



Criminal Justice  
Conference Material

India Habitat Centre  
4-6th December 2017  
New Delhi, India



Institute for  
**New Economic Thinking**



|  |    |
|--|----|
| Survey-based measurement of the Criminal Justice System      | 5  |
| For a true picture of crime and public safety                | 9  |
| Reforms of prosecution in the Indian criminal justice system | 11 |
| Reinventing the criminal justice system (Part 2 of 2)        | 15 |
| Reinventing the criminal justice system (Part 1 of 2)        | 19 |
| Law and order: How to go from outrage to action              | 23 |
| Faulty tradeoff in security                                  | 27 |



# Survey-based measurement of the Criminal Justice System

 [ajayshahblog.blogspot.in/2016/05/survey-based-measurement-of-criminal.html](http://ajayshahblog.blogspot.in/2016/05/survey-based-measurement-of-criminal.html)

by [Renuka Sane](#).

In India, we all seem to agree that we have a dysfunctional criminal justice system. This, has however, not yet translated into large scale attempt at reform. Perhaps the reason for the inaction is our inability to quantify the nature and extent of the problem. For example, we [don't really have good quality data on crime or actions by the police](#) . We [don't have good quality data on the extent and causes of delays in our courts](#). Our court systems [inhibit measurement](#). Since we don't have this data, we cannot estimate the cost of badly run police and courts on the economy, and on the satisfaction of our citizens. Evidence has not been marshaled in a systematic way about the extent and nature of under-performance. What gets measured, gets managed. This post describes two new survey based initiatives on measuring the problems in our criminal justice system.

## Crime victimisation and safety perceptions

We helped initiate a first [Crime Victimisation and Safety Perceptions Survey](#) , with [Commonwealth Human Rights Initiative \(CHRI\)](#). This survey asks 5850 households in Mumbai and 4950 households in Delhi three broad questions:

1. Were they a victim of a crime in the last one year? (such as theft, house break-in, sexual harassment, assault, criminal intimidation, unnatural death, and missing persons)
2. Did the households report this to the police? Did the police respond appropriately? If the households chose to not report to the police, what were their reasons?
3. Do households feel safe in their neighbourhoods? Or in public transport? At different times of the day?

The survey has given some important new facts. A full 13% of households in Delhi and 15% in Mumbai report being victims of one of the crimes, with theft being the most commonly experienced crime. Reporting of crime is low in both cities, at less than 50%. The lowest reporting percentage is for sexual harassment - only 11.1% cases were reported in Mumbai, and 7.5% in Delhi. In both cities, the reporting was on the passing of lewd or unwelcome sexual comments. Incidents of groping were not reported.

The most important reason for non-reporting was that people just didn't want to get caught up in police or court matters. Not having enough evidence was cited as the second reason for not going forward with the reporting. Households felt that the police would just not be able to do anything about their complaint. The anticipation of households is perhaps not misplaced, for less than half of the cases reported to the police by the respondents had an FIR registered. This is particularly the case for sexual harassment cases. None of the cases reported in Delhi and 40% of cases in Mumbai led to an FIR filing. Similarly, none of the missing persons complaints in Mumbai lead to a FIR registration. Low initial reporting by households, and low registration of FIRs by the police implies that official crime statistics perhaps only report one-quarter of the crime experienced. This under-reporting gap is significant.

Of those households who reported crime, roughly 36% in Delhi and 51% in Mumbai said they were satisfied with the first police response. The largest satisfaction is with the police response on assault cases, both in Delhi and Mumbai. The lowest satisfaction is on police response on house break-in (in Mumbai), and on sexual-harassment (in Delhi). It is likely that the record of the police on investigations and actual completion of a case is even lower.

Households in Delhi begin feeling unsafe, even in their own neighbourhoods, earlier in the evening than those in

Mumbai. People's fear of crime is correlated with what is experienced in their neighbourhoods. The crime people are most fearful of is theft in both cities. Households in Delhi are more fearful of sexual harassment, while in Mumbai are fearful of assault. Residents of Mumbai generally perceived the police in a more positive light, and felt safer than those in Delhi.

## Access to justice survey

It is instructive that the biggest cause of under-reporting is not that the police will not take the complaint, but that people feared getting caught up in police and court matters. This is where the results of the [Access to Justice Survey](#) by the [Daksh Foundation](#) becomes important. This survey is undertaken across 300 district courts all over India, and maps 9329 litigants' perceptions on issues relevant to their experiences with the judicial system. The survey focuses on questions like:

1. Who is accessing the judicial system? This includes information on the socio-economic profile of citizens who seek remedy from courts.
2. What are litigants using the judicial system for? What is the subject matter of the civil cases?
3. What is the litigants perception of delay in courts? Why do the litigants think the delay occurs?
4. What is the cost to litigants of access courts?

The survey finds that 84.3% of the litigants were male. Women accounted for only 15% of the litigants, suggesting that women in India don't really access courts. 80% were Hindus, with 45% belonging to the "General" caste category. Most cases are between people of the same religion, that is, 74% of the cases by Hindu survey respondents are against other Hindu respondents, 43% of the cases by Muslim respondents and 75% cases by Christian respondents are against members of their own religious communities. This is similar across caste as well. 15.6% of all litigants had traveled between 50 km and 300 km to reach the courts for hearings.

Those engaged in agriculture accounted for 38% of the litigants, followed by those in private service at 24%. What is interesting is that a large majority of these litigants (almost 80%) are in the less than Rs.3 lakh annual income category. Almost 50% of the litigants have only studied till Class XII. This suggests that it is the low-income individuals that are choosing to access courts. Land and property matters dominate civil litigation across the country, followed by litigation on family matters. This correlates with those in agriculture being the largest category of litigants, and with cases being fought against members of one's own religious communities.

The survey finds that 10% of accused were handcuffed within the court premises. This goes against Supreme court guidelines that guarantee a minimum freedom of movement. Only 63.5% of the accused who were granted bail were in jail in less than one month - this means that almost 40% of accused who were granted bail, had to stay in jail for longer than a month.

The surveyed litigants felt that the two causes of delay were the inability of judges to pass orders quickly, and the non-appearance of opposite parties on the dates fixed for trial. This is costly -- civil litigants spend Rs.497 per day on average for court hearings. They incur a loss of Rs.844 per day due to loss of pay. Criminal litigants spend Rs.542 per day for court hearings on average and incurred a cost of Rs.902 per day due to loss of pay. Their analysis indicates that log-jammed courts are wiping almost 0.5% off India's GDP, and this is likely to be an underestimate because it doesn't measure the cost of cases that never even came to courts.

## The way forward

Core public goods like safety are the responsibility of the government. In India, substantial outlays on the criminal justice system are being made, but there is no measurement of the outcome. We are at the early stages of figuring out how to reform courts [[link](#), [link](#)] and more generally [the criminal justice system](#). Surveys such as

those above are the one of the first few attempts at building a systematic database about the outcomes obtained in the field of the police and courts. This can shape policy thinking in the future, about reforms of the existing criminal justice system, and about the resourcing of this core public good.





