

# THE ROLE AND FUNCTION OF PROSECUTION IN SRI LANKA

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## **I. WHERE AND HOW PROSECUTIONS ARE INSTITUTED**

In Sri Lanka prosecutions are instituted in two original courts namely, the Magistrate's Court and the High Court. Proceedings are instituted in the Magistrate's Court in one of the following ways (Section 136 of the Code of Criminal Procedure Act):

- (1) on a complaint being made orally or in writing to a magistrate of such Court that an offence has been committed which such Court has jurisdiction either to inquire into or try; (Such a complaint if in writing shall be drawn and countersigned by a pleader and signed by the complainant);
- (2) on a written report to the like effect being made to a magistrate of such Court by an inquirer into sudden deaths or by a peace officer or a public servant or a servant of a municipal council or of an urban council or of a town council;
- (3) upon the knowledge or suspicion of a magistrate of such Court to the like effect provided that when proceedings are instituted under this paragraph the accused or when there are several persons accused, any one of them shall be entitled to require that the case not be tried by the magistrate upon whose knowledge or suspicion the proceedings were instituted, but either be tried by another magistrate or committed for trial;

- (4) on any person being brought before a magistrate of such Court in custody without process accused of having committed an offence which such Court has jurisdiction either to inquire into or try;
- (5) upon a warrant under the hand of the Attorney-General requiring a magistrate of such Court to hold an inquiry in respect of an offence which such Court has jurisdiction to inquire into; or
- (6) on a written complaint made by a court under section 135 (giving or fabricating false evidence and forgery).

Prosecutions in the High Court are instituted by the Attorney-General. The procedure is as follows:

- (1) In serious crimes the police, under section 393 (5) and (6) of the Code of Criminal Procedure Act, send to the Attorney-General a file containing the notes of investigation and the statements of witnesses and the suspects, together with a report of the case and other relevant documents. The Attorney-General may forward an indictment to the High Court depending on the sufficiency of evidence.
- (2) In cases where a magistrate is required to hold a preliminary inquiry under section 145 or section 136(e) of the Code of Criminal Procedure Act the Magistrate, if he is satisfied of the sufficiency of evidence, commits the accused to stand trial in the High Court and forwards to the Attorney-General a copy of the proceeding, together with other relevant documents.

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The Attorney-General, if he is satisfied of the sufficiency of evidence for committal, will forward an indictment to the High Court.

After an indictment is forwarded to the High Court in the manner aforementioned, the prosecution will invariably be conducted by a State Counsel. In important cases and in cases where difficult questions of law are likely to arise or cases which depend solely on circumstantial evidence, it is always the practice of the Attorney-General's Department to assign a senior officer to conduct the prosecution.

Every indictment forwarded to the High Court shall contain,

- (1) a list of witnesses whom the prosecution intends to call.
- (2) a list of documents and things intended to be produced at the trial. (*productions*).

The following documents should be attached to every indictment,

- (1) where there was a preliminary inquiry, a certified copy of the record of the inquiry and of the documents and of the inquest proceedings if there had been an inquest;
- (2) where there was no preliminary inquiry, copies of statements to the police made by the accused and the witnesses listed in the indictment;
- (3) copies of all reports and sketches listed in the indictment;
- (4) copies of the notes of any identification parades that may have been held during the investigation of the case;
- (5) copies of any statements made to the magistrate under section 127<sup>1</sup> by:
  - (a) the accused; and
  - (b) any witness listed in the indictment; and

- (6) copies of such portion of the notes, containing the observations of the scene of offence made during the investigation of the offence by a public officer.

The indictment shall be in the prescribed form and shall be brought in the name of the Attorney-General and shall be signed by the Attorney-General or the Solicitor-General or a State Counsel.

The proceedings do not abate or determine by reason of the death or removal from the office of the Attorney-General (Section 162 of the Code of Criminal Procedure Act).

