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## A CRITICAL EVALUATION ON THE ROLE OF PUBLIC PROSECUTOR UNDER CRIMINAL JUSTICE ADMINISTRATION IN INDIA

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### **ABSTRACT:**

In the criminal justice system, the role of a Public Prosecutor (PP) remains the cornerstone. Being a legal representative of the State, they play a significant part in assuring that justice is served for both the accused and victims, by holding criminal prosecution before a magistrate. Almost all systematic societies have adopted the structure of public prosecution for prosecuting the accused who is alleged to have violated the legal norms prevailing in society. In a way, the PP's office signifies the collective will of the society. This article critically maps the function of the public prosecutor in the Indian judicial setup, with emphasis on their role, issues, and significance in securing effective and fair criminal trials. The primary responsibility of a public prosecutor is to ensure that "justice is not only done but seen to have been done". They are entrusted with the duty to establish guilt of conviction while ensuring that the accused's rights are also preserved. But this responsibility is hindered by various factors, including insufficient resources, political influence, and backlogs, which can cause delay in justice and vitiate the mandate of fair trial. This article highlights the appointment procedure of the Public Prosecutor in India, showing how a lack of independence & transparency in selection can prejudice their effectiveness. It also explores the key role of the public prosecutor in ensuring proper investigation and fair trial. The article examines the judicial and legislative approaches concerning the public prosecutor. It discusses challenges faced by public prosecutors and relevant suggestions for addressing them.

**Keywords:** Public Prosecutor, Criminal Justice, BNSS, India.

**INTRODUCTION:**

*We must always remember that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistance in the administration of justice.*"<sup>1</sup> Public prosecutor serves as a pivotal functionary in administering criminal justice. He exercises a delicate balancing act by invoking the rule of law while securing a fair trial standard for the accused person. Keeping this in mind, the role of such an officer of the Court is not merely procedural but also deeply embedded in the larger purpose of justice delivery and adherence to constitutional mandates. The PP's officer is a center of attraction in the criminal justice setup. The reason behind establishing such an office is to safeguard the collective interest and legitimate rights of citizens and appoint an officer to guard the accused's interest by preventing any form of vexatious or frivolous litigation.<sup>2</sup>

**HISTORICAL ROOTS OF PROSECUTOR'S ROLE:****(i) Pre-Independence Era:**

Indian traces of the public prosecutor's office can be traced from colonial rule. Prior to the advent of Britisher rule, the administration of justice was mainly entrusted to local rulers and their officials. The Mughal emperors hired officers like Muftis and Qazis for dealing with criminal cases, often exercising the prosecutorial and judicial roles. But with the advent of the East India Company, the criminal justice system was reshaped by the British.

The Regulation Act of 1793<sup>3</sup> Adopted a more systematic implementation method of prosecution and law enforcement. Prosecutorial powers were vested in British officers. The public prosecutor or Assistant. The District Judge performed a judicial role.

**Introduction of IPC:** Under the supervision of Lord Macaulay, the Indian Penal Code was drafted, which was the basis for Indian Criminal law. The function of the public prosecutor was mainly to serve the colonial state and ensure that criminal conducts were duly prosecuted. During the British era, prosecutors were

<sup>1</sup> "State of Punjab v. Shamlal Murari (1976) 1 SCC 719.

<sup>2</sup> Pillai, K.N.C. (2008) 'Public Prosecution in India', *Journal of Indian Law Institutes* (November 01, 2025, 8:00 P.M.) [PUBLIC PROSECUTION IN INDIA on JSTOR](#)

<sup>3</sup> Only IAS, <https://pwnonlyias.com/upsc-notes/chapter-act-1793/> (last visited on November 01, 2025).

government employees, usually considered as the instruments of British administration in maintaining governance over local people<sup>4</sup>.

Likewise, the Indian Evidence Act 1872 was enacted, which contained the rules concerning the admissibility of evidence in criminal proceedings, affecting the function of the public prosecutor in furnishing evidence before the Court.<sup>5</sup>

**(ii) Post-independence Era:**

After attaining independence, the position of public prosecution underwent substantial alteration. The Indian Constitution formed the basis for transforming the role of the public prosecutor. The “Fundamental Rights (under Part III) and Directive Principles of State Policy” obliged the State to ensure a just and fair system of criminal justice administration. The Courts have affirmed that the right to a fair trial is implicit in the right to life enshrined under Article 21<sup>6</sup> Of the Constitution. The role of public prosecutor was redefined with the enactment of the Criminal Procedure Code (CrPC) 1973, which substituted the Code of 1898. The Code affirmed that public prosecutors are not just a wing of government but are entrusted to secure fairness in the administration of justice. Section 24 to 25A<sup>7</sup> The Code outlines the procedure for selection, obligations, and responsibilities of public prosecutors in the Indian context. Finally, the CrPC was replaced by another comprehensive and updated law, i.e., Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, which is presently governing the appointment and working of the public prosecutor.

**MEANING AND FUNCTIONS OF “PUBLIC PROSECUTOR”:**

Before diving deep into the responsibilities of the public prosecutor, it is essential to explore its meaning in a real sense. The expression “public prosecutor” has been defined under Section 2(u)<sup>8</sup> of the newly enacted “Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023” as *an*

<sup>4</sup> Gurdault Singh Sidhu (2018) ‘Role of Public Prosecutor in Criminal Justice System’ *International Journal of Law*, 4(2), p 157.(November 01, 2025, 8:00 P.M.), [4-2-72-310.pdf](#)

<sup>5</sup> Verma, J.K. (2025) *Bharatiya Nagarik Suraksha Sanhita, 2023 (Criminal Procedure): A Commentary*. 1st edn. Eastern Book Company, pp. 248-91. (November 01, 2025, 8:00 P.M.) [Bharatiya Nagarik Suraksha Sanhita, 2023 \(Criminal Procedure\) : A Commentary by J K Verma – 1st Edition 2024 – Bharat Law House](#)

<sup>6</sup> Constitution of India 1950, art 21, Act of Parliament 1950 (India).

