

Role of public prosecutor in the Indian legal system

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Abstract: From the corridors of the Public Prosecutors' offices across Europe to the bustling legal courtrooms of India, the role of the Public Prosecutor uniquely varies across jurisdictions shaping the contours of justice with each gavel strike. While the goal of gate keeping criminal justice stays common across the board – it is imperative to note how the Office of the Public Prosecutor changes shape with changing geographies. The role of Public Prosecutor is crucial for the administration of criminal justice. A crime is a public wrong, committed not only against the victim, but also against the society. The Public Prosecutor in India represents the State to prosecute the accused. While discharging his various duties and functions, he must ensure that a fair trial is conducted. The Public Prosecutor also has to act impartially and independently, to assist the judge in delivering justice. This chapter aims to provide an overview of the role of Public Prosecutor in India, the legal framework, its challenges, and its prospects.

Keywords: Role; Public Prosecutor; Criminal Justice System; India; Law Commission of India.

I. INTRODUCTION

The Criminal Justice System in India is a multifaceted framework that aims to punish the guilty and protect the innocent, in order to maintain social order. It operates through a network of institutions, law enforcement agencies, and the Judiciary, which are ever engaged in preventing and controlling crime, maintaining public order, protecting victims' rights, rehabilitating offenders, and safeguarding life and property.²

The system in India is mostly adversarial but has also integrated certain facets of the inquisitional system. The Indian system engages in a competitive process between opposing sides where the Public Prosecutor presents the prosecution's case to establish the guilt of the accused as opposed to the European model of engaging in an investigative process, spearheaded by the judge and the Public Prosecutor.

The constitutional role of the judiciary in India has played a key role in reforms and improvement in the security of the social fabric. The infrastructure relating to the judiciary is strong and supported by tenets of law and established procedures, such as presumption of innocence, following due processes and ascribing to proportionality of punishment.

¹ With research assistance by Anita Kumari.

² Page 5, Para 2.1, Report of Committee on Draft National Policy on Criminal Justice System constituted by Ministry of Home Affairs, Government of India, 2007

One critical component of this system is the Public Prosecutor, who is an independent statutory authority³ and often regarded as the “Minister of Justice” or the “gatekeeper of the criminal justice process”. The Indian Penal Code (IPC) and other substantive provisions define crimes and prescribes appropriate punishments. The Code of Criminal Procedure (CrPC) outlines procedures for criminal cases. These legal provisions guide the actions of the Public Prosecutor to navigate its roles within the system.

The Public Prosecutor in India operates to principally represent the State in the prosecution before the judge, with the counsel for the defence representing the interests of the accused. The Public Prosecutor has no powers of investigation and once the chargesheet is filed by the police, independent of the Public Prosecutor, the Sessions Court then conducts the trial.

The Public Prosecutor in India is a legally qualified professional, appearing on behalf of the State, who plays a crucial role in upholding the Rule of Law to ensure justice is served. The Public Prosecutor engages in the competitive adjudication process against the defence counsels to ascertain the true facts and the correct applicability of law vis-à-vis the guilt of the accused person. The Public Prosecutor and the defence counsel present their versions of the facts and applicability of law before a neutral judge, who decides whether the prosecution has proved its case of the accused person’s guilt beyond reasonable doubt. The judge serves as an umpire/referee to ensure fairness during the trial and adherence to due procedure of law. Notably, judges are not passive spectators but have been given ample powers to proactively seek the truth⁴ with the Public Prosecutor aiding and assisting this quest of the court.

The Public Prosecutor remains independent despite having duties and obligations to the court and the State. Such independence is bolstered by the Public Prosecutor’s duty towards the public and the victim to ensure the criminals are brought to justice and to the accused to ensure innocent persons are not wrongfully convicted.

There is an emerging focus on the role of the Public Prosecutors in view of the complex nature of crimes emerging with development of technologies and globalization. Establishing a system and infrastructure of prosecution in India has been the focus of the Government through amendments and enactments by Central and State governments to expand and modernize the laws.

The prevailing system in India provides for the creation of an independent body of Public Prosecutors who are able to function independently, free from the Executive and all external influences, including the police in order to enforce the Rule of Law without fear or favour.

In the legal labyrinth of India’s democracy where power is partitioned and justice is juggled, this article examines the intricate nuances of the role of the Public Prosecutor in India. This article is a critical evaluation into the discretion of the Public Prosecutor. An independent office of the Public

³ The State of Maharashtra v. Surendra Pundlik Gadling & Ors., 2019 (5) SCC 178

⁴ Maria Margarida Sequeria Fernandes & Ors. v. Erasmo Jack De Sequeria (D) Th. LRs. & Ors., 2012 (5) SCC 370

Prosecutor is an essential part of an effectively functioning Judiciary and an implementation of the idealized principle of the traditional separation of powers – between the Legislature, the Executive, and the Judiciary.

II. A HISTORICAL PERSPECTIVE

Through a critical examination of the Criminal Justice System, we shall argue about how the Public Prosecutor's role in India has always been a battlefield against the doctrine of separation of powers, beginning from a slow birth of the post of a Public Prosecutor. The mantle of administering and upholding justice has been shouldered by various agents of justice across timelines over the vast geographical expanse forming modern-day India. The constant evolution of the Public Prosecutor's role in the quickly changing pages of history can be broadly categorized into four distinct periods:

(A) Ancient Period (1500 BC – 800 AD)

In the Ancient Period, the compass of control over the Public Prosecutor's role was entirely held by the sovereign King. The branches of government were differently organized, ignoring the necessity of any separation of powers by centralizing all control to the King. During this period, the criminal justice system was based on religious texts, laying down the principles of *Dharma* (righteousness or duty) and established the concept of crime and punishment. The King was duty-bound to ensure the security and welfare of his subjects and the maintenance of law and order. Thus, the role of a Public Prosecutor was implicit in this duty to uphold justice by prosecuting and punishing in accordance with law. Thus, the role of a Public Prosecutor was implicit in the State's duty to uphold justice and the King and his officials ensured that offenders were prosecuted and punished in accordance with law. The Public Prosecutor's autonomy under such a structure was nugatory.

(B) Medieval Period (800 AD – 1700 AD)

The Medieval Period saw a slight improvement because the legal system gained a separate life from the sovereign King. However, the autonomy that the Public Prosecutor enjoyed within such a structure remains unclear. This period began with the dawn of the Mughal Empire and the introduction of Islamic law (Sharia) in India. The administration of justice was carried out by Islamic courts (Qazi Courts), and the Qazi (judge) played a crucial role in resolving disputes and interpreting the law. A few accounts talk about government hiring their own "wakil", who would sit together with the Qazi and were vested with the power to conduct suits, execute decrees and aid the poor before the court. These Wakils subsumed the role of a Public Prosecutor.

(C) British Colonial Period (1700 AD – 1947)

The seeds of what would be the present-day Public Prosecutor were sown by the British during British Colonial Period, which brought about significant changes to the criminal justice system by introducing principles of English common law and codifying substantive penal provisions and procedural law for criminal offences. This period witnessed a major transition in the role of the Public Prosecutor. The legal system transitioned

from a scant structure with only a judge, a courtroom and a lawyer - into a system nuanced enough to neatly delineate the role of the Public Prosecutor with a separate system of appointment for such a position.

The Code of Criminal Procedure, 1861 was the first codified procedural law applicable to the whole of British India⁵. Under this Act, the Public Prosecutor was given statutory recognition to conduct trials before the courts. Following suit to the system prevalent in England, private prosecution was permitted before Magisterial Courts but for the prosecution of more serious crimes, a Public Prosecutor was appointed to appear and plead before the Court of Session.

Subsequently, under The Code of Criminal Procedure, 1882 (“CrPC 1882”), the term ‘Public Prosecutor’⁶ was used for the first time. The CrPC 1882 contained provisions for the appointment⁷, powers, and functions⁸ of the Public Prosecutor. The Public Prosecutor was empowered to file appeals before the High Courts, in cases of acquittal of accused persons, upon the direction of the Local Government⁹. Also, the CrPC 1882 gave power to the Public Prosecutor to withdraw cases¹⁰. Private pleaders were permitted to prosecute before any court, subject to directions of the Public Prosecutor¹¹. Any person conducting the prosecution was permitted to do so either personally or through a pleader¹².