## **II. ORGANISATION OF THE ATTORNEY-GENERAL'S DEPARTMENT AND ITS FUNCTIONS**

At this stage, it would be appropriate to set out the structure of the Attorney-General's Department and discuss the internal working of the Department. At the apex is the Attorney-General who is the head of the Department. He is the principal law officer of the State and is accorded the first place among public servants at official functions. The next in command is the Solicitor-General followed by three Additional Solicitors-General. Additional Solicitors-General and above are also appointed as President's Counsel (equivalent of Queen's Counsel in England) by virtue of their office. Below them there are nine Deputy Solicitors-General followed by Senior State Counsel and State Counsel.

The Attorney-General's Department is divided into two divisions: the Criminal Division and the Civil Division. The Solicitor-General who is in charge of the administration of the Department is also the head of the Civil Division while the most senior Additional Solicitor-General is the head of the Criminal Division.

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<sup>1</sup> Section 127(1): Any magistrate may record any statement made to him at any time before the commencement of any inquiry or trial.

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In cases of murder, attempted murder and rape, it is mandatory that the prosecution be instituted in the High Court by the Attorney-General. In such cases the magistrate, after committal of the accused to stand trial in the High Court, forwards to the Attorney-General copies of proceedings of the preliminary inquiry together with other relevant documents. In other serious cases such as robberies, the police invariably forward the notes of the investigation and the statements of the witnesses and the suspects, together with other relevant documents, to the Attorney-General for advice.

Once a file reaches the Attorney-General's Department, it is registered and sent to an allocating officer who is a senior officer in the Department. He allocates it to a State Counsel for necessary action. The State Counsel studies the case and submits a report to his supervising officer who is invariably a Senior State Counsel. The report shall discuss the facts of the case, analyse the evidence available and make one of the following recommendations:

- In the case of committal by the magistrate:
  - (1) To forward indictment to the High Court—if there is sufficient evidence;
  - (2) To quash the committal and direct the magistrate to discharge the accused—if there is not sufficient evidence to make out a prima facie case; or
  - (3) To direct the magistrate to record further evidence.
- In the case of files submitted by the police:
  - (1) To indict the suspect or suspects—if there is sufficient evidence to make out a prima facie case;
  - (2) To discharge the suspect or suspects—if there is no evidence or if the evidence available is unsatisfactory and cannot form the basis of an indictment; or

- (3) To order further investigations if the police have not done a proper investigation.

The supervising officer will study the report and decide on the course of action.

### III. POWERS OF THE ATTORNEY-GENERAL

The Attorney-General possesses very wide powers in respect of criminal prosecutions. These powers are set out in section 393 of the Code of Criminal Procedure Act and are stated below:

**A.** Section 393(1): It shall be lawful for the Attorney-General to exhibit information, present indictments and to institute, undertake or carry on criminal proceedings in the following cases, that is to say,

- (a) in the case of any offence where a preliminary inquiry under Chapter XV by a Magistrate is imperative or may be directed to be held by the Attorney-General; (*This chapter relates to inquiries by Magistrates into cases which appear not to be triable summarily by the Magistrate's Court but triable by the High Court. Such offences are set out in the Second Schedule to the Judicature Act.*)
- (b) in any case where the offence is not bailable; (*Non-bailable offences are set out in the Schedule to the Code of Criminal Procedure Act. There are also some offences which are made non-bailable by special statutes.*)
- (c) in any case referred to him by a State Department in which he considers that criminal proceedings should be instituted;
- (d) in any case other than one filed under section 136(1)(a) of the Code which appears to him to be of importance or difficulty or which for any other reason requires his intervention;

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(e) in any case where an indictment is presented or information exhibited in the High Court by him.

(2) The Attorney-General shall give advice, whether on application or on his own initiative to State Departments, public officers, officers of the police and officers in corporations, in any criminal matter of importance or difficulty.

(3) The Attorney-General shall be entitled to summon any officer of the State or of a corporation or of the police to attend his office with any books or documents and there interview him for the purpose of,

- (a) Initiating or prosecuting any criminal proceeding, or
- (b) Giving advice in any criminal matter of importance or difficulty.

