

# **THE ROLE OF PUBLIC PROSECUTOR IN ADMINISTRATION OF CRIMINAL JUSTICE: WITH REFERENCE TO HIGH ACQUITTAL RATE UNDER CRIMINAL JUSTICE SYSTEM IN MAHARASHTRA STATE**

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**Abstract:** A prosecutor is probably the cornerstone of the criminal justice system. The prosecutor's job is to see that all the relevant facts, including those favorable and against to an accused, is placed before the court in a fair, impartial and clear manner. The prosecutor should remember that it is not his job to secure a conviction at all costs. However, that is not to say that the prosecutor should not care about the outcome of the case. The prosecutor should not detract from the fact that he as a prosecutor is acting on behalf of the State or society is an aggrieved party. It is as much a miscarriage of justice for guilty persons to be acquitted and innocent to be convicted. The ultimate object of the criminal justice system is to render justice which means to punish the guilty and protect the innocent. The criminal justice system in Maharashtra State noted highest acquittal rate in the country during the period of last two and half decade. Though, the conviction or acquittal of the accused in trial depends on many factors like quality of investigation conducted; efficient prosecution; delay in concluding trial, evidence of witnesses etc. It is in fact largely depend on the way prosecution case presented before the court. Whatever investigation conducted by the police is good quality, if prosecutor fails to present in proper manner or do not convince the court, prosecution case fails and results in acquittal of the accused. The role of prosecutor in facilitating the trial is not only to control the crime but also achieve the justice too. The researcher has made an attempt to analyze the legal provisions deals with the powers and duties of prosecutor under the law in administration of criminal justice. The object of this study is to analyze the role of prosecutor with reference to the higher acquittal rate in IPC crimes under criminal justice system in the State of Maharashtra.

**Keywords:** Acquittal, Conviction, Criminal Justice, Prosecution.

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**Introduction:** The criminal justice system followed in India is the adversarial system. The accused is presumed to be innocent and the burden is on the prosecution to prove the guilt beyond reasonable doubt. The Constitution of India expressly provided minimum safeguards to the accused such as right to life and personal liberty [1], right against arbitrary arrest and detention [2], right against self incrimination [3], right to speedy trial [4] etc. Moreover, various right are assured under procedural laws as well to ensure fair trial. The criminal justice system has to ensure that rights of the accused as well as rights of victims of crime and the peoples in general should not be violated without the procedure established by law, provided that the procedures must be just, fair and reasonable [5]. The criminal justice system has to strike the balance between the individual rights and interest of the society at large. The peoples in the society have many expectations from the criminal justice system. They expect that their freedoms should not be violated and they can able to live a life free from violence. And if someone violates their rights and hurts them, then the state should take appropriate action against the violators. In other words, they expect the guilty must be punished.

The punishment to the guilty is necessary to maintain rule of the law in the society. The twofold ideas behind the regulation of punishment are to make the criminal pay for wrongs he has done and to reform the criminal as a better person than he is. The punishment is aimed at deterring the actual offender as well as potential offenders from breaking the law. It promotes respect for the law, afford adequate deterrence to similar conduct, and provide the criminal with needed training in the most effective manner. Unfortunately, in the state of Maharashtra, over the years taking advantage of several lacunae in system large number of criminals are escaping convictions. Every year, there are numerous Indian Penal Code cases registered, but the numbers of convictions are very few as compared to the number of cases filed. The fact that crime is on increase every year rather than removal. It has indicates that state and justice system even today has not been able to tackle the problem of crime. On this background, prosecution being an important sub system of the criminal justice plays vital role in dispensing justice. The analysis of the role of the prosecutor in administration of criminal justice is important.

**The Role of Prosecutor in Administration of Criminal Justice:** The criminal justice system comprised of Police, Prosecution, Courts and Correctional Institutions. Among these, prosecution forms an important organ of Criminal Justice Administration. The prosecution comes into picture after the police have investigated the crime and a case has been made out. The common perception is that, the bound duty of the lawyer is to act in the best interest of the client. As for the duty of the prosecutor is concerned, who is the client of the Prosecutor in the administration of criminal justice? Is it the government or the victim or the society? It has been said that the Prosecutor does not act as counsel for any particular person or party. His client is neither victim nor the Government. Instead, his client is society. Therefore the Prosecutor has to act with fairness and impartial to establish the whole truth in accordance with the law [6]. The public prosecutor has duty to the State, to the public, to the Court and to the accused and, therefore, he has to be fair and objective while discharging their duties [7].

