International Journal of Information Movement Vol. 7 Issue IX (January 2023)
Website: www.ijim.in ISSN: 2456-0553 (online) Pages 16-21

A STUDY ON PAST, PRESENT AND FUTURE CRIMINAL LAW REFORMS IN INDIA: SPECIAL REFERENCES WITH LAW COMMISSION REPORTS.

Ankit Kumar
LLM(criminal law)
C.R institute of law, Rohtak
Affiliated with Maharshi dayanand University Rohtak
Email ankitkhatkar300@gmail.com

Abstract: The most advanced form of government is the criminal justice system. It dominates society and parades a variety of organisations, individuals, groups, and sanctions to support its perceptions. The police station, courts, jail, bail, sentence, jails, imprisonment, death row, the gallows, hanging, and death are all included in this array, as well as constables in uniform and those brandishing batons. Each of these organisations and procedures is a component of the criminal justice system while yet having some degree of independence within it. However, the fact that there are several issues about whether or not these institutions are operating effectively within their purview is a major cause for concern. Are the enforcing agencies failing to follow the criminal law's provisions? How effectively do law commission recommendations get put into practice? Whether the recommendations made in the Malimath Committee Report on Criminal Law Reforms are being properly implemented and upheld. Is India's adversarial system of criminal justice appropriate in the modern world, or is it time to adopt a few principles of the inquisitorial system of justice that is used in common law nations? These few queries are an attempt by the researchers to introduce our criminal justice system in the current publication. The scholars also concentrate on the Law Commission's reform suggestions. In order to strengthen and streamline the current criminal justice system in India, the researchers have recommended certain significant changes/modifications.

Keywords: Criminal Justice System, Adversarial, Inquisitorial, Malimath Committee, Law Commission, Human Rights, Courts, Police.

1.0 Introduction:

The major goal of the criminal justice system (hence referred to as CJS) is to protect and uphold the rule of law, which includes maintaining control over the law, maintaining law and order in society, completing trials quickly, punishing wrongdoers, etc. The British implanted the current CJS in India, which has gone through three distinct periods that are as follows: The post-independence instrumental phase, in line with Nehru's ideas of planned development, saw "law," including criminal law, as an instrument for social change, and the post-emergency phase saw the rise of "liberal" due process alongside new and fresh intimidatory anti-terrorist and other laws. The imperial phase was celebrated for its effect on "civilization" as well as its utilitarian necessity.

Therefore, "criminal law and process" was seen by the British as the responsibility of the legislature, to be interpreted but not changed by the judiciary.

In this regard, it should be observed that the emergence of this new "law and development" perspective on criminal law is comprised of two separate developments. Indian criminal law's "strict responsibility" was the first. The second was to establish unique courts, tribunals, and preventive administrative detention for particular wrongdoings and offences. The first trend was seen in numerous pieces of socioeconomic legislation that relied on criminal sanctions to be enforced. In connection to such offences, strict liability conceptions modified common law notions of assigning guilt based on willful wrong a change that didn't always sit well with all Supreme Court justices. Former Chief Justice Gajendragadkar, who was a leading proponent of social engineering through legislation, summarised this comprehensive strategy. This pattern still dominates Indian criminal law thought. Alongside the development of "strict liability" theories, a second trend emerged that saw "special courts" and "special processes" set up for unique offences. The Supreme Court first had reservations about allowing an excessive number of "special

procedures and courts," which were compared to the creation of Star Chambers and were at odds with a Diceyan understanding of the rule of law that demanded that everyone be treated equally under the ordinary law.
However, this reluctance rapidly faded, particularly after the Emergency (1975-77). The Special Courts Bill, 1979, and the Supreme Court's affirmation of it mark the end of the road for the establishment of special courts and processes for different classifications of offences since authorities are eager to bring the guilty parties responsible for the Emergency to justice. Special Courts are now considered to be the norm. In addition to preventive detention, anti-terrorist laws (as in TADA and POTA) and for anti-corruption crimes established special Courts and procedures. It is important to note that the Law Minister established "quick track" courts in this context. The concept of "fast track" legislation was first proposed by Arun Jatley, who was the law minister at the time. The "Best Bakery" case, where a 'fast track' court acquitted all the accused of ruthlessly roasting individuals in the Bakery to death, is the best illustration of what may go wrong.

