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THE QUEST FOR TRUTH IN CRIMINAL JUSTICE- REVISITING THE MALIMATH COMMITTEE RECOMMENDATIONS

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ABSTRACT

'Satyameva Jayate'- Truth alone Triumphs, enunciates the Indian ideology which confers the zenithally importance to truth. Truth and Justice are somewhat synonymous for the common man, and thus, when justice fails, truth stands defeated. The Malimath Committee in its Report on Reforms in Criminal Justice System, 2003 deliberated on the need to attain the ultimate end, not in terms of acquittal or conviction, but truth. Referring to the observations of Dr. R. Venkataraman, Former President of India, the Committee reiterated that "the Judge is not concerned with the truth; he is only concerned with the proof." In fact, the law of evidence clearly enumerates that either the evidence is proved, disproved, or, not proved. In other words, facts of a case are to be established by means of evidence, which is submitted before the Court, and, the latter has to decide whether the facts are thereby established. In case the Court is convinced to the point of 'beyond reasonable doubt', conviction is maintained for the accused, whereas in all other cases, it is acquittal. It is merely presumed that truth will surface from the individual version of facts presented by the prosecution and the defense in presence of the Judge, who appears to have little or no say in the drama that unfolds before him in the court room. He simply plays the role of a mute spectator at the contest between two parties and declares who has won and lost. The Malimath Committee criticized this system to be profoundly loaded in favor of the accused and accordingly made recommendations to incorporate appropriate changes in the law.

An illustration may be given from K. Venkateshwarlu v.State of Andhra Pradesh(2012) where the Court found itself helpless to give justice to a polio-ridden child rape victim; although it was proved that she was sexually assaulted by the accused, a police officer. Lamenting on the acquittal, the Court said: "The demeanor of Aruna, the tears in her eyes, her walking out of the Court after looking at the appellant, pricks the judicial conscience...."

A decade and a half later since the Committee suggested necessary amendments to shift the core

focus of criminal justice to attainment of truth, little has been achieved. Except for sparing aspects of victim participation, the remaining suggestions have gone unhindered. The present system suffers from the same laxity as before. The paper analyses recent judicial trends to indicate the continued ineptness of the adversarial system to achieve justice, and consequently truth, and the dire need to bring about changes.

Key Words: Malimath Committee, Adversarial System, Truth, Justice, Victims.

INTRODUCTION

The Indian spirit vests the highest importance to truth. The aphorism, Satyameva Jayate (Truth alone succeeds) is engraved in our National Emblem “Ashoka Stambha” and all our saga narrate the goodness of truth.¹ Truth is a cherished ideal of India and the cornerstone of our justice system. Truth being the very basis of justice protects the innocent and punishes the guilty. For an average person, truth and justice holds the same connotation, and thus, when justice flounders, truth stands defeated. The Malimath Committee in its Report on Reforms in Criminal Justice System, 2003 considered the need to attain the ultimate end, not in terms of acquittal or conviction, but truth.²

For criminal justice dispensation, India follows the “adversarial system” which has been handed down by our British Colonial Rulers.³ In an adversarial criminal justice system, the Judge acts as a neutral fact finder who remains passive throughout the proceeding.⁴ He allows all sides of arguments in the court room which eventually take the shape of a combat which must be adequately using all available resources. He dispassionately examines the evidence forwarded by the parties during disposition, his only objective being, resolving the dispute.⁵ Here, it is presumed that truth will come up from the individual versions of the facts forwarded by the prosecution and the defense before a neutral judge.

Considering several lacunas in the adversarial system of justice delivery, the Malimath Committee in its 2003 report pointed out that this system has led to a situation where large numbers of

¹ Berti, D. and Tarabout, G. (2017). Anthropological Approaches to Crime. 1st edn. Pg. 27

² Malimath, J. V. S. (2003a). Committee on Reforms of Criminal Justice System. MHA GOVT. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

³ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 23. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁴ Menkel-Meadow, C. (1996). ‘The Trouble with Adversary System with A Post-Modern, Multicultural World’, William and Mary Law Review, 38, p. 7.

⁵ Landsman, S. (1983). ‘A Brief Survey of the Development of the Adversary System’, Ohio State Law Journal, 44, pp. 715–16.

criminals escape convictions. In such a system, ascertainment of truth becomes a distant goal; either due to the errors on the part of investigation officer, prosecution, witnesses, or on account of stringency of the laws of evidence. To do away with the lacunas of adversarial system; the committee recommended that the “presumption of innocence” and “proof beyond reasonable doubt” be substituted with a lower standard, for example, “the Court’s conviction”.⁶ The committee further recommended incorporation of certain attributes of inquisitorial system of investigation and administration of justice in the present criminal justice system. The committee emphasized on the dire need to reform the entire criminal justice system keeping in mind the justice to the victims in terms of adequate compensation, legal representation and witness protection.⁷

The present paper contends that decade and a half later since the Committee suggested necessary amendments to shift the core focus of criminal justice to attainment of truth, little has been achieved. It analyses recent judicial trends to indicate the continued ineptness of the adversarial system to achieve justice, and consequently truth, and the dire need to bring about changes.

- ***Indian Adversarial System and Its Limitations***

India follows an age-old criminal justice system founded on the Penal system established by our colonial rulers. In an adversarial system, the Judge acts as a neutral arbitrator without actively taking part in the legal battle carried out in the court rooms. The liability of gathering evidence rests with the parties (the prosecution and the defense) and a duty is vested on the court of sovereign appraisal of the evidence collected during investigation.