<sup>7</sup> Criminal Procedure Code 1973, No. 2 of 1974, Section 24-25A, Act of Parliament 1974 (India).

<sup>8</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 2(u), Act of Parliament 2023 (India).



*individual appointed under Section 18 of the Sanhita and also encompasses any individual acting under the PP's direction.*" Therefore, in legal sense, Public Prosecutor entails different classes of officers namely, "Public Prosecutor, Special Public Prosecutor and Additional Public Prosecutor". In *Sheonandan Paswan v. State of Bihar*<sup>9</sup>, the Apex Court has noted that "Public Prosecutor is not a partisan agent of state rather a minister of justice whose primary job is to render help to the Court in ensuring that justice is done". The Public Prosecutor holds an impartial role between the accused and the State. He is bound to place every relevant evidence and facts before the Court to help in attaining a fair and just decision. He is vested with the role of conducting transparent and fair prosecution, assisting the judges in finding the truth, ensuring that criminal proceedings are just and reasonable and merely a persecution, and disclosing all substantial evidence, even when it favours the accused person. Therefore, the ultimate purpose of such an officer is not securing victory, rather ensuring justice in a criminal trial, with emphasis on natural justice and fair trial.

### **LEGAL FRAMEWORK RELATING TO PUBLIC PROSECUTOR:**

As far as the administration of criminal justice, the public prosecutor's office is of an indispensable nature. The legislative structure regulating the relevancy of the public prosecutor can be inferred from the last criminal procedure laws, namely, "Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 & Bharatiya Sakshya Adhiniyam (BSA)" 2023, which empowers the public prosecutor to appear and plead before the Court without requiring any written permission. It is pertinent to note that even a pleader employed by a private person shall also act as per the direction of the public prosecutor.<sup>10</sup>

### **BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) 2023**

#### **Appointment of Public Prosecutor, Additional and Special Public Prosecutors (PPs):**

Chapter II<sup>11</sup> of BNSS, entitled "Constitution of Criminal Courts and Offices", includes three sections (18-20) governing the public prosecutors (PP) in India. Section 18<sup>12</sup> deals with the

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<sup>9</sup> AIR 1987 SC 877.

<sup>10</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 338, Act of Parliament 2023 (India).

<sup>11</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Chapter III., Act of Parliament 2023 (India).

<sup>12</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 18, Act of Parliament 2023 (India).

eligibility and appointment of the Public Prosecutor. It states that the State or Central government shall ensure appointment of a public prosecutor or additional public prosecutor for a High Court, and such officers will be legally representing the concerned government in appeals, prosecutions, and other processes. Such selection shall be conducted after consultation with the High Court<sup>13</sup>. The Section also lays down the procedure for appointment of PPs or Additional PPs at District regions, and they would be representing the state, nominated from a panel of legal practitioners prepared by the District Magistrate after consulting with the Sessions Judge. The State or Central government can also appoint Special PPs for certain matters, with the necessity that the advocate shall have been practicing for a minimum of 10 years<sup>14</sup>.

### **Appointment of Assistant PPs and Substitute APPs:**

Section 19<sup>15</sup> of the Sanhita (earlier under Section 25 of CrPC<sup>16</sup>) outlines the selection of an Assistant Public Prosecutor by the State government in the Magistrates' Courts. The provisions also empower the District Magistrate to nominate the Assistant PP where the regular prosecutor is not available. The general rule is that police cannot be selected as PPs unless there exist exceptional circumstances.

### **Directorate of Prosecution:**

A significant reform concerning PP's appointment was brought by the CrPC Amendment 2005, which confers the power to create a hierarchical system for prosecution. Now, the State can constitute a "Directorate of Prosecution" operating under the jurisdiction of the Home Department. The said directorate functions under the leadership of the Director of Prosecutions, with a subordinate officer, i.e., Deputy Director, reporting to them.<sup>17</sup> Additionally, the newly enacted Section 20<sup>18</sup> BNSS prescribes for establishing at Directorate of Prosecution at the District level.

<sup>13</sup> Bhai D.M. and Mir D.M.U.D. (2020) 'The Role of Prosecution in the Criminal Justice System in India: An Analytical Audit', *Indraprastha Law Review* 1(2), (November 01, 2025, 8:00 P.M.)

[GGSIPIU USLLS ILR 2020 V1-I2-010-Dr Mudasir Bhat Dr Mehraj Ud Din Mir.pdf](#)

<sup>14</sup> Tyagi, S.P. (2020) *Session Trial Practice and Procedure*. 5<sup>th</sup> edn. Vinod Publishing House. (November 01, 2025, 8:00 P.M.) [\(PDF\) PROCEEDINGS 7TH PALESTRA CONGRESS](#)

<sup>15</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 19, Act of Parliament 2023 (India).

<sup>16</sup> Criminal Procedure Code 1973, No. 2 of 1974, Section 25, Act of Parliament 1974 (India)..

<sup>17</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 20, Act of Parliament 2023 (India).

<sup>18</sup> *Ibid*, at 2477.

**BHARATIYA SAKSHYA ADHINIYAM (BSA)” 2023:**

Bharatiya Sakshya Adhiniyam (BSA) deals with the rules concerning evidence in the Indian scenario. While it doesn't directly mention the responsibilities of PPs expressly, the role of PPs is closely related to how evidence is furnished, established, and challenged in a criminal proceeding. Some of the relevant provisions related to PPs under BSA have been discussed in the following manner-

- (i) **Leading evidence:** The Prosecutor is bound to produce relevant and admissible evidence before the court. The PP shall ensure that material, digital, documentary, and oral evidence is properly led and established as per the rules laid down under BSA 2023.
- (ii) **Proving electronic or documentary evidence:** Sections 56 to 92<sup>19</sup> The BSA states that PP shall establish the authenticity and genuineness of electronic records and documents. For electronic evidence (such as phone records, CCTV footage, or emails), the PPs are required to present concerned certificates.
- (iii) **Cross-examination & re-examination:** Under BSA 2023, PP is responsible for conducting examination-in-chief of prosecution witnesses and re-examining them.
- (iv) **Role in burden of proof:** According to BSA 2023 (Burden of Proof: Chapter VII)<sup>20</sup> The PP is bound to prove the guilt beyond a reasonable doubt. Initially, the burden rests upon the prosecution. In certain matters, PP shall properly plead when the burden shifts to the accused.
- (v) **Assuring Procedural fairness:** PP shall act in a fair manner by disclosing the evidence which might assist the defence.
- (vi) **Ensuring the establishment of the presumptions:** BSA comprises various legal presumptions. The PP invokes such a presumption if necessary, but shall also be made for rebutting any challenge from the defence.

