



Reforms in Criminal Justice

Theme Paper
for the

**50th Members'
Annual Conference of the IIPA**

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REFORMS IN CRIMINAL JUSTICE

JAYTILAK GUHA ROY

INTRODUCTION

More than half a century ago, when post-colonial India began her "tryst with destiny", our nation-builders and Constitution makers aspired to build up a just and egalitarian society through peaceful, evolutionary, democratic process. There is no gainsaying the fact that a just society cannot be created without the solid edifice of an orderly society. Nor can democracy sustain and succeed without it.

It is true that amongst all the post-colonial Third-world countries, India has the unique distinction of having a functioning democracy during the past over five and half decades. Consequently, the presence of vibrant and committed civil society organizations, free media and proactive judiciary have strengthened India's democracy and her human development prospect. It is heartening to note that the UNDP's *Human Development Report 2002* not only appreciated the role of India's judiciary and voluntary sector, but also predicted that India is one of the few countries on track to halve the number of people living in poverty by 2015. Nevertheless, the sad and stark reality today is that unlike the orderly democracies of the developed nations, the world's largest democracy appears to be more chaotic and turbulent. If the state of crime and violence in contemporary Indian society is any indication, we seem to be far away from a just and orderly society.

Democracy is a system of governance based on the concept of Rule of Law under which *Law* is supreme and *Justice* is the ideal to be achieved by *Law*. In other words, justice is the end, while law is the means to achieve that end.

The principal purpose of criminal justice administration is to preserve and protect the Rule of Law which implies enforcement of law, maintenance of order, fair trial and punishment of offenders, and their social rehabilitation through correctional system of justice.

SIGNIFICANCE OF CRIMINAL JUSTICE

the performance of the State in discharging this basic function. Since the State discharges this function with the help of its criminal justice system, the quality of a civil society is symbiotically linked to the quality of criminal justice.

Criminal justice is one of the major areas of public administration, broadly comprising four principal components, namely, police, prosecution, judiciary and correctional institutions. Its basic objective is not only to enforce law and order but also to ensure equity and justice. Its success or failure therefore determines the fate of societal progress.

Unlike other branches of public administration, criminal justice administration deals with crime which happens to be one of the most complex problems of modern civilization. The state of crime is indeed the reflection on the state of a society. The failure of the criminal justice system in ensuring certainty of punishment is likely to threaten the very foundation of the Rule of Law and ultimately lead to anarchy and developmental disorder. Hence the need for an effective and efficient criminal justice system.

CRIME SCENARIO

There is no denying the fact that the official crime data often do not provide the actual crime scenario, since a large number of crimes are either not reported to the police or if reported, not registered by the police for various reasons. Nevertheless, whatever scenario emerges from the available crime data from official sources is enough to contend that there is growing lawlessness in Indian society. According to *Crime Clock 2003* that appeared in the official report¹ *Crime in India-2003* there are:

- 22 violent crimes every hour
- 4 murder cases every hour
- 7 economic crimes every hour
- 39 property crimes every hour
- 16 crimes against women every hour
- 3 crimes against Scheduled Castes every hour
- 1 crime against Scheduled Tribes every hour
- 2 rape cases every hour.

The phenomenon of growing crime has now become an integral part of urban life and environment. If the rising crime graph in urban industrial areas reaffirms "the proverbial linkage between crime and development," the fast growing urban towns and cities with their changing environment, lavish life-style, and insular residents less inclined towards community life than

every before, appear to be the fertile ground for breeding organized criminals and gangsters.²

Crime scenario in rural India is no less sordid, although the nature and pattern of crime are different from what they are in urban areas. With growing political awareness and mobilization of the exploited and suppressed sections of the society, the hitherto peaceful rural India is now witnessing reign of terror unleashed by the various organized forces such as the *Senas* of different castes armed with the most sophisticated and deadly weapons in Northern India and the *Naxalites* in Andhra Pradesh, Jharkhand and West Bengal. Over and above, "social conflicts in rural areas now find violent expressions in the form of caste, ethnic and communal violence making our rural society extremely turbulent".³

It is against the above backdrop that there is an urgent need to give a refreshing look to the emerging issues pertaining to reforms in criminal justice.

MALADIES OF EXISTING SYSTEM

One of the major indicators to determine the quality of criminal justice system is the rate of conviction in criminal offences which implies percentage of cases that resulted in conviction of the accused to the number of cases in which trials were completed during a particular year.⁴ The latest official report, *Crime in India-2003*, reveals that there has been a steady declining trend in the conviction rate of IPC crime.⁵ From 64.8 per cent in 1961, the rate of conviction has declined to 62 per cent in 1971, 52.5 per cent in 1981, 47.8 per cent in 1991 and 40.1 per cent in 2003. Such a trend indicates that our existing criminal justice system has been suffering from certain maladies resulting in a wide performance gap on a persistent basis. Let us now discuss briefly these maladies.

(i) *Accused-oriented System*

It is now increasingly being realized that our existing criminal justice system is more concerned with the rights and interests of the accused rather than those of the victims. In fact, the victim remains much in oblivion in our criminal jurisprudence, although almost every crime leaves a scar on the victim or his/her family. Let us take, for instance, the plight of a rape victim. Apart from confronting a wide variety of physio-psychological problems and

² Guha Roy, Jaytilak and Mishra, Yatish, "Crime and Violence in Indian Society: Issues for Deeper Study," *IASSI Quarterly*, Vol.16(1), 1997, p.159.

³ *Ibid.*, p.161.

