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Role Of Public Prosecution In Criminal Trial: Indian Perspective

Samreen Hussain
Assistant professor
DR RML National Laws University
Lucknow

INTRODUCTION

The state is the fountainhead of law and justice. "Justice to all" being the main concern of the sovereign functions of the state all organs are engaged in dispensation and furtherance of justice. Prosecution being an essential part of the state plays a pivotal role in administration of justice. It is an important component of public justice system. The public prosecutor conducts the prosecution on behalf of the state. The prosecution commences with taking cognizance by the court of an alleged offence that continues till the ultimate verdict of the court of appeal is delivered in each case.

Indian system owes its origin to the office of Public Prosecutor in the U. K. In the Britain, the institution of Public Prosecution emerged to stop the practice of private prosecution. The private prosecution system was abused. There was vexatious litigation. Also the absence of a functionary to take care of public interest augmented development of Public prosecution.

The Criminal Procedure Code 1973 under its various provisions prescribes for a public prosecutor and its functions. It also helps to overcome situations involving apparent conflict between the authority of Govt. and rights of the individual. For 'the justice to be done and must also appear to have been done' is the essence of an open society with a limited form of government.

Public Prosecution under Cr.P.C

Ever since the enforcement of criminal law became state's concern, it also became the responsibility of the state to book the criminals and establish his guilt. For this a officer is appointed by the state for the collection of relevant facts and law, so to be presented before the judge who determine the guilt of under trial and awards him punishment. The presenting officer of the state is known as Public Prosecutor.¹ The Code of Criminal Procedure 1973 has created a separate cadre of Public Prosecutors, Additional Public Prosecutors and Assistant Public Prosecutors. Section 24 and 25 of Cr.P.C provide for the appointment of Public Prosecutors and Assistant Public Prosecutors. Further Section 301 and 302 deals with appearance of Public Prosecutors in the court to represent the State's case.

The Central or the State governments have authority under the Code of 1973 to appoint these various categories of the prosecutors in their areas, and/or the specific cases falling within their respective jurisdiction. The object of section 24 and 25 is to create an operative and independent prosecution agency free from interest of investigating agency. It does not create or regulate service conditions, this section deals with conduct of trials in Court of Magistrate, it specifies his duties.

¹ R. K. Raizada "The Role of Public Prosecution in Criminal Justice in India" 9 *Aligarh Law Journal*, 35 (1999).

NATURE AND MANNER OF APPOINTMENT

At the High Court level, the concerned, government can appoint Public Prosecutor or Additional Public Prosecutor only in consultation with² such High Court. The central government may also appoint for public prosecutor for conducting a case in any local or district area.³ It was held in a case⁴ that appointment of prosecutor is a compelling constitutional necessity, obligatory under code and cannot be refused on ground of financial constraint; Court cannot stop or stay criminal trial by refusing to appoint prosecutors. For the appointment of public prosecutor or additional public prosecutor at the district level, the district magistrate has to draw in consultation with a session judge a panel of names of advocates.⁵ The proper procedure in matter of appointment of Public Prosecutor would be that the District and Session Judge obtains bio-data from such of the advocates whom they consider to be fit for appointment as Public Prosecutor and send a panel of eligible candidate on such basis.⁶

The Supreme Court in *Srilekha Vidhyarti v State of U. P.*⁷ declared that appointment to such vital offices should not be allowed to be made by spoil system by the political parties.

But even today, the state governments distribute the office among the sympathizers of the political parties in power. And even after assuming office many of the incumbents still feel that they are to look after the interest of the ruling political parties.

ELIGIBILITY

Only the advocates of seven years of standing at the bar can be included in the panel or appointed as public prosecutor or additional public prosecutor at the High Courts.⁸ The Central or State government as the case may be, may also appoint a special Public Prosecutor for any case or class of cases, but such Public Prosecutor has to be an advocate of standing not less than ten years at the bar.⁹ However the requirement of seven or ten years practice as advocate can be waived in case of a person who for the same period has been working as pleader or serving as prosecuting officer known by any name before or after the commencement of the code.¹⁰ It was held in a case¹¹ State Govt. has no authority to relax requirement of Bar experience for appointment Additional Special Prosecutor (ASPP) by issuing notification and appoint ineligible ASPP, but, State Govt. would be at liberty to replace ineligible ASPP with eligible and competent ASPP, to assist Special Public Prosecutor.

