

Synergism Between Prosecution And Investigation Agencies In Administration Of Criminal Justice: An Analysis

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Abstract: The Criminal Justice System is a concoction made up of several agencies that keep the society a safe place of abode. The blend of investigation wing, prosecution wing, defense counsel, courts and prison authorities make the criminal justice system run smoothly. All the agencies have prominent role to play. They are independent institutions yet they are dependent on each other like the interwoven threads of the judicial fabric. The investigation and prosecution wings have a great role to play in the justice administration. Earlier they used to function as one agency without any concrete demarcation between their roles but then they were separated by the legislative developments to overcome the corrupt practices as was suggested by 14th Law Commission Report. However, with the due passage of time, the strict division between the two eminent establishments resulted in lack of cooperation between them. The strict adherence to the divisive rules and regulations created an aura of demeaning each other's authority and which damaged poorly the efficacy of justice delivery system. The damages caused by the poor coordination between the two wings have been discussed at length in the 154th Law commission Report and Malimath committee Report. The Researchers in this article have discussed the evolution of the synergism between the two agencies and how the need of the hour is to dilute the separation between the two and improve the communication and cooperation.]

I

Introduction

The Citadel of Criminal Justice is pillared on the pentagon made of the investigation, prosecution, defense, judiciary, and reformatory services. Each bears its own weight to make sure that the citadel stands reinforced tall and aloft.

Criminal Justice System in any society reflects the level of civilization, standard of living, sense of security and prosperity of its citizens. With the ever-increasing rate of crime, the need of a strict and effective criminal Justice System is inevitable. According to Kautilya, one of the prime obligations of the Ruler is to do RAKSHA i.e., Protection of its Citizens.¹ In order to ensure the

¹ Jois, M. Rama, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA (VOLUME- I), p. 571.

security of its people from the unscrupulous elements of the society, every nation has a Criminal Justice System equipped with the agencies, laws, procedures to deal with the offenders, and to provide security to the citizens. Law enforcement is the monopoly of the state, and it works through its institutions to ensure the efficacy of the Justice administration. The major functionaries that work together for the same are: The Investigation Wing, The Prosecution Wing, The Defense Counsel, The Judges, The Prison and Correctional Service Personnel.²

The effectiveness of the Criminal Justice System lies in the efficiency of the aforementioned functionaries as a whole. The Adversarial Criminal Justice System requires a potent investigation, efficacious prosecution and defense which may present both the sides before the judge who acts as an umpire³ and decides the guilt of the accused based on the evidence and arguments led by the opposing counsels. In the adversarial criminal justice system, unlike the inquisitorial, the investigation is solely done by the investigation wing.⁴ No other authority has any role in an FIR case regarding the investigation. The police may or may not find any evidence against the accused and the same is mentioned in the Police Report. After the filing of Police Report, if it is affirmative, the Prosecution wing works to present the case prepared by the Police i.e., investigation department, before the Court.⁵

Thus, the role of the investigation and prosecution wing in the criminal justice system is undeniably pivotal. In a way police department is a client of prosecution wing on behalf of the State⁶. It becomes essential that they act together in co-ordination to achieve success in the courtroom⁷. However, the ground reality is just the converse.

The Researcher in this Research Paper has elaborated the need of co-ordination between the Investigation and Prosecution wing of the Criminal Justice Department. The Research Paper elaborately explains the evolution of circumstances that led to the thick separation between the two and why the need of the hour is to dilute this separation. The research paper also suggests the important changes that could be brought to make the Criminal Justice System deliver Justice in a fruitful manner.

II

² R.V. Kelkar, CRIMINAL PROCEDURE 15 (2009).

³ B.Malik, LAW RELATING TO CRIMINAL TRIALS (2001).

⁴ Sohoni, CODE OF CRIMINAL PROCEDURE (VOLUME - I)(2001).

⁵ P. Ramanatha Aiyar, CODE OF CRIMINAL PROCEDURE(2001).

⁶ Madan Lal Sharma, *Role and Functions of prosecution in Criminal Justice*, retrieved from https://www.unafei.or.jp/publications/pdf/RS_No53/No53_21PA_Sharma.pdf, (last visited on 15-09-2021).

⁷ Committee on Reforms of Criminal Justice System under the chairmanship of Dr. Justice V.S. Malimath also known as Malimath Committee Report, (Volume-I), Part II, Chapter 8- Prosecution, (2003), p.125.

