Chapter–VII

PART-TIME PROSECUTOR Versus FULL-TIME PROSECUTOR

Right person for the right job is one basic rule for success. Selection of a right person mainly depends on the method and process of selection. Notions that are right in theory may not necessarily result in right results in practice. This appears really true in cases of selection of Public Prosecutors. In India, each Criminal Court is provided with a prosecutor to conduct prosecution for the State. Some of those prosecutors are full-timers and some of them are part-timers. The idea of having part-timers is greatly supported by many a man. A close analysis of this idea shows that the supporters are mainly influenced by their emotional attachment to one facet of the theory. The knowledge of reality on ground in sticking to this institution of part-timers does not justify fancy for it. The present part deals with the legal provisions concerning part-time prosecutors and shows how their selection is handled by the authorities concerned and the extent to which unholy politics deteriorated the selection process and how the holders of the office of prosecution clamour to cling on to their positions. This part also finds out the importance of professionalism that is required for a prosecutor and how the same is wanting in part-timers; the real possibilities of conflict of interests that specially spring up in cases of part-time prosecutors. The various pitfalls in the concept of part time prosecutors are juxtaposed against Full-time prosecutors with a view to find out the relative merits of the latter and finally it argues for dispensing with the concept of part-time prosecutors.

PART–TIME PROSECUTOR

Public Prosecutors prosecute cases for the state in the Sessions Courts. Additional
Public Prosecutors conduct cases before Additional Sessions Court and Assistant Sessions Court. These categories of prosecutors are either full-time or part-time officers. In other words, some of them are full-time prosecuting officers and some of them are part-time prosecuting officers. The full-timers hold the post as regular Government officers and retire on attaining superannuation. The part-time officers are engaged for a term of three years at a time and thereafter they demit the office. However, the Government can renew their tenure for another two terms and not beyond that. Therefore, the part-time prosecutor could continue to hold office for a maximum period of nine years. Thus the courts at the district level may get either a full-timer or a part-timer.

For prosecuting criminal cases before the High Court only part-time prosecuting officers are appointed by the State and no full-timer gets the engagement.

One feature of part-time prosecutors is that they are paid only a consolidated amount of fee per month and are not put in any time-scale of pay and therefore they draw a specified amount of money towards their fee every month throughout their tenure. They are not eligible for any in-service promotions since they are not full-time public servants of the Government. Another significant aspect of them is that they are allowed to continue their profession as advocates and do private practice in all the courts including the courts where they conduct prosecutions. The only rider is that they shall not appear against the State in any case, either civil or criminal, during their term of office as prosecutors.

In terms of Section 24 of Cr.P.C., for the post of Public Prosecutor or Additional Public Prosecutor any advocate with seven years of standing at the bar is eligible to be
identified for and the selection process involves participation of the executive and the judiciary. They together sit and discuss and prepare a panel of names who they think are most eligible to hold the post and forward it to the Government. The ultimate discretion is left to the Government to select one among the empanelled persons to have on its pay roles to serve the cause of justice by conducting prosecutions in the courts. Significant feature in this process is that judiciary is made a party to the selection of part-time prosecutors. In the appointment of no other officer in the Criminal Justice System judiciary has any role. The police, the probation officer, the defence lawyer are engaged by the Government and the accused respectively and the judges have no role to play in their selection. Thus, the scheme of appointment of part-time prosecutors is a significant departure from the rest of the appointments of others who are equally connected with the court and its functions. The State thus selects and engages its part-time counsels not on its own exclusive assessment but with the active participation of judiciary.

For prosecution to appear before the High Court, Section 24(1) of Cr.P.C, provides that the State Government, after consultations with the High Court, appoint a Public Prosecutor and may also appoint one or more additional Public Prosecutors for conducting in such court, any prosecution, appeal or other proceeding on its behalf. Same principle is applicable for the Central Government too in appointing its prosecutors for conducting its cases before the High Court. All these part-time prosecutors are identified and selected by way of consultation between the State Government and the High Court and there is no panel preparation like in the case of the selection of their counterparts in the Sessions Courts.
The idea of part-time Public Prosecutor leaves wide options for the State to select meritorious persons periodically. This appears to be the plausible reason for sticking to this concept. This category of prosecutors is to appear before the Sessions Court at the district level and before the High Court at the State level. It is patently clear that the nature of the cases that come up before such superior courts are very grave in nature and involve complicated questions of fact and law. The Sessions Courts deal with capital offences where even death penalty could be ordered. Revisions and appeals against orders of lower courts are manned by experienced and well informed judges. Thus there is every need that the Public Prosecutor appearing for State before them shall possess exceedingly good knowledge of law and legal forensics and skills. It is presumed that from the vast legal talent available at the bar the appointing authority could select skilful lawyers, who have put in at least seven years of practice, at courts. The preparation of a panel of such lawyers would indicate the active consultation between the Sessions Judge and District Magistrate. Legal skills of the lawyer are to the assessment of the Sessions judge as he watches the performance of that lawyer in the court every day. The character and conduct of the lawyer and his abilities to interact with various personnel is the assessment of the District Magistrate (Executive) as he alone has resources to inquire and find out his merits and demerits. Therefore, theoretically, the combination of this consultative process between the top most judge at the district level and the top most executive authority of the district should result in selection of gem of a man for State to deal with the worst violators of law. The flexibility in this system is that the tenure of such selected candidates is only three years so that a fresh assessment in searching a right
prosecutor can go on afresh. If implemented in its true spirit, this mechanism is impeccable.

