



Role of public prosecutor in criminal justice system

Gurdault Singh Sidhu

Assistant Public Prosecutor, Tis Hajari Court, Delhi, India

Abstract

Law and Justice comes in simultaneous rundown under the Indian Constitution, in this way, the law can be passed either by the focal government or the state government. The law go by the Central government might possibly mull over by the state. Despite the fact that the basic point of indictment apparatus is one, there is slight distinction of pecking order, governing service and the modus operendi of the arraignment wings in India. Based on state necessities, the arraignment apparatus of the state is extraordinary. In a portion of the commonplace Governments in India, the limit amongst investigation and arraignment is obscured. In few of the States the police authorities head indictment apparatus wherein the limit is totally vanished. In Arunachal Pradesh and Mizoram the cops head indictment hardware. The Directorate of the arraignment is heading organs of the indictment of the States. In a portion of the States the Directorate of Prosecution is going by the cops. In a large number of the States the Directorate of Prosecution works under the State Home Ministry. However in the States of Goa and Karnataka, the Law Ministry controls the Directorate of Prosecution. In enrollment system likewise, there is an official obstruction. A large portion of the circumstances they want to prescribe the names of Ad hoc Appointees. Different Courts have held that the arraignment and investigation apparatuses ought not be one and the same.

Keywords: public prosecutor, directorate of prosecution

Introduction

Before autonomy, the Prosecutors were a vital part of the police division. They were subordinate to the police branch of the particular States. In year 1973, the Code of Criminal Procedure was revised wherein the qualification of the Prosecutors was changed and least seven years of training in the Session's court was held mandatory for Public Prosecutor in the Session's court and 10 years hone for the Special Public Prosecutors to manage the exceptional cases. The end of routine with regards to police Prosecutors was a consequence of choice in *Jai Pal Singh V State of Uttar Pradesh*⁹⁷ wherein the court subdued request of Uttar Pradesh Government wherein the Assistant Public Prosecutors were under the authoritative and disciplinary control of the Superintendent of Police and the Inspector General of Police. Keeping in mind the end goal to keep up freedom of Prosecutors, this choice was made.

In year 1958 and 1969, The Law Commission of India has prescribed to set up free arraignment apparatus. In *S. B. Shahane V State of Maharashtra*,⁹⁸ it was held that the target of keeping Prosecutors outside the police control is to guarantee autonomy. On the off chance that the Prosecutors are under police control, it will influence Prosecutorial autonomy.

After partition of Prosecutors from police control, there were numerous reactions. The State Police Commissions and Fourth National Police Commission, The Malimath Committee on Reform of Criminal Justice framework in India have prescribed that the Prosecutor's office ought to be going by the police authorities. Same sort of proposal was made for the arraignment wing in the State of Orissa and West Bengal.

Keeping in mind the end goal to smooth elements of police and indictment, there is a critical need of coordination. In any case, if the Prosecutors are kept subordinate to the police, it will influence the target of the apparatus. The Prosecution Machinery faces numerous sorts of weights from the official wing. The arrangement, residency, compensation and advantages, are chosen by the Executive. Consequently, the Prosecutors ought to be shielded from the Executive impedance.

A perfect Prosecutor must think about herself/himself as a specialist of justice. In India, we have an open prosecutor who acts as per the headings of the judge. Typically, the control of whole trial is in the hands of the trial judge. Investigation is the right of the police. Be that as it may, it is for the most part trusted that conventional right of nulle prosequi is accessible to the prosecutor. General society prosecutor in India does not appear to be a backer of the state as in the prosecutor needs to look for conviction at any cost. The prosecutor must be fair-minded, reasonable and honest, as an open official as well as in light of the fact that the prosecutor has a place with the good calling of law, the morals of which demand these characteristics.