Concept of Public Prosecution: Evolution

Before the advent of Criminal Procedure Code, 1973, there was no clear-cut demarcation of the functions to be performed by the prosecution and the investigation department separately.⁸ The prosecution used to regard itself as right hand man of the Superintendent of the Police⁹. The Public Prosecutor worked as subordinate to the District Superintendent of Police without any legislative command. The Organization of the Public Prosecutors before the Act of 1973 was not uniform across the nation. In practice, mostly in all the Magistrates Courts, the prosecution was conducted by the Police Officers, or the Advocates selected from the Bar and designated as Public Prosecutors or Assistant Public Prosecutors working under the Department of Police¹⁰. The Public Prosecutor who worked in the Sessions Court was under the general control of the District Magistrate.

The prosecution Agency across the nation was non-uniform. On one hand, in the State of Punjab, the prosecution was totally under the control of District Superintendent of Police as a part of the Police Department itself, and on the other hand in the States like Andhra Pradesh and Madras, the practice of police officers appearing as prosecutors before the court of magistrate was given up and specific appointment of assistant public prosecutors was made to appear before Magisterial Courts. In some States, Police officers even of the rank of Head Constables could appear as prosecutors without the need of any legal qualification.¹¹

It is irrefutable truth that the investigation of serious offences requires aid and assistance of the prosecutors¹². There are instances where the police department would need guidance of the prosecutors to see whether there is any missing link in the chain of evidence, whether there is any possible lacuna which needs to be filled or whether the charge sheet framed needs to be amended¹³. However, the aid and assistance could not and should not result in compromising the independence of the prestigious office of public prosecutor¹⁴. The same was elaborately discussed by the Law Commission in its 14th Report.

⁸ S.P. Tyagi, CODE OF CRIMINAL PROCEDURE 1973 (VOLUME – I) (2017).

⁹ Law Commission Report on Reforms of Judicial Administration under the chairmanship of Mr. M.C. Stelvad also known as 14th Law Commission Report, (Volume-II), Chapter 35, Prosecuting Agency-Director of Prosecuting Agency, (1958), p.765.

¹⁰ *Id.*

¹¹ Law Commission Report on Reforms of Judicial Administration under the chairmanship of Mr. M.C. Stelvad also known as 14th Law Commission Report, (Volume-II), Chapter 35, Prosecuting Agency-Director of Prosecuting Agency, (1958), p.766.

¹² Sahadeep Singh Jamwal, *Separation of Prosecution wing will demean Police efficiency*, (Feb. 11, 2019, 10:27 P.M.)

Available at <http://www.earlytimes.in/newsdet.aspx?q=277180>, (last visited on 17-09-2021).

¹³ *Id.*

¹⁴ Law Commission Report on Reforms of Judicial Administration under the chairmanship of Mr. M.C. Stelvad also known as 14th Law Commission Report, (Volume-II), Chapter 35, Prosecuting Agency-Director of Prosecuting Agency, (1958), p. 769.

14th Law Commission Report

In 1958, The Law Commission of India, in its 14th Report, made several recommendations to improve the prevalent conditions of prosecution agency. There were many lacunas and loopholes present in the Prosecuting Machinery that were pointed out by the LCI as:

- Prosecution by Police Officers in the Magisterial Courts without any legal qualification.
- Non-uniformity of prosecution agency all across the Nation.
- Biased approach of prosecution to secure conviction at any cost.
- Subordinate Position of Public Prosecutor.
- Deliberate Weakening of the case by the police department.
- Dearth of independence of Prosecutor's office.

To overcome these drawbacks, the LCI gave plenty of recommendations. LCI observed that it was not possible for the public prosecutors if they are members of the police organization to exhibit that degree of 'detachment' which was necessary in prosecution¹⁵. Therefore, one of the key recommendations that paved the way for the present prosecution system as we see under Criminal Procedure Code, 1973 is the Complete Separation of the Prosecution from Investigation.¹⁶

LCI opined that the Prosecution agency must be separated from and made independent of its administrative counterpart i.e., the Police Department and as a first step in that direction, it has been suggested that the prosecution is completely separated from the Police Department. In every district there shall be a separate department of prosecution under the charge of the Director of Public Prosecution.¹⁷ Further, it has been suggested that to ensure the independence of his office, the Director shall not be from the Police Department¹⁸. Thus, LCI suggested building a strong wall between the prosecution and investigative agencies of the criminal justice department.

