AN ANALYSIS OF MALIMATH COMMITTEE REPORT ON CRIMINAL JUSTICE SYSTEM IN PERSPECTIVE OF HUMAN RIGHTS

Rupaben Mukundbhai Tailor
Research Scholar, Department of Law,
Veer Narmad South Gujarat Unversity, Surat, India.
Email – rupaatailor@gmail.com

Abstract: *The purpose of the study is to analyse the recommendations done by the Malimath Committee to amend such Criminal Laws prevails in Criminal Justice System in India. It is directly or indirectly helpful to know that if such recommendations will be implemented how they will affect the human rights. This current study is mainly focused on the human rights perspective. Therefore, only those recommendations are focused for the analysis. This study is also helpful to the students, academicians, legislatures, lawyers and society to know the effect if the recommendations would be implemented in the criminal justice system of India. This study is based on doctrinal method.*

Key Words: *Criminal Justice System, Human Rights, police, courts, etc.*

1. INTRODUCTION:

The basis of the criminal law is to seek protection of the right to life and personal liberty and other fundamental rights as well as human rights against the public at large and state under the rule of law. Therefore, there should be balance of the rights given to the offenders and victims of the crime and safety to the society as well as to prevent the crimes in criminal justice system.

The Malimath Committee was established in the year of 2000 by the Home Ministry of India. When the committee was formed the reasons for constituting the committee were not stated in the notification. It only said that, "to consider measures for revamping the criminal justice system".[1] This indicates that the present criminal justice system is meagre and suffering from two extreme issues. Firstly, the huge pendency of cases and delay in justice; secondly, low rate of conviction in criminal cases.

The committee had initiated with several objects to amend the Criminal Procedure Code of India, Indian Penal Code, Indian Evidence Act and if there is a need of the hour, to amend the provisions of Constitution of India regarding to criminal jurisprudence; to simplify and to make speedy judicial procedure; for restoring the faith and confidence of the general public; to make accountable judiciary, police and prosecutors. This report has been submitted in 2003 with the various recommendations to modify the criminal laws and criminal justice system to meet their objectives.

2. WHAT IS CRIMINAL JUSTICE SYSTEM?

Criminal Justice System is an instrument of social control which consist the government agencies charged with enforcing law and order and adjudicating crime. The aims of the CJS are as below:

- To prevent incidence of crime
- To punish the criminals
- To reorient the criminals
- For providing the recompense to the victims
- To maintain law and order in the society
- To frighten the wrongdoers

On the basis of objectives it can be said that the mainstay of criminal justice system are the community, the law enforcement, the prosecution and the court.

Criminal justice system can be classified in two parts viz., Adversarial Criminal Justice System and Inquisitorial Criminal Justice System. India follows the adversarial criminal justice system which is established by the British on the basis of their common law. This system is based on two principles one is to presume innocent of accused and second is that prosecution has to prove his case above all reasonable doubts. Inquisitorial system is based on an actively participation of all agencies of government for truth finding.

3. THE MAJOR RECOMMENDATIONS OF MALIMATH COMMITTEE:

The committee has recommends numbers of reforms in Criminal Procedure Code, Indian Evidence Act, Indian Penal Code, Etc. to meet their objectives. Some major recommendations are here as under:

3.1 Reforms regarding detainees:

- The committee has recommended that sec.167 of Cr.P.C., which provides the provision regarding remand that period of remand should be increased from 15 to 30 days in those cases where the punishment is more than 5 years.
- Sec. 25 of the Indian Evidence Act provides the provision regarding the confession. The section says that any confession made to a police officer shall not be admissible as evidence in a court. The committee has recommended that this section should be reformed and incorporate the sec. 32 of POTA and Sec. 15 of TADA, which provided that the confession made to the superintendent of police or the officer of above rank, whether it is audio or video- record, whether the person is in custody or not, is admissible as evidence in court. Although the person has right to counsel.
- The Identification of Prisoners Act 1920 should be amended on the basis of sec. 27 of POTA. This reform will authorised to take fingerprints, saliva, footprints, hair, photographs, semen, blood samples etc. for DNA and if the accused denied for it, the authority can make adverse inference against him. Moreover, the words are used in sec. 27 that such samples shall be collected "through a medical practitioner or otherwise".

3.2 Reforms regarding Fair Trial:

- The committee has proposed that the time period of filing Charge-sheet should be increased from 90 days to 180 days. If the charge-sheet is not filed within the time, detainee must be released on bail.
- The committee recommends that the accused should be questioned by free will of court for finding the truth and relevant information. If accused refused to give information court should have drawn the adverse inference against the accused.
- The committee has recommends that sec. 54 of the Indian Evidence Act should be amended which provides that previous conviction of accused should be considered as "Bad character" and it should be relevant in criminal proceedings. The present provision provides that the previous bad character of accused is not relevant. The accused is only bind to give the evidence of his good character when the prosecution is able to give evidence of bad character.
- 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.
- The committee has recommended that the standard of proof should be reduced to increase the conviction. The view about "prosecution has to prove their case beyond the reasonable doubts" should change.
- The committee has recommended that the procedure of summary trail prescribed in sec. 262-264 of Cr.P.C. should be amended to make process speedy. Moreover, the maximum punishment of three months should be increased to three years in summary trails. The committee has also recommended that when the witness has wilfully or knowingly gave the false or fabricated evidence before the court, the court should try summarily. The present law stipulates 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.
- The committee has suggested that the cruelty made under sec. 498A of IPC should be made compoundable as well as bailable.

