

Assignment topic

Role of Prosecutor in Ensuring Fair Trial

Prosecutor

Prosecutor or Public Prosecutor is a lawyer who represents the interest of the state and plays a significant role in the criminal justice system. He serves as the basic principle of Rule of Law "no person shall be condemned unheard". There are four types of Prosecutor; Public Prosecutor, Chief Prosecutor, Additional Prosecutor and Assistant Public Prosecutor.

UN's guidelines on the role of prosecutors

As per Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, the **Prosecutors** shall, in accordance with the law, perform their **duties** fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

Appointment of Prosecutor - Under Cr.P.C

The Public Prosecutor is defined in Section 24 of Cr.P.C. A person who is appointed under Section 24 of CrPC and it also includes any person who is acting under the directions of Public Prosecutor.

Director of Prosecution -

It is the head office. They exercise the overall control and supervision of officers of Directorate. The objective of establishing a Directorate of Public Prosecutors is to supervise and scrutinise the functions relating to various prosecution agencies at Assistant Session level and Session level except at High Court.

Reasons for the Appointment of Public Prosecutor

Whenever any crime is committed against a group or individual, it is assumed that it has been committed against society. It is the duty of the state to provide justice to any group of society or person who is affected by the crime. In India, it is necessary that the criminal justice system should function within the limits of the Indian Constitution, which means that it is necessary for the Public Prosecutor to act in accordance with the principles of:

- Equality before law
- Protection against double jeopardy
- Protection against self-incrimination
- Protection against ex-post law
- Right to life and personal liberty except procedure established by law
- Presumption of innocence until proven guilty
- Arrest and detention must be in accordance with the provisions of Cr.P.C.
- Equal protection of laws
- Speedy trial
- Prohibition of discrimination
- Right of accused to remain silent

Role of Public Prosecutors in fair trial ;

The role of the Prosecutor begins once the police has conducted the investigation and filed chargesheet in the court. The Prosecutor must conduct the prosecution on behalf of the State. His duty to act impartially and present the full and materials facts, witness and evidences before the court. The prosecutor has three main tasks; to investigate crimes, to decide whether or not to instigate legal proceedings and to appear in court.

To investigate crimes

The prosecutor investigates crimes together with the police. He or she shall have contact with the person suspected of the crime, the victim and witnesses, and have close contact with the police. Once the preliminary investigations have been completed, the prosecutor judges whether there is sufficient evidence to bring the case to court. If it is a minor crime, and the suspect admits his or her guilt, the prosecutor imposes a fine. This is referred to as an order of summary punishment, and no trial will be held.

At the time of trial

Sentencing - When the accused is proven guilty, then the defence counsel and the Public Prosecutor further argue to decide the quantum of punishment. At this stage, the Public Prosecutor may argue for the adequate punishment keeping in mind the facts, circumstances of case and gravity of the offence. It helps the judge to arrive at a judicious decision.

To conduct a speedy trial - Right to a speedy trial is a fundamental right and it is impliedly given in [Article 21](#) of Constitution of India which states "Right to life and Personal Liberty". The prosecutors have a responsibility to call all the witnesses whose evidence is essential to decide the case. To cross-examine the witness and to see that no witness is left unexamined. To produce all the necessary documents.

To appear in court

To make an appearance in the Court and obtain an arrest warrant, obtain search warrants for conducting a search in specified premises, obtain police custody remand for interrogation (including custodial interrogation) of the accused, initiate a proceeding for the declaration of the non-traceable offender as the proclaimed offender and record the evidence of accused in the police report regarding the advisability of the prosecutions.

Other Important Roles

- (a) The Public Prosecutor cannot aggravate the facts of the case or deny to examine the witness whose evidence may weaken the case. The main aim must be to discover the truth.
- (b) He should not defend the accused. It is against the fair play of administration of justice or against the legal profession.
- (c) He represents the State, not police. He is an Officer of State and is appointed by State Government. He is not a part of any investigating agencies but an independent authority. He is charged with statutory duties.
- (d) Superintendent of police or District Magistrate cannot compel to the Public Prosecutor to withdraw the case.
- (e) If there is an issue which is raised by defence counsel and failed, it should be brought out in the notice of the court by Public Prosecutor. To ensure that justice is done.

Judicial trend

In plethora of judgements various High Courts and Supreme Court had defined importance of prosecutor in court room and in fair trial.