Separation of Prosecution and Investigation Agencies under Criminal Procedure Code, 1973

The recommendations of the Law Commission were accepted by the legislature and with the codification of the Criminal Procedure Code, 1973, the Prosecution wing was completely separated from the investigation.¹⁹ Under the new Code, the appointment of Public Prosecutors is made mandatory. The appointment is made under sec 24, in case of public Prosecutors for the High Court after consultation with the High Court and those for the district, out of the list prepared by the District Magistrate in consultation with the Sessions Judge. The minimum qualification for the

¹⁵ Law Commission Report on Reforms of Judicial Administration under the chairmanship of Mr. M.C. Stelvad also known as 14th Law Commission Report, (Volume-II), Chapter 35, Prosecuting Agency-Director of Prosecuting Agency, (1958), 1958, p. 770.

¹⁶ S.P. Tyagi, CODE OF CRIMINAL PROCEDURE 1973 (VOLUME – I), 736 (2017).

¹⁷ Law Commission Report on Reforms of Judicial Administration under the chairmanship of Mr. M.C. Stelvad also known as 14th Law Commission Report, (Volume-II), Chapter 35, Prosecuting Agency-Director of Prosecuting Agency, (1958), p. 770-771.

¹⁸ *Id.*

¹⁹ Sarkar, THE CODE OF CRIMINAL PROCEDURE: AN ENCYCLOPAEDIC COMMENTARY ON THE CODE OF CRIMINAL PROCEDURE 1973(VOLUME – I), p. 98 (Lexis Nexis).

appointment has been made 7 years of practice as an advocate.²⁰ Thus, there is no scope for a police officer to prosecute in High Court or in Sessions Court.²¹

Sec 25 provides for the appointment of the Assistant Public Prosecutor by the State Government or the Central Government in every District for conducting prosecution in the Courts of Magistrate. Sub-section (3) specifically provides that no police officer shall be deemed eligible for the appointment of the assistant public prosecutor and in exceptional cases, if there is no eligible person to be appointed as assistant public prosecutor, the District Magistrate may appoint any other person as assistant public prosecutor in-charge of that particular case, however, such person shall not be the police officer below the rank of inspector or who has taken part in the investigation of the same case.²²

Further, Pursuant to the recommendations of National Police Commission and 154th Law Commission Report, Sec 25-A was added by the amendment act of 2005, to provide for the establishment of Directorate of Prosecution.²³ The Director of prosecution is head of the Directorate and works under the administrative control of the Head of the Department in the State. The State may appoint as many Deputy Directors as it thinks fit who shall be subordinate to the Director of Prosecution. The Director and the Deputy Directors must have practiced advocacy for at least 10 years and are appointed after concurrence with the Chief Justice of the High Court. The Prosecuting officers appointed by state or center for practicing in high courts are directly under the control of Director and those appointed by State or Centre for practicing in Court of Sessions or in the Court of Magistrate, are under the direct control of Deputy Director.²⁴

Thus, the scheme of the CrPC, 1973 clearly demarcated the separation between the prosecution and investigation departments. The recommendations made by 14th LCR were adapted in letter and spirit by the legislature.²⁵

When the nature of the office of the prosecutor is to be decided there appears to be confusion as to whether it is executive or quasi-judicial.²⁶ The Hon'ble SC enunciated the principle in *R.KJain v. State*²⁷ by referring to *State of Bihar v. Ram Naresh Pandey*.²⁸ that the role and powers of the public prosecutor tends to make his office executive. However, the decision of some courts created doubt about the exact nature of his office. In this context, Supreme Court's decision in *Babu v. State of Kerala*²⁹, holds great importance. In this case, SC held that,

²⁰ The Code of Criminal Procedure, 1973, section 24.

²¹ R.V. Kelkar, *CRIMINAL PROCEDURE*, 16 (2014).

²² The Code of Criminal Procedure, 1973, section 25.

²³ S.P. Tyagi, *CODE OF CRIMINAL PROCEDURE 1973 (VOLUME – I)*, p.401 (Vinod Publications 2017).

²⁴ The Code of Criminal Procedure, 1973, section 25A, No. 2.

