ADVOCACY PAPER

RULE OF LAW for the 21st Century

FDR FOUNDATION FOR DEMOCRATIC REFORMS

‘Man’s capacity for justice makes democracy possible, man’s inclination to injustice makes democracy necessary’

— *Reinhold Niebuhr*

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Introduction

"The proper function of a government is to make it easy for the people to do good and difficult for them to do evil"

William Ewart Gladstone

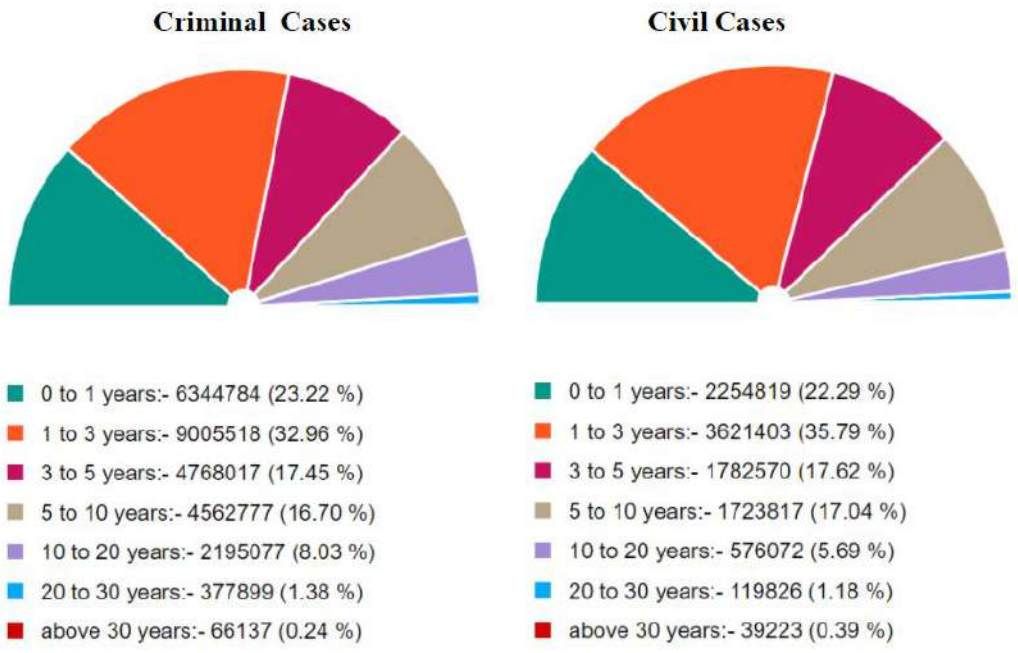
Rule of law is the bedrock of constitutional governance and democratic society. While normative rule of law entails the principles of supremacy of law, equality before the law, and the absence of arbitrariness in exercise of state authority, the manifestation of these principles in the ordinary lives of the citizens takes many forms. Rule of law in the practical sense involves maintenance of public order, protection of rights of the citizens, and equitable enforcement of justice including settlement of disputes. Applying the law uniformly to all, irrespective of their personal characteristics of caste, religion, or sex, calls for three things - one, strict compliance with the due process of law when constitutional liberties of citizens are in question, two, application of penal laws without any discrimination, and three, fair and equitable settlement of disputes between individuals. Well-functioning rule of law institutions in a society would lead to a climate of safety and security for all citizens while simultaneously providing universal access to a fair and effective justice system. The ultimate test for the performance of rule of law lies in the extent to which laws are enforced and the rights of the citizens are protected.

The foremost purpose of any State is to enforce and maintain rule of law in a society. The two limbs of rule of law are the civil justice and criminal justice systems. The aim of any civil justice system is, borrowing from the words of William E. Gladstone, to make it easy for the people to do good, while the aim of a criminal justice system is making it difficult for them to do evil. Fair, speedy, and efficient settlement of disputes at an affordable cost is critical for mutual trust and economic growth. Protection of individual property rights, fair and equitable contract enforcement, creation and enforcement of just labour laws and provision of access to opportunity for all sections of society, creates a culture where commerce and business can flourish. Maintenance of public order while preserving constitutional liberties is at the heart of a harmonious society and democratic system. If

might becomes right and crime and a "grammar of anarchy" dominate, economic activity and wealth creation will be undermined. Therefore, ensuring effective delivery of justice in both criminal and civil matters is a crucial function of the State. In India, although we have normative rule of law, in practice there are serious, and often crippling distortions.

The failure of rule of law in the country is starkly reflected in three facts. First, the Indian courts are crushed under the weight of a massive pendency in cases, coupled with excessively long delays in disposal of cases. Over 37 million[1] cases are currently pending in the trial courts, with an additional 5.6 million[2] cases pending in the High Courts across the country. The majority of such cases have been pending for more than a year. As depicted in Figure 1, more than 100,000 cases have been pending for over three decades! It is evident that our justice system is not adequately equipped for discharging its functions in the existing circumstances.

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



Source: National Judicial Data Grid, 10 February 2020

1 National Judicial Data Grid, 10 February 2021, https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard

2 ibid.

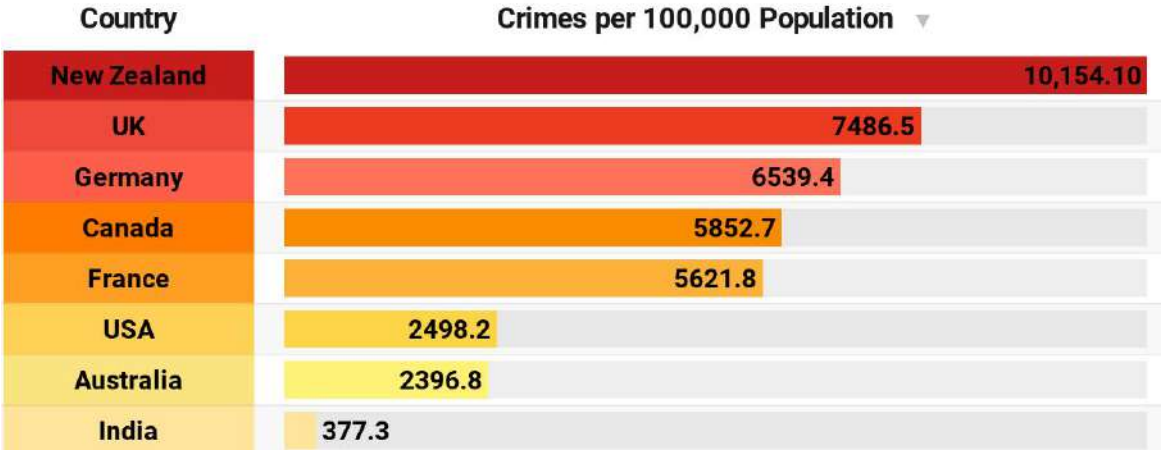
Second, the criminal caseload in the trial courts is more than twice the civil caseload. While there are about 27.3 million[3] criminal cases pending, the number of civil cases pending is only about 10 million[4] cases. Worryingly, the gap widens in case of the annual incoming caseload. Table 1 highlights the stark contrast in ratio of the annual incoming civil to criminal caseload between India and the US and UK. The institution of criminal cases in the subordinate courts in India exceeds the civil institutions by nearly four times. Such a situation is symptomatic of the fact that the general public is avoiding approaching the courts for resolution of civil disputes. Especially so, since the crime rate per unit population in India is far lower than most other countries, as seen in Figure 2.

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 2: Crime Rate by Country



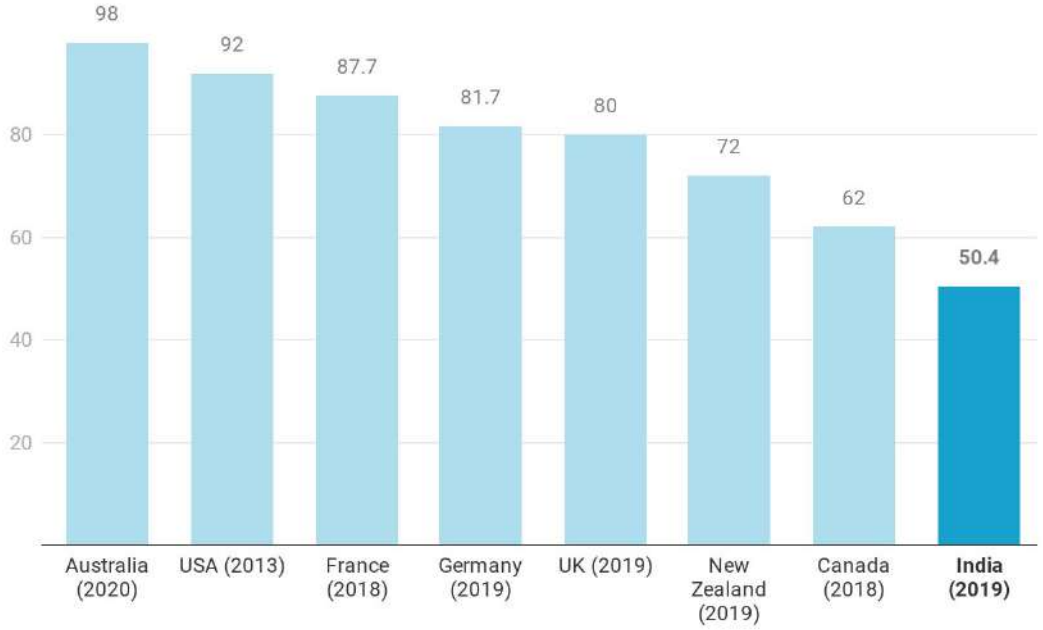
Note: USA includes only violent and property crimes
Sources: Various countries' official crime statistics compiled by FDR

3 National Judicial Data Grid, 10 February 2021, https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard

4 ibid.

Third, India has arguably the lowest conviction rate compared to other major democracies, as indicated in Figure 3, which notionally comes to 50.4%[5]. However, it is important to note that most of the convicted criminals are poor and not able to hire competent lawyers. In many cases, third degree methods are applied to coerce a confession, resulting in conviction. This goes to show that without a confession, the conviction rate is even lower than the indicated figure. Such a low rate of conviction underscores the ineffective criminal justice delivery system in the country, wherein each of its wings - police, prosecution, and the trial courts - are proving to be deficient in many respects.

Figure 3: Conviction Rate by Country



Note: India includes only IPC crimes.
Sources: Various countries' official statistics compiled by FDR.

The only sanction to ensure good conduct and to prevent bad behavior in society is swift punishment. In the absence of the state's capacity to enforce law and to mete out justice, rule of law has all but collapsed. It is, therefore, of no surprise that India, despite strong constitutional norms, ranks 69 out of 128 countries in the Rule of Law Index 2020 released

5 "Crime in India", National Crime Records Bureau, Ministry of Home Affairs, Government of India, 2019, Volume III, p.g.1100, https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%203.pdf

by the World Justice Project[6]. As captured by Table 2, of all the major democracies, India is ranked the lowest overall for rule of law. Only the more autocratic and centralized regimes are ranked below India. Startlingly, India is placed at an abysmal 114 in respect of 'Order and Security'! The performance in respect of 'Civil Justice' and 'Criminal Justice' is equally dismal. Ranked at 98, the civil justice delivery in the country is undoubtedly unsatisfactory. The situation in respect of criminal justice is only marginally better, with a rank of 78. The relatively poorer performance in the civil justice system further corroborates the inference that the ineffectiveness of the judicial system is inducing people to opt out of approaching the courts for civil dispute resolution.

Table 2: Rule of Law Rankings out of 128 Countries

Country	Overall	Order and Security	Civil Justice	Criminal Justice	Fundamental Rights	Constraints on Govt Powers	Open Govt	Absence of Corruption	Regulatory Enforcement
Germany	6	17	4	7	5	6	10	11	6
UK	13	24	17	12	13	13	11	10	13
Japan	15	5	9	9	19	24	22	13	16
South Korea	17	23	13	18	22	21	20	28	19
US	21	28	36	22	26	22	13	19	20
South Africa	45	110	41	44	41	33	30	58	45
Malaysia	47	34	35	38	80	50	95	41	40
Indonesia	59	82	95	79	79	26	49	92	49
Brazil	67	100	63	103	83	64	31	69	60
India	**69**	**114**	**98**	**78**	**84**	**41**	**32**	**85**	**74**
Vietnam	85	44	89	60	101	95	78	84	89
China	88	40	64	62	126	123	92	51	67
Thailand	93	67	84	70	90	82	61	54	83
Russia	94	91	62	110	104	115	69	77	73

Source: World Justice Project, Rule of Law Index 2020

An understanding of the implications of rule of law on everyday lives is essential in order to comprehend the magnitude of the problem and fully appreciate the significance of a robust system of rules and institutions that enforce rule of law. To do so, we must consider India's

6 "Rule of Law Index 2020", The World Justice Project, 2020, p.g. 6, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

rapidly transforming urban landscape. Cities with a population of over one million grew from 35 cities in 2001 to 53 in 2011. It is predicted that by the year 2030, the country will have 71 cities with a population in excess of one million, seven of which will have crossed the 10 million mark[7]. Cities are the fulcrum of economic growth in the country. Currently, 54 cities alone contribute around 40% to the nation's GDP[8]. It is projected that the contribution of urban centres would surge to 70% by the year 2030[9].

This rapid urbanisation presents two challenges on the rule of law front; namely, rise in crime and increased civil disputes, which if unaddressed, will lead to complete disruption of society (see Figure 4). In the traditional rural society, where people know each other intimately, family bonds, caste networks, and social pressure moderate behaviour and control crime. But with urbanisation, more people migrate to cities in the search of better economic opportunities and living conditions. As a result, strangers live in close proximity in densely packed cities. As social controls gradually weaken, crime is bound to rise.

According to the National Crime Records Bureau, there was a 7.3%[10] rise in the registration of crimes in metropolitan cities in 2018 while the nation-wide increase for the same was only 1.6%[11]. In the absence of the State's capacity to forge links with the community, detect and punish simple crimes, and apply modern, scientific methods of crime investigation in a credible, fair and non-partisan manner, crime will become uncontrollable and society, in turn, will be paralysed by fear.

Similarly, in a growing economy, where there will be multiple contracts and commercial interactions, disputes are bound to arise. If there are no reliable, speedy, and inexpensive mechanisms to resolve disputes in courts, people will resort to extra-judicial means to do so, making way for rise in organized crime, corruption and violence. Eventually, mutual trust will collapse and as people become averse to risk, investments will fall. Consequently, economic growth will suffer and poverty will persist, ultimately plunging society into chaos.

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7 World Urbanization Prospects, Department of Economic and Social Affairs - Population Dynamics, United Nations, 2018, https://population.un.org/wup/Country-Profiles/

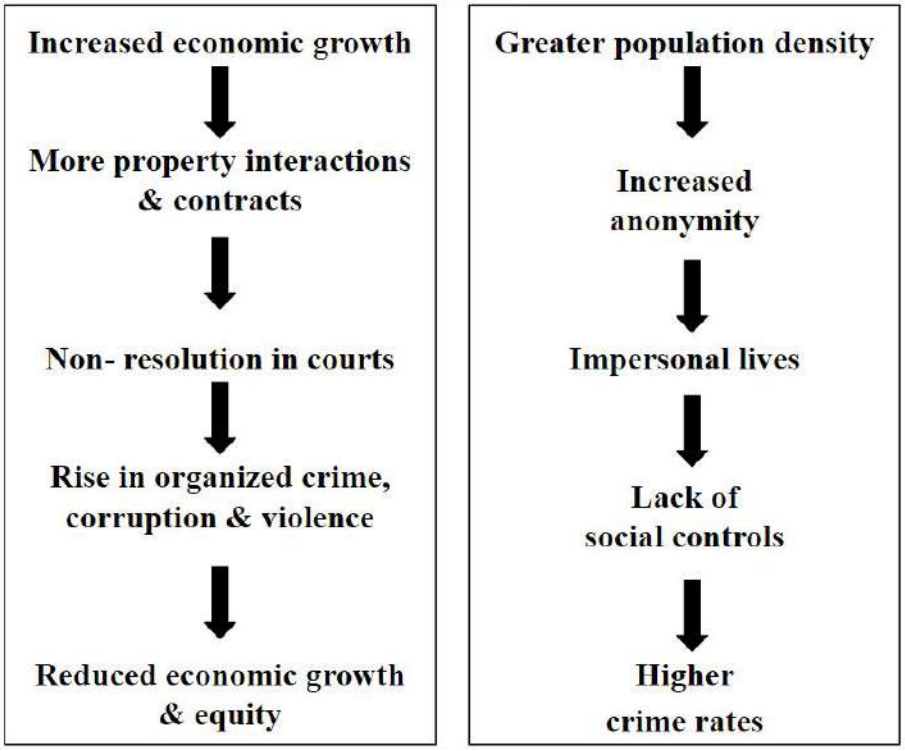
8 "India's economic geography in 2025: states, clusters and cities", McKinsey & Company, 2014, http://www.governancenow.com/files/Indias%20economic%20geography%20in%202025%20States%20clusters%20and%20cities.pdf

9 Confederation of Indian Industry, https://www.cii.in/sectors.aspx?enc=prvePUj2bdMtgTmvPwvisYH+5EnGjyGXO9hLECvTuNtoz3TzLW8nZchXA7a5U/wJ

10 "Crime in India", National Crime Records Bureau, Ministry of Home Affairs, Government of India, 2019, Volume I, p.g. xviii, https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf

11 ibid., p.g. xi

Figure 4: Rapid Urbanization and Rule of Law



The impending crisis can only be averted if the many ills currently plaguing our rule of law institutions are acknowledged and urgently rectified. The failure of the justice system has already resulted in the near breakdown of rule of law in many pockets of the country. There are several shortcomings encompassing all wings of the justice system that can be addressed in a practical and effective way, reconciling individual liberty with rule of law.

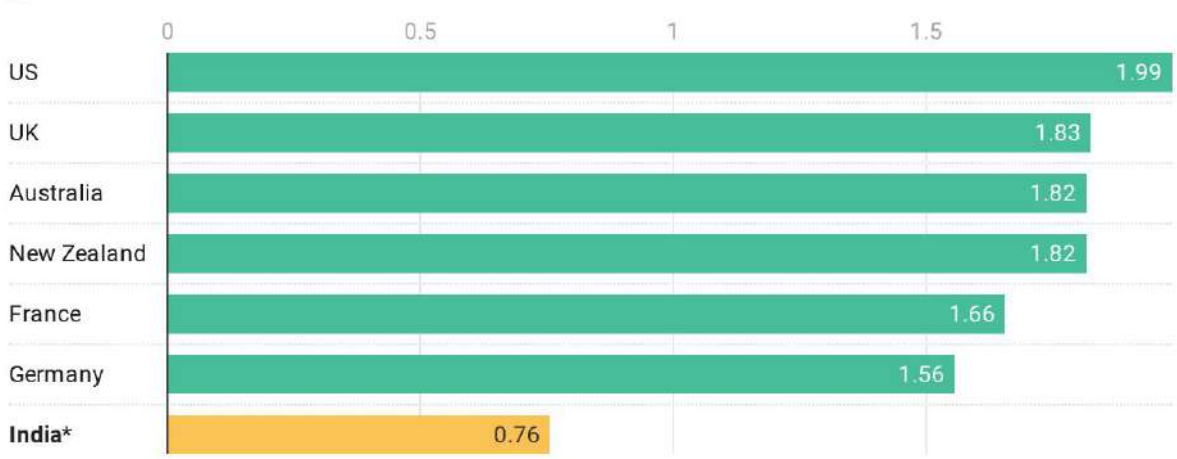
Foremost is the highly overburdened and ineffective police force, facing a plethora of challenges. Given the poor delivery of services by the government and the polarized and contentious public discourse, often the governance and political failures are converted into law and order problems imposing enormous burden on the police. Moreover, the high degree of centralization of functions in a single police force is a serious impediment to the efficient discharge of their duties, and has led to the complete politicization of the police force. Political control of police personnel undermines credibility of crime investigation and erodes public trust. Ordinary citizens feel alienated from the State as police are often perceived as tools of those in power, rather than the instrument of law enforcement.

The criminal justice system is further encumbered by an ineffective prosecution. Alarmingly, we have fewer prosecutors in India than judges. This clearly explains why despite the separation of prosecution from the police, the prosecution wing is still unable to drive the investigation and bring criminals to justice.

Our judiciary, ridden by a severe shortage of capacity, and guided by archaic and complex procedural laws, has become ponderous, excruciatingly slow, and inefficient. The courts have tended to condone delays and encourage litigation and a spate of appeals even on relatively minor matters. Delays, procedural complexity, and use of English as the language of the courts escalate the costs of litigation enormously for most people, deterring them from seeking intervention of courts. As a result, people have been forced to look for extra-legal alternatives, giving rise to a private 'settlement' industry administering rough and ready justice.

It has long been recognised that our institutions of rule of law warrant immediate attention. If we perpetuate status quo, our society faces two grave dangers: collapse of order and deceleration of growth. Several reports of the Law Commission, Police Commission, Administrative Reforms Commision, and other expert bodies have eloquently made out a case for many specific and practical judicial and police reforms. Despite the widely acknowledged need and urgency of reforms, precious little has been attempted to address this growing crisis. Given the electoral compulsions in a poor society, the short-term populist goals tend to dominate over long-term public good that can be promoted by effective enforcement of rule of law. The paltry expenditure on our justice system of roughly 0.8% of the GDP, which is less than or equal to half of the expenditure of other major democracies as seen in Figure 5, is a clear indication of the apathy of the stakeholders towards rule of law. As not only a moral necessity but also an economic imperative, expenditure on rule of law must be considered an investment for the future of the country.

Figure 5: Expenditure on Rule of Law as a % of GDP (2018)



Note: IMF data on public order and safety includes expenditure on police, prisons, fire protection services, law courts, public order and safety r&d, public order and safety n.e.c.
**Data for India has been calculated from expenditure on state police forces, judiciary and prisons only.*
Sources: International Monetary Fund 2018, Economic Survey 2017-18, National Crime Records Bureau 2019, Bureau of Police Research and Development 2019

Although there is a great temptation to completely overhaul the system to ensure fair, equitable, and speedy administration of justice, such radical change is neither practicable nor desirable. However, meaningful, well-thought out reforms can go a long way in restoring public faith in the justice system and ensuring public order and safety. A set of modest, practical, and effective reforms that are in consonance with the basic features of the Constitution are discussed below.

Police

The police are the agency to enforce the will of the State, entrusted with the central responsibility of ensuring order and peace in society. The role of the police is critical in any society, and particularly in a society with a remarkable diversity and social and economic inequality. The importance of policing stems from the fact that the State is afforded legitimate coercive powers. Therefore, the way the police function is an index of liberty and rule of law in a democratic society. The way the police and criminal justice system enforce law, protect innocent citizens, and use coercive power to ensure compliance of law is the ultimate test of rule of law.

