

CONCEPT OF PROSECUTOR IN DIFFERENT CRIMINAL JUSTICE SYSTEM

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Abstract: The criminal justice system of any state has to perform the vital of protecting the society from the law breaking person as well to maintain the harmony in the society. In almost all organised societies, there exists a concept of the public prosecution system to prosecute offenders who violates the law. The administration the system of common law countries differs from that present in the continental countries, but then also in both the systems, the position of the prosecutor is the centre of the attraction. In continental countries as the prosecutors have to perform both the jobs as of the investigation officer as well as filing of the case for the proceedings which clearly implies they also perform the function of investigation magistrate as well as a prosecutor but in common law countries police performs their functions independently of the investigation to that of a prosecutor. Thus the concept of the prosecutor also changes with the different criminal justice system.

Keywords: Prosecutor, Investigation, Criminal Justice System.

INTRODUCTION

The principle purpose of the criminal justice system is to preserve and protect the rule of law, which maintenance of law and order, just fair and speedy trial, punishment to offenders and rehabilitation of the victim. In India there are four wings in the criminal justice system which are namely the investigating agency that is police, the judiciary, the prosecution wing and the prison and correctional services. In this process the adjudication of the cases instituted by the state is done by the court and state performs the duty to provide prosecution to the instituted cases before the court of law. The period before the enactment of the Criminal Procedure Code of 1973 in India the department of the public prosecutors was connected to the police department under the control of District Superintendent of Police but further when the new Code of Criminal Procedure came into force in 1973, the Prosecution wing has been completely segregated from the police department. The state governments

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have constituted cadres of public prosecutors to prosecute cases at various levels in the subordinate courts and the High Court.¹ The main role which the public prosecutor has to perform is to assist the investigation machinery in a way by giving legal advice. But the concept of the prosecutor differs in its function and duties in accordance with the criminal justice system the state follows. Thus, in common law countries the system of prosecution performs its functions under the limits of the provisions of the statute of that respective state as compared to the traditional duties and power attached to the prosecution office in continental countries.

MEANING AND DEFINITION OF PROSECUTOR

In normal terms, we can say the prosecutor is the one who represents the state against the accused in the criminal cases before the court of law, but for better understanding of the term Prosecutor it is important to understand its various definitions.

- (a) **Prosecution:** Prosecutors are lawyers who represent the state or federal government (not the victim) throughout the court process—from the first appearance of the accused in court until the accused is acquitted or sentenced. Prosecutors review the evidence brought to them by law enforcement to decide whether to file charges or drop the case. Prosecutors present evidence in court, question witnesses, and decide (at any point after charges have been filed) whether to negotiate plea bargains with defendants. They have great discretion, or freedom, to make choices about how to prosecute the case.² In this definition, it has mentioned about prosecutor as representative of the state, but not of the victim it means that it is the state responsibility to appoint a lawyer in the form of prosecutor to initiate the proceedings from victim side and the victim does not have any direct control over the selection of the prosecutor. Further, it is the job of the prosecutor to see whether the charges filed are appropriate or there should be addition of any more charges in the case. Further, this definition of the prosecutor clarifies that it is the function of the prosecutor to place the evidence before the court of law with the help of the spot witnesses etc. and if the circumstances permit use the alternative remedy in the form of plea bargaining as to save the precious time of the court.
- (b) **Prosecutor:** The government lawyer who investigates and tries criminal cases. Typically known as a district attorney, state's attorney, or United States attorney.³
- (c) **Prosecutor:** A legal official who accuses someone of committing a crime, especially in a law court⁴

As with the definition the main role of the public prosecutor is to assist the state in the administration of the criminal justice system on the contrary

that of the defence lawyer is to defend the offender. One more important function of the prosecutor has been to always protect the interests and the rights of the citizens of the state. The prosecutor must perform his job and duties in lawful manner as with truthfulness and impartialness towards the proceedings that is the entire "prosecution team" which includes investigating officers and law-enforcement agencies. Thus, dishonesty poses a dilemma for the employing law enforcement agency.⁵ The definition of prosecutor also includes that the prosecutor is the one who look for the charges framed against the accused, so here it again lays the responsibility upon him to see if there are lesser charges framed by the police against the accused, but actually there should be a greater magnitude of the charges framed then he should look after it in the proceedings.

Concept of Prosecutor

In simple terms, if we consider the prosecutor is the one who represents the state in the criminal proceeding. The concept of the prosecutor in the continental countries which has an inquisitorial criminal justice system does not reflect the same position and powers as mentioned in the meaning of the prosecutor to be a state representative in the trail of the criminal case that is it reflects towards more power and functions of the prosecutor as that compare to that in common law countries. Then also apart from the differences in the criminal justice system of the both common law countries as well as continental countries, there are few similarities in the powers and functions of the prosecutor. If we consider the position of the prosecutor in the continental countries, then we can find they are loaded with more powers and functioning due to which they are able to preventive role, punish and prohibit a particular offence. We can consider that though it has been not mentioned in the statutory provisions of the statues of the common law countries, but in them also the prosecutors must be performing in the same way as that of the continental countries prosecutor perform. The main thing in the continental countries as compare to that of common law countries is that prosecutors have to perform both the jobs as of the investigation officer as well as filing of the case for initiating the proceedings which implies they also perform the function of investigation magistrate as well as prosecutor. Police prosecutors are usually uniform branch sergeants who are assigned to the prosecution section of a particular station for about two years.⁶ Thus, how the concept of the prosecutor varies in accordance with change in the criminal justice system can be understood with the help of the criminal justice system present in the common law countries and the continental countries.

