

Duties and Powers of Public Prosecutors

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Abstract

“It is not easy to be a prosecutor. It is often a lonely journey. It tests character. It requires inner strength and self- confidence. It requires personal integrity and a solid moral compass. It requires humility and willingness, where appropriate, to recognize mistakes and take appropriate steps to correct them. Prosecutors must be passionate about the issues, but compassionate in their approach, always guided by fairness and common sense.” In India, the Castle of Criminal Administration is constructed on the Courts, the Public Prosecutors, the Defense Counsel, the Investigating Agency (Police, Excise, Forest officials etc.) and the Prison and Correctional Personnel. The performances of the above organs augur and augment the Administration of Justice. So, constant advice is taken from the Public Prosecutor by the investigating agencies, so that their work may be filled with legal niceties and which is free from mystification.

Keyword: Public Prosecutor, integrity, fairness, Criminal justice system

Introduction:

The Public Prosecutor plays a pivotal role in the Indian criminal justice system. As representatives of the state, they are responsible for prosecuting criminal cases on behalf

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of the government. Their primary duty is to ensure that justice is served while maintaining the rights of the accused. The integrity of a person chosen to be in charge of a prosecution does not need to be emphasised. The purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of a Public Prosecutor is not to represent any particular party, but the State¹. The prosecution of accused persons has to be conducted with the utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community.

There should not therefore be “an unseemly eagerness for, or grasping at a conviction”. A Public Prosecutor should be personally indifferent to the result of the case. His duty should consist only in placing all the available evidence irrespective of the fact whether it goes against the accused or helps him, before the court, in order to aid the court in discovering the truth. It would thus be seen, that in the machinery of justice, a public prosecutor has to play a very responsible role: the impartiality of his conduct is as vital as the impartiality of the court itself.

He is the holder of public office and has to discharge his function impartially and independently. They are not to suppress material facts, evidences or witnesses even if it is not in favour of his case. In other words, he is not to secure a conviction by any means. His duty is to aid the court in finding the truth.

Constitution of India and Public Prosecutor

List III of the Seventh Schedule to the Indian Constitution allows the prosecution to be done by the Central as well as State Government. As there is no direct provision which directly relates to the Public Prosecution. It is considered to be a statutory post. However, it is considered not to be the similar post as of Attorney General of India or Solicitor General of India. The State is duty bound to protect the interest of the Society. In Criminal Courts, State is represented by the Prosecutors and resultantly they protect the victim.

Thus, Public Prosecutor is under obligation to protect the State interest. Indian Constitution is a written Constitution. Anglo-Saxon Common law principles are followed in India.

Article 14 of Constitution provides equality before law or equal protection of laws within the territory of India. Article 21 mandates protection of life and personal liberty. Article 20 gives protection against Self- incrimination as well as Double Jeopardy. Under Article 20 Constitutional Protection is provided to the innocents. Article 39A secures equal justice to all the citizens of India. Public Prosecutor represents the State and in turn he also indirectly protects the Victim. As his sole duty is not to result in conviction of the accused but to act diligently while working for the State Interest.

Law Officers at the Union Government and State Government

In the various departments there are law officers for giving legal advice besides the Public Prosecutors. Article 76 and Article 165 of the Indian Constitution provides the highest law officer for the whole of country as well as for a particular State.

Article 76. Attorney General of India He is the highest law officer of the country appointed by the President of India. Qualification includes to be person qualified to be appointed as Judge of Supreme Court. However, he must be a citizen of India and he must have served as a Judge of High Court for ten years or as an eminent jurist, in the opinion of the president. The following duties are assigned to the Attorney General by the President of India:

- 1) To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- 2) To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
- 3) To appear in any High Court in any case in which the Government of India is concerned.¹⁶ Section 23 of The Advocates Act, 1961¹⁷ provides that Attorney General of India has the Permission to address any Court in the Country.

In Govt. of A. P v. Pushpendara Kaur it was held that in the interest of public regarding privileged communications between State and its counsel, the advice tendered by Attorney General in discharge of duties cannot be judicially reviewed by the Court. Besides this, there is a Solicitor- General of India and additional Solicitor- General of India. They assist the Attorney General in the fulfillment of his official responsibilities. This office is

a non- constitutional post. Thus, Article 76 only talks about the Attorney General of India and not regarding Solicitor- General of India. As Attorney General is not the member of the Central Cabinet so, there is a separate law minister in the Central Cabinet to look after legal matters at the governmental level.

Functions of Directorate of Prosecution

It renders advice and opinion to police authorities regarding prosecution; It renders advice and opinion on references received from other departments of the State government; It handles appeals and revisions for filing in the high Court through law and judicial department of State government and sends appraisal of the same to the district magistrate so that the state government obtains his opinion before final decision.

