

THE ROLE AND FUNCTION OF PROSECUTION IN CRIMINAL JUSTICE

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I. INTRODUCTION

India is a Union of States and is governed by a written constitution which came into force on 26 November 1949. India consists of 25 states and 7 Union Territories. Due to its colonial heritage, India follows the Anglo-Saxon common law justice system. Article 246 of the Constitution provides for three lists which are enumerated in 7th Schedule of the Constitution. List-1 is the Union List which enumerates the subjects on which the Parliament of India has exclusive power to make the laws. List-2 is the State List which enumerates the subjects on which the legislature of a state has the power to make laws. The third list is the Concurrent List which enumerates subjects on which both the Indian Parliament and the Legislatures of the state can enact laws, but if there is any conflict or inconsistency between the laws made by the Indian Parliament and the legislature of any state, the law enacted by the Union Parliament will have overriding effect. Importantly, the "Public Order" and the "Police" are enumerated in Entries 1 and 2 respectively of the State List, meaning thereby that all matters relating to the organisation, structure and regulation of the police force fall within the ambit of the states. However, the 'Criminal Laws' and the 'Criminal Procedure' are enumerated in List-3, i.e., the Concurrent List. Both the Indian Parliament and state legislatures have the powers to make substantive and procedural laws in

criminal matters. The states can also enact laws on local and special subjects. Thus, under the constitutional scheme, the basic criminal laws, i.e., the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act have been enacted by the Indian Parliament. The Indian Police Act has also been enacted by the Indian Parliament. The states have also enacted laws on several local and special subjects. Some states in India have also enacted their own Police Acts. The Indian Police Act, 1861, however, is the basic statutory law governing the constitution and organisation of police forces in the states.

Article 14 of the Constitution provides for equality before law. Article 21 guarantees protection of life and personal liberty. Article 20 provides protection against double jeopardy. No person can be prosecuted and punished for the same offence more than once. Article 39-A mandates the states to secure equal justice for all. It also provides for free legal aid in respect of indigent persons. Article 50 is important as it provides for the separation of the judiciary from the executive in the public services of states.

II. DISTRICT—THE BASIC UNIT OF ADMINISTRATION

In each state, there are a number of districts. The District is governed by a triumvirate consisting of the District Magistrate, the District Superintendent of Police and the District and Sessions Judge. The District Magistrate is the chief executive officer of the district and he belongs to the Administrative Service. The police in the district functions under his general direction and control. The District

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Superintendent of Police is the head of the police force in a district. He is responsible for the prevention and detection of crime and the maintenance of law and order, subject to such directions as may be issued by the District Magistrate. In practical terms, the District Magistrate has no role in criminal investigations. The District and Sessions Judge is the head of the judiciary in a district. He belongs to the higher state judicial service. The entire magistracy in the district functions under his control and supervision.

III. CRIMINAL JUSTICE SYSTEM

The criminal justice system has four important components in India, namely, the Investigating Agency (Police), the Judiciary, the Prosecution Wing and the Prison and Correctional Services. A brief mention of their structure and their roles is made here below:

A. Investigating Agency

The police forces are raised by the state under the Indian Police Act, 1861. The basic duty of the police forces is to register cases, investigate them as per the procedure laid down in the Code of Criminal Procedure (to be referred to as the Code hereinafter) and to send them up for trial. In addition to the State Police Forces, the Government of India has constituted a central investigating agency called the Central Bureau of Investigation (CBI) under the special enactment called the Delhi Special Police Establishment Act, 1946. It has concurrent jurisdiction in the matters of investigation in the Union Territories. It can take up the investigation of cases falling within the jurisdiction of the states only with the prior consent of the state governments concerned. There are certain other specialised investigating agencies constituted by the central government, in various departments, namely, the Customs Department, the Income Tax Department, the Enforcement

Directorate, etc. They investigate cases falling within their jurisdictions and prosecute them in the courts of law.

Thus, India has both the state police investigating agencies and a central investigating agencies as mentioned above. CBI, however, is the primary investigating agency of the central government.

B. The Courts

The cases instituted by the state police and the Central Investigating Agency are adjudicated by the courts. We have a four-tier structure of courts in India. At the bottom level is the Court of Judicial Magistrates. It is competent to try offences punishable with imprisonment of three years or less. Above it is the Court of Chief Judicial Magistrates, which tries offences punishable with less than 7 years. At the district level, there is the Court of District and Sessions Judge, which tries offences punishable with imprisonment of more than 7 years. In fact, the Code specifically enumerates offences which are exclusively triable by the Court of Sessions.

The highest court in a state is the High Court. It is an appellate court and hears appeals against the orders of conviction or acquittal passed by the lower courts, apart from having writ jurisdiction. It is also a court of record. The law laid down by the High Court is binding on all the courts subordinate to it in a state.

At the apex, there is the Supreme Court of India. It is the highest court in the country. All appeals against the orders of the High Courts in criminal, civil and other matters come to the Supreme Court. This Court, however, is selective in its approach in taking up cases. The law laid down by the Supreme Court is binding on all the courts in the country.

