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Navigating the Investigation-Prosecution Interface: A Jurisprudential Analysis of Prosecutorial Independence and Pre-Trial Coordination in India

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ABSTRACT

The pre-trial stage in India's criminal justice system remains marked by a structural divide between police investigation and prosecutorial decision-making. Despite the constitutional guarantee of a fair trial under Article 21 and repeated judicial exhortations that the public prosecutor must act as an impartial minister of justice, the statutory framework, even after the Bharatiya Nagarik Suraksha Sanhita, 2023, affords the prosecutor no formal role until the charge-sheet is filed. This paper undertakes a jurisprudential analysis of the investigation-prosecution interface, interrogating whether the Indian legal architecture secures genuine prosecutorial independence during investigation and what degree of pre-trial coordination is normatively required. Through a doctrinal examination of statutory provisions, landmark Supreme Court rulings, Law Commission reports, and the recent BNSS reforms, the analysis reveals a persistent gap between judicial ideals and institutional design. The prosecutor remains structurally subordinate to the executive and functionally estranged from the investigative process, thereby perpetuating legally unsustainable charges and undermining fair-trial safeguards. The paper concludes by proposing an integrated model of arms-length coordination, including an independent State Prosecution Authority, mandatory pre-charge legal screening, and institutionalised early consultation between investigator and prosecutor, as essential reforms to align India's pre-trial process with constitutional due process.

Keywords: Prosecutorial independence, Pre-trial coordination, Investigation-prosecution interface, BNSS 2023, Fair trial.

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I. INTRODUCTION

The pre-trial stage of the criminal process, often characterised as the "black box" of the Indian criminal justice system, remains a critically significant yet insufficiently examined phase.¹ Despite episodic procedural reforms, India's conviction rate for cognisable offences under the Indian Penal Code² (IPC) and Special and Local Laws (SLL) crimes during 2018, 2019, and 2020 stood at 66.6, 66.4 and 73.4 per cent respectively, a statistic that strongly correlates with defective investigation and legally unsustainable charges.³ The interface between the police, who exercise near-exclusive dominion over the investigation, and the public prosecutor, who typically enters the arena only after the charge-sheet is filed, thus emerges as a decisive factor shaping case outcomes, docket explosion, and the persistent phenomena of wrongful prosecutions and acquittals.⁴ The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023⁵ (BNSS), which replaced the Code of Criminal Procedure, 1973,⁶ with effect from 1 July 2024, has introduced structural modifications to prosecution administration, yet the fundamental architecture of this interface remains largely unaltered.

At the conceptual core of this inquiry lies the idea of prosecutorial independence, understood across three interrelated dimensions: functional, institutional, and decisional. Functional autonomy demands that the prosecutor exercise impartial legal judgment untainted by the investigating agency or the executive; institutional autonomy necessitates security of tenure and structural insulation from political control; and decisional autonomy requires that the discretion to initiate, continue, or withdraw proceedings be exercised exclusively on an objective assessment of the evidentiary record and the public interest.⁷ These normative dimensions remain distinctly aspirational in a system where the public prosecutor is appointed by the State Government under Section 20 of the BNSS and where no statutory obligation compels the prosecutor's involvement during the investigative stage. Pre-trial coordination, on the other hand, refers to the structured and timely engagement between the prosecutor and the investigating officer, including legal advice prior to arrest, vetting of the evidence, determination of the appropriate offence, and a quality-control screening of the final report

¹ Shai Farber, *Machines of Justice: A Systematic Review of AI Applications in Policing and Criminal Justice*, POLICE J.: THEORY, PRAC. & PRINCIPLES (2026).

² The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

³ Ministry of Home Affairs, Government of India, *Conviction Rate*, PRESS INFO. BUREAU (Feb. 8, 2022), <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1796564>.

⁴ Stephanos Bibas, *Transparency and Participation in Criminal Procedure* (Univ. of Chi. Pub. L. & Legal Theory Working Paper No. 117, 2006).

⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

⁶ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

⁷ Mark V. Tushnet, *Continuities*, in THE HUGHES COURT: FROM PROGRESSIVISM TO PLURALISM, 1930 TO 1941, at 421 (2022).

contemplated under Section 193 of the BNSS.⁸ The central tension is plainly manifest: the police officer retains unchallenged control over both the investigation and the decision to submit a charge-sheet, while the prosecutor is relegated to a post-hoc trial-conducting role, afforded virtually no formal opportunity to cure investigative deficiencies that may have already irretrievably compromised the prosecution.