History of Indian prosecutors

Indian Criminal Justice System utilizes antagonistic Models of Criminal Justice System. The Indian Penal Code 1860 is a substantive law upheld by the Code of Criminal Procedure 1973 which is procedural bit of enactment. The Indian Evidence Act, 1872 explains the principles of proof. Directing Judge leads the criminal trial. Based on reality of the offense, the trial is chosen. The Code of Criminal Procedure, 1973 has

clarified the sorts of offenses and the courts and the particular class of Prosecutor to speak to the cases. In Indian courts, a trial is started by a Prosecutor who initially inspects witnesses in his Examination-in-boss and then he continues with his contentions. In the event that proof created before him is observed to be insignificant or forbidden, a fair-minded Judge protests it and disposes of it as inadmissible. Worldwide Covenant on common and political rights demands reasonable trials by assuming purity and by demanding evidence 'past sensible uncertainty.' Indian courts take after the rule of reasonable trial, amid which Prosecutors appreciate a great deal of tact which empowers them to ensure the blameless and to convict the blameworthy. The idea of reasonable trial and justice is secured. Ordinarily, the arraignment starts after the police end their investigation. In the year 1958, the Law Commission of India had suggested the arrangement of the Director of Public Prosecution to control every one of the Prosecutors. This is a different bureau of indictment. Trial organize is the work concentrated stage for the Indian Prosecutors. Notwithstanding, that proposal was not executed for a long time and the mandate of this Board of Directorate of Prosecutor was consolidated in year 2005.

Keeping in mind the end goal to understand the hypothetical foundation of the Prosecutors, the chronicled development of the Prosecutors in Ancient, Medieval, pre-Constitutional period is essential. Indian Legal System isn't exceptionally old. This framework depends on the first thoughts of justice like justice, value and great still, small voice under the standard laws. Notwithstanding those perspectives, the Legal Platform built up by the British Rule amid their administration of three hundred years in India is essential.

Constitutional Provisions

Rundown III of the seventh Schedule to the Indian Constitution permits the Center and additionally the States to administer on arraignment. Obviously there exists no immediate arrangement identifying with indictment in Indian Constitution. Prosecutor's post is a statutory post. It isn't a protected post as Attorney General of India or Solicitor General of India¹⁰⁵. Be that as it may, it is the obligation of States to ensure the enthusiasm of the general public. Prosecutors speak to the State in criminal courts and by chance they ensure the casualty's advantage. In this manner, by implication it is occupant on Prosecutors to ensure the enthusiasm of State. Indian Constitution is a composed archive. It takes after the Anglo-Saxon precedent-based law justice framework. Article 14 of the constitution mandates fairness under the steady gaze of law or equivalent assurance of laws inside the domain of India. Article 21 mandates assurance of life and individual freedom. Article 20 gives security against self incarnation and twofold danger. Article 20 (3) enables a blamed to look after quiet. The denounced won't be constrained to be an observer against himself. Under Article 20 innocents are intrinsically ensured and no individual would be liable to pay punishment more noteworthy than that which may have been caused upon him under the law in compel at the season of commission of the offense. These essential rights can be asserted against the State which will undoubtedly secure them. Under Article 39 (An) of State must secure equivalent justice to every one of its

nationals. This is one of the Directive Principles of State Policy. Free and Fair trial is vital piece of Adversarial criminal justice framework. In *K. Anbzhagan v Superintendent of police*. Case, the court held that Free and Fair trial is a sine qua non of Article 21 of the Indian Constitution. It is trite law that justice ought to be done as well as it ought to be believed to have been finished. On the off chance that the criminal trial isn't free and reasonable and not free from inclination, legal reasonableness and legal framework would be in question, shaking the very certainty of the Public in the framework and trouble would be the govern of law. There is a nearby nexus of truth with free and reasonable trial. In such manner, according to Philip Rechel, The Adversarial Process accept that fact will rise just from free and open rivalry. Here, the battle is between the State on one hand and the litigant on the other.

