CHAPTER - I

INTRODUCTION

Statement of Problem:-

A Public Prosecutor whose duties principally consist in conducting prosecution on behalf of the State in the criminal proceeding or appeals or revisions and other matters in the Session Courts and the High Courts. He is appointed by the State Government under section 24 of Criminal Procedure Code 1973\(^1\), generally or in any case or for any specified class of cases in any local area. On the basis of his responsibilities and functions to be performed by him, a Public Prosecutor is the most important person in the administration of the criminal law. This office conducts the criminal cases on behalf of public and State in the criminal Court. The criminal justice system plays a key role in safeguarding the rule of law and there is also a need of the State to fight against crime both at national and international level. The office of Public Prosecutor plays a key role in the criminal justice system. This function of prosecutor includes conducting prosecution, appeal or other proceedings in the Court of law on behalf of the Central Government or State Government\(^2\), supervised the criminal charges submitted by police and to ensure that the victim's interest is protected. The prosecutor also entrusted with responsibility that the fundamental rights of the accused should not be violated.

The public Prosecution system started in Great Britain in 1882 when Act of Parliament in 1879 authorized to create a new department under a Director of Public Prosecutions. Under common law prior to 1882 there was no duty of a State to prosecute the person for criminal offences. It was left to the initiative of the people injured or other private people representing them. In India the prosecution department came into existence in 1872 by virtue of the provisions\(^3\) of Criminal Procedure Code 1872. In the legal system of the

\(^1\) The parallel Provision under the old Act was in Section 492 of the Criminal Procedure Code of 1898
\(^2\) Section 24 of the Code of Criminal Procedure, 1973
\(^3\) Section 235 of the Code of Criminal Procedure, 1872, which authorizes to conduct the session trial to be conducted by the Public Prosecutor who is appointed by the Government
United States the office of Public Prosecutor are called as district attorney who has very wide power than the system of prosecution prevailing in England and India. The American Attorney conduct prosecution before the Courts; decide whether to initiate or continue prosecutions; may appeal or conduct appeals concerning all or some Court decisions, investigate charges of crime and the gathering of evidence against alleged criminals. The function of the charges of crime and its supervision are not the function to be performed by Public Prosecutor in India or Great Britain.

In India Public Prosecutor is mainly concern with representing the State in criminal matter before the Court of law. In this sense the position of Public Prosecutor is pivotal in the implementation of criminal policy in the country. In order to perform his role properly, numerous powers have been given to him under the Criminal Procedure Code. The present research work is concerned with the evaluation of powers and functions of Public Prosecutor in India. This research work also refers a survey conducted in the district of Amravati where the researcher personally was working as a Public Prosecutor for many years.

A Public Prosecutor has to conduct the trial and represent the State with utmost fairness. In undertaking the prosecution, the prosecutor should not be motivated by revenge but seeks only to protect the community. Therefore, there should not be, as a learned Judge observed: "an unseemly eagerness for, or grasping at a conviction". A Public Prosecutor though, conducting a trial and representing a State in the proceeding, should be personally indifferent to the result of the case. The Law Commission of India in its 14th report observed that his (prosecutor), 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 impartiality of the Court itself.  

---

4 Anant Vasudeo Chandikar v. The King Emperor, AIR 1924 Nagpur 243 at p. 245
5 The Law Commission 14th Report, Vol. II at p. 765
A Public Prosecutor is a part of public authorities but not a part of judiciary and also has to work independently from Police Department. He represent the State and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system. In most of the criminal justice systems including India, Public Prosecutors are responsible to decide whether to initiate or continue prosecution, conduct prosecution before the Courts and also to recommend or suggest appeal or conduct appeals concerning all or some Court decisions. The effectiveness of prosecutor mainly depends on sound character of administration of criminal justice. The conviction or acquittal of accused, though declared by the Court of law, and is directly depend on the effectiveness of the prosecution department and efficiency of the Prosecutors' skills and also States' arrangement of prosecution. The prosecutor works for the State and also discharges his responsibility to the Court for the search of truth.

There are numerous restrictions on the prosecutor particularly that he should not join politics; he should have a sober behavior with the witnesses; he should study the case carefully and narrate to the Court. At the same time there are certain fundamental rights, which are available to the accused; the prosecutor and the Court must respect those.

The State has to be concerned with the safety of the society, as it has to shoulder the responsibility to preserve the peace in social mode of life of the peace loving people. So also it is the duty of the Court to administer impartial justice as per the evidence on record. At the same time, Court is also under an obligation to discharge their function in accordance with the constitutional mandates, for example the accused, if he is not in a position to engage counsel to meet out allegations against him so as to secure acquittal, then it is the duty of the State and Court to provide him counsel to contest a case.

The Prosecutors are appointed by the State to assist the Court to secure the truth. The role of the Prosecutor is pivotal in nature and character.
As Prosecutor, he is interested to assist the Court to bring the truth on record than for conviction.