²⁵ Sahadeep Singh Jamwal, Separation of Prosecution wing will demean Police efficiency, (Feb. 11, 2019, 10:27 P.M.)

Available at <http://www.earlytimes.in/newsdet.aspx?q=277180>, (last visited on 17-09-2021).

²⁶ K.N. Chandrasekharan Pillai, *Public Prosecution in India*, (50)JILI 4(2008).

²⁷ AIR 1980 SC 1510 para 13.

²⁸ 1957 SCR 279, para 8.

²⁹ (1984) Cr L J 499 (Ker), para 4.

Public prosecutors are really ministers of justice whose job is none other than assisting the state in the administration of justice. They are not representatives of any party. Their job is to assist the court by placing before the court all relevant aspects of the case. They are not there to use the innocents to go the gallows. They are also not there to see the culprits escape conviction.

The Punjab & Haryana High Court in *Krishan Singh Kundu v. State of Haryana*³⁰ has ruled that the very idea of appointing a police officer as in charge of prosecution agency is abhorrent to the letter and spirit of sections 24 and 25 of the code. In the similar vein, the SC, in *S.B. Shahane v. State of Maharashtra*³¹, held that the prosecution agency should be an independent and autonomous agency, irrespective of the nature of the office of the public prosecutor, it is expected that he acts in a fair and just manner as an officer of the court.

Further, in *R. Sarla v. T.S. Velu*³², the Supreme Court elaborated the separate functions of the prosecution and investigation agencies. The Court held that the public prosecutor is appointed in section 24 of the code, 1973 for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus, public prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the code of criminal procedure for supporting or sponsoring any combined operation between the investigating officer and the public prosecutor for filing report in the court.

Separation Between Investigation and Prosecution Wings: Legal Implications

The separation of the two pillars of criminal justice system is created to improve the system so that the prosecutor can act independently without any external pressure or subordination to police³³. The independence of prosecution cannot and shall not be compromised at any cost. But the concrete wall between the two has resulted in adverse consequences³⁴. The two agencies can and shall co-ordinate to ensure that the justice is done while maintaining their independence. In the present scheme of criminal justice system, the Public Prosecutor comes on board after the charge sheet has been filed by the police after the concluding the investigation. Before the filing of charge sheet the public prosecutor has no right to intervene in the investigation. He can only give suggestions if he is called upon by the investigating officer; otherwise, he has no say during investigation³⁵. This is an error which needs to be rectified as the prosecutor fights the case on

³⁰ 1989 CriLJ 1309, para 8.

³¹ 1995 SCC (Cri) 787, para 10.

³² 2000 Cri.LJ 2453(SC), para 12.

³³ Law Commission Report on Reforms of Judicial Administration under the chairmanship of Mr. M.C. Stelvad also known as 14th Law Commission Report, (Volume-II), Chapter 35, Prosecuting Agency-Director of Prosecuting Agency, (1958), p. 770.

³⁴ Sankar Sen, Ex-Director, National Police Academy, Shoddy Probe Prosecution impeding conviction, (Feb., 01, 2020, 09:04 A.M.)

Available at <https://www.tribuneindia.com/news/comment/shoddy-probe-prosecution-impeding-conviction-34176>, (last visited on 25-09-2021).

³⁵ *Shiv Kumar v. Hukum Chand*, 1999 SCC Cri 1277, para 13.

behalf of the police, yet he has no say in the case of his client. Undoubtedly, the prosecution must be conducted by an independent officer as an officer of court without any biasness, but to say that the prosecution has no role at Pre-Trial Stage of a criminal case is a malady.

The need of co-ordination between the prosecution and investigation wings cannot be over emphasized. There are several functions which shall be performed by the prosecutor at the pre-trial stage of the case. Some of his important roles are hereinafter mentioned:

- **AT THE STAGE OF INVESTIGATION:**

During investigation, investigating agency collects the evidence. Witnesses are examined and their statements are recorded. Police collects the material objects by conducting search and seizure and arrests the accused. The accused is sent for test identification parade and his statement is also recorded. The police may also approach an expert for a scientific report and opinion. The investigating officer prepares the case diary and includes every minute detail regarding the case in it³⁶.

The investigation wing has been given many powers to interrogate the accused. There are certain constitutional safeguards given to the accused³⁷. In the context of human rights and constitutional safeguards and presumption of innocence available for accused, there are sincere concerns about the threat of infringement of various freedoms available for people in the hands of investigating police. On the other hand, police must look after the safety and security of the public from the criminals. Therefore, there is need for fine balancing of these competing values.

