

Am I the right Prosecutor? Yes, I am glad to say that I am the right Prosecutor

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The title might sound indifferent. The justifiable reason for such a title is for the reason that many, including the prosecutors (not everyone) have misunderstood as to what the role of a prosecutor is all about. Obviously, the Prosecutors are branded as a byproduct of investigation agency. It's just a spark to be lit to throw light on the fact, that the prosecutor is neither working for the investigation agency nor for the defense. The pragmatic approach to identify the ideal prosecutor is the test to scrutinize the literature which we have come across all along.

The term Public Prosecutor is defined under section 2(u) of the Code of Criminal Procedure 1973. (Act 2 of 1974)¹ as follows;

"Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor.

The provisions of section 24 of the Act deals with the appointment of Public Prosecutors for High Court and Sessions Court and whereas the provisions of section 25 of the Act deals with the appointment of Assistant Public Prosecutors. The above provisions traverse only in respect of the qualifications for a person to be appointed either as Public Prosecutor or Assistant Public Prosecutor. The Act 2 of 1974 has not focused upon the roles and responsibilities of a Public Prosecutor or an Assistant Public Prosecutor. Thus a critical analysis is to be made on the roles and responsibilities of a Prosecutor.

The Prosecutor, being the officer of the Court, shall act upon as an agent, who dedicates himself to the justice delivery system. The Investigation agency, after having found the case entrusted to the Public Prosecutor, puts every possible pressure on the Prosecutor to ensure conviction on the accused.

The Investigation agency, by all means would wish that the accused be convicted immaterial of the nature of offence. But the Prosecutor shall be vigilant enough to handle the case. The Prosecutor shall not work out the case only to end it in conviction. At the same time, he cannot play a role for the defense too. The first and foremost quality requisite for a Prosecutor is that, he/she shall be impartial, fair and truthful and shall be pragmatic.

¹ See Section 24 of The Code of Criminal Procedure 1973

While quoting the Judgement of Honourable Punjab and Haryana High Court in *Shamsher Singh Vs State of Punjab*² the Honourable Supreme Court of India in *Rajendirakumar Jain Vs State through Special Police Establishment Etc. and others*³ has observed as follows;

“We, however, issue a note of warning. The bureaucrat too should be careful not to use peremptory language when addressing the Public Prosecutor since it may give rise to an impression that he is coercing the Public Prosecutor to move in the matter. He must remember that in addressing the Public Prosecutor he is addressing an Officer of the Court and there should be no suspicion of unwholesome pressure on the Public Prosecutor. Any suspicion of such pressure on the Public Prosecutor may lead the Court to withhold its consent.”

The above observation came to be recorded on noting a direction to the Public Prosecutor using the phrase, “**The Public Prosecutor is directed to...**” Thus the above golden letters would give an inference as to how far a Public Prosecutor is secured and granted with immune power so as to be out of such pressures of any kind whatsoever it be. The freedom enjoyed by the Public Prosecutor would enable him to apply his judicial mind, so as to act upon within the ambit of law and to ensure the Justice Delivery System render a fair means of justice.

The Honourable Mr. Justice T.K. Thommen, Judge, High Court of Kerala in *Aziz Vs State of Kerala*⁴ has held as follows;

“In my view, the fact that Shri Velayudhan had appeared before the Claims Tribunal on behalf of the next of kin does not in any manner disqualify him professionally to appear in the criminal Court on behalf of the State in respect of a crime arising from the same incident as that which gave rise to the claim for compensation. I expect that Shri. P. Velayudhan, while defending the public interest, which he represents on behalf of the State will act truthfully and fairly, and at the same time, advocate the cause for which he is engaged to the very best of his ability. This is what is expected of any counsel.”

The above observation of His Lordship would make it clear, as to what is expected from a Public Prosecutor. It has to be noted that, the Honourable High Court had an undaunted faith over the integrity of the Public Prosecutor, who happened to appear for his kin in the claim case and who had to take up the role of Prosecutor in the criminal case. This integrity is one such fair quality, which shall be infused in a Public Prosecutor.

² (1974) 2 SCC 831

³ AIR 1980 SC 1510

⁴ (1984) Crl.LJ. 1060 (Ker)

A Public Prosecutor is an independent entity, who shall act independently without any bias towards the investigation agency. The Public Prosecutor shall not act upon with a quest for conviction and shall not act as a punishing demon by stepping in to the shoes of the victim. In *Jitendrakumar @ aju Vs State (NCT Delhi)*⁵ it has been held that;

