail.
- The committee shared its opinion pertaining to section 54 of the Indian Evidence Act. Presently the section lays down that in criminal proceedings, the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character-in which case it becomes relevant.<sup>15</sup> The committee recommended that Section 54 of the Evidence Act should be amended in such a way that previous conviction of the accused should be considered as “Bad character” and it should be considered as relevant in criminal proceedings. The accused is only bind to give the

<sup>12</sup> 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 11/5/22

<sup>13</sup> See, Section 32 in The Prevention of Terrorism Act, 2002, available at, [https://indiankanoon.org/doc/978947/#:~:text=\(2\)%20A%20police%20officer%20shall,the%20police%20office%20shall%20not](https://indiankanoon.org/doc/978947/#:~:text=(2)%20A%20police%20officer%20shall,the%20police%20office%20shall%20not), last visited on, 20/5/22

<sup>14</sup> 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 20/5/22

<sup>15</sup> Advocate Khoj, S.54 of Indian Evidence Act, available at, <https://www.advocatekhoj.com/library/lawreports/indianevidenceact/177.php?Title=Indian%20Evidence%20Act,%201872&STitle=Sections%2053%20to%2055#:~:text=Under%20section%2054%2C%20in%20criminal,whi ch%20case%20it%20becomes%20relevant,>, last visited on 12/5/22

evidence of his good character when the prosecution is able to give evidence of bad character.<sup>16</sup>

- Regarding questioning to the accused, the committee recommended that only at the free will of the court the accused may be questioned for finding the truth and any other relevant information. In case the accused refuses to give information then the court should draw adverse inference against the accused.
- The committee has recommended that the defendant has to defend him/herself on the early stage of trial even with the weak defence. If the response of the defence is vague, general or devoid of material, the court may give the opportunity to the accused to rectify the statement after that court shall deem that the allegation is not denied.<sup>17</sup>
- Regarding standard of proof, the committee was of the opinion that the standard of proof should be reduced to increase the conviction. The committee laid down that, the view that “prosecution has to prove their case beyond the reasonable doubts” has to change.
- To make the process more speedy the committee recommended that the procedure prescribed in section 262-264 pertaining to summary trial in Criminal Procedure Code should be amended. Further the maximum punishment of 3 months as prescribed in the provision should be increased to three years in cases of summary trials. The committee further recommended that in cases where the witness has wilfully given false evidence before the court of law, then in such cases the court should try the case summarily. As of now the present situation is that the court has discretionary power to choose the process.
- The committee has recommended some provisions to include in IPC, Cr.P.C., Evidence Act of India of POTA and TADA which will lead to the generalization of special laws with addition of safeguards. Further, the committee suggest that the definition of terrorist acts, disruptive activities and organized crimes should be included inclusively and comprehensively.<sup>18</sup>
- With respect to section 498A of Indian Penal Code pertaining to cruelty the committee suggested that the offence of cruelty should be made compoundable and bailable as well.

#### **4. Justice to victims of crime**

According to committee, the victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation. If the victim is dead, the legal representative shall have the right to implement himself or herself as a party, in case of serious offences. The State should provide an advocate of the victim’s choice to plead on

<sup>16</sup> 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 15/5/22

<sup>17</sup> Ibid 6

<sup>18</sup> Ibid 6

his/her behalf, where the state bears the cost. The compensation to victim is a State obligation in all serious crimes. The committee also recommended for creation of separate fund titled as The Victim Compensation Fund and the assets confiscated in organised crimes can be made part of the fund.<sup>19</sup>

### **5. Police Investigation**

The Committee suggested the separation of the investigation wing from Law and Order. The committee further recommended the setting up of a National Security Commission and State Security Commissions. The committee also insisted upon appointment of Additional SP in each district to maintain crime data, organisation of specialised squads to deal with organised crime, and a team of officers to probe inter-State or transnational crimes.<sup>20</sup>

### **6. 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. Committee justified this amendment by analysing Article 20(3) of the Constitution of India. It opined that article 20(3) provides immunity to the accused from compulsion to speak against himself, however, it does not speak of any immunity from drawing of appropriate inference when the accused refuses to answer. Further, 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.<sup>21</sup>

The Malimath Committee's formation and subsequent recommendations provided a platform for a comprehensive review of the criminal justice system in India. While not all of its recommendations have been fully implemented, the committee's work has contributed to ongoing discussions and efforts towards reforming the system to better serve the needs of society. It's important to note that the criminal justice system in India faces challenges, including backlogs of cases, delays in trials, and overcrowding in prisons. Efforts are being made by the Indian government and judiciary to address these challenges and bring about reforms for a more efficient and equitable criminal justice system.

