

Role Of Prosecutor:

Prosecuting agents will function for criminal proceedings and will not interfere in any judicial matter. They are authorized by law to require proper investigation in a particular case. They can challenge any decision from the court and require proper proof and basis of any decision as they are acting for the public interest.

They are the representatives of the public in the court of law. They need to honour the administration of justice by prosecuting only those who need to be prosecuted and issuing the use of non-punitive methods of treatment of those who are liable for that punishment.

A Public Prosecutor is considered as the agent of the state to represent the interest of common people in the criminal justice system. The prosecution of the accused is the duty of the state but not individually the duty of the aggrieved party. They are appointed in almost all countries. The Public Prosecutor is appointed under Section 24 of Cr.P.C. They serve as the basic principle of Rule of Law i.e. audi alteram partem (no person shall be condemned unheard).

Section 2(u) of the Code of Criminal Procedure defines Public Prosecutor. A person who is appointed under Section 24 of CrPC and it also includes any person who is acting under the directions of Public Prosecutor. In the case of Babu vs. State of Kerala (2010) the Court observed that Public Prosecutors are ministers of justice who is duty bound to assist the judge in the administration of justice.

Appointment of Public Prosecutor:

Section 24 provides for the appointment of public prosecutors as follows:

For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub- section (4).

Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub- section (4).

A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.

The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

Section 25 of Cr.P.C states that the Assistant Public Prosecutors is appointed in the district for the purpose of conducting prosecution in Magistrate Court. The court may appoint one or more Assistant Public Prosecutors for the purpose of conducting a case. If there are no Assistant Public Prosecutors then District Magistrate may appoint any other person to act as the Assistant Public Prosecutors.

Functions:

The functions of the Public Prosecutor differ according to their designation:

Public Prosecutor:

supervise the function exercised by the Additional Public Prosecutor in Session Court and High Court.

Chief Prosecutor:

supervise the functions exercised by Assistant Public Prosecutor in Metropolitan Magistrate Court.

Additional Prosecutor:

conduct criminal proceedings in the Session Court.

Assistant Public Prosecutor:

they examine the charge sheet prepared by agencies and submit the acquittal or discharge. They also are responsible for the evaluation of evidence and filing revisions petitions. They also conduct the criminal proceedings in the Court of Metropolitan Magistrate.

Director of Prosecution:

it is the head office. They exercise the overall control and supervision of officers of Directorate. They also look after the Account Branches. The objective of establishing a Directorate of Public Prosecutors is to supervise and scrutinise the functions relating to various prosecution agencies at Assistant Session level and Session level except at High Court.

Reasons for the appointment of public prosecutors:

Whenever any crime is committed against a group or individual, it is assumed that it has been committed against society. It is the duty of the state to provide justice to any group of society or person who is affected by the crime. In India, it is necessary that the criminal justice system should function within the limits of the Indian Constitution, which means that it is necessary for the Public Prosecutor to act in accordance with the principles of:

- Equality before law
- Protection against double jeopardy
- Protection against self-incrimination
- Protection against ex-post law
- Right to life and personal liberty except procedure established by law
- Presumption of innocence until proven guilty
- Arrest and detention must be in accordance with the provisions of Cr.P.C
- Equal protection of laws
- Speedy trial
- Prohibition of discrimination
- Right of accused to remain silent

Role of Public Prosecutors:

It is divided into two parts:

- In investigating process
- During the trial

In investigating process:

The public prosecutors have the following role in investigating process:

- He appears in the court and obtains arrest warrant against the accused;
- He obtains search warrants from the court for searching specific premises for collecting evidence;
- He obtains police custody remand for custodial interrogation of the accused (section 167);
- If an accused is not traceable, he initiates proceedings in the court for getting him declared a proclaimed offender (section 82) and, thereafter, for the confiscation of his movable and immovable assets (section 83); and
- 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 authorities. 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. During the trial:

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 the Code). 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 pronouncement 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.

The role of the public prosecutor during trial is as follows:

Sentencing:

when the accused is proven guilty, then the defence counsel and the Public Prosecutor further argue to decide the quantum of punishment. At this stage, the Public Prosecutor may argue for the adequate punishment keeping in mind the facts, circumstances of case and gravity of the offence. It helps the judge to arrive at a judicious decision.

To conduct a speedy trial:

Right to a speedy trial is a fundamental right and it is impliedly given in Article 21 of Constitution of India which states Right to life and Personal Liberty. The prosecutors have a responsibility to call all the witnesses whose evidence is essential to decide the case. To cross-examine the witness and to see that no witness is left unexamined. To produce all the necessary documents.

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.

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. 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.

Other important roles:

The Public Prosecutor cannot aggravate the facts of the case or deny to examine the witness whose evidence may weaken the case. The main aim must be to discover the truth.

He should not defend the accused. It is against the fair play of administration of justice or against the legal profession.

He represents the State, not police. He is an Officer of State and is appointed by State Government. He is not a part of any investigating agencies but an independent authority. He is charged with statutory duties.

