WITHDRAWAL FROM PROSECUTION AND VICTIM RIGHTS: A COMPARATIVE STUDY OF INDIA, USA AND UK

Thesis

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BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
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SUBMITTED BY

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2016

Dedicated to
My Beloved Parents

DECLARATION

I, **Vijay Kumar Bhaskar** hereby declare that research work embodied in this Ph.D. thesis titled **"Withdrawal from Prosecution and Victim Rights: A Comparative Study of India, USA and UK "** has been carried out by me under the supervision of **Dr. Preeti Misra,** Associate Professor, Department of Human Rights, School for Legal Studies, Babasaheb Bhimrao Ambedkar University (A Central University) Lucknow. This Research work is an original work and it has not been previously submitted in part or full for any other degree or diploma in this University or any other University.

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Certificate

This is to certify that the thesis titled **"Withdrawal from Prosecution and Victim Rights: A Comparative Study of India, USA and UK"** submitted by **Mr. Vijay Kumar Bhaskar** is an original research work and has not been previously submitted in part or full for the award of any other degree or diploma to this or any other university.

The thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the Doctor of Philosophy (Ph.D.) Regulation 1999 as amended in 2010 and it is fit for submission and evaluation for the award of the Degree of Doctor of Philosophy of the University.

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PREFACE

This research work entitled "Withdrawal from Prosecution and Vitim Rights: A Comparative Study of India, USA and UK" explored criminal procedure especially related to the concept of withdrawal of Prosecution in India as well as USA and UK's criminal justice system. Prime object of the criminal justice system is to protect society against crime and to punish offender. However, contemporary criminal justice system does not put accused and victim at equal footing in terms of rights. To maintain the law and order in society, the state does not allow a victim to take law in his/her hand either to punish the offender or compensate the loss or injury suffered by victim. Victim plight became more severe in condition of the withdrawal or discontinuation of prosecution when state direct its prosecution agency to withdraw prosecution in the public interest.

Along with legal developments, there was a concurrent growth in social consciousness about victims' rights. In 1982, President Ronald Reagan's Task Force on Victims of Crime released its Final Report regarding justice for victims' rights. In the year 2004, Crime Victim Rights Acts was passed by USA parliament due to social movement and legal development and in consistency with the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. In United Kingdom 'Victim Rights' have been recognised which have had little impact on criminal justice system. Victim rights in Indian criminal justice system are not separately rcognised in any specific legal framework. Although, the "victim" is specifically defined in the Code of Criminal Procedure 1973, amended in 2008. Victim may engage lawyer of his choice who shall assist the public prosecutor in his case.

After the archive Sheonandan Paswan v. State of Bihar case the Allahabad High Court in landmark judgment Ms. Ranjana Agnihotri and others v. Union of India and others decided various aspect of public interest and role of public prosecutor in withdrawal from prosecution.

Withdrawal of cases is unwarranted termination of judicial process. It also intervention of executive in the judiciary. If such intervention is due to judicial purpose like in case where there is clear indication of malafide accusation and investigation which badly affect the accused then withdrawal should be sought.

Victim right to participation in legal process and right to be heard should be strictly followed in each case of withdrawal. If the withdrawal of cases based on the casteist, religious or other political overtone than Jury may be involved for the better understanding of public interest.

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Chapter I

Introduction

CHAPTER I

Introduction

"If men were angels, no government would be necessary."

James Medison[1]

1.1.Introduction

The ultimate aim of criminal law is protection of right to personal liberty against invasion by others – protection of the weak against the strong law abiding against lawless, peaceful against the violent. To protect the rights of the citizens, the State prescribes the rules of conduct, sanctions for their violation, machinery to enforce sanctions and procedure to protect that machinery. It is utter selfishness, greed and intolerance that lead to deprivation of life, liberty and property of other citizens requiring the State to step in for protection of the citizens' rights. It is the primary function of the government to protect the basic rights to life and property. The State has to give protection to persons against lawlessness, disorderly behaviour, violent acts and fraudulent deeds of others. Liberty cannot exist without protection of the basic rights of the citizens by the Government.[2]

Criminal justice system refers to the structure, functions, and decision processes of agencies that deal with the crime prevention, investigation, prosecution, punishment and correction. Some believe that it is not totally accurate to speak of a criminal justice system. A system, they argue, is an interactive, interrelated, interdependent group of elements performing related functions that make up a complex whole. The criminal justice system is a loose confederation of agencies that perform different functions and are independently funded, managed and operated.[3] However, despite their independence, these agencies of criminal justice system are interrelated because what one agency does affects all others. That is why they are called a 'system'.

[1]James Madison , " The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments", The Federalist No. 51, Independent Journal6/2/1788 accessed from http://www.constitution.org/fed/federa51.htm

[2] Committee on reform of Criminal Justice System, Vol I, March 2003, para 1.4, pg 5

[3]Samaha, Joel, Criminal Justice, Thomson/Wadsworth, 2005 at p. 6.

The present criminal justice system of India is the product of a continuous effort on the part of rulers who controlled the affairs of the country from time to time. In every phase of Indian history the rulers contributed to the development of the criminal justice system. However, most of them treated the criminal justice system more as an instrument to subjugate the masses rather than to protect their rights. The British rulers who made well-thought-out efforts for the establishment of a sound and well defined criminal justice system in India were also not free from this weakness. They too looked at the criminal justice system more as an instrument to uphold the colonial rule in India and less for the administration of fair criminal justice to the people. The main objective of the criminal justice system is to create social harmony and maintain order by enforcing the laws and curbing their violation. For attainment of this objective, a network consisting of the police, bar, judiciary and correctional services constitute the criminal justice system. Since the criminal law provides the basic framework for the whole criminal justice system, it is also considered as a component of the whole system.[4]

Another component of criminal justice is 'Rule of law', which means that the law which govern the people as well as state action. Preposition of rule of law is that it should be purposeful, unambiguous, public welfare oriented and practicable. The laws, made against the constitutional mandate and people welfare is deemed to be arbitrary. Therefore, intelligible criminal law is the foundation on which the efficiency of criminal justice system stands. It is, therefore, the responsibility of the legislators to make the foundation strong by making criminal laws intelligible and purposeful.

The reformation and codification of criminal laws being done during British India. The Indian Penal Code, 1860; the Police Act, 1861; the Code of Criminal Procedure of 1861; the Indian Evidence Act, 1872; and Indian High Courts Act, 1861 are the major laws of criminal law of India. Most of the laws enacted by the British are still in force in with slight variation and in consonance of Constitution of India.

[4]BhartiDalbir, "Crime and Justice", APH Publishing , New Delhi at p. 76 accessed from dalbirbharti.com on 12 April 2014

Rule of criminal laws spring from the constitution. The Constitution under articles 17 and 23 specifically declares certain acts as offences punishable in accordance with law and certain protections in respect of conviction for offences (article 20), protection of life and personal liberty (article 21), protection against arrest and detention (article 22), appeal to Supreme Court in criminal matters (article 134), and powers of President and Governor to pardon, suspend, remit sentences (articles 72 and 161).[5]Article 32 and 226 grant right to constitutional remedy against infringement of fundamental rights. Article 20, 21 and 22 are protection for accused against the violation of fundamental rights. But being a victim there is no specific rights enshrined in the Constitution of India.

Crime in civilised society is steadily increasing. Organised crime is more severe in nature and effect individual and society at large. Organised crime is that crime which is committed by a group of person. The group may a gang of dacoit or drug peddler or on the other hand some time political parties grouped for particular motive cause violence and destroy private and public property in large bases. Violence happened during political protest is deemed to be the inseparable part of the political movement and these violence are sometimes forgivable. But in Indian criminal law there is no such separation. Every person is subject of same law without discrimination. In democratic country like India Gandhian way of political protest is now a day's changing it to violent shape. In past, in several instances political party applied for withdrawal of prosecution of their fellow party worker after forming government. In West Bengal TrinMool Congress (TMC) government ordered probe in The March 1970 incident is considered as one of the most gruesome instances of CPM atrocities on Congress supporters in the past four decades. The family members were killed because they refused to change their political affiliation from the Congress to the CPM. One of them, a youth, was murdered in front of his mother. MamataBanerjee, Chief Minister, West Bengal has an inquiry commission to probe the case.[6]It is serious matter with regard to the rule of law and right to equality and right to life and liberty. Release of member of

[5] Ibid

[6] "Mamata to set up panel to probe political murder cases during Left rule", India Today, Kolkata, accessed on 16/06/2011

Verappen gang and kidnapping of PDP leader Rubina Sayeed, criminals in ransom demanded release of undertrial terrorist, government fell in controversy of maintenance of law and order and victims right and also the duties of citizen. In arising and under saturated democracy country there should be a mechanism and legal setup to protect victim interest. Compensation is not the only recourse to victim but justice should be done in all respect.

The present thesis explores the historical evolution and scope of victim rights in the United States of America(USA), United Kingdom(UK) and Indian criminal justice system. On the other hand the present thesis compares the provision of withdrawal of prosecution in India with the USA and UK. The thesis also explore the position, appointment and duties of the Public Prosecutor. Criminal justice system is explored in details so that it shall be convenient to compare justice delivery system in different country of oldest and newer democratic form of government setup.

Basic object of the criminal justice system is to protect society against crime and to punish offender. However, contemporary criminal justice system does not put accused and victim at equal footing in term of rights. To maintain the law and order in society, the state does not allow a victim to take law in his hand either to punish the wrongdoer and compensate the loss or injury suffered by victim. Basically it is assumed that the claim of the victim is sufficient by conviction and sentencing the offender.

Crime in civilised society is steadily increasing. Organised crime are more severe in nature and effect individual and society at large. Organised crime are those crime which is committed by a group of persons. The group may be a gang of dacoit or drug peddler or on the other hand some time a political parties grouped for a particular motive cause violence and destroy private and public property in large bases. Violence happened during political protest is deemed to be the inseparable part of the political movement and these violence are forgivable. But in Indian criminal law there is no such separation. Every person is subject to the same law without discrimination. In democratic country like India, Gandhian way of political protest is now a day's changing it to violent shape. In past, in

several instances political party applied for withdrawal of prosecution of their fellow party worker. It is serious matter with regard to the rule of law and right to equality and right to life and liberty. Release of member of Verappen gang and kidnapping of PDP leader Rubina Sayeed , criminals in ransom demanded release of undertrial terrorist, government fell in controversy of maintenance of law and order and victims right and also the duties of citizen. In arising and under saturated democracy country there should be a mechanism and legal setup to protect victim interest. Compensation is not the only recourse to victim but justice should be done in all respect.

V.N. Rajan in his book titled "Victimology in India" written :

> " the theory of state is complex of ruler and ruled, politically conceived, territorially organised, seeking by the conferment of power on the ruler the effective maximization of the individual and social welfare of the ruled. The state achieve the purpose through enactment and promulgation of laws and it enforces obedience to the laws by the exercise of power. If the intended result cannot be produced in respect of any law, the state has to assume responsibilty for the loss, pain or damage caused to any law abiding citizen by someone disobedience of the law. It is the victims' rights to place a claim the state for its failure to protect himself."[7]

During the ancient periods, the criminal justice system was "victim-centric," in that crimes were often investigated and prosecuted by individual victims. In the 19th and early 20th centuries, the focus shifted the crime as "social harm." The criminal justice system came to be seen as a tool for remedying this social harm, rather than an avenue for redress of personal harm. The role of the victim in criminal proceedings was drastically reduced thereafter.

The modern Crime Victims' Rights Movement began in the 1970s. In 1973 U.S. Supreme Court Decision in Linda R.S. v. Richard D.[8] court expressed about victims' rights. In Linda R.S. case, the Court ruled that the complainant did not

[7]Rajan V.N. "Victimology in India: Perspectives and Frontiers", Ashish Publishing House, New Delhi, at pg. 7, Accessed from http://artechokebooks.com
[8] 410 U.S. 614

have the legal standing to keep the prosecutors' office from discriminately applying a statute criminalizing non-payment of child support. Whereas the court articulated the then-prevailing view that a crime victim cannot compel a criminal prosecution because a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.

Ruling of Linda R. S. case served as a high-water mark in the shift away from the victim-centric approach to criminal justice, making it clear that victims in the 1970s had no formal legal status beyond that of a witness or piece of evidence. But it was not against the victim's concern and commenced a debate for the concrete legislation for plight victim of crime.

If the Linda R.S. Ruling was a clear representation of the problem of victim exclusion, it also hinted at a solution to the problem. The Court stated that Congress could "enact statutes creating victims' rights, the invasion of which creates standing, even though no injury would exist without the statute." With this statement, the Court provided a legal foundation for victims' rights legislation.

Along with these legal developments, there was a concurrent growth in social consciousness about victims' rights. This was due, in part, to the fact that concern for the fair treatment of victims provided a nexus between disparate, but powerful, social movements. The Law and Order Movement, the Civil Rights Movement, and the Feminist Movement all challenged the criminal justice system to think more carefully about the role of the victim in criminal proceedings. Supporters of these causes helped form the grassroots foundation of the modern Victims' Rights Movement, providing educational resources and legal assistance for victims of crime.