The development of special procedures and courts has resulted in the creation of new rules of proof, not just for crimes like dowry murder or rape, but also more generally for anti-terrorist law, to the point that the presumption of innocence of an accused has been threatened. With this, the CJS assumes an aggressive stance and prepares to confront the accuser. The Malimath Report, which calls for more extreme adjustments, gives more brazen expression to the imbalance in the Indian CJS that is gaining significance with time.

2.0 Reforms Advised by The Law Commission:

Although the Indian CJS appears to be committed to accepting strict liability rules, special court and procedure requirements, and evidence rules, this commitment has not been systematically considered; rather, it has developed over time as the legislature has moved from one piece of legislation to another. There haven't really been many systematic efforts to examine criminal justice as a whole. The Law Commission is one of the main sources for coming up with "reform" proposals. However, it has a patchy track record in advising improvements to the criminal justice system. The Law Commission's famed 14th Report, published in 1958, took a broad approach to criminal courts. The specific issue of the High Court's nomination of justices for extended sessions was addressed in the 32nd Report from 1967. Following closely behind, the 33rd report11 rejected the notion that public employees must be required to testify about bribery offences. The 36th report included topics related to issuing bail. The Criminal Procedure Code's provisions relating to criminal courts and investigations were addressed in the 37th Report, and the recommendations from the 37th Report were revisited in the 41st Report (1969). The 47th Report on Socio-Economic Offenses (1972) and the 29th Report (1966) just explained the foundation for India's instrumental approach to using criminal law to promote social reform and development. The Law Commission's 48th Report gave dubious support to the pressures to streamline the system at the expense of civil liberties, including by allowing confessions to senior police personnel (1972). The Law Commission's 74th Report, published in 1978, examined the admissibility of certain witness testimony to Commissions of Inquiry following the Emergency. This was evidently in relation to the Commission's current investigation of Mrs. Gandhi's record during the Emergency. In the 78th Report, the predictable concerns about delays in criminal trial courts appeared without any concrete, actionable solutions (1979). There were important reports on the 172nd Report (2000), dowry deaths, and current controversies surrounding rape and related offences. Piecemeal reforms were also taken into consideration for sureties for maintaining public order, the ability of criminal courts to reinstate cases that had been dismissed for default, preferential treatment for those who enter guilty pleas without negotiation, the elimination of unnecessary civil and criminal statutes, and protection of informers in general. Recounting these initiatives to think about law change is done to demonstrate that they have either been too generic or too issue-specific, without necessarily using a methodical approach. The relevance and depth of their responses to the trend or issue of the day have typically been minimal.
The Criminal Procedure Code, Penal Code, and Evidence Act all underwent some Law Commission assessments, but without offering any major new insights. Discrete investigations on the right to silence have also been conducted, and these need to be carefully examined because any interference with this important right needs to be closely monitored. Although it makes many helpful recommendations in its report on the law relating to arrests regarding not detaining people in connection with a wide range of offences, this Report has generally been ignored because it presents a liberal face that the Government does not wish to countenance at a time when the latter is preaching harsh criminal law and strict procedures. The government has found it more acceptable to maintain the anti-narcotics laws and, more significantly, the Prevention of Terrorism Bill, 2002 report, which resulted in a radical revision of the anti-terrorist legislation. This most recent report wasn't immune to criticism. The Law Commission's

caution for laws that are more protective of civil freedoms was met with instant publication by the National Human Rights Commission (NHRC), who released their own recommendations in opposition.

The government has adopted the Law Commission's strict recommendations about some harsh laws, but the Law Commission itself has fallen short of expectations as a leading authority on criminal justice reform. It hasn't really resisted the trend toward more restrictive anti-libertarian policies and frequently applies itself more incisively to trivial issues than to deeper ones. Perhaps this explains why the Government looked to the Malimath Committee to make recommendations for a new system of criminal justice in India.