During the trial, the prosecution and the defense submit their variant of events and argue their case in front of a neutral adjudicator. Here, unless contrary is proved; the accused is presumed to be innocent and, in case of a reasonable doubt as to whether the guilt is credibly proved, the accused is allowed acquittal.⁸

Unlike the inquisitorial system of justice, where Judges play an active role, direct the court room debate, shoulder the role of the principle interrogator of witnesses and defendant, inquire into the

⁶ The Adversary system: Who wins? Who loses? (2019). Available at: <https://law.jrank.org/pages/4118/Adversary-System-ADVERSARY-SYSTEM-WHO-WINS-WHO-LOSES.html>.

⁷ Kumar, A. (2018). Criminal Justice System of India-Is It Time to Implement the Malimath Committee Report? Available at: <https://www.clearias.com/criminal-justice-system-india/>.

⁸ Van Sliedregt, E. (2009). ‘A Contemporary Reflection on the Presumption of Innocence’, Dans Revue internationale de droit pénal, 80(1–2), p. 249.

charges and assesses all pertinent evidence; in an adversarial system, the Judge merely acts as a umpire at the hearing. The Judge ensures that the trial is conducted observing due process.⁹ Thereafter, it is decided whether the defendant is guilty beyond reasonable doubt and hearing is conducted on the sentence given. Lawyers are chiefly accountable for leading the evidences and interrogating witnesses.¹⁰ (Cramton, 2002) At first, each witness gives their evidence-in-chief, thereafter they may be cross-examined. Adversarial system is regulated by the idea of “Proof beyond reasonable doubt,”

Unlike the inquisitorial system of justice, where Judges play an active role, direct the court room debate, shoulder the role of the principle interrogator of witnesses and defendant, inquire into the charges and assess all pertinent evidence; in an adversarial system, the Judge merely acts as a umpire at the hearing. The Judge ensures that the trial is conducted observing due process.¹¹ Thereafter, it is decided whether the defendant is guilty beyond reasonable doubt and hearing is conducted on the sentence given. Lawyers are chiefly accountable for leading the evidences and interrogating witnesses.¹² At first, each witness gives their evidence-in-chief, thereafter they may be cross-examined.

Adversarial system is regulated by the idea of “Proof beyond reasonable doubt,” unlike the inquisitorial system where the appeasement of the Judge towards attainment of truth holds greater value. Furthermore, right to silence inherent in our Constitutional mandate of right against self-incrimination is an integral part of this system. It is argued that here the defendant has got stronger protections and the role of the victim is not prominent.¹³ The system does not differentiate between the police and the prosecution. It creates a close knit between the police, prosecution, and the State which tries to convict the defendant. The system fails to recognize the police as a separate authority having responsibilities independent of the prosecution with relation to attainment of truth.¹⁴ Critics claim that the adversarial system is more perturbed with unraveling disputes than detecting the endmost truth.¹⁵ This system places an exorbitant on victory and hence persuades

⁹ Ainsworth, J. (2015). ‘Legal discourse and legal narratives: Adversarial versus inquisitorial models’, *Language and Law Linguagem E Direito*, 2(1), p. 4.

¹⁰ Cramton, R. C. (2002). ‘Furthering Justice by Improving the Adversary System and Making Lawyers More Accountable’, *Cornell Law Faculty Publications*, 70, p. 1601.

¹¹ Ainsworth, J. (2015). ‘Legal discourse and legal narratives: Adversarial versus inquisitorial models’, *Language and Law Linguagem E Direito*, 2(1), p. 4.

¹² Cramton, R. C. (2002). ‘Furthering Justice by Improving the Adversary System and Making Lawyers More Accountable’, *Cornell Law Faculty Publications*, 70, p. 1601.

¹³ T. Pizzi, W. (1999). ‘Victims’ Rights: Rethinking our Adversary System’, *Utah Law Review*, 2, p. 352.

¹⁴ T. Pizzi, W. (1999). ‘Victims’ Rights: Rethinking our Adversary System’, *Utah Law Review*, 2, p. 352.

¹⁵ Roach, K. (2010). ‘Wrongful Convictions: Adversarial and Inquisitorial Themes’, *North Carolina Journal of International Law and Commercial Regulation*, 35, pp. 388–389.

manipulation and deception.¹⁶ Also, people with inadequate resources cannot buy equal access to justice as that of affluent ones.¹⁷ The system is characterized by the fact that lawyers spend more time avoiding truth than seeking it.¹⁸

In the adversarial system, since the parties direct the litigation, they are persuaded to submit only the evidence that is beneficial to them and to repress evidence that is not.

Critics maintain that the 'rules of evidence', which were created to guarantee fairness to all parties actually work against fairness by suppressing necessary information which should have been submitted before the Judge, who is supposedly the fact finder in the case. The Indian law of evidence clearly enumerates that either the evidence is proved, disproved, or, not proved. In other words, facts of a case are to be established by means of evidence, which is produced before the Court, and, the latter has to decide whether the facts are thereby established. In case the Court is convinced to the point of 'beyond reasonable doubt', conviction is maintained for the accused, whereas in all other cases, it is acquittal. Though the goal of truth to be attained at the end of a judicial process is an ideal expressed in the Higher Courts (High Courts of State and the Supreme Court of India); the accent to 'winning at any cost' without adequate concern towards truth-seeking is the prime focus when it comes to adversarial system.¹⁹ Judicial truth in India is exclusively concerned with the facts established according to the law of evidence which may be far from the reality of actual facts. Criminal trials in an adversarial system are prone to manipulations of all sorts and since the contesting parties determine the scope of the dispute, they bring selective evidence in the Court.²⁰

It is argued that the present adversarial system is not only unresponsive towards the victims' predicament and rights, it does not permit the presiding Judge to rectify the anomalies in the investigation or in the issue of production of evidence in the Court.²¹

¹⁶ E. Sward, E. (1989). 'Values, ideology, and the Evolution of the Adversary System', *Indiana Law Journal*, 64(2), pp. 312–313.

