

Chapter II: Prosecutor/Prosecuting Attorney

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Chapter II

PROSECUTOR/PROSECUTING ATTORNEY

1. PROSECUTING SERVICE IN INDIA: AN OVERVIEW

The administration of criminal justice involves three basic components viz., police (inputs); court (process); and corrections (output). The criminal justice is being administered by two important agencies, namely, investigation and prosecution. The primary investigation unit in India is the police department. In general parlance police includes all law enforcement and investigating agencies (directly or indirectly) involved in the process of identifying and apprehending individuals who are suspected of disobeying law or administrative regulation, and in arresting, or by other means causing those individuals to be brought before the appropriate *fora* to answer to the allegations of such violations. It is the responsibility of the police to make every effort to prevent crime, repress the incidence of criminal activities, identify and apprehend the individuals who violate the laws, assist in the presentation of testimony and evidence to provide the accused a fair trial with convictions of the guilty as its goal. The Indian Police Act, 1861 is the basic legislation governing the organization of police force in the country. After due investigation, police files charge sheets in the court,¹⁴⁷ on the basis of which an accused is prosecuted.

Public prosecution is another important component of administration of criminal justice system. The integrity of the person in charge of the prosecution, i.e., 'Public Prosecutor is key to success of any prosecution.'¹⁴⁸ Thus the role of the prosecutor / prosecuting attorney is very significant, who has to collect the evidence and

¹⁴⁷ Code of Criminal Procedure, 1973 (Cr. P.C.), sec 158.

¹⁴⁸ *V. K. Godwani v. State*, AIR 1965 Cal 79

present it before the court in a convincing and effective manner. Assisting the court is a continuation of the law enforcement or investigative agency's responsibility for the arrest. During the British rule in India public prosecutors appearing before the Magistrate were under the direct control of the executive wing of the police at the district level. But in the Sessions' courts and high courts public prosecutors were not subordinate to the police department. Prior to the enactment of Code of Criminal Procedure, 1973 (herein after referred to as 'Code') the public prosecutors were attached with the police department and they were responsible to the district superintendent of police. The 1973 Code¹⁴⁹ has changed this practice on the basis of recommendation of the Law Commission in its 14th Report.¹⁵⁰ Public prosecutors are now no longer under the administrative control of the police. Under section 24 of the Code, a statutory obligation has been imposed on the State as well as the Central Government, to appoint assistant public prosecutors in every district for conducting the prosecutions in the magistrate's court concerned, and making such assistant public prosecutors independent of the police department by creating a separate prosecution department for them, with Director of Public Prosecution as its head directly responsible to the Government for the department's work.¹⁵¹

Structure of Prosecuting Services in India

The structure and composition of prosecuting service varies from state to state. In some states the prosecuting service is under the control of Home Department and in others under the Department of justice.¹⁵² Generally the structure of directorate of prosecution in the states in India is given as under:

