Chapter V

APPOINTMENT, REMOVAL AND PROBLEMS RELATED TO THE PROSECUTOR

Introduction:

The Prosecutor has an important position in the administration of criminal justice. His appointment, terms and conditions of appointment, etc. are regulated by section 24 of the Code Criminal Procedural and Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules 1984. Here an attempt has been made to elaborate the detailed procedure with respect to appointment and removal of the prosecutor on the basis of Rules and Practices. Under the old Code of Criminal Procedural, the public prosecutor means any person appointed under section 492 and includes any person acting under the direction of Public Prosecutor and any person conducting prosecution on behalf of Government in any High Court in the exercise of its original criminal jurisdiction and eligibility for appointment were governed by the conditions of service of Law Officers entrusted with the Government litigation or Criminal cases against accused in the Courts and these conductions were regulated by the Law Officers (appointment condition of service and remuneration) Rules 1939 and thereafter revised in 1984. Under section 2(u) of the new Code of Criminal Procedure 1973 the Public Prosecutor is defined as any person appointed under section 24 and includes any person acting under the direction of a Public Prosecutor.

Appointment Procedure:

The procedure of appointment of Public Prosecutor has been mentioned in the section 492 of Code of Criminal Procedure 1882, which was the same repeated in 1898.
The present appointments of prosecutor are governed by the rules which are called as the Maharashtra Law Officers (Appointment, Conditions of service and Remuneration) Rules 1984. With the help of rules of 1984 we may elaborate the detail procedure including the rules of appointment, qualifications and eligibility as follows:

**Condition of Eligibility for Appointment:**

A person who is appointed as a Public Prosecutor should satisfy the following conditions of eligibility:

a) He must be a citizen of India.

b) He must have obtained a degree of law from the statutory University and has been enrolled as an advocate.

c) He must not more than 55 years of age on the date of appointment.

d) He must be in practice as an advocate for not less than 7 years. In case of Government Pleader in High Court, he must be in practice for not less than ten years; for other Government Pleader the person must be in practice as an advocate for not less than seven years. In case of subordinate Government, pleader must not less than 3 years at taluka head quarters. In case of Honorary Assistant to Government Pleader in the High Court or Assistant Government Pleader in the *mofussil* Court, he must not have a practice less than 3 years.

e) According to opinion of the Government, in the Law and Judiciary Department a person who is a distinguished jurist and eligible for being appointed as an Assistant Government Pleader as the original appellant side of the High Court of Bombay or retired judicial officer or not below the rank of joint secretary in Law and Judiciary Department and prior to joining was practicing advocate for not less than 7 years.

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Additional Qualifications:

While making an appointment of a person who is eligible to be appointed, in addition to his qualifications and experience, the integrity, reliability, reputation and character will be considered as an additional qualification.

Appointment of Prosecutor:

1) Every Government Pleader or Public Prosecutor or Additional Public Prosecutor for the High Court or for each district shall be appointed by the Government in Law and Judiciary Department.

2) The Government invites applications from advocates (in the manner as it thinks fit) and selects from amongst the applicants a suitable candidate for appointment of:

   a) A Government Pleader or Additional or Assistant or Honorary Assistant to the Government Pleader in the High Court or Bombay City Civil Court or Court of small Causes at Bombay

   b) Special Government Pleader and Additional Government Pleader for Maharashtra Revenue Tribunal Bombay

   c) A Public Prosecutor or additional public Prosecutor in the High Court

3) The District Magistrate in Greater Bombay or as the case may be in every district shall invite applications from advocates in such manner as he thinks fit, for inclusion of the name of suitable candidates from amongst them, with approval of the Government in panel for appointment of Public Prosecutor or Additional Public Prosecutor for Greater Bombay or as the case may be for a district; and the Government, shall select a candidate from the panel so prepared for any such appointment.

4) The collector of every district other than the district of city Bombay and Bombay sub urban districts shall invite application from advocates in such manner as he thinks fit for the inclusion of the names of suitable candidates
from amongst with the approval of the Government in panel for appointment for District Government pleader or Additional or Assistant Government pleader or Honorary Assistant to the district Court pleader or subordinate Government pleader.

5) The Commissioner of Pune division, Nagpur division, Kolhapur division & Aurangabad division shall invite applications from advocates in such manner as he thinks fits, for the inclusion of the names of suitable candidates from amongst them, with the approval of the Government, in panel for appointment of a special Government pleader for Maharashtra Revenue Tribunal at Pune, Nagpur, Kolhapur, and Aurangabad and the government shall select a candidate from the panel so prepared for any such appointment.

6) A person appointed as a Government pleader or Additional Government pleader may also be appointed as a Public Prosecutor or Additional Public Prosecutor under sub section (1) or as the case may be. (Sub section (3) of section 24 of the Criminal Procedure Code.

**Appointment of Special Public Prosecutor:**

Under Rule 21 of Maharashtra Law Officers Rules, the Special Public Prosecutors are appointed by the Remembrances of Legal Affairs under section 24(8) of the Code, of a person who has been in practice as an advocate for not less than 10 years.

As special Public Prosecutor on behalf of the State he has to conduct any criminal case or cases in the High Court or subordinate Courts. The proposal to that effect shall be made to the prosecutor either by the District Magistrate, or Commissioner of Police, Public Prosecutor or the Government Officer concerned through his administrative department.

In a criminal case a request may be made by the private party, interested in the case, for the appointment of its own advocate as a Special Counsel or Special Public Prosecutor, on the condition that the payment of fees of such Advocate will be born by that party. The Remembrances of Legal
Affairs may, after considering such case on merits, appoint such Advocate for the particular case or cases.

Regarding the appointment of Public Prosecutor as per Section 24 of the Code of 1973 (after the Amendment Act of 1978) that for every High Court, the Central Government or the State Government shall after consultation with the High Court appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutor for conducting, any prosecution, appeal or other proceeding on behalf of the Central Government or the State Government. The Central Government may also appoint one or more Public Prosecutor for the purpose of conducting any case or class of cases in any district or local area under section 24(2).

