Role of Public Prosecutor as defined by International Guidelines and International & National Jurisprudence

By Sameera Singh

Cite as: (2008) PL Feb. 9

In Indian criminal justice system, the role of a Public Prosecutor, though of immense importance, has always been shrouded in controversy. Allegations varying from corruption to deliberate withholding of important witnesses have been flung at them. One of the main reasons for such controversial image of Public Prosecutors is the fact that there is much confusion about their duties and responsibilities. Police, the accused and the victim all have totally different and conflicting beliefs about what role a Public Prosecutor is supposed to play. For example, according to police, the main duty of a Public Prosecutor is to get the accused convicted. According to the accused, the main role of the Public Prosecutor is to make available to the accused any legitimate benefit that he is entitled during the trial even if the defense counsel has overlooked it. According to the victim, a Public Prosecutor is her/his “avenging angel” and will get her/him justice at any cost. Looking at these varying and totally at variance interpretations, it is not difficult to reach the conclusion that one of the biggest obstacles in way of efficient performance of the Indian prosecuting machinery is confusion clouding the minds of Public Prosecutors themselves regarding what role they are supposed to play.

This paper analyses various national and international judicial pronouncements and international guidelines on role of a Public Prosecutor and on the basis of these tries to give a judicially and legally accurate picture of responsibilities and duties of a Public Prosecutor. This paper is divided in five parts. Part I describes role and responsibilities of Public Prosecutor as defined by international guidelines. Part II elaborates on role and responsibilities of Prosecutor as explained by jurisprudence of different common law countries following an adversarial system. Part III illustrates how Indian judiciary has interpreted the role and responsibilities of a Public Prosecutor. Part V is the conclusion. The paper, on the basis of this analysis, concludes that role of the Public Prosecutor is not to single-mindedly seek a conviction regardless of the evidence and a Public Prosecutor has to play role of a “minister of justice” who should place before the court all evidence in her/his possession, whether in favour of or against the accused.

Role of Public Prosecutor as interpreted by international law and guidelines


The United Nations Guidelines on the Role of Prosecutors (abbreviated as UNGâ€• from herein) require Prosecutors to perform their duties fairly, impartially, consistently, protecting human dignity, upholding human rights and avoiding all political, social, religious, racial, cultural, sexual or any other kind of discrimination. The use of prosecutorial discretion, when permitted in a particular jurisdiction, must be exercised independently and should be free from political interference. In order to ensure the fairness and effectiveness of prosecution, prosecutors must strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions. Corollary to requirements of fairness and impartiality is the condition that prosecution should not be initiated or every effort to stay proceedings should be made where an impartial investigation shows the charge to be unfounded. Providing a corollary to this, the International Association of Prosecutors (abbreviated as IAPâ€• from herein) standards provide that criminal proceedings should be proceeded with only when a case is well founded upon evidence, which is reasonably believed to be reliable and admissible. When Prosecutors come into possession of evidence against suspects that has been obtained through recourse to unlawful methods, which constitute a grave violation of the suspectâ€™s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they are under a duty to refuse the usage of such evidence. The Prosecutors are also required to take proper account of the position of the suspect and the victim, pay attention to all relevant circumstances, and disclose all relevant evidence irrespective of whether it is to the advantage or disadvantage of the suspect. The Prosecutors must act objectively and also remain unaffected by individual or sectional interests and public or media pressures. They must have regard only to public interest.

The States are also under a duty to ensure that Prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability. The States are further required to provide reasonable conditions of service to Prosecutors, adequate remuneration, and where applicable, tenure and pension. Moreover, the promotion of Prosecutors should be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures. If in a State, non prosecutorial authorities have the right to give general or specific instructions to Prosecutors or right of directing the institution of proceedings or right to stop legally instituted proceedings, such instructions should be transparent, consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence. The Council of Europe recommendations goes further and...
states that instructions not to prosecute in a specific case should in principle be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected to transparency and appropriate control. The Council of Europe recommendations also state that Public Prosecutors should account periodically and publicly for their activities as a whole and, in particular, about the way in which their priorities are carried out.

