

Session 2: Strengthening Investigation and Prosecution



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



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



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



Dr. Jayaprakash Narayan
General Secretary, Foundation for Democratic Reforms



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



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

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

Shoddy investigation

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

3rd degree torture to coerce confessions

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

Political control of crime investigation

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

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

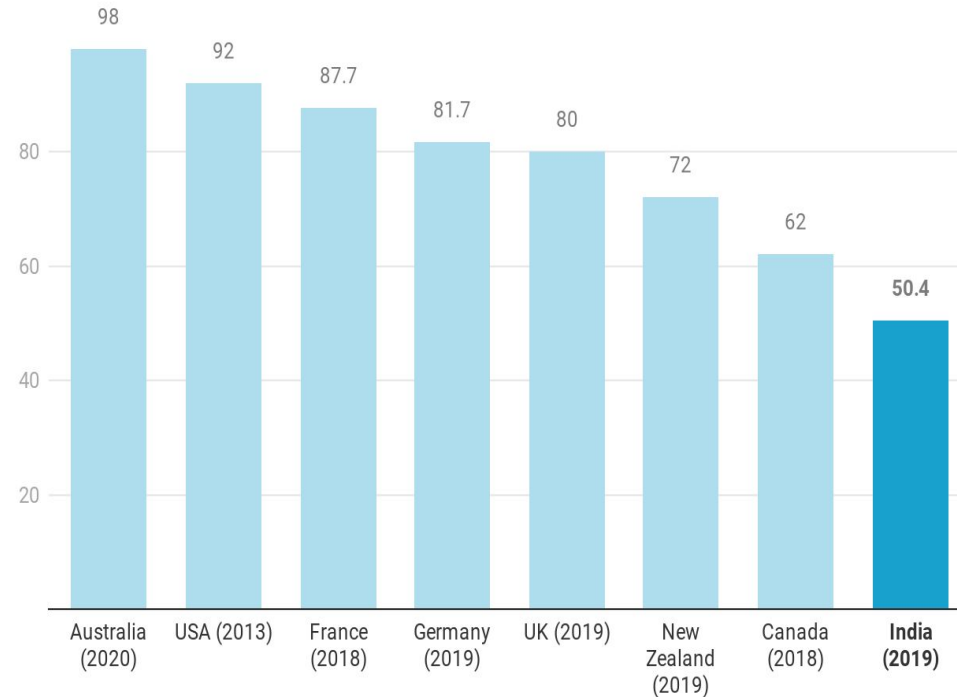
- Hyderabad, 2019 - Extra-judicial killing of four accused in Disha rape and murder case to produce short term results celebrated by public

Abysmal Conviction Rate

Lowest conviction rate among major democracies!

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

Figure 1: Country-wise Conviction Rate



Note: India includes only IPC crimes.

Sources: Various countries' official statistics compiled by FDR.

Challenge: Inadequate Resources



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

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

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

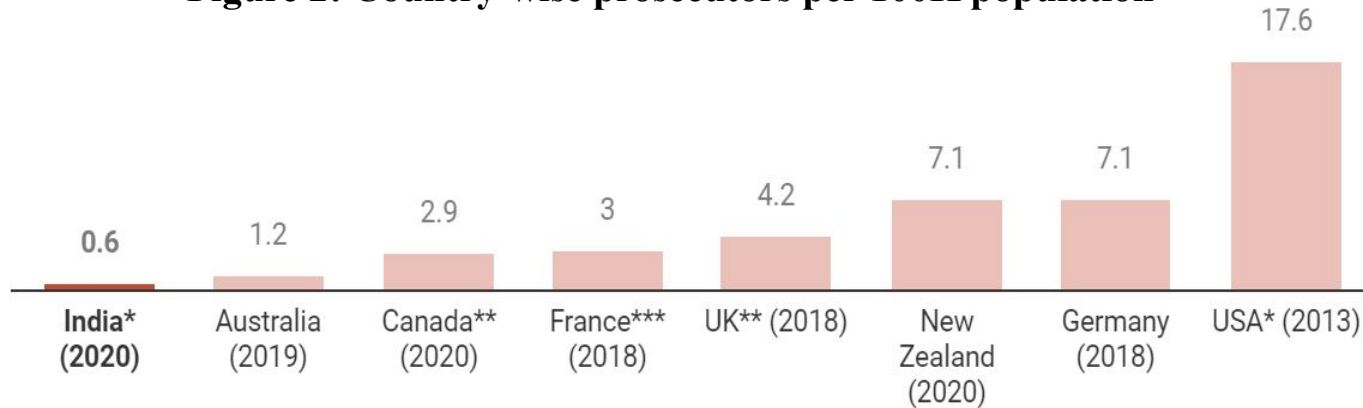
Source: National Crime Records Bureau, 2020