For every district the State Government shall appoint a Public Prosecutor and one or more Additional Public Prosecutor for the district, provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or Additional Public Prosecutor as the case may be for another district. Under section 24(3) provided that Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed in the same capacity for another district.

The District Magistrate shall in consultation with Sessions Judge prepare a panel of names of persons who are in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district (Section 24(4). It has been held by the apex Court in Harpal V/s State\textsuperscript{163} that when sub-section 4 and 5 of this section speak above preparation of a panel out of which appointments for Public Prosecutor or Additional Public Prosecutor have to be made. Then it is for the District Magistrate to assess the merit and professional conduct of the person recommended and District Magistrate on the suitability of persons so recommended from the administration point of view. This section requires an effective and real consultation between Session Judge and District Magistrate about the merit and suitability of person to be appointment as Public Prosecutors or Additional Public Prosecutors.

\textsuperscript{163} 1993, Cri. L. J., P. 340.
No person shall be appointed by the State Government as Public Prosecutors or Additional Public Prosecutors for the district unless his name appears in the panel of names prepared by the District Magistrate under sub section 4 and 5 of section 24. In Gidwar Aghan Oraon V/s State of Jharkhand164 His Lordship held that appointment of Additional Public Prosecutors – Public Prosecutor includes additional Public Prosecutor. Person included in the panel prepared for the appointment of public prosecutor can therefore be picked up for appointment as Additional Public Prosecutors. Mandate of section 24 (4) and (5) is not violated. Practice of preparing two Separate Panels one for Public Prosecutor and another for Additional Public Prosecutor is a simple practice and not rule.

Notwithstanding anything contained in sub-section 5, where in a State there exists a Regular Cadre of Prosecuting Officers, the State Government, shall appoint a Public Prosecutors or Additional Public Prosecutors only from among the persons constituting such cadre. Provided that where, in the opinion of the State Government, no suitable person is available in such cadre for such appointment the Government may appoint a person as Public Prosecutors or Additional Public Prosecutors only from among the persons constituting such panel by the District Magistrate under sub section 4, under section (24(6)).

A person shall be eligible to be appointed as Public Prosecutors or Additional Public Prosecutors under sub sections 1, 2, 3, 6 only if he has been in practice as an advocate for not less than 7 years under section 24(7).

The Central or State Government, may appoint for the purpose of any case or class of cases, a person who been in practice as an advocate for not less than 10 yrs., as a Special Public Prosecutor under section 24 (8).

For the aforesaid purposes i.e. sub sections 7 and 8, the period during which a person has been in practice as a pleader (Advocate or has rendered whether before or after the passing of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public

164 2004, Cri. L. J. N.O.C., P. 47
Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate under section 24 (9). Amendment made by the parliament appears to be a positive approach.165

The combined effect of section 2 (u) and section 24 of the Code of 1973 and Sec 4(1) (t) and Sec 492 old 1898 is that there are 3 categories of Public Prosecutors Viz.

The Public Prosecutor appointed by Central or State Government Under sub Section 1 of section24 for every High Court or for Sessions Court.

The Public Prosecutor or Additional Public Prosecutor appointed by the State Government, Under sub section 1 of Section 24 for Sessions Court or High Court.

An advocate appointed by the Central Government, or the State Government, as a Special Public Prosecutor, for the purpose of any case or class of cases.

Some States i.e. Maharashtra, Bihar, Karnataka, Madhya Pradesh, Rajasthan Tamilnadu, Uttar Pradesh, have made amendment to this section. Mostly to clause 5 where there exists a regular cadre of prosecuting officers the State Government may also appoint a Public Prosecutor Additional Public Prosecutor from among the persons constituting such cadre.

Amendment of Maharashtra Government to section 24:

However, Maharashtra Government, amended this section by Maharashtra Act No.34 of 1981 Section 2 with effect from 20.5.1981 prefer to the application of this section only to the State of Maharashtra as -

in sub Section 1 the words “after consultation with the High Court” shall be deleted.

In sub section 4 for the words “In consultation with the Sessions Judge” the words “with the approval of the State Government” shall be substituted. Under section 24 there could be any number of Additional Public Prosecutor. This all shows that District Magistrate is generally controller over Public Prosecutor and Additional Public Prosecutors\textsuperscript{166}.

**Retirement age:**

No Law Officer shall be continued in the office after he has attained the age of 60 years. Provided that, Government in the Law and Judiciary Department, may continue any Law Officer after he has attained the age of 60 years if it is satisfied that the said Law Officer is physically fit and there are good reason to warrant his retention in office.

1) Subject to other provision contained in this rule and unless the order of appointment directs otherwise a person appointed as a Law Officer shall hold office at a time for a term not exceeding 3 years.

2) A Law Officer shall be eligible for reappointment after the expiry of his term and for that purpose the work of the Law Officer shall be reviewed every year and the report about his work and ability shall be sent to the Government, in the Law and Judiciary Department, at least 3 months before the expiry of his term.

a) In the case of the Law Officers in Nagpur and Amravati Divisions by the Joint Or Deputy Secretary to Government, Law and Judiciary Department, at Nagpur.

b) In the case of the Law Officers in the area of jurisdiction of the High Court at Aurangabad, by the Joint or Deputy Secretary to Government, Law and Judiciary Department, at Aurangabad and

\textsuperscript{166} Ibid 2 P. 144
c) In the case of other Law Officers, by the solicitors to Government (Mofussil Litigation) and by the concerned Joint or Deputy Secretary in the Law and Judiciary Department, (city civil and criminal litigation) at Bombay, as the case may be.