Further, the committee suggested that there should be a "Director of Prosecution". Such post should be filled up from the rank of "Director General of Police".

4. RECOMMENDATIONS V/S HUMAN RIGHTS:

India is the signatory party of many covenants, conventions and declarations etc. of human rights. Therefore, India obliged to obey those international standards of human rights. In this section, how the above recommendations are not according with the international standard of human rights have been analysed.

- The first recommendation is about to increase the detention and justification is given that investigation of serious crime is not possible within 15 days. If the time of detention would be increased, it will make the detainees more vulnerable. In India, there are numbers of cases of torture and other cruel, inhuman and degrading treatment by police authority. Further, India is the signatory party of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but has not ratified yet. India is the signatory party of ICCPR and article 4 of the said covenant states that the right against the torture cannot be suspended and prohibition is absolute even

the offender has committed the heinous crime. Therefore, these rights cannot be derogated by the Government of India.

Justice Madan Lokur has observed in latest case of Dataram singh Vs The State of Uttar Pradesh that "*important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society"*[2].In the case of Gauri Shankar Vs State of Bihar[3] Supreme Court has observed that the 'individual liberty' is the spirit of sec. 167and the law 'disfavours the detention of any person in the custody of police'. Article 21 of the Constitution of India is also favours the liberty of the person without follow of the procedure established by law. In Menaka Gandhi's case[4] Supreme Court has also held that every law shall "just, fair and reasonable". The Supreme Court in Nimeon Sangma Vs. Govt. of Meghalaya[5] has acknowledged that the detainees without charge have inherent dangers and court has also instructed to government to act with keeping in mind the essence of sec. 167.The malimath committee has neglected the issues regarding the police custody.

- The words of Sec. 25 of the Indian Evidence Act are broad and in any situation, a confession made by the accused is absolutely excluded from the evidence. The reason behind it for securing the accused from using of threat and use of violence against him for extracting the confession from him. In the case of R. Vs Babulal[6], Justice Mahmood noted that, "The legislature had in view the malpractice of police officers in extorting confessions from accused persons in order to gain credit by securing convictions and those malpractices went to the length of positive torture."Though the torture used by police remains in India. The confession made to the police during the custody is not an admissible evidence despite that the problem of torture can be seen.

In the case of Kartar Singh Vs State of Punjab[7], the constitutionality of section 15 of TADA had been challenged; with uphold the constitutionality, majority judges had identified the danger inherit in the section. Justice K. Ramaswamy in his dissenting judgment opined that section 15 of TADA was unconstitutional and it was violating the articles of 14, 21 and 50 of the Indian Constitution. On the contrary, he was also opined that the legislature could make different certain procedure for the terrorist with clarification that such procedure must meet the tests enshrined under Article 21of Indian Constitution. If the power would be given to the superintendent of police or the officer of the above rank they also have same inherent interest to solve crimes and also can use the harshness and torture. Such practice will lose the public confidence and leads against the rule of law. Moreover, the threat to use torture and coercion will increase to obtain confession which is inconsistent with the international standard enshrined in article 14(3) (g) of ICCPR which says that *'everyone shall be entitled to the guarantee of not being compelled to testify against himself or to confess guilt.'* The same provision can be seen in Article 20 (3) of Indian Constitution. This recommendation is also endangered to *'no one is subjected to torture or to inhuman or degrading treatment or punishment'*[8] and UN Convention against Torture.

The committee has little tried to give reference that person has right to counsel but it does not includes as safeguard in the recommendations section. The concern is that the confession will have been taken through video recorded or in audio but it does not feel the lacuna of torture and degrading inhuman treatment and not the answer in the absence of specific mechanism to ensure it.

In the case of Styapathi Vs P. L. Dani, Supreme Court noted that despite Supreme Court jurisprudence requiring the presence of a lawyer during interrogation, this has not been included in legislation or implemented in practice.[9] The Committee has commented that the suspect has a right to counsel during the interrogation but counsel is not required to attend the whole process of interrogation. Right to counsel as a safe guard given to the suspect in section 32 of POTA seems like a tooth less tiger. In India where the people are mostly illiterate about their legal, civil and political right, no one can assure that an accused being told about his right by the police itself. Moreover, Indian Legal System is not provided an assistance of a lawyer at the stage of police remand. Therefore it is totally unrealistic in Indian perspective and it would be proved negative for the economically and disadvantaged persons. Moreover, it would be inconsistent with many international standards.[10]

