

# Session 4: Civil Procedural Reforms



Saturday, 27 Feb 2021  
9:00 AM - 11:00 AM



**Shri N.L. Rajah**

*Senior Advocate, Madras High Court*

*(Chair)*



**Dr. Sudhir Krishnaswamy**

*Vice-Chancellor, National Law School of India University*



**Justice (Dr.) Shalini Phansalkar Joshi**

*Former Judge, Bombay High Court*



**Shri Hiram E. Chodosh**

*President, Claremont McKenna College*

- The session will begin with a 5 minute presentation from FDR.
- The Chair for the session will first present his views for 10-12 minutes.
- The Chair will then call upon each speaker, who will also have 10-12 minutes to share their insights.
- Post that, the Chair may open the session for a panel discussion.
- The last 30-45 minutes will be dedicated to taking questions from the audience.
- We request the participants to keep the questions brief and lucid and also mention the panelist that they would like the question to be directed to.

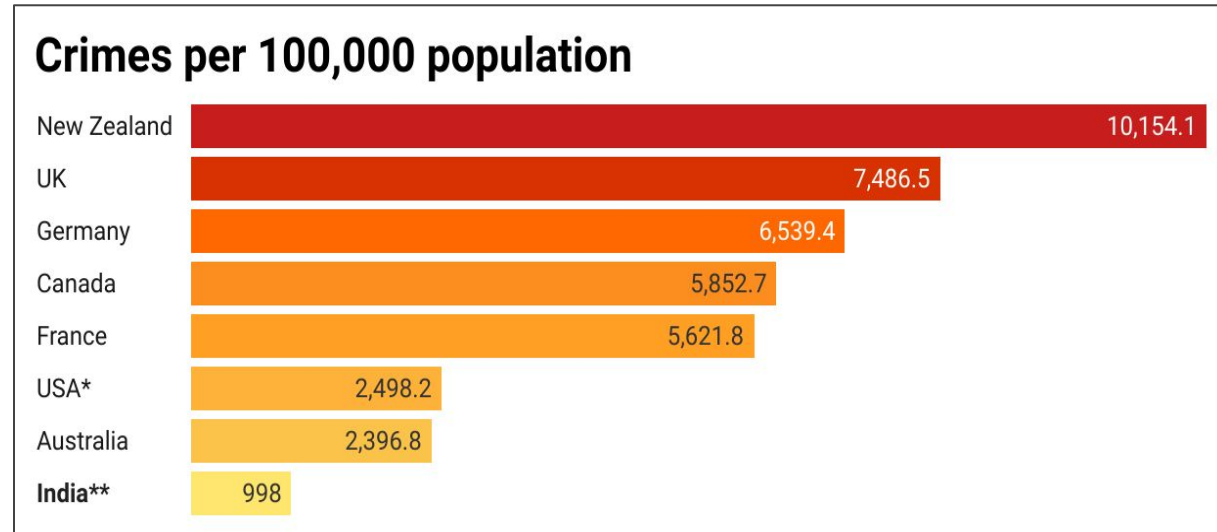
- Criminal Caseload significantly **outnumbers** civil caseload by a ratio of **4:1**

**Table 1: Civil and Criminal caseload by Country**

| Country              | Cases Filed/100,000 Population (2019) |          | Civil Cases Filed in a Year: Criminal Cases Filed in a Year Ratio |
|----------------------|---------------------------------------|----------|---|
|                      | Civil                                 | Criminal |   |
| India                | 257                                   | 998      | 1 : 3.9   |
| USA (Federal Courts) | 91                                    | 28       | 1 : 0.3   |
| USA (State Courts)*  | 5203                                  | 5045     | 1 : 0.9   |
| UK                   | 3435                                  | 2371     | 1 : 0.7   |

\*Does not include Small Claims, Juvenile, Domestic Relations and Traffic Violations, data for 16 states is missing.  
*Sources - National Judicial Data Grid, US Courts data tables, US National Center for State Courts, UK House of Commons*

Figure 1: Crime Rate by Country



*\*USA includes only violent and property crimes \*\* India includes cognizable and non-cognizable offences*

*Sources: Various countries' official crime statistics compiled by FDR*

- Per capita crime rate in India is very low compared to all other democracies, yet criminal cases **outweigh** the civil cases. (As indicated in Figure 2)
- Indicates that people are **avoiding** judicial intervention in civil dispute resolution.

# The Problem - Pendency and Delay



**Figure 2: Age-wise Pendency of Civil Cases in Trial Courts**

- **Pendency** - Nearly 10 million civil cases are pending in the trial courts alone
- **Delay** - About 80% of them have been pending for more than an year!