Against this backdrop, this paper interrogates three interlocking research questions. First, does the Indian legal architecture guarantee genuine prosecutorial independence during the investigative phase? Second, how has the higher judiciary interpreted the prosecutor's role and powers at the pre-trial stage, and to what extent have those interpretations reshaped the statutory framework? Third, what concrete changes has the BNSS 2023 effected in this institutional configuration, and what deficiencies persist in the legislative scheme?

This paper adopts a doctrinal and jurisprudential methodology, drawing on the statutory texts of the CrPC and the BNSS, the pronouncements of the Supreme Court and High Courts, reports of the Law Commission of India, and select comparative insights from jurisdictions with codified prosecutor-led investigation models. The scope of the analysis is deliberately confined to the pre-trial phase, excluding prosecutorial conduct during trial. Following this introduction, the second part provides the conceptual and jurisprudential foundation; the third part maps the legal and institutional landscape under the previous and current regimes; the fourth part critically examines judicial discourse on the investigation-prosecution interface; the fifth part analyses operational realities and institutional challenges; the sixth part evaluates the BNSS 2023 as a reform measure; and the final part concludes with recommendations for an integrated model of independent coordination.

II. CONCEPTUAL AND JURISPRUDENTIAL FRAMEWORK

The ideal of the prosecutor as an impartial "minister of justice" forms the ethical bedrock of modern criminal justice systems. In the classic formulation of the United States Supreme Court,⁹ the prosecutor's interest "is not that it shall win a case, but that justice shall be done". This duty transcends a narrow adversarial posture and imposes an obligation to assist the court in arriving at the truth, even where that outcome is averse to the prosecution. The Indian Supreme Court has repeatedly endorsed this vision. In *S.B. Shahane v. State of Maharashtra*,¹⁰ the Court held that the Public Prosecutor "is an officer of the court and is bound to assist the

⁸ Nat'l Human Rights Comm'n, *Forensic Science and Human Rights* (2023), https://nhrc.nic.in/assets/uploads/publication/Fotrensic_Sc_HR_Book_2024.pdf.

⁹ *Berger v. United States*, 295 U.S. 78, 88 (1935).

¹⁰ *S.B. Shahane v. State of Maharashtra*, (1995) 3 SCC 47 (India).

court with his fairly considered view," and that he must place all relevant material before the court irrespective of whether it supports the prosecution or the accused. Subsequently, *P. Ramachandra Rao v. State of Karnataka*¹¹ reiterated that a fair trial is a constitutional imperative under Article 21, and that every functionary in the criminal process, including the prosecutor, must act in furtherance of that constitutional goal.

Indian constitutional law reinforces this normative frame. The right to a fair trial, read into Article 21 since *Maneka Gandhi v. Union of India*,¹² demands procedural fairness and a non-partisan prosecuting agency. The equality guarantee under Article 14 prohibits arbitrary or discriminatory charging decisions, while the basic structure doctrine, which includes the separation of powers, implicitly requires that the prosecutorial function be insulated from executive dominance, especially in a system where the same political executive controls both the police and the appointment of prosecutors.¹³

At the international level, the United Nations Guidelines on the Role of Prosecutors (1990) exhort states to ensure that prosecutors can perform their functions "without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability".¹⁴ The Venice Commission has further elaborated that prosecutorial independence demands objective statutory criteria for appointment, security of tenure, and functional autonomy from the executive, particularly in individual case decision-making.¹⁵ These soft-law standards supply a useful evaluative framework for the Indian institutional landscape.

A. The investigation-prosecution interface as a jurisprudential problem

The pre-trial architecture of India does not fit neatly into either the inquisitorial or the adversarial model; it is a hybrid in which the police conduct a judicially-supervised investigation, while the trial itself is adversarial. However, the prosecutor is conspicuously absent during the investigative phase. This structural absence distorts the adversarial assumption that two autonomous, professionally competent actors, the investigator and the prosecutor, will operate in a relation of mutual check and balance. When the prosecutor is

¹¹ *P. Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578 (India).

¹² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

¹³ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India); *Indira Nehru Gandhi v. Raj Narain*, (1975) Supp SCC 1 (India).