It also transfers as well as do the postings of the assistant Public Prosecutors in the districts; It also provide extension to the tenure of the Public Prosecutors till the successor takes charge, in case of serious offences. Duties of Head of Prosecuting Agency Whether the head is at the rank of Deputy Superintendent of Police or Inspector his duties are:

To thoroughly scrutinize the Challans and transit the references and applications from police stations in connection with the prosecution of cases. To prosecute as well as watch the prosecution of all the cases in the courts of the district. To supervise as well as to distribute the workload among all the subordinate officers. To take charge of all the articles as well as the property related to the cases. To supervise the transmission of warrants and summons under the criminal courts, further ensuring the processes to be made without any delay.

To supervise the vernacular office of the Superintendent of Police and also to exercise a check on the maintenance of all the registers in relation to the Prosecution work. To maintain registers in relation to the case property, warrants, store- rooms, absconders, special laws, etc., To attend office even on some days when Court remains closed, it is the duty of an officer less in rank than a sub-inspector to attend the Office of Superintendent of Police

Duties of Public Prosecutors

“An ideal prosecutor must consider himself/herself as an agent of justice. Normally the control of entire trials is in the hands of the trial judge. Investigation is the prerogative of the police. However, it is generally believed that traditional right as to how the case has to be handled and presented in the court is with Public Prosecutor. There are three categories of prosecutors at district level: -

- 1) Assistant Public Prosecutor (A.D.A)
- 2) Additional Public Prosecutor (Dy. D. As)
- 3) Public Prosecutor (D. A)

Assistant Public Prosecutor (A. D. A)

- 1) Assistant Public Prosecutor scrutinize charge sheets prepared by the investigation agency.
- 2) They put in appearance on behalf of State as and when any accused is produced before the Learned. Magistrate for seeking police/judicial remand.
- 3) They move application before Learned. Magistrate for discharge of accused if police find that any of the accused is innocent.
- 4) They usually conduct the trial of all criminal cases.
- 5) They are also appearing on behalf of State of Punjab in civil cases as Govt. Pleaders and protects the rights of State while appearing in the court and leading reliable evidence.
- 6) On conclusion of trials they assist the courts in recording evidence under section 313 of Code of Criminal Procedure, 1973 and then argued the case on behalf of State.
- 7) They applied copies of orders/judgements on conclusion of trials and then evaluate the evidence in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgements.”

Additional Public Prosecutors (Dy. D. As)

- 1) Additional Public Prosecutors conduct cases in Sessions Courts.
 - 2) They appear in anticipatory bails filed by accused under section 438 of Code of Criminal Procedure, 1973 and regular bail applications under sections 439(2) of Code of Criminal Procedure, 1973.
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- 3) If any adverse order is passed against the State which is against the Statute their revisions/ appeals are filed or applications are filed for cancellation of bails after evaluating the orders as envisaged under section 439(2) of Code of Criminal Procedure, 1973.
- 4) They usually conduct trials of all criminal cases pending in respective Sessions Courts.
- 5) If needed according to the facts of the case they filed applications under section 311 of Code of Criminal Procedure, 1973 for summoning of additional accused or in case any adverse order is passed then recommended it for appeal/revision.
- 6) They work as Supervisory Officers of Assistant District Attorneys.
- 7) They conduct the challan checking as per litigation policy. As challan checking is a three tier system. After checking of challan they send it to District Attorney who is the Chief Supervisory Officer at the district level.
- 8) On conclusion of trials they assist the courts in recording evidence under section 313 of Code of Criminal Procedure, 1973 and then argued the case on behalf of State.
- 9) They applied copies of orders/judgements on conclusion of trials and then evaluate the evidence in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgements.
- 10) They appeared in civil appeals filed by State or against the State as Govt. Pleader.”]

District Attorney

“Public Prosecutor is responsible for supervision of prosecution work conducted by Assistant Public Prosecutors, Additional Public Prosecutors.

- 1) Public Prosecutor being head of district appears in Sessions Judge’s Court to conduct trials.
 - 2) On conclusion of trials they assist the courts in recording evidence under section 313 of Code of Criminal Procedure, 1973 and then argued the case on behalf of State.
 - 3) They applied copies of order/judgements on conclusion of trials and then evaluate the evidence in each case and make their recommendations for filling revision petitions or appeals against impugned orders and judgements.
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- 4) They appeared in civil appeals filed by State or against the State as Govt. Pleader.
- 5) Public Prosecutor gives opinion on matters referred to them by various departments in which opinion is required on any legal matter.
- 6) They evaluate the evidence collected by police during investigation and then made recommendation for presenting the challans in the courts.”