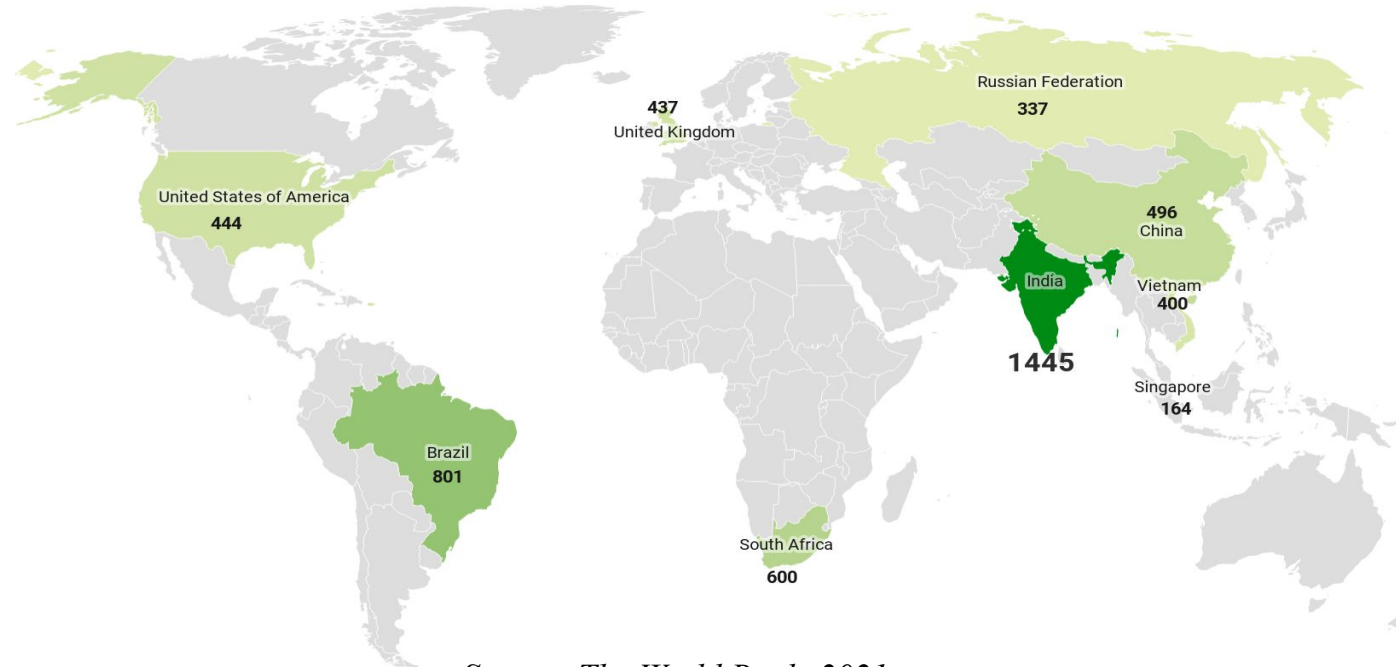
|                  |         |           |
|------------------|---------|-----------|
| 0 to 1 years:-   | 2254819 | (22.29 %) |
| 1 to 3 years:-   | 3621403 | (35.79 %) |
| 3 to 5 years:-   | 1782570 | (17.62 %) |
| 5 to 10 years:-  | 1723817 | (17.04 %) |
| 10 to 20 years:- | 576072  | (5.69 %)  |
| 20 to 30 years:- | 119826  | (1.18 %)  |
| above 30 years:- | 39223   | (0.39 %)  |

*Source: National Judicial Data Grid, 10 February 2020*

# The Problem - Poor Enforcement of Contracts

- Indian courts take **1,445 days** on an average to **enforce a contract**, as opposed to the global trend of about 400 days.
- While India ranks 63 out of 190 economies in Ease of Doing Business overall, it ranks **163** in terms of contract enforcement.

**Figure 3: Time required to enforce a contract (days) in Major Economies**



*Source: The World Bank, 2021*

# Causes, Consequences, and Corrective Measures



- Excessive **judicial passivity** in conduct of trials and **poor communication** between the litigants and the court lead to inefficient justice delivery.
- Backlogs and delays in disposal give way for **routine granting of interim injunctions** and a **protracted and discontinuous trial process**.
- Several **attempts at reform** were made in the past but **without much success** - limiting the number of adjournments, enabling imposition of costs, promoting alternative dispute resolution mechanisms.
- Institutionalisation of a **case management system** which allows for prioritisation and targeted utilisation of judicial resources is the need of the hour.
- As there is no scope for distinguishing issues of real contention under the existing procedure, every issue is **pursued irrespective of time and expense**.