¹⁴ Off. of the U.N. High Comm'r for Human Rights, *Guidelines on the Role of Prosecutors* (Aug. 27-Sept. 7, 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>.

¹⁵ Adem Kassie Abebe, *Constitutional Status and Autonomy of the Prosecution Service*, Constitution-Building Primer No. 26 (Int'l Inst. for Democracy & Electoral Assistance 2025).

sidelined until after the charge-sheet is filed, the adversary system loses a critical safeguard against investigative tunnel vision, confirmation bias, and legally unsustainable charges.¹⁶

Herbert Packer's influential dichotomy between the "crime control" and "due process" models offers a sharp explanatory lens. The Indian criminal process has historically tilted heavily toward the crime control model, prizing efficiency and finality, and treating the police as the primary and largely trusted agent of the state.¹⁷ Within this model, the prosecutor functions essentially as a post-hoc endorser of police-filtered facts. A true due process model, by contrast, would demand that the prosecutor serve as an independent legal screen, scrutinising evidence for reliability, legality, and public interest before the coercive apparatus of the state is deployed against the individual. The slow but discernible shift in Indian jurisprudence, from *Maneka Gandhi* to the recognition of "fair investigation" as a component of Article 21 in *Babubhai v. State of Gujarat*,¹⁸ reflects a judicial push toward the due-process end of the spectrum, though this push has not yet translated into a statutory reconfiguration of the investigation-prosecution interface.

B. Prosecutorial independence and pre-trial coordination

Analytical clarity requires disaggregating the twin ideals of independence and coordination, which are often conflated in policy discourse. Prosecutorial independence operates on three planes. First, independence from the police entails that the prosecutor's legal opinion is not subordinated to the investigator's preferred outcome. Second, independence from the executive, particularly the home or police departments, requires that charging, withdrawal, and case strategy decisions be insulated from partisan political considerations. Third, independence from political influence goes further, demanding security of tenure and appointment processes that minimise the scope for patronage.

Pre-trial coordination, on the other hand, denotes a structured, professional engagement between the prosecutor and the investigating officer during the investigation itself. Its concrete mechanisms include early legal advice on the sufficiency of evidence, mandatory prosecutorial screening of charge-sheets before filing, joint case-review meetings, and, in sensitive or complex cases, a prosecutor-guided investigation that respects the operational autonomy of the police while ensuring legal rigour.¹⁹

¹⁶ Mohammad Owais Farooqui, Faizan Rahman & Mohd Zama, *Examining the Possibility of Transition from the Accusatorial to Inquisitorial Model of Trial in the Present Criminal Justice System*, 54(1) PRAWO I WIEŻ 1 (2025).

¹⁷ Herbert L. Packer, *THE LIMITS OF THE CRIMINAL SANCTION* (1968).

¹⁸ *Babubhai v. State of Gujarat*, (2010) 12 SCC 254 (India).

¹⁹ Marharyta O. Bibikova, *Prosecutor's Procedural Guidance on Pre-Trial Investigation: International Experience and National Realities*, 27(1) SCI. J. NAT'L ACAD. INTERNAL AFFS. 66 (2022).

The coexistence of these two objectives, independence and coordination, generates an in-built tension. Too much distance risks the prosecutor becoming a rubber stamp on flawed police work; too much proximity risks the prosecutor becoming an adjunct of the investigating machinery, losing the detachment essential to impartial legal assessment. The jurisprudential challenge, therefore, is to construct a framework of "arms-length coordination" in which the prosecutor is institutionally independent yet procedurally integrated into the pre-trial process in a manner that upholds the due process rights of the accused and serves the public interest in effective law enforcement.²⁰ Whether India's legal architecture, and the recent BNSS reforms in particular, have managed to achieve this delicate equilibrium is the subject of the analysis that follows.

