

Unreformable criminal justice

Any project aimed at criminal justice reform must accept the problems ingrained in our system instead of wishing them away



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India's criminal justice regime is beset with problems which seem ingrained in not only the constitutive fabric of institutions, but also in the psyche of their functionaries. Much like we have learned to live with the pandemic, we must learn to live with such problems. As Professor Andrew Ashworth said, "A just and coherent criminal justice system is an unrealistic expectation of the people". It is not our case that we must stop attempting to rid ourselves of such problems, but to ensure that our institutional responses reflect an acceptance of the depth of their roots.

The problems that are here to stay

The first such problem is the disposal of pending cases. There are more than 4.4 crore cases pending before the judiciary. It is unlikely that this problem will go away any time soon. Second, justice mechanisms will remain inaccessible to marginalised classes of citizens. As Amartya Sen said, our justice system follows a transcendental institutionalist approach where the focus is on getting the institutional arrangements right without regard to the world that emerges from such arrangement. In such a world, where the focus has been upon institution building rather than capacity building, marginalisation of vulnerable sections of society is inevitable.

The third is the problem of abuse of power by the police. The colonial mindset with which the institution was created is persistent. It determines and governs the manner in which the police discharge their functions. Our stress on crime control values too promotes such abuse of power. To hope that such abuse will end is just wishful thinking unless we are prepared to overhaul the police system overnight. Fourth, crime prevention is a utopian goal of our criminal justice system. Achieving a hundred per cent rate of success in crime prevention through either laws or policing is an unattainable ideal. Successive empirical research studies have shown that higher punishment has little impact on lowering crime rates. Similarly, initiatives such as community policing mechanisms and situational crime prevention are yet to deliver any concrete results.

Fifth, diversionary principles in the treatment of offenders are yet to materialise. Even as several Law Commissions and committees have recommended non-custodial

measures of punishment of offenders, these are yet to translate into practice. Even when we have a problem of overcrowding of prisons, custodial punishments are seen by the governments as a more effective measure. Sixth, there is a dearth of reliable state-sponsored data collection, maintenance and analysis mechanisms. The National Crime Records Bureau's data mark the extent of such data collection and analysis. The methodologies adopted by the reports can be criticised on multiple grounds. Little effort is made by the state to map the perceptions of justice by the victims and the common man. The state also does not seem to realise that there is a dearth of reliable data.

It must be noted that problems are not limited to the ones highlighted. Reforms in criminal laws and criminal justice, however, seem to have been recommended and conducted with the assumption that these problems will go away with time and effort. Our experience shows that this is not true. On the contrary, it must be assumed that these problems are here to stay unless drastic changes are made concurrently at the institutional, social and individual levels.

Accepting issues

Accepting these problems as assumptions is likely to have a favourable impact on the way we plan our institutional reforms and responses. To illustrate, if we accept that our institutional arrangements cannot guarantee access to justice for the most vulnerable sections of society, our approach would automatically shift towards building the capacity of such sections to tap into the criminal justice system. Similarly, it is only when we assume that abuse of power by the police is not going anywhere and that imposing mere ethical obligations on police officers will not resolve the problem can we move into the realm of developing independent investigative procedures and stern punitive sanctions against errant police officers. If we accept that the problem of pendency of cases has acquired such huge proportions that we cannot dispose of all of these cases in 10 lifetimes, maybe we would be able to rein in our tendency to over-criminalise conduct.

Any and all recommendations made by researchers and reformists must be made after considering these problems to be a reality. Any project aimed at criminal justice reform must instead accept the problems we have as assumptions. Only then can we shift the discourse to bringing about holistic reforms in our criminal justice system.

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