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# **Public Prosecution in India**

**Authored By-Rahul Ghosh & Amrita Dimri**

## **Outline of the Paper**

In this paper we have presented research about the fundamental structure of public prosecution in India. We have analysed the efficacy of the justice system, and the role of the prosecution during investigation and trials. We have discussed the concept of speedy trial and that of plea bargain. Lastly we have discussed the various problems in the prosecution and a few ways in which it can be resolved.

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## Introduction

India is a Union of States and it is governed by a written constitution and came into force on the 26th of November 1949. At present India has 28 States and 8 Union Territories. Despite being one of the most diverse countries in the world in terms of language, culture and heritage, India has a judicial system which follows the Anglo-Saxon common law structure. As per article 246 of the Indian Constitution, we know that there are three lists which have been enumerated in the 7th Schedule of the Constitution.

The first list is also referred to as the Union list. It essentially comprises of all the subjects on which only the Parliament has the power to make laws. The second list is the one which is called the State List which lays down the matters in relation to which the State has the power to make laws. The third list is known as the Concurrent List which contains the subjects on which both the Parliament and the Legislature of the State.

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In case there is a strife or inconsistency between the laws made by the State and the Parliament, the law made by the Centre shall prevail.

It is important to note here that subjects like Police and Public Order are included in Entry 1 and Entry 2 of the State List respectively. On the other hand, criminal laws and the criminal procedure have been mentioned in the third list that is the Concurrent List.

Therefore, both the Indian Parliament and state legislatures can exercise powers to make laws related to criminal matters irrespective of the fact whether they are substantive or procedural in nature. The states also hold the power to enact laws related to local and special subjects. Consequentially, under the Constitutional framework, the basic criminal laws such as the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act, have been enacted by the Parliament. Also, some states within India have enacted their own police acts, although the Police Act of 1861 is the basic statutory law governing the functioning of the police forces of various states.

# Understanding The Judicial Structure Of A District And An Overview Of The Criminal Justice System In India

In each state there are a number of districts. Each district is governed by the District Magistrate, the District Superintendent of Police and the District Judge, and each one of them have their well assigned duties. While the District Magistrate is responsible for the development of the district, the District Superintendent of Police is accountable when it comes to issues related to the maintenance of law and order in the State. The district judge is the highest judicial authority within the state. Thus, this is the administrative structure of each district which itself is the smallest unit of administration.

The criminal justice system within India is composed of four components, namely the police, the judiciary, the prosecution and the correctional services. The police force is responsible for registering cases and carrying out their investigation as per the rules and regulations laid down by the Code of Criminal Procedure. The Central Bureau of Investigation is the primary investigation agency of the Central Government, and it comprises of a number of departments working under it like the Special Crime Branch, the Enforcement Directorate and so on and so forth. It can carry out the investigation of matters falling under the judicial ambit of the states with the prior consent of the state governments.

The cases instituted by the state police and the Central Bureau of Investigation are adjudged by the courts. At the district level there is the Court of District and Sessions Judge, which tries offences punishable with imprisonment of more than 7 years. The Code particularly specifies offences which are exclusively triable by the Sessions Court.

In a state the highest Court is the High Court and the laws laid down by it are binding on all the courts subordinate to it in the State. Similarly in a country the highest court is the Supreme Court and the laws framed by it are binding on all the courts of the country.

It falls within the duties of the state to prosecute cases in the courts of law. Cadres of public prosecutors have been organized by the state governments to prosecute cases at various levels in the subordinate courts. The final component is the criminal justice system. Both the prison and the correctional services fall under the control of the correctional services.

## **Structure Of Public Prosecution In India**

In order to comprehend the constitution and the structure of the prosecution wing, it is important to understand as per the constitutional scheme of our country, police is a state subject. The basic unit of investigation of the police force is the police station. After the completion of the investigation, chargesheets are filed in the courts concerned as per the provisions of the Code of Criminal Procedure. The cases are prosecuted by the public prosecutors appointed by the state governments. Before the Code of Criminal Procedure was brought into action in 1973, the public prosecutors were typically associated with the police department and were accountable to the District Superintendent of Police. Once the Code of Criminal Procedure was introduced the prosecution wing was completely separated from the police department.

Now, it is headed by an officer known as the Director of Prosecutions, who is either a police officer of considerable seniority or a judicial officer of the rank of District and Sessions Judge. These public prosecutors appear in the Courts of Magistrates, and it is the Director of Prosecutions who is held responsible for the prosecution of cases in Magisterial Courts. In Sessions Court the cases are prosecuted by the Director of Prosecution, who also holds the responsibility of preparing a panel of appropriate lawyers in consultation with the Sessions Judge, who in turn are appointed as public prosecutors.