**Limitations or Restrictions on Prosecutor**

There are number of limitation or restrictions on the Prosecutor which he has to observe while functioning in the administration of Criminal Justice. The Prosecutor has to observe these limitations meticulously; otherwise he may face the adverse consequences. The following are the limitations or restrictions to be observed by the Public Prosecutor, Additional Public Prosecutor or Special Public Prosecutor as per the Maharashtra Law Officer (Appointment, Condition of Service and Remuneration) rules 1984.

**A. Not to act against State or its Officers**\(^\text{167}\) - Regarding advising appearing or acting other than State or its officers

1) Except with special sanction of the Government in the Law and Judiciary Department, or except as hereinafter provided in this rule the Law Officers or their partners, if any, are debarred from;

\(^\text{167}\) Rule 33
e) Giving advice to the private parties in case in which they are likely to be called upon to advise the Government or its officers;

f) Refusing to appear or act on behalf of the State or its officers except under exceptional circumstances such as being busy in another Court in the Government, cases.

2) The Law Officers are debarred from acting or appearing on behalf of the plaintiff in any suit in which the plaintiff has applied for permission to sue as an indigent person until the application for such permission has been decided by the Court. These provisions shall, mutatis mutandis apply to appeals filed under Order XLIV (i.e. appeals by Indigent persons) of the Code of civil procedure.

3) The Public Prosecutor or Additional Public Prosecutor in Greater Bombay the motussil, while conducting a prosecution on behalf of the State shall not hold a brief for any other person interested in the case.

4) a) The Government pleader or Public Prosecutor High Court at Bombay shall not act or appear on behalf of any person, whether complainant or an accused person in any case without the previous permission of the Remember of Legal Affairs.

b) The Government pleader and Public Prosecutor Bombay High Court at Nagpur shall not act or appear on behalf of any person whether complainant or an accused person, in any case without the previous permission of the Joint or the Deputy Secretary of Government, Law and Judiciary Department, at Nagpur.

The Government pleader and Public Prosecutor Bombay High Court at Aurangabad shall not act or appear on behalf of any person whether complainant or an accused person, without the previous permission of the Joint or the Deputy Secretary to the Government, Law and Judiciary Department, at Aurangabad.
5) a) The Public Prosecutor or Additional Public Prosecutor for Greater Bombay shall not act or appear on behalf of the accused person without previous permission of the District Magistrate, or Commissioner of Police Greater Bombay or Remembrance of Legal Affairs.

b) The Public Prosecutor or Additional Public Prosecutor in Sessions Court in Nagpur and Amravati divisions shall not act or appear on behalf of an accused person without the previous permission of the concerned District Magistrate, or the Commissioner of Police or the Joint or the Deputy Secretary to the Government, Law and Judiciary Department, at Nagpur.

c) The Public Prosecutor or Additional Public Prosecutor in the Session Court in the area of jurisdiction of the High Court at Aurangabad shall not act or appear on behalf of an accused person without the previous mission of the concerned District Magistrate or the Commissioner of Police or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department, at Aurangabad.

d) The Public Prosecutor or Additional Public Prosecutor in the Sessions Court in the rest of the divisions in the State shall not act or appear on behalf of an accused person without the previous permission of the concerned District Magistrate or the Commissioner Police or the Remembrance of Legal Affairs.

6) The Additional Public Prosecutor in the High Court at Bombay, Nagpur and Aurangabad shall not act or appear on behalf of any person whether complainant or an accused person in any case without the previous permission, in the case of High Court at Bombay or the Remembrance of Legal Affairs and in the case of High Court at Nagpur and Aurangabad, the Joint or the Deputy Secretary to the Government, Law and Judiciary Department, at Nagpur or Aurangabad as the case may be.

B. Participation in any political movement prohibited\(^{168}\). The Law Officers are expressly prohibited from taking part in, subscribing in aid of or

\(^{168}\) Rule 34
assisting in any way any political movement sponsored by any organization in relation to any affair in India.

The word 'political movement' includes any movement or activity tending directly or indirectly to excite disaffection against or to embarrass the Government, as by law established or promote feeling of hatred or enmity between different classes of the citizens of India or to disturb the public peace.

If a Law Officers is a member of any political organization before his appointment, he shall resign his membership immediately after his appointment and inform Government, in the Law and Judiciary Department, in writing about such resignation.

C. Membership or local authorities etc. and contesting elections to local authorities, etc. not permitted\(^{169}\):

1) The Law Officers are debarred from standing as a candidate for elections to municipal corporations or councils, Zilla Parishads, Panchayat Samities or any local authorities or to sign nomination papers as proposer or seconder, thereof without the previous permission of the Government in the Law and Judiciary Department.

2) If a Law Officer is a member of any local authorities referred to in sub rule (1), at the time of his appointment, he shall resign his membership immediately after his appointment unless he has obtained the permission of Government, in the Law and Judiciary Department for continuing such membership.

\(^{169}\) Rule 35
D. Acceptance of Directorship of any company etc. prohibited\textsuperscript{170}.

The Law Officers are debarred from accepting any appointment or continuing as a director in any company, cooperative society, bank, firm etc. without the sanction of the Government or the Law and Judiciary Department.

E. Disclosure of information forbidden\textsuperscript{171}.

The Law Officers appearing on behalf of the State or its Officers are debarred from communicating directly or indirectly to any person any document or information which has come into their possession in the course of their duties without permission of Law and Judicial and its Officers.

F. Appearance of more than one Law Officer in the same case prohibited\textsuperscript{172}.

Save as otherwise provided in these rules more than one Law Officers shall not appear in the same case in any Court without the previous permission of the Remembrance Legal Affairs.

G. Head Quarters\textsuperscript{173}.

The Head quarters of the Government pleader or Public Prosecutor shall be the Head quarter of the Court or Tribunal for which he is appointed.