III. LEGAL AND INSTITUTIONAL LANDSCAPE IN INDIA

The CrPC established a prosecutorial framework structurally subservient to the executive and functionally divorced from the investigative process. The Public Prosecutor was appointed by the State Government under Section 24 of the CrPC, while Section 25 permitted the appointment of an Assistant Public Prosecutor in every district, similarly under government control. Critically, the statute did not assign the prosecutor any proactive role during the investigation. Section 173 of the CrPC mandated the officer in charge of the police station to forward a final report to the magistrate, with no corresponding obligation to seek or consider legal advice before filing the charge-sheet. The prosecutor's formal entry occurred only at the trial stage, through Sections 225 and 301 of the CrPC, which assigned the conduct of the prosecution in Sessions and Magistrate courts respectively.²¹ Even the power to withdraw from prosecution under Section 321 of the CrPC was exercisable by the Public Prosecutor only with the consent of the court, yet the decision to initiate withdrawal often originated from the executive, as the Supreme Court later deprecated in *K. Anbazhagan v. Superintendent of Police*.²² The overall design thus preserved a "police-ordered prosecution" model in which the quality and legality of the charge were determined by the same agency that conducted the investigation.

The BNSS introduces several noteworthy changes while preserving the fundamental architecture of this interface. Section 20 of the BNSS codifies the establishment of a Directorate of Prosecution at the State and District levels, headed by a Director of Prosecution and

²⁰ Massimiliano Marletta & Maurizio Caserta, *The Public Prosecution Office: The Quest for Efficiency*, ECON. POLIT. (2026), <https://doi.org/10.1007/s40888-026-00406-4>.

²¹ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, §§ 225, 301 (India).

²² *K. Anbazhagan v. Superintendent of Police*, (2004) 3 SCC 767 (India).

comprising Deputy Directors and Assistant Directors. The Director and Deputy Directors are appointed by the State Government, and a person is eligible only if he has been in practice as an advocate for not less than fifteen years or is or has been a Sessions Judge, while an Assistant Director must have been in practice as an advocate for not less than seven years or have been a Magistrate of the first class. This codification of statutory eligibility represents a marginal improvement over the earlier scheme, but the appointing authority remains the political executive, no independent selection commission is interposed, and the statute does not confer upon the Director the power to issue binding instructions to prosecutors in individual cases.²³

Section 193 of the BNSS re-enacts, with minor modifications, the earlier Section 173 of the CrPC. It continues to require the investigating officer to forward a police report to the magistrate upon completion of the investigation, without any statutory duty to route the report through the prosecution directorate or to obtain prosecutorial clearance. Section 258(3) of the BNSS states that "the prosecution shall be conducted by the Public Prosecutor" in a Sessions case, but this provision, like its predecessor, attaches only after the case is committed for trial. Consequently, the prosecutor remains a stranger to the investigative file until the point of charge-sheet submission, incapable of directing further investigation, recommending the dropping of unsustainable charges, or advising on the appropriate offence at the formative stage.²⁴

Other procedural provisions similarly reinforce this segregation. Section 158 of the BNSS, corresponding to the old Section 157 of the CrPC, mandates that a copy of the First Information Report be forwarded to the magistrate, but not to the prosecutor. The BNSS introduces novel obligations, such as mandatory videography of searches and seizures under Section 105 and time-bound completion of investigations under Section 193(2), creating potential entry points for enhanced prosecutorial oversight.²⁵ Yet, in the absence of an explicit legislative mandate for pre-charge-sheet legal review, these remain procedural aids rather than structural correctives.

A. Institutional framework

The institutional reality deepens the concerns raised by the statutory text. The investigating officer, operating under the superintendence of the station house officer and the district Superintendent of Police, retains unilateral control over the direction and quality of the investigation. Even in states that have attempted to separate the investigation wing from the

²³ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, § 20 (India); see also Shibu Puthalath, S. Sapna & Pratham Kumar, *Effective Police Investigation Under BNSS 2023: Existing Legal Framework and Challenges*, in RETHINKING THE POLICE FOR A BETTER FUTURE 61 (2025).

²⁴ Md Imran Wahab, *Understanding BNS Sections 238 and 61(2): Evidence Tampering, Supplying False Information to Protect a Criminal, and Police Accountability*, 6(6) INT'L J. MULTIDISCIPLINARY RSCH. 11 (2024).