On the other hand no qualification or procedure is required for the appointment of Assistant Public Prosecutor; any person who is not a police officer is eligible to be appointed.¹² In *Madhav v State*¹³ the court held that a public prosecutor is not an agent of police, but is a man associated with the holy mission of assisting the court in arriving at correct decision and it is his bounden duty to act fairly.

Legal qualification is not the prescribed essential for this post but the general practice is that a qualified legal practitioners or law graduates are appointed as assistant public prosecution. Similarly, though provision has been made that where no assistant public prosecutor is available for the purpose of any particular case, the district magistrate may appoint to that post any other person, may be a police officer not below the rank of inspector who has not taken part in the investigation of the case; it is hoped that resort to this provision will be minimum.¹⁴

Further in *Krishna Singh Kundu v. State of Haryana*¹⁵, the appointment of Senior Police Officer as head of prosecution was severely criticised by the judiciary.

The amendment in the code effected in 2005¹⁶ envisages the states to establish director of prosecution to establish Directorate of Prosecution consisting of a director of prosecution and deputy director of

² S.24(1) of Cr.P.C.

³ S.24(2) of Cr.P.C.

⁴ 2001 *Cr LJ* (NOC) 44.

⁵ S.24(4).

⁶ 1991 *Mad LJ* (Cri)630 (DB).

⁷ (1991) 1 *SCC* 212.

⁸ S. 24 (7).

⁹ S.24 (8).

¹⁰ S,24(9).

¹¹ 2006 (1) *MAD LW* (Cri) 122 (131).

¹² S 25 (1) (2).

¹³ (1977) 18 *Guj LR* 896.

¹⁴ Law commission 41st report 312 para 383.

¹⁵ 1989 *Cri LJ* 1309 (P&H).

¹⁶ See sec.25-A inserted by S.4 of CrPC (amendment) Act 2005.

prosecution. Advocates having ten years practice could be appointed Directors/Deputy Directors. They would function under the Home Department.

Director shall be in charge of directorate. All the prosecutors working at the High Court would work directly under the director. The prosecutors including, the Special Prosecutors functioning in the District Court and Add. Public Prosecutors would work under the Deputy Director who in turn would be subordinate to the Director. The powers and function of Director including the territorial jurisdiction of the Deputy Director may be specified by the State Govt. by notification. It is pertinent to note that Director and Deputy Director are appointed with the concurrence of chief justice.

This scheme is departure from the set-up originally envisaged under the Code of 1973. There is going to be active coordination and cooperation between the police and prosecution though, theoretically speaking it may give the impression of making the independence of the public prosecutor suspicious. These provisions are not applicable to A. G. when he Act as public prosecutor.¹⁷

APPEARANCE BEFORE THE COURT

Under Sec. 301(1) a public prosecutor or asst. public prosecutor could appear and conduct case without the permission of the Court, Sec. 301(2) lays down that the pleader engaged by the private person shall only act under the direction of Public Prosecutor or Asst. Public Prosecutor with the permission of the court.¹⁸ The S.301 (2) does not authorize a private party to conduct a case initiated on police report. In no court a pleader appointed by or on behalf of the complainant and not by or for the government is entitled to conduct the prosecution in a trial as a matter of right¹⁹ Thus, the pleader engaged by private party, say, the victim of the crime, could work only under the direction of the Assistant Public Prosecutor/ public Prosecutor that too with the permission of the court.²⁰

S.302 allows the inquiring or trying magistrate to permit the prosecution to be conducted by any person other than a police officer not below the rank of Inspector. It also specifically laid down that no person, other than the Advocate General or Government Advocate or Public Prosecutor or Assistant Public Prosecutor shall be entitled to prosecute without such permission. While engaging a police officer of the above rank, it should be ensured that he did not participate in the investigation of the offence being tried.