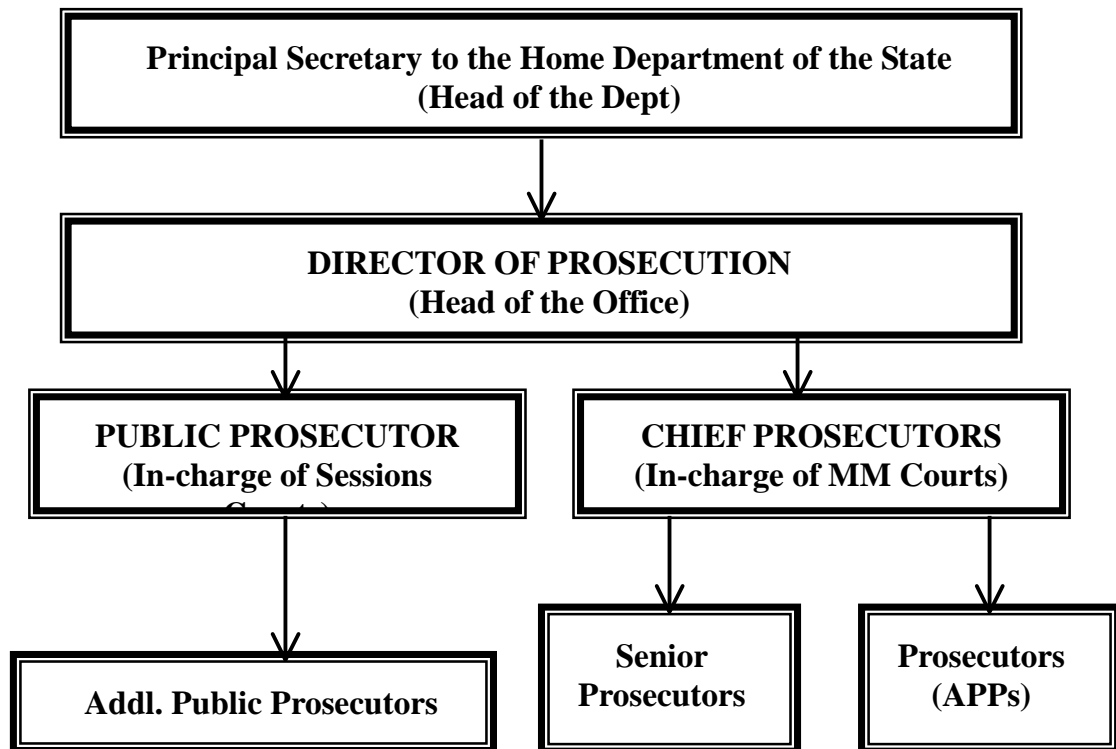
¹⁴⁹ Cr. P.C.

¹⁵⁰ *S.B.Shahane v. State of Maharashtra*, AIR 1995 SC 1629.

¹⁵¹ Cr.P.C, sec 25.

¹⁵² A detailed description of the prosecution department in various states under the Department of Justice and the Department of Home Affairs is given at *infra table 3 and 4*.

STRUCTURE & COMPOSITION OF PROSECUTION DEPARTMENT



2. PROSECUTING ATTORNEY/PROSECUTOR:

The director of prosecution is responsible for the prosecution of cases in the magisterial courts as well as in the session's courts.¹⁵³ The public prosecutor is not a part of the investigation agency. He is an independent statutory authority.¹⁵⁴ The role of a public prosecutor is inside the court, whereas investigation is carried outside the court. Normally the role of a public prosecutor commences after the investigation agency presents the case in the court on culmination of investigation. The Supreme Court in *R. Sarala v. T.S.Velu*¹⁵⁵ while dealing with a case wherein the investigation officer was directed by the High Court to consult the public prosecutor and submit a fresh charge-

¹⁵³ Rules made under Legal Remembrancer Manual.

¹⁵⁴ *Hitendra Vishnu Thakur v. State of Maharashtra*, 1994 (4) SCC 611

¹⁵⁵ *R. Sarala v. T.S.Velu*, 2000 (4) SCC 461.

sheet in tune with the opinion of the public prosecutor, held that “at any rate no investigating agency can be compelled to seek the opinion of a public prosecutor”. The Court gave strong note against this direction and ruled that the public prosecutor is to deal with a different field in the administration of justice and he is not involved in the investigation. However, the office of public prosecutor can help the investigation agency by: (i) appearing in the court and obtaining arrest warrant against the accused; (ii) obtaining search warrants from the court for searching specific premises for collecting evidence; (iii) obtaining police custody remand for custodial interrogation of the accused; (iv) if an accused is untraceable, initiating proceedings in the court for getting him declared a proclaimed offender and, thereafter, for the confiscation of his movable and immovable assets; in complicated cases, in order to fill up a possible lacuna in the prosecution case, to guide investigating officers.¹⁵⁶

(a) Qualifications: The qualifications prescribed for the appointment of public prosecutors varies from state to state. Generally law graduates falling within a specified age group, practicing as Advocates and, on the roll of Bar Councils are appointed as public prosecutors.