¹⁷ E. Sward, E. (1989). 'Values, ideology, and the Evolution of the Adversary System', *Indiana Law Journal*, 64(2), pp. 312–313.

¹⁸ Cramton, R. C. (2002). 'Furthering Justice by Improving the Adversary System and Making Lawyers More Accountable', *Cornell Law Faculty Publications*, 70, p. 1601.

¹⁹ De Barba, K. (2002). 'Maintaining the Adversarial System: The Practice of Allowing Jurors to Question Witness During Trial', *Vanderbilt Law Review*, 55, p. 1523.

²⁰ Berti, D. and Tarabout, G. (2017). *Anthropological Approaches to Crime*. 1st edn. Pg. 29

²¹ Manoharan, D. N. (2013). *Reforming the Criminal Justice System*, Vivekananda International Foundation. Available at: <https://www.vifindia.org/print/1600> (Accessed: 18 April 2023).

QUEST FOR TRUTH OR PROOF?

According to Swami Vivekananda, for an average man, truth tantamount to justice and thus, when truth flounders, justice also fails.²² However, there is no place for truth in the present criminal justice system that is followed by India. On one hand, lawyers are more concerned with resolving controversies and representing their client's interests rather than finding truth; on the other hand, Judges are merely concerned with 'proof', and not 'truth'.²³

Through their entire career, the lawyers involve themselves bootlicking their rich clients who expect them to manipulate the substance and procedure of law.²⁴ Eventually, truth becomes a casualty and a premium is put on winning.

In the case of *Gurbachan Singh v. Satpal Singh*²⁵ it was held that in an adversarial system of justice, "proof beyond reasonable doubt" and "presumption of innocence" still maintain a pivotal position. The maxim that "it is better to acquit ten guilty persons than convict an innocent one" is nowhere mentioned in the criminal law books, but is a rule of prudence founded on public policy. In the case of *Naba Kishore Rout v. the State*²⁶, 1990 it was held that Where the proof of an offence with certainty of criminal law is established to the effect that the offence has been committed and that no other person but the accused must have committed the offence; then the Court considers the case to have been proved "beyond reasonable doubt". "Proof beyond reasonable doubt" does not admit fanciful possibilities and stems out from the idea of "presumption of innocence" embedded in our adversarial system(*SK Badar Alias SK. Badiruddin v. State of Orissa, 1995*²⁷). In the case of *Gurbachan Singh v. Satpal Singh*²⁸ it was held that Even though "proof beyond reasonable doubt" holds high value, the Supreme Court pointed out that inflated fidelity to the rule of benefit of doubt must not be exercised to the extent that justice becomes sterile. In the case of *Neelam Katara v. Union of India and others*²⁹, the Court further added that it is a fact that administration of justice is of great significance in our society, and it may be true that let hundred escape but do not let an innocent to be punished, but this plea cannot be outstretched so as to provide an escape route for the accused and usurp the administration of

²² Berti, D. and Tarabout, G. (2017). *Anthropological Approaches to Crime*. 1st edn. Pg. 12

²³ Parker, C. (2004). 'A Critical Morality for Lawyers: Four Approaches to Lawyers Ethics', *Monash University Law Review*, 30(1), p. 50.

²⁴ West, R. (1999). 'The Zealous Advocacy of Justice in a Less than Ideal Legal World', *Georgetown Law Faculty Publications*, 51(4), p. 974.

²⁵ 1990 AIR 209.

²⁶ LAWS(ORI)-1990-10-31

²⁷ 1994(II)OLR290

²⁸ 1990 AIR 209.

²⁹ ILR (2003) II Del 377

justice.

The Court on various instances condemned the inert role played by the judges and accentuated the significance of finding truth. For example, in *Ram Chander v State of Haryana*³⁰, Justice Chinnappa Reddy opined that in adversary system, the judge plays the role of an umpire or referee wherein he allows the trial to take the shape of a match between the prosecution and the defense with the unavoidable contortions flowing from aggressive, confrontational, and competing elements infiltrating the trial procedure (*Ram Chander v State of Haryana*,³¹). He further added that if a Criminal Court is to be an effectual tool in assuring justice, the presiding judge must refrain from being a bystander and a mere audiotape. He must become an accomplice in the trial by manifesting sharp dynamic interest and by throwing questions to the witnesses in order to determine the truth (*Ram Chander v State of Haryana*,³²). Similar views were given in *State of Karnataka v. Suvarnamma*³³ (2015) where the Supreme Court said that even though we are governed by the adversarial system, the Court cannot be a taciturn observer predominantly in criminal cases and the key obligation of the court is to unleash the truth from material on record (*State of Karnataka v. Suvarnamma*³⁴).

The judiciary has further advanced the need of social justice adjudication as an alternative to mere adversarial approach as mere adversarial means may not be apt. After all, the ultimate duty of the courts is to facilitate the cause of social justice (*Badshah v Urmila Badshah Godse and another*³⁵). The Supreme Court has accorded greater value to social context adjudication when it comes to enforcement of rights of the vulnerable section of the society (*Vishaka and others v. State of Rajasthan and others*³⁶; *Aruna Ramachandra Shahbaug v. Union of India & others*³⁷); though, as Prof. Madhava Menon puts it, adversarial legalism is the only reality in trial Courts where evidence law would dismiss social- context arguments as hearsay³⁸. He further contended that the adversarial system functions in a manner wherein unequal parties are set against each other and the judge is more leaned towards proof than truth. Primarily, this system steers to the

³⁰ 1983 (3) SCC 335

³¹ 1983 (3) SCC 335

³² 1983 (3) SCC 335

³³ Criminal Appeal No. 785 of 2010 (SC)

³⁴ Criminal Appeal No. 785 of 2010 (SC)

³⁵ 2014 (1) SCC 188

³⁶ 1997 AIR SCW 3043

³⁷ (2011) 4 SCC 454

³⁸ Menon, D. N. R. M. (2005). 'Social Context Education for Social Justice Adjudication', Journal of the National Judicial Academy, 1, pp. 257–58.

impediment of the weaker party³⁹.

