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# Mapping Critically Role of Public Prosecutor in Criminal Justice Administration

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## ABSTRACT

*Public Prosecutors play a very significant role in every criminal justice system. Almost all the well-organized societies have the system of public prosecution so as to prosecute the offenders who violate the existing norms of the society. In every criminal trial, the public prosecutors are bestowed with the duty to represent the prosecution side. In a way, the office of public prosecutor also represents the collective will of the society. The article discusses the role of the public prosecutor in detail. Firstly the article seeks to examine the legal framework which relates to the office of public prosecutor. Furthermore the article then delves into examining the nature of office of the public prosecutor. It also deals with the appointment of the public prosecutor and how it is affected by political interference. Lastly the article closely analyses the role of public prosecutor at various stages of the proceedings like initiation of criminal proceedings, investigation and trial stage and withdrawal of prosecution.*

**Keywords:** *Public prosecutor, Withdrawal of prosecution.*

## I. INTRODUCTION

*“We must always remember that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant not a resistant in the administration of justice”-- Justice Krishna Iyer.<sup>3</sup>*

Public Prosecutors play a very significant role in every criminal justice system. Almost all the well-organized societies have the system of public prosecution so as to prosecute the offenders who violate the existing norms of the society. In every criminal trial, the public prosecutors are bestowed with the duty to represent the prosecution side. In a way, the office of public prosecutor also represents the collective will of the society. The office of public prosecutor is a center of attraction in every criminal justice system wielding a lot of authority. It is also a

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<sup>3</sup> State of Punjab v. Shamlal Murari, (1976) 1 SCC 719.

repository of the public power to initiate and withdraw prosecution.<sup>4</sup> As far as the rationale behind the creation of such office is concerned, they are two-fold; primarily the main function is to protect the legitimate rights and collective interests of the citizens and secondly it is also bestowed with the duty to protect the interest of the accused by avoiding any kind of false and vexatious litigations.<sup>5</sup>

As a matter of fact the system of public prosecution differs in continental countries from that of common law countries. In continental countries the powers of the public prosecutor is unrestricted. In these countries this office is termed as 'procurator'. The word procurator traces its origin from the latin word *procure* meaning thereby 'I care, secure, protect'.<sup>6</sup>

In India, this system derives its origin from the office of public prosecutor in UK. It emerged in UK in order to bring an end to the practice of private prosecution. Private prosecution refers to the prosecution of the crimes by the victims itself. This system of private prosecution was being abused as a lot of false and vexatious claims were coming up before the court. In addition to that there was no special functionary to represent the collective interest of the society, supplemented the development of this office. In addition to these impressions following assertions can be drawn, that the prosecution is supposed to be impartial and independent meaning thereby they are not to secure conviction at any cost instead they are required to apply their mind in the evidences in their possession whether incriminating or exculpating and produce them before the court. Public prosecutors are considered to be the officers of the court and in this context while deeply assessing and evaluating the role and powers of public prosecutors in common law countries, there appears a sort of confusion with regards to the nature of the office of the public prosecutor. There is a likelihood of considering the public prosecutors as part of the judicial apparatus while at times they often appears to be executive.

## II. LEGAL FRAMEWORK

Before delving into the role played by the public prosecutor, we must trace and examine the provisions enumerated in the statute with respect to the structure of public prosecution in India and the establishment of its office. According to sec.2 (u) of the Code of Criminal Procedure, public prosecutor is defined as "any person appointed under section 24 and also includes any person acting under the direction of public prosecutor."<sup>7</sup> The office of public prosecutor is of indispensable nature as far the criminal justice administration is concerned. The relevancy of

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<sup>4</sup> K.N.Chandrasekharan Pillai, *Public Prosecution in India* 50 (4) JILI (2008).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> §. 2 (u), Code of Criminal Procedure, 1973.

such office can be culled out from the fact that the Code of Criminal Procedure, 1973 allows the public prosecutors to appear before the court and plead before the court without entailing the requirement of any kind of written authority. It is also significant to note that if a pleader is also engaged by a private person in a case where public prosecutor appears then in such case the pleader appointed by private person has to act in accordance to the directions given to him by the public prosecutor.<sup>8</sup>