A system of checks and balances is the need to complete the task. The leash over the police has been given to different authorities in different countries. In India, it is in the hands of the magistrate, but it resulted in poor failure. The need of the hour is to authorize public prosecutor to keep a check on the actions of the police and balance the rule of law. The Public Prosecutor will guide the police officers and will keep a check on their actions. This is possible only if there is a proper coordination between the investigation and prosecution wings of the criminal justice department.

- For arresting the accused: The power to arrest and the discretion whether to arrest or not is always vested with the police³⁸. When the police feel there are grounds for believing that the accusation is well founded, they transmit the accused and case diary to the Magistrate for remand orders³⁹. Until this stage, Public Prosecutor is not notified about these events. The public prosecutor would be in a better position to get the remand orders from the court. However, even at the time of demanding remand orders, there is no power or duty for the Public Prosecutor to state about the case to court. The decision of Police to arrest the accused is not supervised by prosecutors and the courts alone are empowered to review arrest decisions of police⁴⁰. This approach of Criminal law proved to be a failure.

³⁶ The Code of Criminal Procedure, 1973, section 172.

³⁷ The Constitution of India, 1950, articles 21-22.

³⁸ The Code of Criminal Procedure, 1973, section 41.

³⁹ The Code of Criminal Procedure, 1973, section 167.

⁴⁰ *Ramesh Kumar Ravi alias Ram Prasad v. State of Bihar*, 1987 Cri.LJ 1489, para 9.

Although a police officer should have the authority to arrest a person without prior prosecutorial approval, the process should go no further than that without formal involvement of the Public Prosecutor's office. The Public Prosecutor could act as a quality controller of the arrest proceedings, and he should forward to court only deserving arrestees. The law shall be suitably amended and a role for the Public Prosecutor shall be so evolved enabling him to process the arrest cases before a judicial review takes place to avoid infringement of rights of accused and avoid unnecessary pre-trial detentions which will cut the expenditure for the exchequer.

- At the bail hearing: At the bail hearings before a court of law, if the case is not grave, there is no legal requirement for the court to hear the prosecutor and bail would be granted to accuse invariably.⁴¹ In such cases, the Public Prosecutor does not get to know about the case until the police complete the investigation and file a final report or charge sheet before the court. If the offence is serious, the Public Prosecutor would be notified by the court about bail hearing⁴². This is the first occasion, in the present scheme of law, for the Public Prosecutor to become aware of the existence of a case.

An efficient and effective process would be where all relevant information about the criminal and the case diary is automatically transmitted to the prosecutor by the police. It is a common phenomenon that at bail hearings before Sessions Courts prosecutors would seek adjournments for more than a weekdays solely for the reason that they have no case record with them. Though police and prosecutors are on the same side in pursuing criminal prosecutions, lack of co-ordination between them is a disappointing feature in the present set up.

Decision to prosecute or not to prosecute (Legality Principle v. Expediency Principle)

Once the police complete the investigation, the final decision whether to prosecute the accused or not is in the hands of Police.⁴³ It is a discretionary power given to the police, though reviewable by court. The scheme of law suggests that it is laid down on 'legality principle'. There appears to focus on the 'expediency principle'. There is huge space for alternatives besides no prosecution and prosecution decisions. In legal theory, the decision not to prosecute is an executive function and the appropriate authority ought to be the Public Prosecutor. He could be an effective agency to unburden the courts in this sphere of activity. In the anxiety to uphold rule of law the power to decide prosecutability of a case is granted to court⁴⁴. This apparently ensures equality of treatment and prevents danger of abuse of official power of police. However, in practice it produces strange results. On a non-prosecution case of police, if the court takes cognizance, the prosecutor will have

⁴¹ The Code of Criminal Procedure, 1973, section 437.

⁴² The Code of Criminal Procedure, 1973, sections 437 & 439.

⁴³ The Code of Criminal Procedure, 1973, sections 169 & 173.

⁴⁴ The Code of Criminal Procedure, 1973, section 190.

to prosecute a case which according to his own client a case not fit for prosecution. Therefore, he gets very little support from police and holds little enthusiasm during trial. The accused contends in defense that there is no case to answer for him. Thus, it is a case, which both parties to the case condemn but they shall suffer the ordeal of a trial.