C. Prosecution Wing

It is the duty of the state to prosecute cases in the courts of law. The state governments have constituted cadres of

public prosecutors to prosecute cases at various levels in the subordinate courts and the High Court. I will revert to the subject later when I discuss the structure and functioning of the prosecution wings in the states and the central governments.

D. Prisons and Correctional Services

This is the fourth important element in the criminal justice system. The prisons in India are under the control of the state governments and so are the correctional services.

IV. CONSTITUTION AND STRUCTURE OF PROSECUTION WING

As stated above, the police is a state subject in our constitutional scheme. The primary investigative unit is the police station in India. After due investigation, charge-sheets are filed in the courts concerned as per the provisions of the Code. The cases are prosecuted by the public prosecutors appointed by the state governments.

Prior to the enactment of the Criminal Procedure Code of 1973, public prosecutors were attached to the police department and they were responsible to the District Superintendent of Police. However, after the new Code of Criminal Procedure came into force in 1973, the prosecution wing has been totally detached from the police department. The prosecution wing in a state is now headed by an officer designated as the Director of Prosecutions. In some of the states, he is a senior police officer and in others, he is a judicial officer of the rank of District and Sessions Judge. He is assisted by a number of Additional Directors, Deputy Directors and Assistant Directors, etc.

At the district level, there are two levels of public prosecutors, i.e., the Assistant Public Prosecutor, Grade-I and the Assistant Public Prosecutor, Grade-II.

They appear in the Courts of Magistrates. The Director of Prosecutions is responsible for the prosecution of cases in the Magisterial Courts.

In Sessions Courts, the cases are prosecuted by Public Prosecutors. The District Magistrate prepares a panel of suitable lawyers in consultation with the Sessions Judge to be appointed as public prosecutors. The state government appoints public prosecutors out of the panel prepared by the District Magistrate and the Sessions Judge. It is important to mention that public prosecutors who prosecute cases in the Sessions Courts do not fall under the jurisdiction and control of the Director of Prosecutions.

The state government also appoints public prosecutors in the High Court. The appointments are made in consultation with the High Court as per section 24 of the Code.

The most senior law officer in a state is the Advocate General who is a constitutional authority. He is appointed by the governor of a state under Article 165. He has the authority to address any court in the state.

Under section 24 of the Cr.P.C., the central government may also appoint one or more public prosecutors in the High Court or in the district courts for the purpose of conducting any case or class of cases in any district or local area. The most senior law officer of the Government of India is the Attorney General for India, who is a presidential appointee under Article 76. He has the authority to address any court in the country.

The Assistant Public Prosecutors, Grade-I and Grade-II, are appointed by a state government on the basis of a competitive examination conducted by the State Public Service Commission. They are law graduates falling within a specified age group. They join as Assistant Public Prosecutors Grade-II and appear in the Courts of Magistrates. They are promoted

to Assistant Public Prosecutors, Grade-I, and generally appear in the Courts of Chief Judicial Magistrates. On further promotion, they become Assistant Directors of Prosecution and can go up to the level of Additional Director of Prosecution. They, however, do not appear in the Sessions Court.

As mentioned above, the District Magistrate in consultation with the Sessions Judge prepares a panel of lawyers with a minimum of 7 years of experience to be appointed as public prosecutors. They are so appointed by the state government. They plead the cases on behalf of the state government in the Sessions Courts. They have tenure appointments and are not permanent employees of the state government. They are paid an honorarium (not salary) by the state government.

There is now a move to integrate the aforesaid two cadres of public prosecutors with the object to improving the promotion prospects of law officers who join at the lowest level, i.e., Assistant Public Prosecutor, Grade-II. The idea is to promote the Assistant Public Prosecutors, Grade-I to Additional Public Prosecutor or Public Prosecutor, as the case may be, to plead cases in the Sessions Court. If it comes about, this will obliterate the need for appointing lawyers from the open market as public prosecutors to plead cases in the Sessions Courts.

V. PROSECUTION BY CBI

The Central Bureau of Investigation has a Legal Division which plays an advisory and prosecutory role in the organisation. It is headed by a Legal Advisor, who is a deputationist from the Ministry of Law of the central government. This arrangement ensures objectivity of his office. He is assisted by a number of Law officers who are permanent employees of the CBI, namely, Additional Legal Advisor, Deputy Legal Advisors, Senior Public Prosecutors,

Public Prosecutors, Assistant Public Prosecutors, etc. These are indicated in descending order of seniority and rank. These officers render legal advice to the investigating officers during the course of investigations as to the viability of proposed prosecutions. Their advice is taken seriously, but they can be over-ruled by the executive CBI officers. Multiple and hierarchical systems of legal advice prevails in the CBI. Legal advice is taken at least at three levels before deciding the fate of a case. After a decision has been taken to prosecute a case, the law officers conduct the prosecution of cases in the courts. The level of a law officer to prosecute a case is directly related to the level of the court, i.e., the higher the court, the higher the rank of a law officer to prosecute it.

Besides, the CBI also engages Special Public Prosecutors from the bar on a daily fee basis in important and sensational cases.