Concept of Prosecutor in the Common Law Countries

As discussed earlier also in the common law countries police department performs their functions independently to that of prosecution department.

This It can be seen that the main cause for the Crown Prosecution services in England and Wales has a crystal clear bifurcation among the functional responsibility for investigation department and the prosecution department. In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed and Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest.⁷ The recommendation given by the Philips Royal commission was that the Crown Prosecution services can only provide advice or suggestion to the police machinery, but they shall not in any manner supervise them in the investigation. The basic idea behind the bifurcation of the prosecutor wing and the investigation wing was that if there would be the involvement of the prosecutor wing in the investigation process, then there will a definite line of inquiry which would finally lead towards a great failure in assessing the case. Thus the English prosecutor has no power to order the police to interview different people, or to ask further question of the defendant or other witnesses. The CPS may put a request to the police for further investigations, but it seems that in the past this has sometimes been a source of friction between the two organizations.⁸ At the later stage due to happening of the such incidences of misleading the mode of justice a commission known as Royal commission on criminal justice was appointed whose main object was to allot the CPS the role in the investigation machinery, but at the end this object was completely rejected and the bifurcation between the prosecutor and the investigation officer was continued.

Miscarriages of justice are sometimes caused by confessions, which are coerced by the police or result from suspects' psychological vulnerabilities during custody and interrogation. In recent years there has been considerable research into police interviewing, psychological vulnerability, and false confessions.⁹ Further, it was recognised by the various sources that very few percentage of advice was taken by the police machinery from the prosecution department, but again with the passage of the time there was a drastic change happening in the practice and thinking level regarding the concept of the prosecutor in the investigation machinery under the administration of the criminal justice system. As the structure and mode of the traditional crime kept changing day by day in a way introducing new type of organized crimes the enhancing complexities in relation to the procedural law as well as substantive law automatically turn the police machinery to take advices of the prosecutor in the process of investigation. Prosecutors provide so called ad hoc trainings on legal issues to the investigation.¹⁰

Due to the upcoming changes and the drawbacks in the present system, it was the need for England and Wales to overcome such drawbacks in the

process of investigation. For the basic co-operation and to facilitate symbiotic working of both that are police and the prosecutor the two reports namely The Narey report 1997 and The Glidewell report 1998 were introduced. According to the first report that is the Narey report the prosecutor should from the beginning of the case only start assisting the police department and make himself available at the police station all the time for the better understanding of the particular criminal case and the process of decision making. Narey measures, such as the introduction of early hearings and the location of CPS staff in police stations¹¹ As a result of such recommendation only the scheme in the form of "Lawyers at police station" were introduced. But soon further the Gridewell committee 1998 came with an establishment in the form of "Criminal Justice Units" which were present in major police stations. Due to the establishment of this units only the CPS and the police staff was able to perform their functions symbiotically for better and efficient solving of the cases. Sir Iain Glidewell's report into the Crown Prosecution Service (CPS) recommended the establishment of joint police/CPS Criminal Justice Units to reduce duplication and improve the effectiveness of the criminal justice process.¹² Sooner only this process suffered with the lacuna, such as lost of independence in the functioning of the prosecutor and allowing the police only to exclusively control the charging mechanism. But further soon only because of the Criminal Justice Act the prosecution department was again handed with the responsibility taken from the police department that is whether to lay a particular charge or not while dealing in a particular criminal case. This embodied the power with the prosecution department in a way to ask the police department to make further investigation before initiating the criminal proceeding in a particular criminal case against the accused. One more feature of the Act was Allows the prosecution to apply for a trial to take place without a jury where there are evidences that jury tampering would take place.¹³

Therefore now at this stage it can be said due to the emergence of the new trends of crime as well as laws the prosecutors are being embodied with a huge power as to provide their valuable suggestion in the process of investigation also.

Concept of Prosecutor in the Continental Countries

On the other hand, if we consider the inquisitorial system of criminal justice system, then we can find that there is no clear gap between the prosecution department and the investigation department. That is in this type of criminal justice system the prosecution department only has to perform the function at the pre-trial stage in the form of investigation in a particular criminal case. In inquisitorial system the main job of the investigating magistrate that is *juge d'instruction*, is of finding out the truth, and conducts the inquiry in the administration of the criminal justice system. That means in this criminal justice

system the judicial officer is actively involved in the process of investigation. Thus the whole investigation is an official inquiry with a purpose of finding out truth in the particular case. In an inquisitorial proceeding, the direct involvement of the judge in the gathering of evidence often avoids the consolidation of two contrary points of views resulting from an independent partisan search and presentation of the facts.¹⁴ Thus the Continental countries follow the inquisitorial criminal justice system in which the prosecutor always has to play a supervisory role from the initiating of the case to the till the decision of the case. There can be a difference in the functioning of the administration system of the inquisitorial countries, but nevertheless in most of them the prosecutor has the power to take part in the proceedings as well as in the investigation of the cases. The main feature of the inquisitorial system is Procedures seem more likely to elucidate truth.¹⁵

