



## A critical study of the role of prosecutor in criminal law

Rimpy Bhardwaj

Research Scholar, Department of Law, HP University Shimla, Himachal Pradesh, India

### Abstract

This article describes a critical study of the role of prosecutor in criminal law. Pertaining with the first part of historical background of role of prosecutor, legislative history of prosecutor and also the meaning of role of the prosecutor and second part is the powers and duties of the role of prosecutor and also the critical study of the prosecutor, and also the important cases related to critical study of the role of prosecutor in criminal law.

**Keywords:** meaning of public prosecutor, historical background, legislative history, constitutional background and also critical study of the prosecutor

### 1. Introduction

The public prosecutor is vested with the primary responsibility to prosecute cases in the court. After the charge sheet filed in the court, the original case papers handed over to him. The Courts under Section 190 of the Code of Criminal Procedure, 1973, take the cognizance of the case. The trial in India involves various stages. The primarily is the taking of cognizance of a case by the court. The second step is to frame charges against the accused, if there is a prima facie case against him. The third step is to record the prosecution evidence. The fourth step is to record the statement of the accused (Section 313 of the Code). The fifth step is to record the defense evidence. The sixth step is to hear the final arguments from both sides, and the last step is the pronouncement of judgment by the Court. The public prosecutor is the commentator in all these stages. He has no authority to decide whether the case should be set up for trial. His role is only advisory. However, once the case has been set up for trial, it is for him to prosecute it successfully<sup>[1]</sup>.

In the criminal justice system, the public prosecutor on behalf of the State performs this role. The public prosecutor has been described as a minister of justice who plays a critical role in maintaining purity and impartiality in the field of administration of criminal justice. The present criminal justice system based on principal that any crime committed by individual is a crime against the societal order. The prosecution and punishment for the crime is therefore responsibility of the State and not that victim of crime. It has been said that this responsibility. Where the State acts on the behalf of the victim, limits of the scope for vengeance and revenge such prosecution, on the behalf of State performed by public prosecutor appointed by the State. The public prosecutor is required to play an impartial and neutral role and prosecute all persons who have been charge sheeted by police public prosecutor represents the State in trial of criminal cases. He performs public duty, which by its very nature warrants him independent and fair<sup>[2]</sup>.

Prosecution forms an inevitable part of machinery today and it is humanely understandable that the people of any country expect a fair dealing on the part of State authorities functioning

in a prosecution system. Ours is Constitutional democracy based on certain inviolable concepts, which extend to every field of contemporary law in our country. Every action of the State has to be based on the basis premise of rule of the law and the touchstone of constitutional principles. The criminal justice system requires a certain degree of sensitivity towards the victims as well as perpetrators of crime and it is here where a prosecution system would be termed effective when it is able to strike a balance between the interests of the victim and the accused. However, the action of the state has to be backed by the notion of the legality. Action of any individual per se cannot be illegal and therefore how can state be exempted from ideal of legality<sup>[3]</sup>.

The Indian criminal justice system should be guided by a 'quest for truth' which will automatically set in order the falling prosecution system for e.g. a accused should not be compelled to act as witness for the and the protection is accorded by Article 20 (3) of the Constitution of India<sup>[4]</sup>.

### 2. History of the Prosecution of India

Prior to independence prosecution was carried on by police officer who were designated as police prosecutors and there was no requirement to be of a lawyer, this system worked in a colonial state where prosecutor were crucial in suppressing the struggle for independence. Public prosecutors were functioning under the administrative and disciplinary control police department. Since their promotions to the higher posts in the department depend on number of conviction, they were able to obtain by court in the prosecution conducted by them they were able to show needed detachment expected by prosecutor<sup>[5]</sup>.

With 'law and justice' being a State subject, there is no uniformity in the structure of public prosecution in India. In a large number of States, the boundary between the investigation agency and the prosecution is blurred. This adversely affects the impartiality of the Public Prosecutor since the police could control the prosecution. In a few States where the prosecution headed by a senior police officer, the boundary completely collapses<sup>[6]</sup>.