VI. CRIME SCENARIO IN INDIA

In order to analyse the role of public prosecution, it is essential to have some idea about the crime situation prevailing in India. Table 1 gives the total crimes registered under the Indian Penal Code in India (hereinafter IPC) and the share of violent crimes there.

Table 1 shows that the IPC increased by 168.3 per cent in 1991 compared to 1961. The percentage increase during the decade 1981 to 1991 was 21.1 per cent. The crime increased by 4.7 per cent in 1995 compared to 1994.

Apart from crimes under the IPC the police also registers cases under the local and special laws (to be called SLL hereinafter). It would be expedient to have a look at the volume of crimes under the IPC and the SLL as also the rate of crimes (rate of crime is defined as crime per 1.00 lac of population).

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Table 1

Year	Total Cognizable Crimes (IPC)	Violent Crimes	
		Incidence	% Total
1953	601,964	49,578	8.2
1961	625,651	55,726	8.9
1971	952,581	124,380	13.1
1981	1,385,757	193,224	13.9
1986	1,405,835	182,119	13.0
1987	1,406,992	179,786	12.8
1988	1,440,356	203,589	14.1
1989	1,529,844	217,311	14.2
1990	1,604,449	234,338	14.6
1991	1,678,375	246,252	14.7
1992	1,689,341	251,952	14.9
1993	1,629,936	232,554	14.3
1994	1,635,251	235,228	14.4
1995	1,695,696	NA	NA

Table 2

Year	Incidence			Rate			% of IPC Crimes Cognizable Crimes
	IPC	SLL	Total	IPC	SLL	Total	
1984	1,358,660	2,916,808	4,275,468	184.7	396.5	581.2	31.8
1985	1,384,731	3,096,481	4,481,212	184.4	412.4	596.8	30.9
1986	1,405,835	2,984,654	4,390,489	183.5	389.6	573.1	32.0
1987	1,406,992	3,589,236	4,996,318	180.1	459.3	639.4	28.2
1988	1,440,356	3,765,669	5,206,025	180.8	472.7	653.5	27.7
1989	1,529,844	3,847,665	5,377,509	188.5	474.0	662.4	28.4
1990	1,604,449	3,293,563	4,898,012	194.0	398.3	592.3	32.8
1991	1,678,375	3,370,971	5,049,346	197.5	396.8	594.3	33.2
1992	1,689,341	3,558,448	5,247,789	194.7	410.1	604.8	32.2
1993	1,629,936	3,803,638	5,433,574	184.4	430.4	614.8	30.0
1994	1,635,251	3,876,994	5,512,245	181.7	430.8	612.5	29.7
1995	1,642,599	3,457,189	5,699,788	179.3	377.4	556.7	32.2

Table 2 gives figures about the incidence of crime under the IPC and SLL, the rate of crime under IPC and SLL, total rate of crime and percentage of IPC crime vis-à-vis, total crimes.

From Table 2, the following trends clearly emerge:

(1) There is an increase in the total volume of crime over the years—both

under the IPC as well as under the SLL. IPC crime in 1995 shows an increase of 18.6 per cent compared to 1985. The crime registered under SLL also shows an increase of 11.6 per cent in the aforesaid period.

(2) However, the crime rate for IPC offences shows a slightly declining trend in 1994 and 1995 compared to

1990-91. The downward trend in the crime rate under the SLL is more pronounced, i.e., 8.5 per cent in 1995 compared to 1985.

- 3) The IPC crime constitutes about one-third of the total cognizable crimes registered in India.

VII. DISPOSAL OF IPC CRIME CASES BY POLICE

Table 3 shows the disposal of IPC crime cases by the police.

The percentage of cases finalised from investigation, on average, is about 80 per cent per year. In other words, only 20 per cent of the cases registered by the police in a particular year remain unfinalized within that calendar year. Happily, the percentage of cases in which charge-sheets are filed is going up steadily. This is a positive development showing lesser false registrations and higher police disposal.

VIII. DISPOSAL OF CRIMES BY THE COURTS

The charge-sheets filed by the police are, in fact, inputs for the trial courts. Efficacy of the criminal justice system hinges on the prompt completion of trials and higher conviction rates. The opposite of it would be symptomatic of the systemic failure. Table 4 shows disposal of cases by courts and conviction percentage recorded over the years.

Table 4 shows that the percentage of trials completed is going down steadily. While about 30 per cent trials were completed in 1961 and 1971, the percentage came down to 23.9 per cent in 1981 and to 16.8 per cent in 1991. This percentage has further come down to only 15.5 per cent in 1994.

