



## Reforming the Criminal Justice System

8 Feb, 2013   [Dr. N Manoharan, Senior Fellow, VIF](#)   [View2944](#)   [Comments 0](#)

Justice JS Verma Committee that recently submitted its findings titled as 'Report of the Committee on Amendments to Criminal Law' has to focus the urgent need for reforms in the criminal justice system in India. The principal objective of a criminal justice system is to provide security to the people. However, India's criminal justice system has not been able to deliver on what is expected of it and is, in fact, underperforming. There are problems in all the three components – law enforcement, adjudication and correction – and, therefore, the need for reforms.

### Law Enforcement:

Indeed, some of the Indian laws have become old, archaic and out dated. Yet, largely India's laws and regulations are satisfactory, but it is the implementation of these laws that is challenging. Why? According to Bureau of Police Research and Development (BPRD), the Police in India "suffer from organisational, procedural, personnel and behavioural ailments and paradoxes"<sup>1</sup> The 'Draft National Policy on Police Training' identifies the change and challenges as regards the police organisation: rise in white collar and organised crimes, economic changes and socio-political changes in public protests, demonstrations and mass violence; social disparities, anomalies, lawlessness and permissiveness, leading to a high level of delinquency, alcoholism, and social disorder; acceleration of social mobility giving birth to new patterns of criminal acts, declining standards of degeneration of ethical values; proliferation of social legislation and increasing burden of social responsibilities of the police leading to disrespect of law, rampant corruption, increasing materialism at all levels, increased police stress, and an aggressive approach among themselves for solution of their problems; smuggling, espionage, subversive activity along the international borders, terrorism and security and integrity; increasing communal and caste intolerance; information technology revolution resulting in the growth of cyber crimes and rising public expectations.<sup>2</sup>

However, the numbers of policemen have not caught up with the mounting challenges. Statistically, the number of policemen per 100,000 is 137.8 as against the minimum UN norm of 220. In other words, one policeman is required to look after 761 people. The 'Actual' strength including District Armed Police in the country during 2011 stood at 1,281,317 against the 'Sanctioned' strength of 1,660,953. The vacancy is 22 percent.<sup>3</sup> At national level, India has an average of one constable for every 1.53 sq kms of geographical area. As a result, there is an extra burden on an average policeman, which has adversely affected his efficiency, performance and morale. When it comes to quality, the functional performance of India is not satisfactory. Police-Community relations are normally "brief, contextual and even negative in nature."<sup>4</sup>

Poor quality of policemen is partly due to lack of proper training. Not much has changed since the Gore Committee on Police Training considered view is that police training, except in some of the central police organisations, is currently in a state of general neglect. The arrangements in the different States are unsatisfactory qualitatively as well as quantitatively."<sup>5</sup>

There are indeed training institutions for the Indian Police Service (IPS) officers but there is little training for constables and sub-inspectors. On the average a Police officer is retrained only once in about twenty years. Training of police personnel has been accorded low priority by governments for two reasons: (i) the available staff are so stretched that there is no time for police personnel to be sent for training; and (ii) lack of infrastructure in most states. <sup>7</sup>An amount of Rs.709 crores was spent on police training at all India level during 2010-11 which was only 1.5 percent of the total police expenditure of Rs. 49,576 crores.<sup>8</sup>

What India requires is, as Padmanabhaiah Committee advocated, a "highly motivated, professionally-skilled, infrastructurally sophisticated police force."<sup>9</sup> There has to be conscious and serious effort to strengthen the overall professionalism and capacity of the police. Attention is required for proper training, development of advanced forensic skills and facilities, and separation within the police of law enforcement from conducting investigations from the day-to-day responsibilities for maintaining law and order. As BPRD rightly points out, the procedural aspects make police an object of social distance and popular distrust. The penal and procedural police aspects will have to be reshaped according to the secular and egalitarian aspirations of the Indian people and their Constitution. Behavioural reforms and attitudinal change at the individual levels are required to be brought about with a view to developing professionally sound, individually courteous, functionally democratic people to man the police organization. A modernized police organization will become progressive in their functioning and democratic in their

