

1. Discuss the recommendations of the 2003 report of the Justice V.S. Malimath Committee on reforming the criminal justice system. Do you think these recommendations should be implemented by the government as they are? Comment. (250 Words)

Answer:

The Malimath panel formed in 2000 had made 158 recommendations in 2003 but these were never implemented. The central government is planning to relook into the recommendations again.

Recommendations of Malimath committee:-

- **Borrowing from inquisitorial system**
 - Here a judicial magistrate supervises the investigation. The committee recommended that courts be bestowed with powers to summon any person whether or not listed as a witness for examination, if it felt necessary.
- **Right to silence**
 - The Committee suggested that the court be given freedom to question the accused to elicit information and draw an adverse inference against the accused in case the latter refuses to answer.
- **Rights of the accused:**
 - Accused should be aware of his/her rights as well as how to enforce them and whom to approach when there is a denial of those rights.
- **Presumption of innocence**
 - The courts follow “proof beyond reasonable doubt” as the basis to convict an accused in criminal cases. A fact is considered as proven “if the court is convinced that it is true”
- **Justice to victims:**
 - The victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation.
 - A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund.
- **Police investigation**
 - The Committee suggested hiving off the investigation wing from Law and Order.
 - To improve the quality of investigations, it suggested a slew of measures, including the appointment of an Addl. SP in each district to maintain crime data, organisation of specialised squads to deal with organised crime
 - The Committee suggested police custody be extended to 30 days and an additional time of 90 days be granted for the filing of charge sheet in case of serious crimes.
- **Dying declaration**
 - The committee favoured dying declarations, confessions, and audio/video recorded statements of witnesses be authorised by law. It also sought amendments to the law to allow thumb impression only if the witness is illiterate.
- **Public prosecution**
 - It suggested that a new post, Director of Prosecution, be created in every State to facilitate effective coordination between the investigating and prosecuting officers under the guidance of the Advocate General
- **Trial procedures**
 - The Committee felt that all cases in which punishment is three years and below should be tried summarily and punishment that can be awarded in summary trials be increased to three years.
- **Witness protection:-**
 - The Committee batted for a strong witness protection mechanism
- **Penalty for false evidence:**
 - If during the trial, the witness is found to have given a false evidence then he/she is liable to fine up to ₹500 or up to three-month prison or both.
- **Vacations for the courts**
 - The committee recommended reducing the period of vacation by 21 days, keeping in mind the long pendency of cases.

- **Arrears Eradication Scheme**
 - The Committee proposed an 'Arrears Eradication Scheme' to tackle cases that are pending for more than two years. Under the scheme, such cases will be settled through Lok Adalats on a priority basis.
 - The Committee also suggested constituting a National Judicial Commission and amending Article 124 to make impeachment of judges less difficult.
- **Sentencing**
 - Pregnant women and women with child below seven years can be kept under house arrest instead of being lodged in prison, keeping in mind the future life of the child
- **Reclassification of offences**
- **Rape:**
 - Non-penal penetration and any forcible penetration should also be considered as rape and must be carry a heavier punishment. The trial of rape cases should be done with most expeditiously, within four months, and with a high degree of sensitivity.

- **Organised crime and terrorism**

Though crime is a State subject, a central law must be enacted to deal with organized crime, federal crimes, and terrorism.

Yes, the recommendations need to be implemented:

- It also contains valuable suggestions to revamp the administration of criminal law, covering the entire gamut of the justice system from investigation to sentencing, from matters of policy to the nuances of criminal procedure and the law of evidence.
- The Committee also prescribes a prosecution statement and defence statement. The latter will allow the accused to respond to the charges framed against him or her.
- Audio-visual recordings reduce the space for accused and witnesses to backtrack and also gives judges the benefit of seeing whether the witness/accused is under duress.

No, some of the provisions are controversial:

- Includes controversial recommendations such as making confessions to a senior police officer admissible as evidence, and diluting the standard of proof required for a criminal conviction.
 - Confessions to police have repeatedly come under scrutiny because of allegations of custodial torture, instances of custodial deaths, fake encounters and tampering with evidence.
- It moots that it is enough if the court is convinced that something is true. Such a measure would have adverse implications for suspects, and requires considerable deliberation.
 - Similarly, diluting the proof beyond reasonable doubt precept will prove to be counterproductive.

What is needed?

- The onus must be on improving
 - Investigative skills of police officers
 - Improving quality of documentation and separating criminal investigation responsibilities from law and order duties.
 - Appointing more judges and police personnel
 - Deploying scientific techniques
 - Beefing up forensic labs and other infrastructure investments.

PRACTICE QUESTIONS

Answer the following Questions

1. In recent years, China has made breathtaking strides in science and technology whereas India has lagged behind. Can India catch up with China? What should India do to match China in this regard? Discuss.
2. Examine how the Motor Vehicles (Amendment) Bill that was passed by the Lok Sabha in 2017 is an improvement over the Motor Vehicles Act, 1988.