The conviction rate is also steadily falling over the years. It was 64.8 per cent in 1961, but came down to only 47.8 per

Table 3

Year	Total No. of cases for Inv. (including cases from previous year)	No. of Cases Investigated	No. of Cases Charge-sheeted	% of Cases Investigated	% of Cases Charge-sheeted
1961	696,155	586,279	285,059	84.2	53.6
1971	1,138,588	894,354	428,382	78.5	52.8
1981	1,692,060	1,335,994	740,881	79.0	61.3
1991	2,075,718	1,649,487	1,091,579	79.5	71.3
1993	2,090,508	1,637,712	1,106,435	78.3	72.5
1994	2,077,631	1,612,245	1,109,030	77.6	74.1

Table 4

Year	Total No. of Cases for Trial (including pending cases)	No. of Cases		Percentage	
		Trial	Convicted	Trial Completed	Conviction
1961	800,784	242,592	157,318	30.3	64.8
1971	943,394	301,869	187,072	32.0	62.0
1981	2,111,791	505,412	265,531	23.9	52.5
1991	3,964,610	667,340	319,157	16.8	47.8
1993	4,504,396	752,852	345,812	16.7	45.9
1994	4,759,521	736,797	316,245	15.5	42.9

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cent in 1991. The conviction percentage has further come down to 42.9 per cent in 1994. It may be clarified that the aforesaid conviction rate is for both IPC and SLL crimes. If we exclusively take into account the IPC crimes, the conviction rate is still lower.

In 1994, only 16.02 per cent of murder cases were disposed of from trial and the conviction rate was 38 per cent.

As regards cases relating to attempts to murder, 15.75 per cent of cases were disposed of in 1994, the conviction rate being 38.8 per cent. Of under-trial rape cases, 17.75 per cent were disposed of in 1994, the conviction percentage being 30.42 per cent.

The above shows that, generally speaking, only one-sixth of the total under-trial cases were disposed of in 1994 and about one-third of heinous crimes resulted in conviction. This, however, does not take into account subsequent acquittals in the appellate courts.

IX. EFFICACY OF THE CRIMINAL JUSTICE SYSTEM

The courts are constituted by the state government under the Code and cases are prosecuted by public prosecutors appointed by the state government or the central government as the case may be. Even though the National Crime Records Bureau has been collecting data about the disposal of cases by the courts, the statistics do not seem to be authentic. It has been aptly remarked by a wisecrack that the place of a nation on the civilizational scale is to be determined by the manner in which its criminal laws are enforced. Since all the elements of the public justice system are inter-dependent, even the strictest enforcement of law by the police agency will not deliver the goods unless it is supported by the judicial system by way of prompt disposals. The role of the public prosecutor and his performance is also to be judged

by his ability to assist the court in this regard.

It is in this context that we are going to have a look at the overall pendency of cases in the country. According to an estimate, there are 21.8 million cases pending in the subordinate courts. About 3.1 million cases are pending in the High Courts. The Supreme Court has a pendency of 22,000 cases only. There are about 11,000 courts working in the country.

The number of pending trial cases under the IPC was 52.8 lacs in 1995 which increased to 56.2 lacs in 1996. Of these, 21.6 per cent have been pending for more than 8 years. The number of cases pending trial for more than 8 years increased from 10.7 lacs in 1995 to 12.11 lacs in 1996, showing an increase of 13.3 per cent.

Table 5 shows the states' accounting for major pendency.

Table 5

State	1995	1996
Maharashtra	1,184,187	1,424,867
U.P.	1,375,588	1,008,558
Gujarat	473,694	619,473
Madhya Pradesh	360,664	497,728
Rajasthan	287,337	368,999
Bihar	231,799	301,360
Pune	74,302	271,318
Orissa	218,954	210,318
Andhra Pradesh	179,635	165,412
Haryana	117,582	132,346
Kanpur	111,594	116,775
Kerala	121,972	114,007
Karnataka	96,646	111,023
Delhi	117,949	110,086
Tamil Nadu	94,273	103,037
Mumbai	84,741	94,890
Assam	72,300	72,300

The pendency of trial cases during the decade 1985-1995 has piled up more than double with a growth rate of 10.6 per cent per annum.

Apart from the IPC cases mentioned above, 69.01 lac SLL cases were awaiting disposal by criminal courts in the country at the beginning of 1995. The disposal percentage in 1995 was 52.2 per cent. As against this, the percentage of disposal of IPC cases was only 18.2 per cent. This is largely explained by the fact that the SLL cases pertain to violations of minor acts like the Gambling Act, the Prohibition Act, and the Motor Vehicle Act and there are tried summarily, resulting in quicker disposals.

As mentioned earlier, the Directorate of Prosecutions in some states is under the control of the Home Department, while in others is under the control of the Law Department. The following section examines which of the two systems is working more efficiently.

A. Prosecution System under the Control of the Home Department

In the states of Tamil Nadu, Madhya Pradesh, Uttar Pradesh, Andhra Pradesh, Delhi, Maharashtra, Jammu and Kashmir, Bihar, and Kerala, the prosecution wing is under the Home Department. The conviction percentage in these states for the last seven years ranges from 67.8 per cent in Tamil Nadu to 17.7 per cent in Kerala. The average percentage of conviction for 7 years is given in Table 6.