Given India's population and diversity, maintenance of public order is a colossal challenge. It is, therefore, important to recognize that despite their many shortcomings, the police have been largely successful in maintaining order in society. Yet, the police are criticized as tardy, inefficient, high-handed, insensitive or unresponsive[12]. Often, police are perceived as instruments of abuse of power, rather than as a friend or protector of the people, an image that is a remnant of the colonial legacy and reinforced by obsolete methods and partisan political control.

Such an image of the police, although distorted, is not entirely unwarranted. Time and again, the inherent weaknesses of the police force have been exposed. The murky Arushi Talwar murder case of 2008 remains 'unsolved' to date owing to a shoddy investigation and mishandling of evidence by the Noida police[13]. Similarly, the murder of sister Abhaya in 1992 in Kerala, which finally resulted in a conviction in December 2020, 28 years after a multitude of re-investigations by the CBI, was a case of material evidence being destroyed or tampered with by the local police and crime branch[14]. During the lockdown, numerous images and videos surfaced on social media and the news of police brutality towards the violators of the curfew. The arbitrary use of force ranged from vandalizing vegetable carts to the burtal torture and custodial death of a father and a son in Tamil Nadu. About 140 deaths in police custody have been recorded by the National Human Rights Commission each year from 2013 to 2018[15].

These incidents are reflective of some of the underlying problems in the force. There is a tendency among the police to resort to physical violence to extract confessions and punish criminals, as opposed to use of technology and scientific methods. According to the Status of Policing in India report 2019, four out of five personnel believe that there is nothing wrong in the police beating up criminals to extract confessions[16]. Use of force, particularly against the poor and underprivileged, is common practice.

12 "Public Order", Fifth Report, Second Administrative Reforms Commission, Government of India, June 2007, p.g. 31

13 Mehra, Ajay K., "Aarushi Talwar-Hemraj Case Is a Perfect Example of Why India's Criminal Justice System Needs Reform", *The Wire*, 31 October 2017, https://thewire.in/government/aarushi-talwar-criminal-justice-system-reform

14 Philip, Shaju., "Explained: From suicide to murder verdict, a 28 year journey in Abhaya case", *The Indian Express*, 1 January 2021, https://indianexpress.com/article/explained/abhaya-case-explained-cbi-court-verdict-thomas-kottoor-sephy-guilty-7114774/

15 Annual Report, National Human Rights Commission India, 2017-2018, https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf

16 "Status of Policing in India", Common Cause & Lokniti – Centre for the Study Developing Societies (CSDS), 2019, p.g. 146, https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf

However, the police are not entirely to blame; they function under severe handicaps - inadequate human and technical resources and infrastructure, needless political control of crime investigation, and conversion of political and policy disputes into public order challenges. While the functions of the police have become ever so complex and highly specialized, they are still based on primitive methods and obsolete procedures. On the contrary, society and with it, crime, is constantly evolving. In India's growing urban landscape and economy, on one hand, social controls which hitherto contributed to a relatively peaceful society are weakening, and on the other, organized crime and trans-national syndicates are on the rise. The incidence of crime per 100,000 population in India over the past decade has risen from 181.4 instances in 2009 to 241.2 in 2019[17]. However, the personnel, resources and technology are not keeping pace with the growing challenges.

Moreover, in today's era of political polarization, governance problems often morph into public order problems. The highly contentious farm laws of 2020 which have manifested in the farmers' agitations, which have been going on for months and turned violent on the 72nd Republic Day, are testimony to how politicized public discourse presents critical law and order challenges. Our forms of protest are still guided by our past experience during the national movement for independence waged against alien rulers when we had no voice in governance and no constitutional rights. Dr Ambedkar warned us that the obstructionist and, on occasion, violent forms of protest have no place in a constitutional democracy. However, obstructionist forms of protest – rasta roko, bandh, rail roko, etc – continue to be a part of our political culture at enormous cost to the economy and inconvenience and hardship to ordinary citizens. In these conditions, the police have a difficult task of maintaining order without resorting to excessive force or stifling legitimate protest in a democracy. As a result, as the most visible arm of the State by the very nature of their functioning, the police bear the brunt of the public outrage in light of most governance failures.

While the public may harbour feelings of disdain and mistrust towards the police forces for many acts of commission or omission, the fact is that civilized society and democracy cannot survive in the absence of an efficient, fair, and well-functioning police force. It is therefore of utmost importance that we understand and resolve the various inadequacies that plague the police forces.

17 "Crime in India", National Crime Records Bureau, Ministry of Home Affairs, Government of India, 2019, Volume I, p.g. x, https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf

The first and most important problem impeding the police in India is the high degree of centralization of functions in a single police force, which has remained the case since the colonial era. In almost all states there is a common police force for 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, and so on. Performing such multifarious duties, the police forces are stretched to the limit.

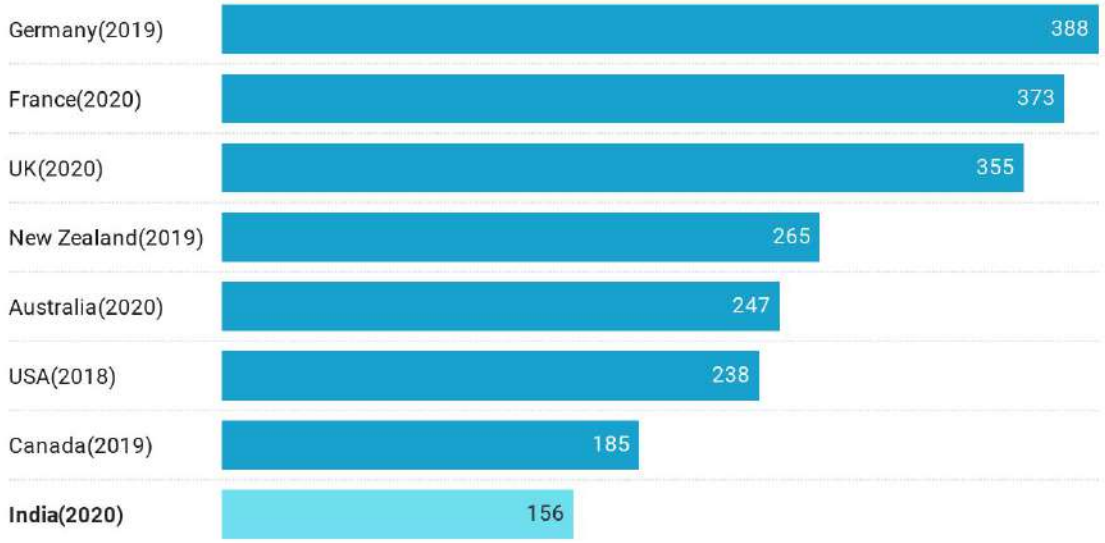
Having many functions concentrated in a single force presents a myriad of challenges. First, each function requires a certain degree of training, knowledge base, skill, and sophistication, all of which cannot be optimally sustained when many functions are concentrated in the same force. Second, in the absence of specialization, the police forces have to deploy more resources and time to achieve the same results in any given area of work. In addition, in the absence of specific and clearly defined roles, measuring performance and ensuring accountability is highly ineffective. Often, the core functions of policing are neglected in the face of ad hoc duties.

The severe shortage of personnel further aggravates the burden on the force. At 156 police per 100,000 population[18], India has one of lowest police to population ratios in the world, as represented in Figure 6. To make matters worse, a large proportion of the police force is engaged in peripheral duties such as protecting nearly 15,000 VIPs in the country at an average of three policemen per VIP[19], and three shifts a day. Working long hours, the police are under immense stress, which naturally impinges on their capacity to perform.

18 "Data on Police Organizations", Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, 2020, p.g. 64, https://bprd.nic.in/WriteReadData/userfiles/file/20210101120101164836 4DOPO01012020.pdf

19 Doval, Nikita. 'Understanding VIP security in India', *LiveMint*, 9 June 2015, https://www.livemint.com/Politics/Bv6xLDStKhw1TH1YNoazoI/Understanding-VIP-security-in-India.html

Figure 6: Police per 100,000 Population by Country



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

Moreover, the training that the police receive is not always adequate. The Padmanabhaiah Committee and the Second Administrative Reforms Commission (ARC) have noted that police training has been one of the most neglected areas over the years. Despite training being at the heart of effective and responsible police functioning, only 1.12% of the entire police expenditure was dedicated to police training in the year 2019-20[20]. The state training academies are ill-equipped and face a paucity of funds. Posting and retaining instructors continues to be a major challenge. Moreover, training methods are outdated, with a greater focus on 'discipline and regimentation' than the behavioural aspect of policing[21]. In the modern democratic milieu, the attitude of policemen has great implications on their ability to interact with and serve the citizens, especially the weaker and disadvantaged sections of the society. Moreover, with the evolving nature of crimes and job requirements of the police, inadequate training leaves them underprepared and ineffective.

Police are not merely overstretched, but also are handicapped by woefully inadequate infrastructure. The resources, technology, weapons and procedures available to the police have not kept pace with the times. Today, the criminals and crime syndicates have access to much greater firepower, faster transport, better communications, and in general far superior

20 "Data on Police Organizations", Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, 2020, p.g. 41, https://bprd.nic.in/WriteReadData/userfiles/file/20210101120101164836 4DOPO01012020.pdf

21 "Public Order", Fifth Report, Second Administrative Reforms Commission, Government of India, June 2007, p.g. 119

technology and speed in decision making. The police forces are not in a position to match these criminal gangs given the many inadequacies in their functioning. Surprisingly, in the year 2018-2019, out of the combined state plus union grant of Rs. 1,937 crores for the modernization of police force, only Rs. 802 crores has been utilized. The trend continued in 2019-20, where the actual expenditure on police modernization was less than half of the total grant[22]. This is a worrisome trend as police stations do not seem to be properly equipped with the latest technology such as weapons, communications systems including wireless devices and satellite networks, which would enable efficient tackling of crimes.

Owing to the dire shortage of personnel and absence of cutting edge technology, the police forces are left with little support to discharge their duties effectively. This is especially true of the poor state of forensic infrastructure in the country. India's forensic capability falls short of global standards by a mile. Compared to the size of the country, the lab infrastructure is insignificant, as seen in Table 3. The inadequacy of the forensic technology can be illustrated by measuring one metric, DNA testing. Only about 10 labs in the country have DNA analysis capacity, which translates to about 20,000[23] DNA samples being tested annually in the country. Forensic analysis in the investigation of one case would call for testing of about 6 DNA samples on an average. It, therefore, follows that India has the capacity to process DNA samples in a paltry number of 3300 cases in a year, while Delhi alone accounted for 11,313[24] violent crimes in 2019! Moreover, transport of evidence to reach labs in distant cities in primitive conditions creates room for corruption, loss of samples, disruption of chain of custody, and tampering of evidence.

22 "Data on Police Organizations", Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, 2020, p.g. 156-157, https://bprd.nic.in/WriteReadData/userfiles/file/20210101120101164836 4DOPO01012020.pdf..

23 "Delhi FSL Doubles Number of Mobile Forensic Units to Cater to Rising Demand for DNA Testing in Crimes", Business Wire India, 15 October 2019, https://www.businesswireindia.com/delhi-fsl-doubles-number-of-mobile-forensic-units-to-cater-to-rising-demand-for-dna-testing-in-crimes-65371.html

24 "Crime in India", National Crime Records Bureau, Ministry of Home Affairs, Government of India, 2019, Volume I, p.g. 155, https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf

Table 3: Forensic Infrastructure in India and 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

With little to no scientific support to prove the guilt of the accused, the police rely excessively on oral testimony and confessions, which are unreliable as they are often coerced using extra-judicial methods. The framing of Ashok Kumar, a school bus conductor, in a murder case of a seven year old school boy in 2018, is proof of the same. In Gurugram, the Haryana police, under tremendous pressure and haste to charge somebody, brutally tortured Ashok Kumar and coerced a confession, who was later cleared by the CBI[25].

Crime investigation in India is in shambles and the reasons for this are two-fold. First, certain areas of functioning, such as riot control, have to be under political supervision and monitoring whereas certain other functions, such as crime investigation, have to be independent of political and partisan control and are in fact quasi-judicial in nature. Since the functions are all clubbed in one police force, it is impossible to separate control of one function from another. As the government of the day has complete powers over the police, including the crime investigation machinery, as well as the legal authority to drop criminal charges against the accused, crime investigation has become a play thing of partisan politics and the fairness and objectivity of the investigation process is always suspect. The brutal rape and murder of a young lady in Hathras, UP, and the unhelpful response of the administration, is a telling example of the grave reality of excessive political control over policing in India.

Second, the crime investigation departments in almost all the states are understaffed, ill-equipped, and insufficiently trained. Crime investigation is a technical and complex function that requires a certain degree of skill, knowledge, sophistication, and professionalism. As it exists today, the quality of crime investigation in India leaves much to

25 Jha, Bagish., "Gurugram school murder: Court acquits bus conductor Ashok Kumar of all charges", *The Times of India*, 28 February 2018, https://timesofindia.indiatimes.com/city/gurgaon/gurugram-school-murder-case-court-acquits-conductor-ashok-kumar-of-all-charges/articleshow/63112789.cms

be desired. Figures 7A and 7B represent a comparative study of the caseload for crime investigation and prosecution for a few grievous crimes such as homicides, suicides, accidental deaths, drug overdoses, and rapes in India and the US. The nature of these crimes is such that they call for a higher degree of skill and competence to be dealt with and will therefore require a considerable amount of time of the investigator and prosecutor.

The analysis shows that at the current strength of the state Crime Branch - Crime Investigation Departments (CB-CID), each investigating officer in India handles about 26 cases in a year. In comparison, each investigating officer in the US handles only 4.2 crimes, which is a reasonable caseload considering the serious nature of these crimes. This is possible in the US because of the greater number of detectives and investigating officers per unit population.

Another critical issue is that within the limited strength of the investigation agency, nearly 60% of the officers in the CB-CIDs are of the ranks of Head Constable and Constable[26]. The current process of recruitment and training of constables does not equip them to be able to investigate serious crimes. When the investigator's professional skills are inadequate, and he is unaware or unmindful of the due processes of law, the quality of crime investigation suffers severely. Moreover, the police typically investigate the case without any legal counsel and their role ends with filing the charge-sheet, after which the prosecutor takes over. This lack of coordination allows the police and prosecution to blame each other for any lapses in the prosecution, which ultimately undermines the credibility of the justice system[27].

26 "Data on Police Organizations", Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, 2020, p.g. 120, https://bprd.nic.in/WriteReadData/userfiles/file/20210101120101164836 4DOPO01012020.pdf

27 "Public Order", Fifth Report, Second Administrative Reforms Commission, Government of India, June 2007, p.g. 95

Figure 7A: 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 7B: Strength of Investigating Officers and Prosecutors in India and US

Note: Number of investigating officers in India only includes state CB-CID strength
Sources: Bureau of Police Research and Development 2020, Bureau of Labour Statistics US 2019, Bureau of Justice Statistics US 2013

The fact that our justice system is archaic, ponderous, and inefficient also adds to the challenges of policing. Owing to the delays in the judicial process and the fact that conviction rate is as low as 50.4% (for IPC crimes), the pressure on the police forces to produce results by hook or crook is always mounting. Sometimes, in order to produce short term results, the police are compelled to resort to third degree and extra-judicial torture and punishments.

The Disha incident that occurred in Hyderabad in December 2019 serves as a case in point. The brutal gang-rape and murder of a young doctor immediately sparked nationwide outrage with people demanding instant justice for the victim. The outrage and anger from various sources pressurised the police to take immediate action, resulting in an 'encounter' killing of all the four accused[28]. What is more telling, the police were lauded and garlanded by the public for providing 'justice' to the victim's family. It is very sad and unfortunate that the credibility of our criminal justice system has eroded to a point where educated men and women prefer extra-judicial killing of criminals over the due process of law. While the perpetrators of such heinous crimes deserve the strongest punishment and the rights of the victim ought to be protected, undermining the due process of law will only further disrupt society and foster a state of lawlessness in the country.

In this backdrop, the need for police reforms is self-evident. Reforms must create institutional mechanisms to ensure a fair and efficient police force prepared to meet the growing challenges of urbanization and emerging threats to constitutional order, while ensuring effective accountability in keeping with democratic norms. The three key areas of reform are: one, increasing the strength of the police force and providing sufficient training, two, equipping them with adequate state of the art technology in terms of better mobility, communications, computerization and forensic infrastructure, and three, restructuring the organization for improved specialization, professionalism, and efficiency, while ensuring independent investigation with accountability.

1. Strength and Training

Enhancing the strength of police forces is necessary so that growing challenges can be met effectively. While our police - population ratio is still well below global norms, the actual strength of the personnel is much below the sanctioned strength[29]. A massive effort is required by all state governments to fill up vacancies and sanction additional posts based on the population and workload. Even more important is the quality of police personnel, which is a function of recruitment and training. Different functions of the police require a different knowledge and skill-set. Training must necessarily focus on the specific job requirements at

28 "Hyderabad case: Police kill suspects in rape and murder of Indian vet", *BBC*, 6 December 2019, https://www.bbc.com/news/world-asia-india-50682262

29 "Data on Police Organizations", Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, 2020, p.g. 31, https://bprd.nic.in/WriteReadData/userfiles/file/20210101120101164836 4DOPO01012020.pdf

each level. As proposed by the Padmanabhaiah Committee, training and promotions of the police forces must be designed similar to that of the defense forces of India[30]. At the entry level, for recruitment of officers of the level of Assistant Sub-Inspector (ASI), the qualifying examination should be followed by a professional degree program such as that offered by the National Defense Academy. Promotions should be linked to performance, including clearing departmental examinations and the completion of specialized training courses. In all specialized agencies except public order, especially in crime investigation, there should only be recruitment of officers of ASI rank, and not Constable.

State training institutes must be adequately strengthened and deputations to the institutes must be made more attractive as recommended by the Second ARC[31]. Following the upward trend in expenditure towards training in recent years, the investment must increase further. The impact of training must be evaluated and the programs must be revised as required every so often. In order to improve the coordination of all of the functionaries of the criminal justice system, joint training programs must be designed for the police, public prosecutors and magistrates. It is of utmost importance that the training regime focuses on the behavioural aspect of policing, and sensitizes them to citizen's needs, particularly the weaker sections of the society such as the poor, socially backward classes, and women.

2. Latest Technology

Adequate allocation and full utilization of the police modernization budget to equip our police forces with state of the art technology on par with global standards will significantly improve the outcomes. Mobility, communications, computerization, and forensics must be priorities to ensure timely response, coordination and speedy and efficient investigation, and act as deterrents to criminals. Such upgradation will significantly enhance the effectiveness, credibility, and stature of the police force.

Forensic infrastructure is not commensurate with the needs and requirements of the current day. A good Forensic Science Laboratory (FSL) must have five divisions with various sub-sections, as depicted in Figure 8. The FSLs must work in close coordination with the forensic medicine department, where the samples from victims of bodily injuries and death

30 "Report of The Committee on Police Reforms", Ministry of Home Affairs, Government of India, August 2000, p.g 38-47

31 "Public Order", Fifth Report, Second Administrative Reforms Commission, Government of India, June 2007, p.g. 120

are processed. This is crucial as half of the samples that go to the biologics and chemical divisions of the FSLs originate in this manner.

Figure 9 provides an overview of the necessary investment in scaling up the forensic technology in the country. The number and capabilities of the laboratories to be set up across the country should be based on the population, crime rate and the caseload in the given area. In addition to the seven central labs (CSFLs), every state must have a Forensic Headquarters, equipped with all the divisions and sections of both the forensic science laboratory and forensic medicine department. The existing state forensic labs must be sufficiently upgraded to enhance their capabilities as specified. There must be Regional Forensic Science Labs in all major urban centers within the states, with at least 5 of the sections including toxicology, serology, DNA analysis. At the district level, District Forensic Science Labs must be set up in close coordination with the district police headquarters, with two or three important sections. There must be a Medical Examiner's Office with adequate infrastructure for storage and post-mortem analysis at least at the district level, if not at the SDPO level.

Figure 8: Components of Forensic Science and Technology

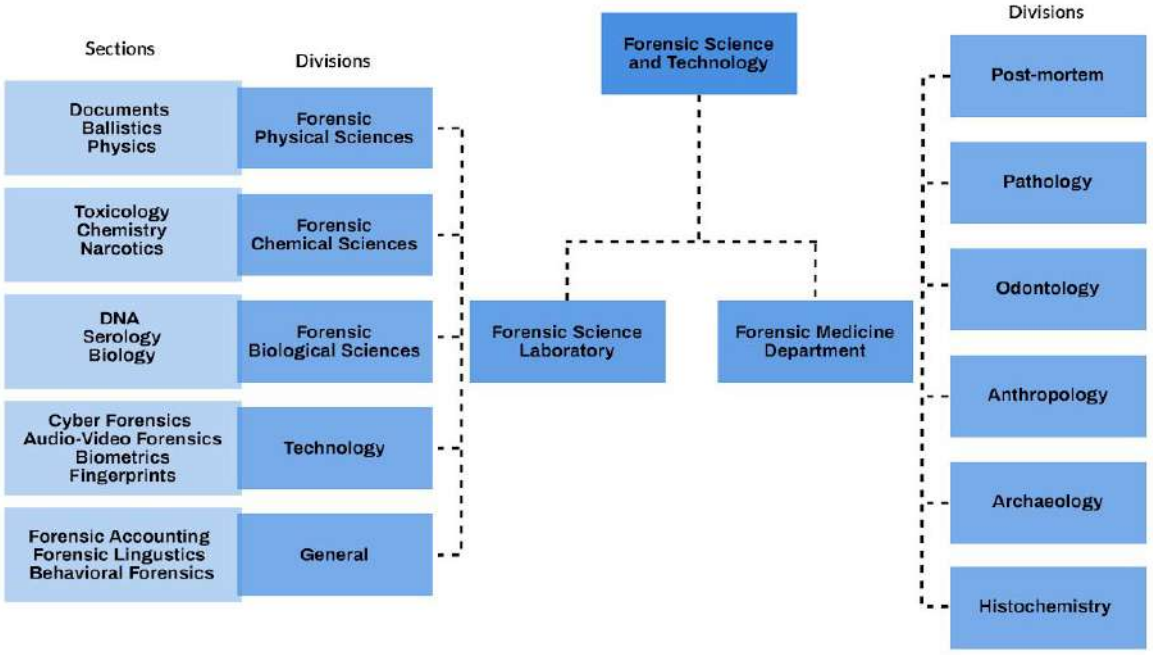


Figure 9: Proposed Forensic Infrastructure for India (in addition to existing CSFLs)

In addition to enhancing the laboratory infrastructure, it is necessary to empower the investigating officers with mobile forensic vans and evidence collection kits to process the scene of the crime and collect, handle, preserve, and package physical evidence in a timely manner. At the current infrastructure and manpower, the forensic teams reach the scene of crime in 50% of grievous crimes and 20% of other conventional crimes, and only 50% of districts have this capability, according to a leading forensic expert in the country. Mobile labs with crime scene processing technology must be deployed in every police subdivision at the SDPO level. Evidence collection kits must be made available at every Police Circle. Forensic evidence collection is carried out by trained scientists in other parts of the world. Given the manpower constraints in India, police officers must receive specialized forensic training to ensure proper collection, storage and transport of evidence duly following the principles of chain of custody.