Powers/Rights of Public Prosecutor

- 1) The investigators and prosecutors have been empowered by the constitution to check whether they have used all the lines of enquiry which are given by the constitution. They have to consider that whether all sources of evidence and unused material have been explored and whether they have been produced in the court.
 - 2) The Public Prosecutor, Additional Public Prosecutors or Assistant Public Prosecutors have the authority to appear on behalf of the State before any Court in any case entrusted to them. And for this they don't need any permission. But if any other person, not being a police officer below the rank of inspector or one who has taken part in the investigation of the case, can conduct the case, with the permission of the concerned magistrate.
 - 3) Although, it is the privilege of the Public Prosecutor to conduct the trial before a session judge and not by the counsel engaged by a complainant. However, the Code of Criminal Procedure (Amendment) Act, 2008 States that victim is permitted to engage an advocate of his own choice to assist the prosecution.
 - 4) Crowded calendars and overburdened prisons provide powerful incentives to many prosecutors. As prosecutors has the power to use plea bargaining method to manage the caseloads. Prosecutors are benefitted from the plea bargain as this deal allow them to improve their “batting averages.”
 - 5) The Public Prosecutor also has the right to withdraw any prosecution under certain circumstances. Section 321 of code of criminal procedure provides for “the withdrawal from the prosecution” and not “the withdrawal of the prosecution”. Withdrawal from a prosecution means retiring or stepping back or retracting from the prosecution. However, withdrawal of appearance from the prosecution means to refrain from conducting with the prosecution.
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In Koli Nana Bhana and others v. State of Gujarat it was decided that withdrawal of prosecution lies with the Prosecutor engaged in the case. This is the prosecutor's exclusive prerogative which can take initiative for withdrawal if the case is fit for withdrawal of prosecution as per existing provisions. In K. V. V. Krishna Rao v. State of Andhra. it was decided that

- (a) The Government has power to order the Public Prosecutor to withdraw from prosecution.
- (b) The Public Prosecutor has to act diligently and apply his mind before filing application for withdrawal from prosecution.
- (c) It is necessary for the Public Prosecutor to give notice to the Complainant.

Legal Provisions under BNSS Regarding public Prosecutor

Section 18: Public Prosecutors

The Bharatiya Nagarik Suraksha Sanhita (BNSS) outlines the provisions for Public Prosecutors, including their appointment, eligibility, and roles. Section 18 of the BNSS focuses on the appointment of Public Prosecutors and Additional Public Prosecutors for High Courts and districts, requiring consultation with the relevant High Court and District Magistrate/Sessions Judge for appointments. Section 19 details the appointment and functions of Assistant Public Prosecutors.

Public Prosecutor plays a vital role in the administration of the Criminal Justice System in India. The Police, the Prosecution, the Judiciary, and the Prison and Correctional Services constitute the components of the Criminal Justice System.

A Public Prosecutor represents the State in a criminal case as a crime is considered to be an offense against the State. His role came into the picture after charge sheet is submitted by the police. He presents the multiple aspects of the case during the trial and assists the Court in the delivery of Justice. Accordingly guidelines on the Role of the Prosecutors requires Prosecutors to perform their duties fairly, impartially, and consistently, protecting human dignity, upholding human rights and avoiding all political, social, religious, cultural, sexual or any other kind of discrimination.

In order to ensure the fairness and effectiveness of prosecution, prosecutors must strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions. Complying with these provisions, the Code of Criminal Procedure, 1973 mandates the appointment of Public Prosecutors in the High Courts and District Courts.

Public Prosecutor and His Appointment

A Public Prosecutor is a lawyer who acts for the government against someone accused of a crime and prosecutes them in the Court. According to the Code of Criminal Procedure, 1973 (Cr.PC, 1973) “Public Prosecutor” means any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor. While, under Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), he is a person appointed under Section 18 and includes any person acting under his directions.

Categories of Public Prosecutor

Section 24 of Cr.PC (now, Section 18 of BNSS, 2023) provides three main categories of Public Prosecutors:

- A. Category I: Those who are attached to a particular High Court or district;
- B. Category II: Assistant Public Prosecutors who are linked to a particular case or a class of cases but in a specified jurisdiction;
- C. Category III: Special Public Prosecutors appointed under Section 24(8) of the Code [or Section 18(8), BNSS].

A. Appointment of Public Prosecutor under Cr.PC, 1973 (Category I)

Section 24 of the CrPC, 1973 (Section 18 of BNSS, 2023) mandates the appointment of a Public Prosecutor or Additional Public Prosecutor for every High Court and District Court. The provisions of this section can be explained in the following steps:

1. Who Appoints

Section 24(1) of Cr.PC provides that the Central Government and the State Government appoint a Public Prosecutor and may appoint one or more Additional Public Prosecutors for every High Court and they have to conduct prosecution, appeal or other proceeding

in such Court on behalf of the respective Government. This provision is similar to Section 18(1) of BNSS. However, the BNSS includes a proviso clause for NCT Delhi, according to which only Central Government shall appoint the Public Prosecutor or Additional Public Prosecutors, after consultation with the High Court of Delhi. The point to be noted here is that the power of the State Government to appoint a Public Prosecutor or Additional Public Prosecutor would extend only for conducting prosecution, appeal or other proceedings in the courts within that State (*Jayendra Saraswathi Swamigal v. State of Tamil Nadu*²).

