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Criminal Trials in India: Lawyer's Perspective

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ABSTRACT

The investigation, prosecution, and adjudication of criminal proceedings in India are governed by the Code of Criminal Procedure (CrPC). A criminal case's pre-trial phase is an essential time when many significant choices are taken that could influence how the trial turns out. Investigation is one of the main and essential parts of Criminal Justice system. An efficient and timey investigation is inevitable. In India due to the inefficient opaque and delayed investigation the innocent person has to suffer and the culprit gets the benefit of it, either in form of bail or acquittal. Scientific methods of collecting evidence are not used by police in India. When investigating officer fails to find sufficient true evidences they try to include false evidences. The Indian judiciary plays a significant role in protecting the rights of the people and it has tried to give certain rights like right to speedy trial, right to fair trial etc. a constitutional status by including all these rights within the purview of Article 21 of Indian Constitution. The judiciary in India has played a dynamic role in the dispensation of justice by providing fair and just trial to all its citizens. This paper describes all facets of criminal trials in India and also delves into the role of public prosecutor in investigation and prosecution and stresses the need for a comprehensive new law for speedy adjudication of criminal cases in India.

Keywords: *Criminal Trial, Speedy Trial, Article 21, investigation, prosecution, Fair Trial*

1. Criminal law is set into motion immediately after an FIR is lodged in respect of a cognizable offence. Police under law is duty bound to register FIR whenever a complaint is lodged alleging commission of cognizable offence, but the police because of political influence or other extraneous considerations sometimes does not register the complaint as FIR. The Hon'ble Supreme Court in Lalitha Kumari Vs. Government of U.P. and others reported in 2014 (2) SCC page 1 gave guidelines for registering FIR whenever commission of cognizable offence is reported to the police.

2. Despite the above guidelines, police powers are misused in registering the FIR in respect of matrimonial offences, civil disputes and commercial disputes. It is common knowledge that

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public go to the police station with complaints even in respect of civil disputes. It is only the civil courts that are competent to decide the civil disputes. Even though, the public perception is that settlement of civil disputes through courts takes long years, there is alternative mechanism for settlement of the disputes through Lok Adalats. whenever a person goes to the police station with a complaint of civil disputes, the police has to advise the party to go to civil court or seek settlement through Lok Adalats held by civil courts. Police should not entertain any civil dispute and convert the same into criminality to satisfy unscrupulous litigants. In respect of matrimonial matters, the police through counselling should always try to unite the two parties, but in deserving cases certainly they should register FIR under the relevant provisions of penal law.

3. The Hon'ble Supreme Court having taken serious note of the misuse of powers of arrest in respect of offences for which the punishment prescribed is less than 7 years, issued guidelines to the police as well as Magistrates in Arnesh Kumar Vs. State of Bihar 2014 (8) SCC Page 273. The grievance of the civil society is that despite the law laid down by the Apex Court in Arnesh Kumar, innocent persons are roped in crimes under Section 498-A IPC and remand reports are prepared in tune with the guidelines of the Apex Court and the consequence is that those who actually did not commit the alleged crime are put to harassment. There are also complaints that the police under the guise of issuance of notice under Section 41-A crpc as per the guidelines of the Apex Court, release the accused on bail in the station itself after having obtained execution of personal bond from the accused with the undertaking that he/she should appear before the court as and when summons is issued after the filing of the charge sheet. Criminal lawyers expect that police should not give bail in the station itself and that the accused arrested in respect of the offences punishable with less than 7 years should be produced only before the court along with remand report. Such a course of action from lawyer's perspective may appear to be proper, but in the interest of justice, depending upon the facts and circumstances of each case and by strictly following the guidelines in Arnesh Kumar case, police should have discretionary power as to whom they should arrest and produce before the court along with remand report.