The officer concerned shall comply with such summons and attend at the office of the Attorney-General with such books and documents as he may have been summoned to bring.

(4) The Attorney-General may nominate State Counsel or employ any attorney-at-law to conduct any prosecution in any court and determine the fees to be paid to such attorney-at-law.

(5) The Superintendent or Assistant Superintendent of Police in charge of any division shall report to the Attorney-General every offence committed within his area where,

- (a) preliminary investigation under Chapter XV is imperative; or  
*(Chapter XV deals with inquiries into cases which appear not to be triable summarily by Magistrates' Courts but triable by the High Courts).*
- (b) for the institution of proceedings the consent or sanction of the Attorney-General is required; or
- (c) a request for such report has been made by the Attorney-General; or
- (d) such Superintendent or Assistant Superintendent considers the advice or assistance of the Attorney-General necessary or desirable; or

- (e) the Magistrate so directs; or
- (f) the offence was cognizable and the prosecution was withdrawn or cannot be proceeded with.

(6) When reporting in terms of subsection (5) the Superintendent or Assistant Superintendent of Police, as the case may be shall supply to the Attorney-General,

- (a) a full statement of the circumstances;
- (b) copies of the statements of all witnesses;
- (c) such other information, documents or productions as may be relevant or as may be called for by the Attorney-General; and
- (d) where an inquest has been held, a copy of the inquest proceedings.

(7) Notwithstanding any other provisions of the Criminal Procedure Code, it shall be lawful for the Attorney-General, having regard to the nature of the offence or any other circumstances, in respect of any summary offence,

- (a) to forward an indictment directly to the High Court; or
- (b) to direct the Magistrate to hold a preliminary inquiry in accordance with the procedure set out in Chapter XV in respect of any offence specified by him where he is of opinion that the evidence recorded at a preliminary inquiry will be necessary for preparing an indictment;

and thereupon such offence shall not be triable by a Magistrate's Court.

**B.** The Attorney-General is also vested with wide powers in respect of preliminary inquiries (also referred to as non-summary inquiries) held by the magistrates.

In all cases which are not triable summarily by the magistrate but triable by the High Court, a preliminary inquiry must be held by the magistrate. It is mandatory that preliminary inquiries should be held in the following cases:

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- (a) Where the offence or any one of them where there is more than one, falls within the list of offences set out in the Second Schedule to the Judicature Act. They are:
- (i) Offences punishable under section 296 (murder), section 297 (culpable homicide not amounting to murder), section 300 (attempted murder), and section 264 (rape) of the Penal Code.
  - (ii) Offences punishable under section 4(2) of the Offensive Weapons Act, i.e., causing injury to any person with an offensive weapon—offensive weapon means a bomb or grenade or any other device or contrivance made for a use or purpose similar to that of a bomb or grenade) and section 4(2) read with section 6(1)—instigation to commit an offence under the Offensive Weapons Act or conspiracy to commit such an offence or intentionally aiding by any act or illegal omission the commission of such offence).
  - (iii) Abetment and conspiracy for the abetment or commission of the offences described in Item (i) above and conspiracy for the commission of the offences described in Item (ii) above.
- (iii) one of the certified copies of the notes of investigation and of statements furnished by the officer in charge of the police station,
- (b) to the Attorney-General:
- (i) a copy certified under his hand of the record of inquiry and of all the documents produced in evidence together with as many of such certified copies as there are accused; and
  - (ii) one of the certified copies of the notes of investigation and of statements furnished by the Officer-in-Charge of the police station.

**D.** Under section 395, it is lawful for the Attorney-General after the receipt by him of the certified copy of the record of the inquiry, if he is of the opinion that such action is necessary for the proper consideration of the case by him, to call for the original record of the inquiry (together with any documents produced in evidence) from the court to which such record has been forwarded, and for any productions other than documentary evidence, from the Registrar.

It is the duty of the Registrar of the High Court to forward to the Attorney-General any record or production called for.