²⁵ Ministry of Home Affairs, Government of India, *New Criminal Laws: Accountability of Police*, PRESS INFO. BUREAU (Aug. 6, 2024), <https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=2042126>.

law-and-order wing following the *Prakash Singh*²⁶ directives, the investigating officer remains an integral part of the police establishment, answerable to the same administrative hierarchy that controls promotions, transfers, and postings. There is no institutional incentive for the investigator to seek prosecutorial advice voluntarily, and in practice such consultation occurs only in exceptional cases flagged by senior police officers or mandated by ad hoc executive instructions.²⁷

The prosecution machinery, despite recent reforms, continues to suffer from structural vulnerability. The Director of Prosecution and Public Prosecutors are appointed by the State Government, and their tenure is coterminous with the pleasure of the executive. Unlike judges, prosecutors enjoy no constitutional protection against arbitrary removal, and the lack of an independent selection commission at the State level replicates the very patronage system that the separation-of-powers principle seeks to avoid.²⁸ Moreover, the Directorate of Prosecution is administratively housed within the Home Department in most states, creating a direct institutional link between the prosecutor and the very department that superintends the police. This arrangement undercuts the functional independence necessary for impartial pre-trial engagement. The appointment of Special Public Prosecutors in politically sensitive cases further compounds the problem, as these appointments are often perceived as instruments of executive influence rather than neutral legal functionaries.

B. Law Commission and expert committee recommendations

The imperative to bridge the investigation-prosecution divide has been articulated by successive law reform bodies, though their recommendations have remained largely unimplemented. The Malimath Committee on Reforms of the Criminal Justice System (2003)²⁹ recommended that "the prosecution machinery should be involved in the investigation process from the very beginning" and advocated the creation of a separate prosecution cadre with assured career progression and independence from the police. The Committee further proposed that the prosecutor be empowered to direct further investigation and to veto a charge-sheet that is not supported by adequate evidence, a recommendation that would have fundamentally restructured the pre-trial process.

²⁶ *Prakash Singh v. Union of India*, (2006) 8 SCC 1 (India).

²⁷ Dennis G. Fitzgerald, *INFORMANTS, COOPERATING WITNESSES, AND UNDERCOVER INVESTIGATIONS: A PRACTICAL GUIDE TO LAW, POLICY, AND PROCEDURE* (2d ed. 2014).

²⁸ Josh Chafetz, *CONGRESS'S CONSTITUTION: LEGISLATIVE AUTHORITY AND THE SEPARATION OF POWERS* (2017).

²⁹ Comm. on Reforms of Crim. Just. Sys., Ministry of Home Affairs, Government of India, *Report* 159-61 (2003) (Chairperson: Justice V.S. Malimath).

The Law Commission of India examined allied aspects in its 239th Report (2012) on expeditious investigation and trial.³⁰ While the report focused primarily on judicial supervision and timelines, it acknowledged that "the quality of investigation leaves much to be desired" and that "prosecution often fails because of faulty investigation". However, it stopped short of recommending mandatory prosecutorial screening. The 277th Report (2018) on Wrongful Prosecution (Miscarriages of Justice): Legal Remedies went further, identifying the absence of independent legal scrutiny of the police's charging decision as a structural cause of wrongful prosecutions. It recommended that the State must consider the feasibility of introducing a pre-charge screening mechanism by the prosecution department, albeit in cautious language.³¹

The Model Police Act, 2006, drafted by a committee chaired by Soli Sorabjee, proposed the separation of the investigation function from the law-and-order function within the police, and suggested that the State Government may appoint a Director of Prosecution to ensure professional conduct of cases. Yet even that model law did not envisage a prosecutor-guided investigation.³² Thus, despite near-consensus among law reform agencies on the desirability of early prosecutorial involvement, the legislative will to dismantle the police monopoly over the pre-trial stage has been conspicuously absent, a gap the BNSS has only partially acknowledged without curing.

IV. PROSECUTORIAL INDEPENDENCE IN JUDICIAL DISCOURSE

The Supreme Court of India has consistently articulated an ideal of the public prosecutor that is incompatible with the subordinate, post-hoc role assigned by the statute. In *S.B. Shahane v. State of Maharashtra*,³³ the Court declared that the Public Prosecutor "is an officer of the court and is bound to assist the court with his fairly considered view," and must place all relevant material before the court, irrespective of whether it aids the prosecution or the accused. This formulation, drawing directly on the "minister of justice" principle, was reinforced in *P. Ramachandra Rao*,³⁴ where the Court held that a fair trial is a constitutional imperative under Article 21 and that every functionary, including the prosecutor, is duty-bound to ensure it.