Superintendent of police or District Magistrate cannot compel the Public Prosecutor to withdraw the case.

If there is an issue which is raised by defence counsel and failed, it should be brought out in the notice of the court by Public Prosecutor to ensure that justice is done.

Judicial Response to role of prosecutors:

Zahira Habibullah vs. State of Gujarat (2006), where the conduct of the BEST BAKERY' case in the Hon'ble Gujarat High Court , involving the burning down of an establishment in Vadodara which caused the death of 14 persons, came up for consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court ordered retrial of the matter in The Hon'ble High Court of Maharashtra, and observed that in Gujarat,: The Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court.

In the final analysis, a public prosecutor is an officer of the court and is required to render assistance to the court to arrive at a just and equitable decision. He is also required to be fair to the opposite party. His guiding principle should be not so much the letter of law, but the spirit of law based on prudence, common sense and equity.

Role Of Judicial Officers:

Judicial officers, especially Magistrate, can make meaningful interventions during investigation, with a view to protect liberty and also to ensure an effective investigation.

In chronological order, the role of magistrate in investigation can be understood in terms of these five stages:

Stage: I Soon after the registration of FIR

Stage: II In cases where the arrest is effected by the Investigating officer, on his production before the court and while deciding the question of the validity of arrest and need for further custody Judicial or Police.

Stage: III Magisterial interventions while deciding misc. applications for recording of statement(s) u/s 164 of the Cr.P.C, test identification parades, etc.

Stage: IV Monitoring of investigation.

Stage: V Further investigation, post-filing of police report u/s 173 of the Cr.P.C.

Stage I Soon after the Registration of FIR:

Criminal justice Administration is set into motion with the receipt of information with respect to the commission of a cognizable offence (Section 154 of the Cr.P.C). Section 157 Cr.P.C mandates the sending of a report to this effect to the area magistrate forthwith, to bring the matter to his scrutiny. This is a safeguard meant to prevent police excess, embellishments, false prosecutions and non-investigation at a crucial stage.

A copy of the FIR is to be brought to the Magistrate empowered to take cognizance as soon as possible, and any delay can adversely affect the prosecution case at trial, if not explained adequately. In heinous cases, a copy of the FIR along with an endorsement is dispatched via a special messenger to the area magistrate or duty magistrate.

As per sec 155 (2) of Cr.P.C. no police officer shall investigate a non-cognizable case without the order of a magistrate having power to try such case or commit the case for trial.

Stage II Production of the Accused before the court for the first time:

According to the latest amendments in the CrPC, in cases covered u/s 41(1)(b) of the CrPC, i.e where the case relates to offence punishable with imprisonment of 7 years or less, arrest can be made by the police only on satisfaction (recorded in writing) to the effect that, the arrest is imperative for:

- prevention of further offences;
- proper investigation of the offence;
- prevention of tampering or disappearance of evidence;
- prevention of any undue influence/threat to the complainant or witnesses;
- ensuring his presence in the court

The recording of these reasons is a condition precedent for arrest. Magisterial check on police powers of arrest:

The sufficiency of reasons for arrest recorded by the police officer is to be examined by magistrates and not to be accepted at the mere ipse dixit of the police. After examining the validity of the arrest, the next point of inquiry is: whether there are grounds to keep the accused in detention or whether he can be released on bail, or otherwise discharged.

The Supreme Court recently in *Arnesh Kumar vs. State of Bihar (2014)* has ruled that decision to detain & remand is not a mechanical act and a remand order has to be a reasoned order and should reflect due application of mind. Mere mechanical reproduction of above elements in remand application is also to be deprecated.

Safeguards relating to arrest:

The magistrate is also under an obligation to peruse the Arrest Memo/Medical examination report of the accused to rule out cases of police torture as well as the victim to preserve crucial medical evidence. It is also incumbent on the Magistrate to ensure production of the accused before itself within 24 hours of arrest as per sec 57 of Cr.P.C. and communication of information to relatives/friends about his arrest as per Sec 50 of Cr.P.C.

In the case of *Youth Bar association of India vs. Union of India and others (2016)* the Apex Court held that the Magistrate is to also ensure that the copy of the FIR is uploaded on the Internet, forthwith, except of course, in cases where the matter is sensitive in nature, or issues of privacy are involved.

Fair trial to accused:- Co-relative duties of Magistrate:

It is well settled today that the accused has fundamental right to know the grounds of his arrest, right to legal aid in case he is indigent, right to consult his lawyer and such other rights guaranteed by Constitution and equivalent safeguards incorporated in CrPC.

Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest and no one shall be detained in custody beyond the said period without the authority of a magistrate. The magistrate can pass order of remand to authorise the detention of the accused in such custody as such magistrate thinks fit, for a term not exceeding 15 days in the whole.

The fundamental rights will remain mere promise if Magistrates do not ensure compliance of the same. Hence, magistrates have been given the fundamental duty under amended section 50A of the Criminal Procedure to satisfy that the police has informed the arrested person of his rights and made an entry of the fact in book to be maintained in the police station.