⁴ Guha Roy, Jaytilak and Mishra Yatish, "Criminal Justice System and its Administration: Agenda for Reform," *Indian Journal of Public Administration*, Vol. 41, No. 3, Feb. 2000, p. 101.

social stigma, she is often deserted even by her own family. What is even more distressing, a rape victim, who is in desperate need of the most tactful, sensitive and humanitarian treatment, is accorded the least by our criminal justice functionaries. What does really happen to her if per chance, she survives the onslaught and reports her victimization to the police? She often finds the police reluctant to register her complaint. If, at all, she succeeds in getting her victimization recorded, her sufferings start afresh. She is treated no better than a defendant and often subjected to further degradation and humiliation at the hands of the functionaries of our male-dominated criminal justice system. She may even be sent to prison or women's home for the sake of *safe custody*, whereas the accused is released on bail.⁶ Is this not travesty of justice?

Presently, the Indian judiciary as well as National Human Rights Commission are awarding, quite liberally, interim compensation to the victims or their kiths and kins in cases of custodial violence or atrocities perpetrated by the guardians of law. This kind of activism is indeed just, reasonable and fair. But what about the compensation to the victims or their kiths and kins in cases of violence committed by armed terrorists or organized gangsters? Why should not the burden of providing proof lie on the accused rather than the victims in all criminal offences of heinous nature? Why should not our outdated criminal laws be suitably amended to shed their bias towards the accused so as to ensure justice to the victims?

(ii) Time Consuming legal process

There is no denying that our existing legal process is too time-consuming. This helps a particular class of defendants who have money power to get the justice delayed in their favour, to emerge as ultimate beneficiaries, while the victims as well as the poor and ignorant defendants become the worst sufferers. As far back as 1978 the Law Commission of India, headed by Justice H.R. Khanna, observed very poignantly:

The problem of delay in the disposal of cases pending in law courts is not a recent phenomenon. It has been with us since a long time... Of late, it has assumed gigantic proportions. This has subjected our judicial system, as it must, to severe strain. It has also shaken in some measure the confidence of the people in the capacity of the courts to redress their grievances and to grant adequate and timely relief.⁷

The situation, instead of improving, continues to deteriorate ever since. It is true that the ratio of judges to population is the lowest in India. We have as low as 10.5 judges for every one million of our people as compared

⁶ For further details, see Guha Roy, Jaytilak, "Assistance to Rape Victims: Programme for Voluntary Actions", *The Indian Journal of Criminology and Criminalistics*, Vol.VII(1-2), January-June, 1997, pp.22-24.

to the highest 107 in England.⁸ Appointment of more judges may, however, provide only a partial remedy since the more menacing threat lies in protracted procedures of our existing criminal justice system.

We are never tired of telling that justice delayed is justice denied. But the fact remains that the disposal of the case of Indira Gandhi's assassination in broad daylight by her security personnel took nearly four years, while the implementation of the final judgment took a few more months. The final verdict in Rajiv Gandhi assassination case was given after over a decade. Both were former Prime Ministers of India. Referring to the delay in disposal of the case of Indira Gandhi's assassination, an eminent criminologist has observed very pertinently:

One may argue that it was an extraordinary case in which justice had not only to be done, but must appear to have been done. On the other side, the common man for whom the elaborate justice process is designed is puzzled that if a matter of such importance could be so delayed and protracted, what would be the fate of thousands of cases pending in courts for years together... May be, in the quest for justice, we are unwittingly defeating the very purpose of administration of justice and lessening its impact.¹⁰

Let us also recall in this context, the release of the dreadful terrorists like Maulana Masood Azhar and Omar Shaikh from the Tihar Jail in the aftermath of the Kandahar hijacking just a few years back. Had our legal or justice process been expeditious, they were sent to the gallows long before the incident of hijacking in December 1999, instead of being released to continue their reign of terror on the Indian soil with the patronage of Pakistan. We should not forget that Maulana Azhar is not mere a terrorist, but the creator of hundreds and thousands of terrorists.

(iii) Faulty and Slipshod Investigation

One of the major reasons for the decreasing rate of convictions in IPC crime has been the faulty or slipshod investigation by the police. This, in turn, is largely due to inadequate staff for investigational work and inability of the concerned police personnel to pursue investigation on day-to-day basis with a sense of commitment and determination.¹¹

As far back as 1979-80, a sample survey conducted under the auspices of the National Police Commission (NPC) in six states covering different parts of the country, revealed that an average investigation officer was able to devote only 37 per cent of his time to investigational work while the rest

⁸ Law Commission of India, *op.cit.*

⁹ *Supra.*, n.4, p.496.

¹⁰ Rao, S. Venugopal, *Criminal Justice: Problems and Perspectives in India*, Delhi, Konark, 1991, pp.279-80.

of his time was taken up by other duties connected with maintenance of public order, VIP *bandobast*, petition enquiries, preventive patrol and surveillance, court attendance, etc.

The NPC had disclosed further that as per the data available from 13 states for the year 1977, an average investigating officer had to handle about 122 cases per year. The Commission was, therefore, convinced that "the enormous burden of investigational workload that falls on the available investigating officer is too heavy to be borne with any reasonable efficiency."¹²

There is no reason to assume that the situation has improved over the years. On the contrary, due to increasing threats of organized violence from the terrorists, militants, insurgents and Naxalites in large parts of the country, the police officials are now by and large more preoccupied with VVIP and VIP security as well as other odd jobs than they were in 1977.

The NPC, therefore, emphasized the urgent need for increasing the strength of the cadre of Investigating Officers and also for earmarking some staff exclusively for attending to investigational work. Sadly, this important recommendation of the Commission has not so far been implemented.

