Quest for Prosecutorial Independence

JALDI Justice, Access & Lowering Delays in India

VIDHI Centre for Legal Policy

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Errors, if any, in the report are the authors' alone.

The authors would like to sincerely thank Mr. Renjith Thomas, Assistant Professor, National Law University, Jodhpur for reviewing the report and his support. The authors are grateful to Adv. Ramesh Siroya, Additional Public Prosecutor, Mumbai and Adv. Divyang Thakur, Public Prosecutor, Delhi for sharing their expertise and providing valuable inputs to the report.

The authors are grateful to Devyani Srivastava, Commonwealth Human Rights Initiative, Leah Verghese, DAKSH and Karan Tripathi for their extensive feedback which have immensely contributed in the making of this report.

The authors would also like to thank Maladi Pranay, Member, NALSAR Kautilya Society and Debarshi Chakraborty, Member, NLUO Kautilya Society for their research and assistance during this study. The authors are also grateful to Keertana Venkatesh, Vidhi Saxena, Yajat Bansal, Anmol Mathur, Kamya Vishwanath, Charmi Mehta, Varini G and Mansi Gupta, interns at Vidhi, for their assistance during this study.

February 2022

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Introduction

The office of the prosecutor rarely makes headlines in India. It is a fairly understudied office. The most infamous indictment of the functioning of a prosecutor came from the *Best Bakery* case, where the court remarked that the prosecutor had served as a defence counsel, failing in his role miserably. Often political appointments of prosecutors in cases involving public functionaries, misuse of public funds catch momentary attention in the press. Given their less than glamorous stature, a sustained meaningful inquiry into their functioning is hard to come by.

This is further complicated by the variety of laws and practices that govern their functioning. Criminal procedure is a concurrent subject and as a consequence, amendments made by states to the Central Code of Criminal Procedure and rules made under Article 309 of the Indian Constitution apply to the prosecutors functioning in different states. The prosecutors are also divided into different categories as per their area of operation. The nodal department coordinating prosecuting agencies also varies across states. Often the Directorate of Prosecution answers to the home department or the law department of the state.

More often than not, in the same state, the 'cadre prosecutors' are administered by the Directorate of Prosecution, while the 'tenure prosecutors' are administered by home department or law department as the case may be.[1] In some states regular cadre prosecutors are promoted to the post of Director, in a few it is held by a judicial officer, and in yet others the post is held by a senior police officer.

These divergences make the subject of prosecution a difficult one to study. In the judicial pronouncements which have extolled the importance of an independent prosecutor, little attention has been paid to the litigation being carried out by prosecutors in different states. The task of studying the role and function of prosecution assumes a greater importance in an environment where the state is accused of compromising the integrity of the criminal justice system and criminalising the seemingly unwanted conduct of its citizens. In this context, the report seeks to continue the conversation on prosecutorial reforms where the independence enjoyed by the office is studied in detail and structural factors that impinge on its autonomy are identified.[2]

The present report seeks to explore the above-mentioned themes through the judicial decisions of the Supreme Court and various High Courts which have a bearing on the relationship between the prosecutors and the executive. The report also uses data published by the National Crime Records Bureau to provide empirical evidence with regard to executive interference in their functioning.

This report attempts to study the procuracy in India and explore:

Firstly, the dominant themes in the way the law related to office of prosecution has evolved in India;

Secondly, the scheme provided in the Code of Criminal Procedure, 1973 ("the Code") with regard to their appointments and general functioning; while the prosecution system in India includes Directors and Deputy Directors of Prosecution as well, this report covers prosecutors appointed under sections 24 and 25 of the Code;

Thirdly, the report seeks to examine the discretion that prosecutors enjoy at different stages of a criminal trial and critically studies the issues with regard to the role of the prosecutor at the investigation stage, the charging stage and the prerogative of the prosecutor to withdraw prosecution.

[1] Public Prosecution in India: An Argument for Autonomy, Aman Trust, (April. 2005), http://www.amanpanchayat.org/Files/Reports/public-prosecution.pdf.
[2] ibid

The report is written with the understanding that an independent office of prosecution is necessarily linked to a well-functioning, due process based criminal justice system. The research questions interrogate the influence of state practices on the independence of procuracy in India.

Development of the prosecution system in India

The office of the prosecutor has been described as a 'latecomer' in common law jurisdictions.[3] The development of the prosecution system into its own institution has been a slow and gradual process. In medieval India, the criminal trial was a private affair. In case of any wrongdoing, when a person approaches the Kotwal (Police) with a complaint, the Kotwal was entrusted with the function to conduct the investigation upon the charge against the accused. In case the Kotwal found evidence against the person, the complainant was guided to take the matter to a Qazi (judicial officer).[4]

Under the British Raj, initially the British administration in India enacted separate legislations to regulate procedures in different courts.[5] Before 1882, there were at least three such legislations regulating the procedure of criminal courts in British India – Criminal Procedure Code, 1872 which was in force in the Mufassils, the High Courts Act, 1875, which was in force in Lahore and Allahabad, and the Presidency Magistrates Act, 1877 which was in force in the presidency towns of Madras, Bombay and Calcutta.[6]

This position was changed with the enactment of the Indian Criminal Procedure Code, 1882 ("the 1882 Code"). The Act consolidated the provisions under other acts and provided a uniform procedure for criminal trials in presidency towns as well as the Mufassil areas. Section 492 of the 1882 Code provided for the appointment of prosecutors and established a statutory office of prosecution. However, in practice, prosecution continued to be predominantly carried out by police officers. Gradually, different states developed their own prosecuting agencies and recruited advocates from the bar who along with police officers were entrusted with the function of prosecuting criminal trials.[7] As of 1958, in most of the states, prosecution in the Magisterial Courts was conducted by police officers themselves or through advocates recruited from the bar and styled as "Police Prosecutors". These advocates conducted prosecution under the control of the police.[8]

Madras and Andhra Pradesh were exceptions in this regard as they established a regular cadre of whole-time prosecutors which was responsible for conducting prosecution in the Magisterial Courts.[9] Further, in these states, prosecutors worked under the supervision of the District Magistrate to further isolate prosecution from police influence. However, even then prosecutors occupied a subordinate position under the District Magistrate and their functions remained restricted.[10] Prosecutors were rarely consulted at crucial stages of investigation and gathering relevant evidence.[11]

The lack of independence and responsibility for prosecutors resulted in their insignificant role in crucial prosecutorial functions such as initiating the prosecution, gathering relevant evidence and withdrawing the case. These significant functions were performed by police officers who often lacked the knowledge of

[3] John H Langbein, 'The Origins of Public Prosecution at Common Law' (1973) 17 Am J Legal Hist 313
[4] Wahed Husain, 'Administration of Justice in Muslim Rule in India" (1934) Univ of Calcutta 67
[5] See Criminal Procedure Supreme Court Act 1852; High Court Criminal Procedure Act 1865
[6] Law Commission of India, *The Code of Criminal Procedure 1889,* (Law Com No 37, 1967) para 25
[7] Law Commission of India, *Reform of Judicial Administration,* (Law Com No 14, 1958) para 35.5
[8] ibid
[9] ibid
[10] ibid para 35.13
[11] ibid

evidentiary and procedural laws. The 14th Law Commission report, while recognising the issues with merged investigation and prosecuting agencies, and with prosecution being controlled by the police, urged the government to separate the office of prosecution from the police. This separation has continued to be the dominant theme in prosecutorial reforms in India. The timeline below outlines the trajectory of conversation on prosecutorial reforms:

1861

Code of Criminal Procedure, 1861

The Act codified criminal procedure in India and provided statutory recognition to prosecutors for conducting trials.[12] The Act also established a hybrid model of prosecution, similar to that prevalent in England,[13] where private prosecution was allowed in Magisterial Courts[14] and public prosecutors were appointed to prosecute serious offences in Sessions Courts.

1882

Code of Criminal Procedure, 1882

The 1882 Code was the first legislation that defined a 'Public Prosecutor' [15] and provided a procedure for their appointment.[16] The legislation also fleshed out the role and powers of a prosecutor. It empowered prosecutors to file appeals in acquittal cases on the direction of the local government,[17]and provided them discretion to withdraw cases.[18]

Though the 1882 Code sought to establish a separate prosecutorial office, it did not separate prosecution from the police and left room for police prosecution to continue. Section 492 enabled the District Magistrate to appoint a police officer, not below the rank of Assistant District Superintendent, as a prosecutor. The Act also allowed a private person to conduct prosecution subject to the Magistrate's permission.[19] However, if a prosecutor is appointed in a case, the private pleader was expected to work under her directions.[20]

1898

Code of Criminal Procedure, 1898

The 1898 Code retained the structure established under the 1882 Code for the appointment and functions of prosecutors. Additionally, the 1898 Code empowered police officers conducting prosecution before a Magistrate to withdraw cases. It also introduced a bar on police officers from conducting prosecution if they were a part of the investigation into the offence.[21]

12 Code of Criminal Procedure 1861, s 233
13 Yue Ma, 'Exploring the Origins of Public Prosecution' (2008) 18 Int'l Crim Just Rev 190, 193
14 Code of Criminal Procedure 1861, ss 44 and 438
15 Code of Criminal Procedure 1882, s 4 (m)
16 Law Commission of India, Reform of Judicial Administration, (Law Com No 14, 1958) para 35.5
17 ibid s 492
18 ibid s 417
19 ibid s 494
20 ibid s 495
21 ibid s 493

Law Commission of India - 4th Report on Reform of Judicial Administration

1958

The report analysed the prosecutorial machinery established under the 1898 Code and highlighted the absence of a uniform prosecuting organisation in India. The report also criticised the practice of police prosecution and noted that police officers lack the degree of detachment necessary for prosecuting cases and often adopt a one-sided approach focussed on securing conviction.[22]

The report recommended separating the prosecuting agency from the police department.[23] it further recommended the appointment of a Director of Prosecution to head the prosecution department in each district who was to exercise control over a cadre of prosecutors to conduct criminal trials.[24] The report also suggested improvement in the conditions of service, pay scales and training for the prosecutors.[25]

1969

Law Commission of India - 41st Report on the Code of Criminal Procedure, 1898

The report highlighted the lack of qualification requirements for the appointment of prosecutors.[26] The report also found that the state governments did not give serious consideration to the 14th Law Commission Report's recommendations, especially regarding the appointment of an independent Director of Public Prosecution in each district.[27]

The report recommended a requirement of at least seven years of practice as an advocate for the appointment of a Public Prosecutor ("PP") as well as an Additional Public Prosecutor ("Addl. PP"). For the appointment of Special Public Prosecutor ("SPP"), the report recommended a minimum practice requirement of 10 years.[28] Further, the report reiterated the recommendation for the appointment of the Director of Public Prosecution in each district. The report also suggested that prosecutors should be given the function of scrutinising chargesheets and should be empowered to send the case back for further investigation where investigation of the offence lacked relevant evidence.[29]

22 Code of Criminal Procedure, 1898, s 495
23 Law Commission of India, 'Report on Reform of Judicial Administration' (Law Com No 14, 1958) para 35.11
24 ibid para 35.13.
26 Law Commission of India, 'Report on the Code of Criminal Procedure 1898' (Law Com No 41, 1969) para 38.3
27 ibid para 18.25.
28 ibid para 38.3.
29 ibid para 18.26.

Code of Criminal Procedure, 1973

1973

The Code addressed the shortcomings of the 1898 Code and laid down a detailed procedure for the appointment of PPs, Addl. PPs, Assistant Public Prosecutors ("Asst. PP") and SPPs.[30] The Code also mandated that the central and state governments should consult with the High Court and the state governments should consult the Sessions Judge for the appointment of prosecuting officers in the High Court and the District Court, respectively.[31]

The Code introduced eligibility criteria for these appointments as prescribed by 41st Law Commission Report and mandated that in states where a regular cadre of prosecuting officers exists, the appointment of PPs and Addl. PPs should only be from the persons constituting such cadre.[32] The Code also explicitly provided that a police officer shall not be eligible to be appointed as an Asst. PP. However, it permitted the District Magistrate to appoint a police officer to conduct prosecution if no Asst. PP was available.[33]

1995

SB Shahane vs State of Maharashtra[34]

In this case, the Supreme Court held that Asst. PPs appointed under section 25 should be independent of the police department. It observed that the provision for appointment of a police officer to conduct prosecution was only to be resorted in unavoidable contingencies or due to the regular prosecutor's unavailability. The court went on to direct the state of Maharashtra to create a separate cadre and department for Asst. PPs free from the administrative and disciplinary control of the police.

30 Code of Criminal Procedure 1973, ss 24, 25.
31 ibid s 24(4).
32 ibid s 24(6).
33 ibid s 25.
34 SB Shahane v State of Maharashtra 1996 Suppl (3) SCC 37

Law Commission of India - 154th Report on the Code of Criminal Procedure, 1973

1995

The 154th report recommended establishing a Directorate of Prosecution for every state. This Directorate was to be headed by a Director with Deputy Directors assisting her at the regional level.[35] It also recommended that prosecutors in District Courts and Magisterial Courts should be subordinate to the Deputy Director.

The report recommended that the investigating agency must work in close coordination with the Directorate of Prosecution.[36] It further recommended the appointment of sufficient women prosecutors for effectively prosecuting offences such as sexual assault and rape.[37]

Addressing the cases where prosecutors appear for the accused in the same case and thereby creating a conflict of interest, the report recommended that in such cases the court should be given the discretion to permit a person other than the prosecutor to conduct the trial. Such appointments shall be made in accordance with section 24 (8).[38]

2003

Committee on Reforms of the Criminal Justice System

The committee recommended that an IPS officer of the rank of Director General should be appointed as the Director of Prosecution of the state.[39] According to the committee, this would aid in better coordination between the police and prosecutors, the lack of which was the reason behind poor investigation and the fall in conviction rates.[40]

The committee further proposed that Asst. PPs should mandatorily be appointed through competitive examinations. The committee suggested an alternative process for the appointment of PPs and Addl. PPs. It suggested that only 50% of the vacancies under these posts should be filled by promotion of Asst. PPs and the remaining 50% should be appointed from the panel prepared by the District Magistrate in consultation with the Sessions Judge for a period of three years.[41]

35 Law Commission of India, 'Report on the Code of Criminal Procedure, 1973' (Law Com No 154, 1996) para 12
36 ibid para 9
37 ibid para 13
38 ibid para 14
39 Dr Justice VS Malimath and others, 'Committee of Reforms of the Criminal Justice System' (Government of India, 2003) para 8.52, 8.55 <https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf > accessed 19 June 2021
40 ibid para 8.2
41 ibid para 8.56

Code of Criminal Procedure (Amendment) Act, 2005

2005

The amendment act was introduced to strengthen the provisions related to prosecution and related machinery. The amendment inserted an explanation to section 24(6) clarifying that a 'regular cadre of prosecuting officers' shall mean a cadre which includes the post of a PP and provides for promotion of an Asst. PP to the post of a PP.

