

# Session 3: Criminal Procedural Reforms



Sunday, 21 Feb 2021  
5:00 PM - 7:00 PM



**Shri P.S. Ramamohan Rao**  
*Former Governor, Tamil Nadu*  
(Chair)



**Dr. M.R. Ahmed**  
*Former Director, APCA*



**Shri G. Kishan Reddy**  
*Minister of State for Home Affairs, Government of India*  
(Keynote Speaker)



**Prof. (Dr.) Ranbir Singh**  
*Founder, Former Vice-Chancellor, National Law University, Delhi*

- The session will begin with a 5 minute presentation from FDR.
- The Chair for the session will first present his views for 10-12 minutes.
- The Chair will then call upon each speaker, who will also have 10-12 minutes to share their insights.
- Post that, the Chair may open the session for a panel discussion.
- The last 30-45 minutes will be dedicated to taking questions from the audience.
- We request the participants to keep the questions brief and lucid and also mention the panelist that they would like the question to be directed to.

# Criminal Procedural Law - The Root Problem



- Components of criminal justice system - police, prosecution, procedural law, and courts
- Procedural law is critical for efficient justice delivery as it governs the working of all rule of law functionaries
- Flawed procedural framework is the cause for several of the challenges in the justice system.
- The Code of Criminal Procedure, 1973
  - Colonial trappings - based on the British system of the late 19th century
  - Outdated provisions - not adapted to changed socio-economic conditions and evolving nature of crime

1. **High pendency** of cases - over 27 million criminal cases pending in the trial courts
2. **Inordinate delays** in disposal of cases - nearly 80% of cases pending for over an year

**Figure 1: Age-wise pendency of criminal cases**

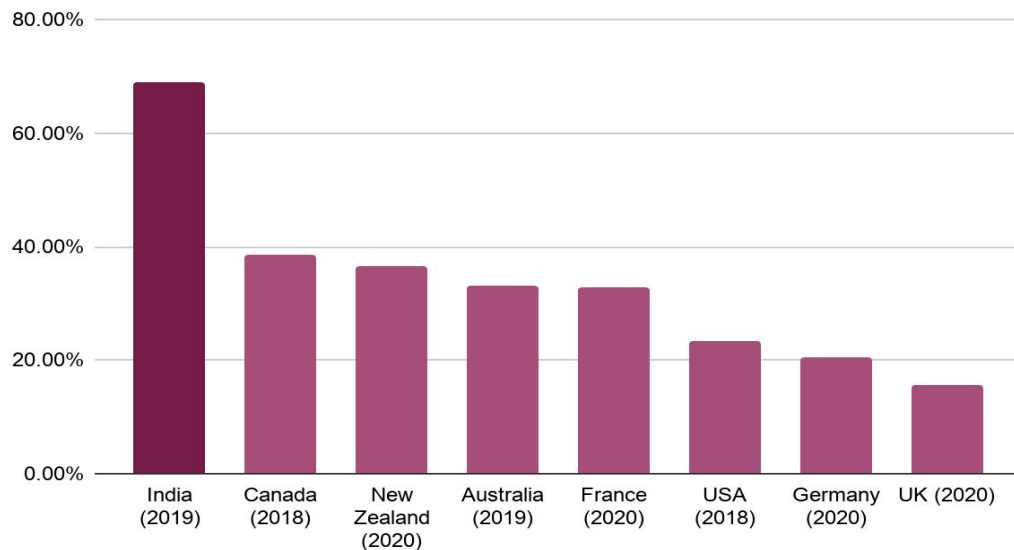


0 to 1 years:-	6424402 (23.47 %)
1 to 3 years:-	8989589 (32.84 %)
3 to 5 years:-	4763139 (17.40 %)
5 to 10 years:-	4557881 (16.65 %)
10 to 20 years:-	2193574 (8.01 %)
20 to 30 years:-	377693 (1.38 %)
above 30 years:-	66048 (0.24 %)

Source: National Judicial Data Grid (15 February 2021)

3. **Large proportion of undertrial prisoners** - 330,713, amounting to nearly 70% of total prison population

