



# ROLE OF PROSECUTORS IN CRIMINAL JUSTICE SYSTEM

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## Abstract

Crime is a universal social phenomenon that exists in all societies. It is an unavoidable aspect of human society. In early societies, victims took matters into their own hands by seeking retribution and vengeance against wrongdoers. The administration of justice is a crucial mechanism embraced by civilized societies to replace the primitive methods of seeking private vengeance. The criminal justice system is a social institution for maintaining law and order and protecting individuals from criminal activities. The state carries these functions through various organs of administration of justice namely police, prosecution, and judiciary which are engaged in the role of investigations, prosecutions, and decision making. Among the three agencies of Criminal justice administration prosecutors are the essential agents because investigation of criminal cases will be rendered fruitless unless there is an efficient prosecution machinery. The Indian criminal justice system has always been criticized that the system protects the rights of guilty and punishes the innocent and its failure has encouraged the habitual offenders to commit further crimes as they are not afraid of punishments. Due to failure of the prosecution to prove the case beyond reasonable doubt large number of cases end in acquittal of accused persons. This paper focus on what are the changes to be needed for the effective administration of criminal justice system with the revamping of prosecution machinery.

.Key words- prosecutor, criminal justice system, revamping, administration of justice, adversarial system.

## 1. Introduction

It is a fundamental principle of criminal jurisprudence that accused is presumed to be innocent and the burden of proving the accused is guilty lies on the prosecution. As far as standard of proof is concerned, judicial precedents governs that in criminal cases it shall be proof beyond reasonable doubt. In an adversarial country like India burden of proving the guilt of accused is on prosecution and if the prosecution failed to prove the case, benefit will go in

favour of accused. The reports from the National Crime Bureaus shows that conviction rates in India is below fifty percentage, which is very low as compared to other countries. Various committee reports and judicial decision pointed out that one of the reason for low conviction rate in India is the poor performance of prosecutor's. The role of prosecutors in the administration of justice is crucial as he is an agency between investigation machinery and judiciary. Though he represents the victim but it does not mean that he should deny the rights which are available to the accused. He should be an independent officer for victim as well as to the accused.

## 2.1 Public prosecutor –powers and Responsibilities

A crime is a wrong not only against the individual victim, but also against the society as a whole. Therefore the prosecutor represents the victim and participate in the criminal trial against the person accused of a crime and takes the responsibility of prosecuting the accused person.. In India the system of prosecution consist of Public Prosecutor <sup>i</sup>(including additional Public Prosecutor and Special Public Prosecutor) and Assistant Public Prosecutor.<sup>ii</sup> The special public prosecutors are appointed under section 24(8) of Cr P C who deals with special cases registered under Special Laws<sup>iii</sup>.

As per The Code of Criminal Procedure (1973) in every trial before a Court of Sessions, Public Prosecutor shall conduct the prosecution. However, no specific provisions have been made in the code in respect of the conduct of prosecution in the Courts of Magistrates, but it is conducted by Assistant Public Prosecutor as a matter of practice. They are full time prosecutors appointed by Home Ministry of the respective State governments.

Based on the recommendations of the Law Commission, section 25A was incorporated in the Criminal Procedure Code<sup>iv</sup>.

*The Law Commission of India in its 14th Report observed that , "it was unrealistic for the public investigators, in the event that they are individuals from the police organization, to display that level of 'detachment' which was vital in prosecution and recommended that a different prosecution department may be established and put under a Director of Public Prosecutions"*.

As a consequence, the Prosecution wing was separated from the Police Department. Pursuant to these provisions, a Director of Prosecution, who functions independently of the Prosecution, heads the Department of Prosecution, under whom, the Assistant Public Prosecutors, and Public Prosecutors have been functioning. Apart from Code of Criminal Procedure International Standards adopted by UN prescribe some guidelines to Public prosecutors.<sup>vi</sup>

Avory J in *R v. Banks*<sup>vii</sup> stated that “Prosecutors are gatekeepers of the criminal justice process, Throughout the case, he should have the status of Minister of Justice assisting the administration of justice rather than of Minister of Justice.” Prosecutor has to perform the duty with due respect to human dignity and upholding human rights. He is an officer of the court and a member of executive branch of government and is independent from judiciary. In *Vijay*

