THE ROLE OF PROSECUTORS IN INDIAN CRIMINAL JUSTICE SYSTEM TOWARDS LOW CONVICTION

Introduction

The public prosecutors conduct the prosecution of the accused on behalf of the state in a criminal trial. Decision of the courts depends on the skill of the public prosecutors. In Hitendra Vishnu Thakur V/s State of Maharashtra¹. The Supreme Court observed that a public prosecutor is an important officer of the state Government and is appointed by the state under the code of criminal procedure. He is not a part of the investigating agency. He is an independent statutory authority. The success of a trial depends mainly on effective prosecution, which is possible only through well qualified, trained, fair and dedicated prosecutors. It goes without saying that integrity and impartiality of the public prosecutor is essential in the administration of justice. It is essential that efforts are made to improve the quality of management of prosecution in order to secure, fair, just and expeditious conclusion of trial.

Public prosecutors are really ministers of justice. They are not representative of any party. Their Job is to assist the court by placing before the court all relevant aspects of the case. They are not there to see

¹. AIR 1994 SC 2623.
the innocent sent to the gallows. They are also not there to see the culprits escape conviction.

Prosecutors have duties to the state, to the public, to the court and to the accused and therefore, they have to be fair and objective while discharging their duties. In state of Bihar V/s Ram Naresh Pandey.\(^2\) It is held that the public prosecutor in large sense in the officer of the court and under a duty to assist the court in fair administration of justice. Prosecution plays a crucial role in the administration of justice. The public prosecutor is under a duty to not merely to seek conviction, but to act impartially and place before the court, the evidence to enable the court to decide on the accused person's innocence. The recent example for the inefficient prosecutors "Best Bakery Case" i.e. Zahira Habibullah Sheikh V/s State of Gujrat.\(^3\) In this case the state and material witnesses approached the supreme court seeking retrial, as a trial was not conducted properly due to the witness turning hostile and non-co-operation of the public prosecutor. The supreme court then ordered retrial in the state of Maharashtra. Public prosecutor has a dual role to play as a prosecutor to conduct the trial and as a legal adviser to the police department in charge of investigation. The quality of criminal justice is closely linked with the caliber of the prosecution system and many of the acquittals in court can be ascribed not only to poor investigation but also the poor quality of prosecution. The police officers also strongly feel that appropriate legal advice at the investigation stage is must and some of the mistakes committed by investigating officers could have been avoided if there had been some mechanism to provide legal guidance during the

\(^2\) AIR 1957, SC 39.

\(^3\) (2004)4 SCC 158.
course of investigation. The Supreme court in the case of Amrinder Singh V/s. Prakash Singh Badal has held the public prosecutor can not act on dictates of the state Government and he has to act objectively as he is also an officer to the court. A prosecutor although representing the state has been made immune from the dictates of the state.

In the case of Prabhu Dayal Gupta V/s State of Delhi High Court has held that “the prosecutor has to be fair in the presentation of the prosecution case. He must not suppress or keep back from the court evidence relevant to the determination of the guilt or innocence of the accused. He must present a complete picture and not one sided picture he has to be fair to both sides in the presentation of the case”.

**Prosecution and code of criminal procedure**

The major procedure law for conducting the criminal trial i.e. Cr. P.C, 1973 has specifically laid down the mechanism of appointment of the public prosecutor (including Additional public prosecutor, special public prosecutor) who conduct the prosecution in the High court and the session court. At the same time in order to conduct the trial in the court of magistrates there is a provision of Assistant Public Prosecutor.

Under the code, Public Prosecutor has special status and it is a statutory recognition under some of the provision made in code, he receives a special recognition section 199 (2), 225, 301 (1), 301 (2), 303,

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5. 1986 Cri. LJ 383 (Del.).