Role of Public Prosecution

UNDER INTERNATIONAL LAW AND GUIDELINES

There are various guidelines elaborating upon the role of Public prosecutors. The most important of these are “United Nations Guidelines on the Role of Prosecutors” (adopted by the United Nations during the United Nation Congress on the Prevention of Crime and Treatment of offences in Havana in 1990). “Recommendation 19 (2000) on the Role of Public Prosecution in the Criminal Justice System”, adopted by Council of Europe in 2000 and general standards entitled the “Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Procedure”, formulated by the International Association of Prosecutors in 1999.²¹

The UNG²² on the role of Prosecutor requires Prosecutors to perform their duties fairly, impartially, consistently, promoting human dignity, upholding Human Rights and avoiding all political, social, religious, racial, cultural, and sexual or any other kind of discrimination.²³ The use of prosecutorial discretion, when permitted in a particular jurisdiction must be exercised independently and should be free from political influence.²⁴ in order to ensure fairness and effectiveness of prosecution, Prosecutor must strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies and institution.²⁵ Further when prosecutor came into possession of evidence against the suspect that has been obtained through recourse to unlawful methods, inhuman or degrading treatment or punishment, or

¹⁷ K. N. Chandrasekharan Pillai R. V. Kelkar's *Lectures on Criminal Procedure*, 12 (Eastern Book Company, Lucknow, 4th edn 2006)

¹⁸ Sec.301 of CrPC.

¹⁹ Madhu Sudan Tripathi “the role of Public Prosecution in Administration of Criminal Justice “ *Cri LJ* 114 (1997).

²⁰ K. N. Chandrasekharan Pillai “Public Prosecution In India” *C. U. L. R.*, 383 (1998).

²¹ Sameera Singh “Role Of Public Prosecutor as defined by International Guidelines and International and National Jurisprudence” (2008) PL. Feb 9.

²² United Nations Guidelines.

²³ Art, 12 and 13(a) of UNG on the role of prosecutors cited in *supra* note 21.

²⁴ Art.21 of Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Procedure cited in *supra* note 21.

²⁵ Art.20 of UNG on the role of prosecutors cited in *supra* note 21.

other abuses of human rights, they are under the duty to refuse usage of such evidence.²⁶ The prosecutor must act objectively and also remain unaffected by individual or sectional interest and public or media pressure. They must have regard only to public interest.²⁷

ROLE OF PUBLIC PROSECUTOR IN OTHER COUNTRIES

The functions of prosecution are essentially same in England and United States. In both countries prosecution have three major tasks to perform: first they must make a decision on whether or not to bring criminal charges against an alleged offender, second, they must put the accusations into proper form and place it before the proper judicial authorities; and third, they must represent to the court evidence tending to establish the guilt of accused. In both countries the prosecution is, theoretically, on an equal footing with the defence, with each side presenting its evidence to the court, and the court acting as an impartial umpire in reaching a decision based solely on the evidence presented to it by the parties.²⁸

In *Harry Berger v United States of America*²⁹ Mr. Justice Sutherland said that:

“the United State Attorney is the representative not of an ordinary party to controversy, but for a sovereignty whose obligation to govern impartiality is as compelling as its obligation to govern at all; and whose interest therefore in criminal prosecution is not that it shall win a case, but that justice shall be done.”

The Supreme Court of Canada has also elaborated upon role of prosecutor in *R v Boucher* by saying that:

“It cannot be over-emphasized that the purpose of criminal prosecution is not to obtain a conviction; it is to lay before jury what the Crown considers to be relevant to what is alleged to be a crime.”

In continental countries there is common service for investigating Magistrate and Procurators. They take care of investigation of crimes as well as filling of prosecution proceedings. Like in France the Procurer is responsible for reviewing the evidence and determining whether or not pursues a prosecution. The procurer exercises a supervisory function over the police investigation. As a magistrate, she plays a more neutral and wide ranging role than that of a simple prosecutor: she is a judicial officer, responsible for directing the police investigation and overseeing the detention of suspects in police custody, including the protection of their due process right.³⁰

According to New Zealand law society rules of Professional Conduct although the Prosecutor is an advocate, he or she must prosecute “dispassionately and with scrupulous fairness”. The New Zealand Court have explained that the Crown’s duty is to present its case fairly and completely, and to be as firm as the circumstances warrant, but the Crown must never “struggle for a conviction”³¹

The Canadian jurisprudence has also interpreted the role of a Prosecutor by laying down that a Prosecutor’s responsibilities are public in nature. As a Prosecutor and public representative, Crown counsel’s demeanour and actions should be fair, dispassionate and moderate, show no signs of partisanship³², open to the possibility of the innocence of the accused person and avoid “tunnel vision”. It is especially important that Crown counsel avoid personalising their role in Court. The Canadian Supreme Court has further very strongly held that although Crown counsel work closely with the police, the separation between police and Crown roles is of fundamental importance to the proper administration of justice³³