**NATURE OF PUBLIC PROSECUTOR'S OFFICE:**

- (i) **Judicial or Executive?:**

<sup>19</sup> Bharatiya Sakshya Adhiniyam 2023, No. 47 of 2023, Section 56-92, Act of Parliament 2023 (India).

<sup>20</sup> Bharatiya Sakshya Adhiniyam 2023, No. 47 of 2023, Chapter-VII, Act of Parliament 2023 (India).

In several instances, the office of the public prosecutor seems to be executive in nature, while in a few cases it also appears as quasi-judicial<sup>21</sup>. The Apex Court of India in *R.K. Jain v. State*<sup>22</sup> outlined the principle in relation to the meaning and authority bestowed upon the PPs in India, which signifies that this post is executive in nature. However, the rulings made by different High Courts across the nation have led to a situation of ambiguity with regard to the nature of PP's officer. The High Court of Kerala in "*Aziz v. State of Kerala*"<sup>23</sup> emphasized that the public prosecutor shall act impartially. He shall support the cause of his client in an efficient and effective manner, but simultaneously, it shall be done truthfully and fairly. Similarly, in "*Babu v. State of Kerala*"<sup>24</sup>, the same Court drew a distinction between a public prosecutor and an advocate representing a private person and explicated that "public prosecutors are considered as ministers of justice and their role is to assist the court in finding the truth. They are not only an advocate representing the client."

**(ii) Public Office:**

Another notable issue relating to the nature of PP's office is whether the relation between the public prosecutor and the government is purely contractual or does it involves a public component which justifies designating it as a public office? The Indian Supreme Court dealt with this question in "*Kumari Srilekha Vidhyarthi v. State of Uttar Pradesh*"<sup>25</sup>. In an instant, the government's legal representatives questioned their termination because such action was taken before the expiration period. Their submissions support that the termination was done without any sufficient cause and arbitrarily. The rationale of their contention is that the relation between the government and the state's counsel was akin to public employment or appointment to a public office. After considering all the legal provisions concerning PP's appointment and their role in withdrawing prosecution as envisaged under

<sup>21</sup> *State of Punjab v. Shamlal Murari*, (1976) 1 SCC 719.

<sup>22</sup> AIR 1980 SC 1510.

<sup>23</sup> (1984) Cri LJ 1060 (Ker.)

<sup>24</sup> (1985) Cri LJ 499 (Ker.)

<sup>25</sup> (1991) 1 SCC 212.



Section 360 of Sanhita, the Court held that “the office of PP is indeed a public office.”<sup>26</sup>.

**(iii) Impartial and Independent:**

The Public Prosecutor shall be independent and impartial. Their work is not restricted to that of a counsel representing a party. The PP shall be bound to assist the court in its pursuit of truth. The core issues involve what criteria can be applied to assess impartiality? How fairness in actions can be evaluated? In the present context, it is witnessed that the appointment of PP majorly relies on political affiliation and connections, which poses a risk to the fairness and impartiality of the office. A leading case of how political intervention can result in misuse of the PP's office has been enlightened in “*Sunil Pal v. Phota Sheikh*.”<sup>27</sup> As per the facts, PP was given just one day to prepare the case of murder, which led to the return of the brief. Later, a junior PP was nominated as Special PP, while the PP pleaded on behalf of 9 accused. In this matter, witnesses were intimidated, many failed to be present, and several turned hostile as the accused received support from the Communist Party. The Apex Court quashed the acquittal order and strongly condemned the ways in which justice is administered by subordinate courts. In *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>28</sup>, the Indian Supreme Court identified “the Public prosecutor as a crucial government officer and entrusted an independent authority upon him”.

**Constitutional provisions:**

While the Indian Constitution doesn't expressly describe the public prosecutor, various provisions influence their role:

**(i) Article 21<sup>29</sup>**

A fair trial is the integral component of the fundamental rights of right to life & liberty as guaranteed under Article 21 of India's Constitution. A keen examination of this provision signifies that the public prosecutor shall ensure that prosecution doesn't become an instrument for persecution, thereby reinforcing this right. In

<sup>26</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 360, Act of Parliament 2023 (India).

<sup>27</sup> (1984) 4 SCC 533.

<sup>28</sup> (1994) 3 SCC 117.

<sup>29</sup> Constitution of India 1950, art 21, Act of Parliament 1950 (India).

*“Zahira Habibullah Sheikh v. State of Gujarat”*<sup>30</sup>The Apex Court pressed the requirement for impartial and fair prosecution for securing a fair trial.

**(ii) Article 22<sup>31</sup>**

In initial phases, the neutrality of the public prosecutor assures that accused persons are not falsely or wrongfully tried on the basis of fabricated evidence. Such neutrality ensures that the accused are protected against unlawful detention and arrest during criminal proceedings.

**(iii) Directive Principles of State Policy**

Article 38<sup>32</sup> & 39<sup>33</sup> Aims to foster equality and justice, which implies that prosecution is to be carried out in a fair manner without discrimination.

### **IMPORTANCE OF PUBLIC PROSECUTORS IN THE CRIMINAL JUSTICE SYSTEM:**

In *Sheonandan Paswan*<sup>34</sup> Case, the Indian Supreme Court underscored the responsibilities and role of the public prosecutor in the criminal justice mechanism- “(i) the prosecution of a criminal is conducted by the prosecutor; (ii) PP exercises the executive function by withdrawal from prosecution; (iii) the public prosecutor performs significant functions at different phases of the criminal trial.