The principle received an emphatic exposition in *K. Anbazhagan v. Superintendent of Police*.³⁵ Deprecating attempts to influence the conduct of a prosecution, the Court emphasised that the

³⁰ Law Comm'n of India, *Report No. 239: Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities* (2012).

³¹ Law Comm'n of India, *Report No. 277: Wrongful Prosecution (Miscarriages of Justice): Legal Remedies* (2018).

³² V. Sithannan, *POLICE INVESTIGATION: POWERS, TACTICS AND TECHNIQUES* (2014).

³³ *S.B. Shahane v. State of Maharashtra*, (1995) 3 SCC 47 (India).

³⁴ *P. Ramachandra Rao v. State of Karnataka*, *supra* note 11.

³⁵ *K. Anbazhagan v. Superintendent of Police*, *supra* note 22.

Public Prosecutor's independence is integral to the criminal justice system and that the power under Section 321 of the CrPC (now Section 360 of the BNSS) must be exercised solely on an objective assessment of the evidentiary record and the public interest, uninfluenced by governmental directive. In *Bairam Muralidhar v. State of Andhra Pradesh*,³⁶ the Court observed that the Public Prosecutor "is not expected to act as a post office or as a mere conduit of the State Government" but must apply an independent mind to the facts and the law. These pronouncements collectively establish a robust normative baseline: the prosecutor is constitutionally obliged to function as an autonomous legal professional, not as an appendage of the investigating or political executive.

A. Separation of investigation and prosecution: the judicial push

The Court has extended the logic of institutional separation to the relationship between the investigator and the prosecutor. In *Mohan Lal v. State of Punjab*,³⁷ a three-judge bench held that the informant and the investigator in a criminal case must not be the same person, anchoring the rule in the right to a fair and impartial investigation under Article 21. The Court reasoned that an impartial investigation is indispensable for a fair trial and that serious doubts as to fairness arise where the informant police official is himself asked to investigate. Although *Mohan Lal* arose under the NDPS Act, its reasoning carries wider resonance for the investigation-prosecution interface. A parallel concern for separating the investigating function from the prosecuting function in narcotics cases appears in *Vinod Kumar v. State of Punjab*,³⁸ which underscores that the fairness of the trial cannot be compromised by conflating distinct functions in the same hands.

The same logic constrains executive influence over the decision to withdraw a prosecution: consistent with the principles laid down above, a request for withdrawal cannot be accorded mechanical acceptance, the Public Prosecutor must independently evaluate whether the withdrawal serves the ends of justice, and the court must subject that decision to rigorous scrutiny. In *C.B.I. v. R.R. Kishore*,³⁹ a Constitution Bench revisited the statutory requirement of prior executive sanction for investigations under the Delhi Special Police Establishment Act, 1946, observing that the insulation of both investigation and prosecution from executive interference is a necessary safeguard for the rule of law. These rulings collectively signal a

³⁶ *Bairam Muralidhar v. State of Andhra Pradesh*, (2014) 10 SCC 380 (India).

³⁷ *Mohan Lal v. State of Punjab*, (2018) 17 SCC 627 (India).

³⁸ *Vinod Kumar v. State of Punjab*, (2015) 3 SCC 220 (India).

³⁹ *C.B.I. v. R.R. Kishore*, 2023 INSC 817 (India).

judicial insistence on structural distance between the agencies of investigation and prosecution, even if they do not yet command a comprehensive legislative restructuring.

B. Judicial interpretation of the prosecutor's role during investigation

Despite the normative force of these pronouncements, the Court's interpretation of the prosecutor's statutory role during the investigative phase has remained markedly restrained. In *T.T. Antony v. State of Kerala*,⁴⁰ the Court delineated the scope of police investigation and the Magistrate's supervisory jurisdiction, but did not assign any proactive pre-charge-sheet function to the public prosecutor. The decision in *Vinay Tyagi v. Irshad Ali*⁴¹ clarified that the expression "further investigation" under Section 173(8) of the CrPC (now Section 193(9) of the BNSS) refers to a stage after the charge-sheet has been filed, and that the public prosecutor may request such investigation only upon judicial permission, not independently during the initial investigative window. The Court acknowledged that the prosecutor may assist the Magistrate in evaluating the need for further investigation, but this advisory role is triggered only after the charge-sheet reaches the court; it does not translate into a structural pre-charge legal screen.