The Code of Criminal Procedure, 1898 (“CrPC 1898”) retained the provisions of the previous Code pertaining to appointment¹³, powers and functions¹⁴ along with the basic definition of the Public Prosecutor¹⁵. The CrPC 1898 modified the Magistrate’s discretion to permit prosecution by a police officer, subject to the prior approval of the Governor General in Council and the officer’s rank was to be prescribed by the Local Government and under the same provision, such officer was granted the power to withdraw cases, with the prior consent of the court¹⁶. This shows how from a statutorily sketched position, the role of the Public Prosecutor became a legal definition to have eventually gained prominence to be in the middle of the separation of powers between the judiciary and the executive.

(D) Post-Independence Period (1947 onwards)

India’s independence from the British in 1947 resulted in the amended and enacted in line with constitutional values. As perhaps in every civilised society, India’s Criminal Justice System exists to provide an inalienable and strong sense of security to its people, by dealing with criminal offences and

⁵ Para 13, 37th Law Commission of India Report on The Code of Criminal Procedure, 1889

⁶ Section 4(m), The Code of Criminal Procedure, 1882

⁷ Section 492, The Code of Criminal Procedure, 1882

⁸ Sections 228, 231, 270, 277, 286, 287, 289 and 292, etc., The Code of Criminal Procedure, 1882

⁹ Section 417, The Code of Criminal Procedure, 1882

¹⁰ Section 494, The Code of Criminal Procedure, 1882

¹¹ Section 493, The Code of Criminal Procedure, 1882

¹² Section 495, The Code of Criminal Procedure, 1882

¹³ Section 492, The Code of Criminal Procedure, 1898

¹⁴ Sections 228, 231, 270, 277, 286, 287, 289, 292, 492, 493 and 494, etc., The Code of Criminal Procedure, 1898

¹⁵ Section 4(t), The Code of Criminal Procedure, 1898

¹⁶ Section 495, The Code of Criminal Procedure, 1898

offenders in a legal, fair, just and effective manner. Criminality must be snuffed out by unfettered and genuine reporting of crimes, proper investigations, fair trials, timely conviction and appropriate punishment for the guilty which, in turn, should stifle recidivism and here comes the role of the Public Prosecutor.

The role of the Public Prosecutor in the India Legal System is indispensable. The Public Prosecutor is guided by sacrosanct constitutional principles and those recognised and upheld by our Legal System. All parts of the Criminal Justice System, including the Public Prosecutor, must discharge their duties to ensure that nobody is wrongly incarcerated and no guilty escapes unpunished.

The Parliament of India enacted The Code of Criminal Procedure in 1973 (“CrPC 1973”), which is an exhaustive Code “*to consolidate and amend the law relating to Criminal Procedure*”¹⁷. The CrPC 1973 improved and expanded on the role of the Public Prosecutor by providing for different categories of Public Prosecutors, their roles, qualifications, supervising authority, appointment, and hierarchy.

III. PUBLIC PROSECUTOR IN INDIA

(A) Introduction

The Indian Code for Criminal Procedure provides for the appointment of a Public Prosecutor in terms of Section 2(u), which defines a “Public Prosecutor” to mean any person appointed under Section 24 and includes any person acting under the directions of a Public Prosecutor¹⁸.

The Public Prosecutor are Advocates enrolled with their respective State Bar Councils and have obtained a Certificate of Practice from the Bar Council of India to practice the profession of law in India. Their practice is governed by the Advocates Act, 1961, and the Rules framed by the Bar Council of India, including Rules on Professional Standards.

(B) Appointment and Terms of Service

The terms of appointment formulate a significant “check” on the autonomy bestowed on the Public Prosecutor in the separation of powers. This is because while the Public Prosecutor’s post is judicial for its functional purpose, the power to appoint such an official is with the Executive. For conducting prosecution on behalf of the State, the CrPC 1973 prescribes the appointment of (i) a Public Prosecutor before the High Court, (ii) a Public Prosecutor, and Additional Public Prosecutor(s) at the district level to handle Sessions cases and (iii) Assistant Public Prosecutors in cases before the courts of Magistrates. Special Public Prosecutor is also part of the prosecutorial framework under CrPC 1973. He is an experienced advocate from the Bar and can be appointed for any case or class of cases by the Central or the State Government.

(C) Public Prosecutor and Additional Public Prosecutor

Public Prosecutor and Additional Public Prosecutor are appointed to appear and plead on behalf of the State before the concerned High Courts must first meet the eligibility criteria given under the CrPC 1973. Public

¹⁷ The Preamble, The Code of Criminal Procedure, 1973

¹⁸ Section 2(u), The Code of Criminal Procedure, 1973

Prosecutor and Additional Public Prosecutor are appointed from advocates having extensive experience in criminal law and must have a minimum experience of 7 years of practice as an Advocate. A list of eligible candidates is prepared and the Central or the State Government, as the case may be, consult the High Court to appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors representing the Central or the State Government, as the case may be¹⁹.

Similarly, Public Prosecutor and Additional Public Prosecutor to be appointed to represent the State in cases before the District and Sessions Courts are required to satisfy eligibility criteria of minimum 7 years of practice as an Advocate. The Central Government is entitled to appoint one or more Public Prosecutors for conducting any case or class of cases in any district or local area²⁰, whereas the State Government must mandatorily appoint, for every district, a Public Prosecutor and may also appoint one or more Additional Public Prosecutors²¹. These appointments by the State Government are to be made from a regular Cadre of Prosecuting Officers in a State²² and if no regular Cadre exists in a State or in the opinion of the State Government no suitable person is available in such Cadre, the appointments are made only from the panel of names prepared by the District Magistrate in consultation with the Sessions Judge for the district²³.

Not all States have established a Cadre of Prosecuting Officers and in cases where States have established a Cadre, the posts of Public Prosecutor and Additional Public Prosecutor are, at times, excluded from the Cadre. Even otherwise, where these two posts form part of the Cadre, the State is vested with the discretion to not promote the lower ranking officer citing that “*no suitable person is available in such Cadre*” or enact State amendments to do away wholly with the mandatory requirement to appoint/promote from the Cadre. In all such cases, the posts of Additional Public Prosecutor and Public Prosecutor are filled-up by the State by empanelling practising advocates from the Bar on a tenure basis. Their services may be dispensed with, at any time, by the Government if, in the State’s opinion, their conduct is in violation of or contrary to their duties and mandate, including upholding integrity and professional ethics.

(D) Assistant Public Prosecutor

The post of the Assistant Public Prosecutor seems to fair better on the autonomy and separation of powers scale as far as the power to appoint is concerned. This is because of their recruitment through merit and fulfilling reasonable criteria in a three-part examination. Assistant Public Prosecutors are appointed for each district. The State Government is mandated to appoint one or more Assistant Public Prosecutors for every district and the Central Government may, if it deems necessary, appoint one or more Assistant Public Prosecutors for conducting prosecutions for any case or class of cases in the Courts of Magistrates.²⁴

¹⁹ Section 24(1), The Code of Criminal Procedure, 1973

²⁰ Section 24(2), The Code of Criminal Procedure, 1973

²¹ Section 24(3), The Code of Criminal Procedure, 1973

²² Section 24(6), The Code of Criminal Procedure, 1973

²³ Sections 24(4), 24(5) and 24(6), The Code of Criminal Procedure, 1973

²⁴ Section 25(1), The Code of Criminal Procedure, 1973

In cases where the Assistant Public Prosecutor is unavailable, owing to vacancy or otherwise, the District Magistrate is empowered to appoint any other person to be the Assistant Public Prosecutor in charge of a case²⁵. Although, there is a specific bar against appointment of police officers as an Assistant Public Prosecutor²⁶, but the District Magistrate can appoint a police officer, in cases of unavailability of the Assistant Public Prosecutor, who has neither taken part in the investigation into the offence with respect to which the accused is being prosecuted nor should s/he be below the rank of inspector²⁷.