*"In the instant case, in the first instance, respondent No. 2 was engaged by a relative of the deceased to prosecute his complaint against the petitioner and others. His association with the complainant party as their Counsel is capable of impairing his ability to act in a detached manner. The apprehension of the petitioner that there may be a likelihood of respondent No. 2 turning to the relatives of the deceased for seeking directions to vindicate their grievances against the petitioner cannot be ruled out. It is possible that respondent No. 2 may rise to the occasion and may act impartially and fairly and in keeping with public interest and demands of justice while appearing for the State before the Trial Court, but likelihood of his being biased against the petitioner cannot be ruled out. The accused must have confidence that he will be treated fairly by the Trial Court and the Public Prosecutor and he will not consider himself as an agent of the complainant. Nothing should be done by the State which shakes the faith of the accused in the impartiality of the trial. It is essential to maintain purity and impartiality in the field of administration of criminal justice. In Ram Ranjan v. The Emperor*⁶, it was observed as follows:

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

5. Having regard to the aforesaid decision and keeping in view the fact that respondent No. 2 was a Counsel for the complainant, we are of the opinion that the appointment of respondent No. 2 vide the impugned notification ought to be quashed. We order accordingly."

Thus the role of a Public Prosecutor shall be free from any ray of suspicion so as to shake the confidence of the accused, which would certainly defeat the salient features of the article 21 of the Indian Constitution, which runs thus, **"No person shall be deprived of his life or personal liberty except according to procedure by law"**

The guarantee enshrined under the above article has been analyzed by Honourable Supreme Court of India, word by word in a catena of judgements. But it would be important to point out the term **"procedure by law"** which includes fair trial by following principles of natural justice. In *Maneka Gandhi Vs Union of India*⁷ the Honourable Lordship P.N. Bhagawati has observed that;

⁵ 84 (2000) DLT 88

⁶ ILR 1942 Calcutta 422

⁷ AIR 1978 SC 597

“Natural Justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The enquiry must, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected?

The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of Natural Justice must be held to be applicable”

It becomes not only the duty of Courts, but also the duties and responsibilities of the Public Prosecutors to ensure fair trial. This is emphasized by *the Honourable Supreme Court of India in Selvi J. Jayalalitha and others Vs State of Karnataka and others*⁸ wherein it has been observed that;

“26. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the ‘majesty of the law’ and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seen to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.

“No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison d’être in prescribing the time frame” for conclusion of the trial.”

Thus the need for sensitization of the stake holders would be the need of the hour. The observation of the Honourable Supreme Court of India in the above decision enshrines the speedy trial to ensure fair justice.

⁸ (2014) 2 Supreme Court Cases 401

In many cases, as we do come across, we could see the delay tactics adopted by the accused in order to protract trial. This is nothing but a denial of fair justice to the victim. The **Honourable Supreme Court of India in Vinodkumar Vs State of Punjab**⁹ has observed that;

"If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross- examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute."

The Prosecutor also plays a vital role in assisting the Court for a speedy trial in a just and proper manner. It becomes a special duty to ensure that the witnesses are being examined in the date scheduled and no adjournments or deferring of the cross examination of the witnesses shall be acknowledged in the petition filed for such purpose. The Prosecutor shall endorse upon his objections keeping upon the guidelines of Honourable Supreme Court, as supra.

Certain other important aspects, though not exhaustive, rather illustrative are elicited hereunder, which shall be borne by a Public Prosecutor in mind and imbibed in senses.

- The Public Prosecutor is neither an agent for the investigation agency nor for the defense.
- The trial is conducted for the State. Thus the accused would also fall within the ambit of State, whose rights shall also be protected.
- The duties shall be discharged without fear or favour.

⁹ (2015) 3 SCC 220

- It shall not be the endeavor to secure conviction of the accused by aggravating the case and retaining backup witness or witnesses to fill up the gaps. The Prosecutor shall rather place the necessary materials before the Court so as to assist the Court to arrive at a just conclusion.
- The Prosecutor shall bear in mind that he/she is an Officer of Court, appointed by the appropriate Government under the Code of Criminal Procedure 1973, and need not satisfy any Government Department (s) by ensuring the ending of the case in conviction alone.
- The Prosecutor cannot be replaced by a private pleader. Rather the victim (any person) can take shelter the provisions of section 301 (2) of the Code of Criminal Procedure by appointing a private pleader to assist the Prosecutor with the prior permission of the Court.
- A Prosecutor can neither appear for the accused nor defend him in a criminal trial.
- Any issue omitted to be raised by the defense, can be brought to notice of the Court by the Prosecutor to ensure fair justice. But at the same time, the Prosecutor shall not be defending the victim(s) so as to impress upon them.

These are those certain qualities, which are expected from a Prosecutor. These cannot be concluded herewith and so this article. A single lemon cannot turn the ocean into salted lemon juice. It's just an attempt to lit the spark. In the Ocean of law, a mini trip alone is taken, and the voyage to be made yet. The other left over areas such as the ethical approach, personal qualities of a Prosecutor, sensitization towards the march of Law and many more arenas are to be addressed still. When every area is addressed, and when a prosecutor poses a question to himself; "***Am I the right Prosecutor? He/she can answer with pride; "Yes, I am glad to say that I am the right Prosecutor"***