Challenge: Inadequate Resources



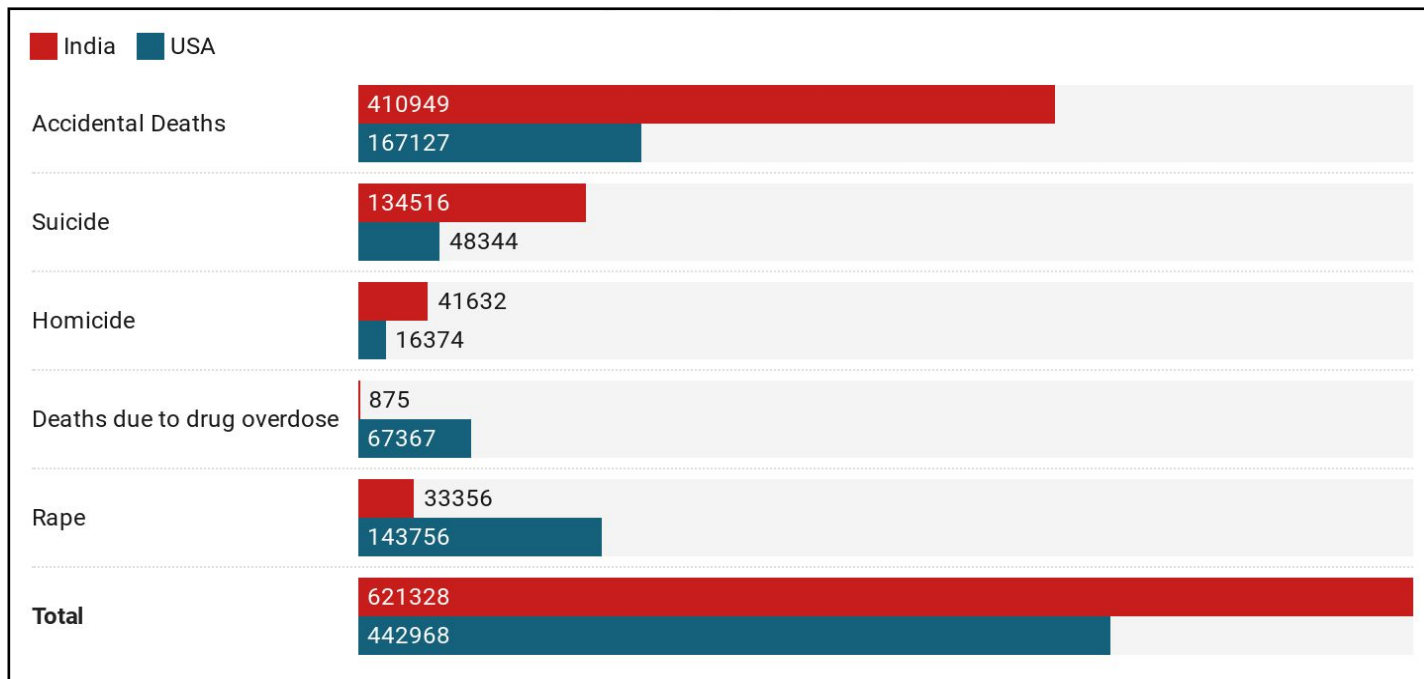
- 1 public prosecutor in India per **150,000** population, 1 public prosecutor in US per **6000** population
- India has **more judges than prosecutors!**
- The caseload per prosecutor of serious crimes in India is **68 cases annually**, nearly **9 times** the caseload handled by the prosecutors in the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