The amendment also introduced section 25A of the Code providing statutory backing to the Directorate of Prosecution. Under the amendment, the state governments were given the power to appoint the Director and the Deputy Directors of Prosecution. The provision also mandates that such appointments shall be made with the concurrence of the Chief Justice of the relevant High Court.

2006

Law Commission of India – 197th Report on Public Prosecutor's Appointment

The report found that several states have enacted amendments to override the mandate for consultation with the Sessions Judge for appointment of PPs in the district and with the High Court for the appointment of PPs in the High Court respectively.[42] The report observed that such amendments have enabled state governments to make appointments without proper screening and assessment which in turn violates Article 14 of the Constitution.[43]

The report suggested restoring this mandate for consultation with Sessions Judge and the High Court.[44] Further, the report suggested the insertion of a provision in section 24(4) requiring the Sessions Judge to give importance to experience in sessions cases, merit and integrity when making such appointments.

The report also observed that the appointment of Asst. PPs should not be entirely based on seniority. As an alternative, the report recommended the establishment of a state-level committee consisting of a retired High Court judge, the law secretary of state, officer of the state government not below the rank of secretary and the Director of Public Prosecution (if any).[45] The committee must assess merit, integrity, past record of performance before promoting an Asst. PP. The report further suggested that the Addl. PPs should be appointed both from the Bar and from the cadre of Asst. PPs in a ratio of 50:50.[46]

42 Law Commission of India, 'Public Prosecutor's Appointment' (Law Com No 197, 2006) p 19
43 ibid p 31.
44 ibid
45 ibid pp 26 to 28
46 ibid

The development of the law has so far focussed on separating the investigating agencies from the prosecuting agencies. We shall now examine how the changes introduced to consolidate a prosecutorial cadre have not materialised in the states and how the conversation needs to renew its focus towards distancing the prosecution from the state executive.

Unravelling the scheme for the appointments of Public Prosecutors

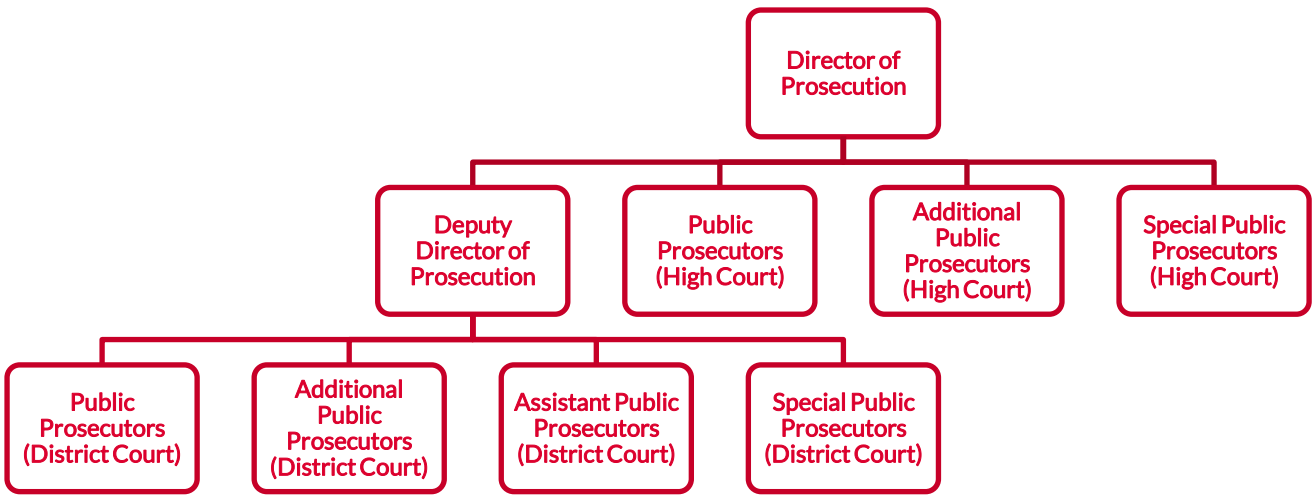
This section explores the scheme of appointment of PPs, Addl. PPs, Asst. PPs and SPPs to analyse the ways in which the concurrent jurisdiction, i.e., both the central and state legislature having the authority to legislate on criminal procedure impacts the functioning of the office of prosecution. The section clarifies the legal position on issues related to appointment of different categories of prosecutors and also discusses the manner in which state institutional practices have a bearing on the independent functioning of prosecutors.

A. Structure of the Prosecution System

The 2005 Amendment to the Code sought to create a more organised prosecutorial agency in every state. Under the newly introduced section 25A of the 1973 Code, the home department of the state government has the administrative control over the Director of Prosecution, although in practice there is considerable variance in the nodal department exercising control over prosecution. The Director is the head of the Directorate. The Deputy Directors and the PPs, Addl. PPs and SPPs appointed for conducting prosecution in High Courts are subordinate to the Director. These posts exist outside the 'regular cadre' system contemplated under section 24 (6).

The 'regular cadre' consists of PPs, Addl. PPs, Asst. PPs appointed for District Courts with promotional avenues for Asst. PPs. These prosecutors are subordinate to the Deputy Director. The SPPs appointed for District Courts are subordinate to the Deputy Director as well. The Deputy Director is the supervisory authority even if a cadre is not constituted and the appointments are made under section 24 (4) by the state government from the panel prepared by the District Magistrate in consultation with the Sessions Judge.

Figure 1. Structure of the Prosecution System as under section 25A of the Code



The eligibility and appointment of PPs, Addl. PPs, SPPs and Asst. PPs continue to be governed by the law existing since the Code of Criminal Procedure (Amendment) Act, 1978.

The following section studies the attempts of state governments to digress from this scheme outlined in the code and extend their interference in the functioning of the office of prosecution by controlling the appointments of prosecutors and their reluctance to establish a prosecutorial cadre in the states.

The table below captures the overall structure and the categories of PPs contemplated under the revised 1973 Code post the 1978 and 2005 Amendments as provided in sections 24, 25, 25A of the Code:

Post	Eligibility	Nature of work	Reporting Authority	Appointing Authority
Director of Prosecution	10 years of practice as an advocate	Supervision of the Deputy Director and the prosecutors in the High Court	Home Department of the State	State Government with concurrence of the Chief Justice of relevant High Court
Deputy Director of Prosecution	10 years of practice as an advocate	Supervision of prosecutors at the District Court and magistrate level	Director of Prosecution	State Government with concurrence of the Chief Justice of relevant High Court
PPs, Addl. PPs in High Courts	Minimum 7 years of practice as an advocate	Conduct Appeals, appear in Bail and Anticipatory Bail applications, applications under Section 482 for quashing, transfer applications etc.	Director of Prosecution	State Government and Central Government after consultation with High Court
PPs, Addl. PPs in District Courts	Minimum 7 years of practice as an advocate	Conduct prosecution and appear in related matters in District Courts	Deputy Director of Prosecution	The Central Government and State Government. Appointment by State Governments must be from the regular cadre of prosecutors and in the absence of a regular cadre, from amongst the panel prepared by the District Magistrate after consultation with the Sessions Judge

Assistant PPs in Magisterial Courts	No eligibility prescribed	Conduct prosecution and appear in related matters in Magisterial courts	Deputy Director of Prosecution	State Government and Central Government
SPPs	10 years of practice as an advocate	Conduct cases or class of cases for which the SPP is specifically appointed or required to be appointed under special statutes	Director of Prosecution for SPPs in High Courts Deputy Director of Prosecution for SPPs in District Courts	Central and State Governments

B. Significance of jurisdictional limitations

Section 24 provides for different categories of public prosecutors; the central government and the state governments are empowered to appoint PPs and Addl. PPs for every High Court after consultation with the High Court. The central government and the state governments are also authorised to appoint a PP and Addl. PP for every district.[47] State governments, however, can appoint only those persons whose name appear in a panel prepared by the District Magistrate in consultation with the Sessions Judge unless there exists a 'regular cadre' of prosecutors in the state, in which case the PP and the Addl. PP have to be appointed from such a regular cadre. A 'regular cadre' means a cadre which provides for the promotion of an Asst. PP to the post of a PP.[48] Under section 25, the central government and the state governments were granted the power to appoint Asst. PP for conducting prosecution in Magisterial Courts.

The importance of the demarcations provided in the Code can be better understood by a difference of opinion, which arose in a very political case involving corruption allegations against the former Chief Minister of Tamil Nadu, the late Ms. Jayalalitha. Notably, the case was transferred from the state of Tamil Nadu to Karnataka as there were serious apprehensions with regard to the conduct of a fair trial in Tamil Nadu, specifically concerning the functioning of the investigation and prosecution machinery.

A division bench of the Supreme Court comprising Lokur and Banumathi JJs. disagreed while considering whether an SPP appointed in the trial of the case against Ms. Jayalalitha in a special court in Bengaluru was also empowered to represent the prosecution at the High Court.[49] As per the Code, a PP appointed for the High Court under section 24(1) cannot appear before a District Court and similarly a PP appointed under section 24(3) for the District Court cannot represent the prosecution before the High Court.[50]

J. Lokur while evaluating the scheme in section 24 remarked that the power to appoint an SPP is a much wider power given to both tiers of the government, for the appointment is not to be made with reference to the area of operation i.e. the High Court or a District Court, rather it is an appointment for a case in any court or a class of

[47] Code of Criminal Procedure 1973, ss 24 (2) and 24 (3)
[48] Code of Criminal Procedure 1973, ss 24 (4) and 24 (6)
[49] *K. Anbazhagan v State of Karnataka* (2015) 6 SCC 86
[50] ibid p 120 para 71

cases in any court or courts.[51] In his judgment, J. Lokur clarified that the jurisdictional limits placed on PPs under the scheme of the Code would apply to SPPs appointed under section 24(8) as well.

J. Banumathi argued that the word 'any court' appearing in section 301 was critical and while the role of PPs under subsections (1) to (3) of section 24 was confined to the area of operation of the PP so appointed, a similar limit is not attracted to the SPPs appointed under subsection (8) of section 24. [52]

Given the divided opinion the case was referred to a larger bench which concurred with the interpretation given by J. Lokur. The court held that the section 24, 25, 25A and 301 have to be appreciated in a schematic context. It deemed the appointment of the SPP to be restricted to the specific case and that too in the specific court. The court held that the scheme of the Code clearly demarcates and compartmentalises the prosecution based on their area of operation. [53]

C. Adequacy of checks in the process of appointments

Unquestionably the power to appoint prosecutors resides with the executive. The power to appoint prosecutors for the High Court and the District Courts belongs to both the central government and the state governments. This power to appoint prosecutors in the High Court and District Courts, however, is not absolute as the process requires consultation with the judiciary. This is supposed to act as a check on the executive power. Understandably, the executive in some states have attempted to circumvent the consultation requirements by amending the provision of section 24 as they apply to the state.

In 1979, while deciding on a special leave petition filed by an aggrieved government pleader who had monopolised representation in land related litigation in the State of Bihar, the Supreme Court recognised the importance of consulting the judiciary in making such appointments.[54] It was the opinion of the court that the state needs to find the most competent lawyers and not act in a politically partisan fashion. It was held that an effective way of ensuring the engagement of competent lawyers was consultation with the district judge.[55]

In *Harpal Singh Chauhan*, the appellants were working as PPs in the District of Moradabad, U.P.[56] The District Judge had recommended their extension but the District Magistrate, after receiving recommendation of the District Judge, did not recommend those names saying that on an inquiry at his level, their reputation, professional work, behaviour and conduct was not found in accordance with public interest. The state government rejected the extension. It was found that the procedure prescribed under section 24 was not followed by the District Magistrate and the records could not show that any panel as required by section 24(4) was prepared by the District Magistrate in consultation with the District and Sessions Judge. The Supreme Court held that there was patent infringement of the statutory provisions and that there was no effective or real consultation between the Sessions Judge and the District Magistrate.[57]

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[51] ibid p 120, 121 para 74
[52] ibid para 159
[53] ibid p 178 para 28
[54] *Mundrika Prasad Singh v State of Bihar* (1979) 4 SCC 701
[55] ibid p 706 para 14
[56] *Harpal Singh Chauhan v State of U.P.* (1993) 3 SCC 552
[57] ibid para 18 and 19

Most notably the State of UP has amended the Code to remove the requirement of consultation with the High Court for appointment of PPs for the High Court and also removed subsections (4), (5) and (6) of section 24 of the Code.[58] The Supreme Court in *State of UP v Johri Mal*[59] reviewed the state action acknowledging that it was concerned with the decision-making process rather than the merit of the decision itself. The court held that if the procedures laid down in the Code were followed or a reasonably fair procedure was adopted by the government, the court would hesitate to interfere with the government's decision. The court held that the State should give primacy to the opinion of the District Judge in making such appointments to appear reasonable and fair.

It was also held that the deletion of subsection 4, 5 and 6 of section 24 from the Code as it applied to the state of UP was devoid of any rationale, it directed that the state government should consult the court despite the express deletion of the provision.[60]

In *Neelima Sadanand Vartak v. State of Maharashtra*,[61] while reviewing relevant decisions of the Supreme Court which dealt with the functions to be performed by the District Magistrate under section 24(4) of the Code regarding the appointment of PPs and Addl. PPs for districts, the Bombay High Court held that these are statutory functions and are to be performed in consultation with the District Judge, who has primacy because the post to be filled is that of a prosecutor in the District Judge's Court. The court unambiguously stated that an effective consultation with the District Judge is essential, and this function could not be discharged by the Law Secretary or the Advocate General. This judgment particularly examined the impact of the amended section 24 (4) which deleted the words "consultation with sessions judge" and discerned the roles the Magistrate and the District Judge have to play in evaluating the candidates.