In NCT of Delhi, law graduates with 3 years experience and below the age of 30 years are eligible for appointment as assistant public prosecutors. They are eligible to be promoted as senior prosecutors after 7 years of regular service as assistant public prosecutors, in the courts of judicial magistrates or additional public prosecutors in the sessions courts. After 3 years of regular service as senior public prosecutors or additional public prosecutors they are eligible for the post of chief prosecutors.¹⁵⁷ The senior most chief prosecutor with three years of regular experience is eligible to become a public prosecutor for a district. The qualifications prescribed for appointment to the post of director of prosecution is either 5 years regular service as a chief prosecutor or 3 years regular service as a public prosecutor. Special public prosecutors, appointed for the purpose of handling any particular case or class of cases, must have 10 years experience.¹⁵⁸

Qualifications for Standing Counsel (Public Prosecutor for the High Court): An advocate who practised for not less than 10 years is eligible for appointment

¹⁵⁶ Source: Law Commission of India, 14th Report.

¹⁵⁷ Source: *Directorate of Prosecution*, Govt. of NCT Delhi (2000).

¹⁵⁸ Cr. P.C, sec 24(8).

as a standing counsel.¹⁵⁹

Qualifications for Government Advocates on Record (Supreme Court): An advocate with 3 years experience may appear in the Advocate- on- Record examination conducted by the Supreme Court of India.¹⁶⁰ Out of these advocates-on-record, those who qualify in the examination conducted by the Central Government through the Union Public Service Examination are selected as Government Advocates on Record. The persons so selected will appear on behalf of the Government before the Supreme Court in criminal appeals.

(b) Procedure of Appointment: The appointment of public prosecutors is regulated by the Code of Criminal Procedure, 1973 and the rules and regulations framed by state governments from time to time. For example, the procedure for appointment in NCT of Delhi is given as under:

In the **Metropolitan Magistrate's Court and Sessions Court**, the recruitment of prosecutors in the directorate of prosecution is made on the basis of a competitive examination conducted by the Union Public Service Commission. The successful candidates in this examination are appointed as assistant public prosecutors. Rest of the appointments in the directorate of prosecution are made on the basis of internal promotion. The state government in consultation with the high court does all promotions.¹⁶¹ The public prosecutor and additional public prosecutors are appointed from the panel of names prepared by the district magistrate in consultation with the sessions judge¹⁶² if, in the opinion of the state government, no suitable person is available in the regular cadre of prosecuting officers (i.e., the assistant public prosecutors selected after conducting Union Public Service Examination or State Public Service Examination)¹⁶³ in a state.¹⁶⁴ The district magistrate in consultation with the sessions judge prepares panel of names on the basis of the counsel's work and suitability of such person, from the administrative point of view.¹⁶⁵

In the **High Court**, the central / state government appoints a public prosecutor,

¹⁵⁹ *Id*, sec 24(7).

¹⁶⁰ Supreme Court Rules, 1966.

¹⁶¹ Cr. P.C., sec 24.

¹⁶² *Id*, sec 24(3), 24(4), 24(5).

¹⁶³ Rules framed by *Directorate of Prosecution*.

¹⁶⁴ Cr. P.C., sec 24(6).

¹⁶⁵ *Harpal Singh Chauhan v. State of Uttar Pradesh*, AIR 1993 SC 2436.

after consultation with the high court,¹⁶⁶ for conducting any case or class of cases.¹⁶⁷ He is known as standing counsel¹⁶⁸ / additional government advocate.¹⁶⁹

In the **Supreme Court**, criminal appeals are taken up by standing counsels of a particular state who are Advocates-on-Record of their choice,¹⁷⁰ or by anyone from the panel of advocates prepared by the Ministry of Law, Justice & Company Affairs.¹⁷¹

Besides, special public prosecutors are also appointed on contract basis¹⁷² by the Remembrancer of legal affairs in most deserving cases,¹⁷³ to deal with sensational or politically important / controversial cases.

Appointment of Public Prosecutors by the Central Bureau of Investigation (CBI): The CBI has a legal division, which plays prosecutory role in the organization. It is headed by a legal advisor, who is a deputationist from the Ministry of Law of the Central Government. He is assisted by a number of law officers, namely, additional legal advisor, deputy legal advisor, senior public prosecutor, public prosecutor, assistant public prosecutor etc. These ranks indicate descending order of seniority and rank. They are employees of the CBI.¹⁷⁴ Besides, CBI also engages special public prosecutors from the Bar on daily fee basis in important and sensational cases.

