Submission to Justice Verma Committee by Azim Premji University, Bangalore

Full text of our submission to the Justice J.S. Verma Committee

The Central Government recently appointed a three-member committee headed by Justice J.S. Verma with the mandate of looking into the avenues for reform of the rape laws in the Country, in light of the deeply unfortunate incident of gang-rape in Delhi last December. Pursuant to this, the Committee had issued a public notice inviting suggestions from interested persons on how this reform could be taken forward.

While the Committee chose to focus its attention on the questions of ensuring speedy trial of cases of sexual violence, and enhanced punishment in cases of extreme sexual violence, our submission was made with the intention of reminding the Committee of the need to base such measures on a concrete idea of the pathologies of the existing system, which could be provided only through empirical analysis.

Below is the full text of our submission. Please feel free to enter this debate through the comments section.

Dear sir,

Sub: Suggestions for reform of rape laws in the country

The recent gang rape incident in New Delhi in December 2012 has raised serious concern about the capacity of the legal system to respond effectively to offences against women, and rape in particular. Your committee has been setup to enquire into possible changes to the criminal law and other relevant laws relating to offences against women. The public notice issued by your Committee dated 24/12/2012 invited suggestions from people with ideas, knowledge and experience on how the laws in the country may be amended to achieve the two stated goals: speedy trials and enhanced punishments in cases of extreme sexual assault. The Law, Governance and Development Initiative at the Azim Premji University has engaged with the problem of legal system reform with empirical and analytical rigour. Our brief submission seeks to point out why substantive law reform in this area is unlikely to yield the promised results unless it is informed by rigorous empirical research.

In this submission we review the data that informs existing analysis in this field and the essential steps to develop a meaningful understanding of this field that is the foundation for successful law reform. Our submission proceeds in the following manner. First, we describe the importance of empirical analysis while examining the process and outcomes of the criminal justice system. We argue that this social science analysis allows us to understand the phenomenon of crime, which is essential for meaningful criminal justice reform. Next, we illustrate the severe shortcomings in the current system of data collection, analysis and presentation in India, which render the data so

generated of questionable value to a program of legal system reform. Finally, we propose key improvements to the data regime in the country and some strategies to achieve this.

1) The use of statistics in criminology and criminal justice reform; an example from the NCRB

Statistics have a vital role to play in the fostering of a scientific approach to the study of crimes, which moves away from the contemplation of principles based on prejudice and abstract judgments.[1] In the main, the two most salient uses of statistics are firstly, enabling interested persons to get an idea of the kinds of crimes being committed, the locations of these crimes, as well as the profiles of the offenders. Identifying these supply side factors gives policy makers a clearer idea of possible modes for legal change that draw on the correlations and causal relationships so identified. On the other side, statistical analysis may be effectively used to review the performance of the existing structures in the criminal justice system, such as rates of crime registration, successful investigation, and case disposal inter alia. Through such an analysis, it is possible to identify areas of the system that are not functioning optimally and are hence in need of change.[2] While the success of statistical analysis depends on its design and sensitivity to different variables, there is ample evidence of the beneficial effect of such analysis in the field of criminological study, and criminal justice reform.[3]

However, several caveats are often necessary while analysing data on crimes, especially while attempting to draw causal relationships between micro and macro-level factors and rates of crime. Max Grunhut, for instance, explains the need to first understand which aspects of crime may be explored through the analysis of quantitative data, and which are more amenable to qualitative studies of various kinds.[4] To be able to draw robust conclusions which may be of use in the conception of legal system reform measures, it is vital to possess data-sets that represent the best and most accurate means of data collection and reporting. The fact of the matter is however, that the Indian data regime does not come sufficiently close to such an ideal.

The single source for macro-level crime data in India is the National Crime Records Bureau (NCRB). From the first edition in 1953 to the latest edition in 2011, the flagship publication of the NCRB, Crime in India, has included increasing levels of detail and presently contains different chapters dealing with different heads of crime, as well as allied questions such as Police Strength, Case Disposal, etc.[5] While the lack of detailed study of the data provided by the NCRB has been noted[6], there have been various analyses of this data in different contexts.[7] Through this example, we will attempt to draw out the potential benefits, as well as critical problems evident in the current data relating to crime against women in the country.

In this example, we will examine the reported incidence, rate, percentage share of three crimes under the Indian Penal Code, i.e., Rape[8], Molestation[9] and Sexual Harassment (or Eve-Teasing)[10] in the different states. We will highlight the severe shortcomings in the existing data that seriously limit the possibility of drawing conclusions robust enough to be of use to a program of legal system reform.

An analysis of the above data reveals a few glaring inadequacies which we will list below.