6. Section 24 of criminal procedure code.

7. Section 25 of criminal procedure code.
308, 321, 377 and 386 are some of the codes which confer a special position upon the public prosecutor. The primary given the role of public prosecutor under the scheme of the code has a social purpose. The office of a public prosecutor involves duties of public nature and vital interest of the public. The prosecutor bound by law and professional ethics and by his role as an officer of court to employ only fair means. Public prosecutor must remind himself, if constantly of his invisible position of trust and responsibility.⁸

Apart from the guidelines of the supreme court of India, there are international standards adopted by the United Nations to which a prosecutor is expected to adhere to while performing his duty. The united nation guideline on the role of prosecutors ⁹ requires prosecutors to perform their duties fairly, impartially, consistently, protecting human dignity, upholding human rights and avoiding all political, social religious, social, cultural any other kind of discrimination.¹⁰ Prosecutor must endeavor to co-operate with the police, the court, the legal profession, public defenders and other government agencies or institutions with a view to certify the fairness and effectiveness of prosecution.¹¹

The prosecutors are required in those situation of criminal proceeding, to proceed only when a case is well founded upon evidence reasonably believed to be reliable and admissible and not to continue with

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8. Section 25 of criminal procedure code.

9. adopted by the united nation during united nations congress on the prevention of crime and treatment of offenders in Havani is 1990.

10. Articles 12 and 13 (a) united nations guidelines on the role of prosecutors.

11. Article 20, united nation guidelines on the role of prosecutors.
a prosecution in the absence of such evidence throughout the course of the proceedings, the case will be firmly but fairly prosecuted and not beyond what is indicated by the evidence.\textsuperscript{12}

**Independence of Prosecution**

Prosecution agency should be separate from the investigation agency and it was observed that Assistant Public prosecutors could not be allowed to continue as personnel of the police department and to continue the function under the control of police department. The State Government were directed to constitute a separate cadre of Assistant Public Prosecutor by separate prosecution department and its head directly responsible to the state government. A major step was taken in this regard, when the S.25-A was inserted in the Cr. P.C, 1973 by criminal law (Amendment) Act of 2005 which provides for the establishment of a Directorate of prosecution in every state.

The law commission of India in its 197\textsuperscript{th} report on the public prosecutor’s Appointment, has stated that the public prosecutor has to be independent of the executive and all external influences, also independent of the police and investigation process. He can not advice the police in matters relating to investigation. He has duties to the state, to the court and to the accused. He is in the position of a minister of justice assisting the court.\textsuperscript{13}

\textsuperscript{12} Article 4.2 (d) of the standard of professional responsibility and statement of the essential duties and rights of prosecutors of information Association of prosecutors.

The basic reason behind the idea of an independent status to the prosecution agency separate completely from the police department because making it answerable only to the state. The Section 25 Cr. P.C. which provides the head of the directorate of prosecution shall be the director of prosecution. Who shall be functioning under the administrative control of the Head of the home department of the state and possibility of influence and interference can not be ruled out especially, where the state is a party to proceeding. Independence of prosecution is need for those case, which is relating to like corruption, violation of human rights. The public prosecutor must be in a position to prosecute without any influence and obstruction.

In a very recent Judgment in the case of Mohd. Shahabuddin V/s State of Bihar.\textsuperscript{14} The supreme court while casting a responsibility upon the state and securing the independence of the prosecution and other agencies has held that, ‘when a state representing the society seek to prosecute a person, the state must do it openly. In dispensation of justice, the people should be satisfied that the state is not misusing the state machinery like police, the prosecutors and other public servants.

The people may see that the accused fairly dealt with and not unjustly condemned. The eminent English Jurist Black Stone while stating the reason for the separation of the administrative of justice i.e. judiciary from the other two wings i.e. the executive and the legislative said:

"Where the administration of justice joined with the legislative

\textsuperscript{14} 2010 AIR SCW 3211.
power, the life, liberty and property of the subject would be in the hands of arbitrary judges”. Whose decision would then be regulated only by their own opinions and not by any fundamental principles of law, which the legislators may depart from it. Yet judges are bound to observe.