Chapter II of the Criminal Procedure Code, 1973, titled “Constitution of Criminal Courts and Offices,” includes three provisions relating to Public Prosecutors. It stipulates that the Central or State government shall appoint Public Prosecutors<sup>9</sup> or Additional Public Prosecutors at the High Court and they will represent them in prosecutions, appeals, or other proceedings. Such appointments must be made after consulting with the High Court. The provision also enumerates that the appointment of Public Prosecutors or Additional Public Prosecutors at the District level and they will represent the state, selected from a panel of advocates prepared by the District Magistrate in consultation with the Sessions Judge. To be appointed as a Public Prosecutor at the High Court or District level, the individual must have been an advocate in practice for at least seven years. The Central or State government may also appoint Special Public Prosecutors for specific cases, with the requirement that the person must have been in practice for at least ten years. Under Section 25 of the Code (S. 19 of BNSS),<sup>10</sup> Assistant Public Prosecutors can be appointed by the State government in Magistrate Courts. The section also permits the District Magistrate to appoint a substitute Assistant Public Prosecutor if the regular one is unavailable. While the general rule is that no police officer can be appointed as a Public Prosecutor, in exceptional cases where it is necessary, the appointed officer must not have participated in the investigation of the case and should not be below the rank of an inspector.

A notable change regarding the appointment of Public Prosecutors was introduced by the Code of Criminal Procedure (Amendment) Act, 2005. This amendment grants state governments the authority to create a hierarchical structure for prosecution. States can now establish a Directorate of Prosecution, which would fall under the jurisdiction of the Home Department. The Directorate will be led by a Director of Prosecutions, with Deputy Directors reporting to them. The powers and responsibilities of these officers will be defined by the state government.<sup>11</sup> However in the New Criminal Laws under section 20 of the BNSS a District

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<sup>8</sup> §. 301, Code of Criminal Procedure, 1973.

<sup>9</sup> The Bhartiya Nagrik Suraksha Sanhita, 2023, §.18.

<sup>10</sup> Id., §.19.

<sup>11</sup> Id., §. 20.

Directorate of Prosecution in every district can also be established as the State Government thinks fit.

### III. NATURE OF OFFICE OF PUBLIC PROSECUTOR

#### (A) Executive or Judicial?

At many instances this office of public prosecutors appears to be executive while it may also appear to be as quasi-judicial.<sup>12</sup> The Supreme Court in the case of *R.K. Jain v. State*<sup>13</sup> laid down a principle with regards to the meaning and powers bestowed upon the public prosecutor which has a tendency to treat this particular office as executive. The court reiterated *Shamsher Singh v. State of Punjab*<sup>14</sup>. But the conclusions drawn by many high courts have created a sort of confusion with respect to the nature of office of public prosecution. The Kerala High Court in the case of *Aziz v. State of Kerala*<sup>15</sup> suggested that the public prosecutor should act in an impartial manner, the court also drawn a comparison between the public prosecutor and any other counsel and stated that any counsel who is appearing before the court is expected to act truthfully and fairly. He must obviously advocate the cause of his client in an effective efficient manner but at the same time it must be done fairly and truthfully. The court therefore quoted:

*“Every counsel appearing in a case before the court is expected to be fair and truthful. He must of course, champion the cause of his client as effectively and efficiently as possible, but fairly truthfully. He is not expected to be impartial but only fair and truthful.”*

In another subsequent decision in *Babu v. State of Kerala*<sup>16</sup> the same High Court has again drawn a distinction between any counsels representing the private party with the public prosecutor stated that public prosecutors are regarded as the ministers of the justice and their job is to provide assistance to the court to order to find the truth. They are not merely and advocate representing a client.

#### (B) Public Office

Another important concern with respect to the nature of the PP's office relates to its relationship with the government. Whether a Public Prosecutor a public servant, or merely an advocate whose client is the state? In other words, is the relationship between the government and the Public Prosecutor purely contractual, or does it have a public element that justifies calling the

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<sup>12</sup> *Supra* note 3.

<sup>13</sup> *R.K. Jain v. State* AIR 1980 SC 1510.

<sup>14</sup> (1974) 2 SCC 831.

<sup>15</sup> *Aziz v. State of Kerala* (1984) Cri LJ 1060 (Ker).