The courts appear to have relentlessly stressed on the importance of consultation with the judiciary as a check on the executive power of the state, often importing the meaning of consultations in the *judges* cases.[62] It is important that the Sessions Judge or the High Court be involved in the process of appointment for the courts are better placed to evaluate the competence and conduct of advocates inside the courtroom. However, consultation with the judiciary cannot substitute for an objective standard to ensure selection of competent prosecutors.

The fitness of the PP to handle trials is an important aspect of her competence. In *Laxman Rupchand Meghvani v. State of Gujarat*,[63] the Gujarat High Court adjudicated the challenge to the appointment of a PP, Adv. Raghubir Pandya, on the grounds of fitness and suitability. The allegation that the advocate is unfit and unsuitable for the position stemmed from the Supreme Court judgment in the *Best Bakery Case*[64] in which the court criticised the manner in which the trial was conducted by Adv. Pandya. In their judgment, the Gujarat High Court stressed the process of choosing the fittest person from the panel prepared by the District Magistrate in consultation with Sessions Judge. The court held that in case such exercise is not undertaken by the Government, the power for appointment of PP is frustrated.

However, in absence of an objective evaluation of fitness, the mere consideration of fitness by the government might not ensure the competence of the prosecutors. Therefore, the entire process of selection of public prosecution, along with the selection criteria, requires serious attention.

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[58] Code of Criminal Procedure (Uttar Pradesh Amendment) Act 1991, s 2
[59] *State of UP v Johri Mal* (2004) 4 SCC 714, 732
[60] ibid p 747 para 7
[61] (2005) 4 Mah LJ 326
[62] *State of UP v Johri Mal* (2004) 4 SCC 714
[63] (2016)2GLR1671
[64] *Zahira Habibulla H Sheikh v. State of Gujarat* 2004 (4) SCC 158

D. Distinguishing the appointments of Special Public Prosecutors

As is clear from the reading of the scheme, SPPs which are appointed under subsection (8) of section 24 are to be distinguished from other categories of prosecutors. While the term SPP is not defined in the Code, they are deemed to fall under the definition of a PP provided in section 2(u). Two important questions arise with regard to the appointment of SPPs:

a) Would the procedural requirements under subsections (4) and (5) apply to the appointment of SPPs?

The said provision for appointment of SPPs has been subjected to legal challenge on the ground of excessive delegation of power.[65] The provision is seen as an exception to the scheme of section 24; it has been argued that it does not adequately guide the executive as to when they should use this discretionary power.[66]

It has also been argued that a government is not justified in appointing SPPs without following the procedure given in subsections 4 and 5 of section 24, i.e., choosing the names from the panel prepared by the District Magistrate and adequately consulting the District Judge in making such decisions. This interpretation chooses to read the scheme of section 24 as a whole rather than reading subsection (8) in isolation.[67] This understanding is preferred by judges who find merit in the argument that the government's power to appoint is discretionary and believe that directing the government to consult with the District Judge is a way to infuse reasonableness to the decision.

This interpretation of the Code has been held to be invalid. The well settled position of law on this aspect is that section 24(8) is a special provision[68] and the procedure for appointment prescribed under subsections (4) and (5) of the section cannot be applied to appointments of SPPs. The central or the state government is "fully empowered to appoint any one with the requisite qualification as a Special Public Prosecutor".[69] An interpretation imposing the requirements of section 24 (4) and (5) in appointing SPPs under section 24 (8) would amount to "putting and adding words to the provision and legislation".[70] There is consensus regarding the special status of this office and it is understood "that when a case or class of cases, in the opinion of the Government requires special attention and therefore there is a need for a Special Public Prosecutor is itself sufficient enough to fall in a class of its own distancing with the other offices.... Merely because the procedure is not contemplated, it cannot be said that the procedure applicable to the other office can be brought in and applied".[71]

It is clear that the power to appoint SPPs is a wider power, to be used sparingly. The practice of appointing SPPs however demonstrates that this power is very widely used by state governments, especially in cases which attract public attention.

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[65] *Vijay Valia v State of Maharashtra* 1987 Mah LJ 49, 52 para 2
[66] ibid
[67] *Paramjit Singh Sadana v State of AP* 2008 (1) ALD (Cri) 712
[68] *Jayendra Saraswathy Swamigal (II) v. State of T.N. (2005) 8 SCC 771*
[69] *Shankar Sinha v State of Bihar* (1994) 1 PLJR 516, 517 para 3
[70] *State of AP v Margadarsi Financiers* (2009) 2 ALD (Cri) 300, 312 para 18
[71] ibid p 312 para 19

b) What circumstances necessitate the appointment of a Special Public Prosecutor?

The usage of the word 'special' adjacent to public prosecutor distinguishes this category from the regular appointments. The question with regard to whether an SPP can be appointed at the initiation of the complainant has received judicial attention. There could be three categories of SPPs: (1) those appointed at the instance of the state and paid by the state; (2) those appointed at the instance of the complainant but paid for by the state and (3) those appointed at the instance of the complainant and also paid by her.[72]

Some judgements have tried to include the complainant in the criminal trial process by allowing her greater say in appointment of SPPs. Others have attempted to demonstrate that interests of private parties may interfere with the interest of the state in conducting criminal proceedings.[73] In *Mukul Dalal v Union of India,* a three-judge bench of the Supreme Court has held that requests for appointment of SPPs should be properly examined by the Remembrancer, for cases instituted on private complaints often have a bearing on public causes. The court further held that requests for making payments raised by private parties should also be scrutinised and suggested that the legal affairs rules of the states be accordingly modified.[74]

Rights of private complainants in a trial are however a less important question than determining what circumstances necessitate the appointment of SPPs by the state itself.[75] The Supreme Court has unambiguously held that the SPP cannot be appointed at the mere asking of the complainant and such an appointment should rightfully be made only when public interest demands it.[76] The severity or heinousness of a crime should also not have a bearing on such a decision.[77]

In *Poonamchand Jain v State of MP*, Madhya Pradesh High Court touches upon some important ramifications of the decision to appoint SPPs,

> "It is to be borne in mind that a Special Public Prosecutor is not to be appointed on mere asking on behalf of the complainant. It is to be kept in mind that when there is appointment of a Special Public Prosecutor there is ouster (sic) of the public prosecutor who is appointed in accordance with the provision of the Code."[78]

The court's opinion also emphasised that the duly appointed prosecutor should not be dislodged from his duties for specious reasons and only extraordinary circumstances should necessitate that. While there is no doubt that the state has the authority to appoint SPPs it should do so by "ascribing reasons and objectively assessing the facts and circumstances".

These judicial decisions agree on the state led prosecution design of our criminal process and indicate that applications made by private parties be properly scrutinised. Similarly, instead of approaching courts with a plea for appointing an SPP, aggrieved parties may also seek to privately prosecute the accused. Recently, a division bench of the Supreme Court had the occasion to deal with the issue related to the role of a victim's counsel during prosecution.[79] In this regard, section 301 (2) of the Code envisages a limited role for a pleader instructed by a private person. Such a pleader is

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[72] *Vijay Valia* (n 57) 55 [10]

[73] *PG Narayanankutty v State of Kerala.* 1982 CriLJ 2085

[74] *Mukul Dalal v Union of India* (1988) 3 SCC 144 [8] [9]

[75] For an analysis centering victims' rights in this context see, Anupama Sharma. 'Public Prosecutors, Victims and the Expectation Gap: An Analysis of Indian Jurisdiction' (2017) 13 Socio-Legal Rev. 87

[76] *Madho Singh v State of Rajasthan* 2002 CriLJ 1694

[77] *Abdul Kadir v State of Kerala* 1993 1 CCR 346

[78] *Poonamchand Jain v State of MP* (2001) SCC OnLine MP 27

[79] *Rekha Murarka v State of West Bengal* 2019 SCC Online SC 1495

required to act under the directions of the prosecutor and can only submit written arguments after the evidence is closed. The proviso to section 24 (8) further provides that a court may permit the victim to engage an advocate to assist the prosecution. Interpreting sections 301 (2) and the proviso to section 24 (8), the Supreme Court noted that these provisions do not allow a victim's counsel to make oral arguments or examine witnesses for that would be constituting a parallel prosecution proceeding by itself. To ensure the consistency of the proceedings, the court held that if the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the prosecutor, they may route any questions or points through the PP. In case the prosecutor does not take such suggestions under consideration, the victim's counsel may route the questions or arguments through the judge. The Supreme Court has interpreted the Code in a manner that accords primacy to the prosecutor for conducting trials with a restricted role contemplated for the victim's counsel.

While the courts have reviewed the decisions of the state governments to appoint SPPs; it remains a discretionary executive power. While importing the requirement of preparation of a panel and consultation with the judge to appointments made under 24(8) would rightly be judicial overreach, there is a need to limit the discretionary power given to state governments considering how freely it has been exercised without any regard to the directives of the court. It has been argued that appointments of SPPs are only justified in cases where there is a considerable conflict of interest, such as when the prosecutor has represented the accused before or is known to the judicial officer or the investigating officer.[80]

Increasingly, governments are using it to oust regular prosecutors and ensure that they are influencing the trial through the conduct of the prosecutors. This is more commonly seen in cases which attract more public scrutiny than others. To take the case of Delhi, the distribution of legislative and executive power in the Union Territory makes such appointments even more political. Recently, a plea was filed in the Delhi High Court challenging the appointment of SPPs for conducting cases pertaining to the riots which took place in February, 2020.[81] The petitioners allege that the SPPs so appointed have been recommended by the Delhi police; this violates the principle of separation of powers where the prosecution is required to question the role of the investigating agencies. The elected government in Delhi and the Lt. Governor have been in conflict regarding the appointments of SPPs in many politically sensitive cases such as the riots and more recently the farmers' protests.[82]

While the situation in Delhi is unique, the politicisation of appointments of SPPs is not a new phenomenon, the executive routinely interferes in the criminal administration of justice by choosing prosecutors of their choice and influencing the narrative presented to the court. The scheme of the Code grants wide unfettered discretion to the state governments in appointments of SPPs. When matters which involve public functionaries or public causes reach the courts the manner in which this discretion is exercised is laid bare.

It is important to note that besides the SPP appointed under section 24(8) of the Code, there are SPPs that are appointed under special statutes. For example, section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 establishes Special Courts for trial of offences against the members belonging to Scheduled Castes and Tribes. section 15 of the Act allows for appointment of a Public Prosecutor for the purposes of conducting cases in the special

[80] Mr Divyang Thakur, 'The Vexed Issue of the Appointment of Special Public Prosecutors' (*The Proof of Guilt*, 7 August 2020) <https://theproofofguilt.blogspot.com/2020/08/guest-post-vexed-issue-of-appointment.html> accessed 24 August 2021

[81] Karan Tripathi, 'Plea in Delhi HC Challenges Appointment of 11 Special Public Prosecutors for Riots Case' (*LiveLaw*, 21 October 2020) <https://www.livelaw.in/news-updates/plea-in-delhi-hc-challenges-appointment-of-special-public-prosecutors-for-riots-cases-164802> accessed 24 August 2021

[82] Mallica Joshi, 'To argue red fort vandalism cases: Delhi Cabinet rejects panel of lawyers suggested by police' <https://indianexpress.com/article/cities/delhi/to-argue-red-fort-vandalism-cases-delhi-cabinet-rejects-panel-of-lawyers-suggested-by-police-7408560/> accessed 24 August 2021

courts. Rule 4 of the SC/ST (PoA) Rules 1995 prescribes the procedure of such appointments. Similarly, section 28 of the POCSO Act, allows for designation of courts as special courts to try offences under the Act. Section 32 of the same Act allows for appointment of SPPs to conduct cases only under the provisions of the Act.

It appears that the SPPs appointed under special statutes are comparable to PPs in the sessions court and not to the SPPs appointed under section 24(8) of the Act for those appointments are restricted to a case or a class of cases and cease to exist once the case is ove

E. Extensive state control over appointment and functioning of prosecutors

The power to legislate on the process of appointment and promotion of prosecutors is governed by Item 2 of List III (Concurrent List) in Schedule VII of the Constitution. The state legislatures are also empowered to amend the provisions related to appointment of prosecutors by following the procedure in Article 254(2) of the Constitution.

States such as Bihar, Madhya Pradesh, Rajasthan, Tamil Nadu and West Bengal have made it optional to appoint prosecutors through the regular cadre envisaged under section 24 (6).[83] Karnataka, on the other hand, has removed the requirement of consultation with the High Court for appointment of PP and Addl. PPs.[84] States such as Maharashtra, Uttar Pradesh, the Union Territories of Jammu and Kashmir and Ladakh have not only made it optional to constitute a regular cadre but have also done away with the consultation mandate under section 24 (1) and 24 (2).[85] Additionally, Uttar Pradesh has altogether omitted sub-sections 4, 5 and 6 of section 24 from the Code removing not only the cadre system but also the requirement of preparation of a panel by the District Magistrate in consultation with the Sessions Judge.[86] In the absence of a regular cadre and mandatory consultation with the judiciary, the executive effectively grants itself unchecked and unbridled power to appoint PPs. Though the Constitution permits amendments by states to parliamentary legislation, total control exercised by the executive over PP appointments not only goes against the spirit of a number of judicial decisions but also violates the principle of separation of powers.

State government rules and resolutions also have a bearing on the everyday functioning of prosecutors and their service conditions.

In 2015, the Maharashtra State Public Prosecutors' Association sought the quashing of the Govt. Resolution dated October,12, 2015 which imposed a condition of securing 25% convictions in cases handled by Asst. PPs to be eligible for promotions.[87] The state argued that the conviction rate in the state of Maharashtra is low, so the government felt compelled to take such a decision with the aim of improving the conviction rate. The Bombay High Court held that the state government cannot fix a benchmark for the prosecutors to secure convictions to get promotions and allowed the petition.