H. Sanction of Remembrance of Legal Affairs for appearance in Court-

I. When any such Special Counsel or Special Public Prosecutor is so engaged by the Government in the Law and Judiciary Department, for the conduct of such case in any Court, the Law Officer attached to such Court
shall not, without the sanction of the Remembrance of Legal Affairs appear, assist or instruct the said Special Counsel or Special Public Prosecutor.

J. Transfer of Records to succeeding Law Officer\(^1\)\(^7\)\(^4\).

On the expiry of the term of the office, whether by efflux of time or otherwise of Law Officer he shall prepare a list of cases, references and official correspondence pending with him and hand over all the records to the Law Officer succeeding him or to such other Law Officer as the Government, in the Law and Judiciary Department, directs and obtain a receipt for the same and report to the Government.

While handing over the charge to new law officer, the incumbent officer would be personally liable for any loss which is caused to the Government due to the default of a Law Officer. Such loss shall be recovered from fees, if any or any amount due and payable to him.

K. Termination with one month notice or in lieu of one month retainers fee.

Notwithstanding anything contained in sub rule (2) and (3) but save as otherwise provided in sub rule (5) the appointment of any Law Officer, which is at the pleasure of the Government, may at any time, be terminated by the Government, in the Law and Judiciary Department, by giving him one month's notice or where any retainer is payable to such Law Officer be terminated forthwith by paying him one month's retainer pay in lieu of such notice.

L. Not to appear after the expiry of Term.

A Law Officer whose term of office has expired, shall not after the expiry of such term be entitled to appear on behalf of the State or its officers in any case, civil or criminal which may then be pending in the Court.

\(^1\)\(^7\)\(^4\) Rule 32
M. Handover the charge to senior most of the subordinate after the expiry of the term of appointment\textsuperscript{175}.

Where in the case of principal Law Officer, no appointment has been made by the Government in the Law and Judiciary Department, before the expiry of the periods specified in sub rule (3) and clause (b) of sub rule (6) of rule 30, the outgoing principal Law Officer shall hand over the charge of his office to the senior most of his subordinates, if any, or any other Law Officer as Government in the Law and Judiciary Department, may direct. The latter shall be entitled to the retainer for the period he holds the charge of the said office.

Facilities and Privileges of the Prosecutor

Following are the general rules regarding the facilities and privileges applicable to Public Prosecutor.

A. Traveling allowances and daily allowances\textsuperscript{176}. The traveling allowances and daily allowances are payable to the Law Officers in respect of journeys undertaken by them in connection with their duties in accordance with the Rule 377 of the Maharashtra Civil Services Rules. In cases where the rates of fees have been fixed by Government in the Law and Judiciary Department, and the said rates are inclusive of daily allowance, in such circumstances traveling allowance shall be payable to the concerned Law Officers.

\textsuperscript{175} Rule 31 
\textsuperscript{176} Rule 40
B. Leave

1) The Government, pleader or Public Prosecutor or his subordinates shall not be entitled to any leave. The Assistant public prosecutor are entitled for leave which are punishable to the civil servant, because they are working under the home ministry from the beginning. Whereas this facility is not available to Government pleader or public prosecutor.

2) (a) Whenever the Government, Pleeer or Public Prosecutor proposes to leave his headquarters, he shall give prior intimation of the same, stating the probable period of his absence and the address showing his stay during his absence.

In the case of Government, Pleeer or Public Prosecutor on the original and Appellate side of High Court of Bombay and the Government, Pleeers in the Bombay City Civil Court and Court of small Causes at Bombay, to the Remembrance of Legal Affairs.

In the case of the Government Pleeer and the Public Prosecutor in the High Court at Nagpur or Aurangabad to the Joint secretary or Deputy Secretary to the Government, Law and Judiciary Department, at Nagpur or Aurangabad as the case may be.

In the case of the Public Prosecutor for Greater Bombay, Court of Session for Greater Bombay, to the District Magistrate and the Commissioner of Police Greater Bombay.

In the case of the District Government Pleeer and Public Prosecutor or the Subordinate Government, Pleeer to the Collector or the District Magistrate, of the district concerned.

In the case of Special Government Pleeer for Maharashtra Revenue Tribunal to the Commissioner of division concerned;

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77 Rule 42
(b) The Government Pleador or Public Prosecutor shall make all
necessary arrangements himself, for the conduct and disposal of the work
in the Court or tribunal, as the case may be, during his absence.

3) Whenever any Additional or Assistant Government, Pleador or Honorary
Assistant to the Government, Pleador concerned or Additional Public
Prosecutor subordinate to the Government Pleador or Public Prosecutor, as
the case may be proposes to leave his headquarters, he shall do so with
the previous permission of the Government Pleador or Public Prosecutor as
the case may be or in his absence the Additional or Assistant Government,
pleader or Additional Public Prosecutor in charge as the case may be.

C. Law Officers is be bound by the rules, orders, etc.\textsuperscript{178}:

1) Every Law Officers shall be bound by the provisions of these rules and
such other rules, orders, or directions as Government, in the Law and
Judiciary Department, may make from time to time.

2) The Law Officers shall follow scrupulously the procedure laid down in the
Rules for the Conduct of Legal Affairs of Government, 1984 and the
instructions that may be issued to them by Government, in the Law and
Judiciary Department, from time to time in the conduct of cases on behalf
of the State or its Officers.

\textsuperscript{178} Rule 43
D. Engagement of special counsel or special Public Prosecutor\textsuperscript{79} -

Notwithstanding anything contained in the foregoing chapters regarding appointment of Law Officers for the conduct of Government, litigation work, Government in the Law and Judiciary Department, shall be at liberty to engage any other advocate as Special Counsel or Special Public Prosecutor or conducting any case or class of cases in any Court on the terms to be agreed upon between them.

E. Decision of the Government in interpretation of these rules to be final\textsuperscript{80} - If any doubt or difficulty arises as to the interpretation of any of the provisions of these rules, the decision of the Government, in the Law and Judiciary Department, in respect thereof shall be final and binding on all Law Officers.