Protagonists of this theory include the Law Commission of India, Malimath Committee, and a few judicial dicta. In July 2006, The Law Commission of India in its 197th Report considered the concept of part-time prosecutors and recommended for retentions of it. In its opinion it is in public interest to appoint lawyers practicing in the Sessions courts and defending cases of accused in murder trials and other serious offences as Public Prosecutor or additional Public Prosecutor209. It is absolutely necessary to appoint them and make use of their vast experience in handling cases triable by a Sessions Court. According to it, it is not in the interest of the prosecution or in public interest to exclude lawyers who have been handling Sessions Cases over a long period. It further said that it will be in the interests of the criminal justice process, if the principal post in the district in this behalf, namely, the post of Public Prosecutor, is manned by an advocate selected on the recommendation of the Sessions Judge210. The Law Commission vied with the question of promoting full-time Assistant Public Prosecutors appearing in the courts of Magistrates and posting them as Public prosecutors to conduct Sessions cases before Sessions Courts and ultimately came to the opinion that they are not fit enough to conduct such cases as they had no opportunity to handle cases of that importance or magnitude. Moreover, it will take considerable time for them to gain experience in dealing with Sessions cases and that is not in the interests of

210 Ibid., pp. 27, 28.
prosecution and public interest\textsuperscript{211}. The Commission approved for promotion of Assistant Public Prosecutor to the post of Additional Public Prosecutor but in no case to the post of Public Prosecutor\textsuperscript{212}. One curious recommendation needs mention here. The Law Commission as well as Malimath Committee on reforms of Criminal Justice reported that 50\% posts of Additional Public Prosecutors in the District shall be filled up by selecting the practising lawyers empanelled by the District Magistrate and Sessions Judge. The remaining 50\% posts shall be filled up by promoting Assistant Public Prosecutors. While promoting them to such higher post their suitability shall be considered by a State Level Committee consisting of a Judge of the High Court, Law Secretary of the State, Secretary to the Government, and the Director of prosecution\textsuperscript{213}. This view appears anomalous since a proven meritorious full-time Assistant Public Prosecutor’s caliber has to be tested by a high ranking State level committee, whereas the selection of a lawyer from the Bar, who never conducted any prosecution for the State, is to be made by a relatively low level officer like Sessions Judge and District Magistrate. This approach indicates undue a priori assumption that a man from the Bar is always better than a man from the State service. Thus, The Law Commission strongly believed that part-time prosecutor brought from the Bar, though a novice for prosecution, delivers qualitative services better than the prosecuting officer already serving well for the State.

There are a few pronouncements of courts that implicitly put faith in part-timer as against full-timer. The High Court of Andhra Pradesh considered the question whether an Assistant Public Prosecutor could be assigned a Session Case for prosecution and held

\textsuperscript{211} Ibid. pp. 26, 27, 28
\textsuperscript{212} Ibid. p. 33.
\textsuperscript{213} Ibid. p. 32.
that such an assignment amounts to unfair treatment to the accused in the Sessions Court and therefore invalid\textsuperscript{214}. The Kerala High Court held that it is a privilege conferred on the accused in a Sessions case that the case against him has to be prosecuted only by a Public Prosecutor and not by an Assistant Public Prosecutor. The order of the State Government in assigning the Sessions case to an Assistant Public Prosecutor was set aside on the ground that they do not know the nuances involved in grave crimes like murder and the implication involved in forensic medicine\textsuperscript{215}.

Thus the Juristic opinion and Judicial opinion delineated above hold out a norm that a part-time prosecutor is a need in the Criminal Justice System and he is more meritorious than a full-time prosecutor and this scheme shall stay in the interest of public and also in the interest of the accused.