The state government appoints public prosecutors out of the panel prepared by the District Magistrate and the Sessions Judge. However, it is essential to observe here that public prosecutors in the Sessions Court are not bound to follow the directives of the Director of Prosecutions.

The state government also appoints public prosecutors in the High Court. The appointments are made in association with the High Court in accordance to Section 24 of the Code. The Senior most law officer in each state is referred to as the Advocate General who happens to be a constitutional authority.

The governor of the State appoints him as per the provisions of Article 165. He holds the power to address any court in the State. Section 24 of the Code of Criminal Procedure clearly states that the central government can exercise its power to appoint one or more public prosecutors in the High Court or in the District Court. Under Article 76 of the Indian Constitution, the Attorney General is a presidential appointee and he can address any court in the country.

The assistant public prosecutors are recruited by the government of the State through the State Public Service Commission Examination, after they have completed their graduation in law. After gradual promotions, they reach the rank of additional director of prosecution, although they don't appear in the Sessions Court. As mentioned earlier, the District Judge in consultation with the Sessions Judge creates a panel of lawyers with an experience which should not be less than 7 years. They are appointed by the State Governments and they argue the case on behalf of the State in the Sessions Court. Their appointments however, are subjected to a tenure and they do not serve as permanent servicemen.

Efforts are now being undertaken to carry out the integration of the two cadres of public prosecutors.

The primary goal of this initiative is to upgrade the chances of granting promotions to the law officers who join at the junior most level, so that there is no need to recruit lawyers from the open market as public prosecutors to plead cases in the Sessions Court.

## **The Central Bureau Of Investigation & Public Prosecution In India**

The Central Bureau of Investigation has a legal division, and this department carries out an important role as an advisor and prosecutor in the organization. This branch is led by a Legal Advisor who is appointed by the Ministry of Law of the central government. He receives assistance from a number of lawyers officers, serving as permanent servicemen of the Central Bureau of Investigation.

This involves the Additional Legal Advisor, the Deputy Legal Advisor, Senior and Assistant Public Prosecutors. These officers provide their legal guidance to the officers investigating the case during the course of investigation with regard to the feasibility of the concerned prosecutions. Such legal counselling is collected at least three levels before the result of a case is decided. Once the decision regarding the prosecution of the case has been taken, the prosecution itself is carried out by the law officers in the court of law. Higher the level of the court, higher the rank of the public prosecutor who is given the responsibility of carrying out the prosecution of that case.

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## **Analysing The Efficacy Of The Justice System**

If the statistics are put under observation, the number of cases concluded from investigation on average is around eighty percent every year. This means that around twenty percent of the cases registered by the police in a specific year remain in a non-finalized status by the end of that particular year. This is definitely a good indication as this shows that lesser false registrations and higher police disposals are taking place.

The charge-sheets filed by the police acts as a guiding light for the trial courts. Efficiency of the criminal justice system is heavily dependent on the speedy and conclusive completion of trials and higher conviction rates. If this would have been the other way round, it would have been an indication of the systematic failure at a number of stages.

The courts are constituted by the state government under the Code and cases are prosecuted by public prosecutors recruited by either the state or the central government. If one has to analyze the efficiency of the justice system it is essential to understand that all the elements of the public justice system are interdependent, and even the sternest measures undertaken by the police force with respect to the process of law enforcement will not give fruitful results unless it is given due support by the judicial department.

It is indeed true that the time period for which cases remain pending has definitely increased with a rate of growth rate more than ten percent per year. To decipher this data, it is necessary to understand the functioning of the prosecution system from two perspectives.

In the states of Tamil Nadu, Madhya Pradesh, Uttar Pradesh, Andhra Pradesh, Delhi, Maharashtra, Jammu and Kashmir, Bihar, and Kerala, the prosecution wing functions under the Home Department. The conviction percentage in these states for the last seven years ranges from sixty-seven per cent in Tamil Nadu to seventeen per cent in Kerala. In other states, the average percentage of conviction for seven years, again, ranges from seventy per cent in Meghalaya to twenty per cent in Himachal Pradesh. Here, the prosecution wing functions under the Department of Law. Therefore, it is actually not possible to deduce which mode of the prosecution wing is functioning more competently.

## **Role Of Public Prosecution**

In the words of Padmashri N.R Madhava Menon, *The objective of the prosecution proceedings is to protect the innocent and seek conviction of the guilty. His duty is to place all evidence before the court, irrespective of whether it goes against or is likely to help the accused.*<sup>1</sup>

Thus it is the prosecutor's duty to ensure a fair trial. It's his job to make sure that the law is followed in the whole procedure of arrest to investigation to trial, and regulate the hearings so that no injustice takes place.

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.

During investigations:

Throughout the investigation process his role is only advisory in nature. The public prosecutor does have a very important role to play during the course of an investigation. It is his duty to appear in court and gather the arrest warrant against the accused.

