

# Session 1A: Addressing Challenges of Modern Policing



Saturday, 20 Feb 2021  
11:00 AM - 1:30 PM



**Shri K. Padmanabhaiah**

*Former Union Home Secretary*

*(Chair)*



**Shri Raj S. Kohli**

*Chief Superintendent,  
Metropolitan Police*



**Smt. Maja Daruwala**

*Senior Advisor, Commonwealth  
Human Rights Initiative*



**Shri V.N. Rai**

*Former Director General of  
Police, Uttar Pradesh*



**Shri Kamal Kumar**

*Former Director, SVP  
National Police Academy*



**Shri Jacob Punnoose**

*Former Director General of  
Police, Kerala*

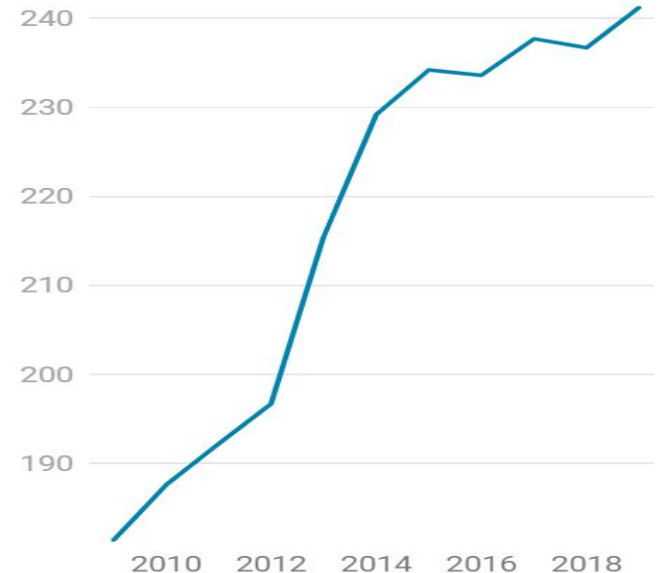
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# Modern policing is difficult



- Social controls are **weakening** with rapid **urbanization**, leading to **rise in crime**
- Nature of crime is **evolving** - economic crime, cybercrime, organized crime, trans-national syndicates on the rise
- **Governance problems** often morph into public order problems due to polarized public discourse
- Functioning of the police is still based on **primitive** methods and **obsolete** procedures

**Figure 1: Crimes per 100,000 population by Year**



*Source: National Crime Records Bureau*

# Image of police is distorted



- Perceived as **tardy, inefficient, high-handed, insensitive** and **unresponsive**
- Seen as instruments of **abuse of power**, rather than as a protector of the people
- Status of Policing in India report 2019 -
  - **4** out of **5** personnel believe that there is nothing wrong in the police **beating up** criminals to extract confessions
  - **2** out of **5** personnel believe people are **hesitant** to approach them even when there is a need
  - **3** out of **5** personnel believe that the number of crimes reported are **lesser** than the number of crimes committed in the society

# Police are stretched to the limit



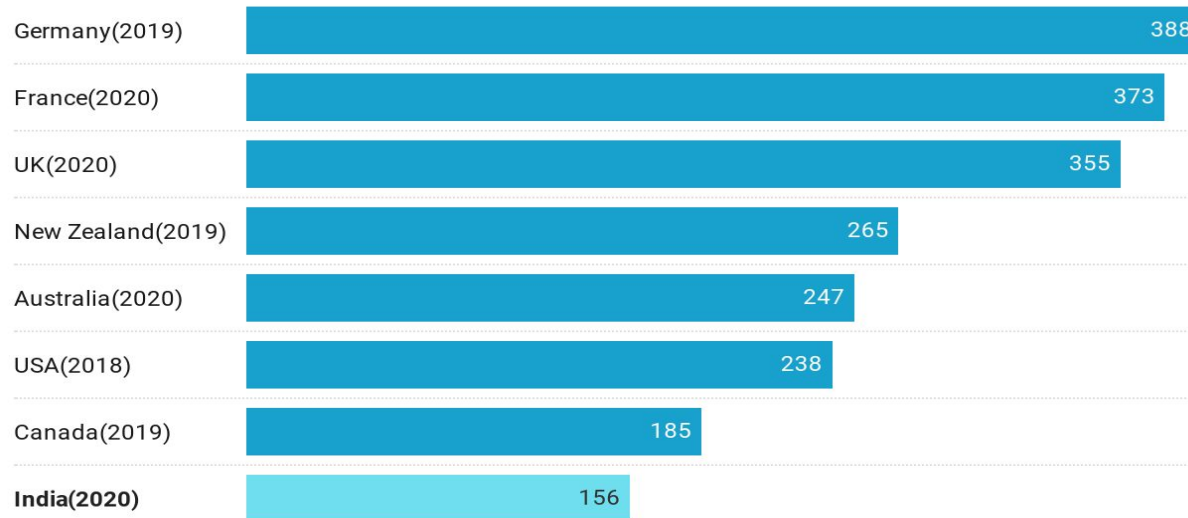
- High degree of concentration of functions in a single force
- **Multifarious duties include but not limited to:**
  - ❑ Crime investigation
  - ❑ Riot control
  - ❑ Intelligence gathering
  - ❑ Security of state properties
  - ❑ Protection of important citizens
  - ❑ Traffic control
  - ❑ Ceremonial and guard duties
  - ❑ Service of summons and production of witnesses in courts
  - ❑ VIP bandobast

**Less than 2%  
of the strength  
is in the crime  
investigation  
department!**

# Police are stretched to the limit

- Severe shortage of personnel further aggravates the burden on the force

**Figure 2: Police per 100,000 population**



*Note: Police per 100,000 population in India is 156 at actual strength and 195 at the sanctioned strength.  
Source: Various countries' government police workforce data compiled by FDR*

# Inadequate training and technology to meet growing challenges

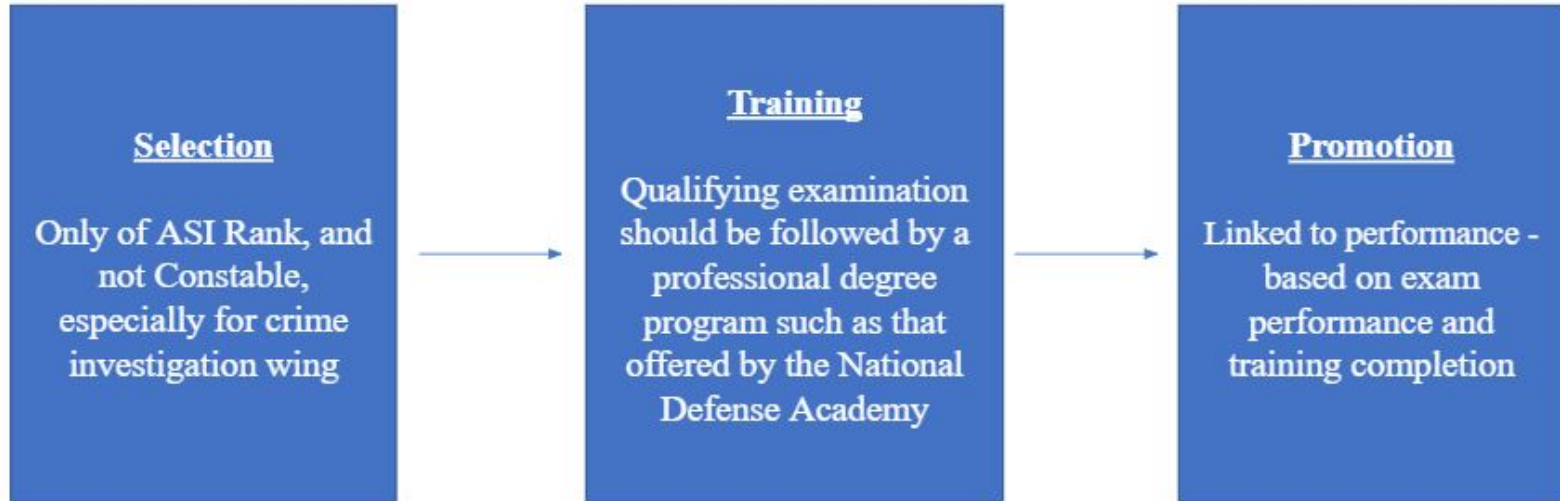


- Police training has been one of the most **neglected** areas over the years
- The state training academies are **ill-equipped** and face a **paucity of funds**
  - Only **1.12%** of the entire police expenditure was dedicated to police training in 2019-20
- Training methods are **outdated**, with a greater focus on ‘**discipline and regimentation**’ than the **behavioural** aspect of policing
- Resources, technology, weapons and procedures available to the police have **not kept pace with the times**
  - Actual expenditure on police modernization was **less than half** of the total grant
  - **Forensic** capability falls short of global standards by a mile

- Fill up **vacancies** and sanction **additional** posts based on the population and workload
- **Reorganising** the police force
  - Ensure **autonomy** with **accountability** and improve **specialization** and **professionalism** for better **efficiency**
    - ❑ Law and order
    - ❑ Crime investigation
    - ❑ Local policing
- Certain functions currently performed by the police can be **outsourced to private players, to reduce the burden** on the understaffed force. Ex: VIP security



- **Recruitment at entry level for specialized agencies -**



- **Joint** training programs for the police, public prosecutors and magistrates to improve coordination
- Focus on **sensitizing** police to **citizens' needs**, especially poor, socially backward classes, and women

# Session 1B: Addressing Challenges of Modern Policing



Saturday, 20 Feb 2021  
5:00 PM - 7:30 PM



**Smt. Aruna Bahuguna**

*Former Director, SVP National  
Police Academy*

*(Chair)*



**Shri M. Mahender Reddy**

*Director General of Police,  
Telangana*



**Dr. Gandhi P.C. Kaza**

*Founder Chairman, Truth Labs*



**Dr. Vipul Mudgal**

*Director, Common Cause*



**Shri Mohit Rao**

*Independent Journalist*

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- Overstretched police and multifarious duties
- Insufficient training to handle evolving crimes and citizen's expectations
- Burden on the police force is compounded as governance problems morph into law and order challenges
  - In a democracy, that the law enforcement agencies cannot resort to arbitrary use of brute force is non negotiable
  - Respecting the right of legitimate protest is vital too
  - The police bear the brunt of the public outrage in light of most governance failures
  - Our crowd control methods are obsolete

# Inadequate support system affects police efficiency



- Ill-equipped to efficiently discharge duties
  - Mobility
  - Communications
  - Forensics

## **Status of Policing in India report 2019 -**

- 240 police stations across the selected states do not have access to a single vehicle
- 70 police stations do not have the basic communication infrastructure of wireless devices
- 224 police stations have no telephone
- Some police stations do not have wireless and telephones

# Inadequate support system affects police efficiency



## Poor state of forensic infrastructure in the country

- India has **7** central forensic laboratories that are well-equipped and **30** state Forensic Science Laboratories with indifferent infrastructure.
- Of the 37 labs, only about **10** have the capability of handling DNA and test about **20,000** DNA samples annually.
- An average of 6 samples are tested for any given case, this translates to DNA testing in **4000** cases per year.
- There were **11,313** violent crimes in Delhi alone in 2019.