\textbf{Contesting the Norm}

In all social sciences including the discipline of law, there is always a wide gulf between what is aspired in theory and what is available in practice. Any theory is not worth its mettle if it could not withstand the friction it suffers when implemented in practice. If a theory failed in materialising into a good practice, it deserves repudiation. The concept of part-time Public Prosecutor stands a classic example of one such failed theory. Besides the fact of its failure from the stand point of practical reality, the theory had failed to take note of a few fundamental aspects of the institution of prosecution and that of Public Prosecutor. Parochial interests polluted the scheme of things at the top, at the bottom and in the middle. Resultant picture is that the spirit of the concept is completely frustrated. What and how all that happened is to be dealt with now.

\textsuperscript{214} \textit{J.Rambabu v. Govt. of A.P.}, 1992 (1) ALT 688 at 692.
\textsuperscript{215} \textit{Susey Jose v. Janardhana Kurup}, 1994 (2) ALT (Crl) 687 at 692 and 694.
Under Section 24(3) of Cr.P.C. the State Government shall appoint a Public Prosecutor, and may also appoint one or more Additional Public Prosecutors. Under Section 24(4) of Cr.P.C. the District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of persons, who are, in his opinion, fit to be appointed. The principle of consultation with the Sessions Judge to prepare a panel is a salutary rule and is an essential check on arbitrary appointments. This being unpalatable to parochial interests, the conmen cracked the integrity of this concept in diverse ways. The best way to overcome the hurdle is to remove the hurdle. Certain States have dispensed with the consultation with the Sessions Judge by amending Section 24(1) of Cr.P.C. This was possible since the power to legislate on the process of appointment and promotion of Public Prosecutors is part of criminal procedure and is governed by item 2 of List-III, concurrent List of the VII schedule of the constitution. Therefore, it is open to the State legislatures to amend the parliamentary legislations by following the procedure contained in Article 254(2) of the Constitution. Many States resorted to this mechanism and thereby dented the wholesome intendment of parliamentary legislation. This created a great deal of concern for the Prime Minister’s office, which felt that the requirement of consultation with Sessions Judge need be restored and the State Amendments be nullified. The Prime Minister’s officer therefore addressed a letter dated 16-5-2006 and sought the views of the Law Commission which in turn submitted its 197th Report and supported the concerns expressed in that letter in a way but stuck to the idea of part-timers.

Even in those States where Section 24(4) of Cr.P.C., is not amended and the norm is that the District Magistrate shall consult the Sessions Judge and prepare a panel, the
picture is not rosy, The Allahabad High Court found the regretful manner in which the
District Magistrate and the Sessions Judge performed their respective roles in assessing
the relative merits and demerits of individuals while empanelling them. Court was found
that the District Magistrate was acting on his surmises and conjectures and taking
decisions to please the political bosses and was depending on newspaper reports about
the individuals without making any verification. The Sessions Judge too was not
adhering to the Rules and was not making any objective assessment of the suitability of
the persons before empanelling their names and put no real effort to appreciate their
performances, character and behaviour. It condemned the situation saying that the
appointments of part-time prosecutors are made mostly on the political affiliation or on
the basis of caste or creed and not on the basis of merit of a man\textsuperscript{216}.

The question of consultation between the District Magistrate and the Sessions
Judge raises various questions. One such important question is about the concept of
consultation contradictory views came to place on this. A Full Bench of the High Court
of Andhra Pradesh said that the ‘consultation’ does not mean ‘concurrence’. It pointed
out that concept of ‘consultation’ that is required between the Government and the Chief
Justice of High Court in making appointments of the Judges for the High Court’s cannot
be imported in the case of appointments of part-time prosecutors Under Section 24(4) of
Cr.P.C\textsuperscript{217}. On the other hand, Public Prosecutors are also appointed to conduct cases
before the High Courts. Under Section 24(1) of Cr.P.C, the State Government shall
‘consult’ the High Court and appoint the Public Prosecutor. Referring to this

\textsuperscript{217} B.Rajeswar Reddy v. K.Narasimhachari, 2001(3) L.S317 (AP).
'consultation’ The Law Commission said that it cannot be dispensed with and applied the analogy of consultation as applicable for appointment of High Court Judges\textsuperscript{218}. Thus, the term ‘consultation’ is given different stature in the same Section 24 Cr.P.C. The normal rule of statutory interpretation is that the same word in a section of a statute shall be similarly interpreted unless the context really requires otherwise. Part-time prosecutor is a statutory creature and the context of his appointment at different courts does not appear to require different interpretations since his functions and responsibilities as a prosecutor on behalf of the State does not vary from court to court.