<sup>16</sup> *Babu v. State of Kerala* (1984) Cri LJ 499 (Ker).

position a public office? The Supreme Court addressed this issue in *Kumari Srilekha Vidhyarthi v. State of U.P.*<sup>17</sup> The factual matrix of the case are as such that the state government's counsels have challenged their termination as their termination was done before the prescribed term meaning thereby before the expiration of the term. Their claim states that the termination of service is done arbitrarily and without any reasonable cause. The basis of their argument is that the relationship between government counsel and the government was not merely that of client and counsel, similar to that of a private client, instead their relationship status is akin to public employment or an appointment to a 'public office'. Taking into consideration all the statutory provisions related to the appointment of Public Prosecutors and their role in the withdrawal of prosecution provided under S. 321 of CrPC (now, S.360 of BNSS), the Court categorically said that the office of the Public Prosecutor is indeed a public office, and the relationship with the government differs from that of a regular advocate representing its client. Relying primarily on Section 321, the Court made the following observation:

“This power of the Public Prosecutor in charge of the case (u/s 321) is derived from statute and the guiding consideration for it, must be the interest of administration of justice. There can be no doubt that this function of the Public Prosecutor relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the Code of Criminal Procedure, undoubtedly invest the Public Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it.”

### **(C) Independent and Impartial**

The rationale behind the above observation clearly illustrates that a Public Prosecutor must be impartial and fair. Their role is not just limited to that of an advocate representing a client meaning thereby they should not procure conviction at any cost, especially in the cases where evidences are present to disapprove the culpability of the accused. Prosecutors often resort to concealing the evidence or information that favors the accused in order to secure conviction. Instead, the duty of the PP is to assist the court in its pursuit of the truth. However, the main issues are as to what criteria should be used to evaluate impartiality? How can the fairness of their actions be assessed? There have been numerous instances where the misuse of this public

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<sup>17</sup> (1991) 1 SCC 212.

office has been alleged, either by the prosecutors themselves or by their political superiors. In order to find out the answers to these questions, one needs to first analyze the nature of appointment of the PP and the level of political interference.

#### *Appointment of the Public Prosecutor and Political Interference*

In today's scenario it can be observed that the appointment to the office of the PP depends solely on the basis of the political connections and affiliations. This is the major area of concern as far as the impartiality and fairness of the office is concerned. The reality is that these offices are being filled only by the candidates who are directly or indirectly associated with the political party in power, as soon as that government is changed, the office-holder also gets changed. The difficulties faced due to such appointments to the office of PP has been also discussed by the Supreme Court in the case of *Shrilekha Vidhyarthi v. State of U.P.*<sup>18</sup>, the court stated as under:

“Public prosecutors are really ministers of justice whose job is none other than assisting the state in the administration of justice. They are not representatives of any party. Their job is to assist the court by placing before the court all relevant aspects of the case. They are not there to use the innocents to go the gallows. They are also not there to see the culprits escape conviction. But the pleader engaged by a private person who is a defacto complainant cannot be expected to be so impartial. Not only that, it will be his endeavor to get the conviction even if a conviction may not be possible.”

Another classic example of how political interference has led to an abuse of the office of the public prosecutor is enumerated in the case of *Sunil Kumar Pal v. Phota Sheikh*<sup>19</sup>. The factual matrix of the case are as such that there was a murder, and the proceedings were initiated after the persistent demands made by the deceased's brother. The PP in this case was given just one day to prepare his case, which resulted in him returning the brief. Subsequently, a junior prosecutor was appointed as Special Public Prosecutor, while the PP represented the nine accused. In this case witnesses were intimidated, many turned hostile, and several failed to appear because the accused were being supported by the Communist Party of India. The High Court even denied permission to appeal to the Supreme Court against the order of acquittal. In response, the Supreme Court set aside the acquittal and thereafter strongly criticized the manner in which justice is being administered by the lower courts, making the following observations:

“It is imperative that in order that people may not loose faith in the

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<sup>18</sup> *Ibid.*

<sup>19</sup> (1984) 4 SCC 533.

administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law.”