**Figure 1: Forensic Infrastructure in India and the USA**

Country	Number of Forensic Labs	Number of DNA Samples Tested in a Year
India	37*	20,000 (2019)
USA	409	1,200,000 (2014)

*\* 7 well-equipped Central Labs, 30 state labs with indifferent infrastructure*

*Sources: Indian Forensic expert, GTH-GA estimates for India, Bureau of Justice Statistics US*

# Inadequate support system affects police efficiency



- In such circumstances, the police are under tremendous pressure to produce short term results by hook or crook!
  - Coercion and confessions
  - Extra-judicial alternatives to render justice
- Haryana Police claimed to have solved the Ryan school murder case within minutes, charging bus conductor Ashok Kumar as the killer of a 7-year-old. However, the CBI later found that Kumar was falsely accused in the case.
- In 2019, the Disha rape and murder case sparked outrage across India. Four suspects were arrested and were shot dead in an alleged encounter with the police. **While it is important to extend appropriate punishment to the perpetrators of the crime, this must not circumvent the due process of law! Due process is achievable only if the support system is adequately equipped.**

# Proposed forensic infrastructure for the country



	LEVEL	INFRASTRUCTURE	CAPABILITY
↓	State	Forensic Headquarters	All divisions with full fledged DNA, narcotics, documents
	Urban Major Centre	Regional Forensic Lab	5-7 Sections, with toxicology, Serology, DNA
	District	District Forensic Lab	2-3 sections, Post Moterm division
	SDPO	Subdivisional Lab	Mobile Labs with crime scene processing
	Police Circle	Evidence Collection Kit	Crime scene processing



# Money is not a constraint!



- The proposed model should be set up in addition to the existing 7 Central Forensic Labs
- The capital cost of the proposed model is around Rs. 5000 crore
- Annual recurring cost of the set-up can be presumed to be at 50% of the capital cost
- A country that spends Rs. 12000 crore daily, spending this sum to ensure a fair and efficient justice is not too much to ask for!

- Community policing is essential for:
  - Constant **communication** and **collaboration** with community members, providing a source of valuable information for crime investigation
  - **Proactive** response leading to significant reduction in crime rates
  - Enhanced **trust** and **confidence** of the public in the police system
- At the ratio of **1** policeman per **5000** residents, **~5%** of the regular police force must work as **community** police or beat police embedded within the community
  - In urban areas, small, **mobile** and effective units of community police under local control
  - In rural areas, police drawn from the local community, from among the **local residents**
- Regular meetings with community members for discussion of local problems and jointly formulating a **local policing strategy**

# Session 2: Strengthening Investigation and Prosecution



Sunday, 21 Feb 2021  
9:00 AM - 11:00 AM



**Justice B.S. Chauhan**  
*Chairman, 21st Law Commission of India*  
(Chair)



**Shri C. Anjaneya Reddy**  
*Former Director General of Police, Andhra Pradesh*



**Dr. Jayaprakash Narayan**  
*General Secretary, Foundation for Democratic Reforms*



**Shri D.R. Kaarthikeyan**  
*Former Director, Central Bureau of Investigation*



**Justice M.L. Tahaliyani**  
*Former Judge, Bombay High Court*

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## **Shoddy investigation**

- Noida, 2008 - Arushi Talwar double murder case ‘unsolved’ to date owing to a shoddy investigation and mishandling of evidence by the police

## **3rd degree torture to coerce confessions**

- Gurugram, 2018 - Ashok Kumar viciously tortured and framed by Harayana police due to pressure and haste to charge somebody for the murder of a seven year old school boy

## **Political control of crime investigation**

- Hathras, 2020 - Disruption and interference of administration in investigation of gang rape of young woman

## **Lack of trust in the criminal justice system and public pressure on police**

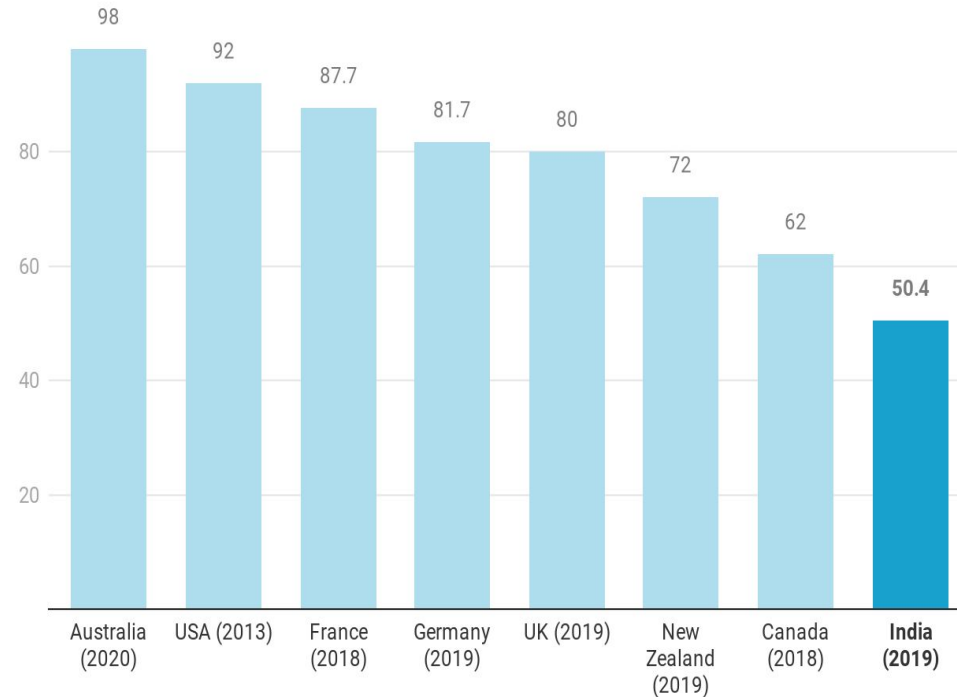
- Hyderabad, 2019 - Extra-judicial killing of four accused in Disha rape and murder case to produce short term results celebrated by public

# Abysmal Conviction Rate

## Lowest conviction rate among major democracies!

- Most of the convicted criminals are **poor** and are not able to hire competent lawyers
- In many cases, third degree methods are applied to **coerce a confession**, resulting in conviction
- Without confession, India's conviction rate is much less

Figure 1: Country-wise Conviction Rate



*Note: India includes only IPC crimes.*

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

# Challenge: Inadequate Resources



- Highly understaffed, ill-equipped and insufficiently trained crime investigation departments
- Nearly **60%** of the officers in the CB-CIDs are of the ranks of **Head Constable** and **Constable**
- Lack of state-of-the-art **forensic technology and infrastructure**

**Table 1:  
Strength of  
CB-CIDs in  
Major  
States**

State	Actual Strength of CB-CID
Andhra Pradesh	480
Bihar	838
Delhi	1442
Gujarat	321
Haryana	2193
Karnataka	426
Kerala	1047
Madhya Pradesh	582
Maharashtra	1898
Punjab	121
Tamil Nadu	1533
Telangana	506
Uttar Pradesh	365
West Bengal	1712

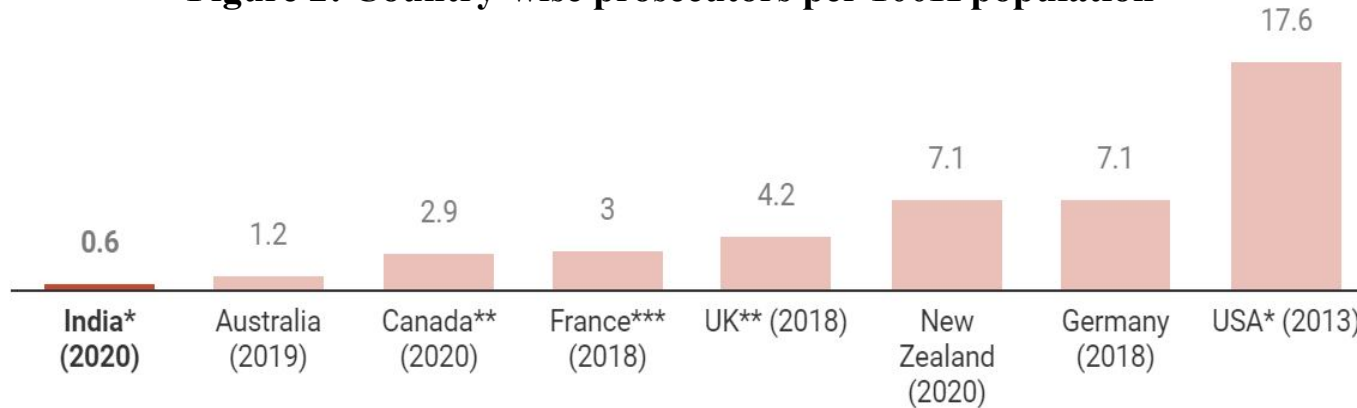
*Source: National Crime Records Bureau, 2020*

# Challenge: Inadequate Resources



- 1 public prosecutor in India per **150,000** population, 1 public prosecutor in US per **6000** population
- India has **more judges than prosecutors!**
- The caseload per prosecutor of serious crimes in India is **68 cases annually**, nearly **9 times** the caseload handled by the prosecutors in the US