The Judges are expected not to act like a recording equipment to document whatever is being stated by the witnesses; rather, they are conferred with wide powers under Sec.165 of the Evidence Act, 1872 and Sec.311 of the Code of Criminal Procedure, 1973. In the case of *Nellore v. Intna Ramana Reddy*⁴⁰, the Court said that all criminal trials resemble a voyage in which the unearthing of truth is the pursuit. It is the task of the moderator Judge to investigate every possibility open to him in order to ascertain the truth and to promote the cause of justice (*Nellore v. Intna Ramana Reddy*⁴¹). Thus, the judge is vested with the powers given by Sec. 165 of the Evidence Act, 1872, which gives him the right to put questions to witnesses. The Supreme Court further observed that the outcome of a criminal proceeding cannot be entirely left in the hands of the parties and it is the duty of the Courts to ensure that the pertinent questions are not left unattended (*Raghunath v. State of UP*⁴²). The presiding Judge must not be a bystander but should become an accomplice in the trial and educe all congruous materials essential for reaching the right end for finding out the truth (*Zahira Habibulla H. Sheikh and another v. State of Gujarat and others*⁴³).

Though it is the key principle of the law of evidence that the highest possible degree of proof or the best evidence should be produced before the Court, in the case of *Mohan Lal Shamlal Soni v. Union Of India and another*⁴⁴, where the best evidence could not be put forward by the prosecution before the Court, the Supreme Court put a serious question on the Judge. The Court interrogated whether the presiding officer is vested with a legal duty of his own, separate from the parties, to take an effective role in discovering the truth or should he merely sit as an umpire and assert at the end of the warfare as to who won and who lost (*Shamlal Soni v. Union Of India and another*⁴⁵). The Court furthermore added that the scope and ambit of Sec.311 of the Code of Criminal Procedure, 1973 is sufficiently extensive to cover any Court at any stage or any enquiry, trial, or other proceedings, and that the discretionary power can be administered on any person if it is a requisite to secure new evidence so as to reach a valid and just decision.

The Supreme Court advanced the duty of the Court to detach the wheat from the husk and pointed

³⁹ Sikri, J. A. K. (2019). 'The Constitution at 67', in Role of Judges in a Democracy. 1st edn. Delhi: The Supreme Court of India, p. 28. Available at: <https://sci.gov.in/pdf/AnnualReports/The%20Constitution%20at%2067.pdf>.

⁴⁰ 1972CRILJ1485.

⁴¹ 1972CRILJ1485.

⁴² 1974 SCC (4) 186

⁴³ 2006 (3) SCC 374

⁴⁴ 1991 AIR 1346, 1991 SCR (1) 712.

⁴⁵ 1991 AIR 1346, 1991 SCR (1) 712.

out that although in each case it must be appraised to what extent the evidence is acceptable, but, just because in few respect, the Court considers the same to be inadequate, the same cannot be discarded or ignored in totality (*Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble*⁴⁶). As long as the chaff, cloud, and dust remain, they will clog the very truth, and the criminals will be clothed under a protective layer of 'benefit of doubt.' (*Mohan Singh and another v. State of MP*⁴⁷)

The Malimath committee envisaged that even though the foundation of the criminal justice system is investigation by the police, but, adversarial system does not compel the judge to undo the anomalies in the investigation with the endeavor of discovering the truth.⁴⁸ In *Samaj Parivartan Samudaya and Ors. v. State of Karnataka and Ors.*⁴⁹ it was held that the fundamental principle of an investigation is to extract the truth by conducting fair and appropriate investigation, in harmony with law and to make certain that the culpable are penalized. The Court must insure that powerful persons are not able to abuse or usurp the investigation so as to suffocate a fair investigation, the consequence being an escape route for offenders (*Samaj Parivartan Samudaya and Ors. v. State of Karnataka and Ors.*⁵⁰). Similarly, in the case of *Mithilesh Kumar Singh v State of Rajasthan*⁵¹ it was held that in an adversarial system of administration of justice, fairness of investigation is the very first requirement for fairness of trial and a trial based on one-sided and biased investigation can hardly be fair (*Mithilesh Kumar Singh v State of Rajasthan*⁵²).

Considering several lacunas in the adversarial system, the Malimath Committee in its 2003 report laid down the foundations for a restructured criminal justice system. The committee focused on adopting certain features of the inquisitorial system in our justice delivery mechanism to improve upon the existing vice.

RECOMMENDATIONS OF MALIMATH COMMITTEE

The Malimath Committee was constituted for a thorough review of the whole criminal justice system of the country so that methodical reforms may be made to recover the existing legal depravity. The Committee dwelt on several aspects of the system including the primary principles

⁴⁶ 2003 (7) SCC 749

⁴⁷ 1999 AIR SCW 553

⁴⁸ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 25. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁴⁹ 2012 (7) SCC 407

⁵⁰ 2012 (7) SCC 407

⁵¹ (2015) 9 SCC 795

⁵² (2015) 9 SCC 795

of justice administration.

