
THE ROLE OF PUBLIC PROSECUTORS IN THE INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The Police, the prosecution, the courts, and the correctional administration together comprise the criminal justice system. All these components are designed to function in concert with one another. The success of the criminal justice system is only possible when these entities collaborate effectively. The prosecution, recognized as the most significant branch of the system, must fulfil its responsibilities without interference from external sources. The expectation of impartiality is a perpetual duty for the prosecutor, who is regarded as the minister of justice. This is an inescapable aspect of human society. In early societies, victims often took justice into their own hands, seeking retribution and vengeance against offenders. This research study will focus on the status, appointments, and roles of prosecutors within the criminal justice system. It will also highlight the criticisms of the prosecutor's role and the challenges they face in executing their responsibilities. The article concludes with several insightful recommendations aimed at ensuring the smooth operation of the criminal justice system in general, and the prosecution system in particular.

Keywords: prosecutor, criminal justice system, revamping, administration of justice, adversarial system.

I. INTRODUCTION

The initial responders to criminal incidents are the police, who apply the law and their professional judgment to collect pertinent evidence. Once this evidence is gathered, the case is forwarded to a court of law to initiate the legal proceedings. If significant evidence is missed by the investigating officer, there is a substantial risk that it may eventually be lost (a phenomenon referred to as progressive change), which could be detrimental or even lead to the

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accused being acquitted. Therefore, the role of the investigating officer in a criminal inquiry is essential for constructing a solid case against the accused. Under the 1973 Code of Criminal Procedure, crimes are categorized into two primary types: cognizable and non-cognizable offences. In the case of a cognizable offence, the police have the authority to initiate an investigation on their own accord and collect the necessary evidence to ensure a successful prosecution.

II. ROLE OF THE PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM:

The 197th Law Commission of India Report on Public Prosecutors Appointments (2006) references the work of Christmas Humphrey, published in the Criminal Law Review in 1955, which is significant when examining the role of the prosecutor within the criminal justice system: The prosecutor serves as a minister of justice, tasked with presenting a well-structured case to the tribunal against the accused individual, supported by evidence. They should not take pride or derive satisfaction from achieving a conviction, nor should they boast about the percentage of convictions obtained over time. In instances where a defence is presented that contradicts their case, they will conduct a dispassionate and fair cross-examination, subsequently addressing the tribunal in response, if permitted, to assert that their case has been established. Should they fail to persuade the tribunal of the accused's guilt, their reputation remains intact. Their demeanour must be objective and indifferent to the outcome, as it is solely the tribunal, whether a magistrate or jury, that determines guilt or innocence. The Law Commission of India has underscored the significance of prosecutors within the criminal justice system, asserting that they are ministers of justice who aid the state in the pursuit of justice. They do not represent any party, and their responsibility is to present all pertinent aspects of a case to the court. The prosecution plays a vital role in the criminal justice system, and its function is essential for its effective operation. The prosecutor is appointed by the state and is accountable for prosecuting cases on its behalf. They must strive to ensure that the trial culminates in a conviction, yet they should not be excessively focused on the outcome. They act as a neutral officer appointed by the court, required to provide an accurate representation to the Court of Law. Although they represent the state, the prosecutor must also guarantee that the accused is treated justly. They must maintain honesty and impartiality to ensure fair treatment for the accused. The prosecutor should only initiate prosecution in exceptional circumstances to uphold the integrity of the process.