Table 6

State	Average Percentage of Convictions of 7 years
Tamil Nadu	67.8
Madhya Pradesh	64.5
Uttar Pradesh	54.0
Andhra Pradesh	51.6
Delhi	47.6
Maharashtra	39.4
Jammu & Kashmir	37.4
Bihar	36.7
Kerala	17.7

B. Prosecution System under the Department of Law

In certain other states, the average percentage of conviction for seven years, again, ranges from 76.4 per cent in Meghalaya to 21.9 per cent in Himachal Pradesh. This is shown in Table 7.

Table 7

State	Average Percentage of Conviction of 7 years
Meghalaya	76.4
Pondicherry	72.2
Sikkim	67.2
Chandigarh	65.5
Haryana	61.2
Gujarat	61.0
Manipur	47.6
Goa	44.4
Karnatka	31.9
Himachal Pradesh	21.9

Thus, no clear picture emerges as to which of the two systems is working more efficiently.

X. THE DUTIES AND FUNCTIONS OF A PUBLIC PROSECUTOR

Public prosecution is an important component of the public justice system. Prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor. The public prosecutor is appointed by the State, and he conducts prosecution on behalf of the State. While it is the responsibility of the public prosecutor to see that the trial results in conviction, he need not be overwhelmingly concerned with the outcome of the trial. He is an officer of the court and is required to present a truthful picture before the court. Even though he appears on behalf of the State, it is equally his duty to see that the accused does not suffer in an unfair and unethical manner. The public prosecutor,

though an executive officer, is an officer of the court and is duty bound to render assistance to the court. The public prosecutor represents the State and the State is committed to the administration of justice as against advancing the interest of one party at the cost of the other. He has to be truthful and impartial so that even the accused persons receive justice. The public prosecutor plays a dominant role in the withdrawal of a case from prosecution. He should withdraw from prosecution in rare cases lest the confidence of public in the efficacy of the administration of justice be shaken.

The Supreme Court of India has defined the role and functions of a public prosecutor in *Shiv Nandan Paswan vs. State of Bihar & Others* (AIR 1983 SC 1994) as under:

- a) The Prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor.
- b) Withdrawal from prosecution is an executive function of the Public Prosecutor.
- c) Discretion to withdraw from prosecution is that of the Public Prosecutor and that of none else and he cannot surrender this discretion to anyone.
- d) The Government may suggest to the Public Prosecutor to withdraw a case, but it cannot compel him and ultimately the discretion and judgement of the Public Prosecutor would prevail.
- e) The Public Prosecutor may withdraw from prosecution not only on the ground of paucity of evidence but also on other relevant grounds in order to further the broad ends of public justice, public order and peace.
- f) The Public Prosecutor is an officer of the Court and is responsible to it.

XI. ROLE OF A PUBLIC PROSECUTOR IN INVESTIGATIONS

Investigations in India are conducted as per provisions of Chapter XII of the Code. Cases are registered under section 154 of the Code. A police officer is competent to investigate only cognizable offences. Non-cognizable offences cannot be investigated by the police without obtaining prior orders from the courts. A police officer can examine witnesses under section 161. However, the statements are not to be signed by the witnesses. Confessions of accused persons and statements of witnesses are recorded under section 164 of the Code. A police officer has the power to conduct searches in emergent situations without a warrant from the court under section 165. A police officer is competent to arrest an accused suspected to be involved in a cognizable offence without an order from the court in circumstances specified in section 41 of the Code. He is required to maintain a day to day account of the investigation conducted by him under section 172. After completion of investigation, a police officer is required to submit a final report to the court under section 173. If a prima facie case is made out, this final report is filed in the shape of a charge-sheet. The accused has, thereafter, to face trial. If no cogent evidence comes on record, a closure report is filed in the Court.

The public prosecutor plays the following role at the investigation stage:

- (1) He appears in the court and obtains arrest warrant against the accused;
- (2) He obtains search warrants from the court for searching specific premises for collecting evidence;
- (3) He obtains police custody remand for custodial interrogation of the accused (section 167);

- (4) If an accused is not traceable, he initiates proceedings in the court for getting him declared a proclaimed offender (section 82) and, thereafter, for the confiscation of his movable and immovable assets (section 83); and
- (5) He records his advice in the police file regarding the viability/advisability of prosecution.

After the completion of investigation, if the investigating agency comes to the conclusion that there is a prima facie case against the accused, the charge-sheet is filed in the court through the public prosecutor. It is to be noted that the opinion of the public prosecutor is taken by the police before deciding whether a prima facie case is made out or not. The suggestions of the public prosecutor are also solicited to improve the quality of investigation and his suggestions are generally acted upon. However, the ultimate decision of whether to send up a case for trial or not lies with the police authorities. In case there is a difference of opinion between the investigating officer and the public prosecutor as to the viability of the prosecution, the decision of the District Superintendent of Police is final.