### **Certain shortcomings in Malimath Committees Report**

<sup>19</sup> See, Malimath Committee: An overview, available at, <https://byjus.com/free-ias-prep/malimath-committee/#:~:text=Malimath%20Committee%20%E2%80%93%20Recommendations&text=For%20instance%2C%20it%20seeks%20to,be%20doubled%20for%20grave%20offences.>, last visited on 12/5/22

<sup>20</sup> Ibid 9

<sup>21</sup> Rachna Mishra and Utkarsh Mishra, Malimath committee's reforms in criminal justice system: a critical analysis, available at, [https://3fdef50c-add3-4615-a675-a91741bcb5c0.usfiles.com/ugd/3fdef5\\_c1774d48bc5e47728f126a18d8340b81.pdf](https://3fdef50c-add3-4615-a675-a91741bcb5c0.usfiles.com/ugd/3fdef5_c1774d48bc5e47728f126a18d8340b81.pdf), last visited on 15/5/22



While the Malimath Committee Report made significant recommendations for reforming the criminal justice system in India, it also faced criticism and raised concerns regarding certain aspects. Some of the lacunas or criticisms of the report include:

- **Emphasis on punitive measures:** One criticism of the Malimath Committee Report is its perceived focus on punitive measures rather than restorative justice or rehabilitation. Some experts argued that the report did not give sufficient attention to the reformation and rehabilitation of offenders, which are crucial aspects of a comprehensive criminal justice system.
- **Lack of holistic approach:** Critics have pointed out that the report primarily focused on procedural reforms and did not adequately address the underlying social, economic, and systemic factors that contribute to crime. They argue that a more holistic approach, considering social and economic disparities, would be necessary for effective reform.
- **Limited attention to human rights:** Some experts have raised concerns about the report's treatment of human rights issues within the criminal justice system. They argue that the recommendations did not sufficiently prioritize protecting the rights of accused persons, ensuring fair trials, and preventing violations of fundamental rights.
- **Inadequate consideration of marginalized communities:** The report was criticized for not adequately addressing the specific concerns of marginalized communities, such as Dalits, Adivasis, and religious minorities, who often face discrimination within the criminal justice system. Critics argue that more targeted recommendations were needed to address the specific challenges faced by these communities.
- **Lack of consultation:** Some stakeholders raised concerns about the limited extent of consultation during the committee's deliberations. They argued that a wider range of perspectives, including those of civil society organizations and experts from diverse backgrounds, should have been considered to ensure a more inclusive and comprehensive set of recommendations.
- **Implementation challenges:** While the report made several recommendations, the actual implementation of these recommendations faced challenges. Some experts argue that the lack of political will, bureaucratic hurdles, and resource constraints hindered the effective execution of the proposed reforms.

It's important to note that the criticisms mentioned above reflect various viewpoints and interpretations of the Malimath Committee Report. Despite these lacunas, the report did contribute to important discussions on criminal justice reform in India and served as a foundation for subsequent deliberations and initiatives in the field.

Furthermore, it also important to note that no system is perfect, and the adversarial system has its limitations and criticisms. Some argue that it can be an expensive and time-consuming process, potentially leading to delays in justice. Additionally, it places a heavy burden on the

accused and their defense team to counter the resources and power of the state. Nonetheless, the adversarial system remains a widely used and valued framework in many jurisdictions around the world.

It is important to note that the criminal justice system in India, like any other system, has its own strengths and challenges. Over the years, efforts have been made to reform and improve the system, address issues such as delays in justice, strengthen victim rights, and enhance the effectiveness of law enforcement and investigation processes. On-going discussions and initiatives continue to shape the evolution of the criminal justice system in India.

### **Conclusion**

The main objective of the Malimath Committee was to identify the challenges and shortcomings in the criminal justice system and suggest measures to address them. It analyzed various aspects of the system, including investigation procedures, judicial processes, police functioning, victim protection, prison administration, and legal reforms.

While the report suggests that the current adversarial system be converted to inquisitorial, it ignores the higher burden on the court and the requirement for significantly more infrastructure that such a transformation would entail. There are initiatives to adapt parts of the adversarial system into the inquisitorial system used in Germany and France. Given these factors, as well as the practical problems involved, the inquisitorial system's operation must be thoroughly examined before it can be implemented into our system. Trials that go quickly, courts that move quickly, the large number of people awaiting trial, and access to the courts have all been overlooked. The report makes no mention of crimes against members of the Scheduled Castes and Scheduled Tribes.

India must have a clear policy that will guide the adjustments that will be made to the existing criminal legislation. It also needs to improve the police, prosecution, judiciary, and prisons at the same time. To achieve all-around peace in society, the focus of reform should be on reformative justice.

The Malimath Committee Report sparked extensive debates and discussions among legal experts, policymakers, and the public. Some of the recommendations were implemented, while others faced criticism or were not adopted due to various reasons, including practical feasibility and differing opinions. It is important to note that the Malimath Committee and its report were specific to the context of the Indian criminal justice system. The committee's findings and recommendations were intended to address the unique challenges and requirements of the system in India, with the goal of improving its functioning and ensuring justice for all stakeholders involved.

The criminal justice system is steeped in policy ambiguity. India must create a clear policy that will guide the amendments that will be made to the IPC or CrPC. All reforms will be in vain unless improvements are implemented in the police, prosecution, judiciary, and prisons at the same time.