CHAPTER VIII
ORGANIZATIONAL STRUCTURE AND HIERARCHY IN THE FUNCTIONING OF THE PROSECUTOR'S OFFICE

Introduction:

The Strategy of change through law is only the democratic road of success or peaceful progress of the country. Because where the law rules the tranquility dwells else, if the law runs counter minus to the life of the people, in such events people will take law into their own hands if the law fails to take the people in to its own hands. Rule of law should run close to the rule of life of the people. The same is in administration of criminal justice. People love their life, liberty and property. Therefore violations of law must be effectively dealt with a rational criminal law, because good laws are the essence of good Government Public Prosecutor of any class is a public servant. His duties and responsibilities are of public nature. Law and professional ethics bind him and his role is as an officer of the Court.

In our country we have adopted adversary system of administration of criminal justice based on Anglo-Saxon system of criminal jurisprudence as Britishers were the rulers before independence. Besides, long ago British Jurist said "let the ten guilty persons escape but one innocent should not suffer"; from that flowed maxim "A man is presumed to be innocent till he is found guilty", trailed a rider he is also entitled to the benefit of doubt and treated as bed plates of criminal trials in the country. In this system guilt of the accused should be proved by prosecution. "Before this, Romans had considered that it was better that a guilty person may go unpunished rather than innocent person be condemned, which was adopted by Britishers. It is the duty of the prosecution to prove the prisoner's guilt. The well celebrated case of Woolmington V/s D.P.P. (Supra) Lord Viscount Sankey L. C. consider that "throughout the web of English criminal law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to be the defence of insanity and subject also to any statutory exceptions, prosecution must prove the guilt of
the accused is a part of the common law of England and no attempt to whittle it down is the rule". So also the Indian case in Ramdas V/s Maharashtra\textsuperscript{362} 1977 S.C.C. P.124 it has been held that where the circumstances are susceptible to two equally possible inferences the Court should accept inference which is in favour of accused. Indian Penal Code is a subjective law while Criminal Procedure Code is adjective law.

**Overall organization structure of administration of Criminal Justice:**

Our criminal justice system is guided by Criminal Procedure Code. Therefore there are 4 functionaries under the administration of criminal justice system. They are - 1) The Police 2) The Prosecutors 3) The Defence Counsel 4) The Court. Under the Code the State has to appoint equally competent defence counsel to challenge or to test the evidence of prosecution witnesses as per Article 22(1) (Right of an accused to be defended by a lawyer of his choice) of our constitution and section 303 of the Code of Criminal Procedure. Moreover, accused can raise an objection in respect of equal access to legal service under section 304 of the Code of Criminal Procedure. If accused is unable to engage a counsel, Court should assign a counsel to him, for his defence. It has been held in Sukhdas V/s Arunachal Pradesh\textsuperscript{363} 1986 Criminal Law Journal P.1084 (S.C.) Magistrate is duty-bound to inform him of such a right else conviction will be vitiated. It is at the State expenses. The paradox and pathology of our criminal jurisprudence is that we go out of the boundary prescribed by the law to protect the interest of the accused, as accused is presumed to be innocent while the victim's emotions are always ignored.

**Public Prosecutors as a part of structure:**

Public Prosecutor is another functionary which is the most important from the point of dispensing justice created under the Code. The Public

\textsuperscript{362} (1977) S.C.C. P.124

\textsuperscript{363} 1986 Criminal Law General P.1084B
Prosecutor represents the State before the Court and seeks for proper punishment to the offender. A crime is a wrong not only against the individual victim but also against the society at large. It is because of this consideration that the State, representing the people in their collective capacity, participates in a criminal trial as party against the person accused of crime more particularly if the crime is a cognizable offence. The Public Prosecutor is the counsel for the State in such trials. His duties mainly consist in conducting prosecutions on behalf of the State. The Public Prosecutor also appears as State Counsel in criminal appeals, revisions and such other matters in the Session Courts and the High Courts. The Public Prosecutor should not however appear on behalf of accused\textsuperscript{364}. The Public Prosecutor or the Assistant Public Prosecutor has authority to appear and plead before any Court in any case without vakalatnama entrusted to him. (Section. 301) With the consent of the Court he can withdraw from the prosecution against any person (Section. 321). He can give advice to the police or other Government Departments with regard to the prosecution of any person if his advice is so sought.

