

## **Draft - The Code of Criminal Procedure (Amendment) Bill, 2013**

A Bill to improve accountability in the appointment of public prosecutors so as to enable them to function independent of the executive and other external influences

### **Statement of Objects and Reasons**

#### Rationale

Every State has a duty to protect its citizens from criminal tendencies in society, and to promote an atmosphere of freedom conducive to the full realization of human potential. Crimes are therefore considered offences against the State itself, and accordingly prosecuted by it. Hence, in any State that is committed towards upholding the rule of law and the interest of its citizens, the public prosecutor is placed at the pivot of the criminal justice system.

Public prosecutors have a duty to the accused, to the public, to the State as well as to the court and, therefore, must be fair and objective while discharging their duties. Their duty is not to get convictions but to ensure that all the facts of the case are presented in the court of law, for the court to take reasoned action. In *Babu v. State of Kerala (1984)*, the Kerala High Court noted that, "Public prosecutors are really Ministers of Justice whose job is none other than assisting the State in the administration of justice. They are not representatives of any party. Their job is to assist the Court by placing before the Court all relevant aspects of the case. They are not there to see the innocent sent to the gallows; they are also not there to see the culprits escape conviction."

The independence of the public prosecutor is therefore essential to ensure a free and fair trial in the court. However, in India, scant attention is paid to this crucial office and its importance is regularly undermined by vested interests in the system.

The present system of public prosecution in India is riddled with problems. Prosecutors are overburdened, and the procedures followed in their appointment make them susceptible to interference from the executive and other external interests. Often, special public prosecutors are appointed at the whims and fancies of the government and without adequate reasoning, to suit special interests. Though the Code of Criminal Procedure calls for 'consultation' with the judiciary for all appointments to the post of public prosecutor, the requirement has been diluted through amendments in many States. At the lower levels, prosecution is not separated from the police and in any case, the police exercise substantial control over the prosecution machinery.

The Code of Criminal Procedure was amended in 2005 to create an enabling (but not mandatory) provision for the establishment of a Directorate of Prosecution directly answerable to the Home Department, but only a few state governments such as Kerala and Delhi have established the Directorate.

#### About the Bill

This Bill aims to improve the effectiveness of prosecution, and by extension, the effectiveness of the criminal justice system in India. Specifically, it aims to increase

accountability and transparency in the appointment of prosecutors so as to shield them from political interference.

The Bill mandates the establishment of a separate Directorate of Prosecution in each State with administrative control over all prosecutors in the State, and answerable to the Home Department. It prescribes 'concurrence' with the judiciary for the appointment of prosecutors at all levels. The number of prosecutors to be appointed for effective discharge of functions must be decided with the concurrence of the Director of Prosecution in the State and based on an objective criterion that takes into account caseload and pendency. This provision will act as a check on the power of the executive and help unburden the prosecution machinery.

The Bill also brings in transparency in the appointment of special public prosecutors by requiring a detailed and written explanation from the government about the reasons for each appointment. In addition, it prescribes a minimum of five years of experience as an advocate as eligibility criteria for assistant public prosecutors, and thereby disallows police officers from being appointed to such posts.

While commenting on the independence of public prosecutors in India, the Law Commission, in its 197th report, held that any legislation that permits arbitrary appointment of public prosecutors, without proper checks, will violate Article 14 of the Constitution (Right to Equality before Law). Therefore, to ensure free and fair trials in courts, it is vital that the existing provisions of the Code of Criminal Procedure be amended.

Our commitment towards the pursuit of justice will be half-hearted, unless these vital changes are incorporated in the public prosecution system in India.

Hence, this Bill.

**Baijayant 'Jay' Panda**

## **The Code of Criminal Procedure (Amendment) Bill, 2013**

By

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BILL

To further amend the Code of Criminal Procedure, 1973

Be it enacted in Parliament in the Sixty-fourth year of the Republic of India as follows:

1. (1) This Act may be called The Code of Criminal Procedure (Amendment) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint:

Provided that the notification under sub-section (3) shall be issued within one year of the commencement of this Act.