*Shankar Mishra v. State of Uttar Pradesh*<sup>viii</sup>, it was held that public prosecutor is more than an advocate of the litigant. He holds public office and his duties are of public nature and are accountable not only to the state but also to the public. About the role of prosecutor in a criminal justice system Honorable Supreme Court in *Shiv Nandan Paswan v. State of Bihar & Others*<sup>ix</sup> held that “The Public Prosecutor is not a persecutor, but the representative of a sovereignty obligated to govern impartially and ensure justice is done in a criminal prosecution, not just to win a case”. . They have duty to state, public, to the accused and therefore to be fair and objective while discharging their duties<sup>x</sup>

The intention of the Parliament to keep prosecution separate from the police is to investigate the offence and identify the guilt of accused<sup>xi</sup>. Hence it was held that prosecution should not be a part of investigation directly or indirectly. But the role of police and prosecution is complementary to each other and there shall be mutual cooperation and harmony in order to conduct effective investigation. In *S.B. Shahane v. State of Maharashtra*<sup>xii</sup> it was held that the objective of keeping prosecutors outside the police control is to ensure independence. If they are under police control it will affect the independence of prosecutor. It is a common complaint of police officers in charge of investigation that there is no proper coordination between police and prosecution. Hon’ble Supreme Court in *R. Sarala, v. T.S. Velu*<sup>xiii</sup> held that “Investigation and prosecution are two different aspects of the administration of criminal justice. The role of the public prosecutor is within the Court, while the role of the investigation is outside the jurisdiction of the Court. Normally, the role of the public prosecutor begins after the investigation agency presents the case to the Court at the conclusion of the investigation. The involvement of the public prosecutor in the investigation is both unjust and pernicious in law”. About the responsibility of prosecutors , the apex Court opined that <sup>xiv</sup>”He is an independent officer of the Court responsible for presenting all relevant materials on behalf of the prosecution and to assist the court in arriving at the truth. While discharging his duties he must act in a manner that is fair to the Court, investigating agencies and accused. He does not conceal any material that is benefit to accused during the course of trial”.

## 2.2 Duties of Public Prosecutor

Duty of public prosecutor is to place all the materials available with him before the court by stating what evidence he proposes to prove the guilt of accused. He must present a complete picture and should be fair to prosecution as well as to the accused<sup>xv</sup>. He is an authority to determine whether the evidence is sufficient, selection of witnesses, scrutiny of charge sheet etc. He is responsible for conduct of prosecution but he cannot interfere in investigation<sup>xvi</sup>. He is not to be totally guided by instructions of the Government and is required to constantly remember his duty to the court as well as his duty to the collective. He has an important role under the statutory scheme and is expected to acts as independent persons<sup>xvii</sup>.

The fundamental principle of criminal jurisprudence that the accused is presumed to be innocent and the burden of proving the accused is guilty lies on the prosecution. <sup>xviii</sup>. If there is reasonable doubt in the prosecution

story about guilt of accused, benefit of doubt must go to him. The maxim presumption of innocence and benefit of doubt was so popular in *Woolmington. v. D.P.P*<sup>xxix</sup> throughout the Commonwealth countries and several eminent judges quoted these observations. In *Kali Ram v. State of H.P*<sup>xxx</sup> it was held that one of the fundamental principle of adversary trial is the prosecution must prove its case beyond the shadow of doubt.

The principle of burden of proof is defined under section 101 Indian Evidence Act, 1872<sup>xxxi</sup>, which support the presumption of the innocence of accused to the extent that if there were any gaps or lacunae in the evidence of the prosecution, the accused and not the prosecution would be entitled to get benefit of doubt. Any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favor of the accused.

The Indian criminal justice system has always been criticized that the system protects the rights of guilty and punishes the innocent and its failure has encouraged the habitual offenders to commit further crimes as they are not afraid of punishments. In *State of U.P. v. Pussu*<sup>xxii</sup>, it was held that letting the guilty escape is not doing justice according to law. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense, growing out of the evidence<sup>xxiii</sup>.

In order to prove the case beyond reasonable doubt investigating agency has to place all relevant materials before the prosecutor. Investigation as well as the prosecution should be competent<sup>xxiv</sup>.