This system continues presently in Uttar Pradesh and Tamilnadu, despite doubts about its legality in light of a

number of Supreme Court rulings as also the upcoming Criminal Procedure Code Amendments, Act 2005.

The Patna High Court in *Kunja Subidhi and anr. v Emperor* <sup>[7]</sup> held that "duty as a public prosecutor is not merely to secure the conviction of the accused at all costs but to place before the Court whatever evidence is in the possession of the prosecution, whether it be in favour of or against the accused and to leave the court to decide upon all such evidence, whether the accused had or had not committed the offence with which he stood charged."

The Oudh Chief Court in *Ghirro and ors. v Emperor* <sup>[8]</sup> observed that "It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice."

The Supreme Court in *Hitendra Vishnu Thakur v. State of Maharashtra* <sup>[9]</sup> was held that "There can be no manner of doubt that the Parliament intended that Public Prosecutors should be free from the control of the Police Department."

Further, the Supreme Court in *Shakila Abdul Gafar Khan v Vasant Raghunath Dhobale* <sup>[10]</sup>, held that "A public prosecutor is an important officer of the state government and is appointed by the state under the Criminal Procedure Code He is not a part of the investigating agency. He is an independent statutory authority."

The present criminal justice system is based on the principle that any crime committed by an individual is a crime against the societal order. The prosecution and punishment for the crime is therefore the responsibility of the state, and not that of the victim of the crime. It has been argued that the responsibility where the state acts on behalf of the victim limits the scope for vengeance and revenge. A Public Prosecutor appointed by the State performs such prosecution, on behalf of the state (and therefore society). The Public Prosecutor is required to play an impartial and neutral role and prosecute all persons who have been charge sheeted by the police. However, given the power play discussed previously, and the vast political and economic forces that influence the government, it is obvious that the Public Prosecutor faces tremendous pressure, from not only the state but also powerful elites who attempt to influence the prosecution <sup>[11]</sup>.

### 3. Legislative History

This section corresponds to Section 492 of the old Code, and the Section has been amended in 1973 as:

- a) To enable the central government and state governments to appoint one or more additional public prosecutors for the high court;
- b) To enable the central government to appoint one or more public prosecutors in any district or local area;
- c) To enable counting of service rendered as prosecuting officer before or after the coming into force of the Code of Criminal Procedure, 1973 and service as an advocate for the purpose of appointment as public prosecutor or additional or public prosecutor or special public prosecutor; and
- d) To provide that in any state where there exist a regular cadre of prosecuting officer appointment of public prosecutor or additional public prosecutors will be made only from that cadre and when there are no suitable persons available appointment can be made from the penal prepared by the district magistrate in consultation with the sessions judge.

The present section is wide in its scope and substantially different from Section 492 of the repealed Code. The main changes are as under:

- a) Under the repealed code no qualifications were laid down in law for a public prosecutor, the state government was empowered to appoint anyone it liked to be public prosecutor, and the state government was empowered to appoint anyone it liked to be public prosecutor. Under the present section in the case of a public prosecutor or additional public prosecutor the requirements is that, he should be an advocate of not less than 7 years standing at the Bar. In the case of special public prosecutor, the standing at the Bar should not be less than 10 years.
- b) Under Section 492 of the old Code, there could be any number of public prosecutors; some appointed by the state government, and yet others by the district magistrate or subject to his control by the sub-divisional magistrate. Under this Section 495, any Magistrate inquiring into or trying a case who may do so personally or by a pleader.
- c) Under the present Code there are only 2 categories of public prosecutors:
  - i) Those appointed under this section by the central or state government; and
  - ii) Those engaged by the public prosecutor to act under his own direction.
- d) For conducting any prosecution in any high court on behalf of the central of state government, a new provision has been made for the appointment of a public prosecutor by the government concerned after consulting the high court. Such appointment of a public prosecutor or additional public prosecutor by the state government in every district can be made only from the penal of names of persons prepared by the district magistrate in consultation with the Session Judge. There was no such provision in the old Code <sup>[12]</sup>.