Assistant Public Prosecutors are recruited through competitive examinations conducted by the Union and the respective State Public Service Commissions. They hold a civil post and are full-time employees of the Central / State Government. The Centre for the Union Territories and each State prescribes its own eligibility criteria, such as age, qualification, and requisite years of practice as an Advocate for appointment of Assistant Public Prosecutors. The examinations are generally conducted over three stages comprising of (i) written objective type, (ii) written subjective and (iii) an interview. Shortlisting for interview may additionally be based on reasonable criteria, such as higher qualifications and/or experience. Selected candidates are put on probation, during which their suitability and performance are reviewed. Further, part-time appointments may also be made as per requirements which carry no inherent right to regularisation. The terms of service are governed by the rules made by the State, which include the option to apply for the transfer within the State to another district and as the appointment and terms of service are governed by the respective rules and policies of an individual State/Union Territory, there is no provision for inter-State transfers.

The conduct of an Assistant Public Prosecutor is governed by the respective Service Rules (Conduct) which provides rules to ensure the duties of the post are discharged with utmost professionalism and integrity. The respective Service Rules in place provide for disciplinary actions and as a result of disciplinary inquiry proceedings, penalties may be imposed in the form of (a) Minor Penalties, such as Censure, Fine, withholding of increment or promotion, recovery from pay, suspension and (b) Major Penalties, such as reduction to a lower rank in seniority list or to a lower post, removal or even dismissal from the service.

The disciplinary proceedings are held in a fair and objective manner upon following Principles of Natural Justice to ensure a fair and objective decision and the matter is subjected to an independent and impartial review. A charge memo is prepared detailing the alleged offence/wrong that has been committed and a right to representation, including a right to file a written response is afforded to the concerned officer. During the inquiry, witnesses may be examined and cross-examined and arguments may also be presented before passing an order. There also exists a right to appeal. Power of judicial review of the courts is often invoked to seek relief/justice by the officer.

²⁵ Section 25(3), The Code of Criminal Procedure, 1973

²⁶ Section 25(2), The Code of Criminal Procedure, 1973

²⁷ Section 25(3), The Code of Criminal Procedure, 1973

(E) Special Public Prosecutor

Special Public Prosecutors are advocates appointed from the Bar to conduct cases of special importance and/or involving a high degree of complexity, at times under special Acts, on behalf of the Government and require to have greater expertise in criminal matters. The Central or the State Government appoints Special Public Prosecutors having a minimum of 10 years of practice as an Advocate, for conducting prosecution in any case or class of cases.²⁸ Such Prosecutors are appointed specially for cases involving terrorism, corruption, human trafficking, drugs and narcotics related offences, sexual offences against children, environmental crimes, organized crime and such other 'high-profile' cases warranting a higher degree of skill and care²⁹. The right to terminate their mandate vests with the Government and may be exercised upon improper discharge of duties.

(F) Other appointments

As a long-standing practice, senior law officers are appointed by the Government to discharge vital duties of a Public Prosecutor. The Attorney-General for India³⁰ (Highest Law Officer of India) may be requested to appear in special cases to provide legal advice, guidance and even argue criminal cases. The Solicitor General of India (Second-Highest Law Officer of India) and Additional Solicitor Generals of India may also be requested to appear in important cases. The Advocate General³¹ for a State advises the State Government and is often appointed as Public Prosecutor for the State to appear before the High Court³². The above shows how appointment to some categories of positions as a Public Prosecutor renders the position subordinate to the Executive, whereas for some categories of Public Prosecutors the appointment is merit based, allowing them more freedom without any obligation to appease the Executive in their daily discharge of duties.

(G) Significance of the Law Commission of India Reports

The role of the Public Prosecutor had assumed great importance in the Indian Criminal Justice System upon India's independence. The distinct dichotomy between Indian citizens and the British administration had dissolved and the great acts of rebellion against the imperialistic oppressors were no longer required or deemed worthy of praise. Stripped of its resources, emergent India had to meet the expectations of the new generation. Curbing lawlessness and crime assumed priority and the role of the Public Prosecutor gained significance.

The 14th Law Commission of India Report, 1958 on Reform of Judicial Administration recognised and recommended that the conditions of service of the Public Prosecutors should be improved and they should be adequately trained.³³

²⁸ Section 24(8), The Code of Criminal Procedure, 1973

²⁹ *Subramanian Swamy v. A. Raja*, (2012) 9 SCC 257; *Mohammed Ajmal Mohammad Amir Kasab & Ors. v. State of Maharashtra & Ors.*, (2012) 9 SCC 234; and *Mukesh & Ors. vs. State for NCT of Delhi & Ors.*, (2017) 6 SCC

³⁰ Article 76, The Constitution of India, 1950

³¹ Article 165, Constitution of India, 1950

³² Section 24(1), The Code of Criminal Procedure, 1973

³³ Para 23, 14th Law Commission of India Report on 'Reform on Judicial Administration', 1958

The 41st Law Commission of India Report on ‘The Code of Criminal Procedure, 1898’ built on the previous report and recommended that Public Prosecutors should play a bigger role and should scrutinise the police report (charge-sheet), before it is submitted to the Magistrate along with the authority to send back the case to the police for further investigation and modify the proposed charge (offences committed).³⁴ Simultaneously, minimum qualifications were prescribed for the appointment Public Prosecutors / Additional Public Prosecutors, Special Public Prosecutors and Assistant Public Prosecutors to further raise the standards of the Public Prosecutors in India³⁵.

The 154th Report of Law Commission of India on ‘The Code of Criminal Procedure, 1973’ submitted in August 1996 recommended appropriate strength of women Public Prosecutors and Assistant Public Prosecutors to effectively deal with cases involving women under 18 years and other serious sexual offences against women³⁶.

In March 2003, the Malimath Committee prepared its Report on ‘Reforms of the Criminal Justice System’ recommending that a formal structure for Public Prosecutors should be created alongside the existing practice of tenure appointment of practising advocates by appointing Assistant Public Prosecutors through a competitive examination held by the Public Service Commission. The tenure appointments of Public Prosecutors directly from the Bar should be for a limited period of three years, while the State would be empowered to appoint any member of the Bar as a Special Public Prosecutor for any class of cases for a specified period. Also, the need for adequate representation of women was reaffirmed and the intensive training of the Public Prosecutors.³⁷

These recommendations were indicative of the need of the hour, as recognised by the eminent jurists and top legal minds of the country, to bolster the office of the Public. The above have been largely implemented in practice by the State and Central Government agencies dealing with prosecution.

IV. ROLE, FUNCTIONS AND DUTIES OF PUBLIC PROSECUTOR

(A) Guiding Principles for Public Prosecutor

Before delving into the role, functions and duties of a Public Prosecutor, it is apposite to consider the doctrines and principles which guide the Public Prosecutor and the standards based on which the Public Prosecutor’s performance is evaluated. The Public Prosecutor is expected to imbibe the following doctrines and principles from the Constitution of India

³⁴ Page 152-153, Para 18.26, 41st Law Commission of India Report on ‘The Code of Criminal Procedure, 1898’, 1967

³⁵ Page 311-312, Para 38.3, 41st Law Commission of India Report on ‘The Code of Criminal Procedure, 1898’, 1967

³⁶ Page 11, Para 13, 154th Law Commission of India Report on ‘The Code of Criminal Procedure, 1973’, 1967

³⁷ Part-II, Chapter 8 ‘Prosecution’, Pages 125-130 and Part-IV, Chapter 24 ‘Recommendations’, Pages 278-279, Report of the Committee on ‘Reforms of Criminal Justice System’ constituted by Ministry of Home Affairs, Government of India, 2003

and judicial precedents of the Supreme Court of India and various High Courts, while performing its role, functions and duties.