The total one time cost of developing the infrastructure in this manner, would be of the order of Rs. 3000-5000 crores. The annual recurring maintenance costs (calculated as 50% of the one time cost) would be about Rs. 1500-2500 crores. The benefits of scientific and speedy crime investigation far outweigh the burden on the exchequer.

3. Reorganizing the Police Force

There are three broad areas of policing based on which the police force may be structured, to ensure autonomy with accountability and improve specialization and professionalism - law and order, crime investigation and local policing. Specialization and professionalism do not mean isolation; there should be effective coordination to bring synergy among all the wings.

I. Local Policing - Community Policing

In a democratic society, constant communication and a bond of trust between the society at large and the police force are necessary. Also, as far as practicable, there should be proactive policing, instead of merely reacting to situations and crime after the event. Therefore, a local police force ought to be embedded in the community to ensure close interaction with the citizens through some form of community policing.

The discord between the police and the public is evident in India, where two out of five police personnel themselves believe that common people are hesitant to approach the police even when there is a need[32]. Moreover, three in five personnel believe that the number of crimes reported are fewer than those committed in the society.

The outcomes are impressive in countries such as the UK, Singapore, and Japan that place community policing at the heart of their policing strategy. A similar organisational strategy whereby the police and the public closely collaborate to solve crime and disorder issues, can generally improve the neighbourhood conditions and feelings of security, enhance the confidence of the public in the police system, and curb criminal activities. Incidentally, Kerala ranked the highest among the states in terms of satisfaction with police performance in the Status of Policing in India report, 2018[33], followed by Himachal Pradesh, both of whom have adopted community policing practices in their day-to-day policing activities.

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32 "Status of Policing in India", Common Cause & Lokniti – Centre for the Study Developing Societies (CSDS), 2019, p.g. 130, https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf

33 "Status of Policing in India", Common Cause & Lokniti – Centre for the Study Developing Societies (CSDS), 2018, p.g. 64, https://www.commoncause.in/pdf/SPIR2018.pdf

Community policing as an integral part of the overall policing in India will greatly enhance public trust, communication and effectiveness of policing. It is proposed that local policing functions can be handled by a dedicated division called the community police, which would be drawn from the existing police force. At the ratio of 1 policeman per 5000 residents in respect of both rural and urban areas, we would need approximately 5% of the sanctioned civil police personnel to be employed in community policing activities. This will be a part of the local police station, but embedded in the community. The police station and the community police work as a single unit.

The community police in urban areas should be organised as small, mobile, effective units under local control. The increased familiarity and police visibility on roads would act as a deterrent to crime. In rural areas, the community police officer must reside in the village under his purview, and preferably be drawn from the local community. Additionally, it is recommended that meetings between the officers and the local community must be held on a monthly basis, with the purpose of discussion of local problems, and jointly formulating a policing strategy that is beneficial to the community.

By building meaningful relations with the residents of the community, the image of the police officer would alter from that of an oppressor to that of a service provider. By gaining expertise over the area, the police officer would be able to recognize aberrations, identify offenders and hold them accountable before the law, effectively nipping crime at the bud. With their local expertise, these community policemen will be a credible source of information and assistance to the crime investigation police in solving cases in their area.

II. Independent Crime Investigation

Public order has to be monitored and supervised by the elected government in a democracy. Political judgment is necessary in dealing with protests and agitations, particularly in a milieu in which many policy and governance issues result in agitations and law and order problems. Therefore the police force dealing with public order and minor crime should remain under political supervision and control.

However investigation of serious crime should be independent of partisan or political considerations. The job of the investigation wing is to collect evidence, identify the culprit, and present admissible evidence to the court of law. This function is vital in administration

of justice. Equal treatment of all citizens, application of law to all irrespective of rank, and impartial, honest, and efficient crime investigation are possible only when the investigation wing is strong, independent, well-trained, impartial, and yet accountable and transparent in its functioning. Investigation of serious crimes should therefore be separated from law and order functions requiring political oversight, even as effective coordination between various wings is ensured.

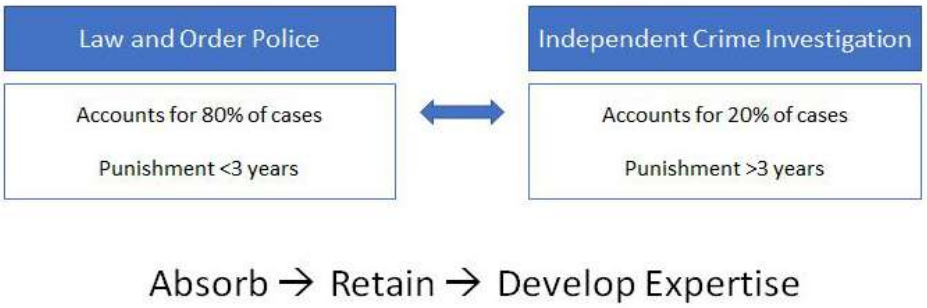
Several mechanisms have been proposed by various expert bodies for the separation of crime investigation from the general police force, time and again. Many states have also made provisions for the same in their state Police Acts. However, the implementation of this well acknowledged and widely accepted reform has been tardy and half-hearted. In the current social and economic climate, it is vital that independent crime investigation is incorporated into a uniform national law through an amendment to the Code of Criminal Procedure.

An independent crime investigation agency must be instituted in a balanced, holistic, and judicious manner, as proposed by the Second Administrative Reforms Commission (ARC). While crime investigation should be non-partisan, autonomous, and professional, it has to be accountable and transparent. Police are the visible, coercive arm of the State with the duty to use deadly force when necessary. Therefore, empowerment of any wing of the police should be accompanied by robust systems of accountability.

The investigation of crimes over a threshold, say, offences punishable by 3 or more years of imprisonment, such as murders, rape, grevious hurt, abduction and kidnapping, and so on, must be solely carried out by an independent specialized crime investigation agency. Such cases amount to about 20 percent of the total cases registered in a year (refer to Annexure B). The remaining 80 percent of the cases, punishable by a maximum sentence of 3 years of imprisonment, may remain under the jurisdiction of the regular law and order police force and police stations as now, as shown in Figure 10.

Appropriate mechanisms should be developed to ensure coordination between the two agencies and the forensics department at the local, district and state levels. Once recruited to the crime investigation department, there must not be any routine inter-agency transfer of these officers between the crime investigation wing and the law and order wing. Retaining investigating officers within the agency will allow the officers to develop domain expertise. However, if the officers are found unable to effectively discharge their duties in the crime investigation department, they may be reverted to the law and order force.

Figure 10: Police Workforce Specialization



The crime investigation wing should be manned only by officers of ASI rank or above, with appropriate number of support staff. The traditional pyramidal structure should be replaced by a more flat structure with tasks and teams being the focus. The forensic infrastructure, medical examiner's office and other technical experts to deal with complex challenges like cybercrime and financial fraud must be part of the CB-CID wing.

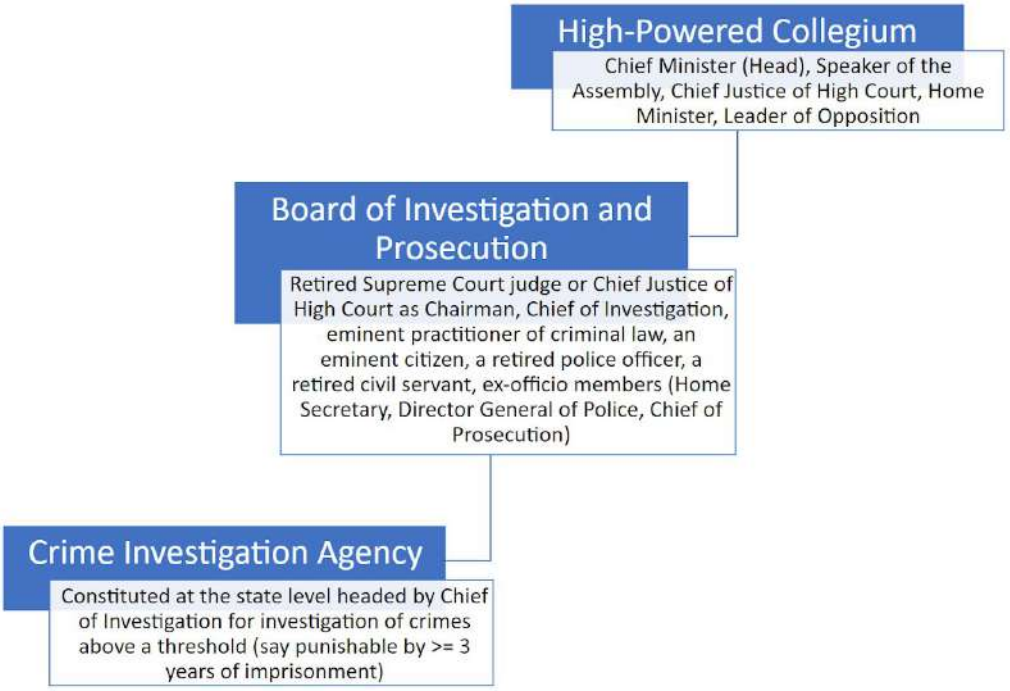
The autonomy of crime investigation has to be accompanied by strong, credible accountability mechanisms, and practical institutional linkages for effective coordination. All matters of appointment, promotions, transfers, postings and disciplinary action relating to crime investigation agency must be under the control of an independent Board of Crime Investigation and Prosecution. The constitution and composition of the Board may broadly be on the lines of the Board of Investigation proposed by the Second ARC.

The ARC proposed a State Board of Investigations headed by a retired or sitting judge of the High Court, and comprising of an eminent lawyer, an eminent citizen, a retired police officer, a retired civil servant, the Home Secretary, the Director General of Police, the Chief of Crime Investigation Agency and the Chief of Prosecution[34]. However, it may be advisable to have a Board of Crime Investigation and Prosecution headed by a retired Chief Justice of a High Court or Judge of the Supreme Court, with the other composition remaining as proposed by the Second ARC (see Figure 11). A single Board for investigation and prosecution will improve coordination between the two wings, and facilitate harmonious functioning. A former Chief Justice of the High Court or Judge of the Supreme Court will enhance the stature and authority of the Board, and will go a long way in insulating investigation and prosecution from political vagaries, while promoting transparency, public trust, and

34 "Public Order", Fifth Report, Second Administrative Reforms Commission, Government of India, June 2007, p.g. 88

accountability. It will also facilitate the appointment of a retired judge of the High Court to head the Prosecution Wing.

Figure 11: Constitution of an Independent Crime Investigation Wing



The strength of the specialized crime investigation agency must be substantially increased. Right now most major states have a CB-CID wing. These agencies have no automatic jurisdiction of serious crime and investigate only those cases referred to them by the government/ senior police leadership. The postings and transfers are entirely politically controlled as in the case with the other police wings. They only have a small staff and resources, and can only handle a limited number of cases. Typically, now the CB-CID has about 500-2000[35] total strength in a major state as seen in Table 4 . This number needs to be substantially enhanced, and training and infrastructure should be improved significantly.

35 "Data on Police Organizations", Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, 2020, p.g. 120, https://bprd.nic.in/WriteReadData/userfiles/file/20210101120101164836 4DOPO01012020.pdf

Table 4: 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
Rajasthan	1034
Tamil Nadu	1533
Telangana	506
Uttar Pradesh	365
West Bengal	1712

Source: National Crime Records Bureau, 2020

Based on the data shown in Figure 7 (on page 14), given India's relatively low crime rate, a ratio of 10 investigating officers per 100,000 population would lead to an annual caseload of approximately 5 cases of major crimes per officer. This means that there is a requirement of over 100,000 investigating officers in the whole country. To begin with, officers of the rank of ASI and above may be selectively recruited from the existing force and put through a rigorous, highly specialized training process. At this ratio, about 5-8% of the existing police force needs to be channeled into this independent crime investigation wing. Eventually, the direct recruitment can be made through a specialized cadre.

Restructuring the police force in this manner will not deplete the existing manpower in the police stations; it will redeploy the officers along with the transfer of cases to a specialized agency. Rather, it is a necessary step to provide for the specialization of functions and enhance efficiency. Having such an independent investigation agency to tackle crimes of a serious nature, equipped with suitably trained personnel and guided by legal counsel, will significantly improve professionalism in discharge of functions.

Prosecution

The prosecution has a dual role to play in the criminal justice system - present the case before the court during the trial and provide legal counsel to the police during investigation. The adversarial system of justice practised in India is based on the principle that the truth will be ascertained as a result of the two opposing parties in a trial, the prosecution and the defence, seeking to prove their case and disprove that of the other. The system presumes the accused to be innocent until proven guilty and places the 'burden of proof' on the prosecution. Moreover, the accused is generally represented by a competent defense lawyer who has a professional and financial incentive to get the client acquitted. In such a scenario, the onus of delivering justice to the victim lies on the competence of the prosecutor, who must prove guilt 'beyond reasonable doubt' for the trial to result in a conviction. Therefore, the importance of an independent and competent prosecution to the effective delivery of justice cannot be stressed enough.

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

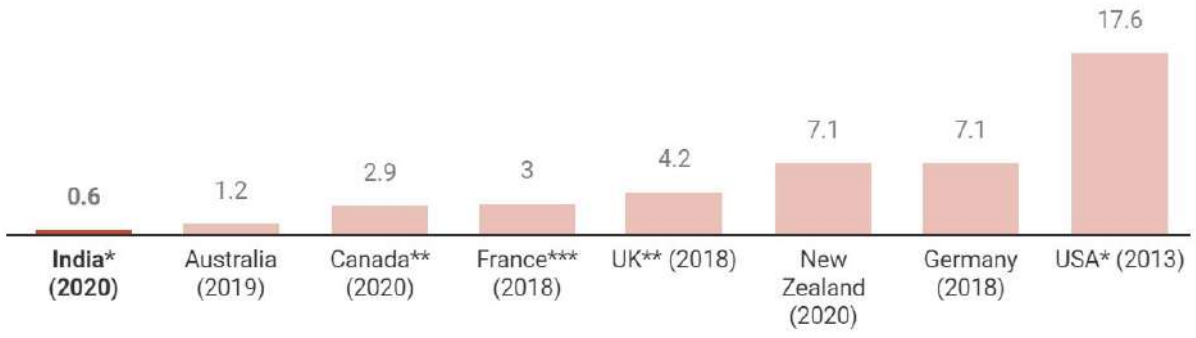
(ii) develop legally admissible evidence sufficient to obtain and sustain a conviction of those who are guilty and warrant prosecution.

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

When the investigation and prosecution work hand in hand to build a conclusive case backed by scientific evidence and adherence to the due processes of law, the criminal trial proceeds efficiently and succeeds in punishing wrongdoers. On the contrary, in India, the investigation and prosecution work in silos. The investigation is largely conducted by the police on their own with the prosecution taking over the case only after the charge sheet is filed in the court. Without having a say in the investigation process or scrutinizing the evidence before the chargesheet is filed, the prosecution lacks the opportunity to rectify the lacunae in the investigation such as inadmissible or insufficient evidence or determine whether or not the case ought to be charged.

Another major cause of concern is the paltry number of public prosecutors in the country. Figure 12 shows the contrast in the number between India and the rest of the major democracies. Although there are discrepancies in the prosecutor data in India, the overall picture looks grim. According to the e-prosecutions data, there are a total of 9124 prosecutors across India[36]. This amounts to about 1 public prosecutor in the country per 150,000 population - far below the judge to population ratio of about 1:70,000, meaning that India has more judges than prosecutors! The ratio is abysmally low when compared with the US (~1:6000). The caseload per prosecutor of the serious crimes as shown in in Figure 7 (on page 14), is 68 cases annually, which is nearly 9 times the caseload handled by the prosecutors in the US! This enormous caseload cannot possibly be handled by even the best prosecutors.

Figure 12: Country-wise Prosecutors per 100K Population

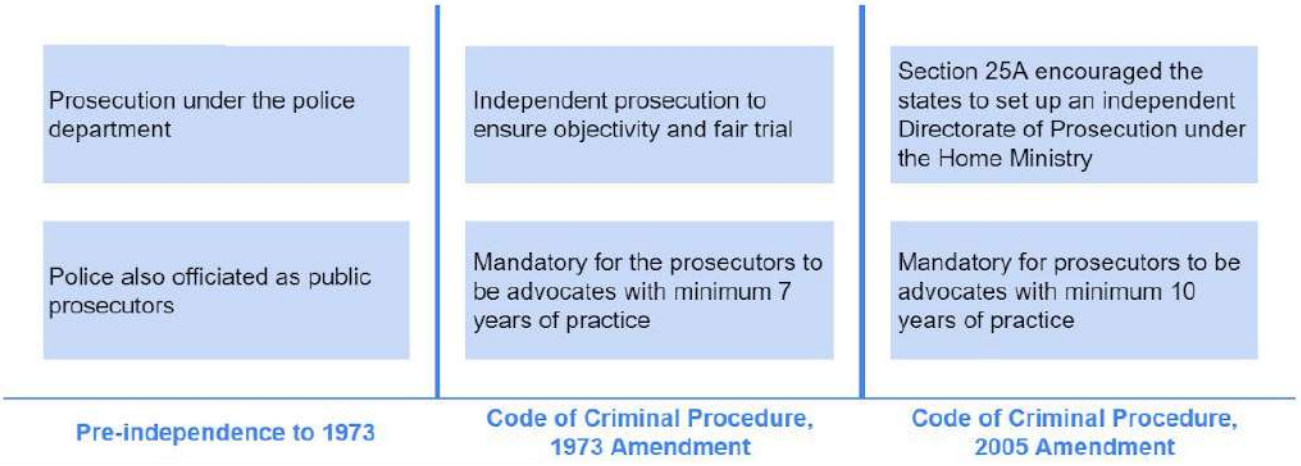


** 1.84 Federal Prosecutors + 15.79 State prosecutors per 100,000 population in US ** Canada and Australia include only federal prosecutors. Data on state prosecutors is not available.*
Source: Various countries' government statistics compiled by FDR

With scant manpower and no role in guiding the investigation, the prosecution wing remains quite powerless in the Indian criminal justice system. Consequently, prosecution has become largely ineffective, resulting in the abysmally low conviction rates. Over the years, many criminals have escaped conviction and this has brought tremendous misery to the victims and completely vitiated the public's faith in the justice system. This erosion of trust is increasingly leading to dangerous populism and calls for public lynching, severely undermining rule of law.

36 e-Prosecution, Department of Prosecution, Ministry of Home Affairs, Government of India, 2 February 2020, https://eprosecution.gov.in/eprosecution/

Figure 13: History of Prosecution Wing in India



Although some attempts have been made to make the prosecution independent and competent as seen in Figure 13, the subsequent challenges meant that the prosecution remains a weak link of the system. In other major democracies, the prosecution is front and center in the criminal justice system. In the UK, for example, whose criminal justice system historically formed the basis for its Indian counterpart, a Crown Prosecution Service was established in 1985. It is independent of the judiciary and police and advises the police during the investigation, decides whether or not a case should be prosecuted as well as determines the appropriate charges in the more serious or complex cases[37]. Similarly, in the United States, the District Attorneys (DA) are either elected or appointed by the Governor of the state, and they lead a staff of prosecutors for state or local crimes in their jurisdiction, typically a county. Similarly, US Attorneys appointed by the President for each of the 94 federal District Courts lead a large contingent of prosecutors in each district[38]. Prosecutors, both at the federal and state levels, enjoy the power and discretion to decide whether the case must be charged. The DA provides expert legal advice to the police during the investigation process and in some states, the DA can conduct further investigation if he/she feels the evidence is insufficient. The high conviction rate and clearance rate in these countries is an indication of the effectiveness of the prosecution.

Having an empowered prosecution wing helps the US state courts dispose of their huge incoming caseload of about 18 million criminal cases a year at an incredible clearance rate of

37 Crown Prosecution Service, United Kingdom, https://www.cps.gov.uk/

38 Offices of the United States Attorneys, United States Department of Justice, https://www.justice.gov/usao

over 95% percent.[39] The high conviction rate (over 92% in 2013 in District Courts[40]) seen in the US reflects in large part the strength of the prosecution. Cases go through thorough legal scrutiny before trial, and are either resolved through plea bargaining or successful trial.

1. Strength

An effort to improve the state of prosecutions in the country must begin with enhancing the capacity of the prosecution wing significantly. A ratio of at least five prosecutors per 100,000 population would mean that the strength of the prosecution must be increased 7.5 times. At this strength, each prosecutor would handle about nine cases in a year, close to the US caseload of about eight cases per prosecutor annually. An earnest effort from the state governments is required over the next five years to increase the number and efficacy of prosecutors.

2. Independent District Attorney System

To ensure professional competence, fair trial, and coordination between investigation and prosecution, there is need for structural reform at the district level. A District Attorney system as shown in Figure 14, similar to the one proposed by the Second ARC must be implemented. Each revenue district must have an independent District Attorney, drawn from the judiciary (say, a Sessions Judge), to guide and supervise all investigations and prosecutions in that district. In several states there is a practice of appointing serving District Judges as Law Secretaries for a tenure on deputation, and these judges return to the judiciary after their term in government. A similar practice could be adopted in drawing the DA from the judiciary. The number of trial court judges is already very low, and the courts are overburdened with a large pendency of cases. Therefore, vastly increasing the number of judges at various levels including local courts is a necessary precondition for judges being deputed as prosecutors.

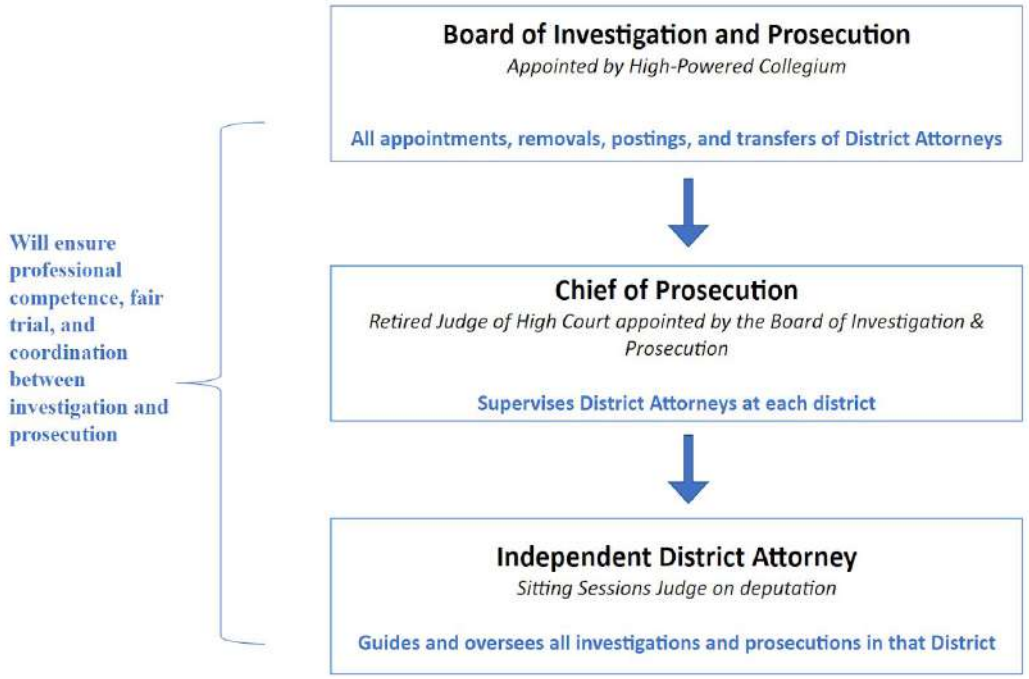
39 The Court Statistics Project, National Center for State Courts (NCSC) and the Conference of State Court Administrators (COSCA), US, 2020 http://www.courtstatistics.org/

40 'United States Attorneys' Annual Statistical Report', Executive Officer for United States Attorneys, US Department of Justice, 2013, https://www.justice.gov/sites/default/files/usao/legacy/2014/09/22/13statrpt.pdf

The ARC also calls for a Chief Prosecutor for the State to supervise the District Attorneys, appointed by the Board of Investigation. The Chief of Prosecution (or the Director of Prosecutions of the state) must be a retired High Court judge, appointed by the Board of Investigation and Prosecution. All matters of appointments, removals, postings and transfers of the District Attorneys should be under the control of the Board of Investigation and Prosecution. Similar to the existing practice of district judges being deputed as law secretaries, after serving as the District Attorney for a fixed tenure of 5 years, the judge must go back to practice. The Chief of Prosecution should have the power to appoint an adequate number of prosecutors in each district as per the guidelines of the Board of Investigation and Prosecution.

