



## *Perspective: Indianisation of Judiciary*

**Context:** Chief Justice of India N. V Ramana deploring the Indian justice system as “colonial” called for its “Indianisation” for the benefit of ordinary litigants.

### What is Indianisation of the judicial system?

- In the literal sense CJI said this means **localization of the judicial delivery system- “the need to adapt to the practical realities of our society and localize our justice delivery system.”**
- Our systems, practice, rules being colonial in origin, it may not be best suited to the needs of the Indian population.
- In support of his point he gave the example: **parties coming from rural India to fight their cases, who feel out of place in courts as they are unable to understand the arguments and pleadings which are mostly in English, a second language and not a comfortable mode of communication for a large part of the Indian population.**
- **Shorter Judgements:** Judgments delivered by the courts these days are also becoming lengthy, which make them incomprehensible to litigants. Thus, they are forced to spend more money to understand the judgment.
- **Litigant Centric Judiciary:** A comforting environment should be created for the litigants and that “**the litigant, the justice seeker**” is the focal point of any justice delivery system. The simplification of the justice delivery system making it easier for the common man to understand should be a priority.
- **Ease of Access:** Procedural barriers often undermine access to justice. While approaching the court, **common man should not feel scared of the judges and courts.** He should be able to speak the truth.
- **Transparency:** It is crucial to make justice delivery **more transparent, accessible and effective.**

### India’s Age-Old Judiciary System:

- India has the **oldest judiciary system in the world dating back to 5000 years.**
- In history, **India has had a very effective, trustworthy and democratic judicial system but most of the statements in judgements nowadays are taken from western jurisprudence.**
- **India’s own ancient system of delivery of justice is given much less recognition.**

### Earlier recommendations:

- **Malimath Committee Report (2000)** on reforms in the Criminal Justice System of India (CJS): The Committee suggested that a Schedule to the Code be brought out in all regional languages so that the accused knows his/her rights, as well as how to enforce them and whom to approach when there is a denial of those rights.
- **Law Commission, 1958:** The All India Judicial Services (AIJS) was first proposed by the 14th report of the Law Commission in 1958.

### Issues with Indian Judicial apparatus:

- **Issues faced by common man:**
  - Colonial system of judiciary established more or less from **the master-servant point of view and not from the public’s point of view.**



- Parties from a rural place **do not understand the arguments or pleadings** which are mostly in English, a language alien to them.
- These days **judgments have become lengthy**, which further complicates the position of litigants.
- For the parties to understand the implications of a judgment, they are **forced to spend more money. Even after spending money justice is not guaranteed.**
- The **lack of timely judgement has led to erosion of trust.**
- In India, it is **quite common to see a matter (even family matters like divorce petitions) being passed through different courts at least fifteen to twenty times before the final adjudication of the matter.**
- **Unavailability of Judges:** Currently India has only **19.78 judges per million people.**
- **Pendency and disposal:**
  - The Indian judicial system has **over 3.53 crore pending cases.**
  - As on 9th January, 2019, there are more than 29 million cases pending in the lower courts across India, about 5 million cases pending in High Courts, and about 60,000 cases in the Supreme Court.
  - The distribution of pendency of both civil and criminal cases is more or less the same. More than 64 per cent of all cases are pending for more than one year.
  - Distribution of the disposal time for D&S courts in 2018 reveals that 74.7 per cent of the civil cases and 86.5 per cent of the criminal cases are disposed within three years.
  - Cases disposed since 2000 by district and lower courts, 81.8% took more than 5 years and 57% more than 10 years. In four high courts where sufficient data was available, 87% cases were disposed of in 10-15 years, and only 5% in less than 5 years.
- **Lack of Judicial Accountability:** Areas of concern are:
  - Judicial Appointments.
  - Removal of Judges.
  - Conduct of Judges.
  - Opacity in the operations of Judiciary.
  - Information asymmetry with Judiciary.
  - Judicial Overreach
- **Problems with Tribunals:**
  - Violation of Doctrine of Separation of Powers.
  - Inadequate constitutional protection.
  - Undermining the Authority of Judiciary.
  - Increasing Pendency and huge vacancies.
  - Overlapping Jurisdiction
- India **continues to lag on the indicator for enforcing contracts**, climbing only one rank from 164 to 163 in the report of EODB, 2018.
- The **strength of the police force in the country is well below international norms.** As on 1st March 2016, the total sanctioned police force was approximately 181 policemen per lakh population. The UN recommended number of police personnel per lakh population is 222.
- The **conviction rate in IPC criminal cases in 2015 was 49%**, implying that in more than half of IPC cases, either innocent people were charged, or the offenders were not convicted.
- **Impacts:**
  - Denial of 'timely justice' amounts to denial of 'justice' itself.
  - Erodes social infrastructure.
  - Overcrowding of the prisons.
  - Affects the economy of the country.
  - Increasing cost of doing business.



### Way Forward:

- The **Panchayati Raj Institutions have to be empowered** and all the small cases should not be allowed to clog the normal court system but shall be given to them.
- The **judges shall lay down the timelines within which the argument should be finished**
- **Advocates must ensure that unnecessary adjournments are not sought.**
- The **use of Indian/regional languages in courts at grass-root level** becomes more significant in a sound judicial system for a country like India. The local conditions also have to be taken into account, for instance, what particular kind of cases are coming from a certain region.
- CJI suggested the **use of alternate dispute mechanisms such as mediation and conciliation as means of reducing friction between parties** as that would result in reducing pendency and a need for having lengthy arguments and lengthy judgments.
- No reforms in the judiciary can effectively take place unless it is **inclusive of women**.
- There is a **need to strengthen the legal outreach programmes** along with improving the judicial infrastructure.
- **Statutory and administrative law reform** should focus on:
  - Modernising and weeding out old and dysfunctional elements in legislation;
  - Unifying and harmonising laws;
  - Reducing government intervention in areas where it is not required;
  - Statutory reforms in the criminal justice and procedural laws; and
  - Reform of land/property related laws
- The strategy for reforming the **judicial system** should focus on streamlining human resource availability and performance, increasing and strengthening avenues for dispute resolution, using ICT extensively to improve efficiency.
- For **police reform**, the important areas are state level legislative and executive reforms to allow police forces to serve more effectively the purpose of the police force of a modern democratic state.
  - **State level legislative reform:** States should be encouraged, with fiscal incentives, to introduce critical legislative reform to their police acts, most of which are still based on the police act of 1861.
  - **Administrative and operational reform:** A Task Force must be created under the MHA to identify non-core functions that can be outsourced to save on manpower.
  - The police-to-population ratio should be increased to reach the UN norm of 222 personnel per lakh population in the next seven years.
  - The states should be encouraged to ensure that the representation of women in the police force is increased.
  - India should launch a common nation-wide contact for attending to urgent security needs of the citizens.

<https://www.youtube.com/watch?v=umbLO0QH54Q>

<https://www.thehindu.com/news/national/need-to-indianise-legal-system-to-suit-our-society-cji/article36532676.ece>

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<https://indianexpress.com/article/india/justice-system-colonial-not-suited-for-indian-population-says-cji-7517470/>