Prosecutors in post constitutional provisions

After sanctioning of the Constitution of India, till 1973, there were no revisions in the Prosecution apparatus and the prosecutors were still under the control of District Superintendent of Police. In year, 1973, the indictment apparatus was brought under partitioned division and isolates from the police control.

4.4 Legislative Provisions

In India the Prosecutors are not administered by any single law. In India, the Indian Penal Code, 1860 is a substantive Law which manages the criteria of offense and quantum of discipline. In the event that the offense is under the Special Law, at that point that different law might be appropriate in that extraordinary case or cases. The Code of Criminal Procedure, 1973 manages the idea of offense and the court before which the case can be brought for mediation and the particular Prosecutor to manage the case. And in conclusion, the Indian Evidence Act 1872 manages the tenets of proof to be taken after amid examination of witnesses.

Indian Prosecutors are controlled and administered under the Code of Criminal Procedure, 1973. Alongside these, there are exceptional statutes where particular arrangement for the Public Prosecutor is given. The Prosecutors take after the standards of proof under the Indian Evidence Act, 1872 all through the criminal procedures. Notwithstanding these arrangements, there are unique enactments governing Prosecutor's arrangements, their forces, and so forth under the uncommon laws ordered by the Parliament Indian and instituted by State assemblies.

- Provisions under the Code of Criminal Procedure, 1973
- Provisions under the Special Laws instituted both by the Parliament of India and additionally by different State Legislatures.
- Provisions under the Indian Evidence Act, 1872

Classification of prosecutors in India

a. Public prosecutor/additional public prosecutors at high courts and sessions courts

After discussion with the High Courts, Central Government or State Government is engaged to select Prosecutors for motivation behind indictment, request or for some other reason. The Act made it mandatory that each State Government name Public Prosecutors for each area in the

State. For that reason the District Magistrate plans rundown of the intrigued candidates to be a District level Public Prosecutor or an Additional Public Prosecutor. The Sessions Judge, i.e. the main area Judge is counseled. Reasonable candidate list is sent to the State and the State Government endorses the rundown at long last from the rundown it gets. Least seven years of experience is mandatory for the candidates who apply for the post of Prosecutors. That experience ought to be of the Session's courts case. For whatever length of time that the Prosecutor is on the move of Prosecutors, he isn't qualified for show up against the Government in any thoughtful or criminal cases. Keeping in mind the end goal to stay away from conflicts in intrigue, this arrangement is made and is entirely followed in India

b. Special public prosecutors

The Special Public Prosecutors are designated under Sec 24 (8) of the Code of Criminal Procedure 1973. They manage the uncommon cases enrolled under the Special Laws. No less than 10 years rehearse is mandatory for the candidates willing to be Special Public Prosecutors. Additionally, the Special Public Prosecutors are designated for CBI Courts under Sec 24 (8) of the Code of Criminal Procedure, 1973. According to warning Directorate of Prosecution 2002, the Central Government issues notices to select exceptional Public Prosecutors in CBI courts. Because of Vinit Narayan V Union of India chose in the year 1963, Santhanam Committee has prescribed the arrangement of Prosecution Wing to manage CBI cases in the CBI or the Sessions courts. Backer on the move list with least ten years of training in the Session's courts is qualified for the post of Special Public Prosecutors in India. The Special Public Prosecutors who manage uncommon offenses culpable under the Indian Penal Code, 1860 or the Special Criminal Laws made either by the Central Government or the State Government individually. Those uncommon laws can be the Narcotic Drugs and Psychotropic Drugs Act, 1985, The Prevention of Money Laundering Act, 2002, The Scheduled Caste and Schedules Tribes (Prevention of Atrocities) Act, 1987. These Special Public Prosecutors are named for a fix period and are paid nearly higher than the Public Prosecutors working in the Session's court or the High courts. Upon unique demand from the police or Public or some of the time the State Government or the Central Government all alone choose Special Public Prosecutors.