XII. THE ROLE OF A PUBLIC PROSECUTOR DURING TRIALS

As stated above, the public prosecutor is vested with the primary responsibility to prosecute cases in the court. After the charge-sheet is filed in the court, the original case papers are handed over to him. The cognizance of the case is taken by the courts under section 190 of the Code. The trial in India involves various stages. The first and foremost is the taking of cognizance of a case by the court. The second step is to frame charges against the accused, if there is a prima facie case against him. The third step is to record the prosecution evidence. The fourth step

is to record the statement of the accused (section 313 of the Code). The fifth step is to record the defence evidence. The sixth step is to hear the final arguments from both sides, and the last step is the pronouncement of judgement by the Court. The public prosecutor is the anchor man in all these stages. He has no authority to decide whether the case should be sent up for trial. His role is only advisory. However, once the case has been sent up for trial, it is for him to prosecute it successfully.

A. Withdrawal from Prosecution

The public prosecutor has the authority to withdraw a case from trial under section 321 of the Code. Under the case law, he and he alone has the ultimate authority to withdraw a case from prosecution (AIR 1983 SC 194). But the practice is that he receives instructions from the government and pursuant to those instructions, he withdraws the case from prosecution. The grounds of withdrawal could be many, including:

- (1) False implication of accused persons as a result of political and personal vendatta;
- (2) Inexpediency of the prosecution for the reasons of state and public policy; and
- (3) Adverse effects that the continuation of prosecution will bring on public interest in the light of changed situation.

B. Burden of Proof on Prosecution

It is for the public prosecutor to establish the guilt against the accused in the court beyond a reasonable shadow of doubt. The evidence is in three forms, namely, oral evidence (i.e., statements of witnesses); documentary evidence; and circumstantial evidence. Forensic evidence also plays an important role in varied crimes. In the Indian system, the statement of a witness is recorded by the investigating officer. The

statement is not required to be signed by a witness under the law. The witness is required to appear in the court and prove the facts mentioned by him to the investigating officer at the pre-trial stage and to face cross-examination by the defence lawyer. The public prosecutor conducts the examination-in-chief of a witness and, thereafter, his re-examination, if need be, in order to clarify ambiguity, if any, after a witness' cross-examination. Similarly, the documents cited in evidence are required to be proved by the public prosecutor with the help of witnesses. The forensic evidence is proved through the documents prepared by the experts and also by the testimony of the experts in the court. The experts are also liable to be cross-examined by the defence counsel. On the basis of the facts proved by the oral, documentary and forensic evidence, the public prosecutor tries to substantiate the charges against the accused and tries to drive home the guilt against him. If there is a statutory law regarding presumptions against the accused, the public prosecutor draws the court's attention towards that and meshes it with other evidence on record. While the law requires establishing a prima facie case for charge-sheet purposes, the law for conviction is that the guilt should be proved beyond a reasonable shadow of doubt. The standard of proof in Indian courts is quite high and that largely explains the low conviction rate, particularly in IPC offences. The prosecutor has an immense role. He has to prove the facts. He has to prove the circumstances, and then he has to draw the inferences and convince the court that the arraigned accused alone is guilty of the offences that he has been charged with. This is an onerous task and requires sound legal knowledge, the ability to handle witnesses and the capability to carry the court along with him.

XIII. SPEEDY TRIAL

The concept of speedy trial is enshrined in Article 21 of the Constitution of India. Article 21 reads as under:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

The Supreme Court in 1997 CrLJ, page 195 has interpreted this Article to mean that right of speedy trial is also a fundamental right. Undeniably, the trials in India drag on for years together. There are several agencies responsible for delays, namely, the police, the lawyers, the accused and the courts. All of them play a contributory role in the delays. While the police agency may be responsible for 25 per cent of delays, non-police agencies are responsible for the rest of it. The public prosecutor, being an officer of the court, can play an important role in ensuring speedy trial. It is his duty to see that the adequate number of witnesses are called at each hearing and none of them goes back unexamined. Similarly, he is to ensure that the documents are put up to the court in time. He has also to ensure that police officers, who generally prevaricate in appearing in the courts, do appear as per the schedule fixed by the court. A good working relationship with the court may help in achieving this end. Not much cooperation can be expected from the defence counsel as experience shows that he is more interested in the delays than in speedy trial because delay means more hearings which, in turn, means more fee for him. This behaviour may be unethical on his part, but this is the ground reality. In this scenario, the role of public prosecutor assumes special significance.

XIV. PLEA BARGAINING

The Indian law does not provide for plea bargaining as it exists in the U.S.A. However, the Law Commission of India has recently recommended to the government that a separate Chapter (Chapter 21-A) be incorporated in the Code to provide for plea bargaining. The system of plea bargaining has been recommended as it is believed that 75 per cent of convictions in the U.S.A. are based on plea bargaining. It is proposed to introduce a plea bargaining system in less grievous offences, to begin with. If this experiment succeeds, it will be extended to grievous offences thereafter.

XV. PUBLIC PROSECUTION AND SENTENCING

In the criminal statutes, varied sentences are provided for different offences. The most serious offence is the crime of murder for which life imprisonment or death is provided. A death sentence is, however, to be awarded in the rarest of rare cases. There are certain statutes which provide for minimum imprisonment, but may exceed the minimum imprisonment so provided. After the court has held the accused guilty, the defence counsel and the public prosecutor are called upon to argue on the quantum of punishment. The courts in India generally believe in the individualisation of sentences. The age, educational background, social status and liabilities of the accused such as infant children, dependent wife and other factors are considered by the court before imposing a sentence. The public prosecutor has to use his discretion in arguing for adequate punishment, keeping in view the circumstances mentioned above. He should exercise the discretion keeping in mind the gravity of the offence, and the facts and circumstances of the case.