According to the pattern set by the Criminal Procedure Code, while Public Prosecutors (including Additional Public Prosecutors and Special Public Prosecutors) have to conduct prosecutions and other criminal proceedings in the Session Courts and the High Courts. Assistant Public Prosecutors are appointed for conducting prosecutions in the Magistrates’ Courts. According to the prevailing practice, in respect of cases initiated on police reports, the prosecution is conducted by the Assistant Public Prosecutor and in cases initiated on a private complaint, the prosecution is either conducted by the complainant himself or by his duly authorized counsel. In such cases also the State can appoint prosecutors if the cause has in public interest\textsuperscript{365}.

In this connection the following points may be noted:

\textsuperscript{365} Mukul Dafal v. Union of India (1988) SCC (Cri) 566; (1988) 3 SCC 144
(a) A person shall be eligible to be appointed in High Court as Public Prosecutor if he has been in practice as an advocate for not less than seven years [Section. 24(7)]; however it has been clarified by Section. 24(9) that the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of the Code) service as any prosecuting officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate;

(b) The appointing authority can make the appointment only after consultation with the High Court [Section. 24(1)];

(c) The Central Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for conducting in a High Court any prosecution, appeal or other proceeding on behalf of the Central Government [Section. 24(1)];

(d) similarly, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for conducting in a High Court any prosecution, appeal, etc., on behalf of the State Government [Section. 24(1)]; The State Government may appoint a Director of Public Prosecutions, but he shall be functioning under the Advocate-General of the State.

(e) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, an advocate who has been in practice for not less than ten years as a Special Public Prosecutor [Section. 24(8)];

Public Prosecutors and Additional Public Prosecutors for the districts:

(a) A person shall be eligible to be appointed as a Public Prosecutor or Additional Public Prosecutors if he has been in practice as an advocate for not less than seven years [Section. 24(7)]; the explanation regarding the period given in Para 3.5 (a) above is applicable here also.
(b) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons who are, in his opinion, fit to be appointed as the Public Prosecutor or Additional Public Prosecutors [Section. 24(4)J; and no person shall be appointed as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears on such panel [Section. 24(5)].

However, where in a State there exists a regular cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such cadre. But if, in the opinion of the State Government, no suitable person is available in such cadre for such appointment then the Government may appoint a Public Prosecutor or an Additional Public Prosecutor from the panel of names prepared by the District Magistrate as mentioned above [Section. 24(6)].

(c) Consistent with the above rules, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district [Section. 24(3)]; further it is possible that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be for another district.

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

Nothing in Sections. 24(8) and 24(9) restricts the power of the State Government to appoint Special Public Prosecutors in public interest. It can also refuse to appoint a Special Public Prosecutor in a particular case for sufficient reasons held in A. K. Musaliar v/s State of Kerala. It may appoint a Special Public Prosecutor in a case and insist that he be paid by the victim or his dependents held in Phool Singh v/s. State of Rajeshthan.

366 1993 Criminal Law Journal, 1249 (Kerala HC)
367 1993 Criminal Law Journal, 3273 (Rajasthan HC)
Assistant Public Prosecutors:

Section 25 makes provisions prescribing eligibility qualifications for being appointed as Assistant Public Prosecutor as well as provisions for the appointment of such prosecutors for conducting prosecutions in the Magistrates' Courts.

The section read as follows:

(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1-A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be appointed—

(a) If he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) If he is below the rank of Inspector.

Although it is not expressly provided in the section that the Assistant Public Prosecutors should be legally qualified, it is hoped that the present trend of appointing, as far as possible, qualified legal practitioners as Assistant Public Prosecutors will be maintained in all States and that the provisions made in sub-section (3) above will be resorted to less and less in
future years\textsuperscript{368}. However, the provisions contained in Sections. 24 and 25 do not give an adequate idea as to the actual organization of the prosecuting agency in the district or as to the hierarchy or the administrative control envisaged therein. Generally speaking the prosecution work in the Magistrates' Courts is under the directions of the Police Department, while the prosecution of trial in Session Courts is under the general control of the District Magistrate\textsuperscript{369}. It would be worthwhile to refer to the views expressed by the Law Commission in its 14\textsuperscript{th} Report on the Reform of Judicial Administration. The Report observed: "It has been suggested, and we see great usefulness in the suggestion, that the prosecuting agency should be separated from and made independent of its administrative counterpart, that is the Police Department, and that it should not only be responsible for the conduct of the prosecution in the Court but it should also have the liberty of scrutinizing the evidence particularly in serious and important cases, before the case is actually filed in Court. Such a measure would ensure that the evidence in support of a case is carefully examined by properly qualified authority before a case is instituted so as to justify the expenditure of public time and money on it. It would also ensure that the investigation is conducted on proper lines, that all the evidence needed for the establishment of the guilt of the accused has been obtained. The actual conduct of the prosecution by such an independent agency will result in a fairer and more impartial approach by the prosecutor of the case\textsuperscript{370}.

