Chapter-I

INTRODUCTION

On the rise of the sun, humans get up and greet each other saying good morning. Sitting in the comfort of their cozy homes, they say good night when sun sets. It seems that everything is not so good in between day and night throughout the life. Insecurity is threatening all: men, women, young and old, the rich and powerful as well as the poor and downtrodden. There is always threat to individual life, limb, health, tranquility and possessions. Rules are made by day but are broken by minute. Crime may come from a punch-up between lovers, ego-ridden spouses, agro in the nightclub, resentful family members, envious friends, greedy colleagues, jealous rivals, from strangers. Criminals hold anger, envy, jealousy, resentment, and vengefulness. Victim of a crime may die today and the doer of crime dies tomorrow but crime hangs on. Crime is a curious tradition humans have been studiously practicing since ages. The real anxiety is about the ordinary citizen's feelings concerning the problem of security while living. What is underlying the lawlessness is waning of traditional authority, the decline of punishment, disappearance of moral self-discipline[1]. This socio-legal concern coagulated the researcher to choose a topic from the field of criminal law.

Crime in myriad form is a reality. Punishing them is a social necessity. To tackle the reality and to redress the needy resulted in the emergence of Criminal Justice System (CJS). The purpose of criminal law is to protect the society from criminals and lawbreakers. CJS is a collection of agencies, laws, procedures, programmes, and

[1] See generally, R.N.Berki, **Security and Society: Reflections on Law order and Society**, J.M.Dent & Sons, London, 1986.

decision-makers intended to deal firmly and fairly with offenders, protect and serve citizens, prevent and control crime, and maintain social order. State is the guardian of law and order. Law enforcement and punishment is monopoly of State through its institutions. "It is the responsibility of every government to ensure that its legislative agenda has, at its core, a genuine concern for the well being of the common man, reflecting their hopes and aspirations"[2]. One such legislation is the Code of Criminal Procedure, 1973. The functionaries exercising powers and discharging duties under the Criminal Procedure Code are:

1. The Police,
2. The Prosecutors,
3. Defense Counsels,
4. Magistrates and Judges,
5. Prison authorities and correctional services personnel.

Besides them, victims, witnesses, offenders, citizens, media are also decision-makers in their own ways.

Intense research, extensive literature, keen interest, provocative debates focused mostly on police and courts. The one institution that missed the attention of mainstream legal literature in India is the institution of prosecutors. There is neither light nor heat about prosecutors in the Indian jurisprudence.

Government Advocate who presents the State's case against the accused in criminal prosecution is prosecutor. They are the only persons empowered to prosecute many of the criminal cases. Prosecutor has been in the CJS for over one hundred and

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[2] Sonia Gandhi, The Hindu dt.28-3-2010 Page 10, Visakhapatnam, at a National Convention on **'Law, Justice and the common man'**. Sonia Gandhi is said to be one of the most influential women in the world.

fifty years. Yet, he has been mostly ignored by the Indian scholarly literature. His role is hazy. Researching on this institution is consistent with the purpose of doing research on anything at all. This idea navigated the researcher to choose the Public Prosecutor for this research work.

NEED FOR THE STUDY

Criminal Justice system is afflicted by three problems:

1. Numerically large quantity of cases leading to backlogs.
2. Poor quality of cases resulting in failed prosecutions.
3. Slow progress of cases violating quick dispensation norms.

Human proclivity is to grow from unorganised to organised, from anarchy to government. Therefore, there is evolution of various systems. CJS is one such system that evolved in every country across the continents. Once dispensation of justice is systematised, it is natural that the system holds out its own motto. The CJS in India has also its own fundamentals. Among those ideals, one principle is said somewhat loudly. That one is "Speedy Trial". These words are unwritten in the laws but they are undercurrent in the laws. Therefore, the theme of the law is spelt out by the Supreme Court of India: "Speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution ... No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21"[3]. The supposition of law is that the CJS would turn its wheels swiftly from the time a victim is produced by a crime till the time a judgement is pronounced against the criminal by a court. However, the legal cruise in criminal justice