Besides, the court has the statutory authority to release a convict on probation

in certain offences under the Probation of Offenders Act. The court can release a convict on admonition in cases where the punishment is not more than two years. The public prosecutor should guide the steps of the court in this regard.

The court also has the discretion to release a convict on probation under section 360 of the Code, in the following circumstances:

- (1) a convict of more than 21 years of age punished with fine or imprisonment of less than 7 years; and
- (2) a convict of less than 21 years of age or any woman not punished with life imprisonment or death.

The court will take into consideration his age, character and antecedents and the fact that he is not a previous convict.

The court can also release the offender on probation of good conduct in other offences excluding offences punishable with death or life imprisonment.

The prosecutor is required to help the court in arriving at a fair and judicious finding in this matter.

XVI. CO-ORDINATION BETWEEN THE POLICE AND PUBLIC PROSECUTORS

Before 1973, the Assistant Public Prosecutors (some of them were police officers) were under the direct control of the District Superintendent of Police. The public prosecutors appearing in the Sessions Courts were drawn from the open market on a tenure basis and they were responsible to the District Magistrates. After the amendment in the Code, Assistant Public Prosecutors have been totally detached from the police department. At present they report to the District Magistrate at the district level and to the Director of Prosecutions at the state level. The status of the public prosecutors appearing in the Sessions Courts remains unchanged. There is no institutionalised

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interaction or co-ordination between the investigating agency and the prosecuting agency. The police files are sent to the Assistant Public Prosecutors for their legal opinion at the pre-trial stage. As they are not responsible to the district police authorities, the legal advice is sometimes perfunctory and without depth. Further, the district police is totally in the dark as to the fate of cases pending in the courts. Even though there is a district level law officer (called District Attorney in some states), to supervise the work of the Assistant Public Prosecutors, he does not have the status and stature that the District Superintendent Police has. Whatever the reasons, as shown supra in Table 4, the conviction rate is falling over the years. Be that as it may, there is no immediate prospect of the Assistant Public Prosecutors being placed under the control of District Superintendent of Police. The Law Commission of India has also supported total separation between the police department and the prosecution agency. Even so, it would be desirable to make some institutional arrangement for proper co-ordination between the two agencies. The following suggestions are being made in this regard:

- (1) The District Superintendent of Police should periodically review the work of the Assistant Public Prosecutors;
- (2) He should be authorised to call for information from the prosecution agency regarding the status of a particular case pending in the court;
- (3) The prosecution agency should send periodical returns to the District Superintendent of Police regarding disposal of cases in the courts;
- (4) The District Superintendent of Police should send a note annually to the District Magistrate regarding the performance of each Assistant Public Prosecutor working in his district, which should be placed in his confidential annual report/dossier; and

- (5) On its part, the police department should make available certain facilities to the prosecutors such as housing, transport, and telephones.

The state government may provide for the above arrangement by issuing necessary orders. Such an arrangement would go a long way in bringing about co-ordination between the police and the prosecution agency.

XVII. ROLE OF PUBLIC PROSECUTORS IN NATIONAL CRIMINAL JUSTICE POLICY

The laws are enacted by the legislature, enforced by the police, and interpreted by the courts. Neither the police nor the prosecution agency has any say in the formulation of laws. The number of criminal laws is increasing by the day, but the quality of drafting shows definite deterioration and bristles with avoidable vagueness in construction. It is felt that a representative each of the police department and the prosecution agency should be associated with the formulation/drafting of laws. Their field experience would go a long way in improving the quality of laws enacted. Further, unlike the police, the prosecution agency does not have a national level body to watch its professional and service interests. This is due to the fact that prosecution agencies are organised at the state level and not at the national level. Such an apex should be constituted by the government.

XVIII. PROBLEMS OF PROSECUTION AND SUGGESTIONS FOR IMPROVEMENT

It bears repetition that the conviction percentage in India has been falling over the years. It was 64.8 per cent in 1961, and fell down to 42.9 per cent in 1994. The disposal of cases by the courts is also falling over the years. In 1994, it stood at 15.5

per cent of the total cases pending in the Courts in that year. This clearly demonstrates non-efficacy of the public justice system. The public prosecutors cannot escape the blame for this dismal state of affairs. It is proposed to highlight some of the problems being faced by the prosecution agency and also to suggest measures to improve the situation.