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[83] Code of Criminal Procedure (Bihar Amendment) Act 1983; Code of Criminal Procedure (Madhya Pradesh Amendment) Act 1995; Code of Criminal Procedure (Maharashtra Amendment) Act 1995; Code of Criminal Procedure (Rajasthan Amendment) Act 1981; Code of Criminal Procedure (Tamil Nadu Amendment) Act 1980; Code of Criminal Procedure (Uttar Pradesh Amendment) Act 1991; Code of Criminal Procedure (West Bengal Amendment) Act 1990.

[84] Code of Criminal Procedure (Karnataka Amendment) Act 1982, s 2.

[85] Code of Criminal Procedure (Maharashtra Amendment) Act 1981, s 2; Code of Criminal Procedure (Uttar Pradesh Amendment) Act 1991, s 2; The Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order 2020; Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020

[86] Code of Criminal Procedure (Uttar Pradesh Amendment) Act 1991, s 2

[87] *Maharashtra State Public Prosecutors Association v State of Maharashtra* WP 8117/2017(High Court of Judicature at Bombay, Bench at Aurangabad, August 24, 2018); See Nitish Kashyap, 'Breaking: Bombay HC Quashes Government Resolution Making it Mandatory for Assistant Public Prosecutors to Secure 25% Conviction for a promotion' (*LiveLaw*, 23 November 2018) <https://www.livelaw.in/breaking-bombay-hc-quashes-government-resolution-making-it-mandatory-for-assistant-public-prosecutors-to-secure-25-conviction-for-a-promotion-read-judgment/> accessed 24 August 2021

Similarly, the Directorate of Prosecution in Madhya Pradesh has an incentive scheme for prosecutors which allocates units to different categories of cases and awards points for securing convictions.[88] It is clear that the state governments are confusing the aims of the criminal justice system with securing convictions and are attempting to influence the outcomes of cases by incentivising prosecutors to secure convictions

F. Challenges in establishing a prosecutorial cadre

The most litigious site of the conflict has been with regard to section 24(6) of the scheme which asks for appointment of the regular cadre consisting of Asst. PPs to the posts of PP. This subsection was legislated to ensure that Asst. PPs who have been selected through open public examinations are duly represented as PPs and Addl. PPs at the district level. Most state governments have amended the provision to make this requirement optional.

The 1978 amendment to the Code sought to introduce a prosecutorial cadre constituted by state governments. However, it did not define a 'cadre' or provide any clarification on the structure. This led to confusion over the promotion of Asst. PPs as PPs and Addl. PPs in District Courts and the issue finally reached the Supreme Court. The Supreme Court in the *KJ John* judgment held that a 'regular cadre' comprised a service with Asst. PP at the lowest level and PP at the top.[89] When it did not go up to the PP at the top, the State was not bound to appoint Asst. PP as PP or Addl. PP. The court held that the basic intention of the legislature was to appoint PPs and Addl. PPs from advocates having at least 7 years of practice, and state government was within its powers to keep the posts of PP as tenure posts and not to regularise them. The Code was amended in 1978 with the specific objective of "maintaining a regular cadre of prosecuting officers". The dilution of provision through state amendments combined with the interpretation of regular cadre preferred by the Supreme Court resulted in a situation where the object has still not been realised.[90]

The amendments to the Code in 2005 sought to establish the Directorate of Prosecution in each state with a key function to exercise control over the prosecutorial cadre., However, in effect it can be observed the administrative control of the Directorate is not uniform across the states and is often limited to the cadre of Asst. PP, which works at the Magisterial Courts. In many states, the category of PPs and Addl. PPs which are appointed under section 24(3) are not under the administrative control of the Directorate.

These developments have been challenged at the High Courts,[91] however, there are few instances where repugnancy has been alleged by the petitioners. The Maharashtra State Public Prosecutors Association approached the High Court challenging the validity of amendments made by the state government in 2014 as being repugnant to the Code under Article 254(2) of the Constitution.[92] Recently, Kerala Assistant Public Prosecutors Association has challenged the amendments and rules made by state governments which violate the scheme given in sections 24, 25 and 25A of the Code at the Supreme Court.[93]

The tenured class of PPs and Addl. PPs is very entrenched in the criminal justice system of respective states and state governments are

[88] Saurav Datta, 'Madhya Pradesh Scheme Incentivising Public Prosecutors Can Endanger Justice' (*The Wire*, 2 November 2018) <https://thewire.in/law/madhya-pradesh-incentive-public-prosecutors-justice> accessed 25 August 2021

[89] ibid

[90] See Smriti Parsheera, 'Reforms of prosecution in the Indian criminal justice system' (*The Leap Blog*, 7 May 2015) <https://blog.theleapjournal.org/2015/05/reforms-of-prosecution-in-indian.html> accessed 24 August 2021

[91] *Andhra Pradesh Assistant Public Prosecutors Association v Government of Andhra Pradesh* (1990) 1 AP LJ 197

[92] *Maharashtra State Public Prosecutors Association v State of Maharashtra* 2017 (6) MhLJ 499

[93] 'Paper Book' (Rameez Jabbar v Union of India) <https://www.livelaw.in/pdf_upload/pdf_upload-366193.pdf> accessed 24 August 2021

finding it difficult to consolidate the prosecutorial cadre. The tenured prosecutors routinely litigate their claims with regard to extension and continuity at the High Courts, with the courts having to reiterate that they do not have such rights, unless a fault is found in the manner of promotions or appointments and that their appointment is merely a "professional engagement".[94] This judicial understanding has undergone a change as well, where earlier given the public nature of the office and the public functions that are discharged by the office the claims were considered rightful.[95]

The other lesser discussed aspect of the inability of state governments in consolidating a cadre is the question of representation. Given that these appointments are contractual in nature and not civil posts, demands for reservations to Scheduled Castes and Scheduled Tribes are not tenable.[96]

The discussion on the working of the scheme demonstrates that the state governments have been gradually widening their discretion through amendments or through continuing older rules and resolutions of the states that violate the scheme of the Code. This has hampered the development of the prosecution system. Additionally, states have introduced practices such as promotions being conditional on conviction rates which skew the aims of the criminal justice system. State governments view low acquittal rates as a failure of the state prosecution machinery. These developments indicate that strategic engagement with legislators, to inform their understanding of a criminal justice system which emphasises the importance of due process is urgently needed.

[94] *State of UP v Johri Mal* (2004) 4 SCC 714; *State of UP v Ajay Kumar Sharma* (2016) 15 SCC 289

[95] *Kumari Shrilekha Vidyarthi v State of UP* (1991) 1 SCC 212

[96] *Govindrao Namdeorao Shirsat v State of Maharashtra* (2001) 4 LLN 178; *State of Uttar Pradesh* v. *Uttar Pradesh State Law Officers Association* (1994) 2 SCC 204

The criminal trial process and the public prosecutor

This section maps the prosecutorial role, functions and duties from practices followed in courts as well as those specifically captured in the Code. It also focusses on a prosecutor's role as it has evolved through judicial decisions.

A prosecutor performs a wide range of functions and appears in criminal proceedings on behalf of the state. Sections 301 and 302 of the Code permit prosecutors to appear and plead without any written authority of any court or any permission to conduct prosecution.

Role of a prosecutor as prescribed by the Code

Stage	Role/function/duty	Is it a specifically assigned role to the PP under the 1973 Code?
Investigation		
Warrant for arrest and other searches	Obtains orders of warrants whenever necessary from the Magistrate	No
Remand	Obtains police custody of accused on production under section 167	No
Absconding accused	Declaration of accused as proclaimed offender (section 82) and confiscation of his assets (section 83)	No
Final Report	Submission of final report under sections 169 or 170 r/w section 173	No
Cognizance and Committal		
Committal proceedings	Assist the Magisterial court on questions of cognizance (section 190) and committal to sessions court (section 209)	No
Prosecution for Defamation (section 199)	A prosecutor may make a complaint in writing for direct cognizance by Sessions Court when defamation is alleged to have been committed against the President, Vice President, Governor etc.	Yes

Bail		
Release of undertrial prisoners (section 436A)	A prosecutor should be heard before an order for continued detention or release of an undertrial prisoner is passes	Yes
Bail Application under section 437 before a Magistrate	Oppose bail application to the best of her ability depending on facts and circumstances of the case within the purview of law	No
Bail Application under section 439 before Sessions Court and High Court	Oppose the bail application. Mandatory notice of the application has to be given to prosecutor	Yes
Anticipatory Bail Application under section 438	A prosecutor should be given a reasonable opportunity of being finally heard when interim bail is granted. A prosecutor may also make an application for ensuring the presence of the applicant at the time of final hearing.	Yes
Withdrawal (section 321)	Power to PP and Asst. PP to withdraw cases from prosecution in respect of offences	Yes
Transfer (sections 407 and 408)	Notice of transfer applications filed before High Court and Sessions Court should be given to the PP.	Yes
Trial		
Trial of warrant cases, summons cases and Summary Trials	Asst. PPs to conduct trials in Courts of Magistrates unless there is some unavoidable contingency or is unavailable.	Yes
Trial before Sessions Court	Trial to be conducted by PP. Under section 226, PP is required to open the case by describing the charge and stating the proposed evidence.	Yes
Trial of pardoned person (section 308)	The PP is empowered to certify that a person has failed to comply with the conditions of pardon leading to the trial of the person for the offence in respect of which the pardon was tendered.	Yes

Appeal		
Appeal by Government against sentence (section 377)	PP has the power to present an appeal against a sentence on the grounds of inadequacy on directions from the relevant government	Yes
Appeal against acquittal (section 378)	PP has the power to present an appeal against an acquittal on directions from the appropriate authority/government	Yes
Powers of Appellate Court (section 386)	Appellate court is required to hear the PP, if she appears in appeals under sections 377 and 378	Yes

Evaluating prosecutorial discretion in the criminal trial process

The office of prosecution in India is excluded from interfering at the stage of investigation or even assisting the investigating agencies in preparing the chargesheets or final reports as the case may be. This position is not shared in other jurisdictions where the pre-trial discretion given to prosecution is immense. Taking into account the laws in other jurisdictions, the discretion to conclude a case at the stage of the investigation is shared between the police and the prosecutors with the police often sending the case to the prosecutor's office for review. Many criminal justice systems give the police legal or de facto discretion to end cases that have the effect of reducing the workload of the prosecution service for the more discretion the police have, correspondingly lesser is the prosecution's workload.[97]

Comparative studies on prosecutorial discretion have found that in the English and the USA's criminal justice systems, the police discontinue cases acting as gatekeepers and the public prosecution service acts as a "supplementary filter".[98] The other extremes are countries like South Korea where prosecutors monopolise pretrial stages of the criminal process, no other actor independently screens the decisions made by the prosecution.[99]

It is argued in the following portion of the chapter that the Indian criminal justice system gives relatively little discretion to the prosecutor. To arrive at this conclusion we study the,

A. investigation stage where the police is legally authorised to form an opinion regarding the prospect of trial;
B. the charging stage where ideally the prosecutor should independently assist the court regarding the report filed by the police, however, ultimately the court is tasked with the charging decision and;
C. lastly the decision to withdraw from prosecution where the consent of the court is necessary to execute the prerogative of the prosecutor.

A. Investigation stage

In India, the discretion to conclude a case at the completion of investigation is given to the police authorities. The police are empowered to decide whether or not the case should be pursued in a trial.

As per the law, the officer in charge of the police station conducting the investigation is empowered to form an opinion on whether or not a case should go to trial. While the Code does not use the words final report or chargesheet, the police manual reveals that the

[97] DH Choe, 'Discretion at the pre-trial stage: A comparative study' (2014) 1 European Journal on Criminal Policy and Research 20 101 102
[98] ibid 116
[99] 90% of the cases are concluded as results of prosecutorial decision making. See ibid 117

report by the police filed under section 169 of the Code outlining insufficiency of evidence is referred to as 'final report'; the filing of such a report indicates that the police does not think that the accused can be justifiably sent to trial.[100] A report under section 170 of the Code is referred to as the chargesheet and indicates the police's preference for placing the accused on trial.[101] It is important to highlight that the average chargesheeting rate of the police is 67.2 where states like Andhra Pradesh, Gujarat, Himachal Pradesh, Kerala, Madhya Pradesh, Odisha, Tamil Nadu, Telangana and West Bengal have a chargesheeting rate >80.[102]

The decision to proceed with the trial rests with the Magistrate, if she agrees with the final report, she can close the proceedings and if she is unconvinced by the final report, she can direct the police to investigate further.[103] The Magistrate is not obliged to accept the final report. The Code however does not empower a Magistrate to direct the police to submit a chargesheet if they have filed a final report under section 169; she can take other suitable action but cannot impinge upon the police's jurisdiction.[104]

The Supreme Court in a two-judge bench decision has stated clearly that the police are equipped to form an opinion as to whether a final report or a chargesheet should be submitted in a particular case and forming an opinion about whether the evidence collected justifies that the accused go to trial. The court has regarded the formation of this opinion as the final stage in investigation and unambiguously suggested that this function has to be performed solely by the police and no other authority.[105]

Incorporating the opinion of the prosecutor

In *R Sarala v TS Velu*, an order given by a single judge of the Madras High Court, where he ordered the investigating officer to place the chargesheet before the PP and suitably amend the chargesheet after seeking the opinion of the PP was challenged before the Supreme Court. The court determined that the question was not whether an investigating officer, on his own volition, can consult the prosecutor- for the investigating officer is free to do so; the court questioned the High Court's authority to direct an investigating officer to do the same.[106] The court held that the High Court had committed an illegality in directing the withdrawal of the final report and fresh submission of the chargesheet after incorporating the opinion of the PP. It stated collaboration between the investigating officer and the PP for filing of the report was against the scheme of the Code.[107]

In 2014 while deciding a criminal appeal where a two-judge bench of the Supreme Court held the lapses in investigation and prosecution responsible for the acquittal of a rape accused, the court directed that "on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind and require all shortcomings to be rectified, if necessary, by requiring further investigation".[108] It further directed that a Standing Committee of senior officers of police and prosecution department be formed in every

[100] Code of Criminal Procedure 1973, s 169
[101] ibid s 170
[102] National Crime Records Bureau, 'Crime in India 2019' (2020) 1017 <https://ncrb.gov.in/sites/default/files/CII2019-Volume-3.pdf> accessed 24 August 2021
[103] ibid s 156(3)
[104] *Abhinandan Ja v Dinesh Mishra* (1967) 3 SCR 668 [20]; *Kishore Kumar Gyanchandani v GD Mehrotra* AIR 2002 SC 483
[105] ibid
[106] *R. Sarala v TS Velu* AIR 2000 SC 1731 para 8
[107] Ibid para 19, 11, 10 and 12
[108] *State of Gujarat v Kishanbhai* (2014) 2 SCC (Cri) 457 para 21

state to examine the orders of acquittals and furnish reasons for the failure of the prosecution.[109]

As a consequence of this decision, the Chandigarh Directorate of Prosecution have issued office orders mandating *challan* (chargesheet) checking by prosecutors.[110] The police department or the investigating agencies do need the expertise of a prosecutor at the investigation stage to advise them regarding the quality of evidence being collected. It is for this reason that concerns regarding lack of coordination between the police and the prosecution surface in conversations on criminal justice reform.[111]

There are a few states which incorporate this practice. The prosecutors in Delhi have been scrutinising the chargesheets prepared by the local police.[112] In 2018, a prosecutor had written to the Deputy Commissioner of the Delhi Police, that the objections raised by him to the charges were not considered by the Delhi police and it filed the document despite the opinion of the prosecutor which advised against it.[113] The Asst. PP said these actions of the Delhi Police violated the judgment of the Supreme Court in *State of Gujarat v. Kishanbhai*. The Himachal Pradesh manual too incorporates scrutiny of police *challan* and even includes a proforma for conducting such a scrutiny for different categories of offences.[114] It provides a procedure for scrutiny and endorses '*samanvay*' i.e. coordination between the investigating agency and the prosecuting agency.