Overall, the Prosecutor should remember that it is not his job to secure a conviction at all costs. However, that is not to say that the prosecutor should not care about the outcome of the case. The prosecutor should not detract from the fact that he as a prosecutor is acting on behalf of the State or society is an aggrieved party. It is as much a miscarriage of justice for guilty persons to be acquitted and innocent to be convicted. The duty owed by the Prosecution is to protect the life and liberty of the innocent and punish the guilty. That there is public interest lies in ensuring conviction in appropriate case. Indeed, in the cases, where there is no evidence to prove the case beyond reasonable doubt, required under the law, in such cases conviction is not bearable and the accused would be acquitted. But, where the clinching and unchallenged evidence is available, the Prosecutor's duty to act in the interests of justice may not be incompatible. He has to actively present before the court material and convince the court to punish the guilty.

In Maharashtra State, after the year 1997, the Government of Maharashtra constituted a separate Prosecution Department to giving effect to the recommendation made by the Law Commission of India in its 14th Report [8] and the decision of the Supreme Court in *S. B. Sahane Vs. State of Maharashtra* [9], The Law Commission felt that the prosecution requires a specific detachment from the police department. Public prosecutors must be in a position to prosecute without influence or obstruction by the executive or public officials for offences committed by such persons, particularly corruption, misuse of power, violations of human rights etc. [10]. However, the segregation of prosecution and police resulted into the lack of co operation and communication between them. Consequently, it leads to large scale acquittals in criminal cases. The present acquittal rate is very high as compared to the same that was before 24 years ago in 1994. The acquittal rate of crimes was somewhere close to 65.03 % in 1994 it has been gone up to 91 % in 2011.

If one takes a look at the National Crime Records Bureau (NCRB) reports since 1994 to 2011, that is, a span of 18 years, the acquittal rate increased by lips and bounds every year. It began to increase from 1994, it was noted 65.5 % in the year 1994, 67.1 % in 1995, 81.2 % in 1996 and reached ever highest acquittal rate up to 91.79 % in the years 2011 in the country. However, it is fortunate that, after 2012, during the year 2013, 2014, 2015 and 2016 showed decreasing trend and come down to 86.69%, 80.68 %,

67.01% and 65.7 % during respective years. In the 2011, the acquittal rate noted was the ever highest rate i.e. 91.79 % under criminal justice system in Maharashtra State. Recently reported in year 2016 rate of acquittal in State of Maharashtra has been seen to be decreased by 26.09 % over the year 2011 [11].

**Prerogatives of the Prosecutors:**

**Right to Withdraw Prosecution:** The prosecutor's prerogative is to withdraw from the prosecution. The Code of Criminal Procedure provides for exclusive discretion of public prosecutor to withdraw from the prosecution and none else, and so he cannot surrender that discretion to someone else. The government may suggest to public prosecutor that he may withdraw from the prosecution but none can compel him to do so. However, the public prosecutors discretion is subject to the consent of the court. The court is to satisfy itself that the executive function of the public prosecutor has not been improperly exercise and that it is not an attempt to interfere with the normal course of justice for illegitimate reasons and purposes. If the application for withdrawal is to thwart or to stifle the process of law, permission not be given. Criminal cases cannot be withdrawn from the prosecution to concede to the illegal demands of deal [12].