Coming back to ‘consultation’ between the District Magistrate and Sessions Judge, it must be real and effective consultation. Going by the language used in Section 24(4) of Cr.P.C, the panel preparation is the duty of the District Magistrate and that he shall empanel only those persons who are in his opinion fit to be appointed. While preparing the panel of names he must elicit the views of the Sessions Judge. Thus, the Judiciary has no primacy in this regard. In practice, the District Magistrates were making only name sake consultations and not making any meaningful and effective consultations with the Sessions Judge as noticed by the High Court of Andhra Pradesh\textsuperscript{219}. If the State Government is not satisfied with the names of the advocates empanelled, it could reject the same and call for a fresh panel. This can be done any number of times since it is the satisfaction of the State Government that alone results in appointing a part-time prosecutor. Though the satisfaction of State has to be based on the merits of the individual empanelled, the Government derives satisfaction on political considerations only.

\textsuperscript{218} 197\textsuperscript{th} Report of the Law Commission of India, page 36.
In this democratic polity of India, Governments are formed every five years by the winning political parties. Each political party is interested in keeping its base of supporters strong and intact. The political history of India is testimony to the extensive participation of lawyers both in the freedom struggle and also in the post independence era. Universal symbols like Mahatma Gandhi, Jawaharlal Nehru were all extensive practitioners of law before the courts. Every political party has its wing of lawyers at the District level, State level, National level. Thus many lawyers are part of the main stream politics. The political party winning the election and forming the Government immediately wants to exhibit its gratitude to those who helped it in attaining the chair of power. They can do it best in the areas where the discretion of selection is invested with it under law. Appointments of part-time prosecutors are one such area where the Government has the discretion to make final choice. Thus, the advent of political preferences in the selection arena. Sub-Section (5) and Section 24 of Cr.P.C., mandates that the State Government shall not appoint a person as prosecutor unless his name appears in the panel of names prepared by District Magistrate in consultation with the Session’s Judge. In view of this embargo, the ruling party in the Government could not straight away appoint its loyalist as prosecutor. Therefore, politicians and the political party in power exert pressure on the panel preparing authorities to put the names of lawyers recommended by it in the panel. The panel preparing authorities sometimes yield to it and sometimes do not yield to it. The politician moving the strings reacts and adopts arm twisting tactics to see that the relevant authorities buckle under his pressure. Once the authorities yield, the panel contains the names selected by the politician and not the names derived from the consultative process contemplated under law.
Sometimes it so happens, when a Government is established by a political party either after elections or in between two elections, there is already a contingent of part-time prosecutors, appointed by the earlier Government, holding the posts. The new Government is prone to dispense with their services and set up their own chosen persons as the State counsels. They developed the unhealthy practice of cancelling the earlier appointments wholesale. For instance, in the year 1990, in the State of Uttar Pradesh, the newly formed Government ordered termination of all the Public Prosecutors and Government counsels in all districts in the State and called for action on part of the administration to prepare a fresh panel for appointments. The Government order was issued without specifying any reasons for such overnight overhauling. The Supreme Court of India found this action of the Government arbitrary, unfair and violative of Article 14 of the Constitution of India and nullified the Government order and preserved the positions of part-time Public Prosecutors\(^{220}\). However, no one is willing to learn the lesson and every time the new Government treads the ill minded path. Once again, the Supreme Court had to say that the State Government is not expected to rescind the appointments with the change in the Governments\(^{221}\). Yet the repetition of malpractice was once again resorted to and the issue came up for adjudication before Allahabad High Court\(^{222}\).

Politician and politics are inevitable truths in democratic governance. There is per se nothing wrong for the political boss to select the prosecuting counsel for the State. The selection made by an elderly statesman may produce a result that is better than any

\[^{220}\text{Kumari Shrikekha Vidyarthi etc., v. State of U.P. AIR 1991 SC 537.}\]
\[^{221}\text{State of U.P v. Johrimal, AIR 2004 SC 3800.}\]
\[^{222}\text{Ghanashyam Kishore Bajapayee v. State of Uttar Pradesh, 2005 CriLJ 1985.}\]
theory could produce. The problem is that a developing country like India does not have, at the moment, many such elderly statesman politicians though, it has many nice politicians. The truth to be realised about niceness is that it does not equal goodness. Niceness is a decision, a strategy of social interaction, it is not a character trait. People seeking to control others almost always present the image of a nice person but beneath it lie motives that are not good. The human predator does not wear a costume so different from ours that he cannot always be recognised by the naked eye. Therefore, there is need to see the kind of politicians available so as to decide whether it is safe for the society to leave the selection of part-timers with them.