Slipshod investigation by the police is also due to lack of their professional capability and competence in crime investigation. There is no denying that crime investigation is a highly specialized job which requires professional aptitude, skill, patience and scientific temperament. Unfortunately, most of the police personnel involved in investigational work do not have these qualities in adequate measure. They are also not sufficiently exposed to rigorous training and refresher courses to acquire necessary knowledge, skill and aptitude for crime investigation.

(iv) Lack of Coordination between Police and Prosecution

Police alone should not be blamed for the decreasing rate of convictions. The ultimate success of police investigation depends on the competence of the prosecuting agency in collating the evidence and presenting the same before the presiding officer of the court in a convincing and effective manner. This calls for a good measure of coordination between the investigating and the prosecuting agencies on a regular basis from the filing of chargesheets to the completion of the trial in court.

During old days, when these two agencies were an integral part of the district police set-up, there was hardly any problem of coordination. "This relationship", observed the NPC, "got somewhat loosened when a separate cadre of Assistant Public Prosecutors was created, but the overall supervision from the Superintendent of Police and District Magistrate ensures continuance of cooperation and coordination between the two wings to a reasonable degree."¹³

The actual problem started with the coming into force of the Cr P.c, 1973 when a feeling appears to have grown among the prosecuting staff in states that they form an independent wing of criminal justice system and do not come under the administrative purview of the police set-up. This, according to the NPC, has led to lack of coordination between the subordinate officers of these two wings at the district level and ultimately resulted in the poor rate of convictions.¹⁴

It is not possible at this juncture to revert back to the earlier system as that would conflict with the doctrine of separation of powers in a democratic system of governance as ours. Nevertheless, as observed by the NPC very forthrightly, it is necessary "to evolve a new arrangement and institutionalize it on a proper footing to secure the required measure of coordinated functioning of both the wings for the successful conduct of prosecution in court."¹⁵

(v) Overcrowding in Jails

Another major malady of our criminal justice administration lies in overcrowding in jails. Its principal causes are, *inter alia*, unnecessary detention of undertrials and the heavy influx of short-term convicts. As an inevitable consequence of unnecessary detention, undertrial prisoners constitute bulk of India's prison population.¹⁶ Over two decades ago, Justice Mulla Committee on Jail Reforms¹⁷ recorded that while the total prison population in India has shown a declining trend over the past few years, the ratio of undertrial prisoners per hundred of convicted prisoners went up to 149 as on December 31, 1980 and 160 as on June 30, 1981. The Seventh Finance Commission found "this proportion to be very high in several States, such as Assam, Bihar, Orissa, Uttar Pradesh and West Bengal, and in some cases it rose to as much as 80 per cent of the total inmate population."¹⁸

Unlike crime data, the data on prisons are not readily available. Nevertheless, in view of the deteriorating state of our justice delivery system, we may reasonably assume that the problem of overcrowding in our prisons has not been solved but rather aggravated further during the past over two and half decades. For instance, the available reports on India's largest prison, Tihar Jail, reveal that it currently houses nearly 11,000 inmates as against its total capacity to accommodate around 3300

¹⁴ Government of India, *National Police Commission, op.cit.*

¹⁵ *Ibid.*, para 29.3, p.23.

¹⁶ For further details, see Guha Roy, Jaytilak, *Prisons and Society: A Study of the Indian Jail System*, Delhi, Gyan, 1989, Chap.4, pp.64-91.

¹⁷ Government of India, Ministry of Home Affairs, *Report of the All India Committee on Jail Reforms, 1980-83* (Chairman: Justice Anand Narain Mulla), Vol.1, para 12.2, p.170.

¹⁸ Government of India, *Report of the Seventh Finance Commission, 1978*, Chap.10, para 39.

prisoners.¹⁹ According to the 85th report of the Parliamentary Standing Committee on Home Affairs on Legal Delays, undertrials constitute 73 per cent of the total jail occupancy in our country.²⁰

In this context, it needs to be emphasized that with a whooping number of the total inmates being undertrials, creating more space alone will not resolve this problem. Our judicial process has to be simplified and expedited.

There is no denying that in a prison setting, the effects of overcrowding on inmates and institutional environment are "deleterious, destructive and dehumanizing".²¹ In fact, overcrowding is injurious not only to the morale of the prisoners but also to their health and mind. It poses a lot of problems for prison administration, particularly making custodial surveillance and reformatory activities extremely difficult. The laxity in custodial surveillance, albeit not deliberate, ultimately indulges in such immoral practices as homosexuality which may even result in increasing number of victims of AIDS and other sexually transmitted diseases inside the jails.

REFORM INITIATIVES

Following the colonial legacy, the Central and State Governments in independent India have appointed time and again a number of commissions, committees and other official bodies to look into various aspects pertaining to reform of the different segments of criminal justice system, namely police, judiciary and correctional administration. Since it is not possible to deliberate upon the reports of all these official bodies, we shall concentrate only on the reports of two such bodies, namely NPC (1977-81) and Committee on Reforms of Criminal Justice System (2000-03), and that too, very selectively. This implies that we shall highlight only those recommendations of these two bodies which have far-reaching implications for reforms in criminal justice. We shall also make critical observations on these recommendations as and where needed.

(i) *The National Police Commission (1977-81)*

Police is the first and foremost segment in Indian criminal justice administration that requires serious and urgent attention for reform. Unfortunately, during the first three decades since Independence, there had been no systematic effort on the part of our political leadership to insulate

¹⁹ Dutta Sachdeva, Sujata, "Networking in Tihar: How it works" (a report), *The Times of India*, Delhi, February 17, 2002; Trakroo, Upasana, a report on Overcrowding problem at Tihar, *The Times of India*, Delhi, February 27, 1998.