(c) Position/Status of Prosecutors: Unlike the judges, prosecutors are not absolutely independent officers. They are appointed by the Government for conducting in court any prosecution / other proceedings on behalf of the Government concerned. They cannot act contrary to the instructions issued by the Government.¹⁷⁵

Director of Prosecution: The director of prosecution is the head of the prosecution wing in a state. He works under the supervision of law department or home department of the state. He is assisted by a number of additional directors, deputy directors and assistant directors, etc. He is a person of the rank of director general of police (executive force),¹⁷⁶ and over all in-charge of prosecution branch. He controls

¹⁶⁶ Cr. P.C, sec 24(1).

¹⁶⁷ *Id.*, sec 24(2).

¹⁶⁸ In Delhi.

¹⁶⁹ *Mansoor v. State* AIR 1971 SC 1977.

¹⁷⁰ B.R.Agarwala, *Our Judiciary*, 104, (1993 Eastern Book Company).

¹⁷¹ Source: Central Agency, Government of India, New Delhi (2000).

¹⁷² CBI Notification No. 225/45/97-AVD-II (ii).

¹⁷³ *Mukul Dalal v. UOI*, 1988 (3) SCC 145.

¹⁷⁴ M.L.Sharma, *Towards Speedy Justice*, CBI Bulletin, 4, (August 1999).

¹⁷⁵ *Sheonandan Paswan v. State of Bihar*, AIR 1983 SC 195.

¹⁷⁶ M.L.Sharma, *Role and Function of Prosecution in Criminal Justice*, CBI Bulletin 4 (September

prosecution of cases in the sessions courts as well as in metropolitan magistrates courts¹⁷⁷ through public prosecutor of a district and chief prosecutors.¹⁷⁸

Public Prosecutor: The public prosecutor supervises the work of additional public prosecutors working in the court of sessions, scrutinizes acquittal reports received from additional public prosecutors, refers the proposal for appeals and revisions to the director of prosecutions for filing in the high court and thereafter follows them.¹⁷⁹

Additional Public Prosecutors: Additional public prosecutors conduct cases on behalf of the state in the court of sessions and work under the supervisory control of public prosecutor of a district.¹⁸⁰

Chief Prosecutors: Chief prosecutors are in-charge of the prosecution work of their respective districts, render advice to the deputy commissioner of police from time to time and supervise the work of senior prosecutors and assistant public prosecutors posted in the metropolitan magistrate's courts¹⁸¹ of their respective districts.¹⁸²

Senior Prosecutors: Senior prosecutors are officers in charge of prosecution work of the sub-division / district and supervises the work of assistant public prosecutors posted in the metropolitan magistrate's courts. They are designated as additional public prosecutors when posted in the sessions' courts.¹⁸³

Assistant Public Prosecutors: These officers conduct the prosecution of cases on behalf of the state in the metropolitan magistrates' courts and prepare the acquittal reports and send the same to the chief prosecutor through senior prosecutors of their division.¹⁸⁴ Assistant public prosecutors, hold an office of profit under the state government and consequently, they are not eligible to stand for election.¹⁸⁵

Standing Counsel: Standing counsels or additional government advocates are the public prosecutors for the high court.¹⁸⁶ They are under the control of the state's law

1997).

¹⁷⁷ Metropolitan Magistrate's Courts or Judicial Magistrate's Courts, as the case may be.

¹⁷⁸ *Supra* note 11.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ Metropolitan Magistrate's Courts or Judicial Magistrate's Courts, as the case may be.

¹⁸² *Supra* note 11.

¹⁸³ *Ibid.*, the procedure prescribed under Legal Remembrancer Manual.

¹⁸⁴ *Supra*, note 33.

¹⁸⁵ *Rabindra Kumar Nayak v. Collector* 1999 (2) SCC 627.