A former Inspector General of Police, State of Orissa, writing about the links between mafia and politicians and political parties states that the underworld of smuggling, liquor trafficking, drug peddling, gambling and gun running is thriving in collusion with criminal politicians and police, and big money is involved. Both the Police forces and courts have been neutralised. The law makers and law keepers are perceived to be inextricably linked with the underworld. The Police force is ruthlessly prostituted to political purposes and made the mere adjunct to the ruling political party. The underworld has been allowed to flourish because of government’s expediency in bartering with anti socials and gangsters. The selection of part-time prosecutors being one without any written examinations is always prone to be influenced by subjective considerations. These selections are to be from the pool of advocates available at a particular place for working in the courts available there. What type of human resource is available is a vital factor that ultimately governs the quality of prosecutor one gets.

former judge of the Supreme Court of India, Mr. Justice Sathyabrath Sinha quoted a survey conducted by The Times of India & Aditya Birla Group in an opinion poll, of the sixteen professions/fields that were polled, the participants rated the legal profession the least honest and the advocates were said to contribute the least to upliftment of society. In this grim situation, it is not difficult to imagine what sort of Public Prosecutor would emerge to represent the society and state. In fact one need not struggle to imagine, as numerous examples are alive and available. For instance in the famous Zahira Sheik’s Case, she requested for a new trial on various grounds stating that the Public Prosecutor was acting suspiciously and did not choose to examine the injured person as a witness in the court. The Supreme Court of India observed, “The trial court wanted to issue non-bailable warrants against those accused that were not present but the Public Prosecutor opposed it saying the State was taking steps to arrest them. What type of Public Prosecutor is he who opposes issuance of arrest warrants against the accused? You are showing your true colours from the first day”.

There are several instances of non-performing prosecutors. Even after fourteen adjournments of case in the court the prosecutor did not take steps to ascertain the latest address of the Investigation Police officer to secure his presence for evidence in the case. Court reported to the Government for necessary action against prosecutor. In this state of affairs, it is not realistic to accede to the assumptions of jurisprudence echoed by the Law Commission in its 14th Report, 1958. Analysing the concept of State prosecutions the Law Commission States “In undertaking the prosecution the State is not actuated by any motive of revenge, but

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224 Mr.Sathya Brata Sinha, Judicial Reforms in Justice Delivery system. AIR 2004 (Journal) 193 at 1999.
seeks only to protect the community. There should not be any unseemly eagerness for grasping a conviction”. Experiences that unveil in the court hall, day in and day out, make a mockery of the juristic assumptions. What is happening to every criminal case every time is expressed by a prosecutor, “The Police are filing charge sheets with so many legal \textit{lacuna} and are not bothered about the success of the case. Most of the police cases are resulting in acquittals due to perfunctory investigations resulting in denial of Justice to the victim. … (R)ead cases are failing in the courts and the real offenders are escaping from the clutches of law. … The prosecution is failing to prove the guilt beyond all reasonable doubt in the court of law due to in effective system of prosecution”\textsuperscript{227}. This is what an academician says: “The appointments of prosecutors have become dependent on political affiliations rather than merit. In fact, the engagement of the Public Prosecutor on a tenure basis and on payment of fees on a daily basis, has paved the way for disregard and apathy on the part of the Public Prosecutor”\textsuperscript{228}. Professor S.M. Afzal Quadri gave his survey findings 85.7\% of Police officers agreed that arrests are made on extra legal consideration. 85.85\% of Police Officers and 88.88\% of lawyers agreed that the persons who have powerful political connections are not kept in police stations on remand. He also quoted a finding on a study made by the Indian Institute of Public opinion, New Delhi which shows 74\% of people agree that corruption is responsible for poor police image\textsuperscript{229}. All this, go to show the corruption and political manipulations in the prosecution system. Then does the nation get the kind of prosecutor the law demands

\textsuperscript{227} P.V.Ramakrishna Rao, The Role of Prosecutors and need for reformation of Prosecutions system in India, 2002 ALT (Crl) (Journal), pages 14 to 19.
\textsuperscript{228} Sairam Sanath Kumar, Dr.V. Krishna Ananth, The prosecutorial system in our criminal justice administration – A close look, Vol.II, \textit{NULAS Law Journal}, page 14 at 17
\textsuperscript{229} Police Reforms – Need of the time XIII KULR (2006) 34 at 38, 40, 41
A prosecutor with impartial disposition, a prosecutor who assists the court, a prosecutor who sees that the guilty is punished, a prosecutor with unquestionable integrity, honesty and devotion to duty and of competence\textsuperscript{230}.

After all law is only an instrument and not a player by itself. It is played upon by others. It is for the player always to play the tune of his choice and interest. In such a situation, when the player himself is playing foul, appropriate strategies are to be devised to take care of the system and remove hurdles. Our criminal law jurisprudence must not only be normatively acceptable but it must also be relevant to the needs of the present day.

Thus, in the scheme of part-time prosecutors the concern for qualitative and efficient prosecutors with integrity has been proved to be a nullity in practice.