c. Assistant public prosecutors at the magistrates courts

The Assistant Public Prosecutors are the Prosecutors managing the cases in Magisterial Courts. The State Govt. conducts aggressive examinations through its separate State Public administration commissions. Their locale is restricted to Judicial Magistrate First Class, Judicial Magistrate Second Class, Metropolitan Magistrates Court and the Chief Judicial Magistrate Courts. These right hand Public Prosecutors are delegated by States. Cops are not qualified for fill in as Prosecutors. The District Magistrate may name any individual as Public Prosecutor on the off chance that he or she isn't an exploring officer in a particular case and he/she is of or over the rank of Inspector. These Prosecutors are normal full time Prosecutors named by the Home Ministry of the individual State Government. They are qualified for get profits by Govt.

for example, maintenance, month to month compensation, advantages, and so forth. The District Magistrate is qualified for designate any individual as Prosecutors without particular Prosecutor on specific event. In any case, this arrangement can be made regardless of that nominee's capability in the field of law and fitness to speak to the enthusiasm of the State. From 1973, the workplace of Prosecutor is disengaged from the police division, the cops who has explored the case is disintitiled to be an Assistant Public Prosecutors. Likewise, the cops beneath rank of the sub reviewers are not qualified for be Assistant Public Prosecutors.

The director of prosecution

The Head of the indicting specialist in a State is known to be Director of Prosecution. A man might be qualified to be designated as Director of Prosecution or a Deputy Director of arraignment, just on the off chance that he has been by and by as a promoter for at the very least ten years and such arrangement should be made with simultaneousness of the Chief Justice of the High Court. He should work under the managerial control of the Head of the Home Department in the State Secretariat. The forces, capacities and zone of expert of the Director of Prosecution and the Deputy Director of arraignment should be, for example, the State Government may determine.

In year 2005, a noteworthy correction was made to Section 25 of the Code of Criminal Procedure. The Directorates of Prosecutors are made in States for different reasons. Their essential undertaking is to achieve coordination among various arraigning organizations. Moreover, the directorate of indictment exhorts the State Govt. for filling of offers and modification petitions. It likewise deals with productivity, uprightness and teach of all Prosecutors. The Directorate of Prosecutor comprises of a Director of Prosecution, the Dy. Executives of Public Prosecutors, Additional Public Prosecutors and the Special Public Prosecutors.

Despite the fact that the Directorate of Prosecution is a parent expert over the Prosecutors in India, there are sure Prosecutors who are not secured under this Authority. Those are - Assigned Prosecutors, Binary Prosecutors, Departmental Prosecutors, Vacuum Filler Prosecutors, Supplementary Prosecutors and the Advocate Generals of States. 10 years rehearse is mandatory for the Director of Prosecutor. The State Govt. is approved to indicate the forces and elements of its Director of Prosecutor.

d. Prosecution by Central Bureau of Investigation (C.B.I.)

The Central Bureau of Investigation has its Legal Division which plays a warning and Prosecutor part. The Legal Division is going by a Legal Advisor, who is sent on assignment to CBI by the parent Union Ministry of Law. This course of action guarantees objectivity of his office. The Legal Advisor is helped by various Law officers in particular, Additional Legal Advisor, Deputy Legal Advisors, Senior Public Prosecutors, Public Prosecutors, Assistant Public Prosecutors. These are shown in dropping request of position and rank. These officers, who are lasting representatives of the CBI, render lawful guidance to the exploring officers over the span of their investigations with regards to the practicality of proposed arraignments. Their recommendation is considered

important, yet they can be over-ruled by the official CBI officers. Numerous and progressive frameworks of lawful guidance wins in the CBI Lawful guidance is considered important at any rate at their levels previously choosing the destiny of a case. After a choice has been taken to arraign, the law officers direct the indictment of cases in courts.