Rule 29 All the Law Officers shall be under administrative control of Remembrance of Legal Affairs in his capacity as the \textit{ex-officio} Secretary to Government in the Law and Judiciary Department.

F. The subordinate Government pleader may act or appear on behalf of the accused person in any case in which the Assistant Public Prosecutor appears on behalf of the State.

G. Any Law Officer may resign his appointment either by giving one month’s notice to Government in the Law and Judiciary Department, or may resign forthwith by surrendering one month’s retainer where such retainer is payable to him.

\textsuperscript{79} Rule 44
\textsuperscript{80} Rule 46
Removal of Public Prosecutor

The Maharashtra Law Officers (Appointment, Condition of Service and Remuneration) Rules 1984 have made detailed provision regarding the removal of Public Prosecutor, whereas the Maharashtra Civil Services Rules are applicable for assistant public Prosecutor.

1. Appointment continues till the Pleasure of Government\textsuperscript{181}:

All the Law Officers except the Advocate General shall hold office during the pleasure of the Government, in the Law and Judiciary Department.

2. Removal For Guilty of Conduct\textsuperscript{182} - A Law Officer shall be liable to be removed from his office at any time, if he is guilty of any act or conduct which in the opinion of the Government in the Law and Judiciary Department, is incompatible with his duties as such Law Officer. The decision of the Government in the Law and Judiciary Department, in such cases shall be final.

However, in \textit{Shrilekha Vidhyarthi V/s State of Uttar Pradesh}\textsuperscript{183} it has been analyse that the duration of Public Prosecutor as per the legal Remembrance manual the initial appointment of Public Prosecutor or Additional Public Prosecutor is for the period of one year during which the work of the appointee is watched to adjudge his suitability and a report is required to be submitted at the end thereof by the District Magistrate after consulting with District Judge. If found satisfactory, his engagement is made for three years and in 3 years also prosecutor is to be considered on the basis of his work, conduct, age, for renewal and the Government is required to decide the question of his reappointment, for a period not exceeding 3 years on the basis of a report of District Magistrate and the opinion of District Judge.

\textsuperscript{181} Rule 30 (1)

\textsuperscript{182} Rule 30 (5)

\textsuperscript{183} (1991) 1 SCC 212, at p.231
If the Government agrees with their recommendation, the term of incumbent is renewed for a period not exceeding 3 years. But if the Government decide not to reappoint a Government Counsel that the Legal Remembrance may call upon District Magistrate to forward fresh recommendation in the manner laid down in para 7.3 of the manual.

1) It is a professional engagement terminable at will on either side and is not appointment to the post under Government. Accordingly Government reserves the power to terminate the appointment of any Government Pleader or Public Prosecutor or Additional Public Prosecutor. Accordingly Government reserves the power to terminate the appointment of any Government Counsel at any time without assigning any cause.

2) Para 7.07 say that participation in political activities is disqualification for the post. Para 7.08 provides for consideration of past record of work, conduct and age of the Public Prosecutor for renewal of his term.

3) The renewal beyond 60 yrs. of age shall depend upon continuous good work, sound integrity and physical fitness of counsel.

4) Para 7.09 provides for maintenance of the character roll in which the District Magistrate and the District Judge are required to record their opinion on the capacity and work.

The Legal Remembrance manual clearly show that Government counsels in district are treated as the officers of the State. It is not merely a professional engagement nor is purely contractual. A public element is attached to the office or post. Appointment of the best amongst those available is the object sought to be achieved by these provisions which otherwise should be the paramount consideration in discharge of this function, aimed at promoting public interest for public good. Their remuneration is paid out of the public good exchequer para 7.06 of the Legal Remembrances manual must be understood that the appointment of District Government pleader and Public Prosecutor is not to be equated with the appointment to the post under the Government, in strict sense which does not mean that it
results in denuding the office of its public character and public element is attached to the offices.

Appointment can be terminated even currency of term by only communicating the decision of terminations without any reason even during the subsistence of the term of appointment. However, as per the ratio of Srilakha Vidyarthi V/s State of Uttar Pradesh\textsuperscript{184} without assigning any cause means without communicating any cause to the appointee, it cannot be equated with “without existence of any cause”. The reason must exist; otherwise the decision on the basis of same reported cases would be arbitrary. Apex Court has taken judicious view in most of the cases. In Liberty Oil Mills V/s Union of India\textsuperscript{185} Section 321 of the Code permits withdrawal from prosecution by Public Prosecutor or Assistant Public Prosecutor incharge of the case with the consent of the Court at any time before judgement is pronounced. As the Court observed that, this power of Public Prosecutor is derived from statute and the guiding consideration in such cases, that it must be done in the interest of administration of justice. This function of the Public Prosecutor relates to the public purpose entrusting him with the responsibility of the action only in the interest of Administration of justice\textsuperscript{186}.

In Mudrica Prasad Singh V/s State of Bihar\textsuperscript{187}, Justice Krishna Iyer also pointed out that Government under our Constitution shall not play with the Law Officer on the political or other impertinent consideration as it may affect the legality of the action and subvert the rule of law itself. In this decision earlier Madras High Court decision was quoted with approval, wherein it was clearly held that the duties of the Government pleader are of public nature and his office is a public office. Our investigation agency almost based their case entirely on the testimony of the Principal witness ignoring other form of evidence particularly forensic evidence and coercing witnesses to change their testimony to suit their case requirement.

\textsuperscript{184} Ibid.
\textsuperscript{185} Liberty Oil Mills V/s Union of India. (1984) 3 SCC 465
\textsuperscript{186} Ibid.
\textsuperscript{187} Mudrica Prasad Singh V/s State of Bihar, (1979) 4 SCC 701
Problems of the Prosecutor:-
Here an attempt has been made to identify the different problems faced by the prosecutor in fact, these are the difficulties or lacuna in the facilities provided to in.