There is another out fall of this part-time prosecutors. Since their tenure is for a limited period, promptness in filling up the vacancies is a must to avoid the seat falling vacant. Normally the Rules conceive such a situation and alerts the relevant authorities to commence the selection process well in advance\textsuperscript{231}. However, if the selection process is not completed before the completion of tenure of the prosecutor, there would arise a vacancy for the post. In such situations, some in charge arrangements would be made. However, the ambitious prosecutor who held the post for a full term would put spokes into the process and litigate. For instance, after the completion of the term of the petitioner as Additional Public Prosecutor the Government placed another Additional Public Prosecutor of another court to be in charge of the vacant post till new recruitment

\textsuperscript{230} The qualities of prosecutor are narrated by Mr. Justice Rama Swamy of the High Court of Andhra Pradesh in \textit{V.Ramachandra v. M.C.Jagadhdhara Gupta}, 1986 Cr.I.LJ 1820.

\textsuperscript{231} Rule 5 of the A.P Law Officers (Appointment and Conditions of Service) Rules, 1999
is made. This was challenged on the ground of non compliance with the procedure contained in Section 24(4) of Cr.P.C., concerning preparation of panel. Rejecting the contention, the High Court of Andhra Pradesh held that the in charge prosecutor is not a new appointee nor a period of extension of his service to follow Section 24(4) of Cr.P.C. That posting of in-charge is neither a regular appointment nor a temporary appointment. Therefore the in charge arrangement is valid and the petition was dismissed 232.

The zeal to be a Public Prosecutor is so high that one who has completed two terms as prosecutor still wants another term. Look at the machinations. In a case, where a panel of five names was prepared by the District Magistrate in consultation with the Sessions Judge and the file is pending for consideration before the Government. The name of the then working Public Prosecutor is not in the panel of names. However, conceding to his request, the District Magistrate forwarded his name to the Government separately and that was done without any effective consultation with the Session’s Judge. The Government was by then considering the report of the cabinet sub-committee not to give a third term for any Public Prosecutor. Yet the sitting Public Prosecutor was given a third term despite the fact that his name was not in the empanelled advocates names. The court disapproved this appointment holding that the power vested with the Government is to select one among the panel recommended or to reject the whole empanelment and call for a fresh panel. In no case, the Government could select a prosecutor whose name is not in the panel duly prepared by the District Magistrate in consultation with Sessions

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Judge\textsuperscript{233}. This instance itself indicates how the scheme of part-time prosecutor led to degeneration of the system of criminal justice.

When political variables along with mafia links for politicians and political parties is the authority that picks up the candidates from the panel of individuals drawn from the lot of lawyers of the above stature, it is a matter of common sense to guess the kind of part-time prosecutor the Nation gets.

Much is written about the juristic sentiments of impartial yet vigorous prosecutions to be conducted by the prosecutor. If analysed, these attributes, in the context of part-time Public Prosecutors, one finds those attributes are mere myths. A prosecutor is first an advocate and then he attains the post of a part-time prosecutor. If he, as an advocate possessed those two qualities referred above, he must have gained a commendable private practice in the qualifying seven years of his standing at the bar. That means he is a member of significant defence bar that cut the State’s cases into ribbons while defending the criminals. Such practitioner would naturally amass wealth in his profession in this crime rampant society. If he aspires for the office of prosecutor with a consolidated pay of Rs.20,000/- per month, without any allowances, perks, available to other public servants, that has to be only on his sacrifice of lucrative defence profession and a great deal of money. The sacrifice is assumed on the premise that he wanted to serve the interests of State, hapless victims of crime and rid the society of grave criminals and dastardly criminality. It is hard to find such sacrificial saints in the society and more particularly in the defence bar. If a man with lucrative practice expects to become a part-time prosecutor, there is nothing wrong in expecting that his

expectations about future are certainly different in this *kaliyug*. His choice for the post may not be because of any soul searching on his part and his compassion for victims of crime and rage against criminals. Such man with oblique motives would never fill the bill for the post of State prosecutor. On the other hand, if he is a man with no significant briefs under his belt in his seven years stint at the legal practice, his aspirations will be limited to eke out a livelihood for three years, by becoming a part-time prosecutor. If he is selected, he could not be a vigorous prosecutor for the State and would not be in a position to live up to the legal expectations and be an uncorrupt servant for the State. Would he not try to make his hay when the sun is shining? Does not it always dangle in his mind that three years later he would be once again a member of the strong and wealthy defence bar? It could hardly be hoped that with his vigour and valour in conducting prosecutions he would dishearten his erstwhile as well as future colleagues in the defence bar. What emerges from what is said above is very simple. The design that the country have in having a part-time prosecutor is based on a factual fallacy and illogicity. The fallacy lies in assuming that a successful defence counsel would be an ideal prosecutor. Idealism sans practicality is best said by Dr. Lawrence, J. Peter “An idealist is one who on noticing that a rose smells better than a cabbage concludes that it will also make better soup”. Mere technical skills in law do not necessarily make an advocate a good prosecutor. The aptitude and orientation coupled with good training on skills alone would make one a better prosecutor. A part-time prosecutor’s heart lies at the defence where he was nurtured and to where he will sure to go and oppose the State cases just after three years. Therefore dispensing with this scheme is in the interest of Justice.
The quintessence of a State prosecuting officer ought to be his professionalism. Intellectual skills alone do not make a man a professional. The work of a professional is such that he is to engage in his activity systematically and habitually for rendering material services to the community or any part thereof. Mindset of a professional is totally different from the mindset of a non-professional. A full-time prosecutor is a trained professional. There is a sustained period of time he spends in that occupation and that helps in improving the system in which he is one of the prime components. On the other hand, a part-timer could never become a professional for holding the office of a prosecutor. Half his heart and mind are engaged in his private practice and could not bestow regular and systematic attention to the State cases and in a short period of three years of his tenure he cannot improve the quality of office he holds. As a part-timer and a non-professional prosecutor, he contends the State cases against a full-time professional defence counsel and could never match him. Thus, the concept of part-time prosecutor failed to comprehend the virtues of professionalism in the office of prosecution.