¹⁸⁶ *Mansoor v. State of Uttar Pradesh* AIR 1971 SC 1977.

department.¹⁸⁷ They present appeal in high courts against acquittal by lower courts.

Government Advocates-on-Record: They are central government employees, who handle litigation of the Union Government before the Supreme Court.¹⁸⁸ They appeal against order of acquittal passed by the high court. However, they are not designated as public prosecutors because at the stage of Supreme Court, there is no prosecution as such, but only questions of law are argued.

Special Public Prosecutors: There are two kinds of special public prosecutors namely, (i) those appointed by the state government to deal with any particular case or class of cases and (ii) those appointed by the central government and its various agencies like, enforcement department, customs department or any public sector undertaking, etc. They are free to do private practice except that they cannot sue the department in which they are employed.¹⁸⁹ Ordinarily, they are paid out of the state funds but in cases where the prosecutor is in a public sector undertaking or bank or educational institution and like, the remuneration is paid from the private source.¹⁹⁰

CBI Prosecutors: The prosecutors attached with the CBI render legal advice to the investigating officers during the course of investigations as to the viability of proposed prosecutions. Their advice is taken seriously but can be overruled by the executive CBI officers.¹⁹¹ The level of a prosecutor to prosecute the case is directly related to the level of the courts. Higher the court, higher is the rank of a prosecutor to prosecute it.

3. PROSECUTING SERVICE / DEPARTMENT OF JUSTICE:

Functions of Directorate of Prosecution:

The director of prosecution (i) renders advice and opinion to police authorities regarding prosecution; (ii) renders advice and opinion on references received from other departments of the state government;¹⁹² (iii) processes appeals and revisions for filing in

¹⁸⁷ Source: office of the *Addl. Director of Prosecution*, NCT of Delhi, (2000).

¹⁸⁸ Source: Central Agency Section, Supreme Court of India, New Delhi (2000).

¹⁸⁹ Central Board of Excise & Customs notification No. 278 A/80/98.

¹⁹⁰ *Mukul Dalal v. UOI*, 1988 (3) SCC 145.

¹⁹¹ G.O.I., *CBI Bulletin* 6 (September 1997)

¹⁹² *Supra* note 48.

the high court through law and judicial department of state government and sends appraisal of the same to the district magistrate so that the state government obtains his opinion before final decision;¹⁹³ (iv) transfer and post assistant public prosecutors in the districts;¹⁹⁴ (v) if tenure of public prosecutors expire, then to give extension till successor takes charge, in case of serious offences.¹⁹⁵

The public prosecutor conducts the prosecution on behalf of the state and makes all possible efforts so that trial results in conviction; however, it is not his job to secure convictions at any cost to please the police.¹⁹⁶ The public prosecutor represents the state committed to the administration of justice as against advancing the interest of one party at the cost of other.¹⁹⁷ Besides prosecution, public prosecutor has other obligations as well.¹⁹⁸

(i) Withdrawal from Prosecution:¹⁹⁹ Statutory discretion²⁰⁰ is vested in it to withdraw from prosecution at any stage subject to the court's supervisory function, on larger grounds of public policy such as inexpediency of prosecutions; broader public interests like maintenance of law and order; maintenance of public peace and harmony, social, economic and political; changed social and political situation; avoidance of destabilization of a stable government and the like and on the grounds of paucity of evidence also.²⁰¹ There is no appeal provided against an order giving consent for withdrawal of prosecution, but the same is revisable.²⁰²

(ii) Burden of proof on prosecution: Prosecuting agency is required to establish the guilt against the accused in the court beyond reasonable shadow of doubt with the help of witnesses and on the basis of facts proved by the oral, documentary and any other evidence. He is also expected to draw the court's attention towards statutory

¹⁹³ *State of Gujarat v. Ratilal Laljibhai Tandol* 1997 (7) SCC 228.

¹⁹⁴ It was held by the Supreme Court where in connection with murder of one person, two different cases are put up before Sessions Court, one pursuant to police investigation and other pursuant to a private complaint, accusing two different persons as perpetrators of crime, if possible, to appoint two different Public Prosecutors. See, *Balbir v. State of Haryana*, 2000 (1) SCC 287.