4. Law is well settled that investigation into an offence should be fair to the accused. Law does not at all say that simply because an FIR is lodged, it means that the police after investigation should invariably filed charge sheet against the accused. Fairness in investigation lies in that the investigating officer after completion of the investigation by collecting necessary evidence comes to the conclusion that the FIR against the accused named therein is not true or that he/she is falsely implicated, he/she should fairly file final report stating that the complaint

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is false. Specially, such kind of fairness should be exhibited in serious crimes. For example, if an FIR is lodged alleging commission of rape, after investigation it is found basing on the evidence collected, that the accused is falsely implicated the investigating officer should boldly report to his higher officers that there is no truth in the complaint and accordingly seek their consent for filing final report about the falsity of the complaint. But the police officers in respect of grave crimes are under the misconceived notion that some material has to be collected to prove the allegations in the FIR and filed the charge sheet into Court and that it is for the court after trial to decide whether the accused is guilty the offence or not. It is very well known that trial of a criminal case takes considerable time and if charge sheet is filed against an innocent person, it results in lot of harassment and mental agony for the accused and more so when the case after trial ends in acquittal. There are instances that innocent persons because of their false implication, face criminal trial as under trial prisoner and by the time the trial is concluded the period of imprisonment would be for several years and in case there is acquittal, the state does not pay any compensation for the imprisonment afforded by the accused.

5. Grant of bail is an important issue from lawyer's perspective. Though, there is catena of decision of Apex Court regarding grant of anticipatory bail and regular bail, whether there is fairness in grant or refusal of bail in all cases of grave crimes is a debatable issue. The criticism often is that persons actually committed crimes are granted bail, but innocent persons falsely implicated are refused bail. Even though the investigation is complete, police for reasons best known to them, seriously oppose the grant of bail in some cases and don't do the same in other cases. For the courts, there is no straight jacket formula for grant or refusal of bail and depending upon the facts and circumstances of each case courts have to exercise the discretionary power of grant of bail. Here also the police is expected to be fair in informing the court through Public Prosecutor about the grant or refusal of bail.

In the recent case of Sonadhar v. State of Chhattisgarh, an Apex Court division bench opined that Convicts who have Completed 10 Years Of Sentence, Whose Appeals Wont Be Heard Soon, Should Be Released On Bail Unless There Are Other Reasons

6. In the trial of a case, it is the police that have to serve summons on witnesses and produce them before the court. It is only the police that brief the witnesses about what they should depose before the court. It is often pointed out that some crucial witnesses are not produced before the court in respect of certain serious offences and through Public Prosecutor they are given up. In such cases, an account of the non-examination of the material witnesses, the case ends in acquittal. Conversely, in some cases knowing fully well that the accused is falsely implicated, the police if they want conviction, examine all the witnesses after thoroughly briefing them and

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an account of such evidence an innocent person is convicted. Though there is separate department of prosecution having control over the working of Public Prosecutors in trial courts it is doubtful whether the department is effectively supervising the Public Prosecutors.

The metamorphosis of the *"Police Prosecutor"* to the *"Public Prosecutor".*

In the 154th Report *(1995—1997)* of the Fourteenth Law Commission of which Mr. Justice K. Jeevan Reddy was the Chairman, it was observed that the ***"Police Prosecutors"*** who were conducting prosecutions in the Magistrates Courts in the country under the Code of Criminal Procedure, 1898, for all intents and purposes, were members of the Police Force and that having regard to the nature of the duties they had to discharge, it was not possible for them to exhibit the requisite degree of detachment that was necessary for a Public Prosecutor. The Law Commission further stated that a belief prevails among the Police Officers that their promotion in the Department depended upon the number of convictions they were able to obtain as prosecuting officers. The Law Commission strongly felt the need to conform to the salutary rule that the prosecution of criminal cases should be entrusted with Public Prosecutors who should act fairly and impartially. Accordingly, the Law Commission suggested certain remedial measures for the improvement of the system. It was *inter alia* recommended as follows:-

1. *The Departments of the machinery of Criminal Justice, namely the Investigation Department and the Prosecution Department should be completely separated from each other.*
2. *The prosecuting agency should be completely detached from the Police Department.*
3. *In every District a separate Prosecution Department may be constituted and placed in charge of an official called the "Director of Public Prosecutions". The entire prosecution machinery in the District was to be under his control.*
4. *In order to ensure that the Director of Public Prosecutions is not regarded as part of the Police Department, he should be given the status of an independent official who is directly responsible to the State Government.*