Where the administration of justice joined with the executive, this union might soon be over balance for the legislative, nothing is more to be avoided in a free constitution than uniting the provinces of a judge and a minister of state.15

The observation as made by black stone applies equally to the prosecution. The reason behind is that the prosecution is one of the essential functionaries for the administration of justice and thus also the court of Law.

Problems of prosecutors which leads hurdle in successful prosecution

Public prosecution is an executive function of the state, which is conducted by the prosecutor, it is primary duty of prosecutor to prove the guilt of the accused beyond the reasonable doubt. The problem inefficient prosecution are enumerated herein after.

1. Lack of co-ordination between the prosecution and police

For successful prosecution, there is need for co-operation and understanding between these agencies. Generally, the prosecutor also ensures the execution of court orders through the police agency. If any

lack of co-ordination is observed there, result in inefficient prosecution and delayed trial.

The supreme court in **S.B. Shahane V/s State of Maharashtra**¹⁶ held that the prosecution agency be autonomous having a regular cadre of prosecuting officers. There is a general complaint that the public prosecutors in lower courts do not prepare cases carefully and that the quality of prosecution is poor. Therefore, there should be careful selection and appointment of prosecutors who can closely co-ordinate with the investigation.

No doubt, they have to closely co-ordinate with the police system since prosecutions are conducted on behalf of the police. There should not be communication gap between the police and the prosecutors during the investigation stage and both should be closely co-ordinated in order to ensure successful prosecution of criminal cases. The police are firmly of the view that the prosecutors have to constantly advise the police in investigation of grave offences and collection of evidence to sustain the prosecution with success.

2. Inadequate or delayed scrutiny by the prosecutors

The prosecutors has absolute authority to determine whether a case should be sent for trial or not and he is only the person who determines if the evidence is sufficient or not, in some countries have a pre-trial stage to the prosecutor for screening even though he does not make the final decision, due to heavy work load, prosecutor does not conduct proper screening and other extraneous factor is also responsible for that. Scrutiny may take a long time and may be too late to make any suggestion to the

¹⁶. AIR 1995 SC 1628.
police to improve the quality of investigation. Hence weak cases are sent to the court. But the public prosecutor has, neither the power to interfere in the investigation nor can he call for the police papers and scrutinize them or otherwise examine the available evidence before a report is filed. Prosecutor is responsible for the conduct of the prosecution in court and has not opportunity of shaping and controlling the material on which the case is to be presented before the court for solving this problem, head of the entire prosecuting machinery of the district, he should arrange for the prosecution of all cognizable cases and distribute the work among them and should advise the police department on the legal aspects of the case at any stage of criminal proceeding including the stage of investigation. The public prosecutor in district should be made responsible for efficient functioning of the sub-ordinate prosecuting staff in the district and necessary supervisory control over them for this purpose.

Public prosecutor will be the responsible to scrutinize the police report or charge sheet before it is filed and see whether a case, which exclusively triable by the court or not. At this stage, the public prosecutor should have the authority to send the case back for further investigation and to modify the proposed charge whenever he finds it necessary to do so.

3. Political pressure and other factors

The prosecutors do not conduct fair and impartial prosecution due to political pressure and other factors. In very famous case Zahira Habibullah V/s. State of Gujrat, which is also known as the Best Bakery case there was threat and coercion to the witnesses from the

17. AIR 2006 SC 1367.
powerful politician not to dispose against the accused person. At the same time question were also raised on the prosecution and it was contended that the public prosecutor was not prompt and improperly conducted the trial. The most important aspect of the case is that the questions were raised by the state itself on the prosecution.

The supreme court has observed that "criminal trial should not be reduced to be the mock trials or shadow boxing of fixed trials. Judicial criminal administration system must be kept clean and beyond the reason of whimsical political waves. There is need to insulate the prosecution from administrative and political influences.