In 1982, President Ronald Reagan's Task Force on Victims of Crime released its Final Report regarding justice for victims' rights . Since 1982, most of the US states have amended their constitutions to address victims' rights, and all states have passed victims' rights legislation. In same year, Congress passed the first piece of federal crime victims' rights legislation, the Victim and Witness Protection Act. In 1984, the Victims of Crime Act and the Violence

AgainstWomen Act were passed. In 2004, the landmark Crime Victims' Rights Act(VOCA) was passed, granting crime victims eight specific rights, and providing standing for individual victims to assert those rights in court. The Crime Victims' Rights Act (CVRA) of 2004, grants victims the right to protection from the accused, right to notification, right not to be excluded from proceedings, right to speak at criminal justice proceedings, right to be treated with fairness, and respect for the victims' dignity and privacy

In 1985, the U.N. adopted the **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**, which outline best practices for treatment of crime victims. The Declaration recognise that victims are entitled to fair treatment and access to the mechanisms of justice, and generally draws attention to the need for victims' rights in the criminal justice process. Declaration specify ways in which victim should have access to judicial and administrative procedure to be treated fairly and have their views considered, encourage restitution or compensation by offender to victim and government funded compensation where the victim is poor assistance to victim to recover from the ordeal.

Council of Europe has produced **European Convention on the Compensation of Victim of Violent Crime1983** (enforced on 1 June 1990) and a guide line recommendation on the Position of the Victim in the Frame work of Criminal Law and procedure 1985(council of Europe Recommendation No. R(85)11 of the committee of minister to members states). The convention specifically deals with compensation to the victims. Whereas guide line deals with treatment of victim by state agents(police and court) and assistance which victim needs. In United Kingdom ‘Victim Rights’ have been recognised which have had little impact on criminal justice system.

Other United Nations provisions that touch on victims' rights include

(1) The International Covenant on Civil and Political Rights (ICCPR);

ICCPR recognise the Rights to be protected from harm, which impose obligations on governments to have effective criminal justice systems (Article 6.1, Article 7, and Article 17)

1. Rights to be recognized by and treated equally before the law (Articles 2, 3, 16, and 26)
2. A right of non-discrimination (Article 2)
3. Rights to a remedy and to access to justice (Articles 2 and 14)
4. Due process rights (Articles 9, 10, 14, and 15)

(2) The Convention on the Elimination of Discrimination of Women (CEDAW);

(3) The Convention on the Rights of the Child (CRC).

In modern organized society the private prosecution is shifted to the public prosecution system established by the state. The public prosecution system have authority to initiate and withdraw prosecution in almost all criminal justice system.

Indian criminal justice system is of Adversarial system. Criminal justice administration is divided in investigation, prosecution and trial court. Investigation agency is primarily in state domain. Unlike investigation agency, prosecution officer is appointed and function under state direction but is responsible toward the court for fair and independent trial whether in trial court or in High Court. Being an officer of the court public prosecutor is believed to represent public interest and seek conviction of an accused is in either instance whether accused is found to be innocent. In later case prosecution may apply to court for withdrawal from prosecution.

Public prosecutor is appointed by the central or state government. Though public prosecutor is appointee of the government he has responsible duties to bear on his shoulder toward true and fair justice. The nature of office of public prosecutor is sometime doubtful.

According to Section 321 of Code of Criminal Procedure :

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,—

(a) **If it is made before a charge has been framed**, the accused shall be **discharged** in respect of such offence or offences;

(b) I**f it is made after a charge has been framed**, or when under this Code no charge is required he shall be **acquitted** in respect of such offence or offences:

Provided that where such offence—

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

Withdrawal from prosecution means retiring or stepping back or retracting from prosecution. It clearly distinct from withdrawal of prosecution. Withdrawal

from prosecution is withdrawal of appearance from the prosecution or refraining from conducting with the prosecution. When the court consents the withdrawal from prosecution the accused shall be discharged or acquitted in accordance with the clause (a) and (b) of section 321 of Criminal Procedure code.[9]

Application for Withdrawal from prosecution is generally moved form the respective governments on the public interest, public peace, civil unrest and other issue. Public prosecutor incharge of the case apply on such government guidance with facts and evidence tendered to him. Court and public prosecutor have duty to protect administration of criminal justice against the possible misuses by the executive. Both, court and public prosecutor are independent and free from any compulsion of executive. Being the officer of the court, public prosecutor is responsible to the court.

In **Sheonandan Paswan v. State of Bihar**[10]Bhrul Khan J. observed that :

> "Unlike judge the public prosecutor is not absolute independent officer. He is an appointee of the government ….appointed for conducting in court any prosecution or other proceeding on behalf of the government concerned… A public prosecutor cannot act without instruction of the government."

Therefore, there may be chance of political biasness regarding the conflicting political interest in withdrawal from prosecution.

Trinmool Congress formed government in West Bengal and Samajwadi Party in Utter Pradesh directed the respective public prosecutor for withdrawal from prosecution of their party worker held and put to trial during political movement in various head of the Indian Penal code. While opposition protested, government established a scanning committee for justifiable withdrawal from prosecution though with their own appointee member.

In State of U.P. v. Additional District and Session Judge[11], Allahabad High Court upheld the decision of trail court rejecting request for consent for

[9]Kelkar R.V. , " Criminal Procedure", Vth Revised Ed., Eastern Book Company, 2008, p. 456

[10](1983)1 SCC 438

withdrawal from prosecution of former women dacoit on issue that she belong to lower caste. Consent for withdrawal from prosecution may lead to communal tension.

1.2.Statement of problem

Declaration of Basic Principle of Justice for Victims of Crime and abuse of Power 1985(Declaration) make provision on the participation of victims in criminal justice with dignity and priority. But contemporary criminal justice is accused oriented. Prime functionary of state is to investigate and put to trial the accused by its prosecution machinery on behalf of the victims, Public prosecutor suo-moto or on executive, request for withdrawal of prosecution in event of paucity of evidence or unreasonable delay which suppress justice. The declaration suggest the member countries for change in their criminal law for more victim oriented. But the declaration has no binding force because of certain covenant on these issue. A **Draft Convention on Justice and Support for Victims of Crime and Abuse of Power 2006** is proposed and pending before the United Nation General Assembly for discussion.

In United States of America and United Kingdom 'Victim Rights' have been recognised which have had little impact on criminal justice system in India.

Right to fair trial for an accused is a basic right which include that of victim also. Withdrawal from prosecution violate such victim fundamental and Human Rights on certain footing.

The Indian court are required to explicitly follow the International Human Rights norm in reaching a decision in absence of any domestic , municipal statute that could provide effective enforcement of human rights in question. Arbitrary request of executive to withdraw from prosecution lead to violation of fundamental right to life and right to equality enshrined in the constitution of India.

[11]1997 CriLJ 3021(All)

The government of India has not yet decided the policy, statute in accordance with the international norm on the issue of victim rights in the criminal justice.

On many instance, government has applied for withdrawal from prosecution in crimes which were directly or indirectly related to the political nature(like release of naxalite prisoner in demand of ransom, release of terrorist for ransom etc).

Despite amendment in Criminal Procedure Code 1973 by inserting section 25A, Act 25 of 2005, has been established in few state. Section 25A ensure appointment and functioning of public prosecutor, independent of the state authority so far as possible.

Public prosecutor *suo-moto* or on executive request applies for withdrawal of prosecution in event of paucity of evidence or unreasonable delay which suppress justice.

Right to fair trial for an accused is a basic right which includes that of victim also. Withdrawal from prosecution violates such victim's fundamental and Human Rights of equality and dignity.

Arbitrary request of executive to withdraw from prosecution lead to violation of fundamental right of victim to life and right to equality enshrined in the constitution of India.

The government of India has not even decided the policy, statute for the victim compensation and assistance in accordance with the international norm.

1.3.Hypothesis

1- Arbitrary concern of public interest regarding withdrawal from prosecution is against principle of criminal justice system and good governance

2- Public prosecutor is appointed by and in direct command of the executive

3- There is lack of specific law in respect of victim active participation in criminal proceeding in India.

4- Victims' 'Right to Fair Trial' 'Right to Participate in Proceeding' in withdrawal from prosecution is not recognised in Indian criminal law

5- Most of the cases for withdrawal are of political nature and involve crimes of serious nature like murder, assault and destruction of public and private property by political groups

1.4. Objective of study

The objective of study is to study the legal study of withdrawal from prosecution in various aspect and victim's position in criminal justice in order to suggest a better statutory provision to curtail arbitrariness. Keeping allthe above facts in mind, the following objectives of the proposed study are being framed:-

1- To trace the jurisprudential development of law related to criminal justice.

2- To trace the procedural provisions related to the prosecution and trial

3- To examine the executive function and it's relation in the judicial process

4- To examine constitutionality of withdrawal from prosecution and executive arbitrariness

5- To critically examine and evaluate the role of public prosecutor

6- To critically examine the contemporary victim's fundamental rights and Human Rights

7- To trace and evaluate the various international covenants and the legal instruments.

8- To suggest legal framework to provide the victim more comprehensive and dominant role in withdrawal from prosecution.

1.5. Research Methodology

The proposed study is mainly based on the doctrinal approach. In addition descriptive, explanatory and analytical research method is also applied in accordance with the objective and hypothesis of the study. Regarding the analysis of the legal provisions and judicial decisions the method would be analytical.

The information is gathered using primary and secondary source of data. Primary source includes government publications and secondary source includes

law journals, earlier research, mass media reports, internet and magazine and other similar good source of data.

1.6. Chapterisation

Chapter I Introduction

This chapter deals with the brief description of the thesis with the statement of problem, objective of study, hypothesis and research methodology adopted. The chapters are also briefly discussed in this chapters.

Chapter II Victim Rights in International and National Scenario

In this chapter researcher discuss definition of victim, types of victim proposed by various jurist. Provision contained in United Nation Declaration on Basic Principle of Victim of Crime and Abuse of Power 1985 and Draft Convention on Victim of Crime and Abuse of Power 2006 are discussed in detail in four key areas: i)victim being treated with dignity and respect; ii) vicitm having information about legal processes concerning them; iii) measures to ensure equal access to those processes for victim; and iv) victim's protection from reprisals. It is recognised that criminal justice processes should be empowering to victims; their voices should be heard in such processes , not only as witnesses for the prosecution, but as rights holders with valid interests in the proceedings and their outcome.

Chapter enumerates numbers of rights of victim of crime which are contained in criminal laws of the India, United States of America and United Kingdom with specific historical aspect and judicial pronouncement. Researcher also analyzed the Justice Malimath Committee report 2003 and on criminal justice reform and 198th Law Commission report on Witness Protection and Witness Protection Programs 2006 in the light of recommendation for justice to victim.

Chapter III Criminal Justice System in India, USA and UK

This chapter specifically deals with provisions related to the criminal procedure in investigation, trial of an accused and setup of judiciary and power, selection and appointment of judges and prosecutor. Various provisions regarding

criminal procedure is being discussed in detail wherever it was required with case law. Provisions of the United Nations Guideline on Role of Prosecutor 1990 is discussed with detail to understand the role of prosecutor in the criminal justice system.

Chapter IV Comparative Study of the Provisions of Withdrawal of Cases in India, USA and UK

In this chapter researcher explore the specific provision of withdrawal from prosecution in the USA and UK and compare it with provision contained in Code of Criminal Procedure of India. To concise the study researcher has not covered all the provisions of criminal procedure applicable and enacted in all the states of the United States of America and territories of Scotland, Ireland, Wales and England of the United Kingdom. But few details are incorporated in the study.

Position of prosecutor in India is very much different. Power of withdrawal of cases rest in prosecutor, is discussed with the judgments by the High Courts and Apex Court. Government may direct prosecutor in public interest to withdraw cases. In this situation role of judiciary and prosecutor become crucial.

Researcher has also discussed all these provisions in the light of cases of **Abdul Karim case**[12], **Sheonandan Paswan**[13] case, and PIL by **Ranjana Agnihotri and others**[14].

Chapter V Effect of Withdrawal of Prosecution on Victim Rights InSoicio-Political Context

In this chapter researcher explored various cases of withdrawal from prosecution cases in India and its impact on society. Researcher explored the effect of withdrawal from cases on the victims like children, women, lost of business, lost of property. The chapter includes the detail study of release of

[12]Abdul Karim v. State of Karnataka (2000) 8 SCC 710

[13]SheonandanPaswan v. State of Bihar 1987SCC(1)288

[14]Ms.RanjanaAgnihotri and others v. Union of India through Secy. Ministry of Home Affairs & others MISC. BENCH No. - 4683 of 2013

terrorist in Rubina Sayeed kidnapping case, withdrawal of TMC members in the West Bengal, U.P. government order to withdraw cases against the accused of terrorism.

Chapter VI Conclusion and Suggestions

In this chapter researcher conclude its study and give respective suggestions.

Chapter II

Victim Rights in International and National Scenario

CHAPTER II

Victim Rights in International and National Scenario

Who are the victims? The word "victim" is derived from the Latin "victima" and originally contained the concept of sacrifice. The victim occupies an uncomfortable position in the criminal justice system. In one sense, the victim is the central agent in this process. Victim is the party most directly affected by the criminal act. The justification for the system of criminal liability, however, almost totally marginalises the role of the victim in the criminal justice system.

In reality, the concept and identity of victims create problem and often controversial. It is important to stress this at the outset because attitudes towards victims and how they should be dealt with are likely to be shaped by the assumptions we make about them, which may not always be well founded. This concept applies to those who advocate restorative justice approaches as the most appropriate way of dealing with victims.

We may start by observing that, contrary to contemporary popular perceptions, the apparently inextricable connection in the public mind between 'victims' and 'crime' is a relatively recent phenomenon. Formerly, the term 'victim' was as likely to be associated with general misfortune as it was with crime.