- (1) The first and the foremost problem is the poor quality of entrants in the prosecution agency. Undoubtedly, the entrant is a law graduate who qualifies through a state-level competitive exam, but the quality of law education is not uniform in the country and is not up to the mark in certain law colleges. Further, the earnings in the open market are much higher than what the government offers to the prosecutors. Resultantly, able and competent advocates shy away from joining the prosecution agency. The only way to remedy the situation is to make the job attractive by improving the salary structure and by providing other perks such as government housing, transport, telephone facilities and allowances such as non-practising allowance, rob allowance, and library allowance.
- (2) According to an estimate, 21.8 million cases are pending trial in the subordinate courts. The exact number of public prosecutors in the country is not known. Experience, however, shows that the public prosecutors are overburdened with cases and their number is not adequate enough to efficiently handle the cases entrusted to them. It is difficult to fix a norm as to the number of cases to be entrusted to a public prosecutor as it would depend on the nature of the case. Further, the performance of a public prosecutor is largely dependent on the performance of the presiding

officer and other collateral factors. While there is a case for increasing the number of criminal courts, there is equally a case for increasing the number of public prosecutors. As a norm, at least two public prosecutors of the appropriate level should be attached with each court.

- (3) The Assistant Public Prosecutors are recruited from the open market, and they are entrusted with the cases without any institutional training. They learn by experience, but that takes time and, in the meanwhile, the cases suffer. It is suggested that a national level training institution should be set up for the public prosecutors to impart them proper training. The duration of the training could be one and a half years. Six months could be earmarked for training in law; four months for attachment with a police station; four months for attachment with a competent magistrate; and the remaining four months for attachment with a senior and experienced public prosecutor. The proposed institutional training could be supplemented with refresher courses from time to time.
- (4) The pay scales of the Assistant Public Prosecutors are rather low. Assistant Public Prosecutors Grade-II are bracketed with a Sub Inspector of Police and Assistant Public Prosecutors Grade-I with an Inspector of Police. As they are law graduates and have lucrative avenues open to them in the market, it is necessary that their pay scales be improved and also they be given sumptuous allowances so as to make the job attractive. Similarly, the honorarium paid to the public prosecutors appearing in the Sessions Courts is grossly inadequate and this needs to be enhanced drastically.

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- (5) Another problem facing the public prosecutors is the lack of promotional avenues. As stated in the preceding paras, an Assistant Public Prosecutor Grade-II is promoted to Assistant Public Prosecutor Grade-I and thereafter as Assistant Director or Deputy Director, as the case may be. He can appear only in the Magisterial Courts and not in the Sessions Courts, where more heinous offences are tried. It would be expedient to integrate the two cadres and allow an Assistant Public Prosecutor to rise in the hierarchy; enabling him to appear not only in the Sessions Court, but even in the High Court, depending on his ability and calibre.
- (6) The investigations are generally conducted by low level police officers who are not proficient in laws, procedures and practical police working. The supervisory officers are, sometimes, deficient in closely monitoring the investigations. Such cases when sent up for trial, often result in acquittals and the blame comes on the public prosecutors. While, it is necessary to improve the quality of public prosecutions, it is clearly important to improve the quality of investigation. Special emphasis should be laid on using modern scientific methods of investigation. A closer rapport between the investigating agency and the prosecution agency should also improve the outcome of trials.
- (7) Delay in trials is one of the fundamental reasons for acquittals in criminal cases. Speedy trial is the fundamental right of the accused in Indian law. It is the paramount duty of the public prosecutor to ensure speedy trial for which he has to take along with him the court and also the defence lawyer. The police officers, sometimes, are responsible for delays in trials because of their lack of interest in trials as evidenced in non-production of witnesses in time and, occasional prevarication in appearing in the courts themselves to render evidence. A multi-disciplinary approach needs to be evolved to remedy this situation and no short-cut solutions are possible.
- (8) The prosecutors generally do not have good library facilities. Due to their rather inadequate pay scales, they are not in a position to spend on books. The libraries of the Bars are overcrowded and the books are not made available to the prosecutors. It would be advisable to set up exclusive libraries for the prosecutors in cities and bigger towns at government cost.
- (9) There is virtually no accountability on the part of the prosecution agency. The work of Assistant Public Prosecutors is supervised by the District Magistrate, who being the chief executive of the district, is saddled with multifarious responsibilities and has virtually no time to supervise their work. The public prosecutors appearing in the Sessions Courts, again, are responsible to the District Magistrate. Apart from the time constraint, the District Magistrate generally does not possess the legal acumen and knowledge to objectively assess the performance of each public prosecutor and cannot give thrust and impetus to the prosecution agency. The departmental superiors should play a dominant role in this regard. Norms for disposal of work should be fixed and non-performers should be penalised.

XIX. CONCLUSION

In the final analysis, a public prosecutor is an officer of the court and is required to render assistance to the court to arrive at a just and equitable decision. He is also required to be fair to the opposite party. His guiding principle should be not so much the letter of law, but the spirit of law based on prudence, common sense and equity. A society which is governed by the letter of law does not fully exploit its human potentialities. I conclude by quoting from Russian Nobel laureate Solzhenitsyn,

A society which is based upon the letter of law, and never reaches any higher is taking very scarce advantage of high level of human possibilities. The letter of the law is too cold to have any beneficial influences on society. Whenever the issue of life is woven in legalist relations, there is an atmosphere of moral mediocrity, paralysing man's noblest impulses.