²⁰ Chakraborty, Sanghamitra, "Judiciary treads a sluggish track" (a report), *The Times of India*, Delhi, March 31, 2002.

the police from its colonial legacy and transform it into an impartial, professional and people-oriented force compatible with the democratic system of governance. Since police is a State subject under the Constitution of India, some State governments such as Uttar Pradesh and West Bengal had appointed commissions or committees to suggest measures for police reforms. However, the 'brazen manner' in which the police were misused during the emergency of 1975-77 led the first non-Congress Government at the Centre to appoint the NPC, headed by Dharma Vira, former Governor and ICS officer, with comprehensive terms of reference covering the entire spectrum of police administration and allied issues of the criminal justice system.

The NPC was appointed under the Union Ministry of Home Affairs Resolution dated 15th November, 1977. It submitted as many as eight reports, the first one in February 1979 followed by seven more reports including the last report in May 1981. Each of these reports was conclusive and final as far as the subjects covered by the respective report were concerned. Ironically, the Commission hoped that "this arrangement would facilitate quick analysis and follow up action by the Central Government and State Governments on each report as and when it was submitted".²² But the fact remains that till date, none of the State Governments has evinced any interest to take follow up action despite the repeated requests of the Union Ministry of Home Affairs. Consequently, some retired IPS Officers led by Shri Prakash Singh, filed a PIL before the Supreme Court for police reform on the basis of the recommendations of the NPC. The National Human Rights Commission *suo moto* made its recommendations in detail on police reform during one proceeding before the Supreme Court in the matter of *Prakash Singh vs Union of India*.²³ The matter is still pending before the apex Court. It needs to be recalled, in this context, some of the recommendations of the NPC²⁴ which have far-reaching implications for police reform. These are as follows:

1. A **Police Complaints Board** set up at the *State level* will generally oversee the satisfactory implementation of the new scheme (to deal with complaints against the police, proposed by the Commission) throughout the State.

(Para 10.31, p.17)

2. The **posting of Chief of Police in a State** should be from a panel of IPS officers of that State cadre prepared by a Committee of which the Chairman of the UPSC will be the Chairman and the Union Home Secretary, the senior most among the heads of Central Police

²² Government of India, *National Police Commission, Eight Report*, May 1981, Para 64.15, pp.31-32.

²³ National Human Rights Commission (NHRC), *Annual Report 2000-2001*, Para 3.41, pp.23-24.

²⁴

Organisations, the Chief Secretary of the State and the existing Chief of Police in the State will be members. The panel should not have more than three names at any time...

(Para 15.45, pp.29-30)

3. There is an immediate need to devise *a new mechanism of control and supervision* which would help the State Government to discharge their superintending responsibility in an open manner under the framework of law, with due regard to healthy norms and conventions that may develop in due course. For this purpose we recommend the constitution of a statutory Commission in each State which may be called *the State Security Commission* which shall have the State Minister incharge of police as the ex-officio Chairman and six others as Members. Two members shall be chosen from the State Legislature, one from the ruling party and another from the opposition parties. They shall be appointed to this Commission on the advice of the Speaker of the State Legislature. The remaining four members of this Commission shall be appointed by the Chief Minister, subject to approval by the State legislature, from retired judges of the High Court, retired Government servants who had functioned in senior positions in the Government while in service, social scientists or academicians of public standing and eminence. The Chief of Police will ex-officio function as Secretary of this Commission which shall have its own Secretariat for the transaction of its business. Arrangement of funds for the functioning of this Commission will be made on the same lines as for the State Public Service Commission.

(Para 15.46, p.30)

4. We fully endorse the recommendations of Justice Bhagwati Committee's report on *Gram Nyayalayas*, subject to the modifications and refinements as spelt out in Paragraphs 16.15 to 16.31, which we consider desirable in the present context.

(Para 16.14, p.33)

5. To secure *honesty and integrity for the system as a whole* it is important that the postings of officers in charge of police stations should be the exclusive responsibility of the District Superintendent of Police and likewise the Chief of Police should have the exclusive responsibility for selecting and posting Superintendents of Police in charge of districts.

(Para 22.9, p.43)

6. The post of Assistant Public Prosecutors, Additional Public Prosecutors and Public Prosecutors should be so designed as to provide a regular career structure for the incumbents for the entire State as one unit.

(Para 29.6, p.58)

7. The cadre of investigating officers has to be increased. The police hierarchy has to be restructured to secure, *inter alia*, a large number of officers to handle investigational work.

(Para 27.7, p.51)

8. A supervisory structure over the district prosecuting staff should be developed with Deputy Directors of Prosecution at the regional level and a Director of Prosecution at the State level.

(Para 29.9, p.58)

9. *Police Station* to be effective should be *a whole and compact unit*, adequate to respond to all needs and assume full responsibility for all the basic police tasks for investigation of crime, maintenance of law and order, traffic control in the areas. The *jurisdiction* should neither be so large as to defeat the very purpose for which it is created nor so small as to lead to considerable expenditure of resources on more house-keeping functions. The area of 150 sq. kms. for a rural Police Station may be adequate for the efficient function of a Police Station...

(Para 50.12 and 50.13, p.109)

10. Urban areas should have exclusive Police Stations and it is not desirable for a Police Station to cater to both urban and rural areas.