Figure 2: Country-wise prosecutors per 100K population



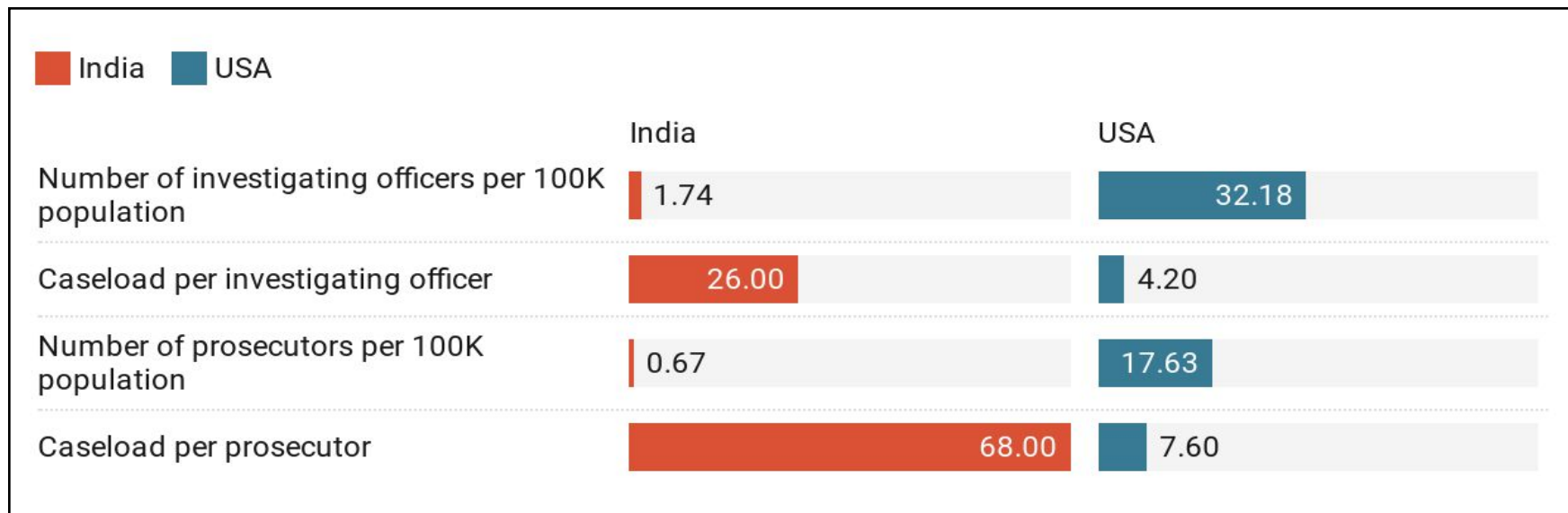
* 1.84 Federal Prosecutors + 15.79 State prosecutors per 100,000 population in US ** Canada and Australia include only federal prosecutors. Data on state prosecutors is not available. Source: Various countries' government statistics compiled by FDR

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



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

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



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

Challenge: Undue Political Interference in Crime Investigation



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

Challenge: Poor Coordination between Investigation and Prosecution



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

Box 1: Nexus Between Crime Investigation and Prosecution

The purposes of a criminal investigation are to:

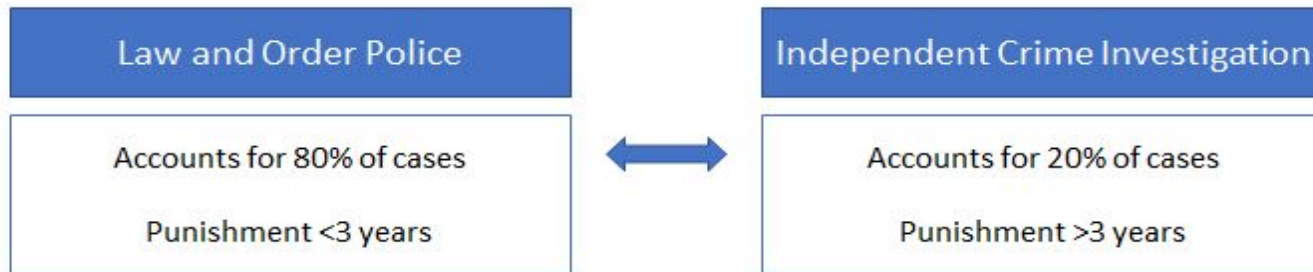
- (i) develop sufficient factual information to enable the prosecutor to make a fair and objective determination of whether and what charges should be brought and to guard against prosecution of the innocent, and*
- (ii) develop legally admissible evidence sufficient to obtain and sustain a conviction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