Role of Prosecutor as interpreted by law of other countries

In United States, the duty of a Public Prosecutor or other government lawyer is to seek justice, not merely to convict. Rule 3.8 of the Model Rules of Professional Conduct formulated by the American Bar Association lays down that the Prosecutor in a criminal case shall refrain from prosecuting a charge that the Prosecutor knows is not supported by probable cause and make timely disclosure to the defense of all evidence or information known to the Prosecutor that tends to negate the guilt of the accused or mitigates the offense and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the Prosecutor, except when the Prosecutor is relieved of this responsibility by a protective order of the tribunal.

In Harry Berger v. United States of America, Mr Justice Sutherland, delivering the opinion of the Court said that: (US p. 88)

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. [She]he may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much [her]his duty to refrain from improper methods calculated to produce a wrong conviction as it is to use every legitimate means to bring about a just one." The Supreme Court of Canada has also elaborated upon role of Prosecutor in R. v. Boucher by saying that:

It cannot be over-emphasised that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel has a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of Prosecutor excludes any notion of winning or losing; her/his function is a matter of public duty than which in civil life there can be none charged with greater responsibility. It is to be efficiently performed with an ingrained sense of dignity, the seriousness and the justness of judicial proceedings. According to New Zealand Law Societyâ€™s Rules of Professional Conduct although the Prosecutor is an advocate, he or she must prosecute âœœdispassionately and with scrupulous fairnessâœ– 21. The New Zealand courts have explained that the Crownâ€™s duty is to present its case fairly and completely, and to be as firm as the circumstances warrant, but the Crown must never âœœstruggle for a convictionâœ– 22. They have further said that it is âœœquite impermissibleâœ– for a Prosecutor to attempt to persuade the jury by factors of prejudice or emotion and that the Prosecutor is neither the lawyer for the victim, nor a lawyer for the police. He or she acts on behalf of the community, and has a responsibility to ensure that justice is done in a fair and balanced way.

The Canadian jurisprudence has also interpreted the role of a Prosecutor by laying down that a Prosecutorâ€™s responsibilities are public in nature. As a Prosecutor and public representative, Crown counselâ€™s demeanor and actions should be fair, dispassionate and moderate, show no signs of partisanship24, open to the possibility of the innocence of the accused person and avoid âœœtunnel visionâœ– 25. It is especially important that Crown counsel avoid personalising their role in Court. The Canadian Supreme Court has further very strongly held that although Crown counsel work closely with the police, the separation between police and Crown roles is of fundamental importance to the proper administration of justice.

Role of Prosecutor: interpretation by Indian judiciary

Despite the fact that the Public Prosecutor is appointed by the State, her/his sole aim is not to seek a conviction. The Indian courts have interpreted the role of Prosecutor as âœœminister of justiceâœ– who should place before the court all evidence in her/his possession, whether in favour of or against the accused. The role of the Prosecutor is not to single-mindedly seek a conviction regardless of the evidence. The Indian judiciary has interpreted role, responsibilities and duties of prosecution as follows:

1. An ideal Prosecutor must consider herself/himself as an agent of justice

The ideal Public Prosecutor is not concerned with securing convictions, or with satisfying departments of the State Governments with which she/he has been in contact. He must consider herself/himself as an agent of justice. The Allahabad High Court had ruled that it is the duty of the Public Prosecutor to see that justice is vindicated and that he should not obtain an unrighteous conviction.

2. There should not be on part of a Public Prosecutor âœœseemly eagerness for, or grasping at a convictionâœ–

The purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of a Public Prosecutor is not to represent any particular party, but the State. The prosecution of the accused persons has to be

https://www.supremecourtcases.com Eastern Book Company Generated: Tuesday, July 7, 2020
conducted with the utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community. There should not therefore be an undue eagerness for, or grasping at a conviction.