## For a true picture of crime and public safety

by Renuka Sane

Over the last week, quite a bit has been written about the latest release of data by the National Crime Records Bureau. While most commentary has focused on analysing whether crime in India has risen or fallen, and what are the cities worst affected, some have raised concern about the validity of the NCRB data itself.

It is useful to step back and ask, what is it that we wish to do with the crime data? Our first response is likely to be: We want to know the law and order experience of people. Do people feel safe in their homes, and in public spaces? Do they feel that the police is responsive to their complaints? How do they modify their behaviour in fear of crime? Only when we know the answers to these questions can we begin to quantify the extent and nature of crime, and police performance.

Why is it that reported crime fails to explain the answers to these questions? If citizens are too scared to go to the police, or feel like the police won't do anything anyway, or if the police refuse to report cases, then true crime is always going to be higher than reported crime, and we will never know. If citizens are scared and don't step out of their homes, then low crime may actually reflect fear for safety, than the existence of safety. If the police is very responsive, then high reported may actually reflect that the police is doing a great job.

A way around this problem is to go ask citizens directly what their experience with crime was? Were they victims of specific crimes? Did they report to the police? If they did, what was their experience? If they did not, why did they not report? Do they feel safe in their homes? Do they feel safe in public spaces at night? This will give us a survey-based measure of crime that can be compared with reported crime. This will also give the police and administrators a sense of the "true" crime prevalent in society.

Such crime victimisation surveys are routinely carried out by governments in the US, UK and Australia, and the results benchmarked with reported crime. It is useful to draw an analogy with the surveys on learning outcomes carried out by Pratham - by consistently measuring skills of children, they have had remarkable impact on education policy. Similar efforts need to be made in the field of crime as well.

A second reason why we wish to know about prevalence of crime is to improve resource allocation. If from crime surveys we know that a particular kind of a crime is on the rise, or a certain locality is particularly vulnerable, then the police can take preventive measures through appropriate resource allocation. The police can use the results of successive surveys to see if their policy actions have had any impact on citizen experience. This provides a useful feedback loop to the police themselves.

One such survey was carried out by Commonwealth Human Rights Initiative (CHRI) in Mumbai and Delhi in 2015. The survey is representative at the zone level in each city. It asked, if households were victims of one of the following crimes in the last 12 months: theft, house break-in, sexual harassment, assault, criminal intimidation, unnatural death, and missing persons. It also asked if households reported to the police, and households perceptions of safety.

The survey provides for some interesting insights. A full 13% of households in Delhi and 15% in Mumbai report being victims of one of the crimes, with theft being the most commonly experienced crime. Reporting of crime is low in both cities, at less than 50%. The lowest reporting percentage is for sexual harassment - only 11.1% cases were reported in Mumbai, and 7.5% in Delhi. People did not report because they didn't want to get caught up in police or court

02/12/2017

For a true picture of crime and public safety

matters. Of those households who reported crime, roughly 36% in Delhi and 51% in Mumbai said they were satisfied with the first police response. Residents of Mumbai generally perceived the police in a more positive light, and felt safer than those in Delhi.

What is now required is the juxtaposition of the survey data with the NCRB numbers for Mumbai and Delhi in 2015. It might be useful for the police to ask - where the largest reporting gaps are? Which zones have a low ranking of safety perceptions? How can this data be used for more effective policing? At the same time, such surveys need to be carried out for other cities across India, so that a true picture of crime, and citizen's perceptions of safety may emerge.

---

Business Standard, 5 October, 2016.

# Reforms of prosecution in the Indian criminal justice system

 [ajayshahblog.blogspot.in /2015/05/reforms-of-prosecution-in-indian.html](http://ajayshahblog.blogspot.in/2015/05/reforms-of-prosecution-in-indian.html)

by Smriti Parsheera

The criminal justice system consists of four main components - police, prosecution, prisons and courts. These agencies are collectively responsible for apprehending, prosecuting and sentencing offenders, keeping in view the interests of the accused, the victims and the society at large.

The little data that is available about the workings of the system in India, at present, paints a grim picture. At the end of 2012 there were 18.82 million criminal cases pending before subordinate courts. Disposals and institution of new cases during the year led to a marginal decline in the figure to 18.56 million in 2013. Data from the [Crime Records Bureau](#) shows that there were 9.7 million serious criminal cases pending under the Indian Penal Code in that year out of which the trial was concluded in 1.2 million cases with a conviction rate of 40.2 per cent. Only a small fraction of the pending criminal cases are getting decided each year. Of the ones that do get decided, a majority of the verdicts in serious criminal cases do not support a conviction. A combination of factors contribute to this situation - defects in investigation techniques, inefficiency of court processes, poor quality of prosecution, delay tactics used by the parties, insufficient coordination between the agencies and absence of a framework to protect victims and witnesses, which often results in them turning hostile.

The performance of the prosecutorial wing has a direct bearing on the pace as well as quality of justice being rendered by courts. Often referred to 'ministers of justice' and 'gatekeepers of the criminal justice process' ([197th report](#)), public prosecutors (PPs) represent the interests of the state before the courts. Under Indian law, the prosecutor's role comes into play after completion of the investigation and once the matter has been admitted before the court. [A lot has been legitimately said](#) about the responsibilities of PPs and their duty to act in an impartial, truthful and fair manner. But these expectations need to be weighed against the ground realities in which the prosecution system operates. Problems in the selection and training of PPs, their poor service conditions and lack of independence and supervision have all led to prosecution being branded as the *"weakest link of the criminal justice system"*.

The subject of prosecution falls under the concurrent list of the Constitution. This has induced difficulties in consistent nationwide reforms. States have used their authority to formulate rules for the appointment, conduct and remuneration of PPs. Recent developments include the introduction of an e-Prosecution system in Madhya Pradesh to streamline and manage the workflow of PPs in the state, and a [slew of changes](#) announced by Maharashtra to boost their conviction rates. These include a number of positive steps such as measures for securing greater independence for the Directorate of Prosecution (DoP) and evolving a court monitoring system for better coordination between the prosecutor, the investigator and witnesses. There is also a suggestion of allowing the police to have a direct say in the appointment of PPs, which goes against the well established principle of independence of the prosecution from police control.

This is, hence, a good time to think about and debate fundamental questions about the independence and accountability of prosecutors and their relationship with the other state agencies. Better knowledge can help shape and strengthen the reforms of Madhya Pradesh and Maharashtra, and help other states better navigate their own reforms of prosecution.

## Structure and independence of prosecutors

The Code of Criminal Procedure (CrPC) speaks of four categories of prosecutors - PPs and additional PPs; assistant PPs for magisterial courts and special PPs who may be appointed under exceptional circumstances. Appointment of PPs and additional PPs at the district level can be done in two ways - 1) on tenure basis from a panel prepared by the district magistrate in consultation with the sessions judge; or 2) from a regular cadre of

prosecutors maintained by the state.