Constitution of India:

- Right to Equality before Law and Equal Protection of Laws (Article 14)
- Right to opportunity to be heard (Article 14)
- Protection against *ex-post facto* laws (Article 20(1))
- Doctrine of Double Jeopardy (Article 20(2))
- Right against Self-Incrimination / Right to Remain Silent (Article 20(3))
- Right to Life and Personal Liberty (Article 21)
- Presumption of Innocence (Article 21)
- Right to Fair and Just Trial (Article 21)
- Right to Speedy Trial (Article 21)
- Right to Legal Aid (Article 21)
- Right to Counsel (Article 22(1))

Other principles:

- Locus Standi of the Prosecution in Criminal Matters
- Burden of Proof on the Prosecution to prove the guilt of the accused

Principles of Natural Justice:

- Nemo Judex in Causa Sua (Right against Bias)
- Audi Alterum Partem (Right to be heard)
- Right to legal representation
- Right to cross-examination

The presumption of innocence being the paramount doctrine in India's Criminal Justice System is the first step towards being an objective Public Prosecutor. The police and prosecution were separated to ensure the presumption of innocence is not forsaken by police officers, whose performance was gauged by the number of crimes they were able to solve by placing the purported guilty before court and behind bars. The tangible difference between State and police must be understood and appreciated, as the Public Prosecutor is an officer of the State Government and is neither a part of the investigating agency nor its forwarding agency³⁸.

The aim of the Public Prosecutor in India should not be to secure a conviction against the accused at any cost, regardless of the actual facts of the case³⁹. Their approach must be fair to the court, the police and to the accused as well. To that extent, the Public Prosecutor must bring to notice of the court any legitimate benefit available to the accused.⁴⁰ Justice must be vindicated and the Public Prosecutor should not obtain an unrighteous conviction. Their role is often defined as that of a 'Ministers of Justice' who

³⁸ Prosecution Guidelines, Directorate of Prosecution, Odisha, available at <https://rb.gy/4vmh0>

³⁹ Shiv Kumar v. Hukam Chand & Anr., (1999) 7 SCC 467

⁴⁰ Shiv Kumar v. Hukam Chand & Anr., (1999) 7 SCC 467

are bound to assist the court in ensuring that neither an innocent is sent to the gallows nor the culprit escapes conviction⁴¹.

Only when these principles and doctrines are understood and subsequently implemented in each and every prosecution, can the Public Prosecutor be truly considered to have performed the roles, functions, and duties of a Public Prosecutor.

(B) Role of Public Prosecutor

“Prosecutors are gatekeepers to the criminal justice process” – Avory J.⁴²

Public prosecution is vital to the proper functioning of the Criminal Justice System of any country. The welfare State has taken the onerous duty to prosecute an alleged offender, through the office of the Public Prosecutor, who are advocates duly appointed to conduct prosecution for and on behalf of the State. The Public Prosecutor has a duty towards the State, the accused, the court and is considered to be an officer of the court. Most importantly, he must remain independent and exhibit an unwavering loyalty towards the cause of truth and the principles of Rule of Law.

(i) Role of Public Prosecutor during Investigation (Pre-Trial)

Investigation and prosecution are two different facets in the administration of criminal justice⁴³. The investigation is the privilege and prerogative of the police⁴⁴. The police authorities have a statutory right to investigate commission of alleged offences. Whereas, in some cases, investigation and arrest may require the prior permission from the Court⁴⁵ and for other alleged offences no such permission is required⁴⁶.

Public Prosecutor does not interfere at the stage of police investigation of offences purported to have been committed by the accused persons and his role, usually, begins only after the conclusion of the investigation and filing of a charge-sheet, cancellation report or untraced report, before the Court. The Public Prosecutor is neither a part of the investigating agency nor its forwarding agency but is an independent authority.

It must be noted that, the law or the Courts in India do not condemn the police officer for seeking legal opinion from the Public Prosecutor to prepare the charge-sheet or any other report⁴⁷ and, as a matter of practice, the Public Prosecutor is sent charge-sheets for legal scrutiny before filing. Such a voluntary exercise borne out of respect for the Public Prosecutor's legal know-how and acumen should not lead to the independence of the investigating agency being lost, so much so, that even a Court's order cannot direct the police authorities to follow the opinion given by the Public Prosecutor⁴⁸.

The exclusive authority of the police during the Investigation (pre-trial) Stage does not completely exclude the role of the Public Prosecutor, who is expected to appear on behalf of the State in bail application filed by

⁴¹ Babu v. State of Kerala, 1984 Cr LJ 499 (Ker.)

⁴² R v. Banks 1916 (2) KB 621

⁴³ Para 2, R. Sarla v. T.S. Velu & Ors., (2000) 4 SCC 459

⁴⁴ Amar Nath Chaubey v. Union of India & Ors., (2021) 11 SCC 804

⁴⁵ Section 155, The Code of Criminal Procedure, 1973

⁴⁶ Section 156, The Code of Criminal Procedure, 1973

⁴⁷ Para 2, R. Sarla v. T.S. Velu & Ors., (2000) 4 SCC 459

⁴⁸ Para 9, R. Sarla v. T.S. Velu & Ors., (2000) 4 SCC 459

the accused at the pre-trial stage⁴⁹, to secure police and/or judicial custody of the accused⁵⁰ and obtain search and arrest warrants.

Though, it can be argued that the Public Prosecutor should have the authority to send back the case to the police for further investigation and modify the proposed charge (offences committed) if he finds it necessary to do so⁵¹, as weak cases also result in an acquittal owing to improper investigation and not just because the accused is genuinely innocent.

The ultimate objective of the Criminal Justice System in India is for its people to have faith in the system, which in itself acts as a deterrent to the wrongdoers and a beacon of hope for the meek and the innocent by ensuring the conviction of the guilty, justice for the victim and acquittal of the innocent. The Public Prosecutor plays a pivotal role in this endeavour for true justice and the objectivity he is bound to uphold should become a part of investigation stage as well.

Having regard to the above, the general practice is that the advice and guidance of the Public Prosecutor is sought by the police with respect to investigation and drafting of charge-sheets. The insights and expertise are relied upon to ensure effective investigation, which aids proper prosecution and the cause of justice.

The role of the Public Prosecutor in India at the pre-trial stage is limited and the Public Prosecutor does not have any power to direct the criminal investigations or conduct inquiries to gather evidence to ascertain the facts surrounding the alleged offences, which is in contrast with the practice across many parts of Europe.

(ii) Role of Public Prosecutor during Trial and Post-Trial

The filing of the charge-sheet is the absolute discretion of the police and the Public Prosecutor can only play an advisory role, if called upon to do so. Once the charge-sheet is filed, the criminal trial commences. The Court takes judicial notice of the case. The Public Prosecutor's primary and pivotal role begins when he is assigned the case and enters his appearance⁵² and proceeds to argue on the charges to be framed, which are basically the offences deemed to have been committed by the accused. Having heard the prosecution and defence, the Court upon being satisfied that it is a triable case, proceeds to frame charges against the accused and the Court explains the charges so framed to the accused. The accused is then brought before the Court and he is asked whether he pleads guilty or wishes to raise any defence. A plea of guilt results in conviction without any trial. Whereas, if the accused pleads not guilty, a date is fixed for trial to commence and on the said date, the case is opened by the Public Prosecutor for the State. The prosecution and then the defence adduce evidence in the form of oral, documentary and inferential/circumstantial evidence and further examine witnesses under oath. The right to examine one's own witness(es) is a statutory right and so is the right to cross-examine and re-examine witness(es)⁵³. The Prosecutor, then presents final arguments before the

⁴⁹ Para 2, *R. Sarla v. T.S. Velu & Ors.*, (2000) 4 SCC 459

⁵⁰ Section 167, The Code of Criminal Procedure, 1973

⁵¹ Page 152-153, Para 18.26, 41st Law Commission of India Report on 'The Code of Criminal Procedure, 1898', 1967

⁵² Section 301, The Code of Criminal Procedure, 1973

⁵³ Sections 137 & 138, Indian Evidence Act, 1872

Court and with the defence also presenting its concluding arguments, the Court decides the case and pronounces its reasoned decision. A pronouncement of guilty verdict thereafter affords the accused an opportunity to plead his case with respect to sentencing⁵⁴ as the justice system believes in individualisation of sentences.