## 6. Role of Prosecution

### a) Role of Prosecution in India

It is generally asserted in India that investigation is prerogative of the police. However, it is to be understood that the magistrate has overall supervision investigation. In case there is violation of rights of the accused, it is for the magistrate to prevent it. The purpose of production of the accused within 24 hours of his arrest, the production of FIR (First Information Report) in the magistrate court, the submission of final report to the magistrate etc. etc. signify that though investigation is done by the police, it is to be under the surveillance of the magistrate that various measures are taken. The appellate courts also used to quash investigations in the event of violation of rights of the accused. The decision to prosecute a function attributed to the prosecutor in continental countries is taken in India by the magistrate on the report submitted by the police. Though even the courts usually call the police report as charge sheet, charging is to be done only by the court. In case the case does not signify, any charged the magistrate could discharge the accused <sup>[13]</sup>.

It is often found that Public Prosecutors appear for public servants who are accused or are respondents, by name, and in their individual capacities, in various courts in India from the magisterial court to even the High Courts.

- 1) In the circumstances, this is a short article to set down the correct position in law on the point, in the hope of the

ending the said widespread illegality currently going in the large number of India's courts.

- 2) The correct position in law in this regard came to be laid down by the Madras High Court, in the case of *Kannappan v Abbas* <sup>[14]</sup>.
- 3) Arising out of a situation in which the Sub-divisional magistrate, Ponneri in Tamil Nadu permitted the Assistant Public Prosecutor attached to his court officer, in a private complaint. On record the SDM did so based on a written request of the then Superintendent of Police, East Chengalpattu, to the Assistant Public Prosecutor to represent the accused police officer.
- 4) Upon a revision, coming to be field in Madras High Court against the order of the SDM in this regard this is what the court held and ruled.
- 5) Section 303 Code of Criminal Procedure, 1973 deals with the right of a person against whom criminal proceedings are instituted and it says that any person accused of an offence before a criminal court or against whom proceedings are instituted and it says that any person accused of an offence before a criminal court, or against whom proceedings are instituted under this Code, may if the right be defended by a pleader of his choice. The term "pleader" is defined in Section 2(q) of the Code as follows.
- 6) The said section is thereafter extracted and the judgment proceeds to say thus:

"Thus the definition on "pleader" includes not only registered practitioners or advocates, but also other persons appointed with the permission of the court to act in such proceedings. In the present case, we are faced with the questions whether the Assistant Public Prosecutor can at all defend an accused under any circumstance. Section 24 of the Criminal Procedure Code, 1973 defines the term "Public Prosecutor" as a person appointed by the central Government for conducting any prosecution, appeal or other proceedings on the behalf of the Government. Similarly, Section 25 of the Criminal Procedure Code, 1973 deals with Assistant Public Prosecutors for conducting prosecutions in the courts of magistrates."

"Thus the Assistant Public Prosecutors are appointed by the government only for conducting prosecutions in the courts and they are full time government servants. In other words, they are not advocates or legal practitioners entitled to practice as advocates and their duty, as their designation itself mentions is only to conduct prosecutions on behalf of the State. To put it differently, they have no right to practice or take briefs to defend the accused in criminal cases <sup>[15]</sup>.

#### **b) Role of Prosecution in Other Countries**

A crime is a wrong not only against the individual victim but also against the society. Since it is a wrong against the society, the State by the Public prosecutor is the main party. The public prosecutor is a person who in a criminal court presents the court on the behalf of State against a person accused of crime. In some countries, such as France, prosecution is a public function conducted by officers of a nationwide service, a branch of the civil service. In United State America, states and countries have their own prosecutors, mostly elected to office. At the federal level, a district by the United State Attorney General's office, and as belonging to the executive branch of government, may be changed on a change of administration.