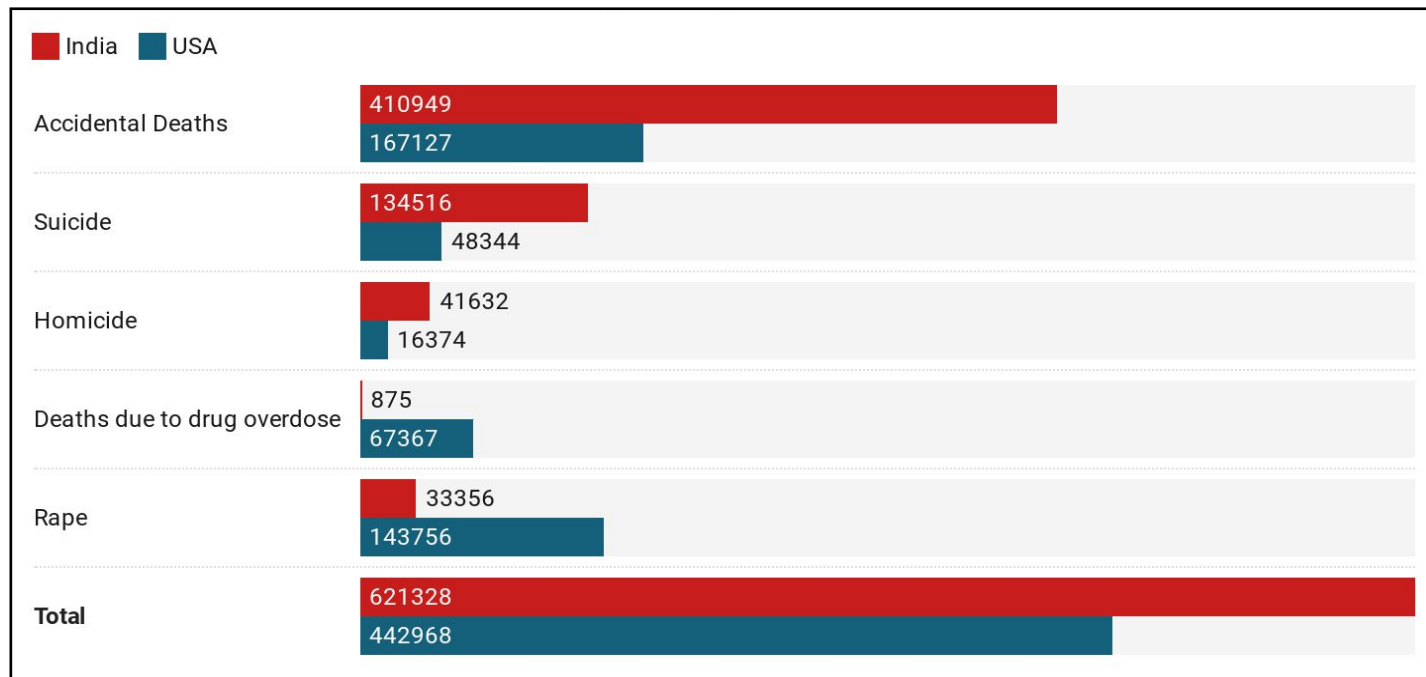
**Figure 2: Country-wise prosecutors per 100K population**



\* 1.84 Federal Prosecutors + 15.79 State prosecutors per 100,000 population in US \*\* Canada and Australia include only federal prosecutors. Data on state prosecutors is not available. Source: Various countries' government statistics compiled by FDR

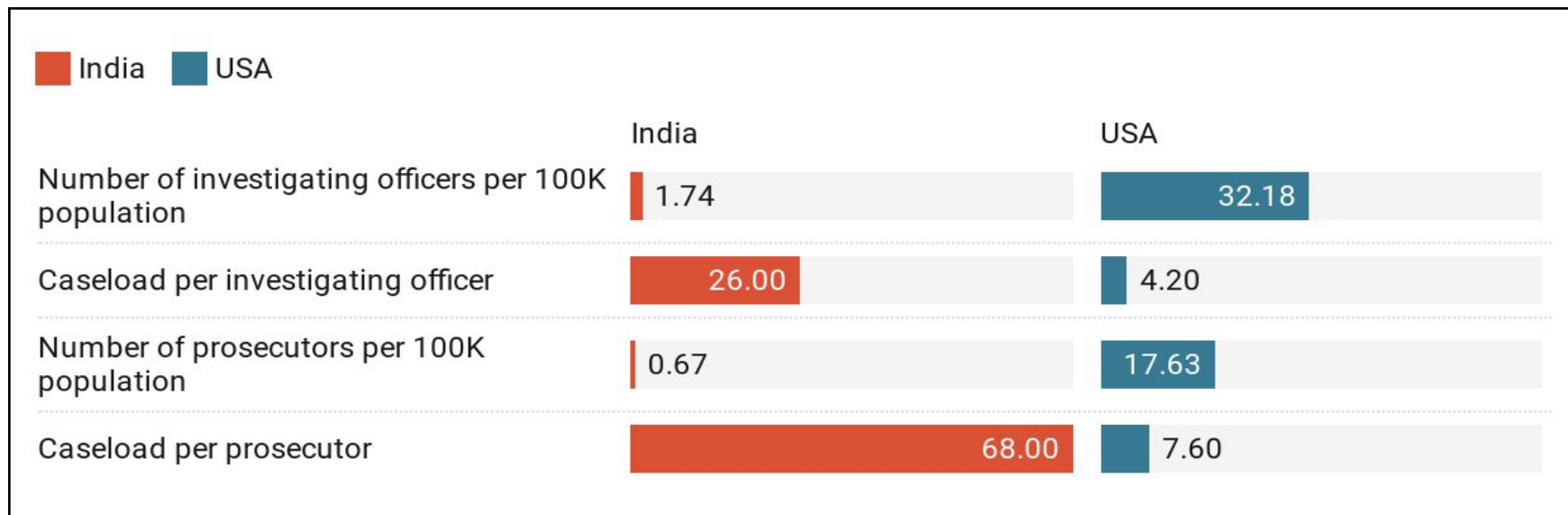


**Figure 3: Serious Crimes and Unnatural Deaths in India and US**



*Sources: National Crime Records Bureau 2018, Center for Disease Control and Prevention 2018, Federal Bureau of Investigation 2018*

**Figure 4: Strength of Investigating Officers and Prosecutors in India and US**



*Sources: Bureau of Police Research and Development 2020, Bureau of Labour Statistics US 2019, Bureau of Justice Statistics US 2013*

# Challenge: Undue Political Interference in Crime Investigation



- Law and order functions require **political oversight**
- Job of the investigation wing is to collect evidence admissible in the court of law - a **quasi-judicial function**
- Investigation of serious crimes requires **knowledge, skill, sophistication, and professionalism**
- **Concentration** of functions in a single police force - crime investigation has become a plaything of partisan politics
- **Fairness and objectivity** of the investigation process is always suspect

# Challenge: Poor Coordination between Investigation and Prosecution



- Crime investigation and prosecution work in **silos**
- Investigation is largely conducted by the police **on their own**
- Prosecution takes over the case only **after the chargesheet is filed in court**
- **No scrutiny of evidence** before filing
- Lacunae in investigation **cannot be rectified**
- **Blame each other** for lapses
- Lack of convergence leads to **erosion of the credibility** of the justice system

## Box 1: Nexus Between Crime Investigation and Prosecution

*The purposes of a criminal investigation are to:*

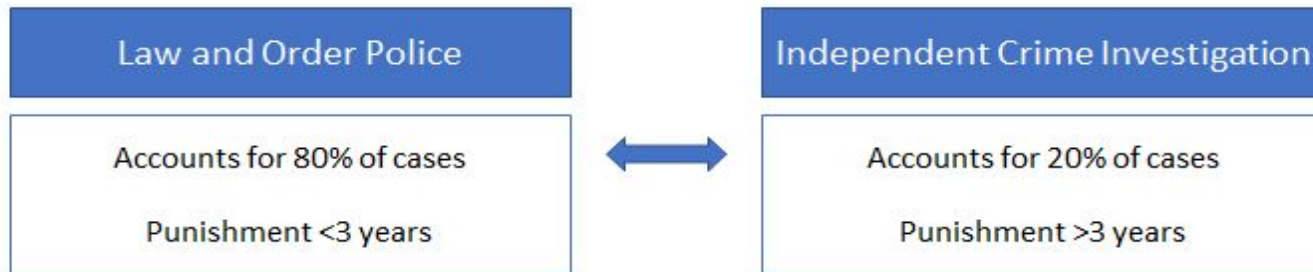
- (i) develop sufficient factual information to enable the prosecutor to make a fair and objective determination of whether and what charges should be brought and to guard against prosecution of the innocent, and*
- (ii) develop legally admissible evidence sufficient to obtain and sustain a conviction of those who are guilty and warrant prosecution.*

Source: Criminal Justice Standards: Prosecutorial Investigations, American Bar Association

# Reform: Independent Crime Investigation Wing



- Specialized **independent** crime investigation wing
  - **Non-partisan, autonomous, professional, accountable and transparent**
  - Crimes punishable by **3 years or more** imprisonment (~20% cases registered in a year)
  - No routine **inter-agency transfer** between two wings
  - Effective **coordination** mechanisms to maintain synergy



Absorb → Retain → Develop Expertise

- Restructuring for improved **specialization, professionalism, and efficiency**
- Requirement of over **100,000 investigating officers** in the whole country
  - Officers of the rank of ASI and above selectively recruited from the existing force
    - About **5%** of the current strength
  - Eventually, direct recruitment can be made through a specialized cadre
- Flat structure with **tasks** and **teams** being the focus
- Build **technical expertise**
  - Forensic infrastructure, medical examiner's office and other technical experts to deal with cybercrime and financial fraud
- **Accountable** to an independent Crime Investigation and Prosecution Board