A. ROLE OF A PROSECUTOR IN PRE-TRIAL STAGE

The terms "trial" and "criminal procedure" were not defined in the 1872 Code of Criminal Procedure, nor in the subsequent laws of 1882, 1898, or 1973. To ascertain the meaning of these terms, one must refer to dictionary definitions. According to Stroud's Judicial Dictionary, a trial is the resolution of an issue by a competent court in any legal action. Wharton's Law Lexicon defines a trial as a civil or criminal case that is adjudicated before a judge with jurisdiction over the matter. Consequently, the interpretation of the term "trial" must be based on the specific context in which it is employed, as it does not possess a universal definition. In India, the pre-trial phase involves limited police engagement, permitting them to make arrests, conduct searches, and document confessions and statements. However, for non-cognizable offenses, court approval is necessary. Investigations are conducted in accordance with Chapter XII of the CrPC, 1973. The prosecutor's responsibilities include securing arrest warrants, search warrants, custody remands for interrogation, designating an accused individual as a proclaimed offender, seizing assets, and documenting advice in the police file. Upon concluding the investigation, the prosecutor is required to present a final police report to the court. The duties of the prosecution encompass obtaining arrest warrants, search warrants, custody remands, declaring the accused a proclaimed offender, and recording advice regarding the viability of prosecution. Once the investigation is finalized and a prima facie case against the accused is established, the prosecutor's office submits a charge sheet to the judge. At this juncture, the prosecutor's perspective on the establishment of a prima facie case is sought. The prosecutor's suggestions and brief remarks are routinely taken into account to enhance the quality of the inquiry. Nevertheless, it is ultimately the police authorities who determine whether to advance a case to trial. In instances where there is a disagreement between the investigating officer (IO) and the prosecutor regarding the decision to file charges, the District Superintendent of Police holds the ultimate authority.

B. ROLE OF A PROSECUTOR DURING THE TRIAL STAGE

During the trial phase, the prosecutor holds a unique position in representing the state, more so than the government or police. The impartiality of both the judge and prosecutor is crucial in determining the outcome of the trial. Throughout the trial process, which consists of several stages, the prosecutor's role remains essential. Once the charge sheet is submitted to the court, the case is assigned to the prosecuting officer. Upon acknowledging the case, the court formulates charges against the accused if a prima facie case is established. The court then proceeds to document the prosecution's evidence and the accused's statement. Ultimately, the court listens to the concluding arguments from both parties and announces its judgment.

publicly. Additionally, during the trial, the prosecutor is empowered to withdraw a case as outlined in Section 321 of the Code of Criminal Procedure. This section states that “the withdrawal from prosecution does not specify the grounds on which the prosecutor may submit the application or the considerations for which the court is to grant its consent. The initiative lies with the prosecutor, and the court's role is merely to provide consent without making any judicial determinations.” In the case of *Sheo Nandan Paswan v. State of Bihar*, it was determined that “the judicial function inherent in the exercise of judicial discretion for granting consent typically implies that the court must ensure that the prosecutor's executive function has not been misused or that it does not represent an attempt to disrupt the normal course of justice for improper reasons.

The Supreme Court in *Subash Chander v. The State* has determined that "under Section 321, the authority to withdraw prosecution lies solely with the prosecutor. No executive body possesses the power to withdraw the prosecution. However, the prosecutor may withdraw it with the court's consent. The requirement for court consent under Section 321 serves as a safeguard against the misuse of that power. According to the Supreme Court, consent will only be granted if such withdrawal promotes public justice in a broader context rather than undermining it. The prosecutor must operate independently and make judicial decisions. In this role, he acts as a part of the judicial process, not as an extension of the executive branch. The choice to withdraw must originate from the prosecutor, not from other authorities, even those whose discontent may impact his employment status." Furthermore, in *Rahul Agarwal v. Rakesh Jain*³⁴, "the request for withdrawal of prosecution was approved on the basis that the case had been pending for an extended period and the accused was not a repeat offender. The case was scheduled for the examination of the accused, yet no inquiry was conducted regarding the reasons for the prolonged delay. It was ruled that allowing the withdrawal of prosecution when the prosecution's evidence was nearing completion was inappropriate. Additionally, it was stated that permission to withdraw prosecution should only be granted in the interest of justice and for legitimate reasons. Such permission may be granted in cases likely to result in acquittal, where the continuation of the case only subjects the accused to undue hardship, or to foster reconciliation between the parties. The discretion to allow withdrawal of prosecution should not be used to suppress prosecution at the behest of aggrieved parties. Even if the Government instructs the prosecutor to withdraw the prosecution, the court must evaluate all pertinent circumstances to determine whether such withdrawal would further the cause of justice.