**C.** When the magistrate commits the accused for trial to the High Court, he is mandated under section 159 of the Code of Criminal Procedure Act to forthwith transmit,

- (a) to the High Court:
- (i) the record of the inquiry together with all documents and things produced in evidence; and
  - (ii) a copy certified under his hand of such record and of such documents; and

**IV. ATTORNEY-GENERAL'S  
FUNCTIONS VIS-À-VIS NON-  
SUMMARY INQUIRIES**

If after the receipt by him of the certified copy of the record of the inquiry, the Attorney-General is of the opinion that there is not sufficient evidence to warrant a commitment for trial, or if for any reason he is of the opinion that the accused should be discharged from the matter of the complaint, information or charge, and if the accused is in custody, from further detention, he may by order in writing quash the commitment made by the

magistrate and may direct the Registrar of the High Court to return the record of the inquiry to the Magistrate's Court. The Attorney-General shall in every such case issue to the magistrate such directions as to the disposal of the complaint, information or charge against the accused as to him may seem expedient, and it is the duty of the magistrate to comply with the directions so issued.

If the Attorney-General is of opinion that a criminal offence is disclosed by the proceedings against the accused but that the evidence already taken by reason of being in any particular or respect defective is not sufficient to afford a foundation for a full and proper trial, then he may make in writing an order requiring the Magistrate's Court to take such further evidence as may be specified or indicated in the order either in the way of examining anew witnesses who have already given their testimony or otherwise to continue the inquiry, and upon making such order the Attorney-General shall direct that the record of the inquiry be returned to the Magistrate's Court, and thereupon the Registrar of the High Court shall so return the record and the magistrate shall comply with the order of the Attorney-General. [Section 397(1) of the Code of Criminal Procedure Act.]

The Attorney-General may if he thinks it necessary, direct the Magistrate to record the evidence of any expert witness or police officer and the Magistrate shall then comply with such directions. [*Id.* section 397(2)].

A judge of the High Court and a magistrate shall whenever required in writing by the Attorney-General, forthwith transmit to the Attorney-General the proceedings in any criminal case in which an inquiry or trial has been or is being held before him and thereupon such inquiry or trial shall be suspended in the same and the like manner as upon adjournment thereof. [*Id.* section 398(1)].

It shall be competent for the Attorney-General upon the proceedings of any case being transmitted to him by a Magistrate to give instructions with regard to the inquiry to which such proceedings relate as he may consider requisite; and thereupon it shall be the duty of the Magistrate to carry into effect the instructions of the Attorney-General and to conduct and conclude such inquiry in accordance with the terms of such instructions. [*Id.* section 398(2)].

Whenever a Magistrate has discharged an accused after a Non-Summary Inquiry and the Attorney-General is of the opinion that such accused should not have been discharged, the Attorney-General may direct him to commit such accused to the High Court or order the Magistrate of such Court to re-open the inquiry and may give such instructions with regard thereto as to him shall appear requisite; and thereupon it shall be the duty of such Magistrate to carry into effect such instructions (*Id.* section 399).

#### **V. WHO MAY CONDUCT THE PROSECUTION IN NON-SUMMARY INQUIRIES?**

A person other than the Attorney-General, State Counsel, or a pleader generally or specially authorised by the Attorney-General shall not conduct the prosecution in any case into which the magistrate of a Magistrate's Court may be inquiring [*Id.* section 400(1)].

In the absence of the Attorney-General, the Solicitor-General, State Counsel and a pleader generally or specially authorised by the Attorney-General, the Magistrate has to conduct the prosecution, but there is nothing to preclude the Magistrate from availing himself, if he considers it so desirable, of the assistance of any pleader or public officer in the conduct of any inquiry [*Id.* section 400(2)].

## **VI. EXAMINATION OF WITNESSES AND ADMISSIBILITY OF DOCUMENTS**

In all trials either in the High Court or in the Magistrate's Court, the witnesses for the prosecution as well as witnesses for the defence are first examined in chief, then if the adverse party so desires cross-examined, and then if the party calling him so desires re-examined (section 138 of the Evidence Ordinance).

A person summoned to produce a document does not become a witness by the mere fact that he produces it and, therefore, cannot be cross-examined unless and until he is called as a witness (*Id.* section 139).