# Reform: Independent Crime Investigation Wing



**Figure 5:  
Constitution of an  
Independent Crime  
Investigation Wing**

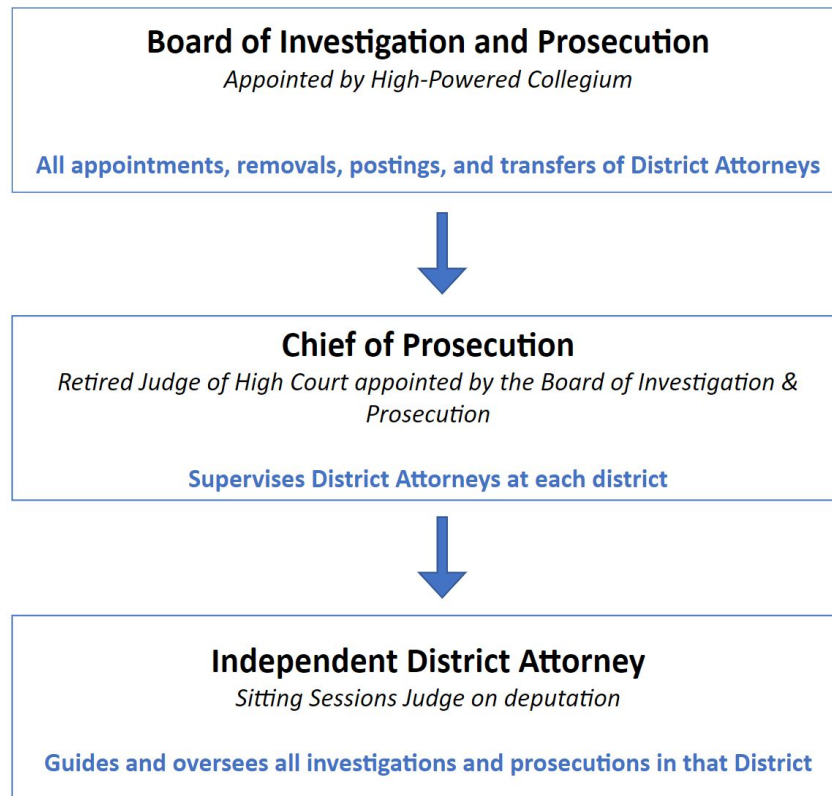


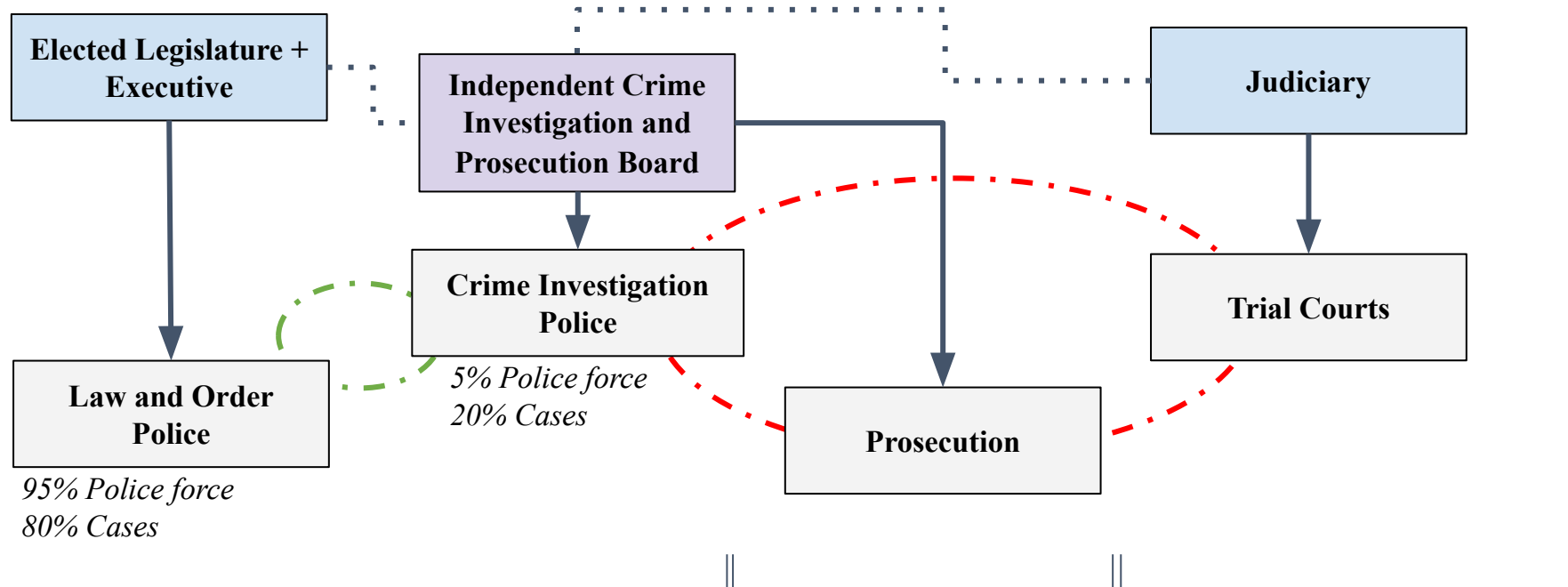
- A **District Attorney**, at the rank of **Sessions Judge**, drawn from the judiciary
- **Technical and managerial control** over all investigations and prosecutions in that district
- On deputation for **5 years**, before returning to service as a judge
- **Competent, credible, impartial** prosecutor -
  - Elevate stature of prosecution wing
  - Effective **coordination** between investigation and prosecution
  - Improve efficacy of criminal trial
- **Accountable** to the Board of Crime Investigation and Prosecution, supervised by **Chief of Prosecution** of state of rank retired High Court Judge
- Strength must be increased **7.5** times, at the ratio of at least 5 prosecutors per 100,000 population
  - About **9** cases of serious crimes in a year, close to the US caseload of about 8 cases



**Figure 6: District Attorney System for Overseeing Prosecutions at District-level**

Will ensure professional competence, fair trial, and coordination between investigation and prosecution





# Session 3: Criminal Procedural Reforms



Sunday, 21 Feb 2021  
5:00 PM - 7:00 PM



**Shri P.S. Ramamohan Rao**  
*Former Governor, Tamil Nadu*  
(Chair)



**Dr. M.R. Ahmed**  
*Former Director, APCA*



**Shri G. Kishan Reddy**  
*Minister of State for Home Affairs, Government of India*  
(Keynote Speaker)



**Prof. (Dr.) Ranbir Singh**  
*Founder, Former Vice-Chancellor, National Law University, Delhi*

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# Criminal Procedural Law - The Root Problem



- Components of criminal justice system - police, prosecution, procedural law, and courts
- Procedural law is critical for efficient justice delivery as it governs the working of all rule of law functionaries
- Flawed procedural framework is the cause for several of the challenges in the justice system.
- The Code of Criminal Procedure, 1973
  - Colonial trappings - based on the British system of the late 19th century
  - Outdated provisions - not adapted to changed socio-economic conditions and evolving nature of crime

1. **High pendency** of cases - over 27 million criminal cases pending in the trial courts
2. **Inordinate delays** in disposal of cases - nearly 80% of cases pending for over an year

**Figure 1: Age-wise pendency of criminal cases**

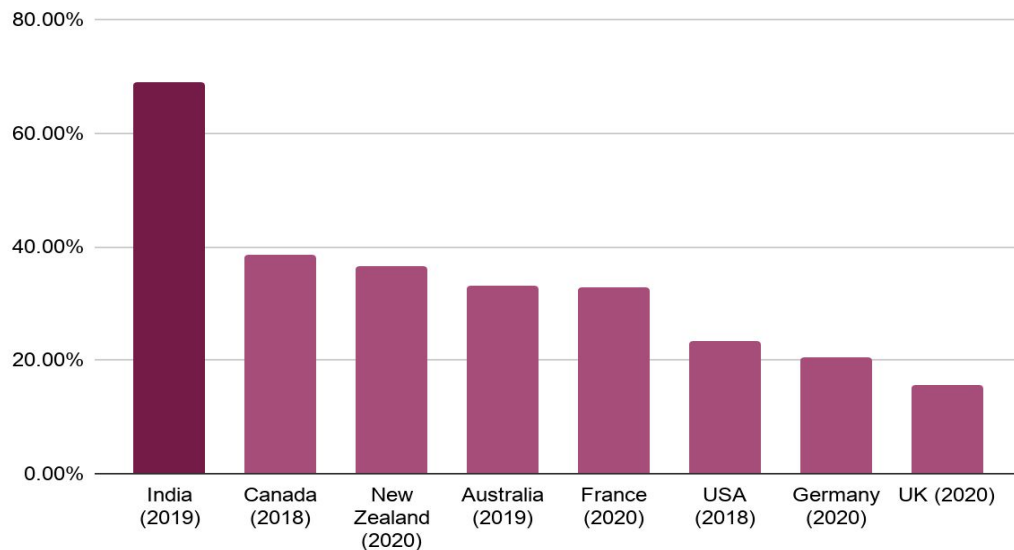


0 to 1 years:-	6424402 (23.47 %)
1 to 3 years:-	8989589 (32.84 %)
3 to 5 years:-	4763139 (17.40 %)
5 to 10 years:-	4557881 (16.65 %)
10 to 20 years:-	2193574 (8.01 %)
20 to 30 years:-	377693 (1.38 %)
above 30 years:-	66048 (0.24 %)

Source: National Judicial Data Grid (15 February 2021)

3. **Large proportion of undertrial prisoners** - 330,713, amounting to nearly 70% of total prison population

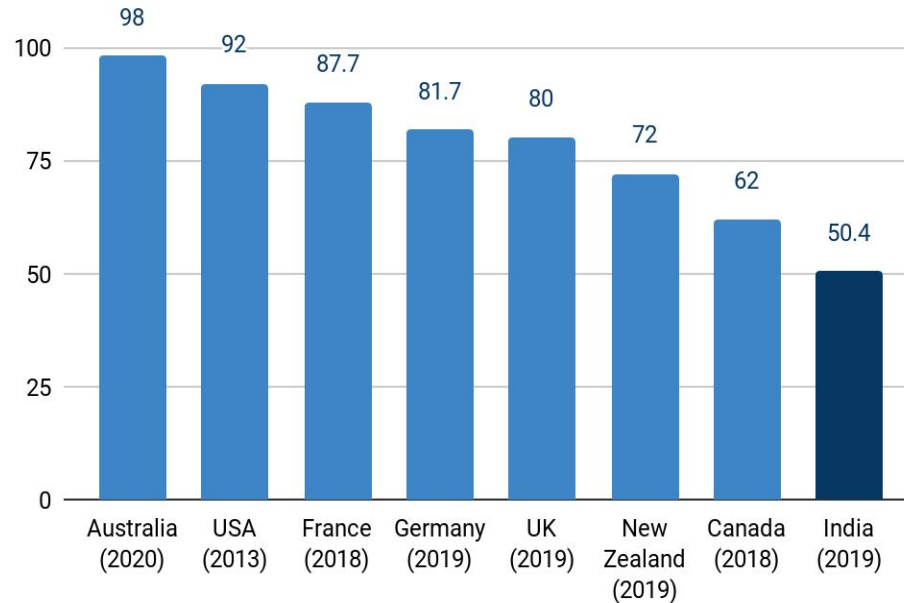
**Figure 2: % of Undertrial Prisoners**



Source: Official Statistics compiled by FDR

## 4. Low conviction rate - about 50% for IPC crimes

**Figure 3: Conviction Rate**



Source: Official Statistics compiled by FDR



# The Malimath Committee Report (2003)



- The **Committee on Reforms in the Criminal Justice System** (Malimath Committee) was constituted in 2000 by the then Vajpayee government to -
  - Revamp the criminal justice system
  - Simplify judicial procedures and practices
  - Enhance justice delivery - faster, uncomplicated, inexpensive
  - Adapt CrPC, Evidence Act, and the IPC to changed times
- The Malimath Committee **identified drawbacks and recommended** several changes to the CrPC and the Evidence Act but many have not been implemented.