The questions on part-time prosecutors haunt the American Jurists also but slightly in a different mould. In the United States system, part-time prosecutor is used for small-town and rural areas where there is a little criminal work. He is given lesser salary than their full-time equivalents since they could supplement their income with private practice income. There the police complain that they have to sit in the waiting room of the prosecutor’s private office and taking their turn along with the private clients. The American Bar Association in its report on the prosecution Function, 1970 warns that the part-time prosecutor will not give sufficient energy and attention to his official duties. Since his salary is a fixed amount, and his total earnings depend on what he can derive
from his private practice, there is a continuing temptation to give priority to private clients. Thus, the part-time prosecutor is faced with the issue of conflict of interest between his public duties and private duties. This issue was also addressed by the President’s commission on Law Enforcement and the Administration of Justice. While the direct conflicts of interest between the prosecutor’s public office and his private practice are clearly unlawful and, one may assume, rare, there are many indirect conflicts that almost invariably arise. The attorneys he deals with as a public officer are the same ones with whom he is expected to maintain a less formal and more accommodating relationship as counsel to private clients. Similar problems may arise in the prosecutor’s dealings with his private clients whose activities may come to his official attention. It is undesirable to place a prosecutor in a position in which he must always be conscious of this potential for conflict and be careful to avoid improprieties or appearance of conflict. These observations are equally applicable to Indian context also.

It is often difficult to predict when a divorce proceeding handled by the prosecutor in his private practice will result in the filing of an assault or attempted murder charge. Unfortunately, too little systematic attention has been given in India to this problem of system of part-time prosecutors. There is battle between full-time professional prosecutors and the part-time non-professional prosecutors. There is this half-hearted legislative attempt in dispensing with the part-time prosecutors. Sub-Section (6) of Section.24 of Cr.P.C., provides that where in a State there exists a regular cadre of prosecuting officers, the State Government shall appoint a Public Prosecutor or an

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235 Ibid., p.60.
additional Public Prosecutor only from among the persons constituting such cadre. This principle is not applicable to the Central Government prosecutors. The proviso appended to the above referred Section 24(6) of Cr.P.C., left lot of discretion to the State Government as it allows the State Government to initiate the panel preparation for part-time prosecutors on the ground that in its opinion there is no suitable person available in the regular cadre of full-time prosecutors. No legislative guidelines are made for the exercise of such discretion. It is not known as to how among the large number of full-time professional prosecutors appointed by the State, the Government itself could not find even single one suitable to act as Public Prosecutor or Additional Public Prosecutor in the Sessions Court and Additional Sessions Courts. The ‘proviso’ for the section gives ample scope for vested interests to play with. On an overall view, it is found desirable to dispense with part-time prosecutors system in this country.

**FULL-TIME PUBLIC PROSECUTORS**

These are the prosecutors who enter the government service after successfully getting through a qualifying written examination and viva voce. They are salaried professionals with the attendant perks and perquisites attached to their service. They would be transferred from one court to another court, from one place to another place within the district, from one district to another district within a zone of districts. They retire on superannuation and receive pension from the State. Their salaries are hiked in response to the rise in the cost of living. When they are posted to urban cities they receive city compensatory allowance which they do not get while working at a smaller-town or rural area. They are disciplined by the Code of Conduct and disciplinary rules implying thereby that their misbehaviour may cost their job. They have promotional
avenues in their cadre and therefore the aspirations to reach higher level of position are kept alive and impel them to work well. They are prohibited to do private practice while in service. Therefore, they have no clients other than the State. Their professional decisions are not dictated by the personal, parochial preferences of the client. He combines the responsibilities of a lawyer with the authority of a public official. Political factors, in theory, have no role in their appointments. They are free from any loyalties except to the Criminal Justice System.

