

Reform with caution — on criminal justice system

It is not a bad idea to revisit old committee reports with a view to considering their possible implementation. However, such an exercise must be pursued with care and caution. The Centre's decision to revisit the 2003 report of the Justice V.S. Malimath Committee on reforming the criminal justice system needs to be examined through the prism of civil rights. It 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. 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 made 158 recommendations, and since then some of these have become law. Its suggestion on permitting videography of statements has been implemented. The definition of rape has been expanded and new offences against women have been added. Its advocacy of substantial witness protection has not been realised, but victim compensation is now part of law. The Centre would do well to ignore the recommendations relating to making confessions to high-ranking officers admissible, and increasing the period of police custody from 15 to 30 days. These provisions were available only in anti-terrorism laws that are now no more in force. There is no need to bring them into general criminal laws.

The Malimath report suggests a standard of proof lower than the current 'beyond reasonable doubt' standard. It moots a 'clear and convincing' standard, that is, 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. There is some understandable disquiet about the state of criminal justice administration in the country and there is a crying need for a wide range of reforms. As the Madhava Menon Committee's 'Draft National Policy on Criminal Justice' (2007) noted, such popular dissatisfaction arises from the low rate of conviction, the apparent role of money and influence in the outcome of cases, delayed and denied justice, lack of protection to witnesses and inadequate attention to crime victims. The widespread perception that there is corruption on the one hand and a deep nexus between crime syndicates and politicians on the other, has added to the erosion of public confidence in the justice delivery system. Despite all these considerations, any move to make substantive changes in the way criminal justice is administered will have to be done with great circumspection, lest vital constitutional safeguards against abuse of police and judicial powers are violated in the process. In the name of revamping the law, investigation and trial should not be altered in a way that undermines the principles on which the justice system was founded.

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