## 1. Nature of the trial -

- Adversarial process - shortcomings in the investigation or prosecution **cannot be rectified** by the judge.
- The essence of a criminal trial becomes adjudging the **efficacy of the prosecution** rather than determining the guilt of the accused.
- Recommendation - **Statutory duty** to be imposed on a judge to play a proactive role in seeking the truth

## 2. Standard of Proof -

- Standard of ‘proof beyond reasonable doubt’ is **unsuitable** for current socio-economic circumstances - increasingly sophisticated form of crime and unreliable witness testimony.
- Recommendation - A standard that is **lower** than the ‘proof beyond reasonable doubt’ but **higher than the standard of ‘preponderance of probabilities’** followed in civil cases

## 3. Right to Silence - Adverse Inference -

- Accused is a vital source of information for the purpose of investigation
- Fear of infringing **right against self-incrimination** [Article 20(3)] inhibits full utilisation of this source of information
- Court must be allowed to draw **an adverse inference upon refusal to answer** when
  - i. prosecution case is prima facie established, and
  - ii. accused had access to legal counsel during questioning

## 4. Rights of Victims

- Victims **right of participation** in the trial facilitates discovery of the truth by the courts
- Victim may be allowed to **put questions or suggest questions** to be put to witnesses and bring to light **evidence** not already brought on record

- Advantages -
  - Assists the court in exercising discretion in **bail** matters
  - Aids in computing quantum of **compensation** for the victim
  - Facilitates **compounding** of cases
  - Provides an opportunity for the victim to **continue prosecution** in case of withdrawal by the State

## 5. Statements recorded by police officers -

- Statements recorded by the police under Section 161 cannot be signed by the witness and cannot be used for corroboration by the prosecution
- Must be required to be **signed by the witness** and be **admissible for corroboration**

## 6. Confessions recorded by Police Officers -

- Section 25 of the Indian Evidence Act renders inadmissible any confession made to a police officer, irrespective of the rank of the officer recording the confession.
- This provision deprives the police of a **key piece** of evidence.
- Recommendation - Confessions recorded by a police officer of the rank Superintendent of Police and above be made **admissible in evidence**.
- However, considering the workload on a SP, confessions recorded by a Deputy Superintendent of Police may be made admissible.

## 7. Trial Procedures -

- CrPC provisions that provide for swift disposal of cases remain under-utilised
- **Scope of Summary Trials and Summons Cases** must be enhanced

## 8. Perjury -

- As perjury law is not enforced effectively, the phenomenon of witnesses turning hostile and/or giving false evidence is very common
- The ordinary procedure for trying a person for perjury, prescribed by **Section 340** of the CrPC is **cumbersome**, hindering proper application of these provisions.
- Recommendation - Summary trial by the court where perjury is committed should be made the norm.

## 9. Alternative modes of punishment

- Limited variety and gross inadequacy of punishments
- Need for **new forms** of punishment that are **not custodial** in nature - community service, disqualification from holding public office, confiscation orders etc

# 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*

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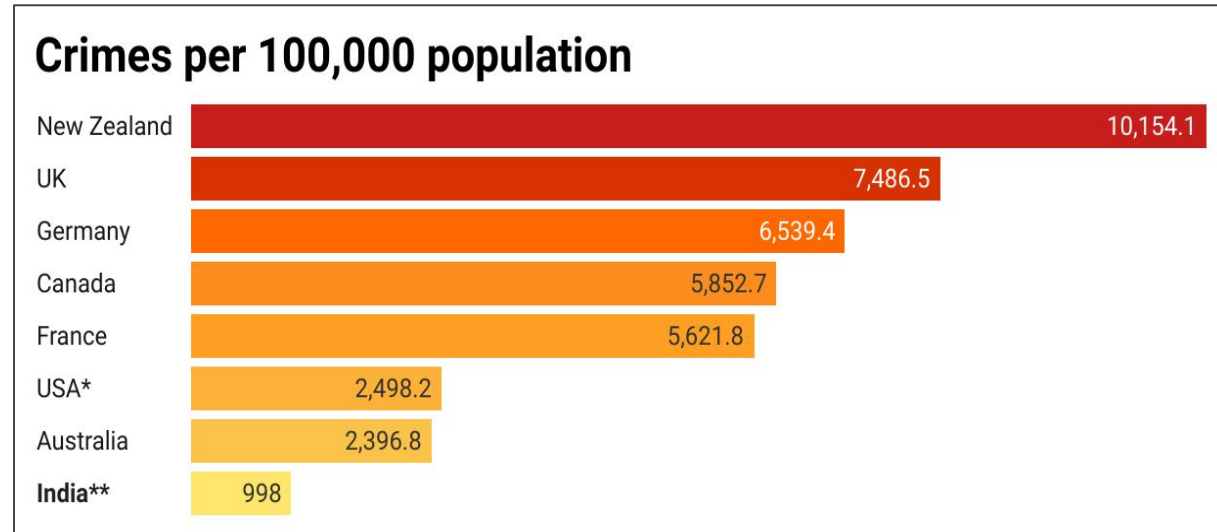
- Criminal Caseload significantly **outnumbers** civil caseload by a ratio of **4:1**

**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!



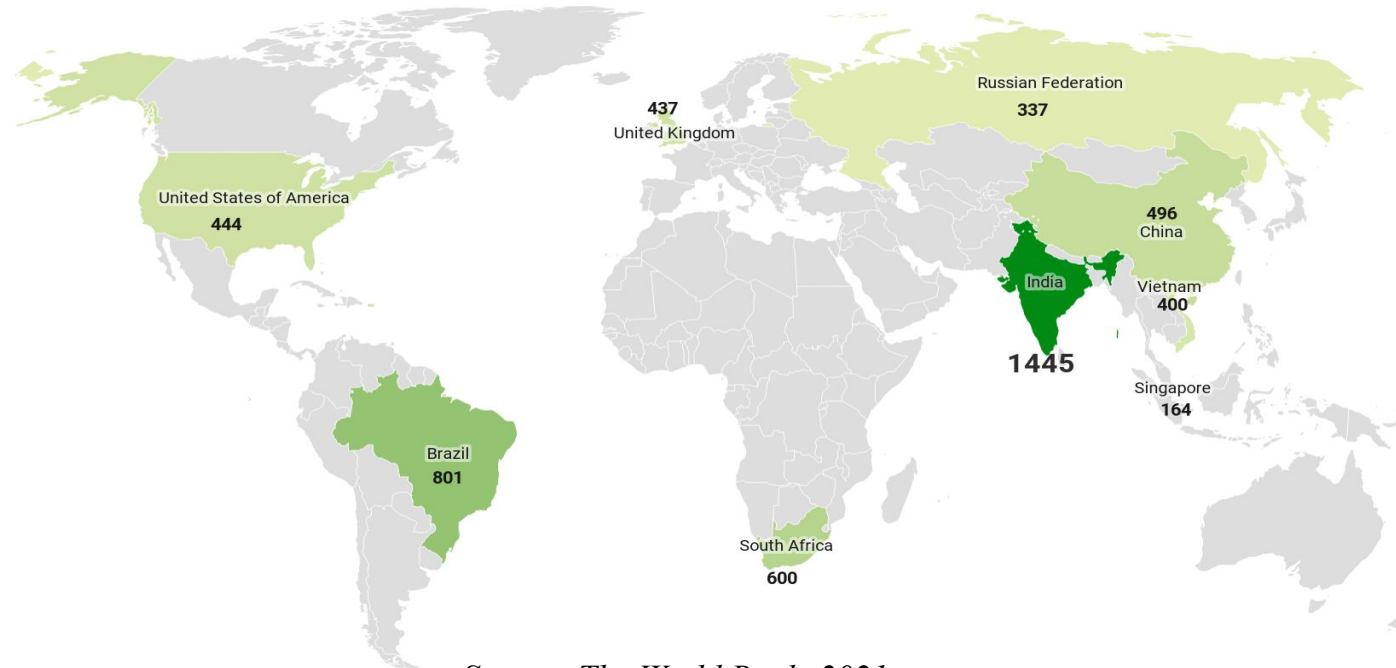
0 to 1 years:-	2254819	(22.29 %)
1 to 3 years:-	3621403	(35.79 %)
3 to 5 years:-	1782570	(17.62 %)
5 to 10 years:-	1723817	(17.04 %)
10 to 20 years:-	576072	(5.69 %)
20 to 30 years:-	119826	(1.18 %)
above 30 years:-	39223	(0.39 %)

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**

<b>Element</b>	<b>Advantage</b>
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

# Session 5: Speedy Justice in Trial Courts



Saturday, 27 Feb 2021  
5:00 PM - 7:00 PM



**Justice G. Raghuram**  
*Director, National Judicial Academy*  
(Chair)



**Dr. Jayaprakash Narayan**  
*General Secretary, Foundation for Democratic Reforms*



**Justice R.C. Chavan**  
*Former Judge, Bombay High Court*



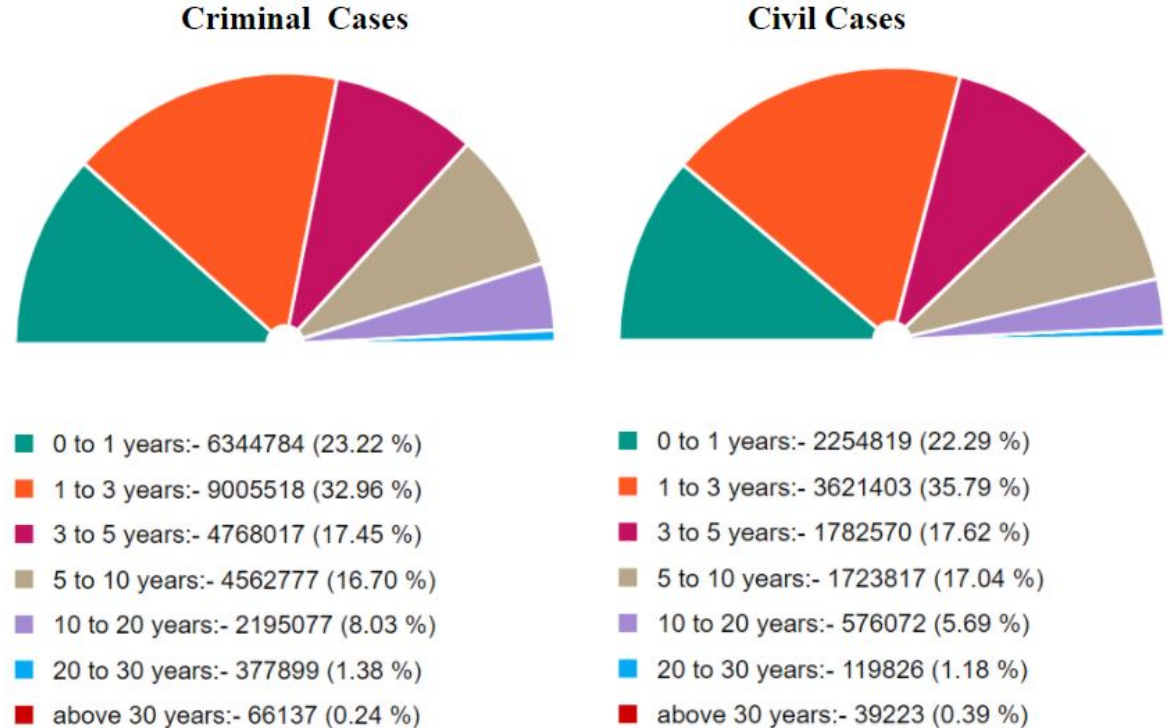
**Shri Atul Kaushik**  
*Chief of Party, The Asia Foundation*

- The session will begin with a presentation from Dr Jayaprakash Narayan.
- 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.

