

ILLUSTRATION BY AJAY MOHANTY



How can we deter crime?

Increasing the headcount in the police and the judiciary is an answer, but its opportunity cost needs to be worked out

Crime is deterred by the probability of getting caught. For one case — theft in New Delhi — we estimate the probability of getting caught is under 3 per cent. The criminal justice system is not deterring crime. We can make punishments more draconian, but this generally leads to greater corruption. We can increase the headcount by 10 times, but this is expensive. The way forward lies in organisation and process reform, which yields a 10-fold reduction in the man-days expended per conviction.

The probability of getting caught

The Crime Victimization Survey (CVS) measures outcomes as seen by citizens. Using a recent IDFC Institute survey, we estimate that 1.34 million people in Delhi experienced a theft in the latest year. Of these, 0.6 million approached the police. The IDFC Institute and NCRB (National Crime Records Bureau) data agree that 90,000 were able to file an FIR. The conviction rate for theft in Delhi is not known. The overall average conviction rate in Delhi (the NCRB data) is 49.2 per cent, which may imply that the 90,000 FIRs eventually yield 44,000 convictions.

For 100 thefts in Delhi, the police are approached in 44, FIRs are filed in seven, and convictions obtained for three. Of the three who are convicted, some are innocent, so the actual chance of the criminal getting away is greater than 97 per cent.

For a would-be thief, there is an over 97 per cent chance of getting away. Our criminal justice system is failing to generate deterrence. With such a low chance

of getting caught, it is a wonder there is not much more theft. This is a comment on the great reservoir of social capital in the idea of India. Decency is the norm even when the state does not punish misbehaviour.

Solution 1: Increase the punishment

One way to respond to the low probability of getting caught is to increase the punishment. As an example, suppose there is a self-service system where you have to pay ₹100 for parking. Some people cheat, and do not make this payment. If there is only a 10 per cent chance of getting caught, we should set the fine at ₹1,000. Even though there is a 90 per cent chance of getting away with non-compliance, the 10 per cent event of getting caught has a 10-fold penalty, and this delivers compliance.

In the field of finance, there are many crimes — such as market manipulation — where all violators will surely not be caught. In the FSLRC (Financial Sector Legislative Reforms Commission) approach, the financial agency (the Securities and Exchange Board of India, or the Reserve Bank of India) works in two

steps. First, the prosecutor must determine the wrongful profit of the violator. Second, it is assumed that only one-third of the cases will get caught, so the penalty is set at three times the ill-gotten gains. This two-step method constitutes a rational approach to think about punishment. It is much better than the present ways, where punishments are awarded in a fairly arbitrary way, where equal treatment is often violated.

As an example, the Securities and Exchange Board

of India (Sebi) often skips the step of computing the ill-gotten gain, and imposes the punishment upon a financial firm of being debarred from business for N days. When two different firms are punished by being debarred for 30 days, this sounds like an equal punishment. However, the monetary value of this punishment can be very different, based on the profit per month and the long-term impact upon profit that is experienced by the two firms. We need to pursue equal treatment in the overall monetary value of the penalty that is imposed. The investigation and prosecution need to do the additional work of estimating the ill-gotten gains, and being able to defend this calculation in court.

In the Indian discourse, we often become angry and ask for big punishments. This may not just be bloodthirsty; it may be an intuitive response that seeks to reclaim deterrence when there is only a low probability of getting caught.

But there are two problems with large punishments (<https://goo.gl/FXYNFW>). Big punishments increase discretion in the hands of the officials doing investigation and prosecution. Imagine what would happen if the traffic policeman could impose a fine of ₹10,000 upon a person who drives through a red streetlight. In an environment with weak processes and weak accountability, big punishments generate organisational rot with pervasive corruption.

And, there is an ethical problem in the harm imposed when a large punishment is imposed upon an innocent person. This is one of the reasons why the death penalty is ill advised: Every now and then, the justice system makes a mistake, and hanging an innocent person is a grave tragedy.

We can be like Saudi Arabia, and eliminate theft by promising to amputate a hand. But the purpose of punishment in a civilised society is deterrence and not retribution. Liberal democracies have walked the slow path of building state capacity that yields deterrence at low levels of punishment. For thefts in Delhi, how can we do better than 3 per cent deterrence? How can we get to 6 per cent and then 30 per cent deterrence?

Solution 2: More policemen

As is the case with judges, India has too few policemen. But as is the case with judges, merely increasing the headcount is a poor answer. To move from 3 per cent deterrence to 30 per cent deterrence under the present arrangement will require 10 times the headcount, which uses taxpayer money and also incurs the opportunity cost of what those workers could have done in the economy.

The way forward

It is hence essential to think about productivity. How many man-days of staff time is required per conviction? How can organisation and processes be modified so as to achieve a 10-fold increase in productivity? This requires a careful analysis of the working of the police, investigators, forensic labs, prosecutors, and courts.

The ultimate outcome is measured by the CVS. This tells us how we are faring. At present, the CVS tells us that 1.34 million people in Delhi experienced a theft in a year. When the reforms are introduced and succeed, this count should go down.

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