

# The Malimath Committee's recommendations on reforms in the criminal justice system in 20 points

As the Union government is considering to revisit the Malimath Committee report on reforms in the criminal justice system, here is a look at what the panel recommended in 2003.

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K. DEEPALAKSHMI

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The panel was in favour of borrowing features from the inquisitorial system of investigation practised in countries such as Germany and France, where a judicial magistrate supervises the investigation. The committee recommended that courts be bestowed with powers to summon any person — whether or not listed as a witness — for examination, if it felt necessary.

### **Right to silence**

The panel recommended a modification to Article 20 (3) of the Constitution that protects the accused from being compelled to be a witness against himself/herself. The Committee suggested that the court be given freedom to question the accused to elicit information and draw an adverse inference against the accused in case the latter refuses to answer. The Committee also felt that the accused should be required to file a statement to the prosecution disclosing his/her stand.

### **Rights of the accused**

The Committee suggested that a Schedule to the Code be brought out in all regional languages so that the accused knows his/her rights, as well as how to enforce them and whom to approach when there is a denial of those rights.

### **Presumption of innocence**

The courts follow “proof beyond reasonable doubt” as the basis to convict an accused in criminal cases. This, the committee felt, gives “very unreasonable burden” on the prosecution and hence suggested that a fact be considered as proven “if the court is convinced that it is true” after evaluating the matters before it.

### **Justice to victims of crime**

The Committee made a series of recommendations to ensure justice to the victims.

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 implead himself or herself as a party, in case of serious offences.

The State should provide an advocate of victim’s choice to plead on his/her behalf and the cost has to be borne by the State if the victim can’t afford it.

Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation.

A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund.

### **Police investigation**

The Committee suggested hiving off the investigation wing from Law and Order. It also recommended setting up of a National Security Commission and State Security Commissions. To improve the quality of investigations, it suggested a slew of measures, including the appointment of an Addl. 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, and setting up of a Police Establishment Board to deal with posting, transfers, and so on.

Police custody is now limited to 15 days. The Committee suggested this be extended to 30 days and an additional time of 90 days be granted for the filing of charge sheet in case of serious crimes.

### **Dying declaration**

The committee favoured dying declarations, confessions, and audio/video recorded statements of witnesses be authorised by law. It also sought amendments to the law to allow thumb impression only if the witness is illiterate.

### **Public prosecution**

It suggested that a new post, Director of Prosecution, be created in every State to facilitate effective coordination between the investigating and prosecuting officers under the guidance of the Advocate General. The appointment of Assistant Public Prosecutors and Prosecutors, it was recommended, should be made through competitive examination. There was also a rider that they were not to be posted in their home district and the places where they were already practising.

### **Courts and judges**

The report submitted in 2003 pointed out the judge-population ratio in India is 10.5 per million population as against 50 judges per million population in many parts of the world. **The ratio is 19.66 per million people as of 2017.**

The National Judicial Commission must have clear guidelines on precise qualifications, experience, qualities and attributes that are needed in a good judge and also the prescription of objective criteria to apply to the overall background of the candidate. The higher courts, including the Supreme Court, should have a separate criminal division consisting of judges who have specialised in criminal law. The committee suggested every court keep a record of the timestamps such as date of conclusion of arguments, date of pronouncement of judgment, and so on, which may be prominently displayed.

### **Trial procedures**

The Committee felt that all cases in which punishment is three years and below should be tried summarily and punishment that can be awarded in summary trials be increased to three years.

### **Witness protection**

Noting that taking action against perjury is a cumbersome process and genuine witnesses are treated shabbily, the Committee batted for a strong witness protection mechanism – it said the judge should be ready to step in if the witness is harassed during cross-examination.

It also recommended the following: that witnesses get their allowances on the same day; they be provided with proper seating and resting facilities and be treated with dignity. It also suggested that a separate witness protection law be enacted akin to the one in the United States.

### **Perjury**

If during the trial, the witness is found to have given a false evidence with an intention to affect the case, he/she must be summarily tried and be liable to fine up to ₹500 or up to three-month prison or both.

### **Vacations for the courts**

The committee recommended reducing the period of vacation by 21 days, keeping in mind the long pendency of cases. If implemented, the Supreme Court will work for 206 days and High Courts will function 231 days per year.

### **Arrears Eradication Scheme**

The Committee proposed an ‘Arrears Eradication Scheme’ to tackle cases that are pending for more than two years. Under the scheme, such cases will be settled through Lok Adalats on a

priority basis. These cases will be heard on a day-to-day basis and no adjournment shall be permitted.

## **Sentencing**

The Committee is in favour of a permanent Statutory Committee to prescribe sentencing guidelines. Pregnant women and women with child below seven years can be kept under house arrest instead of being lodged in prison, keeping in mind the future life of the child, it said.

In cases where the interest of society is not involved, law should favour settlement without trial as recommended by the Law Commission. The fine amount may be increased by fifty times. In cases where the convict is unable to pay fine or has defaulted, community service may be prescribed.

The Committee also favoured substituting death sentence with imprisonment for life without commutation or remission.

The Indian Penal Code has to be reviewed to enhance, reduce or apply alternative modes of punishments keeping in mind new and emerging crimes.

## **Reclassification of offences**

Offences are currently classified as cognisable and non-cognisable. Instead, the Committee recommended classifying offences as social welfare code, correctional code, criminal code, and economic and other offences code.

## **Offences against women**

### **Here is a gist of the Committee's recommendations:**

**Bigamy:** Evidence regarding a man and woman living together for a reasonably long period should be considered as marriage, even if he is already married and he is liable to provide maintenance to both women.

**Adultery:** When a man can be punished for having sexual relations with another man's wife, the woman should also be liable for punishment.

**Domestic abuse:** The Committee favoured making Section 498A as a bailable and compoundable offence. This Section is largely used in case of dowry harassment.

**Rape:** Non-penal penetration and any forcible penetration should also be considered as rape and must be carry a heavier punishment. The trial of rape cases should be done with most expeditiously, within four months, and with a high degree of sensitivity.

### **Organised crime and terrorism**

Though crime is a State subject, a central law must be enacted to deal with organised crime, federal crimes, and terrorism. A Department of Criminal Justice must be established to appraise procedural and criminal laws and to periodically amend them, the Committee said.

One of its suggestions was that the possession of prohibited automatic or semi-automatic weapons and lethal explosives be made punishable with up to 10 years jail.

### **Economic crimes**

The Committee suggested that sentences in economic offences not run concurrently, but consecutively. A law has to be enacted to protect informers, it said.

### **Periodic review**

The Committee has recommended providing for a Presidential Commission for a periodical review of the functioning of the Criminal Justice System.