The Parliament effectuated the above remedial measures relating to the separation of the Prosecuting Agency from the Investigating Agency while enacting the present Code of Criminal Procedure, 1973. (Vide paras 6 to 9 of **S. B. Shahane v. State of Maharashtra 1995 Supp. (3) SCC 37 = AIR 1995 SC 1628** - *Kuldip Singh, **N. Venkatachala** - JJ.*) Consistent with the recommendations of the Law Commission the Parliament made provisions in the present Cr.P.C. for the separation of the **Judiciary** from the **Executive** with regard to other areas as well.

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With a view to insulate the Police machinery from the interference and influence of the **political executive**, the Apex Court in **Prakash Singh v. Union of India (2006) 8 SCC 1 –** 3 Judges - ***Y. K. Sabharwal*** *– CJI, C. Thakker, P. K. Balasubramanyan - JJ* and **Prakash Singh and Others v. Union of India (2009) 17 SCC 329 –** 3 Judges - *Y. K. Sabharwal – CJI, C. K. Thakker, R. V. Raveendran - JJ,* had issued certain directions to the Central and State Governments. It is doubtful whether all those directions have been implemented in letter and spirit by the Central and State Governments. The question as to whether this important functionary called the *"Public Prosecutor",* over the years, stand completely insulated from Police influence or whether he has been let loose with unbridled freedom of ruling to roost the prosecuting jurisdiction vested in him, are all matters for deliberation both at the level of the Bench and the Bar alike, the Police constabulary and its higher echelons, the academicians and the members of the public.

The statutory framework

The relevant statutory provisions governing the "*Public Prosecutor*" for the district, are contained in sub-sections (3) to (7) of Section 24 Cr.P.C.

The multi-faceted role of the Public Prosecutor

A perusal of the provisions of the Cr.P.C. and the judicial verdicts will show that the Public Prosecutor has a very important role to play in the Criminal Justice System.

a) In a trial before a Court of Session Section 225 Cr.P.C. mandates that the prosecution of the case shall be conducted by the Public Prosecutor. (See also paras 10 and 11 of **Shiv Kumar v. Hukam Chand (1999) 7 SCC 467 –** S. P. Kurdukar, **K. T. Thomas –** JJ.)

b) Sections 301 and 302 Cr.P.C. recognize the fact that the Public Prosecutor has the exclusive and unquestionable right to conduct the prosecution before the criminal court concerned. (Vide **Babu v. State of Kerala 1984 Cri.L.J. 499 = 1984 KLT 164 – K. K. Narendran**, Fathima Beevi - JJ; **Shiv Kumar v. Hukam Chand (1999) 7 SCC 467 –** S. P. Kurdukar, **K. T. Thomas –** JJ; **Achuthan P. v. Sayishkumar N. 2017 KHC 2717 = ILR 2017 (1) Ker. 751 – K. T. Sankararn,** Anil K. Narendran.

Even when a private person instructs an Advocate to prosecute a person in any Court, the Public Prosecutor or the Assistant Public Prosecutor has to conduct the prosecution and not the Advocate instructed by the private person. (Vide Section 301 (2) Cr.P.C.) (Vide **M. K. Balan v. State 1990 (2) KLJ 453 = 1990 KHC 314** (Kerala) **–** M. M. Pareed Pillai – J.)