Both methods have their pros and cons. The former makes it possible to attract the best talent from the bar while allowing judicial officers who have direct insights on the competence of those lawyers to have a prominent say in the matter. However, the extent to which this happens in practice is suspect, given the vast difference between the earnings of a successful defence counsel and a PP. Panel appointments are also criticised for lack of accountability as appointments are for a fixed tenure, generally three years, and tend to be more susceptible to political interference. The CrPC was amended in 1978 to address these issues by introducing the concept of cadre appointments. States that maintained a "regular cadre of prosecuting officers" were required by the law to treat that as the only source for appointment of PPs. The idea was that a new breed of salaried PPs would replace all empanelled prosecutors. This would improve accountability and create promotion opportunities for prosecutors in the permanent staff.

The proposal for exclusive cadre appointments, however, turned out to be a non starter. First, the [Supreme Court interpreted](#) the term "regular cadre of prosecuting officers" to mean a permanent prosecution cadre encompassing all levels, starting from assistant PPs and going up to the PP at the top. This is not the case in most states - cadre appointments are generally restricted to the level of assistant PPs. Second, a number of states passed local amendments to dilute the requirement of mandatory cadre appointments. Some of them have also done away with the need for consultation with the sessions judge for panel appointments thus giving full control to the executive. In 2006, the Prime Minister's office raised concerns about these developments and their consequent scope for arbitrariness. The [Law Commission](#) responded by indicating its preference for a combined appointment process - 50:50 split between Bar members and assistant PPs selected from the regular cadre. The [Malimath Committee](#) had also expressed the same view. A decade has passed since these recommendations, and implementation has not taken place.

The appointment process of assistant PPs for magisterial courts is more straightforward. It is generally done through a direct recruitment exercise conducted by the state public service commission. Before the enactment of the CrPC in 1973, prosecutors working at this level used to function under the control of the police.

In many cases, police officers themselves used to act as prosecutors. This blurring of lines between the prosecution and police was problematic on many counts. It was [observed by the Law Commission](#) that the police had a tendency to focus on securing convictions, which made it difficult for them to exhibit the degree of detachment found necessary for the role of a prosecutor. In the words of the Law Commission: *"In undertaking the prosecution the State is not actuated by any motives of revenge but seeks only to protect the community. There should therefore be an unseemly eagerness for, or grasping at a conviction. A public prosecutor should be personally indifferent to the result of the case. His duty should consist only of placing all available evidence irrespective of the fact whether it goes against the accused or helps him, in order to aid the court in discovering the truth."*

Section 25 of the CrPC fixed this by explicitly stating that police officers would not be eligible for appointment as assistant PPs. In doing this, the legislature recognised the importance of independence of the prosecution from the investigative arm of the state, a demarcation that has also been [emphasized by the courts](#).

Sometimes the complexity or gravity of a case may justify a more experienced lawyer to handle the prosecution. Section 24(8) of the CrPC recognizes this possibility by empowering the government to appoint a special public prosecutor (SPP) for a specific case or a class of cases. The appointment of a SPP amounts to a deviation from the general norm (of using PPs) and is therefore resorted to only under special circumstances and [only and only when public interest so demands](#). Many times, the request for appointment of a SPP may come from the victim of the crime, but the law as laid down by the Supreme Court [makes it clear](#) that such requests cannot be granted on a routine basis. The application for appointment of a SPP has to be properly examined by the government - in most cases through the Remembrancer of Legal Affairs in the state - and should be granted only after being satisfied that the material on record justifies the need for a SPP. It has also been clarified that even though the request may have been initiated by the complainant the costs of the SPP are to be borne by the government.

## **Relationship with the government**

PPs are appointed by the government, but the duty cast upon them is to represent the interests of the State and not the government of the day. Prosecutors who are wholly dependent on the executive for their tenure and appointments may find it hard to maintain this distinction. This is illustrated by the reshuffling of posts which seems to happen with every change in government. The problem becomes [all the more stark](#) in cases involving corruption, violence by state agencies or other instances where people close to the government find themselves on the wrong side of the law. For instance, while ordering a retrial in the [Best Bakery case](#) the Supreme Court noted that no credibility could be attached to an acquittal that is based on tainted evidence, tailored investigation, unprincipled prosecution and perfunctory trial. The court found that through selective examination of witnesses and mishandling of evidence, the PP had *"acted more as a defence counsel than one whose duty was to present the truth before the Court"*.

Section 321 of the CrPC gives the PP the power to withdraw any case from prosecution with the consent of the court. This leads to the discharge/acquittal of the accused. The wording of the law and its [interpretation by the Supreme Court](#) makes it clear that the discretion to withdraw from prosecution is that of the PP and none else. The Government may suggest a withdrawal to the PP but cannot compel her to do so. It is the duty of the court to consider if the PP has applied her mind *"as a free agent, uninfluenced by irrelevant and extraneous considerations"*. Yet [it is often reported](#) that prosecutors act on the directions of the government. This again raises concerns about the lack of independence from the executive.

One way of addressing this is to entrust the appointment and monitoring of PPs at all levels to an independent DoP. Most states have already set up their own DoPs but these bodies are not really independent. For instance, the head of the DoP does not have a statutorily prescribed term of appointment that would allow her to function freely from the government. DoPs are also not entrusted with control over the appointment process of PPs. The vision and organisation design of DoPs varies across states. To take an example, the [DoP manual for Delhi](#) speaks of the duty of the prosecution to secure justice for victims of crimes, and to extend support to the state in maintaining law and order. The [guiding policy in Maharashtra](#) is *"To secure maximum conviction in criminal cases in all courts"*, which explains the nature of changes being adopted by the state. Practices also differ on where the DoP is placed - under the home department or the law department; who heads it - judicial officer, bureaucrat (Haryana), prosecutor (Delhi) or police officer (Tamil Nadu) and the scope of the DoP's powers. In a feeble effort to streamline these systems, the CrPC was amended in 2005 to say that the state governments *may* establish a DoP to be headed by an experienced advocate who should function under the administrative control of the state's home department. The benign wording of the provision, and the concurrent nature of the subject, have ensured that states continue to exercise their discretion on whether or not to have a DoP and what form it should take.

## International practice

Unlike the Indian system where the prosecutor has little or no say till a case has been filed before the court, most other jurisdictions regard the [decision on whether or not to prosecute](#) as one of the core responsibilities of a prosecutor. In addition, prosecutors also tend to have some role to play in the investigation stage although the scope of their intervention varies across jurisdictions. The United States is an example of a country where the prosecution plays a dominant role in the working of the criminal justice system. At the federal level, a set of US Attorneys working under the US Attorney General are responsible for trial in criminal and civil cases before federal courts. They initiate prosecutions in cases and also have the authority to request investigative agencies to conduct investigations in suspected violations. In fact the attorneys can also use the grand jury process to conduct an investigation on their own.

In addition, each US state has its own State Attorney General who is in most cases an elected representative. All the State Attorneys are members of the National Association of Attorney Generals, a coordinating agency that facilitates inter-state cooperation and conducts policy research and training programs for attorneys and their staff.

This presents a useful model that can be emulated in India. The heads of the DoP or whichever body is in-charge of prosecutors in each state can be members of a body created as a forum for regular exchange of ideas among prosecutors. This will help in articulating the issues faced by them which are often common across states and

finding appropriate solutions. It can also be used to create a mechanism for specialised training of PPs from across the country.