Therefore, the best authority of State in this regard is none other than the Public Prosecutor. While collection of evidence is the exclusive function of the police⁴⁵, the screening process to find out whether the case can be tabled for prosecution is obviously the function of Public Prosecutor. The discretion shall vest with him since it is he who has to prosecute the case before court. Police shall place the case file with prosecutor and if the prosecutor is satisfied, he should be empowered to endorse his no-prosecution decision on the ground of insufficiency of evidence.

Under the present scheme of criminal law, the prosecutor has been given the power to withdraw the case at any stage with the permission of the court, so he must also be given the power to decide whether the case is fit for prosecution or not.

Thus, it is evident that the prosecutor must be given more powers and rights to get involved in the investigation. He must have some authority over the case that he is going to fight in the courtroom⁴⁶. The Requisite reforms in the prosecutor's role at pre-trial stage can be understood summarily as:

- The ability to review and approve or disapprove the case files before they are filed in the court.
- To assist the Police at different stages of investigation⁴⁷.
- To get the opportunity of being heard at the stage of Bail hearing of every accused.
- To investigate the availability of the evidence against the accused.
- To decide whether to prosecute the accused or not based on available evidence.

154th Law Commission Report, 1996

The Law Commission of India in 1996 made a report on Criminal Procedure Code and Chapter 3 of the Report made recommendations to make amendments in the office of independent Prosecuting Agency. The Law Commission found in their workshops and surveys that the autonomy of the prosecuting agency is invariably a requisite. But the reports also show that the concrete wall between the two agencies has led to dearth of co-ordination between the two which is affecting the criminal justice system poorly. The co-ordination between the two is important for

⁴⁵ The Code of Criminal Procedure, 1973, section 162.

⁴⁶ Sankar Sen, Ex-Direction, National Police Academy, Shoddy Probe, Prosecution impeding conviction, (Feb., 01, 2020, 09:04 A.M.)

Available at <https://www.tribuneindia.com/news/comment/shoddy-probe-prosecution-impeding-conviction-34176>, (last visited on 25-09-2021).

⁴⁷ *Id.*

the efficient prosecution of the case at the trial stage⁴⁸. To improve the co-ordination, it has been suggested that:

- The Home Departments of the State Government prescribe guidelines to achieve the desirable coordination between the two.
- Separate Investigating Agency for investigation in serious offences (i.e. punishable for more than 7 years), which shall work in close coordination with the Director of Prosecution.
- Earmarking of certain prosecutors to work in close coordination with such separate investigating agency.
- Structured Directorate of Prosecution and establishment of regular cadre of prosecuting officers in each state.

Malimath Committee Report, 2003

In 2003, Malimath committee was formed to bring reforms in the Criminal Justice System under the Chairmanship of Justice V.S. Malimath. The committee gave an extensive report on various aspects of our criminal justice system. Part II of the report contains the recommendations for the requisite reforms in the sphere of investigation and prosecution⁴⁹.

The Malimath Committee stressed on the significance of coordination between the investigating and prosecuting agency on the success of the prosecution. It has been noted that the police officials have grievance of lack of assistance from the prosecution wing, which affects the prosecution case adversely.

The committee referred to the British experience. In Britain, Prosecution of Offences Act, 1985 was enacted, under this Act, Crown Prosecution Services is established which is headed by the Director of Prosecution. All the Prosecution on behalf of Crown is conducted by the members of CPS. The concept of 'Criminal Justice Unit' has been introduced in England to bring about greater coordination between the Police Department and the CPS. The members of the CPS have been given offices in the police stations falling in their jurisdiction and they are required to function from there.⁵⁰

In our country, after the enactment of CrPC, 1973, several states have established separate Directorate of Prosecution. But there has been a constant complaint of the Police officials regarding the coordination between them and the prosecutor. As the prosecutors are no longer under the control and supervision of the Police Department, they do not take any interest in the investigation, even if they are called upon to assist.

⁴⁸ 154th Law Commission Report on The Code of Criminal Procedure, 1973, (Act no. 2 of 1974), under the chairmanship of Justice K.J. Reddy, (Volume-I), Chapter-III- Independent Prosecuting Agency, (1996), pp. 8-12.