In *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>20</sup>, the Supreme Court recognised the Public Prosecutor as a significant State officer and bestowed an independent statutory jurisdiction upon him. Apex court highlighted the independence of the Public Prosecutor’s office and stated that “independence of the Public Prosecutor from any political influence is the hallmark of this exalted office” in *Centre for Public Interest Litigation v. Union of India*.<sup>21</sup>

#### IV. ROLE OF PUBLIC PROSECUTOR AND FAIR TRIAL

Before delving into the role of Public Prosecution, it is worthwhile to mention the relevant provisions from the U.N. “Guidelines on the Role of Prosecutors”. Guidelines 10-16 are laid as under:<sup>22</sup>

“The office of prosecutors shall be strictly separated from judicial functions. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. In the performance of their duties, prosecutors shall:

- (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
- (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage

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<sup>20</sup> (1994) 4 SCC 602.

<sup>21</sup> (2012) 3 SCC 117

<sup>22</sup> Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 Aug. to 7 September 1990.



of the suspect;

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”

The Prosecution wing is regarded as the Minister of Justice and thereby plays a very crucial role in the criminal justice system. The effective functioning of the system largely depends upon this office. They are not the representatives of any party; their job is to assist the court in the administration of justice. However the State fulfills its duty to prosecute the accused through the office of public prosecutor. A prosecutor, who is appointed by the state, entails the responsibility of handling all the cases on behalf of the state. It is to be seen that the prosecutor should not solely focus on the outcome that is to procure conviction at any cost. He should act like a neutral officer appointed by the Court whereby it is the duty of the prosecutor to represent the case accurately and fairly. Moreover the prosecutor in all scenarios must ensure that accused is treated justly. Having mentioned that, it should also be noted that the prosecutor should not prefer the interests of one party over the other rather his responsibility lies in serving the state's commitment to justice. The prosecutor must ensure fairness by maintaining impartiality and

honesty especially in the cases where evidences are present that could disapprove the accused culpability. The prosecution wing exercises a significant discretion while deciding on withdrawal of the prosecution. However this discretion as a general rule should be exercised only in exceptional cases so as to retain the public trust in the criminal justice system. The Supreme Court of India, in the case of *Sheonandan Paswan v. State of Bihar*,<sup>23</sup> has emphasized the role and responsibilities of the prosecutor in the criminal justice system as follows:

“a) That the Prosecution of an offender is the duty of the executive which is carried out through the institution of the Prosecutor. b) That the withdrawal from prosecution is an executive function of the Prosecutor. c) That the discretion to withdraw from prosecution is that of the Prosecutor and that of none else and he cannot surrender this discretion to anyone. d) That the Government may suggest to the Prosecutor to withdraw a case, but it cannot compel him and ultimately the discretion and judgment of the Public Prosecutor would prevail. e) That the Prosecutor may withdraw from prosecution not only on the ground of paucity of evidence but also on other relevant grounds to further the broad ends of public justice, public order and peace. f) That the Prosecutor is an officer of the Court and is responsible to it.”

#### **(D) Initiation of Criminal Proceedings**

The significance of the role played by PP is also highlighted in Chapter XVIII (CrPC), which encompasses the provisions related to trials before a Court of Session. The chapter begins with the provision that every trial held before the Court of Session, the prosecution must be conducted by a Public Prosecutor. In addition to that, the prosecution is required to present the case by outlining the charges and evidence against the accused. The evidence referred to by the PP in the opening statement is that which was sent to him by the Magistrate when committing the case to the Court of Session. As soon as Magistrate sends the relevant records, documents, and articles to the Court, remands the accused to custody or grants bail, and the PP is being notified, thereafter it becomes the responsibility of the public prosecutor to carry out the prosecution. In *Shiv kumar v. Hukum chand*<sup>24</sup> apex court has stated that:

“From the scheme of the Code the legislative intention is manifestly clear that prosecution in a session court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly

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<sup>23</sup> (1987) 1 SCC 288.

<sup>24</sup> (1999) 7 SCC 467.

conform to fairness in the trial of an accused in a session court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case.”

### **(E) Investigation and Trial Stage**

In the case of *Ajay Kumar Agarwal v. Union Territory of J&K*, it was observed that fair investigation and fair trial is not only necessary for the accused but it is equally necessary for the victim and the society which has stakes in ensuring that the real perpetrator of crime is booked. It is, thus, obligatory on the investigating officer to collect the evidences, oral as well as documentary, from all possible sources and such sources may include an accused.