The level of a law officer to indict a case is straightforwardly identified with the level of the court, i.e. the higher the court, the higher the rank of a law officer to indict it. Other than the CBI additionally connects with Special Public Prosecutors from the Bar on an everyday charge premise to battle essential and amazing cases

Prosecutors under special legislation

Notwithstanding the violations under the Indian Penal Code, 1860, there are particular enactments authorized by the Parliament of India and the State Legislators. A portion of the established exceptional laws are as under:

- a. The Narcotic Drugs and Psychotropic Substances Act, 1985
- b. The Arms Act, 1959
- c. The Gambling Act, 1867
- d. The Child Marriage Restraint Act 2006
- e. The Explosive Substance Act
- f. The Protection of Human Rights Act, 1993
- g. The Dowry Prohibition Act, 1961
- h. The SC/ST (Prevention of Atrocities) Act, 1989

Under the previously mentioned laws, the Special Prosecutors are delegated. The cases can be attempted in consistent Sessions court or the Special Courts set up by the State to do the capacities under these statutes.

Role of prosecutors in pre - trial phase

- a. Synchronization with the police
- b. Withdrawal of indictment
- c. Role in Framing Charge

Genuine endeavors are made to develop smooth relationship among Public Prosecutors, courts and police. The Prosecutor ought to be completely familiar with the certainties of the case and additionally pertinent archives, for example, FIR and police report. In India, "there is no coordination between the Prosecutors and police. In spite of the fact that Prosecutors and the police are a piece of indictment hardware, the Prosecutors are not acquainted with the working of police. In *Hitendra Vishnu Thakur v. Province of Maharashtra* the Supreme Court held that "Public Prosecutor is an essential officer of the State Government who is delegated by the State under the Code of Criminal Procedure He isn't a piece of the researching office. He is an autonomous statutory expert. In *Jai Pal Singh Naresh and others versus Province of U.P* the Allah bad High Court held that "there can be no way of uncertainty that the Parliament planned that Public Prosecutors ought to be free from the control of Police Department." It is the police attentiveness to send or not to send the case for trial. The Prosecutor ought to by and by check the witnesses and additionally their proposed Statements a long time under the watchful eye of the court starts examination of witnesses.

Part of prosecutors in withdrawal of prosecution

The Public Prosecutor or the Assistant Public Prosecutor responsible for a case is legitimately skillful to apply to the court for withdrawal. The Prosecutor concerned is under no lawful commitment to counsel the police or some other official expert in choosing with regards to the attractive quality of withdrawal. The police feel wronged when such thought isn't taken with him or/and he is activate by inclining intention or incidental issues like political support, party weight, individual pick up or like concerns. Cases are aplenty when Prosecutors have mishandled or abused the power vested in them in such manner, and have in this way messed with the course of justice for ill-conceived purposes and their own pick up. Police can't absolutely command yet they may praise something out of their personal information, which might be thought about by the Prosecutor. Such an open door is denied to the police, not rarely, however they have been accused of the obligation of guaranteeing that the wrongdoers are conveyed to book. Such a commitment has been forced upon them by area 23 of the Police Act of 1861. The Prosecutors are qualified for pull back indictment subject to permission of the court before a judgment is conveyed. The Code of Criminal Procedure has given criteria to such withdrawal. "Energy of withdrawal is vested in the Prosecutor. It is the settled view that in regard of Court matters influencing the State the Public Prosecutor is the sole specialist for choosing whether to pull back the Prosecution or not. In case of a contention of supposition between Public Prosecutor and an Assistant Public Prosecutor, the expert of the Public Prosecutor will win.

No objection registration by the prosecutors

The Indian Evidence Act, 1882 has empowered Public Prosecutors to raise complaints to the case. During examination of observers in the law courts, just important certainties are allowable. The rundown of significant certainties is given under Section 5 to 55 of the Indian Evidence Act, 1872. Therefore, at whatever point, any inquiries as to any unimportant actualities are raised by the Defense Counsel, the Prosecutor dependably has a privilege to enroll his protests and request that the courts deny the Defense Counsel to make such inquiries. The Indian Evidence Act, 1872 accommodates examination of observers in the law courts. Arraignment might be directed by a Public Prosecutor in each trial under the steady gaze of a Sessions court. There are three kinds of examination of witnesses.