While performing his duty under section 321 of the Cr. P.C. in withdrawal from prosecution a public prosecutor can not act on the dictates of state government. He has to act objectively as he is also an officer of the court.\(^\text{18}\)

**In the case of Subhashchander *V/s State*\(^\text{19}\) "It is the public prosecutor alone and not any other executive authority that decides withdrawal of prosecution. Consent will be given by public prosecutor only if public justice in the larger sense is promoted rather than subverted by such withdrawal in doing so. He acts as limb of judicial process, and not as an extension of the executive. He has to decide about withdrawal himself, even where displeasure may affect his continuance in office none can compel his to withdrawal case. The public prosecutor is an officer of the court and is responsible to the court".

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\(^\text{18}\) S.K. Shukla V/s State of Uttar pradesh AIR 2006 SC 413.

\(^\text{19}\) AIR 1980 SC 423.
Public prosecutor cannot act properly with fair and imparted prosecution due to political pressure and other influences interference and influence of the political pressure is sure to hamper the process of administering justice.

4. Quality of Prosecution

It is necessary for efficient prosecution, the prosecutor be preferably a law graduate with adequate experience and a good command of law. Three years experience should be done for the appointment of prosecutor, if the prosecutor is not competent to understand the fact of case resulting, prosecution would be poor. Therefore, there should be careful selection and appointment of prosecutor to achieve the goal of criminal trial. On account of a lack of adequate knowledge of law, law of evidence and particularly of case law, such prosecuting officers are not capable of presenting their case with ability and effectiveness. As compared with counsel appearing for the accused, who are legally qualified and trained. The burden of proving a case is upon the prosecution and the prosecution ought to be represented by advocates, as able if not abler than the lawyers for the accused. Now largely accepted that the prosecutors ought to be legally qualified person should be recruited from the Bar.

There is a common complaint that required number of prosecuting officers have not been appointed and the prosecutions are not being conducted effectively and efficiently. This is also a major problem. Which create adverse effect on quality of prosecution. Of course, due to heavy work load, prosecutor cannot give a proper attention in a one case resultly, poor presentation is there. For effective prosecution there is urgent need
of required number of prosecuting officer so the work can be done properly with full spirit and zeal.

5. Inadequate supervisor of investigation

Prosecutor is vested with the authority to supervise investigation, due to heavy work load or indifference he may not exercise it. We already discussed it that there is not always adequate co-operation with the police.

Many of the criminal cases, which are of a simple nature are handled by the police without difficulty but some cases, which require legal assistance even during the stage of investigation. Whether any particular link in chain of evidence is missing or any connected aspect of the matter requires to be investigated to file up a possible lacuna in the prosecution case for successful prosecution. There should be adequate supervision of investigations by prosecutors.

One of the most important functions of the prosecutor is to conduct the trial. But sometime it is observed that prosecutors are not prepared for the trial and fail to examine the witnesses in a professional manner due to lack of co-operation between the police department and public prosecutors. The public prosecutor has to be full possession of all relevant facts and documents. If we see that the case of private complaint, a counsel who engaged by a party has the opportunity of examining all documents and even the questioning witnesses. He may be able to place a precise case but a public prosecutor, is frequently denied such an opportunity. It is also true that he is furnished with the case diary, which contains the copies of documents and statement of the witnesses relevant to the crime. But not frequently, it become necessary to the public prosecutor to know more fully what a witness is likely to say.
The statement of witnesses are rarely recorded, case diary does not give him enough information, sometime he also wishes to communicate with the investigating officer in order to acquaint himself thoroughly with the facts appearing from the diary and documents. He should have the assistance of the police officer, where defence witnesses are to be cross examined but the public prosecutors do not get sufficient assistance in these matters. The police officers, once completed the investigation and submitted to police report. Though, the police officers should in fairness to the accused not adopt a partisan attitude and try to manoeuvre matters so as to secure a conviction. It is also a part of their duty to see that all information needed for trial is furnished to the prosecutor. In our view it should be the duty of superintendent of the police as the head of the police in the district to see that the prosecutors are given the assistance and information they need at the trial. Efficient co-ordination between police and prosecutor is necessary to proper prosecution of cases.