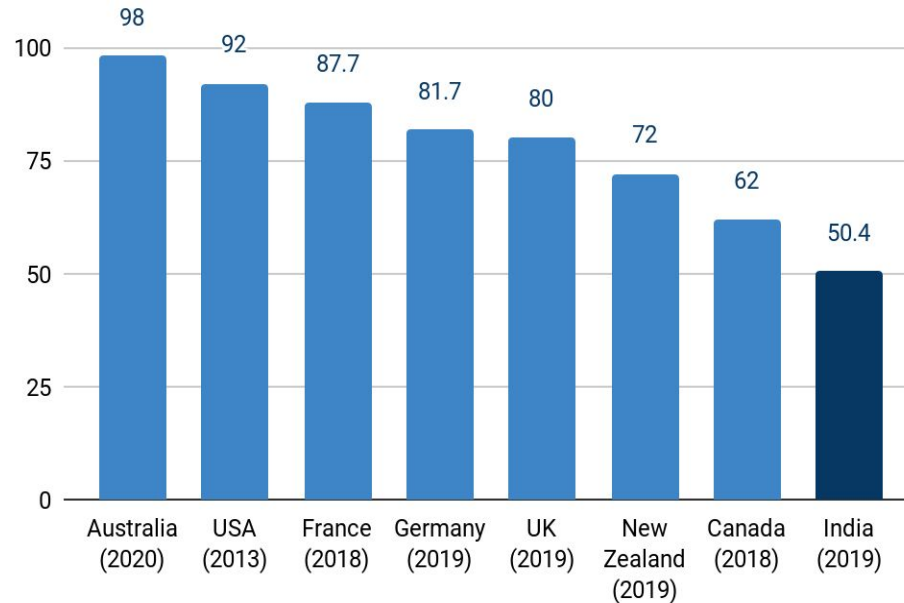
**Figure 2: % of Undertrial Prisoners**



Source: Official Statistics compiled by FDR

## 4. Low conviction rate - about 50% for IPC crimes

**Figure 3: Conviction Rate**



*Source: Official Statistics compiled by FDR*

# The Malimath Committee Report (2003)



- The **Committee on Reforms in the Criminal Justice System** (Malimath Committee) was constituted in 2000 by the then Vajpayee government to -
  - Revamp the criminal justice system
  - Simplify judicial procedures and practices
  - Enhance justice delivery - faster, uncomplicated, inexpensive
  - Adapt CrPC, Evidence Act, and the IPC to changed times
- The Malimath Committee **identified drawbacks and recommended** several changes to the CrPC and the Evidence Act but many have not been implemented.

# Malimath Committee Recommendations



## 1. Nature of the trial -

- Adversarial process - shortcomings in the investigation or prosecution **cannot be rectified** by the judge.
- The essence of a criminal trial becomes adjudging the **efficacy of the prosecution** rather than determining the guilt of the accused.
- Recommendation - **Statutory duty** to be imposed on a judge to play a proactive role in seeking the truth

## 2. Standard of Proof -

- Standard of ‘proof beyond reasonable doubt’ is **unsuitable** for current socio-economic circumstances - increasingly sophisticated form of crime and unreliable witness testimony.
- Recommendation - A standard that is **lower** than the ‘proof beyond reasonable doubt’ but **higher than the standard of ‘preponderance of probabilities’** followed in civil cases



## 3. Right to Silence - Adverse Inference -

- Accused is a vital source of information for the purpose of investigation
- Fear of infringing **right against self-incrimination** [Article 20(3)] inhibits full utilisation of this source of information
- Court must be allowed to draw **an adverse inference upon refusal to answer** when
  - i. prosecution case is prima facie established, and
  - ii. accused had access to legal counsel during questioning

## 4. Rights of Victims

- Victims **right of participation** in the trial facilitates discovery of the truth by the courts
- Victim may be allowed to **put questions or suggest questions** to be put to witnesses and bring to light **evidence** not already brought on record

- Advantages -
  - Assists the court in exercising discretion in **bail** matters
  - Aids in computing quantum of **compensation** for the victim
  - Facilitates **compounding** of cases
  - Provides an opportunity for the victim to **continue prosecution** in case of withdrawal by the State

## 5. Statements recorded by police officers -

- Statements recorded by the police under Section 161 cannot be signed by the witness and cannot be used for corroboration by the prosecution
- Must be required to be **signed by the witness** and be **admissible for corroboration**

## 6. Confessions recorded by Police Officers -

- Section 25 of the Indian Evidence Act renders inadmissible any confession made to a police officer, irrespective of the rank of the officer recording the confession.
- This provision deprives the police of a **key piece** of evidence.
- Recommendation - Confessions recorded by a police officer of the rank Superintendent of Police and above be made **admissible in evidence**.
- However, considering the workload on a SP, confessions recorded by a Deputy Superintendent of Police may be made admissible.

## 7. Trial Procedures -

- CrPC provisions that provide for swift disposal of cases remain under-utilised
- **Scope of Summary Trials and Summons Cases** must be enhanced

## 8. Perjury -

- As perjury law is not enforced effectively, the phenomenon of witnesses turning hostile and/or giving false evidence is very common
- The ordinary procedure for trying a person for perjury, prescribed by **Section 340** of the CrPC is **cumbersome**, hindering proper application of these provisions.
- Recommendation - Summary trial by the court where perjury is committed should be made the norm.

## 9. Alternative modes of punishment

- Limited variety and gross inadequacy of punishments
- Need for **new forms** of punishment that are **not custodial** in nature - community service, disqualification from holding public office, confiscation orders etc