ROLE OF PUBLIC PROSECUTOR IN INDIA

The Code does not specifically mention about the spirit in which the duties of the prosecutor are to be discharged. Probably it might have been thought to be too obvious to require any specific mention in the code. Whatever be the reason the principles in this regard are well-

settled. The object of the criminal trial is to find out the truth and to determine the guilt and innocence of the accused³⁴. In the case of *Ghirrao v Emperor*³⁵ it was held that the duty of the prosecutor in such a trial is not merely to secure conviction at all costs but to place before the court whatever it be a favour of or against the

²⁶ Art.16 of UNG on the role of prosecutors cited in *supra* note 21.

²⁷ Art.3 (d) of Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Procedure cited in *supra* note 21.

²⁸ Delmar Karlen *Anglo-American Criminal Justice*, 19 (Oxford Clarendon Press, London, 1st edn, 1967).

²⁹ (1934) 295 US 78-79:79 L ED1314.

³⁰ Jacqueline Hodgson *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France*, 75 (Oxford and Portland, Oregon, 1st edn 2005).

³¹ *Supra* note 20.

³² *R v Henderson* (1999) 44 OR (3d) 628 (CA).

³³ *R v Regan* (2002) 1 SCR 297 (SCC).

³⁴ K. N. Chandrasekharan Pillai, *R. V. Kelkar’s Criminal Procedure*, 27 (Eastern Book Company, Lucknow, 5th edn 2008).

³⁵ AIR 2004 SC 261

accused, and to leave the court to decide upon all such evidence- whether the accused was or was not guilty of the offence alleged.

It should be noted that despite the fact that the public prosecutor is appointed by the state, her/his sole aim is not to seek a conviction.

The Indian courts have interpreted the role of prosecutor as “minister of justice” who should place before the court all evidence in her/his possession, whether in favour or against the accused. The Indian judiciary has interpreted the role, responsibilities and duties of prosecutions as follows:

An ideal Prosecutor must consider herself as agent of justice and she should not by statement aggravate the case against the accused. In *A. Mohambaram v. M. A. Jayavelu*³⁶ the ideal Public Prosecutor is not concerned with securing conviction, or with satisfying departments of the State Govt. with which she is in contact. She must consider herself as agent of justice. In *Aziz v State of Kerala*³⁷ every counsel appearing in a case before the court is expected to be fair and truthful. He must of course, champion the cause of his client as efficiently and effectively as possible, but fairly truthfully. He is not expected to be impartial but only fair and truthful. Further in *Kashinath Dinka*³⁸ case the court held that only aim of public prosecutor should be aid to court in securing truth. A public prosecutor should avoid any proceeding likely to intimidate or unduly influence witness on either side.

A Public Prosecutor should place before the court whatever evidence is in her possession and should discharge her functions fearlessly and with responsibility. In *Shakila Abdul Gafar Khan v Vasant Raghunath Dhoble*³⁹ court said the duty of public prosecutor to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

In the case of *Kunja Subhudhi v Emperor*⁴⁰ the Patna High Court held that purpose of Criminal trial is not to support a given theory at all cost but to investigate the offence to determine the fault of innocence of the accused and the duty of the prosecutor is to represent people and not police.

*Banti alias Guddu v State of Maharashtra*⁴¹ has held that public prosecutor's duty is to produce witnesses from the latter category, also subject to his discretion to limit to one or more among them.... But if the public prosecutor gets reliable information that any witness would not support the prosecution he is free to state in court about that fact and skip the witness from being examined as prosecution witness.

The duty of Public Prosecutor is to represent the state and not the police. The Punjab & Haryana High Court in *Krishnan Singh Kundu v. State of Haryana*⁴² has ruled that the very idea of appointing a police officer to be in charge of a prosecution agency is abhorrent to the letter and spirit of sections 24 and 25 of the Code. In the same vein the ruling from the Supreme Court in *S. B. Sahana v. State of Maharashtra*⁴³ found that irrespective of the executive or judicial nature of the office of the public prosecutor, it is certain that one expects impartiality and fairness from it in criminal prosecution. The Supreme Court in *Mukul Dalal v. Union of India*⁴⁴ also categorically ruled that the office of the public prosecutor is a public one and the primacy given to the public prosecutor under the se of the court has a social purpose. But the malpractice of some public prosecutors has eroded this value and purpose.