The provisions of the new Code of 1973 have not gone far enough to adopt fully the suggestions made by the Law Commission. It was expected that administrative steps would be taken in due course of time to make the suggested reforms a reality. It has been observed by the Bombay High Court that the appointment of Special Public Prosecutor under section 24(8) and Assistant Public Prosecutor under section 25(1) of the Criminal Procedure Code would not be violative of Article 14 of the Indian Constitution\textsuperscript{371}.

\textsuperscript{368} 41\textsuperscript{st} Law Commission Report p.312
\textsuperscript{369} Ibid. Vol. II. at p. 766
\textsuperscript{370} Ibid. at p. 770.
\textsuperscript{371} Vijay Valia v. State of Maharashtra (1986), Cr.LJ. 2093(Bom)
The State Government was following the spoils system in appointing District Counsels and public prosecutors till 1991. But this practice was disapproved by the Supreme Court in a decision delivered in Shrilekha Vidyarthi's case, in which the Court ruled that having regard to the provisions in sections 21, 24, 25, 321 etc., of the Code, the functions of public prosecutors invest them with the attributes of holders of public office and hence their appointment cannot be terminated arbitrarily. The retention of Assistant Public Prosecutor as part of the Police establishment in Maharashtra has been disapproved by the Supreme Court. The State has been directed to have a separate cadre of Additional Public Prosecutor independent of the Police Department. Accordingly, the changes have been made in the State of Maharashtra by creating an independent cadre as Director of Prosecution under whom the prosecutors will work.

Hierarchy in the prosecutor's office

The Code does not specifically mention about the spirit in which the duties of the prosecutor are to be discharged. It does not speak of the attitude the prosecutor should adopt while conducting the prosecution. Probably it might have been thought to be too obvious to require any specific mention in the Code. Whatever that may be the principles in this regard are well-settled. The object of a criminal trial is to find out the truth and to determine the guilt or innocence of the accused. The duty of the prosecutor in such a trial is not merely to secure conviction at all costs but to place before the Court whatever evidence is possessed by the prosecutor, whether it be in favour of or against the accused, and to leave the Court to decide upon all such evidence—whether the accused was or was not guilty of the offence alleged. There should not be on the part of the prosecutor "any unseemly eagerness for or grasping at conviction". It is no part of the prosecutor's duty to obtain convictions by hook or by crook. The prosecutor plays a very important role in the administration of criminal justice. "The last thing he would desire is to secure a wrongful conviction or even to secure a conviction in a doubtful

374 Ghirao v. Emperor 34 Cr.LI. 1009, 1012; Ram Ranjan Roy v. Emperor. I LR 42 Cal 422, at 428
case.” "A Public Prosecutor should be personally indifferent to the result of the case. His duty should consist only in placing all the available evidence irrespective of the fact whether it goes against the accused or helps him, before the Court, in order to aid the Court in discovering the truth. It would thus be seen that in the machinery of justice a Public Prosecutor has to play a very responsible role; the impartiality of his conduct is as vital as the impartiality of the Court itself.\textsuperscript{375}

The following chart shows that in which court Public Prosecutor, Additional Public Prosecutor, Special Public Prosecutor and Assistant Public Prosecutor has to conduct the criminal cases, what experience they required to become a Prosecutor in a particular category. Which will be the appointing authority that has also been shown and for appointment whether the Government (for High Court) or executive authority (for Sessions Trial) has to consult the judiciary.