3. A Public Prosecutor should not by statement aggravate the case against the accused, or keep back a witness because her/his evidence may weaken the case for prosecution.

The only aim of a Public Prosecutor should be to aid the court in discovering truth. A Public Prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side. There should be on her/his part no unseemly eagerness for, or grasping at, conviction.

4. A Public Prosecutor should place before the Court whatever evidence is in her/his possession.

The duty of a public Prosecutor is not merely to secure the conviction of the accused at all costs but to place before the court whatever evidence is in the possession of the prosecution, whether it be in favour of or against the accused and to leave the court to decide upon all such evidence, whether the accused had or had not committed the offence with which he stood charged. It is as much the duty of the Prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

5. The duty of the Public Prosecutor is to represent the State and not the police.

A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure, 1973. She/he is not a part of the investigating agency. She/he is an independent statutory authority. She/he is neither the post office of the investigating agency, nor its forwarding agency but is charged with a statutory duty. The purpose of a criminal trial is not to support at all costs a theory, but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the Public Prosecutor is to represent not the police, but the State and her/his duty should be discharged by her/him fairly and fearlessly and with a full sense of responsibility that attaches to her/him in her position. There can be no manner of doubt that Parliament intended that Public Prosecutors should be free from the control of the police department.

6. A Public Prosecutor should discharge her/his duties fairly and fearlessly and with full sense of responsibility that attaches to her/his position.

The Patna High Court held that purpose of a criminal trial is not to support a given theory at all costs but to investigate the offence and to determine the fault or innocence of the accused and the duty of the Public Prosecutor is to represent not the police but the Crown and her/his duty should be discharged by her/him fairly and fearlessly and with full sense of responsibility that attaches to her/his position.

7. Prosecution does not mean persecution.

The Andhra Pradesh High Court had ruled that prosecution should not mean persecution and the Prosecutor should be scrupulously fair to the accused and should not strive for conviction in all these cases. It further stated that the courts should be zealous to see that the prosecution of an offender should not be given to a private party. The Court also said that if there is no one to control the situation when there was a possibility of things going wrong, it would amount to a legalised manner of causing vengeance.

8. A Public Prosecutor cannot appear on behalf of the accused.

It is inconsistent with the ethics of legal profession and fair play in the administration of justice for the Public Prosecutor to appear on behalf of the accused.

9. No fair trial when the Prosecutor acts in a manner as if he was defending the accused.

It is the Public Prosecutors’ duty to present the truth before the court. Fair trial means a trial before an impartial Judge, a fair Prosecutor and atmosphere of judicial calm. The Prosecutor who does not act fairly and acts more like a counsel for the defense is a liability to the fair judicial system.

10. The statutory responsibility for deciding upon withdrawal squarely vests unwavering with the Public Prosecutor and should be guided by the Criminal Procedure Code.

The statutory responsibility for deciding upon withdrawal squarely vests on the Public Prosecutor and is entirely within the discretion of the Public Prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above her/him on the administrative side. The Criminal Procedure Code is the only master of the Public Prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with her/him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. The sole consideration for the Public Prosecutor when she/he decides a withdrawal from the defense is a liability to the fair judicial system.

11. District Magistrate or the Superintendent of Police cannot order the Public Prosecutor to move for the withdrawal.

The District Magistrate or the Superintendent of Police cannot order the Public Prosecutor to move for the withdrawal, although it may be open to the District Magistrate to bring to the notice of the Public Prosecutor materials and suggest to her/him to consider whether the prosecution should be withdrawn or not. But, the District Magistrate cannot command and can only recommend.
12. If there is some issue that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor.