Delay in trial may be fatal to the prosecution and also a very big problem due to this some witnesses may lose all interest in prosecution and suffer from memory loss. Unnecessary adjournment and prosecutor do not oppose these applications.

As a factor in unnecessary delay is incompetence of some judges and magistrates, which keep adverse effect on successful prosecution. The failure to keep abreast with the law and jurisprudence also caused under delay. Due to increase in the population in country and deterioration of economic condition, numbers of new cases are added yearly to the already overcrowded dockets of the courts. The excessive work load of a prosecutor and inadequate staff of prosecutor in courts may result inadequate preparation for trial and unsuccessful prosecution.
Delay may be caused by prosecutor, who are unprofessional and who lack proper managerial and technical skills or ability. The training should be effective and the recruit should be made acquainted with those aspect of investigation of cases which would enhance his usefulness as a prosecutor.

Forensic evidence is also very useful in proving the guilt of the defendants. Sometimes, these reports are not available when needed by court, which adversely effects on successful prosecution.

Reluctance of witnesses is also a very big problem. The witnesses are often reluctant due to fear or they are compromised themselves with the defendant, sometimes victims also may not co-operate with the prosecution and retract their previous statement. There are urgent need to protection from the state for those persons who coming in courts as a witness. In U.S.A. for the protection of witnesses. There are legal provisions which also permit a change of their identity, their relocation. This program has yielded good results in several criminal have been convicted on the basis of the testimony of such protected witnesses.

Abuse of court process is also a very big problem such as defense counsel are known to use dilatory tactics to gain an advantage over the opposing party and filing unnecessary motion for the review of court orders and defence counsel hopes that the prosecution may lose interest in the case. The prosecutor should oppose these applications which are given by defense counsel.

The police and prosecutor may lack information about the past criminal record of the defendant. It is very necessary to understand the character of defendant, due to poor conservation of such records or lack of co-
operation with the police, prosecutor may find it difficult to obtain the past criminal record of some convicts.

The closing argument is the final statement made by the prosecutor, the prosecutor may disclose the past criminal record of the defendant and argue that the defendants past record is not good. Therefore maximum punishment should be imposed on him and recommend specific punishment it is also a type of penalty, it is generally of the view that the prosecutor should partake in the process. This is because he is in a unique position to provide the court not only the victim but also the law enforcement agencies.

Some prosecutors may be too ardent rigid and overzealous, thereby affecting on successful prosecution. Some of them purposely involve themselves in various forms of malpractices which also adversely effects on prosecution. Prosecutor should honestly adhere to the ethics of their professions. The prosecutor and the defense counsel usually resist till the end of a case in favour of their party, which is quite natural, but to achieve the object of justice, they should co-operate and work together, instead of being rigid. They should be objective and flexible.

We observed that there is wide-spread poverty and ignorance of the law as one of the factors contributing to unsuccessful prosecution. Where a witness could not travel to court due to lack of bus fare or means of transportation. Setting up mobile courts in such jurisdiction may be a way of taking justice closer to the people and reducing expenditure.

We observed that prosecutors do not have separate chamber to study the case in a court, no journals and legal magazines for them to understand new legal issues and enhance the quality and skills of prosecutors.
We observed that national training seminars which is given by experts to prosecutors, is not useful in new era because it is quite old dated, so it should be organized for focusing on new aspect. Research is necessary to determine the dimension of the problems.

We observed in a court that there is no check and balance on prosecutors whether accused is acquitted or convicted. They are working mechanically, they do not take interest in a case. State should be taken an action for those prosecutors, who are working in this manner and appeal should be necessary in every acquittal case.