[3] *Hussainara Khatoon v. Home Secretary*, State of Bihar, AIR 1979 SC 1360.

process is tardy and indifferent causing fatigue and indignation for the people of India. The exhortations on speedy trial are whimpering in real life. About two and a half crore cases are pending in courts in India and more than half of them are criminal cases. In search of a remedy for the evil of clogged up criminal cases, many a wise men and women made plethora of suggestions ranging from enlarging the numerical strength of courts to enhancing the excellence of police and judges and pruning the procedures. Some progress is made. Yet, the problem looms as large as it has always been. Speedy trial is still a mirage. This problem prompted the researcher to think that a fresh look at the institution of Public Prosecutors and readjusting their legal role and status is indeed needed as a remedy for the malady.

As is always everywhere the language employed guides and typifies ones thinking process. When the term used is 'Speedy trial' the focus is on court and the assumption is that the judge alone is responsible for lethargic progress of a case. If the term is recoined as 'Speedy Prosecution', the whole facet of reflection will change. There are very many areas where a Public Prosecutor could decisively play a vital role in quickening the case process to achieve Justice speedily.

Speedy Justice is not the end of all ills. Qualitative processing of cases is equally fundamental. Citizen's desire, and they rightly deserve, quality in dispensation of Justice. State prosecutes the criminal when in its opinion, it has gathered enough evidence against him. Court admits the prosecution when it finds that prima facie there is enough evidence indicating commission of crime and the culpability of the criminal. Against the accusation levelled, the accused comes up with his theory in defence. Court records throughout the nation would vouch safe the fact that in most of the criminal cases, the

defence of the accused is mere denial of the case set up by the prosecution. Thus the work of the prosecutor is relatively easy as he needs only to prove what is alleged by the prosecution and reach the success. In this matrix of reality, there is every theoretical probability for the prosecution to succeed. However, the truth is that 75% of State prosecutions fail to prove the guilt of the accused. This is alarming and calls for attention. Acquittal of an accused does not always mean that no crime was committed nor it does mean that this accused did not commit that crime. Acquittal of an accused simply means that prosecution failed to establish the guilt of the accused. Inevitable inference that could be drawn from this scenario is that there is poor prosecution of the case that is resulting in large number of acquittals. Poor prosecution has its own causes. Poor investigation by police, poor performance of Public Prosecutor is the prominent causes. Victims of crime and the society at large is not happy seeing the accused cheerfully coming out acquitted of charges. To bring back cheers to common man qualitative prosecution is a *sine qua non*. For this, the researcher fervently thought that repositioning the role of prosecutor in the CJS is one sure cure.

Since there is need to improve quantity of prosecution disposals and improving the quality of prosecutions, there is need to undertake a critical study of the existing law, judicial precedent, academic contributions. Thus, this research is to find out the ways and means.

SCOPE OF THE STUDY

Prosecutor being a vital player in the system and is pitted against competent defence bar, selection of a right person for the job is equally vital. This study deals with the principles governing his selection, the qualifications he should possess, the training he

gets, the emoluments he receives. The assistance he is provided with, the resources that are put under his command, the environment in which he discharges his functions, the incentives available for the wise and competent and the reprimands provided for the incompetent prosecution. An attempt is made to find out whether prosecutors in India acquired professionalism in their functions. The study tries to find out the difficulties in finding out who is the client for the prosecutor with a view to orient the prosecutor in handling his work. Prosecutor is a member of an organisational structure visible in the form of Directorate of Prosecutions. An organisational structure is the formal system of task and authority relationship that controls how people co-ordinate their actions and use resources to achieve organisation goals. Therefore this study deals with the Directorate of prosecutions, its functions and its limitations and suggests legal measures that could make the Directorate to live up to the expectations its name creates in others. The study is to find out wither in the present times the concept of private prosecutions need be remodelled and be brought within the fold of Directorate of prosecutions. It endeavours to suggest for declaration of prosecution policies. In the anxiety to meet specific crime challenges, law has grown in different perspectives producing different kinds of prosecutors some of whom are not creatures of code of criminal procedure. The present study explores the need to streamline both organisationally and bring uniformity in their functions.