2. In this Act, unless the context otherwise requires,

(a) "Code" means the Code of Criminal Procedure, 1973.

### Chapter 1

#### Public Prosecutors

3. For section 24 of the Code, the following section shall be substituted, namely:-

"24. (1) For every High Court, the Central Government or the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for conducting in such court, any prosecution, appeal or other proceeding on behalf of the Central Government or the State Government, as the case may be.

*Prosecutors to  
High Courts*

(2) The number of Additional Public Prosecutors to be appointed under sub-section (1) shall be decided by the Central Government or the State Government, as the case may be, based on the assessment procedure in sub-section (17):

Provided that the Central Government or as the case may be, the State Government shall record in writing the reasons for such decision

(3) Every appointment under sub-section (1) shall be made with the concurrence of the Chief Justice of the High Court.

(4) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area.

*Prosecutors appointed at the district by the Central Government*

(5) Every appointment under sub-section (4) shall be made with the concurrence of the Sessions Judge of the Court of Session having jurisdiction in relation such district or local area.

(6) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for such district:

*Prosecutors appointed to the Court of Session by the State Government*

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may also be appointed to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(7) The number of Additional Public Prosecutors to be appointed under sub-section (6) shall be decided by the State Government based on the assessment procedure in sub-section (17), and with the concurrence of the Director of Prosecution appointed under sub-section (1) of section 25A.

Provided that the State Government shall record in writing the reasons for such decision

(8) Every appointment under sub-section (6) shall be made with the concurrence of the Sessions Judge of the Court of Session having jurisdiction in relation such district and the Director of Prosecution appointed under sub-section (1) of section 25A.

(9) In a State where a Regular Cadre of Prosecuting Officers exists, the State Government may also recommend names of persons constituting such Cadre for appointment under sub-section (6):

Provided that all appointments under this sub-section shall be subject to the provisions of sub-section (8)

For the purpose of this sub-section, a "Regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post

(10) A person shall be eligible to be appointed as a Public Prosecutor under sub-section (1) or sub-section (4) or sub-section (6), only if he has been in practice as an advocate for not less than seven years and has personally conducted substantial number of cases.

*Eligibility criteria and terms and conditions of office*

(11) A person appointed as a Public Prosecutor under sub-section (1) or sub-section (4) or sub-section (6) shall not engage, during the term of his office, in any paid employment outside the duties of his office.

(12) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

*Special Public Prosecutors*

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section

(13) Every appointment under sub-section (12) shall be accompanied with an explanation detailing the reasons for appointment of such Special Public Prosecutor.

(14) Every appointment by the Central Government under sub-section (12) shall be made with the concurrence of the presiding Judge of the court where the trial is being conducted.

(15) Every appointment by a State Government under sub-section (12) shall be made with the concurrence of the presiding Judge of the court where the trial is being conducted and the Director of Prosecution appointed under sub-section (1) of section 25A.

(16) For the purpose of sub-section (14) and sub-section (15), the presiding Judge of the court shall refer to, -

- (a) In the case of the Supreme Court, the Chief Justice of India;
- (b) In the case of a High Court, the Chief Justice of the High Court;
- (c) In the case of a Court of Session, the Sessions Judge of the Court; or
- (d) In other courts, the Judge who presides over the Court.

(17) The number of Additional Public Prosecutors to be appointed under sub-section (1) or sub-section (6) shall be based on an assessment of the requirements of the High Court or the Court of Session, as the case may be, and shall include, inter alia, the following,-

*Procedure to assess the requirement of Additional Public Prosecutors*

- (a) Rate of institution and disposal of cases; and
- (b) Number of cases pending; and
- (c) Nature or type of offences under trial and the duration of trial in each case; and
- (d) Caseload per public prosecutor.

Explanation: For the purpose of this sub-section, caseload means the number of cases conducted by a public prosecutor in a defined period of time.