Such a District Attorney system is a crucial remedial measure whose benefits to the justice system are manifold. Judicial officers would serve as highly competent, impartial prosecutors with extensive knowledge of the law and hold credibility among the population, thus elevating the stature of the prosecution department. Being well versed with the law and trial procedure, they can better guide the investigation and prosecution, thereby making the criminal trial more efficient and productive. Bringing the investigation and prosecution under the administrative control of the same Board would ensure better coordination between them.

Figure 14: District Attorney System for Overseeing Prosecutions at District-level



The impact of this reform on the criminal justice system would be two-fold, first, improved quality of crime investigation and prosecution would enhance the conviction rate, and second, thorough legal scrutiny before trial would reduce the burden on the courts by creating a mechanism to filter the cases that are likely to be acquitted before going to trial, thereby improving their efficiency.

Procedural Law

Procedural law occupies a vital place in the rule of law framework of any polity. A sound procedural framework is necessary to give effect to legal rights and obligations of all stakeholders. This branch of law governs the working of every rule of law functionary, aiming to strike the balance between adequately empowering these functionaries on one hand, and minimising the scope for arbitrary exercise of power, on the other.

Several of the challenges faced by our justice systems, civil as well as criminal, find their genesis in the flawed procedural framework upon which these systems are built. Flawed, not on account of the underlying principles being wrong, but because they have become unsuitable for the current socio-economic conditions. Along with a rise in the absolute numbers, the nature of cases reaching the courts has undergone a change as well. Failure to adapt procedural rules to the emergent circumstances adversely affects the efficacy of the courts. Hence, archaic procedural rules constitute a significant factor contributing to the delays in disposal of cases and the huge pendency of cases in our trial courts and the High Courts.

On the criminal front, a direct consequence of the two challenges is the high proportion of undertrials incarcerated in the country, at nearly 70% of the total prison population, higher than any other major democracy in the world.[41] Most of the undertrial prisoners are poor and do not have the capability to hire a competent lawyer or post bail. It is particularly unfortunate that such a high proportion of prisoners are under-trials when the conviction rate in the country is amongst the lowest in the world. Such a situation undermines human rights and the foundation of rule of law in any civilized society let alone a robust democracy like India. Moreover, it costs the exchequer about Rs.120,000 every year per inmate on average and it is ironic that the State spends about Rs.4200 crore annually on undertrial prisoners but cannot deploy additional resources to improve the justice system[42]!

Similarly, the case pendency and delay in disposal in the civil justice system have meant that the opportunity cost of opting for a judicial resolution of civil disputes would far outweigh the benefits thereof. The fact that our civil caseload is considerably less than its criminal counterpart despite a low crime rate is sufficient evidence to show that most people are avoiding civil litigation as far as possible.

Therefore, the civil and criminal procedure codes and the laws of evidence have to be substantially revised to be able to meet the demands of modern judicial administration. Numerous expert Committees and reports of the Law Commission have extensively studied

41 "Prison Statistics India 2019", National Crime Records Bureau, Ministry of Home Affairs, Government of India, 2020, p.g. 33 https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf

42 "Prison Statistics India 2019", National Crime Records Bureau, Ministry of Home Affairs, Government of India, 2020, p.g. 255 https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf

these challenges and have recommended several changes to be brought about in the procedural framework.

CRIMINAL PROCEDURAL REFORMS

The Committee on the Reforms of the Criminal Justice System led by Dr Justice V.S. Malimath (hereinafter referred to as the Malimath Committee), set up by the Vajpayee government, produced a comprehensive and cohesive report on the changes necessary in the criminal procedural law in 2003. It is high time that these recommendations are implemented to restore the efficiency of the criminal justice system.

1. Adversarial System

The Indian criminal legal system, which is wholly derived from its English counterpart, is adversarial in nature. Such a system would entail a limited role for a judge in the conduct of the investigation as well as the trial. The judge must merely consider the facts and evidence brought on record by each party and proceed to convict or acquit the accused.

The necessary implication of an adversarial system is that any deficiency in the investigation or in the prosecution cannot be rectified by the judge. Therefore, the essence of a criminal trial becomes adjudging the efficacy of the prosecution rather than determining the guilt of the accused. Furthermore, the trial process places undue emphasis on proof over the truth, with no active endeavour to ascertain the truth of the matter, defeating the purpose of rendering justice. Given the multiple challenges faced by crime investigation and prosecution in India, lack of a positive endeavour by a judge to discover the truth has meant that the conviction rate in India has remained below par. An alternative can be found in the inquisitorial system followed in a few civil law countries such as France and Germany. Unlike in the case of an adversarial system, the judge plays an active role in the investigation as well as the conduct of trial.[43]

However, an adversarial system ensures that the judge remains objective, providing the accused the opportunity of a fair trial. It provides adequate protection to the interests of the

43 Report of the Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, 2003, Volume I, p.g. 23-29.

accused in criminal matters where repercussions are often severe in terms of life, liberty and property, whereas an inquisitorial set-up is often perceived to be biased against the accused. It is, therefore, neither desirable nor necessary to shift away from an adversarial set-up. Quoting Prof. Abraham S. Goldstein, the Malimath Committee noted that internationally there is a movement towards a convergence of the two legal systems to be able to effectively deal with challenges of rising crime. The United Kingdom and Australia, both common law countries, reformed their criminal justice systems adopting certain elements of the inquisitorial system.[44]

In order to enhance criminal justice delivery, it is essential to adopt the recommendation of the Malimath Committee that the aim of a criminal trial must be to arrive at the truth, with the judge playing a proactive role if necessary in reaching that goal. To give statutory effect to this principle, the proposed amendments to the CrPC must be carried out, which include mandatorily requiring the judge to call for evidence in order to ascertain the truth.

2. Standard of Proof

The standard of proof that is required to be met in a criminal case is that of proof beyond a reasonable doubt. This principle was conceptualised as a guide for the jury in criminal trials in the UK. As juries comprised of ordinary citizens, such a high standard of proof was necessitated to ensure that the rights of the accused were protected and due care was exercised in reaching a verdict.[45]

Although the principle of presumption of innocence remains central to any criminal justice system, a gradual shift in the burden of proof is noticeable in light of changing socio-economic conditions, evolving nature of crime, and associated challenges including new and graver forms of crime, low convictions rates, and practical difficulties in securing evidence. For instance, acknowledging the difficulty in clearly defining the parameters of 'proof beyond reasonable doubt', the courts in India have frequently modified the principle whenever it was in the interest of justice, including doing away with strict adherence to a very high standard of proof. Furthermore, a lower standard of 'clear and convincing standard' of proof is prescribed for the offence of fraud in a few states of the USA, illustrating that

44 Report of the Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, 2003, Volume I, p.g. 23-29.

45 Ibid, p.g. 71-74.

while presumption of innocence is a universal concept, the mode and standard of proof is left to be determined by the State, in accordance with local conditions and the nature of the offence.[46]

As stated by the Malimath Committee, most of the acquittals in India are a result of the prosecution failing to prove its case beyond reasonable doubt to the satisfaction of the court. The said standard of proof was laid down in the context of different surrounding circumstances, wherein the habits of people were simpler, witnesses were generally willing to testify in the court, and the truthfulness of the testimony was generally not in question. There is now a need to revisit the standard of proof to adapt it to emergent conditions where the crime is more sophisticated, and witness testimony is increasingly becoming unreliable. A standard of proof that protects the innocent on one hand, but also prevents the guilty from escaping punishment on the other, must be adopted.

3. Right to Silence - Adverse inference

Another key area of criminal procedure that requires to be revisited in light of a changed socio-economic milieu is the right to silence of the accused. The accused is undoubtedly a vital source of information for the purpose of the investigation. However, the fear of infringing the right against self-incrimination of the accused enshrined under Article 20(3) of the Constitution prevents the police and the courts from fully utilising this source of information.

Following a detailed study of the limits of Right to Silence of an accused, the Malimath Committee recommended incorporation of a provision in the CrPC similar to Section 35 of the United Kingdom Criminal Justice and Public Order Act, 1994. Section 35 allows an adverse inference to be drawn against the accused upon his refusal to answer during a trial with the preconditions that the prosecution had established a prima facie case, and the accused had access to a lawyer during time of questioning. A similar provision would be in consonance with Article 20(3). Furthermore, sufficient safeguard against arbitrary exercise of this power is ensured as a judge, not a jury or a layman, gives the verdict in our country.

46 Ibid, p.g. 69-71.

4. Rights of Victims

Imposition of a positive duty on the court to seek the truth must be accompanied with a means of achieving this objective. In a traditional Inquisitorial System, a judge participates in the investigation in order to ascertain the truth. As a complete transition to an Inquisitorial System is not called for, the Malimath Committee suggests recognising the victim's right to participate in criminal proceedings as a means of facilitating the discovery of the truth by the courts. The victim, being naturally interested in the conviction of the offender, would play an active role assisting the court in discovering the truth. The victim may be allowed to put questions to witnesses or suggest questions to be put by the court, and point out the existence of evidence not already brought before the court.

Victims's participation in the trial has multiple advantages - it assists the court in exercising discretion in bail matters; helps the court in computing the quantum of compensation for the victim; provides an opportunity for the victim to continue prosecution in case of withdrawal by the state; and facilitates compounding of cases.[47]

5. Statements and Confessions recorded by a Police Officer

Police play the critical role of ascertaining facts through the collection of evidence in order to prove the case in a court of law. Therefore, the success of a case for the prosecution depends entirely on the work done by the investigating officer. Despite the significance of the findings of crime investigation, the police are handicapped in effectively performing their functions due to various procedural constraints. These constraints stem from the distrust of the police and suspicion of their credibility. Two such procedural obstacles in police functioning are -

- Restrictions on the use of statements made under Section 161 of the CrPC.
- Confessions made before a police officer not being admissible as evidence under Section 25 of the Indian Evidence Act.

These constraints have essentially meant that valuable information collected by the police during the investigation process cannot be used by the prosecution. Therefore, this allows the

47 Report of the Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, 2003, Volume I,, p.g. 36.

witnesses to lie or make contradictory statements with impunity as it does not amount to perjury.

Statements of Witnesses under Section 161 CrPC

Section 161 of the CrPC deals with examination of witnesses by the police during the course of investigation. It provides that any statement made to the police under this section may be reduced into writing by the police. However, Section 162 mandates that such a statement shall not be signed by the witness making the statement, and that it cannot be used for corroboration, but only for the purpose of contradicting the witness. While the accused can use such a statement to contradict the witness, the prosecution can only do so with the permission of the court.

In order to adequately empower the police officers to perform their functions effectively, the statements made during the course of investigation must be recorded in writing and be required to be signed by the maker of the statement. It should be made permissible to use such statements for the purpose of both corroboration and contradiction.

Confessions made to a Police Officer

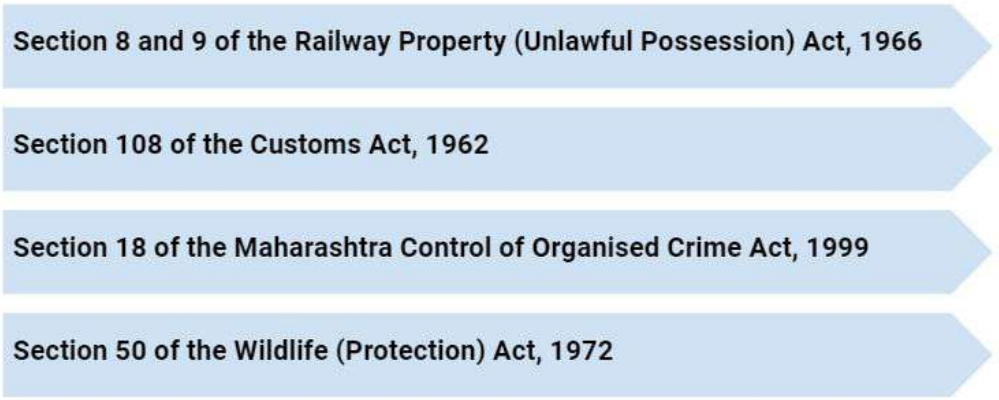
Section 25 of the Indian Evidence Act renders inadmissible any confession made to a police officer, irrespective of the rank of the officer recording the confession. The rationale for this provision is evidently the need for the protection of the accused against extraction of confessions using forceful means. This unqualified restriction invalidates a precious piece of evidence in establishing the guilt of the accused. However, Section 27 of the Evidence Act renders admissible such part of the information received from the accused as that which enables the discovery of any fact relevant to the case. Constrained by the restriction under Section 25, the police are often compelled to manipulate the evidence so as to bring it within the ambit of S.27, thereby rendering the confessions admissible in a court of law, especially in case of organised crimes and the like wherein procuring independent witnesses is extremely difficult. It can therefore be seen that the combined effect of these two provisions is not only inhibiting smoother investigation but in practice is defeating their very purpose.

Confessions made before the police have been made admissible in other parts of the world, including Singapore, which follows a largely similar criminal justice system. In Singapore, police officers of a certain rank, viz. Sergeant-level officers are empowered to record

confessions.[48] Even under Indian law, confessions made to certain law enforcement agencies under various laws are made admissible in evidence, as can be seen in Figure 15.

The 48th Report of the Law Commission of India had recommended that confessional statements recorded by a police officer of the rank of Superintendent of Police or higher should be admissible in evidence provided that the accused is informed of his right to consult a legal practitioner. Officers of the level of Superintendent of Police or higher have been empowered to record confessions under the above mentioned laws, and there is no reason why the same authority and responsibility cannot be extended to investigation of all crimes.

Figure 15: Acts under which Confessions made to Investigating Officer are Admissible



The Malimath Committee, therefore, recommended that Section 25 of the Indian Evidence Act be substituted with an appropriate provision that renders admissible confessional statements recorded by a police officer of the rank of Superintendent of Police or above. However, keeping in mind the workload of the SP, who leads the force at the District level, it may be too cumbersome for him/her to take part in every investigation in the District. Therefore, it is necessary that the confessions recorded by an officer of the rank of Deputy Superintendent of Police or above is made admissible. The provision providing for audio/ video recording of the statement, acts as an additional safeguard.

6. Perjury

Despite perjury being an offence under the Indian Penal Code (Sections 193-195), the phenomenon of witnesses turning hostile and/or giving false evidence is very common. As perjury law is not enforced effectively, a system of false witnesses perjuring themselves for a

48 Report of the Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, 2003, Volume I, p.g. 122.

price has been established as a profession in most of our courts. As the prosecution relies heavily on oral evidence in a trial, the menace of perjury becomes especially critical in a criminal proceeding.

The ordinary procedure for trying a person for perjury, prescribed by Section 340 of the CrPC (Figure 16), is cumbersome, hindering proper application of these provisions.[49] It is, therefore, proposed that the court must be required to try the case summarily once it forms the opinion that the witness has knowingly or willfully given false evidence or fabricated false evidence with the intention that such evidence should be used in such proceeding, according to the procedure prescribed in Section 344 of the CrPC (Figure 17). However, if the judge is satisfied that it is necessary and expedient in the interest of justice that the witness should be tried and punished following the lengthier procedure, he/she may do so. Moreover, the punishment of three months or fine up to Rs. 500/- or both should be enhanced sufficiently. Depending on the gravity of the case, the punishment could be upto three years, and the fine could be any amount within the court' s competence.

49 Report of the Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, 2003, Volume I, p.g.154-155.

Figure 16: Trial Procedure under Section 340 of CrPC

Figure 17: Trial Procedure under Section 344 of CrPC

7. Trial Procedures

The CrPC provides for several means of swiftly disposing of cases, especially those relating to minor offences, which constitute the majority of criminal cases in the courts. These provisions, however, remain under-utilised. In order to speed up trial procedures and dispose of a large number of cases that do not involve serious offences, all Magistrates should be allowed to try cases summarily, without having to be specially empowered by the High Court to do so. Furthermore, summary trials should be made mandatory for the categories of offences that are so triable and not be left to the discretion of the Magistrate concerned. One category of offences that can be tried summarily is the Summons Cases. The scope of the Summons Cases should be increased to include all cases relating to offences punishable with imprisonment of upto three years from the current limit of two years. The CrPC also provides

for certain offences relating to property such as theft that can be tried summarily. The value of the property in question must be enhanced in accordance with the increase in property values. The Malimath Committee recommended that the maximum punishment that can be awarded in a summary trial be increased from 3 months to 3 years. However, keeping in mind the nature of summary trials and in the interest of justice, the maximum punishment that can be imposed should be increased to one year.

Moreover, the scope of Petty Offences must be enhanced by adequately increasing the fine amount. The fine amount that can be mentioned in the summons must also be enhanced accordingly. It should be made mandatory for the Magistrate concerned to deal with all petty offences in the manner provided in Section 206(1) which calls for issuing a summons to the accused with the option of pleading guilty by post or through a pleader.

CIVIL PROCEDURAL REFORMS

Similarly, several Law Commission reports and other expert bodies have time and again deliberated upon improving the civil justice delivery system, particularly upon the need for modifications in the Civil Procedure Code, 1908.

Civil litigation in India takes unduly long owing to inefficient court administration systems, excessive judicial passivity in conduct of trials, poor communication between the litigants themselves, and with the court. The consequent backlog of cases and delay in disposal leads to routine granting of interim injunctions and prolonged delay in hearing of contentions which in turn results in a protracted, fragmented, and discontinuous trial process.[50]

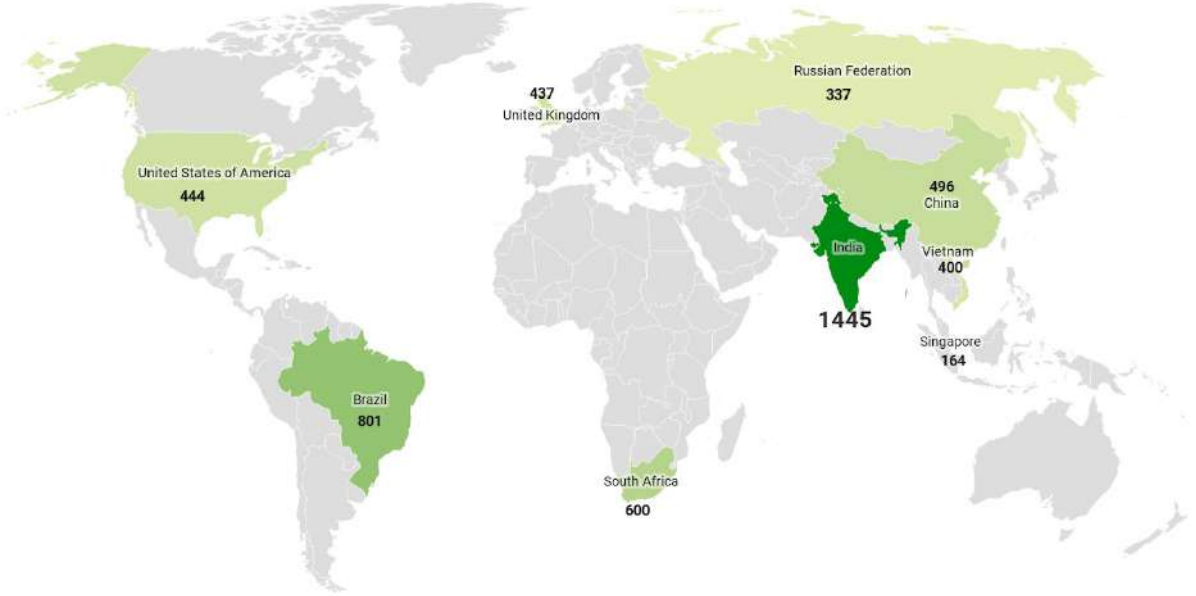
For instance, it takes about 1445 days on average to enforce a contract through the Indian courts whereas the global trend is around 480 days,[51] as shown in Figure 18. This inordinate delay in resolution of civil disputes means that contractual obligations essentially become rights that can be breached with impunity, and the eventual remedies in the litigation will be devoid of any value for the litigants. This acts as a significant barrier to economic growth of the country.[52]

50 Hiram E. Chodosh , Stephen A. Mayo, A.M. Ahmadi & M. Abhishek Singhvi, "Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process", 30 N.Y.U. J. INT'l L. & POL. 1 (1997), p.g. 4-5.

51 Ease of Doing Business Rankings, The World Bank, 11 February 2021, https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts

52 Hiram E. Chodosh, Stephen A. Mayo, A.M. Ahmadi & M. Abhishek Singhvi, "Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process", 30 N.Y.U. J. INT'l L. & POL. 1 (1997), p.g. 5.

Figure 18: Time required to enforce a contract (days) in Major Democracies



Source: The World Bank, 2021

The problem of inefficiencies in civil justice delivery is neither new nor is it unique to India. Numerous legal systems across the world continue to grapple with the challenges of law's delays and India is no exception. Several attempts have been made in the past to reform the civil procedural framework in order to remedy these problems, including provisions to deal with excessive adjournments, to better enable imposition of costs, as well as to promote alternative dispute resolution mechanisms in lieu of a court trial. The unabated increase in pendency suggests that the impact of these changes has been marginal.

Notwithstanding the existing pendency of cases, our civil courts will encounter an increase in the influx of cases as a natural consequence of an expanding economy and rising property transactions and contracts. It is neither feasible nor desirable to continually enhance the number of judges to deal with the increased caseload without improving the methods to enable optimal functioning of the courts. In pursuit of improved management of judicial time, legal systems around the world have reoriented their approach towards civil dispute resolution through adoption of case management practices in various forms.[53] While a similar attempt is being made in India, much remains to be done.