A Public Prosecutor cannot appear on behalf of the accused. No fair trial when the Prosecutor acts in a manner as if he was defending the accused It is inconsistent with the ethics of legal profession and fair play in the administration of justice for the Public Prosecutor to appear on behalf of the accused.⁴⁵ It is the Public Prosecutors' duty to present the truth before the court. Fair trial means a trial before an impartial Judge, a fair Prosecutor and atmosphere of judicial calm. The Prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system.⁴⁶

WITHDRAWAL FROM PROSECUTION

Another area of public prosecutor's role which has caught the public eye and sharp judicial focus, relates to withdrawal from prosecution the case against the accused. The withdrawal of prosecution is given in S.321 Cr. P. C. which is as follows:

³⁶ 1970 *Cri.LJ* 241 at 245.

³⁷ 1984 *Cri. LJ* 1059 at 1060.

³⁸ (1871) 8 BHC 126, 153.

³⁹ (2003) 7 SCC 749

⁴⁰ (1929) 30 *Cri.LJ* 675.

⁴¹ AIR 2004 SC 261

⁴² 1989 *Cri. LJ* 1309 (P&H)]

⁴³ [(1995) SCC (Cri) 787]

⁴⁴ (1988) 3 SCC 144

⁴⁵ *Sunil kumar Pal v Phota Sheikh* (1984) 4 SCC533

⁴⁶ *Zahira. H. Sheikh v State of Gujarat* (2004) 4SCC 158.

“the Public Prosecutor or Asst. Public Prosecutor in charge of a case may with the consent of the court at any time before judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of anyone or more of the offences for which he is tried; and, upon such withdrawal –

- (a) if it is made before a charge has been framed, the accused shall be discharged on respect of such offences;
- (b) if it is made after the charge has been made, or under this Code no charge is required in respect of such offence or offences:

Provided that where such offence-

- (a) where against any law relating to matter which the executive power of the union extends, or
- (b) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946, or
- (c) involved misappropriation or destruction of, or damage to any property belonging to the central government, or
- (d) was committed by a person in the service of central government while acting or purporting to act in the discharge of his official duty.”⁴⁷

The section provides for “withdrawal from prosecution” and not the “withdrawal of the prosecution”. Withdrawal from prosecution means retiring or stepping back or retracting from prosecution, in other words, withdrawal of appearance from the prosecution or refraining from conducting or proceeding with the prosecution. The only limitation is the consent of the court.

The Supreme Court’s approach towards political motivated withdrawal of prosecution by state governments has been very progressive. It gave new meaning to the traditional doctrine of locus standi and allowed even political opponents too fight out cases in the Court.⁴⁸ In *V. S. Achutanandan v R. Balakrishnan Pillai*⁴⁹, the Supreme Court allowed the Petitioner’s challenge to the order of withdrawal from prosecution of the respondent, a former minister, was permitted by the Kerala High Court to be withdrawn.

The court in the case of *State of Bihar v Ram Naresh*⁵⁰ held that the decision to withdraw or not a case is absolutely that of Public Prosecutor and nobody else.

The Apex Court in the case of *Balwant Singh v State of Bihar*⁵¹ highlighted –

“In deed, it is not proper to have public prosecutor ordered for withdrawal of prosecution. It is entirely within the discretion of the public prosecutor. It may be open to the District Magistrate to bring to the notice of public prosecutor materials and suggest to him to consider, whether the prosecution should be withdrawn or not.” Hon’ble Justice Y. R. Krishna Iyer and his companion judge, further observed

“The statutory responsibilities of public prosecutor are non-negotiable and cannot be bartered away in favour of those, who may be above him on administrative side. The Criminal Procedure Code is the only master of the public prosecutor and he has to guide himself, with reference to Criminal Procedure Code only”

As has already been discussed it has been the consistent policy of the Appellate courts in the Country that it is the prerogative of public prosecutor to recommend the withdrawal from Prosecution.⁵² In *State of Punjab v Union of India*⁵³ it was ruled by the Punjab and Haryana High Court that Public Prosecutor could withdraw from Prosecution not only on the ground of paucity of evidence but also in order to further the broad ends of public justice, and such broad ends of public justice may include appropriate social economic and political purposes.