(Para 50.14, p.110)

(ii) *The Committee on Reforms of Criminal Justice (2000-03)*

This Committee was the first of its kind in independent India. It was constituted by the Government of India, Ministry of Home Affairs by its order dated 24th November 2000 to consider measures for comprehensive reforms of the entire Criminal Justice System including the fundamental principles and the relevant laws. Earlier, reform initiatives were confined to only certain set of laws, or one particular segment of the system in piecemeal. This type of compartmental approach was not enough to cover all the vital issues of reforms in criminal justice including justice to victims and the emerging challenges to national security. It was therefore a welcome initiative on the part of the Union Home Ministry to constitute this Committee under the Chairmanship of Justice V.S. Malimath, former Chief Justice of Karnataka and Kerala High Courts, Chairman, Central Administrative Tribunal and Member of the National Human Rights Commission, with comprehensive terms of reference²⁵ as follows:

1. To examine the fundamental principles of criminal jurisprudence and see if any modifications or amendments are required thereto;
2. To examine in the light of findings on fundamental principles and aspects of criminal jurisprudence as to whether there is a

²⁵ Government of India, Ministry of Home Affairs, *Report of the Committee on Reforms of Criminal*

need to re-write the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India;

3. To make specific recommendations on simplifying judicial procedures and practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive;
4. To suggest ways and means of developing such synergy among the Judiciary, the Prosecution and the Police as restores the confidence of the common man in the Criminal Justice System by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal;
5. To suggest sound system of managing, on professional lines, the pendency of cases at investigation and trial stages and making the Police, the Prosecution and the Judiciary accountable for delays in their respective domains;
6. To examine the feasibility of introducing the concept of "Federal Crime" which can be put on List I of the Seventh Schedule to the Constitution.

As regards the need for reforms in criminal justice, the following observations of the report of *the Committee on Reforms of Criminal Justice System, widely known as Justice Malimath Committee* are worth our consideration:

...The statement in the notification that the Committee has been constituted "to consider measures for revamping the Criminal Justice System" implies that the Criminal Justice System is in such a very bad shape as to call for revamping. A former Chief Justice of India warned about a decade ago that the Criminal Justice System in India was about to collapse. It is common knowledge that the *two major problems besieging the Criminal Justice System* are huge pendency of criminal cases and the inordinate delay in disposal of criminal cases *on the one hand* and the very low rate of conviction in cases involving serious crimes *on the other*. This has encouraged crime. Violence and organized crimes have become the order of the day. As chances of convictions are remote, crime has become a profitable business. Life has become unsafe and people live in constant fear. *Law and order situation has deteriorated and the citizens have lost confidence in the Criminal Justice System.*²⁶

Since the earlier initiatives were of a limited nature to bring about reforms in the relevant laws, substantive and procedural laws, judicial reforms or police reforms, Justice Malimath Committee realized forthrightly

that it was required to take into account the recommendations made by the commissions, committees or official bodies such as the Law Commission of India, the Conference of Chief Ministers on Internal Security, the Report of Task Force on Internal Security and Padmanabhaiah Committee Report on Police Reforms.

The terms of reference were very wide and comprehensive, and as such, the Committee, with due regard to the importance and magnitude of the task, decided to reach out to every section of the society, which has a stake in the system, directly or indirectly. Accordingly it decided to prepare a questionnaire and obtain responses from all walks of society, organize seminars on important issues in different parts of the country, obtain the views of the State Governments, the High Courts, the Judges, Central and State Bar Councils and their members, Attorney General and Advocate Generals of the States, Heads of Police and Prosecution Departments, Forensic Scientists, academics in law and media persons, study the reports of the earlier commissions, committees and official bodies on topics relevant to Criminal Justice System, make a comparative study of Criminal Justice System in 20 selected countries from different continents, interact with experts from different countries in the world, and examine Reports of the National Crime Records Bureau upto 2000.²⁷

After an in-depth study of the problem facing the Criminal Justice System, Justice Malimath Committee prepared the questionnaire and sent to 3,164 persons or bodies enclosing a pre-paid envelope to enable them to respond without incurring any expenditure. Unfortunately, the response was lukewarm, if not discouraging. In fact, the number of responses received was only 284. Likewise, although all the State Governments were requested by the Committee to send their views, only seven States had submitted their replies, while other States did not respond despite repeated requests.²⁸

The Committee also organized four seminars in Chennai, Jaipur, Mumbai and Delhi on different topics pertaining to reforms of Criminal Justice System. These apart, the Chairman or members of the Committee actively participated in several other seminars organized by different organizations on the topics concerning the Criminal Justice System. Many eminent personalities also participated in these seminars.

Based on an in-depth study of the materials gathered through various sources as indicated above, Justice Malimath Committee made as many as 158 recommendations²⁹ in its report in two volumes submitted to the Union Home

²⁷ Government of India, MHA, op. cit., Para 1.8, pp.6-7.

²⁸ For further details, see Appendix 6, Vol II of the Report.