The **Cambridge Dictionary** define victim as:-

someone or something that has been hurt, damaged, or killed has suffered, either because of the actions of someone or something else, or because of illness or chance[1]

Thus, when concept of the welfare state arises , the 'victims of misfortune' for whom they sought to make provision were those oppressed by the five 'giant evils of society' – want, disease, ignorance, squalor and idleness – but not crime. Several decades were to elapse before crime victims were recognized as a distinct

[1] Accessed from http://dictionary.cambridge.org on 15th June 2013

social category in their own right, and the first co-ordinated responses were formulated to address their concerns also.[2]

The emergence of the victim of crime as an object of study is largely the product of the past sixty years. In 1937 Benjamin Mendelsohn started the scientific study of victims of crime, and introduced "the science of the victim", for which in 1947 he coined the term "Victimology" (1956). Later on, in 1948, the other (or second) forefather von Hentig, published his book: "The Criminal and his Victim" (1948/1979)2 In 1979 the World Society of Victimology was founded in Munster by criminologist like Hans Joachim Schneider and others. This development can be seen as an important mile stone in the development and recognition of Victimology as a scientific discipline.[3] Twenty years after, it seems appropriate now to reconsider and evaluate the development of Victimology.[4]

Justice Benjamin N. Cardozo of the United States Supreme Court in judgement wrote:

> "But justice, though due to accused, is due to accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."[5]

Even so crime victims have not been treated fairly. Somewhere along the way the system began to serve lawyers, judges and accused, treating the victim with institutionalized disinterest.

There is no difficulty in determining the person who has been victim of stolen property. But question is more difficult that whether that person is a "victim" who is entitled to assert crime victims' rights in any given case. The answer depends upon on the legal definition of "victim". It all varies with the jurisdictions. Whether a person is a crime "victim" may depend on the particular right at issue or the stage and procedural state of the case. Law and order are integral parts of a civilized society. The victim plays a vital role in the administration of justice. His role in criminal justice administration is twofold-

[2] "Victim, Victimization and Victimology", accessed from http://www.mheducation.co.uk

[3] Hoffman, 1992; Kirchhoff 1993, Friday, 1989 as referred

[4] Paul C. Friday and Gerd Ferdinand Kirchhoff ed. "Victimology at the Transition From the 20th to the 21st Century.", accessed from http://www.ariel.ac.il

[5]Snyder v. Massachusetts, 291 U.S. 122 (1934)

(a) It is personal, that wrong done to him.

(b) The victim duties to inform wrong done toward him and help authorities to maintain law and order.[6]

In every society there are crime and criminals, tragedy and violence. No society whether primitive or modern, no country whether economically under developed or developing or developed is free from crime. Through development of modern society the focus is becoming on offender and crime, and very less on victim suffering. Therefore, in the civilized legal society victim and their kith and kin plight should be remedied and whole criminal justice system should be developed accordingly.

The Supreme Court of the United States first recognized the rights of crime victims to make a victim impact statement during the sentencing phase of a criminal trial in the case of **Payne v. Tennessee.**[7] In this case Supreme Court of the United States court stated that :

1. the Supreme Court, since **Marbury v. Madison** (1803) has decided what the law is and stare decisis is "not an inexorable command"
2. the defendant has the right to present mitigating evidence at the sentencing phase, the prosecution should be able to present aggravating evidence about the victim.

Dissenting opinion of Justice Stevens characterizes this argument as *a non sequitur*(a conclusion or statement that does not logically follow from the previous argument or statement.). Justice Stevens opined that the defendant has constitutional rights because he is on trial whereas the victim is not on trial and has no constitutional rights in the proceeding.

2.1. Definition of Crime Victim

In the late 1930's and early 1940's a barrister specializing in criminal defense work began a series of studies designed to assist defense attorneys in the preparation of cases on behalf of their clients, The barrister was Benjamin

[6]Kamlasabayson K. C., Attorney General, "Balancing Rights of the Accused with Rights of the Victim", accessed from http://alrc.net/doc/mainfile.php/documents/432/ , on 10/02/2015

[7]501 U.S. 808 (1991)

Mendelsohn, and his studies, notably one on rape (Rape in criminology,1940), culminated in the delineation of a typology of criminal victims. This typology consists of the following six categories:

1. completely innocent victim (typically children or those who are attacked while unconscious);
2. Victim with minor guilt (often victimized because of ignorance);
3. voluntary victim, whose guilt is equal to that of the offender (a suicide pact, for example);
4. victim more guilty than offender one who provokes or induces another to commit crime,
5. victim who alone is guilty, the attacker who is killed in self-defense;
6. the imaginary victim, who has suffered nothing at all but who accuses another falsely,[8]

2.2. Types of Victim of Crime

The BenjiminMendeloshn typology[9] consists of six categories:

(1) completely innocent victims;

(2) victims with minor guilt;

(3) voluntary victims;

(4) victims more guilty than the offender;

(5) victims who alone are guilty; and

(6) the imaginary victims.

Other type of classification is based on type of offences, causation or offender's relationship with the victim. Such type of classification is broadly highlight the offender and victim position in commission of crime.

2.3. Classification of Victims

Mendelsohn (1937) interviewed victims to obtain information, and his analysis led him to believe that most victims had an "unconscious aptitude for being victimized." He created a typology of six (6) types of victims, with only the

[8]Mary C. Shengstok"Culpable Victim in Mendelshon's Theory", Wayne University. Paper presented at the 1976 Annual Meeting of the Midwest Sociological Society, April 21-24, 1976, at St. Louis, MO. Accessed from https://www.ncjrs.gov/pdffiles1/Digitization/48998NCJRS.pdf

[9]ibid

first type, the innocent, portrayed as just being in the wrong place at the wrong time. The other five types all contributed somehow to their own injury, and represented victimprecipitation.

He has constructed a typology predicted on the basis of the victim's contribution to criminality. He refers:

1. completely innocent victim ;
2. victim with minor guilt and victim of ignorance;
3. voluntary victims;
4. victims who are more guilty then the offenders;
5. the most guilty type of victims who commit offences against others and get killed by others in self-defense.

Hans Von Hentig (1948) a German criminal psychologist studied victims of homicide, and said that the most likely type of victim is the "depressive type" who is an easy target, careless and unsuspecting. The "greedy type" is easily duped because his or her motivation for easy gain lowers his or her natural tendency to be suspicious. The "wanton type" is particularly vulnerable to stresses that occur at a given period of time in the life cycle, such as juvenile victims. The "tormentor," is the victim of attack from the target of his or her abuse, such as with battered women. Von Hentig's work provided the foundation for analysis of victim-precipitation that is still somewhat evident in the literature today.[10]

Marvin Eugene Wolfgang, (1967) an American sociologist and criminologist was a pioneer in theoretical and empirical criminology. He studied on homicide, delinquency, and violence, and his research work ws so comprehensive and reliable that laid down the foundation of modern criminological research. His research on delinquency and violence has been replicated in countries all over the world. His research which was later published in book, introduced the formal concept of victim precipitation when he argued that, in some instances, the victim may initiate the behavior of the victimizer.Victim precipitation theories generally involve an explanation of how

[10] Hans Von Henting, "The Criminal and his Victim: Studies in Socio-biology of Crime", New Haven: Yale University Press, 1948

an individual's behavior may contribute to his or her own victimization. Behavior by a victim that initiates subsequent behavior of the victimizer is referred to as victim precipitation. The examination of victim precipitation, while important from an etiological perspective, is not without controversy. Victim precipitation theories have been accused of being veiled attempts at victim blaming.[11]

Wolfgang was the first to demonstrate empirically that in two-thirds of the cases, the victim, the offender, or both, had been drinking alcohol prior to the event. He showed that more than half of the homicides involved family members or close friends as both victims and offenders (primary group relationships), thus undermining the widely held belief that homicide is mainly committed by strangers. He analyzed relationships by sex and by race. African American and male homicide offenders far exceeded their proportion in the general population, and the vast majority of homicides were between members of the same race. Only 6 percent of the cases were unsolved. He also introduced "victim precipitation" in this study. "The term victim-precipitated is applied to those criminal homicides in which the victim is a direct, positive precipitator in the crime. The role of the victim is characterized by his having been the first in the homicide drama to use physical force directed against his subsequent slayer"[12]

Stephen Schafer's (1968) theoretical work also represented how Victimology invested a substantial amount of its energy to the study of how victims contribute, knowingly or unknowingly, to their own victimization and potential ways they may share responsibility with offenders for specific crimes.[13]

Above learned persons made special studies regarding victim according to their age, sex, ethnicity and type of offences and victim's need with greater attention. They are:

1. **Elderly persons**

[11] Wolfgang Marvin Eugene, "Pattern in Criminal Homicide", Patterson Smith, 1958

[12] Accessed from http://www.amphilsoc.org/sites/default/files/proceedings/480416.pdf on 27th August 2013

[13] Schafer Stephen, "The Victim and His Criminal: A Study in Functional Responsibility", Random House, 1968

In western countries elderly person are more vulnerable to crime because of the loneliness in old age. They were generally rejected or deserted by their kith and kin. Offence against old age are now increasing in the metro cities of India due to desertion or loneliness at home because of the working children.

2. Child victims

Children of higher and middle class society are facing general and sexual abuse in particular. Children of lower income group people group facing sexual as well as bonded labour menace and abduction for alms.

3. Victims of Sex Offence specially Female Victims

Offence against women, in particular serious offences such as that the rape, sexual harassment at workplace have been increasing in traditional as well as modern society like India, Pakistan and other Asian countries. Acid attack is another kind of offence which is particular against the womanhood create lot of psychological and physical stress. Investigation, trial in court may sometime be as traumatic as the offence itself.

4. Minority Group and Weaker Section of Society

The phenomenon of vulnerability of member of the ethnic, religious, or linguistic minorities of society to crime by the dominant group. In the United State of America, vulnerability of Negro aborigine sometimes suffers oppression from the White dominant people. In India communal and caste conflict are common problem leading to the murder, rape and destruction of property. Victim's suffering enhanced when administrative or legal actions are prone to biased attitude.

5. Victims of Consumerism

Society is changing rapidly from agrarian to industrial society. Consumers of goods and services are often the victim of

unscrupulous practice of manufacturer, retailer, and service contractor, service provide such as telecommunication, transport and medical services.

6. Victim of Terrorism

The word, 'Terrorist' comes from French word, “terrorisme” and originally referred specifically to state terrorism as practiced by the French government during the Reign of terror. The French word, “terrorisme” in turn is derived from the Latin verb “terrei” meaning “I frighten”. The Jacobins cited this precedent when imposing a Reign of Terror during the French Revolution. After the Jacobins lost power, the word “terrorist” became a term of abuse.

In November, 2004, a United Nations Secretary General report described terrorism as “any act intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act".

In Black's Law Dictionary, the word, “terrorism” has been defined as under : “**terrorism-**The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct.”[14]

2.4. Type of victim on the basis of offence, causation and a relationship of victim

1. Type of offence and injury

A few jurisdictions define crime “victim” broadly to include persons harmed by any criminal act or omission that is punishable by fines or imprisonment or both. Some jurisdictions define “victim” to include persons harmed by any misdemeanor or felony. Consequently, when conducting the legal “victim” analysis, an initial step is to examine whether only certain offenses and injuries can satisfy the jurisdiction’s definition of “victim,” and, if so, whether the client and the crime meet these requirements.

[14]Black's Law Dictionary, 9th Edition

2. Causation

Whether a defendant can be held legally responsible for the injury at issue—i.e., whether defendant's conduct legallycausedthe injury— lies at the heart of the causation inquiry. Many jurisdictions' legal definitions of "victim" have an express causation requirement. Direct causation embodies the concept of "but for" cause; it asks whether but for this conduct, would the harm have occurred? Proximate causation considers whether "the harm is a reasonably foreseeable consequence of the criminal conduct." Other jurisdictions that explicitly include a causation requirement in their legal definition of "victim" typically define "victim" to mean persons harmed as a "result" or "direct result" of the commission of the offense. But even where the constitutional, statutory or rule provisions do not refer to "direct" or "proximate" causation, courts may nevertheless interpret the legal definition of "victim" to require that defendant's conduct directly and proximately have caused the injury in question. Therefore, when conducting the legal "victim" analysis, it is important to examine whether a showing of causation is required, and, if so, what type of causation must be established

3. Relationship to the victim

In a number of countries, the family members or other representatives of minor, or is incapacitated, incompetent, or deceased victims are included within the legal definition of "victim," which arguably allows those individuals to assert all victims' rights on their own behalf as well as on behalf of the direct victim. Family members or other persons are recognised to act as the direct victim's "representatives" and exercise victims' rights in a representative capacity. In homicide cases, the questions arise that who qualifies as the direct victim's family members or lawful representatives for purposes of victims' rights? Firstly, matter of legally cognizable family member under victims' rights laws, how close of a relationship must one have with the direct victim? Secondly, is there a any limit as to the number of family members or lawful representatives who may exercise the victims' rights?

With regard to the requisite degree of relationship the direct victim's spouse, child, parent/legal guardian, sibling, and sometimes grandparent deems to be eligible as the legal "victims" or victim's representative. In several states of the

USA relationship is restricted to "immediate family members". whereas some states in USA allow only the consanguine and affinity in direct relationship.

2.5. Status as the accused, an offender, or an incarcerated person

In over two dozen USA states jurisdictions, the crime victims' rights laws further limit the definition of "victim" or victim "representative" to exclude persons who fit within one or more of the following classes:

(i) a person who is accountable for the crime or another crime arising from the same conduct, criminal episode or plan;

(ii) a person alleged to have committed the crime at issue or another crime arising from the same conduct, criminal episode or plan; and

(iii) a person who is in custody (either as a pretrial detainee or a prisoner) for any offense. Excluded from eligibility as a victim, a victim's relation, and other lawful representative.