**Right to Choose the Witnesses:** As per the provision of the Code of Criminal Procedure, 1973, the public prosecutor has an independent say in the matter criminal trial while examining the witnesses. He has prerogative to pick up and choose the witnesses among the listed witnesses is unquestionable. The public prosecutor has been vested with independent powers to prosecute the offenders by examining such witnesses who can unravel the truth. The primary duty of the prosecutor to place before Court all evidence collected by the investigating agency whether it be in favour or against the accused for the proper consideration thereof [13]. But, in certain cases, prosecutors unfairly exercise the power to select witnesses for prosecution, though independent eye witnesses were available, they were purposely excluded and only the family members of the deceased were examined as eye witnesses. The prosecutor should never adopt the device of keeping back eye witnesses only because the evidence is likely to go against the prosecution and that the duty of the prosecutor is to assist the court in reaching a proper conclusion [14]. In case where large number of persons have witnessed the incident, it is open to him make a selection. The selection must, however, be fair and honest, and not with a view to suppress inconvenient witnesses. Therefore, if it is shown that persons who had witnessed the incident have been deliberately kept back, the court may draw an adverse inference and in a proper case record such failure as constituting a serious infirmity in the proof of the prosecution case. The apex court has held that, ordinarily it is the duty of the public prosecutor to examine all the material witnesses essential to the unfolding of the narrative on which the prosecution is based, whether in the result the effect of that testimony is for or against the case of the prosecution [15]. It is not necessary to particular number of witnesses to be recorded in order to convict the accused; the material witnesses should be examined. The conviction based on solitary eye witnesses cannot be vitiated under the law if he is of trustworthy.

**Unfair Methods of the Prosecutor:** The various decisions of cases before the High Courts and the Supreme Court, has been revealed that how the prosecutors are abused their powers to serve political ends. In the case of Zahira Abubullha Sheikh vs. State of Gujrat [16], came up for consideration before the Hon'ble Supreme Court, it has been observed that, "The Public Prosecutors appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court". In which case during the trail before the Session's Court, the prosecutors have not examined the material witnesses on record and acted unfairly. In Mukul Dalal v. Union of India [17], also ruled that the office of the public prosecutor is a public one and the primacy given to the public prosecutor under the scheme of the court has a social purpose. But the malpractice of some public prosecutors has eroded this value and purpose. The Supreme Court presented with peculiar situation in the case of Sunil Kumar Pal v. Phota Sheikh And Ors. [18], where the Additional Public Prosecutor who was conducting the case on behalf of the prosecution produced only two witnesses out of a list of twelve witnesses and refused to call the appellant and other witnesses in spite of the fact that the appellant was fully aware of the facts and circumstances leading to the murder of the deceased and was therefore a material witness. All this, thus reflects biased and unfair practices of the prosecutors responsible for large scale acquittals.

After the consulting the various provisions relating to the rights and duties of the prosecutor, it has been clear that the public prosecutors have enormous powers to withdraw from prosecution and choose the witnesses for prosecution. He has full freedom, in certain cases to request the court to discharge or acquit any accused. But, in practice, time and again it has been seen that, these powers are being abused. However, there are several factors are responsible for this awful phenomenon; firstly, it is the lack of co operation and communication between the wings of prosecution and investigation. Though, these subsystems are separate and independent in their sphere, it is not possible to them to work in isolation for the dispensation of true justice. Secondly, the selections of the prosecutors are made purely on the political recommendations rather than on merit. Therefore, they are biased towards the case while acting as prosecutor. There is possibility of political favours and they could be abused to serve political ends. Thirdly, corruption is rampant due to the appointments are temporary rather than regular. They are under paid and their services are not full salaried. Hence, they are not interested in the successes or the failure of the case.

Overall, the object of the criminal justice system is to maintain the rule of the law in the society. It is imperative that in order that people may not lose faith in the 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 [19].

Therefore, it can be sum up with the suggestion that, there should be assessment of the working and performance of the prosecutors on the basis of conviction and acquittals of the criminal cases and make them accountable for. It can also be suggested that, the appointments of the prosecutors must be made on the merit through the public services commission. Their services should be full time and regular, provided with adequate scale. The adequate initial and continued professional training should be conducted for the efficient and diligent performance of prosecutorial functions. There is a need of framing guidelines to establishment of the cooperation between the prosecution and investigation wings of criminal justice system at the investigation, prosecution and trial of the criminal case. These reforms can help to control the unmerited large scale acquittal under criminal justice system in the state of Maharashtra.

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