¹⁹⁵ *Raj Deo Sharma (II) v. State of Bihar* 1999(7) SCC 329.

¹⁹⁶ G.O.I., Law Commission of India, 14th Report

¹⁹⁷ Ratanlal & Dhirajlal, the Code of Criminal Procedure, 1973, 18, (Wadhwa Sales Corpn., 1982); see also, *Shiv Kumar v. Hukumchand* 1999 (7) SCC 467.

¹⁹⁸ Public Prosecutor cannot appear on behalf of the accused. See, *Sunil Kumar Pal v. Phota Shiekh* 1984 (4) SCC 533.

¹⁹⁹ *Sheonandan Paswan v. State of Bihar* AIR 1983 SC 197.

²⁰⁰ Cr. P.C., sec 321.

²⁰¹ *Shrilekha Vidyarthi v. State of UP* (1991) 1 SCC 214.

law regarding presumptions against the accused.

Law Officers of the Union Government and State Governments: Apart from public prosecutors, government in various departments and ministries employs lawyers as law officers for rendering legal advice, in the internal decision-making process because regulatory agencies are created by statute, their powers are limited and vested by statute, and virtually all rules are subject to judicial review for substantive rationality, procedural correctness, and fidelity to the Constitution of India.²⁰³

Attorney General of India is the senior most law officer of the Government of India, who is appointed by the President of India under the Constitution.²⁰⁴ He has the authority to address any court in the country.²⁰⁵

Besides, there is a **Solicitor-General for Government of India** and 4 Additional Solicitor-Generals. The office of Solicitor-General is not a constitutional office.

Central Agency Section:²⁰⁶ The Central Agency is a nodal cell, which handles central Government litigations in the Supreme Court. It consists of 13 government advocates on record.

Apart from these there is a **panel of advocates**, being prepared by judicial section of the Ministry of Law, Justice & Company Affairs. From this panel, advocates are chosen to handle Union Government's cases. But, the panel of advocates are not government employees.

The senior most law officer in a state is the **Advocate-General** who is also a constitutional authority. The Governor of a state appoints him.²⁰⁷ He has the authority to address any court in the state.

The duties of Law Officers of Government of India and State Governments:²⁰⁸

The function of the law officers is: (i) to render advice to the government of India upon such legal matters and to perform such other duties of a legal nature, as may from time to time be referred or assigned to them by the Government of India or the

²⁰² Cr. P.C., sec 397, see also, *Sheonandan Paswan v. State of Bihar* 1987 (1) SCC 289.

²⁰³ Neal Devins, *Government Lawyering, L & CP*, 61, (1998).

²⁰⁴ Constitution of India, Art 76.

²⁰⁵ The Advocates Act, 1961, sec 23 (inserted by Act 47 of 1980).

²⁰⁶ G.O.I., Min. of Law, Justice & Co. Affairs, *Annual Report* 39, (1997-98).

²⁰⁷ *Supra* note 58, Art 165.

²⁰⁸ B.R.Agarwala, *Our Judiciary*, 102, (National Book Trust, 1993).

concerned state government as the case may be; (ii) to appear, whenever required before the Supreme Court or before any high court on behalf of the Government of India in cases (including suits, writ petitions, appeals and other proceedings) in which the Government of India is concerned as a party or is otherwise interested; (iii) to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and (iv) to discharge such other functions as are conferred on a law officer by or under the Constitution or any other law for the time being in force.

In order to avoid any complications and conflict of duty, a law officer is not allowed to: (i) advice or hold briefs against the Government of India; (ii) advice or hold briefs in a case in which he is likely to be called upon to advice (iii) appear for the Government of India; (iv) defend accused persons in criminal prosecution without the permission of the Government of India; (v) accept appointment as a director in any company or corporation without the permission of the Government of India.

4. STATISTICAL DATA:

Law Officers at the Centre: Attorney- General of India-1, Advocate-General in a State-1, Solicitor-General of India-1 and Additional Solicitor-Generals-4.