53 Justice M. Jagannadha Rao, Case Management and its Advantages, Law Commission of India, year?, https://lawcommissionofindia.nic.in/adr_conf/Mayo%20Rao%20case%20mngt%203.pdf; Salem Advocate Bar Association, TN v. Union of India, A.I.R. 2003 S.C. 189, at paras 9-12.

1. Case Management System

As a concept, case management entails judicial control over the progression of a case in the court system, with the ultimate responsibility of the conduct of the litigation shifting from the litigants and their legal counsel to the court. Case management system as part of judicial procedure differentiates between cases of various types. It allows for prioritisation and targeted utilisation of judicial resources for cases or issues that need it the most. Pre-trial procedures assume great significance in such a system whereby the judge aims to identify the issues of real contention which require the trial process for resolution, and to strongly promote settlement in case of the rest.[54] Procedural rules hitherto, including the Civil Procedure Code, 1908, did not provide for such a distinction to be made, allowing every issue to be pursued regardless of time and expense.

A pertinent example to note is the process of civil justice reform in the UK in the 1990s. In light of expanding backlogs, rising costs, and protracted delays in the civil court system, the then Master of Rolls, Lord Woolf was appointed to study the UK civil justice system and suggest necessary reforms. The final report titled Access to Justice released in 1996 paved the way for the Civil Procedure Rules 1998 which marked a pivotal shift in the functioning civil courts in the UK. The Civil Procedure Rules adopted the concept of a case management system as the basis for civil dispute resolution in the courts. Essential elements of a case management system identified by Lord Woolf are given in Table 5. These reforms have been widely credited with improving civil justice delivery by enhancing the coordination between the parties and the court, limiting the number of trials, and enabling timely disposal of cases.[55]

54 Sir Harry Woolf, Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales, 1996, https://webarchive.nationalarchives.gov.uk/20060213223540/http://www.dca.gov.uk/civil/fin

55 See Tamara Goriely, Richard Moorhead, & Pamela Abrams, "More Civil Justice? The Impact of the Woolf Reforms on Pre-action Behaviour", https://orca.cf.ac.uk/44483/1/557.pdf

Table 5: 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

A Supreme Court appointed Committee considered the suitability of a case management system for the Indian Courts and suggested draft rules for both High Courts and Subordinate Courts.[56] It noted the necessity of adopting the novel approach towards adjudication, and therefore, provided for a track system to classify cases of various types in the courts, as shown in Table 6. Currently, 17 High Courts in India have drafted Case Management Rules for subordinate courts based on the draft rules recommended by the Committee. However, these rules are not comprehensive and do not sufficiently cover all elements of a case management system.

56 "Consultation Paper on Case Management", Law Commission of India, p.g. 8, https://lawcommissionofindia.nic.in/adr_conf/casemgmt%20draft%20rules.pdf

Table 6: 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

Furthermore, with the enactment of the Commercial Courts Act, 2015, a new procedural framework specifically meant for commercial cases, with a few elements of Case Management System, was introduced (see Table 7). Formulated with the aim of boosting India's performance in enforcement of contracts, these rules were meant to be put in practice on pilot-basis and eventually made applicable to all civil disputes.[57] The impact of these new rules on the efficacy of contract enforcement in India is not yet clear. However, a few studies indicate that the compliance with the new procedural framework is lax, leading to underwhelming outcomes.[58]

57 "Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015", Report No. 253, Law Commission of India, Government of India, 2015, p.g. 36, https://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill,_2015.pdf

58 See Ameen Jauhar & Vaidehi Misra, "Commercial Courts Act, 2015: An Empirical Impact Evaluation", Vidhi Centre for Legal Policy, 2019, https://vidhilegalpolicy.in/wp-content/uploads/2019/07/CoC_Digital_10June_noon.pdf; Prof. (Dr.) Sudhir Krishnaswamy & Varsha Mahadeva Aithala, "Commercial Courts in India: Three Puzzles for Legal System Reform", 2020, Journal of Indian Law and Society, 11 (1). p.g.. 20-47, https://jils.co.in/wp-content/uploads/2020/08/Commercial-Courts-in-India-Three-Puzzles-for-Legal-System-Reform.pdf

Table 7: Additions to the CPC for Commercial Cases

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

In light of the improvement in the civil judicial administration witnessed by legal systems around the world as a result of a robust set of case management rules, including in the UK,[59] Civil Procedure Code must be reviewed and amended to suit the current requirements. The rules recommended by the Supreme Court Committee as well as the Commercial Courts Act, 2015 can form the basis for such an exercise.

2. Pecuniary Jurisdiction of Civil Courts

Another aspect of the civil justice system that requires to be brought up to date is the limits of pecuniary jurisdiction of civil courts. These limits are provided by the Civil Courts Acts of each state and therefore, are not uniform across the country. While the authority for determining such pecuniary limits must be left to the administration of each state to be exercised in consideration of local conditions and needs, it is essential that they are periodically reviewed and revised, so that efficient administration of justice is not hindered. Table 8 depicts the illustrative pecuniary limits that are suitable for current economic conditions which may be adapted in accordance with the specific requirements of each state. These limits must be reviewed every 3 years in order to ensure that the civil justice system is responsive to a dynamic economic system.

59 "Consultation Paper on Case Management", Law Commission of India, p.g. 6, https://lawcommissionofindia.nic.in/adr_conf/casemgmt%20draft%20rules.pdf

Table 8: Illustrative Pecuniary Limits

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

Judiciary

The judiciary is the most vital part of the justice system, broadly performing two critical functions. One, through constitutional courts, it acts as the watchdog of constitutional liberties by placing a check on excesses of state authority, and two, through civil and criminal adjudication in trial courts, it enforces rights and obligations of the citizens in their everyday interactions and thereby, maintains order and promotes harmony in the society. An independent and impartial judiciary is, therefore, a sine qua non for enforcement of rule of law. Access to justice would be rendered meaningless in the absence of a fair, speedy, inexpensive, and effective judicial system.

Our judiciary, however, is mired with several problems, severely disabling the delivery of justice. The enormous pendency in courts is a defining feature of the Indian judiciary. Inefficiencies in the judicial process have resulted in cases being registered in courts at a much faster pace than they are disposed of, creating a backlog which has worsened over the years. Of the 5.6 million cases pending in the High Courts today, 85 percent are more than a year old.[60] The situation in subordinate courts is particularly unfortunate. Currently, there are 10 million civil cases and 27 million criminal cases pending in District and Taluka Courts across India.[61] In 2018-19, at least one in every four cases in Bihar, Uttar Pradesh, West Bengal, Odisha, Gujarat, Meghalaya, and Andaman and Nicobar Islands, has been pending

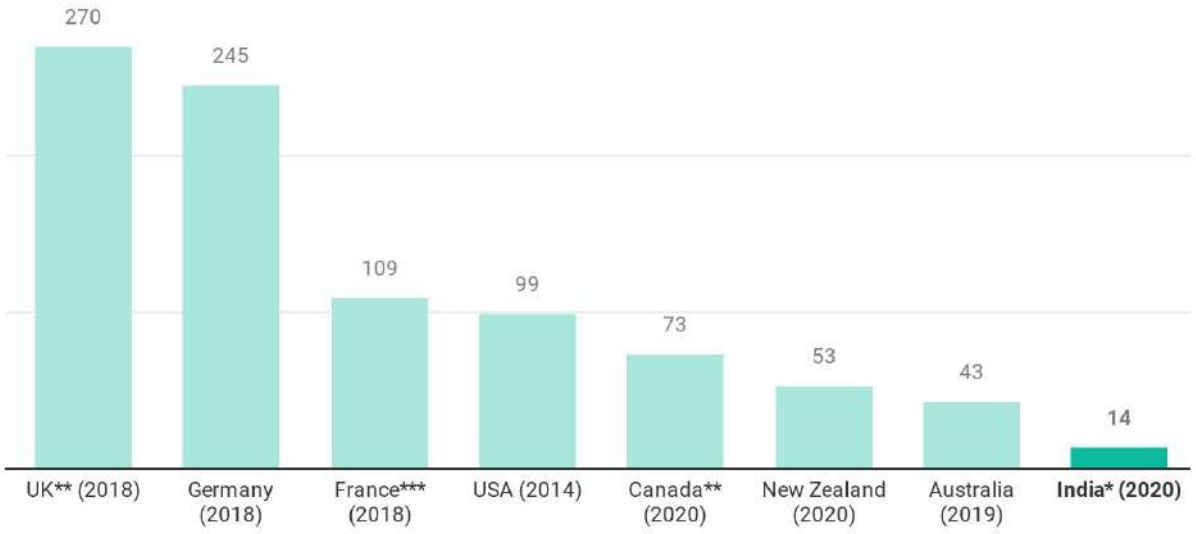
60 National Judicial Data Grid, 10 February 2021, https://njdg.ecourts.gov.in/hcnjdgnew/

61 National Judicial Data Grid, 10 February 2021, https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard

for more than 5 years.[62] Furthermore, the average number of pending cases in the High Courts as well as the Subordinate Courts rose by 10.3% and 5% respectively between 2016-17 and 2018-19.[63] While the dilatory procedures and archaic practices represent one part of the problem, the pendency can be also attributed to several resource constraints plaguing the judiciary.

The foremost challenge limiting the capacity of our courts is the dire shortage of judges. As of 2020, the judge to population ratio in India at actual strength is 14 judges per million population, while the ratio at sanctioned strength stands at 20.91. The number is abysmally low compared to many parts of the world (see Figure 19). At the ratio of 50 judges per million people recommended by the Law Commission of India, the requirement of judges stands at nearly 70,000 judges. In reality, the 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.[64]

Figure 19: 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 not include members of the labour and commercial courts.*
Sources: Various countries' official statistics compiled by FDR

In such a situation, each judge is unduly burdened with an enormous caseload, considering that roughly 14 million cases are instituted in the trial courts every year. As a matter of fact,

62 "India Justice Report 2019", Tatas Trusts, 2020, p.g. 69, https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf

63 "India Justice Report 2020", Tata Trusts, 2021, p.g. 58, https://www.tatatrusts.org/Upload/pdf/ijr-2020-overall-report-january-26.pdf

64 Rajya Sabha Debates, *Impact of COVID-19 pandemic over pendency in courts*, Session No. 252, 22 September 2020, *Unstarred Question,* Shri Ravi Shankar Prasad, https://doj.gov.in/sites/default/files/RS-22.9.20.pdf

a trial court judge in India on average disposes of 824 cases in a year compared to 159 in the UK (calculated by dividing the total number of disposals in the year by the number of actual judges at the end of that year). This means that he/she spends one fifth of the time on deciding a case compared to his/ her UK counterpart, adversely affecting the quality of justice delivered. Worse still, excessive caseload has meant that most orders emanating from courts would be by nature of granting stays instead of adjudication. As delayed justice has become endemic, many litigants abuse the judicial process only to harass the adversary or to buy time, not to get justice. Inadequate justice because of hurried disposal of cases, and a culture of browbeating the opponent and buying time have led to endless appeals, further clogging the justice system.

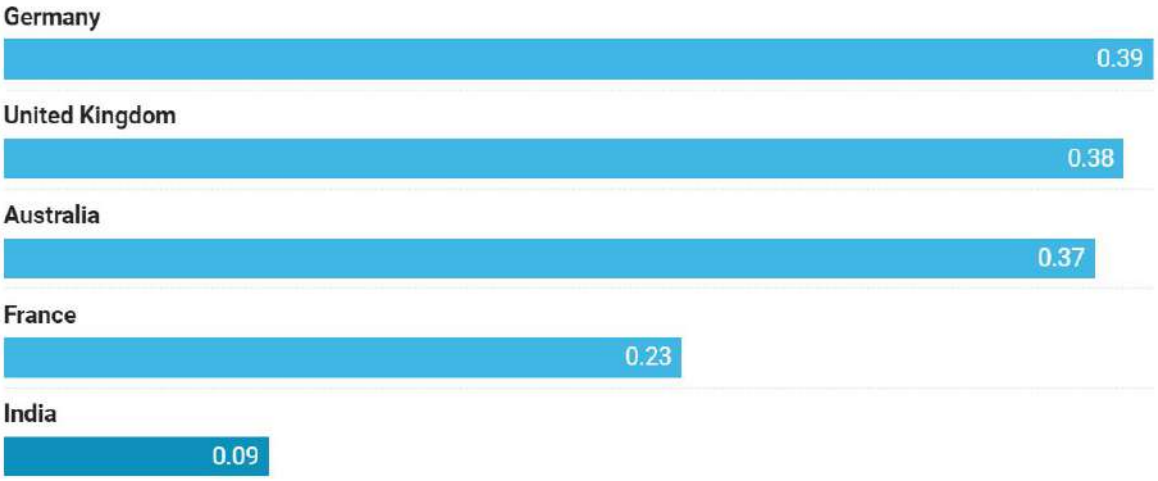
Besides the shortage in personnel, the judiciary is further crippled by a severe lack of resources at its disposal. For instance, as of January 2020, there are only 19,632 courtrooms available in the country,[65] far below the number required to cater to the total sanctioned strength of judges. This is an inevitable consequence of insufficient state expenditure on the judiciary. The combined expenditure of the Union and the states on the court system in 2018 amounted to a meagre 0.09% of the GDP,[66] whereas the proportion for some other major democracies is more than twice that of India (Figure 20). In fact, the Union and the states on an average spend less than 1% of their respective budgeted amount of money on the judiciary. Moreover, the increase in judicial expenditure over the years in respect of most states is far less than the average increase in their budgetary expenditure which clearly indicates the low-priority accorded to the judicial system by the elected governments.[67]

65 Lok Sabha Debates, *Judicial Infrastructure*, Session No 3 of the 17th Lok Sabha, 5 February 2020, *Unstarred Question,* Shri Ravi Shankar Prasad, https://doj.gov.in/sites/default/files/5-feb-2020_3.pdf

66 "Economic Survey 2017-18", Department of Economic Affairs, Ministry of Finance, Government of India, 2018, Volume I, p.g. 140, http://www.indiaenvironmentportal.org.in/files/file/economic%20survey%202017-18%20-%20vol.1.pdf

67 "India Justice Report 2019", Tatas Trusts, 2020 , p.g. 60-62, https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf

Figure 20: Expenditure on Law Courts as a % of GDP (2018)

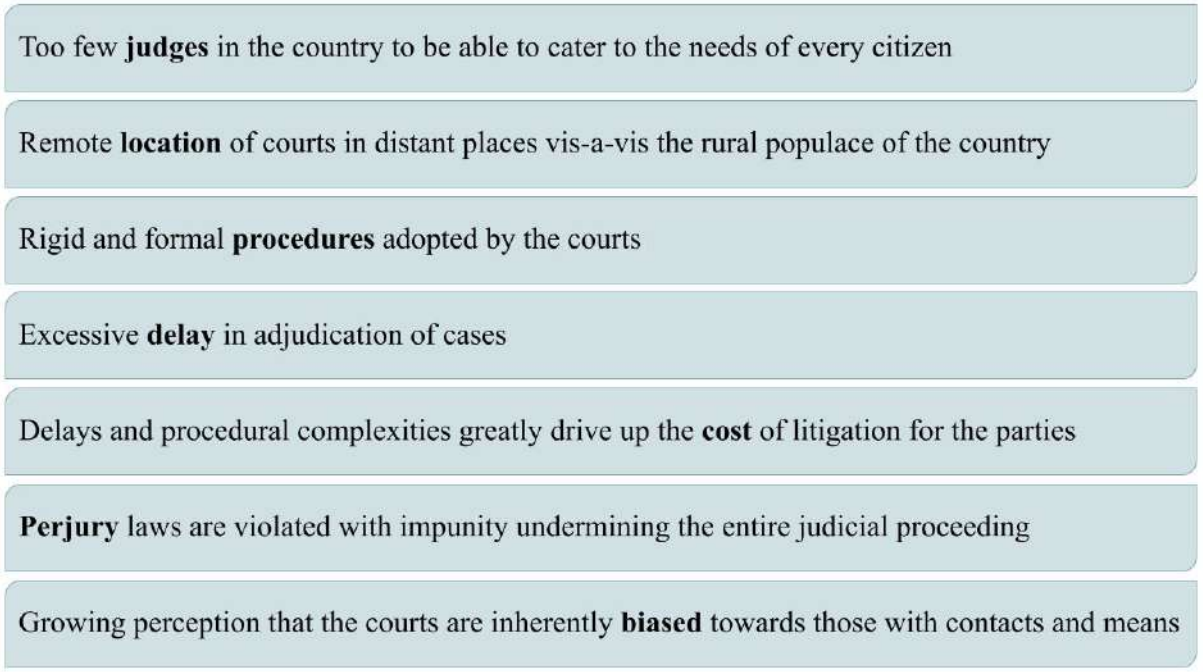


Sources: International Monetary Fund, Economic Survey 2017-2018

As delays, and rigid and complex procedures drive up the cost of litigation, the courts have come to be perceived as biased towards those with means. The most serious impact of these shortcomings, shown in Figure 21, on rule of law is the incapacity to provide justice to the ordinary citizens of the country. The litmus test of any justice system is the access provided to average citizens, facing simple, day-to-day disputes. As a result of the courts' inability to resolve these disputes, people have been compelled to resort to extra-judicial methods of settling disputes, often involving violence and corruption. The ensuing culture of lawlessness is gradually eroding rule of law in society.

Although several interventions have been tried in the past in the form of better court administration practices, establishment of Lok Adalats and Fast Track Courts, they have been grossly insufficient. Unless suitable mechanisms are evolved to address major factors that hinder accessibility of the court system to the ordinary citizen of the country, the justice system cannot enforce the rule of law.

Figure 21: Barriers to Justice for Ordinary Citizens



1. Local Courts

Many efforts have been made all over the world to make justice speedy, accessible and inexpensive, particularly in respect of the ordinary cases. For instance, in the US, small claims courts, with limited jurisdiction at municipal, city, or regional level are usually confined to civil suits involving relatively small amounts of money and minor violations of law. The procedures are simple with very little formality, and those involved in litigation normally present their cases to a judge, magistrate or court commissioner. The maximum amount involved in a suit in these courts varies from state to state, ranging from $1000 to $15,000, but limited to $5000 in most states. The parties can be represented by a lawyer or come to appear on their own. In 2018-19, the small claims filings in California reached a total of about 150,000 cases, while the disposals numbered 153,000.[68]

In the UK, local courts called Magistrates Courts (Justices of the Peace) for criminal matters and the small claims track for civil matters deal with a majority of the court caseload. Local criminal courts, presided over by Justices of the Peace (JP), date back well beyond 1361 AD, when the first JP Act was enacted. The JPs deal with offences involving minor violations of

68 "2020 Court Statistics Report", Judicial Council of California, 2020, p.g. 80, https://www.courts.ca.gov/documents/2020-Court-Statistics-Report.pdf

law, constitute nearly 83% of the total judiciary, and dispose of 93% of the total criminal caseload, as shown in Table 9.

Table 9: Justices of Peace in UK for Minor Criminal Cases

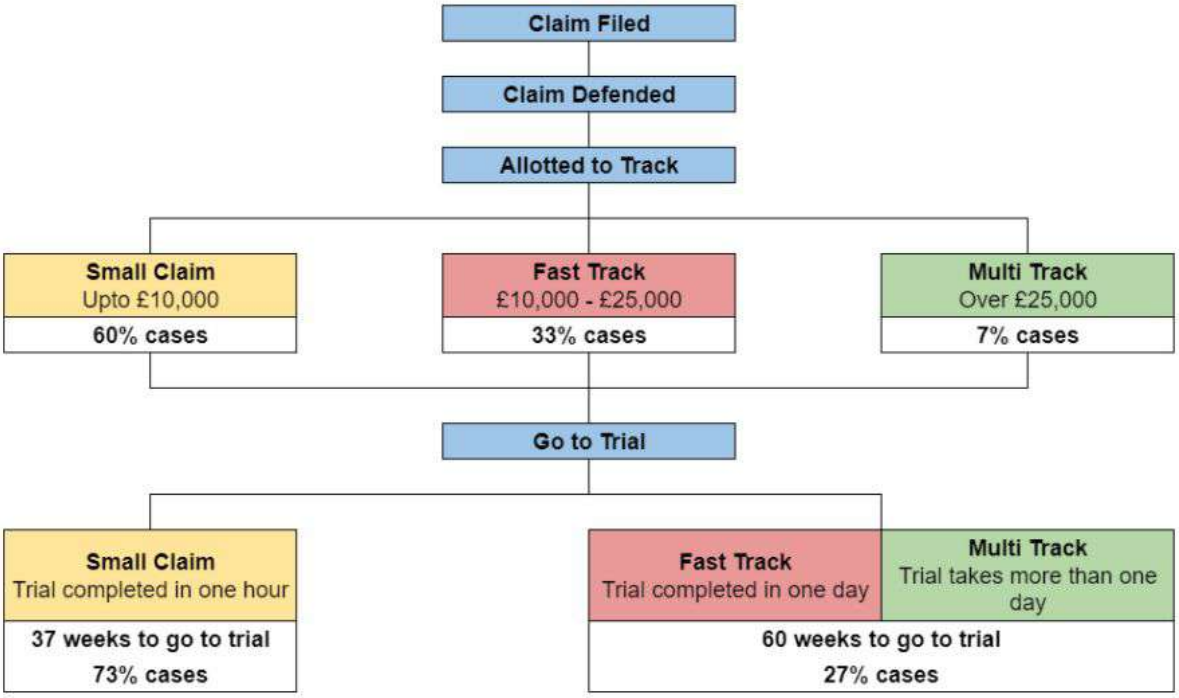
Magistrates' Courts (Justices of the Peace)		
Proportion of Magistrate's in the judiciary	**Proportion of total criminal caseload dealt with**	**Clearance Rate**
83%	**93.40%**	**99.8**
Source: UK House of Commons, 2019		

The small claims track, a component of the track system wherein cases are sorted to different tracks based on the claim value and complexity as shown in Figure 22, has the pecuniary jurisdiction of upto £10,000. Defended claims are allotted to a track and proceed to trial if they are not resolved by settlement at each stage. Small claims account for about 60% of the cases allocated to tracks and about 73% of the total trials conducted in the civil courts.[69] Hearings in the small claims courts are conducive even to those who cannot access legal representation, and are usually completed within an hour.[70] Using informal procedures, these courts are very popular and effective in dispensing speedy justice.