In England, there is no general system of public prosecution in the name of the crown. The Director of Public Prosecutions

(DPP) undertakes only a small proportion of prosecutions and barristers instructed by local authorities conduct most prosecutions. The police officers are also entitled to prosecute in summary offence; he is thereby acting as a private individual. The English system is somewhat different from the Indian system in the sense that a prosecutor (whether private prosecutor or police officer) in England cannot be sure of bringing the proceedings he has started to a premature close if he changes his mind about them; if he withdraws from the case, anyone else can continue the proceedings on behalf of the public would takeover someone else can continue the proceedings on behalf of the public. It is unlikely that an ordinary member of the public would takeover someone else's prosecution; but the police may do so; and the Director of the Public Prosecutions (DPP) has a right to takeover any private prosecution whether or not the private prosecutor wishes to relinquish it <sup>[16]</sup>.

#### **7. Meaning of Role of Prosecutor**

The prosecutor is the chief legal representative of the prosecution in countries with either the common law adversarial system, or a civil law inquisitorial system. The prosecution is the legal party responsible for presenting the case in a criminal trial against an individual accused of breaking the law <sup>[17]</sup>.

Section 24 of the Code of Criminal Procedure, 1973 defined the public prosecutors as:-

- 1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor for conducting, in such Court, any prosecution, appeal or other proceeding on behalf of the Central or State Government, as the case may be.
- 2) For every district, the State Government shall appoint a public prosecutor and may appoint one or more additional public prosecutor for the district.
- 3) The district magistrate shall in consultation with the Session Judge, prepare a panel of names of persons who are, in his opinion fit to be appointed as the Public Prosecutor or additional Public prosecutor for the district.
- 4) The state government shall appoint no person as the public prosecutor or additional public prosecutor for the district unless his name appears on the panel of names prepared by the district magistrate under sub-Section (3).
- 5) A person shall only be eligible to appointed as a public prosecutor or an additional public prosecutor under sub-Section (1) or sub-Section (2), if he has been in practice as an advocate for not less than seven years.
- 6) The central government or the state government may appoint, for the purposes of any case or class of the cases, an advocate who has been in practice for not less than ten years, as a special public prosecutor.

Under Section 492 of the Code of Criminal Procedure, 1860:

(The Central Government or the State Government) may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be as called public prosecutor <sup>[18]</sup>.

#### **8. Nature and Scope of Public Prosecutor**

The Public prosecution office is an office of responsibility more important than many others are because the holder is required to prosecute with detachment in the one hand and yet with vigor in the other. Some state governments have laid

down the condition that they shall not accept any brief in criminal and shall not even in civil matters appear in any case in which the interests of the state appear to be involved. The purpose of criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the public prosecutor is to represent the administration of justice <sup>[19]</sup>.

- a) The office of prosecutor is charged with responsibility for prosecutions in its jurisdiction.
- b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions.
- c) The duty of the prosecutor is to seek justice, not merely to convict.
- d) It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.
- e) It is the duty of the prosecutor to know and guided by the standards of professional conduct as defined by applicable professional traditions, ethical codes, and law in the prosecutor's jurisdiction. The prosecutor should make use of the guidance afforded by an advisory council <sup>[20]</sup>.
- f) The Role of Police: One important function of the police is to investigate the complaint about the commission of a crime. An investigation includes recording statement of witnesses and collecting different kinds of evidence. Based on the investigation, the police are required to form an opinion. If the evidence points to the guilt of the accused person, then they file a charge sheet in the court.
- g) For a trial to be fair, several different procedures have to be observed. A fair trial ensures that Article 21 of the Constitution is upheld. In a fair trial, the accused person is given a copy of the charge sheet and all other evidence that is presented against her. The trial is held in an open court in a public view. The trial is held in the presence of the accused. A lawyer defends the accused. The lawyer is given a chance to cross-examine the prosecution witnesses. After all the procedures, the judge announces the sentence only in accordance with the law <sup>[12]</sup>.