(18) The assessment under sub-section (17) shall be conducted at least once every 24 months, and the number of Additional Public Prosecutors to be appointed under sub-section (1) or sub-section (6) shall be revised in accordance with such assessment:

Provided that the Central Government or as the case may be, the State Government shall record in writing the reasons for such revision

(19) For the purposes of sub-section (10) and sub-section (12), the period during which a person has been in practice, is a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.”

*Service as a prosecuting officer eligible to be counted as practice as an advocate*

## Chapter 2

### Assistant Public Prosecutors

4. For section 25 of the Code, the following section shall be substituted, namely:-

“25. (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

*Assistant Public Prosecutors appointed to the Courts of Magistrates by the State Government*

(2) The number of Assistant Public Prosecutors to be appointed under sub-section (1) shall be decided by the State Government based on the assessment procedure in sub-section (8), and with the concurrence of the Director of Prosecution appointed under sub-section (1) of section 25A:

Provided that the State Government shall record in writing the reasons for such decision

(3) Every appointment under sub-section (1) shall be made with the concurrence of the presiding officer of the Courts of Magistrates and the Director of Prosecution appointed under sub-section (1) of section 25A.

(4) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

*Assistant Public Prosecutors appointed to the Courts of Magistrates by the Central Government*

(5) Every appointment under sub-section (4) shall be made with the concurrence of the presiding office of the Courts of Magistrates.

(6) A person shall be eligible to be appointed as an Assistant Public Prosecutor under sub-section (1) or sub-section (4), only if he has been in practice as an advocate for not less than five years.

*Eligibility criteria and terms and conditions of service*

(7) A person appointed as an Assistant Public Prosecutor under sub-section (1) or sub-section (4) shall not engage, during the term of his office, in any paid employment outside the duties of his office.

(8) The number of Assistant Public Prosecutors to be appointed under sub-section (1) shall be based on an assessment of the requirements of the Courts of Magistrates and shall include, inter alia, the following,-

*Procedure to assess the requirement of Assistant Public Prosecutors*

(a) Rate of institution and disposal of cases; and

(b) Number of cases pending; and

(c) Nature or type of offences under trial and the duration of trial in each case; and

(d) Caseload per Assistant Public Prosecutor

Explanation: For the purpose of this sub-section, caseload means the number of cases conducted by an Assistant Public Prosecutor in a defined period of time.

(9) The assessment under sub-section (8) shall be conducted at least once every 24 months, and the number of Assistant Public Prosecutors to be appointed under sub-section (1) shall be revised in accordance with such assessment:

Provided that the State Government shall record in writing the reasons for such revision”

### Chapter 3

#### Directorate of Prosecution

5. For section 25A of the Code, the following section shall be substituted, namely:-

“25A. (1) The State Government shall establish a Directorate of Prosecution consisting of a Director of Prosecution and such number of Deputy Directors of Prosecution as it may, with the concurrence of the Chief Justice of the High Court, from time to time deem it necessary to appoint.

*Establishing a Directorate of Prosecution*

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than fifteen years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

*Eligibility and terms and conditions of service*

(3) A person appointed as Director of Prosecution or Deputy Director of Prosecution shall not engage, during the term of his office, in any paid employment outside the duties of his office.

(4) The Director of Prosecution shall be the Head of the Directorate of Prosecution and shall function under the administrative control of the Head of the Home Department in the State.

*Organizational structure of the Directorate of Prosecution*

(5) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (12), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(7) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (6), or as the case may be, sub-section (12), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(8) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

*Powers and functions of the Director and Deputy Directors of Prosecution*

(9) Notwithstanding the provisions of sub-section (8), the Director of Prosecution shall be responsible for general superintendence and shall exercise administrative control over his subordinates in the Directorate of Prosecution.

(10) The Director of Prosecution or a Deputy Director of Prosecution shall not be removed from office unless he has been given a reasonable opportunity of being heard in the matter.

*Opportunity of being heard before removal*

(11) For the purposes of sub-section (2), the period during which a person has been in practice, is a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

*Service as a prosecuting officer eligible to be counted as practice as an advocate*



(12) The provisions of the section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.”

*Section not to  
apply to the  
Advocate  
General of the  
State*