Truth as the core focus: The committee indicated that nothing but truth must be the cornerstone of the Criminal Justice System⁵³ since justice is defeated if truth does not prevail⁵⁴. The committee addressed the fact that in an adversarial system of justice administration, the Judge, being too apprehensive to preserve an unprejudiced position, never takes the lead to determine the truth. However, in an inquisitorial system, the Judge is conferred with an affirmative duty to unleash the truth and the judicial police are required to assemble evidence for and against the accused, in an unbiased manner, under the direction of an independent Judicial officer, “the Judge of instructions.”⁵⁵ After all, to recoup the missing confidence of common mass on Judiciary, the Courts must become vigorous seekers of truth and everyone should lend a hand to the Court in its pursuit for truth.

Attributes of inquisitorial system to be embraced: It is imperative that our system adopts some features of the inquisitorial system with necessary modifications since inquisitorial system is more proficient in the sense that the investigation is directed by the judicial magistrate ensuring good number of conviction. The committee alerted the Courts to seek out truth, to assign a more dynamic role to the Judges, to render instructions to the investigating officers and prosecution agencies in matters of investigation, and to lead evidence with the purpose of realization of truth⁵⁶.

To confer duty on every Court to discover truth: The committee envisaged that ample authority has been given to the Judges by virtue of Sec. 311 of the Code of Criminal Procedure, 1973 wherein the Court is given discretion to summon any person as a witness or re-call and re-examine any person who has been previously examined if it is necessary for arriving at a just decision⁵⁷. The committee pointed out that ‘just decision of the case’ does not equate to ‘the duty of discovering the truth’ and in reality, when the witnesses are examined, the Courts scarcely interrogates. Furthermore, the trend of decisions is that the power under Sec. 311 should be

⁵³ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 28. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁵⁴ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 29. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁵⁵ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 35. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁵⁶ Kumar, A. (2018). Criminal Justice System of India-Is It Time to Implement the Malimath Committee Report? p. 265. Available at: <https://www.clearias.com/criminal-justice-system-india/> (Accessed: 18 April 2023).

⁵⁷ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 31. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

exercised with immense caution⁵⁸. Thus, the committee suggested necessary amendments to this section imposing a duty on every Court to “suo moto cause production of evidence for the purpose of discovering the truth”.

Justice to victims: The committee pointed out that the criminal justice system at hand is heftily in favor of the accused and it does not sufficiently focus on justice to the victims. The victim is the one who's right has been pervaded by the accused, but he is not given any right to partake in the criminal trial, except as a witness⁵⁹. It recommended that the victim should be given the right of active participation in a trial so that he may furnish such information which would aid the Court in unearthing the truth or ensuring the production of new evidence necessary to render justice⁶⁰. It further endorsed that victims must have the right to prefer an appeal against acquittals⁶¹ and right to compensation.⁶²

To shift the trends in “burden of proof” and “standard of proof”: The committee specified that it is the obligation of the Courts to discover the ultimate truth and pass judgments accordingly. Since India follows adversarial system of justice, the Judge acts as a referee to see whether the case has been proved “beyond reasonable doubt” by the prosecution. By shifting the trends in “burden of proof” and “standard of proof”, the unreasonable burden on the prosecution may be reduced. This in turn will block the escape routes for the criminals, who have been taking huge advantage of the lacunae of this system for years⁶³. The committee suggested that the standard proof be set at a midway between “proof beyond reasonable doubt” (as followed in India) and preponderance of probabilities (as followed in Europe). It called for a ‘clear and convincing standard.’⁶⁴

To reverse “presumption of innocence” and “right to silence”: The committee indicated that “presumption of innocence” of the accused and “right to silence” are inter alia well recognized principles of criminal jurisprudence. “Right to silence” of the accused is a fundamental right which

⁵⁸ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 32. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁵⁹ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 20. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁶⁰ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 35. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁶¹ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 80. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁶² Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 265. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁶³ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 23-24. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁶⁴ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 269. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

germinates from the right against self-incrimination conferred by Article 20(3) of the Indian Constitution. While explaining the accurate range and meaning of “right to silence”, the committee referred to examination of the accused under Sec.313 of the Code of Criminal Procedure, 1973. It emphasized on the fact that sec.313 will not contradict the right of the accused against self-incrimination because he may decline to respond to the questions put to him and no coercion is involved herein. Thus, the Court is empowered to place any questions to the accused during trial which would give him a chance to clarify the state of affairs appearing against him in the evidence and if the accused willingly makes self-incriminatory statement, it may be taken into account, either in favor of him or against him.⁶⁵ However, the fact that the accused may reject to answer the questions put to him not only results in immense bigotry to the prosecution, but also hampers the pursuit for truth. Thus, the committee suggested that Sec. 313 should be substituted by Sec.313A, 313B and Sec.313C and that he should file a statement to the prosecution revealing his stand.⁶⁶

In fact, in similar lines, the Supreme Court of India has held that in case the accused remains numb to the questions put to him by the court under Sec.313 of Cr.P.C., 1973, wherein he is expected to come out with an clarification, leads to an unfavorable inference against the accused (*Prahlad v. State of Rajasthan*⁶⁷).

The extensive recommendations given by Malimath Committee were atypically straightforward in the sense that common people have indeed lost trust in the present criminal justice system, and that victims feel disregarded and unattended. However, a glance at the criticisms against Malimath report posed by Upendra Baxi propagate that, most of the recommendations in the report are based on knee jerk reactions and not on sound legal propositions. For example, Prof. Baxi maintains that, the report has significant acquaintance with what has been already stated. At the outset of the report, Andre Gide’s quote “Everything has been said already, but as no one listens, we must always begin again” assuages the readers into considering that the report is a compiled version of existing acumen.⁶⁸

⁶⁵ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 42. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁶⁶ Malimath, J. V. S. (2003b). Committee on reforms of criminal justice system. MHA GOVT., p. 267. Available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf.