1) Inadequate library facility:

Even though Prosecutor has to safeguard the interest of actual victim as there is sufficient material on record but sometime different case laws of the Supreme Court or High Courts spoil the case. Therefore inadequate law library facilities spoil the case of Prosecution. There should be a provision to supply law reporters such as All India Reporter, Criminal Law Journal, Supreme Court Criminal Cases or other Journals. Some Prosecutors have no library at all. It hampers the work of Prosecutor. Defence Counsel can put case laws which are in their favour. Moreover senior advocates have their own library or member of the Advocates Bar can have it from Advocate Bar Library. The whole burden to prove the case of prosecution is on Prosecutor. If two views are possible, principally view which is in favour of accused has to be considered by the Court as accused is presumed be innocent unless proved clear guilty i.e. without any shadow of doubt. Therefore, prosecutor has a heavy responsibility to prove its case without any slur of doubt. Unless the resource of library is available prosecutor is handicapped. He cannot bring the latest case laws to the knowledge of the Court. This is the foremost reason why the Conviction rate declines and crime is flourishing. The general public is afraid of to testify or complaining against the gangsters. To maintain the law and order situation this problem must be solved. Unless and until this situation is resolved the rate of conviction is impossible to improve. So also country like India is a developing country. Every now and then old laws slightly changes are made to improve to suit the circumstances and no new major development in laws has been made. Unless and until the prosecutor knows it, he cannot put before the Court the particular change in the old law.

2) Office of the Prosecutor is not in the Court Compound:

If any prosecution witness is coming to the Court to adduce evidence, in such event it is natural that, he will meet prosecutor. It is necessary that Prosecutor should be easily available to him. For this he should not cause harassment. Therefore prosecutors should have an office with good
accommodation and sitting arrangements in Court compound. There should be stenographer and clerks for office work. Moreover Prosecutor has to see whether witness will testify in Court as per his statement to police or otherwise. If a witness needs some general instruction about the case, it must be provided by Prosecutor. Moreover there is no rule of law that witness should be taken as surprise. Justice is not only the prerogative of an accused. Delay in justice also affects the prosecution. Procedure of law do not punish the unwitting and innocent. Law is a body enacted or customary rules established among the Community enjoying or prohibiting certain action. Moreover, Human Rights law is for all the citizens. Now a day's crime shows up rising trend. Therefore this is a burning problem and it is necessary to curtail it by improving the situation.

3) Unnecessary adjournments given to the Defence Lawyer:

General Practice followed is that if the witness turn to the Court in due response to the Court summons then if his examination in chief is over, the tactics of defence counsel is that he needs adjournment on this or that pretext for no satisfactory reasons. Intentional absence of accused from Court are common for prolonging the trial. It stands to the difficulties of harried witnesses who are not ready to face countless trips to the Court to dispose because more often than not having had been adjourned the case on some specious ground and delay trial for years to come, put witness to the personal and occupational hardship. Therefore as a result Prosecution witness retract their statement and turn hostile to prosecution resulting in clear cut acquittal. Moreover, witness has no facility to sit in a shed and water facility. This is the infelicitous scenario in many Courts in India and cannot help to Judicial findings. Therefore there must be some limits for number of adjournments.

As this is a general scenario in Courts. Therefore, now a day's witnesses tumble on getting summons. The efforts as of delivering timely justice gets disturbed. However, witness not examined on several dates and case being adjourned in late hours cause harassment to witnesses. Because of the adjournment sometime there is a change in address of witnesses and it is difficult to get the address through police for which also case suffers.
Moreover, due to lapse of time Prosecution witnesses do not recollect the incident properly. Thereby defence counsels make them target of attack, not only to direct eye witnesses but also to the formal witnesses. Adjournments tire again and again to the witnesses. In the mean time the witnesses are either won over or they may be threatened or may be abducted or, may be done away with or bribed because there is no protection to them.

If witness is examined after some years and on prolongs cross-examination he finds himself in hopeless situation. If the case is adjourned the appropriate diet money is the far cry of witnesses. There have been cases when after examination or adjournment; witnesses were not provided the diet money from the Court most of the times ultimately accused takes the opportunity. In some cases, he has to come from long distance in such situation; he should not be left to be harassed by subordinate staff of the Court. To avoid all such untoward incidents people in general avoid being a prosecution witness. Even if people come forward for no solid reasons they undergo harassment. Therefore they turn hostile to the prosecution.

**Delay in disposal of the case:**

It is crying need of the day. In spite of adjournment intentional absence of the accused is another tactics as a major reason for prolonging the trial.

Non-supply of charge sheet of the offence investigated against accused result in so many difficulties and adjournments. Intentional absence of the accused in this process causes prolonging the trial. Police not producing the seized property at the time of filing of the cases in the Court. They bring the Court on some other date so also accused not being present to answer the charge, cause delay.

Absconding accused cause delay in which addresses of witnesses also sometimes get changed. More number of Courts and short number of prosecutors also cause delay. No sufficient prosecutors are appointed as per the work load in the Court. Some accused cause material delay by adopting delaying tactics by way of criminal revision.
There are number of reasons for the delay in disposing the case. Usually the following reasons are identified which are as follows:

i) The defence counsel busy in Appellate or other Courts.

ii) Court is over burdened by numerous cases.

iii) Evidence of prosecution witnesses generally prolong in more than in one sitting.

iv) Trials are not properly monitored.

v) Inadequate number of prosecutors.

4) Police Non-cooperation:

There must be cooperation from police when any order is passed by the Court or require some information. Court uses to handover it to prosecutor and prosecutor for execution of that order handover to police in such situation police should not avoid to execute it, which adversely affect the prosecution case. It is an undisciplined behaviour of the police. General excuses from police are investigation officer transferred. In fact, after filing the charge sheet in the Court, the follow up procedure in the case must be adopted by the police else the case will deteriorate. Releasing or acquittal of the under trial prisoner due to the laxity of police would be harmful to the societies interest.