Presently crime situation in the country is grim. We have accepted the English system of criminal trial. However, day-by-day illegal activities in the field of criminality are going up with leaps and bounds. However, the old criminal laws are inefficient to tackle the present crime situation, as it is static because it is too old to suit the present circumstances. In this system, accused is given a status of gentleman till he is proved guilty. The present Criminal Procedure Code and Evidence Act falls short to bring home the guilt to the accused as nexus between crime and criminals is difficult to prove in a strict sense. Generally as a matter of prosecution for one or other reason, Prosecutors fails to discharge the heavy onus. The large number of acquittals of criminals poses a question mark on the credibility of the prosecution function and also the State's commitment of maintaining the law and order. The penal statute, which aims to maintain peace and security, seems to fail in the light of increasing criminality. Many times Criminal Procedure Code has happened to be a criminal freedom code of an accused. Moreover, hardened criminals have a grip over Police and politician including bureaucrats. So also guilt must be proved beyond a reasonable doubt is a blessing to the criminals. Hardened criminals enjoy it by engaging a reputed lawyer to secure an acquittal in their case and poor who cannot afford to engage a lawyer grind behind the bar, i.e. suffer incarceration. British model of judiciary, which we are following, not giving the better result therefore demands change. Not only the Prosecutors but also a Judges and Magistrates even if feels that culprit has committed the crime from his demeanor and evidence on record even then he cannot convict the accused for want of accurate standard of evidence in a strict sense. Moreover, the idea behind the justice is “Justice should not only be done but should manifestly be seen to be done.”

In the light of this situation it is important to assess the role of the prosecutor and his responsibility towards the Court and individual victims.

In fact, law is an instrument of social engineering so as to keep in the life of the people within the parameter of our civilization and culture in the
society. Law needs to be evolved to society's needs and not to be borrowed or imitated from the other countries. Therefore, Prof. Friedman rightly said that law is not a brooding omnipotence in the sky but flexible instrument of social order depending upon the political value of the society. The Law for prosecutor is cross-connect with the responsibility of the State as well the fundamental rights of the individual (who may be victim or accused). In the light of above problem, the researcher has formulated the following hypothesis:

**Hypothesis:**

1. In the criminal justice system the importance of the prosecutors has not been estimated properly. The significance of his work has recently been highlighted because of some decision of the Apex Court.

2. To work more effectively, the prosecutor requires more teeth to implement the spirit of law.

3. The prosecutor has to be more skilled than competent. There are different categories of witnesses, which are to be examined by the Prosecutor. They are accomplice, ballistic experts, black marketers, child witnesses, chance witnesses, Court witnesses, convict witnesses, deaf and dumb witnesses, direct eye witnesses, so also doctors, finger print experts, interested witnesses, injured witnesses, police witnesses, related witnesses, rustic and village witnesses, Serologist, woman witnesses and stock witnesses. It is necessary for the Prosecutor to handle these witnesses and take their evidence as per the provisions of Evidence Act. So also, victim of the crime should be treated sympathetically and properly and humanly.

4. The Prosecutor has to look into the mode of appreciation of evidence by the Court and accordingly search out the relevant case laws of our High Court or different High Courts or of the Supreme Court. Comparatively the defense lawyer is more equipped with the case law.
5. As we have adopted the adversarial method, there is more responsibility on a Prosecutors because he has to build the story, develop the chain of facts with proofs. This requires more craftsmanship than the defense lawyering.

6. The prosecutor while performing all functions cannot act in isolation. He is part of the total system of the State apparatus. Therefore he is subject to all sorts of prejudices, bias, influences and interference. We expect enormous function with great sensitivity but without providing the proper structure.

7. The working conditions of the Prosecutors and the nature of work performed by him do not match with each other. This is also a personal experience of the researcher who worked for 30 years in the department of prosecution.

8. The standard norm regarding the prosecution functions are developed at the European level as well as global level. In India, we have accepted certain ideals and policy norms on the basis of recommendations made by committees, but observance in the practice is just a matter of chance or discretion of authority.

9. What kind of privileges, facilities, and working conditions requires for smooth functioning of prosecution function?

10. The role of prosecutor is to be identified in the administration of criminal justice with reference to factors, which our society is likely to face in future. The importance of prosecutor has to be assessed in the light of privatization of many governmental functions and globalization of almost all matter of importance and disappearance of State in number of public field.

The analytical research method has been applied in this thesis. Basically the statutory provisions with regard to the power, function, and procedure are the subject matter of analyze. The evaluation of the statutory provision has been made in the work at the same time socio legal survey has
been conducted to collect the data from various sections of the society and professionals, which has been interpreted with reference to the functioning and powers of prosecutor. This analysis goes beyond the statutory text and exposing to the area of knowledge, which so far can be articulated through interview and questionnaire method. The researcher has conducted the interview and also selected 200 respondents out of which 150 have responded. There were six categories of respondent: Prosecutors, Advocates, Law Lecturers, Judges, Litigants and Police Officers.