69 "Civil Justice Statistics Quarterly - October to December 2019 Tables", Ministry of Justice, United Kingdom, 2020, https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-october-to-december-2019

70 "Guide to Civil Justice Statistics Quarterly", Ministry of Justice, United Kingdom, 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870186/Civil-supporting-document-Q419.pdf

Figure 22: Small Claims Track for Civil Cases upto £10,000



Source: Ministry of Justice, UK, 2019

In India, the honorary second-class magistrates system which operated successfully in many states in the past is a good example of such a system. In 2008, the Gram Nyayalayas Act was passed by the Parliament, which provided for the setting up of local courts in every block in rural areas. These courts are intended to be local courts trying simple civil and criminal cases, adopting summary procedures, functioning as an integral part of the independent justice system, and fully under the administrative control of the High Courts. However, the implementation of the law so far has been lax, despite the Union Government and Supreme Court urging the states to set up these courts. The Report of the Working Group of the Twelfth Five Year Plan (2012-2017), Department of Justice, Ministry of Law and Justice, Government of India, envisaged 2,500 Gram Nyalayas to be established at a cost of Rs. 1356 crores across India. In stark contrast, as of 2020, a mere 395 Gram Nyayalayas have been notified, of which only 221 are functional.[71]

71 "One Hundred and First Report on Demands for Grants (2020-2021) of the Ministry of Law and Justice", Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, 2020, p.g. 36, https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/18/125/101_2020_3_13.pdf; "42 Village Courts to Come up in Andhra Pradesh", The New Indian Express, 27 February 2020, https://www.newindianexpress.com/states/andhra-pradesh/2020/feb/27/42-village-courts-to-come-up-in-andhra-pradesh-2109070.html.

Given the many challenges faced by the judiciary and the eroding public faith in the justice system, a significant increase in the number of trial courts at the lowest level, with the adoption of simple, informal procedures for adjudication is all-important. Local courts will ensure speedy and fair justice through simple and uncomplicated procedures at a low cost, both for the system and the ordinary citizen. Having hearings as close to the cause of action as possible will encourage truthful witnesses to come forward locally and resolve matters speedily. Adequate safeguards to ensure the credibility and accountability of these courts can be put in place. A provision for appeal ensures corrective steps in case of miscarriage of justice. As an integral part of the independent judiciary, these courts will be under the administrative control of the High Court of the state.

The Gram Nyayalayas Act needs to be improved to bring a system of local courts into effect all across the country, rural and urban. The scope of the law must be widened to include urban areas, where petty crime and civil disputes are on the rise. Setting up of such courts by state governments must be made mandatory. Over the next three years at least one local court per block in rural areas must be set up. Based on the caseload, there may be a court for about every 50,000 people in urban areas, with one court per every 100,000 at the very least. Ideally, there should be around 15,000 such courts dispensing prompt and effective justice. This recommendation is not unreasonable considering that the UK, with a population of 66.8 million, has 14,348 local criminal courts (JPs),[72] or one JP for 4,658 population. The jurisdiction of the courts must be exclusive, so that all civil and criminal cases below a certain level (say Rs.500,000 for civil matters and criminal offences punishable by a maximum of 3 years of imprisonment) will automatically be heard by these courts. The power of sentencing of these local courts may be limited to one year jail term. If the local court is of the opinion that the crime warrants a sentence of more than one year, the case may be referred to the appropriate judicial magistrate.

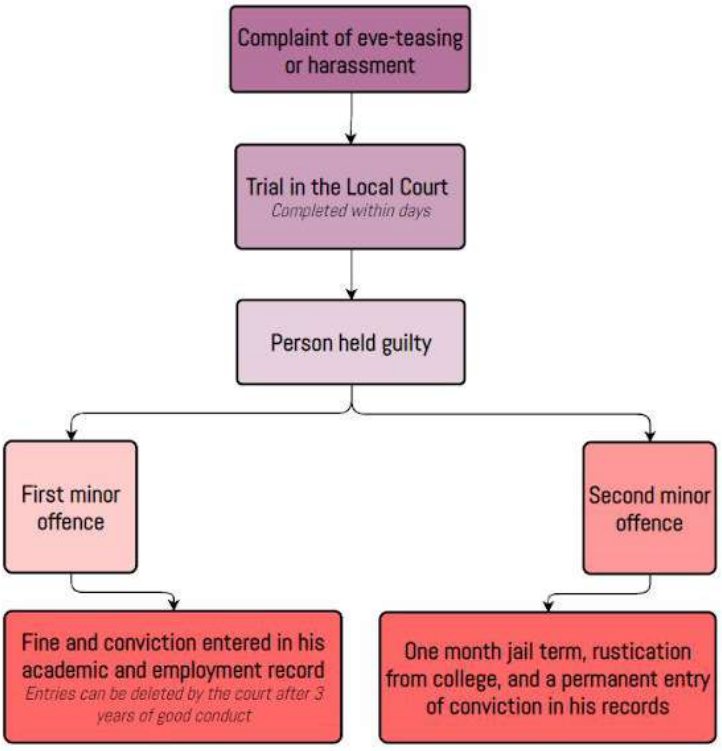
The speedy delivery of justice in the case of criminal offences requires an efficient local police force that works in synergy with these courts. Therefore, it is recommended that the local court be coterminous with the local police station. With the local court and local police station having the same jurisdiction – geographic and functional – it would not only facilitate better coordination and speedy trial, but also effective policing. Further, each local court should have a dedicated public prosecutor. This would enable the prosecutor to work in

72 "Judicial Diversity Statistics", Courts and Tribunals Judiciary, United Kingdom, 2019, p.g. 17, https://www.judiciary.uk/wp-content/uploads/2019/07/Judicial-Diversity-Statistics-2019-1-2.pdf

tandem with the local police to eliminate functional bottlenecks and facilitate speedy prosecution of cases.

Another critical issue for the country which can be addressed through these local courts is women's safety. By expanding local courts all over the country, especially in urban areas, an acceptable, simple mechanism for ensuring speedy justice in cases of day-to-day harassment, gender violence and ill-treatment of women can be created. Harassment of women including eve-teasing, inappropriate remarks, touching without permission and other forms of daily humiliation is rampant, especially in urban areas, and often goes unchecked, creating a culture of impunity and lawlessness. Once this permissive climate of harassment of women with impunity goes unchecked, it escalates over time and paves way for more serious crimes against women. To create a culture and climate of safety for 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. Swift and sure action with follow up, such as that proposed in Figure 23, will create a culture of zero tolerance of all forms of harassment of women, ensuring women's safety and dignity in public places.

Figure 23: Local Court's for Women's Safety



2. Clearing Arrears in Trial Courts

While long term measures to facilitate the courts to speedily deal with the incoming caseload are much-needed, the huge backlog is a constraint on the system that needs to be addressed through a one-time mechanism. A close look at the number of cases instituted and disposed of in a year by the Indian courts shows that the rate of disposal (calculated as cases disposed per cases filed in the year) is around 84%. In 2019, the disposal rate was 90%. However, when the caseload of pending cases from previous years is included with the new cases filed in 2019, the rate of clearance is less than 30% (see table 10).

Table 10: 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
Civil	3516589	3387063	**96.3**	13637583	**24.8**
Criminal	13641430	12094736	**88.7**	40984166	**29.5**
Total	17158019	15481799	**90.2**	54621749	**28.3**

Source: National Judicial Data Grid, 12 February 2021

Once the challenges of reduced faith in courts and the growth of dispute resolution through rough and ready settlements are addressed, and the efficiency of the justice system is restored, more people will rely on the system to resolve their disputes. For the courts to be able to handle this incoming caseload effectively, it is necessary that the arrears are cleared on a fast-track basis. While the induction of more judges can contribute to a certain extent, it may not be practicable to increase the manpower in the higher courts to the level necessary to clear the backlog.

The local courts can play a major role in clearing up the backlog of pending cases, and may do so more effectively as they are free from the procedural complexities that encumber the process of litigation in the District and High Courts. It is, therefore, recommended that all civil suits pending over a year and upto Rs.500,000 in value can be transferred to local courts and the remaining cases can be disposed of by Fast Track Courts set up for this purpose, as shown in Table 11. Similarly, all criminal cases which are pending more than 1 year and are

punishable by a maximum of 3 years of imprisonment can be transferred to the corresponding local courts where they will be tried summarily and disposed of quickly. Such cases would naturally constitute the major proportion of the pending cases, approximately 80%, which can be cleared within a few years. Moreover, if the local court judge feels that a particular crime warrants a greater punishment than that can be imposed by him, then the case may be transferred to the appropriate court. The remaining 20% of the pending criminal cases, which are punishable by more than 3 years of imprisonment must be transferred to and speedily disposed of by an efficient system of Fast Track Courts, to be put in place over the next 2 years.

In order to handle the post conviction challenges, the prison capacity needs to be substantially improved to accommodate the convicts, and the undertrials should be released on bail. Also law should be amended to provide for punishment other than prison term for relatively minor crimes - fines, community service, probation, restitution to victims, mandatory rehabilitation etc.

Table 11: Jurisdiction of Local Courts and Fast Track Courts

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

3. Contempt of Court

While local courts are a necessary step towards making justice accessible to the masses, the existing trial courts are also in need of reform to ensure speedy justice and reinforce their authority. The issue of contempt of court is one important area of reform as it not only affects the swift dispensation of justice but also undermines the authority and integrity of the judicial process. A trial court judge is entrusted with the power of awarding punishment, even a death sentence in the case of a Sessions Judge. However, the trial court judge is impaired without the authority to enforce discipline and compliance in his/her courtrooms and must rely on the High Courts to penalize those in contempt of court. Misbehaviour and disregard for the

judicial rules and norms by the witnesses, litigants, accused, or lawyers causes delays in the trial process and is an obstruction to justice. Therefore, it is essential that trial court judges are empowered to act immediately in a case of contempt of court and impose a penalty or sentence proportionate to the offence, in the interest of delivering speedy justice, and preserving the dignity and authority of the court.

4. All India Judicial Service

Undoubtedly our judge - population ratio is too low, and we need to increase the number of trial court judges. But as many jurists have pointed out, mere increase in the number of judges, without improvement in their quality, is of no avail. The quality of justice administered critically depends on the quality of the judges recruited.

The quality of judicial officers recruited to the subordinate judiciary in most states is on the decline. The duties and responsibilities of judges are onerous, and any dilution of competence in recruitment into the judiciary has profound consequences to the country. 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, and in general vitiates rule of law and constitutional governance.

The experience in many States shows that with the present practice of recruitment of subordinate judges, competent lawyers and bright young law graduates are usually not attracted to a career on the Bench. In comparison, the prestige and prospects attached to the Indian Administrative Service and Indian Police Service attract some of the brightest youngsters into these services, with fierce nation-wide competition. In general, the quality and competence of officials in the all-India services are regarded as fairly high at the stage of recruitment.

Article 312 of the Constitution provides for the creation of an all-India Judicial Service common to the Union and the States. All District and Sessions Judges should be recruited to such a service, and acquire adequate training and exposure. Only such a meritocratic service with a competitive recruitment process, high quality uniform training and assured standards of probity and efficiency would be able to ensure speedy and impartial justice. A proportion of the High Court Judges could be drawn from the Indian Judicial Service, after adequate experience in trial courts.

There is fair criticism about lack of mechanisms to sustain motivation, competence and integrity once officers are recruited to IAS and IPS, largely because of lack of specialisation, non-transparent functioning, lack of accountability, almost guaranteed, time-bound promotions and high degree of politicization of administration. However, unlike the executive branch of government, the judiciary is completely independent and invulnerable to the vagaries of politics and partisan pulls. The High Court has complete control over the conduct and functioning of trial courts and there are established procedures for elevation to the High Court and Supreme Court. Judicial functioning is such that there is complete transparency and constant public scrutiny of court functioning and the quality of judgments. Therefore, once recruitment practices are sound, there are incentives for better performance as well as effective monitoring of judges in trial courts.

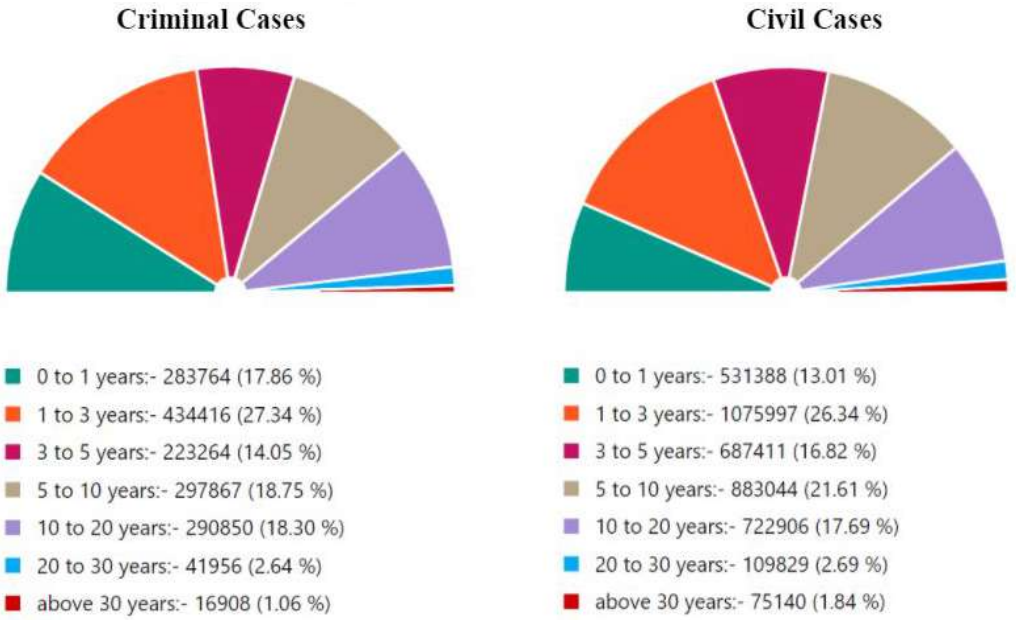
A highly competent, meritocratic All-India Judicial Service would accord judicial officers with the prestige and respect that the civil services enjoy, ensuring that the best talent can be tapped for the judiciary. Then the control exercised by the High Court, and the prospects of elevation to High Court, and the transparent functioning of courts will ensure high quality performance in trial courts. At the very least, formation of an all-India service for the judiciary would ensure a high level of competence and skills in our justice administration. In order to ensure proper career management, the IJS officers may be required to serve on a five-year probation in courts below district level, and on confirmation serve at the district level as per the constitutional requirements.

5. Pendency in High Courts

The High Courts, along with the Supreme Court, are the Constitutional Courts in India. They are constituted by, and derive authority directly from, the Constitution of India. High Courts are placed at the apex of the judicial pyramid in a state, and as such are entrusted with multiple responsibilities and an expansive jurisdiction, both original and appellate, over the territories over which its jurisdiction extends.

The Indian High Courts are facing a crisis of a great magnitude by virtue of their exploding dockets. The mounting arrears in these courts have only been worsening over the years and is one of the greatest challenges to the judiciary today. Currently, there are over 5.6 million cases pending in the 25 High Courts across the country.[73] About 20% of these cases have been pending for more than a decade (see Figure 24). In addition to the pendency, the High Courts are also faced with a high vacancy in judicial strength. There are only 673 High Court judges currently,[74] which means there are over 8,000 cases pending per judge in the High Courts. The unnaturally high caseload places undue pressure on the judges to dispose of cases at a faster rate which will invariably affect the quality of adjudication. In fact, the disposal rate per judge in 2019 was an astonishing 3,500 cases!

Figure 24: Age-Wise Pendency in High Courts



Source: National Judicial Data Grid, 9 February 2021

These courts are meant to be the sentinels of our Constitution, ensuring the protection of citizens liberties as well as dispensing effective civil and criminal justice delivery in the territories under their jurisdiction. Although entrusted with the authority to adjudicate on matters of constitutional importance, these courts are currently unduly burdened with appellate and revisional matters which account for 40% of their caseload as shown in Table

73 National Judicial Data Grid, 10 February 2021, https://njdg.ecourts.gov.in/hcnjdgnew/

74 Department of Justice, Ministry of Law and Justice, Government of India, 1 November 2020, https://doj.gov.in/sites/default/files/Vacancy%2001.11.2020.pdf

12. The High Courts are entrusted with supervision and administrative control of trial courts under Article 235, and such a heavy caseload and vast responsibilities mean that the High Court judges in India are probably the most overworked judges in the world.

Table 12: Nature of the pending cases

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

Source: National Judicial Data Grid, 10 February 2021

It is therefore critical that the functioning of the High Courts is immediately strengthened, the means for which have been enumerated in the past by several expert bodies. Broadly, four approaches, which are complementary to each other, need to be adopted. One, filling vacancies in the sanctioned strength of the judges; two, appointment of ad hoc judges to clear the existing pending caseload; three, limiting the jurisdiction of the High Courts in non-constitutional matters; and four, giving significant assistance to the judges in the form of an expanded Judicial Clerk System.

Filling up vacancies in sanctioned strength of judges

The Indian High Courts are currently functioning at 60% capacity which only exacerbates the burden on the dockets of each individual judge. These positions must be filled up on priority across the country.

Appointment of ad hoc judges under Article 224A of the Constitution

Article 224A of the Constitution provides for the appointment of retired High Court judges for the purpose of clearing the arrears in the High Court docket. This provision must be invoked at the earliest to appoint an adequate number of such judges in order to clear the existing arrears in cases, as was previously recommended in the 79th Report of the LCI.

Limiting the jurisdiction of the High Court

i. Abolition of Ordinary Original Civil Jurisdiction of High Courts

Although the original criminal jurisdiction of the High Courts was abolished decades ago, six of them continue to exercise original jurisdiction for civil matters (see Table 13). Several Committees in the past, including the Satish Chandra Committee and the Arrears Committee, have favoured abolition of such ordinary civil jurisdiction.

There is no reason as to why these particular High Courts must exercise ordinary civil jurisdiction adding to the caseload of the High Court that is not meant to be a court of first instance for such matters. The conditions under which such jurisdiction was granted to these High Courts have long disappeared with the establishment of City Civil Courts in each of these Metropolitan Cities where these High Courts exercise such jurisdiction.

Table 13: Caseload under Ordinary 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, the Economic Survey 2017-18 depicted that the disposal of a civil case takes longer in the High Courts than it does in the corresponding trial courts, citing the examples of the High Courts of Bombay and Delhi (see Table 14).

Table 14: 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, p.g. 134

Therefore, in line with the recommendations of the Arrears Committee, the original civil jurisdiction of HCs should be abolished and unlimited pecuniary jurisdiction ought to be conferred upon the respective City Civil Courts. Simultaneously, as proposed by the Malimath Committee, 1989-90, the strength of the Judges in City Civil Courts to be suitably increased, requisite staff must be sanctioned and a sufficient number of courtrooms must be made available.

ii. Restriction of appeals

As recommended by the 79th LCI Report and the Arrears Committee, the pecuniary limits of the appellate jurisdiction of the District Courts may be enhanced in accordance with the current requirements, which in turn will limit the scope of first appeals that lie to the High Court. Furthermore, a review of such pecuniary limits every 3 years must be mandated. The pecuniary limit upto which no second appeal shall lie must also be enhanced in keeping with current requirements. Furthermore, such a bar must be made applicable irrespective of the nature of the suit as recommended by the Arrears Committee.

iii. Revisional Jurisdiction

The recommendation of the 54th LCI Report may be implemented wherein the abolition of the civil revisional jurisdiction of the High Courts was suggested. The Law Commission opined that the High Courts' jurisdiction under Article 227 of the Constitution provides sufficient remedy in lieu of S.115 of the CPC. With respect to the criminal revision jurisdiction (S.397 of the CrPC), in line with the recommendations of the Arrears Committee, the High Court should have power of revision only against the orders of Sessions Courts/ Special Courts, which are themselves not orders made under revisional jurisdiction. Sessions Courts should have exclusive power of revision against orders of criminal courts subordinate thereto.

Expanding the Judicial Clerk system

In all major democracies, judges of the constitutional courts have a great support system in the form of intelligent, knowledgeable, highly motivated judicial clerks. Many of the judicial clerks grow in stature over time and become leading lawyers and judges themselves. In India, the judicial clerk system is in its infancy. Each Judge of the High Court should be allotted four judicial clerks carefully selected based purely on merit, hard work and motivation.

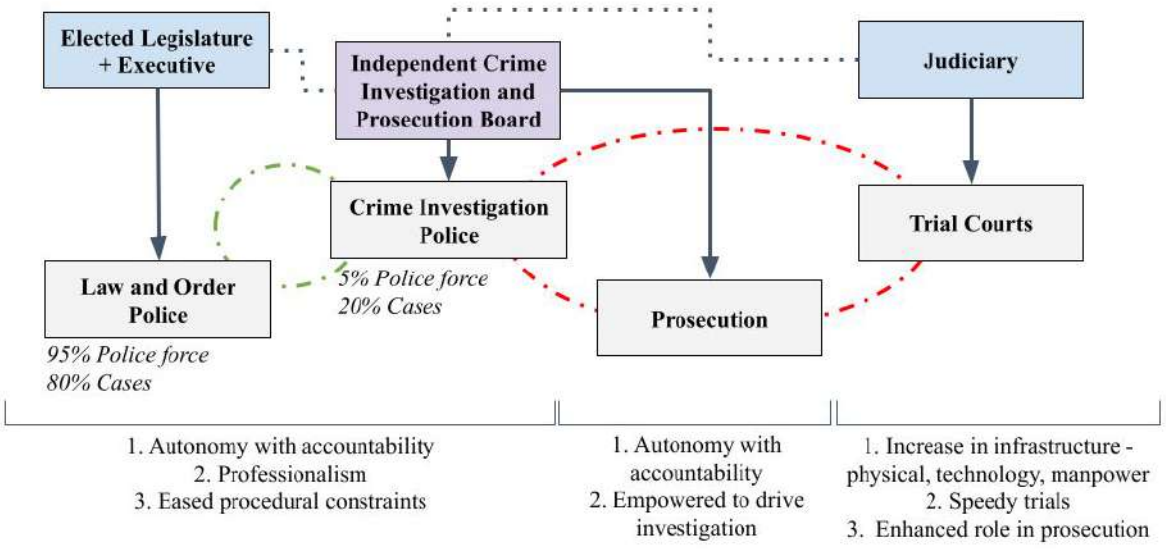
Conclusion

The effort to strengthen rule of law requires the active participation and willing consent of all stakeholders. The purpose of the recommended reforms is not to overhaul the existing system, but bring about meaningful change to benefit all the stakeholders. A separate crime investigation agency with 15% of the police force investigating 20% of the total criminal caseload, overseen by an independent Crime Investigation and Prosecution Board, would significantly improve professionalism and efficiency of the police force. The Board would oversee crime investigation and prosecution in each state and the composition of the collegium would include members of the elected legislature, the executive and the judiciary, ensuring convergence of all organs of the state. The crime investigation police would work in harmony with the law and order police, the latter comprising 85% of the workforce, handling

80% of the caseload. The elected government and legislators will have legitimate say in general policing and political oversight of crime control, public order and use of force will continue.

The prosecution wing would take charge of the investigation and provide legal counsel to the crime investigation agency. With judicial officers of District Judge rank as head of prosecutions in the districts, the trial courts, crime investigation police, and prosecution will function in congruence with each other. This will lead to an enhanced role of the judiciary in prosecution, leading to independence, competence and efficacy of investigation and prosecution, and higher conviction rates. Improvements in manpower, physical infrastructure and technology in the trial courts and removing cumbersome and dilatory procedures, will enhance the speed and quality of justice.