In *Rajendra Kumar Jain V State through Special Police Establishment*⁵⁴, the apex court while considering the scope of Section 321 of Cr. P. C. and the rights of public prosecutor has laid down following proposition: Under the scheme of prosecution of an offender of serious offence is primarily the responsibility of the executive.

- (i) The withdrawal of prosecution is executive function of the public prosecutor.
- (ii) The discretion of withdrawal is of public prosecutor and no one else.
- (iii) The government can suggest that he can withdrew but no one can compel him to do so
- (iv) The public prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other grounds as well in order to further broad ends of public justice, public order and

⁴⁷ Criminal procedure code 1973

⁴⁸ K. N. Chandersheran Pillai “Public Prosecution in India” *JILI* 50 (4) 637 (2008).

⁴⁹ (1944) 4 SCC 299.

⁵⁰ AIR. 1957 S. C. 389. Also see *Amar Narain v State of Rajasthan* AIR 1952 Raj.42

⁵¹ AIR 1977 SC 2265.

⁵² *Supra Note* at 386.

⁵³ 1987 Cr. L. J. 151 (SC).

⁵⁴ AIR 1980 SC 1510.

peace. The broad end of public justice will certainly include appropriate social, economic and, political purposes.

- (v) The Court performs a supervisory function in granting its consent to the withdrawal.
- vi) The court duty is not to re appreciate the grounds, which led public prosecution to request the withdrawal from the prosecution but to consider whether the public prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous conditions.

In *Abdul Karim v State of Karnataka*, the Court held, “criminal cases cannot be withdrawn from prosecution to concede illegal demands of deal.”

Further in *Sheonandan Paswan v State of Bihar*⁵⁵, the Court came down in upholding the withdrawal of criminal cases against another political high-up in the famous case of Dr. Jagannath Misra, the Chief Minister of Bihar. He was allegedly involved in the cases of cheating, forgery, criminal conspiracy, abetment etc. The prosecution was launched in 1979, when he was not in power. In the meantime he was re-elected as Chief Minister. At this instance the State Government took a decision to withdraw from prosecution for reason of state and public policy. The withdrawal was challenged by the petitioner. The Supreme Court rejected the petition against withdrawal, inter alia, as it did not consider it proper to “send back the case to the Special Judge for trial assuming and only assuming that there is Prima Facie case for trial for the following reason:

- (i) The occurrence took place as early as 1970, it is already more than 12 years.
- (ii) Accused is Chief Minister in his Office. Knowing the human nature it is hardly expected that witness most of whom are official will come forward and depose against a Chief Minister.
- (iii) The prosecution is pending on several dates but the public prosecutor appointed by the earlier government did not take any interest in case at all. Remand for trial, if made, will be mere exercise in futility; it will be nothing but an abuse of process of the court to remand the case to the trial court.

Without commenting more on the above observation suffice it to note down to earth approach of the majority judge of the Supreme Court in this case, in contrast to sky-high expectation of the earlier courts from the public prosecutor to maintain freedom of his discretionary authority in the interest of justice even at the risk of losing his job. Also in the case of *Nandini Satpathy*⁵⁶, the court ruled that the Public prosecutor can withdraw a prosecution at any stage and that only requirement is consent of the Court. Even when reliable evidence has been adduced to prove the charges, the public prosecutor can seek the consent of the court to withdraw the prosecution.

But the Madras High Court in the case of *State of Tamil Nadu v Ganesan*⁵⁷ when faced with the problem where the same office of public prosecutor which got the criminal case withdrawn with permission of the Court, on change of government move to court to launch re-prosecution. But the Court did not permit.

Therefore it should be noted down that the launching of criminal prosecution against any person is not an insignificant matter. The losses and trauma suffered by the defendant in the process cannot be set right even if ultimately he is discharged or acquitted either as result of full trial or because of withdrawn from the prosecution. On the other hand, the criminal justice system represents the authority and sovereignty of the State which as the guarantor of public peace and maintenance of law and order, has almost the exclusive jurisdiction to dispense criminal justice to people. Any fiddling with the criminal law enforcement process or its any misuse for the ulterior purposes such as political and vexatious prosecution or oppression not only bring disrepute to power operating behind such activities but also shakes the confidence of the people in the system itself.⁵⁸

NATURE OF OFFICE

The Prosecutor's office in the Indian criminal justice system, at times appears to be executive. In certain context it may appears to be quasi-judicial. If decisions to prosecute and decision to withdraw a prosecution are to be taken by public prosecutor we may have no difficulty in categorizing them as quasi-judicial. But in India, in effect, the decision is usually taken by the magistrate rather than by the Public Prosecutor.⁵⁹ The principle laid down by the Supreme Court in *R. K. Jain v state*⁶⁰ quoting *Shamsher Singh v State of Punjab*⁶¹ as regards the meaning and content of executive power may tend to treat public prosecutor's office as

⁵⁵ AIR 1983 SC194.