### 9. Constitutional Provision of Role of Prosecution

Under Constitution public prosecutor is governed by item 2 of List III, (Concurrent List) of 7<sup>th</sup> Schedule of Constitution of India. At the time of commencement of the Constitution, the procedure for appointment of Public Prosecutor was contained in Section 492 of the Code of 1898 and hence the subject falls under item 2 of the Concurrent List. Therefore under Article 246 (2), it is open to the Parliament to legislate on the subject but it is also open to state to amend Parliamentary Legislation by following the procedure in Article 254 (2) of the Constitution, by reserving the State Amendment Bill for assent of the President of India and thus there is no uniformity in structure of prosecution in India various reports of law commission in 1958 and 1969 recommended and setting up of an independent prosecution agency. Therefore, law commission suggested remedial measures for conducting prosecution by prosecutors fairly and impartially. Police department shall not continue as prosecution agency as practice prevailed. Secondly, the prosecution agency must have own cadre separate and distinct from police department. Thirdly, the

prosecutors of prosecution department must have their own machinery who can exercise administrative and disciplinary control over them being directly possible to government concerned. It is ultimately suggested in unequivocal word that machinery of criminal justice though comprised of investigation department and prosecution department, there should be complete separation between them. The object of such separation is to see that the officers of the police department who investigated the cases to be prosecuted shall have in no manner control or influence over prosecutors who conduct cases in courts based on investigations made by police department <sup>[22]</sup>.

## 10. Powers and Duties of Prosecutor

### 1) Powers

The Public Prosecutor is the counsel for the government and conduct prosecution on the behalf of state government or central government as the case may be. In criminal cases, the state and not the complainant is a party. An offence is an invasion against the public peace and wrong against the society and, therefore, every trial before a session judge should be conducted only by a public prosecutor and not by a counsel engaged by a complainant. It may, however be stated that by the Code of Criminal Procedure (Amendment) Act, 2008, the victim is allowed to engage an advocate to his choice to assist the prosecution. The public prosecutor may withdraw any prosecution in certain circumstances. However, he has no power to interfere in investigation <sup>[23]</sup>.

### 2) Duties

#### a) Duty to Elicit From the Doctor as to the Nature of the Injuries

Neither the session judge nor the public prosecutor put any question to the doctor as to whether the injuries on the dead body of the deceased were sufficient in the ordinary course of nature to cause death or likely to cause death. The intention or the knowledge of the accused is to be inferred only from the doctor as to be nature of the injuries and if he, then the Session Judge neglects this duty ought to put this question in the case of Chalku vs. State <sup>[24]</sup>.

#### b) Duty of the Prosecution to Obtain Clarification

Normally when a witness says that an axe or spear is used, there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that were the implication, it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp edged or a piercing instrument was used as a blunt weapon. - *Hallu v State of H.P* <sup>[25]</sup>.

#### c) Marking of the Whole Statement Under Section 161 is Illegal

The Public Prosecutor has simply asked the additional session's judge has marked each one of the hostile witnesses as to whether that witness had stated as per the whole of the statement made before the police and the whole. It is needless to observe that this is not how Section 154 of the Evidence Act, 1872 lays down. It is clear that a particular portion of the statement must be read over and explained to the witness and the witness be asked whether he stated accordingly in his previous statement legally recorded by the authority

empowered to do so, in this case the concerned police officer investigating into the offence. Marking of the whole of the statement is not contemplated under section 145 of the Evidence Act, 1872. The Additional Session Judge has overlooked that lacuna. *Annasab Melappa v State of Karnataka* [26].

**d) Prosecution Cannot Be Compelled to Examine A Witness Who Has Been Won Over And No Adverse Inference Can Be Drawn From It:**

Prosecution cannot be compelled to examine a witness who was gained over and so there was no use. His non-examination will not affect the prosecution case nor can any adverse inference be drawn on that score. - *Tunai Sharma v State of Bihar* [27].

**e) Proof of F.I.R.**

It is the duty of the prosecution to prove the FIR as well as the formal FIR. If for any reason the Public Prosecutor fails to get them exhibited, it is the duty of the court to see that they are duly proved and exhibited in this case. If the FIR is not duly proved or if a statement recorded as an FIR cannot be used as an FIR on legal grounds, merely for that reason the evidence of the eyewitnesses cannot be rejected if otherwise reliable. *Benudhar Rountray v Maheshwar Sahu* [28].