France Inquisitorial Legal System

In France it is clearly mentioned under The Code of Criminal Procedure that the prosecutor will be having formal authority over the police authorities whenever they will be conducting a criminal investigation in a particular case. Even in France it is only in criminal law that we can truly speak of an inquisitorial system.¹⁶ Thus the Code of Criminal Procedure only provides that the prosecutor can instruct normally what they give to the investigators in the process of investigation. Thus in France the prosecutor has the authority in the investigation method also as under French provisions, although the police hold discretionary powers including powers of coercion, they must always refer to the prosecutor who is the only authority that can decide whether or not a case should enter the criminal justice process.¹⁷ It works in a way that the police machinery has to inform to the prosecutors regarding all the offences in knowledge of them and take instructions in the process of investigation. In addition, there is an obligation upon the police to bring in the knowledge of the public prosecutor about all the arrests made by them and takes the advice of the prosecutor in terms of the decision to put the suspected person in their custody and further line up the process related to the investigation in the particular case. Prosecutor can instruct the investigating officers to look in to the matters forthwith or inform the investigating magistrates about the case if the matter is complicated and vague.¹⁸ Whenever the public prosecutor finds any serious offences as well very complicated investigation in any of the cases then he asked for the judicial inquiry to be opened. The judicial inquiry has to open by *juge d'instruction*. Although the *juge d'instruction* deals with only a small minority of criminal cases, these are often the most complex and sensitive investigations concerning terrorism, fraud, drug trafficking and, of course, political corruption.¹⁹ Thus the process by which all these things are carries out is known as judicial investigation information judiciaire. In this process the public prosecutor refers the cases

to *juge d'instruction* or it may be also referred by the Victim (victime or partie civile)²⁰ who wants to bring the civil claim for damages within the scope criminal proceeding. Thereafter, while in continuation of the proceeding the judge may at any time call any person for taking interview of his/her and also take the assistance of the police for making the attendance of the witnesses, issue warrants, take the victim's statement who is claiming for the damages, make the appointment of the experts and to make arrangements for search and seizures. In the proceedings the public prosecutor is also part of the judiciary. *The procureur* is not understood to be a judicial officer in quite the same sense as the trial judge or even the *juge d'instruction*.²¹ While making a difference between the judge and the public prosecutor we can say the public prosecutor to be part of standing judiciary and that of a judge to be a part of the sitting judiciary. The sitting judiciary is completely independent from the orders or authority of the executives while the public prosecutor is according to their hierarchical position and further always accountable not only to the executives but also to the minister of justice in the administration of the justice system. The ministers of justice are free to give any written instructions to the public prosecutor which earlier was only in the oral form. Therefore, in France it is the minister of justice who is completely responsible for the functioning of the public prosecutor and also has a power to issue instructions to them.

Germany Inquisitorial Justice System

The prosecutor has been provided with the responsibility for the pre-trial only by the German Criminal Code and it is usually known to be 'the ruler of the investigative stage.' The public prosecutor is responsible for taking all necessary measures and legal means for discovering criminal acts and initiate the further proceeding. It also provides an extra authority to the prosecutor that they can by themselves start the procedure of investigation on ask the police to begin it. Along with all such authority they can also provide the guidelines that how a particular case is to be handled by them and what would be the expected priorities in the line of investigation. In other words, the public prosecution office is an institution *sui generis*.²² Further the police is also having the obligation on them to inform about all the actions taken by them to the public prosecutor and then to take their opinion in relation to the investigation. But when it comes to practicality there are very few areas the public prosecutor is included in the process of investigation from the very beginning stage. The cases basically related to the homicidal, cases related white collar crime and also that crime by which public is effected at large are to be dealt by the public prosecutor from the beginning level.²³ The processes such as DNA analysis, need of search and seizure, need of pre trial detention, telephone tapping has to when ordered by the court then there must a necessary steps taken by the prosecutor also in furtherance of it. The prosecutor only has to make decision in relation to particular charge is to be has kept or not in a particular case.

Conclusion

Thus, by understanding how the concept of the prosecutor varies in its functions and duties in different criminal justice system that is adversarial criminal justice system and the inquisitorial justice system. In the inquisitorial trial system, there is not a high gap between the functioning of prosecution machinery and the investigation machinery, but at the same time in the adversarial system the prosecution machinery has its majority of the role in the trial of the particular criminal case and the part of the investigation is look after by the police department. Further in adversarial trial system, the burden of proving the guilt is entirely on the prosecution and the law does not call for the accused to lead evidence to prove his innocence, yet the accused is given a right to disprove the prosecution case or to prove special defense available to him.²⁴ Therefore the prosecutor has to limit his performance of the duty in accordance with the different criminal justice system.

Footnotes

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