**(i) Commencement of Criminal Proceedings :**

The importance of functions exercised by the public prosecutor is illuminated under Chapter XIX of BNSS, which contains the sections relating to trials before a Sessions Court. Section 248<sup>35</sup> The Sanhita clearly specifies that in every trial before the Sessions Court, the public prosecutor shall conduct the prosecution. Additionally, the prosecution (PP) is mandated under Section 249<sup>36</sup> The Sanhita presents the case by describing the evidence and charges levelled against the accused person. The evidence relied on by the prosecutor in the opening statement

<sup>30</sup> (2004) 4 SCC 158.

<sup>31</sup> Constitution of India 1950, art 22, Act of Parliament 1950 (India).

<sup>32</sup> Constitution of India 1950, art 38, Act of Parliament 1950 (India).

<sup>33</sup> Constitution of India 1950, art 39, Act of Parliament 1950 (India).

<sup>34</sup> AIR 1987 SC 877.

<sup>35</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 248, Act of Parliament 2023 (India).

<sup>36</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 249, Act of Parliament 2023 (India).

shall be the one that was sent before the Magistrate when the matter was committed to the Sessions Court. Soon after the Magistrate transmits the relevant articles, documents, and records to the Court, grants bail or remands the accused for custody, and the prosecution is intimated about the same, then in such a case, the public prosecutor will be responsible for conducting the prosecution.

In *Shiv Kumar v. Hukum Chand*<sup>37</sup> The Supreme Court declared that “From the scheme of Code (now BNSS), the main intent behind legislation is evidently clear, that is, the prosecution before the Courts of session can only be carried out by the public prosecutor. The law framer reminds the government that policy shall stringently adhere to fairness in the trial of an accused person in a session court. APP cannot show a thirst to somehow convict the accused, ignorant of the true facts of the case”.

The prosecutor is obliged to identify and present witnesses whose statements or testimonies are pivotal for establishing the prosecution’s version. PP conducts the examination-in-chief for extracting the relevant facts from these witnesses. She/he shall ensure that witnesses are not led inappropriately and that their examination complies with the evidentiary norms<sup>38</sup>.

**(ii) Investigation Stage:**

In a landmark case of “*Ajay Kumar Agarwal v. Union Territory of J&K*”<sup>39</sup> The Court noted that fair investigation and fair trial are not only essential for the accused person but it is also crucial for society and the victim who have an interest in ensuring that the actual criminal of an offence is booked. Therefore, investigating officials are obliged to gather evidence (either documentary or oral) from every possible source.

While Herbert Pecker in his work titled “Limits of Criminal Sanction” dealt with the division or distribution of competency, that the responsibility and power are allocated among every wing as per their competency. Thus, applying such a principle in the pre-trial phase, the police have pre-requisite competency with

<sup>37</sup> (1997) 7 SCC 467.

<sup>38</sup> Mittal, Y. (2024) ‘Legal Aid Must be Effective; Prosecutor Must Ensure Fair Trial: Supreme Court Issues Guidelines to Legal Aid Lawyer, Prosecutors’ LiveLaw. [Online] (November 01, 2025, 8:00 P.M.) <https://www.livelaw.in/supreme-court/legal-aid-must-be-effective-prosecutors-must-ensure-fair-trial-supreme-court-issues-guidelines-to-legal-aid-lawyers-prosecutors-277034> (Accessed: 14 April 2025).

<sup>39</sup> W.P.(C) No. 821/2022.

respect to investigation and chargesheet, signifying that it is the prerogative of police officers. Prosecution and investigation are the 2 different facets under the ambit of administration of criminal justice. The function of the public prosecutor is within the court, whereas the investigative actions fall beyond the court. PP's role starts when the police officer presents the matter before the Court on the completion of the investigation. Thus, the role of the prosecutor during the investigation phase is pernicious or injudicious under the legal framework.<sup>40</sup>

But the PP's role is very crucial in ensuring better investigation, as he is at the earliest phase of reviews, what is being done in the investigation, and where such investigation is not conducted in a rightful and proper manner, then he has every right to require the police for further investigation.<sup>41</sup>

Although the police officers are the main people involved in the investigation, the public prosecutor can advise police officials on what kind of evidence can be gathered, how the case could be structured in alignment with legal mandate, and ensure appropriate documentation of evidence to avoid lapses during a criminal trial. Moreover, the public prosecutor mostly examines the evidence collected, the chargesheet, and the case diary before filing. Where there exists an allegation of inadequate evidence or biased investigation, the public prosecutor can advise sending their matter to specialized agencies such as the CBI in grave cases or for further investigation. In *CBI v. Hopeson Ningshen*<sup>42</sup>, the Court observed that "Prosecutors shall assure that investigation does not cause suppression of evidence and maintain neutrality." PP also provides assistance in framing the levelled charges after examining the investigation report. This ensures that charges are levelled on the basis of law and evidence, and are not vague.

During the investigation period, there can be a conflict related to custody (whether an accused person shall be kept in judicial custody, police custody, or be conferred bail). Here, the role of the public prosecutor is to represent the State's case in

<sup>40</sup> Yadav, S. and Yadav, A. (2025) 'Mapping Critically Role of Public Prosecutor in Criminal Justice Administration' (2025) *International Journal of Law Management & Humanities* 8(2), 1621-1622. (November 01, 2025, 8:00 P.M.) [Mapping Critically Role of Public Prosecutor in Criminal Justice Administration | International Journal of Law Management & Humanities](#)

<sup>41</sup> Kadeejabi, D.A.A. (2022) 'Role of Prosecutors in Criminal Justice System' *Journal of Emerging Technologies and Innovative Research*. 9(4), p. 533. (November 01, 2025, 8:00 P.M.) [JETIR2204865.pdf](#)

<sup>42</sup> AIR 2020 SC 1617.



objecting bail application whenever the circumstances demand. The PP can contend before the magistrate about why continued detention is essential for the interest of public safety, investigation, and the larger benefit of justice delivery.<sup>43</sup>.