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

Reform: Independent Crime Investigation Wing



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



Absorb → Retain → Develop Expertise

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

Reform: Independent Crime Investigation Wing



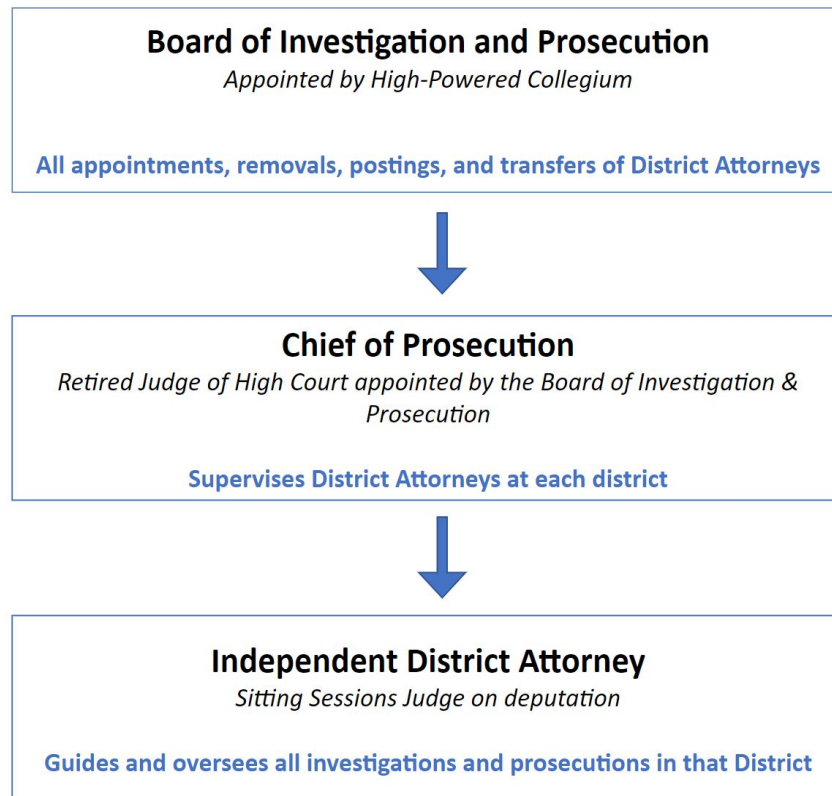
**Figure 5:
Constitution of an
Independent Crime
Investigation Wing**

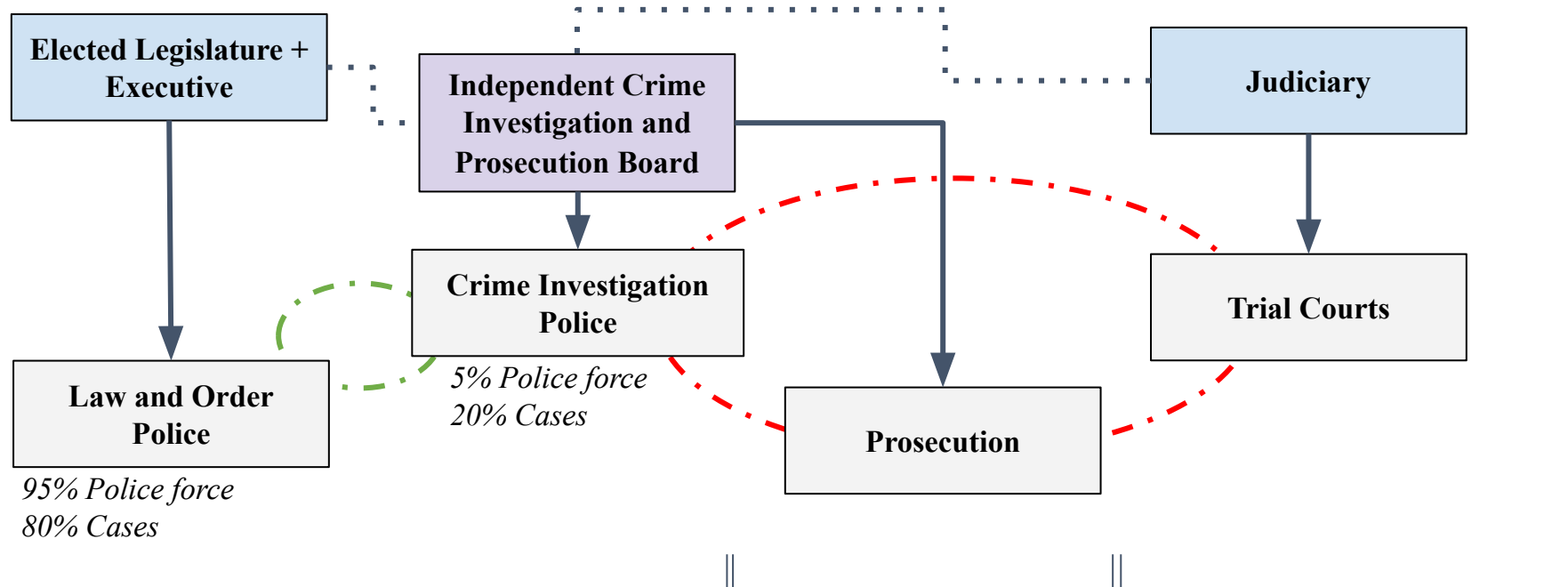


- A **District Attorney**, at the rank of **Sessions Judge**, drawn from the judiciary
- **Technical and managerial control** over all investigations and prosecutions in that district
- On deputation for **5 years**, before returning to service as a judge
- **Competent, credible, impartial** prosecutor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

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

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





1. Autonomy with accountability
2. Professionalism
3. Eased procedural constraints

1. Autonomy with accountability
2. Empowered to drive investigation

1. Increase in infrastructure - physical, technology, manpower
- Speedy trials
2. Enhanced role in prosecution