The courts on a few occasions have also recognised the usefulness of this practice; the Delhi High Court issued an order in 2018 mandating the scrutiny of chargesheets by prosecutors, however it later withdrew its order.[115] Similarly, the Punjab and Haryana High Court directed that the final report must reflect the opinion of the prosecuting agency that the suggested offence has been committed.[116] Recently the Delhi Prosecutors Welfare Association has petitioned the Delhi High Court to transfer the work of scrutinising the chargesheets to the legal division of the police department. The petition states that this practice, which commenced in 1978 by a Standing Order of the Delhi Police and got sanctioned by the Government of National Capital Territory of Delhi in 1997, in fact goes against the scheme of the Code.[117] The petition has been referred to a division bench of the High Court by Justice Pratibha Singh. The petition suggests that scrutinising chargesheets is what they consider to be "additional work" and they have not been compensated for their work.

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[109] Ibid para 22

[110] Dy. Superintendent of Police (Hqrs.), 'Miscellaneous Directions' (No 1389, 26 February 2020) <http://chandigarhpolice.gov.in/pdf/Notification%20Circular/Miscellaneous%20Directions.pdf> accessed 24 August 2021

[111] Madan Lal Sharma, 'Role and Function of Prosecution in Criminal Justice' (1997) Resource Material Series No. 53, 107th International Training Course Participants' Papers, United Nations Asia and Far East Institute 187

[112] Directorate of Prosecution, Govt of NCT of Delhi, 'Manual 1' s 7 <http://web.delhi.gov.in/wps/wcm/connect/d77c03004c6b0f39b40cf658f7255897/Manual_1_Dec2019.PDF?MOD=AJPERES&lmod=-191329353&CACHEID=d77c03004c6b0f39b40cf658f7255897> accessed 24 August 2021

[113] Abhishek Angad, 'Chargesheets being filed without propoer scrutiny, police told' *Indian Express* (December 13, 2018) <https://indianexpress.com/article/cities/delhi/chargesheets-being-filed-without-proper-scrutiny-police-told-5491083/> accessed 24 August 2021

[114] Directorate of Prosecution Himachal Pradesh, 'Prosecution Manual' (Government of Himachal Pradesh, January 2008) <https://himachal.nic.in/WriteReadData/l892s/173_l892s/3-11934501.pdf> accessed 24 August 2021

[115] *Court on its Own Motion* v. *State* [Writ Petition (Criminal) 1352/2015, order dated 05.04.2018]

[116] *Tarsem Singh v State of Punjab* CR MM 303-2013 (Punjab and Haryana High Court, Order dated September, 16, 2019)

[117] Shreya Agarwal, 'Delhi HC DB To Hear Plea Seeking To Transfer Work Of Chargesheet Scrutiny From Prosecutors To Legal Division Of Police' (*Livelaw*, 16 February 2021) <https://www.livelaw.in/news-updates/delhi-high-court-delhi-police-transfer-chargesheet-scrutiny-public-prosecutors-169913?infinitescroll=1> accessed 24 August 2021

Instituting a legal division within the police department to advise them on preparation of chargesheets might seem like a viable solution, however, it would resemble the old system where the prosecutors worked under the supervision of the police. It would be prudent to continue or introduce, as the case may be, prosecutorial oversight at the investigation stage, in the form of scrutiny of chargesheets.

B. Charging

Many criminal justice systems allow prosecutors to make the decision regarding the nature of the charge. This decision is critical in assessing the status of the prosecution service in a criminal justice system.[118] Prosecution service in such jurisdictions performs the function of lowering the caseload of the courts.[119] Regarding decisions to not charge the accused, the evidentiary sufficiency and the public interest tests are applied. The prosecutors are also allowed to not charge the accused and dismiss the case while simultaneously attaching conditions on the accused.[120] In the USA, the prosecutor's discretion to charge has invited significant criticism. The criticism is levelled against the opaque functioning of their office and the lack of public accountability and for compounding the racial disparities in the criminal justice system.[121]

In the Indian context, the court is empowered to frame the charges albeit the prosecutors play a limited role in influencing the opinion of the court. Section 226 of the Code corresponds to section 286 of the 1898 Code.[122] The changes incorporate the abolition of the jury, however, the function of the prosecutor with regard to opening the case remains the same. Section 226 allows the prosecution to introduce the case to the judge and form her first impressions about the merits of the case.[123]

It is important to understand the purpose of the sections 227 and 228 to appreciate the role of the prosecutor at this stage. Under sections 227 and 228, the court is expected to evaluate the material and documents on record, distil the facts, and form an opinion regarding the ingredients which should constitute the alleged offence. While the court is empowered to be the neutral arbiter and not accept the prosecution's version unquestioningly, the prosecutor too is expected to ensure the accuracy of the charge that is framed.

The prosecutor should inquire about the contents of the chargesheets filed by the investigating agency and if the necessary ingredients which constitute the offence are not found in the chargesheet, assist and alert the court regarding the deficiencies of the document. The Madhya Pradesh High Court while deciding a criminal revision petition challenging the accuracy of charges framed by the trial court remarked that,

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[118] Choe (n 86)

[119] Ibid 107

[120] ibid

[121] Davis, Angela J., 'The American prosecutor: Independence, power, and the threat of tyranny.' (2000) 86 Iowa L. Rev. 393.

[122] Code of Criminal Procedure 1973, s 286

"(1) In a case triable by jury, when the jurors have been chosen or, in any other case, when the Judge is ready to hear the case, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.
(2) The prosecutor shall then examine his witnesses."

[123] Code of Criminal Procedure 1973, s 226

"Opening case for prosecution-
When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused."

"The Prosecutor cannot take the stand that his case is whatever has been stated in the charge sheet filed by the police. Instead, the mandate of section 226 is that the Prosecutor would have to lead the Trial Court through the evidence on record on the basis of which the Prosecutor seeks to establish the guilt of the accused and thereby assist the Court in forming its opinion based on evidence on record with regard to framing of charges against the accused."[124]

The court goes on to allow the petition and acknowledges that the court was to apply its mind independently on whether a *prima facie* case was made against the accused. The court held that instead of taking a stand in the case, the prosecutor should help the court in establishing whether the evidence collected warranted framing of charges against the accused.

C. Withdrawal from Prosecution

The power to withdraw prosecution in a criminal case under section 321 of the Code is one of the salient functions of prosecutors. It empowers the PP and Asst. PP in charge of a case to withdraw the prosecution, with the consent of the court, against any person or generally in respect to any one or more charges for which they are tried.

The Code entrusts the prosecutor with this executive power to be exercised in furtherance of the object of law[125] and to promote public justice in the larger sense – social, economic and political.[126] While exercising this power, the prosecutor should act as 'an officer of the court'[127] and independently assess whether a case for withdrawal of the prosecution is made out.[128] It is the prosecutor's responsibility to apply independent mind and decide upon the withdrawal of prosecution. This responsibility cannot be betrayed in the favour of those who are above them on the administrative side.[129] Further, before providing consent to the withdrawal of prosecution, the court shall be satisfied that the prosecutor is exercising her functions independently and that it is not an attempt to interfere with the normal course of justice for any illegitimate purpose.[130]

However, amendments by state governments and rules enacted by them have curtailed this prerogative. The UP government through a state amendment has made it obligatory for the PP or the Asst. PP to withdraw a criminal case only after obtaining the written permission of the state government.[131] It is important to note that various other states have such rules in the Legal Affairs manual or their equivalent which mandate that sanction be obtained from the government or the District Magistrate to move the application to withdraw from prosecution.[132] The Himachal Manual includes the District Magistrate and the state home

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[124] *Ramnaresh v State of Madhya Pradesh* 2016 SCC OnLine MP 838 para 20

[125] *MN Sankarayaraynan Nair v PV Balakrishnan* (1972) 1 SCC 318

[126] *Rajendra Kumar Jain v State* (1980) 3 SCC 435

[127] *Faqir Singh v Emperor* AIR 1938 PC 266; *SK Shukla v State of UP* (2006) 1 SCC 314

[128] *Subhash Chander v State* AIR 1980 SC 423

[129] *Balvant Singh v State of Bihar* AIR 1977 SC 2265

[130] *State of Bihar v Ram Naresh Pandey* AIR 1957 SC 389

[131] Code of Criminal Procedure (Uttar Pradesh Amendment) Act 1991; Ranjana Agnihotri v Union of India 2013 (11) ADJ 22

[132] Office of the District Government Pleader and Public Prosecutor, Yavatmal, 'Information published under Section 4 of the Right of Information Act, 2005' <https://www.maharashtra.gov.in/Site/Upload/RTI/Marathi/Mahitiadhikar_DGPNPP_Office_Yavatmal_17itmes.pdf> accessed 25 August 2021; Madhya Pradesh Law and Legislative Affairs, 'Department Manual' s 24 <http://www.law.mp.gov.in/sites/default/files/documents/law-dept-manual-english-copy.pdf> accessed 24 August 2021

department into the decision of withdrawing from prosecution; it states that while statutory power to withdraw vests with the prosecutor, such a withdrawal suggests a fatal weakening of the case, or change in circumstances which were not present at the time of filing of the challan.[133] It is clear that while statutorily the decision vests with the prosecutor of a case, in practice this power cannot be freely discharged by the prosecutor given the bureaucratic sanctions she has to obtain from state functionaries.

This has resulted in the minimal use of this power to withdraw criminal cases. A provision originally intended to promote administration of justice and weed out weaker cases has been sparsely used in our legal system; between 2013 and 2019, less than 0.25 percent of the cases sent to trial under IPC have been withdrawn by the prosecution. In this period of five years, in 19 out of 36 states and union territories, less than 35 cases under IPC were withdrawn by the prosecution

Executive interference in withdrawal of cases

The ecosystem under which prosecutors operate, as such, would make one question how independently prosecutors can make this decision. The state governments hold the right to suggest the withdrawal of cases where it thinks that such an action will promote administration of justice, though, the right to withdraw rests with the prosecuting officer.[134] However, the administrative control of the governments over prosecuting officers and the general lack of independence makes it difficult for a prosecutor to apply her independent mind and/or protest a direction by the government to withdraw prosecution.[135] Moreover, in several instances, the governments have overstepped the contours of this right and directed the prosecuting officers to withdraw cases in furtherance of their political purposes.[136]

This political abuse compelled the judiciary to further clarify the provisions for the withdrawal of prosecution under section 321 of the Code. Over the years, the Supreme Court arrived at certain principles to guide the exercise of this provision. In *Rajendra Kumar Jain* v *Union of India*, addressing the issue of the withdrawal of prosecution against George Fernandes, in a case regarding the destruction of property during the protests against Emergency, the Supreme Court held that the mere fact that the withdrawal is initiated by the government will not vitiate the application of the PP.[137] The Supreme Court further held that in such a situation the court should satisfy itself that the PP was convinced with the reasons for the withdrawal. In *Sheonandan Paswan v State of Bihar*,[138] a constitutional bench of the Supreme Court decided the question regarding the role of the judge while granting consent for withdrawal of prosecution. The court held that while granting consent the court should not review the grounds of withdrawing the prosecution but must only make sure that the PP has made the application in good faith and not to stifle the process of law.[139]

It is important to note that political parties of all persuasions encroach upon the prosecutors' power to withdraw criminal cases. Recently while deciding on a case involving withdrawal of criminal cases against members of the legislative assembly, the Supreme Court synthesised a set of principles that should be observed with regard to exercise of power

[133] Directorate of Prosecution Himachal Pradesh, 'Prosecution Manual' (Government of Himachal Pradesh, January 2008) <https://himachal.nic.in/WriteReadData/l892s/173_l892s/3-11934501.pdf> accessed 24 August 2021

[134] *Rajendra Kumar Jain v State* (1980) 3 SCC 435

[135] Aditya Ranjan, 'Politics in prosecution: Withdrawing of cases for votes undermines the criminal justice system' (*The Firstpost*, 19 March 2021) <https://www.firstpost.com/india/politics-in-prosecution-withdrawing-of-cases-for-votes-undermines-the-criminal-justice-system-9438241.html> accessed 19 August 2021

[136] See *Bairam Muralidhar v State of Andhra Pradesh* (2014) 10 SCC 380

[137] *Rajendra Kumar Jain v State* (1980) 3 SCC 435

[138] *Sheonandan Paswan v State of Bihar* (1987) 1 SCC 288

[139] ibid.

under section 321.[140] The court held amongst other things, that "while the mere fact that the initiative has come from the Government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the PP was satisfied that withdrawal of prosecution is necessary for good and relevant reasons" and "in deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature".