<sup>1</sup> <https://www.youthforequality.in/2008/07/17/strengthening-the-prosecution-system-n-r-madhava-menon/>

The court hands over the requisite search warrant to the public prosecutor, so that he can conduct the search of specific premises for the purpose of collecting evidence. As per section 82, if it so happens that an accused cannot be traced, the public prosecutor begins proceedings in the court in order to declare the person as an offender.

He also states his pointers in the police file regarding the feasibility of the prosecution.

## **During Trials:**

The role of the prosecutor begins after the investigation agency puts the case before the court. A prosecutor has no authority to decide if a case is to be taken up for trial but if it is sent up it's his duty to prosecute successfully.

As it is believed that when a crime takes place it's not just the victim who is affected but the entire society that is affected by such conduct in various ways the prosecution represents a state and not a particular individual (the victim).

His role is to open up the case entirely before the court. According to the guidelines laid out for prosecutors, they are required to place whatever evidence is in her/his possession before the court.

## **Withdrawal Of A Case:**

Under Sec. 321 of Cr.P.C the prosecutor can withdraw a case at any time before the judgement is pronounced. In practice this withdrawal is done in those cases where instructions have been received from the government. The Prosecutor may also withdraw that case which is inherently weak in evidence and there is no prospect of its success and further Prosecution of which is a sheer wastage of Court's time.

## **Burden Of Proof:**

The burden of proof lies entirely on the prosecution. It rests on them to establish guilt against the accused beyond a reasonable iota of doubt. To accomplish this the prosecutor uses the oral, documented and forensic evidence at his disposal.

The conviction rate in India is very low especially in IPC cases due to the high bar set for the standard of proof.

All in all, prosecutors have a huge role to play. They have to prove facts, prove circumstances, draw inferences and convince the court that the arraigned accused is guilty of the offences with which he has been charged, all the while maintaining an atmosphere of judicial nonchalance.

*Speedy Trial:*

Article 21 of the Indian Constitution makes speedy trial a fundamental right. It is common knowledge that trials in India can take years to be concluded. A prosecutor as an officer of the court can act as a catalyst to speed up this process thereby ensuring a speedy trial. At his end he can see to it that an adequate number of witnesses are called at each hearing and none go back unexamined. He can ensure that documents are put up to the court in time, and ensure that police officers who avoid the court appear according to the schedule fixed by the court.

A good working relationship with the court may help in achieving this end. Conon prati ghante with the defense counsel won't be of much benefit to the prosecutor as a delay in trial is beneficial for him. A delay would amount to more hearing thereby resulting in an increase in his earnings. This may seem unethical but it is the ground reality.

*Plea Bargaining:*

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Until 2006 plea bargaining was not a part of Indian law. Though there has been a provision in the Code of Criminal Procedure for an accused to plead 'guilty' instead of claiming the right to a full trial, it is not the same as plea bargaining.

Under plea bargaining an arrangement is formed between the prosecutor and the defendant under which the defendant pleads guilty to a lesser charge for a more lenient sentence or an agreement to drop the other charges.

The Law Commission of India, in its 142nd Report , mooted the idea of "concessional treatment" of those who plead guilty on their own volition, but was careful to underscore that it would not involve any plea bargaining or "haggling" with the prosecution.

Plea bargaining was introduced in 2006 as part of a set of amendments to the CrPC as Chapter XXI-A , containing Sections 265A to 265L.<sup>2</sup>

In India criminal statutes list down the various sentences provided for varie offences. The gravest penalty being that of death or life imprisonment. Presently, judges in India can only award the death sentence in the ‘rarest of rare’ cases.

After the accused has been held guilty by the court the defense counsel and the prosecutor in charge of the case are called upon to argue on the quantum of punishment.

The courts in India aim to individualise 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 needs to keep in mind these circumstances while arguing for adequate punishment. The gravity of the crime and facts and circumstances of the case also need to be taken into account.

In an instance, where the prosecutor feels that the sentence passed by the Court against any convict is inadequate or is disproportionate to the facts and circumstances of the case and the punishment attached to the offence he can file an appeal for enhancement of sentence as per the procedure laid out.<sup>3</sup>

Under the Probation of Offenders Act, the courts have the authority to release convicts on probation in certain circumstances (offenses). It can be so in cases where the punishment is not more than two years. The prosecutor is required to guide the court in this regard.

<sup>2</sup><https://www.thehindu.com/news/national/the-hindu-explains-what-is-plea-bargaining-and-how-does-it-work/article32126364.ece>

<sup>3</sup> <http://www.dppodisha.nic.in/?q=node/18>

Under Sec 360 of the Code the court can use its discretion to release convicts under 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.

Circumstances like the convicts age, character, whether he is a previous convict or not are also to be taken into consideration by the court.

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

In all these matters, the prosecutor is required to help the court in arriving at a fair and judicious finding.