Central Agency: 1-Senior Government Advocate, 1-Government Advocate, 2-Additional Government Advocates, 3-Deputy Government Advocates and, 6- Assistant Government Advocates. They are Central Government employees. They usually assist and instruct law officers of the Government.

Panel of Advocates: The judicial section of the Ministry of Law, Justice & Company Affairs prepares from time to time such number of panels of advocates as are necessary to represent the Union Government.

Statistics of Prosecutors in the States: The number of prosecutors appointed by the Government in a state varies from state to state. The sanctioned strength of prosecutors under the Directorate of Prosecution in NCT of Delhi is given below:²⁰⁹

In NCT of Delhi: Director of prosecution- 1; public prosecutors- 1 for each district; chief prosecutors-12; additional public prosecutors/senior prosecutors-71;

assistant public prosecutors-120.

Statistics regarding Conviction & Disposal of Criminal Cases:

The conviction percentage in India has been falling over the years. It was 64.8% in 1961, which fell down to 42.9% in 1994. All India average conviction rate in the year 1997 is as low as 38.2. The disposal of cases by the courts is also falling over the years. In 1994 it stood at 15.5% of the total cases pending in the courts in that year.

The disposal & conviction rate for whole of India in the year 1997 is depicted below:

STATE/UT	Incidence of Indian Penal Code crimes	Disposal rate by police	Charge-sheet rate by police	Disposal rate by courts	Conviction rate	Policemen per lakh of population
Andhra Pradesh	114,963	70.6	87.2	31.6	37.3	101
Arunachal Pradesh	1,876	71.8	59.9	8.1	46.6	394
Assam	36,562	49.4	55.4	22.6	22.6	193
Bihar	117,401	63.2	73.8	18.2	26.2	88
Goa	2,395	74.7	47.9	19.3	23.9	182
Gujarat	117,823	86.5	78.3	13.1	35.0	138
Haryana	31,981	79.2	79.9	19.0	37.0	162
Himachal Pradesh	10,242	80.5	85.4	15.9	29.1	188
Jammu & Kashmir	17,192	77.7	63.5	20.9	36.0	446
Karnataka	114,863	78.0	75.5	31.0	15.8	117
Kerala	92,523	79.6	89.8	27.1	32.5	114
Madhya Pradesh	205,026	95.4	81.3	19.1	47.0	110
Maharashtra	185,122	78.5	71.7	10.7	18.1	155
Manipur	2,974	40.2	4.6	43.2	0.1	614
Meghalaya	1,978	50.4	53.8	8.8	56.5	333
Mizoram	2,120	30.2	84.1	15.3	93.9	783
Nagaland	1,477	38.2	46.8	9.3	82.8	1,102
Orissa	51,359	81.4	85.9	17.1	11.8	99
Punjab	15,069	67.3	83.8	23.5	37.0	297
Rajasthan	165,469	95.9	80.6	22.0	50.8	117
Sikkim	623	70.1	64.3	37.4	73.1	604
Tamil Nadu	141,867	75.5	91.1	42.8	64.0	124

²⁰⁹ *Supra* note 11.

Tripura	3,444	69.5	54.2	25.9	10.1	354
Uttar Pradesh	152,779	85.1	71.0	21.1	51.4	103
West Bengal	65,481	66.0	54.1	6.8	21.9	106
A&N Islands	477	59.2	78.0	9.3	64.7	725
Chandigarh	2,181	71.6	47.9	25.4	61.1	497
D & N Haveli	347	80.5	67.3	15.8	27.3	128
Daman & Diu	267	64.9	66.6	22.5	19.8	256
Delhi	60,883	32.1	73.4	8.7	38.0	392
Lakshadweep	26	54.7	23.4	33.3	33.3	511

source: G.O.I., *Crime in India*, 1998

The disposal of IPC crime cases from 1961 to 1997 is given under:

YEAR	No. of cases for trial	TRIED	CONVICTED
1961	800784	242592	157318
1971	943394	301869	187072
1981	2111791	505412	265531
1991	3964610	667340	319157
1994	4759521	736797	316245
1995	5042744	763944	321609
1996	5297662	843588	318965
1997	5461004	879928	336421

source: G.O.I., *CBI Bulletin*, 10 (August 1999)

The Directorate of Prosecutions in some states is under the control of Home Department, while in others is under the control of Law Department.