In the tussle between law and lawbreaker, the plight of the law abiding victim needs a fresh look. The study strikes to drive the point that between the victim and Public Prosecutor there is a pause that needs filling as effectively and quickly as possible. The right measures for it are attempted to be suggested in this study.

The study is limited to Indian law. It has not undertaken a comparative analysis of Indian prosecutor as against commonwealth or continental prosecutor. However, propositions from other countries are adverted to only for a better elucidation of an issue or a more lucid illustration of a point in issue.

OBJECTIVE OF THE STUDY

Public Prosecutor is a repository of public power and is endowed with vast discretionary authority. Public Prosecutors are legally independent and are expected to be impartial and are assumed to be learned and are believed to be honest in their dealings and they are supposed to seek conviction of only guilty and ought to see acquittal of innocent. They are loyal to law and justice and to none else. Their most apparent function is prosecution. Thus prosecutors and prosecution are intertwined and knowing one needs knowing the other. It is generally felt that poor quality of investigation contributes to poor performance of prosecution and poor quality of prosecution results in poor performance of the CJS. Therefore, the competence and efficiency of the investigating and prosecuting agencies decide the outcome of the criminal proceedings. This requires a study of the existing system and interaction between the different components within it i.e., police, prosecutor and court. Therefore, the study is broadly aimed at understanding the role of the Public Prosecutor during pre-trial, trial, and post-trial without trial phases of cases. It is to find out the width and breadth of Public Prosecutor in his advisory role to the executive wing of the State and the role he plays as an advocate before the judicial wing of the State and the situations where he exercises quasi judicial powers.

Prosecutor is a precious human resource in the CJS. What a prosecutor could be legitimately expected to do is stereo typed in India. Some of the functions that are discharged by police and courts could be shuffled and be brought within the fold of prosecutor's job to improve the quality of cases for prosecution and to quicken the disposal of cases. This study endeavours to project that readjustment and suggest the need to create new legal avenues in handling the crime and the criminal.

The researcher believes that poor prosecution is a result of poor legal structuring of prosecutors. Therefore, this study analyses the system of prosecutions, the system of prosecutors. It critically views the statutory law, law laid down by courts, proposals suggested by commissions and committees and academicians. The goal is to search for ways and means to secure quick and qualitative justice dispensation to console the victim, to create confidence in the society, to prevent the criminal in his further ventures.

RESEARCH PROBLEM

Whether there is adequate focus of law on the role a Public Prosecutor could play in the CJS in India? Whether there is conceptual clarity and coherence on the proper prosecution functions? Whether discretionary powers legitimately belonging to Public Prosecutors are available with him? Whether law makers declared the prosecution policies to guide and orient the Public Prosecutors? Whether part-time Public Prosecutors possess professionalism? Whether there are rewards and reprimands for the Prosecutors for the work they do? Whether there are training programmes for them? Whether necessary infrastructure is made available for the Public Prosecutors? Whether there is well conceived organisational structure for prosecutors? Whether there is statutory scheme to co-ordinate police and prosecutors? Who is the client for prosecutor?

METHODOLOGY

The nature of the pursuit being essentially conceptual the methodology chosen for this research study is 'Doctrinaire'. The scarcity of research in this area, the rarity of statistical data is inhibiting factor that necessitated a confinement of the study to a conceptual analysis. The theoretical study includes a critical analysis of law in statutes and precedent and to find out answers to the questions posed in the research problem and to verify the hypotheses formulated.

Research material has been procured from the secondary sources like books, journals, reports of cases. The perspectives such as general attitudes and perceptions of prosecutors on various aspects of their work and service conditions are gathered from informal interactions of the researcher with various prosecutors, police officers and judicial officers.

REFRAINS

Throughout this study, masculine gender is used only for the easy narration of the content. By no means, is it meant to disregard the fair sex. The word Public Prosecutor / Prosecutor is generally used in the narration, where the concepts are applicable equally to every cadre of Prosecutors. Wherever it is necessary, specific designation of a Prosecutor is mentioned.