Lack of proper equipment like weapons, gadgets, protecting gears and communication devices for police personnel is yet another issue. Police are poorly armed and the firemen lack protection. There has to be routine upgradation of equipments as per world standards. Use of technology is important to have an edge over terrorists. The Centre has already been assisting states by providing separate funds for police. 'Modernization of State Police Forces Scheme' has been in implementation since 1969-70.<sup>11</sup> The objectives of the Scheme are to address deficiencies in various aspects of police administration, and reduce the dependence of states on Central Police Forces/Army. Keeping in mind the expressed by the states to contribute a matching share towards implementation of the scheme, it was revised on 22 October 2003. It includes change in funding pattern after grouping the states into two categories, namely, A and B, on the basis of threats from militancy/cross-border terrorism being faced by them. Focus has been on fortification/upgradation of police stations in terms of infrastructure, communication equipment and mobility in naxalite affected districts. Yet, most of the states are found wanting in utilisation of police money. They do not even have perspective action plans for modernisation. As a Parliamentary Committee rightly points out,

"... when it comes to the control and superintendence of police forces, the States do not want to yield even an inch of their jurisdiction. But when it comes to improve and strengthen their police forces, they simply raise their hands expressing their inability to do so because of resource constraints."<sup>12</sup>

The Centre also has to share the blame for releasing funds late. Partly the reason for delay is due to states' failure to submit 'utilisation certificate'. But, overall the scheme has undoubtedly made some positive impact on strengthening the 'first responders'.<sup>13</sup> Apart from insisting on monitoring of modernisation of state police forces should be periodically undertaken by the Central government. In the modernisation, state and district levels should be taken into consideration instead of pushing things from above. This will require updating educational levels in police and developing a technological and scientific temper.

Emphasis should be on capacity building from the police station level itself, so that the police are better equipped. Each police station should be self-sufficient and needs to be given the required resources in terms of anti-riot gear, better weapons, nucleus of a mobile forensic unit and a networked criminal database management system. Ironically, as on 01 January 2011, 350 Police Stations did not have telephone. 100 Stations were without wireless sets; and 38 Police Stations were having neither.<sup>14</sup> Rectifying this 'communication gap' is important. Every modern police control room with digitized maps. Connecting all police stations in the country through an intranet is not a luxury, it is a necessity. Currently, the database of each agency stands alone, with its owners having no access to other databases. As a result, crucial information is not available to another. In order to remedy this deficiency, the government has decided to set up NATGRID, under which 21 sets of information are networked to achieve quick, seamless and secure access to desired information for intelligence/enforcement agencies.<sup>15</sup> But, this ambitious project is yet to get operational.

### **Adjudication:**

The main problem in this component of criminal justice system is huge backlog of cases due to resource and manpower constraints. By mid-2011, 61,876 cases pending in the Supreme Court. Of these, the number of unresolved cases older than one year has increased to 40,658 from 34,000 in 2009. Number of pending cases in the High Court and subordinate courts was around 3.2 crore as on 31 December 2010 of which around 8 crore were more than five year old. Pendency has increased by 148 percent in the Supreme Court, 53 percent in High Courts and 36 percent in subordinate courts in the last 10 years.<sup>17</sup> There were 3,146,326 cases for investigation during the year 2011 including the pending cases from previous year.<sup>18</sup>

Due to this, there were enormous delays in the adjudication, increases in litigation costs, loss or diminished reliability of evidence by the passage of time, unevenness and inconsistency in the verdicts that ultimately are reached at trial. Consequently, large numbers of under trials languish in prison. In many cases, the detention under trial even exceed beyond the maximum periods to which they could be sentenced if convicted. In such cases, justice is denied. Such incapability of the judiciary in delivering justice on time has the danger of reduction of faith in the justice system among the people; low conviction rate has created a perception that crime is "low-risk, high-profit business".<sup>19</sup> Presently, compared to China and USA, conviction rate in criminal cases are about 98 percent, the corresponding rate in India is much lower.<sup>20</sup> This has resulted in huge overcrowding of prisons, which in turn, has significantly brought down the deterrence value of the criminal justice system. Two measures are suggested:

i. It is important to increase the number of judges. As suggested by the Supreme Court, present ratio of about 13 judges per million people should be increased to at least 50 judges per million people in a phased manner.<sup>21</sup> While working autonomously, better rapport between police and prosecution will improve the condition.<sup>22</sup>

ii. Present Adversarial System is not only insensitive to the victims' plight and rights, but also does not encourage the presiding judge to probe into the aberrations in the investigation or in the matter of production of evidence before court. The judge in this system is more concerned with the technicalities of the law. As suggested by the Criminal Justice Commission, some of the good features of the Inquisitorial System<sup>23</sup> can be adopted to strengthen the Adversarial System of common law to increase the rate of conviction.

Simultaneously, a number of judicial and legal bottlenecks must be removed to improve India's enforcement regime. In addition to electing more judges, India's courts need more judges, higher filing costs (to discourage frivolous litigation), improved tracking of cases, more alternative dispute resolution, pre-litigation measures and plea bargaining. Specialized courts should be set up to replace civil courts in the appeals process. Judges who are trained in specific areas of the law would be better equipped to consistently enforce laws and judgments in a relatively small area. Judges are forced to deal with widely disparate areas of law. Setting up such courts ought to be a joint effort of the government and the bar. Enforcing judgments improved by better training for the police and judiciary; placing a limit on the number of adjournments and injunctions granted; and improving the efficiency of the judicial system.

on parties that lose commercial disputes. Lawyers are also to a large extent responsible for the lax enforcement regime. Most of the time fail to fix an ailing system but nurture and exploit it.

### Correctional System:

It is widely known that Indian jails are overcrowded. As on 31 December 2011, total capacity of jails in the country is 332,782 as against inmates. The occupancy rate at all-India level works out to 112.1 percent. Ironically, the number of under-trials stood at 241,200, constituting 44 percent of total inmates.<sup>24</sup> Uttar Pradesh has reported the highest number of convicts (23,910) under IPC crimes followed by Madhya Pradesh (19,870) for 21.4 percent and 12.9 percent respectively of the total IPC convicts (111,987) in the country. There were 48,656 persons lodged as under-trials in various prisons of the country for committing crimes under Special and Local Laws (SLL). The highest number of under-trial prisoners reported under NDPS Act which accounted for 24.2 percent of the total under-trial prisoners under SLL followed by Arms Act (18.6 percent) and SLL (12.0 percent).<sup>25</sup>

The main objective of 'correction' strategy is to induce positive change in the attitude of criminals. The emphasis is on the basic trust in the criminal to rehabilitate himself to proceed towards a re-adaptation of his behaviour. But there are certain issues that require attention: Are prison conditions good enough for correction? There are two aspects involved in imprisonment: 'imprisonment as punishment' and 'imprisonment as rehabilitation'. In the first aspect, the very solitary confinement and denial of societal contacts is regarded as punishment. In the second aspect, apart from the added physical, mental and other kinds of humiliation are considered as part of punishment. The latter aspect, by default, gets accepted as a part of prison conditions resulting in the counter-productiveness of the whole corrective system.<sup>26</sup> This should change; prisons are primarily for rehabilitation. Secondly, care should be taken that the internment should not become a kind of "Staff College" for the criminals to plan and execute their criminal activities.

The Justice Malaimath Committee on 'Reforming Criminal Justice System' rightly observes that "The entire existence of the orderly and sound and efficient functioning of the Criminal Justice System." Unless it is made sure that criminal justice system functions with transparency and honesty, it is difficult to bring down prevailing "crisis of legitimacy". Improving law and order requires cooperation from all institutions. Police reform alone would not suffice to quell crime if police capture criminals and then corrupt judges release them and if prosecutors to enlarge their criminal empires while behind bars, or if laws do not exist to keep them in jail for adequate periods of time.

### Endnotes

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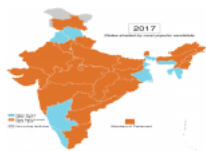
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