Withdrawal from prosecution and elections

As mentioned earlier, in general, the provision for withdrawal of cases, given in the Code to eliminate unnecessary trials and trials that may harm public justice, is seldom utilised by prosecutors. The burdensome procedure and sanctions required for the withdrawal disincentivise prosecutors from utilising the benefits of the provision. It appears from reading the numbers on withdrawals that the prosecutors do not get to use their prerogative, rather the political executive often indirectly use this provision to serve their own ends.

In recent years, across many states, the executive has misused this provision to gain political support and allies during elections.[141] At many instances, political parties have even made electoral promises to withdraw prosecution against political supporters to gain support and votes in the election.[142] The inclusion of such promises in election manifestos has become a common occurrence. In recent years, several political parties, including Aam Aadmi Party in 2013 Delhi elections,[143] Jharkhand Mukti Morcha in 2019 Jharkhand elections,[144] Indian National Congress in 2019 Madhya Pradesh elections[145] and 2019 Odisha elections[146] and Dravida Munnetra Kazhagam in 2020 Tamil Nadu elections have included the withdrawal of politically significant cases as one of their key electoral promises. Further, even the party in power has often abused this function to withdraw politically sensitive cases and seek re-election.[147] While such promises attract support for the political party, it weakens the criminal justice system by making it a tool for electoral politics.

The number of yearly disposals of criminal cases under IPC, published by the National Crime Records Bureau, highlights two key trends regarding the withdrawal of prosecution under section 321 of the Code. *Firstly*, the provision for withdrawal of prosecution is seldom used in many states, as 19 out of 36 states and union

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[140] *State of Kerala v K Ajith* Crl Appeal No 697 of 2021 (Supreme Court of India)

[141] Deep Gazmer, 'Bengal to withdraw 70 criminal cases against Bimal Gurung' (*The Times of India*, 21 February 2021) <https://timesofindia.indiatimes.com/city/kolkata/bengal-to-withdraw-70-criminal-cases-against-gurung/articleshow/81131565.cms> accessed 19 August 2021; Shaju Philip, 'Kerala government decides to withdraw Sabarimala, anti-CAA protest cases' (*The Indian Express,* 25 February 2021) <https://indianexpress.com/article/india/kerala-government-decides-to-withdraw-sabarimala-anti-caa-protest-cases-7203600/> accessed 19 August 2021

[142] Press Trust of India, 'Dilip Ghosh says BJP will withdraw false cases against workers of all parties after coming to power' (*Firstpost*, 30 October 2020) <https://www.firstpost.com/politics/dilip-ghosh-says-bjp-will-withdraw-false-cases-against-workers-of-all-parties-after-coming-to-power-8964961.html> accessed 18 August 2021

[143] Aam Aadmi Party, 'Delhi Election Manifesto 2013' (2013) <http://media2.intoday.in/indiatoday/aap_manifesto.pdf> accessed 24 August 2021

[144] Purnima S Tripathi, 'Jharkhand: Discord in the ruling front' *The Frontline* (31 January 2020) <https://frontline.thehindu.com/politics/article30536375.ece#!> accessed 24 August 2021

[145] Suchandana Gupta, 'Madhya Pradesh cabinet approves withdrawal of criminal cases against farmers and Congress workers' *The Times of India* (17 January 2019) <http://timesofindia.indiatimes.com/articleshow/67577074.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 22 September 2021

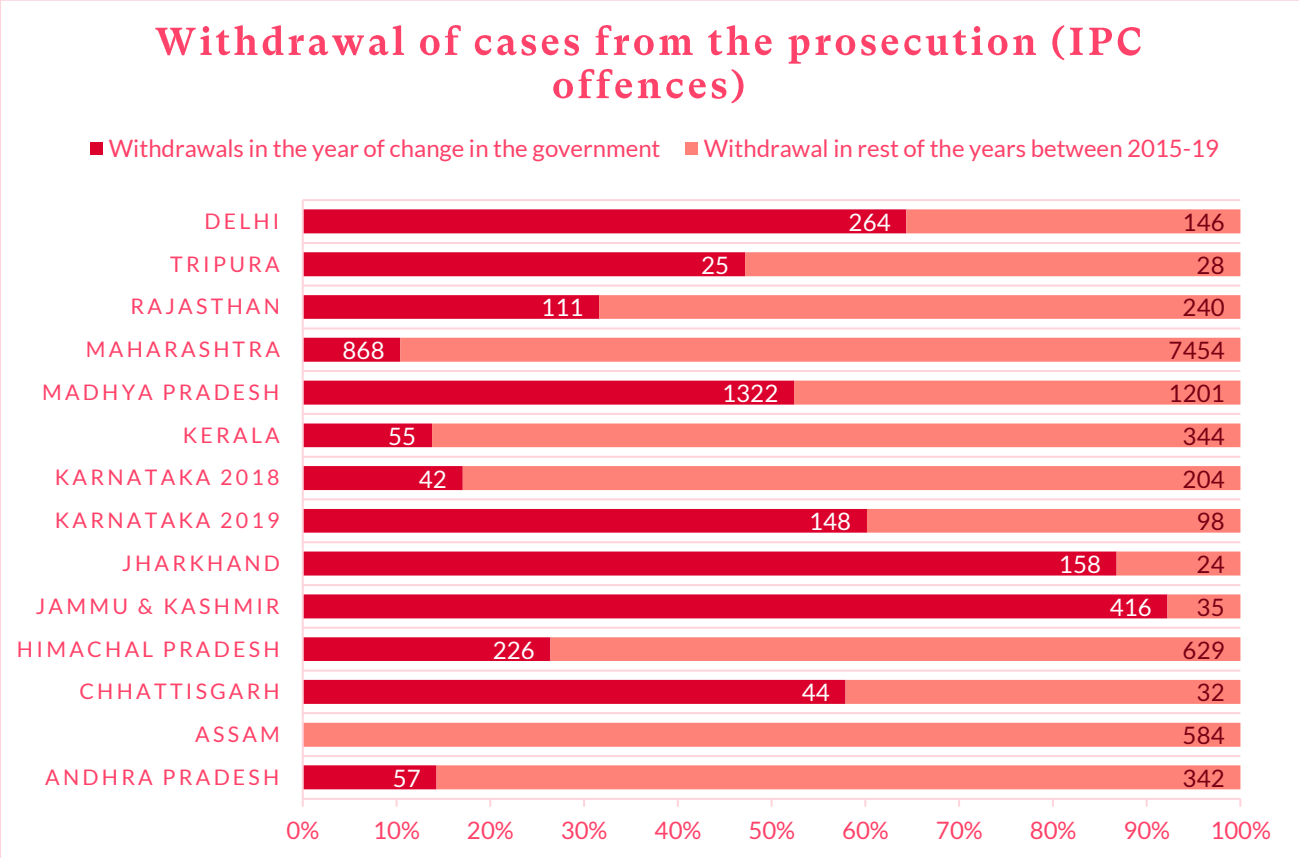
[146] Debabrata Mohapatra, 'Congress woos farmers, women, youth in Odisha manifesto' *The Times of India* (7 April 2019) <http://timesofindia.indiatimes.com/articleshow/68765729.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst>accessed 22 September 2021

[147] Aarefa Johari, ''It's a poll gimmick': Gujarat farmers, Patidars rubbish BJP's offer to withdraw cases against them' (*Scroll.in*, 22 October 2017) <https://scroll.in/article/854837/its-a-poll-gimmick-gujarat-farmers-patidars-rubbish-bjps-offer-to-withdraw-cases-against-them> accessed 22 September 2021.

territories recorded less than 35 withdrawals of cases filed under IPC between 2015 and 2019. *Secondly*, in states where this provision was used to withdraw a significant number of cases, the year-wise distribution of the withdrawal of prosecution points at the increased withdrawal of cases during election years, particularly when elections result in a change in the political party in power.

Between 2015 and 2019, in the states where more than 35 cases under IPC were withdrawn in this period, there were 14 instances of transition of power from one political party or coalition to the other.[148] Among these 14 instances, 10 (71%) corresponded with the higher withdrawal of cases than the average number of cases withdrawn in the years with no change of power. Further, in 7 instances, the number of cases withdrawn in the year of change in government constitute more than 45 per cent of the total number of cases withdrawn in the state between 2015 and 2019.

Figure 2. Withdrawal of IPC cases from prosecution under section 321 of the Code



The analysis also shows that other factors such as panchayat elections have a significant impact on the withdrawal of cases. For instance, in Odisha, all 92 withdrawals between 2015 and 2019 occurred in 2016, when the panchayat elections were scheduled in the state. During that year, the state government faced public anger over the criminal cases filed against ineligible beneficiaries under the National Food Security Act, 2013. To address this

[148] The transition of power considered for this analysis includes: Andhra Pradesh – formation of Yuvajana Sramika Rythu Congress Party (YSRCP) led government in 2019; Assam – formation of Bharatiya Janta Party (BJP) led coalition government in 2016; Chhattisgarh – formation of Indian National Congress (INC) led government in 2018; Himachal Pradesh – formation of BJP led government in 2017; Jammu and Kashmir – imposition of President's rule in the state in 2018; Jharkhand – formation of Jharkhand Mukti Morcha (JMM) led coalition government in 2019; Karnataka – formation of INC and Janda Dal (Secular) led coalition government in 2018 and formation of BJP led coalition government in 2019; Kerala – formation of Left Democratic Front coalition government in 2016; Madhya Pradesh – formation of INC led coalition government in 2018; Maharashtra – formation of INC, Nationalist Congress Party and Shiv Sena led coalition government in 2019; Rajasthan – formation of INC led government in 2018; Tripura – formation of BJP led government in 2018; Delhi – formation of Aam Aadmi Party led government in 2015.

discontentment before the local body elections, the state government directed the prosecution to withdraw the cases against those accused to be ineligible beneficiaries.[149]

The increase in the number of withdrawn cases around the election season is a concerning trend. While the power to withdraw cases is sparsely used by the prosecution, the instances where this function is employed is often related to political motives. These numbers warrant a deeper analysis of the nature of cases withdrawn and the process of their withdrawal to provide a better understanding of the extent of political interference in the executive powers of prosecutors and the role of the judiciary in checking this misuse of the criminal justice system.

The need for prosecutorial accountability

Various judicial decisions and Law Commission Reports have repeatedly stressed the necessity of an independent and autonomous prosecutorial machinery. This has been hindered as a result of excessive interference by the executive in the appointment of prosecutors and with her discretion to withdraw cases. Moreover, the law does not bestow any role upon the prosecutor at the pre-trial stage of a case which she is eventually expected to prove in court. A more involved and informed prosecutor can immensely aid the creaking criminal justice system.

Any measure taken for establishing an autonomous procuracy with wider discretions must also include an appropriate mechanism for accountability. In commonwealth countries such as England & Wales, Australia and Canada where the prosecutor has greater involvement and decision-making powers, the office of the prosecutor is made accountable directly to the Parliament. Additionally, England & Wales as well as Australia have constituted dedicated bodies to annually audit the performance of the procuracy while Canada has a self-imposed code of conduct for all its prosecutors. A more detailed discussion on the prosecutorial functioning in select commonwealth jurisdictions has been set out in **Annexure I** to this report.

Given that the subject lies in the concurrent list and the existence of different categories of prosecutors, a uniform standard to ensure prosecutorial accountability may not be possible in India. However, it ought to be ensured that any additional power granted to the prosecutor must be accompanied by sufficient checks.

The performance of a prosecutor in court is another concern. Recently the Kerala High Court took exception to the inability of prosecutors to prove the most basic aspects of a case such as proving the minority of a child in POCSO cases and instituted a *suo moto* case to take appropriate measures against the appointment of incompetent prosecutors.[150] This has been the issue across states and is not an isolated incident. Multiple judicial decisions have lamented the lack of competent prosecutors. Therefore, there is also an urgent need to start a conversation about setting minimum standards of performance for all types of prosecutors while conducting trials in court.

[149] Sujit Kumar Bisoyi, 'Odisha govt to withdraw criminal cases against ineligible NFSA beneficiaries' *The Times of India* (6 August 2016) <http://timesofindia.indiatimes.com/articleshow/53577925.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst > accessed 22 September 2021

[150] Hannah M. Varghese, 'Abject Incompetence of Prosecution: Kerala High Court Initiates Suo Motu Case To Probe Appointment Of Prosecutors', *LiveLaw,* (23 September 2021) <https://www.livelaw.in/news-updates/kerala-high-suo-motu-cognizance-on-incompetence-of-prosecutors-182322> accessed 31 December 2021

Recommendations

This report is an attempt to further this discourse on prosecutorial reform and highlight the need for independence of prosecution from the state executive. The report calls attention to some of the key areas for reforms in the structure and functioning of the office of public prosecution. A summary of these recommendations is provided below.