HYPOTHESES

1. Inadequate focus of law in India on the role of Public Prosecutor in the Criminal Justice System.

2. "Public Prosecutors are Ministers of Justice" is an empty platitude as the Prosecutor could neither decide the prosecutability of a case nor effectively prosecute a case.
3. No prosecutorial policies to guide the Public Prosecutor.
4. Incoherent legal theory, insufficient infrastructure are the causes for indifferent attitude of Public Prosecutors.
5. No proper co-operation and co-ordination between prosecutor and police.
6. No effectively structured machinery holding powers and wielding control over all kinds of Public Prosecutors and all kinds of prosecutions.
7. System of part-time Prosecutors shall be done away with.
8. Professionalism is conspicuously absent among Public Prosecutors.
9. Absence of training for Prosecutors and no rewards or reprimands for the work done.

TREATMENT OF THE TOPIC

This research work analyses the role of Public Prosecutor during various phases of a criminal case. It also deals with the concept of the Public Prosecutor as to the manner in which the office of Public Prosecutor is kept in the organisational set up. For this purpose the topic is divided into **eleven chapters.**

The **first chapter** is introduction, where in the factors that motivated the researcher to select the present topic for research is mentioned and the need for this study are narrated. It spelt out the scope of the study and objective of the study. The research problem is put forth and the hypothesis is disclosed. The methodology adopted in this

study and the limitations of it are set out. It also contained the refrains concerning the expressions used in the work for felicity of expression.

The **second chapter** is "Pre-trial". This chapter deals with the advisory and supervisory role of Public Prosecutor in the case diary preparation of police during investigation. The extent to which the discretionary powers are available for him under law and the predominant powers of police in this area are noted and the failure of law in assigning legitimate prosecutorial functions to the prosecutor are brought forth. It dealt with the causes of poor quality of cases and suggested the modalities by which a Public Prosecutor could work as a sieve to filter out imperfect cases, before a case is transmitted to court for adjudication. It identified the need for up gradation of legal standards for a criminal case before it is sent up for trial. It dealt with a novel idea concerning 'No-Prosecution' decisions and the need to cut it out from court's domain and bring it within prosecutor's domain and the internal supervision to rectify errors that may be committed by the Public Prosecutor are mentioned. The need to accept at law that the decision to prosecute shall be considered as a prosecutive function and not a judicial function is argued in this chapter. The independence in status offered to the office of prosecutor is not supported by legal framework and the areas for rectification are referred. The reforms required in law are suggested to bring quality in cases, to reduce quantity of cases in courts.

The **third chapter** is 'Trial'. The presence of Public Prosecutor is most seen by everyone in the trial stage of criminal cases. This chapter deals with the onerous task of Public Prosecutor to reconstruct the crime event through evidence before a court of law. The various rights of Public Prosecutor in choosing the pattern of evidence in proof of the

case and his duties towards the accused and the court concerning fair trial and the nature of co-operation and co-ordination that is required between police and prosecutor are mentioned. The legal bottlenecks that debilitate the prosecutor in his endeavour to establish truth are traced and reforms are suggested. This chapter also traces out the various tactics of accused, defence counsel and others that create roadblocks for prosecutor resulting in tardy trial process and suggested the legal remedies for attaining speedy justice. This chapter indicates the undue bias of law in favour of the accused and suggested the legal measures, which bring fairness to prosecution without sacrificing the protections available for accused.

The **fourth chapter** is 'Post-Trial'. After the guilt of the accused is established before a court either on a contested trial or on a plea of guilt or on a plea bargain, the question of awarding punishment to the guilty arises. This chapter deals with the statutory principles about the law concerning sentencing the accused and finds out the inept legislative formulations. It also dealt with the judicial decisions and the foothold granted to Public Prosecutor during this phase by the judiciary. It brought out the incoherent philosophy of law in this phase and suggested reforms. The fact that there are very few options when it comes to kinds of punishments is deciphered pointing out that it resulted in crippling the Public Prosecutor to canvass for right kind of punishment and suggested for legal reforms. This chapter points out the areas where the law failed to grant appropriate role to prosecutors in violation of principles of justice which demand equal opportunity of hearing to both sides of a case. The law concerning appeals, revisions, post-convictions bails is dealt with, lapses are pointed out, and law changes are suggested.