Although Herbert Pecker in his book *Limits of Criminal Sanction*, has talked about allocation of competency, that the power and the responsibility are distributed among all the organs according to their competency. So the police is competent for the role of investigation and chargesheet meaning thereby it is the prerogative of the police. Investigation and prosecution are the two facets in the administration of criminal justice. The role of PP is inside the court whereas investigation is outside the court. PP commences after investigation agency presents the case in the court on culmination of investigation. So the involvement of PP in investigation is seen as injudicious as well as pernicious in law.

However the role of PP is also important for the better investigation, because PP at very early stage if checks what is going on in the investigation and if investigation is not done in proper and right manner then he can ask police officer for further investigation. But as in the lines of Rudyard Kipling, “*Oh East is East, and West is West, and never the twain shall meet,*” the decision of the Supreme Court in *Sarala v. T S Velu*, rendered the final push in tearing apart the two arms of the criminal justice system- prosecution and investigation. In *Sarala v. T S Velu*, case the investigation officer concerned was directed by the High Court to take back the case for investigation and was further directed to consult with the PP and submit a fresh chargesheet in tune with the opinion of the PP. The main question before the Supreme Court was whether such course is permissible in the court. The court held that the High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the PP as various provisions dealing with the investigation, the investigating officer is nowhere obliged to take opinion of PP or any authority except the superior police officer in rank. Hence such an order cannot stand legal scrutiny and hence they allowed the appeal.

The Issue of cooperation between the Police and prosecution was also also raised in The

Malimath committee report 2003. However in 2014 in case of *State of Gujarat v. Kishan Bhai* court got an opportunity to correct this anomaly, in this case out of sheer frustration at the miserable investigation and prosecution in a case of a gruesome rape, mutilation and murder of a minor girl, the Supreme Court was forced to come out with a tough decision suggesting corrections in the work of these two agencies. The court speaking through Kehar J. made a significant direction which after 13 years of divorce ordained by *Sarla* could well sound the end of the impasse. Justice Kehar's direction reads as under:

*"...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."*

This direction needs to be welcomed and accepted in the right spirit by the police and prosecution in order to improve both the quality of investigation and prosecution. A new chapter in cooperation should be given effect to between the two crucial instrumentalities of administration of justice and fair trial. As it is also important to understand that if PP, instead of involving directly in investigation but if checks the investigation stage then it will be helpful at the time of fair trial and can find at early stage if investigation is done in proper way or not.

## V. WITHDRAWAL OF PROSECUTION

In India, it is generally asserted that investigation is the prerogative the police. However an overall judicial supervision on investigation is there. The decision to prosecute rests with the magistrate only if he is satisfied that the *prima facie* case is made out the accused is put for prosecution unlike in continental countries. If in case the magistrate is not satisfied, the magistrate can discharge such accused. The prosecutor has a very little discretionary role in deciding as to whether the prosecution is to be commenced or not whereas the scenario is different when it comes to withdrawal of prosecution. When in any case a withdrawal is sought, PP plays a very significant role as he acts on behalf of the state. S. 360 of BNSS (S.321 of CrPC) states that PP or APP in any stage before the judgment is pronounced, may withdraw the prosecution with the consent of the court either generally or with respect to one or more offences.<sup>25</sup> The role of the PP has served as a testing ground for the principles of independence and impartiality which are associated with the office. In reality, political leaders' try to influence or manipulate such decisions which have led to numerous instances where judiciary has to intervene necessarily. The apex court of India has established and it has been time and again reiterated through various judgments that it is the sole prerogative of the PP to decide whether

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<sup>25</sup> The Bharatiya Nagrik Suraksha Sanhita, 2023, §. 360.

to withdraw the prosecution or not. The position is such because the office of the prosecutor is regarded as the public office. As pointed out earlier that such withdrawal cannot be done without the permission of the court, in this regard it has been established that the court has to be satisfied that such decision has not been made under the political influence showcasing their political interests. For instance Madras HC once had to tackle with a case wherein the same office of PP sought permission from the court to withdraw a criminal case initially. Later on after the change of government the same PP launched re-prosecution in the same court.<sup>26</sup> So the satisfaction of the court is necessary before granting such permission. In the same case of *Sheonandan Paswan v. State of Bihar*,<sup>27</sup> the court ruled that the court's role in granting permission for the withdrawal of prosecution is limited to ensuring that the Public Prosecutor's decision is made independently, considering public policy and justice. In the case of *State of Punjab v. Union of India*<sup>28</sup> it has been held by the Punjab and Haryana HC that the ground of lack of evidence cannot be the only ground available for the withdrawal whereas it can also be proposed to fulfill the broad ends of public justice including political, social and economic purposes. Once the court is satisfied that the application is made in good faith, in the interest of justice and public policy, and not to obstruct the legal process, the court may grant permission. In other words, the court's role here is neither exercises adjudicatory role nor supervisory role. The court does not need to examine the merits of the reasons for withdrawal, but simply ensure that the decision is made independently and in good faith. This approach has been consistently upheld by the Supreme Court in various other cases as well.<sup>29</sup>