5) Lack of Legal Education to Police:

There is legal illiteracy inter alia in constabulary. Presently police need to clean up its own machinery. Judicial cannot be blamed for this. Lethargic and sloppy investigation cannot produce convictions. Lack of knowledge of law and procedure among the constabulary leaves wide loopholes therefore the defence counsel jump up it. Many important points are badly understood by the police. Even minor nuance of grammar like writing hain instead of hoon can make the difference between conviction and acquittal. If some inadvertence admission appeared in cross examination then where two views are possible, view in favour of accused shall be considered by the Court i.e.
benefit of doubt. The police have the difficulties in investigations as they have to perform dual function i.e. law and order and investigations. Ill-equipped police functionaries do investigations, poor quality of forensic facilities; lack of communication is also responsible for speedy investigation. Moreover exploitation of police by political parties demoralizes the force. Some time the fair investigation process may be vitiated which affect adversely the conduction of prosecution cases. Expeditious investigation is the prerequisite for the clear conviction of the accused. Prosecutor should ponder upon these problems. Legal illiteracy among the constabulary is also the reason for defective investigation.

6) In proper cases help of Forensic Science has not been taken by Investigation Agency:

Various systematic use of Forensic Science would provide important assistance in reaching the answer to the following questions:

Has the crime been committed?

How and when the crime was committed?

Who committed the crime?

It is a key measure of detection of crime, identifying the criminal and providing help to the victim of the crime. It through light on the application of knowledge of science for the purpose of law and justice. It provides scientific study for investigation of crime in juristic journey. The uses of Forensic Laboratories in detection of crime in developed countries are tremendous and improving one with the new technique. However, in India it is not so developed. Police are not taking full advantages of this technique. The scientific examination by Forensic scientists adjoins a missing link or strengthen a weak chain of investigation. How to take the blood sample is important for doctors and how to send it is for investigation agency. The knowledge of such science is necessary to the important functionaries and components of the criminal administration of justice. Forensic Science has eight important branches like chemistry, Biology, Physics, Serology, Ballistic,
Toxicology, questioned documents and photography. Forensic expert solve mysterious situation concerning human life and thereby providing useful contribution to the criminal Courts to search out truth in criminal trials and to investigating officers in selecting and detecting incriminating objects and items from the crime scene. It can also help to detect cyber crime.

The conventional reliance on the eye witnesses and the verbal testimony as a proof of guilt neither practicable not reliable today. Culprits are educated and cinema, television has taught them many tricks. It is for the police to reconcile the erring mans freedom to commit crime. Cheating, frauds, embezzlement etc. often involves addition, subtraction and erasures.

X-ray technique also useful to reveal the structure of bones. In poisoning case, forensic science can help to know the kind of poisons in human body. Thereby police can utilize this technique but in technical and complicated cases they rely on only direct evidence and not apply this technique of Forensic is a concern in the matter of investigation and causes difficulty to the Prosecution agency.

7) Regarding Report of doctor in hurt or other cases:

When doctor issuing the certificate to the victim by medically examining him then he must be able to stand in cross-examination by defence counsel. If doctor is unable to satisfy the defence counsel why he has mention so in the report or not given proper and suitable explanation of ambiguity then adverse inference can be drawn by the Court against prosecution case. Moreover, if evidence of doctor itself is contradictory, and he could not explain it then it will not attach full weightage and ipso facto each sentence of the deposition made by the doctor cannot be accepted.

While dying declaration is recorded, patient must be in a fit and conscious condition to make his/her statement on death bed. It is an acid test for doctor. If 3rd degree burn is on the person of the injured in such event Court will confuse about the statement given by injured on death bed. Moreover, injured on the death bed, first given statement to the police and
then before the special Judicial Magistrate in such event it will not be admissible as it create suspicion.

8) Age old Principles of Criminal justice system not suit to present time is a problem:

In fact the object of the administration of criminal justice is to protect the society from mischievous and undesirable bad elements by deterring potential criminals by preventing them from actual committing further offences and reforming them to be a law abiding citizens. Therefore, the following principles of criminal jurisprudence creates a problems where there are alarming rate of crime, intelligent offences and cyber offences are on increase.

Accused is presumed to be innocent that trail to the maxim let the 99 criminals should be acquitted but one innocent should not suffer or punished.

When two views are possible, view which is in favour of accused must prevail.

However, the prosecution in cooperation with Court and police have to play a dynamic and proactive role in search of truth for punishing the guilty and protecting the innocent.

The above problem creates hardship to prosecutor in proving the case.

9) Witness and perjury:

In existing system prosecution mainly relied on oral evidence of conventional method. Unfortunately there is no dearth of witnesses who come to the Courts and adduce false evidence with impunity. However procedure prescribing for taking action against perjurer is cumbersome. This is a typical problem.
10) General Problems in Conducting Cases:

1) The prosecutor cannot give the general instruction to the witnesses in respect of case even though victim lodge First Information Report. He set the criminal machinery in motion.

2) In some serious and technical offences opinion of prosecutor has not been sought and even if sought opinion of prosecutor not complied with.

3) Muddemal i.e. seized property not produced before the Court before trial begins usually its descriptions is quite different than that of produced in the Court.

4) Chemical analyzer report handwriting expert examination report, Ballistic expert report, weapon examination report, not sent well in time, causing harassment to the prosecutor.

5) Sometimes copies of the important documents are not supplied to accused viz-identification pared, confessions, copy of dying declarations etc. because accused demanding those documents in the interest of fair trial.

6) The Investigating officers when transferred not giving their proper addresses and not attend the Court well in times that generate anger in the mind of the Court.

7) There is no witness protection programme to save them from bellies.

8) Staff is not provided to prosecutor's office.

9) No sufficient stationery, Xerox machines and sufficient staff not provided.

For taking opinion in the case some time complete set of papers not sent, to prosecutor.

