

## **Criminal Law Reforms Awareness Project (CLRAP)**

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The objective of this website is to collate and disseminate commentary on the [Committee for Reforms in Criminal Laws](#), constituted by the Ministry of Home Affairs. The mandate of the Committee is unclear, but it is apparent that it aims to recommend far-reaching changes to criminal law in India. This will have serious repercussions for every person in India who is subjected to criminal law, whether as a crime victim, or as an accused, or simply as a person wanting to live in a just and peaceful society. Moreover, the criminal justice system affects people differently. Religious minorities, as well as poor, dalit, and adivasi communities, bear the brunt of the criminal justice system through police violence, long periods of undertrial detention, harsh punishments and poor legal representation. Women, transgender people, and sexual minorities, who overwhelmingly experience gender based violence, are often let down by the criminal justice system. Given the impact of reforms to criminal law for each and every one of us, and especially for the most marginalised members of our society, it is imperative that we understand what is being done. This website is meant to help us understand the problems with the reform process currently being undertaken.

On this page, we summarise the main objections to the composition and operation of the Committee. These concerns relate mainly to the non-representative composition of the Committee, its exclusionary methods, the opacity of its functioning, the design of the questions asked, and the narrow timelines for completion of its work. We have tried to discuss our concerns in a way that is accessible to everyone, regardless of whether they have legal training or not. Our aim is to reinforce that the operation of this Committee is a public interest issue, which we should all be concerned about.

While the stated aim of the Committee refers to reform that prioritises constitutional values, and the safety and security of individuals, communities and the nation, it comes during an extremely fraught time. The people of the country are suffering through the global Covid-19 pandemic, during the course of which the government has already proposed a range of far-reaching 'reforms' impacting citizen's labour, environmental and land rights. The government has also been selectively using harsh criminal laws (such as the National Security Act 1980 (NSA) and the Unlawful Activities (Prevention) Act 1967 (UAPA)) against activists, students, minorities, and academics amongst others. Against this backdrop, it is extremely important that a Committee with a wide-reaching mandate to reform various aspects of criminal law functions with maximum transparency and accountability, to uphold values of fairness and justice. While reform to various aspects of criminal laws are necessary, the following issues with this Committee make it unlikely that it will be able to adequately discharge its obligations.

### **1. Opacity**

- a. The **Terms of Reference** of the Committee have not been made public since it was constituted. These establish the framework for the Committee's work and recommendations and are imperative to understanding what this Committee is/is not entitled to do.

- b. The Committee has not undertaken to publish all the **responses** it receives during the process of consultation. This is important to prevent misquoting and distortion in the final report of the Committee.

## 2. Timelines

- a. The Committee was established in the middle of the **Covid-19 global pandemic**. At the time of the writing, no other country in the world (barring the USA and Brazil) has a higher incidence of coronavirus cases than India. Indian citizens are trying to survive through the many negative effects of this situation, including the massive strain on the public healthcare infrastructure and heightened rates of unemployment. It is not feasible to expect in-depth, engaged participation from stakeholders at this time.
- b. According to the [website](#), the Committee aims to recommend reforms to criminal laws, including substantive, evidentiary and procedural laws. Each of these categories in turn has a broad ambit. For example, [the section on substantive laws](#) covers how offences should be defined; which conduct should be considered criminal; when someone can be punished without having the intention to commit an offence; in what circumstances a person can become liable for the attempt to commit an offence; how the state should respond when someone is found guilty; when the defendant should be acquitted despite all elements of a crime being present; which definitions under the Indian Penal Code 1860 (IPC) should be revised; when inaction should be punished; how offences should be classified under the IPC and 'such other reforms as may be necessary.' And this is just one of the three categories of laws being reviewed by the Committee, through a series of six questionnaires. Yet, the entire consultative exercise is meant to be concluded in about three months, [from 4 July 2020 to 9 October 2020](#). The Committee has set overlapping time-frames for submitting responses to the six questionnaires, likely to contain over 300 questions in all. **It is neither realistic nor desirable that an overhaul of the entire criminal justice system be considered in such a short span of time.** Even under ordinary circumstances, it would be difficult for citizens to engage with the breadth of these changes within three months. During a pandemic, it is virtually impossible. To give context, the last Committee concerned with criminal justice reforms of a comparable scale, the Malimath Committee, took two and a half years to prepare its report.