Ministry in March 2003. These recommendations covered the following aspects concerning reforms of the criminal justice system:

- | | |
|---|---|
| 1. Need for reforms | 12. Vacation for Court |
| 2. Adversarial system | 13. Arrears eradication scheme |
| 3. Right to silence | 14. Offences, sentences, sentencing and compounding |
| 4. Rights of accused | 15. Reclassification of offences |
| 5. Presumption of innocence and burden of proof | 16. Offences against women |
| 6. Justice to victims | 17,18 Organised crime, federal crime and Terrorism |
| 7. Investigation | & 19 Economic crimes |
| 8. Prosecution | 20. Training – A strategy for reform |
| 9. Courts and Judges | 21. Training – A strategy for reform |
| 10. Trial Procedure | 22. Vision for the future |
| 11. Witnesses and Perjury | |

Let us now highlight some of the important recommendations of Justice Malimath Committee (with their rationale as given by the Committee, as and where necessary) which have far-reaching implications for reforms in criminal justice:

I. Striking a balance between Adversarial and Inquisitorial Systems

As regards the issue concerning the efficacy of our existing *Adversarial System* as compared to the *Inquisitorial System of Criminal Justice*, the Committee was of the view that the later system was "certainly efficient in the sense that the investigation is supervised by the Judicial Magistrate which results in a high rate of conviction". Nevertheless, it felt that "a fair trial" and "fairness to the accused" are better protected in the Adversarial System. Accordingly, it sought to strike a balance between the two systems, and recommended *certain modifications to the Criminal Procedure Code* (Section 311 and 482) and the *Indian Evidence Act* (Section 54) so as to adopt certain *good features of the Inquisitorial System and make it more effective*.

[Recommendations (1) to (7), pp.266-67]

II. Restriction to the Right to Silence

The right to silence is a fundamental right guaranteed to the citizen under Article 20(3) of the Constitution which says no person accused of any offence shall be compelled to be a witness against himself. *As the accused is in most cases the best sources of information, the Committee felt that while respecting the right of the accused a way must be found to tap this critical source of information.* It feels that without subjecting the accused to any duress, *the court should have the freedom to question the accused to elicit the relevant information and if he refuses to answer, to draw adverse inference against him.* It also feels that *the accused should be required to file a statement to the Prosecution disclosing his*

stand. For achieving this, the Committee recommended *certain modifications to the Criminal Procedure Code*, such as substitution of Section 313 by Sections 313-A, 313-B and 313-C and incorporation of suitable provisions in the Code on the lines indicated in its recommendations (9)(i) to (ix) and (10)(i) to (iii).

[Recommendations (8) to (10), pp.267-69]

III. Presumption of innocence and burden of Proof

The Committee recommends that –

- i. the standard of "proof beyond reasonable doubt" presently followed in criminal cases shall be done away with; and
- ii. the standard of proof in criminal cases should be *higher* than "preponderance of probabilities" and *lower* than "proof beyond reasonable doubt".
- iii. Accordingly, the Committee recommends that a clause be added in section 3 of the Indian Evidence Act.

[Recommendation (13), pp.269-70]

IV. Justice to Victims

Emphasising the need to ensure justice to the victims, Justice Malimath Committee has made eight recommendations which include *the right of the victim to participate in cases involving serious crimes and to adequate compensation.*

[Recommendation 14(i) to (viii), pp.270-72]

V. Improving Quality of Investigation

Emphasising the need for the law and society to trust the Police and the police leadership to ensure improvement in their credibility, as well as the need for improvement in the quality of investigation, the Committee recommends, *inter alia*, that –

- The *Investigation Wing should be separated from the Law and Order Wing.*
- *National Security Commission and the State Security Commission at the State level should be constituted, as recommended by the National Police Commission.*
- Law should be amended to the effect that the literate witness signs the statement and illiterate one puts his thumb impression thereon. A copy of the statement should mandatorily be given to the witness.
- *Audio-video recording of statements of witnesses, dying declarations and confessions should be authorized by law.*
- *Forensic Medico-Legal Services should be strengthened at the District and the State/Central level, with adequate training facilities at each level for the experts doing medico-legal work.*

- The State Governments must prescribe *time frame for submission of medico-legal reports*.
- As the Indian Police Act, 1861 has become outdated, a *new Police Act* must be enacted on the pattern of the draft prepared by the National Police Commission.
- Section 167(2) of the Cr. P.C. be amended to increase the *maximum period of police custody to 30 days* in respect of *offences punishable with sentence more than seven years*.
- Section 25 of the Evidence Act may be suitably amended on the lines of section 32 of POTA, 2002 that a *confession recorded by the Superintendent of Police or officer above him is admissible in evidence* subject to the condition that the accused was informed of his right to consult a lawyer.
- A suitable provision be made on the lines of sections 36 to 48 of POTA, 2002 for *interception of wire, electric or oral communication* for prevention or detection of crime.
- Suitable amendments be made to *remove the distinction between cognizable and non-cognizable offences in relation to the power of the police to investigate offences* and to make it obligatory on the Police Officer to entertain complaints regarding commission of all offences and to investigate them.
- *Refusal to entertain complaints* regarding commission of any offence shall be made *punishable*.

[Recommendations (15) to (51), pp.272-78]

VI. Prosecution

The Committee feels that this important institution of Criminal Justice System has been weak and somewhat neglected. *Its recruitment, training and professionalism need special attention* so as to make it *synergetic* with other institutions and *effective* in delivering good results. Accordingly it made eleven recommendations, including the one that "in every State, the *post of Director of Prosecution* be created, if not already created, and should be *filled up from among suitable police officers of the rank of DGP* in consultation with the Advocate General of the State.

[Recommendations (52) to 62, pp.278-79]

VII. Improving Quality of Judges and quality of justice

In this regard, the Committee recommended *inter alia* that –

- In the Supreme Court and High Courts, the respective Chief Justices should constitute a *separate criminal division* consisting of such number of criminal benches as may be required consisting of Judges who have *specialized in criminal law*.

- *In urban areas* where there are several trial courts *some courts should have lady Judges* who should be assigned as far as possible *criminal cases relating to women*.
- A *high power Committee* should be constituted to lay down *qualifications, qualities and attributes regarding character and integrity* that the candidate for the *High Court judgeship* should possess and specify the evidence or material necessary to satisfy these requirements. Reasons should be recorded with reference to these criteria by the selecting authority.
- The Law Commission's consultation paper on *case management* be accepted and the proposals carried out without any delay.