**(iii) Plea Bargaining:**

The Public Prosecutor's role is significant in plea bargaining proceedings, wherein he serves as a facilitator to ensure that the procedure remains just, voluntary, and fair. Incorporated under Chapter XXIII (Section 289 to 299<sup>44</sup>) of BNSS, plea bargaining enables an accused to plead guilty in consideration for a decreased penalty. In this mechanism, the PP provides assistance to the court by ensuring that the plea bargaining claim was invoked voluntarily and without any kind of undue influence, threat, or coercion. He further takes part in negotiation, wherein victims and accused are consulted for arriving at a mutually agreed decision. Significantly, the PP protects the interests of society and the State by assuring that the said plea doesn't threaten the graveness of the crime or the larger public interests.<sup>45</sup>.

**(iv) Trial phase:**

The trial phase is the most essential stage wherein the Prosecutor's role is illustrated. In this stage, both parties are in an adversarial battle.

The PP is involved in leading evidence in a persuasive, logical, rational, and coherent manner. Oral or documentary evidence, expert testimony, and forensic reports are introduced by PP systematically. The PP shall also ensure that all evidence is admissible under Bharatiya Sakshya Adhiniyam 2023<sup>46</sup> And that the appropriate process for presenting exhibits is adhered to.

During the criminal trial, the PP evaluates the witnesses from the prosecution side and, when it seems essential, re-examines them to clarify the issues raised during the phase of cross-examination and doesn't bring new facts which can be questioned by the defense counsel.

<sup>43</sup> Sharma, A. (2022) 'Public Prosecutor, Victims and the Expectation Gap: An Analysis of Indian Jurisdiction' *Socio-Legal Review* 13, 92. (November 01, 2025, 8:00 P.M.) ["Public Prosecutors, Victims and the Expectation Gap: An Analysis of In" by Anupama Sharma](#)

<sup>44</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 289-299, Act of Parliament 2023 (India).

<sup>45</sup> Jain, A.K. (2025) *Bharatiya Nagarik Suraksha Sanhita (BNSS) (Criminal Law- II)*. 1st edn. Ascent Publications, pp. 312. (November 01, 2025, 8:00 P.M.) [Bharatiya Nagarik Suraksha Sanhita \(BNSS\), 2023 by Dr. Ashok Kumar Jain](#)

<sup>46</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 232, Act of Parliament 2023 (India).

The PP plays a vital role in ensuring speedy trials through efficient management of their caseloads by ranking the cases as per their seriousness and the gravity of the crime. It entails making quick decisions to avoid pointless delays in a complex process.<sup>47</sup> The PP assists in preparing the cases in advance of the prescribed timeframe. Their preparation assists in dictating the trial schedule, which would be effective in disposing of the cases timely manner. PPs also take part in the pre-trial process, like plea negotiation, which speeds up the matter.<sup>48</sup>

In a few cases, prosecution witnesses become hostile by changing their stance opposite to their previous statement. In these cases, the PP's role becomes crucial in seeking the court's permission to conduct cross-examination of their own witness, express the inconsistencies, and attempt to impeach the credibility of the witness without contravening the ethical standards.

When defense counsel files a motion for acquittal post closure of the prosecution's evidence under Section 232<sup>49</sup> Of Sanhita, the PP shall contest the motion by contending that there is adequate material for requiring the accused to enter upon their defense.

**(v) Argument Phase:**

After presenting the evidence, PP demonstrates closing arguments. The prosecutor is involved in summing up of evidence and establishing how it conclusively proves the accused's guilt beyond a reasonable doubt. Any weaknesses or inconsistencies in the evidence by the defence are illustrated during this phase. Further, the PP also counters the final arguments presented by the defence counsel, emphasizing legal provisions, case laws, and its alignment with the prosecution's case<sup>50</sup>.

**(vi) Sentencing Phase:**

Where the accused's guilt is established and he is convicted, the case shifts towards the sentencing stage, wherein the PP plays a significant role. The prosecutor helps

<sup>47</sup> Kumar, P. and Dixit, D.A. (2024) 'The Role of Public Prosecutor in Speedy Trial and in restoring the Faith of Common People in Criminal Justice Administration' 44(3) *BPAS Journals* 7651. (November 01, 2025, 8:00 P.M.) [The Role Of Public Prosecutor In Speedy Trial And In Restoring The Faith Of Common People In Criminal Justice Administration | Library Progress International](#)

<sup>48</sup> *Id.*

<sup>49</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 232, Act of Parliament 2023 (India).

<sup>50</sup> Sharma, A. (2022) 'Public Prosecutor, Victims and the Expectation Gap: An Analysis of Indian Jurisdiction' *Socio-Legal Review* 13, 92. (November 01, 2025, 8:00 P.M.) ["Public Prosecutors, Victims and the Expectation Gap: An Analysis of In" by Anupama Sharma](#)

the judge by suggesting a judicious and proportionate sentence, taking into account the accused's condition and background, mitigating and aggravating factors, seriousness of the crime, and effect on victims and society. In grave crimes, the PP might suggest for stringent punishment, while in less serious offences, he can suggest leniency where necessary.

**(vii) Withdrawal of Prosecution:**

In matters where withdrawal is claimed, the Public Prosecutor plays a crucial role as he serves as the representative of the state. Section 360<sup>51</sup> The Sanhita mentions that APP or PP, in any phase prior to the pronouncement of a decision, can withdraw the prosecution with the permission of the court, either generally or in relation to one or more crimes.<sup>52</sup> The function of the Public Prosecutor has been deemed as a testing basis for principles of impartiality and independence, which is connected with the office. Actually, the political parties attempt to manipulate or influence such decisions, which have caused numerous cases wherein courts have to intervene. The Indian Supreme Court has found that, in various cases that "it is the sole prerogative of the Public Prosecutor to decide whether to withdraw the prosecution or not". This is because the officer of PP is deemed a public office. In *State of Punjab v. Union of India*<sup>53</sup> The Court opined that there can be various grounds for withdrawal, including, lack of evidence, for meeting public justice like economic, social, and political purposes. Once the court deems that the application is filed with due diligence and good faith, in the interest of public policy and justice, and not to hinder the legal proceeding, the Court can grant permission.<sup>54</sup>

**(viii) Post-Trial Phase:**

Even after the completion of the trial, the role of public prosecutor doesn't end. When an accused is granted acquittal by the Court and if the State is of the opinion that such a decision is erroneous, then the PP is obliged to offer advice regarding whether an appeal can be preferred. She or he drafts and pleads in appeal-related

<sup>51</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 260, Act of Parliament 2023 (India).