The Public Prosecutor aids the court to arrive at a fair conclusion with respect to sentencing, admonition and probation, where applicable either upon a guilty verdict or as a result of plea bargaining. The Public Prosecutor is further permitted to participate to assist the Court to arrive at a fair and just compensation for the victim.

Upon the conclusion of the trial, the Public Prosecutor examines the judgment of the Court and must take a judicious call whether or not to file an appeal/revision. If the circumstances warrant filing an appeal/revision, he prepares a draft and accordingly, forwards the same to the concerned senior officers for their approval.

The Public Prosecutor may be involved at the post-trial stage, including the appellate proceedings in India to represent the interests of the State and to safeguard the rights of the victim. Unlike in Europe, the Public Prosecutor in India does not oversee the execution of sentences and court orders as a result of the trial proceedings by coordinating with law enforcement agencies and correctional institutions, to ensure that sentences are carried out in accordance with the law.

(iii) Withdrawal from Prosecution

The most contentious point of the debate in the separation of powers and the position of the Public Prosecutor lies in his power of withdrawal from prosecution, with the consent of the Court, against any person or generally in respect of one or more offences and such power is vested only with the Public Prosecutor in-charge⁵⁵. This is because while such a discretion to withdraw unilaterally from a case is ostensibly untethered and immense, the simultaneous obtaining of consent and bureaucratic permissions render its real utility as murky at best. While a possible counter argument is a system of checks and balances imposed on the discretion of the Public Prosecutor, however – from a separation of powers perspective, it strangulates the Public Prosecutor beyond already having checks through appointment, applicability, and oversight. Decisions of the Supreme Court have explained the power to withdraw from prosecution in *Subhash Chandra v. State (Chandigarh Administration) & Ors.*⁵⁶ that “*the functionary clothed by the Code with the power to withdraw from the prosecution is the Public Prosecutor. The Public Prosecutor is not the executive, nor a flunkey of political power. Invested by the statute with a discretion to withdraw or not to withdraw, it is for him to apply an independent mind and exercise his discretion. In doing so, he acts as a limb of the judicative process, not as an extension of the executive.*” and also in *Balwant Singh v. State of Bihar*⁵⁷ that “*the statutory responsibility for deciding upon withdrawal squarely vests on the public prosecutor. It is non-negotiable and cannot*

⁵⁴ Section 235, The Code of Criminal Procedure, 1973

⁵⁵ Section 321, Code of Criminal Procedure, 1973

⁵⁶ *Subhash Chandra v. State (Chandigarh Administration) & Ors.*, 1980 AIR 423

⁵⁷ *Balwant Singh v. State of Bihar*, AIR 1977 SC 2265

be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only matter of the public prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution.”

The Supreme Court further in *R. K. Jain v. State*⁵⁸ reviewed numerous judicial precedents to encapsulate the powers of the Public Prosecutor to withdraw from prosecution and how these powers should be exercised:

“1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.

2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.

3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes.

6. The Public Prosecutor is an officer of the Court and responsible to the Court.

7. The Court performs a supervisory function in granting its consent to the withdrawal.

8. The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.”

The duties of the Public Prosecutor often entail navigating the intricate web of the separation of powers, facing conflicting expectations from the Legislature, the Executive and the Judiciary. Straddling these realms, they are tasked with upholding justice while fending off political pressure and using their discretion to balance the interests of justice.

Role of Public Prosecutor under CrPC 1973

A detailed summary of the role of the Public Prosecutor at various stages in a criminal proceeding has been tabulated to provide a concise yet complete overview of the pivotal role played in the criminal justice system of India.

S. No.	Stage	Role of Public Prosecutor under CrPC 1973
1.	Investigation	

⁵⁸ *Rajender Kumar Jain and Ors. v. State Through Special Police Establishment and Ors.*, (1980) 3 SCC 435

(a)	Warrants for arrest, search, etc.	Obtain warrants from the Court of Magistrate, as required.
(b)	Remand/Custody of person arrested	Securing police custody of the accused, upon his/her production under Section 167 CrPC 1973.
(c)	Person Absconding	To apply for proclamation of person absconding ⁵⁹ and subsequent attachment of property of person absconding ⁶⁰ , if need be.
(d)	Submission of Final Report	Submission of final report/charge-sheet, cancellation report or untraced ⁶¹ .
2. Cognizance and Committal		
(a)	Committal Proceedings	Render due support and assistance on issues of cognizance ⁶² and committal of Court of Session ⁶³ .
(b)	Prosecution for offence of Defamation	Filing of written complaint before Court of Session in cases of alleged offence of Defamation against <i>“President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions”</i> ⁶⁴ .
3. Bail		
(a)	Undertrial Prisoners ⁶⁵	Public Prosecutor is heard before an order for release or further detention is passed by the Court.
(b)	Bail Application ⁶⁶ (Magisterial Court)	Public Prosecutor is heard before an order for release or denial is passed by the Court. He may oppose the grant of bail by taking an objective view of the circumstances.
(c)	Bail Application ⁶⁷ (Magisterial Court)	Notice issued to the Public Prosecutor, who is heard before an order for release or denial is passed by

⁵⁹ Section 82, The Code of Criminal Procedure, 1973

⁶⁰ Section 83, The Code of Criminal Procedure, 1973

⁶¹ Sections 169 or 170 and 173, The Code of Criminal Procedure, 1973

⁶² Section 190, The Code of Criminal Procedure, 1973

⁶³ Section 209, The Code of Criminal Procedure, 1973

⁶⁴ Section 199, The Code of Criminal Procedure, 1973

⁶⁵ Section 436A, The Code of Criminal Procedure, 1973

⁶⁶ Section 437, The Code of Criminal Procedure, 1973

⁶⁷ Section 439, The Code of Criminal Procedure, 1973

		the Court. He may oppose the grant of bail by taking an objective view of the circumstances.
(d)	Anticipatory Bail ⁶⁸	Public Prosecutor is heard before the order passed by the Court.
4. Withdrawal		
(a)	Withdrawal from prosecution ⁶⁹	Public Prosecutor in-charge can seek withdrawal in genuine cases, in the interest of larger interest and public justice ⁷⁰ .
5. Transfer		
(a)	Transfer of cases and appeals by High Court ⁷¹ and Sessions Judge ⁷²	Such decisions are taken upon giving notice to the concerned Public Prosecutor.
6. Trial		
(a)	Court of Magistrate	Public Prosecutor's primary duty and mandate is to prosecute in Warrant, Summons and Summary Trials.
(b)	Court of Session	To be Conducted by the Public Prosecutor. ⁷³
(c)	Trial of person not complying with conditions of pardon ⁷⁴	Public Prosecutor to be aware and where warranted, certify as to person securing pardon by fraudulent means and also where pardoned person has failed to comply with conditions for tender of pardon.
(d)	Appeal against inadequate sentence ⁷⁵	Public Prosecutor empowered to file such an appeal, subject to directions of the Government.
(e)	Appeal against acquittal ⁷⁶	Public Prosecutor empowered to file such an appeal, subject to directions of the Government.
(f)	Appeal before Appellate Court ⁷⁷	Public Prosecutor to be heard in appeals filed under Sections 377 & 378 CrPC 1973.

(C) Duties to be discharged by the Public Prosecutor

⁶⁸ Section 438, The Code of Criminal Procedure, 1973

⁶⁹ Section 438, The Code of Criminal Procedure, 1973

⁷⁰ Punjab v. Union of India & Ors., (1986) 4 SCC 335

⁷¹ Section 407, The Code of Criminal Procedure, 1973

⁷² Section 408, The Code of Criminal Procedure, 1973

⁷³ Section 225, The Code of Criminal Procedure, 1973

⁷⁴ Section 308, The Code of Criminal Procedure, 1973

⁷⁵ Section 377, The Code of Criminal Procedure, 1973

⁷⁶ Section 378, The Code of Criminal Procedure, 1973

⁷⁷ Section 386, The Code of Criminal Procedure, 1973

The State Home Departments having supervision and control Directorate of Prosecution in a State have published prosecution manuals and guidelines which detail various duties that the Public Prosecutor must discharge during the performance of its official duties. Considering that guiding principles and doctrines for the Public Prosecutor are commonly accepted all across States in India, these manuals and guidelines prescribe similar duties across various states to uphold the dignity and integrity of the role and position of the Public Prosecutor.