**Scope of the Work:**

The thesis is concerned with the functions and power of the prosecutor. The exact scope of the present work encompasses the statutory provisions regarding the power and function of the prosecutor under the Indian law. This study also covers the various kinds of problems so far faced by the prosecutors in their work. The work also deals with the problem of appointment and removal of the prosecutor under the present system. It is to be noted that this work is not concerned with the position, status and problems of the prosecutor in pre-independent era, except the brief introductory remark about the historical character of the problem.

**Broad Skeleton of the Research Work:**

The present research work is divided in 11 chapters.

The Chapter I deal with historical note on the role of Prosecutor who used to conduct the case on behalf of the king before the Court. As the society has grown in the further period, the work of the prosecutor has also undergone the changes particularly the prosecutor in system is practiced in this country from Vedic period, and also the system continue with modification in Muslim period. When the British thoroughly reshaped the system in the light
of expectations and demands of the British ruler. There was a total departure in prosecution – function and procedures from the old system of India.

Chapter II gives broad sketch of Indian legal system with emphasis on administration of criminal justice. The analysis has been provided about the position of the prosecutor in the administration of criminal justice.

Chapter III deals with the general character of Indian Legal System and Administration of Criminal Justice in India. Under the modern criminal justice system, which was initiated by the British rulers, the role of prosecutor as an agency of the State, become more prominent? British regime firstly took this issue and the powers and responsibilities systematically codified under the statute. In fact, the British ruler brought the idea of British justice and mechanism to deliver justice in India, through various enactments. This period may be called as a period of foundation for the law with regard to the prosecutor.

Chapter IV deals with Powers, Responsibilities and Position of the Prosecutor under the present system. The Prosecutor, being a public servant, works on behalf of the State in the administration of criminal justice. He is an advisor with respect to the prosecution work to the Government and at the same time he is independent from the Judiciary. How he performs his responsibilities and what kind of powers he enjoys is the main thrust of this chapter.

Chapter V analysed with the matter of appointment, removal and problems relating to the Prosecutor. He is appointed under Section 24 and 25 of the Criminal Procedure Code. His terms and condition of services are governed by State government’s rules.

Chapter VI reflects on the methodology of Prosecution function particularly in the trial process. The Prosecutor has to perform various functions in the trial process from framing the charges by the Court to the final judgment of the Court.
Chapter VII throws light on professional standard and rules of ethics for the Prosecutor. In this chapter there has been emphasis on ethical rules. Fearlessness, honesty and earnestness of Prosecutor gain the confidence of the Court. Number of characteristics of the Prosecutors has been highlighted as the symbol of honesty of prosecutor.

Chapter VIII deals with organizational structure of the prosecutor and in the functioning of the prosecutors office. Chart has been presented in this respect about in which Court public prosecutor, special public prosecutor, assistant public prosecutor is appointed to conduct prosecution.

Chapter IX focuses on socio-legal survey of the functioning of Prosecutor with reference to Amaravati District. A survey has been conducted through the method of interview and questionnaire. The data has been analyzed from the point of functioning of the prosecutor.

Chapter X deals with the Evaluation of the work of Prosecutor. The prosecutor is under the responsibility to safeguard the fundamental principles of criminal trial and as apart of it; he has to safeguard the fundamental rights of the victims as well as the accused. The Indian legal system is based on certain fundamental principles, which are emanating from British tradition and chapter III of the Indian Constitution. The evaluation of the function of the prosecutor has been made from the standpoint of above principles.

Chapter XI throws light on with Conclusion and Recommendations. The researcher, on the basis of conclusion provided various recommendation to improve the working of prosecutor.

In Sum up in chapter No.1 it can be concluded that in this chapter as per the Code of Criminal Procedure Code 1973 in prosecution branch Public Prosecutor is appointed by the State Government or Central Government to conduct the prosecution on behalf of the State or Central Government. In olden days this system started in Great Britain. Prior to 1882 this was not the duty of the State. In India the position of Public Prosecutor is pivotal. This research work is concerned with the evaluation work so also of power and functions of the public prosecutor in India. The survey conducted in this
respect of Amravati district is mentioned in this research work. Personally researcher was Assistant Public Prosecutor then promoted as Additional Public Prosecutor and there after Assistant Director for Prosecution. Prosecutor must conduct a trial fairly and not to run after conviction and help the Court for discovering the truth but Public Prosecutor is not a part of judiciary and of police department.

However, in scientific age crime is growing day to day. Standard of evidence needed is without any doubt or if two things possible, accused will be acquitted. Therefore time has come to assess the work of prosecutor. This work is divided in eleven chapters. Which mention how this post came in existence. In historical survey, Indian Legal system and administration of criminal justice, powers and responsibilities of prosecutor, Matter of appointment and removal, and problem relating to prosecution, methodology of prosecution work, professional standard of the prosecutor, organizational structure of the prosecutor and hierarchy of the office, socio legal survey of the prosecutor of Amravati district thereafter evaluation of the work of prosecutor and ends with conclusion and recommendation.