# Huge Pendency of Cases

- Over **37 million** cases are currently pending in trial courts
- The reasons include -
  - **Procedural complexities**
  - **Low judge to population ratio**
  - **Inadequate resources**
  - **Quality of judges**

**Figure 1: Age-wise Pendency in District and Talukas Courts in India**



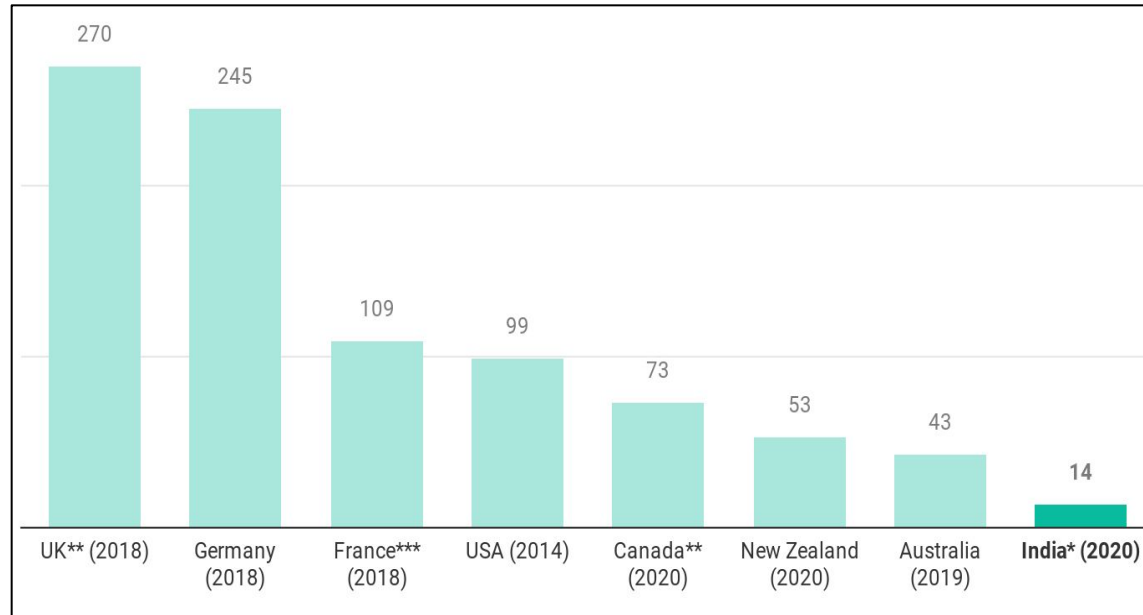
Source: National Judicial Data Grid, 10 February 2020

# Low Judge to Population Ratio



- At **50** judges per million people, requirement of judges stands at nearly **70,000**
- Sanctioned strength of judges in India is only **25,316**, of which **5442** posts are **vacant**, with **410** vacancies in the High Courts and Supreme Court
- A trial court judge in India on average disposes **824** cases in a year compared to **159** in the UK

**Figure 2: Judges per Million Population by Country**

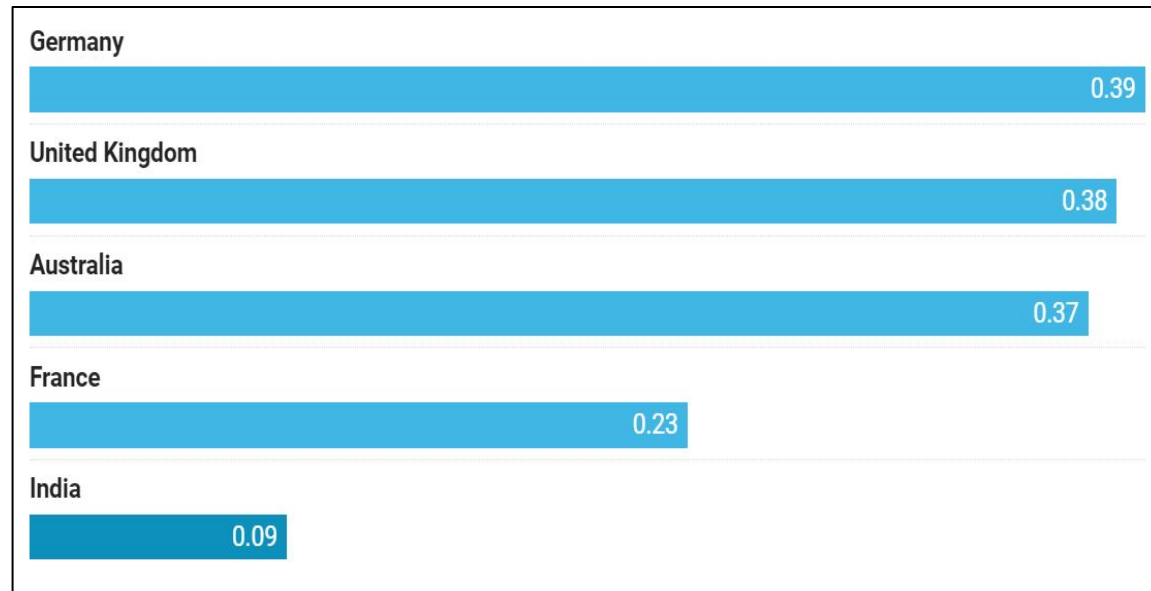


*Note: \*India - 14 at actual strength and 21 at sanctioned strength. \*\* Canada and UK - numbers include Justices of Peace \*\*\* France - numbers don't include members of the labour and commercial courts.*

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

- As of January 2020, there are only **19,632 courtrooms** available in the country, **less** than sanctioned strength of judges
- Combined expenditure of Union and states on court system in 2018 amounted to a meagre **0.09% of the GDP**
- Union and states on an average spend **less than 1%** of their respective budgeted amount of money on judiciary

**Figure 3: Expenditure on Law Courts as a % of GDP**



Sources: International Monetary Fund 2018, Economic Survey 2017-2018

# Incapacity to provide justice to ordinary citizens



- Barriers to justice for ordinary citizens -
  - Too few **judges**
  - Remote **location** of courts
  - Rigid and formal **procedures**
  - Excessive **delay**
  - **Cost** of litigation
  - **Perjury**
  - Perception that courts are **biased** towards those with means
- As a result, people either -
  - **Suffer** in silence
  - Use **extra-judicial methods** of settling disputes, often involving violence and corruption



- **Speedy** and **fair** justice to ordinary citizens
- **Simple** and **uncomplicated** procedures
- **Low cost** of functioning
- **Low cost** to people
- Maintain **close proximity** to the cause of action - to encourage truthful witness to come forward locally

**US - Small claims courts, with limited jurisdiction, for civil suits involving relatively small amounts of money and minor violations of law**

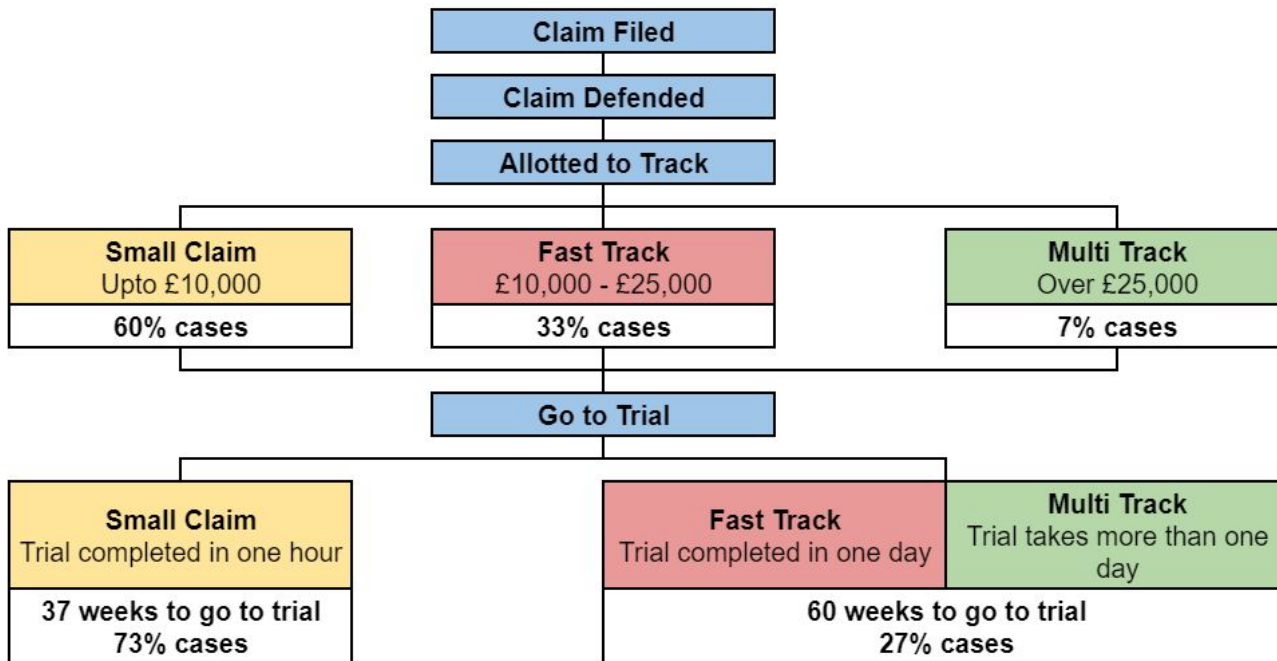
**UK - Magistrates Courts (Justices of the Peace) for criminal matters and small claims track for civil matters**

**India - Honorary second-class magistrates system**

**Table 1: Justices of Peace in UK for Minor Criminal Cases**

<b>Magistrates' Courts (Justices of the Peace)</b>		
<b>Proportion of Magistrates in the judiciary</b>	<b>Proportion of total criminal caseload dealt with</b>	<b>Clearance Rate</b>
<b>83%</b>	<b>93.40%</b>	<b>99.8</b>
<i>Source: UK House of Commons, 2019</i>		