**f) Duty of The Public Prosecutor to See Examination Under Section 313 is Properly Done**

It was the duty of the Public Prosecutor also to ensure that all the incriminating circumstances were put to the accused for his explanation. It is the duty cast on the trial Judge, it is the duty of the Public Prosecutor as well as the defense counsel to ensure that confrontations are properly put and correctly recorded by the Judge. And the Public Prosecutors who are conducting trials before the courts, are not performing their duties properly and the recordings, especially with reference to confrontations are not only defective and sometimes are contrary to what is stated by the witness in his police statement. - *Ramanna v State of Maharashtra* [29].

**11. Role of Judiciary**

The tribunal records that overall conduct of the judiciary higher and lower. When in times of serious law and order breakdown and when complete anarchy prevails, is decidedly wanting. While we are, clear that as a rule. Courts cannot play the role of the legislature or the executive and takes charges of the maintenance of public order, there comes a time when the judiciary is looked upon as the last resort. At such times, and such moments were evident during the Gujarat carnage and remain important to date. The judiciary is expected to rise to the full capability of its constitutional obligations and duties and takes swift and clear suo motu action, if necessary to restore the belief of the disillusioned, marginalized and alienated sections of our population who have the victim of the state sponsored massacres. In not doing so, the Courts failed in their primary duty. We state with regret that the casualness with which matter relating to the Gujarat carnage have been handled by the Court(s), high and low is a matter of serious concern for the rule of law and the survival of the constitutional principles in any real sense in this country [30].

The prosecution agency also faces pressure from the executive in a number of ways. An extreme case is Arunachal Pradesh,

where the question of autonomy and independence of the prosecution is redundant as there is not even the constitutionally required separation between the executive and the judiciary. For instance, the Deputy Commissioner is also the Ex Officio District and Sessions Judge.

In other States where the judiciary and executive are independent of each other, appointment, security of posts and tenure are methods by which the executive seeks to control the prosecution. Even where the appointments made are not 'ad-hoc', there are a number of ways in which the executive can ensure that the prosecution is reliant on it. Vigilance on administrative issues relating to appointment and security of posts as the nature of the posts tenure or cadre is there. The relationship between the investigation, prosecution and the executive received the Supreme Court's attention in the case of *Jain Hawala case* [31].

In this case, the bureaucrat politician criminal nexus had used all means necessary to thwart the investigation and prosecution of corruption cases by the Central Bureau of Investigation. The Court monitored the progress of these cases and passed detailed directions on the functioning of various agencies involved and even warned the minister in charge to avoid interfering with the investigation and prosecution.

Prosecutors, police officers and defense lawyers however insist that in reality, the Public Prosecutor has no role in deciding on withdrawal of the case and it is the executive that decides on the withdrawal. Given the control of the executive over the security of the posts, it is obvious that the PP has little defense against the executive. An excellent example is the withdrawal of criminal charges in the Bhopal gas leak case. In that instance, the Union of India arrived at a settlement with the Union Carbide Corporation under the aegis of the Chief Justice of India. It is unlikely that there was any independent 'application of mind' by the Public Prosecutor in charge of the criminal case before withdrawal from the prosecution [32].

**12. Critical Analyses of Role of Prosecutor**

There existed unimpeachable evidence" and considering the seriousness of the offense if the conviction and sentence stayed, Jayalalitha may misuse the liberty, so he strongly opposed the suspension of sentence. However, in the next hearing, the public prosecutor stated, "He has no objection for granting of conditional bail to convicts". Now the act of the public prosecutor in Jayalalitha's case consequently put the impartiality and independence of judicial system into question. The concept of the independence of judiciary has been held as a part of basic structure of the constitution. To further reinforce this principle, judiciary and legislature formulated the office of "public prosecutor", to provide a fair, impartial and effective prosecution by excluding elements of private vendetta or vengeance. Our legal system has made the public prosecutors the direct representative of the State.

The Law commission of India in its 14th report on judicial administration, while dealing with the subject of prosecution agency, made the necessary provisions in Section 24 and 25 of Criminal Procedure Code dealing with the appointment and functioning of the office of the Public Prosecutor [33].