(a) The data suffers from massive underreporting, which is especially true in case of the crime of Sexual Harassment. The incidence of Sexual Harassment, the relatively least severe offence of the three (using the measure of punishment prescribed under the Indian Penal Code) is reported to have a negligible incidence, even in states where the incidence of the other crimes mentioned here is high. In related crime categories, in other jurisdictions sexual harassment and sexual assault cases are between 5-10 times the numbers of rape cases. This suggests a clear underreporting bias in the NCRB data, at least in the case of Sexual Harassment.

(b) The reporting bias also varies from crime to crime and state to state. For instance in certain states, elopement of young couples often results in the registration, and hence over-reporting of rape cases.[11] The differences in reporting bias are dependant on cultural factors prevalent in each state, as also the efficiency or otherwise of the Police system in the state. Without appropriate estimates of such bias, the chances of drawing accurate conclusions of crime causality at the National level through the data are extremely poor.

(c) The data lacks rudimentary classifications, such as a split between urban, semi-urban and rural areas. Though current popular debates assume that crime against women may have different causal factors in these three different settings, not being able to compare them with the help of reliable empirical data is a severe handicap, and one that may be easily rectified even within the current framework.

We at the Law, Governance and Development Initiative at Azim Premji University are, like all persons interested in the state of our country, moved by recent events and eager to contribute our resources to the development of a more coherent and satisfactory legal framework for the detection, prosecution and resolution of cases of violence against women, especially rape, in the country. We believe that empirical analysis is imperative to shed light on various causal elements of crimes against women that may have hitherto gone unnoticed, and for that reason inter alia, strongly suggest that the committee include an empirical component in its discussion as also in its subsequent recommendations. Further, we are confident that the adoption of rigorous empirical analysis by the committee shall serve as a valuable precedent for the future, by creating greater awareness of the need as well as benefit of research-based policy making in the country.

2) Significant drawbacks of the current data regime and possibilities for reform

Given that the NCRB is the only provider of macro-level crime data in the country, it is vital for us to critically analyse its data collection procedures and methodology so as to ensure that we use it in an optimal manner, accounting for potential biases and inaccuracies.

The primary and most significant problem with the existing crime data in the country provided by the NCRB, is the outmoded collection mechanism. The NCRB crime data is based exclusively on cases registered by the Police. This practice is not entirely accurate for the simple reason that there are a variety of reasons why the police fail to register cases in many instances where a crime has been committed. These reasons vary from crime to crime, and from reasons such as political pressure to report fewer crimes, to lack of trust by the victim in the police mechanism.

Further, the failure to report is also dependent on cultural factors within states. This gap between the number of crimes committed and the number of crimes registered is known as the 'dark figure', and has been universally recognised to be a major drawback of systems of crime data collection that rely solely on cases registered by the police.[12] Arguably, this problem is even more significant in the Indian context, with the presence of increased political interference and a general skepticism towards the police force among the population[13].

The significance of the problem of under-reporting had been noticed by the National Police Commission in its eighth report in 1983. While discussing the system of recording of crime statistics and organisational accountability, the Commission recognised that the existing system created perverse incentives among the police force to suppress the registration of cases, with the connivance of their supervisors and the political class.[14] However, perhaps the most in-depth examination of the existing drawbacks in the Indian system of crime statistics is provided by the 2011 Report of the Committee on Criminal Statistics set up by the Ministry of Statistics and Programme Implementation[15].

Among the recommendations of the Committee on Criminal Statistics is the recommendation for the introduction of Crime Victimisation Surveys to compensate for the under-reporting tendencies under the current model. These surveys may be conducted at the household and institutional level, by asking respondents directly about their experiences regarding crime. The Committee notes that these surveys may be especially efficacious for the collection of accurate data regarding crimes against women, where for various reasons, case registration is particularly low.[16] The survey method is also much better suited to record relatively less severe or non-cognisable offences, which often go unreported on account of the reluctance of victims to approach the police for something that is deemed not serious enough, or the reluctance of the police to register offences for the same reason. In the case of crimes against women, the survey method may be able to give a far more accurate picture of crimes such as Sexual Harassment, which are more likely to be underreported, as our previous example has shown. Crime surveys

have proven to be efficacious in various other jurisdictions,[17] and their implementation in India might greatly improve the strength and viability of crime data in the country, as well as go some way towards revealing the true extent of the state of crimes against women.