Leading questions are not generally permitted in examination in chief. However, such questions may be asked in cross-examination subject to the following qualifications:

- (1) the question must not put into the mouth of the witness the very words which he is to echo back, and
- (2) the question must not assume that facts have been proved which have not been proved, or that particular answers have been given contrary to the fact. (*Id.* section 143).

Oral evidence as to contents of documents cannot be led unless the document itself is produced. If the document is not available, secondary evidence may be given. (*Id.* section 144).

## **VII. WHO MAY PROSECUTE IN TRIALS BEFORE THE MAGISTRATES' COURTS?**

In the case of trials before a Magistrate's Court, the Attorney-General, the Solicitor-General, a State Counsel or a pleader generally or specially authorised by the Attorney-General shall be entitled to appear and conduct the prosecution. In the absence of any of the officers from the Attorney-General's Department, the

complainant or any officer of any Government Department or any officer of any local authority may appear in person or by pleader to prosecute in any case in which such complainant or Government Department or local authority is interested. In the absence of any of the officers mentioned above, the magistrate may permit any attorney-at-law to appear and conduct the prosecution on behalf of the person against whom or in respect of whom the accused is alleged to have committed the offence. If the complaint is one filed under paragraph (a) of subsection (1) of section 136 of the Code of Criminal Procedure Act, that is a private plaint, the Attorney-General, Solicitor-General, a State Counsel or pleader generally or specially authorised by the Attorney-General shall, except where such complaint has been filed against an officer or employee of the State in respect of a matter connected with or relating to the discharge of the official duties of such officer or employee, not have the right to appear for the complainant without his consent.

## **VIII. CONDITIONS NECESSARY FOR INITIATING PROCEEDINGS**

In certain types of cases, the law provides safeguards to persons accused of those offences. In these cases, the Attorney-General is required to bring his mind to bear on the facts before a prosecution is instituted. Below are the conditions necessary for initiating proceedings in those cases.

Section 135(1) of the Code of Criminal Procedure Act stipulates that any Court shall not take cognizance of,

- (a) any offence punishable under sections 170 to 185 (contempts of lawful authority of public servants) of the Penal Code except with the sanction of the Attorney-General or on the complaint of the public servant concerned or of some public servant to whom he is subordinate;

- (b) any offence punishable under sections 158, 159, 160, 161, 210, 211 and 212 of the Penal Code (offences by or relating to public servants) except with the previous sanction of the Attorney-General;
- (c) any offence punishable under sections 190, 193, 196, 197, 202, 203, 204, 205, 206, 207 and 223 of the Penal Code (*fabricating false evidence and perjury, etc.*) when such offence is committed in or in relation to any proceeding in any Court except with the previous sanction of the Attorney-General or on the complaint of such court;
- (d) any offence described in section 452 or punishable under sections 459, 463 and 464 of the Penal Code (*forgery, etc.*) when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding except with the previous sanction of the Attorney-General or on the complaint of such Court;
- (e) any offence punishable under section 290A or section 291B of the Penal Code (*offences relating to religion*) unless upon complaint made by the Attorney-General or by some other person with the previous sanction of the Attorney-General;
- (f) any offence falling under Chapter XIX of the Penal Code (*criminal defamation*) unless upon complaint made with the previous sanction of the Attorney-General by some person aggrieved by such offence or by some other person with the like sanction; and
- (g) any offence punishable under section 291A of the Penal Code (*uttering words, etc. with deliberate intent to wound religious feelings*) unless upon complaint made with the previous sanction of the Attorney-General by some person aggrieved by such

offence or by some other person with the like sanction.

#### **IX. SUPPLEMENTARY POWER OF THE ATTORNEY-GENERAL**

In Sri Lanka like in any other country, it is the State that is responsible for the administration of justice in the country. All criminal prosecutions (except private complaints) are instituted in the name of the State and the Attorney-General as the principal law officer of the State has supervisory control over all prosecutions. He can take over any prosecution at any time or intervene in any criminal matter at any time. Thus he can take over and offer no evidence in any criminal prosecution at any stage and secure the acquittal of the accused. This is usually done where a public officer is prosecuted for something which he has done bona fide in the execution of his official duties.