The CVRA provides that:

The term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.[15]

Under the Georgia, USA, victims' rights statute: illustrate "Victim", a person against whom a crime has been perpetrated or has allegedly been perpetrated; or in the event of the death of the crime victim, the following relations if the relation is not either in custody for an offense or the defendant: it include-

(i) The spouse;

(ii) An adult child if division (i) does not apply;

(iii) A parent if divisions (i) and (ii) do not apply;

(iv) A sibling if divisions (i) through (iii) do not apply; or

(v) A grandparent if divisions (i) through (iv) do not apply; or

[15] National Crime Victim Law Institute, "Victim Law Bulletin" accessed from http://law.lclark.edu

(vi) A parent, guardian, or custodian of a crime victim who is a minor or a legally incapacitated person except if such parent, guardian, or custodian is in custody for an offense or is the defendant.

According to above discussion it can be summarized that Victim of crime means those person against whom act of offense is committed without fault on his part and those person directly or indirectly related to the victim by virtue of degree of relationship. If victim dies of injuries his relative may claim all privileges as victim and some rights shall be available against the offender and participate in judicial proceeding.

2.6. Victim Rights in International Covenants

2.6.1. Universal Declaration of Human Rights 1948

The need for a victim compensation framework has been recognised by the international community. The Universal Declaration of Human Rights, 1948 does not specifically mention about compensation, Article 9[16] states that no one shall be subject to arbitrary arrest, detention or exile. Whereas looking in the procedure under articles 6[17], 7[18] and 8[19] it can be inferred that for the violation of such rights the victim is entitled to an effective remedy. Applying on the particular case, compensation could be a effective remedy.

2.6.2. International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights specifically states that a victim of unlawful arrest or detention shall have an enforceable right to compensation.[20]

[16]No one shall be subjected to arbitrary arrest, detention or exile.

[17]Everyone has the right to recognition everywhere as a person before the law.

[18]All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

[19]Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

[20] Article 9(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2.6.3. The European Convention for the Protection of Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms has an identical provision as mentioned in article 5(5)[21] of the International Covenant on Civil and Political Rights 1966.

2.6.4. American Convention on Human Rights

American Convention on Human Rights[22] entitles a person to compensation in case of miscarriage of justice due to wrong sentencing.

2.6.5. Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power 2006[23]

Preamble of the draft convention proposes that the states parties to the convention recognize the rights of the women and children who are victims of crime, abuse of power and terrorism. The rights of these victims of these crimes while they are assisting prosecution are not adequately recognized and they suffer hardship.

The objectives of the convention are:

- legislating the basic principles of justice into domestic laws combined with a high level office to implement policies and programs to provide comprehensive measures for victims of crime;
- providing victims of crime with better information, support services, reparation from offenders, compensation from the state and a role in criminal proceedings;
- establishing programs to protect victims of crime who are vulnerable, for instance because of gender or age;
- launching permanent boards and legislation to promote the use of effective and proven prevention of victimisation at all levels of government.

A definition of victim in Article 1 of the draft convention is given as follows:

[21] Article 5(5)Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

[22]Article 10 Every person has the right to be compensated in accordance within the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

[23] Accessed from http://www.un.org/en/documets on 24 January 2013

(1) 'Victims' means natural persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimizations identified under 'scope'.

According to this definition:

1. Individual or community of any individuals.
2. Harm suffered, physical or mental injury, emotional suffering or economical loss measurable in law.
3. Infringement of fundamental rights recognised by the member states.

(2) A person is a victim regardless of whether the crime is reported to the police, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victims' also includes, where appropriate, the immediate family or dependants of the direct victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization.

According to this sub clause under the definition of victim and their near relative is included. And compensation shall be awarded in case of reported or non reported case. Indirectly this clause mention that victim of crime is entitled for compensation and rehabilitation it is irrelevant whether accused apprehended or put before trial or after trial whether offender is punished or acquitted of charges.

2.6.6. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985[24]

According to paragraph 1 of the **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**, (herein after called Declaration) the term "victim" means:

> "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power".

[24] Accessed from http://www.un.org/en/documets on 24 January 2013

This definition extends too many categories of harm sustained by victim as a consequence of criminal misconduct, ranging from physical and psychological injury to financial or other forms of damage to their rights, irrespective of whether the injury or damage concerned was the result of positive conduct or a failure to act.

According to important paragraph 2 of the Declaration a person may be considered a victim "regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim".

2.6.6.1. Victims position in the Administration of Justice

Although international law is optional, some useful guidelines have been developed and will be dealt with below in the logical order of their relevance to the practical workings of the administration of justice. It may be secured that whose rights have been violated must get justice. It is the duty and in principle and in practice that victim's concern, needs and interest is respected at priority.

Paragraph 5 of the Declaration states that victims of crime should be enabled to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Further, victims should be informed of their rights in seeking redress through such mechanisms.

At instance of criminal offence against victim, the victim's first contact with the justice system is with the police and thereafter till the end of the judicial process. Attitude of the police at first encounter may have a decisive impact on the victim's attitude to the criminal justice system. Therefore police role is crucial at early stage of the criminal process.

Paragraph 4 of the Declaration state general statement that victims should be treated with compassion and respect for their dignity. This rule is equally applicable on the police.

However, paragraph 6 [25], is meant for the police investigations of crime,

[25]Paragraph 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a)Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

"the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by",

inter alia,

- Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information[26]
- Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system[27]
- Providing proper assistance to victims throughout the legal process[28]

The aforesaid mentioned paragraph's provisions provide that the police must show due courtesy and respect towards victim. They must also ensure that the victim feels "that the offence is being considered individually and properly". Consequently, to prevent a sense of frustration among victims or increased anger, fear and insecurity, police officers should avoid conveying the impression that the crime is trivial or otherwise not being taken seriously. At the investigation stage it is required that police should forward respect, compassion and understanding for victims. And as far as possible police official should speak to the victims in language that they understand and provide information in written form of their language, so that actual problem can be well understood.

(b)Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c)Providing proper assistance to victims throughout the legal process;

(d)Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e)Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

[26] Paragraph 6(a)

[27] Paragraph 6(b)

[28] Paragraph 6(c)

As like principles of the declaration are not specifically mention police behavior towards victim of crime, the prosecution must also treat victims with compassion and respect for their dignity and keep them informed about their role, the scope, timing and progress of the proceedings and the outcome of the investigations. Declaration of Principle may not be equally applicable to all member states because variation of their criminal justice system these principles show certain guideline for victim's assistance.

2.6.6.2. Victims and Criminal Court Proceedings

Paragraph 6[29] of the Declaration states that victims should be informed about the time and scope of the proceedings and the victim's role in all possible court proceeding.

To promote victim's confidence in the justice system, the court should make sure that victims are given due information or notices of the trial proceedings regarding any delay in or adjournment of the proceedings and that their views are adequately conveyed to the court. It also required that the presiding judge ensures that victims have been adequately informed about any rights for the compensation and restitution.

2.6.6.3. Victims' Right to Privacy

> "Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation".[30]

In the digitized world victim may suffer from the infringement of privacy rights. Social media press media on net may cause distress to victims of their identity. Disclosure of victim personal life information may tend to sexual abuse, including child abuse and in cases of organized crime and terrorism disclosure of identity may endanger the victim's life and property. In such life threatening

[29] Supra note 23

[30] Paragraph 6(d) of the Declaration

situation victim and his/her family members should be properly protected by the police forces

2.6.6.4. Restitution, Compensation and Assistance to Victims o f Crime

The questions of restitution, compensation and assistance to victims of crime will, of necessity, be addressed only in very general terms in this context, as the issues at stake are too complex for more in-depth analysis. This part of the Declaration is therefore limited to an outline of the general principles that should guide national judicial authorities in providing some sense of justice to crime victims, whose needs vary according to the nature of the crime committed, the place it was committed and the situation of the victims themselves.

2.6.6.5. Restitution

The term "restitution" means in this context that the offender restores to the victim the rights that were breached by the criminal act. Restitution to victims is of course only possible when the property or money stolen is still available. Restitution is not, therefore, a viable solution in the case of violent crimes such as murder, where there can be no reinstatement of rights.

According to paragraph 8 of the Declaration restitution means :

Offenders or third parties responsible for their behavior should provide fair restitution to victims, their families or dependants. Such restitution should include:

-the return of property or payment for the harm or loss suffered where property is recoverable in good condition,

-reimbursement of expenses incurred as a result of the victimization,

-the provision of services and the restoration of rights.

Whereas declaration also state that respective government should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.[31]

If offender have caused severe harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment,

[31]Paragraph 9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.[32]

If the crime is committed by the public officials or other agents acting in an official or quasi official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.[33]

Paragraph 9 states that "Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions."

In addition to the restitution of property or payment for the harm and loss suffered, the victim may also claim reimbursement of certain expenses. Such claims may require a clear listing of expenses that the victim has incurred as a result of victimization.

2.6.6.6. Compensation

It is also stated in the declaration that victim should be properly compensated of physical, psychological or financial injury irrespective of whether compensation is claimed from the offender, the State should provide compensation as far as possible. "is seen to be a recognition of the hurt done to the victim by the offender". An order for compensation made by the court is also a symbol of the State's concern for the victim. This is a kind consideration to the victim which may increase victim's confidence in the criminal justice system.

[32] Paragraph10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

[33] Paragraph11. Where public officials or other agents acting in an official or quasiofficial capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

On this question, paragraph 12 of the Declaration states that, "when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

a. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
b. The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization." [34]

Lastly, paragraph 13[35] of the Declaration states that there should national fund for the compensation to victim of crime, which should be established, strengthened and expanded for that very purpose.

2.6.6.7. Assistance

In addition to that victims of terrorist activity or mass violence need special assistance in stepwise immediate, mediate or long-term or medical care as well as other forms of assistance. Such need is recognized in paragraph 14 of the Declaration, according to which victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.[36]

This provision required that assistance should be from the state, community or specially trained non government agency or association. The need for assistance can vary in terms of both the victim and the effects of victimization such as injured victims require prompt medical assistance.

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[34] Paragraph12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

[35]Paragraph 13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

[36]Paragraph 14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

Paragraph 17 of the Declaration further laid emphasis that while providing services and assistance to victims, attention should be given to harm inflicted to the victim.

Certain groups of crime victims, such as victims of sexual offence will have to be need of specialized treatment, mental or physical, in short term or long term support. Seriously injured sex crime victim victims need may also need medical follow-up over an extended period owing to the HIV/AIDS problem. Victims of terrorist attacks need special attention in traumatic condition. States must be prepared to deal with such kind of situation by developing contingency plans at the national, regional and local levels. In cases of burglary, or damage to property may have to be repaired. Victims of arson or domestic violence may need temporary accommodation in the victim support. Other victims may need social support services for some time after the crime such as child victim or woman victim.

Paragraph 15[37] of the Declaration provides that victims should be informed of the availability of health and social services and other relevant assistance and such assistance should radially available and cost effective and affordable.

Paragraph 16[38] state that police, justice(judges, lawyers), health(government or NGO), social service(Rehabilitation Agencies) and other personnel who directly or indirectly engaged in should be properly trained and certain guidelines to drafted in this issues.

Forwarding the assistance, compensation assistance to the victim the United Nation General Assembly adopted a draft convention on the justice and support for victims of crime and abuse of power in year 2006.

The declaration also contains the provisions about the avoidance of double compensation and the subrogation of rights. States parties to take appropriate steps "to ensure that information about the scheme is available to potential applicants" (arts. 9-11).

[37]Paragraph 15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

[38] 16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

2.7. Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power 2006

resolved to :

1. UN Commission approval of The Guide for Policy Makers and the Handbook on Justice for Victims;[39]
2. Establishment of International Criminal Court;
3. ECOSOC adoption of the Guidelines on Restorative Justice;[40]
4. ECOSOC adoption of the Guidelines for Child Victims and Witnesses;[41]
5. ECOSOC acceptance of crime prevention guidelines;[42]
6. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[43]

Article 3 of the said conventionensure that all officials and other persons dealing with victims treat them with courtesy, compassion, cultural sensitivity, and respect for their rights and dignity.

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[39] "U.N. Guide for Policy Makers on the implementation of UN Declaration on Justice and Support for Victims of Crime and Abuse of Power 2006" accessed from https://www.unodc.org/pdf/criminal_justice/UNODC_Guide_for_Policy_Makers_Victims_of_Crime_and_Abuse_of_Power.pdf

[40] ECOSOC Resolution 2002/12 "Basic principles on the use of restorative justice programmes in criminal matters" accessed from http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf

[41] ECOSOC Resolution 2005/20 "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime" accessed from http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf

[42] ECOSOC Resolution 2006/20 "United Nations standards and norms in crime prevention" accessed from http://www.un.org/en/ecosoc/docs/2006/resolution%202006-20.pdf

[43]Boven Theo Von, "The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", Accessed from http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf

Article 5 set guidance for access to justice and fair treatment of victim by state members. this article direct to ensure victims with access to the mechanisms of justice and redress which is expeditious, fair, inexpensive and accessible. and set forth the judicial and administrative mechanisms which will enable victims to obtain redress. procedure that me followed for resolution of disputes, may be including mediation, arbitration, and customary justice processes or indigenous practices, where appropriate, to facilitate conciliation and redress for victims. such formal or informal mechanism shall response to the need of victims and for facilitating this :

a) right to fair trial and proper compensation;[44]
b) right to participation in judicial proceeding at appropriate stage whatever necessary[45]
c) right to legal assistance[46]
d) restitution of property; [47]
e) the right of appeal against discontinuation of prosecution;[48]
f) providing proper assistance to victims throughout informal, administrative, investigative and judicial processes;[49]
g) protection of right to privacy of the victim; [50]
h) ensure safety of victims and their families, witnesses on their behalf, from intimidation and retaliation;[51]
i) speedy trial;[52]

Article 5(3) ensure the reimbursement of expenses incurred by victim during legitimate participation in criminal proceeding.

