CHAPTER-IV
POWER, RESPONSIBILITIES AND POSITION OF THE
PROSECUTOR

Introduction

The public prosecutor occupies a crucial position in the administration of State. This chapter is designed with a purpose to identify his position under Indian Law. There are equally numerous powers and responsibilities conferred on the public prosecutor. Following are the responsibilities along with powers of Prosecutors.

Definition of Prosecutor:

The Public Prosecutor has been defined in the Code of Criminal Procedure 1882 in section 4(m) which was changed in the Code of 1898 as under 4(1)(t) that 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. Under section 2(u) of the new code of 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. As pointed out by Shri. R.V. Kelkar that the assistant Public Prosecutors are not covered by this definition, as they are not appointed Under S.24, at the same time they have not been defined separately.\textsuperscript{52}

\textsuperscript{52} K.N. Chandrasekharan Pillai, R.V. Kelkar's Criminal Procedure 23 (Eastern Book Co., Lucknow, 4th edition, 2001)
Prosecutor to Assist the Court:

To run this administration smoothly, there should be coordination in Prosecutor and Magistrate inter alia. Prosecutor has to assist the Court pro bono publico. The prosecutor must have before him the summary of all investigating papers and his prime duty is to assist the Court to arrive at the real justice, which is the signature tune of our temple of justice and constitution, so as to prove the case. As burden is heavily on prosecution, except some exceptions under section 76 to 106 of Indian Penal Code or under Special Law provides. "The course of justice must be furthered instead of being frustrated and fair to both the sides" i.e. accused as well as prosecution. In Prabhu Dayal Gupta V/s State, it has been held that Public Prosecutor should not be partial to the prosecution or accused and fair in representation of prosecution case for both the sides. In Sudhir Vhora V/s Commissioner of Police greater Bombay Bombay High Court held that Police officer should not be depend by the prosecutor when allegation against Police officer of Commission or Omission are made. Therefore the job of a prosecutor in turn becomes very tedious and complicated as a tight rope walking, wherein mostly, cross-examination is an unequal wordy duel between rustic witnesses and a refined lawyer. Moreover, criminal justice system is heavily in favour of accused. We Indians have adopted adversarial system of criminal jurisprudence not even inquisitorial system in serious offences. If this ratio is extended indefinitely then there will be chaos in the society. As late as 1944, Lord Viscount Simon in Stirland V/s Director of Public Prosecution has remarks that "A miscarriage of justice may arise from the acquittals of the guilty no less than conviction of innocence. In this system of Administration of Criminal Justice, if there are mass acquittals in such events law will not be an efficient protector of the society. Basic welfare policies will not be implemented and cannot be called as essence of good Government. Moreover, in justice system. i.e. "Nemo debet esse judex in propria (sua) causa" i.e. justice should not only be done but it should appear

54 2004 Criminal Law Journal P. 2278 (Bombay High Court)
55 1944 Appellate Cases. P. 315.
to be done or manifestly be seen to be done. In such situation the role of Public Prosecutor etc., is of a crucial nature. It has to be seen that there should not be pervasive perception that law should be a shield of unscrupulous.

Therefore to do the work fearlessly, prosecutor has to perform some duties and so also to exercise this duties law has given certain rights to him.

As per Rule 14 of the Maharashtra Law Officers (appointment, conditions of services and remuneration) following are the Duties or functions of the Government pleader and Public Prosecutor:

1) **He is Adviser to the Government, or its officers:**

   It shall be the duty of the Government pleader or Public Prosecutor to advise Government or its officers in respect of proceedings whether civil or criminal which he has or may have to conduct on behalf of the State or its officers.

2) **Statutory duties:**

   The Government pleader or Public Prosecutor shall discharge such functions as are expressly imposed upon him by the Code of Civil Procedure or the Code of Criminal Procedure or by any other law for the time being in force

3) **Responsibilities of the Public Prosecutor in Sessions Court:**

   As per Maharashtra Law Officers (Appointment, conditions of service and remuneration) Rules 1984, (given hereinafter as rules) Duties are as follows.

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i) To appear and conduct cases
To appear and conduct the prosecution in every trial before Sessions Court and for that purpose he shall, at the, earlier opportunity examine the records of the proceedings before the committing Magistrate and ensure that any defect, such as the omission to summon a necessary witness is, if possible, remedied before the date fixed for hearing in the Sessions Court.

ii) Every Hearing must be attended for Prosecution
To appear for the prosecution at the hearing before the Sessions Court of any appeal against a conviction or application for revision of sentence or an order (not being one of discharge or acquittal) against which no appeal lies or against any other order when notice of such appeal is served upon him or when he is directed by the Sessions Judge or by the District Magistrate or Commissioner of Police as the case may be, so to appear. In doubtful cases he shall consult the District Magistrate or Commissioner of Police, as the case may be whether he should or should not appear in such cases;

iii) To conduct Prosecution in the Court of Metropolitan Magistrate etc.
To conduct the prosecution in any trial before a Court of Metropolitan Magistrate or Judicial Magistrate First Class when so required by the Sessions Judge or the District Magistrate or the Commissioner of Police or Remembrance of Legal Affairs or the Joint or Deputy Secretary to the Government Law and Judicial any Department at Nagpur or Aurangabad respectively;

iv) File complaints
To prepare and file complaints in the Court of Metropolitan Magistrate or Judicial Magistrate First Class as the case may be when directed by the any Court or by any head of the department of Government or the District Magistrate or Commissioner of Police as the case may be;

v) Withdrawal of Prosecution Case on the Instructions of Concern Government
Not to withdraw any prosecution under section 321 except upon the suggestion by the Court or for other special reason which it will be for him
to substantiate and without first obtaining the sanction of the Government of the Home Department through the District Magistrate or Commissioner of Police as the case may be;

vi) Any duty assign by the State Home Department etc.

To perform such other duties as may be assigned to him by Government in the Home Department or Remembrance of Legal Affairs or the Joint Secretary or Deputy Secretary to Government Law and Judicial Department at Nagpur and Aurangabad as the case may be;

vii) Help the Government Officers in Investigations etc.

To assist the Government officer or Judge or Magistrate in such investigations or inquiries as might result in criminal prosecutions;

viii) Cases committed should be communicated to

To communicate and advise the District Magistrate or Commissioner of Police in respect of cases committed or to be committed for trials before the Sessions Court;

ix) Outlines of chargesheet etc.

To draft chargesheets, complaints, replies, notice applications and other documents in any of the criminal proceedings filed in the Sessions Court;

x) If Government Servant is accused final order informed to each head of the department

Where accused person is Government servant, to intimate the head of the department to whom Government servant is subordinate about the final order passed by the concerned Court immediately after the said order is passed.

4) Duties for other Governments:

It shall be the duty of the Public Prosecutor to appear on behalf of the other Government, in criminal case filed in the Court to which he is attached, when required to do so by the Remembrance of Legal Affairs or the Joint or Deputy Secretary to the Government Law and Judicial Department at Nagpur and Aurangabad as the case may be.
5) Duties at or outside the Head quarters:

The duties of the Public Prosecutor are ordinarily restricted to the Courts to which he is appointed, but it is also his duty, that whenever his services can be spared without inconvenience to that Court and the Remembrance of Legal Affairs or the Joint or Deputy Secretary to Government Law and Judicial Department at Nagpur or Aurangabad or the Collector if requires to appear himself or to assist any other Government Pleader in any case in any Court, Tribunal or before any authority at or outside the head quarters.

6) Rule 53 - If decision is adverse to the State:

i) If the decision of the High Court is adverse to the State may be partially, Public Prosecutor of High Court shall within a month submit his detail report to the Remembrance of Legal Affairs or Joint Secretary or Deputy Secretary to Government Law and Judicial Department at Nagpur or Aurangabad as the case may be with copies to all Government officers concerned. If Public Prosecutor proposes to challenge the decision of the High Court his report shall he accompanied by grounds of appeal, the certified copy of the judgment, the paper book and other relevant case papers.

ii) If Government in Law and Judicial Department decides to agree (acquiesce) in the decision of the High Court. The Remembrance of Legal Affairs or the Joint Secretary or the Deputy Secretary to the Government Law and Judicial Department at Nagpur or Aurangabad respectively, shall communicate Government decision in Form No.6 of the said rules to all the officers concerned.

7) Rule 54 - Bail Matters:

i) The Public Prosecutor of the subordinate Court or High Court shall on receipt of the notice of the Court seek instruction of District Magistrate or Commissioner of Police concerned for opposing the bail applications. If time does not permit or if the Public Prosecutor does not receive any
instructions from the District Magistrate or Commissioner of Police he shall use his discretion for opposing such bail application.

ii) Cancellation of bail — a) If the Public Prosecutor or District Magistrate or Commissioner of Police concerned is of the opinion that any person released on bail by any Court should be rearrested and committed to custody he shall immediately send his proposal for cancellation of bail to the Remembrance of Legal Affairs or the Joint Secretary or the Deputy Secretary to the Government Law and Judicial Department at Nagpur or Aurangabad as the case may be who shall in turn, if considered necessary by the Government Law and Judicial Department issue the Government resolution in form No. 11 and direct the Public Prosecutor concerned to take immediate steps to move the Court for cancellation of such bail.

iii) The Public Prosecutor shall effectively resist the grant of bail to accused by the Court in the case which is non-bailable involving necessities or crime perpetuated on the member of schedule castes and schedule tribes and offences under protection of Civil Rights Act 1955. He shall persist such cases in the Court for securing out of turn quick trial, conviction and deterrent punishment.

8) Duties for the Maharashtra State Legal Aid and Advice Board:

i) The Public Prosecutors are expected to accept, as far as possible, the briefs whenever entrusted to them by the District or Taluka Legal Aid and Advice Committees constituted under the Maharashtra State Legal Aid and Advice Scheme 1979.

ii) The Public Prosecutor engaged under clause (a) shall be entitled to the rates of fees as are prescribed under the Maharashtra Legal aid and Advice Scheme 1979 and payable by Legal Aid and Advice Committee under whose instructions the Public Prosecutor conduct the case.

9) General Duties:

Unless otherwise provided in these rules, it shall be the duty of Government Pleader or Public Prosecutor that; -
a) To discharge all duties of the Government Pleader to wards the Government, or its officers in regard to matters which are likely to lead to litigation in the Court;

b) To prepare and settle pleading or memoranda of appeals or replies or applications or affidavits or counter affidavits or other documents in the proceedings filed in the Court or of other States or to the Supreme Court as the case may be;

c) To ensure that no case is heard by the Court without filing a necessary pleading or submissions or replies or affidavits or counter affidavits or other documents indicating clearly the contentions of Government, both on questions of Law and Facts;

d) To see that no case is conceded before the Court such as granting of bail to any accused or any question of facts not conceded in the affidavit or counter affidavit or any claim against the State without obtaining previous permission, oral or written, of the competent officer of the department concerned or the Remembrance of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government Law and Judicial Department at Nagpur or Aurangabad as the case may be;

Provided that, all oral permissions obtained shall be confirmed in writing within 7 days from the date of obtaining such permission;

e) To appear in any case whether civil or criminal in which the Court desires him to appear or express its opinion that he ought to appear;

f) To assist the Advocate General in Civil or Criminal cases of special importance, whether such assistance is required by him;

g) to report to the Remembrance of Legal Affairs or to Joint or Deputy Secretary to Government, Law and Judicial Department, at Nagpur or Aurangabad as the case may be periodically about the progress of the proceedings in the Court to which the State or its officers are parties;
h) as soon as a matter to which the State or its officers are the parties, decided by the Court;

i) to communicate the nature of the decision to the administrative department and to the Collector or the District Magistrate or the Commissioner of Police or the Government, officers concerned or the Remembrance of Legal Affairs or to the Joint or Deputy Secretary to Government Law and Judicial Department, at Nagpur or Aurangabad as the case may be, giving in important cases a brief statement of the grounds on which the decision is based;

J) to apply on the day of the decision for a certified copy of the judgment and order or decree and take all the necessary steps as provided for in the Rules for the Conduct of the Legal Affairs of the Government, 1984;

K) to perform duties as specified in clause (4) (ii) and clause (i) in the cases in which Advocate General appears on behalf of the State or its officers;