Benefit arises from faulty investigation will definitely go to accused and not to prosecution. There is indeed a long distance between accused `may have committed the offence and must have committed the offence which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognized as a human right which cannot be wished away<sup>xxv</sup>. Due to inefficient prosecution and investigation Hon'ble Supreme Court ordered retrial after the pronouncement of judgement by the lower court<sup>xxvi</sup>. While dispensing justice, people should be satisfied that state is not misusing the state machinery like Police, prosecutors and judges<sup>xxvii</sup>. Public prosecutor is an organ of executive side of government. His prime duty is to prove the case beyond reasonable doubt. For successful prosecution there shall be cooperation and understanding between these agencies. He is an authority to determine whether the evidence is sufficient, selection of witness's scrutiny of charge sheet etc. He is responsible for conducting of prosecution but he cannot interfere in investigation.

The ideas of proof beyond reasonable doubt and benefit of doubt to accused were evolved to humanize the system particularly in difficult circumstances with a view to avoid miscarriage of justice and to ensure natural justice. The maxim "Let hundred guilty go unpunished rather than one innocent is punished" is now benefited to persons who are committing grave offence and persons who are financially sound. The entire criminal justice system is concerned more on the rights of accused than on the injured victim. For justice to be done truth must prevail since the truth is the very soul of justice. This can be achieved by statutorily mandating the courts to become active seekers of truth<sup>xxviii</sup>.

About the undue importance to rule of benefit Justice Krishna Iyer in *Shivaji sahabano Bobade v. State of Maharashtra*<sup>xxix</sup> held that

*The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defense and to the soothing sentiments that all acquittals are always good regardless of justice to victim and community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has public accountability. The cherished principles or the golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every haunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubt belongs to the accused. Otherwise any practical system of justice will then breaks down and lose credibility with the community.*

In *State of Gujarat v. Kishanbhai*<sup>xxx</sup> apex Court held that

*Every acquittal is considered as failure of justice delivery system. Acquittal of innocent person means that one innocent person is wrongfully prosecuted. Court also directed that Home department of every state to examine all orders of acquittal and to record reasons for failure of prosecution cases*

### 3 Problem faced by the prosecutors

**3.1 Hostile witnesses.** One of the reasons for the high percentage of acquittals in criminal cases are witnesses turning hostile and giving false testimony. In India, criminal cases mainly rely on oral evidence, and the problem becomes crucial, when they are not loyal to the prosecution. Eventhough eyewitnesses play a crucial role in the criminal justice system, but they have inherent weaknesses such as threat, fear, favoritism, bias, and emotion. The issue of hostile witnesses poses a significant threat to the Indian judicial system. In rape cases also the victims turns hostile due to the lack of support from family members. In India we have no witness /victim protection laws. In some cases prosecutors also play indirect role in turning the witnesses to hostile.

*Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors,*<sup>xxxi</sup>

In this case after completion of the trial and judgement victim filed an affidavit before the National Human Right Commission stating that she was forced to turn hostile and deposed false statement due to the threat and coercion from powerful politician, not to depose against the accused.

### 3.2 Lack of coordination between prosecution and investigation wing.

To ensure a successful prosecution, it is essential to have flawless coordination between the prosecutor and the Investigating Officer. Any negligence or omissions in the investigation must be addressed by the prosecutor to ensure a proper and thorough process. It is crucial that the police and prosecutors share common goals, as without

this alignment, the prosecution will not succeed. Before the 1973 amendment to the Code, prosecutors in Magistrate Courts operated under the control of the police department. Therefore, it is imperative for these agencies to engage in consultation and rectification before filing a case in a court of law. Based on the recommendation of Law Commission prosecution wing was separated from Police department.

*Kishan Lal v. Dharmendra Bafna*<sup>xxxii</sup>, Honourable Supreme Court held that An investigator should develop good prosecutor relationship by conducting investigation along with the legal guide lines. In this case lack of coordination between different agencies lead to uncertain result. The state government in appeal also admitted that there was a dereliction of duty from public prosecutor and there were no coordination between investigation and prosecution from the initial stage itself.