[44] Article 5(2)(a) of the Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power 2006

[45] Article 5(2)(b)

[46] Article 5(2)(c)

[47] Article 5(2)(d)

[48] Article 5(2)(e)

[49] Article 5(2)(f)

[50] Article 5(2)(g)

[51] Article 5(2)(h)

[52] Article 5(2)(i)

Article 7 of the said conventionensures that victims have right to information. Victim must be informed from very beginning criminal proceeding when he firstly move law enforcement machinery. of this, from their first contact with law enforcement or other agencies. Victims must be informed of the progress of case in written or in oral form in victim's language as far as possible.

further article 7 provide that such information should facilitate an informed understanding for victims and shall be at least as follows:

a) the type of services or organizations to which they can turn for support;
b) the type of support which they can obtain, including the availability of health and social services and other relevant assistance;
c) where and how they can report an offence;
d) procedures following such a report and their role in connection with such procedures;
e) their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
f) how and under what conditions they can obtain protection;
g) to what extent and on what terms they have access to legal advice or legal aid;
h) requirements for them to be entitled to compensation;
i) if they are resident in another State, any special arrangements available to them in order to protect their interests;
j) where and how victims could obtain more information. [53]

Furthermore, it is also obligatory that victims who have expressed a wish to this effect are kept informed of:

a) the outcome of their complaint;
b) relevant factors enabling them, in the event of prosecution, to know the conduct of the proceedings regarding the person prosecuted

[53]Article 7(1)

for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;

c) the court's sentence. [54]

Article 8[55]of the convention provides immediate, medium term, long term Assistance to the victim. Police , official engaged in the assistance services to the

[54] Article 7(2)

[55] Article 8

(1) State Parties shall ensure that the necessary material, medical, psychological and social assistance to victims is provided through government, voluntary, community-based and indigenous means. Such assistance may be provided through any agencies or comprehensive programs that are appropriate under domestic laws or norms.

(2) State Parties should be encouraged to develop networks of criminal justice, social services, health and mental health services, victim assistance services and other relevant groups or institutions in order to facilitate referrals, coordination and planning among those providing assistance.

(3) State Parties should be encouraged to establish local and regional victim assistance centers to coordinate networks, develop and make referrals, and provide outreach to victims and direct services where appropriate

(4) State Parties shall facilitate the referral of victims by the police and other relevant agencies to victim assistance centers or other service institutions.

(5) Language understood by victims should be encouraged. If translators are needed, they should be trained in the subject matter that they are addressing and victim support personnel should be familiar with common terms that will be used.

(6) State Parties shall seek to establish the following kinds of assistance to victims:

A. Immediate Assistance:

(a) medical attention and accompaniment to medical exams, including first aid, emergency medical attention and medical transport. Support services should be provided to victims when forensic examinations are called for or in the aftermath of death;

(b) material support such as shelter, housing, transportation, or property repair;

(c) crisis intervention, involving crisis counselling and problem solving;

(d) information and notification about what happened to the extent that such information does not interfere with investigation, including notification of any immediate responsibilities to the criminal justice system. Assistance should be offered in notifying family or friends of what happened;

(e) protection from repeat victimization should be provided through the development of safety and security plans. This may include information on police surveillance, relocation, emergency communication and the like. It may also involve assistance with obtaining protection orders through the judicial system;

victim should be trained of the traumatic condition of the victim so that they can effectively provide help. As soon as the victim is located by the police victim shall be referred to the nearest assistance center or other service institution. [56]the state should endeavour to establish medical assistance unit to the victim in emergency and if death occurred forensic examination shall immediately be followed. [57]Victim should also be protected from repeat victimization and ensure safety and security victim . This may include information on police surveillance, relocation, emergency communication and the like. Victim should also be provided prompt justice. In the long term assistance victim must be assisted to reunited in the family, community or workplace. Rape victim needs such kind of assistance but varies according to the society.

(f) victims should be protected from media intrusion;

(g) general support and advocacy should be offered when victims interact with social, justice and medical institutions as well as appropriate referrals for urgent needs;

(h) confidentiality and privacy should be guaranteed to the extent allowable under current law and policy.

B. Medium term Assistance:

(a) the continuation of the services provided under A 'Immediate Assistance';

(b) psycho/social health and spiritual interventions that may include post-trauma counselling, mental health therapy, family counselling, pastoral counselling, or traditional healing intercessions;

(c) assistance with financial needs or claims including filing and advocacy for compensation claims, restitution, insurance, or emergency funds.

(d) legal referrals should be provided for legal assistance in the criminal or civil justice systems. To the extent possible such legal assistance should be free.

(e) Information, support and assistance concerning options for participation in alternative justice forums should be provided.

C. Long term Assistance:

(a) the continuation of the services provided under A 'Immediate Assistance' and B. 'Medium Assistance';

(b) assurances and re-establishment of the victim's place in the family, community, education and in the workplace should be encouraged;

[56] ibid

[57] ibid

Article 9 restoration[58] provide that sate shall endeavor, with all effort to establish or enhance systems of restorative justice, that seek to represent victims' interests as a priority. And it also emphasise the need for acceptance by the offender of his or her responsibility for the offence and the acknowledgement of the adverse consequences of the offence for the victim in the form of a sincere apology. It also emphasized that victims shall have the opportunity to choose or not to choose restorative justice forums under the laws, and if victim decided to choose such forums than such mechanisms must be according to the dignity, compassion of the victim.

According to the **Article 10**[59] the state shall legislate to make offenders responsible for paying fair restitution to victims, their families or dependants in

[58]Article 9 Restorative justice

(1) State Parties shall endeavor, where appropriate, to establish or enhance systems of restorative justice, that seek to represent victims' interests as a priority. State shall emphasize the need for acceptance by the offender of his or her responsibility for the offence and the acknowledgement of the adverse consequences of the offence for the victim in the form of a sincere apology.

(2) State Parties shall ensure that victims shall have the opportunity to choose or to not choose restorative justice forums under domestic laws, and if they do decide to choose such forums, these mechanisms must accord with victims' dignity, compassion and similar rights and services to those described in this Convention.

[59]Article 10 Restitution including reparation

(1) State Parties shall legislate to make offenders responsible for paying fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, provide the opportunity for a sincere apology where appropriate, the provision of services and the restoration of rights.

a) State Parties shall review their practices, regulations, laws and their constitution to ensure that restitution is an available sentencing option in criminal cases.

b) In cases of environmental crime, State Parties shall legislate to include restitution to restore the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of the community.

c) Where public officials or other agents acting in an official or quasi-official capacity have violated domestic criminal laws, State Parties shall legislate to provide restitution to victims from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurs is no

case of burglary, theft or similar offences. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, provide the opportunity for a sincere apology where appropriate, the provision of services and the restoration of rights.

Article 11[60] When restitution is not fully available from the offender or other sources financial compensation shall be provided to:

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longer in existence, the State or Government successor in title shall provide restitution to the victims.

d) When there is a court order for restitution, the State Party shall be responsible for enforcing the order.

e) In cases where the offender is under a legal obligation to pay restitution as well as their pecuniary sanctions, the former shall have precedence over the latter.

f) In cases where the victim seeks restitution through civil remedies, State shall endeavor to expedite these proceedings and minimize expenses.

[60]Article 11 Compensation

(1) When restitution is not fully available from the offender or other sources, State Parties shall endeavor to provide financial compensation to:

(a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of intentional violent crime;

(b) the victims' family, in particular dependants of persons who have died (or become physically or mentally incapacitated) as a result of such victimization.

(2) Compensation shall be provided for:

(a) treatment and rehabilitation for physical and psychological injuries caused to victims;

(3) States should also consider compensation for loss of income, funeral expenses, loss of maintenance for dependants, and pain and suffering and other psychological injuries caused to victims.

(4) The establishment, strengthening and expansion of national, regional or local funds for compensation to victims should be encouraged. State Parties may consider providing funds through general revenue, special taxes, fines, private contributions, and other sources.

(5) These funds shall guarantee fair, appropriate and timely compensation. They should also allow for emergency and/or interim payments. Special care should be taken to make the funds accessible. This requires, inter alia, extensive dissemination of information on the eligibility criteria and the procedure to be followed. State should also consider other means to raise public awareness of the existence of these funds.

(6) Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

(a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of intentional violent crime;

(b) the victims' family, in particular dependants of persons who have died (or become physically or mentally incapacitated) as a result of such victimization.

And such compensation shall be for treatment and rehabilitation for physical and psychological injuries caused to victims and such compensation should be for loss of income, funeral expenses, loss of maintenance for dependants, and pain and suffering and other psychological injuries caused to victims.

The state shall also endeavour for the establishment, strengthening and expansion of national, regional or local funds for compensation to victim. These funds shall guarantee fair, appropriate and timely compensation. The state should also allow for emergency and/or interim payments. Special care should be taken to make the funds accessible. Inter alia, extensive dissemination of information on the eligibility criteria and the procedure to be followed regarding the compensation and information thereof.

Where state in which the victimization occurred and such state is unable to disseminate compensation due to the foreign nationality the state must also establish fund for them.

2.8. European convention on the Compensation of Victim of Violent Crime 1983

European Convention on the Compensation of Victim of Violent Crime 1983 (herein after called European Convention) was adopted by the European member by the resolution (77) 27 of the Committee of Ministers of the Council of Europe on the compensation of victims of crime who sustained physical, psychological or financial injuries. The objectives of the convention are to consider that for reasons of equity and social solidarity it is necessary to deal with the situation of victims of intentional crimes of violence who have suffered bodily injury or impairment of health and of dependants of persons who have died as a

(7) In cases of cross border victimization, the State where the crime has occurred should pay compensation to the foreign national, subject to the principle of reciprocity.

result of such crimes and for that it is necessary to introduce or develop schemes for the compensation of these victims by the State in whose territory such crimes were committed, in particular when the offender has not been identified or is without resources.

Article 2 provide thatwhen compensation is not fully available from other sources such as the judicial pronouncement or compensation from the offender than the State shall contribute to compensate:

a. those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;
b. the dependants of persons who have died as a result of such crime.

Further that compensation shall be awarded even in the above cases even if the offender cannot be prosecuted or punished.

According to the **Article 3** compensation shall be paid by the State on whose territory the crime was committed regardless to victims nationality of whom the victim is national and such country has ratified the convention and to nationals of all member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed.

Article 4[61]states that compensation shall cover, according to the case under consideration, at least the following items:

-loss of earnings,

-medical and hospitalisation expenses

-funeral expenses,

-regards dependants,

-loss of maintenance.

According to **Article 5**[62]for achieving the purpose of the European convention, a scheme shall be drafted for proper distribution of compensation to

[61]**Article 4**

Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance.

[62]**Article 5**

the victim of crime. The compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted.

According to the **Article 6**[63] the under the compensation scheme the state may specify limitation on the acceptance of application for claim of compensation within prescribed period. And such compensation scheme may set a calculated amount of compensation according to the victim's financial status. (Article 7)[64]

Article 8 states that compensation may be reduced or refused on account of the victim's or the applicant's conduct before, during or after the crime, or in relation to the injury or death. Compensation may also be reduced or refused on account of the victim's or the applicant's involvement in organised crime or his membership of an organisation which engages in crimes of violence. Compensation may also be reduced or refused if an award or a full award would be contrary to a sense of justice or to public policy (*ordre public*).

Article 9 prohibit payment of double compensation. The State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source. [65]

Article 10 is a reserve right of the State or the competent authority which may subrogated the rights of the person compensated for the amount of the compensation paid.

The compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted.

[63]**Article 6**

The compensation scheme may specify a period within which any application for compensation must be made.

[64]**Article 7**

Compensation may be reduced or refused on account of the applicant's financial situation.

[65]**Article 9**

With a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source.

2.9. Victim Rights in the United States of America

2.9.1. Growth of Victim Rights

The victims' rights movement in the United States involved five independent activities:

1. The development of a field called Victimology.

   "Victimology" arose primarily to seek to understand the criminal-victim relationship. Early victimology theory posited that victim attitudes and conduct are among the causes of criminal behavior.

2. The introduction of state victim compensation programs.

   The idea that the state should provide financial reimbursement to victims of crime for their losses was initially propounded by English penal reformer Margery Fry in the 1950s. It was first implemented in New Zealand in 1963 and Great Britain passed a similar law shortly thereafter. Early compensation programs were welfare programs providing help to victims in need.

   California initiated the first state victim compensation program in 1965, soon followed by New York. By 1979, there were 28 state compensation programs. By then, most had rejected the welfare precept in favour of a justice orientation in which victims were seen as deserving of compensation whether or not they were in need. Compensation programs also promoted involvement by victims in the criminal justice system since they required victims to report crimes to the police and to cooperate with the prosecution.

3. **The rise of the women's movement.**

   There is little doubt that the women's movement was central to the development of a victims' movement. Their leaders saw sexual assault and domestic violence and the poor response of the criminal justice system as potent illustrations of a woman's lack of status, power, and influence. Long-time victim advocate Janice Rench of Massachusetts describes the influences that propelled her into the victims' movement:

   "It was not by accident [that I joined the movement]. That was my passion, having been a victim of a sexual assault crime. I wanted to

right a wrong…we have to step back…when I started, it was a time of excitement, it was a time of passion….We didn't have any plans, any books…but as we listened to the victims, we certainly got asense of what was going to work and what wasn't. And so it was the victims themselves, I believe, that really started this field and certainly it was the sexual assault field in the '70s that did it."[66]

The new feminists immediately saw the need to provide special care to victims of rape and domestic violence. There were several significant contributions that these programs brought to the victims' movement:

i. Emotional crisis was recognized as a critical part of the injury inflicted.
ii. Intervenors learned to help victims with the practical consequences of rebuilding their lives, rather than relying on a criminal justice system where they were too often maltreated.
iii. In the absence of any resources, there was a heavy reliance on volunteers.