[Recommendations (63) to (71), pp.279-82]

VIII. Witnesses and Perjury

The Committee has observed that the witnesses are not treated with due courtesy, nor are they protected. It also feels that the procedure prescribed for taking action against perjury is as cumbersome, as it is unsatisfactory. It therefore recommends *inter alia* that –

- *Witness* who comes to *assist the court* should be treated with *dignity* and shown *due courtesy*. An official should be assigned to provide assistance to him.
- A law should be enacted for giving *protection to the witness and their family members on the lines of the laws in USA and other countries*.
- A provision should be incorporated requiring the Judge administering the oath or affirmation to *caution the witness* that he is *duty bound* under *section 8 of the Oaths Act* to *speak the truth* and that *if he makes a false statement* in violation of the oath or affirmation that has been administered to him, *the court has the power to punish him for the offence of perjury* and also to inform him of the punishment prescribed for the said offence.

[Recommendations (79) to (89), pp.283-85]

IX. Arrears Eradication Scheme

The committee recommended, *inter alia*, a *complementary strategy* vide its proposed *Arrears Eradication Scheme(AES)* for the purpose of *tackling all the criminal cases* that are *pending* for more than 2 years on the appointed day.

To *carry out the scheme*, the Committee feels that a *retired Judge of a High Court* who is known for effective and expeditious disposal of criminal cases should be put in *charge of the AES* as the sitting Judges may not find the time for it.

[Recommendations (91) to (99), pp.286-87]

X. Offences, Sentencing & Compounding

In this regard, Justice Malimath Committee, *inter alia*, made the following recommendations:

- A permanent Statutory Committee be constituted to lay down sentencing guidelines to regulate the discretion of the court in imposing sentences for various offences under the Indian Penal Code (IPC) and Special Local laws under the Chairmanship of a former Judge of the Supreme Court or a retired Chief Justice of a High Court who has experience in criminal law, and with members representing the Police Department, the legal profession, the Prosecution, women and a social activist.
- Review of the IPC to consider enhancement, reduction or prescribing alternative mode of punishments, creating new offences in respect of new and emerging crimes and prescribing new forms of punishments wherever appropriate and including more offences in the category of compoundable offences and without leave of the court.
- Implementation of 142nd and 154th reports of the Law Commission of India in regard to settlement of cases without trial.

[Recommendations (100) to (106), pp.288-89]

XI. Offences against Women

In this regard, the Committee, *inter alia*, recommends:

- That the IPC be suitably amended to make the offence of cruelty by husband or relative of husband under section 498A, bailable and compoundable.
- Instead of death penalty for the offence of rape, it recommends sentence of imprisonment for life without commutation or remission.

[Recommendations (115) to (123), pp.290-92]

XII. Organised Crime, Federal Crime and Terrorism

In the backdrop of the States' reluctance to share political power through legislatures, for enactment of federal law to deal with certain crimes, the Committee has, *inter alia*, made following recommendations to deal with (a) organized crime, (b) enactment of central law to tackle federal crimes and (c) terrorism:

(a) Organised Crime

- The Nodal Group recommended by the Vohra Committee may be given the status of a National Authority with a legal framework with appropriate composition.

- Suitable amendments to provisions of the Cr. P.C., the IPC, and the Indian Evidence Act and such other relevant laws as required may be made to deal with the dangerous nexus between politicians, bureaucrats and criminals.
- A special mechanism be put in place to deal with the cases involving a Central Minister or a State Minister, Members of Parliament and State Assemblies to proceed against them for their involvement.
- A Central, special legislation be enacted to fight organized crime for a uniform and unified legal statute for the entire country.

(b) Federal Law

- That in view of legal complexity of such cases, underworld criminals/crimes should be tried by federal courts (to be established), as distinguished from the courts set up by the State Governments.
- That a Federal Law to deal with crimes of interstate and/or international/transnational ramification be included in List I (union List) of the Seventh Schedule to the Constitution of India.

(c) Terrorism

- Crime Units comprising dedicated investigators and Prosecutors and special courts by way of Federal Courts be set up to expeditiously deal with the challenges of 'terrorist and organised' crimes.
- A comprehensive and inclusive definition of terrorist acts, disruptive activities and organized crimes be provided in the IPC, 1860 so that there is no legal vacuum in dealing with terrorists, under-world criminals and their activities after special laws are permitted to lapse as in the case of TADA, 1987.
- The sunset provision of POTA, 2002 must be examined in the light of experiences gained since its enactment and necessary amendments carried out to maintain human rights and civil liberties.

[Recommendations (124) to (141), pp.292-95]

XIII. Economic Crimes

In this regard, the Committee, *inter alia*, made the following recommendations:

- Sunset provisions should be continued in statutes and these provisions be examined keeping in view the continuing changes in economy and technology.

- Sentences in economic offences should not run concurrently, but consecutively.

[Recommendations (142) to (156), pp.295-97]

XIV. Vision for the Future

Justice Malimath Committee feels that since crimes are increasing especially with changes in technology, *ad hoc policy making and piecemeal legislation is not the answer*. It therefore recommends the following:

- That the Government may come out with a *policy statement on criminal justice*.
- That a provision be incorporated in the Constitution to provide for a *Presidential Commission for periodical review of the Criminal Justice System*.