⁶⁷ 2018 SCC OnLine SC 2548

⁶⁸ Baxi, U. (2003). An Honest Citizens Guide to Criminal Justice System Reform: A Critique of the Malimath Report. New Delhi: Amnesty International, p. 6.

Baxi maintains that reversing the “presumption of innocence” and “right to silence” would challenge the cardinal principle of criminal justice administration. In fact, “presumption of innocence” is an essential right under the International Covenant on Civil and Political Rights. The same has been incorporated under Article 20(3) of the Indian Constitution. Reversing presumption of innocence through prompt action, without establishing an evidence-based relationship between high rates of acquittals vis-à-vis presumption of innocence, questions the credibility of the Malimath report.⁶⁹

Besides, the report talks about incorporation of certain good points of inquisitorial system presuming that it “may” strengthen the present adversarial system. However, not much of research has gone into that presumption. Prof. Baxi argues that the only jurisdiction referred herein is France which is ruled by jury system and where offices of Magistrates and Prosecutors are interchangeable. Whether such a system is feasible for India has not been clarified in the report.⁷⁰

The Committee emphasizes on the quest for truth and warrants the judges with extraordinary powers. However, court room trials centre on facts, and established facts lead a judge towards educated guesses to what really happened.⁷¹ Under such circumstances, the place of truth remains dubious.

Other critics have questioned the very constitution of the Committee with judges, bureaucrats, police, academician etc. In fact, it had no women members; nor prominent criminal law attorneys.⁷² Moreover, the Committee sidelined its discussion on the rights of poor and marginalized sections like dalits who are victimized at the hands of the system. Though the Committee advanced on the assumption that greater conviction rate shall meet the ends of justice; yet critical human rights concerns, like wrongful arrest and detention, torture and custodial violence, crisis in legal aid, and growing number of under-trials, remained unaddressed.⁷³

True that the concerns flagged by Malimath regarding a less-than-functional criminal justice

⁶⁹ Baxi, U. (2003). *An Honest Citizens Guide to Criminal Justice System Reform: A Critique of the Malimath Report*. New Delhi: Amnesty International, p. 18.

⁷⁰ Baxi, U. (2003). *An Honest Citizens Guide to Criminal Justice System Reform: A Critique of the Malimath Report*. New Delhi: Amnesty International, p. 25.

⁷¹ Rodell, F. (1949). ‘Courts On Trial: Myth and Reality in American Justice by Jerome Frank’, *Indian Law Journal*, 25(1), p. 115.

⁷² Nagaraj, V. and Batra, B. J. (2003). Criminal justice system ‘reforms’, *India Together*. Available at: <http://indiatogether.org/articles/malimath-human-rights> (Accessed: 19 September 2023).

⁷³ Narrain, S. (2003). ‘Rights and Criminal Justice’, *Frontline: The Hindu*, pp. 1–3.

system in India have been slammed on grounds of being hasty, flawed, and ambiguous; yet, it cannot be disregarded that the Committee made efforts towards revamping the entire system on the brink of collapse. The three major apparatus of the criminal justice machinery in India, the police, the court, and the prison, need discrete but coordinated reforms to induce tangible changes⁷⁴. Though legislative intent relies more on facts than popular opinion, Malimath's recommendations, and rightly so, concluded that Indian criminal justice administration will proceed towards a new track bearing better justice dispensation once and for all, if the rights of the victims are recognized and established, along with the rights of the accused.

RESPONSE TO MALIMATH- LITTLE DONE, VAST UNDONE

Out of the several recommendations made by the Malimath Committee, barely a few have been acted upon. These include, inclusion of victim compensation scheme through Sec. 357A of Cr.P.C, 1973; insertion of victim protection through Sec. 357C of Cr.P.C, 1973 which talks about providing treatment to victims free of cost; amendment to Sec. 372 of Cr.P.C, 1973 which provides the victim with the right to prefer an appeal against any order passed by the Court acquitting the accused or imposing lesser sentence or inadequate compensation; insertion of sub-section (8) to Sec.24 Cr.P.C, 1973 which gives a right to the victim to engage an advocate of his choice to assist the prosecution and infusion of sub-section (5) to Sec. 313 of Cr.P.C, 1973 wherein the Court is given the power to take assistance from the prosecution and defense to prepare relevant questions to be put before the accused.

However, the changes have made little difference to the conviction rate (Ranjan, 2017, p.46). Thus, decade and a half later since the Malimath Committee gave its recommendations; the situation still remains grim as ever.

Even though the Judge is vested with inquisitorial powers as inculcated under Sec.165 of the Evidence Act, 1872, and Sec.311 of the Code of Criminal Procedure, 1973 that allow a Judge to seek any information necessary to obtain proper proof of relevant facts and to ask for production of vital evidence or examination of a witness who is not a part of the prosecution or defense case, the Court, time and again, has talked about the 'caveat' that this power, which is vast and wide, should be exercised judiciously and with immense caution (*Natasha Singh v. Central Bureau of*

⁷⁴ Krishnaswamy, S., Sivakumar, S. K. and Bail, S. (2014). 'Legal and Judicial Reform in India: A Call for Systemic and Empirical Approaches', Journal of National Law University Delhi, 2(1), p. 17.