Figure 4: Small Claims Track for Civil Cases upto £10,000



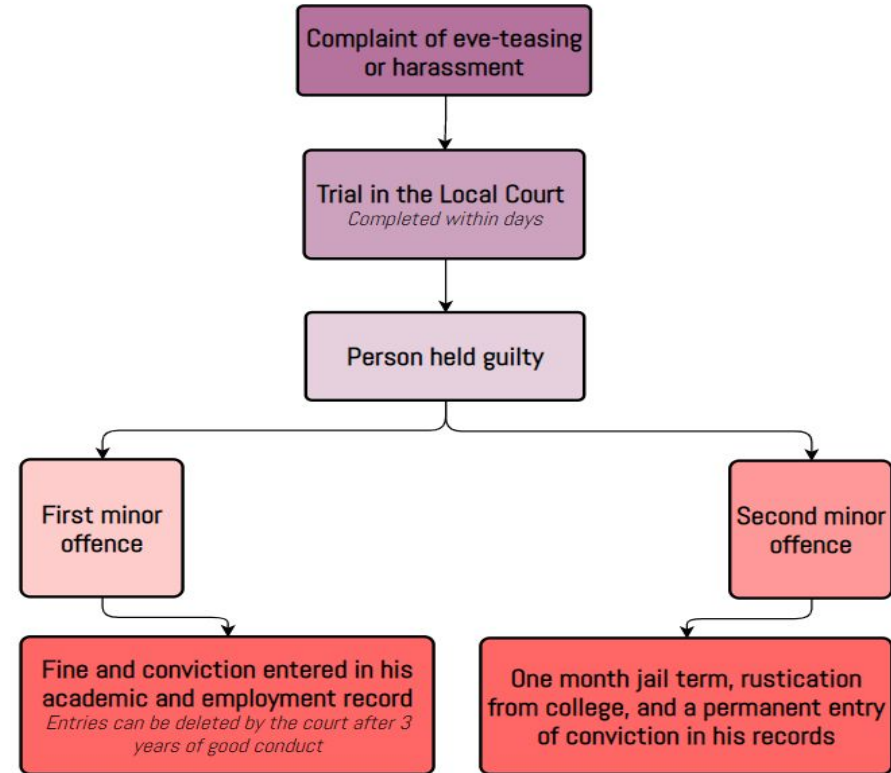
Source: Ministry of Justice, UK, 2019

- Features of the Act
  - Local court in every block in rural areas
  - Integral part of the **independent** judiciary, under administrative control of the High Courts
  - Provision for **appeal** ensures corrective steps in case of miscarriage of justice
  - Judges to be **appointed** by the State Government in consultation with High Courts
    - Salary and other allowances payable and other terms and conditions of service must be those applicable to the Judicial Magistrate First Class
- Problems with the Act
  - Not **mandatory** - As of 2020, a mere **395** Gram Nyayalayas have been notified, of which only **221** are functional
  - **Limited** scope - greater necessity in **urban** areas where petty crime & civil disputes are on the rise

- Gram Nyayalayas Act, 2008 must be extended to urban areas
  - 1 local court per **50,000 - 1,00,000** population based on caseload
- Courts to be mandatorily set up in all rural and urban areas over next 3 years
  - Around **15,000** such courts dispensing prompt and effective justice across the country (UK has **14,348** local criminal courts (JPs), or one JP for **4,658** population)
- Jurisdiction -
  - **Minor criminal cases** which account for **80%** of total crimes
  - Civil cases up to a certain **pecuniary limit**, say Rs 5,00,000
- Power of sentencing of these local courts may be limited to one year jail term
- Local courts and local police station must be **coterminous** and have one **dedicated** public prosecutor for improved coordination

# Local Courts for Women's Safety

- When **permissive** climate of harassment of women with impunity goes unchecked, it escalates over time and paves way for more **serious** crimes against women
- Provisions may be made in the criminal law for providing for **summary trial** and speedy justice in local courts in all minor cases of sexual harassment like eve-teasing



- Backlog is a constraint on the system that needs to be addressed through a **one-time** mechanism to improve efficiency

**Table 2: Clearance Rate of Trial Courts**

Type	Cases Instituted in 2019	Cases Disposed in 2019	Clearance Rate	Cases Instituted in 2019 + Cumulative Pending Caseload	Clearance Rate including Cumulative Pending Caseload
<b>Civil</b>	3516589	3387063	<b>96.3</b>	13637583	<b>24.8</b>
<b>Criminal</b>	13641430	12094736	<b>88.7</b>	40984166	<b>29.5</b>
<b>Total</b>	17158019	15481799	<b>90.2</b>	54621749	<b>28.3</b>

*Source: National Judicial Data Grid, 12 February 2021*

# Clearing Pendency in Trial Courts



- All cases pending **>1 year** and punishable by a **maximum of 3 years** of imprisonment (approx. 80%) or **<Rs 500,000** value of civil suit must be disposed of speedily by **local courts**
- All cases pending **>1 year** and punishable by **more than or equal to 3 years** of imprisonment or **>Rs. 5,00,000** value of civil suit must be disposed of by **fast-track courts**

**Table 3: Jurisdiction of Local Courts and Fast Track Courts**

Court	Civil	Criminal
<b>Local Courts</b>	Below the threshold, say Rs. 500,000	Below a threshold, crimes punishable by a maximum sentence of 3 years of imprisonment
<b>Fast Track Courts</b>	Above Rs. 500,000	Crimes punishable by more than 3 years of imprisonment



- **Contempt of Court**

- **Misbehaviour** and **disregard** for the judicial rules and norms by the witnesses, litigants, accused, or lawyers is common
- Causes **delays** in the trial process and is an **obstruction** to justice
- Currently, trial courts must rely on the High Courts to penalize those in contempt of court
- **Empower** trial court judges to deliver **speedy** justice, and preserve the **dignity** and **authority** of the court

- **Judicial Clerks**

- At least **one** highly competent judicial clerk to **assist** District Judges
- Judicial clerks may **grow** in stature over time and become **leading lawyers** and **judges** themselves

- **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

# Session 6: Strengthening the Role of Constitutional Courts



Sunday, 28 Feb 2021  
9:00 AM - 11:00 AM



**Justice Madan B. Lokur**

*Former Judge, Supreme Court  
of India*

*(Chair)*



**Shri V. Sudhish Pai**

*Lawyer and Jurist*



**Ms. Catty Catherson**

*Former Clerk and Circuit  
Executive of the Court of  
Appeals, Ninth Circuit, USA*



**Shri Alok Prasanna Kumar**

*Co-Founder and Lead, Vidhi  
Centre for Legal Policy,  
Karnataka*

- 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.

# Mounting Arrears in High Courts - A Cause for Concern



- Constitutional Courts - **interpret, enforce** and act as **guardians** of the Constitution
- High Court case pendency - arguably the **greatest challenge** facing Indian Judiciary
- Over **5.6 million cases** pending in High Courts, **85%** of which have been pending for over a year.
- More than **80,000 cases** have been pending over 3 decades!
- Over **8,000 cases pending per judge**. The disposal rate per judge in 2019 was an astonishing **3,500 cases!**

**Figure 1: Age-Wise Pendency in High Courts**



0 to 1 years	-	849848	(14.93 %)
1 to 3 years	-	1502397	(26.39 %)
3 to 5 years	-	907031	(15.93 %)
5 to 10 years	-	1177792	(20.69 %)
10 to 20 years	-	1011851	(17.77 %)
20 to 30 years	-	151690	(2.66 %)
above 30 years	-	92000	(1.62 %)

*Source: National Judicial Data Grid*

# Mounting Arrears in High Courts - A Cause for Concern



- At the **apex** of the judicial pyramid in a state.
- **Jurisdiction** - ordinary, extraordinary, original, appellate, revisional, and writ.
- Exercise power of **supervision** and **administrative control** over subordinate courts
- Unduly burdened with appellate and revisional matters - **40%** of the caseload.

**Table 1: Nature of the pending cases**

Type	Civil	Criminal	Total (% of the total pending cases)
<b>First Appeal</b>	3,77,358	529	3,77,887 (8.61 %)
<b>Second Appeal</b>	2,64,234	-	2,64,234 (6.02 %)
<b>Appeal</b>	3,23,157	5,27,548	8,50,705 (19.39 %)
<b>Revision</b>	63,699	1,78,190	2,41,889 (5.51 %)
<b>Writ Petitions</b>	12,67,044	51,904	13,18,948 (30.06 %)
<b>Others</b>	8,11,790	5,21,629	13,33,419 (30.39)

*Source: National Judicial Data Grid, 10 February 2021*

## 1. **Filling up vacancies** in sanctioned strength of judges on priority

**Table 2: High Courts Judicial Strength**

Sanctioned Strength	Working Strength	Vacancies
1079	673	406

*Source: Department of Justice, 01 November 2020*

## 2. Invoke **Article 224A** of the Constitution

- Provides for appointment of **ad hoc judges** from amongst retired High Court judges to clear the backlog
- Recommended by the Committee on Arrears (1989-90)

## 3. Limiting the jurisdiction of the High Courts -

### a. Abolition of ordinary original civil jurisdiction

- Favoured by **several Committees** in the past - Justice Satish Chandra Committee, 1986 and the Committee on Arrears (1989-90)
- **No justification** for continued exercise of such jurisdiction with the establishment of City Civil Courts

**Table 3: Caseload under Original Civil Jurisdiction of High Courts**

High Court	Cases	Proportion of the civil caseload	Proportion of the total caseload
Bombay HC	8,705	1.9%	1.6%
Madras HC	151	0.03%	0.03%
Calcutta HC	NA	NA	NA
Delhi HC	10,486	15.9%	11.5%
Himachal Pradesh	860	1.3%	1.1%
Jammu and Kashmir	16	0.03%	0.03%

*Source: National Judicial Data Grid, 10 February 2021*



- Moreover, High Courts take longer than the trial courts to dispose of original civil cases

**Table 4: Average Pendency of Civil Suits in Bombay and Delhi**

Court Name	Pending Cases	Average Pendency (in years)
Delhi High Court	19,740	5.8
Delhi Lower Judiciary	15,223	3.7
Bombay High Court	16,099	6.1
Maharashtra Lower Judiciary	1,02,931	5.6

*Source: Economic Survey 2017-18, Volume I*

**b. Restriction of appeals - 79th Law Commission Report (1979) and Committee on Arrears (1989-90)**

- Increase the pecuniary limits of appellate jurisdiction of District Courts and mandatory periodic review of these limits every 3 years
- Restrict second appeal in civil matters to suits above a certain limit, say Rs 2 million.