In England the [Crown Prosecution Service \(CPS\)](#) serves as the principal prosecuting agency. The CPS is a statutory body headed by a Director of Public Prosecutions, who works under the overall superintendence of the Attorney General. Their role is to advise the investigation authorities, decide on which cases are to be prosecuted, and to frame the charges in more serious cases. To facilitate better cooperation with other government agencies, the CPS has entered into comprehensive agreements with the police association and the prison authorities that set out their respective responsibilities for appropriate handling of crimes. Accountability and transparency in the functioning of the office is maintained through the publication of detailed annual reports, business plans and evaluation reports.

## **The way forward**

Independence, both from the police and the government, is essential for the efficient discharge of the prosecutor's functions. This calls for the creation of a strong DoP in every state that is both operationally and financially independent. [Some of the ways](#) to do this are by statutorily providing for a transparent appointment process for the head of the DoP, a fixed term of service and clear process of removal for cause. The functions of the DoP should also be clearly articulated in the law to cover the appointment, evaluation and training of PPs and allocation of work to them. In addition, improvements of remuneration and working conditions are required so as to improve the talent pool.

The legislature should act on the recommendation of having 50:50 tenure and cadre appointments for PPs and additional PPs. The DoPs can then be tasked with the duty of evolving the evaluation criteria for the empanelment and selection of PPs from the bar and the regular cadre. In doing so, the DoPs must look at performance measures that go beyond mere conviction rates. Some of [indicators that may be considered](#) include time taken in the completion of trials; role in causing any delays in the process; conduct in plea bargaining cases; feedback of victims and witnesses; and participation in professional training programmes. In order to achieve all of this, states need to give the DoP the capacity to operate independently and the budgetary capacity to deliver on these promises. Corresponding accountability measures are required, to assess the performance of the DoP and ensure proper utilisation of resources.

There is a pressing need for better coordination between the investigation and prosecution wings. The DOPs can manage this interface with the police through a formal coordination mechanism that will enable the police to seek legal advice from the prosecution prior to the framing of charges even though they are not statutorily bound to do so. The prosecution will also benefit from police assistance in the production of witnesses and evidence before the court. The goal should be to strike a fine balance between the independence and interdependence of the two agencies.

## **Acknowledgements**

I thank Nandkumar Saravade, Pradnya Saravade and Raja Thakare for valuable discussions.

# Reinventing the criminal justice system (Part 2 of 2)

 [ajayshahblog.blogspot.in /2015/03/reinventing-criminal-justice-system\\_20.html](http://ajayshahblog.blogspot.in/2015/03/reinventing-criminal-justice-system_20.html)

by Nandkumar Saravade.

## Background

In Part 1 of this article, we looked at the [problems of investigative capacity](#). This yields a picture of a case load that has overwhelmed the criminal justice system, poor performance, and an overall lack of effectiveness in criminal investigation and prosecution. We now turn to the ways to remedy the situation.

The key issues which must be understood are capacity and resource constraints, clarity and measurement of the output of the Indian Police, the required structural changes in Police organisations the required accountability framework for that resourcing.

## Guiding Principles

**Record all crime:** The purpose of criminal investigation is to generate deterrence by ensuring that the perpetrator is identified and brought before the court to face trial, while adhering to due process. All citizens have recourse to the law. The first step towards ensuring the rule of law is to record **all** complaints, irrespective of what further action taken.

There is a bias in public systems to turn away complainants. In addition, not all victims may want to report. These two problems generate bias in the official statistics. This calls for a three-pronged approach with (a) Cultural change that removes the stigma associated with being the victim of a crime; (b) Improved technology and process design through which all crime is reported and (c) Parallel measurement of crime incidence using [Crime Victimization Surveys](#) (CVS).

**Investigate selectively:** Since resources are limited, not all instances of violation of laws can be investigated. The purpose of the criminal justice system is deterrence, not retribution. If perpetrators feel there is a sufficiently high probability of getting caught, and if the punishments are sufficiently severe, this will generate deterrence. For offences involving loss of property, insurance and other compensation mechanisms may be operated to substantially comfort the victim. However, all instances of offences involving bodily hurt must be investigated. Indian law separates offences into cognisable (where police register a First Information Report (FIR) and investigate) and non-cognisable (where permission of a court is required). There is no merit in this distinction.

**Analyse for prevention:** Data collected through direct reporting and CVS can be used to improve the allocation of scarce police presence, channeling this to locations and timepoints which maximise deterrence for the same expenditure.

**Speed up prosecution:** As we saw earlier, delayed trials are not only ineffective, but also counterproductive for subsequent cases. The judges:population ratio needs to be substantially higher. The Law Commission ([120<sup>th</sup> Report](#)) recommended in 1987 that this ratio needs to go up from 12.5 judges per million to 50, which is a four-fold increase ([2009 data](#)). This would still be half of that found in the US in 1999. At the same time, dramatic increases in the productivity of judges [are feasible through better process engineering of courts](#). There may be a case for [large-scale withdrawal of unviable and old cases](#), as a one time measure, to debottleneck courts.

## Agenda for State Governments

The most important change that is required is to improve the working of the police. The police machinery is



currently controlled by the party in power and manipulated for their short term objectives of 'managing the crime numbers.' The [National Police Commission \(NPC\)](#), set up in 1977, went into all aspects of policing in the country and gave detailed recommendations through several reports, which have not been implemented. Most of the findings and the recommendations of the NPC remain valid even today. The issue of police reforms got revived after the Supreme Court judgement on a [case filed by Prakash Singh](#), former DGP, UP and others. It is making slow progress, though [not always in the right direction](#).

The recommended governance model for the police involves setting up of State Security Commission (headed by the Chief Minister, the Leader of the Opposition, the Chief Secretary, members of the civil society and subject matter experts) to act as the highest policy-making and oversight body. Further, an empowered Police Establishment Board is required, to insulate police officers from political interference. A Police Complaints Authority is required, to look into allegations of unprofessional/illegal behavior of police officials.

As the police is a subject in the state list under the Constitution, all the issues of police reform -- structural change, and better resourcing -- have to be carried out by the state governments. There is a remarkable opportunity to re-ignite this agenda, owing to the recent decision of the Central Government to increase the states' share of tax revenues to 42%, which is going to dramatically enhance budgets at the level of states. As part of the devolution of greater resources to the state level, the Central Government is also exiting its interventions in state subjects, which has led to [discontinuation of the Police Modernisation Scheme](#). The facts need to be taken together by the leadership of states, and a sharp increase in the resourcing of police is required, alongside improvements in the organisational effectiveness and accountability mechanisms. These three elements -- increased resourcing, institutional reform, and enhanced accountability -- should be seen as a package.

## Vision for the Police

For police organisations themselves, the mission to improve investigation effectiveness starts at creating an effective reporting mechanism, in addition to the local police station. Currently, there is a common telephone number (Dial 100) in most states, which [does not always work](#). However, this is meant only for emergency responses. For filing a complaint, the complainant has to travel to the police station. With appropriate amendment in the Code of Criminal Procedure (CrPC), modified processes to mandate registration of crime must be brought about, including: (a) Reporting on the spot with the police official visiting the place of occurrence and (b) offering multiple channels (telephone/email/web/paper) of interaction. Will these changes reporting will improve, fulfilling the first requirement of police being a responsive organisation.