\footnotesize\textsuperscript{375} 14\textsuperscript{th} Law Commission Report, Vol. II, p. 765, para 2. Also see observations in Shivnandan Paswan v. State of Bihar. 1987 SCC (Cri) 82.
<table>
<thead>
<tr>
<th>Designation of Prosecutor</th>
<th>Court</th>
<th>Qualifications</th>
<th>Appointing authority</th>
<th>Appointment Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Public Prosecutor</td>
<td>High Court</td>
<td>Advocate in practice for 7 years or more</td>
<td>State Government or Central Government, as the case may be</td>
<td>Appointment to be made after consultation with High Court.</td>
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<tr>
<td>2. Additional Public Prosecutor</td>
<td>-do-</td>
<td>-do-</td>
<td>-do-</td>
<td>-do-</td>
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<tr>
<td>3. Public Prosecutor for district (local area)</td>
<td>Sessions Court</td>
<td>-do-</td>
<td>-do-</td>
<td>The advocate to be appointed by the State Government as Public Prosecutor must be one of the Advocate's on the panel prepared by the District Magistrate in consultation with the Sessions Judge. However, in case of a State in which regular cadre of Prosecuting Officers exists, the appointment shall normally be made from among persons constituting the Cadre.</td>
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<td>4. Additional Public Prosecutor for district</td>
<td>-do-</td>
<td>-do-</td>
<td>-do-</td>
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<tr>
<td>5. Special Public Prosecutor</td>
<td>Any Court</td>
<td>Advocate in practice for ten years or more</td>
<td>-do-</td>
<td>Appointment is to be made for the purpose of any case or class of cases.</td>
</tr>
<tr>
<td>6. Assistant Public Prosecutor(s)</td>
<td>Courts of Magistrates</td>
<td>Any person other than a police officer</td>
<td>-do-</td>
<td>For the purpose of any particular case, if Assistant Public Prosecutor is not available, the District Magistrate may appoint any Assistant Public Prosecutor, for the case. Such other person may be may be a police officer if (i) he has not taken part in the investigation of that offence, and (j) he is not below the rank of an Inspector.</td>
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The Defence Counsel

According to S. 303, any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may as a matter of right, should be defended by a pleader of his choice. Unlike the other functionaries under the Code, such as the police and the prosecutors, the advocates and pleaders engaged in the task of defending the accused persons are not in the regular employment of the State and in most of the cases they receive remuneration for their services from the accused persons. The adversary system of criminal trial presupposes that the State using its investigative resources and employing a competent prosecutor would prosecute the accused, who, in turn, will employ equally competent defence counsel to challenge the evidence of the prosecution. Therefore, both the Constitution of India and the Code confer on the accused person a right to consult and to be defended by a legal practitioner of his choice. The right to counsel would however be of no use if the accused due to his poverty or indigent conditions has no means to engage a counsel for his defence. The indigent accused obviously stands the risk of denial of a fair trial when he does not have equal access to the legal services available to the opposite side. To an appreciable extent the Code has attempted to find a solution to this problem. Section 304 provides that where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State, and the section further empowers the State Government to extend the application of the above provision in relation to any class of trials before other Courts in the State. At present there are several schemes under which an indigent accused could get legal aid. The legal aid schemes of the State Governments, Bar Associations, Legal Aid and Advice Board, Supreme Court Senior Advocates' Free Legal Aid Society, etc., are in point. The Legal Services Authorities Act, 1987 also provides for legal aid to the needy.

376 Report of the Expert Committee on Legal Aid, p. 70
377 Article 22(1)(b) the Constitution of India and S. 303 of the Code, 3
Conclusion

For chapter No. 8 in the sum up Public Prosecutor or Additional Public Prosecutor has to work in High Court which must have 7 years practice in such Court or the same criteria is applicable to Session Court in district places. The public prosecutor or Assistance Prosecutor is a part of functionaries in the Court. Police cannot work in the Court as a Prosecutor in the Sessions Court or if taken part in investigation then cannot work in the Court of Magistrate. Chart of hierarchy of the Prosecutor’s office has mentioned. The whole chapter indicate which Prosecutor has to work before the particular Court.

In organizational structure stress has been given on Criminal Procedure Code to guide the Prosecutor and functionaries, they are in all four i.e Police, Prosecutor, defence counsel and Court. Prosecutor is helping the Court to come to justice as per the evidence on record whether accused should be acquitted or convicted.