Prosecution System under the Control of Home Department:

STATE	CONVICTION RATE OF 7 YEARS
Tamil Nadu	67.8
Madhya Pradesh	64.5
Uttar Pradesh	54.0
Andhra Pradesh	51.6
Delhi	47.6
Maharashtra	39.4
Bihar	36.7
Kerala	17.7
Jammu & Kashmir	37.4

source: G.O.I., *CBI Bulletin*, 12 (1997)

Prosecution System under the Control of Department of Law:

In the States of	Average percentage of conviction of 7 years
Meghalaya	76.4
Pondichery	72.2
Sikkim	67.2
Chandigarh	65.5
Haryana	61.2
Gujarat	61.0
Manipur	47.6
Goa	44.4
Karnataka	31.9
Himachal Pradesh	21.9

source: G.O.I., *CBI Bulletin*, 12 (1997)

Statement of Criminal Cases for NCT of Delhi:

In Metropolitan Magistrate Courts:

Years	Previous balance	Fresh received	Total	Conviction	Acquitted	Others	Disposal
1997	102436	32746	135182	7298	11041	10805	29144
1998	106038	27705	133747	7259	9865	9272	26396
1999	107351	28853	136014	6410	10986	8829	26225
July 2000	109789	19199	119988	4150	6054	4419	14623

source: *Directorate of Prosecution, NCT of Delhi (2000)*

In Sessions Courts:

Years	Previous balance	Fresh received	Total	conviction	Acquitted	Others	Disposal
1997	11657	4983	16640	1191	2881	1246	5318
1998	11322	2930	14252	1032	2954	727	4713
1999	9539	4049	13588	1205	2720	860	4785
July 2000	8803	2615	11418	633	1465	594	2692

source: *Directorate of Prosecution, NCT of Delhi (2000)*

Average Workload: In NCT of Delhi, only about 150 public prosecutors are handling nearly 3 lakh criminal cases pending in the three lower courts. In the Patiala House courts alone, only 27 prosecutors handle 35000 cases, which means a prosecutor handles over a thousand cases at one time.²¹⁰

Observations: In the recent years the Supreme Court has played a significant role in bringing reforms in the prosecution system. In *S.B. Shahane v. State of Maharashtra*²¹¹ it directed the state of Maharashtra to have autonomous prosecuting agency with a regular cadre of prosecuting officers. However, one may find some lacunae in the existing prosecution system. The first and the foremost problem in the area of prosecution is the poor quality of entrants in the prosecution agency. The earnings in the open market are much higher than what the government offers to the prosecutors. Resultantly, able and competent advocates shy away from prosecution agency. The only way to remedy the situation is to make the job attractive by improving the salary structure and by providing other perks, such as government housing, transport, telephone facilities and allowances, such as non-practicing allowance, rob allowance, library allowance, etc.

Experience shows that the public prosecutors are overburdened with cases and their number is not adequate enough to efficiently handle the cases entrusted to them.²¹² It is thus imperative to fix a norm as to the number of cases to be entrusted to a public prosecutor, as it would help in improving their efficiency and making the office of

²¹⁰ Utpal Parashar, "Crime and punishment", *The Hindustan Times* 7 (12 – 2 – 2000).

²¹¹ *Supra* note 4.

²¹² In NCT of Delhi on an average a prosecutor handles 20-30 cases per day; source: Directorate of Prosecution, NCT of Delhi (2000).

public prosecutors more responsible and accountable. Further it is suggested that a national level training institute should be set up for imparting training to the public prosecutors. The proposed training could be supplemented with refresher courses from time to time.

The prosecutors generally do not have access to good library facilities. Due to their rather inadequate pay scales, they are not in a position to spend on books. The libraries of the Bars are not made available to the prosecutors. It would be advisable to set up exclusive libraries for the prosecutors in cities and bigger towns at Government cost. There is virtually no- accountability on the part of Prosecution Agency. The departmental superior should play a dominant role in this regard.