⁴⁹ Committee on Reforms of Criminal Justice System under the chairmanship of Dr. Justice V.S. Malimath also known as Malimath Committee Report, (Volume-I), Part II, (2003), p. 87-132

⁵⁰ *Id.*

The Malimath Committee also mentioned several problems that arose due to the lack of coordination between the two agencies⁵¹:

- Dipping Conviction Rate
- Disposal rate of Court is falling
- Legal advice at investigation stage is totally missing thereby adversely affecting the quality of investigations;
- There is no structured mechanism for Investigating Officers' to interact with the Prosecutors in bail related matters and overall trial management;
- There is lack of review mechanism of the performance of the prosecution wing at the district level.

Recommendations to improve the coordination between the prosecuting and investigating agencies

The Malimath Committee referred to various recommendations made by other committees already formed like Committee on Police Reforms⁵², The Administrative Reforms Commission, Rajasthan⁵³, suggestions of several Police Officers and concluded that several of these suggestions have been adopted by some states and they have yielded good results. Therefore, to improve the Criminal Prosecution following amendments must be brought about in our criminal justice system⁵⁴:

- The post of Director of Prosecution may be occupied by an IPS officer of IG rank. This will further strengthen coordination between police and the prosecution.
- The control, guidance and supervision of Director should extend to the prosecutors functioning at the Sessions Courts and Executive Magistrates Courts, Additional Public Prosecutors and Assistant Public Prosecutors Grade I and Grade II.
- Director General may be appointed by the Govt. as the Director of Prosecution in consultation with the Advocate General. This should become a cadre post.
- The duties of the Director inter alia, shall be to facilitate effective coordination among the investigating and prosecuting officers, to review the working of the Public Prosecutors, Additional Public Prosecutors and Assistant Public Prosecutors and the work of the investigators.
- Assistant Public Prosecutors who appear before the Courts of Magistrates should be given intensive training, both theoretical and practical to improve their professional skills as

⁵¹ Committee on Reforms of Criminal Justice System under the chairmanship of Dr. Justice V.S. Malimath also known as Malimath Committee Report, (Volume-I), Part II, Chapter 8- Prosecution, (2003), p. 128

⁵² The Padmanabhaiah Committee on Police Reforms headed by Shri K. Padmnabhaiah, the former Union Home Secretary (2000).

⁵³ The Administrative Reforms Commission, Rajasthan, headed by Shri Shiv Charan Mathur, former Chief Minister of Rajasthan, made recommendations on police reforms in its Eighth Report (2001).

⁵⁴ Committee on Reforms of Criminal Justice System under the chairmanship of Dr. Justice V.S. Malimath also known as Malimath Committee Report, (Volume-I), Part II, Chapter 8- Prosecution, (2003),p. 129.

prosecutors. Those already in service should be given periodical in-service training to update their knowledge.

- As already some States have their own Directorates of Prosecution, which are not headed by Police Officers, the present recommendations relating to the choice devolving on a Police Officer of the rank of DGP should be taken up when the term of office of the existing incumbents is coming to an end.

To ensure accountability, the Director may call for reports in any case where the case ends in acquittal, from the Prosecutor who conducted the case and the Superintendent of Police of the District to review the work of the prosecutor and the investigation.

Epilogue

The Research Paper has discussed the evolution of relationship between the prosecution and investigation agencies in our criminal justice system. The separation between the two wings was incorporated on the basis of Law Commission's Report to improve the prosecution machinery; however, the Law Commission itself took a U-turn after almost 3 decades by looking into the need of the hour. The Dominant Role of Police at the Investigation stage without any coordination with the Prosecution has resulted into a menace. It has led to excessive and unnecessary arrests, manipulation of the evidence, Discretionary filing of charge sheet, careless scrutiny of evidence and interrogation by means of assault. The accused suffers violation of his human rights and on the other hand the victim's case also languishes.

The lack of coordination between the two wings has created an ocean of injustice for the accused as well as victim which can be crossed only by creating a bridge. This bridge can be in the form of a separate cadre of legal advisers which are solely devoted to the investigation department. These legal officers shall be given all the responsibilities of the case at the pre-trial stage till the trial starts. This will not put an extra burden on already preoccupied prosecutors and will provide the requisite assistance to the investigation department without affecting independence of both the departments.

Further, the recommendations made by 154th Law Commission Report and Malimath Committee Report shall be implemented with immediate effect and the pillars of the criminal justice system should work in complete coordination to keep the citadel intact.