The **fifth chapter** is 'Renouncing the Prosecution'. Circumstances, public interest, private choice are some of the factors law considers and allow them to substitute judicial determination of guilt of accused through a full fledged trial. Public Prosecutor may consider, it expedient in the interest of justice to withdraw from prosecution. This chapter deals with his powers, duties, and discretions in this area and finds that undue obligations are cast on him by judiciary. It is seen that the legal jurisprudence expressed in judgements of courts is not coherent and the courts failed to recognise the historical need of public prosecutions and the role of Public Prosecutor and played into the act of victim consolation. Need for a holistic legal concept is stressed in this study. This chapter also deals with the concept of pardon to an accomplice and points out the areas where legislative clarity is wanting. This chapter deals with the nascent concept of plea bargaining and the flawed legal framework for it and argues the benefits the system gains by empowering the Public Prosecutor in this area to play an active role. This chapter finds out the practical need to involve the Prosecutor in those cases where compounding of offences is permitted by law.

The **sixth chapter** is 'Take over'. Here, the law concerning private prosecution and public prosecution is dealt with and the approach of law permitting private prosecution to be taken over by a Public Prosecutor and a public prosecution to be taken over by a private prosecutor is analysed. The inadequate treatment of this concept by law-makers and law-judges is brought out. Reforms to law are suggested for a comprehensive formulation of legal policy.

The **seventh chapter** is 'Part-Time Prosecutor *versus* Full-Time Prosecutor'. This chapter analysed the concept of Part Time Prosecutors and the support it has from

courts and commissions and committees and pointed out the truth as to the manner in which the process of appointments degenerated the system. It described the areas of conflict of interests and lack of professionalism for part-timers and argued for a shake up. The virtues of having a Full-Time Prosecutor and the seamless ease with which he merges in the system is narrated seeking amendments in law.

The **eighth chapter** is 'Public Prosecutor and his client'. This chapter deals with the apparently innocuous idea that the Government appoints Public Prosecutor to conduct prosecution of its criminal cases, and therefore, it is the client and the Public Prosecutor is its counsel. It then shows how this first impression is not completely correct and then analyses, whether it is the victim or police or the state that is his client. It narrates the law, precedent and finds out that the present conception that public interest is the real client for the Public Prosecutor. This idea is questioned on the anvil of democratic polity and shows the scope for further research and sought for a definite statement from law makers so as to orient the prosecutor appropriately and enable him to discharge his duties properly in a right perspective.

The **ninth chapter** is 'Public Prosecutor-Ethics'. In this chapter, the need for ethical orientation of Public Prosecutor and the failings in this regard leading to miscarriage of justice are delved. It points out the practical need to produce a 'Statement of Values' with concrete examples for the Public Prosecutors to guide them and to minimise errors.

The **tenth chapter** is 'Organisational Structure'. It deals with various kinds of prosecutors patently and latently available in the system and the organisational set up for prosecution wing of the State. The law concerning Directorate of prosecution is analysed

and the findings concerning the weaknesses in it are narrated. It sought for conferment of all legitimate prosecutorial functions on the directorate. It also focused on those categories of prosecutors who are not within the network of Directorate and pointed out the need for notifying private prosecutions to the directorate and the virtues in creating uniform prosecution practices and standards and the need for proper infrastructure for prosecutors and empowering the District Public Prosecutor to guide the other prosecutors in the district.

The **eleventh chapter** deals with 'Conclusions', along with a summary of the whole study. Here a sum up of broad areas is made and important among the suggested legal reforms are narrated. The Hypotheses are justified and given appropriate suggestions for making the role of Public Prosecutor in Criminal Justice System more meaningful.

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