*Kamlesh kumar C. Dave v. State Of Gujarat*<sup>30</sup> high court while rejecting withdrawal of prosecution application against all 46 accused and one of them was sitting Member of Legislative Assembly at the time of filling of application stated that:

“this court firmly believes that anyhow and at any cost, the State Government is trying to save his sitting MLA under the provisions of Section 321 of the Code under the pretext of larger public interest. ....which suggest that the said learned Special Public Prosecutor is nothing but a sheer “puppet” in the hands of the State Government who has not kept his obligation towards the Court as envisaged in Cr.P.C. in mind and only with a view to please the superior authority, made such an application”.

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<sup>26</sup> State of Tamil Nadu v. Ganesan, 1995 Cri LJ 3849 (Mad).

<sup>27</sup> *Supra* note 15.

<sup>28</sup> 1987 Cri LJ 151 (SC).

<sup>29</sup> R.K. Jain v. State (AIR 1980 SC 1510), Mohd Mumta v. Nandini Satpati (1987 Cri LJ 778 SC).

<sup>30</sup> Special Criminal Application No. 8049 of 2022.

## VI. CONCLUSION

The office of the PP is looked at part of the executive branch; however, it is widely believed that the nature of the office is not purely executive. In fact, it carries a judicial character, which is significant in a democracy. The very establishment of this office reflects the understanding that private prosecution cannot be allowed, as it can lead to chaos, especially in the current political climate. Having said that it should ensure that the office of the public prosecutor replaces private prosecution but in no case the interests of the victim should be overlooked. It can be the plausible scenario that public prosecutor may not always prioritize the victim's concerns. To address this, the Indian CrPC and now BNSS allows private individuals to appoint pleaders to represent the victim's interests. Moreover, the courts require that these pleaders act under the guidance of the public prosecutor, emphasizing the priority of public interest. In India, the public prosecutor is not merely an advocate for the state seeking conviction at any cost. He must remain impartial, fair, and truthful not only because of his role in the public executive, but also due to the ethical standards of the legal profession, which demand these qualities. The cases of *Sunil Kumar Pal* and *Ganesan* highlight the need for reform, which has been recognized through amendments to the CrPC. These amendments allow the state government to establish a prosecution service, with a director of public prosecutions at the top and district and assistant public prosecutors in the lower judiciary. However, these provisions are yet to be fully implemented by the state governments. Reorganizing the public prosecution system in this manner could help prevent police torture, harassment, and delays. It would also promote greater transparency in the police-citizen relationship if the public prosecutor were an independent entity placed between the police and the courts.

An essential role in the administration of criminal justice is played by the public prosecutor. It is a role enabled by law. In criminal cases, the Public Prosecutor represents the state. However, he is not a supporter of the state. He holds public office and must carry out his duties impartially and independently. They are not permitted to suppress material facts, evidence, or witnesses, even if they are unfavorable to his case. In other words, he is not to secure a conviction by any means. His duty is to aid the court in finding the truth. Politically motivated appointments and interference by political heads in the decisions concerning prosecutions are challenges to the independent working of the office which has been dealt quite seriously by the judiciary.

The changes made in the new Criminal Laws, have made some reforms which are favoring the victims, for instance it has been made necessary to consult the victim necessarily before the withdrawal of prosecution. Also in cases where sanction is required for prosecution, an attempt

has been made to end the delay caused in getting such sanction. It is being provided in S.218 of BNSS that sanctioning authority shall make decision with the period of 120 days otherwise the sanction shall be deemed to have been accorded. Hence these progressive reforms aim at time justice in a fair manner. Many difficulties that arise due to political interferences can be overcome if these reforms are implemented properly.

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