Figure 25: Overview of Recommendations



These pragmatic reforms will restore people's faith and improve the credibility of the justice system. The short term economic burden of these reforms is negligible when compared with the outcomes achieved in the long run in terms of sustaining public order and promoting economic growth of the country. We need a broad consensus on the general principles of reform in our rule of law institutions and practices and on specific, practical reforms. What is more, we need a sense of fierce urgency and deep commitment to institutionalize these

reforms swiftly, and to provide reasonable resources to make the systems work for our people. The protection of rights of our people, the maintenance of peace, harmony and stability in society, and rapid economic growth and enhanced opportunities to our growing young population - all depend, in a large measure, on strengthening the rule of law and thus enhancing the legitimacy and credibility of the State.

ANNEXURE A - Recommendations of Various Expert Bodies

I. Padmanabhaiah Committee Report on Police Reforms (August 2000)

Chapter 5 - Training

General - (P.g. 41)

(ii) State Government in consultation with the DG, must decide on the mandatory training programmes an officer has to undergo before each promotion and before each posting from one area of specialisation to another area of specialisation. No officer should be promoted unless he successfully completes the mandatory training.

(v) The mechanics of training, the methodology of training and evaluation of training for each training programme have to be clear, well-defined, published and monitored.

(xii) There should be an 'Evaluation of Impact of Training' of each person who undergoes an induction training course, or a refresher course, at the end of one year after training. For officers up to DSP level, the SP of the concerned district should do this evaluation. Inputs of the DFID project on training can be used for designing the 'Impact Assessment'. Relevant entries should be made in the ACRs.

(xiii) The DG should prepare a roster of Refresher Courses, which officers of SP rank and above, should attend. He should ensure that all such officers complete their training within a period of 3 years. The cycle needs to be repeated thereafter.

Training of Constabulary - (P.g. 46)

(xxiv) We think that the present duration of one year's training is too short to either change the behavioural aspects of the cadets, or, to develop and improve the necessary professional skills. In the Army, young X Class students are trained for a period of two years at the National Defence Academy. We recommend a similar practice should be followed for the police constables also.

(xxv) In our concept, we see the newly-recruited constable not as a constable but as a future sub-inspector with prospects to go further up. The training that is given to a constable is rudimentary and needs to be upgraded. For instance, there is no point in the sub-inspector knowing all details about how a scene of crime should be handled so that no clues are lost, if

the constable or head-constable, (who perhaps would be first one to reach one to reach the scene of crime), does not know how to handle it. The quality of teachers in police training schools also needs to be upgraded. For instance, we have noted that while a forensic science expert teachers the sub-inspectors, it is generally one of the junior police officers who teaches forensic science at the Police Training Schools where constables are trained.

(xxvi) During training, a constable should only be treated as a cadet and should be paid a stipend. He should be posted as a regular constable only after successful completion training. This practice is presently being followed in some States like Andhra Pradesh.

Training of SIs - (P.g. 47)

(xxvii) At present, the duration of training for sub-inspectors ranges from nine months to one year in different states. Afterwards, he is also required to be on probation for a period of one year. We feel that the duration of training of the sub-inspector also is short and does not allow him to digest the multitude of laws, police manuals, crime detention work, etc. We have elsewhere suggested a 3-year training programme for a sub-inspector.

(xxviii) During the period of training, he should be treated as a cadet and paid a stipend and should get his regular post and salary only after successful completion of training.

II. Second Administrative Reforms Commission: Fifth Report on Public Order (June 2007)

Separation of Investigation from other Functions - (Para 5.2.2.30)

a. Crime Investigation should be separated from other policing functions. A Crime Investigation Agency should be constituted in each state.

b. This agency should be headed by a Chief of Investigation under the administrative control of a Board of Investigation, to be headed by a retired/ sitting judge of the High Court. The Board should have an eminent lawyer, an eminent citizen, a retired police officer, a retired civil servant, the Home Secretary (ex-officio), the Director General of Police (ex-Officio), Chief of the Crime Investigation Agency (ex-officio) and the Chief of Prosecution (ex-officio) as Members.

c. The Chairman and Members of the Board of Investigation should be appointed by a high-powered collegium, headed by the Chief Minister and comprising the Speaker of the Assembly, Chief Justice of the High Court, the Home Minister and the Leader of Opposition in the Legislative Assembly. The Chief of Investigation should be appointed by the State Government on the recommendation of the Board of Investigation.

d. The Chief of the Crime Investigation Agency should have full autonomy in matters of investigation. He shall have a minimum tenure of three years. He can be removed within his tenure for reasons of incompetence or misconduct, but only after the approval of the Board of Investigation. The State Government should have power to issue policy directions and guidelines to the Board of Investigation.

e. All crimes having a prescribed punishment of more than a defined limit (say three or more years of imprisonment) shall be entrusted to the Crime Investigation Agency. Registration of FIRs and first response should be with the 'Law and Order' Police at the police station level.

f. The existing staff could be given an option of absorption in any of the Agencies – Crime Investigation, Law and Order and local police. But once absorbed, they should continue with the same Agency and develop expertise accordingly. This would also apply to senior officers.

g. Once the Crime Investigation Agency is staffed, all ranks should develop expertise in that field and there should be no transfer to other Agencies.

h. Appropriate mechanisms should be developed to ensure coordination between the Investigation, Forensic and the Law and Order Agencies, at the Local, District and the State levels.

Competent Prosecution and Guidance to Investigation - (Para 5.3.13)

a. A system of District Attorney should be instituted. An officer of the rank of District Judge should be appointed as the District Attorney. The District Attorney shall be the head of Prosecution in a District (or group of Districts). The District Attorney shall function under the Chief Prosecutor of the State. The District Attorney should also guide investigation of crimes in the district.

b. The Chief Prosecutor for the State shall be appointed by the Board of Investigation for a period of three years. The Chief Prosecutor shall be an eminent criminal lawyer. The Chief Prosecutor would supervise and guide the District Attorneys.

III. Committee on Reforms in Criminal Justice System (Volume I, March 2003)

Adversarial System (P.g. 266-267)

a. A preamble shall be added to the Code on the following lines: -

   "Whereas it is expedient to constitute a Criminal Justice System, for punishing the guilty and protecting the innocent.
   "Whereas it is expedient to prescribe the procedure to be followed by it, "Whereas quest for truth shall be the foundation of the Criminal Justice System,
   "Whereas it shall be the duty of every functionary of the Criminal Justice System and everyone associated with it in the administration of justice, to actively pursue the quest for truth.
   It is enacted as follows:

b. A provision on the following lines be made and placed immediately above Section 311 of the Code
   "Quest for truth shall be the fundamental duty of every court".

c. Section 311 of the Code be substituted on the following lines: -
   "Any Court shall at any stage of any inquiry, trial or other proceeding under the Code, summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined as it appears necessary for discovering truth in the case".

d. Provision similar to Section 255 of the Code relating to summons trial procedure be made in respect of trial by warrant and sessions procedures, empowering such court to take into consideration, the evidence received under Section 311 (new) of the Code in addition to the evidence produced by the Prosecution

e. Section 482 of the Code be substituted by a provision on the following lines:
   "Every Court shall have inherent power to make such orders as may be necessary to

discover truth or to give effect to any order under this Code or to prevent abuse of the process of court or otherwise to secure the ends of justice".

f. A provision on the following lines be added immediately below Section 311 of the Code.

Power to issue directions regarding investigation

"Any court shall, at any stage of inquiry or trial under this Code, shall have such power to issue directions to the investigating officer to make further investigation or to direct the Supervisory Officer to take appropriate action for proper or adequate investigation so as to assist the Court in search for truth**.**

Standard of Proof (P.g. 270)

a. The Committee recommends that the standard of 'proof beyond reasonable doubt' presently followed in criminal cases shall be done away with.

b. The Committee recommends that the standard of proof in criminal cases should be higher than the one prescribed in Section 3 of the Evidence Act and lower than 'proof beyond reasonable doubt', with the safeguards being, one, the accused being assisted by a lawyer, and two, the requirement of a reasoned judgment on the part of the presiding officer.

c. Accordingly the Committee recommends that a clause be added in Section 3 on the following lines:

"In criminal cases, unless otherwise provided, a fact is said to be proved when, after considering the matter before it, the court is convinced that it is true".

(The clause may be worded in any other way to incorporate the concept in para 2 above)

d. The amendments shall have effect notwithstanding anything contained to the contrary in any judgment order or decision of any court.

Right to Silence (P.g. 267-268)

Section 313 of the Code may be substituted by Section 313-A, 313-B and 313-C on the following lines: -

a. 313-A In every trial, the Court shall, immediately after the witnesses for the prosecution have been examined, question the accused generally, to explain personally any circumstances appearing in the evidence against him.

b. 313-B(1): Without previously warning the accused, the Court may at any stage of trial and shall, after the examination under Section 313-A and before he is called on his defence put such questions to him as the court considers necessary with the object of discovering the truth in the case. If the accused remains silent or refuses to answer any question put to him by the court which he is not compelled by law to answer, the court may draw such appropriate inference including adverse inference as it considers proper in the circumstances.

c. 313-C(1):No oath shall be administered when the accused is examined under Section 313-A or Section 313-B and the accused shall not be liable to punishment for refusing to answer any question or by giving false answer to them. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, or any other offence which such answers may tend to show he has committed.

d. Suitable provisions shall be incorporated in the Code on the following lines:

    i. Requiring the Prosecution to prepare a 'Statement of Prosecution' containing all relevant particulars including, date, time, place of the offence, part played by the accused, motive for the offence, the nature of the evidence oral and documentary, names of witnesses, names and similar particulars of others involved in the commission of the crime, the offence alleged to have been committed and such other particulars as are necessary to fully disclose the prosecution case.

    ii. 'Prosecution statement' shall be served on the accused.

    iii. On the charge being framed the accused shall submit the 'Defence Statement', within two weeks. The Court may on sufficient cause being shown extend the time not beyond 4 weeks.

    iv. In the defence statement the accused shall give specific reply to every material allegation made in the prosecution statement.

v. If the accused pleads guilty he need not file the defence statement.

vi. If any reply is general, vague or devoid of material particulars, the Court may call upon the accused to rectify the same within 2 weeks, failing which it shall be deemed that the allegation is not denied.

vii. If the accused is claiming the benefit of any general or special exceptions or the benefit of any exception or proviso, or claims alibi, he shall specifically plead the same, failing which he shall be precluded from claiming benefit of the same.

viii. Form and particulars to be furnished in the prosecution statement and defence statement shall be prescribed.

ix. If in the light of the plea taken by the accused, it becomes necessary for the prosecution to investigate the case further, such investigation may be made with the leave of the court.

x. On considering the prosecution statement and the defence statement the court shall formulate the points of determination that arise for consideration.

xi. The points for determination shall indicate on whom the burden of proof lies.

xii. Allegations which are admitted or are not denied need not be proved and the court shall make a record of the same.

Justice to Victims of Crime (P.g. 270-271)

a. The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the change is punishable with 7 years imprisonment or more.

b. In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in court proceedings.

c. The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.

d. The victim's right to participate in criminal trial shall, inter alia, include:

   i. To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence

   ii. To ask questions to the witnesses or to suggest to the court questions which may be put to witnesses

   iii. To know the status of investigation and to move the court to issue directions for further to the investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth.

   iv. To be heard in respect of the grant or cancellation of bail

   v. To be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution

   vi. To advance arguments after the prosecutor has submitted arguments

   vii. To participate in negotiations leading to settlement of compoundable offences

e. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

f. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

g. Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation by Parliament. The draft bill on the subject submitted to the Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration.

h. The Victim Compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the

Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn

Statements and Confessions recorded by a Police Officer (P.g. 275-276)

a. Section 161 of the Code be amended to provide that the statements by any person to a police officer should be recorded in the narrative or question and answer form.

b. In cases of offences where sentence is more than seven years it may also be tape / video recorded.

c. Section 162 be amended to require that it should then be read over and got signed by the maker of the statement and a copy furnished to him.

d. Section 162 of the Code should also be amended to provide that such statements can be used for contradicting and corroborating the maker of the statement.

e. Section 25 of the Evidence Act may be suitably amended on the lines of Section 32 of POTA 2002 that a confession recorded by the Supdt. of Police or Officer above him and simultaneously audio / video recorded is admissible in evidence subject to the condition the accused was informed of his right to consult a lawyer.

Perjury (P.g. 285)

a. Section 344 of the Code may be suitably amended to require the court to try the case summarily once it forms the opinion that the witness has knowingly or willfully given false evidence or fabricated false evidence with the intention that such evidence should be used in such proceeding. The expression occurring in 344 (1) to the effect "if satisfied that it is necessary and expedient in the interest of justice that the witnesses should be tried summarily for giving or fabricating as the case may be, false evidence" shall be deleted.

b. The Committee recommends that the punishment of three months or fine up to Rs. 500/- or both should be enhanced to imprisonment of two years or fine up to Rs. 10000/- or both.

c. Sub-section 3 may be suitably amended to the effect that if the Court of Session or Magistrate of first class disposing the judicial proceeding is however satisfied that it is

necessary and expedient in the interest of justice that the witness should be tried and punished following the procedure prescribed under Section 340 of the Code, it shall record a finding to that effect and proceed to take further action under the said provision. Section 341 providing for appeal is unnecessary and shall be deleted.

Trial Procedure (P.g. 282-283)

a. Section 260 of the Code be amended by substituting the word "shall" for the words "may if he think fit".

b. Section 260 (1) (c) of the Code be amended empowering any Magistrate of First Class to exercise the power to try the cases summarily without any special empowerment in this behalf by the High Court.

c. The limit of Rs.200/- fixed for the value of property under Section 260(1) (c) (ii, iii, iv) be enhanced to Rs. 5000/-.

d. Section 262(2) be amended to enhance the power of sentence of imprisonment from three months to three years.

e. Section 2(x) be amended by substituting the word "three" for the word "two".

f. That all Magistrates shall be given intensive practical training to try cases following the summary procedure.

g. Section 206 be amended to make it mandatory to deal with all petty cases in the manner prescribed in sub-section (1).

h. In the proviso to sub-section(1) the fine amount to be specified in the summons shall be raised to Rs. 2000/-.

i. Notice to the accused under Section 206 shall be in form No.30-A and the reply of the accused shall be in form No. 30-B as per annexures.

j. In Sub-section (2) of Section 206 the limit relating to fine be raised to Rs.5000/-.

k. Sub-section (3) shall be suitably amended to empower every Magistrate to deal with cases under Sub-section (1). Offences which are compoundable under Section 320 or any offence punishable with imprisonment for a term not exceeding one year or with fine or with both.

l. Section 62 of the Code be amended by deleting reference to the need for rules by State Government for alternate modes of service.

m. In Section 69 before the word "witness" the words "accused or" be added wherever the word "witness" occurs.

IV. The Arrears Committee (1989-1990, Volumes I and II)

Chapter I: Ordinary and Extraordinary Original Civil Jurisdiction of High Courts (P.g. 119)

1. Six High Courts in the country exercise Ordinary Original Civil Jurisdiction: High Courts of Calcutta, Bombay, Madras, Delhi, Jammu and Kashmir and Himachal Pradesh.

2. Ordinary Original Jurisdiction of High Courts of Calcutta, Bombay and Madras should be abolished and the City Civil Courts in three Metropolitan Cities be visited with unlimited civil pecuniary jurisdiction with prospective effect. But pending cases should not be transferred.

3. The Law abolished Original Civil Jurisdiction of the High Courts of Delhi, Jammu and Kashmir and Himachal Pradesh and vesting such jurisdiction on the civil courts of competent jurisdiction be also made prospective in operation. Pending cases should not be transferred.

4. Simultaneously, the strength of Judges in the Courts of competent jurisdiction should be suitably augmented to cope up with the inflow of new work. Additional accommodation and staff required should be simultaneously sanctioned. Until provision therefore is made in consultation with the High Court, the proposed statutory amendments in the existing laws should not be brought into force.

Chapter III: First Appeals (P.g. 121)

16. First appellate jurisdiction of the District Courts should be enhanced so as to cover a degree of a Subordinate Judge passed in suit the value where of for the purpose of jurisdiction does not exceed Rupees Two Lakhs and that this should be done by a Central Legislation in order to achieve uniformity. There should be a review at the interval of every five years so that such jurisdiction may be enlarged circumstances justifying. Before any such step is taken, a proper assessment of additional requirement of Judges and staff at the District Court level and of more courtrooms and residential accommodation must be made. The legislation in this behalf should be undertaken only after the respective State Government has agreed to the aforesaid requirements being provided.

23. Although uniformity in regard to the forum of appeal may be advisable and the provision of internal appeals within the City Civil Courts in matters of small value may tend to lessen the burden of High Courts, the matter may be left to be decided locally having regard to the varied structure and composition of different City Civil Courts.

Chapter IV: Second Appeals (P.g. 122)

27. Pecuniary limit upto which no second appeal shall lie be enhanced to Rupees Ten Thousand irrespective of the nature of the suit by suitably amending section 102 of the Code of Civil Procedure.

28. Limited retrospectivity should be given to the said amendment so as to make it applicable to all original suits pending on the day on which such amendment takes effect, leaving unaffected the pending first and second appeals.

29. The provisions of order XLI Rule 11 of the Code of Civil Procedure should be strictly followed in second appeal in conformity with the spirit of section 100 and filling of caveat by respondent should be adopted and encouraged to enable the Court to hear the party before admission of such appeal. A prior circulation for study of second appeals and entrustment of admission of those appeals to experience Judges are recommended. Proper formulation of substantial question of law under a separate heading in the Memorandum of Appeal and requiring counsel to confine his argument to the question so formulated should be insisted upon.

30. Appropriate amendments should be made in the relevant rules or statutes so that second appeals can be heard only by a Single Judge.

31. The requirement of annexing a certified copy of the degree to the Memorandum of Appeal should be dispensed with in second appeals also.

Chapter VI: Remedial Measures for Arrears on Criminal Side (P.g. 123)

37. The Court of Session should have exclusive power of revision against orders of criminal courts subordinate thereto. High should have power of revision only against the orders of the Court of Sessions/Special Courts other than those passed in exercise of their revisional jurisdiction. Section 397 of the Code of Criminal Procedure be suitably amended.

V. 79th Report of the Law Commission of India (1979)

Strength of High Courts: numerical and qualitative aspects (P.g. 79)

12. Institution being in excess of disposal, any scheme for improvement must ensure that :-

(i) The disposal is not less than the institution: and

(ii) The heavy backlog is reduced one quarter be cleared in one year 'Increase in Judges' strength is unavoidable.

13. Permanent strength of each High Court should be fixed and reviewed, keeping in view the average institution during the preceding three years.

14. For clearing arrears, additional and ad hoc Judges should be appointed. However, it is not advisable to have only additional Judges for the purpose as, ordinarily, persons so appointed should not be sent back to the profession or to their substantive judicial posts.

15. Recommendation of the Chief Justice (for the appointment of Judges) should be attended to promptly. An outside limit of six months should be observed in this regard.

16. For clearing arrears , Article 224A of the Constitution may be availed of. Retired Judges, who had a reputation for efficiency and quick disposal, and who retired within three years, be reappointed ad hoc under this article. Persons who have retired from other High Courts can

also be considered. The appointment should be normally for one year, to be extended by further periods of one year each, upto a total of three years.

17. The Chief Justice can play a pivotal role in securing disposal.

18. The best person should be appointed on High Court benches, the overriding consideration being merit.

19. Service of condition of Judges should also be improved in order to attract persons of the right caliber.

20. Increase in the number of Judges must also take into account the need for more courtrooms, staff and law books.

21. Punctuality should be adhered to, and court timings duly observed.

Pecuniary Limits of Appellate Jurisdiction of District Judge (P.g. 70)

Need for change in Valuation:

18.5 The regulation of appellate jurisdiction on the basis of valuation is sound in principal, but it has to be kept in mind that the amount for the purpose of jurisdiction has to be fixed according to the conditions as they prevail when the fixation is made; and such amount ought to be revised with the changing conditions. As far back as 1949, the High Court Arrears Committee, set up by the Government under the Chairmanship of Mr. Justice S R Das for enquiring and reporting, besides other matters, as to the advisability of curtailing the right of appeal and revision and the extent and method by which such curtailment should be effected, observed that 30 to 40 percent of the first appeal in the sidering the depreciation which has taken place in the value of money and the consequent rise in the market value of the property generally, there does not appear to be any cogent reason why the District Court should not be vested with jurisdiction to dispose of first appeals upto Rs. 10,000/-. It may be mentioned that the jurisdiction of the District Judge for the purpose of Civil appeals was Rs. 5000/- in most States when the above observations were made.

18.6 In Reports of the High Court's Arrears committee, presided over by Mr. Justice Shah, this aspect was again stressed. The Committee stated that disputes concerning transactions in immovable property and commodities that were then brought before the High Court by way of first appeals were such as did not reach the High Court in the earlier decades. The

Committee also recommended Rs. 20,000 / - as the minimum for the appellate jurisdiction of the High Court.

Need to rise appellate jurisdiction of the District Judges:

18.7 The pecuniary appellate jurisdiction of the District Judge was fixed long ago in most of the States. Since then, there has been a considerable deprecation in the value of the rupee and we feel that it would be appropriate if the pecuniary appellate jurisdiction of the District Judge is raised. This would also have the effect of reliving the workload of the District Judge and this might, in its turn, entail the appointment of more persons as District Judges or Additional District Judges. Despite this, we are of the view that the pecuniary appellate jurisdiction of the District Judge should be raised, because we find that the time normally taken for the disposal of an appeal in the court of District Judge is less then the time taken in the High Court and also because the cost involved in an appeal in the District Court is less than that in the High Court.

Whether uniform figure feasible:

18.8 This takes us to the next question as to what should be the pecuniary jurisdiction of the District Judge, and whether we should have a uniform figure for the different areas in the country. We have given our thought to the matter and are of the view that it would not be desirable to fix a uniform figure for the entire country. The circumstances vary from State to State and place to place. The impact of the depreciation in the value of the rupee is also not felt to the same extent in different areas.

Recommendation:

18. 9 We have, therefore, refrained from suggesting a uniform figure for the pecuniary appellate jurisdiction of the District Judge. All that we can point out is that the pecuniary appellate jurisdiction of the District Judge has been raised to Rs. 25,000/- in one State and that in some other States it has been raised to Rs. 20,000/- . As already mentioned, it would depend on local conditions in each State as to what figure should be fixed for the purpose of appellate jurisdiction of the District Judge. Accordingly, we leave the matter to the authorities in each State.

These remarks would also hold good so far as the question of enhancing the appellate jurisdiction of subordinate judges (by whatever nomenclature they are described) is concerned.

Appeals of higher value to continue to be heard by High Courts:

18.10 At the same time, we are averse to increase inordinately the pecuniary appellate jurisdiction of the District Judge. Appeals in case of higher values in our opinion should continue to be decided by the High Courts, because the High Courts, by the large, inspire greater confidence.

Appeals to court subordinate to the High Court (P.g. 88)

(99) To relive the High Courts of their burden regarding first appeals, the pecuniary appellate jurisdiction of the District Judge should be raised. More District Judges will, of course, have to be appointed.

Because of variable local conditions, a uniform figure for the whole country as to the pecuniary limits of appellate jurisdiction of the District Judges is not feasible. Appeals of higher value should lie to High Courts, which inspire greater confidence.