The Attorney-General also enjoys the following exclusive powers:

- (1) The power to enter a nolle prosequi,
- (2) The power of pardoning an accomplice, and
- (3) The power of sanctioning an appeal from an acquittal.

A nolle prosequi is an order under the hand of the Attorney-General stopping any criminal case at any stage in any court of trial without assigning any reasons. This is rarely resorted to and is exercised only when public interest demands recourse to such cause of action. The Attorney-General has the right to offer a conditional pardon to an accomplice. This is done in serious cases where there is a severe dearth of evidence. In practice, a conditional pardon is offered to an accomplice whose involvement in the crime is minimal and whose evidence covers the most number of suspects.

An appeal from an acquittal cannot be preferred without the sanction of the Attorney-General. When an application is



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made to the Attorney-General for his sanction, he calls for the record and examines the evidence carefully to see whether any substantial grounds of appeal exist. If he is satisfied that there are sufficient grounds, he will give his sanction to appeal.

The Attorney-General appeals against acquittals only where there has been a serious miscarriage of justice. Appeals by the Attorney-General against sentences are more frequent.

The three powers of the Attorney-General stated above have to be exercised personally by him and the order should be made under his hand. No other officer of the Attorney-General's Department is entitled to make such order (Section 401 of the Code of Criminal Procedure Act).

The Attorney-General exercises supervisory powers over his Department in the matter of all prosecutions. Prosecutors are not subject to the supervisory control of any Minister or the Cabinet or the President in the matter of the discharge of their official duties as prosecutors. The Minister of Justice exercises supervision in administrative and financial matters only.

**X. APPOINTMENT AND TRAINING  
OF PUBLIC PROSECUTORS AND  
THE GUARANTEE OF THEIR  
STATUS**

The members of the Attorney-General's Department are appointed by the Public Service Commission and are thus governed by the rules laid down in the Establishments Code. Generally the status of these officers is guaranteed as long as they are of good behaviour while holding office. Their services could be terminated only after a disciplinary inquiry is held in terms of the provisions of the Establishments Code. Unequal treatment could give rise to the officers filing applications in the Supreme Court alleging violations of their fundamental rights

guaranteed under the Constitution. This remedy is available to all public servants. The availability of this remedy has more or less secured the status of public servants.

State Counsel are appointed from among qualified attorneys-at-law. No period of service or training is insisted upon at the time of recruitment. After recruitment, they acquire on-the-job experience. In addition senior officers of the Department hold workshops at the end of every High Court session for the benefit of junior officers. At these workshops, presentations are made and discussions centre around the difficulties each prosecutor has faced in the course of carrying out his duties.

The Department generally follows a scheme of assigning duties to junior State Counsel with a view to assisting them in acquiring experience in a systematic way. The pattern generally followed is as follows:

A State Counsel as he joins the Department is sent to the Court of Appeal with appeals from the lowest court, which is the Magistrate's Court. After about one and a half years, they are posted to the High Courts to prosecute in criminal matters like murder, rape, etc. After about another one and a half to two years, they are usually brought into the "miscellaneous section" of the Head Office. In this section, they have to deal with very complicated cases such as bank frauds, cases involving circumstantial evidence, etc. They are also sent to the Court of Appeal with appeals from High Courts. After a year or so, they are considered for promotion to the Senior State Counsel grade depending on the availability of vacancies in the cadre. A Senior State Counsel becomes a supervising officer. He supervises the work of several junior State Counsel. Usually a Senior State Counsel appears in the Court of Appeal and the Supreme Court in appeals from the High Courts. They appear in High Courts to prosecute only in important cases. Above Senior State

Counsel, there are several Deputy Solicitors-General who are also in charge of various subjects and supervise several State Counsel. Above them there are Additional Solicitors-General. The most senior Additional Solicitor-General is in charge of the Criminal Division of the Attorney-General's Department.