L) to report to the Remembrance of Legal Affairs or to the Joint or Deputy Secretary to Government Law and Judicial Department, at Nagpur or Aurangabad as the case may be, any of the following matters arising out of any civil or criminal case decided by the Court:

i) Any case in which the Court in confirming or imposing the minimum legal penalty, expresses or indicates an opinion that a lesser penalty would serve the ends of justice;

ii) if in a case where the Court observed or expressed or indicated that imposition of any tax, cess, levy, penalty fine or royalty under any of the enactments is unjust and would not serve the ends of justice and also when any such observation or indication is made in relation to service matters, agrarian reforms undertaken by the Government, distribution of surplus lands, acquisition of lands or in any other matter in which action has been taken by the Government, in furtherance of the Directive Principles of the State Policy;
iii) any case in which the action of the Lower Court or the conduct of investigation or prosecution or the conduct of Law Officer or State employee has been considered to be gravely irregular or has been severely criticised by the Court;

iv) any case in which the Court has declared any law or statutory rule to be ultra vires or in which it has observed that a law or statutory rule has been causing inconvenience or anomaly;

v) any defect or lacuna in any enactment or statutory rules, the removal of which he considers necessary,

vi) any pronouncement of the Court on a question of Law which is likely to affect other cases in the State,

vii) in any other matter or circumstances which he himself or Court desires to consider it necessary to be brought to the notice of the Government,

viii) in any case in which any important question of law is likely to affect the policy of the Government, or the conduct of the Government, or its employees has been the subject of comment by the Court,

M) to assist the Government, pleader or Public Prosecutor in High Court in appeal or other proceeding relating to a case in which he has conducted in the subordinate Court, when the Remembrance of Legal Affairs or to the Joint or Deputy Secretary to Government Law and Judicial Department, at Nagpur or Aurangabad as the case may be, required him to do so,

N) Civil Nature for District Government Pledger,

i) to appear when instructed to do so by a District and Sessions Judge or District Magistrate or Commissioner of Police, as the case may be in any proceeding before a civil, criminal or revenue Court under sections 340 or 345 the Code of criminal procedure 73.
ii) to appear when so directed by Collector in application made by the Collector, Guardianship and Ward Act 1890 under section 10 or under section 10 of Bombay Court of the Wards Act 1905.

O) Civil Nature for Government Pleader

where the District Magistrate so requires the subordinate Government pleader under section 25 of the Code of Criminal Procedure Code to appear before the Court of Judicial Magistrate First Class at or near the head quarters of the Court for which he is appointed.

Rule 15 - Charges and distribution of briefs:

A) The Government pleader or Public Prosecutor except in the case of the Government Pleader High Court (original side) and the Additional Government pleader High Court (Appellant side) at Bombay or except where there is only one Law Officer shall be in overall charge of the distribution of briefs amongst his subordinate and panel counsel, if any:

Provided that the distribution shall be subject to any instruction from the Remembrance of Legal Affairs or to the Joint or Deputy, Secretary to Government Law and Judicial Department, at Nagpur or Aurangabad as the case may be,

B) Subject to clause (a), the Government Pleader or Public Prosecutor shall as a general rule and as far as possible, himself conduct all important civil or criminals cases which involve important law points or involve important policies of the Government, or high stakes. While appearing in such matters he may take the assistance of his subordinate after seeking the sanction of Remembrance of Legal Affairs

C) subject to proviso to clause (a) and clause (b) he shall distribute the work equally inter alia and panel counsel. While assigning work, he shall see that only one Court is allotted to himself and each of his subordinates or
panel counsel as the case may be during a day. However, under special circumstances or reasons to be recorded in writing he may allot more than one Court to himself or any of his subordinates or panel counsel.

D) i) The Additional Or Assistant Government pleaders or Honorary Assistant to the Government pleader concerned or the Additional Public Prosecutor shall appear in such cases only as are entrusted to them by the Government pleader or Public Prosecutor as the case may be.

Chapter VI in respect of the General Administrative control by Remembrance of Legal Affairs:-

In this system of Administration of Criminal Justice, if there are mass acquittals in such events law will unable to control the bullies and inefficient protector of the society. Basic welfare policies will not be implemented and can not be called as essence of protective Government.

10) Duties of prosecutors in general:

Prosecutor holds the public office of trust for the State. Public Prosecutor or Assistant Public Prosecutor is a public servant. The duties are therefore of public nature and of vital interest to the public\(^57\). It is an office of responsibility, more important than many others. He is not only required to prosecute cases with detachment on the one hand, and vigorous to the other. He is empowered to withdraw the prosecution of case under the provisions of Criminal Procedure Code on the direction of the State Government held in Vijay Shukar Mishra V/s State of Uttar Pradesh and others\(^58\) it has been held that all prosecutors are lawyers of the State, therefore officer of the Court independent from the Judicial. He is a member of executive branch of the Government Prosecution is taken on behalf of the people not for complainant or reporter but State V/s accused and help the Court in administration of criminal justice.

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1.a) Prosecutor should not involve in politics:

First and foremost thing is that he should not be protagonist of any party. It is very onerous and responsible duty as the prosecutor spans the entire criminal justice system.

2.b) Under Section 226 of the Code of Criminal Procedure opening case for prosecution:

Even though heading appeared is same but change in body of old section 286 (1) It runs when the accused appeared or is brought before the Court in pursuance of a commitment of the case under section 209 (to Court of Session) The prosecutor shall open his case by describing a charge brought against the accused and stating evidence to prove the guilt of the accused to Magistrate or Judge.

Prosecutor states to the Court the leading facts upon which the prosecution rely. (Duty of the Public Prosecutor and Assistant Public Prosecutor has also been narrated in this section).

3) Judge cannot work as a Prosecutor:

Before opening of the case, he should acquaint himself with the term of the indictment under section 226 new and 286(1) old Criminal Procedure Code and if he is absent, judge cannot undertake the duties of the prosecutor. This is not only happening in Judicial Magistrate First Class's Court but in Sessions Trial, prosecutor is an initial starting point of the trial, as the knowledge of the prosecution case must be known to the accused in detail. He should not be taken as surprise for his trial. Therefore, copy of charge sheet filed by the police under sections 207,208 of Criminal Procedure Code 73, which is mandatory must be given to the accused through Court. It is
because law and procedure conducting criminal trial requires that prosecution must open his cards before the Court and must intimate the accused, the detailed information on which it has an evidence against him. He should prepare his case thoroughly in advance. If he is allotted brief just on time, he is duty bound to apply for adjournment, because injustice to victim cannot possibly be justice to the accused. It will be a wrongful gain for accused and wrongful loss for victim. Therefore his duty is to study the case carefully and thoroughly. Arrange the sequence of the witnesses, which has to be examined first (Section (286 (2)) old and) under section 231 new Criminal Procedure Code.\textsuperscript{59}

The ruling of Alderson B who was great Judge has supported the ruling of Parke, B, who followed the ruling of Lord Champbell Chief Justice after consultation with Creswell Judge and all eminent Judges of the English bench express the duty of the Public Prosecutor is to conduct the case for the crown fairly. His object should be not to obtain unrighteous conviction but to see that justice is vindicated and in exercising his discretion as to the witnesses to whom he should or should not call. Public Prosecutor should not refuse to call or put into witness box for cross examination a truthful witness, returned in calendar as a witness for crown because the evidence of such witness might in some respects be favorable to defence. If Public Prosecutor is of the opinion that a particular witness is a false witness or is likely to express false testimony if put in witness box, he is not bound in his opinion to call that witness or to tender him for cross-examination.\textsuperscript{60}

Guiding principles for opening of the case if, charge against accused should be described clearly and concisely.

4) Leading facts on which prosecution rely, should then be briefly stated with Precision and clarity.

5) In opening the case Public Prosecutor should state all facts of the case and that he intended to prove it.


\textsuperscript{60} Ibid. P. 1808
6) Nothing should be said in opening in anticipation of defence that may be set up. The prosecutor will have the opportunity when summing up or in reply\textsuperscript{61}.

7) Under section 242(2) Criminal Procedure Code condition precedent is that Public Prosecutor must apply to the Court for summoning its witness through the medium of Court. If not served, apply the Court to use coercive methods. He should look into the case for service of summons to witnesses. Through the medium of Court prepare an application for issuing summoning to witnesses under section 242 (2) in warrant trial cases and section 254(2) in summons triable cases and under section 230 for Session triable cases under the Code 73.

8) The legislature in their wisdom has separated the executive from Judicial. Prosecutor is held to be a Executive Officer. He must assist the Court to come to real justice, which should appear to be done.

Public Prosecutor as per Legal Remembrance manual 1975 Chapter VII is a Law Officer of the Court. He is a public servant and public element is attached to his office. Therefore his function is to promote public interest for public good. His duty is to govern by rule of Law, non-arbitrariness and fair play in action. He should not be a mouthpiece of the State held in State of Bihar V/s R. N. Yadav\textsuperscript{62} it has been held that prosecutor is bound to assist the Court in his fairly considered view and Court is entitled to the benefit of the fair exercise of his functions.

He owes allegiance for the higher cause. He should not conceal the truth from the Court. As an Advocate for the State, he may rank as a Minister of Justice equally with the Judge. In Balvant Singh V/s State\textsuperscript{63} Apex Court held that Criminal Procedure Code is the only master of the Public Prosecutor

\textsuperscript{62} AIR 1957 S.C., P. 389
\textsuperscript{63} 1977 on Criminal Law Journal, P. 1935.
and he has to guide himself with reference to the Code. To get a guilty punished in a fair and unbiased trial, Balyantising V/s Bihar State\(^6^4\). Also held that the statutory responsibility of the prosecutor is not negotiable and cannot be bartered in favour of those who may be above him on administrative side.

9) Guiding principles for duties of Public Prosecutor when conducting the case:

The integrity and impartiality of the Public Prosecutor is essential for the Administration of Criminal justice. As the object of criminal trial is to find out the truth and determine the guilt or innocence of an accused. Prosecutor plays an important role in reaching this conclusion of guilt or innocence by the Court. To promote fair justice, the prosecutor must be fair to both sides. In Prabhu Dayal V/s State\(^6^5\) observed that the Public Prosecutor has to be fair in presentation of the prosecution case. He must present the complete picture and not one-sided picture and not partial. He has to be fair to both sides.

10) The object for the appointment of the prosecutor:

The duty of the Public Prosecutor is to represent not the police but to State and "the ideal Public Prosecutor is not concern with securing conviction or with satisfying departments of the State Government. He must consider himself as a agent of the justice\(^6^6\). He should be to aid the Court in discovering the truth. He should avoid any proceeding likely to intimidate or unduly influence witnesses of either side. There should not be on his part unseemingly eagerness for grasping conviction. He must examine trustworthy and independent witness, so that guilty person should not go unpunished. "He must be able to draw out vividly the picture of occurrences with its detail which happened at the time and place in question." There is no royal road to successful examination in chief and cross-examination. Experience does a great deal. Timid witness must be encouraged and talkative must be

\(^{64}\) AIR 1977 S.C. P. 2265.
\(^{66}\) 1970 Criminal Law Journal, P. 241
depressed. An honest witness should be left to tell his tale in his own way, with a little interruption. Never ask question without object. Never begin, before you are ready and finish. Moreover, a prosecutor who has not thoroughly prepared his case and not noted the fact relevant to the time, place and person who are acquainted with the facts of the case, is liable to make some mistakes in examination-in-chief.

The State has a duty that offenders against the law are prosecuted and punished and Public Prosecutor represents the State. It has been said in Shrimad Bhagvat Geeta in Adhyay 2 verses No. 34 that for great persons defamation is worst than the death. He owes allegiances to the higher cause. He must not mistake the facts nor knowingly conceal the truth from the Court as he is an advocate for the State, he must be ranked as a “Minister of justice” equally with the judge. Therefore his behaviour should be as a man of conscience and courage intent to remain on the path of dharma, should discharge the duties that fall to his lot, unmindful of praises or the criticism that he attracts or of the gains or losses that may follow. Bhrutuhar Nitishatak.

In M. H. Hoskot v/s State of Maharashtra the same has been discussed by Justice K. Iyer which is necessary to mention here:-

The story of the prosecution was that accused was Reader of Saurastra University was found guilty of attempting to issue counterfeit University degree certificate of Karnataka University. Therefore, the report was lodged against him resulted in filing a chargesheet against him in the Court of Law under sections 417, 457, 468, 471 and 511 Indian Penal Code Session Court awarded punishment till rising of Court on the basis of background of the offender and not indulge in such activity in future. He was M.Sc Ph. D. 30 years old belong to a middle class family. Beyond economic compulsions to make a living by Criminal means.