The above problems are the burning problem, which requires early attention. So also the Judges in criminal trial are functioning like a umpiror and not the seekers of the truth. In fact, they must participant to search out
the truth, as injustice should not be done to the accused so also to the victim as it reflect society. Moreover, Court also not in a position to analyses and appreciate the evidence in true perspective. The result may be unwarranted acquittals and convictions. Law allows the Judge/Magistrate under section 165 of Evidence Act to put any question at any point of time while witness under examination to search out the truth. But the time generally considered proper for extended examination is where the prosecutors and lawyers finished their questions. However, intervention in examination in chief is not proper which amount to destroying the fiber of examination in chief. Moreover some time Judges are not putting questions in clear form, which prevent the witness being unfairly misled. If he again put series of questions he makes effective examination in chief by Public Prosecutor impossible, because prosecutor cannot ask leading questions. For examination in chief prosecutor has to study the case papers thoroughly and then put the questions in sequence, so that answer must be proper and clear and not divert the trial from its natural course. Moreover, leaving aside the important witnesses, if the Judge passed the judgment hurriedly along with stricture on the prosecutor is also create a problem for prosecutor.

Above are the burning problems requiring urgent attention.

11) The law of Criminal Procedure Code not allowing the participation of Victim in the trial, i.e. Fairness to victim:

It is an internationally accepted basic element even though in criminal trial victim feel ignored. It must be changed is burning need for justice. There is a feeling that the existing administration of criminal justice exalts a criminal right over the victims. In fact victim of crime cannot be a "forgotten man" It is he who has suffered a lot. Because there is no provision in the Code that he has right to watch the trial. He is the only man who can provide a necessary material useful to the case to Prosecutor. However the non-participation of victim in the trial is fatal to the prosecution. However, criminal law recognized right of the victim under section 301 (2) and 302 of the Criminal Procedure Code is minimal. In each case police help cannot be obtained. As no one is there to help the prosecutor in respect of the case resulted in failure to get
offender punished for his crime, generated contempt towards the State and criminal justice system and compelling the victim to look for extra legal avenues to settle his score with the offender.

If victim help the prosecution it can solve the much more difficulty of Prosecutor. As the paradox and pathology of our criminal jurisprudence is that some time we go out of way to protect the interest of the accused. While victims emotions are always ignored. He cannot take part in Court conduction trial except lodging First Information Report and watching evidence and submit written note of argument with the permission of the Court. Police only collected witnesses they preferred. Moreover they get no chance to open their mouth. By some defence counsel they made target of attack to victim or police witnesses. They are severally pulled up for not describing the colour of the eyes of the accused whom he has seen on one dark night before ten years ago and case comes up before Magistrate after a decade. Defence counsel putting humiliating question of annoyance, which causes harassment to witnesses to reply the question.

12) Stock witnesses by Police:

Stock witness taken by investigation agency has routinely come to rely on fabricated evidence to salvage them. Therefore, the evil of perjury is showing alarming increase and one of the reason is that no action has been taken against hostile witnesses. Professional panchas, fake witnesses and planted evidence are routine tricks of the trade by the police, which does not go by book. Therefore, large number of cases ended in acquittals. In Narcotic Drugs and Psychotropic Substance Act 1985, cases ended in acquittals as the Investigation Officers did not follow the procedural safeguards and norms mentioned in the Act. Identical unlikely scenario is portrayed in most of the cases. Crime detection was the duty of the police officer before 10 years but today they are obsessed with bandobast and very important person's security. Therefore there is no strict compliance through effective supervision by senior officer. Inspector of this branch record the height of the prime suspect faculty cause suspicion resulted in acquittal.
It is a paramount principle that the prosecution agency must be separated from police and it must have its own financial allocation from the State funds. By observance of this principle a fair trial and impartiality can be maintained. As a matter of separation between the police and prosecution the appointments of the Public Prosecutor and Assistant Public Prosecutor must be made by an independent agency which is not subject to the influence of police department. The reason is that prosecutor has to appear and conduct criminal cases in the Court of law against the accused whose matter is investigated by the police department.

The basic principle of criminal jurisprudence is that accused is presumed to be innocent till it proves guilty. Article 20 (1) of Indian Constitution is also recognizes this as fundamental right of a person. The prosecution has to examine various types of witnesses in the trial, which are again to be cross-examined by the defence lawyer. Therefore to prove the case against the accused in the adversarial system is an onerous and difficult task. Hence, the more experienced lawyer is required as Public Prosecutor to represent the State in the Court of law so as to satisfy the Court from the available evidence on record and through argument that how accused is held constructively liable for punishment for the offence committed by him.

There is a need to appoint an excellent lawyer as a Prosecutor. He is also an assistant to the Court in furtherance of justice. The post of prosecutor is responsible to uphold the dignity of his office with full sense of responsibility and its value should not be devalued. However, the position of prosecutor does not attracted by meritorious, talented and experienced lawyer.

Conclusion

In chapter No. 5 while sum up it can be ascertain the procedure to appoint the Prosecutor. The State Government and Central Government under old and new provisions of Criminal Procedure Code appoint Prosecutor. No doubt appointment procedure, condition and eligibility for appointment removal has also shown in Maharashtra Law Officers (appointment and condition of service and remuneration) rules 1939 it has been repealed
because new rules 1984 have been passed as much more amendment has been made in that rules of 1939. When and how the Special Public Prosecutor has to be appointed has also been shown. The District Magistrate can appoint Public Prosecutor as well as Additional Public Prosecutor in consultation with District Judge in the District and in High Court in consultation with High Court Judge by the State Government under section 24 Criminal Procedure Code 1973. However change has been made by the Maharashtra Government in 1981 to keep the control over the Public Prosecutor by ruling Government. Some restrictions have been imposed on them to work without prejudice. However while working Prosecutor has to face so many difficulties in conducting the Criminal Trial before the court of law has also been mentioned.