The above-stated system of graded assignments ensures a high degree of quality training for the officers of the Attorney-General's Department.

#### **XI. RELATIONSHIP BETWEEN THE HIERARCHY OF THE COURTS AND THE ATTORNEY-GENERAL'S DEPARTMENT (OFFICIAL BAR)**

Prosecutors of the Attorney-General's Department are eligible to be appointed to higher grades in the Judicial Service. Senior State Counsel are elevated to the High Courts, Deputy Solicitors-General to the Court of Appeal, the Solicitor-General to the Supreme Court, and Additional Solicitors-General, who are also appointed as President's Counsel by virtue of their office, could also be elevated to the Supreme Court. The Attorney-General ranks above the Judges of the Supreme Court and is second only to the Chief Justice in the hierarchical order. As such, the Attorney-General is elevated to the rank of Chief Justice.

Appointments to the higher judiciary, namely, the High Court, the Court of Appeal and the Supreme Court, are made by the President of the Democratic Socialist Republic of Sri Lanka. The President has the power to appoint suitable officers from the judiciary or the Attorney-General's Department, or a member of the unofficial bar.

#### **XII. PROFESSIONAL ETHICS OF PROSECUTORS**

The general code of ethics for attorneys-at-law would apply to any prosecutor of the

Attorney-General's Department. The prosecutor is an officer of the court and his role is to assist the court to dispense justice. Thus it is not for a prosecutor to ensure a conviction at any cost, but to see that the truth is elicited and justice is meted out. A prosecutor is not expected to keep relevant facts either from the court or from the accused. If the investigation has revealed matters which are favourable to the accused and the accused is unaware of the existence of such facts, it is the bounden duty of the prosecutor to make those facts available to the court and to the defence.

#### **XIII. ROLE OF THE PUBLIC PROSECUTOR IN ARRESTING AND DETAINING A SUSPECT**

Public prosecutors of the Attorney-General's Department do not play a role in the arrest and detention of suspects. It is the function of the police to arrest suspects and produce them in court in accordance with the law. However, it becomes necessary sometimes to advise the police that there is a prime facie case against the suspect, and the police arrest the suspect thereafter. When a person in remand custody applies for bail to the High Court or to the Court of Appeal, the Attorney-General is consulted before bail is granted.

#### **XIV. INTERROGATIVE AUTHORITY AND METHODOLOGY**

In criminal cases falling under the Penal Code or other acts creating criminal offences, such as the Offensive Weapons Act and the Firearms Ordinance, the power of interrogation is entrusted to the police. The procedure to be adopted in conducting a criminal investigation is laid down in the Code of Criminal Procedure Act, No. 15 of 1979.

Generally an investigation is commenced with the reception of information relating to the commission of an offence. If upon information, the officer

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in charge of the police station has reason to suspect the commission of a cognizable offence or he apprehends a breach of the peace, he shall either himself or through another officer commence the investigation. The interrogator is given powers to question witnesses to the incident and arrest any suspects whose names have transpired. It is the duty of the investigating officer to produce the suspects, if any, before a magistrate within a period of 24 hours, together with a report setting out the facts of the case and a summary of the statements of the witnesses and the suspects. It is up to the magistrate to decide whether to grant bail to the suspect. In minor offences police many themselves release the suspect if they can ensure his attendance in court if necessary. In cases of waging war against the State, giving or fabricating false evidence with intent to procure conviction for a capital offence and murder, the magistrate has no power to grant bail. However, a suspect accused of such an offence shall be released on bail by the magistrate if proceedings are not instituted against him in a Magistrate's Court or a High Court before the expiration of a period of three months from the date he has surrendered to the court or is arrested, unless the High Court, on application made by the Attorney-General, directs otherwise. The High Court in special circumstances may release such person on bail before or after the expiration of the period of three months. [Section 115(3) of the Code of Criminal Procedure Act].