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68 1978 S.C.C. P. 544
On appeal High Court enhanced punishment upto three years rigorous imprisonment. The Apex Court upheld the High Court’s version and sentence awarded by the Session Court was termed as incredibly indiscrete. Also held that the Public Prosecutor consented on behalf of the State to unsocial softness to an antisocial offender. If Public Prosecutor would have been given stern say, Judge must have thought twice and lamented that the office of the Public Prosecutor involves duties of public nature. The Apex Court observed that social defence is the Criminological foundation of punishment. The Court should not confuse between correctional approach to prison treatment, nominal punishment verging on discriminisation of social serious offences.

However in Apex Court His Lordship Justice V. R. K. Iyer (and Hon’ble JJ D. A. Desai and O. Chinnappa Reddy, Concurred) declared that we are scandalized by soft justice syndrome vis-a-vis white collar offender. It stultifies social justice and camouflages needed severity with naive leniency. Two appeals were filed one by petitioner against his conviction and other by the State at the naive sentence.

The High Court dismiss the appeal against conviction and in allowance of the State’s prayer for enhancement, imposed rigorous imprisonment for three years was maintained by the Supreme Court as it endanger the health and wealth of the society.

The Apex Court dismisses the appeal against heavy punishment. However, as regards the delay in supply of copy of the High Court judgment after 4 years after the accused has undergone his full sentence was vehemently criticized and right to legal aid to the accused was held a constitutional obligation on the part of the State and its functionaries.
11) Behaviour of Public Prosecutor with Prosecution Witnesses:

He should aid Court in discovering the truth and to do justice between State and accused. It is no part of his duty to obtain conviction at all cost. He should uphold the dignity of a high office. To place before the Court all available evidence in his possession and leave to the Court to decide upon all such evidence. No doubt it is his duty to produce all material witnesses to support the prosecution to see that case against the prisoner is brought out in all its strength but it is not his duty to conceal or diminish the importance of its weak points. If on affidavit witnesses State that they have not seen anything, they should not be called. He should not demolish his own case and produce it in untrue colour. He should not withhold the witness. Produce before the Court all material evidence necessary to unfold the story of prosecution to prove the chain of events, so as not to cause serious reflection. But it is not a general rule that every witness must be examined even though his evidence is not material or known that he has been won over or terrorized by defence. In sum up prosecutor should not be a persecutor. The two fold aim i.e. guilty should not escape and innocent should not suffer. This is the reason why the Law Commission decided to separate the prosecution wing from the police department. However it has not been done. Therefore Assistant Public Prosecutor preferred a writ petition before the Nagpur Bench of Bombay High Court, but not succeeded on appeal to the Supreme Court.

The authoritative pronouncement of the Apex Court in S. B. Shahane others V/s State of Maharashtra and another. Held by Their Lordship J.J. Kuldeep Sing and N. Venkatchalayya that it is the statutory obligation upon the State or Central Government, as the case may be to appoint one or more Assistant Public Prosecutors in every district for conducting prosecution in the Magistrate’s Courts concerned and making such Assistant Public Prosecutors independent of the police department. Free from administrative and

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71 Ibid Pp. 2734 to 2738
72 AIR 1995 S.C. 1628
disciplinary control its officers entrusted with the work of investigations of the case on which prosecution started in the Court of Law. By constituting the separate cadre of the Assistant Public Prosecutor and create a separate prosecution department for them as the State Government failed to discharge its statutory obligations.

12) Except Government Prosecutor can not represented anybody:

His duty is not to appear in any case against the Government so that criminal cases can effectively be conducted to sub serve the social cause but avoid to take frequent adjournments.

13) Brief Account of the Case:

The prosecutor must have before him, summary of the statement of Prosecution witnesses examined, on seizure, panchrama, etc. He should keep himself informed of the new development arising out of cross-examinations. Therefore he must keep bird's eye view on cross-examination by the adverse party. Some time a witness of truth commits mistake due to lapse of time. For adducing evidence in such event duty of the prosecutor is to bring him on correct track rather than to presume him hostile. Experience shows that after recollection many of the Prosecution witness have come forward to place the story before the Court, when the tactful prosecutor brings some incident to their notice. They place the evidence before the Court in sequence. It is not permissible to put irrelevant question in cross-examination. Sections 146 to 153 of Evidence Act prescribed the limits of cross-examination. The judges will thank the Public Prosecutor for his timely guidance and the counsel of the opposite could be seen gritting his teeth. However, in our system the way in which we treat witnesses is a national disgrace and serious obstacle. Advocate must feel that he belongs to a highly honourable profession. No word escapes his lips, which he would not repeat and acquire a elegant style, undisfigured by common or coarse expression.
Social objective of the cross-examination has kept aside. "In fact it is the discretion of the Court how long cross examination should continue. Lord Sankey L.C. said in Mechanical and General Inventions Co., Ltd V/S Austin Motor Co., Ltd., that protracted and irrelevant cross-examination not only add to the cost of the litigation but also is a waste of public time.

14) Characteristics of friendly nature with prosecution witnesses:

The prosecutor in examination-in-chief is assumed to be friendly to his own witness unless informed to contrary. Prosecutor shall encourage him if he is found to be timid and win his confidence by look and a voice of friendliness. Frame the questions carefully and put it deliberately and questions should be so framed as to bring-out desired answer. But if the witness is not supportive to the prosecution as per his statement given to the police, then to show the Court untruthfulness of the witnesses by lower down his credibility. Permission of the Court to be sought to cross-examine him (to declare him hostile under section 154 Evidence Act and cross-examined him in the manner provided under section 145 Evidence Act) in such manner that contradictions and omissions in the statement of the witnesses can be brought on record in his deposition to show the Court that a witness is branded as a liar.

There is no royal road by means of which the examination-in-chief or cross-examination may become perfect in his hands. Experience does a great deal, observation, knowledge of human nature perhaps help. It is matter of personal glory. Regard must be had for the administration of justice and it should not be defeated by improper examination-in-chief or cross-examination. It is like possessing, the art of music and painting. Whilst the amateur beginning his music or painting may not be very successful, yet he

75 Ibid. P. 14.
can achieve perfection by training, practice and experience. A different type of witness requires different treatment.

15) Argument:

While argument of the case Public Prosecutor must know the chief weapons of the orator’s harmony i.e. the art of persuasion and manner and style i.e. elocution, be well versed about case laws of different High Courts and Apex Court. Sincerity cannot be underestimated; an old adage that "Law is a jealous mistress". As a jealous wife always demands sincerity and devotion from her husband at home before he can lead a happy married life so the success in law is desirous of sincerity to the case but for which no prosecutor or advocate will be rewarded from jealous mistress of law. Like a faithful husband to his wife, a faithful lawyer or Public Prosecutor / Assistant Public Prosecutor should be with the mistress of Law before he can dream of a laudable success in his career.

16) Honourable or righteous and worthy manners:

While addressing the Court Public Prosecutor should maintain an upright and dignified appearance and behaviour. "There must be accuracy of expression" should be the guiding principle. Fluency in speech is sine-qua-non. Go through the evidence of case carefully, address the ideas in perfect logical manner and should not misguide the Court. The duty of Public Prosecutor/ Assistant Public Prosecutor while arguing the case is to represent administration of justice so that the testimony of all available eye witnesses should be before the Court. It is therefore, said that "personality to man is what perfume is to the flower": Charles M. Schwab. Socrates, Abraham

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16 Ibid. P. 932.
Lincoln, Tolstoy and Gandhi were impressive or attractive but their feature were ugly.  

17) Maintain good relation with the Magistrate or Judge:

i) The success of the case mainly depends upon the manner in which the case is addressed before the Court. In a hopeless case it will be sheer waste of time and energy to dilate on facts. Prosecutor need not be overly eloquent. It must be suited to the occasion. There is a power in the words. Words without ideas so far as conviction and persuasion are concerned are barren things. "While addressing the Court, avoid a dogmatic manner. "Prosecutor's demeanour and bearing in the Court-room should be praiseworthy. He must be a model of gentlemanly difference. Never attempt to deceive the Judge, when he asks critical questions then answer cautiously" but not disingenuously. Equally the scorn equivocation supressio Veri and suggestio Falsi else the object of examination in chief and cross-examination to bring the truth will prevail and the force of the testimony of witnesses will be in favour of other side. Moreover, the cardinal principle of administration of criminal justice for criminal cases is person indicated as an accused is presumed to be an innocent unless that is rebutted, prosecution case cannot be proved. Another golden trend which runs through the web of administration of Criminal justice is that if two probable views are possible, View which is favourable to the accused will be adopted. The rule dose not warrants conviction by resorting to surmise, conjecture or fanciful consideration.

ii) Take pains, never to turn molehill into a mountain at the cost and respect of the Court. It is the first duty of Prosecutor and the Magistrate or Judge owing each other's co-operation. Magistrate and Prosecutor must contribute lion's share in maintaining dignity and honour of the Court

before he accepts Court’s counter obligations. Prosecutor, representing the State in the Court of law, has to play vital role to assist the Court to come to justice. If the case has been proved and the accused is the hardened criminal i.e. previous convict beyond rehabilitation, Public Prosecutor/Assistant Public Prosecutor pray the Court for severe punishment or if previous convict, after filing previous copy of Judgment of conviction under gone apply to the Court to frame a charge Under section 211(7) Criminal Procedure Code for enhancement of punishment under section 75 of Indian Penal Code or in addition to any other mode provided by other law, by duly certified copy of sentence or order passed by the Court or submitted by the jail authority in which punishment was undergone or by production of warrant of commitment and if accused does not admit the guilt, Magistrate may after he is convinced, take evidence in respect of the alleged previous conviction and shall record the finding there on under section 248(3).

iii) Scandalizing the Court is really polluting the very fountain of justice since justice flows from the fountain of the Courts of law. Therefore its honour and dignity becomes supreme for the prosecutor held in Lalit Mohan Vis Advocate General S. K. Das. As per "Professional ethics" from C. L. Anand, prosecutor has the following duties towards the Court.

1) Maintain honour and dignity of the Court.
2) Not to do such thing which lower down public confidence in the administration of Criminal Justice.
3) Not to do such things, which calculate to obstruct the stream of justice.

Present everything before the Judge or Magistrate openly and freely.

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82 AIR 1975 S.C. P. 250.
"So also Prosecutors must observe, etiquette and ethics in Court to maintain the decorum of the Court, some important points are mentioned, as it falls within duties of Prosecutor.

1) Professional zeal should not be permitted beyond the limits of sobriety and decorum.

2) Don't show hatred or malice towards antagonist.

3) Behave respectfully with the Judge and be studiously respectful with various officers of the Court.

4) Prosecutor must be zealous and industrious in his work and pay attention to cross examination of adverse party.

5) Consult to serious matters with senior if so required.

6) The wealthy and powerful shall have no privilege against the prosecution.

7) Even if a case is of minor offence, the prosecutor discharges the duty consciously, never tempted to any pecuniary advantage.

8) Never enter into the conversation with accused or his relative.

9) He should be modest in his own opinion and every question put to him should be suitably replied.

10) A forensic contest is neither sure test of comparative strength of the combats nor defeat be regarded as just cause. When controversy has been judicially settled against Public Prosecutor, he should not fight the matter again.

11) Avarice is one of the most dangerous and disgusting of vices its offspring is meanness and it contaminates honourable principles.
12) No one ought to be expected to be convinced by loud words, dogmatic assertions, assumption of super knowledge, sarcasm but by gentleness sound ideas, continuously expressed by sincerity.  

Withdrawal of Prosecution under the Act of 1898:

Under section 494 of the Code of Criminal Procedure 1898 (new 321):

The effect of withdrawal from the prosecution:

Any Public Prosecutor appointed by Governor General in council or Local Government (Deleted by Act of 1923) may with the consent of the Court in case tried by the Jury before the return of verdict and in other cases before the Judgment is pronounced withdraw from the prosecution any person and upon such withdrawal:

a. If charge has not been framed then discharged.