*Investigation*⁷⁵; *Rajaram Prasad Yadav v. State of Bihar and another*⁷⁶). The Court emphasized that though the discretion to examine witnesses under Sec. 311 Cr.P.C, 1973 is wide, but, the width requires corresponding vigilance (*Himanshu Singh Sabharwal v. State of M.P.*⁷⁷). The Court even warned that Sec. 311 Cr.P.C, 1973 or Sec.165 of the Evidence Act, 1872, cannot be exercised “to fill a lacuna in the prosecution case” and it must be perceived as an innate flaw in the milieu of prosecution, the benefit of which should in effect go to the accused (*Rajendra Prasad v. Narcotic Cell*⁷⁸). Thus, in a situation where the evidence is concluded or where the prosecution has closed the case, Sec.165 of the Evidence Act, 1872 would have no application even though the prosecution fails on a material aspect (*Omprakash Shankarlal Sharma v. State of Maharashtra*⁷⁹). The Court has furthermore held that once a witness is examined-in-chief and cross-examined, such witness cannot be recalled and re-examined under Sec.311 of the Code of Criminal Procedure, 1973 to deny evidence, even though the witness had given inconsistent statement before any other Court or forum (*State of MP v. Vinod Mudgal and Ors.*⁸⁰). Similarly, recalling an investigating officer after the closure of the evidence has been refused on the ground that such is not essential to arrive at a just decision (*Chandran v. State of Kerala*, 1985).

The Court has held that “lacuna in the prosecution case” should not be treated as irreparable and the Court should be liberal in allowing such errors to be ameliorated (*Rajendra Prasad v. Narcotic Cell*⁸¹). Thus, Sec.311 of Cr.P.C, 1973 or Sec.165 of Evidence Act, 1872 can be exercised with the intention of discovering the truth in order to facilitate the court to arrive at a just decision of the case (*U.T. of Dadra and Nagar Haveli and another v. Fatehsingh Mohansingh Chauhan*⁸²). In fact, the Court has inherent power to recall a witness under Sec.311 of Cr.P.C. 1973, if he is ready to give evidence materially dissimilar from what he has given in the trial (*Raj Deo Sharma v. State of Bihar*⁸³); but ironically, the Court found it helpless to give justice to a polio-ridden child rape victim; although it was proved that she was sexually assaulted by the accused, a police officer. (*K. Venkateshwarlu v. State of Andhra Pradesh*⁸⁴) Lamenting on the acquittal, the Court said:

“The demeanor of Aruna, the tears in her eyes, her walking out of the Court after looking at the

⁷⁵ (2013) 5 SCC 741

⁷⁶ 2013 (14) SCC 461

⁷⁷ AIR 2008 SC 1943

⁷⁸ AIR 1999 SC 2292

⁷⁹ 1993(1)BOMCR599

⁸⁰ 2008 LawSuit(MP) 637

⁸¹ AIR 1999 SC 2292

⁸² 2006 AIR SCW 4840

⁸³ AIR 1998 SC 3281

⁸⁴ 2012 (8) SCC 73

appellant, pricks the judicial conscience....” (*K. Venkateshwarlu v. State of Andhra Pradesh*⁸⁵) Similarly, where a six year old girl was taken to a field by the accused, who seduced her with sweets, and thereafter committed rape on her, and smashed her face with bricks, the Supreme Court maintained the acquittal of the accused by the lower Courts on the ground of grave lapses by the investigation or prosecution including non-examination of material witness and elimination of vital evidence (*State of Gujarat v. Kishanbhai*⁸⁶). The sheer anguish of the Court, though palpable in the judgment, could not serve the cause of justice to an innocent child or her immediate family.

In *Lalu v. State of MP* (2003), the Court held that the evidence adduced by the prosecution was not considered worthy of credence because the prosecution failed to adequately ascertain the culpability of the accused. The wife of the deceased, who was sitting by his side, when the deceased received knife blows, avoided and evaded all questions put to her in cross-examination and thus, her testimony, was discarded completely and the conviction of the trial Court for the offense punishable under Sec. 302 of the Indian Penal Code, 1860, was set aside.

Similarly, in the case of *Babu v. State of Kerala*⁸⁷, where the deceased died within 15 days of her marriage due to cyanide poisoning which was procured by the accused appellant who manipulated the deceased to take it as an oral contraceptive, and where the High Court of Kerala set aside the acquittal of the accused by the trial Court on the ground that all the circumstances necessary to establish guilt against the appellant was proved by the prosecution, the Supreme Court of India emphasized on “the principle of presumption of innocence” and “benefit of doubt”. Highlighting the statement of the accused which was furnished under Sec.313 Cr.P.C, 1973, that he had seen the deceased along with another man in a compromising position, the Supreme Court held that the trial Court’s judgment was adequately reasoned as the sequence of circumstances were found patchy. Accordingly, the accused was acquitted on the ground of material contradictions in the prosecution case, though the truth appeared far from it.

In similar lines, the Supreme Court in the case of *Joydeb Patra v. State of West Bengal*⁸⁸ held that since the prosecution could not prove its case beyond reasonable doubt that the deceased died due to poison administered by the accused persons, the lower Courts should not have declared the

⁸⁵ 2012 (8) SCC 73

⁸⁶ 2014 AIR SCW 557

⁸⁷ 2010 (1) KLT 132

⁸⁸ 2013 CrLJ 2729 SC

appellant guilty simply because they could not elucidate under what situation the deceased had died. In fact, the Court stressed that Sec.106 of the Indian Evidence Act, 1872 do not alleviate the prosecution from justifying the case “beyond reasonable doubt.” Only after the prosecution proves the case “beyond reasonable doubt,” the burden in relation to such facts which was within particular knowledge of the accused may be transferred to the accused for explaining the same (*Joydeb Patra v. State of West Bengal*⁸⁹). In a like manner, where it was proved that the deceased had died due to several burn injuries in her body and that she was brutally assaulted by her husband and in-laws for want of dowry, the Supreme Court chose to rely on the evidence given by the appellant husband where he claimed to have been acquainted with the handwriting and signature of his wife, and affirmed that the chit which was discovered from the dressing table was indeed a suicide note from his deceased wife where she clearly mentioned that nobody but she alone was responsible for her death (*Vipin Jaiswal v. State of Andhra Pradesh*⁹⁰). The Court stressed on the onus of the prosecution “to prove beyond reasonable doubt” the ingredients of section 498A and section 304B of the Indian Penal Code, 1860. It furthermore held that the Trial Court and the High Court could have compared the handwriting and signature of the alleged note with some of the other handwritings of the deceased under Sec.73 of the Indian Evidence Act or could have gone for an expert’s opinion under Sec. 45 of the Evidence Act, but they never resorted to these provisions (*Vipin Jaiswal v. State of Andhra Pradesh*⁹¹).