<sup>52</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, No. 46 of 2023, Section 360, Act of Parliament 2023 (India).

<sup>53</sup> 1987 Cri LJ 151 (SC).

<sup>54</sup> Swayamraj, K (2024) *Textbook on Bharatiya Nagarik Suraksha Sanhita BNSS*. 1st edn. Central Law Publications, pp. 189-91. (November 01, 2025, 8:00 P.M.) [Bharatiya Nyaya Sanhita, 2023 - Wikipedia](https://www.abhidhvajlawjournal.com)



matters in high courts. The PP represents the State even in review and revision matters, which ensures that the procedural or legal error committed by the subordinate courts is rectified. The Prosecutor assures that sentencing imposed by the courts is executed appropriately, including compliance with compensation orders, overseeing probation reports, and any essential communication with prison officials.<sup>55</sup>.

## INTERNATIONAL SCENARIO WITH RESPECT TO THE ROLE OF PUBLIC PROSECUTOR (PP):

### INTERNATIONAL INSTRUMENTS:

#### (i) United Nations Guidelines on the Role of Prosecutors (1990):

The UN Guidelines envisaged the fundamental principles related to the role of prosecutors across the globe. It emphasizes on following principles-

- **Impartiality and independence:** Prosecutors shall discharge their obligation in an independent manner and free from inappropriate influence.
- **Objectivity and fairness:** They shall safeguard public interest, respect the rights of the accused person and the victim & act with integrity.
- **Obligation to disclose evidence:** The Prosecutor shall present exculpatory and incriminating evidence to ensure a fair trial.
- **Safeguarding Human Rights:** PP shall foster and respect the fulfilment of human rights identified under the international and national framework<sup>56</sup>.

These guidelines are highly influential and are frequently referenced by human rights bodies and courts.

#### (ii) International Covenant on Civil and Political Rights (ICCPR), 1966:

Although ICCPR doesn't expressly specify about prosecutors. Article 14 affirms the right to presumption of innocence, equality in judicial matters, and fair trial. The prosecutor's conduct is essential in ensuring that such entitlements are invoked in

<sup>55</sup> Gurbuneet Singh Randhawa and Dr. D.J. Singh (2018) 'Analysis of Challenges Faced by Indian Prosecution System' 3(5) *International Journal of Research in Humanities and Social Studies* 4. (November 01, 2025, 8:00 P.M.) [3.5201-Gps.compressed.pdf](#)

<sup>56</sup> OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors> (last visited on November 01, 2025).



criminal proceedings. PP shall not abuse their authority to hamper the fair trial rights.

**(iii) Rome Statute of the International Criminal Court (ICC), 1998:**

Under the Rome Statute, the “OP- Officer of Prosecutor” has been established under Article 42. OP is an independent organ obliged for prosecuting and investigating offences falling within the jurisdiction of the Court (crime against humanity & aggression, war crimes and genocide). As per this instrument, the Prosecutor serves in an independent manner and is not subjected to external intervention. They shall ensure that investigations are impartial. Victim participation is fostered, and the prosecutor shall strike a balance between the rights of the accused with the rights of the victims.

**(iv) European Guidelines on Ethics and Conduct for Public Prosecutors ("Budapest Guidelines", 2005):**

The Budapest Guidelines emphasize that prosecutors shall act fairly, impartially, lawfully, and safeguard the fundamental rights of persons. They shall ensure professional independence and integrity. They are bound to be involved in transparent communication with witnesses and victims while assuring necessary confidentiality. These regional rules have reformed the prosecutorial behaviour, particularly in Europe, and impact on wider global standards.<sup>57</sup>.

**(v) Soft Law and Other International Standards:**

The role of prosecutors has also been mentioned under soft law instruments, which have been described below-

- **Bangalore Principles of Judicial Conduct 2002:** Although mainly premised on judges, it indirectly focuses on prosecutorial fairness as an essential element of assuring impartiality in judicial proceedings.
- **The Basic Principles on the Roles of Lawyers 1990:** This also relates to the role of prosecutors, as in several nations, the PPs are deemed as officers of the courts, just like advocates.
- **UNODC (United Nations Office on Drugs and Crime) Handbook on Prosecution (2014):** It prescribes best practices regarding responsibilities

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<sup>57</sup> Consultative Council of European prosecutors (CCPE), <https://rm.coe.int/168074738b> (last visited on November 01, 2025).

of PPs in the criminal justice system, fostering respect for rights and professionalism.

### **POSITION OF PUBLIC PROSECUTOR IN FOREIGN JURISDICTIONS:**

The significance of the Public Prosecutor, while uniformly essential to criminal justice systems, varies substantially across different nations based on their societal demands, constitutional frameworks, and legal traditions. While few nations consider the PP majorly as the State's legal representative with significant discretionary authority, others adopt the Prosecutor's responsibility as a judicial officer whose foremost obligation is to ensure fairness. Comprehending the distinctions and similarities in the responsibility of PP across nations like the USA, UK, and Germany offers a lesson for the Indian context and points out the best practices for efficient prosecution and securing justice.

#### **United States (US): Political accountability and wide discretion:**

In the US, the role of PP (usually known as the US Attorney under the federal system or District Attorney) is characterized by broad discretionary power and independence. U.S. prosecutors are elected officials in majority states, signifying that they are politically answerable to the citizens. They are conferred with wide authority to take decisions on whether to commence prosecution, what charges to be levelled, whether to indulge in plea bargaining, and whether to suggest the appropriate sentences after conviction. Prosecutors' independence enables them to prioritize certain offences or matters based on public importance, like focusing more on violent offences or drug-related crimes. But such discretion also raises issues concerning unreasonable pressure by public opinion, political bias, and unequal treatment. Thus, the US approach focuses on prosecutorial independence but also emphasizes the requirement for internal checks to avoid abuse of authority.