The tenure of full-time prosecutor is fixed and at a particular age he retires from service. He is secured of his job as long as he conducts his office reasonably satisfactorily. He is assured of monthly income as salary for the decent living of him and his family. He is inspired to do well and discharge his duties so that he could be promoted to the next level in the hierarchy. There are no conflicts of interest for him as he has no private practice. He could be impartial towards one and all as he, most likely, works in a place where he never practised as lawyer before his recruitment. Since a full-timer, he easily grasps the professionalism befitting his stature and nature of duties. Being a full-timer he is always available to render his professional services to the State and its machinery. This full-time prosecutor is trained in the relevant nuances of his position, both legal and administrative. Without continual growth and progress words such as ‘improvement’ ‘achievement’ and ‘success’ have no meaning. Therefore, these prosecutors have avenues of progress in their department and also they could be taken to judicial service. On completing a relevant number of years in service he could choose to become a Judicial Magistrate of First Class. He is ideally suited to become a good
prosecutor for the cases initiated by police of the State and other Government departments of the State.

On investigating, the general culture of these prosecutors it was reported that these full-time prosecutors are reluctant to take pains in work as they are assured of their salaries. Some of them are haunted by ‘relative deprivation’ since the earnings of defence counsel are more\textsuperscript{236}. Allegations of corruption are far too many. The response of the prosecutors is that the advocates are found collecting money from the parties as bribe in the name of prosecutor\textsuperscript{237}. Many of these are ethical and attitudinal problems to be cured by personality training. These problems are not the products of any defects in the scheme of having the system of full-time prosecutors. By having Full-time prosecutors the office of the prosecutor becomes institutionalised and more firmly woven into our system of Criminal Justice. These full-timers are functionally more responsible and they maintain better relationship with other agencies in the system. Level of accountability for Full-time prosecutors is more. As long as, it is believed that public prosecution is for protection of people, and is a continuous obligation of the State and as long as the police and judges are full-timers and serve the Sovereign interest of the State, it is eminently desirable to have only full-time prosecutors.

Every prosecutor for the State shall be competent in prosecuting the case at the trial court and appellate court. The system of having part-time Public Prosecutors at the higher courts has failed to show any substantial gains for the State and failed to prove


\textsuperscript{237} Mohammad Abdul Khader, A Role of Public Prosecutor in Administration of Criminal Justice, 1986 Cri.L.J. (Journal), page 11 at 13.
higher merit as against full-time prosecutors in the lower courts. Looking from the point of State administrative set up the part time prosecutors selected from the panel of names are appointed by the Law department of the State and the full-time prosecutors selected by the Public Service Commissions or such other commissions after competitive examinations are appointed by the Home Department of the State. A regular cadre of prosecuting officers for the State would bring uniformity in the set up and instill discipline in the ranks and keeps up zeal for hard work as it provides a channel for growth and promotion in the hierarchy from the lowest Assistant Public Prosecutor up to the higher level Public Prosecutor for the district and into the Directorate of Prosecution. Sub-Section (6) of Section 24 of the Code of Criminal Procedure there is legislative hint for such regular cadre of prosecuting officers. However this proviso failed to ignite enthusiasm in any state. Reasons for such inaction are not very far to seek. It is the interest of the vested interests that nullified the genuine ambitions. Sub-Section (6) of Section 24 of the Criminal Procedure, 1973 shall be suitably amended and with a time frame the State Governments shall be mandated to create regular cadre of prosecuting officers and bring uniform recruitment of full-time prosecutors for every court at every level and do away with part-time prosecutors. Sooner it is done, better it is for the Criminal Justice System.

To sum up, the theoretically sound system of part-time prosecutor suffered various dents in the hands of executive, judiciary, the political bosses. It is found that the process of consultation was not observed in its true spirit and many a time empanelling was made in violation of the rules. It is found that part-time prosecutor encountered professional dilemmas and conflict of interests between his private engagements and his
professional duties as a prosecutor. He was unable to bestow proper attention to his public office. Flourishing lawyers were found unwilling to become part-time prosecutors. Those advocates who had no lucrative practice were aspiring for this posed and it is found that their doubtful integrity is making them prone to corrupt practices. It is seen that there is no training for any of the part-time prosecutors. They lacked professionalism and they had soft corner towards defence bar and therefore justice became a casualty. The full-time prosecutor is one selected upon successfully passing through a written examination. He is found more professional in his attitudes. He does his duties relatively with more devotion than a part-timer, since he has avenues for promotion in his service. He is more detached from the local bar since he doesn’t belong to that place where he works. It is high time, the law dispenses with the institution of part-time prosecutors and creates a cadre of full-time prosecutors.

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