With a business triage approach enabled through a suitable CrPC amendment, high priority investigations can be taken up and the rest, especially those relating to minor property offences, only acknowledged.

From the organisational side, it would be important to devote a sufficient number of skilled police officers, give them standard operating procedures and measure their performance more accurately, with commensurate incentives for better achievement. To improve the supply of investigators without excessive cost escalation, the current heavy bias towards low-output constabulary should shift to officer-oriented composition. At present, 15% of the staff are officers; this needs to go up to 25%. This will also improve promotions and, consequently, motivation and morale of the force, through aspiration based efforts and more meaningful job content.

Separating the investigation function from public order maintenance to promote specialisation has been a long-standing recommendation. This was [recently done in Punjab](#). This involves earmarking a fixed number of officers for investigative work at the police station level. These detectives cannot be deployed for public order management or security without the orders of the district police chief and unless there is a dire emergency. This protects the prioritisation of investigations.

A national Police Standards Board needs to be created, to improve police investigative processes with clear Key Performance Indicators (KPIs) and an external auditing mechanism, which can directly report to the State Security Commission (SSC), as is done by Internal Audit to the Audit Committee in a listed company.



To enable the SSC to gauge the level of crime afflicting the society, independent surveys are required to be carried out, as a standard practice. Called [Crime Victimisation Surveys](#), these are invaluable for measuring trends on crime reporting and comparative performance of different police units. They constitute reporting of the performance of the police that is completely independent of the police, and serve as an accountability mechanism in the eyes of society, which would see performance in these surveys as the outcome of resources put into the police.

For keeping the knowledge, skill and ability of the investigators at the desirable level, modern training infrastructure is essential. The current training mechanism emphasises a long initial training period over several months, but little subsequent training. However, there is a need for continuous training all through the working years, through which experience and knowledge interventions come together to induce a spiral of capability. This can be addressed through higher budgets for training and developments of a comprehensive Learning Management System (LMS) and community building through professional certifications, Continuing Professional Education (CPE) and a Code of Ethics to promote independence and integrity.

The technology infrastructure of the police department needs to be transformed. An enterprise-scale Information Technology backbone is required, with seamless flow of communication across the police, judiciary, prisons, forensic department and prosecution. Currently, investigation generates a lot of manual and tedious paperwork. With modern devices and well-designed software, the investigator can be freed to concentrate on the actual work. Digital tools for data visualisation and case management, as well as forensic databases for fingerprints, DNA, ballistic markings, paint/glass, shoe prints and tyre marks will improve the success rate of investigations.

It would simultaneously be important to build in accountability mechanisms for the improved resourcing so that the changes in the system stay put, or become feedback loops for the next stage of improvements.

The Supreme Court has passed an order asking for [mandatory registration](#) of criminal cases without any discretion to the police officer, as well [avoiding indiscriminate arrests](#). Adherence to this on the ground is inconsistent and low.

## Summing up

In summary, it is important to treat the Criminal Justice System holistically. It is possible to get some early wins, by fast tracking trials of cases involving elected representatives and creating specialised units and courts dealing with economic crimes and violent crimes against women. However, for long-term success in establishing the rule of law, there is no alternative to improving governance and making adequate investments in quantity and quality of investigative resources and trial courts.



# Reinventing the criminal justice system (Part 1 of 2)

 [ajayshahblog.blogspot.in /2015/03/reinventing-criminal-justice-system.html](http://ajayshahblog.blogspot.in/2015/03/reinventing-criminal-justice-system.html)

by Nandkumar Saravade.

Police and court [inefficiency](#) is the dominant feature of the Indian criminal justice system. The latest verdict on the [L. N. Mishra murder case](#), which took 40 years to resolve even when the victim was a central minister, has once again brought home the point that things just don't work. Our system has repeatedly fallen short of its objective of being able to investigate and prosecute to ascertain the culpability of the accused and award deterrent punishments. Failure in this area is a significant inhibitor for achieving society's true potential, including economic progress.

After many decades of stagnation, there are now signs of important change in this field:

1. There was a time when the dominant idea of the Indian State was a "*mai baap*" who would wipe every tear. The Indian State is now re-engineering itself towards a much narrower vision, of achieving State capacity in delivering core public goods, and leaving the pursuit of happiness to the private choices of each individual. Law and order looms large in the field of public goods. Law and order is the ultimate public good: it is non-rival (my consumption of safety does not diminish the safety available to you) and non-excludable (there is no way to exclude a new born child from the blanket of safety).
2. Important new work has begun on [building high quality courts in India](#). If these innovations work out well, and are then transplanted more widely into the working of courts all over India, this could have a major impact upon the criminal justice system.
3. The 14th Finance Commission has given a great surge of budgets at State governments. This is an important time for State governments to rethink their expenditure priorities, and a key element of this should be a greatly increased focus on law and order.

Prioritisation of the criminal justice system is going beyond the intellectual elite to every citizen. One highly visible episode of rape in Delhi [\[link\]](#) appears to have had an impact on elections at the level of the state government and possibly in the general elections also. Politicians are now much more oriented towards succeeding on law and order. As an example, the [manifesto](#) of the newly elected AAP government in Delhi speaks of reducing judicial delays.

We may thus be at an important moment, at the early stages of reinventing the Indian criminal justice system. It is, then, particularly important to obtain a clear diagnosis of what is wrong, and of effective strategies for reform. This is what motivates this two-part article. The first part is on the state of affairs of crime, and of the police machinery. The second part will be on the strategy for police reform.

## What is the extent of crime?

Crime must be measured as the crime experience of the citizenry. E.g. the number of murders per 100,000 of population, per year, is a measure of crime. For our present purposes, it is useful to think of the work of the police which takes in a complaint that is filed at one end, and results in convictions at the other end. The workload that comes into the entry point is the number of FIRs filed.

During the [2003-2013](#) period, India's population grew by 15%, but was outpaced by the growth of crimes defined in the Indian Penal Code (IPC) by 54.3%. The number of IPC crimes registered as First Information Reports (FIRs) during the year 2013 was about 2.65 million.

While the IPC is the main law on crime, there are other laws called Special and Local Laws (SLL), which also keep police investigators busy. These include offences under, among others, the Motor Vehicles Act, Arms Act, Gambling Act and Narcotics Act. SLL figures reached 4 million in 2013. SLL grew less rapidly (5.7%) during the same period, probably due to the fact that most of cases booked under SLL result from a proactive and

preventive approach, depending on the time and resources available to police leadership at the local level. For the sake of simplicity, we will focus only on IPC crimes.

With respect to IPC FIRs, investigators processed [3.5 million cases](#) (including cases carried forward from the previous years) during 2013. They completed investigation in 2.5 million cases, of which 1.9 million (75%) cases were sent for trial, leaving 0.95 million cases under investigation to carry over to the next year.