4. **The rise of crime that was accompanied by a parallel dissatisfaction with the criminal justice system.**

Dr. Morton Bard, "Crime Victim's Book", published in 1979, was the first book-length primer on identifying and meeting victims' needs and was considered a "bible" for many advocates and crime victims alike. Dr. Morton Bard, who was widely known for his research on the psychology of crime victims.Dr. Bard, in partnership with the police, conducted studies of crime victims, especially hostages, rape victims and the families of murder victims.He wrote that what victims need is sympathy and a chance to vent their feelings. They also said victims require reassurance that they are not failures and are not inferior to the criminal who committed the crime. And they wrote that the police could be helpful or harmful in their response to victims but lacked

[66]Accessed from https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg4c.html on 29 February 2014

training in the new field of "Victimology."[67]

A New York police officer, Martin Symonds, became a psychiatrist specializing in treating trauma victims and later became the Director of Psychological Services for the New York City Police Department. In his clinical work with victims that began in 1971, Dr. Symonds developed three insights:

1. The pattern of responses from victims of trauma was similar regardless of the type of crime.
2. The principles of good crisis intervention are also similar.
3. Law enforcement officers are in the position of doing the most harm or the most good in responding to victims.

5. The growth of victim activism.
    1. 1970s
    2. 1980s
    3. 1990s and beyond [68]

2.9.2. Provision Related to Victim rights in Criminal Justice System of the USA

Protecting Victims' Rights in United States Criminal Proceedings with State-Specific Victim Restitution Statutes every state has statutes empower courts to order restitution for a victim. Most states also have constitutional amendments protecting victims' rights. States differ as to which rights are protected, but many states protect the same general rights. State provisions often require nondisclosure of the victim's confidential information. States often give victims the right to information concerning protection from the defendant, victim services, the criminal justice process generally, and the specific proceeding that the victim is involved in. A separate right is the victim's right to notice, to be given prompt notification of all proceedings, including release on bail, scheduling changes, and

[67]Accessed from http://www.nytimes.com/1997/12/14/nyregion/morton-bard-73-authority-on-crime-victims.html

[68]Dr. Marlene Young and John Stein, "The History of the Crime Victims' Movement in the United States", 2004, accessed from https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pdf/historyofcrime.pdf

incarceration details. State victims' rights statutes often include a right to be present, allowing the victim to physically attend all of the proceedings.[69]

Many states recognise and protect some or all of the following:

1. right to due process, fairness, dignity, respect, and privacy;
2. right to notice;
3. right to be present;
4. right to be heard;
5. right to reasonable protection;
6. right to restitution;
7. right to information and referral;
8. right to apply for victim compensation;
9. right to proceedings free from unreasonable delay;
10. right to confer;
11. right to a copy of the presentence report and transcripts; and
12. right to standing and remedies. [70]

Certain general protections providing crime victims with the right to be treated by agents of the state with dignity, respect, and sensitivity during all phases

[69]Status of the Law: Right to Restitution, Office for Victims of Crime Archive (Nov.2002), https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin6/2.html

[70]**Title 18 U.S.C. § 3771. Crime victims' rights**

(a) RIGHTS OF CRIME VICTIMS.--A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

of the criminal justice process. Every state has their own victims' rights statute, and though text of laws are different, the above mention rights are largely the same nation-wide.

Linda R. S. v. Richard D.[71] Fact of the case was that appellant, the mother of an illegitimate child, brought a class action to enjoin the "discriminatory application" of Art. 602 of the Texas Penal Code providing that any "parent" who fails to support his "children" is subject to prosecution, but which, by state judicial construction, applies only to married parents. Appellant sought to enjoin the local district attorney from refraining to prosecute the father of her child. The three-judge District Court dismissed appellant's action for want of standing:

> Article 602 of Texas Penal Code provides:
>
> "any parent who shall willfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under eighteen years of age, shall be guilty of a misdemeanor, and upon conviction, shall be punished by confinement in the County Jail for not more than two years."

It was held appeal to U.S. Supreme Court that although appellant has an interest in her child's support, application of Art. 602 would not result in support, but only in the father's incarceration, and a private citizen lacks a judicially cognizable interest in the prosecution or non prosecution of another.

In Linda R.S.[72] the Court ruled that the complainant did not have the legal standing to keep the prosecutors' office from discriminately applying a statute criminalizing non-payment of child support. In dicta, the court articulated the then-prevailing view that a crime victim cannot compel a criminal prosecution because "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." This ruling served as a high-water mark in the shift away from the victim-centric approach to criminal justice, making it clear that victims in the 1970s had "no formal legal status beyond that of a witness or piece of evidence."

[71] 410 U.S. 614 (1973)

[72] ibid

Limitation on relief.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only ifthe victim has asserted the right to be heard before or during the proceeding at issue and such right was denied. The victim petitions the court of appeals for a writ of mandamus must be presented within 14 days and victim's right to restitution as provided in Title 18, United States Code is not affected in any way.

United States or any of its officers or employees could be held liable in damages on the breach of duty fixed toward the officers, or employees. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

Further the enforcement and limitation of the Crime Victim s is also defined in the act as:-

Title 18 - Part II-Chapter 237 Crime Victims'Rights

3771 (d)Enforcement and Limitations.—

(1)Rights.—

The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2)Multiple crime victims.—

In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3)Motion for relief and writ of mandamus.—

The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movement may petition the court of appeals for a writ of mandamus. The court of

appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

2.10. Victim Rights in the United Kingdom

2.10.1. Victims' Bill of Rights[73]

Section 1. A victim of crime shall be entitled to receive —

1. accurate and timely information from all the agencies of the criminal justice system concerned with the detection and prosecution of the relevant crime and with the support of victims of crime;
2. adequate notice of all relevant court and other legal proceedings, including information about decisions by and discussions between agencies of the criminal justice system relating to the person convicted of the crime concerned ("the perpetrator"), including—
   (i) information about any prison sentence previously served by the perpetrator,
   (ii) information about relevant changes to the perpetrator's circumstances whilst on parole or in custody, and
   (iii) information about any crimes committed by the perpetrator outside the UK where the victim of the crime concerned is a British national;
   (c) access, where required, to adequate interpretation and translation services; and

[73] Victims (Bill of Rights) Bill (HC Bill 181)2014-15 accessed from http://services.parliament.uk on 25 June 2015

(d) information about the direct contact details of the criminal justice agencies and individuals involved in the court or other legal proceedings concerned.

Section 2. Police and Crime Commissioners must provide effective and safe ways to for victims to report a crime in the relevant police area.

Section 3. The Victims' Regulatory Body must review the arrangements referred to in paragraph 2 on an annual basis and publish the results of such reviews.

Rights to review of decision not to prosecute

Section 4[74] In the event of a criminal prosecution being discontinued by the investigating police force or the Crown Prosecution Service, a person affected by the alleged crime shall be entitled to request a review of that decision by the Crown Prosecution Service.

Treatment of victims of crime during court proceedings

Section 5[75] During criminal justice proceedings, HM Courts and Tribunal Service must ensure that victims of crime—

(a) are not subjected to unnecessary delay by any other party to the proceedings;

(b) are treated with dignity and respect by all parties involved; and

(c) do not experience discriminatory behaviour from any other party to the proceedings.

Section 6.[76] Children and vulnerable adults must be able to give evidence to a court from a location away from that court or from behind a protective screen.

Section 7.[77] The investigating police force concerned must ensure the safety and protection of victims of crime during proceedings, including but not restricted to—

(a) a presumption that victims of crime may remain domiciled at their home with adequate police protection if required; and

[74] Victims (Bill of Rights) Bill (HC Bill 181)2014-15 accessed from http://services.parliament.uk on 25 June 2015
[75] ibid
[76] ibid
[77] ibid

(b) ensuring that the victim and those accompanying them are provided

with access to discreet waiting areas during the relevant court proceedings.

Representation[78]

Section 8. All victims of crime shall have access to an appropriate person to liaise with relevant agencies on their behalf and to inform them about, and explain the progress, outcomes and impact of, their case.

Section 9 Witnesses under the age of 18 shall have access to a trained communications expert, to be known as a Registered Intermediary, to help them understand as necessary what is happening in the criminal proceedings.

Section 10 Any relevant criminal or civil proceedings must be provided with the victim's account of the crime, and the victim must be given the opportunity to attend the proceedings where possible.

Disclosure[79]

Section 11 The relevant court and public authorities must ensure that the personal data of any victim is not publicly disclosed, if that disclosure would put the victim at risk of harm.

Section 12 Victims of crime shall have access to transcripts of any relevant legal proceedings at no cost to themselves.

Section 13 Victims of crime shall have access, prior to proceedings, to any electronic footage or evidence which may cause alarm or distress to them.

Section 14 Information about any crime committed against a victim of crime for which a person on trial in a case which involves that victim has been found guilty must be disclosed to the court in proceedings in that case.

Section 15 Victims of crime shall have the right to attend and make representations to a pre-court hearing to determine the nature of the court proceedings.

[78] Victims (Bill of Rights) Bill (HC Bill 181)2014-15 accessed from http://services.parliament.uk on 25 June 2015

[79] ibid

Compensation and costs[80]

Section 16 The Secretary of State must take steps to ensure that victims of crime—

(a) have access to financial compensation from public funds for any detriment arising from the criminal case concerned;

(b) have restored to them any of their property or personal belongings which have been seized for use as evidence at a trial;

(c) are given the right to approve or refuse the payment of any compensation order made by a court against a person convicted of a crime against them;

(d) have reimbursed to them, from public funds, any expenses incurred by them in attending in court and in any related legal process, whether in the UK or overseas; and

(e) access to legal advice at no cost to themselves throughout the legal process.

2.11. Victim Rights: Victim's status and role in the Criminal justice system in India

It is important in the interests of victims and to ensure victim participation during investigation and trial ; victim should be involved in the judicial proceeding effectively. The clear problem with the existing legal scheme is that once an investigation commence, the role of the victim is minimal. In many instances the police personnel proceed very slowly on investigations, thereby losing out on the opportunity to gather relevant evidence and opening up the possibility of corruption. Conversely, investigations involving well connected and influential persons as victims tend to be taken up in a relatively expeditious manner. Even during the course of trial, the victim's role is confined to that of acting as a 'prosecution witness' since the prosecution is entirely conducted by the State. The lawyers working as Public Prosecutors at the district level often lack the necessary competence and function in a manner that is not accountable to the victim in any way. As a result trials are unduly delayed either on account of the disinterest or

[80] ibid

conversely the heavy workload faced by the Public Prosecutors. Furthermore, victims as well as witnesses tend to face considerable inconvenience when they are required to repeatedly attend court hearings or face aggressive cross-examination from defence. The situation is even more complicated for victims of sexual offences. This phenomenon of the victims of crimes facing even more harassment during the course of investigation and trial is called 'secondary victimisation'. The least that the law can do is to check and prevent such callousness.

2.11.1. Provision Related to Victim rights in Criminal Justice System of the India

The status of victim in criminal proceedings in India is dealt with in a few provisions of the Criminal Procedure Code, which are too insufficient to be considered fair in dispensing equal justice under law. If the victim of a cognizable offence reports to the police, the police is required to reduce the information into writing or if information is in writing it shall be recorded in FIR and read it out to the informant. The informant is required to sign it and receive a copy of the First Information Report(FIR)[81]. If the police refuse to record the information, the informant victim is allowed to send it in writing and by post to the Superintendent of Police concerned.[82] If the police refuse to investigate the case for whatever reason, the police officer is required to notify the informant of that fact.[83] In this circumstance, alternate remedy available to the victims are to institute complaint case under section 190 of the Cr. P.C.

In the granting and cancellation of bail, victims have substantial interests though not fully recognised by Indian Criminal law. Section 439 (2)[84] allows a

[81]Section 154 (1) and (2) of the Cr.P.C.

[82]Section 154(3) of the Cr.P.C.

[83]Section 157(2) of the Cr.P.C.

[84]Code of Criminal Procedure, Section 439.Special powers of High Court or Court of Session regarding bail.

(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

victim to move the Court for cancellation of bail but prosecution has discretion in this matter. The victim has to contend and move the appropriate court against the bail application moved by accused is interpreted by the court as rights of victim. Similarly, victim can move court for the cancellation of bail.[85] Previously, principle was settled down in the **Gurcharan Singh**[86] case that concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. Also, in compounding of an offence cannot be possible without the participation of the complainant.[87] In the withdrawal of cases prosecution role has more vide discretion and prosecution can seek withdrawal at any time during trial without consulting the victim.[88] In event of withdrawal only remedy left for the victim is to appeal against the withdrawal from prosecution to higher judiciary with all available facts under section 378 and inherent power of the High Courts under section 482.

After the Code of Criminal procedure (Amendment) Act, 2008 and Criminal law amendment act 2013 a many radical change is introduced in the Indian criminal justice system redefining the rights of victim in the following manner:

i) victim includes a guardian or legal heir of the victim as a victim and confers them the rights equivalent to the victim.[89]

(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

[85]Puran, Shekhar and Anr. Vs. Rambilas&anr., state of Maharastra Appeal(Cri.) 599 of 2001

[86]Gurcharan Singh v. State (Delhi Admn.) AIR 1978 SC 179

[87]Section 320 of the Cr.P.C.

[88]Section 321 of the Cr.P.C.