We observed that for effectiveness and efficiency in the administration of justice. There is a need for professional training of prosecutors before they join their respective professions. This will ensure that all legal issues are addressed in view of a fair application of law.

In *Shrilekha Vidyarthi V/s State of Uttar Pradesh* 20 It has been ruled that the office of the prosecutors is a public office of much importance and the present spoil system of appointment of the office of public prosecutors followed by political parties should be done away with.

The power of appointment of prosecutor can not be left only to the government, if the person, who do not qualify the highest standards in terms of knowledge and conduct appointed as a Additional Public Prosecutors or Public Prosecutors, may lead to hurdle to achieve successful prosecution. The appointment of the Public Prosecutors from the cadre of the prosecuting officers should not be granted merely on the basis of seniority but after a proper examination by a high level committee consisting of a retired or sitting high court judge.

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20. (1990) 1 SCC.
The 197th Report very clearly show that there is a strict need of constitutional compulsion thereby caused the states to refrain from practicing arbitrariness in the appointment of the prosecutors.

The examination of witness and cross examination of witness should be done on the same day in court. Many time we observed that is could not be done on the Same day which leads consequences on further date and defense counsel takes advantage. It is also a big and serious problem.

The law commission of India in its 14th Report 21 has also pointed out that defective investigation and the lack of legal assistance at the investigation stages often result in acquittal. The existing arguments under which legal guidance is sought at the time of filing the charge sheet are not satisfactory. In this connection, the national police commission is also of the view that the prosecuting staff should be made responsible not only for conducting prosecution in courts, but also for giving legal advice to the police in any matter which arising from the investigation and the trial. The role of the prosecution staff should be made for a legal advisor, therefore the police commission recommended, that a full time functionary of the rank of Assistant public prosecutor, free from prosecution work in courts, be assigned the role of legal advisor to the superintendent of police in each district. He should be responsible for advising the superintendent of police in specific cases and other general matters relating to police work in the district.

The suggested arrangements however, can work effectively only if the investigating agency and the prosecution machinery are brought together under a single chain of command.

Conclusion

The importance of the prosecutor in criminal trial can not be overemphasized. Adequate and continued professional training are necessary for efficient performance of prosecutorial functions. The prosecutor should adhere to the professional ethics throughout his career. They should be requisite for admission into the profession.

There is a urgent need for sustained co-operation between the prosecutors, the investigating agencies defense counsel, Judges, supporting staff and all persons who involved in the administration of justice.

The quality of investigators, prosecution and trial in needs to be improved. We have seen that best legal talent is not availed of far planning its case before the court. The accused is normally represented by a very competent lawyer of the choice. There is mismatch in that, an equally competent lawyer is not there to represent the prosecution.

The appointment of Public Prosecutors and Additional Public Prosecutors, I think that the Public Prosecutors and additional Public Prosecutors in the districts must be appointed from the cadre of Assistant Public Prosecutors who are appointed through the examination conducted by the Public Service Commission and no appointment should be made from the bar. Appearing in the examination should be compulsory where by an experience of at least 5 years would be a pre-requisite qualification for appearing in the examination. Appointment should be made whether it is the court of magistrate or the session court from the candidates passing the examination. Whether they will work in session or the court of the
magistrates should depend on their rank the system of the contractual appointment in the prosecution should be done away with,

For proper functioning of the criminal justice system it is very important to strength the prosecution otherwise an important limb of the judicial process stands paralyzed, the rule of law should be merely an illusory war of words or soothing legal opium, nothing else.

The political, social and economic conditions of countries may not be conducting to implementation of some of the measures prepared. The intention of the research is to make meaningful contributions with a view to optimizing the efficacy of the systems and practice

Prosecutors are the officers of the court and the duty of the prosecutor is to assist the court in the search of truth, which is the main objective of the criminal justice system. Its recruitment, training and professionalism need special attention for effective in delivering good results.