If after charge has framed, then the accused acquitted in respect of such offence or offences (inserted in 1923)\textsuperscript{85}. Where there is no valid prosecution in such event, the Public Prosecutor cannot withdraw under this section. If investigating case papers are doubtful and the case was for evidence, then it would be proper ground for withdrawal said wording that “any Public Prosecutor” denotes that it is only the Public Prosecutor who can withdraw from the prosecution, under section 494 Criminal Procedure Code\textsuperscript{86}. The reporter or victim has no locus-standi of withdrawal when case has been instituted on police report, and the Court’s prosecuting inspector (who is Public Prosecutor) wants to withdraw the case, then the Court cannot reject the application simply because complainant wants to proceed further with the case, held in Gopi Bar\textsuperscript{87}.

\textsuperscript{85} AIR Manual Vol. V (All India Reporter publication. 2\textsuperscript{nd} dition 1960) P. 5353.
\textsuperscript{86} AIR Manual Vol. V (All India Reporter publication. 2\textsuperscript{nd} dition 1960) P. 5353.
\textsuperscript{87} 21 Criminal Law Journal, P. 641.
It also suffices that the prosecution has as per the Magistrate no sufficient evidence, then this section contemplates action to be taken upon the circumstances extraneous to the record of the case e.g. in expediency of prosecutors for reasons of State, necessity to drop the case on the ground of public policy or credible information having reached the Government as to falsity of evidence for which the prosecution is not supported and other matter of that descriptions. For withdrawal consent of the Court is necessary.

Moreover, when it is necessary to take evidence of one accused against the others, the usual practice is to tender to the said accused under section 337 Criminal Procedure Code 1898, therefore, to withdraw the prosecution against him under section 494 Criminal Procedure Code or to enter *halle prosequi* (unwillingness to prosecute)*89*.

It is the duty of the Public Prosecutor to give more cogent reasons as the withdrawal is in the best interest of justice. That the prosecution would involve lot of expenditure is not sufficient for withdrawing the case when the case itself is not weak. *'A private prosecutor cannot prefer an application for withdrawal in a non compoundable case. An application for withdrawal of a non-prosecution case by Public Prosecutor who is not the incharge of the case but can appear to withdraw the prosecution for and on behalf of the State can be made 'Complainant cannot apply to proceed with the case in a case started upon police report after withdrawal by Public Prosecutor. May withdrawal from prosecution- this section authorizes the Public Prosecutor only to withdraw from the prosecution.*

**Consent of the Court for Withdrawal:**

Consent of the Court is necessary when the prosecutor has asked the Court that the case is to be withdrawn on the ground of insufficient evidence and permission is refused then it is the duty of the Public Prosecutor to place the evidence before the Court as it is. It is certainly not correct to refuse to

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assist the Court and refuse to supply the list of the witnesses. 

Riswanath Khemka V/s Sewchand Roy

Criminal Procedure Code, 1898, Section 495:

Permission to conduct prosecution in the Court of Magistrate:

1) Any Magistrate enquiring into or trying any case may permit the prosecution to be conducted by any person not officer of police below a rank to be prescribed by the State government (substituted by A.O. 1950 or provincial Government, which has been substituted by the A.O. 1937) in this behalf (with the previous sanction of the Governor General in council omitted by Act of 38 of 1920) but no person other than the Advocate General Standing Counsel, Government, Solicitor, Public Prosecutor or other Officer generally or specially empowered by the State Government (substituted by the A.O. 1950 for provincial Government, which has been substituted by A.O. 1937) on his behalf entitled to do so without such permission.

2) Any such Officer shall have the like power of withdrawing from the prosecution as is provided by Section 494 and provision of that Section apply to any withdrawal by such Officer.

3) It has also been mentioned that any person conducting the prosecution may do so personally or by a pleader.

4) An Officer of the police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence for which the accused is being prosecuted or below the grade of inspector.

In respect to clause I of the section 495 Criminal Procedure Code old for Mumbai Police Officers not below the rank of Second Grade head constable may conduct prosecution, as per Home Department Res. No. 179

AIR 1945 Calcutta, Pp. 488 and 490.
dated 6.2.1923. (In Madras not below the Deputy Inspector, in Bengal, Assam, Uttar Pradesh and Madhya Pradesh not below the rank of Sub-Inspector have been authorized to conduct prosecution.) When such Officer was present in the Court, it was not open to the Magistrate to permit some other person to conduct the prosecution either instead of or alongwith the Police Officer without his consent. Emperor V/s Janke Gopal Koli.  

As per clause 3 of the Section 495 Magistrate can empower to permit "any Person" to conduct the prosecution but after considering the circumstances of the case i.e. indiscriminately not refer to higher Authority, "Any person" mean other than certificated pleaders. (1892 M.H.C. Pro. 2nd Sept. 1892) Private lawyer also required permission, but it is doubtful whether the word "any person" would include an absolute stranger who had no connection in the remotest degree with the prosecution and whose desire is to help the prosecution.  

The scope of this clause is widened by deleting the word "any person conducting the prosecution on behalf of the Government, in the High Court in exercise of its original criminal jurisdiction". The provision therefore made a counsel on behalf of the Government, irrespective of his manner of appointment as a "Public Prosecutor". Where, an advocate was instructed by Public Prosecutor in the High Court to conduct prosecution in a case in the High Court, Session Court there was no defect in the appointment of the counsel as a Public Prosecutor.  

Section 321- Withdrawals from prosecution under the Code of 1973:  

The Public Prosecutor or Assistant Public Prosecutor in-charge of the case may by consent of the Court at any time before the judgment is pronounced withdraw from the prosecution of any person either generally or in respect of any one or more offences for which he is tried and upon such

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50 AIR 1936 Bombay, P 35  
withdrawal (a) if it is made before the charge the accused will be discharged
(b) if it is made after the charge has been framed or when under this Code no
charge only particulars explained then he shall be acquitted in respect of such
offences.

In new Code there are some changes. After the word “Public
Prosecutor or Assistant Public Prosecutor incharge of the case” has been
substituted and “at any time before the judgment is pronounced” has been
added. Proviso has been added as:-

Provided that where such offence –

i) was against any law relating to matter to which the executive power of the
union extends or;

ii) was investigated by Delhi Special Police Establishment under the Delhi
Special Police Establishment Act 1946 or;

iii) involve the misappropriation or destruction of or damage to any property
belonging to the Central Government or;

iv) was committed by the person in the service of the Central Government,
while acting or purporting to act in the discharge of his official duty and the
prosecutor incharge of the case has not been appointed by the Central
Government, he shall not unless he has been permitted by the Central
Government, to do so, move the Court for its consent to withdraw from the
prosecution and the Court shall before according its permission direct the
Prosecutor to produce before it the permission granted by the Central
Government, to withdraw from the prosecution.

1) “Effect of” occurring in the heading of the section 494 have been
omitted – in present heading now, there is only “withdrawal from
prosecution”.

2) The word “any Public Prosecutor” appearing in sub section 1 of section
494 have been substituted in the present sub section 1 by the words –
"The Public Prosecutor or Assistant Public Prosecutor in-charge of the case."

And in cases tried by the Jury before the return of verdict and in other cases have been substituted by the words "at any time"

3) Clause (a) and (b) of present section are verbatim reproduction of clause a and b of old section.

Law Commission in its 41st report at Page-313 recommended that consent of the Central Government should be obtained before the Public Prosecutor or Assistant Public Prosecutor seeks permission of the Court to withdraw from the prosecution and inserted the proviso to that effect in corresponding section 494 of old Code to avoid the conflict of interest occurred between State and Central Government.

Withdrawal of prosecution really means withdrawal of appearance from prosecution or refraining from conducting or proceeding with the prosecution\(^{53}\)

Assistant Public Prosecutor must be incharge of the case under section 25 new and section 321 gives a person who is permitted by the District Magistrate under section 25 (3) to conduct the prosecution or withdraws the case.

The paramount consideration is in interest of administration of justice. **Subhash Chandra V/s Chandigarh Administration\(^{54}\).**

Insufficient or no evidence is not a proper ground for withdrawal of prosecution after framing of charges. **Shivandan Paswan V/s State of Bihar\(^{55}\).** However, withdrawal from the prosecution can only be done with the consent of the Court, the Court has to exercise the discretion Judiciously.

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\(^{55}\) AIR 1987 S.C. P. 877.
However no specific provision has been made in the Code in respect of the conduct of prosecution in the Court of Magistrate. According to the prevailing practice, if the cases are instituted on police report prosecution can be conducted by Assistant Public Prosecutor but in private complaint the prosecution is conducted by a complainant himself or by his duly authorized counsel. In such cases also State can appoint a prosecutor if the cause is in public interest. Mukul Dalmia v/s Union of India\textsuperscript{96}

Trial to be conducted by Public Prosecutor under section 225 of the new Code is identical to section 270 of the old Code change occurred in heading. "Before Court of Session" has been omitted.

This section is analogous to section 494 of the Criminal Procedure Code 1898 but newly added in 1973 Code is as under “Provided that where such offence (i) was against any law relating to a matter of which executive power of the Union Government extends, or (ii) was investigated by the Delhi Special Police establishment Act, 1946 or (iii) involved the misappropriation or destruction of, or damage to any property belonging to Central Government or (iv) was committed by a person in the service of Central Government, while or purporting to act in the discharge of his official duty.

The prosecutor incharge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government, to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before accorded it a permission, direct the prosecutor to produce before it, permission granted by the Central Government, to withdraw from the prosecution.

The change in new section is only where there is conflict of interest between the Central Government and State Government for withdrawal. The Law Commission therefore recommended that the consent of the Central

\textsuperscript{96} 1988 (3) S.C.C. P. 144.
Government is necessary to seek the permission of the Court to withdraw from the prosecution and therefore this proviso has been added.\textsuperscript{97}

**Duty of prosecutor in respect of withdrawal of the cases under section 321 Criminal Procedure Code 1973:**

i) The statutory duty squarely rests upon the Prosecutor whether the case is fit for withdrawal. No untrammeled power is given to Prosecutor he has to guide himself with reference to Criminal Procedure Code only. The consideration, which should weigh with him, is if broader cause of public justice will advance or retarded by the withdrawal or continuance of prosecution. Whenever he is incharge of the case he must show inexpediency of prosecution so also demonstrate before the Court inter alia that either police paper does not disclose sufficient material to sustain charge or not well founded or the circumstances show that administration of justice will not be advanced or furthered by going on with the prosecution may not be able to procure sufficient evidence to sustain the charge or not well founded or grounds put up before the Court should not be vague i.e. mechanically. But order of Government for withdrawal is no good ground. If the case appears to be of civil nature or in larger public interest then prosecutor is duty-bound to withdraw.

ii) Prosecutor who is not the incharge of the case is not duty bound to apply for withdrawal and has no right to interfere with the case.

iii) It should not with political favour. It must be in the interest of the public justice being a paramount consideration or in the administration of Criminal Justice. Prosecutor should apply his mind independently without being subjected to any outside interference. As withdrawal is concerned, it will be his duty to be autonomous executive.\textsuperscript{98} It can be only with the


\textsuperscript{98} Woodroof - Commentaries on the Code of Criminal procedure 1973 (Law publishers India (P) Ltd. Allahabad, 2\textsuperscript{nd} edition 1999) P. 968.
consent of the Court to further the broader ends of public justice, social economical and political public order, changed economical or political situation, avoidance of destabilization of the stable Government. Their Lordships laid down in Sheo Nandan Paswan V/s State of Bihar and others. However, it has also been held by Apex Court in Ramial and another V/s. State of J. and K. that the offence which is not shown as compoundable under section 320 (1) (2) Criminal Procedure Code, cannot be made compoundable with the permission of the Court.

The well celebrated judgment of the Apex Court in Sheonendan Paswan V/s State of Bihar and others in respect of withdrawal of the case. Justice V. Ramiah concurring with majority view observed in Para 45 that we should bear in mind the nature of the role of Prosecutor, he is not a persecutor. He is a representative not of an ordinary party to controversy but of the sovereignty whose obligation to govern impartially is as compelling as its obligations to govern at all and whose interest therefore in a criminal prosecution is not that it shall win the case but that justice shall be done. He is a servant of the land. He may prosecute with earnest and vigour. Indeed he should do so. But while he may strike hard blows, he is not at liberty to strike foul ones. It is his duty to refrain from improper method calculated to produce wrongful conviction, as it is to use every legitimate one to bring about a just one. Which is also mentioned in Berger V/s United State of America. The opinion of the Public Prosecutor under section 321 cannot be lightly interfered with unless the Court comes to the conclusion that he has not applied his mind or his decision is not bonafide.

iv) It is the duty of Prosecutor who is in charge of the case to apply for withdrawal of the case from the original Court. However, he cannot apply at appellate stage.