1. Establishing objective standards and a comprehensive process for the appointment of PPs

While the Code provides for the consultation with the judiciary in the appointment of prosecutors, mere consultation cannot substitute an objective standard to ensure the selection of competent and fit candidates to handle criminal trials. There should be a comprehensive process to evaluate the candidates based on objective criteria of competence and fitness to ensure that the best advocates are appointed as the prosecutors. *(For detailed analysis, refer to p 19)*

2. Guiding executive discretion to appoint SPPs

Section 24(8) of the Code offers wide discretion to the state governments to appoint SPPs to a case or a class of cases. The Code does the provide any guidance for the executive regarding the process of appointment of SPPs or the circumstances under which such special power should be used. In absence of such guidance, often governments have used this provision in cases that attract public scrutiny to oust regular prosecutors and influence the trial through the conduct of the prosecutors. Such executive interference in criminal trials harms the criminal justice system. To prevent such interference, appropriate laws and rules must be framed to guide the application of this discretionary power by the executive. *(For detailed analysis, refer to p 21)*

3. Expanding the role of the prosecutor at the pre-trial stage

In recent years, the judiciary has emphasised the expansion of the role of the prosecution agency in scrutinising the investigation and the chargesheet filed by the investigative agencies.[151] As a result of this, a few states, including Delhi[152] and Himachal Pradesh[153] have incorporated this practice of prosecutorial oversight in the investigation, in the form of scrutiny of the police chargesheets. Such practice supports police investigation and establishes better coordination between the prosecution and investigative agency. This practice should be encouraged in other states and appropriate laws and rules should be introduced to support the expansion of the prosecutorial function. *(For detailed analysis, refer to p 30)*

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[151] *State of Gujarat v Kishanbhai* (2014) 2 SCC (Cri) 457 para 21

[152] Directorate of Prosecution, Govt of NCT of Delhi, 'Manual 1' 7 <http://web.delhi.gov.in/wps/wcm/connect/d77c03004c6b0f39b40cf658f7255897/Manual_1_Dec2019.PDF?MOD=AJPERES&lmod=-191329353&CACHEID=d77c03004c6b0f39b40cf658f7255897> accessed 24 August 2021

[153] Directorate of Prosecution Himachal Pradesh, 'Prosecution Manual' (Government of Himachal Pradesh, January 2008) <https://himachal.nic.in/WriteReadData/l892s/173_l892s/3-11934501.pdf> accessed 24 August 2021

4. Eliminating executive interference in withdrawal of cases

The power to withdraw cases from prosecution is often misused by the state executive for political and electoral purposes. While the prosecutor enjoys discretionary power under section 321 of the Code to withdraw cases from prosecution with the consent of the court, this power is seldom used by the prosecutor on her own accord. Therefore, it is crucial that the prosecutor is empowered to resist any attempts of executive interference in her functions. Further, courts should perform an active role to prevent the political abuse of this provision. *(For detailed analysis, refer to p 34)*

5. Creating a robust system for prosecutorial accountability

While establishing an independent prosecutorial agency, it is important that sound accountability measures are incorporated into the system. Such prosecutorial accountability may be achieved through a dedicated body entrusted with the function to conduct audits and evaluations of the office of prosecution in the state. Alternatively, prosecutorial accountability may be directed towards the legislature through the presentation of annual reports on the performance of prosecution before the state legislative assembly. *(For detailed analysis, refer to p 38)*

Conclusion

The conversation on prosecutorial reforms in India has emphasised upon its institutional separation from the police. Much has been achieved in this aspect with development of a robust prosecution system in the states with different categories of prosecutors working with the tiered judiciary. Many judicial decisions acknowledge the importance of independence in the functioning of the office, however most of these observations are made with regard to the way the prosecutor discharges her official responsibilities. The report attempts to evaluate the institutional arrangements under which the office functions and examines whether it impinges on the independence enjoyed by the office.

The report attempts to shift the conversation towards the executive interference in the functioning of the prosecution through the extended involvement in appointments as prescribed by the Code. The report finds that the state governments have encroached further by amending the Code to remove the checks on executive power in the matter of appointments and through the set of rules and instructions made by the state governments that are intrinsically tied to the functioning of prosecutors. Some states have also attempted to orient the prosecutors towards securing more convictions through executive instructions. This has resulted in an ecosystem where the independence of prosecutors has been compromised.

While the PPs in many states are fairly organised, they have attempted to negotiate with the state by making claims in the respective High Courts and the Supreme Court. However, these attempts have also thwarted the development of a prosecutorial cadre in states, given the entrenchment of tenured prosecutors in the criminal justice ecosystem.

Another arena where the political influence is fairly visible is the manner in which criminal cases are withdrawn from prosecution. Withdrawal from prosecution allows for weaker cases to fall out of the system, however in practice negligible numbers of cases are withdrawn in India. The power is mostly usurped by state governments to manipulate the criminal justice system and use it as a site for electoral politics.

These practices of the state governments combined with the relatively limited discretion prosecutors in India enjoy in the investigation stage and the early stage of a criminal trial makes them vulnerable to executive interference. While independence from the investigating agencies has been secured, independence from the state executive is equally important for optimal functioning of the office of public prosecution. It is important to shift the narrative on prosecutorial reforms to these structural factors that affect their everyday functioning in courts.

The institutional arrangements that they operate within have a significant influence on the discharge of their responsibilities inside the courtroom. The judiciary has in the past made passing references to the need to ensure prosecutorial autonomy. However, for this to translate into reality, laws and rules involving their appointments and functioning would necessarily have to be amended. It is evident that the strongest push towards prosecutorial reforms needs to come from state legislatures.

Annexures

Annexure I

Prosecutorial functioning in commonwealth jurisdictions

The importance of an independent prosecutor has been recognised across commonwealth jurisdictions. In countries such as England, Australia, Canada and South Africa, the appointment process, structure of the prosecutorial agency, duties and functions, and provisions for accountability have been expressly stated through dedicated legislation. The aim of such legislations is to establish an independent agency with appropriate checks in place to ensure minimal executive interference.

1. England and Wales

In England & Wales, the Crown Prosecution Services ("CPS") is the public prosecution agency established under the Prosecution of Offences Act, 1985.

Structure, appointment and qualifications[154]

The CPS consists of the Director of Public Prosecution as the head, Chief Crown Prosecutors for areas within England & Wales as divided by the Director, and Crown Prosecutors. The Director is appointed by the Attorney General ("AG") and the Crown Prosecutors are appointed by the Director. The minimum qualification is 10 years of practice to be appointed as a Director and a general legal qualification to be appointed as Crown Prosecutors. The Director also has the power to appoint lawyers who are not a part of CPS to conduct prosecution.[155]

The administrative responsibilities rest with the 'CPS Board' which provides strategic leadership and is collectively responsible for its organisational objectives. It manages the CPS as a body corporate with a CEO and Non-executive Board Members that meet at least 8 times a year. It plays a key role in ensuring that the CPS is equipped to provide professional, efficient and high-quality service. As a result, the Director is free to focus on actual prosecutorial and the administrative management is the CPS Board's responsibility.

Broad duties and functions

The legislation contains an exhaustive list of functions and responsibilities for the CPS as a whole as well as for the office bearers.

The CPS's duties and functions include[156]:

- deciding which cases should be prosecuted (this is based on a twin test, which includes determining whether there is '*enough evidence to provide a realistic prospect of conviction*' and if there is, then '*whether a prosecution is in public interest*');

[154] Prosecution of Offences Act 1985, ss 1 and 2 <https://www.legislation.gov.uk/ukpga/1985/23 > accessed 9 July 2021
[155] Prosecution of Offences Act 1985, s 5 <https://www.legislation.gov.uk/ukpga/1985/23 > accessed 9 July 2021
[156] 'About CPS' (*Crown Prosecution Service, England and Wales*) <https://www.cps.gov.uk/about-cps> accessed 13 July 2021

- determining the appropriate charges in more serious or complex cases, and advising the police during the early stages of investigations;
- preparing cases and presenting them at court; and
- providing information, assistance and support to victims and prosecution witnesses.

Relationship with the appointing authority

Though the AG has the power of superintendence over the CPS, there is limited scope of AG's interference in actual prosecutorial work. This relationship is specifically set out in a '*Framework Agreement Between Law Officers and the DPP*'[157] which seeks to ensure that prosecution related decisions remain with the Director without any interference from the AG.

Accountability mechanism

Financial: The Director and the CPS Board determine the CPS's approach on corporate and financial matters. The CPS publishes an annual report of its activities together with its audited accounts after the end of each financial year. The Comptroller & Auditor General audits the CPS's annual accounts.

Prosecutorial actions: Under the CPS Inspectorate Act, 2000, the AG appoints Her Majesty's Chief Inspector of the Crown Prosecution Service ("HMCPSI"). The HMCPSI is empowered to inspect the CPS's operations and submit annual reports to the AG who in turn, submits the report before the Parliament

The HMCPSI's annual report studies the handling of various categories of crime by the CPS, provides annual data on prosecution, examines the casework of the CPS and gives specific recommendations for improvement.[158]

2. Australia

In Australia, there are separate prosecutorial agencies at the federal and state level. The Commonwealth Directorate of Public Prosecutions ("CDPP"), established under the Director of Public Prosecutions Act, 1983, prosecutes offences against federal law and the state agencies prosecute offences against state laws.[159]

Structure, Appointment and eligibility

The CDPP consists of a Director, Associate Director and members of staff (which includes other legal practitioners). The Director and the Associate Director are appointed by the Governor-General and require a minimum experience of 5 years as legal practitioner.[160] They can be appointed for a maximum of 7

[157] Attorney General's Office and CPS, *Framework Agreement Between Law Officers and the DPP,* (18 December 2020)<https://www.cps.gov.uk/sites/default/files/documents/publications/Framework_agreement_between_the_Law_Officers_and_the_Director_of_Public_Prosecutions__CPS.pdf> accessed 13 July 2021

[158] HM Chief Inspector of the Crown Prosecution Service, *Annual Report 2019-20,* (July 2020) <https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2021/04/2020-11-03-Annual-Report-2019-20-accessible.pdf> accessed 13 July 2021

[159] 'How we differ from State DPPs' (*Commonwealth Director of Public Prosecutions, Australia*) <https://www.cdpp.gov.au/prosecution-process/how-we-differ-state-dpps> accessed 13 July 2021

[160] Director of Public Prosecutions Act 1983, ss 18 and 19

years. The Director may also employ legal consultants on contract basis.

The CDPP also consists of a Chief Corporate Officer who looks after the administrative aspect of the CDPP such as people, communication, governance, risk, audit, support services, library, finance, property, ICT, and digital transformation.[161]

Duties and functions

Apart from conducting prosecution, the CDPP assists in assessing evidence, drafting charges and providing legal advice and assistance to investigators.[162] The CDPP is involved at all stages of the prosecution process including bail, summary matters, committals, trials and appeals.[163] Though the CDPP does not have any investigative powers on its own, the decision whether or not to prosecute rests with the prosecutor. Similar to England & Wales, the prosecution policy involves assessing a case on two criteria: presence of sufficient evidence and public interest.[164]

Relationship with AG's office

While the CDPP is part of the AG's portfolio, it operates independently of both the AG and the political process.[165] While the Director is subject to the directions and guidelines given by the AG, these guidelines and directions are required to be tabled before the Parliament and published in the official gazette.[166]

Accountability mechanism

In Australia, the Public Governance, Performance and Accountability Act, 2013 seeks to establish a performance framework across Commonwealth entities, create accountability for the use and management of public resources by them, measure and assess their performance, and prepare annual performance statements for the entity.[167] The CDPP is considered a 'commonwealth entity' under this law which provides for the following accountability mechanism-

Financial: The Director has to prepare and publish a corporate plan and prepare budget estimates.[168] The Director is also required to maintain records[169], measure and assess its performance[170] and prepare annual performance statements[171]. The Director has to maintain financial accounts[172], prepare annual

[161] Commonwealth Directorate of Public Prosecutions, *Annual Report 2019-20,* (25 September 2020) pg. 16 <https://www.cdpp.gov.au/sites/default/files/Annual%20Report%202019-20.pdf> accessed 13 July 2021
[162] 'Prosecution Process' (*Commonwealth Director of Public Prosecutions, Australia*) <https://www.cdpp.gov.au/prosecution-process> accessed 13 July 2021
[163] 'Prosecution Process' (*Commonwealth Director of Public Prosecutions, Australia*) <https://www.cdpp.gov.au/prosecution-process> accessed 13 July 2021
[164] 'Prosecution Policy' (*Commonwealth Director of Public Prosecutions, Australia*) <https://www.cdpp.gov.au/prosecution-process/prosecution-policy> accessed 13 July 2021
[165] Commonwealth Directorate of Public Prosecutions, *Annual Report 2019-20,* (25 September 2020) pg. 6 <https://www.cdpp.gov.au/sites/default/files/Annual%20Report%202019-20.pdf > accessed 13 July 2021
[166] Director of Public Prosecutions Act 1983, s 8
[167] Public Governance, Performance and Accountability Act 2013, ss 5 and 6
[168] Public Governance, Performance and Accountability Act 2013, ss 35 and 36
[169] Public Governance, Performance and Accountability Act 2013, s 37
[170] Public Governance, Performance and Accountability Act 2013, s 38
[171] Public Governance, Performance and Accountability Act 2013, s 39
[172] Public Governance, Performance and Accountability Act 2013, s 41

financial statements[173]. The Auditor General then examines it and prepares an audit report.[174]

Prosecutorial actions: The CDPP is required to publish Annual Reports which are presented before the Parliament.[175] This Annual Report explains the current organisational structure, assesses prosecutors' performance based on set parameters, and publishes crime-wise data on prosecution and results of internal audits.

3. Canada

In Canada, as in Australia, there are separate prosecution agencies at the federal and provincial level. The Public Prosecution Service of Canada ("PPSC"), established under the Director of Public Prosecutions Act, 2006, conducts federal prosecutions.

Structure, appointment and qualifications

The PPSC consists of a Director[176], Deputy Directors[177], employed[178] as well as non-employed[179] federal prosecutors.

The Director is appointed by the Governor General on recommendation of the AG. Before making the recommendation, the AG establishes a selection committee and submits 10 names for consideration. From the given 10 names, the committee recommends 3 names. The AG chooses one candidate who is further recommended to the Governor General after approval by a parliamentary committee. The Director must have 10 years of practice and has a tenure of 7 years with a prohibition on reappointment.

Deputy Directors are appointed by the Governor General on recommendation of the AG. This recommendation is made after consultation with a separate selection committee also consisting of the Director. The practice criterion is the same as that of the Director.