3.0 Report of the Justice v. S. Malimath Committee:

Evidence captured on video and audiotapes before a police officer with the level of superintendent should be allowed to be used as evidence, according to the Malimath Committee's recommendation. Given the advancements in technology, it was suggested that videotapes could be used to help a Magistrate determine whether the person making the confession was under duress. The article notes that, at the moment, confessions recorded by police are not admissible as evidence because it is believed that the police frequently use torture to extract a confessional statement. Even if videos are redone, the issue of coercive pressure and torture will still exist. It is well known that many countries permit the use of video recorded evidence to prevent torture, however this is not a sufficient defence on its own. If there is no protection on the independence of such supervision, it is also insufficient to prescribe recording under the supervision of a superior police officer. People who videotape investigations are unlikely to videotape their transgressions either before or after the questioning. The Committee offers no specific recommendations in this regard beyond its mistaken reliance in technology because there are no protections in the current statutory framework that would guarantee the fair use of this recommendation.

Only a few proposals have been highlighted for discussion's sake. The Committee has made a number of recommendations that would improve the situation for witnesses and victims. Several ideas aim to grant the victim a right inside the criminal justice system. Other ideas aim to divide the police's duties of maintaining public order from those of crime detection and investigation. Similar to this, the study revives the discussion of judge "qualifications" by advocating a review procedure to guarantee that only highly qualified judges are appointed. The report also aims to change the definition of penetration under Section 375 of the IPC and to expedite the investigation and trial processes. The report, at least in this regard, tries to address the issues witnesses face by making sensible recommendations to protect witnesses and ensure that they are treated with respect and dignity, assigning an official to look after witnesses, providing separate facilities like toilets, drinking water, searing, resting, and so on for witnesses, allowing a seat for the witness when s/he gives evidence in Court, and creating a witness protection programme. Through constitutional interpretation, the Supreme Court may ordain some of these recommendations.

The Malimath Committee was unexpectedly thrust into the public conversation at a time when robust policing, expanded investigative authority for the police, expedited trials, and harsh punishment are being emphasised significantly and again. There is a lot in the study that we need to be cautious about because it suggests completely rewriting the system by giving police more authority, switching to an inquisitorial system, and altering the standard of proof. Without sufficient understanding of how they operate and what makes them practical, it exults support for and exaltation of the so-called European criminal justice systems. Research conducted by the Committee is episodic and logical. Without closely analysing the Indian conditions into which these concepts are intended to be transplanted, it provides recommendations. Without a doubt, a thorough public discussion of the Malimath Report is necessary. But it's recommendations need to be carefully considered. They give too little while making excessive demands.

Even though our leaders preach that we shouldn't look a gift horse in the mouth, a system needs to be examined from the perspective of civil liberties in order to assess both its design and functioning. The criminal code of India was created to provide the police excessive power during the arrest and investigation phases. These empowerments have come to be seen with trepidation and fear due to the general power and attitude of the police. At these arrest and investigative stages, atrocity after atrocity is committed. Unless they have a powerful person protecting their interests, people who have been arrested by the police live in fear. Assault, humiliation, injury, and death while in custody are frequently committed crimes. In fact, the Supreme Court's criminal due process was a reaction to the appalling cases of rape, blinding in a penal facility, and unjustified incarceration that were presented to the Court. It was exactly because the Court responded to practises that were well-known but begged for redress that the new jurisprudence was successful. The impoverished, disadvantaged, dalits, and disempowered suffer abhorrent suffering in ways that defy remedy in a vast country with over a billion people where caste, community, and communal

rivalry contaminate the functioning of any government. The essential issue from the perspective of human rights and inhumane acts is this experience component of what people actually go through. Other issues include ongoing delays, temperamental decision-making, a deficient prison system, a lack of legal help and assistance (which renders a costly system out of reach for most people).

The opposite viewpoint, which is largely based on India's un-governability, calls for the police to be given more authority while calling for changes to the laws governing the right to remain silent, pre-trial confessions, the burden of proof, and the requirement that an accused's guilt be proven beyond a reasonable doubt. This line of thinking within the establishment is represented by the Malimath Committee. In this context, a countervailing emphasis has also been included in the reforms that have been proposed to make the case for better police training, greater informal oversight, magisterial control over pre-trial confessions, and better court administration. There is a "pro-establishment" pressure that echoes glamour for stronger sentencing and imprisonment standards, less liberal due process, and tougher policing. The cause of civil liberties suffers in this environment. The Court's new due process statements are only partially successful in terms of their declarations and their remedial rigour. The recent Criminal Law (Amendment) Bill, 2003, which interferes with the right against self-incrimination and introduces plea bargaining without adequate and due consideration of the full implications of the change, serves as an example of how piecemeal changes continue to be implemented as knee-jerk reactions.