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c) There is a duty cast upon the Public Prosecutor to ensure that the rights of an accused person are not infringed and that he gets a fair chance to put forward his defence so as to ensure that a guilty person does not go scot free while an innocent is not punished. (Vide para 82 of **Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (Jassica Lal Murder Case) AIR 2010 SC 2352 = (2010) 6 SCC 1 – P. Sathasivam,** Swatanter Kumar – JJ.)

d) Public Prosecutor is a "minister of justice" who is bound to assist the Judge in the administration of justice. (Vide para 4 of **Babu's case (**Supra **- 1984 Cri.L.J. 499);** noted with approval in paragraph 27 of **Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 117 = 2012 Cri.L.J. 1153 –** G. S. Singhvi, A. K. Ganguly - JJ.)

e) He is not a mouthpiece of the investigating agency. (Vide **Deepak Aggarwal v. Keshav Kaushik (2013) 5 SCC 277** – 3 Judges - **R. M. Lodha,** Anil R. Dave, Ranjan Gogoi – JJ.)

f) He is an officer of the Court Deepak Aggarwal. (Supra – (2013) 5 SCC 277).

g) He should scrupulously avoid suppression of material capable of establishing the innocence of the accused. Deepak Aggarwal (Supra – (2013) 5 SCC 277).

h) He has to discharge his functions to serve and protect public interest. Deepak Aggarwal (Supra – (2013) 5 SCC 277).

i) He has a pivotal role under Section 321 Cr.P.C. in the withdrawal from prosecution of an accused person in respect of one or more offences. (Vide Paras 6 and 7 of **P. Seethi Haji v. State of Kerala 1986 KLT 1274 –** K. T. Thomas – J; Paras 20 to 23 of **Sheonandan Paswan v. State of Bihar AIR 1987 SC 877 –** 5 Judges – **P. N. Bhagwati** – CJI, E. S. Venkataramiah, V. Khalid, G. L. Oza, S. Natarajan - JJ; **Kumari Shrilekha Vidyarthi v. State of U. P. AIR 1991 SC 537 = 1991 (1) SCC 212 – J. S. Verma**, R. M. Sahai – JJ; Para 9 of **Jayendra Saraswati Swamigal @ Subramaniam v. State of Tamil Nadu AIR 2008 SC 2997 = (2008) 10 SCC 180 –** 3 Judges - **K. G. Balakrishnan – CJI,** R. V. Raveendran, Dr. Mukundakam Sharma - JJ.)

j) He is not a representative of any of the parties to the controversy but is only of the Sovereign whose obligation is to govern impartially. (Vide paras 21 and 24 to 27 **Centre for Public Interest Litigation (**Supra **- (2012) 3 SCC 117);** Per Justice Venkataramiah in **Sheonandan Paswan v. State of Bihar AIR 1987 SC 877 –** 5 Judges – **P. N. Bhagwati** – CJI, E. S. Venkataramiah, V. Khalid, G. L. Oza, S. Natarajan - JJ.)

k) It is the Public Prosecutor who has to present an appeal under Section 378 Cr.P.C. against acquittal. (Vide Para 9 of **Jayendra Saraswati Swamigal @ Subramaniam v. State of Tamil**

Nadu AIR 2008 SC 2997 = (2008) 10 SCC 180 – 3 Judges - **K. G. Balakrishnan – CJI,** R. V. Raveendran, Dr. Mukundakam Sharma – JJ; **Lalu Prasad Yadav v. State of Bihar (2010) 5 SCC 1 –** 3 Judges – K. G. Balakrishnan – CJI, **R. M. Lodha,** Dr. B. S. Chauhan – JJ.)

l) The Public Prosecutor who does not act fairly but acts more like a defence counsel, is a liability to the fair judicial system. (Vide paras 71, 56 and 43 of **Zahira Habibulla H. Sheikh v. State of Gujarat (Best bakery case) AIR 2004 (4) SCC 158 = 2004 Cri.L.J. 2050 –** Doraiswami Raju, **Arijit Pasayat –** JJ.)

m) When the offence of "defamation" as defined under Section 499 IPC and punishable under Section 500 IPC is committed against a "public servant" or any of the dignitaries referred to in Section 199 (2) Cr.P.C., the Public Prosecutor is given the authority to file a "complaint" before the Court of Session concerned and that Court can take cognizance of the offence even without a committal of the case under Section 193 Cr.P.C. in view of Section 199 (2) Cr.P.C.

n) At no stage of the investigation of a case should the investigating officer take the opinion of the Public Prosecutor whose role is inside the Court and not outside. (Vide **R. Sarala v. Velu AIR 2000 SC 1731 = (2000) 4 SCC 459 – K. T. Thomas,** D. P. Mohapatra – JJ.)