C. ROLE OF A PROSECUTOR IN POST-TRIAL STAGE:

Indian Penal Code (IPC):

The primary criminal code in India is the Indian Penal Code, which was passed in 1860. It lists different offenses, their definitions, and associated penalties. The Indian Penal Code is structured into multiple chapters, each addressing distinct types of offenses, including those against individuals, property, public order, and the state. Some noteworthy sections are:

Section 154: First Information Report (FIR) - This section deals with the procedure for recording information about cognizable offenses by the police.

Sections 299-377: Offenses against the human body, including murder, culpable homicide, rape, and unnatural offenses.

Sections 378-462: Offenses against property, including theft, robbery, dacoity, and mischief.

Sections 504-509: Offenses relating to defamation, insult, and outrage of modesty.

Sections 499-502: Defamation and related offenses.

Sections 511-530: Attempt to commit offenses, including attempt to murder, attempt to theft, etc.

Criminal Procedure Code (CrPC):

The 1973 Criminal Procedure Code established the legal framework for criminal investigation, prosecution, and sentencing. It contains clauses pertaining to investigations, bail, trials, and appeals. Important sections consist of:

Section 154: FIR - It mandates the registration of FIR by the police upon receiving information about a cognizable offense.

Section 161: Examination of witnesses by the police.

Section 173: Submission of the police report upon completion of investigation.

Sections 227-231: Procedure for framing charges and trial in Sessions Courts.

Sections 238-243: Procedure for summary trial.

Sections 265-265L: Plea bargaining provisions.

Sections 291-299: Appeals, Reference, and Revision.

Sections 319-325: Provisions for the court to proceed against other persons appearing to be guilty of the offense.

Sections 406-412: Provisions related to bail.

Evidence Act:

The guidelines and requirements for evidence that apply in criminal trials are outlined in the Indian Evidence Act. It sets rules for the weight, relevance, and admissibility of evidence. Relevance, admission and confession, documentary evidence, and witness examination are among the crucial sections.

Protection of Children from Sexual Offences (POCSO) Act, 2012

Children are protected by this act from sexual assault, sexual harassment, and pornographic material. To protect children who are victims of such crimes and to ensure that justice is served quickly, it establishes unique protocols for their trial.

Narcotic Drugs and Psychotropic Substances Act, 1985:

This law addresses offenses involving psychotropic and narcotic drugs. In an effort to stop drug abuse and trafficking, it imposes severe penalties for the illegal trafficking, possession, and use of these substances.

Prevention of Corruption Act, 1988:

This act deals with corruption-related offenses by public servants and prescribes punishment for bribery, abuse of official position, and possession of disproportionate assets acquired through corrupt means.

Criminal Law (Amendment) Act, 2013:

This amendment introduced changes in the IPC and CrPC, particularly concerning sexual offenses against women. It expanded the definition of rape, introduced new offenses such as acid attacks and stalking, and enhanced punishments for such crimes.

Juvenile Justice (Care and Protection of Children) Act, 2015:

This act deals with children in conflict with the law and provides for their care, protection, treatment, and rehabilitation. It aims to ensure that the rights of juveniles in the criminal justice system are protected and that they are treated with compassion and understanding.

Mental Healthcare Act, 2017:

This act deals with mental health issues, including the treatment and rights of persons with mental illness who are involved in criminal proceedings. It aims to ensure that persons with mental illness are treated with dignity, their rights are protected, and they receive appropriate mental healthcare.

III. CRITIQUE OF THE ROLE OF PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM:

The prosecuting officers in the criminal justice administration are not the pawns in the hands of the government. They are required to play their role in an impartial and unbiased manner. The prosecutor has to represent the state than the government. He must be the defender of the cause of his client as efficiently and effectively as possible. However, in the performance of his duties, it is an obligation on him to work in synchronization with the other wings of the criminal justice system. When the researcher approached the different stakeholders (respondents' groups for empirical study) for their opinion regarding the coordination between the police and prosecution, the majority of them are of the inference, that there is a lack of cooperation between the different wings of the prosecution in general and police and prosecution in particular.