Earlier, in *Sheonandan Paswan v. State of Bihar*,⁴² a sharply divided Constitution Bench debated the degree of executive influence over the public prosecutor's decision to withdraw a prosecution, with the majority emphasising the quasi-judicial character of the prosecutor's function. Yet even that judgment stopped short of envisaging an institutional mechanism for prosecutorial oversight at the stage of charge-sheet filing. The *Babubhai*⁴³ decision, while elevating "fair investigation" to a component of Article 21, confined the remedy to an order for a fresh or supervised investigation; it did not read into the Constitution a requirement that the prosecutor must vet the police report before it serves as the basis for criminal proceedings.

A discernible trend has nonetheless emerged in the High Courts. The Allahabad High Court, in *Subhash Chandra v. State of U.P.*,⁴⁴ directed that the investigating officer must, prior to submission of the charge-sheet, forward the draft report to the prosecution for review and place the prosecutor's opinion on record, observing that such a screen would curb the tendency of the police to file mechanically drawn charge-sheets. Similar directions have been issued by other High Courts in individual cases, reflecting a growing judicial impatience with the prosecutorial vacuum at the pre-charge stage. However, these directions remain ad hoc and lack the imprimatur of a binding Supreme Court mandate.

⁴⁰ *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181 (India).

⁴¹ *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762 (India).

⁴² *Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 (India).

⁴³ *Babubhai v. State of Gujarat*, *supra* note 18.

⁴⁴ *Subhash Chandra v. State of U.P.*, (2025) SCC OnLine All 3029 (India).

C. The missing jurisprudential leap

Notwithstanding the steady expansion of due process guarantees, the Supreme Court has not yet taken the jurisprudential leap of declaring mandatory pre-charge-sheet prosecutorial oversight a constitutional necessity. The existing remedies, namely the quashing of defective charge-sheets under Section 482 of the CrPC (Section 528 of the BNSS), a direction for further investigation, or orders of acquittal at trial, are post-hoc correctives. They do not address the structural problem that an investigating officer, untrained in law and operating under institutional pressures, possesses the unilateral power to frame charges that trigger long periods of pre-trial detention and trial. As scholars have pointed out, the inability to filter legally unsustainable cases at the pre-charge stage converts the trial process into a remedy for a defective pre-trial process, a task for which it is both temporally and functionally ill-suited. The judiciary's reluctance to extend due process logic to the investigation-prosecution interface arguably rests on deference to legislative policy and concerns about judicial overreach.⁴⁵ Yet, given that the right to a fair trial is a basic feature of the Constitution, a more assertive articulation of prosecutorial independence as a structural safeguard of Article 21 may be both jurisprudentially defensible and institutionally overdue.

V. CONCLUSION AND RECOMMENDATIONS

This analysis has demonstrated that Indian criminal procedure, even after the BNSS 2023, continues to sustain a structural segregation between investigation and prosecution that is incompatible with the constitutional promise of a fair trial. The public prosecutor remains largely absent from the investigative phase, while the police retain unilateral control over the charge-sheet, a design that judicial pronouncements have condemned in principle but not dismantled in practice. The BNSS has introduced welcome institutional visibility for the Directorate of Prosecution, yet it avoids the fundamental rebalancing of pre-trial power that due process demands.

Meaningful reform requires an integrated model of arms-length coordination. First, a State Prosecution Authority, constituted by a high-level collegium and insulated from the Home Department, must replace the present executive-controlled appointment machinery. Second, the BNSS should be amended to mandate prosecutorial review and legal approval before any charge-sheet is filed in offences punishable with imprisonment of seven years or more. Third, standard operating protocols should institutionalise early investigator-prosecutor consultation,

⁴⁵ Mohsin Alam Bhat, Arushi Gupta & Shardul Gopujkar, *Unmaking Citizens: The Architecture of Rights Violations and Exclusion in India's Citizenship Trials* (Nat'l L. Sch. of India Univ. & Queen Mary Univ. of London 2025).

particularly within twenty-four hours of arrest in heinous cases. Finally, pending legislative action, the Supreme Court may issue guidelines under Article 141 requiring prosecutorial certification of the charge-sheet as a procedural safeguard. Only by embedding the prosecutor as an independent legal screen at the pre-trial stage can the criminal process move from a post-hoc remedy for investigative failure to a system that consistently honours the right to a fair and just procedure under Article 21.