Large as these numbers seem, it is well known that only a fraction of the criminal incidents get registered as FIRs. Indeed, non-registration of crimes is a major factor in citizens' dissatisfaction with the Indian Police. In a landmark [experiment conducted in Jalpaiguri](#), West Bengal in 2007, it was revealed that the actual incidence of IPC crimes across different categories was 4 to 6 times of the recorded numbers. More recently, the Delhi Police leadership stepped up registration, [with revealing results](#). Delhi Police had recorded 64,882 IPC cases in 1998, which fell to 54,287 in 2012. However, the numbers rose rapidly to 80,184 in 2013 and 147,230 in 2014, close to a three-fold jump over two years.

## **How do the police fare on investigative capacity?**

The Bureau of Police Research and Development (BPRD) publishes [data on police resources](#) on a regular basis. It shows that the police-population ratio has improved from 139 (per 100,000 population) in 2002 to 181 in 2012. The state police comprises of civil police (police station and support unit staff) and armed police (reserve units). According to NCRB, the total sanctioned strength of the state civil police at the end of 2013 was [1.79 million](#), while the actual was 1.3 million, leaving about 25% of the positions vacant.

For the purpose of investigation, it is more important to look at the number of investigators who primarily come from the ranks of Assistant Sub Inspector (ASI), Sub Inspector (SI) and Inspectors. These are mere 11% of the civil police strength. However, these officers cannot consider investigation as their primary job, having to give priority to maintenance of public order, VIP security and court appearances.

There have been a few studies in recent years estimating the actual workload at police stations. Though not specifically aimed at the investigation function, these provide some clue about the existing gap. A recently released BPRD report on [8-hour shifts in police stations](#) looked at the existing supply side situation and found that majority of police stations had its staff putting in 11- hour to 14-hour workdays. Further, most police station staff members could get only one or two days as weekly off during a month. The report estimates that to enable a 48-hour work week, with an assured weekly holiday, it will take 68% enhancement in the police station strength. Another highlight was that, of the total police strength, only [a third was posted in police stations](#), though, admittedly, it was the most important part of the police organization.

A smaller workforce is directly linked to low crime registrations described earlier. They are seen as a necessary evil by police supervisors to ensure that work load remains manageable. Even when the top leadership is interested in more realistic registration, the police stations thwart the efforts by turning away complainants. In a territory-based approach, the local police station has a monopoly on registrations and uses it to the detriment of the poor victims, who are unable to get their grievances addressed. In other countries, this monopoly is taken away to a certain extent by a centralised emergency response system, such as the 911 mechanism in the US. No equivalent system has been created in India yet. Madhya Pradesh Police is attempting this currently, with the project cost of Rs.6.33 billion over a five year period.

## **Court delays and policing**

Another factor impacting investigative capacity of the police is the [pendency in courts](#). As described earlier, 1.9 million cases got added to the pool of cases under trial in different courts, swelling the number to 9.8 million. During 2013, only 1.3 million cases were disposed of, increasing the pendency by 0.6 million. Of the 1.3 million disposals, about 0.2 million were due to cases being compounded or withdrawn, 0.77 million discharged or compounded and only 0.52 million convictions. The success rate in offences like rape and murder was around 27% and 36% respectively. The prosecution was even less successful in economic crimes like criminal breach of trust (23%) and cheating (24%). The slow pace of the proceedings was apparent from the vintage of

concluded cases, with 13% cases aged between 5-10 years and 3.2% older than 10 years.

Court pendency keeps the investigators unproductively occupied in attending courts where more time is spent on procedural matters, rather than depositing. It reduces the viability of success of prosecution, finally impacting the outcome of investigations and motivation of investigators. It adds to the burden of preserving evidence and tracking witnesses - jobs mostly done by the police - over a longer period of time. Delayed trials are also responsible for the lower rate of success, as a [study of corruption cases](#) under the Karnataka Lokayukta showed.

### **What is the level of funding?**

Though manpower is an important factor, it is also relevant to look at the financial expenditure on police department, as an indicator of the relative importance given by the state governments towards bolstering the rule of law. State governments seem to be spending between 3-5% of their budgets on the police.

It would be interesting to put this low expenditure in context by looking at [Maharashtra budget figures](#) for FY 2015. The total number of employees under the state government was 0.64 million, of which police personnel were 0.2 million. Thus, despite being one third of the state government workforce, the budget allocation for police was less than 5%, of which sustenance spends (such as salary, fuel and office expenses) took away 98%. The low allocation of resources for training results in lack of upgradation of investigators' knowledge about forensic techniques and new modus operandi.

### **What is the level of data collection and analysis?**

Poor funding has meant that police departments lack IT systems for managing workflow better and data analytical tools to crunch large data sets available in cases of terrorism and financial crimes. The funding for creating new data-sets on understanding crime victimisation, demographic and spatial mapping of criminals, statistical analysis of the investigative processes are non-existent.

One significant factor in doing meaningful analysis is the antiquated method of compiling and analysing crime statistics. The whole process is manual and prone to errors and manipulations. An enterprise level case management system, called Crime and Criminal Tracking Network and Systems (CCTNS) has been [delayed](#) by more than four years due to inadequate funding and poor project management. Till the crime data is digitally captured at source and is amenable to modern techniques and tools of business intelligence, mapping the problem of poor-quality investigation in adequate detail remains only an aspiration.

### **What incentives exist for better performance?**

It is not impossible to conceive of an efficient police force within the limitations imposed by the manpower and resource constraints. For this to happen, performance appraisals need to be aligned to elicit appropriate behaviour. Little is known about what constitutes good performance, and how police fare on such metrics.

What metrics of performance exist, are not linked to effectiveness in investigating crime, since it figures low in the list of priorities. Also, trials take a long time to reach conclusion and a negative outcome is attributable to various factors, such as [poor investigation](#), [insufficient evidence](#), [long delays](#) and [witnesses turning hostile](#). Existing internal processes to fix accountability for bad investigation seldom seem to work.

### **Conclusion**

Even at current levels of registration of crime, the criminal justice system is overwhelmed and in a state of logjam. There is gross under-registration of crimes; a fact well known to the police leadership. There continue to be considerable delays in police investigation. The police continue to be under-staffed and under-funded. At the same time, performance measurement of the police is weak.

Simply adding more manpower, or increasing resource allocation without appropriate performance metrics and accountability frameworks will not get us the desired results. A reform strategy has to take into account the

failures on each of these fronts and devise an approach that will bring in more accountability, structural modifications, adequate resourcing, training and process improvements. This will be the subject of Part II of this article.

# Law and order: How to go from outrage to action

---

 [ajayshahblog.blogspot.in /2012/12/law-and-order-how-to-go-from-outrage-to.html](http://ajayshahblog.blogspot.in/2012/12/law-and-order-how-to-go-from-outrage-to.html)

There is fresh rage on the bad state of law and order in India today. That rage is entirely appropriate.

My father was born in 1926 and experienced British rule. One of the high points of his life was participation in the freedom movement. He used to say to me with great regret that under British rule, the Shiv Sena would have never arisen. What has happened in India is a disgrace.

The interesting and important question is: How can the problems be solved?