#### **United Kingdom (UK): Crown Prosecution Service :**

The UK incorporates a contrasting approach with the introduction of the Crown Prosecution Service (CPS) in 1986<sup>58</sup>. Unlike the US, the Public Prosecutor in the UK is not nominated but is a career civil servant working in an independent body. The CPS bifurcates the prosecutorial and investigative functions in a clear manner. The UK's Public Prosecutor has a dual role: they shall secure that there is adequate evidence for a realistic prospect of conviction and that the PP conducts the prosecution for promoting the public interest. PPs are bound to disclose such

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<sup>58</sup> *Crown Prosecution Services*, <https://www.cps.gov.uk/> (last visited on November 01, 2025).

evidence that can support the defence, and ethical standards are core to this aspect. The main focus is on impartiality, fairness, and affirming public confidence, with the least political intervention. The UK approach outlines the idea that the Public Prosecutor is not merely the State's agent or advocate but a "Minister of Justice"<sup>59</sup>.

### **Germany: Judicial Officer with Obligation to conduct an investigation impartially:**

Germany contains yet another distinct model wherein "Staatsanwalt" (Public Prosecutor) is considered a judicial officer and not simply a legal counsel of the State. PPs in Germany are obliged to investigate both exculpatory and incriminating evidence, signifying a commitment to objective truth instead of emphasizing adversarial victory. The office of PP is established within the judiciary, and the prosecutor's responsibilities include guiding police investigations and even passing them direction when required. German PPs have limited authority in dropping charges and, unlike in the USA, cannot enter into plea bargaining regularly. Germany's model promotes the idea that the Prosecutor shall serve as an impartial truth seeker, assuring that justice is done instead of securing a conviction. This approach strengthens the notion of fairness and materially prevents prosecutorial bias.

### **JUDICIAL POSITION ON THE IMPORTANCE OF THE PROSECUTOR:**

In a plethora number precedents Supreme Court and different High Courts have reinforced the significance of the Public Prosecutor in the criminal justice system and in ensuring fair trial.

- (i) ***State of Bihar v. Ram Naresh Pandey***<sup>60</sup> The Apex Court illuminated that "the main duty of PP is not to convict but instead to place all the relevant evidence and material before the court (whether unfavourable or favourable for the accused), so as to secure justice.
- (ii) ***S.B. Saha v. M.S. Kochar***<sup>61</sup> The Indian Supreme Court stated that "Public Prosecutor plays an important part in striking a delicate balance between the accused person and society at large, thereby assuring that such rights are respected. His obligation is to ensure that the guilty are penalized, but simultaneously the innocents are safeguarded from wrongful prosecution.

<sup>59</sup> Kumar, P. and Dixit, D.A. (2023) 'Public Prosecutor- An Eminent Character of Criminal Justice System, A Comparative Analysis' *Journal of Namibian Studies*. 35(51), 5147. (November 01, 2025, 8:00 P.M.) [Public Prosecutor- An Eminent Character Of Criminal Justice System, A Comparative Analysis | Journal of Namibian Studies : History Politics Culture](#)

<sup>60</sup> AIR 1957 SC 389.

<sup>61</sup> AIR 1979 SC 1841.

- (iii) **Mukesh Singh v. State (NCT of Delhi)**<sup>62</sup>The Court reinforced that Public Prosecutors shall act with utmost fairness, which assures a fair trial and prevents being partisan. Any kind of deviation from impartiality and neutrality can cause vitiation of the whole criminal trial, resulting in miscarriage of justice.
- (iv) **Vineet Narain v. Union of India**<sup>63</sup>This case relates to an offence involving high political personalities. The CBI investigated the matter but failed to fulfil its duty properly. It was held by the Court that there is no restriction or bar on entrusting a prosecutor with the matter or order for commencing the investigation.
- (v) **Jitendra Kumar v. State (NCT of Delhi)**<sup>64</sup>The Delhi High Court noted that “Public Prosecutor acts on behalf of the government.”
- (vi) **Zahira Habibullah vs State of Gujarat**<sup>65</sup>The matter emerged from the death of 14 people in Vadodara because of a fire. The issue was brought before the Apex Court. It was ruled that “Public Prosecutor acted more like a defense counsel instead of stressing on presentment of truth before the Court.
- (vii) **Thakur Ram vs State of Bihar**<sup>66</sup>The Court held that the “rationale behind appointing the office of PP is that no private individual can utilize the legal apparatus in wreaking private vengeance on anyone”.
- (viii) **Tikram Singh v. State & Ors**<sup>67</sup>The Court observed that “PP’s role is different from that of private counsel. PP serves as a state’s representative but not as a complainant.
- (ix) **Radheyshyam vs State of M.P. & Ors** Court enlightened that “a special Public Prosecutor can be nominated for ensuring administration of justice. They cannot be nominated merely on the claim made by the complainant. His remuneration is disbursed by the state because if it were paid by a private person, then impartiality and independence of the PP could be at risk.”

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<sup>62</sup> (2020) SCC OnLine SC 700.

<sup>63</sup> AIR 1998 SC 889.

<sup>64</sup> 2023:DHC:2774.

<sup>65</sup> AIR 2006 SC 1367.

<sup>66</sup> AIR 1996 SC 911.

<sup>67</sup> 2006 (4) WLC 46.



- (x) ***Kunja Subidhi and Anr vs Emperor***<sup>68</sup>The Court outlined the obligation of PP, i.e., to present before the Court all relevant substances, whether against or in favour of the accused, and to leave it to the court to adjudicate the matter.