**3.3 Irresponsible conduct of prosecution.** In most of the states appointment of prosecutors and additional public prosecutors are purely political appointment, and they hold the post as per the whims and fancies of the government. Judiciary in number of cases criticized how the irresponsible conduct of prosecution results in miscarriage of justice. Honble Supreme Court held that in *Zahira Habibulla H Sheikh and Anr Vs State Of Gujarat and Ors* (2004) 4 Scc 158. (Best Bakery Case how the negligent conduct of prosecution result in miscarriage of justice. The court also held that the prosecution was completely failed to perform its duty and miserably failed to conduct a fair, unbiased and proper examination. High Court of Kerala while setting aside the judgment and ordered for retrial of Palakkd POCSO Court in Walayar case<sup>xxxiii</sup> and held that

*.Public prosecutor has to serve for public purpose and in the interest of administration of justice. They are the persons appointed under sec. 24 of CrPc for appearing before the Sessions Court. The cases should be handled with Utmost care and caution importantly in POCSO cases which are perpetrated against Children of tender age.*

### 3.4 Inadequate Training.

Now a days criminal are exploring science and use advanced techniques for commission of the crime. But the prosecutors are not well trained in advanced technologies which result in difficulty to prove the commission of crime. In order to prove the modern crimes prosecutors should be properly trained and possess necessary skills and expertise.

**3.5 Political and other undue influences** -Public Prosecutors and Additional Public Prosecutors appointed under section 24 hold their positions subject to the discretion of the executive. The successive government make appointments to the post of prosecutors and additional public prosecutors by considering their political interest without effective consultation with District Magistrate and session judges. This creates susceptibility to manipulation and interference of political parties to the prosecution cases. Public Prosecutors/ Additional Public Prosecutors appointed under section 24 are not under administrative control of the Director of Prosecution or the

Director General of Prosecution, whose main function is to supervise and streamline the conduct of the prosecution machinery of the state.

#### 4. Changes to be need.

##### Suggestions

1. Transparency in appointment of prosecutors. As per sub-section (4) of Section 24 of the CrPC, the District Magistrate prepares a panel of names of persons fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the respective Districts, in consultation with the Sessions Judge. In most of the states it is purely political appointment, and they hold the post as per the whims and fancies of the government. It is important to ensure transparency in the appointment process in view of the risk of politicization of prosecution service. Clear criteria for appointment should be laid down. 50% from practicing advocate in Sessions court and 50% from assistant public Prosecutors of Magistrate Court on promotion basis. There shall be implementation of recommendations of 197<sup>th</sup> Law commission report with regard to the arbitrary appointments of Public Prosecutors and Additional Public Prosecutors
2. Proper training. Nowadays crimes are committed in a scientific ways which requires new skills to be developed in prosecution services. Advanced training could be provided to prosecutors in subjects such as forensic evidence DNA , and cybercrimes etc
3. Public prosecutors and Additional public Prosecutors should be brought under the control of Director of Prosecution. If they were brought under the control of Director of Prosecution they can monitor and supervise the prosecutors in the Sessions Court also.
4. Prosecutorial independence. Prosecution should be free from political and other source of influences. They should have independence and should be free from any bias, pressure or fear or favor. Independence of prosecutors is crucial for ensuring fair and just decisions based on the law and evidence .Protecting the prosecution procedures from politicization and ensuring transparency in appointments are essential to safeguarding the integrity of the justice system.
5. The judicial guidelines for strengthening of prosecution machinery should be strictly implemented.

**5 Conclusion.** The most important problem faced by criminal justice administration is the low rate of conviction especially in serious crime. The most reason for this is the failure of prosecution to prove the case beyond reasonable doubt. Today the criminals are using modern methods for the commission of crime which also necessitated the investigating agencies to use different scientific methods for conducting investigation. But due to the professional

incompetence the prosecutors failed to prove the relevance of scientific evidence during the course of trial. Hence advanced training should be given to prosecutors especially in forensic evidences such as DNA and crime science investigation. For the smooth function of criminal justice system they should have sufficient independence or autonomy to take decisions regardless of their outside pressure.

<sup>i</sup> Sec. The Code of Criminal Procedure, 1973, S. 24 Acts of Parliament, 1973 (India)

<sup>ii</sup> See. The Code of Criminal Procedure, 1973, S. 25, Acts of Parliament, 1973 (India).

<sup>iii</sup> See. The Code of Criminal Procedure, 1973, S. 24 (8), Acts of Parliament, 1973 (India). The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor

<sup>iv</sup> See The Code of Criminal Procedure, 1973, S. 25 A, Acts of Parliament, 1973 (India). Directorate of Prosecution the State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

<sup>v</sup> Mr. Justice K. J Reddy, Law Commission of India 14<sup>th</sup> Report on Reform of Judicial Administration, 1958.

<sup>vi</sup> See Article 12, 13 and 20 of U.N. Guidelines on role of prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>vii</sup> R v. Banks, 1916 (2) KB 621.