*Role of Public Prosecutor in Jayalalitha's Case:*

Prosecution and punishment for the crime regarded as supreme responsibility of state as well as our legal system. A public prosecutor appointed by state on behalf of the state performs such prosecution. But when the public prosecutors, one of the

most important branch of our legal system, justice, acts on behalf of wrongdoers then the impartiality and purity of judiciary comes into question. Recently in Jayalalitha's case, the role of prosecutor was put through the wringer yet again, as the act of prosecutor was criticized for his "dubious stand" and acting for convicts.

The act of the prosecutor, Mr. Bhavani Singh, was itself dishonored by Justice Cunha saying that he merely read out the chief examination of the prosecution witnesses and summed up his arguments. To the contrary, the defense lawyer addressed arguments for more than 80 hours, elaborately dealing with every aspect of law. In addition, Mr. Singh, the special prosecutor, was condemned for instantly changing his mind and agreeing for conditional bail of accused.

In March 2014, special Judge, Justice Cunha, imposed a fine of 60,000 on Mr. Singh for repeatedly delaying his final argument and seeking adjournments without justifiable reason.

A degenerated prosecution system will in turn adversely affect the basic democratic system enshrined in the constitution. However, any discussion on the prosecution system of the country would be futile without observing the factors affecting the system adversely because in order to cure a person, the disease or the symptoms of the disease have to be found out. The following are some of the reasons affecting the prosecution system adversely:-

#### a) Outdated Law and the Legal System

The laws, particularly the provisions contained in the Indian Evidence Act, 1872, are antiquated and do not take into account the latest concepts which are seen in psychological researches. The Act was enacted at a time when the theories of the classical school of criminology were in vogue. Interpretation of human acts including criminal acts because of the 'pleasure pain' principles made the police, prosecutor and judges to appreciate human behavior only from the angle.

#### b) Ignorance of Research Findings

Researches in criminology, psychology or sociology of crime may show that a person commits crime may show that a person commits crime because of factors/causes, which are beyond the classical explanation of the 'freedom of will' or 'hedonistic calculus'. Various schools of psychoanalytic including psychoanalytic and psychiatric approaches, theories of sociology, biology, genetics, victimology and many other schools put forward their own explanations of crime and criminal behavior.

#### c) Defective Legal System

The legal system in India is accusatorial and an accused is presumed to be innocent until he is proved to have committed the offence. The system therefore compels the police to find out all sorts of evidence by applying fair and foul means against the accused so much so that every case that is charge-sheeted by police is likely or better surely, to contain genuine as well as conducted/false evidence. In this system, the law is likely to disbelieve the police even when they produce true evidence<sup>[34]</sup>.

#### 13. Conclusion

A Public Prosecutor is an officer of the court and is required to render assistance to the court to arrive at a just and equitable decision. He is also required to be fair to the opposite party.

His guiding principle should be not so much the letter of law, but the spirit of law based on prudence, common sense and equity. A society, which is governed by the letter of law, does not fully exploit its human potentialities. I conclude by quoting from Russian Nobel laureate Solzhenitsyn, A society that is based upon the letter of law, and never reaches any higher is taking very scarce advantage of high level of human possibilities. The letter of the law is too cold to have any beneficial influences on society. Whenever the issue of life is woven in legalist relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses<sup>[35]</sup>.

"Public prosecutor" as title itself implies "public interest" entrusted with the responsibility to protect the interest of public via assisting in the administration of justice but functioning of public prosecutors has revealed incapability to prosecute political and elite accused. The manner in which prosecutors discharge their duties, directly affects criminal legal system and the whole society as well<sup>[36]</sup>.

The role of prosecution in the future will be depending how states deal the issues concerning prosecution. There is no doubt that number of steps need to be taken before that to ensure that the prosecution service can even attempt to resist this pressure. This with great autonomy from both police and the execution and in some state from judiciary will allow the prosecution to become successful<sup>[37]</sup>.

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