1. **In the case of *Vineet Narain vs Union of India***
Facts – the offence involves high political dignitaries. CBI failed to investigate properly. The court stated that there are no limitations or restrictions as to launching of prosecutor or initiation of investigations.
2. **In the case of *Jitendra Kumar @Aju vs State (NCT OF Delhi)***
The High Court of Delhi stated that “the Public Prosecutor acts on the behalf of the state. They are the ministers of justice who play a pivot role in the administration of criminal justice”.
3. **In the case of *Zahira Habibullah vs State of Gujarat*, This case is known as “Best Bakery Case”**

Facts – burning down of construction in the city of Vadodara results in the death of 14 persons This matter came up before the Supreme Court for consideration. The Supreme Court stated the “Public Prosecutors acted more as the defence rather than focusing on presenting the truth before Court”.

4. In the case of *Thakur Ram vs State of Bihar*

The reason behind the establishment of the office of Public Prosecutor is that no private person can use the legal apparatus to wreak private vengeance anyone.

5. In the case of *Tikam Singh vs State & Ors*

There is no dispute related to the office of the Public Prosecutor but there is a public element attached to it. He acts as the representative of the state but not a complainant. The role of the Public Prosecutor is distinguished from the role of private counsel.

6. In the case of *Sandeep Kumar Bafna vs State of Maharashtra & Anr*

The court stated that “a Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or other irrespective of the facts of the case. The attitude of the Public Prosecutor must be fair towards the investigating agencies and as well as towards the accused.”

7. In the case of *Radheyshyam vs State of M.P & Ors*

The court stated that a special Public Prosecutor can be appointed when the administration of justice is required. They cannot appoint only on the request of the complainant. His remuneration is paid by the state because if it will be paid by the private party, then his ability or capacity to perform his role as a Public Prosecutor will be endangered. The government cannot appoint Special Public Prosecutor on such terms, directing him to receive his remuneration from any private individual.

8. In the case of *Kunja Subidhi and Anr vs Emperor*

The duty of the Public Prosecutor is to place before the court all the relevant

evidence whether it is in favour or against the accused and to leave upon the court to decide the matter.

9. In the case of *Babu vs State of Kerala*

The Court observed that Public Prosecutors are ministers of justice who is duty bound to assist the judge in the administration of justice

Prosecutor Role in other countries ;

Prosecutor, government official charged with bringing defendants in criminal cases to justice in the name of the state. Although responsibilities vary from one jurisdiction to another, many prosecutors are in charge of all phases of a criminal proceeding, from investigation by the police through trial and beyond to all levels of appeal. Many also defend the state in civil actions. In the United Kingdom, prosecution is carried out in the name of the crown.

In some countries, such as France, public prosecution is carried out by a single office that has representatives in courts all over the country. In Japan, too, the office of public prosecutor runs parallel to a unitary court system. In the United States, however, states and counties have their own prosecutors.

In some countries, including France, Japan, and Germany, the prosecutors are part of a career civil service. They are appointed and dismissed by the ministry of justice and generally subject to its control.

In countries where the judge handles the questioning of witnesses, the prosecutor is limited to presenting evidence and giving a final summation. In the United States and Great Britain the prosecutor plays an active role in questioning witnesses.

Present scenario India

There is no uniformity in the structure of the public prosecution in India. There is no boundary created between the investigating agency and the prosecution in a number of states. This affects the impartiality of Public Prosecutor since police control the

prosecutions. When the prosecution is headed by a senior police officer, the boundary collapses completely.

Suggestions

A Public Prosecutor is an officer of the court helping in the administration of justice. Govt. should encourage more lawyers to become Public Prosecutors. Govt. should increase the salary structure of the Public Prosecutor so that it can act as a reinforcement to more people. Govt. should establish a national institute to impart proper training upon the aspiring candidates. Central Govt. should make compulsory for all the states to create its own Directorate of Prosecutions as per Law Commission suggestion in the year 1958.

Prosecutor should be appointed on merit. They must not be selected by Govt. officials, although they must be appointed through competitive exam.

Conclusion

It is clear from the fact that the main duty of the Public Prosecutor is to help the court in finding the facts of the case. The Public Prosecutor must be impartial, fair and honest. He must act on the directions of the judge. He should not believe in the conviction of accused by hook or crook.

The guiding principles of any public prosecution must be equity, justice and good conscience. An ideal Prosecutor must consider herself/himself as an agent of justice.

In pursuance of their duties, public prosecutors should not use improper methods calculated to produce wrongful convictions and she/he must discharge her/his functions in a scrupulously fair and honest way. A fortiori, a Public Prosecutor has the responsibility of a minister of justice and not simply that of an advocate.

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Sunday, 13/12/2020