100 1999 Criminal Law Journal, P. 1942 (Supreme Court).
102 (1934) 295 U.S. P. 78.
v) If the matter is related to Central Government and Prosecutor appointed is not the one appointed by Central Government he may seek the withdrawal from prosecution only after obtaining permission of Central Government.

Consent of the Court is required:

To observe that:-

1) Whether the grounds are valid 2) Whether application is bona fide.
As the meaning of prosecutor as per Oxford dictionary is one who prosecutes in Criminal Courts or Law Officer conducting criminal Proceeding in public interest.

In Abdul Karim and others Vs State of Karnataka and others\(^{104}\) In this case accused Virappan has held sway since 10 years smuggled out ivory and sandal wood and guilty of heinous offences and Task Force of Tamil Nadu and Karnataka was unable to apprehend him. On a fateful night (30.7.2000) he abducted film actor Rajkumar and 3 others. Virrappan for the release of Rajkumar and others, asked for 10 demands to be satisfied, one of the demand is Terrorist And Disruptive Activities (Prevention) Act of 1987 charges and order Under National Security Act will be dropped facilitating release of the prisoners, accepted by Government was fulfilled by two States.

Therefore, application under section 321 seeking consent of the Designated Court at Chennai to withdraw the under case above Act (supra) were made by Special Public Prosecutor Special Court passed an order to withdraw the cases to facilitate ultimately release of accused person from Judicial custody so as to meet Virappan’s demand by Special Public Prosecutor of Tamil Nadu Governor.

\(^{104}\) 2001 Criminal Law Journal P. 148 (Supreme Court).
The aforesaid orders of the Government, of the State of Tamil Nadu and the order of the Designated Court were challenged in two public interest petitions before Apex Court.

Highest Court of the land held that dreaded criminal abducting popular film actor. Setting forth demands for the release of the film actor for withdrawal from prosecution. Grant of permission by the Court on the ground that application for withdrawal of the Terrorist And Disruptive Activities Act cases has been filed by Public Prosecutor on the basis of Government order does not meet requirements of section 321. Permission granted is bad in law. However satisfaction of Public Prosecutor cannot be based on information, which he could not verify. Permission to withdraw also held to have been obtained by misleading Court. Public Prosecutor has to be on consideration of all relevant materials and in good faith satisfied that withdrawal is in public interest. Court while granting permission to ensure that Public Prosecutor has applied his mind independently and withdrawal is in public interest. Grounds mentioned were to maintain peace among the people living in the border area and of village so as to prevent unpleasant situation in border area. Public Prosecutor not stated that why breach of peace was apprehended. Court granting consent could not have therefore, applied his mind to relevant material and exercised jurisdiction in good faith. Consent granted is bad in law. Therefore the order of Designated Court Chennai Dated 16.8.2000 and order of the Government of Tamil Nadu passed on 14.8.2000 was set aside.
Duty to examine various types of witnesses and their appreciation by the Court:

1) Accomplice or approver:

It has been mentioned under section 133 of the Evidence Act that the Court can proceed upon the uncorroborated testimonies of the accomplice i.e. guilty associate. However, contrary to this under section 114 (b) of the Evidence Act, illustration says that the accomplice is unworthy of credit unless he is corroborated in the material particulars. This has become accepted as a rule of law. Corroboration need not be from oral testimony only. It can be in the form of circumstantial evidence as held in Narayan Choudhary Vs State of Maharashtra.\(^{105}\)

Accused can be examined as defence witness under section 315 of Criminal Procedure Code. He can be cross-examined as an ordinary witness. His evidence can be treated as evidence of an accomplice as held in Tribhuwanath Vs State of Maharashtra.\(^{106}\)

2) Ballistic experts:

Where the death is only due to the injuries caused by lethal weapon then the expert evidence of ballistic expert is necessary, as these injuries have been caused with the weapon with which and in the manner in which they have alleged to have been caused, as held in Chhatarsingh Vs State of Haryana.\(^{107}\)

3) Child witnesses:

Under section 118 of the Evidence Act, a preliminary examination must be taken and expected rational answers to Judge the value and mental capacity of a child witness. Corroboration of the testimony of child witness, is not a rule but caution. A witness is of 11 years and cannot recollect the incident that happened before three years, cannot be doubted as held in the

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\(^{105}\) AIR 1976 S.C. P. 2474.

\(^{106}\) AIR 1973 S.C. P. 450.

\(^{107}\) 2000 All M.R. (Cri). P. 1928 (Supreme Court).
case of State of Maharashtra V/s D. G. Shinde\textsuperscript{108} so also as held in Bhagwansingh V/s State of Madhya Pradesh\textsuperscript{109} in which the child evidence to be evaluated carefully, Corroboration is necessary. It depends on the facts and circumstances of the case.

4) Chance witness:

Anybody going by road at the time of occurrence is by chance a witness. If his evidence is trustworthy can be relied upon as held in Ramlakhan V/s State of Uttar Pradesh\textsuperscript{110}

5) Chemical analyzer:

From the microscopic examination of hair it is possible to say from where it came from, colours and size; so also cloth can exhibit number of blood stains, report of Chemical Analyzer to police officer is not in-admissible by virtue of section 162(1) of Criminal Procedure Code. Forensic Science has immense value. Report of Serologist can be used as an evidence without any formal proof under section 293 of Criminal Procedure Code as held in Dhananjaya Reddy V/s State of Karanataka\textsuperscript{111}

6) Convict witness:

Even if a person is convicted once, on that ground his evidence cannot be rejected as held in Virghes Thomas V/s State of Kerala\textsuperscript{112}

7) Court witness:

Section 311 of the Criminal Procedure Code empowers the Court to examine any material witness or person he cannot be contradicted even if crossed by the prosecution and defence for the just decision of the case.

\textsuperscript{108} 2000 Criminal Law Journal, P. 2301 (Supreme Court).
\textsuperscript{109} 2003 Criminal Law Journal, P. 1262 (Supreme Court).
\textsuperscript{110} 1996 Criminal Law Journal, P. 3496.
\textsuperscript{111} 2001 Criminal Law Journal, P. 1712 (Supreme Court).
\textsuperscript{112} AIR 1977 S.C. P. 701.
8) Defence witness:

He is entitled to cross examination by the prosecution and equal treatment like as prosecution witnesses it is under section 243 in Warrant trial, and section 233 in the Sessions Trial and Section 254(2) in summons trial. However, if the Court feels that it is nothing but prolongs the proceedings it can disallow the application as held in Arivazhagan V/s State.\(^{113}\)

9) Dumb witness:

The deaf and dumb witness can give evidence by writing or by signs under section 119 of the Evidence Act where the prosecutrix was deaf and dumb, her non-examination is immaterial. When the accused found blood stains on his trouser and also on the complainant, evidence of prosecution Witness 4 Jaswantsingh found satisfactory proving the ingredients of the Offence. Where the Court believes that Sexual intercourse was done forcibly, no corroboration is necessary as held in Mange V/s State of Haryana.\(^{114}\) Non-examination of dumb witness even though no interference against the prosecution so also held in Krishansing V/s State and others.\(^{115}\)

10) Direct witness:

Eye witnesses are, the eyes and ears of Justice where there is definite evidence of eye witnesses, then contrary opinion cannot be accepted. Their evidence cannot be rejected on the ground that why they did not intervene to save the deceased as held in Angad V/s State of Maharashtra.\(^{116}\) Multiplicity of evidence is not necessary when some are won over as held in Gurunekhsingh V/s State of Panjab.\(^{117}\) Moreover, in the Apex Court, in the State of Karnataka V/s Mohammad Nazir\(^{118}\) it has been held that blow or kick

\(^{113}\) 2000 S.C. C. (Cri) P. 638.
\(^{114}\) AIR 1979 S.C. P. 1194.
\(^{116}\) AIR 1989 S.C. P. 1227.
\(^{117}\) AIR 1989 S.C. P. 2249.
\(^{118}\) 2003 Criminal Law Journal, P. 1249 (Bombay).
was given by the accused on a particular part of the victim is sufficient to
convict the accused.

11) Finger print expert:

Mere presence of finger print of the accused is not enough that such
weapon used in the commission of the crime as held in Mahamood V/s State
of Uttar Pradesh.\(^{119}\)

12) Handwriting expert:

It is not conclusive but opinion evidence as held in Ishvari V/s
Mohammad Isa.\(^{120}\) Conviction can be based upon it. But it can be supported
by other item that is signature and handwriting on the slip of paper by
handwriting expert as that of accused, opinion can be relied upon as held in
Alamgir V/s State (N.C.T. Delhi).\(^{121}\)

13) Hostile witness:

It is settled law that the evidence of the hostile witnesses can be relied
upon to the extent of which he is supported as held in Dharyashil @ Pumpi M.
Ghadge V/s State of Maharashtra.\(^{122}\)

14) Interested witness:

Their evidence requires greater scrutiny. Evidence of prosecution witnesses
otherwise creditworthy cannot be rejected/discarded, merely because
particular sentence is not available in the Statement of witness under section
161 of Criminal Procedure Code as held in Alamgir V/s State (N.C.T.
Delhi).\(^{123}\)

\(^{119}\) AIR 1976 S.C. P. 69.
\(^{120}\) AIR 1963 S.C., P. 1728.
\(^{121}\) 2003 Criminal Law Journal, P. 556 (Supreme Court).
\(^{123}\) 2003 Criminal Law Journal, P. 456 (Supreme Court).
15) Related witness:

That, this is the last witness to spare the real assailant as held in Bharti V/s State of Uttar Pradesh.\textsuperscript{124} If creditworthy cannot be discarded as held in Alamgir V/s State (N.C.T.Delhi)\textsuperscript{125} Relation is not a factor that affect credibility of witness as held in Gangadhar Behara V/s State of Orissa\textsuperscript{126}.

16) Doctor witness:

His evidence can be valued as an opinion evidence, He can only tell whether a particular injury is sufficient in the ordinary course of nature to cause death or not. If yes, the case of murder is made out. But if the doctor says that the death was on account of shock or hemorrhage, then his evidence cannot be considered as knowingly caused murderous injury. Moreover, the doctor is not sure about the time and duration of the injury. Weapon must be shown to the doctors at the time of evidence held in Ramswaroop and others V/s State of Uttar Pradesh\textsuperscript{127}. It is a technique of a prosecutor how to put a question to the doctor.

17) Injured witness:

Evidence of injured witness cannot be discarded on the ground of inimical deposition towards the accused or details of actual attack. Eye witnesses are the natural witnesses as held in Suresh S. Surve V/s State of Maharashtra\textsuperscript{128}.

18) Police witness:

Their Lordships of the Hon’ble Supreme Court in the State of Assam V/s Muhim Barataki\textsuperscript{129} held that the evidence of the Police Officer couldn’t be underestimated. Court will assume that public servant is discharging his duty and an attempt to do certain things in the Course of discharging of his duties.

\textsuperscript{124} AIR 1974 S.C. P. 8399.
\textsuperscript{125} 2003 Criminal Law Journal, P. 456 (Supreme Court).
\textsuperscript{126} 2003 Criminal Law Journal, P. 41 (Supreme Court).
\textsuperscript{127} 2000 Criminal Law Journal, P. 808 (Supreme Court).
\textsuperscript{128} 2003 Criminal Law Journal, P. 475 (Supreme Court P.B.).
\textsuperscript{129} AIR 1987 S.C. P. 98.
Accused fired at victim. Police party escorting him. Police also received injuries cannot be termed as an Official witness but an eye witness as held in Ravindra Shantaram Sawant V/s State of Maharashtra\textsuperscript{130}.

19) Prosecutrix:

Corroboration is not a \textit{sine qua non} for the conviction in a rape case. It is adding insult to the injuries. Victim of sexual assault stands as per with the evidence of an injured witness. Moreover, it is not video tape replayed on mental screen. She is the best witness and least likely to exculpate the real offender. Corroboration insisted when woman having attained majority is found in a compromising position and there is likelihood of her leveled accusation on account of instinct of self-preservation. The exact time and date can be estimated by guesswork on the spur of the moment. Some times 1) witness may be confused 2) overawed by piercing cross examination or by the Court atmosphere as held in Bhogin Bhai V/s State of Gujarat\textsuperscript{131}.