[Recommendations (157) and (158), pp.297-98]

(iii) Recommendations of Justice Malimath Committee: A Critique

There is no denying that Justice Malimath Committee has made some valuable recommendations for reforms in criminal Justice. For example, its recommendations for improving the quality of investigation as well as the quality of judges and justice deserve serious consideration by the governments. Likewise, its recommendations for ensuring justice to victims, dignified treatment to the witnesses and their protection, arrears eradication scheme and federal law to deal with crimes of inter-state and/or international/transnational ramification are progressive and welcome.

On the contrary, the Committee has also made quite a few regressive recommendations. These include, *inter alia*, extension of the period of police remand from 15 to 30 days through amendment to section 167(2) of the Cr. P.C., allowing a confession recorded by a Superintendent of Police admissible in courts as evidence through amendment of section 25 of the Indian Evidence Act on the lines of section 32 of POTA, 2002, making the offence of cruelty by husband or relative of husband of a woman under section 498A of IPC bailable and compoundable, and creation the post of Director of Prosecution in every State and filling it up from among suitable police officers of the rank of DGP. The Committee has also recommended placing an increased burden on the defendant to defend him or herself early in the trial without taking into account the adverse consequences of such recommendation on the million of the poor and illiterate defendants who appear to be almost dumb and defenseless even under the existing criminal justice system.

There is no denying that in the present state of Police culture and practices in India, increase in period of police remand and admissibility of confession recorded by a police officer (irrespective of the rank) as evidence in the court of law would only add to the existing menace of coercion and

torture in police custody and encourage the overzealous police personnel in resorting to inhuman, cruel and barbaric methods of treating the suspects for securing their confessions by hook or crook. It needs to be noted in this context that even the National Police Commission, headed by a retired civil servant and not an eminent jurist, did not make any such regressive recommendation to empower the police with extraordinary power. Again, the Committee's reasoning for leniency towards offenders of domestic violence to facilitate 'reconciliation' and "give a chance to the spouses to come together" does not stand the test of pragmatism. For, in Indian society, women and their family members are by and large more tolerant to domestic violence, and their eagerness to reconciliations often lead to the murder of the hapless women by her husband and/or husband's relatives. In fact, such incidents are increasing day by day. There are reasons, therefore, to assume that Justice Malimath Committee did not care to have adequate consultation with the women organizations in India on matters relating to protection of women's rights.

Last but not the least, the Committee's recommendation to hand over the role of prosecution to the Police is "extremely regressive" as it seeks to dilute the constitutional doctrine of separation of powers. On the contrary, as noted earlier, the NPC emphasized forthrightly the need "to evolve a new arrangement and institutionalize it on a proper footing to secure the required measure of coordinated functioning of both the wings (Police and Prosecution) for the successful conduct of prosecution in court".

GOVERNMENTAL RESPONSE

We have already indicated the fate of the Report of the National Police Commission (1977-81). In fact, keeping in view the long-time practice of the governments of independent India in continuation of the colonial legacy of the British Raj to appoint commissions and committees from time to time to recommend measures for reform in governance and administration as a ritual rather than a commitment, one should not expect that the fate of the Report of Justice Malimath Committee would be different from that of the earlier reports of other commissions and committees. As the *Annual Report 2005-06* of the Ministry of Home Affairs, Government of India has noted:

Since the Criminal Law and the Criminal Procedure are on the Concurrent List of the Seventh Schedule to the Constitution of India and the criminal laws are administered by the State Governments, the Report of the Malimath Committee was forwarded to State Governments on October 8, 2003 for their views. So far, comments of 12 State Governments and 4 Union Territories (out of 28 States and seven UTs) have been received. The rest of the States/UTs are being reminded regularly to furnish their comments so that the necessary action could be

taken. Action on some of the recommendations of the Malimath Committee, pertaining to the Central Government, have already been taken.³⁰

Needless to say, the above facts are enough to enable even a lay person to gauge the concern and commitment of our governments for reforms in criminal justice.

LEARNING LESSONS

From our foregoing discussion on reforms in criminal justice, we may draw certain learning lessons. These are as follows:

- The reform initiatives are sporadic, adhoc and piecemeal in nature and as such not enough to cope with the emerging challenges to criminal justice system.
- These initiatives appear to be more of a ritualistic exercise rather than a conscious endeavour with commitment, thereby resulting in colossal wastage of public funds for futile exercises.
- There is an urgent need for a paradigm shift from accused-oriented to victim-oriented criminal justice system with adequate protection of the right of the accused belonging to the lower strata of the society to fair trial, from time-consuming to time-bound legal process, inculcating professionalism in crime investigation, evolving a strategy to ensure a good measure of coordination between the investigating and prosecuting agencies on a regular basis without diluting the constitutional doctrine of separation of powers, and formulating an effective plan to decongest the jails.
- Since law and order is a State Subject under the Constitution of India, reforms in criminal justice could not be carried out without the support of the State Governments. In view of the long time practice of our political authorities to misuse the police and criminal justice machinery to be remain in power, it would be too much to expect that they would come forward to carry out the necessary reforms. When political will for reforms is lacking, it is imperative that the Judiciary and/or civil society will have to play a pro-active role to ensure that the much-needed and long-awaited reforms in criminal justice are carried out.

ISSUES FOR DISCUSSION

1. Why are reforms in criminal justice needed?
2. What are the major maladies of our existing criminal justice system?
3. What are the impacts of initiatives of the Central and State Governments for reform in criminal justice?
4. How satisfactory is the governmental response to the reports of various commission, committees and other official bodies at the Central and State levels?
5. What learning lessons could be drawn from our overall experience relating to reforms in criminal justice?
6. In view of lack of political will for reforms, what alternative actions could we visualize?
7. What are the important agenda for reforms in criminal justice?
8. Any other issue relevant to the Theme.