NOTE: In **State of Gujarat v. Kishanbhai (2014) 5 SCC 108 = 2014 KHC 4014,** the Apex Court has issued directions for locating lapses on the part of Public Prosecutors resulting in unmerited acquittals and has also stressed the need for training to PPs.

ROLE OF A PUBLIC PROSECUTOR IN INVESTIGATIONS

Investigations in India are conducted as per provisions of Chapter XII of the Code.Cases are registered under section 154 of crpc. A police officer is competent to investigate only cognizable offences. Noncognizable offences cannot be investigated by the police without obtaining prior orders from the courts. A police officer can examine witnesses under section 161 crpc. However, the statements are not to be signed by the witnesses. Confessions of accused persons and statements of witnesses are recorded under section 164 crpc. A police officer has the power to conduct searches in emergent situations without a warrant from the court under section 165 crpc. A police officer is competent to arrest an accused suspected to be involved in a cognizable offence without an order from the court in circumstances specified in section 41 of crpc. He is required to maintain a day to day account of the investigation conducted by him under section 172 crpc. After completion of investigation, a police officer is required to submit a final report to the court under section 173 crpc. If a prima facie case is made out, this final report is filed in the shape of a charge-sheet. The accused has, thereafter, to face trial. If no cogent evidence comes on record, a closure report is filed in the Court.

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The public prosecutor plays the following

role at the investigation stage:

(1) He appears in the court and obtains arrest warrant against the accused;

(2) He obtains search warrants from the court for searching specific premises for collecting evidence;

(3) He obtains police custody remand for custodial interrogation of the accused (section 167 crpc);

(4) If an accused is not traceable, he initiates proceedings in the court for getting him declared a proclaimed offender (section 82crpc) and, thereafter, for the consfiscation of his movable and immovable assets (section 83crpc); and

(5) He records his advice in the police file regarding the viability/advisability of prosecution.

After the completion of investigation, if the investigating agency comes to the conclusion that there is a prima facie case against the accused, the charge-sheet is filed in the court through the public prosecutor. It is to be noted that the opinion of the public prosecutor is taken by the police before deciding whether a prima facie case is made out or not. The suggestions of the public prosecutor are also solicited to improve the quality of investigation and his suggestions are generally acted upon. However, the ultimate decision of whether to send up a case for trial or not lies with the police authorites. In case there is a difference of opinion between the investigating officer and the public prosecutor as to the viability of the prosecution, the decision of the District Superintendent of Police is final.

The Supreme Court of India has defined the role and functions of a public prosecutor

in *Shiv Nandan Paswan vs. State of Bihar & Others* (AIR 1983 SC 1994) as under:

a) The Prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor.

b) Withdrawal from prosecution is an executive function of the PublicProsecutor.

c) Discretion to withdraw from prosecution is that of the Public Prosecutor and that of none else and he cannot surrender this discretion to anyone.

d) The Government may suggest to the Public Prosecutor to withdraw a case, but it cannot compel him and ultimately the discretion and judgement of the Public Prosecutor would prevail.

e) The Public Prosecutor may withdraw from prosecution not only on the ground of paucity of evidence but also on other relevant grounds in order to further the broad ends of public justice,

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public order and peace.

f) The Public Prosecutor is an officer of the Court and is responsible to it.

THE ROLE OF A PUBLIC PROSECUTOR DURING TRIALS

As stated above, the public prosecutor is vested with the primary responsibility to prosecute cases in the court. After the charge-sheet is filed in the court, the original case papers are handed over to him. The cognizance of the case is taken by the courts under section 190 of the Code. The trial in India involves various stages. The first and foremost is the taking of cognizance of a case by the court. The second step is to frame charges against the accused, if there is a prima facie case against him. The third step is to record the prosecution evidence. The fourth step is to record the statement of the accused (section 313 of crpc). The fifth step is to record the defence evidence. The sixth step is to hear the final arguments from both sides, and the last step is the prouncement of judgement by the Court. The public prosecutor is the anchor man in all these stages. He has no authority to decide whether the case should be sent up for trial. His role is only advisory. However, once the case has been sent up for trial, it is for him to prosecute it *successfully*.

