

TEAM CODE NO 4 (1)

SUBMISSION 1 FOR THE AGAMI OPEN DATA CHALLENGE 2021

A POLICY BRIEF

Examining the functioning of Public Prosecution in India: Need for open data and policy reform

DATA VISUALTIZATION (FLOURISH)

[https://public.flourish.studio/s
tory/1045516/](https://public.flourish.studio/story/1045516/)

Introduction

The role of a Public Prosecutor is one of the pillars of the criminal justice system. The Law Commission of India, in its **197th Report**¹, asserted on need to have independent Public Prosecutors, calling them 'Ministers of Justice' and noting that such independence stands at the '**heart of rule of the law**'. The Law Commission in the same report- advocated for establishment of separate **Departments of Prosecution** to ensure effective both regulatory and fiscal independence for prosecutors. Section 25A of the CrPC² asserts that State's '**may**' establish a Directorate of prosecution.

Little or no data has been collected into examining the functioning of the system of public prosecution on a pan-Indian basis. For example, the India Justice Report 2019³ ranks States on the basis of functioning of **police, judiciary, prisons and legal aid**. India Justice Report 2019 fails to look into the effective functioning of public prosecution- which plays a key role in upholding law and better access to justice.

Methodology

For the study - data was collected from **official websites** and 2021 budget reports (**expenditure profiles and demand for grants**) of 28 States and 8 Union Territories to ascertain the following.

- How many States/ Union Territories have established a Directorate of Prosecution?

¹ Law Commission of India, '197th Report: Public Prosecutor's Appointments' (Law Commission of India, July 2006) at pg 13 <<https://lawcommissionofindia.nic.in/reports/rep197.pdf>> accessed 21 November 2021

² Code of Criminal Procedure, §25A

³ Tata Trusts, 'India Justice Report 2019' (Tata Trusts, 11 September 2019) <<https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf>> accessed 19th November 2021

- If a Directorate of Prosecution is established is it under the Administrative control of a Department?
- What is the estimated expenditure for the year 2021-2022 that each State/Union Territory will bear towards administration of justice?
- How many States / Union Territories through their respective departments have published their annual reports which show how effective Directorate of Prosecution is? (number of convictions, expenditure, vacancies etc)

Limitations & Challenges

Majority of States and UT's websites are very hard to navigate and to extract data. In some instances – the budget documents were not available in English or not even available on the State Finance Department or other websites. Data was also not available for some States and UT's on [openbudgetindia](#) and similar platforms like [data.gov.in](#)

The Findings

An interactive data chart on the findings can be viewed at

<https://public.flourish.studio/story/1045516/>

Status of Directorate of Prosecution

19

States/UT's have a Directorate of Prosecution Present

8

States/UT's the Directorate of Prosecution is absent

1

State (West Bengal) no data is present

Nature of Directorate of Prosecution if present

23

States/UT's have a Directorate of Prosecution Present, which is under the administrative control of Home Department

6

States/UT's – the Directorate of Prosecution is absent and prosecution is vested with the Law Department

6

States/UT's no data whether prosecution is vested with Home/Law Department

1

State (Himachal Pradesh) has an exclusive Department of Prosecution

Estimated expenditure to be borne by States /UTs towards administration of justice (2021-2022)

19

State's /UT's data is available

10

State's/UT's no data is available

4

State's data is available, but not in English

3

State's data is inaccessible

Trends in estimated expenditure to be borne by States /UTs towards administration of justice (2021-2022)

Rs 272.589 Lakh–

Lowest estimated expenditure
(Arunachal Pradesh)

Rs 135068 Lakh –

Highest estimated
expenditure (NCT-Delhi)

Rs 36965 Lakh –

Average estimated expenditure
borne by States /UT's

Latest Data on number of convictions secured by Directorate of Prosecution

31

States/UT's no data
is present

3

States/UT's data
is present but inaccessible

1

State's data is present but unavailable in English

1

State's (Karnataka's) data is available

Annual Reports of either Home Department /Law Department

31

States/UT's not published

3

States/UT's inaccessible

1

State's data is present but unavailable in English

1

State's (Karnataka's) data is available

The Analysis

Despite a massive investment into administration of justice by State's and UT's there is still a huge pendency of criminal cases in India⁴ and a low conviction rate for the same.⁵ This is effectively due to lack of coordination between public prosecutors and the police. An example of this can be seen through the 2019-

⁴ National Judicial Data Grid, 'Pending Dashboard' (National Informatics Center, 18 November 2021) <https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard> accessed 18 November 2021.