20) Rustic and rural witness:

Prosecution witnesses from the villages are generally ignorant about the date, time and months. Police embroiders the story to give a creditable look to its case, allowance must be given to it. Witnesses are villagers, and if contradictions about exact distance wherefrom prosecution witnesses saw the incident, occurs, it is immaterial. Villager cannot be expected to have clear and definite assessment of distance as held in the case of Podapati Malakondaiah V/s State of Andhra Pradesh\textsuperscript{132}.

21) Solitary witness:

Law does not require plurality of evidence. It is the quality of the witness and plurality of witness which signify in appreciating the evidence of witnesses Conviction can be based on it as held in State of Haryana V/s

\textsuperscript{130} 2002 Criminal Law Journal, P. 3239 (Supreme Court).
\textsuperscript{131} 1983 Criminal Law Journal, P. 1090 (Supreme Court).
\textsuperscript{132} 2002 Criminal Law Journal, 3555 (D.B. Supreme Court).
Manojkumar. But in England unsworn testimony requires corroboration in some material particulars, however, it is not said in section 134 of the Indian Evidence Act.

22) Woman witness:

In Bhoyaganagana V/s State of Andhra Pradesh observed that ignorant and rustic woman’s evidence cannot be calculated by mathematical accuracy.

23) Serologist:

Bloodstains on clothes of the accused are of the same group as that of the deceased is an important corroboration. Moreover, for the appreciation of evidence report of the serologist can be used as evidence without any formal proof under section 293 of Criminal Procedure Code.

24) Examination of investigating officer:

The prosecution should be very careful in the examination of Investigating Officer. It is useful for the prosecution and the defence as held in Krupasindhu Poithal V/s State of Orissa.

Per se admissible document can be put to Investigation Officer search and seizure panchnama, late recording of a statement under section 162 of Criminal Procedure Code late registration of First Information Report and recording of a statement under section 164 of Criminal Procedure Code can also be put to Investigation Officer and can take explanation from him as held in Ramesh Gawali V/s State of Maharashtra.

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133 AIR 1994 S.C. P. 147.
134 1976 Criminal Law Journal, P 1158
135 1986 Criminal Law Journal, P. 862
136 1999 Criminal Law Journal, P. 3603 (Supreme Court).
25) Black marketers:

He is not necessarily an untruthful witness. Sections 135, 146, 148 of the Evidence Act disclose that the credit of witness can only be shaken if he is of bad moral character.

26) Stock witnesses, punter witness and tutured:

Their evidence can only be appreciated with closed Scrutiny.

Therefore there is ample material to present that the job of prosecutor is complex nature, tedious tricky and typical. Unless and until some right given to him it is difficult to perform his pious works therefore let us see the rights of the prosecutor.

Appearance by Public Prosecutor - Under Section 301:

Before throwing light on the rights of the prosecutor, I feel it necessary to look into changes occurred in section 301 and 302 of the new Criminal Procedure Code 1973. It is analogous to section 493 of the old Code. It runs as follows:

1) The Public Prosecutor or Assistant Public Prosecutor in-charge of the case may appear and plead without any written authority before any Court in which “that case” is under inquiry or trial or appeal.

2) If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution and the pleader so instructed shall act therein under the directions of Public Prosecutor or Assistant Public Prosecutor as the case may be “and may with the permission of the Court submit written note of arguments after the evidence is closed in the case.” This is new addition to this Act of 1974.
Reference of Assistant Public Prosecutor is necessary. Following are the changes:

1) Heading of section 493 i.e. Public Prosecutor may plead in all Courts in cases under his charge. Pleader privately instructed to be under his direction. However in new Code of 1973 “Appearance by public prosecutors” is heading.

2) The word “Assistant Public Prosecutor in charge of the case” have been inserted in clause (1). In place of “that case” the words “any case of which he is incharge”. Broad view has been taken.

3) The words if in any such case a private person instructs a pleader to prosecute any person in any Court has been substituted, in sub section 2. For the words “if any private person in any such case” appearing in section 493. The word or Assistant Public Prosecutor in charge of the case” have been added after Public Prosecutor occurring in 493 and the words under the directions of the Public Prosecutor or Assistant Public Prosecutor and may with the permission of the Court submit written note of arguments after the evidence is closed in a case have been substituted” for the words “under his directions” in section 493.

Section 302 of Criminal Procedure Code corresponds to section 495 of old Criminal Procedure Code 1898. Title of the section is “permission to conduct prosecution” old heading was same. It is modified with change as under-

1) Any Magistrate inquiring into or trying “a case” may permit the prosecution to be conducted by any person other than “a police officer below the rank of inspector” but no person other than Advocate General or Government entitled to do so without such permission. Advocate or Public Prosecutor or Assistant Public Prosecutor shall be

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"Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

2) Any person conducting the prosecution may do so personally or by a pleader.

Change is for the word in "any case" inspite of it. "the case" has been mentioned. This sub section was the word it substitutes words "a police officer below the rank of inspector". For the words "an officer of police below the rank to be prescribed by the State Government, in this behalf" appearing in the old sub section 1.

3) It also substitutes the words or Government Advocate or Public Prosecutor or Assistant Public Prosecutor for the wards "Standing counsel" Government Solicitor, Public Prosecutor or other officer generally or specifically empowered by the Central or the State Government in this behalf. Appearing in the old sub section 1. The words "any case" have replaced by the wards "a case".

Provision to sub section 1 corresponds to sub section 4 of section 495 of old Code, only substitutes the words "provided that no police officer shall" for the words "An officer of police shall not "occurring in old sub section 4 (3), sub section 2 identical to sub section 3 of section 495 of old Code.

Criminal Procedure Code Section 319:

Power to proceed against other persons appearing to be guilty of offence:

The present heading has been substituted for the heading of section 351. It is analogous to the old section 351 of the Code. Newly added clause 1 and 2 runs as under: Even though it is a power of the Court against that person not being added as an accused and in examination in chief sufficient material against him.
1) Where in the course of any inquiry into or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with an accused the Court may proceed against such person for the offence which he appears to have committed.

2) Where such person is not attending the Court, he may be arrested or summoned as the circumstances of the case may require for the purpose aforesaid clause ((1) and (2) are new).

3) Any person attending the Court, although not under arrest or upon a summons may be detained by such Court for the purpose of inquiry into or trial of, the offence which he appears to have been committed. This clause corresponds to sub section 1 of old Code section 351 and minor changes has been occurred.

4) Where the Court proceeds against any person under sub section (1) in such events.

a) the proceedings in respect of such person shall be commenced a fresh and the witness reheared.

b) Subject to the provision of clause (a) the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

This present sub section 3 and 4(a) correspond to sub section 1 and 2 of section 351 old. The opening words of sub section 4 of clause (b) of this section have been newly added.

This term includes the statement recorded by police and submitted to the Court. When in evidence and after testing the witnesses in cross examination, prosecutor can make an application to Court to add the prosecution witness as an accused or new person as an accused under section 319 of the Code.
"Any person not being the accused" covers any person not being tried by the Court. So person dropped by the police during investigation but against whom evidence showing his involvement in the offence comes before the Criminal Court, are included.

The words "it appears from the evidence that any person not being the accused has committed any offence" are very significant and section 319 provides for the same. Even though the earlier Court discharged him under section 239 Criminal Procedure Code\(^{138}\). Now it is easy to look into the rights of the prosecutors.

Right of the Prosecutor:

1) To select the case in counter cases

Where two counter cases are to be tried by the Court of Sessions or Judicial Magistrate First Class and facts are such that if one case is true the other is false in such events Public Prosecutor or Assistant Public Prosecutor has a right to choose one case out of two to conduct prosecution the truth of which he is reasonably satisfied\(^{139}\). It is the right of Public Prosecutor or Assistant Public Prosecutor. He can seek permission of the Court for withdrawal from either of the one, which he feels it proper.

2) No Private Lawyer as right to interfere in working

Lawyer engaged by the private person has no right to audience in their case in which prosecutor is in-charge under section 301(2) Criminal Procedure Code\(^{140}\).

Public Prosecutor or Assistant Public Prosecutor who is in-charge of the case has only right of audience under section 225 and 226 Criminal Procedure Code i.e. trial to be conducted by Public Prosecutor and under section 234 Criminal Procedure Code (Arguments) and no scope for the lawyer engaged by private party to address the Court orally except a

\(^{138}\) Ibid. Pp. 3355 to 3359
\(^{139}\) Ibid. Pp. 2701, 2702
\(^{140}\) Ibid. P. 3341.
written note of argument. Under section 301(2) Criminal Procedure Code\textsuperscript{141} and conduct the case without Vakalatnama.

In Emperor V/s B. B. Bhopatkar\textsuperscript{142} it was held that section 234 Criminal Procedure Code 1973 makes right to reply depend upon the fact, evidence being adduced. But this interpretation as pointed out by Beaman J. would include both documentary and oral evidence. The view taken in Queen Empress V/s Krishnaji Babarao Bulleli\textsuperscript{143} and some other cases was that production of documentary evidence alone did not give the prosecutor a right to reply. This conflict was resolved by the use of the words "adduce any oral evidence" instead of "adduces any evidence" in old section.

3) To a certain the correctness of charge
To verify whether the charges are proper or not. If not, prefer an application to the Court to enact or amend the charges.

3a) To open the case
It is right of a Public Prosecutor to open case and not of Judge to open. Under section 225, 226 Criminal Procedure Code by describing the charge brought against the accused and state by what evidence he proposes to prove the guilt of the accused under section 240 in Session trial, section 246 (7) in warrant trial and particular in summary trial Under section 251 of the Criminal Procedure Code.

4) Choice to select the witnesses for examination
It is a choice of the prosecutor to examine witness in a sequence of his choice. Court cannot compel to examine a particular prosecution witness first section 231 Criminal Procedure Code for sessions trial says that "Judge shall proceed to take all such evidence as may be produced in support of prosecution and which should be examined first. He can take any number of witnesses to prove his case and clause 3 of section 242 in warrant trial cases and under section 254 (3) in summons trial cases\textsuperscript{144}.

5) Not to favour to victim or reporter etc.
Public Prosecutor or Assistant Public Prosecutor is not a mouthpiece of complainant i.e. reporter or State to say what it wants or what the State

\textsuperscript{141} Ibid. P. 3340.
\textsuperscript{142} ILR 30 Bombay P. 421.
\textsuperscript{143} ILR 14 Bombay P. 436.
directs because he owes allegiance to higher cause. Being a public servant he has a right to be conscientious. State the facts to the Court and not conceal the truth. He is a autonomous executive.

6) **Objections for irrelevant cross-examination**

Prosecutor has a right to raise an objection to restrict the cross examination of counsel of adverse party if he feels that irrelevant question has been asked hypothetical, misleading compound or scandalous and offensive questions asked which is prohibited under section 146 to 153 of Evidence Act.

7) **To recall the witnesses**

Public Prosecutor or Assistant Public Prosecutor has a right to call or recall witness/s or examine any person in attendance under section 311 of Criminal Procedure Code, if he is so required in the interest of justice or examine person present by applying before the Court. Apart from the witness being summoned on the request of prosecution or defence, Court can also call as a Court witness at any stage of trial prosecution and defence can cross-examine the Court witness.\(^{145}\)

8) **Witness can be given up from witness list in chargesheet**

Public Prosecutor or Assistant Public Prosecutor has also right not to call any of the witness or not put in witness box for cross-examination to any witness whom he believes to be a false or unnecessary which may demolish his case. Prosecutor can give list of witnesses, which he does not propose to examine from the list of witnesses given by police in-charge sheet under section 231 of Criminal Procedure Code.\(^{146}\)

9) **Conduct the Prosecution without Vakalatnama**

Public Prosecutor or Assistant Public Prosecutor in charge of the case may appear, take evidence and argue the case without filing a Vakalatnama or permission before the Court.

10) **Discretionary right for withdrawal of the case**

Public Prosecutor or Assistant Public Prosecutor if thinks it proper and well-founded, then only can apply for withdrawal from prosecution Under section 321 Criminal Procedure Code. It is the sole discretion of the Public

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\(^{145}\) Ibid. Pp. 3454, 3455.

\(^{146}\) Ibid. P. 2732.
Prosecutor to withdraw if he thinks that it is in the public interest, held in Abdul Karim V/s State of Karnataka and others etc\textsuperscript{147}.