At the pre-trial stage, the Public Prosecutor has to scrutinise the final investigation report forwarded to him before filing before the Court. Such scrutiny must include the examination of the calendar of evidence mentioning the names, addresses, and brief statement of purpose of all the witnesses. In case no such calendar is prepared, the Public Prosecutor should direct the concerned Investigating Officer to prepare the same.

At the stage of trial, the Public Prosecutor must ensure that all case files are complete and up-to-date. To that end, all documents that have been filed in a trial before the concerned court must be obtained and collated. Upon commencement of the trial, the Public Prosecutor must ensure that no delay is occasioned in the hearing of the criminal case. The preparations for the case must be done in advance, including calling the police officer and, where required, ensuring the witness is produced before the court on the scheduled date of hearing.

If a Court has permitted the appointment of a private counsel to participate in the trial, Public Prosecutor has to effectively and proactively supervise the work of such private counsel. The Public Prosecutor must ensure that the primary role accorded under the CrPC 1973 to conduct a criminal case and ensure a fair trial is not abdicated under any circumstances. The Public Prosecutor must not dismiss, at the very outset, the inputs given by the private counsel and where necessary must incorporate them.

The Public Prosecutor is bound to present all relevant evidence collected during the course of the investigation to the court, including witnesses, documents and forensic evidence collected by the police. Whenever any person is required to be examined as a witness by the Court for the just decision of the case, the Public Prosecutor must move an appropriate application⁷⁸. The Public Prosecutor is also duty-bound to properly examine all material prosecution witnesses to establish the facts of the case and due regard must be had to ensure that all the relevant facts are proved and ingredients of the offence as well as chain of evidence is properly established. No unnecessary witnesses should be examined to avoid delays and which may unduly weaken the case.

A proper examination of all expert witnesses, including medical, and forensic experts must be ensured and the Public Prosecutor needs to undertake appropriate study, training and guidance regarding the technical and legal aspects of the same.

The Public Prosecutor has the right to cross-examine defence witnesses to challenge the credibility and accuracy of their statements. He must make proper use of the tactics available to a counsel during cross-examination. If a prosecution witness gives testimony that contradicts the

⁷⁸ Section 311, The Code of Criminal Procedure, 1973

prosecution's case, the Public Prosecutor is responsible for treating the witness hostile and with the permission of the court conduct cross-examination⁷⁹.

During the final arguments stage, the Public Prosecutor has to collect copies of evidence adduced and proceed to prepare his arguments while being mindful of the possible defence. Copies judicial pronouncements relied and referred must also be kept handy⁸⁰.

Any lacunae on part of the Police Department of which the Public Prosecutor becomes aware must be promptly reported to the Superintendent of Police.⁸¹ The Public Prosecutor must itself always act in accordance with professional ethics and the Code of Criminal Procedure. This includes avoiding any conflicts of interest, maintaining confidentiality and ensuring that their conduct is beyond reproach.

(D) Prosecutorial Misconduct

Another significant check on Public Prosecutorial power on the separation of powers spectrum is enunciated below. Misconduct by a Public Prosecutor in India refers to any unethical, unprofessional, or illegal actions taken by a Public Prosecutor during the course of their duties. However, misconduct by a Public Prosecutor can undermine the fairness and integrity of the legal process.

Misconduct by Public Prosecutors in India can have severe consequences for the accused, the victims, and the credibility of the Criminal Justice System. It is essential for the legal profession, the judiciary, and the public to hold them accountable for any misconduct and ensure that they adhere to the highest standards of professional ethics and integrity. When Public Prosecutors cross their bounds, they erode public trust and erase the line between justice and abuse of authority, necessitating thereby the need for punishment in the event of Prosecutorial Misconduct. The discretion of the Public Prosecutor stands outlined at its outer ends of right and wrong using the above legal procedures. Some examples of prosecutorial misconduct observed in India include:

(1) **Corruption:** This may involve accepting bribes, demanding favours, or engaging in other forms of corruption to influence the outcome of a case. This can lead to wrongful convictions, acquittals, or other miscarriages of justice.

(2) **Abuse of power:** A Public Prosecutor may misuse their authority for personal gain or to target specific individuals or groups. This can include withholding evidence, or pursuing cases without sufficient evidence.

(3) **Failure to disclose evidence:** A Public Prosecutor is obligated to share all relevant evidence with the defence, whether it supports or undermines the prosecution's case. Failure to disclose evidence can result in wrongful convictions and is a serious breach of professional ethics.

⁷⁹ Section 154, Indian Evidence Act, 1872

⁸⁰ Prosecution Guidelines, Directorate of Prosecution, Odisha, available at <https://rb.gy/4vmh0>

⁸¹ Prosecution Guidelines, Directorate of Prosecution, Odisha, available at <https://rb.gy/4vmh0>

(4) Misrepresentation of facts: A Public Prosecutor may intentionally or negligently misrepresent facts or evidence to the court, which can lead to unjust outcomes.

(5) Collusion with witnesses or police: A Public Prosecutor may conspire with witnesses or law enforcement officers to fabricate evidence, coerce testimony, or otherwise manipulate the legal process.

(6) Breach of confidentiality: Confidentiality is crucial in the legal profession, and Public Prosecutor must maintain the confidentiality of sensitive information. Sharing confidential information with unauthorized parties can compromise the integrity of the legal process.

(7) Incompetence: A Public Prosecutor may demonstrate a lack of competence in their duties, resulting in poor case management, inadequate preparation, or failure to follow proper legal procedures.

V. PRIMACY OF THE PUBLIC PROSECUTOR DURING TRIAL (ROLE OF VICTIM)

The office of the Public Prosecutor was introduced in India to steer clear of the ills of vindictive and vexatious private prosecution and to ensure law and order in society. Such measures were taken having regard to the objectivity and fairness the office of the Public Prosecutor was capable of upholding but it was never meant to oust the accused completely from the pursuit of justice in a criminal case. The system in India is a result of an emerging delicate balancing between both the private and public prosecution. This current system recognises the rights⁸² of the victim⁸³, including the right to be represented by an advocate of their choice.

The CrPC 1973 specifically provides for Right of the victim to be represented by an Advocate and uses the term “assist”⁸⁴. This right is recognised as a human right which is both, substantive and enforceable⁸⁵. The term assist has been held by Courts in India to mean that such Advocate will have a role that is subservient to the role of the Public Prosecutor, who retains primacy as the *dominus* in the conduct of a criminal trial in India. The victim’s Advocate is subject to the directions of the Public Prosecutor and is not, generally, permitted to present arguments, examine and/or cross-examine witnesses⁸⁶.

On the other hand, such Advocate acts as a ‘safety valve’ intended to make up for any oversights and/or deficiencies in the prosecution’s case.⁸⁷ The inputs of the victim’s counsel may be considered by the Public Prosecutor, resulting in the amalgamation of the expertise of the Public Prosecutor and the victim’s counsel without compromising the primacy of the Public Prosecutor⁸⁸.

⁸² Jagjeet Singh and Ors. v. Ashish Mishra and Ors., (2022) 9 SCC 321

⁸³ Section 2(wa), The Code of Criminal Procedure, 1973

⁸⁴ Proviso to Section 24(8), The Code of Criminal Procedure, 1973

⁸⁵ Jagjeet Singh and Ors. v. Ashish Mishra and Ors., (2022) 9 SCC 321

⁸⁶ Rekha Murarka v. The State of West Bengal & Ors, (2020) 2 SCC 474

⁸⁷ Rekha Murarka v. The State of West Bengal & Ors, (2020) 2 SCC 474

⁸⁸ Rekha Murarka v. The State of West Bengal & Ors, (2020) 2 SCC 474

VI. DIRECTORATE OF PROSECUTION

The establishment of the Directorate of Prosecution is the first articulation of the impossible demands on the Public Prosecutor's role by all branches of government. It is a major turning point in the battle of the role of the Public Prosecutor and the doctrine of separation of powers.