Moral outrage does not lend itself to good policy analysis. As with the problem of corruption, the problem of law and order requires sophisticated thinking. Just as the young people who got enamoured by [Baba Ramdev and Baba Hazare](#) got nothing done in terms of combating corruption, we should worry about what comes next on law and order. Anger and outrage, coupled with low knowledge of political science and public economics, is a sure path to poor policy analysis. What matters is shifting from anger to analysis to action.

As an example, if laws are modified to prescribe draconian penalties for rape, then rapists are more likely to kill the victim. What is required is better quality *implementation* of the existing law.

What would it take to make the police and courts work better? The three ingredients that are required are *incentives for politicians, resources and feedback loops*.

## Incentives for politicians

The first issue is incentives for politicians. Politicians will deliver law and order if they think that this is what will get them re-elected. From Indira Gandhi's time onwards, politicians in India have felt that the way to win elections was to focus on welfare programs for the poor. As long as this is the case, the narrative that will dominate the Indian State is that of poverty, inequality, and welfare programs.

Economists distinguish between *public goods* and *private goods*. Public goods are defined to be those that are 'non-rival' (your consumption of safety does not reduce my consumption of safety) and 'non-excludable' (it is impossible to exclude a new born child from the environment of safety). The legitimate purpose of the State is to pursue public goods. All citizens gain from public goods, and all voters should respond to these benefits. The first and most important public good is safety, which requires building the army, the police and the courts.

The Indian State has, instead, gone off on the adventure of building welfare programs: of government giving private goods to marginal voters. The first priority of the Indian State is the themes of poverty, inequality and welfare programs. Politicians need to learn that this hurts. Sheila Dixit should realise that her top priority in Delhi is law and order.

There are undoubtedly problems in the leadership and management structure of the police. I believe that once politicians want law and order, this will drive them to recruit the leadership that is required, and undertake structural reforms, so as to get results. As an example, look at how the politicians broke with PWD and setup NHAI, or setup Delhi Metro. The question that matters is : Do politicians want law and order? From the 1960s onwards, the minds of politicians have been addled by welfare programs.

If Rs.X is spent as a gift on a few marginal voters, it makes a certain difference to winning elections. If that same money is spent on public goods -- e.g. better safety for all -- it should make a bigger difference to winning elections since more voters gain. The question is: Do politicians see this and act in response?

## Resources

The second issue is resources. India needs much more staffing in the police and the courts. This includes both technical staff (e.g. constables and judges) and support staff (e.g. clerical staff, operators of computer systems, etc).

Courts and police stations need to be high quality workplaces with air conditioning, computer systems, modern office equipment, canteens, web interfaces to the citizenry, lighting, toilets, and such like.

Policemen need to live in high quality housing. If policemen live in high quality housing and work in high quality offices, they will be more civilised both in terms of the quality of intake and in terms of how their behaviour evolves on the job. This will cost a lot of money. The State in India has very little money. To improve the police and courts will require cutting back on welfare programs.

As Robert Kaplan says, underdevelopment is where the police are more dangerous than the criminals. One element of this is the biases in recruitment. As an example, the police in Bombay tends to be male Maharashtraian and relatively low skill. This needs to evolve into a more sophisticated workforce, with gender, ethnic and religious diversity that reflects the cosmopolitan structure of the populace.

At present, in India, spending on police and courts (which are core public goods) is classified as 'non-plan expenditure' and is treated as a bad thing. Spending on private goods like welfare programs is classified as 'plan expenditure' and grows lavishly year after year. In the UPA period, plan expenditure has gone up by four times in 10 years. These priorities need to be reversed.

The other critical resource, other than money, is top management time. The simple question that I would ask Sheila Dixit or Manmohan Singh is: What fraction of your time do you devote to public goods? My fear is that the bulk of their time is spent worrying about welfare programs. When the top management is not focused on law and order, safety will degrade.

The lack of safety is a regressive tax: it hits the poor more than the rich. The rich are able to insulate themselves at a lower cost. When a policeman faces me on the street, he immediately speaks to me in a certain way once he sees that I come from the elite. Poor people are mistreated by both criminals and the police. Through this, the number of votes that should be affected by improved law and order is large. The people who care deeply about the poor, and would like to focus the Indian State upon problems of inequality and poverty, should ponder the consequences of what they have wrought.

## Feedback loops

In order to think about law and order, we need measurement. I used to think that the murder rate is high quality data. Over recent years, I have come to believe that in many parts of India, not all murder is reported to the police. In this case, we are at ground zero about the state of crime: we know nothing about how much crime is taking place out there.

What you measure is what you can manage. I had recently written [a blog post about health](#), and the same issues apply here. Our first priority should be to setup crime victimisation surveys [\[link\]](#).

The most important outcome that I think matters is a question asked in a household survey of parents: *Are you comfortable when your teenage daughter is out alone at 11 PM?* That's it. That's the end goal. Civilisation is where parents are comfortable when their teenage daughters are out alone at 11 PM.

Once the CPI is measured, [and measured well](#), RBI can be held accountable for delivering low and stable inflation. In similar fashion, the Bombay police can be held accountable once we get a graph updated every month about the crime rate in Bombay, supplemented by quarterly data from crime victimisation surveys. This would generate feedback loops whereby we can judge whether Sheila Dixit has improved law and order in Delhi on her watch.



When Sheila Dixit gets anxious about the lack of progress on publicly visible statistics about the state of law and order in Delhi, she will have the incentives to recruit high quality leadership for the Delhi police, and to resource them adequately, to get things done.

## **Why are these good things not getting done?**

This is the hardest question. I have three opinions about what has been going wrong.

The first lies in the incentives of politicians. Why do politicians pursue private goods for a few when they can instead spend money on doing public goods that benefit all? Why does democracy not push Indian politicians towards the centre? I think one element of the answer lies in first-past-the-post elections.

Today in India, winning elections does not require pleasing all voters; it only requires a base of 30% of the voters. This gives politicians a greater incentive to dole out goodies for the 30% and not work on public goods that please all voters. This reduces the prioritisation for public goods.

The second issue is that of urban governance. The defining challenge for India today is to make the cities work. But our constitutional structure is confused on the location of cities versus states. The feedback loop from the voters in Bombay do not drive improvements in governance in Bombay.

Delhi is unique in this respect in that it's the first city of India where the basic structure is correct. Sheila Dixit is the Mayor of Delhi. She is held accountable for making voters in Delhi happy. Voters in Delhi bother to vote in the Delhi elections. Hence, I am far more optimistic about the future of Delhi than I am with Bombay.

The third issue lies in the intelligensia. Western NGOs, aid agencies and the World Bank are focused on inequality, poverty and welfare programs. This generates incentives for individuals to focus on inequality, poverty and welfare programs, owing to the funding stream and career paths associated with western NGOs, aid agencies and the World Bank. These large funding sources and career paths have generated a distorted perspective in the Indian intelligensia. We need more minds in India who think in terms of first principles economics and political science, without the distortions that come from the worldview of development economics.