- Referring to the Identification of prisoners Act, 1920, the concern about that amendment is that the medical officer or other person's intervention should be specified; therefore sample shall be taken in written without any possibility of torture or inhuman or degrading treatment or cruelty. Moreover, if the person denied giving samples, drawing adverse inference would breach the human right enshrined under Article 14(2) of ICCPR which protect the right to presumed innocent.
- The proposal of increasing the time period for filing the charge sheet will lead to the judicial and police remand. Consequently, it would violate the India's obligation towards the Article 9(3) of the ICCPR which requires that the accused shall be presented for trial 'within a reasonable time' or he should be released. It is also against the Bail Jurisprudence which states that "Bail is rule and jail is exception". In Hussainara Khatoon case[11], the Supreme Court noted that to get speedy trial is a fundamental right under Article 21 of Indian Constitution and delay to provide justice would lead to the denial of justice which is against to the spirit of speedy trial.

- As per the recommendation of committee the accused should be asked freely by court to reach the truth and refusing to give answer would lead to the adverse inference against the accused which violates the fundamental right 20(3) of Indian Constitution which assures the person to be silent. India is bound to respect guarantees given under Article 14(3)(g) under ICCPR and also Principle 21 of the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment.
- Regarding section 54 of the Indian Evidence Act, committee has proposed to be considered a "Bad character" as evidence in criminal procedure which violates the right to be presumed innocent. Such practise will lead to the prejudice proceeding and fair trial will not take place. Article 11(1) of UDHR states that every person has the right to be presumed innocent until proved guilty. Criminal Jurisprudence affirms this right and the essence of this right is that the miscarriage of justice never takes place. Every trial shall be taken place on its merit and does not depend on past of the charged person.
- Regarding with the defence on early stage, if he/she cannot defend him/herself on the early stage court shall deem that the allegation is not denied. Committee has tried to shift the burden of proof on the accused which violates the right to be silent and also breach the basic tenets of criminal law which affirm the right to be presumed innocent. The Human Right Committee has pointed out in its general comment 13 on Article 14 of ICCPR regarding with the presumption of innocence, the rule and conduct of trial must ensure that the burden of proof is beared by the prosecution throughout a trail.
- The committee's recommendation to reduce the standard of proof will increase the conviction but again proving case beyond reasonable doubt by prosecution is relates with the right to be presumed innocent. Such practice will provide the risk of unbalanced criminal justice of India and also will disturb the universal fundamental values of criminal justice. Further, "In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt."[12] It will also increase the risk of wrongful convictions.
- By amending sections 262-264 of Cr.P.C., the discretionary power of court will take away from the judge. It will make compulsory for all cases to be tried as summary trail. Consequently it will lead to increase the burden of cases. Further it will affect the right to fair trail and due process of law guaranteed under Article 14(3) of ICCPR.
- With regard to include some provision of POTA and TADA with safeguard in IPC, Cr.P.C. and Evidence Act of India, the concerns about such amendment is that even providing with safeguard it will continue to violate the human rights of suspects. TADA and POTA have proved draconian law. Police had wide powers to arrest and detain person merely on the basis of apprehension and it was also misused by the State Governments to arrest detain the opponent politicians, minors, persons of the particular communities.[13] Similar way under TADA, there were 77,000/- people were arrested and amongst them only 8000/- people were tried and only 2% convicted.[14] The Committee has justified that inclusion the definition of 'terrorist', 'terrorist activity' and 'organised crime' in IPC will feel the gap of TADA and POTA. The concern is that the definition under POTA was extremely broad dangerous and inconsistent with the international law which states that crimes are certainly defined, without vagueness.
- With regarding the cruelty made under sec. 498A of IPC should be made compoundable as well as bailable is already included in legislation. The committee had justified that, without providing any data, mostly case were being made falsely and being misused by women. The committee was on opined that the amendment is necessary to give easily forgiveness for husband to his wife and also protects his job. For the committee, 'for women, marriage is a sacrament bond and she tries her best to not break her marriage and this offence being non-compoundable makes practically impossible to conciliation and returning the home for women.' On the reasoning of the committee one can conclude that women are willing to suffer from violence, cruelty and degrading human treatment in silence. Recently, the domestic violence law has limited deterrent though it is strong, but it is important that the issue of domestic violence should be brought into public domain instead of leaving it as a private family matter. India is the signatory party of the Convention on the Elimination of All Forms of Discrimination Against Women and bound to perform the legitimate fight against the domestic violence through legal strategies.
- The committee has suggested transferring the role of prosecution to the police. Being an interested party in criminal justice system, such practice will adversely affect the right to fair trial. Police are also not officers of court. The prosecution should remain independent to ensure justice in criminal justice system.

5. CONCLUSION:

The concern is that the committee's report on criminal justice system is frightened than to improvement from recommendation in Indian Criminal Justice System. The committee has failed to address the fundamental failings regarding the human rights prevailing in criminal justice system. Though some recommendations have been taking place and have been implemented in system, it is believed that it does not provide complacency to the affecting human rights from those recommendations. The committee is failed to consider the international standards of human rights.

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