- The **Supreme Court appointed Committee** (Salem Advocate Bar Association, TN v. Union of India) recommended draft rules for adoption by High Courts.
- 17 High Courts have drafted such Rules for subordinate courts.

**Table 2: Proposed Track System**

| Track   | Prescribed Time for Disposal | Case Type   |
|---------|------------------------------|---|
| Track 1 | 6 months                     | Family matters - divorce; child custody; adoption; maintenance            |
| Track 2 | 9 months                     | Money suits; suits based primarily on documents                           |
| Track 3 | 12 months                    | Partition and like property disputes; trademarks, copyrights and other IP |
| Track 4 | 18 months                    | Rent; lease; eviction matters and so on                                   |

*Channeled based on nature of dispute, evidence to be examined, time taken for completion by a court / judge / judges nominated for that purpose*

Source: Source: Consultation Paper on Case Management, Law Commission of India



- However, they do not extend to all elements of a case management system.

**Table 3: Elements of a Case Management System**

| Element  | Advantage   |
|--|---|
| Track system   | Distinguishing between cases based on complexity, and issues in contention                                      |
| Elaborate pre-trial process [pre-trial hearings; disclosure of information by parties] | Encourage settlement, or to strictly determine the scope of dispute so that trial is shorter and less expensive |
| Alternative Dispute Resolution mechanisms  | Enable large-scale settlement of cases so that only really deserving cases proceed to trial                     |
| Summary judgment   | Expedite disposal of weak cases or issues   |
| Timetable for each stage in the case   | Ensure swift disposal   |

Source: Access to Justice- Final Report, 1996 by Sir Harry Woolf, UK

- The Commercial Courts Act, 2015 - enacted to provide a **platform for expeditious resolution** of commercial disputes to enhance investor confidence, international perception of Indian justice delivery system and thereby propel economic growth.
- Provided for a new procedural framework with certain elements of Case Management System.

**Table 4: Additions to the CPC for Commercial Cases**

|                                |   |
|--------------------------------|---|
| <b>Disclosure</b>              | Parties mandatorily required to submit all documents relevant to the dispute at the very beginning                  |
| <b>Summary Judgment</b>        | Decision to be made without oral evidence in cases where one of the parties has no real prospects of success        |
| <b>Case Management Hearing</b> | Mandatory hearing to decide the schedule of the trial, which cannot exceed six months from the date of this hearing |

# Commercial Courts - Concerns



- It is evident that the intention behind the Act has **not translated into practice**.
- Operation of the Act has given rise to several issues that need to be addressed -
  1. **Subject-matter jurisdiction** - is the definition of 'Commercial Disputes' too wide?
    - 'Commercial disputes' includes disputes arising out of ordinary transactions of *merchants, bankers, financiers and traders* relating to 22 categories of documents
  2. **Pecuniary jurisdiction** - is the pecuniary threshold of Rs. 3 lakhs too low?
    - 2015 Act stipulated Rs 1 Cr, reduced by an amendment in 2018
  3. **Establishment of Commercial Courts** - at which level of the civil court system must these courts be established?
    - Originally envisaged at the HC level, later provided for even at the District and Subordinate Courts levels.

# Pecuniary Jurisdiction of Civil Courts



- Provided by the Civil Courts Acts of each state; to be determined based on the local conditions and needs.
- Periodic review and revision is necessary for a efficient litigation in a court system that is responsive to a dynamic economic system.
- **Original Jurisdiction** - pecuniary limits must be enhanced to suit current requirements

**Table 5 - Illustrative Pecuniary Limits (Original)**

|  |  |
|--|--|
| <b>District Court</b>                  | Unlimited                              |
| <b>Civil Judge (Senior Division)</b>   | Above Rs.2 million, up to Rs.5 million |
| <b>Civil Judge (Junior Division)</b>   | Above Rs.500,000, up to Rs.2 million   |
| <b>Small Causes Court/ Local Court</b> | Up to Rs.500,000                       |

- **Appellate Jurisdiction -**
  - Restrict scope of second appeal to suits valued above a certain pecuniary threshold, say Rs 2 million
  - A maximum of one appeal for suits valued upto Rs 2 million
  - Amend S.102 CPC accordingly
- A statutory mandate for **review** every 3 years may be imposed