Other noticeable problems are those relating to aggregation errors and time lag. As the data passes through at least four levels before the NCRB computes national aggregates[18], there needs to be a significant effort to ensure it is dealt with adequate care at each level, so as to avoid errors in aggregation that only get magnified at each level. Currently, there is no evidence that that is the case. Further, the report of the NCRB is released with a considerable lag of about two years from the time of currency of the data. This compares poorly with the rates of data publication in other jurisdictions.[19]

Lastly, we may also state that the recording and publication of reliable data through both methods of cases registered as well as victim surveys shall prove to be highly beneficial to the process of an international comparative analysis of crime data. Comparative criminological studies may be potentially highly beneficial in the identification of causalities unique to our country, as also in learning lessons from countries with a good record in handling particular types of cases such as crimes against women. For these purposes, reliable crime statistics are essential.[20]

Concluding remarks

Through the course of this submission, it has been our aim to outline to your Committee the urgent need to enter into a close empirical examination while preparing recommendations for reform of the law relating to sexual violence in the country. The urgency of dealing with law and legal system reform relating to rape and sexual violence is certainly a welcome development. Our enthusiasm to amend the law must be fortified with an intimate understanding of its mechanisms and outcomes of the legal system. We have tried to show that such a reform programme must rest on a sound empirical understanding of crime in India. We believe that your Committee has the opportunity to reshape the discourse on criminal law reform in India by recommending reform of empirical data generation on crime in India. This single recommendation has the potential to create a new enduring foundation for reform of the criminal law and the legal system in India for the 21st century.

1] See Grunhut, Max; Statistics in Criminology, Journal of the Royal Statistical Society. Series A (General), Vol. 114, No. 2 (1951), pp.139-162, for an earlier statement of the precise role of statistics in criminology, as well as a review of the different uses found for statistical analysis in criminological projects.

[2] Sellin, Thorsten; The Uniform Criminal Statistics Act, Journal of Criminal Law and Criminology (1931-1951), Vol. 40, No. 6 (Mar. – Apr.,1950), pp. 679-700 uses similar ideas while outlining the need for a centralized system of accounting for statistical data in the United States of America.

[3] Supra 1, 2; See further Macdonald, Ziggy; Official Crime Statistics: Their Use and Interpretation, The Economic Journ al, Vol. 112, No. 477, Features (Feb., 2002), pp. F85-F106;

 [4] Supra 1

[5] See Crime in India 2011, National Crime Records Bureau, Ministry of Home Affairs, Government of India, New Delhi, 2011 as an example.

[6] See Crime in India, Editorial, Economic and Political Weekly, January 19, 2008

[7] See generally Dreze, J and Reetika Khera: 'Crime, Gender and Society in India: Some Clues from Homicide Data', Social Security in India, Seminar Papers, Institute for Human Development and Indian Society for Labour Economics, (1999) April 15-17.; Mukherjee, Chandan, Preet Rustagi and N. Krishnaji, Crimes against women in India; Analysis of Official Statistics, Economic and Political Weekly, October 27, 2001, pp. 4070-4080; Mayer, Peter Baldwin, Lance Brennan , Ralph Shlomowicz, and John McDonald, Is North India violent because it has a surplus of men? Proceedings of the 17th Biennial Conference of the Asian Studies Association of Australia, 1-3 July, 2008

[8] Section 376 IPC

[9] Section 354 IPC

[10] Section 509 IPC

[11] See Chowdhry, Prem; Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India, Oxford University Press, New Delhi, 2007

[12] Supra 1,3; See also Walker, Monica; Some Problems in Interpreting Statistics Relating to Crime, Journal of the Royal Statistical Society. Series A (General), Vol. 146, No. 3 (1983), pp.281-293

[13] For an examination of the general failure of the police in India to register cases, as well as reluctance to do so in specific contexts, see Broken System: Dysfunction, Abuse and Impunity in the Indian Police, Human Rights Watch Report, August 2009, at pages 41-57

[14] Government of India (1983) Report of National Police Commission (NPC), Volume 8, at paragraph 61.37.

[15] Report of the Committee on Crime Statistics, Social Statistics Division, Central Statistics Office, Ministry of Statistics and Programme Implementation, New Delhi, 2011

[16] Ibid, at paragraphs 8.2-8.3

[17] For instance The British Crime Survey in the United Kingdom and the National Crime Victimization Survey in the United States of America.

[18] See Ibid 15 for a description of the various levels the crime data is processed through before being arranged by the NCRB.

[19] For instance, crime data in the United Kingdom is published on a quarterly basis. See User Guide to the Home Office Crime Statistics, United Kingdom Home Office, October 2011 available at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/user-guide-crime-statistics/user-guide-crime-statistics?view=Binary last accessed 1554 on 5/01/2013

[20] Mugellini, Giulia. International Crime Statistics, why they are needed, how they should be improved and what has been done so far, ON CRIME AND SOCIETY 7 (2008): 77.