While this Directorate is an independent body, the fact that it functions under the authority of the State or Central Government – threatens to make the Public Prosecutor's judicial role subordinate to the Executive's discretion.

The Directorate of Prosecution is an independent body which is the parent authority responsible for strengthening the Prosecution Department, reducing pendency of cases and ensuring justice is served. It is separate and independent from the Police Department.

The Directorate of Prosecution (DoP) for a State/Union Territory of India is established under the CrPC 1973. It functions under the administrative control of the Home or Law Department of a State/UT. The prosecution machinery functions under the supervision, guidance, and scrutiny of the Directorate's functionaries. The Director of Prosecution is the head of the Directorate and may be supported by Joint Director, Deputy Directors, and Assistant Directors to overlook work at various levels.

Having regard to the Public Prosecutor's onerous duties and weighty responsibilities, the Directorate ensures these officers work in a professional, productive, and streamlined manner and also promotes effective coordination, support, and cooperation with other agencies, such as the police. The question of whether such coordination remains at the logistics stage or transitions to control – though significant for the separation of powers question, remains unanswered.

The Code of Criminal Procedure (Amendment) Bill, 2005 was enacted, which provided for the establishment of the Directorate of Prosecution along with the appointment and hierarchy of senior functionaries heading the Directorate mandated to supervise Prosecutors appointed by the State to appear before various Courts. The Parliament bolstered the prosecutorial system and related machinery by enacting the Code of Criminal Procedure (Amendment) Act, 2005, which came into force on 23 June 2006.

The State Governments are given the discretion to establish a Directorate of Prosecution⁸⁹ to be headed by the Director of Prosecution⁹⁰ and the subordinate Deputy Directors of Prosecution to assist the Director⁹¹. These Directors and Deputy Directors are skilled Advocates having minimum 10 years of experience and are appointed by State Government but with the concurrence of the Chief Justice of the concerned High Court.⁹²

The Directorate of Prosecution in India is primarily an administrative framework, which is a prerogative inspired by the Reports of the Law Commission of India, focused on maintaining the autonomy of the Public Prosecutor's office from the police. Correspondingly, the Directorate also

⁸⁹ Section 25A(1), The Code of Criminal Procedure, 1973

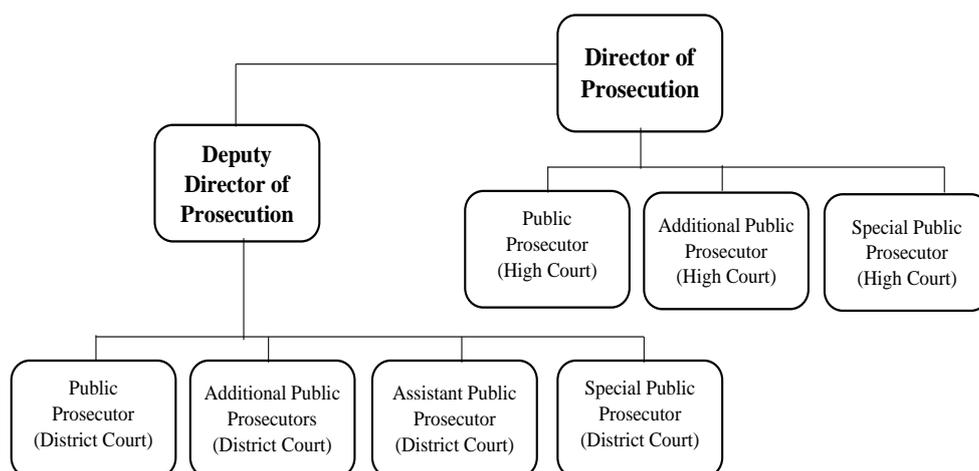
⁹⁰ Section 25A(3), The Code of Criminal Procedure, 1973

⁹¹ Section 25A(4), The Code of Criminal Procedure, 1973

⁹² Section 25A(2), The Code of Criminal Procedure, 1973

ensures that the Public Prosecutor and the police work well with each other. The Directorate of Public Prosecution also oversees the appointment, promotion, and disciplinary matters of Public Prosecutors. But the Directorate does not exercise such powers and functions with respect to the magistrates and the judges, as is the case with the High Council of Judiciary in Europe.

(E) Hierarchy of Directorate of Prosecution under Section 25A of CrPC 1973⁹³



The system and hierarchy of the Directorate of Prosecution varies from State-to-State owing to area, population, and other administrative requirements for prosecutions. The larger states in India have District prosecution offices and sub-divisional prosecution offices as part of the Directorate of Prosecution. In addition to the post of Director of Prosecution, the State Directorate of Prosecution framework may include additional administrative posts of Deputy Director, Joint Director, and Assistant Director of Prosecution. The State is empowered to specify the power and functions⁹⁴ of the Director and Deputy Director and such other officers.

The Director of Prosecution is the administrative head of the Prosecution Department of the relevant State and exercises control of the Prosecution Department. It remains under the supervision and control of the Home Department of State and when required, tender advice to the Department. As the administrative head, the Director ensures effective cooperation, mutual assistance and coordination between the Public Prosecutors and the Police Department for effective administration of justice, proper prosecution of criminal offences and speedy disposal. In order to maintain the proficiency of its subordinates, the Director conducts regular review of the performance of Prosecuting Officers and conducts inspections, which culminate into periodical reports which are filed to the concerned Home Department of the State, including comprehensive statistical data.

The Deputy Director of Prosecution, while working under supervision and control of the Director of Prosecution convenes meetings with

⁹³ Sections 25A(3), 25A(4), 25A(5) and 25A(6), The Code of Criminal Procedure, 1973

⁹⁴ Section 25A (7), The Code of Criminal Procedure, 1973

Prosecuting Officers and the Superintendent of Police of a District. Their work includes a proactive approach of reviewing the petitions and representations to be filed before Court and even organise courses and training of Prosecuting Officers. Statements of monthly cases handled by the Prosecuting Officers are reviewed to identify lapses and lacune, if any, in the work done for issuance of instructions ensuring rectification.

(F) Central Government

The Central Government also appoints Public Prosecutors, Additional Public Prosecutors, and Assistant Public Prosecutors to represent the Central Government in criminal cases before the High Court and also makes such appointments for a District. The appointing/parent authority for such officers is the Union Ministry of Law and Justice. In this battlefield, due to the power of appointment being with the Central Government – it comes across as a ‘veto’ power with the Central Government. Such power of appointment is not a threat to the autonomy but rather a check on the Public Prosecutor’s power, but in reality, how this plays out in the everyday politics of the Legislature makes it unchartered, unarticulated and unpredictable.

There is a separate Directorate of Prosecution for the Central Bureau of Investigation (CBI)⁹⁵, which is an investigating agency under the Central Government for conducting investigation of cases concerning the Prevention of Corruption Act, 1988 against public officials, Economic Offences relating to major financial scams and serious economic frauds and serious crimes under the Indian laws on the request of State Governments or on the orders of the Supreme Court and High Courts.⁹⁶

(G) Significance of the Law Commission of India Reports

Interestingly, before the Code of Criminal Procedure (Amendment) Act, 2005, most States of India had already established their own Department/Directorate of Prosecution and even made changes to its structure having regard to recommendations made in numerous Law Commission of India Reports.

The 14th Law Commission of India Report submitted in 1958 emphasised the need to reform the Judicial Administration and recommended that the prosecuting agency should be separated from the Police Department and prosecutors should be legally qualified and be recruited from the Bar because the burden of proving a case is on the prosecution, which ought to be represented by able advocates. Police officers functioning as prosecutors often lacked adequate knowledge of law and could not present their case effectively. There was a lingering apprehension that a police officer is generally one-sided in his approach and is naturally anxious to secure convictions to get promoted. The separation was recommended to afford the liberty to the prosecuting agency to scrutinise the evidence particularly in serious and important cases before the case is actually filed in Court to justify the expenditure of public time and money on it. This independence was sought to ensure a fairer and more impartial approach by the prosecutor to the case. This report further recommended the appointment of a whole-time officer to become the administrative heads

⁹⁵ Section 4BA, The Delhi Special Police Establishment Act, 1946

⁹⁶ Frequently Asked Questions, Central Bureau of Investigation, available at <https://cbi.gov.in/faq>

of the prosecution department was for each district, under whom a Cadre of whole-time prosecutors responsible for conducting prosecutions would be appointed. The need for such a change was reaffirmed in 41st Report of Law Commission of India on ‘The Code of Criminal Procedure, 1898’, which reiterated the above recommendation of 14th Law Commission of India’s Report⁹⁷.