There have been frequent complaints about the police's noncompliance of the above mentioned requirements. The magistrates are empowered under section 97 to issue search warrant which is in the nature of a writ of habeas corpus for rescue of a wrongfully confined person by intervention of police directed by a magisterial order. If magistrate has reason to believe that any person is confined under circumstances that amounts to an offence, he may issue a search warrant and person if found shall be immediately taken before a magistrate.

In *Sheela Barse vs State of Maharashtra (1983)*, it was held by the Hon'ble Supreme Court that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of section 54. In this case, High court directed magistrates to ask the arrested person as to whether he has any complaint of torture or maltreatment in police custody.

Further, in *Hussainara Khatoon and others vs. Home secretary, State of Bihar (1979)* it was held that it is the duty of the magistrate to inform the accused that he has a right to be released on bail on expiry of statutory period of 90 or 60 days as the case may be. Suffice is to say that magistrates are the best persons to oversee that the accused is not denied his rights.

STAGE III Magisterial interventions while deciding applications for recording of statement u/s 164 of the Cr.P.C/Test Identification Parade, and the like:

Recording of Statements of the witnesses is a vital part of the investigation. Statements recorded by the Police Officers during investigation are inadmissible in evidence, except in limited cases where it can either be used as a Dying Declaration or only insofar as it leads to a recovery. These statements, however, can be used for contradiction and cross examination of the prosecution witnesses, at the time of trial.

Section 164 of Cr.P.C. allows recording of statement of witnesses & confessions by the magistrate. The statement of witnesses under this section is recorded on oath. Section 164 empowers magistrate to record even when he has no jurisdiction in the case.

Before recording any such confession, the magistrate is required to explain to the person making confession that: He is not bound to make such a confession If he does so it may be used as evidence against him. Confessions and dying declarations recorded by magistrate constitute valuable evidence as they may form the basis of conviction of the accused. Although there is no hard and fast rule as to

proper manner of recording the same, the Magistrate must follow certain broad guidelines to ensure that the document inspires confidence of the court assessing it.

STAGE IV Monitoring of Investigation:

The argument that there is no provision in CrPC that allows the magistrate to monitor an investigation has been debunked by the Supreme Court conclusively in *Sakiri Vasu vs. State of U.P.* (2008) wherein such power has been read within Section 156(3) of the CrPC. It has been held that the power to direct investigation u/s 156(3) of the CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and the Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

Therefore, in appropriate cases, the victim, complainant or a witness can approach the court seeking necessary directions to the police and supervision of investigation.

Where the power to pass necessary directions may be used are: to protect witnesses, check disregard of vital evidence (which may get obliterated in course of time), non-examination of witnesses, deliberate shielding of some accused, or the investigating officer being interested in the case. In such cases, a magistrate ought to push the envelope and actively monitor the investigation, while avoiding investigating himself, or directing investigation by a specific agency, with respect to which there is a specific embargo on the powers of the magistrate. Monitoring of investigation by the magistrate is, therefore, of vital importance to protect the integrity of prosecution.

Stage V Further investigation after filing of police report:

Magisterial vigil does not terminate on the filing of the police report on the conclusion of the investigation and the court is not bound to accept the results of an investigation conducted by the police. After completion of investigation, the police files either be in the nature of charge sheet or final report. If the investigation ends with final report, different courses are open to the Magistrate.

He may either accept the final report and close the proceeding or he may take the view that the said report is not based on complete investigation, in which case he may in exercise of power conferred by sec 156(3) of CrPC, direct the police concerned to make further investigation.

The third course open to him is that he in not agreeing with the views of the investigating officer, may on the scrutiny of the case diary take cognizance of the offence. In the case the police concludes that no case is made out against the accused, the Magistrate has to issue a notice to the informed/victim and hear him out. After hearing the informant, the court can, notwithstanding the closure report,

choose to proceed with the matter, as a case based on police report or even a prior complaint.

Another option available is ordering further investigation. Section 173(8) of the CrPC expressly lays down such a course of action. However, the section does not enlist considerations that will govern the exercise of such power. Illustrative cases where further investigation may be ordered are : where the police acts in a partisan manner to shield the real culprits and the investigation has not been done in a proper and objective manner but is tainted, non-examination of crucial witnesses, clearing of doubts and to substantiate the prosecution case. To conduct fair, proper and an unquestionable investigation is the obligation of the investigation agency and the court in its supervisory capacity is required to ensure the same.

The magistrate also cannot order a further investigation by a different agency (agency other than the original investigating agency) either, as that will amount to re-investigation. Only the higher courts have the power to order reinvestigation by a different agency, such as the CBI. The result of the further investigation is called a supplementary report and can supplement the primary police report, already on record.

It is apparent that ample powers are vested in the magistrate to check arbitrary arrests, police excesses & to facilitate a more incisive probe into the discovery of truth, at various stages of an investigation, and even after filing of the police report.