## **Problems In Public Prosecution And Solutions**

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Over time many inadequacies have come to light with respect to the working of the public prosecution.

In its March 23 report The Committee on Reforms of Criminal Justice System in its report identified some weaknesses in the prosecution machinery and its functioning.

They are discussed here along with some solutions as proposed by N.R. Madhava Menon and a few others.

There is a major problem of insufficient coordination between the prosecution and the police department. The same was highlighted in surveys conducted post the 2003 report.

As mentioned earlier before the 1973 report the prosecutors appearing before the court of magistrates functioned under the police department .

They scrutinised police papers and advised police on legal matters. The prosecutor was able to closely monitor the proceedings of a case thereby reducing unnecessary and avoidable delays.

The 1973 amendment led to the decline of police-prosecution coordination. The 14th Report of the Law Commission observed that it would not be possible for PPs to exhibit the degree of detachment necessary for fair prosecution if they were part of the police organisation. As a consequence the prosecution wing was separated from the Police Department and placed under a Directorate of Prosecution (Sections 24 and 25 Cr.PC).<sup>4</sup>

Most police officers, judges, prosecutors etc. are of the belief that the fall in conviction is a direct consequence of the lack of coordination between the two departments.

Apart from delays lack of coordination has also resulted in a high disposal rate. The police officials also do not apprise the prosecutor regarding the material facts of the case and negligently hide many valuable informations from the prosecutor which result in the failing of the prosecution case in the court. Filing of poorly investigated cases, indifferent management of trial proceedings including bail, and lack of effective review, particularly at the district level can also be traced back to the same problem.

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There is no doubt that police-prosecution relations need to be enhanced but giving the prosecution back to the police is neither desirable nor practical.

Another problem that exists is the lack of professional competence and commitment amongst the public prosecutors. Though the entrant is a law graduate the law education is not uniform. No specific guidelines for the appointment of APPs have been set in Section 25 of the Code, it has become a matter of political patronage rather than merit. Selection is neither merit-based nor competitive. There is no system of education and training for prosecutors. Prosecutors are expected to learn the requirements of their job over time. Because of this, the morale of the service is very low and prosecutors become vulnerable to bribery and corruption.

<sup>4</sup> <https://www.youthforequality.in/2008/07/17/strengthening-the-prosecution-system-n-r-madhava-menon/>

A proper training institute needs to be set up for prosecutors where they can be given proper training. This will not only improve the standard of the entrants but it would also make the new prosecutors more efficient.

Remuneration and conditions of service are not attractive. Resulting in competent individuals to look for jobs elsewhere. The only way to resolve this issue is to make the job more attractive by improving the salary structure and by providing parts like government housing, transport and other such benefits. They and also be provided with good library facilities given their Megan pay they are not in a position to spend a lot on books. The libraries of the Bars are overcrowded and the books are not made available to the prosecutors. They can also be given subscriptions to online libraries and other legal databases so that the information they desire can be at their fingertips. Proper training for the usage of the same can also be provided.

Apart from this the working atmosphere and job satisfaction can also be increased by taking measures to reduce the burden on the prosecution. The officials of the prosecution are overburdened with cases. During a study it was seen that they *seldom find any time to sit and relax or even have lunch during day time as they have to perform several duties not only in the court but also help the police officials for several legal lacunas during the investigation of the cases.* This is not a healthy sign they have barely any time to take a breather. Increasing the strength of the staff would be beneficial in reducing the workload on each individual.

Generally investigations are conducted by low level officers who are not proficient in the laws, procedures and practical police working. Furthermore the supervising officers do not carry out their task properly this results in inadequate evidence being collected. Many times the necessary evidence is also missed. Due to this lack of evidence on many instances the prosecutors have been unable to make their case. There is the need to improve the quality of investigations. Emphasis should be laid on using scientific methods of investigation. Furthermore a close rapport needs to be maintained between the investigating agency and the prosecution agency to improve the outcome of trials.

## **Conclusion**

Public prosecution is a vital part of the public justice system. It is the duty of the executive to prosecute the culprit through the institution of the public prosecutor. The public prosecutor is appointed by the State, and he conducts the prosecution on behalf of the State. It is the responsibility of the public prosecutor to ensure the fact that the trial results in conviction, but it is not necessary for him to be acutely concerned about the result of the trial.

He is an officer of the court and his duty is to present a fair version of the case when the trial is taking place. Although he appears on behalf of the state, it is also his duty to make sure that the individual who is accused is not discriminated against and treated in an unjust manner.

There is a need for reform in the working of the public prosecution in India. The failure of prosecution is not always of its own making. The weaknesses in its structure needs to be addressed. Priority needs to be given to improving the coordination between the police and prosecuting and that is the source of most of the problems. Lastly, working atmosphere and job satisfaction also needs to be improved.

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