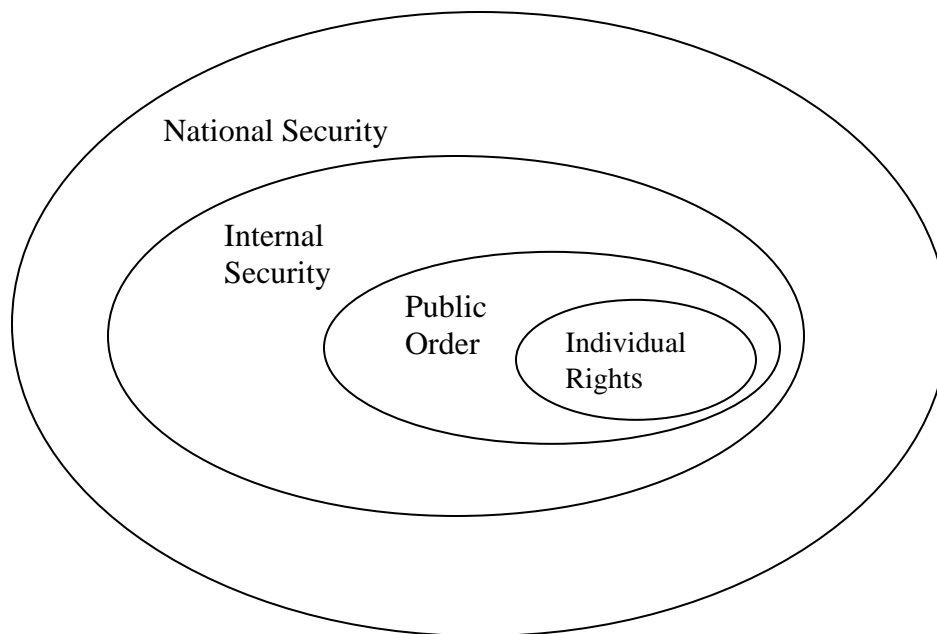


## **Efficacy of the Contemporary Criminal Justice System to meet National Security Challenges**

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National Security is a vast canvas that presupposes several layers of State-Individual interactions.



The Criminal justice system in India is torn between the law enforcement agencies, which approach the above question from outside- in and the judiciary, which sees the above paradigm inside-out.

This engenders a chronic suspicion and distrust in the Legal System against the Police and a perpetual scorn in the police against the Legal System.

When dealing with issues of National Security, so very often law enforcement officers seek remedy outside the Criminal Justice System than within.

The strength of any legal system depends on how it responds in all situations, be it times of stress or of peace, be it moments of progress or of great economic challenge. A legal system that offers answer to all situations is truly a mature legal system.

There are many who believe that the present legal system is inadequate to meet the challenges of a society where incidents of violence are increasing. The truth is that there are neither simple and safe antidotes to terror nor any failsafe preventive. Indeed, a recent international intelligence survey placed India fourth on the hit list of terrorists.

Blueprints for intelligence and police reforms as well as excellent ideas to improve the criminal justice system have been around for years. Sadly, these ideas have not been turned into a tangible agenda for change and improvement.

It is the investigation process of the police and the evidence that it develops that serves essentially as the gateway to this system, as the police initiate most criminal matters that other components of the justice system deal with. The information collection efforts and decisions made during the investigation by police officers are key determinants of whether or not any other elements of the system will ever become involved.

The quality and thoroughness of police investigations also affect how prosecutors dispose of them. In this sense, the police directly influence the amount and quality of evidence available for prosecution. The police investigation process also influences the workload and activities of the court systems. The police investigation process generates many of the legal issues that are raised and adjudicated in courts.

Issues involving police searches, seizures of property, detention, arrest, interrogations, the use of force, and the handling of evidence, are critical areas of legal debate that have long histories in the judicial decision-making process. Aspects of each of these issues are integral to the investigation process, and investigative activities both shape and are shaped by legal arguments and outcomes in these areas. Even the court sentencing process is directly impacted by the presence of physical evidence in police investigations.

However, improvements in the productivity of a single element, such as an increase in police case detection rates through the improved quality of investigation, will increase the workload of other system elements. Increasing workloads without bringing about reforms to handle the additional work may prove to be futile.

The inability of one component to take advantage of improvements in another could have negative repercussions on new reform programs and could also decrease the confidence of the public in the value of investing more resources in a system that yields counterproductive results.

Judicial officers and prosecutors across the country have to be systematically **sensitised** to the various National Security Issues facing the country today. Police officers bringing accused and suspects before the courts in such cases have to produce the **background**, history and the MO of the anti-national outfit, to which the person belongs, before the presiding officer.

**Special Acts** to deal with organised crime, anti-national and subversive activities have to be enacted and implemented.

A **centralised agency** to monitor and investigate anti- national crime has to be created with officers drawn from the state police organisations, CBI, IB, RAW, ED, NCB, Customs & Excise, NSG with experts from law, accounting, telecom and I.T.

**Organisational changes** are needed to develop more fully a problem solving approach to criminal investigations, to deal with heavy workload on the investigators, to move away from the generalist-oriented to exclusive crime investigators at the field level. The process of supervision of investigation of crime also need to be redefined in order to bring about more accountability on the part of the supervising officer for all the decisions taken and instructions given by in regard to the progress and final fate of the criminal case.

Recording evidence of the witnesses by **videoconferencing** during trial: s. 167 Cr.P.C has been amended in A.P. and T.N. to provide for production of the accused persons to the magistrate through electronic video linkage for the purpose of remand. The Supreme Court has recently (1.4.2003) held that

so long as the accused and/or his pleader are present when evidence is recorded by video conferencing, that evidence would fully meet the requirements of s.273 of the code and such evidence would be as per procedure established by law (The State of Maharashtra v. Dr Praful B.Desai, JT 2003 (3) SC 382). The court laid down some conditions relating to procedure and manner of recording such evidence and issue of commissions etc. Taking advantage of this ruling, we may standardize the systems and **procedures of recording evidence** in the courts across the country. This will enable recording of evidence and do away with the risk in moving the high-risk prisoners who face trial in different courts across the country. This will also enable recording of evidence of experts and also witnesses who reside abroad without incurring the enormous cost of bringing them to the trial court.

**Mobile evidence collection teams:** Many cases fail in the courts primarily because all the evidence available at the scene of crime are not collected properly but allowed to be destroyed and where they are collected they are not preserved intact for analysis in the FSL subsequently. In order to preserve the scene of crime and collection of evidence in a credible manner, mobile evidence collection teams need to be formed on the pattern of “CLUES” teams that have been deployed in this state. Deploying two such teams with trained technicians in each district will prove very useful in investigation of serious crimes. Finding resource and selection and training of manpower are the issues to be settled.

**Conducting searches in a computerized environment:** Conducting searches in an electronic environment is a new challenge to the investigators

in the wake of many scams in the stock markets, non-banking financial companies, co-operative banks etc. In a classical search scene, the investigator can visually identify the objects, which may contain evidence and decide whether or not to seize it on-scene. Often, this is not the case with electronic evidence. Important evidence may be overlooked or damaged if proper seizure and examination procedures are not used. While the forensic examination process can be undertaken later in the FSL, we need to train our investigators on the methodology to be used to examine and seize electronic evidence. A guide for this purpose also needs to be prepared and circulated.