## CHALLENGES FACED BY THE PUBLIC PROSECUTOR IN ADMINISTERING JUSTICE:

Public Prosecutors witness multiple ethical, legal, operational, and structural issues which hinder their working-

(i) **Political Influence in appointment, undermining Independence & Impartiality:**

Public prosecutors are usually appointed on the basis of political allegiance rather than competence or merit. In most of the Indian States, the ruling party nominates the panel of advocates who align with their beliefs, which eventually undermines the impartiality of the PP. Such a kind of politicization hinders the independence of PP and raises concerns around procedural fairness in prosecution. Precedents like “*State of Uttar Pradesh v. Johri Mal*”<sup>69</sup>The Court has emphatically criticized the PP’s appointment and noted that the appointment of the PP shall be on the basis of integrity, experience, and merit, free from political influence.

(ii) **Reliance on the Police and lack of autonomy:**

While PP is expected to act independently, practically, there is an over-reliance on the police. The PPs have restricted engagement in the investigation, which curtails their capability to guide. Thus, they do not have much to say about the evidence and other material aspects. Such structural weakness results in miscarriage of justice, acquittals, and weak prosecutions, as demonstrated in cases like the “*Jessica Lal Murder case*,” wherein the case was weakened due to initial investigative lapses.

(iii) **Limited Tenure and Job Insecurity :**

Another notable challenge is the contractual nature and short duration of PP’s term. This leads to a chilling effect wherein PPs might fear losing their jobs when they go against political ideologies. This insecurity hinders the Prosecutor’s ability to act independently and fearlessly, as needed for ensuring fair administration of justice.

<sup>68</sup> AIR 1929 Pat. 275

<sup>69</sup> AIR 2004 SC 3800.

**(iv) Insufficient training:**

Presently, PPs deal with more complex criminal cases like financial fraud, terrorism, cybercrime, etc. But in India, there is an absence of specialized training for Prosecutors once they are appointed.

**(v) Over-pressurized with Excessive backlogs:**

In several regions of the nation, a single PP is compelled to handle several matters simultaneously. The excessive workload leaves no time for detailed case preparation. Because of case backlogs and multiple adjournments, prosecutors are under a burden to emphasize quantity over quality, thereby impacting the justice delivery system.<sup>70</sup>.

**(vi) Poor resources and infrastructure :**

The infrastructure for PPs is outdated and rudimentary. Several prosecutors face issues in accessing adequate legal research facilities, digital databases, or clerical support.

**(vii) Lack of accountability and ethical Issues:**

Incidents of negligence, collusion with defence lawyers, and corruption by a few Prosecutors have been reported, which hampers the people's faith in the system. Despite expecting adherence to high ethical standards, the mechanism for assuring PP's accountability is either absent or weak. There is a lack of an independent oversight institution for monitoring the conduct of PPs, and disciplinary actions against them are quite rare. Without a strict accountability mechanism and ethical guidelines, the impartiality and fairness of the trial remain questionable.

**CONCLUSION:**

It is evident from the aforesaid analysis that the function of the Public Prosecutor is indispensable to the efficient working of criminal justice administration in India. It is an essential position of neutrality and trust, which is responsible for assuring that justice is as within the legal framework. Unlike private counsel, who is obliged to represent the rights of the client, the PP serves as the court's officer who is entrusted to assure the highest standards of integrity, impartiality, and fairness. The BNSS 2023, BSA 2023, and various case laws have

<sup>70</sup> Randhawa, G.S. and Singh, D.D.J. (2018) 'Analysis of Challenges Faced by Indian Prosecution System' 3(5) *International Journal of Research in Humanities and Social Studies* 8. (November 01, 2025, 8:00 P.M.)  
[ijrhss.ijsrset.org](http://ijrhss.ijsrset.org)

evidently established the distinct feature of PP's role, highlighting that the prosecution shall not be biased, thereby ensuring that the accused avails a fair trial while safeguarding the interest of society. Despite the essentiality of their functions, Public Prosecutors frequently face various issues that impede the effective delivery. Reforms are needed to strengthen the institution of the Public Prosecutor. Recently, deliberations on prosecutorial modification, especially in the light of enhancing issues regarding the need for speedy justice, delays in trials, and wrongful convictions, have introduced renewed attention to the role of PPs. Comparative study with global practices depicts that where prosecutors are provided professional resources, institutional respects and autonomy, the criminal justice system tend to work more efficiently and fairly.

### **SUGGESTIONS:**

For addressing the issues concerning the role of Public Prosecutor, the authors have proposed the following suggestions-

**(i) Assuring merit-based and transparent appointments:**

For eliminating political intervention, a merit-based and transparent appointment procedure for PPs shall be institutionalized. It is suggested that a Selection Committee consisting of experienced judges, former PPs, and legal academicians can be constituted for recommending the appointment of Prosecutors based purely on merit, integrity, and experience.

**(ii) Improving autonomy during the Investigation:**

The prosecutor shall be engaged from the earliest phases of investigation to guide police officers on charge framing, evidence collection, and legal requirements. Concerned States shall reform their political manuals and BNSS for mandating consultation with PPs during investigation, particularly in heinous cases like economic crimes, rapes, and murder.

**(iii) Ensuring job security and fixed tenure:**

Job security is important for assuring fearless and independent working of the Public Prosecutor. At least they shall be appointed for five years, subject to termination only by a transparent mechanism based on the grounds of incapacity or misconduct.

**(iv) Skill development and institutionalizing regular training:**

Continuous professional development shall be made compulsory for Prosecutors. State and national prosecution academics shall be created to ensure annual training in developing fields like victim rights, digital evidence, forensic science, and cybercrimes.

**(v) Rationalizing Workload and enhancing staff strength:**

The state shall carry out a scientific evaluation of caseloads dealt by PPs and, accordingly, appoint prosecutors to balance the burden of work. Adequate case managers, clerks, paralegals, and support staff shall be provided to PPs so that they can focus more on legal work rather than administrative tasks.

**(vi) Resource allocation and strengthening infrastructure:**

Well-equipped and dedicated offices of prosecution shall be established at the sub-division and district levels. Every Prosecutor shall be provided access to a digital database, legal research platforms, private office space, and secure IT facilities.



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