These remarks apply also to the subordinate judges exercising appellate jurisdiction.

(100) It should be ensured that the number of appellate courts in each district is sufficient to deal with the volume of appeals in that district. Because of the low priority accorded to appeals, such appeals remain pending and the parties have to go back because of the preoccupation of the Judge. To avoid this, the courts subordinate to the High Court should set apart a number of days every month exclusively for the disposal of civil appeals. Where the workload does not permit such a course, recourse should be had to increasing the number of appellate courts in the district.

Appeals in subordinate courts generally not being of a complicated nature, they should not remain pending for an unduly long time, if days are earmarked for exclusively dealing with them.

(101) Normally civil appeals in subordinate court should be disposed of within six to nine months of their institutions.

The problem of disposal of appeals in subordinate courts can be tackled by just increasing the number of the appellate courts. The increase required would be small and insignificant.

VI. 54th Report of the Law Commission of India (1973)

Chapter 1-L: Reference, Review and Revision

Section 115

1-L.2. Section 115 deals with the High Court's power of revision. Briefly speaking, in a case not subject to appeal, it empowers the High Court to call for the records of a case decided by an inferior court, and if the inferior court has exercised a jurisdiction not vested in it by law or failed to exercise jurisdiction vested by law or acted with material irregularity etc. in the exercise of its jurisdiction, the High Court can interfere.

1-L.3. Experience shows that often the cause of delay in the trial of suits is the entertainment of petitions for revision against interlocutory orders which invariably result in stay of proceedings. In fact, in many cases, the object of the parties in moving the High Courts under S. 115 of the C.P.C. may be to delay the progress of the proceedings.

1-L.4. This question has been considered in the past more than once. We had in our Questionnaire issued on the Code put a question as to whether the present powers should not be abolished or drastically curtailed.

1-L.5. Most of the replies to the above questions do not favour a change in the law. But having considered the matter carefully, we have come to the conclusion that the provision in the Code as to revision should be deleted. The discretion of the court in granting adjournments, in granting amendment of the pleadings, in issuing or refusing to issue commissions, and with regard to many more miscellaneous matters, should not be open to revision under section 115.

It is against such orders that revisions are generally filed resulting in a stay of the proceedings and consequent delay in the disposal of cases.

1-L.6. We may note that serious cases of injustice can be dealt with under article 227 of the Constitution.

1-L.7. Having regard to the above position, and to the fact that where injustice has resulted, adequate remedy is provided for by article 227 of the Constitution for correcting cases of excess of jurisdiction or non-exercise of jurisdiction, or illegality in the exercise of jurisdiction, we are of the view that it is no longer necessary to retain section 115. Article 227, we are sure, will cover every case of serious injustice; and, in that sense, that article is wider than section 115.

Recommendations

1-L.8. We, therefore, recommend that section 115 should be deleted.

ANNEXURE B - Incidence of Crime in India based on Maximum Punishment Prescribed

INCIDENCE OF IPC CRIMES - 2019					
Max Punishment =< 3 Years			**Max Punishment > 3 Years**		
Offence	**Section**	**Incidence**	**Offence**	**Section**	**Incidence**
Attempt to commitit Suicide	309	1637	Murder	302	28918
Simple Hurt	319, 321, 323, 324	455946	Culpable Homicide Not Amounting to Murder	304	3470
Causing Grievous Hurt by act endangering life/safety of others	338	3979	Dowry Deaths	304-B	7115
Wrongful Restraint/ Confinement	341, 342	18683	Abetment of suicide	306	8315
Sexual Harassment	354-A	18334	Attempt to commit murder	307	51254
Sedition	124-A	93	Attempt to commit Culpable Homicide	308	7766
Unlawful Assembly	143, 144	8889	Miscarriage, Infanticide, Foeticide, and	312-317	1950

			Abandonment		
Rioting	147, 148	46209	Grievous Hurt	322, 325, 326	85136
Offences promoting enmity between different groups	153-A	1113	Assault on Women to Intent to Outrage her Modesty	354	48586
Affray	160	7148	Kidnapping and Abduction	363-369	105037
Theft	379-382	675916	Human Trafficking	370	1334
Criminal Intimidation	506, 507	101422	Exploitation of Trafficked Person	370-A	183
Extortion and Blackmailing	384	11067	Selling of Minors for Prostitution	372	24
Criminal Misappropriation	403	497	Buying of Minors for Prostitution	373	8
Criminal Breach of Trust	406	20833	Rape	376	32033
Dishonestly receiving/ Dealing in Stolen Property [Punishment for Dealing exceeds 3 years, break-up not available]	411	7233	Attempt to commit Rape	511, 376	3944
Offences relating to elections	171-A to 171-I	5545	Unnatural Offences	377	1004
Disobedience to order duly promulgated by Public Servant	188	29496	Certain offences against the state	121-130 [except 124-A]	73
Offences relating to Adulteration or Sale of Food/Drugs	272-276	2959	Robbery	392	31065
Rash Driving on Public Way	279	417024	Attempt to commit robbery/ dacoity	393	596
Obstruction on Public way	283	93343	Dacoity	395	3176
Sale of obscene Books/Objects	292	108	Making Preparation and Assembly for committing	399, 402	3338

			Dacoity		
Obscene Acts and Songs at Public Places	294	24708	Counterfeiting	213-260	1040
Offences relating to Religion	295-298	1459	Arson	435	8420
Cheating by Impersonation	416-417	775	Burglary	449-460	100897
Criminal Trespass	447	39477	Assault or use of criminal force to women with intent to disrobe	354-B	11,238
Cruelty by Husband or his Relatives	498-A	125298			
Voyeurism and Stalking	354-C, 354-D	10209			
Total		**2129400**			**545920**
Percentage of Total		**79.6**			**20.4**

ANNEXURE C - Comparative Analysis of Reforms Proposed (from the Second Administrative Reforms Commission: Fifth Report on Public Order)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
1	The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee. The recommendations of this Commission shall be binding on the State Government. The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing	<u>State Police Board</u> The State Government shall, within six months of the coming into force of this Act, establish a State Police Board to exercise the functions assigned to it under the provisions of this Chapter. (S.41) <u>Functions of the State Police Board</u> The State Police Board shall perform the following functions: (a) frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law; (b) prepare panels of police for the rank of Director General of Police against prescribed criteria with the provisions of Section 6 of Chapter II; (c) identify performance indicators to evaluate the functioning of the Police Service. These indicators shall, inter alia, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and observance of human rights standards; and	The Government may, by notification in the Official Gazette, constitute a State Security Commission. The Commission shall have the following functions, namely: — (a) to frame the broad policy guidelines for the functioning of the police force in the State; (b) to issue directions for the performance of the preventive tasks and service, oriented functions of the police; (e) to evaluate, from time to time, the performance of the police in the State in general; (d) to prepare and submit an yearly report of its functions to the Government; and (e) to discharge such other functions as may be assigned to it by the Government. Notwithstanding any guidelines or directions issued by the Commission, the Government may issue such directions as it deems necessary on the matter, if the situation so warrants, to meet any emergency.	<u>State Police Board</u> The Government shall, within six months of the coming into force of this Act, establish a State Police Board to exercise the functions assigned to it under the provisions of this Chapter. (S.23) The State Police Board shall consist of: (a) Chief Secretary - Chairperson (b) Director General of Police - member and (c) Secretary in charge of the Home Department - member-secretary. (S.24) The State Police Board shall perform the following functions: (a) frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law; (b) identify performance indicators to evaluate the functioning of the Police Service. These indicators shall, inter alia, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilisation of resources, and

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
	a report thereon for being placed before the State legislature.	(d) in accordance with the provisions of Chapter XIII, review and evaluate organisational performance of the Police Service in the state as a whole as well as district-wise against (i) the Annual Plan, (ii) performance indicators as identified and laid down, and (iii) resources available with and constraints of the police. (S.48)		observance of human rights standards; and (c) review and evaluate organisational performance of the Police Service in the state as a whole as well as district-wise against performance indicators as identified and laid down and resources available with and constraints of the police. (S.25)
2	The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a	<u>Selection and term of office of the Director General of Police</u> (1) The State Government shall appoint the Director General of Police from amongst three senior-most officers of the state Police Service, empanelled for the rank. (2) The empanelment for the rank of Director General of Police shall be done by the State Police Board created under section 41 of Chapter V of this Act, considering, inter alia, the following criteria: (a) Length of service and fitness of health, standards as prescribed by the State Government; (b) assessment of the performance appraisal reports of the previous 15 years of service by assigning weightages to different grading, namely, 'Outstanding', 'Very Good', 'Good', &'Satisfactory' ; (c) range of relevant	The Director General of Police shall be appointed by the Government from amongst those officers of the state cadre of the Indian Police Service who have either already been promoted to such rank or are eligible to be promoted to such rank, considering his overall record of service and experience for leading the police force of the state.	<u>Selection and term of office of the Director General of Police</u> (1) The Director General of Police shall be appointed from a panel of officers consisting of the officers already working in the rank of the Director General of Police, or the officers who have been found suitable for promotion in the rank of Director General of Police after screening by a Committee under the rules made under the All-India Services Act, 1951 (Central Act 61 of 1951). (2) The Director General of Police so appointed shall normally have a tenure of two years: Provided that the Director General of Police may be transferred from the post before the expiry of his tenure by the Government consequent upon:

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	criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.	experience, including experience of work in Central Police Organisations, and training courses undergone; (d) indictment in any criminal or disciplinary proceedings or on the counts of corruption or moral turpitude; or charges having been framed by a court of law in such cases. (e) due weightage to award of medals for gallantry, distinguished and meritorious service: (3) The Director General of Police so appointed shall have a minimum tenure of two years irrespective of his normal date of superannuation : Provided that the Director General of Police may be removed from the post before the expiry of his tenure by the State Government through a written order specifying reasons, consequent upon: (a) conviction by a court of law in a criminal offence or where charges have been framed by a court in a case involving corruption or moral turpitude; or (b) punishment of dismissal, removal, or compulsory retirement from service or of reduction to a lower post, awarded under the provisions of the All India Services (Discipline and Appeal) Rules 19- or any other relevant		(a) conviction by a court of law in a criminal offence or where charges have been framed by a court in a case involving corruption or moral turpitude; or (b) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions as the Director General of Police; or (c) promotion to a higher post under either the State or the Central Government, subject to the officer's consent to such a posting. (d) any other administrative reasons which may be in the interest of efficient discharge of duties. (S.6)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		rule; or (c) suspension from service in accordance with the provisions of the said rules; or (d) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions as the Director General of Police; or (e) promotion to a higher post under either the State or the Central Government, subject to the officer's consent to such a posting. (S.6)		
3	Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer incharge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.	Term of office of key police functionaries (1) An officer posted as a Station House Officer in a Police Station or as an officer in-charge of a Police Circle or Sub-Division or as a Superintendent of Police of a District shall have a term of a minimum of two years and a maximum of three years: Provided that any such officer may be removed from his post before the expiry of the minimum tenure of two years consequent upon: (a) promotion to a higher post; or (b) conviction, or charges having been framed, by a court of law in a criminal offence; or (c) punishment of dismissal, removal,	The Government may ensure a normal tenure of two years from the date of assuming charge of the post to the Director General of Police; and to all officers holding charge of Police Stations, Police Circles. Police Sub-divisions, Police Districts, Police Ranges and Police Zones. The Government or the appointing authority may, without prejudice to any other legal or departmental action, transfer any police officer before completing the normal tenure of two years, on being satisfied prima facie that it is necessary to do so on any of the following grounds, namely:— (a) if he is found incompetent and inefficient in the discharge of duties	Transfers & Postings (i) The transfers and postings of the Police officers and personnel of Supervisory ranks shall be governed by the rules of Executive Business and such other rules framed by the Government from time to time. (ii) The officers shall ordinarily have a tenure of two years. Provided that any such officer may be transferred from his post before the expiry of the tenure of two years consequent upon: (a) promotion to a higher post; or (b) conviction, or charges having been framed, by a court of law in a criminal offence; or (c) incapacitation by

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		discharge or compulsory retirement from service or of reduction to a lower rank awarded under the relevant Discipline & Appeal Rules; or (d) suspension from service in accordance with the provisions of the said Rules; or (e) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or (f) the need to fill up a vacancy caused by promotion, transfer, or retirement. (2) In exceptional cases, an officer may be removed from his post by the competent authority before the expiry of his tenure for gross inefficiency and negligence or where a prima facie case of a serious nature is established after a preliminary enquiry: Provided that in all such cases, the competent authority shall report in writing the matter with all details to the next higher authority as well as to the Director General of Police. It shall be open to the aggrieved officer, after complying with the order, to submit a representation against his premature removal to the Police Establishment Committee, which shall consider the same on	so as to affect the functioning of the police force; (b) if he is accused in a criminal case involving moral turpitude; (c) initiation of departmental proceedings against him; (d) if he exhibits a palpable bias in the discharge of duties; (e) misuse or abuse of powers vested in him; (f) incapacity in the discharge of official duties."	physical or mental illness or otherwise becoming unable to discharge his functions and duties; or (d) the need to fill up a vacancy caused by promotion, transfer, or retirement; or (e) any other administrative reasons, which may be in the interest of efficient discharge of duties. (S.30)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		merit and recommend due course of action to the competent authority. Explanation: Competent authority means an officer authorised to order transfers and postings for the rank concerned. (S.13)		
4	The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/ urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.	State Intelligence and Criminal Investigation Departments (1) Every state police organisation shall have a State Intelligence Department for collection, collation, analysis and dissemination of intelligence, and a Criminal Investigation Department for investigating inter-state, inter-district crimes and other specified offences, in accordance with the provisions of Chapter X of this Act. (2) The State Government shall appoint a police officer of or above the rank of Deputy Inspector General of Police to head each of the aforesaid departments. (3) The Criminal Investigation Department shall have specialised wings to deal with different types of crime requiring focused attention or special expertise for investigation. Each of	The Government may, having regard to the population in an area or the circumstances prevailing in such area, by order, separate the investigating police from the law and order police in such area as may be specified in the order to ensure speedier investigation, better expertise and improved rapport with people.	State Intelligence and Crime Investigation Departments (1) There shall be a State Intelligence Department for collection, collation, analysis and dissemination of intelligence, and a Crime Investigation Department for investigating inter-state, inter-district crimes and other specified offences, in accordance with the provisions of this Act. (2) The Government shall appoint a police officer of or above the rank of Inspector General of Police to head each of the aforesaid departments. (3) The Crime Investigation Department shall have specialised wings to deal with different types of crime requiring focused attention or special expertise for investigation. Each of these wings shall be headed by an officer not below the rank of a Superintendent of

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
		these wings shall be headed by an officer not below the rank of a Superintendent of Police. (4) The State Intelligence Department shall have specialised wings, to deal with and coordinate specialised tasks such as measures for counter terrorism, counter militancy and VIP Security. (5) The State Government shall appoint by rules prescribed under this Act, an appropriate number of officers from different ranks to serve in the Criminal Investigation Department, and the State Intelligence Department, as deemed appropriate with due regard to the volume and variety of tasks to be handled. (S.16)		Police. (4) The Government shall appoint an appropriate number of officers from different ranks to serve in the Crime Investigation Department, and the State Intelligence Department, as deemed appropriate with due regard to the volume and variety of tasks to be handled. (S.14) <u>Creation of Special Crime Investigation Units</u> The Government may create, in crime prone areas, Special Crime Investigation Units, each headed by an officer not below the state cadre rank of Sub-Inspector of Police, with such strength of officers and staff as may be deemed necessary for investigating economic and heinous crimes. The personnel posted to this unit shall not be diverted to any other duty, except under very special circumstances with the written permission of the Director General of Police. (S.36) <u>Creation of Special Investigation Cells</u> At the headquarters of each Police District, one or more Special Investigation Cells will be created, with such strength of officers and staff, as the State Government may deem fit to take up investigation of offences of a more serious nature and other complex crimes,

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
				including economic crimes. These Cells will function under the direct control and supervision of the Additional Superintendent of Police/ Deputy Superintendent of Police. (S.41) Crime Investigation Department The Crime Investigation Department of the state shall take up investigation of such crimes of inter-state, inter-district or of otherwise serious nature, as notified by the Government from time to time, and as may be specifically entrusted to it by the Director General of Police in accordance with the prescribed procedures and norms. (S.43) Specialised Units for Investigation The Crime Investigation Department will have specialised units for investigation of cyber crime, organised crime, homicide cases, economic offences, and any other category of offences, as notified by the Government and which require specialised investigative skills. (S.44)
5	There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board	Police Establishment Committees (1) The State Government shall constitute a Police Establishment Committee (hereinafter referred to as the 'Establishment	The State Government may constitute a Police Establishment Board which shall be a departmental body consisting of the Director General of Police as Chairman and four other senior Police Officers of the Department of	Transfer & Posting of Subordinate ranks (1) The Police Officers ranging from the rank of Inspector to Constable will be posted to a particular post within the jurisdiction of the District Superintendent

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
	shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/ disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.	Committee') with the Director General of Police as its Chairperson and four other senior-most officers within the police organisation of the state as members. (2) Accept and examine complaints from police officers about being subjected to illegal orders. The Establishment Committee shall make appropriate recommendation to the Director General of Police for necessary action: Provided that if the matter under report involves any authority of or above the ranks of the members of the Establishment Committee, it shall forward such report to the State Police Committee for further action. (3) The Establishment Committee shall recommend names of suitable officers to the State Government for posting to all the positions in the ranks of Assistant/Deputy Superintendents and above in the police organisation of the state, excluding the Director General of Police. The State Government shall ordinarily accept these recommendations, and if it disagrees with any such recommendation, it shall record reasons for disagreement.	the rank of Additional Director General of Police as members. The functions of the Board shall be (a) to decide on all transfers, postings, promotions and other service related matters of police officers of and below the rank of Inspector of Police, subject to the provisions of the relevant service laws as may be applicable to each category of police officers; (b) to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Deputy Superintendent of Police;	of Police by the District Superintendent of Police. They will have a tenure of six years in a District, eight years in a Range and ten years in a Zone. Transfers from one district to another within the Range will be done by a committee consisting of the Range DIG and the District Superintendents of Police of the Range. Transfers from one Range to another Range will be made by a committee consisting of the Zonal IG and all the Range DIGs of the Zone. Transfers from one Zone to another Zone will be made by a committee consisting of the Additional Director General of Police and all the Zonal IGs. (2) An officer posted as a Station House Officer in a Police Station or as an officer in-charge of a Police Circle or Sub-Division or as a Superintendent of Police of a District shall have a term of minimum two years: Provided that any such officer may be transferred from his post before the expiry of the tenure of two years or more consequent upon: (a) promotion to a higher post; or (b) conviction, or charges having been framed, by a court of law in a criminal offence; or

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		(4) The Establishment Committee shall also consider and recommend to the Director General of Police the names of officers of the ranks of Sub-Inspector and Inspector for posting to a Police Range on initial appointment, or for transfer from one Police Range to another, where such transfer is considered expedient for the Police Service. (5) Inter-district transfers and postings of non-gazetted ranks, within a Police Range, shall be decided by the Range Deputy Inspector General, as competent authority, on the recommendation of a Committee comprising all the District Superintendents of Police of the Range. (6) Postings and transfers of non-gazetted police officers within a Police District shall be decided by the District Superintendent of Police, as competent authority, on the recommendation of a District-level Committee in which all Additional/Deputy/ Assistant Superintendents of Police posted in the District shall be members. (7) While effecting transfers and postings of police officers of all ranks, the concerned competent authority shall ensure that every officer is ordinarily allowed a minimum		(c) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or (d) the need to fill up a vacancy caused by promotion, transfer, or retirement; or (e) any other administrative reasons which may be in the interest of efficient discharge of duties. (S.10)

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		tenure of two years in a posting. If any officer is to be transferred before the expiry of this minimum term, the competent authority must record detailed reasons for the transfer. (8) No authority other than the authority having power under this Act to order transfer shall issue any transfer order. (S.57)		
6	There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of uperintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him.	<u>Police Accountability Commission</u> The State Government shall, within three months of the coming into effect of this Act, establish a State-level Police Accountability Commission ("the Commission"), consisting of a Chairperson, Members and such other staff as may be necessary, to inquire into public complaints supported by sworn statement against the police personnel for serious misconduct and perform such other functions as stipulated in this Chapter. (S.159) <u>District Accountability Authority</u> (1) The State Government shall establish in each police district or a group of districts in a police range, a District Accountability Authority to monitor departmental inquiries into cases of complaints of misconduct against police personnel, as defined in Section 167(3). (S. 173)	The Government shall establish a Police Complaints Authority at the State level to look into complaints of grave misconduct against police officers of and above the rank of Superintendent of Police as well as serious complaints including death, grievous hurt or rape or molestation of women in police custody against officers of all ranks. (2) The State Authority shall consist of the following members, namely:— (i) a retired judge of a High Court who shall be the Chairman of the Authority; (ii) a serving officer of the rank of Principal Secretary to Government; and (iii) a serving officer of the rank of Additional Director General of Police. The Government shall establish Police	<u>District Accountability Authority</u> (1) The Government shall establish in each district "District Accountability Authority" for such functions as mentioned in Section 61. (2) The District Accountability Authority shall be presided over by the District Magistrate and shall have Superintendent of Police as a member and senior-most Additional District Magistrate/ Additional Collector as Member-Secretary. (S.59) <u>Functions of District Accountability Authority</u> (1) The District Accountability Authority shall: (a) monitor the status of departmental inquiries or action on the complaints of "misconduct" against officers below the rank of Assistant/ Deputy Superintendent of Police, through a quarterly report obtained periodically

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			Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. The District Authority shall consist of the following members, namely:— (i) a retired District Judge, who shall be the Chairman; (ii) the District Collector; and (iii) the District Superintendent of Police: The recommendations of the Authority or Authorities, for any action, departmental or criminal, against a delinquent police officer shall be binding in so far as initiation of departmental proceedings or registration of a criminal case is concerned. Such recommendation shall, however, not prejudice the application of mind by the enquiry officer or the investigating officer when he is conducting the departmental enquiry or criminal investigation, as the case may be.	from the District Superintendent of Police; (b) issue appropriate advice to the District Superintendent of Police for expeditious completion of inquiry, if, in the Authority's opinion, the inquiry is getting unduly delayed in any such case; (2) The Authority may also, in respect of a complaint of "misconduct" against an officer below the rank of Assistant/ Deputy Superintendent Police, call for a report from, and issue appropriate advice for further action or, if necessary, a direction for fresh inquiry by another officer, to the District Superintendent of Police when a complainant, being dissatisfied by an inordinate delay in the process of departmental inquiry into his complaint of "misconduct" or outcome of the inquiry if the principles of natural justice have been violated in the conduct of the disciplinary inquiry, brings such matter to its notice; Provided that the provisions contained in sub-sections (1) and (2) above shall not be construed to, in any manner, dilute the disciplinary, supervisory and administrative control of District Superintendent of Police. (S.60)

S.No	Supreme Court Directions	PADC Formulation	Kerala Police Ordinance	Bihar Police Act, 2007
7	The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPOs), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.			

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