In *Niranjan Panda v. State of Orissa*⁹², where the victim was a minor girl under the age of 12 years who in her evidence testified that a man dragged her into the place of occurrence which was dark and raped her, the High Court of Orissa retained the conviction by the Sessions Court on the ground that the evidence on record could not prove the charges “beyond reasonable doubt”. The Court stressed on the right of innocence and furthered that every man is presumed innocent until contrary is proved; the burden of proving everything which is necessary for the establishment of charge lies with the prosecution (*State of Rajasthan v. Mohan Lal*⁹³). Correspondingly, in *Lakhan Hari Yadav v. State of MP*⁹⁴, after appreciation of evidence in the trial Court, when the appellant was held guilty of the offences of rape and criminal intimidation, the High Court of Madhya Pradesh held that since after the alleged act, the prosecutrix as well as the accused wore their respective undergarment and lungi, the probability that the prosecutrix was actually a consenting

⁸⁹ 2013) CrLJ 2729 (SC

⁹⁰ AIR 2013 SC 1567

⁹¹ AIR 2013 SUPREME COURT 1567

⁹² (2011) OLR

⁹³ AIR 2009 SUPREME COURT 1872

⁹⁴ 2010 AIR SCW 5993

party to the act, cannot be precluded. Thus, benefit of doubt was given to the appellant and the conviction was set aside. So was the case of *Md. Ali v. State of U.P. (2015)*, where the Supreme Court set aside the conviction of the appellant by the lower Courts on ground of benefit of doubt which arose due to the delay in lodging F.I.R, non-examination of witness, medical evidence, testimony of the prosecutrix and allied circumstances.

In the Pipili Gang Rape case, where the deceased victim was a 19 year old Dalit girl, the Court acquitted the accused persons of rape on account of lack of evidence⁹⁵. When the family of the deceased faced constant threats to not give evidence in the Court, the case was transferred to Bhubaneswar (*Babuli Behera v. State of Odisha*⁹⁶) and eventually the Pipili incident melted into thin air. Similarly, in the case of *State of Gujarat v. Kishanbhai*⁹⁷ where the trial Court held that the prosecution has “proved the case beyond reasonable doubt” and sentenced the convict with death for committing rape and brutal murder of a child as young as 6 years, the High Court acquitted Kishanbhai giving justification like deficiencies in investigation and incongruity in the prosecution case. Aggrieved by the order of the High Court, the State of Gujarat approached the Supreme Court wherein it was held that the investigating officers had miserably failed in discharging their duties and the misery of the victim’s family remained unaddressed. Regretting the acquittal due to evident blunder in the investigation and prosecution of the case and material inconsistencies in the evidence produced; the Court concluded by stating that- “A heartless, merciless criminal, who has committed an extremely heinous crime, has gone scot-free...We are trained to adjudicate without taking sides, and without being mindful of the consequences...We could not serve the cause of justice to an innocent child...”

More than 15 years have passed since the Malimath Committee gave its recommendations. Still, the above discussion poses real questions on the existing approach of the judicial system towards dispensation of justice which is far away from truth.

⁹⁵ Mohapatra, D. (2018). ‘Pipili Gang Rape and Murder Accused Acquitted for Want of Evidence’, The Times of India, 25 December. Available at: <https://timesofindia.indiatimes.com/city/bhubaneswar/pipili-gang-rape-murder-accused-acquitted-for-want-of-evidence/articleshow/67242101.cms>.

⁹⁶ 2014 CrLJ 3272

⁹⁷ 2014 AIR SCW 557

CONCLUSION

The quest for truth is an eternal quest of mankind. It has its basis in the philosophy which tries to comprehend the very nature of 'truth'. However, in legal context, the truth-inquiry the Courts delve into is different in the sense that, the questions revolve around finding the correct answer to the questions posed before it; for example: did the accused do the act? A system which forms decisions on the basis of competing version of events is anything but true; it is a sort of 'weak deflationist understanding of truth'⁹⁸. The Malimath Committee emphasized on this very aspect of decision making premised on traditional principles of criminal jurisprudence and procedural fairness as negating the quest for truth and, in a sense, of justice. In fact, plethora of decisions delivered by the Courts has indicated a failure of truth and consequently, justice, either because of shoddy investigation, or absence of evidence, or some other material lapses. In each of the cases, over-emphasis on the presumption of innocence, right of silence, right against self-incrimination, proof beyond reasonable doubt etc. on one hand, and the Judge's perceived neutrality on the other, have tilted the balance unjustifiably in favor of the accused, causing grave injustice to the injured party. It has also generated a sense of void, insecurity, and diffidence in the society and towards the criminal justice system as a whole. Time is ripe for an overhaul in the system as there can be no justice without truth. To quote the words of Rabindranath Tagore, 'Facts are many, but the truth is one'; and thus, the purpose of the justice system should be towards securing that truth which shines clear and constant.

⁹⁸ Klein, K. S. (2016). 'Truth and Legitimacy (in Courts)', *Loyola University Chicago Law Journal*, 48(1), pp. 1–2.