⁵⁶ 1987 Cr. L. J. 778

⁵⁷ 199 Cr. L. J.(Mad) 3849.

⁵⁸ *Supra* note 2 at 47.

⁵⁹ *Supra* note 48.

⁶⁰ AIR 1980 SC1510.

⁶¹ (1974) 2 SCC 831.

executive. However it is strongly felt that it is not purely executive . it partakes judicial character and as such assumes a lot importance in a democracy.⁶² According to R. K. Raizada,⁶³ in view of the far reaching legal and social implication of his roles both at criminal trial and withdrawal from prosecution proceedings, the court have time and again emphasized that the public prosecutor though an officer of the state, is more a court officer.

According to K. N. C. Pillai⁶⁴ the very establishment of this office presupposes the understanding that one cannot afford to permit private prosecution as it may result in utter chaos particular in the present political setup.

Problems of Prosecution

The failure of public prosecution occurs due to variety of reasons: the foremost reason can be the lapses committed by the investigation agencies. The infirmities at these stages become evident at the trial and adversely effect it. The investigation is generally conducted by low level police officers who are not proficient in laws procedure and practical police working. The supervisory officers are deficient in closely monitoring the investigation.⁶⁵ The infirmities identified in the cases are- defective recording of F. I. R. unreasonable delay I issuing copy, inconsistency in the statement of witnesses, improper and careless preparation of panchnama etc.,⁶⁶

Another problem is the poor quality of entrants in prosecution agency. Further the earning in the open market is higher than what the Govt, offers to the prosecutors. Resuktantly competent advocate shy away from joining the prosecution agency.⁶⁷

Thirdly the public prosecutors are overburdened with cases and number is not efficient enough to handle the case. Further the performance of public prosecutor is largely dependent upon the presiding officer and other collateral factors.

Fourthly the pay scales are rather low and there is problem of promotion in the cases of asst, public prosecutor. There is dire need to improve the pay scale so as to make the job attractive and to have quality prosecutors. This enhancement has to be drastic.⁶⁸

Fifthly the prosecutors generally do not have good library facilities, due to their rather inadequate pay scales.

Lastly there is virtually no accountability on the part of prosecution agency. Though through the 2005 amendment, efforts have been made to bring transparency in the prosecution system yet there is need for more.

Conclusion

In the final analysis it can be said that In Indian criminal justice system the prosecution agency though play a very important role, has been always shrouded with problems and controversies. It should always be kept in mind that the criminal justice system is most sensitive area of social well being. An unjust conviction or harmful punishment is as bad for the peace and progress of society as an escape from conviction or a lenient punishment. Thus in order to achieve just and fair criminal administration system the public prosecutor plays a very significant role. In order to understand the role of public prosecutor it is necessary to understand that the sole aim of prosecution is not conviction but to bring out the truth and to do justice between the parties. Though a public prosecutor is a government servant, he has to be independent and fair not only on account of being a public executive but because he belongs to the honorable profession of law the ethics of which demand him to have these qualities.

However, with the growing shift in society on the emphasis toward the politico-administrative expediency, there appears to be a change in judicial approach too regarding the position and role of public prosecutor. The judiciary, which mostly held the public prosecutor as, an assistant to justice clothed as a “trustee” of “the public trust of public power”. A public prosecutor is an officer of 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, equity.

⁶² *Supra* note 48 at 637.

⁶³ *Supra* note 2 at 47.

⁶⁴ *Supra* note 48.

⁶⁵ M. L. Sharma “Role and Function Of Prosecution In Criminal Justice” C. B. I. Bulletin, 9 (1997).

⁶⁶ *Supra* note 2 at 47.

⁶⁷ *Supra* note 65 at 8.

⁶⁸ *Ibid.*

It can be concluded 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, paralyzing man’s noblest impulses.”

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