**c. Limit Revisional jurisdiction -**

- Civil Revisional Jurisdiction (S 115, CPC)
  - must be **abolished** as recommended by the **54th Law Commission Report**
  - **Article 227** of the Constitution provides sufficient remedy
- Criminal Revisional Jurisdiction (S 397, CrPC)
  - must be **restricted** as recommended by the **Committee on Arrears (1989-90)**

- Sessions Courts to have exclusive power of revision against orders of the subordinate courts
- High Courts to have power of revision only against orders of Sessions Courts/ Special Courts which are themselves not orders made under revisional jurisdiction

#### 4. Expand and improve the **judicial clerk system**

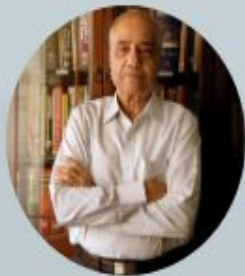
- Each HC judge must be allotted **four clerks** selected purely on merit
- Judicial clerks may **grow in stature** over time and become leading lawyers and judges themselves

- **Constitutional adjudication on the backseat** as dispute-resolution functions take priority
- Constitutional matters comprised only **7%** of the judgments delivered by the Supreme Court in 2014
- Number of matters heard by constitutional benches (i.e. of five or more judges) has reduced from 15.5% in the 1950s to **0.12%** in the 2000s
- There is an urgent need to set up separate **permanent constitutional bench**
- Recommendations made previously by the **95th, 125th and 229th Law Commission Reports**
- **Article 130** allows for such restructuring of the Apex Court, without the need for any amendment of the Constitution.
- Restore the **constitutional role** of the court and enhance the **quality** of constitutional adjudication

# Session 7: Judicial Standards and Accountability



Sunday, 28 Feb 2021  
12:00 PM - 2:00 PM



**Justice B.N. Srikrishna**

*Former Judge, Supreme Court  
of India  
(Chair)*



**Justice J. Chelameswar**

*Former Judge, Supreme Court  
of India*



**Prof. (Dr.) G. Mohan Gopal**

*Former Director, National  
Judicial Academy*



**Shri Harish Narasappa**

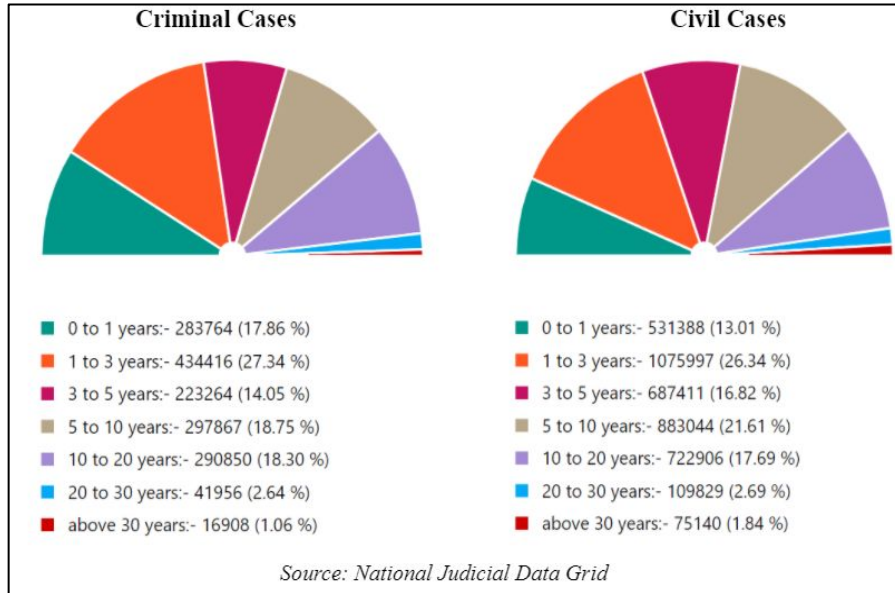
*Co-founder, Daksh*



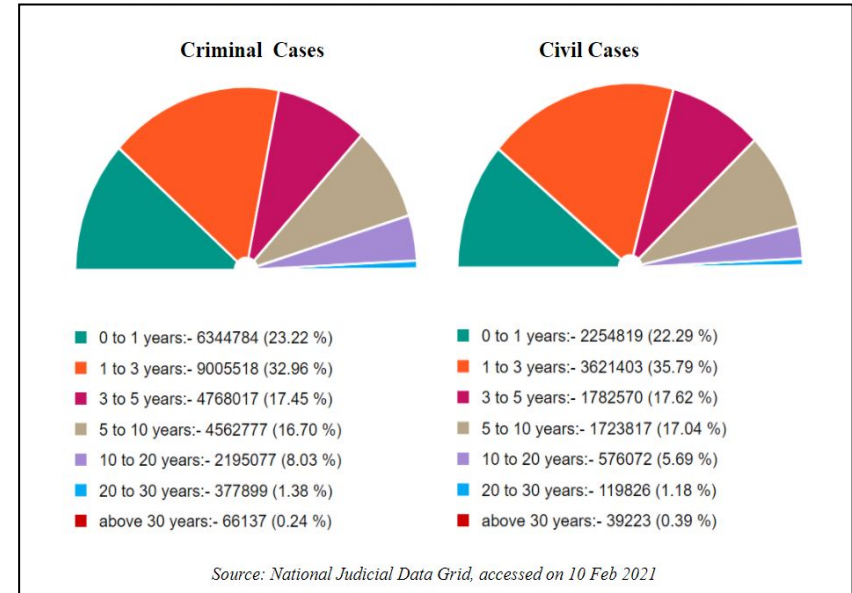
- The session will begin with a 5 minute presentation from FDR.
- The Chair for the session will first present his views for 10-12 minutes.
- The Chair will then call upon each speaker, who will also have 10-12 minutes to share their insights.
- Post that, the Chair may open the session for a panel discussion.
- 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.

# Enormous pendency of cases

## Age-wise pendency in District & Taluka Courts



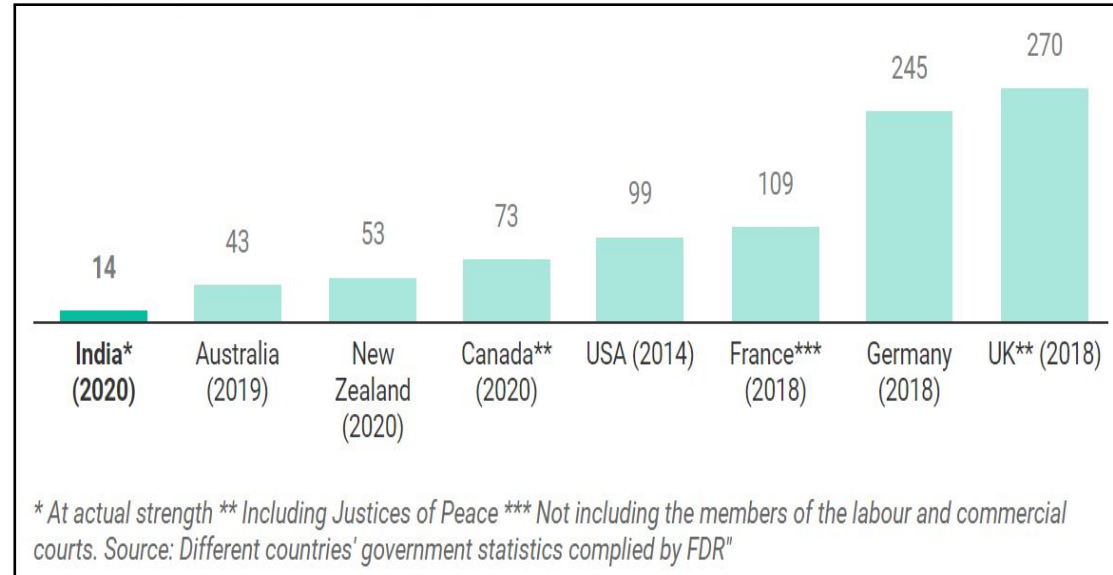
## Age-wise pendency in High Courts



- Over **37 million civil and criminal cases** pending in District and Taluka courts and **5.6 million cases** pending in high courts

- Low judge to population ratio - actual strength of judges in India is **14 judges per million population**
- At the ratio of **50** judges per million population as recommended by the Law Commission, requirement of judges stands at nearly **70,000**
- However, sanctioned strength of judges only **25,316**, of which **5442** posts are vacant

### Judges per Million Population by Country





- A mere increase in the number of judges, without improvement in their quality, is of **no use**
- The quality of justice administered critically depends on the **quality of the judges recruited**
- Poor quality of judges causes:
  - ➔ **Delays in justice**
  - ➔ **Increases pendency**
  - ➔ **Impairs the quality of judgments**
  - ➔ **Diminishes trust in judiciary**
  - ➔ **Affects the competence of higher judiciary**
  - ➔ **Vitiates rule of law and constitutional governance**

- **Meritocratic service similar to that of the civil service**, to attract the best available talent to pursue a career on the Bench
- Recruitment through a **national-level examination** with fierce competition, making it aspirational
- **Transparent** and **efficient** mode of recruitment
- **Uniformity** and **regularity** in the examination process
- Incentivised with the opportunity of **elevation to higher judiciary**, ensuring better performance even after recruitment
- May be required to serve a **5-year probation in trial courts** below the district level before they become district judges and elevated to High Courts later

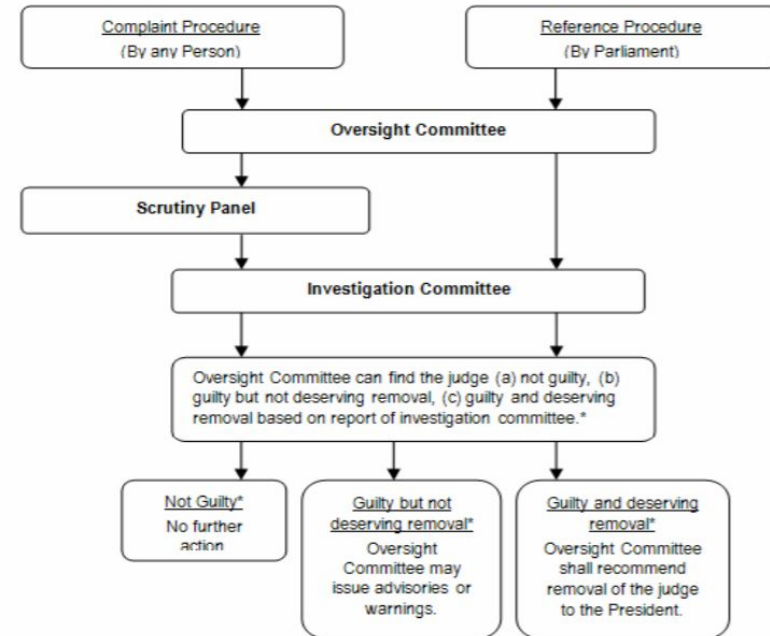
- **Article 235 of the Constitution** provides complete authority over the functioning of the judicial officers of the trial courts to the respective state High Courts
- Need to **strengthen the utilization** of this authority by the High Courts as an instrument to ensure judicial standards in the lower judiciary
- **No such mechanism** is envisaged in the constitution for ensuring standards in Higher Judiciary
- **Impeachment** of Supreme Court and High Court Judges for misbehaviour or incapacity is envisaged in Article 124(4) of the Constitution and procedure is laid down in the Judges (Inquiry) Act, 1968
- **Cumbersome and tedious process which is also rarely used**

# Accountability Mechanisms - Impeachment process



- **National Judicial Standards and Accountability Bill, 2010** lays down judicial standards of conduct for judges
- Provides mechanisms for addressing complaints and removal of judges
- Proposed to establish an **Oversight Committee**, a **Scrutiny Panel** and an **Investigation Committee**

Figure 1: Procedure of investigation into a complaint against a High Court or Supreme Court judge.



\*Under the reference procedure, the final report of the Oversight Committee is submitted to the Speaker/ Chairman irrespective of the findings of the investigation committee.