[89]Section 2(w)(a) of the Cr.P.C.

ii) victim is able to engage his advocate of his choice to assist the public prosecutor.[90]

iii) Section 26(a)(iii)of the code of criminal procedure. It provides that offense under section 376 and 376 (A) to 376 (D) of the Indian penal code shall be tried as far as practicable by a court presided over by a woman.[91]

iv) In the second proviso of the section 157 to facilitate rape victim to record statement at the residence of the victim or in a place of her choice or as far as practicable by the woman police officer in the presence of her parent or guardian or near relative or a social worker of the nearby locality.[92]

v) It is mandatory specific time of three months for the investigating agency to complete the investigation if the allegation relates to the offence of rape of a child.[93]

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[90]Section 24(8) of the Cr.P.C

The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

["Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section."] Ins. by Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009, dt. 7.1.2009)

[91]Section 26(a)(iii) of the Cr.P.C

any other court by which such offence is shown in the First Schedule to be triable;

["Provided that any ["offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code"] (45 of 1860) shall be tried as far as practicable by a Court presided over by a woman."] Ins. by Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009, dt. 7.1.2009)

[92]Proviso Section 157 (1)(b)of the Cr.P.C.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

[93]Section 173(1-A) of the Cr.P.C.

The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.

vi) Amendment in section 357(a) was incorporated to provide for the state government to prepare in coordination with the central government a scheme called "Victim Compensation Scheme" for the purpose of compensation to the victim or his dependents who suffered loss or injury as a result of the crime.[94]

Further, there is no specific provision in the Cr.P.C. to provide legal assistance to the victim but according to section 12 of the Legal Services Authority Act 1987, member of the SC/ST community, a victim of trafficking according to article 23 of the constitution of India, a woman or child, disabled person, victim of mass violence or disaster and industrial workman may apply for the legal services free of cost provided by the state.[95]

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[94] Section 357(a) of the Cr.P.C.Victim compensation scheme

1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependent, who have suffered loss or injury as a result of the crime and who, require rehabilitation.
2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)
3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

[95]Section 12 of the Legal Services Authority Act 1987. Every persons who has to file or defend case shall be entitled to legal services under this Act if that person is –

(a) a member of a Scheduled Caste or Scheduled Tribe;

Justice V.S. Malimath Committee have proposed several victim rights in its report. In its report committee observed that:

"An important object of the Criminal Justice System is to ensure justice to the victims, yet he has not been given any substantial right, not even to participate in the criminal proceedings. Therefore, the Committee feels that the system must focus on justice to victims and has thus, made the following recommendations which include the right of the victim to participate in cases involving serious crimes and to adequate compensation.

i. The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the change is punishable with 7 years imprisonment or more.
ii. In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in court proceedings.
iii. The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.
iv. The victim's right to participate in criminal trial shall, inter alia, include:

(b) a victim of trafficking inhuman beings or beggar as referred to in article 23 of the Constitution of India:

(c) a woman or a child ;

(d) a person with disability as defined in clause (i) of section 2 of the persons with disabilities (Equal opportunities Protection of Rights and full participation) Act, 1995.

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral traffic (Prevention) Act, 1956 or in a juvenile home within the meaning of clause

(j) of section 2 of the Juvenile Justice Act, 1986 or in a psychiatric hospital or psychiatric nursing home within the meaning of clause

(g) of section 2 of the Mental Health Act, 1987 ; or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

a. To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence
b. To ask questions to the witnesses or to suggest to the court questions which may be put to witnesses
c. To know the status of investigation and to move the court to issue directions for further to the investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth.
d. To be heard in respect of the grant or cancellation of bail
e. To be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution
f. To advance arguments after the prosecutor has submitted arguments
g. To participate in negotiations leading to settlement of compoundable offences

v. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.
vi. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.
vii. Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration.
viii. The Victim Compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which

compensation may not be granted and conditions under which it may be awarded or withdrawn.[96]

2.11.2. Rights and Protection under Criminal Procedure Code, 1973

1. **Police officer's power to require attendance of witness and Child and woman Victim:** Section 160 of Criminal Procedure Code provides that "no male person under the age of 15 years or woman shall be required to attend at any place other than the place in which such male person or woman resides." Though, this provision does not apply to a woman or a child who is a suspect, the Supreme Court emphasized the mandatory nature of this requirement in **Nandini Satpathy v. P.L. Dani**.[97]
2. **Protection of Victim's right to be heard under Section 439 :** The victim has a say in the grant of bail to an accused. Section 439 (2) of Criminal Procedure Code, as interpreted by the courts, recognizes the right of the complainant or any aggrieved party to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused. A clause report by the prosecution cannot be accepted by the court without hearing the informant.
3. **Sec 372 as amended by Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) Sec. 29** : "No appeal shall lie from any judgement or order of a criminal court except as provided for by this code or by any other law for the time being in force.

   Provided that the victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation and such appeal shall lie to court to which an appeal ordinarily lies against the order or conviction of such court.
4. **Section 301 (2) :** Section 301 (2) of Criminal Procedure Code mandates that a lawyer of the private party shall act under the directions of the Public Prosecutor and may, with the permission of the court, submit written

[96] "Committee on Reforms of Criminal Justice System", Report I, Volume I, 2003, pg. 278

[97] NandiniSatpathy Vs. P.L. Dani (1978) SCC 424

arguments after the evidence is closed in the case. Public prosecutor may hear from the victim and act according to the law.

5. **Protection to informant or the witness under Section 162 of the Cr.P.C. :** The section 162 of Criminal Procedure Code protect against the intimidation by the police. Statement made by a witness to the police during the course of investigation is inadmissible in evidence consistent with the statutory bar under Section 25 of Evidence Act, 1872.
6. **Section 284 :** Section 284 of Criminal Procedure Code provides that a witness can be directed by the court to be examined on commission thus dispensing with the need for such witness to attend the trial. In addition, where the court finds that the key prosecution witness have turned hostile it can under section 309 of Criminal Procedure Code and for reasons recorded, postpone the trial.
7. **Section 154 (3) :** Section 154 (3) of Criminal Procedure Code provides that if officer in charge of a police station refuses to act upon such information, the victim can write to the Superintended of Police who is then expected to direct investigation into the complaint.
8. **Section 190 :** Section 190 of Criminal Procedure Code states that if above mechanism of filing complaint fails, the victim can give a complaint to a Magistrate, who will in turn examine the complainant on oath and enquire into the case or direct investigation by the police before taking cognizance.
9. **Section 200, 202 :** If a public servant wilfully neglect to act upon the complaint of member of the Scheduled Caste and Tribes is punishable offence under these sections of Criminal Procedure Code.
10. **Section 406 :** Under Section 406 of Criminal Procedure Code the victim or the complainant can petition the Supreme Court for transfer of trial for ensuring free trial of the case.

The misery of the victim restart if he survives an offence and reports his victimisation to the Police? In several instances harassment by the police officer and lawyer is not uncommon if the victim is women or a child. Victim suffers pecuniary loss by unnecessary adjournment. Judiciary responded in these

apathy and adjudged time to time several rights and guideline in favour of victim in India.

2.11.3. Judicial Response and victim rights in India

Palaniappa Gounder v. State of Tamil Nadu [98] Supreme Court reduced the amount awarded by high Court from Rs 20,000 to Rs 3,000 but also observed that:

> "It appears to us that the High Court first considered what compensation ought to be awarded to the heirs of the deceased and then imposed by way of fine an amount which was higher than the compensation because the compensation has to come out of the amount of fine."

Apart from the fact that even the compensation was not fixed on any reliable data, the High Court, with respect, put the cart before the horse in leaving the propriety of fine to depend upon the amount of compensation.

The Hon'ble further remarked that the sentence must be proportionate to the nature of the offence and the sentence, including the sentence of fine, must be unduly excessive.

Bhim Singh v. State of J& K[99] case Supreme court awarded compensation in case of violation of fundamental rights by the state and victim is entitled to compensation.

> "When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation."

The court ordered to the State of Jammu and Kashmir to pay to ShriBhim Singh a sum of Rs. 50,000/- as compensation.

Sarwan Sing v State of Punjab[100] Supreme Court reverted from its previous judgement all should be taken in to account while imposing fine or compensation. The Hon'ble Court Observed that:

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[98] 1977 AIR 1323

[99] AIR 1986 SC 494

[100] 1957 AIR 637

> "The object of the section 357 therefore, is to provide compensation payable to the persons who are entitled to recover damage from the person sentenced even though fine does not form part of the sentence. Though Section 545 enabled the court only to pay compensation out of the fine that would be imposed under the law, by Section 357(3) when a Court imposes a sentence, of which find does not form a part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in position to pay the compensation to the injured or his dependents to which they are entitled to, there could be no reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary mensrea to pay compensation for the person who has suffered injury."

And also:

"It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. After consideration of all the facts of the case, we feel that in addition to the sentence of 5 years' rigorous imprisonment, a fine of Rs. 3500 on each of the accused under Section 304(1), I.P.C. should be imposed."

Bhupendar Singh v State of M.P.[101]which was out come of quarrel between college students where the Hon'ble Court although allowed the compounding of offence but did not forget the cause of victim and granted the compensation of Rs 3000.

Harikishan v Sukhbir Singh [102]and others is the second most important case after Sarwan Singh where court repeated its firm understanding once again in following words:

> "The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default."

Balraj Singh v State of U.P.[103] stated the same point as discussed above but in most appropriate word by saying that the power to a award compensation is not ancillary to the other sentence but in addition thereto.

In **Adamji Umar Dalal v. State of Bombay**[104]**,** Supreme Court observed that while passing a sentence the court has always to bear in mind the proportionality between an offence and the penalty. In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused person and to the character and magnitude of the sentence, where a substantial term of imprisonment is imposed, an excessive fine could not accompany it except

[101]Criminal Appeal Nos. 301 & 302 Of 2007

[102] 1988AIR 2127

[103] 1995 AIR 1935

[104]AIR 1952 SC 14

in exceptional cases. The criminal court's power to award compensation is limited by the considerations which govern the imposition of fine as compensation.

In **Jitendra Kumar Agrawalla v. State of Bihar**[105] the court held that the informant or the complainant to be heared on the final report by the police closing the case. Under section 173 of Cr.P.C. the police officer investigating a case sends its report to the magistrate either made challan the accused or stating that no case is being made out for sending up an accused for trial. The magistrate may agree on the such report and order to close the proceeding. The acceptance of the final report of the police and discharging the accused without hearing the informant or complainant is not justified. Even on complainant cum protest petition of informant or complaint magistrate can take cognizance and unfold the case.

In **State of Himanchal Pradesh v. Prem Singh**[106]the supreme court held that the delay in lodging FIR in case of sexual assault cannot be equated with the other offences. In traditional society like India, it would be quite unjustified to throw out the prosecution case merely on the ground of delay in lodging FIR.

2.11.3.1. Compensation

The principle of payment of compensation to the victim of crime was evolved by Hon'ble S.C. on the ground that it is duty of the welfare state to protect the fundamental rights of the citizens not only against the actions of its agencies but is also responsible for hardships on the victims on the grounds of humanitarianism and obligation of social welfare, duty to protect it's subject, equitable Justice etc . It is to be noted that compensation by the State for the action of it's official was evolved by the Hon'ble Court against the doctrine of English law: "King can do no Wrong" and clearly sated in the case of

Smt. Nilabati Behra alias Lalita v State of Orissa [107]that doctrine of sovereign immunity is only applicable in the case of tortuous act of government servant and not where there is violation of fundamental rights and hence in a way

[105] 2000 CrLJ 2730(Pat)

[106]2009 CrLJ 786(SC)

[107] 1993 AIR 1960

stated that in criminal matters (of course if there is violation of fundamental rights) this doctrine is not applicable.

Rudal Sah v State of Bihar[108] is the most celebrated case where the Hon'ble S.C. directed the state to pay compensation of Rs 35,000 to RudalSah who was kept in jail for 14 years even after his acquittal on the ground of insanity and held that it is violation of Article 21 done by the State of Bihar. The case of Bhim Singh v State of J&K is another important case where Bhim Singh an MLA was arrested by the police only to prevent him to attended the Legislative Assembly, the Hon'ble Court not only entertained the writ petition of his wife but also awarded the compensation of Rs 50,000 to be paid by the state.

Meja Singh v SHO Police Station, Sadar [109] High Court of Punjab &Haryana took the cause of victim and awarded the compensation of Rs 25,000 for illegal detention of son of the petitioner.

Prem Shanker Shukla v Delhi Administration.[110]compensation in case of victim of custodial death is another burning issue where the courts have awarded compensation to the victims of crime.

Mrs. Cardino & Ohters v. U.O.I.[111]where although the accuse was arrested on the charge of misappropriation of some plastic ware and hospital; utensils worth Rs1500 but tortured like hard core criminal and hence he succumbed to the torture. Here when the matter was brought before the Hon'bleHigh Court of Bombay which gave the compensation of Rs 2,00,000 to be paid by the state.

SAHELI v Commissioner of Police [112]is land mark where the son of KamleshKumari died due to ill treatment by a S.I. of Delhi Police, the Hon'ble S.C. directed the Delhi Adm. to pay the compensation of Rs 75,000.

[108]1983 AIR 1086

[109] 1991 ACJ 439

[110]1980 AIR 1535

[111]1990 ACJ P. 804

[112]1990 AIR 513

Gudalure Cherian v UOI[113] where Hon'ble S.C. following an innovative approach first directed the whole matter to be investigated by the CBI afresh and completion of investigation directed the Govt. of U.P. to first suspend the police officials and medical officers who tried to save the accuse but also directed the state to pay compensation of Rs 2,50,000 to the victim of rape and Rs 1,00,000 to victim of other crime.

Bodhi SattaGautam v SubhraChakraborty[114] If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation at any stage of trial. The said observation invented the concept of interim compensation. This decision recognises strongly the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalisation of Scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation, which should also be provided in the Scheme.