2. Panel of Names

To appoint a Public Prosecutor or Additional Public Prosecutors for every district, the District Magistrate u/s 24(4) of Cr.PC (now, Section 18(4) of BNSS) shall prepare a panel of names in consultation with the session judge. The panel of names includes the name of those who are in their opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutor. The State government shall appoint them from these panel of names u/s 24(3) Cr.PC [similar to Section 18(3) BNSS]. Further, Section 24(5) Cr.PC [similar to Section 18(5), BNSS] puts an obligation on the State that it cannot appoint any person as the Public Prosecutor or Additional Public Prosecutor unless his name is not in the list of *panel of names* prepared by the District Magistrate.

3. Regular Cadre of Prosecuting Officers

Section 24(6) of the Cr.PC mandates that, if there exists a regular Cadre of Prosecuting Officers in a State, the State Governments are obliged to appoint Public Prosecutors or Additional Public Prosecutors only from amongst the persons constituting such cadres. The same provision is also laid down by BNSS u/s 18(6). If in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section. The expression "regular cadre of Prosecuting Officers" as held by Supreme Court in the case of *A.K. Ahlawat v. State of Haryana, (2010)* comprised a service with the Assistant Public Prosecutor at the lowest level and Public Prosecutors at the top. Further the court in the case of *K.J. John, Asst. Public Prosecutor v. State of*

Kerala held that in case a regular cadre of Prosecuting Officers did not go up to the Public Prosecutor at the top, the State Government cannot be considered as bound to appoint Public Prosecutor or Additional Public Prosecutor only from among the persons constituting such cadre under the Code of Criminal Procedure for conducting cases in the sessions court.

4. Experience

Section 24(7) of Cr.PC [similar to Section 18(7) of BNSS] laid down a mandatory provision that the person has been in practice as an advocate for not less than seven years to be appointed as an Additional Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6) of this Code. In short, Public Prosecutor and Assistant Public Prosecutor is appointed by Centre and State Government in High Court and in a district the Public Prosecutor or assistant Public Prosecutor is appointed from the panel of names prepared by District Magistrate in general.

B. Assistant Public Prosecutor (Category II)

Section 25 of Cr.PC [S.19 of BNSS] deals with the appointment of Assistant Public Prosecutors in the district for prosecution in the courts of Magistrate. Section 25(1) of Cr.PC states that the State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates. Further, u/s 25(2) Cr.PC, no police officer shall be eligible to be appointed as an Additional Public Prosecutor subject to the provision under sub-section (3). According to Section 25(3), where no Assistant {Public Prosecutor is available for the purpose of any particular case, the District Magistrate may appoint any other person to be Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed –

- (a) If he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or
- (b) If he is below the rank of inspector.

C. Special Public Prosecutor

The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor u/s 24(8) of Cr.PC[s.18(8) of BNSS].

It is to be noted that Supreme Court in the case of *Poonamchand Jain v. State of M.P.* held that the appointment of Special Public Prosecutor is not with reference to the High Court or district, but is an appointment for a case or class of cases in any court. Without disclosing a special reason, order appointing a Special Public Prosecutor is illegal.

Key Roles of a Public Prosecutor

1. A public prosecutor is responsible for
2. Representing the State in criminal cases
3. Ensuring Justice: Their role is not just to secure convictions but to ensure fair and impartial trials
4. Analyzing Evidence: They must examine evidence provided by law enforcement and decide whether to proceed with charges
5. Presenting Arguments: Prosecutors must take strong evidence based argument in court.
6. Guiding Investigation: Collaborating with law enforcement agencies to strengthen cases.

Conclusion:

The Prosecutor as a public officer is the person in the Criminal justice system who is charged with responsibility to present the evidence which the state carries against the defendant. However, the powers, duties and functions of the prosecutor are clearly defined by constitutional as well as the statutory provisions. Prosecutor is also required to be fair and should act on the guiding principle of the spirit of law based on 'prudence, common sense and equity' and not the Letter of law. The letter of law is said to be too cold to have any beneficial influences on the society. Wherever the issue of life is netted in legalist relations, there is a creation of atmosphere which is morally inadequate, paralyzing man's noblest impulses. The Prosecutor at no time can pose as the con artist

of the Criminal administration of justice. Public Prosecutor has got a glittering role in the administration of Criminal Justice. And for his exquisite role, there are no perimeters in the scheme of administration of justice.

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