11) To prefer appeal or revisions
Public Prosecutor or Assistant Public Prosecutor has a right to prefer an appeal or revision cases if he thinks fit or so deserved or where he feels that judgment and order of the Court is against law, justice and equity and perverse, can prefer an appeal against acquittal under section 378 or for enhancement of punishment under section 377 and revision under section 397 Criminal Procedure Code in the interest of justice for the just decision of the case or in public interest.

12) Apply for transfer of case
If Public Prosecutor or Assistant Public Prosecutor is doubtful about the adverse interest of judge he can prefer application for transfer of case to another Court under section 408, 409, 410 Criminal Procedure Code respectively. The rule of natural justice is audi alterum partem.

13) Choice to examine first witness
Public Prosecutor or Assistant Public Prosecutor has a discretion as to which witnesses should be called by the Court. Court cannot interfere with the exercise of that discretion unless shown it by oblique motive\textsuperscript{148}. If Public Prosecutor or Assistant Public Prosecutor feels that witnesses will not in his opinion speak the truth or support the points he wants to establish by his evidence that witness will not be called under section 231 Criminal Procedure Code.

14) Even if witnesses not produced, no hostile inference
No adverse inference can be drawn from the non-production of the witnesses. Who is no better than a stubborn and who is not a witness essential to the unfolding of the narrative on which the prosecution is based and for non-production of whom no oblique reason is alleged.

15) Court witness can be cross-examine
As the evidence of prosecution and cross by defences is over the accused shall be called upon to enter in his defence Under section 233 (1) Criminal Procedure Code prosecution can cross it to search out the truth and even

\textsuperscript{147} 2001 Criminal Law Journal, P. 148
\textsuperscript{148} Kelkar R.V.—Lectures on Criminal procedure (Eastern Book Company, Lucknow publication 3\textsuperscript{rd} edition 1998) P. 152.
Court witness under section 311 Criminal Procedure Code can be cross-examined by prosecution. At this stage prosecutor shall argue his case. Under section 234 Criminal Procedure Code in session Court and Section 314 in other Courts and in alternate accused will reply\(^{149}\). However if a new point of law is raised by the accused in reply the prosecutor will have a right to make his submissions on that point Under section the proviso to section 234 (292 old).

15A) **Apply for non-bailable warrant against accused**
Public Prosecutor or Assistant Public Prosecutor has a right to make an application before the Court to issue non bailable warrant against accused avoiding arrest then issue Proclamation against an accused against whom warrant has been issued but absconded or concealing himself so that such non bailable warrant cannot be executed can attach his property movable or immovable under section 82,83 of Criminal Procedure Code.

16) **Hear on the point of sentence**
As any sentence is passed by Judicial Magistrate First Class or Sessions, accused must have been given hearing opportunity on the point of punishment under section 248 (2) in Judicial Magistrate First Class Court and under section 235 (2) Criminal Procedure Code in Sessions Court respectively to argue in regard to here the accused on the question of sentence so also prosecutor must have been allowed to rebut it\(^{150}\). In *Nirpalsing v/s State of Haryana*\(^{151}\). In which Sessions Judge had given a sentence of death without giving an opportunity to accused to be heard on the question of sentence. It was reduced to Life Imprisonment by Supreme Court.

17) **Permission to cross own witness**
If the prosecution's own witness is not supporting the case as stated before police under section 161 of the Code in such situation Under section 154 Evidence Act prosecution has a right to cross examine and contradict by the leave of the Court, to lower down his credibility so as demonstrate

\(^{149}\) Ibid. P. 185.


\(^{151}\) AIR 1977 S.C. P. 1066.
before the Court that he is branded as a liar. Moreover, it has been held in Bhagwan Singh V/S State of Harayana\textsuperscript{152} laid down that the Court granted permission to cross his own witness, which characterize as a hostile witness does not completely efface his evidence. Evidence remains admissible in trial and no legal bar is there if other reliable evidence corroborates it. It cannot be rejected outright. Also held in Syed Akbar V/S State of Karnataka\textsuperscript{153}. An experienced prosecutor does produce the material witnesses despite their hostility and often declare them hostile live no efforts to contradict them, fully from their previous statement to Investigating Officer and by searching cross examination proves the prosecution's case to the great extent. He is clear about the law, if their complicity with the accused will be believed by the Court. His previous statement so contradicted, proved by the Investigating Officer who has written his statement and signed it will be believed by the Court and case can be made out against accused.

18) Before going to the witness box if police had read over a statement to the witnesses due to such happening their evidence would not be disbelieved and inadmissible held in - Ali V/S State of Kerala\textsuperscript{154}.

**Position of Prosecutor:**

Prosecutor has more duties and responsibilities than his rights in order to act for justice. He has to perform his functions in tight rope walking system for the welfare and betterment of the society. In adversary system of criminal jurisprudence as in United States and United Kingdom for administration of criminal justice law and procedure conducting the criminal cases requires that the prosecution must open its cards before the Court and must intimate to accused, the detail information on which it would lead the evidence against him. Where the direct testimony of witnesses must be trustworthy. Circumstantial evidence must lead to inference of guilt and only guilty, no

\textsuperscript{152} AIR 1976 S.C. P. 2002.
\textsuperscript{153} AIR 1979 S.C. P. 1848
\textsuperscript{154} 1995 Criminal Law Journal, P. 2974 (Kerala).
other. Aim at only to produce quality evidence and not quantity of evidence. In alternate prosecution has to lead the evidence on such material links that the testimony of witnesses should disclose that no other but the accused committed the offence on trial. Prosecution has to build whole story as per documents i.e. Police paper while defence has to create reasonable suspicion by cross-examination of prosecution witnesses in the mind of the Court. The whole points of the evidence draw only conclusion which a prudent man that ought, under the circumstances of the particular case to act upon a supposition that it exist or not exist.

Moreover, the adversary system of trial is based on accusation method. Burden of proving the guilt of the accused is on the prosecution and by adducing quality evidence prosecution must relieves of this burden else, accused cannot be held guilty. Every Criminal trial begins with presumption of innocence in favor of accused. Therefore, in Shivaji S. Bobade Vs State of Maharashtra\(^{155}\) Their Lord-ship observed that the cherished principle or golden thread of proof beyond reasonable doubt which runs through the web of criminal law should not be stretched morbidly to embrace (impact) every hunch, hesitancy and degree of doubt. In case the Court finds that Prosecution had not examined witnesses for reasons not tenable the Court would be justified in drawing an inference adverse to the Prosecution under sec. 3 of Evidence Act. So also in State of Bihar Vs Krushana Moch\(^{156}\) where the discrepancies are normal then it should not be taken into consideration as falsus in uno, falsus in omnibus has no application in India.

The criminal law in India does not recognises the right of the victim of the crime to participate in the criminal trial against the offender. Therefore efforts fall short to bring the real culprit to book because benefit of doubt fall infavour of accused and the high percentage of the offenders get acquittals. Therefore position of the prosecutor is that he should be careful, cautious and alert while examination in chief and in cross-examination of prosecution witnesses by defence counsel. Under article 22 of the constitution of India or

\(^{155}\) 1973 Criminal Law Journal, P. 1783 (Supreme Court).

\(^{156}\) 2002 Criminal Law Journal, P. 2645 (Supreme Court).
under section 303 of the Code statutory right of the accused to be defended by lawyer of his choice but victim's case is at mercy of Public Prosecutor, appointed by the State, because copious tears are shed for the accused if there is delay in justice in criminal law. Conviction of real culprit cannot be sustained on the basis of conjecture, suspicion, a mere belief of guilt of the accused or a strong probability of guilt on the basis of evidence. Court is entitled to insist that the best possible evidence should be produced but no hard and fast rule can be laid down as to any quantum of evidence required for the proof of a fact as it invariably varies with the particular circumstances of each case that too beyond a reasonable doubt. The position of the prosecutor is that he must keep bird's eyewview and keen interest while conducting the case is sine qua non at the time of cross-examination by defence counsel. Leaving or remain flaws in examination in chief is to loose the case beyond control. He must also know the skill of cross-examination as he has to cross-examine defence witness and Court witness and vice versa. The position will be better if the victim is allowed to help the Prosecution so that Court can give to real justice, as it had been said that justice should not only be done but it should manifestly be seen to be done.

Prosecutor's position in the Court is that he is a lawyer for the State and considered as an Officer of the Court. He is formally a member of executive branch of the Government, and independent from Judicial. As he appears and conducts criminal cases for the State rather than on behalf of individual victim or complainant. He presents a case against accused. In fact or principle securing conviction is less important than administering criminal justice as an Officer of the Court. His position is, he should protect the legal rights of the innocent accused. The prosecutor makes a proper balance between two conflicting interests. He should represent the State case at all stages of criminal proceeding. He comes into picture after police arrest and decide what specific criminal charge will be brought against the arrested person. At preliminary stage Public Prosecutor relies upon information given in police report and there after he plays an important role in determining the specific charges against accused. If he fails to perform his duties in such event the offender who deserves punishment would be free from clutches of
law. He is accountable to the State and public. He must marshal the correct fact and law before the Court. His office is more a judicious in character than executive and is separated from political office.

The role of prosecutor in any criminal trial whether at the instance of State or other private party is to safeguard the interest of both the complainant and the accused. The right to be heard by spokesman of one's confidence this right belong to the complainant and accused. It is not accused only who is in need of assistance and prosecution of his rights, but also the complainant i.e. Victim. The prosecutor has to discharge his duties diligently towards this end. He is ordained by law, by professional ethics, and by his role as an officer of the Court to employ only such means as are fair and legitimate and to desist from resorting to unjust and wrongful means. Court always safeguards the interest of the complainant and the accused, to control the proceeding and to check the omissions and commissions of the prosecutor. The Court is not a silent spectator to the proceeding but active participant in it.

Therefore in Vijay Valia (parag) and etc. vs State of Maharashtra\(^{157}\), the purpose of the criminal prosecution is to bring home the guilt of the accused and to punish him if documents and evidence shows it. Therefore, prosecutor has to discharge his duties diligently towards this end. A prosecutor who fails and neglects in his duties is doing no service to the administration of criminal justice.

It indicates that the position of Prosecutor in criminal justice system is pivotal. From the above various discussion, we can form firm opinion that the work of prosecutor is pivotal and of immense value in administration of criminal justice.

Position of a Special Public Prosecutor on payment by private individual:

In Mukul Dalal Vs Union of India\(^{158}\), the office of the Public Prosecutor is public one and the primacy given to the Public Prosecutor under the

\(^{157}\) 1986 Criminal Law Journal, P. 2095 (Bombay High Court D B ).
\(^{158}\) Mukul Dalal Vs Union of India, (1988) 3 SCC 144
scheme of the Code is as a social purpose. Article 14 of the constitution of India came into play if any arbitrary action is taken against the removal of the Public Prosecutor Even in the matter pertaining to States; contract with private parties, the policy must satisfy the requirements of Article 14 of our constitution. Fairplay in action must be the basis of the policy. In Malloch V/s Aberdeen Corporation\textsuperscript{159}, The Respondent is public authority. The appellant holds public position fortified by statute.

Moreover, in Mukul Dalal’s case (supra) under section 24(8) guideline for appointment of Special Public Prosecutor on the request of Private complainant: The Apex Court held that it should be properly examined by the Remembrance of Legal Affairs and when they are satisfied that the case deserves the support of Public Prosecutor or Special Public Prosecutor in such event Special Public Prosecutor should be appointed in-charge of the case. It must be for public cause. In such cases the prosecution, though initiated by Private individual, is really one which should be taken over by the State and paid out of State funds, but where the Prosecutor is a public sector undertaking, bank, educational institution or the like, the remuneration may be collected from that sector. It can be for various other reasons which will be appropriate for the State to support prosecution by appointing Special Public Prosecutor or Public Prosecutor. In Devineni Sheshgiri Rao V/s Government of Andhra Pradesh and others\textsuperscript{160}, it has been held that appointment of Special Public Prosecutor is a prerogative of the State. Complainant cannot name any person to be appointed as a Special Public Prosecutor held not a good law. Because the office of the Public Prosecutor is unique in its nature and status and it cannot be controlled by or slipped into the hands of private individual. It shall also not be open to the complainant to name a person of his choice.