Withdrawal from Prosecution

The public prosecutor has the authority to withdraw a case from trial under section 321 of the Code. Under the case law, he and he alone has the ultimate authority to

withdraw a case from prosecution (AIR 1983 SC 194). But the practice is that he receives instructions from the government and pursuant to those instructions, he

withdraws the case from prosecution. The grounds of withdrawal could be many, including:

(1) False implication of accused persons as a result of political and personal vendatta;

(2) Inexpediency of the prosecution for the reasons of state and public policy;and

(3) Adverse effects that the continuation of prosecution will bring on public interest in the light of changed situation.

Burden of Proof on Prosecution

It is for the public prosecutor to establish the guilt against the accused in the court beyond a reasonable shadow of doubt. The evidence is in three forms, namely, oral evidence (i.e., statements of witnesses); documentary evidence; and circumstantial evidence. Forensic evidence also plays an important role in varied crimes. In the Indian system, the statement of a witness is recorded by the investigating officer. The statement is not required to be signed by a

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witness under the law. The witness is required to appear in the court and prove the facts mentioned by him to the investigating officer at the pre-trial stage and to face cross-examination by the defence lawyer. The public prosecutor conducts the examination-in-chief of a witness and, thereafter, his reexamination, if need be, in order to clarify ambiguity, if any, after a witness' crossexamination. Similarly, the documents cited in evidence are required to be proved by the public prosecutor with the help of witnesses. The forensic evidence is proved through the documents prepared by the experts and also by the testimony of the experts in the court. The experts are also liable to be cross-examined by the defence counsel. On the basis of the facts proved by the oral, documentary and forensic evidence, the public prosecutor tries to substantiate the charges against the accused and tries to drive home the guilt against him. If there is a statutory law regarding presumptions against the accused, the public prosecutor draws the court's attention towards that and meshes it with other evidence on record. While the law requires establishing a prima facie case for charge-sheet purposes, the law for conviction is that the guilt should be proved beyond a reasonable shadow of doubt. The standard of proof in Indian courts is quite high and that largely explains the low conviction rate, particularly in IPC offences. The prosecutor has an immense role. He has to prove the facts. He has to prove the circumstances, and then he has to draw the inferences and convince the court that the arraigned accused alone is guilty of the offences that he has been charged with. This is an onerous task and requires sound legal knowledge, the ability to handle witnesses and the capability to carry the court along with him.

7. Speedy trial is one of the facets of Article 21 of the Constitution of India. It is common knowledge that final disposal of criminal case takes years and the accused involved in the cases for several reasons suffers hardship till the conclusion of the trial. Because of the pendency of the criminal cases, the life of an individual involved in the criminal cases is seriously affected in various ways.

CONCLUSION

A criminal case requires the testimony of witnesses with first-hand knowledge of the crime in order to fill in the gaps of the investigation process and make the duty of dispensing justice easier for the judiciary. A number of Judgments have been given by Indian judiciary for elimination of delay in adjudication of criminal cases and a number of steps have been formulated by the State to look into the reasons behind delay in disposal of criminal cases but the object of speedy trial remains a myth and has not, so for, translated into reality. There is a need to enact a new comprehensive law on the speedy trial of cases. There should be awareness campaign for speedy trial of offences. It is revealed that although the Constitution of India does

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not directly talk of the right to speedy trial but the same has been given a status of fundamental right by way of interpretation of Article 21 of the Constitution of India. Besides the Constitution of India, the Code of Criminal Procedure also guarantees the right to speedy trial in its various provisions. No person can hope to get justice in a fairly reasonable period. Proceedings in criminal cases go on for years, sometimes decades. This is despite the legal position strongly favouring speedy trial.

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