**XIX. INSTRUCTION AND  
SUPERVISION OF THE POLICE  
AND CO-OPERATION BETWEEN  
PUBLIC PROSECUTORS AND THE  
POLICE**

It is the role of the police to conduct investigations into criminal offences. As stated above, the Attorney-General has

wide statutory powers over prosecutions. The Attorney-General also has the power to give appropriate directions to the police in the course of the investigations. It is also open to the police to seek instructions from the Attorney-General in regard to any criminal offence. In practice, the police seek the advice of the Attorney-General in complex and difficult cases, and the Attorney-General usually exercises some degree of supervision over the investigations thereafter. There are also instances of representations being made on behalf of suspects complaining of police irregularities and the Attorney-General is entitled in such instances to step in and ensure that investigations are done properly and impartially. Generally the police and the public prosecutors co-operate with each other to ensure that justice is done.

**XVI. EXERCISE OF DISCRETION IN  
PROSECUTING**

The Attorney-General has the discretionary power to:

**A. Enter a Nolle Prosequi**

The Attorney-General has the power of stopping any prosecution in any court at any stage without giving any reasons. This device is resorted to only in extreme cases in order to secure justice or where it is necessary in the interests of the public and the State.

**B. Withdraw an Indictment**

At any stage of a trial in the High Court before the return of the verdict, the Attorney-General may if he thinks fit, inform the Court that he will not further prosecute the accused upon the indictment or any charge therein. Thereupon, all proceedings on such indictment or charge as the case may be against the accused shall be stayed and the accused shall be discharged of and from the same.

### **XVII. SUSPENSION OF PROSECUTIONS**

The concept of suspension of prosecutions is not known to the legal system of Sri Lanka. However, considering the background of an accused, the circumstances under which the offence was committed and the social implications of any case, a suspended sentence may be given by a judge. When a suspended sentence is imposed, the suspect should be of good behaviour during the operational period of the sentence. If he commits another offence during the operational period and is convicted by a court of law, the suspended sentence would begin to operate after the sentence imposed for the subsequent offence.

### **XVIII. PLEA BARGAINING AND SENTENCE**

Plea bargaining is an accepted practice in Sri Lankan courts. For example, where a suspect has been indicted for murder and he wishes to plead guilty to the lesser offence of culpable homicide not amounting to murder, the court may accept such plea with the consent of the prosecutor, provided sufficient grounds exist. The trial judge has the sole discretion to impose any sentence laid down by law. Sentence bargaining is not permitted.

However, a prosecutor is entitled to place before the court facts relevant to determining an adequate sentence. It is open to the Attorney-General to move in revision of any sentence passed by any judge. In recent times, the Attorney-General has resorted to this practice very successfully in several cases.

### **XIX. PROOF OF CRIMINAL FACTS**

It is an accepted principle of law in Sri Lanka that an accused is presumed innocent until proven guilty. This is enshrined in Article 13(5) of the

Constitution as well. The standard required is proof beyond reasonable doubt. It is the duty of the prosecutor to prove the case beyond reasonable doubt. If the evidence adduced by the prosecution falls below this standard, the accused is entitled to be acquitted.

### **XX. CO-OPERATION FOR A SPEEDY TRIAL**

The subject of law delays has been the topic of discussion in Sri Lanka for many years. The prosecutor and the police always work towards ensuring a speedy trial, as inordinate delay is always detrimental to the prosecution. The prosecutors also make it a point not to make applications for postponements unless they are compelled to do so. Trial dates are fixed in consultation with counsel for the prosecution as well as counsel for the defence, to suit the convenience of the court.

### **XXI. SUPERVISION OF THE FAIR APPLICATION OF THE LAW**

It is the duty of the prosecuting counsel to see that the law is applied correctly by the trial judge. Whenever a trial judge errs, the prosecutor is entitled to point out such errors. The Attorney-General is entitled to move in revision to correct wrong interim orders made in the course of a trial. The Attorney-General is also entitled to appeal from wrongful or unreasonable acquittal. State prosecutors are required to submit all files relating to concluded cases, to the supervising officer to enable him to see whether an appeal should be lodged or whether revisionary action should be taken.