The primacy given to the Public Prosecutor under the scheme of the Code has special purpose. The same would be lost if the procedure adopted by rule 22 of Maharashtra rules is accepted i.e. payment to Public Prosecutor/Special Public Prosecutor by complainant. It should be paid out of

\textsuperscript{159} Malloch V/s Aberdeen Corporation. (1971) All E. R., 1278

\textsuperscript{160} 2004 Cri. L. J., P. 52.
the State funds. But there may be cases of public sector undertaking, a bank may be nationalized or not, an educational institution and the like the rate of fees should be prescribed and the private complainant should be called upon to deposit the fees either with the Remembrance of Legal Affairs or a prescribed State Agency from where the fees would be drawn by Special Public Prosecutor on Page 148 of manual it has been stated that Apex Court is of the view that permission to engage an advocate should be given freely to private person (complainant or victim). The complainant has as much a right as the accused to represent his case effectively before the Court. He has right to be heard and vindicated. The right to be heard implies a right to be effectively represented at the hearing of the case and engaging advocate of his choice. Therefore there is no reason why the State refuses the permission. In the Criminal Procedure Code Public Prosecutor has a special status and he is statutorily appointed under the provision of the Code. He receives special recognition. Section 2(U) of the Code defines the Public Prosecutor section 199(2), 225, 301 (1), (2), 302 308, 321, 377 and 378 of Criminal Procedure Code provision confer a special position upon Public Prosecutor in the scheme of the Criminal Procedure Code it is the duty of Public Prosecutor to support prosecution initiated by the State i.e. by police. It is a public office of trust, susceptible to misuse and corruption if not properly insulated, held that to leave it to a private complainant to pay the Special Public Prosecutor is not appropriate. Therefore rule 22 of the Maharashtra Law Officers Rules referred, in our view is bad and State Government should modify it.

Assistant Public Prosecutor formerly who had to work for prosecution in Magistrate Court i.e. before passing Criminal Procedure Code 1973 named and styled as Prosecuting Inspector and his duty was to run after conviction and earned it by hook or crook. In the beginning they were from police officers. They had legal illiteracy and lack of latest case laws of our High Court and Supreme Court. They were poorly conversant with law. Therefore to improve the standard the qualification for Public Prosecutor was LLB (Bachelor of Legislative Laws) having 3 years practice on criminal side and appointed by Inspector General of Police. However, when Vidarbha merged into Maharashtra prosecuting Inspector were called as police prosecutor.
Police Prosecutor has to attend all Judicial Magistrate First Class's Courts to conduct prosecution.

In the case when peculiar difficulty occur or Criminal case of great public important the District Superintendent of Police or selection grade Prosecutor used to conduct the criminal case. In 1957 when Vidarbha merged with Maharashtra, the term Prosecution Inspector changed to "Police Prosecutor". However, this has been changed when new Criminal Procedure Code 73 came into force. Section 25, says that the State Government, shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Judicial Magistrates. Under section 25(1) (Newly inserted by Act 45 of 1978 section 9 with effect from 18/12/1978) says that 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.

Save as otherwise provided in sub section 3 of section 25 of the Code no police officer shall be eligible to be appointed as Assistant Public Prosecutor (section 25(2)) 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 investigation into the offence with respect to which the accused is being prosecuted or (b) if he is below the rank of Inspector under section 25(3) of the Criminal Procedure Code 1973.

This is the statutory obligation imposed upon State or Central Government to appoint Assistant Public Prosecutor and by this Assistant Public Prosecutor are made independent of the police department. But where no Assistant Public Prosecutor is available to conduct prosecution then, police officer not below the rank of inspector and who has not taken part in investigation can conduct the case. By this section separate cadre of Assistant Public Prosecutor was formed and Director of Public Prosecution is the head of the department who will be responsible to the Government for the work of Assistant Public Prosecutor. But this has not been from the police
department, has issued a notification on 1st of April, 74 that in exercise of the power conferred.

Under the old Criminal Procedure Code of 1898 there was no provision of Assistant Public Prosecutor but under section 495 Code while any Magistrate inquiring into or trying the case may permit the prosecution to be conducted by any person other than a police officer not below the rank to as prescribed by the State Government and there after not below the rank of inspector in this behalf, i.e. proper authority to deal with the application for permission to conduct prosecution is Magistrate himself. But Advocate General, Standing counsel, Government Solicitor, Public Prosecutor or other officers as empowered by the Central Government or State Government can do so without permission of Magistrate.

Any such officer shall have the like power of withdrawing from the prosecution as per section 494 of the Code.

Any person conducting the prosecution may do so personally or by pleader.

An officer of police shall not be permitted to conduct the prosecution if he has taken part in investigation into the offence with respect to which accused is being prosecuted. It corresponds to section 302 (1) and (2) of new Criminal Procedure Code. It does not apply to security proceeding (There was a prosecuting Jamadar in the Court of Executive Magistrate) It substitutes the words "A police officer not below the rank of inspector" For the words "an officer of the police below the rank to be prescribed by the State Government" appearing in old section 4 (1) (t) of 1898. For the word standing Counsel, Public Prosecutor or other officer, empowered by the Central or the State Government.

By section 25 of Criminal Procedure Code 1973 appointed officers or Prosecutors of police department, a Public Prosecutor without freeing such as Assistant Public Prosecutor from administrative and disciplinary control of police department to which they belonged earlier without creating separate prosecution department for them with the head of the department or
departments being directly made responsible to the Government and thereby State Government fail to discharge its statutory obligation implied/imposed upon it in that regard under sub section 3 of section 25. Therefore petition was field under Article 226 of the Constitution of India, before Division Bench of the High Court of Bombay, Nagpur bench through S. B. Shahane and others W/s State of Maharashtra and another\(^{161}\) seeking from High Court issuance of direction to Government, of Maharashtra, for their exclusion from its Police department and free from administrative and disciplinary control of Inspector General of Police, the head of the Police Department and create its separate Cadre of Assistant Public Prosecutor under separate prosecution department making its head directly responsible to the Government. It was dismissed by Bombay High Court at Nagpur bench on 31.7.1981 which was questioned by appellant in the appeal by special leave to appeal before the Supreme Court demanding separate cadre of Assistant Public Prosecutor making held directly responsible to the Government "In exercise of the powers conferred by section 25 Criminal Procedure Code 73 (II of 74) The Government of Maharashtra hereby appoint with effect from 1\(^{st}\) April, 1974 the officers specified in column (2) of the schedule appended who are police prosecutors to be recognized as Assistant Public Prosecutor.

For conducting prosecution in the Court of Magistrate in the District including Greater Bombay and District respectively specialized against their names in column of the said schedule, Supreme Court considered section 25 and said that this section was undisputedly inserted by the parliament as the fault found by the Law Commission in conducting prosecution by Prosecutors in Judicial Magistrate First Class's Courts. Remedial suggestion made by the 14\(^{th}\) report in para 12 laid down that it is not possible for Assistant Public Prosecutor to exhibit that degree of detachment and belief prevail inter se, that there promotion in the department depended on number of convictions they are able to obtain. Finally Police Officer's control or supervision of the work on these prosecuting officers is exercised by Police department officials. Therefore Assistant Prosecutor separated from Police dominion.

Remedy suggested was in para 15 by the Law Commission that for improvement of the prosecuting agency they should be separated from police department. In every district separate prosecution department should be constituted whose incharge will be Director of Public Prosecution. Prosecution machinery will be under his control and directly responsible to the State Government By this investigation department and prosecuting department should thus be completely separated. Prosecutor must conduct the prosecutions fairly and impartially. The mandate of sub section (1) of section 25 Criminal Procedure Code is that the State Government shall appoint Assistant Public Prosecutors in every district, one or more Assistant Public Prosecutors for conducting the prosecution any case or class of cases in the Court of Magistrates. Clause 2 said, police officer ineligible as rule for appointment of Assistant Public Prosecutors i.e. exception to the rule is proviso to clause 3. It permits appointment of other person as Assistant Public Prosecutors Police Officer can be appointed in particular case by District Magistrate proviso to clause 3 special care is required to see that such officer shall not be below the rank of inspector and who had not taken part in the investigation in this offence. Mandate of clause 3 implies that independent Assistant Public Prosecutors cadre be created by Central or State Government, and separate department of prosecution having its own hierarchy of officers. Promotion by seniority-cum-merit, performance in service i.e. from Assistant Public Prosecutors to Additional Public Prosecutor to Assistant Director of prosecution, then to Deputy Director Public Prosecution and then Director of Public Prosecution who is in charge of whole department in the State. As per the order of Supreme Court the State Government appoints Assistant Public Prosecutors through Maharashtra Public Services Commission because statutory obligation is imposed on the State or Central Government as the case may be to appoint Assistant Public Prosecutors in the Court of Magistrate fairly. The appointment of police officer as Assistant Public Prosecutors is envisaged for want of other suitable person to meet some unavoidable contingency. Independence of Assistant Public Prosecutor is achieved under section 25 of the Code, also sough to be achieved of section 24 clause 6 which says that "Notwithstanding anything contained in clause 5 where in State there exists a regular cadre of
Prosecuting Officers, the State Government shall appoint a Public Prosecutor or Additional Public Prosecutor only from among the persons constituting such cadre. In this regard the Apex Court held that the Government of Maharashtra has failed to discharge its statutory obligation impliedly imposed upon it. Under section 25(3) Government of Maharashtra could not have allowed the Assistant Public Prosecutor appointed there under to continue as personnel of the police department and to continue them under the control of police department of Government of Maharashtra. To free them from the administrative and disciplinary control of police department, by creating a separate cadre and head, for them directed the Government of Maharashtra to constitute a separate cadre of Assistant Public Prosecutors either on district wise or State wise basis. For separate prosecution cadre and head of the cadre will be directly responsible to the Government, for their discipline and conduct of all prosecutions by them before Magistrate Courts and free from administrative and disciplinary control of police department and officers.

It was held that since High Court has failed to hold that there was an obligation on the part of Government, of Maharashtra, which issued notification under section 25 of the Code appointing officers or prosecutors of the police department as Assistant Public Prosecutors to free them from administrative and disciplinary control of police department and its officers by creating a separate cadre and department for Prosecutors as was sought in the High Court appeal becomes unsustainable.

The remedial measures suggested by the Law Commission for conducting prosecution by prosecutors fairly and impartially 1) The Police Department and the Prosecuting Agency must have its own prosecution department, separate and distinct from the police department of which it was a part. Prosecutors of prosecution department must have their own heads who can exercise administrative and disciplinary control over them being directly responsible to the Government, concerned.

Firstly the machinery of criminal justice though comprised of police investigation department and the prosecuting department, there should be complete separation between them. The object of separation is to see that the
officers of the police department, who would have investigated the case to be prosecuted in the Courts, shall have no manner of control or influence over the prosecutor, who conducts the case. Secondly prosecution agency must having its own prosecution department at thirdly prosecutors of prosecution department must have their own heads who can exercise administration and disciplinary control over them being directly responsible to the Government.

Conclusion

In conclusion of chapter No.4 it can be observed that because of the responsibilities on the prosecutor in conducting the criminal cases some powers have been given to the prosecutor under Criminal Procedure Code. There by prosecutor can run his work smoothly and efficiently. Even judge can not work as a Prosecutor so that prejudice should not cause to the accused. Prosecutor has to put up the case before the Court as it has been submitted by police. Prosecutor can take advantages of the Code of Criminal Procedure Code, as this Code is a master of Prosecutor so also Prosecutor must have command over the Evidence Act. It has also been shown that even if any lacuna is left by investigation agency some Provision has made or formal procedure, Prosecutor has to apply for admission of formal document. How the prosecutor has to behave with the witnesses has been shown. In no case Prosecutor can represent to accused privately. He should maintain good relations with Magistrate or Judge also. He should not quarrel on silly point with Magistrate or Judge. Moreover this chapter indicate the criteria of withdrawal of Prosecution in old Criminal Prosecutor Code 1898 and new Criminal Prosecutor Code 1973. Different case laws has also been cited moreover Prosecutor must have deep study to examine various types of witnesses has been shown. Police witness shown in charge-sheet can be added as accused to whom police has not been not shown as accused if any evidence appear against that witness or involve in the crime. Rights of the prosecutor indicates that he is entitled to appear before the Court without Vakalatnama so also when witness came to adduce evidence if he is in need of guidance, prosecutor can instruct him. Different case laws has been cited in this regard. However from the nature of the work it can be said that
Prosecutors' rights and responsibilities have been decided. He has to put evidence before court fairly and not to run after conviction. Light has also been thrown on the work of special Public Prosecutor. Moreover, there is a need to separate this branch of Assistant Public Prosecutor from police department as per the 15th report of the Law Commission, for improvement in the prosecutor's work.