We blame politicians in India for being focused on welfare programs. But to some extent, they are influenced by the intelligensia. It is the job of the intelligensia to hold their feet in the fire, and hold politicians accountable for public goods. The politicians were too happy when, from the 1960s, the intellectuals proposed welfare programs, poverty action, socialism, etc.

## **Acknowledgments**

I am grateful to Pradnya and Nandu Saravade who helped me think about all this.



# Faulty tradeoffs in security

---

 [ajayshahblog.blogspot.in /2012/05/faulty-tradeoffs-in-security.html](http://ajayshahblog.blogspot.in/2012/05/faulty-tradeoffs-in-security.html)

## The new world of security in India

*Only in a police state is the job of a policeman easy.*

-- Orson Welles

The policemen of India say: It is only by using onerous and intrusive tracking procedures that we will be able to block the terrorism, the tax evasion, the money laundering. But society should be designed for the convenience of the median citizen and not for the convenience of the policeman. Yes, when citizens have liberty, it imposes more work upon the policeman. That is a tradeoff we should favour.

In every place in the world, I walk into a coffee shop, open my laptop, and go into free open wifi networks. Except in India. Open wifi networks are banned in India, because they make life difficult for policemen. This is a bad tradeoff : we have sacrificed the immense gains from ubiquitous open wifi networks, in return for reducing the work of policemen.

Terrorists and criminals use roads. Does that mean that we will only permit people with photo IDs to embark on roads? Terrorists and criminals drink water. Does this mean that we will only permit people with photo IDs to buy water? And so on.

Global norms on financial distribution, which have been pushed hard into the direction of more monitoring by the US Treasury, do not require a know-your-customer on every transaction. They only require 'customer due diligence' (CDD), which means that the due diligence applied on a transaction should be appropriate (a big principles-based word) for the transaction at hand. We in India have translated this into a mechanistic rule "demand KYC for everything". This is incorrect. A greater push-back is required, from citizens.

In a civilised society, employees of government will have to work hard and work smart in blocking terrorism, obtaining tax revenues, etc. This is okay. We should not set out to make the life of these employees easy. Obtaining a high tax/GDP ratio requires careful, detailed hard work, and a lot of brainpower. In the absence of this, there is a temptation to resort to quick fixes, which should be avoided.

## A civil liberties perspective

*They who can give up essential liberty  
to obtain a little temporary safety,  
deserve neither liberty nor safety*

-- Benjamin Franklin

We get asked to prove identity to enter an airport, to do financial transactions, to get a mobile phone, etc. We have become used to the idea that this is essential in this world inhabited by too many terrorists.

I think anonymity and privacy are precious and valuable. We in India seem to have given up on protecting civil liberties from an encroaching State that wants to know a lot about us. Particularly given that we are a fragile democracy that works imperfectly, it is important for us to have less information in the hands of the State. One element of the imperfection of our democracy is [the undersupply of criticism](#). We need to cherish and protect the

critic, which will be assisted by having a government that knows less about us.

The best we're able to muster today, in the Indian discourse, is the hope that UIDAI will reduce our transactions costs of complying with the surveillance state. I think it's important to go deeper, to question this array of rules that monitor us. How much security do they buy us, in return for what costs to society?

## What bang for the buck?

We should be more intelligent in weighing these tradeoffs between imposing costs upon society at large, and the extent to which they help us catch criminals. A great deal of what passes for security procedures today is quite silly when you pause to think about it.

We are obsessed with monitoring electronic payments. The bad guys will just use cash. The amount of money required for pulling off the WTC attacks is believed to be roughly \$100,000, which was wired to Mohammad Atta. It is not hard to move \$100,000 through non-electronic channels: this is the value of 11 bars of gold, each the size of a pack of cigarettes.

In fact, it is very convenient for the *authorities* when the bad guys use electronic channels, since greater tracing becomes feasible. We have a fair clue that [this money came to Mohammad Atta from Pakistan's ISI because the money was wired](#); if the bad guys had moved money through cash or gold or diamonds or platinum, we would have not known this crucial fact. It is *better* for us if more bad guys ride on the electronic highways of the financial system. As long as cash is around in large quantities in India, it makes little sense to block people from coming into electronic payments on the grounds of KYC.

We are obsessed with physical IDs as a tool for security. But the bad guys will easily forge any physical IDs that you can propose. It is not clear what safety we're buying, in return for the enormous human resource and cost in time that is being expended today in checking IDs.

We in India are surprised to discover that in the US, you can buy a temporary one-month GSM SIM card at a storefront, without any know-your-customer or proof of identity. They do not even want to know your name. This is not to say that the security agencies in the US are not watching everyone keenly. The point is that they are doing this in ways that impose lower costs upon society; the security procedures are less of an eyesore.

## A need to rethink where we're going

Many elements of the information before us, today, suggest things aren't going well:

- In the US, despite a fairly open and liberal system (e.g. freely selling GSM SIMs to anyone, without requiring even a name), law enforcement has been pretty effective: They haven't had a single successful terrorist attack after 2001, despite being [the #1 target](#) of myriad nutcases like OBL. In India, thousands of people have died in terrorist attacks, even though we have embarked on a barrage of security procedures.
- Every terrorist caught dead or alive in India has a cell phone. This suggests that our attempts at requiring a KYC for every mobile phone aren't so useful.

Failure should have consequences. We should rethink the way we work today, drawing on these blocks of evidence.

We need to ask three questions:

1. *Tradeoffs between freedom and safety.* How much of a violation of personal freedom are we willing to accept, in return for better enforcement of laws. We should be willing to sacrifice some safety in return for

more freedom. E.g. Saudi Arabia has low crime, but do we want to be Saudi Arabia?

2. *Tradeoffs between prosperity and safety.* How much inferior GDP are we getting, as a consequence of the security procedures which are being put into place? We are willing to sacrifice some safety in return for more GDP. E.g. there would be fewer road accidents if the speed limit were 25 kph (and road accidents kill vastly more people than terrorists), but we're willing to live with the carnage on the roads in return for higher prosperity.
3. *Does the claimed security procedure even work??* What is the bang for the buck, the effectiveness of these procedures? As many examples above have suggested, many of the security procedures used in India seem to be poorly thought out.

Drawing on my experiences in Indian public policy process, I can venture a guess about how the prevailing tools of security came about. A meeting was organised. Everybody in the room was an experienced security practitioner. The only viewpoint present was about how the world can be redesigned to make life easier for the employees of government. Everyone was indignant. We have to do something. A few [security as theatre](#) proposals came up. Everyone agreed. It felt like we were making progress; we certainly got plenty of showy security procedures to impress Parliamentarians and the media. Nobody asked second order questions; nobody analysed the data. This combination of factors (indignation, decision making dominated by the status quo, theatre to satisfy journalists and politicians, lack of a feedback loop through data capture and data analysis) is not conducive to problem solving.

We in India repeatedly find ourselves in a situation where law enforcement is placed under pressure to deliver. Whether it is a crime wave, or a terrorist attack, or a low tax/GDP ratio: officials are asked to do better. Such demands for performance are entirely appropriate. However, at such times, we should be careful to not accede to bargains where the enforcers promise results in exchange for arrangements that make life convenient for the enforcers, at the expense of the open society.