## 3. Questionnaires

- a. The questionnaires are extensive. For example, just the first of the six questionnaires includes 46 questions. Yet, no guidance has been provided by the Committee on the **need or context of reform** in the areas identified in the questionnaires. On what basis has the Committee decided that these areas of law might be in need of reform?
- b. The questionnaires are **poorly phrased**. The meaning is either unclear or incomprehensible, with questions sometimes making unfounded presumptions. The language used is certainly not accessible for those who do not have the benefit of a legal education. The following example will help explain these points.

### **An illustration of the flaws in the Committee's questionnaires: 'Strict Liability'**

One of the questions in the first questionnaire that has been released is, '*Which principles regarding the object and nature of crime should guide the introduction of strict liability offences within the I.P.C.?*' Many people outside the legal fraternity will not know what the idea of 'strict liability' entails. Nor does the Committee give any indication of how it understands 'strict liability.' To explain this term a little: ordinarily, an act is considered to be a crime only when the defendant carries out that act intentionally, or with the intention to bring about a prohibited result. Broadly speaking, strict liability offences are those where the intention of the person committing the act is irrelevant. For example, if a cheque bounces, the person issuing the cheque is not acquitted simply because she did not intend to have the cheque dishonoured. Similarly, a person caught speeding will not be exempted from legal sanctions simply because she did not intend to drive beyond the permissible speed limit. However, there is no agreement in law or scholarship about what the boundaries of this concept of 'strict liability' are. If Offence X can be committed by a defendant acting negligently rather than intentionally, some people would say that this is a 'strict liability' offence. Others would say that the law imposes 'strict liability' only where it punishes a defendant who was not acting in a blameworthy way. According to this school of thought, a negligent defendant acts in a blameworthy way so we cannot refer to Offence X as a strict liability offence. It is impossible to engage with the Committee on this point without knowing how they understand 'strict liability.' Besides this, the question proceeds on the assumption that strict liability is acceptable under certain circumstances and then asks for feedback on when/why it should be introduced. Given the serious repercussions of a strict liability offence - to be held guilty even when you did not intend to do anything wrong - this is a matter of deep concern. There is also no data available on the website of the Committee to show what research was undertaken to identify the absence of strict liability offences in the IPC as a problem area.

- c. The Committee plans to release questionnaires in a [serial order](#), dealing first with substance, then with procedure and then finally, with evidence. It is not practical to deal with these areas of law in sequence because they are all tied together in operation. Broadly speaking, substantive criminal law describes what the offence is. Procedural and evidentiary laws govern how the offence is proved in court. Stakeholders might want to suggest the addition of new offences or the modification of existing offences, but only on the condition that procedural and evidentiary safeguards guaranteeing the fairness of the trial are respected. It is not possible to make recommendations about substance, procedure and evidence in isolation from each other.

#### **4. Procedure**

- a. Information about the Committee has been mainly advertised on its website. Participation in the Committee's consultations is dependent on accessing these **online resources**, knowing how to navigate through them and

comprehending the **language** in which the website operates (English). These are exclusionary procedures even in the best of times in a country characterised by an intense plurality of languages and low internet penetration. Perhaps the rudest reminders of this reality are in the form of reports that Indian students have died by suicide as a result of being unable to access online classes during the pandemic.

## 5. Composition

- a. The Committee includes only **five members, all of whom have other full-time jobs**. Given how narrow the timeframes of the Committee's operation are, we do not think it is possible for the Committee to competently and democratically discharge its functions without full-time members.
- b. There appears to be **no representation on the Committee from racial, sexual, gender, religious, or caste minorities**. As far as we can tell, there is no representation from **working class** or **disabled** communities. Let alone fraught areas of conflict, there are no members on the Committee based outside of a **limited geographic region in North India**. There is no representation from **civil society organisations** who work with these marginalised groups, most of whom are frequently over-policed and under-protected. Those who are most affected by criminal law should be made part of the process, for the sake of democratic legitimacy, and to ensure that the reform process is meaningful and effective. For example, the Committee has sought views on whether honour killing should be made a specific offence under the IPC, and how it should be punished. Honour killings are usually inflicted to uphold power structures based on caste, religion or gender. It is thus undesirable to introduce reform on this issue without including members who can speak to this marginalisation.
- c. The **Law Commission of India** exists for the precise purpose of examining contentious areas of law and recommending reforms after extensive consultation with the public. There is no justification for entrusting an external Committee for a task of this scale and importance without any reference to the Law Commission.

**In light of the above critiques, it is vital that the Committee ceases to operate with immediate effect. If criminal law reforms are to be introduced, this must be done with adequate consultation, coherent methods, following inclusive and transparent procedures, by a representative Committee and only once the disastrous effects of the Covid-19 pandemic have abated.**