4.0 Suggestions and Conclusion:

According to the researchers' interpretation of the aforementioned conversations, debates, and deliberations, the current criminal justice system requires revision and revamping, but not in the manner recommended by the Malimath Committee and its backers. The following ideas are offered to strengthen and streamline the criminal justice system in India:

1. In each State or UT, a separate, independent body, under whatever name it may be called, completely free from political influence, with a Chairman and at least two members (including the Director-General of Police of the concerned State or UT as an ex-officio member), should be established to monitor the investigation's progress and control the flow of cases to the courts by determining whether the case is at least prima facie sufficient to warrant trial before the Report under Section 173 is submitted. The Chief Justice of the State must give his or her approval before the Chairman and members are chosen. Additionally, this will lessen the number of convicts awaiting trial and keep them from hanging out with violent offenders. This will lessen the number of weak cases brought before the court.
2. A completely independent investigation agency should be established, free from any political interference and under the sole control of the Authority. This agency should provide extensive and intensive training in scientific investigation, abstaining from partiality, bias, and third-degree practises, and it should only be responsible to the said Authority for posting, promotion, and transfer decisions. Such an agency should have a location in the city's main police stations so that it may offer the investigating officer rapid finger print forensic and pathological aid while they wait for the established laboratory's/fingerprint bureau's official report.
3. To ensure that the plea is voluntary and not coerced, the process of "plea bargaining" has been used in summons cases with the necessary protections, as previously mentioned. If the experiment goes well, it might be continued. Additionally, by doing this, the number of convicts awaiting trial who are unable to post bond would decline.
4. The accused should be informed of his right to a lawyer of his choosing or through the legal aid system as soon as he is arrested. He should also be allowed to receive advice from his lawyer throughout the inquiry. This would also serve as a deterrent to third-degree use.
5. The Magistrate/Presiding Judge should be given a more lenient (proactive) role than they already have in order to obtain the truth by asking questions in court without appearing to intervene.
6. The burden of proof shall be on the prosecution throughout the trial if, and only if, all the current protections offered by the Code and Evidence Act in favour of the suspect/accused remain in place and are not diminished by unfavourable presumptions or exceptions included into the law.
7. The concerned government shall develop a schedule for providing the equipment and knowledge required for scientific investigation to the investigation machinery.
8. The quality of the legal assistance given to the accused should be very good, especially when the punishment is five years or longer. It must be kept in mind that providing an unskilled or ineffective advocate will turn legal aid—which is a right under Article 39A of the Constitution—into a mere formality.

Additionally, it may be wise to appoint a moderately competent attorney as Special Public Prosecutor to deliver the prosecution case in delicate cases where a highly regarded and senior counsel represents the defence.

9. If a presumption is made, it should only be in regard to something that the accused has unique information about. This will prevent the right to silence from being undermined by making the accused prove the contrary.
10. To attract good talent to match competent defence attorneys, the terms of employment for public prosecutors should be liberalised and their salaries should be revised upward. Similarly, lawyers of reasonably good talent should be hired to represent the accused under a legal aid programme or as required by Section 304 of the Code of Criminal Procedure, 1973.
11. Judges presiding over cases involving gender bias should be made aware of how certain mindsets and prejudices may affect their decisions. They should also receive special training to prevent purposeful offensive lines of cross-examination.
12. In light of the foregoing discussion, it is important to note that society cannot afford to make the criminal justice system so ineffective that it leads to an over 90% acquittal ratio while also being so time-consuming. After all, the safety of every citizen's life and property must be of the first priority. It is time to make adjustments to the system that would guarantee that the guilty do not get away and the innocent are safeguarded. Realize that the credibility of the final product rests on the integrity of the process. I expect that the suggested adjustments will significantly improve the system and produce better outcomes, even though they might not result in transformation. The Indian Criminal Justice System would be further streamlined as a result.

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