The Supreme Court stated that the duty of the Public Prosecutor is to ensure that justice is done. It stated that if there is some issue that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor. Hence, she/he functions as an officer of the court and not as the counsel of the State, with the intention of obtaining a conviction. The District Magistrate or the Superintendent of Police cannot order the Public Prosecutor to move for the withdrawal, although it may be open to the District Magistrate to bring to the notice of the Public Prosecutor materials and suggest to her/him to consider whether the prosecution should be withdrawn or not. But, the District Magistrate cannot command and can only recommend. 12. The Supreme Court stated that the duty of the Public Prosecutor is to ensure that justice is done. It stated that if there is some issue that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor. Hence, she/he functions as an officer of the court and not as the counsel of the State, with the intention of obtaining a conviction.

Conclusion

After analysing aforementioned international guidelines and jurisprudence of different countries (including India), it is clear that it is not a Public Prosecutorâ€™s duty to seek conviction at all cost. Nor, is her/his duty to act as an avenging angel for the victim. On the contrary, her/his duty is to ensure that justice is delivered and in pursuance of this he/she must lay before the court all relevant evidence including the evidence that favours the accused. Corollary to this is the duty of a Public Prosecutor to bring to attention of the Court, any issue that the defense could have raised, but has failed to do. But, in doing so, she/he cannot act as if she/he is defending the victim, nor can he/she appear on behalf of the accused. When the Prosecutor acts in a manner as if she/he was defending the accused, then there is no fair trial. A Public Prosecutor is an independent entity from police and police cannot order her/him to conduct prosecution in a particular way. Police, politicians or any other extraneous party cannot influence her/his actions, including her/his discretion to decide withdrawal of a case. She/he represents the State and not the police and can only be influenced by â€œpublic interestâ€. In pursuance of her/his duties, he cannot use improper methods calculated to produce wrongful convictions and she/he must discharge her/his functions in a scrupulously fair and honest way. In brief, a Public Prosecutor has the responsibility of a minister of justice and not simply that of an advocate.

- Articles 12 and 13(a), United Nations Guidelines on the Role of Prosecutors
- Article 2.1, International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Article 20, United Nations Guidelines on the Role of Prosecutors
- Article 14, United Nations Guidelines on the Role of Prosecutors
- Article 4.2(d), International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Article 16, United Nations Guidelines on the Role of Prosecutors; Article 4.3(f), International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Article 3(d), International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Article 13(b), United Nations Guidelines on the Role of Prosecutors; Articles 3(e) and (f); International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Article 4, United Nations Guidelines on the Role of Prosecutors; Article 6(a), International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Article 6, United Nations Guidelines on the Role of Prosecutors; Article 6(c), International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Article 7, United Nations Guidelines on the Role of Prosecutors; Article 6(e), International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Articles 2.2 and 2.3, International Association of Prosecutionâ€™s Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures
- Rule 3.8(a) of the Illinois Rules of Professional Conduct
- Article 2.01, Texasâ€™s Code of Criminal Procedure, 1966
- Rule 3.8 of the Model Rules of Professional Conduct adopted by the American Bar Associatesâ€™ House of Delegates in 1983
- (1934) 295 US 78-89 : 79 L Ed 1314
- Rule 9.01, Rules for Professional Conduct for Barristers and Solicitors, Adopted by the New Zealand Law Society on 28th July, 1989

- "tunnel vision means the single-minded and overly narrow focus on a particular investigative or prosecutorial theory, so as to unreasonably color the evaluation of information received and one’s conduct in response to that information. The Commission on Proceedings Involving Guy Paul Morin, The Hon'ble Fred Kaufman, Commissioner (Toronto: Queen's Printer, 1998) at p. 1136."


- Kashinath Dinka, (1971) 8 BHC (Cr C) 126, 153.

- Anant Wasudeo Chandekar v. King-Emperor, AIR 1924 Nag 243 at p. 245.

- Ghirrao v. Emperor, (1933) 34 Cri LJ 1009 (Oudh Chief Court).


- 1976 Cri LJ 32 (All).


