Subject Name: Code of Criminal Procedure
Topic Name: The Role of Prosecutor

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Introduction

A crime not only harms the individual victim but also violates the societal fabric at large. Hence, the State, as the representative of the collective interests of the people, engages in criminal trials, particularly in cases of cognizable offences, as a party against the accused individual.

The Public Prosecutor or Assistant Public Prosecutor serves as counsel for the State in such trials, primarily tasked with conducting prosecutions on behalf of the State. They also represent the State in criminal appeals, revisions, and related matters in Sessions Courts and High Courts. However, it's important to note that they should not represent the accused.

The Public Prosecutor or Assistant Public Prosecutor holds the authority to appear and advocate before any court in cases entrusted to them [S. 301]. With the court's consent, they can withdraw from prosecuting any person [S. 321]. Additionally, they can provide guidance to the police or other government departments regarding the prosecution of individuals if requested.

As per the structure outlined in the Code of Criminal Procedure, Public Prosecutors, including Additional Public Prosecutors and Special Public Prosecutors, are responsible for conducting prosecutions and other criminal proceedings in Sessions Courts and High Courts. On the other hand, Assistant Public Prosecutors are appointed to handle prosecutions in Magistrates' Courts.

Typically, prosecutions initiated based on police reports are handled by Assistant Public Prosecutors, while those initiated based on private complaints are either conducted by the complainant or their authorised representative. However, the State can appoint prosecutors in cases of public interest, even if initiated by a private complaint.

In the formal definition provided in clause (u) of Section 2, a Public Prosecutor is defined as "any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor." Assistant Public Prosecutors are not covered by this definition since they are not appointed under Section 24, yet they have not been defined separately.

Public Prosecutors for High Courts

(a) Eligibility: A person can be appointed as a Public Prosecutor in a High Court if they have practised as an advocate for at least seven years [S. 24(7)]. However, it's clarified that the period during which a person has practised as a pleader or served as a prosecuting officer, regardless of the name, will be considered as the period of practice as an advocate.

(b) Appointment Procedure: The appointing authority can make the appointment only after consulting with the High Court [S. 24(1)].

(c) Appointment by Central Government: The Central Government appoints a Public Prosecutor and may also appoint one or more Additional Public Prosecutors to conduct prosecutions, appeals, or other proceedings on behalf of the Central Government in a High Court [S. 24(1)].

(d) Appointment by State Government: Similarly, the State Government appoints a Public Prosecutor and may also appoint one or more Additional Public Prosecutors to conduct prosecutions, appeals, etc., on behalf of the State Government in a High Court [S. 24(1)].

(e) Special Public Prosecutor: The Central or State Government may appoint, for specific cases or classes of cases, an advocate who has practised for at least ten years as a Special Public Prosecutor [S. 24(8)]. The clarification regarding the period of practice mentioned in point (a) is also applicable here.

Additionally, the State Government may appoint a Director of Public Prosecutions, who functions under the Advocate-General of the State [S. 24(12)].

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Public Prosecutors for Districts

(a) Eligibility: To be appointed as a Public Prosecutor or Additional Public Prosecutor, a person must have practised as an advocate for at least seven years [S. 24(7)].

(b) Panel Preparation: The District Magistrate, in consultation with the Sessions Judge, creates a panel of suitable candidates for appointment as Public Prosecutor or Additional Public Prosecutors [S. 24(4)].

No person can be appointed as Public Prosecutor or Additional Public Prosecutor for the district unless their name appears on this panel [S. 24(5)]. However, if a State has a regular cadre of Prosecuting Officers, appointments must be made from within this cadre. If no suitable candidate is available from the cadre, the government may appoint from the panel prepared by the District Magistrate [S. 24(6)].

(c) State Government Appointment: In line with the above rules, the State Government appoints a Public Prosecutor and may appoint one or more Additional Public Prosecutors for the district [S. 24(3)]. It's also possible for a Public Prosecutor or Additional Public Prosecutor appointed for one district to be appointed for another district as well.

(d) Special Public Prosecutor: The Central or State Government may appoint, for specific cases or classes of cases, an advocate who has practised for at least ten years as a Special Public Prosecutor [S. 24(8)]. The explanation regarding the period of practice mentioned in point (a) is applicable here as well.



Assistant Public Prosecutors

Section 25 outlines the qualifications and procedures for appointing Assistant Public Prosecutors (APPs) for conducting prosecutions in Magistrates' Courts. Here's a breakdown of its provisions:

1. State Government Appointment: The State Government is mandated to appoint one or more Assistant Public Prosecutors in every district for handling prosecutions in Magistrates' Courts [S. 25(1)].

2. Central Government Appointment: Additionally, the Central Government has the authority to appoint one or more Assistant Public Prosecutors for specific cases or classes of cases in Magistrates' Courts [S. 25(1)].

3. Eligibility Restrictions for Police Officers: Generally, police officers are ineligible to be appointed as Assistant Public Prosecutors. However, under specific circumstances where no other candidate is available, the District Magistrate can appoint a person other than a police officer as an Assistant Public Prosecutor for a particular case [S. 25(3)]. Certain criteria must be met, such as the police officer not having been involved in the investigation of the case and holding a rank higher than Inspector [S. 25(3)(a)-(b)].

While the section does not explicitly mandate legal qualifications for Assistant Public Prosecutors, it is encouraged that qualified legal practitioners are appointed for these roles. Additionally, it is hoped that the provisions allowing for the appointment of non-police officers are used sparingly in the future.

Regarding the organisation and administrative control of the prosecuting agency, while prosecutions in Magistrates' Courts typically fall under the purview of the Police Department, the District Magistrate holds general control over trial prosecutions in Sessions Courts.

There have been suggestions, echoed in the Law Commission's 14th Report on Judicial Administration, advocating for the independence of the prosecuting agency from the administrative control of the Police Department. This separation would allow for a more thorough examination of evidence before cases are filed in court, ensuring fair and impartial prosecution.

Role of Public Prosecutor

The role of the prosecutor in criminal trials is fundamental to the pursuit of justice, and while the Code of Criminal Procedure (CrPC) may not explicitly outline the spirit in which their duties are to be fulfilled, certain principles are well-established:

1. **Objective Pursuit of Truth:** The primary objective of a criminal trial is to ascertain the truth and determine the guilt or innocence of the accused. The duty of the prosecutor is not to secure convictions at any cost but to present all evidence available, whether favourable or unfavourable to the accused, and allow the court to make an impartial judgement based on the evidence **(Harendra Rai v. State of Bihar, 2023)**.

2. **Impartiality and Fairness:** Prosecutors should maintain impartiality and fairness throughout the trial process. There should be no eagerness to secure convictions by any means, and prosecutors should not feel pride or satisfaction solely from obtaining a conviction **(Harendra Rai v. State of Bihar, 2023).**

3. **Minister of Justice:** Prosecutors are often described as ministers of justice, whose duty extends to serving not only the state but also the accused and the court. Their role is to assist the court by presenting all relevant aspects of the case, without bias or partisanship **(Harendra Rai v. State of Bihar, 2023).**

4. **Assistance to the Court:** Prosecutors are not representatives of any party but are there to assist the court in the administration of justice. Their duty is to present all available evidence to aid the court in its quest for truth **(154th Law Commission Report).**