- a. The examination in Chief,
- b. Cross Examination and
- c. Re-examination

Under the Indian Evidence Act, 1872, "Examination of the observers by the gathering who calls him is called examination in chief" In this examination of witnesses, the examination in chief is taken by the Prosecutors.

Independence of prosecutors from executive interference

India has just type of Government. The rulers are chosen by the general population, they administer for the general population and the Government is of the general population according to Abraham Lincoln's rationality. The Montesquou's

doctrine of division of energy isn't entirely followed in India. In spite of the fact that Prosecutors are separate from the Law Makers and the Judiciary, some lawful arrangements and traditions give scope for official interference in the Prosecutor's work. The District Magistrate, endless supply of the Prosecutor authorize offer or correction in the re-appraising courts. These interests are documented either against exonerations or inadequate sentences. Sadly, our framework engages District Magistrate to initiate offer instead of the Prosecutor who is in a perfect world expected to have this attentiveness. The Central Rule 1995 enables the District Magistrate or Sub Magistrate to connect with an eminent Sr. Lawyer. However the compensation should be settled by the State Government.

Indian Prosecutors are either full time Prosecutors or low maintenance Prosecutors. There is a plausibility of appointing new unit of Prosecutors replacing prior framework appointees by the prior Govt. This is an unwelcome practice to expel the prior appointments in all. In *Kumari Shrelekha Vidyarth and so forth v. St. of UP*, AIR 1991/SC537, the recently framed Govt. in 1990, issued termination request of the considerable number of Prosecutors and Govt. Guidance in every one of the Districts. It had requested that the administration set up a rundown of new names. This request by the UP Govt. was nonsensical. This request was scrutinized by the Supreme Court which held it to be subjective and out of line. It was additionally held to be violative of Article 14 of the Indian Constitution. At last, The Supreme Court has invalidated that Govt. arrange and retained the places of low maintenance Prosecutors who had endured. Again in *State of UP v. Johrimal*, AIR 2000 SC 3800, the Supreme Court of India held that the State Govt. ought not rescind the appointment on account of progress in Govt. Tragically the appointments of Prosecutors relies upon political associations, rather than justify. In *V. Ramchandra v. M.C. Jagadhodhara Gupta*, 1986, Cr. L.J. 1820, Justice Ramaswamy of Andhra Pradesh High Court has portrayed the characteristics of Prosecutors. The characteristics like, fair-mindedness, co-task towards the court, watch on liable to be rebuffed, full integrity, legit, dedicated, and competency are an unquestionable requirement.

Conclusion

Indian Prosecutors require a solid and exhaustive theoretical foundation. The administration of criminal justice isn't develop enough to focus on the Prosecutors. The Judiciary in India has intermittently endeavored to shape the Prosecutors. Since Indian Criminal Justice isn't substantially more seasoned there is a need of greater authenticity and exhaustiveness in the laws governing Prosecutors in India. The term Prosecutors is defined and his privilege of opening a criminal case is given the part in the examination of witnesses are expounded, however the privilege and obligations of the Prosecutors should be explained all the more plainly now and again. The Law Commissions and Judiciary have recommended certain changes however keeping in mind the end goal to maintain the adjust of privileges of casualty and of the blamed, it isn't conceivable to take after those changes. India takes after an Adversarial Model of justice. Reasonable trial is the objective and the Prosecutors need to demonstrate

the case past sensible questions. Disappointment of the Prosecutors to demonstrate the cases past sensible uncertainty, prompts the advantage of uncertainty to the charged. It prompts absolutions. The part of Prosecutors in India is extremely critical since more vindications can empower criminal exercises in future and may prompt ascent in wrongdoing rate. Subsequently, keeping in mind the end goal to keep the ascent of criminal exercises in future, the Prosecutors in India ought to be empowered and strengthened.

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