The prosecution and investigation no doubt are the two different aspects of the criminal justice system. The role of the police in the criminal justice system is important because he is the first who reaches the scene of the occurrence and while applying the law and his professional expertise collects material evidence based on which the case is sent to the court for legal trial. If the police investigating officer ignores certain evidence which subsequently disappears or gets destroyed then it may prove fatal to the case in hand. The police and the prosecution sometimes lack coordination on investigative issues. Their acts are independent of each other as investigation work is outside the court, whereas the role of the prosecutor is inside the court. It is also true that they are interdependent, hence they should act in harmonizing the things in the delivery of justice.

As per the National Crime Records Bureau (NCRB) report, Crime in India, 2018, the conviction rate in the country is less than 50% which is very lower than countries like the USA (85%), China (99.9%), UK (84.5%), Israel (93%), Japan (99.5%) and Russia (99.78%). The reasons for the low conviction rate in the country may be many, but it has been time and again highlighted by the courts in India that prosecution also does not play its role as per the mandate of law. The Hon'ble Supreme Court of India in the Best Bakery case has criticized the role of

the prosecutor for opposing the issuance of arrest warrants against the accused persons before a Mumbai court. The Court has observed that such a person should not continue as the public prosecutor for the state.

Again, in Jayalalitha's Disproportionate case” when the public prosecutor stated, he has no objection to granting of conditional bail to the convicts has put the impartiality and independence of judicial system into question. The Court has held that the public prosecutor is appointed by the state to perform the functions of the state. But when the public prosecutors which is one of the most important branches of our legal system, acts on behalf of wrongdoers then the impartiality and purity of judiciary come into question.”

Regarding the misuse of the power of withdrawal from prosecution by the prosecutors under Section 321 of the CrPC, Hon'ble Supreme Court in **Sheo Nandan Paswan v. State of Bihar** and others have opined that “Section 321 of the Code enables the Public Prosecutor to withdraw from the prosecution with the consent of the Court. Before the prosecutor makes an application under Sec. 321 of the CrPC, the Prosecutor has to apply his mind judiciously to the facts of the case without being subject to any executive influence.”

IV. PROBLEMS OF THE PROSECUTORS IN THE CRIMINAL JUSTICE SYSTEM

In our country, the criminal justice system is based on the idea that any crime committed against citizens is a crime against the state. The state takes on the burden of prosecuting perpetrators on behalf of the victims based on this premise. Although Indian prosecutors are nominally independent, they are subjected to a variety of unlawful influences and pressures. The problems of the prosecutors in India can be summed up in the following heads:

1. Lack of Coordination between the Police and Prosecution
2. Overburdened Prosecution
3. Lack of Proper Training
4. Lack of Infrastructure
5. Executive and Political Influence

6. SCOPE OF THE STUDY

An overview of the Indian criminal justice system is given at the outset, and then the historical background and the legal framework controlling prosecution are examined. The study explores

the roles and responsibilities of prosecutors across the criminal justice system, stressing the difficulties they encounter, such as resource limitations and outside pressures. Additionally, it looks at prosecutorial independence, responsibility, and discretion and evaluates the consequences of each in the Indian setting. Furthermore, the study assesses how prosecutorial procedures affect the administration of justice, drawing on case studies or empirical data as needed, and compares its findings with those of other jurisdictions to pinpoint best practices. In the end, the study offers suggestions for improving the function and efficiency of prosecution in India's criminal justice system.

V. CONCLUSION

In conclusion, a thorough analysis of the role of the prosecution within India's criminal justice system underscores the importance of ensuring fair justice administration. The prosecution serves as the segment of the legal framework responsible for presenting cases, collecting evidence, and safeguarding the rights of individuals and the state. It plays a vital role in upholding the rule of law, deterring criminal behaviour, and protecting the rights of both the accused and victims. However, challenges such as insufficient resources, a backlog of cases, and systemic inefficiencies reveal the urgent need for continuous reform and improvement within the prosecution framework. Enhancing the effectiveness and integrity of the prosecution in India's criminal justice system necessitates advancements in infrastructure, collaboration, and training among all involved parties. Ultimately, a robust and responsive prosecution system is essential for fostering the principles of justice and fairness in society, maintaining social order, and building public confidence.