The PPSC also consists of other non-legal staff such as the executive secretariat, internal audit and evaluation, finance & acquisitions and corporate services which looks after the administrative part of the PPSC.[180]

Duties and Responsibilities

The key functions of the PPSC include: [181]

- Initiating and conducting federal prosecutions;
- Advise law enforcement agencies or investigative bodies on general matters relating to prosecutions and on particular investigations that may lead to prosecutions; The PPSC does not have authority to direct investigations but it responds to requests for

[173] Public Governance, Performance and Accountability Act 2013, s 42
[174] Public Governance, Performance and Accountability Act 2013, s 43
[175] Public Governance, Performance and Accountability Act 2013, s 46
[176] Director of Public Prosecutions Act, 2006, s 3
[177] Director of Public Prosecutions Act, 2006, s 6(1)
[178] Director of Public Prosecutions Act, 2006, s 7 (1)
[179] Director of Public Prosecutions Act, 2006, s 7 (2)
[180] Public Prosecution Service of Canada, *Annual Report 2019-20*, (29 June 2020) pg. 7 <https://www.ppsc-sppc.gc.ca/eng/pub/ar-ra/2019_2020/ar20-ra20.pdf> accessed 13 July 2021
[181] 'Our Mandate' (*Public Prosecution Service of Canada*) <https://www.ppsc-sppc.gc.ca/eng/bas/index.html> accessed 13 July 2021

prosecution-related advice from investigators;[182]

- Deciding if a prosecution should proceed by applying the following test
  - Is there a reasonable prospect of conviction?
  - Is it in the public interest?[183]

Relationship with AG

The PPSC is a politically neutral and independent agency. The AG does not interfere in any prosecutorial decision. The consent of AG is required only in select matters and the AG has the power to issue directives provided they are in writing and published in the Canadian gazette.[184]

Accountability

The prosecutors are required to adhere to a PPSC Code of Conduct[185]. The DPP must provide an annual report to the AG which is to be then laid before the Parliament.[186] These reports cover the entire functioning of the PPSC ranging from information on prosecution of particular types of offences, its current organisational structure, financial statements, prosecution data and training facilities provided to prosecutors.

4. South Africa

In South Africa, the Constitution[187] provides for establishing a National Prosecuting Authority ("NPA"). Accordingly, NPA was established by the National Prosecuting Authority Act, 1998.

Structure, appointment and eligibility

There is a single prosecuting authority for the entire country.[188] It consists of: (a) National Director ("ND"); (b) Deputy National Directors; (c) Directors; (d) Deputy Directors; and (e) Prosecutors.[189] Apart from that, there are prosecuting authorities at every High Court headed by either a Director or a Deputy Director.[190] The President appoints the ND.[191] The Deputy ND and Directors are appointed by President after consultation with the relevant minister and the ND.[192] The Minister has the power to appoint Deputy Directors after consultation with the ND.[193] Prosecutors are appointed by the ND.[194]

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[182] 'Areas of Prosecution' (*Public Prosecution Service of Canada*) <https://www.ppsc-sppc.gc.ca/eng/bas/index.html> accessed 13 July 2021

[183] Public Prosecution Service of Canada, *Annual Report 2019-20*, (29 June 2020) pg. 22 <https://www.ppsc-sppc.gc.ca/eng/pub/ar-ra/2019_2020/ar20-ra20.pdf> accessed 13 July 2021

[184] Director of Public Prosecutions Act 2006, s 10 (1)

[185] PPSC Code of Conduct (*Public Prosecution Service of Canada*) <https://www.ppsc-sppc.gc.ca/eng/bas/cc.html> accessed 13 July 2021

[186] Director of Public Prosecutions Act 2006, s 16

[187] Constitution of South Africa, s 179

[188] National Prosecuting Authority Act 1998, s 2

[189] National Prosecuting Authority Act 1998, s 4

[190] National Prosecuting Authority Act 1998, s 6

[191] National Prosecuting Authority Act 1998, s 10

[192] National Prosecuting Authority Act 1998, s 11 and 13

[193] National Prosecuting Authority Act 1998, s 15

[194] National Prosecuting Authority Act 1998, s 16

A South African citizen with legal qualifications and integrity is eligible to be appointed to any of the posts.[195] No experience criterion is prescribed for any of these posts.

The term of office of the ND is a one-time term of 10 years with compulsory retirement at the age of 65. Similarly, the retirement age for Deputy ND is also 65 years.[196]

Duties and Responsibilities

The primary responsibility of the NPA is to institute and conduct criminal proceedings on behalf of the state, carry out any necessary and incidental functions, and to discontinue criminal proceedings.[197] The legislation also describes the powers and duties of each office bearer in detail.

Relationship with the executive

The NPA Act prohibits interference from the executive in prosecution matters. However, the cabinet minister exercises final authority over the NPA. The prosecution policy is determined by the ND only after the concurrence of the Minister.

Accountability[198]

The NPA is accountable to the parliament. The ND is required to submit an annual report to the Minister of Justice who is obligated to table it before the Parliament.

Note:

There has been certain controversy surrounding the appointments of the ND in South Africa. There have been allegations of political interference in the NPA and politicisation of appointments.[199] To this end, a bill was tabled in the South African Parliament which made the appointment of ND by the President subject to approval of the National Assembly and removal of minister's superintendence. However, it was defeated in National Assembly and could not go through. It has been argued that such an amendment would go against the South African constitutional principles that prosecution of crimes is an executive function and does not come within the functions of the judicial branch.[200] This is in contrast with the Indian SC's decisions which declare prosecutors as a part of the judicial limb and not as an extension of the executive.

[195] National Prosecuting Authority Act 1998, s 9

[196] National Prosecuting Authority Act 1998, s 12

[197] National Prosecuting Authority Act 1998, s 20

[198] National Prosecuting Authority Act 1998, s 35

[199] 'Political interference blamed for NPA's woes' (*SABC News*, 26 June 2014) <https://web.archive.org/web/20140709044447/http://www.sabc.co.za/news/a/081043004481c774bf86ff3bfe17c0b1/Political-interference-blamed-for-NPA%E2%80%99s-woes-20142606> accessed 13 July 2021

[200] Mtende Mhango, 'Don't touch independence of NPA' (*IOL*, 13 July 2014) <https://www.iol.co.za/sundayindependent/dont-touch-independence-of-npa-1718836#.U8uVDuOSyyg> accessed 13 July 2021

Annexure II

Number of Cases Withdrawn from the Prosecution – IPC Crimes

(The highlighted cells indicate the year of legislative assembly election in the state/union territory)

State/UT	2019	2018	2017	2016	2015
Andhra Pradesh	57	156	83	45	58
Arunachal Pradesh	0	0	0	0	1
Assam	0	584	0	0	0
Bihar	0	0	0	1	0
Chhattisgarh	11	44	21	0	0
Goa	3	1	1	0	0
Gujarat	238	253	4768	27	62
Haryana	0	0	0	0	0
Himachal Pradesh	262	312	266	7	8
Jammu & Kashmir	18	416	16	1	0
Jharkhand	158	0	0	3	21
Karnataka	148	42	29	25	2
Kerala	85	128	83	55	48
Madhya Pradesh	11	1322	985	10	195
Maharashtra	868	666	3825	562	2401
Manipur	0	0	0	0	0
Meghalaya	0	1	0	0	1
Mizoram	0	0	0	0	0
Nagaland	0	0	0	0	14
Odisha	0	0	0	92	0
Punjab	0	0	0	0	0
Rajasthan	51	111	5	35	149
Sikkim	0	0	1	0	0
Tamil Nadu	400	1474	3442	0	0
Telangana	0	0	391	0	425
Tripura	22	25	0	6	0
Uttar Pradesh	3	0	5	4	21
Uttarakhand	0	0	0	2	2
West Bengal	0	0	0	0	0
A&N Islands	0	0	0	0	0
Chandigarh	0	0	0	0	0
D&N Haveli	0	0	0	0	0
Daman & Diu	0	0	0	0	0
Delhi	44	11	83	8	264
Lakshadweep	0	0	0	0	0
Puducherry	0	0	0	0	0

Annexure III

Number of Cases under IPC sent to trial, disposed of and withdrawn from the prosecution

	2019			2018		
State/UT	Cases Sent for Trial during the year	Cases Disposed of by Courts	Cases With-drawn From Prosecution	Cases Sent for Trial during the year	Cases Disposed of by Courts	Cases With-drawn From Prosecution
Andhra Pradesh	92829	88881	57	113272	111476	156
Arunachal Pradesh	958	142	0	1351	461	0
Assam	56473	24811	0	53081	37589	584
Bihar	125128	24707	0	139374	17698	0
Chhattisgarh	47743	47692	11	47527	49607	44
Goa	1938	1410	3	2300	1396	1
Gujarat	122444	85324	238	131072	76123	253
Haryana	46221	37368	0	48959	42388	0
Himachal Pradesh	12476	6135	262	11312	5870	312
Jammu & Kashmir	17864	16223	18	16982	16988	416
Jharkhand	23293	15992	158	26517	14732	0
Karnataka	90750	81483	148	104567	73219	42
Kerala	164765	170765	85	180575	171681	128
Madhya Pradesh	202369	179284	11	204651	170574	1322
Maharashtra	225691	147492	868	202076	148882	666
Manipur	333	202	0	401	146	0
Meghalaya	2268	3704	0	818	557	1
Mizoram	1447	1176	0	1498	755	0
Nagaland	628	422	0	699	449	0
Odisha	76165	16235	0	66758	21227	0
Punjab	25258	19338	0	24816	21249	0
Rajasthan	107528	84312	51	89050	78463	111
Sikkim	287	90	0	305	219	0
Tamil Nadu	129565	109028	400	151041	142412	1474
Telangana	96847	79463	0	86665	84081	0
Tripura	3152	3041	22	3001	2439	25
Uttar Pradesh	244298	91692	3	222803	94886	0
Uttarakhand	7403	5637	0	7881	2729	0
West Bengal	141950	29652	0	141180	29652	0
TOTAL STATES	**2068071**	**1371701**	**2335**	**2080532**	**1417948**	**5535**
A&N Islands	411	342	0	625	307	0
Chandigarh	1556	1307	0	1762	1270	0

D&N Haveli	196	526	0	228	688	0
Daman & Diu	175	125	0	241	138	0
Delhi	50866	29747	44	52587	25297	11
Lakshadweep	11	0	0	34	0	0
Puducherry	2638	773	0	2701	932	0
TOTAL UTs	**55853**	**32820**	**44**	**58178**	**28632**	**11**
TOTAL ALL INDIA	**2123924**	**1404521**	**2379**	**2138710**	**1446580**	**5546**

	2017			2016		
State/UT	Cases Sent for Trial during the year	Cases Disposed of by Courts	Cases With-drawn From Prosecution	Cases Sent for Trial during the year	Cases Disposed of by Courts	Cases With-drawn From Prosecution
Andhra Pradesh	111278	129702	83	86306	90652	45
Arunachal Pradesh	1365	275	0	1657	1006	0
Assam	42233	16799	0	45586	24707	0
Bihar	141098	63557	0	130005	41879	1
Chhattisgarh	46513	46270	21	46148	46610	0
Goa	2512	1762	1	1582	1375	0
Gujarat	116960	80189	4768	128836	66718	27
Haryana	46069	49587	0	45766	40787	0
Himachal Pradesh	9656	6823	266	10537	7587	7
Jammu & Kashmir	17499	15446	16	16515	14220	1
Jharkhand	21982	13931	0	24560	16847	3
Karnataka	125439	96337	29	105572	88357	25
Kerala	234603	176139	83	247657	190683	55
Madhya Pradesh	227859	185603	985	221817	177072	10
Maharashtra	181681	133561	3825	187788	111573	562
Manipur	770	231	0	899	136	0
Meghalaya	1377	508	0	1834	1437	0
Mizoram	1845	1616	0	2144	1691	0
Nagaland	682	699	0	848	744	0
Odisha	69182	20430	0	67578	37813	92
Punjab	23538	21863	0	21752	23254	0
Rajasthan	89026	86984	5	94245	78002	35
Sikkim	444	240	1	586	326	0
Tamil Nadu	144907	146933	3442	139971	127253	0
Telangana	92677	110040	391	83319	67625	0
Tripura	2718	2753	0	2965	3359	6
Uttar Pradesh	188491	83750	5	173382	76033	4
Uttarakhand	7987	2168	0	5682	3548	2
West Bengal	138642	29200	0	146641	37278	0
TOTAL STATES	**2089033**	**1523396**	**13921**	**2042178**	**1378572**	**875**
A&N Islands	640	560	0	582	527	0
Chandigarh	1853	1579	0	1697	1942	0
D&N Haveli	202	402	0	233	196	0
Daman & Diu	203	215	0	236	139	0
Delhi	52075	27634	83	46680	21491	8
Lakshadweep	4	0	0	31	41	0
Puducherry	3501	2269	0	3359	1082	0
TOTAL UTs	**58478**	**32659**	**83**	**52818**	**25418**	**8**
TOTAL ALL INDIA	**2147511**	**1556055**	**14004**	**2094996**	**1403990**	**883**

	2015		
State/UT	Cases Sent for Trial during the year	Cases Disposed of by Courts	Cases With-drawn From Prosecution
Andhra Pradesh	91857	96899	58
Arunachal Pradesh	1973	433	1
Assam	48612	29790	0
Bihar	109158	45702	0
Chhattisgarh	44477	43654	0
Goa	2619	1577	0
Gujarat	105833	64527	62
Haryana	44175	37997	0
Himachal Pradesh	11275	7951	8
Jammu & Kashmir	18973	18240	0
Jharkhand	27175	25414	21
Karnataka	97631	81181	2
Kerala	244145	194343	48
Madhya Pradesh	223867	206747	195
Maharashtra	174492	126806	2401
Manipur	460	89	0
Meghalaya	1892	1030	1
Mizoram	2056	2015	0
Nagaland	762	783	14
Odisha	69197	39362	0
Punjab	23457	25810	0
Rajasthan	99640	93228	149
Sikkim	397	257	0
Tamil Nadu	159284	119086	0
Telangana	87171	74308	425
Tripura	3289	2716	0
Uttar Pradesh	147631	89085	21
Uttarakhand	5411	6848	2
West Bengal	160214	34634	0
TOTAL STATES	**2007123**	**1470512**	**3408**
A&N Islands	566	396	0
Chandigarh	1997	3138	0
D&N Haveli	174	141	0
Daman & Diu	165	154	0
Delhi	44079	21090	20
Lakshadweep	36	49	0
Puducherry	2576	1037	0
TOTAL UTs	**49593**	**26005**	**20**
TOTAL ALL INDIA	**2056716**	**1496517**	**3428**

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