<sup>viii</sup> Vijay Shankar Mishra v. State of Uttar Pradesh, 1999 CriLJ 521.

<sup>ix</sup> 1987 AIR 877, 1987 SCR (1) 702

<sup>x</sup> Mr. Justice M Jagannadha Rao, Law Commission of India 197<sup>th</sup> Report on Public Prosecutor's Appointment, 2006 p.13.

<sup>xi</sup> Jai Pal Song v. State of Uttar Pradesh, 1976 CriLJ 32.

<sup>xii</sup> S.B. Shahane v. State of Maharashtra, AIR 1995 SC 1628.

<sup>xiii</sup> R. Sarala, v. T.S. Velu, AIR 2000 SC 1731. Also referred in Ishwar Pratap Singh v. State of UP, (2018) 13 SCC 612.

<sup>xiv</sup> RekhaMurarkavs The State Of West Bengal on 20 November, 2019

<sup>xv</sup> Prabhu Dayal Gupta v. State of Delhi, 1986 CriLJ 383.

<sup>xvi</sup> Mohd. Shahabuddin v. State of Bihar, 2010 (3) SCJ 490.

<sup>xvii</sup> Abdul Wahab v. state of Kerala, AIR 2018 SC(W) 4265.

<sup>xviii</sup> BRYAN A GARNER, BLACK'S LAW DICTIONARY, 9<sup>th</sup> Edition (2009) p. 1535. Standard of proof is the degree or level of proof demanded in specific case such as beyond reasonable doubt or preponderance of probability” .

<sup>xix</sup> In Woolmington v. D.P.P 1935 AC 468.

<sup>xx</sup> Kali Ram v. State of H.P, 1973 SCC 1048. This case is also referred in Jabbar v. state of Kerala, 2020 (5) KLT 12.

<sup>xxi</sup> Indian Evidence Act, 1872, S. 101, Acts of Parliament, 1872, (India).

<sup>1</sup> State of U.P. v. Pussu, 1983 AIR 867; 1983 SCR (3) 294.

<sup>xxiii</sup> Dr. N R Madhava Menon, *Report of The Committee on Draft National Policy On Criminal Justice*, Government of India, Ministry of Home Affairs, 2007 p.24 at Para 6.2. The draft National Policy on Criminal justice system “Benefit of doubt never considered as a defence to escape guilt by creation of doubts in the mind of judges. In the present day, the understanding and application of the axiom “proof beyond reasonable doubt” is taken to mean “beyond doubt”, or “beyond any doubt”, or “beyond any shadow of doubt”. It is, however, the need of the time that the said axiom may be clarified by the legislature in a terse, clear and precise language and if desired, illustrated by examples from time - honored cases decided by the courts in England and India.

<sup>xxiv</sup> Sonalal Soni v. State of Chhattisgarh, 2005 CriLJ 4461.

<sup>xxv</sup> Kailash Gour v. state of Assam, (2012) 2 SCC 34.

<sup>xxvi</sup> Zahra Banu v. State of Gujarat, 2006 (2) KLT 350 (SC); AIR 2006 SC 1367

<sup>xxvii</sup> Mohd. Shabudhin v. State of Bihar, 2010 (3) SCJ 490.

<sup>xxviii</sup> Dr. Justice V S Malimath, *Committee on Reforms of Criminal justice system*, Government Of India, Ministry of Home Affairs, 2013 p.29 at Para 2.16.8

<sup>xxix</sup> Shivaji sahabano Bobade v. State of Maharashtra 1973 AIR 2622, 1974 SCR (1) 489. The case is also referred in Satish Kumar v. State of Himachal Pradesh, AIR 2020 SC 1766.

<sup>xxx</sup> State of Gujarat v. Kishanbhai, 2014 5 SCC 108. Where a six-year-old girl child was raped and murdered and her legs were severed, the trial court convicted the accused for death sentence. But on appeal the judgement was reversed. Against the judgement of High Court state appealed to Supreme Court. . Supreme Court was of the view that victim was denied justice due to the inefficiency of State agencies.

<sup>xxxi.</sup> Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors, (2004) 4 SCC 158.

<sup>xxxii.</sup>, (2009) 7 SCC 685.

<sup>xxxiii</sup> State of Kerla V.Madhu decided by Kerala High Court in January 2021