⁵ National Crime Records Bureau, 'Crime in India 2020-Snapshots' (Government of India, September 2021) accessed 18th November 2020

2020 Annual Report of the Home Department, Government of Karnataka⁶ that as of 2018 shows that **15,900 criminal** cases resulted in acquittal. Karnataka was the **only State whose annual report was published online**, showing the grave nature of information dissymmetry over how offices of public prosecution function. Since the annual reports showcase allied information like status of vacancies, no of legal counsel engaged to name a few-lack of data effectively **removes public oversight**. Even data from **Data.gov.in** on number of convictions secured by State and UT's is incomplete.⁷

Through the data collected it is clear that despite the establishment of 'Directorates of Prosecution' – prosecution offices are not clearly independent as they are under the administrative control of either respective Home/Law department. A key problem is also the difference in eligibility and service conditions among different prosecutions, lack of a uniform prosecution policy and the lack of coordination between State prosecutors and Police. In a 2020 ruling⁸ - the Karnataka High Court – noted that **“One of the biggest impediments to a speedy trial is the delay in the filing of FSL reports. Cases are adjourned for years due to non-receipt of these reports.”**

Further majority of States do not mention 'prosecution' exclusively in their budget documents- putting prosecution expenses under 'administration of justice' – this ensures ambiguity in the actual amount spent. Some State reports **do not mention the costs** incurred in engagement of the Advocate General and other legal counsel.

Recommendations

1. Making the government liable for non-availability of data-

The open data policy 'ODP' of the Union Government is silent on the nature of liability of government officials in case of non-availability of data, despite vesting with the government- substantive grounds for withholding of data. Basic data like annual reports of departments (which is mandated by RTI) is not available. The only way for citizens to get data is through RTI which is already a cumbersome process given the lack of appointments of information

⁶ Home Department, 'Annual Report 2019-20' (Government of Karnataka, 2020) at pg 188 <<https://home.karnataka.gov.in/storage/pdf-files/Annual2019-20E.pdf>> accessed 20 November 2021.

⁷ Union Ministry of Health and Family Welfare, 'State/UT-wise Number of Convictions from 2014-15 to 2016-17' (DATA.GOV.IN, 11 December 2018) < <https://data.gov.in/resources/stateut-wise-number-convictions-2014-15-2016-17-ministry-health-and-family-welfare>> accessed 22nd November 2021.

⁸ Naveen Kumar v State of Karnataka, Criminal Petition No 7019 of 2020, Judgement dated 22nd December 2020, High Court of Karnataka

commissioners and allied staff. One way to combat this issue is to regulate in detail (through a law/rules) the services provided by the National Informatics Centre to include periodic website maintenance, uploading of data, provision of data in both English and official State Language to name a few. Mode of liability can either be criminal (fines/jail term etc) or civil (demotion, reduction of salary/transfer etc).

2. Introduction of a binding -uniform prosecutorial code

With administration of justice falling in the concurrent list – the Union Government should introduce uniform code of conduct for public prosecutors. This code (unless State's introduce a code before the Union Code and get presidential assent)- will override all State laws in case of 'irreconcilable differences' due to the doctrine of repugnancy.

3. Transparency

Budgets and expenditure of prosecutorial bodies in the US and UK are audited by independent auditors. Prosecutorial budgets and functioning of State-wise prosecution systems must be audited by the Comptroller and Auditor General of India to suggest better fiscal and non-fiscal reforms. This analysis should cover how independent public prosecutors are and whether they are free to take their own decisions based on law and factual circumstances of each case.

4. Integration of Police with Prosecutors

The data from the National Judicial Data Grid also shows '**evidence**' as a factor that constitutes **39.1%** pending criminal cases. Karnataka became the first State to introduce '**scene of crime**'⁹ police officers in 2021. Similar steps can be taken by other States to ensure deeper coordination between police and prosecutors.

5. Judicial Review

Currently in India – no juridical review is present over the choice of prosecutorial bodies to 'not prosecute'. For example, in Karnataka, as of 21st December 2018- **19,129 criminal** cases were not recommended for appeal /

⁹ Indian Express, 'Karnataka Police to have Scene of Crime Officers' (Indian Express, 13 July 2021) <<https://www.newindianexpress.com/states/karnataka/2021/jul/13/karnataka-police-to-have-scene-of-crime-officers-2329353.html>> accessed 22 October 2021

revision.¹⁰ This is contrary to UK – where Courts have judicial review even over cases of non-prosecution¹¹

¹⁰ Home Department, 'Annual Report 2019-20' (Government of Karnataka, 2020) at pg 188 <<https://home.karnataka.gov.in/storage/pdf-files/Annual2019-20E.pdf>> accessed 20 November 2021.

¹¹ Crown Prosecution Service, 'Appeals: Judicial Review of CPS Prosecuting Decisions', (Crown Prosecution Service, 27 September 2019) < <https://www.cps.gov.uk/legal-guidance/appeals-judicial-review-cps-prosecuting-decisions>>