Thus, the Law Commission of India’s 154th Report of Law Commission of India on ‘The Code of Criminal Procedure, 1973’, in August 1996, approved the recommendations of the Criminal Procedure (Amendment) Bill, 1994, for establishing in each State a Directorate of Prosecution and the appointment of Director and Deputy Directors, to whom all Public Prosecutors will be subordinate⁹⁸, to facilitate and expedite trials and properly coordinate with the investigating agency. This recommendation was made upon noting the Supreme Court’s order directing the establishment of a separate Cadre of Public Prosecutors by constituting a separate Prosecution Department under the Maharashtra State Government to fully free the Public Prosecutors of the State from the control of the Police Department⁹⁹. The recognition by the Supreme Court of India and the Parliament meant there was consensus among the top legal and legislative minds in India that the prosecution department’s autonomy should be formalised.

The Committee on Reforms of the Criminal Justice System was constituted by the Government of India, Ministry of Home Affairs by its order dated 24 November 2000, to consider measures for revamping the Criminal Justice System¹⁰⁰. In March 2003, the Report of the Malimath Committee on ‘Reforms of the Criminal Justice System’ was published which, *inter alia* recommended¹⁰¹ that a Directorate of Prosecution should be created in every State in India, with Assistant Public Prosecutors and Public Prosecutors (other than the State Public Prosecutor in the High Court) subject to the administrative and disciplinary control of the Director of Prosecutions. The Director must ensure effective coordination between the investigating and prosecuting officers and review their work and conduct regular meetings with Prosecuting Officers, in that regard.

Therefore, despite the discretionary law for establishing the Directorate of Prosecution in every State came to be enacted in 2005, the Directorate of Prosecution in several States and Union Territories of India had already been functioning for over 3 decades.

VII. MEDIA AND PUBLIC PROSECUTOR – THE QUEST FOR JUSTICE

⁹⁷ Page 770, Paras 15 and 16, 14th Law Commission of India Report on ‘Reform on Judicial Administration’, 1958

⁹⁸ Page 10, Para 12, 154th Law Commission of India Report on ‘The Code of Criminal Procedure, 1973’, 1967

⁹⁹ S.B. Shahane v. State of Maharashtra, 1995 Suppl. (3) SCC 37

¹⁰⁰ Page, 3, Para 1.1, Report of the Committee on ‘Reforms of Criminal Justice System’ constituted by Ministry of Home Affairs, Government of India, 2003

¹⁰¹ Part-II, Chapter 8 ‘Prosecution’, Pages 125-130 and Part-IV, Chapter 24 ‘Recommendations’, Pages 278-279, Report of the Committee on ‘Reforms of Criminal Justice System’ constituted by Ministry of Home Affairs, Government of India, 2003

In India, Freedom of Speech and Expression¹⁰² is a Fundamental Right guaranteed under the Constitution of India, 1950, which subsumes the right to impart and receive information¹⁰³. However, this Fundamental Right is subject to reasonable restrictions¹⁰⁴.

Media in India, is considered the fourth pillar of our democracy, which must keep the people informed and updated. Its impact is significant and far-reaching by bringing out how the government and governing bodies have been performing their duties and therefore, serves as an important instrument to curb corruption and other ill-facets of society. The individual is empowered and encouraged to actively participate in the decision-making process, to uphold the true nature and fundamental principles of a democracy.¹⁰⁵

The relationship between the media and the Public Prosecutor plays a crucial role in shaping public perception and ensuring the fair administration of justice. The media serves as the primary source of information for the public and is responsible for reporting accurate and unbiased accounts of criminal cases. Whereas, the Public Prosecutor is entrusted with the task to ensure that the guilty are brought to justice. Since the media is considered the fourth pillar of Indian Democracy, it holds those in power accountable and informs the public of essential developments in criminal cases. Through their reporting, the media can exert significant influence on the court of public opinion. In many instances, the media has played a crucial role in exposing miscarriages of justice, pressuring authorities to re-examine cases and highlighting the need for legal reforms. On the other hand, the relationship between the media and the Public Prosecutor can be fraught with tension, as both parties have competing interests. The Public Prosecutors may be wary of the media's tendency to sensationalise criminal cases, potentially jeopardising the integrity of the legal process and the accused's right to fair trial. Trial by the media causes irreparable harm and disrepute to the accused, making it challenging for the accused and their family to lead a normal life, regardless of the Court's verdict. Reporting by the media can also create an atmosphere of public pressure on the Public Prosecutor to secure conviction, regardless of the strength of the evidence.

The power wielded by the media cannot prevent the Public Prosecutor from performing his duties and functions and, in turn, subvert the cause of justice. The presumption of innocence cannot be negated by the media houses in their fervour to sensationalise. This unethical profit-making makes a mockery of the justice system, the plight of the victim and the rights of the accused, thereby striking at the core of the Public Prosecutor's mandate. The media's improper reporting creates a whirlpool of conjecture and rumours. The Courts are empowered to take corrective action and punish such media malefactors for obstructing justice and committing contempt of court. To this extent, the 200th Report of the Law Commission of India¹⁰⁶

¹⁰² Article 19(1)(a), The Constitution of India, 1950

¹⁰³ *The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal & Anr.*, 1995 SCC (2) 161

¹⁰⁴ Article 19(2), The Constitution of India, 1950

¹⁰⁵ *Sanjoy Narayan and Ors. v. Hon. High Court of Allahabad*, (2011) 13 SCC 155

¹⁰⁶ 200th Law Commission of India Report on 'Trial by Media – Free Speech and Fair Trial under The Code of Criminal Procedure, 1973', 2006

recommended basic legal training for journalists and more earnestly protecting the sacrosanct concept of a 'fair trial'.

In conclusion, the cornerstone of investigative journalism must be public interest and discovery of truth. The hazards posed by inapt publicity during investigation and/or trial plague the society as a whole and must be discouraged, as they pose a threat to a fair and speedy trial. The relationship between the media and the Public Prosecutor is a delicate balancing act that requires both parties to navigate the competing demands of public interest, the pursuit of justice, and the preservation of individual rights. By fostering a relationship built on transparency, accountability and mutual respect, the media and the Public Prosecutor can work together to ensure that justice is not only done but is seen to be done. Public Prosecutors walk the tightrope walk of justice balancing the scales of separation of power and also simultaneously dodging the media spotlight – however, the presence of the media proves that much like lions in a circus, where Public Prosecutors with all their powers and responsibilities need a deft hand to stay tamed.

VIII. CONCLUSION

The role of the Public Prosecutor at every level of the judicial hierarchy is multi-dimensional owing to the myriad duties and responsibilities along with the importance of his actions affecting the process of justice, which must ensure that the tenets of law are properly applied and practiced for the benefit of the people and society.

Herein, the role of the Public Prosecutor has been discussed, especially in relation to the revision and review of the legal tenets being undertaken by Central and State Governments after Independence. The focus is to develop a robust prosecution department with excellent prosecutors which work to promote justice and fair play. In the delicate dance of democracy, where checks and balances waltz with the weight of justice, the role of the Public Prosecutor is both pivotal and profound – with the ability to achieve the twin goals of a separation of power and a symphony of a nation striving for true equality and democracy.

The efforts and role of the Legislature, Executive and the Judiciary in this have been continuous and notable to ensure that India's Judicial System is at par with the best principles and practices of the developed democracies, while incorporating the requirements specific to the Indian context.

The present structure ensures a humanitarian and just approach to delivery of justice while promoting efficiency of the administration and protecting the integrity of the Public Prosecutor, their training and professional growth. It also promotes and regulates the proper interaction with the Police, Judiciary, Public, and the Government.

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