Delhi Domestic Working Women's Forum v. Union of India[115] the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life. The court also stated that:

> "Having regard to the facts and circumstances of the present case in which there is a serious allegation that BodhisaltwaGautam had married SubhraChakraborty before the God he worshipped by putting Vermilion on her forehead and accepting her as his wife and also having impregnated her twice resulting in abortion on both the occasions, we, on being prima facie satisfied, dispose of this matter by providing that BodhisattwaGautam shall pay in SubhraChakraborty a sum of Rs. 1,000/-every month as interim

[113](1992) 1 SCC 397

[114]1996 AIR 922

[115]1995 SCC (1) 14

> compensation during the pendency of Criminal Case… in the Court of Judicial Magistrate, Ist Class, Kohima, Nagaland. He shall also be liable to pay arrears of compensation at the same rate from the date on which the complaint was filed, till this date."

Therefore it can be observed that the Hon'ble Courts have taken little softer view (with regard to monetary aspect) when question of the award of compensation come under Cr.P.C. as compare to when it come under Constitution.

No doubt that Code of Criminal Procedure provided for the compensation to victim in the year 1898, when even the concept has not developed properly but now it submitted that the whole scheme under Cr.P.C. or P.O.A. needs renovation. The most important attack on the present legislative frame work lies on the desertion given to the courts i.e. it depends upon them to grant compensation and absence of recording any reason when they abstain them self from grating compensation. Another criticism of the present legislative framework lies in the absence of right of victim to claim compensation.

Critics also argue for the absence of any institutional scheme under the present legislative framework that has now become the important part of victim-Crime relationalship in countries of southern hemisphere such as USA, UK, New Zealand, France etc . The laxity on the part of Indian legislature is so much so that India has not made any legislation to give compensation to victim of crime when accused is acquitted despite of its obligation under various International Covenants.

Delhi Domestic Working Forum v UOI [116]has shown its concern in following words:

> "It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries

[116]1995 SCC (1) 14

> Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result. So this in brief set out the major defaults in the present legislative framework due to which the whole concept of compensation has become akin to flop show in India. However it is to be noted that part of responsibility of being the concept flop show lies on Indian judiciary as well, especial the lower courts."

State of Gujarat v Hon'ble High Court of Gujarat is relevant where following was stated:

> "Section 357 of the Criminal Procedure Code, 1973 provides some reliefs to the victims as the court is empowered to direct payment of compensation to any person for any loss or injury caused by the offence. But in practice the said provision has not proved to be of much effectiveness. Many persons who are sentenced to long term imprisonment do not pay the compensation and instead they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus the restorative and reparative theories are not translated into real benefits to the victims."

In the **Uttarakhand Sangharsh Samitee v. State of U.P.,**[117] the Allahabad High Court delivered a path-breaking judgment in a group of six cases arising out of the incidents in Khatima, Mussoorie and Muzaffarnagar. The brief facts of the case are that twenty four persons were killed, seven women were raped, seventeen were sexually molested while many others were injured and illegally detained as a result of police firing and atrocities committed on a peaceful demonstration for a separate State of Uttaranchal in 1994. In the instant case, the State was held vicariously responsible for the crimes committed by its officers and was directed to compensate the victims and was not protected under the doctrine of sovereign

[117] (1996) 1UPLBEC 461

immunity wherein the State can avoid criminal liability in the name of 'acts of State'.

However diverging from this trend, in the **A.K. Singh case**[118], the Supreme Court set aside the High Court's order directing the convicts to furnish compensation to the victims, holding that Rs. 10 lakh was in excess of the required compensation for the crime. This decision was made despite the fact that state functionaries perpetrated this crime against innocent members of a peaceful demonstration.

On the other hand in the recent case of **Chairman, Railway Board v. Chandrima Das (Chairman, Railway Board v. Chandrima Das,**[119]) the Supreme Court ordered the payment of Rs. 10 lakhs as compensation to a Bangladeshi national who was repeatedly raped by Railway employees. The Court upheld the Calcutta High Court's decision that even as a foreign national she was entitled to the fundamental right to life in India, and thus there was a constitutional liability to pay compensation to her.

P. S. R. Sadhanantham v.Arunachalam & Anr[120], The petitioner filed the writ petition under Article 32 of the Constitution, contending:

(1) that Article 136 did not empower the grant of special leave to the brother of the deceased and the grant of special leave by the Court and its entertaining the appeal violated Article 21 of the Constitution, and

(2) before the Court may grant special leave under Article 136 there must be an antecedent right of appeal absent which the question of leave by the Court does not arise.

Supreme Court observed that

"Our constitutional order vests in the summit court a jurisdiction to do justice, at once omnipresent and omnipotent but controlled and guided by that refined yet flexible censor called judicial discretion. This nidus[121] of

[118] A.K. Singh v. Uttarakhand Jan Morcha, (1999) 4 S.C.C. 476.

[119] (2000)2SCC465

[120] 1980 AIR 856

[121] Nidus, means "A point or place at which something originates, accumulates, or develops, such as

power and process, which master-minds the broad observance throughout the Republic of justice according to law, is Art. 136."

Further, court observed the importance of article 136 for justice. "In express terms, Art. 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction. It is residuary power; it is extra-ordinary in its amplitude, its limit, when it chases injustice, is the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Art. 136."

Furthermore, court include the rights life and liberty of a victim and its relative on victim death under article 21 and compared with it with the in article 136 procedural justice.

"If Art. 21 is telescoped into Art. 136, it follows that fair procedure is imprinted on the special leave that the court may grant or refuse. With a motion is made for leave to appeal against an acquittal, this Court appreciates the gravity of the peril to personal liberty involved in that proceeding. While considering the petition under Art. 136 the court will pay attention to the question of liberty, the person who seeks such leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave."[122]

> "A crime is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual. Murder injures primarily the particular victim, but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim's family. Those who commit such acts are proceeded against by the State in order that, if convicted, they may be punished. No private person has a direct interest in a criminal proceeding although exception may be made by the Statute in certain cases. [885C-F] Kenny's Outlines of Criminal Law, 16th Edn., p. 2 para 3 Blackstones Commentaries, III p. 2, Mogul Steamship"[123]

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the center around which a calculus forms." (Botanical Term) accessed from http://www.oxforddictionaries.com

[122] Ibid

[123] Ibid

The purpose of criminal prosecution is not for the private satisfaction in term of revenge. In India, the criminal law deals with the prosecution of the crime by state prosecution and not a personal affaire of an individual. But in most instances complainant may also appeal acquittal.

> "Under the Code of Criminal Procedure 1973, s. 378, the right of appeal vested in the State has now been made subject to leave being granted to the State by the High Court. The complainant continues to be subject to the prerequisite condition that he must obtain special leave to appeal. The fetters so imposed on the right to appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court."[124]

While interpreting the article 136 permitting private special leave petition court held that it is permissible only in case of public interest.

> "The Court should entertain a special leave petition filed by a private party, other than the complainant, in those cases only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petitioning for special leave for reasons which do not bear on the public interest but are prompted by private influence, want of bona fide and other extraneous considerations."

2.11.4. Current trends

The policy of our criminal justice system is victim-oriented and we have to a certain extent incorporated the idea of compensatory criminal jurisprudence. The problem arises in implementation of this policy. The attitude of the judiciary needs change. The provisions being discretionary, it neither imposes a legal obligation on the judge to order compensation in all suitable cases to the victim of crime, nor does it require reasons to be recorded for not doing so. Similarly, these provisions do not vest in the victims a legal right to be compensated either by the accused or the state for loss or injury caused by the commission of the offence. The victim remains at the mercy of the discretion of the judge for the award of compensation because of the word 'may' Cr.P.C.; this being the vanishing point of victim

[124] Ibid

compensation in India. Mere punishment to the accused though it may exhaust the primary function of criminal law, is not fulfilment of the Rule of Law. Hence, the court should be liberal in utilising the discretion vested in them in granting compensation to the injured in a criminal case. It is imperative to convert the discretionary power of the court into a legal mandate requiring it to in all suitable cases, pass compensation orders and when it decides not to do so, make it obligatory to record reasons for not doing so. From the aforesaid cases we may conclude that the Apex Court in India has set a trend of compensatory criminal justice jurisprudence, which in effect is developing the ground towards restorative justice in our criminal justice system.[125]

[125] Accessed from http://www.manupatra.co.in/newsline/articles/Upload/5C770380-C132-4069-A666-41373B4935FB.pdf

Chapter III

Criminal Justice System in India, USA and UK

CHAPTER III

Criminal Justice System in India, USA and UK

No citizen should go away with the feeling that he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law.

Justice P. Bhagwati,[1]

3.1. International Provisions for the Public Prosecutor

Guidelines on the Role of Prosecutors was Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, on 27 August to 7 September 1990.

The guideline document recognise crucial role the prosecutors in the administration of justice. Rules concerning the performance of their important responsibilities should promote their respect for and compliance with the principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime. It is also felt that prosecutor posses the professional qualification required for the accomplishment of their functions therefore improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions is necessary.

It was felt that in the congress that the recommendation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, inter alia , to the selection, professional training and status of prosecutors, their expected

[1]Sunil Kumar Pal v. Phota Sheikh and Ors. (1984) 4 SCC 533

tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses.

The Guidelines which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

The guideline prescribe that Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications. On the state side it is recommended that Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned.

Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.[2]

3.1.1. Role of Public Prosecutor in criminal proceedings

1. The office of prosecutors shall be strictly separated from judicial functions.

[2] Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of offenders, Havana, Cuba, 27 August to 7 September 1990 accessed from http://www.ohchr.org/

2. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.
3. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
4. In the performance of their duties, prosecutors shall:
    4.1. Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
    4.2. Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
    4.3. Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
    4.4. Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[3]

Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of

[3] Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of offenders, Havana, Cuba, 27 August to 7 September 1990 accessed from http://www.ohchr.org/

human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

5. **Discretionary functions**

   In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

6. **Alternatives to prosecution**

   In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

   In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider

available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

7. **Relations with other government agencies or institutions**

   In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

8. **Disciplinary proceedings**

   Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

   Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

3.2. Criminal Justice System in USA

Hierarchical structure of the criminal justice system is distinctly divided in the federal, state, and local courts which interpret laws, adjudicate disputes under laws, and review law violating the fundamental protections that the United State Constitution guarantees all Americans. The Constitution fixed many of the boundaries between federal and state law. It also divided federal power among legislative, executive, and judicial branches of government (thus creating a "separation of powers" between each branch and enshrining a system of "checks-and-balances" to prevent any one branch from overwhelming the others), each of

which contributes distinctively to the legal system.[4]The U.S. Supreme Court has been having only nine Justices for the last hundred and fifty years or so. All or such of the nine Justices as are available, collectively decide each and every case, except in a vacation when a single Justice may pass an interlocutory order. They sit in court for hardly a hundred days in a year. How are they able to cope with the work? For this, we have to understand the basic differences between our system and theirs.[5]

The hierarchical systems of courts of United States at the federal and state levels are closely linked. The federal courts form the judicial branch of the Federal government of the United States and operate under the authority of the United States Constitution and federal law whereas the state and territorial courts of the states and territories operate under the authority of the state and territorial constitutions and state and territorial law.

The federal courts of the United States are all formally courts of limited jurisdiction. The federal structure includes district courts, circuit courts of appeal (the country is divided geographically into 12 circuits), and the U.S. Supreme Court. In addition, Congress has created several courts with special jurisdiction (e.g., trial courts for tax and government claims and an appellate court for tax, government contracts, and patent cases, and a nationwide system of bankruptcy judges). Article III of the U.S. Constitution expressly limits the "judicial power of the United States" to "Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority," to admiralty and maritime cases, and to other special cases based on the identity of the parties. The latter category includes, most notably, litigation where the United States is a party and cases between citizens of different states (this is called "diversity" jurisdiction). [6]

[4]Accessed from http://iipdigital.usembassy.gov accessed on 25/04/2014

[5] Justice K.N.Goyal, "About Lawyer and Judges in America", accessed from ijtri.nic.in/article/art2.pdf on 12 September 2015

[6] Accessed from https://pennstatelaw.psu.edu/_file/Ross/Chapter_Eight.pdf accessed on 25/04/2014

Federal statutes that refer to the "courts of the United States" are referring only to the courts of the federal government, and not the courts of the individual states. Because of the federalist underpinnings of the division between sovereign federal and state governments, the various state court systems are free to operate in ways that vary widely from those of the federal government, and from one another. In practice, however, every state has adopted a division of its judiciary into at least two levels, and almost every state has three levels, with trial courts hearing cases which may be reviewed by appellate courts, and finally by a state supreme court. A few states have two separate supreme courts, with one having authority over civil matters and the other reviewing criminal cases. 47 states and the federal government allow at least one appeal of right from a final judgment on the merits, meaning that the court receiving the appeal must decide the appeal after it is briefed and argued properly.

State courts have diverse names and structures, as illustrated below.

3.2.1. Geographic based jurisdiction

1. Trial Courts
2. United States district courts
3. Appellate Courts
4. United States courts of appeals numbering twelve in total

3.2.2. Supreme Court of the United States

3.2.2.1. Constitutional Origin

Article III, Section 1, of the Constitution provides that:

"the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

The Supreme Court of the United States was created in accordance with this provision and by authority of the Judiciary Act of September 24, 1789 (1 Stat. 73). It was organized on February 2, 1790.

3.2.2.2. Jurisdiction

According to Art. III, Section 2, Clause 1 of the Constitution of United States of America:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

1. to all Cases affecting Ambassadors, other public Ministers and Consuls;
2. to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;
3. to Controversies between two or more States;
4. between a State and Citizens of another State;[7]
5. between Citizens of different States;
6. between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Art. III, Section 2, Clause 2:

"In all Cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Art. III, Section 2, Clause 3:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

Appellate jurisdiction has been conferred upon the Supreme Court by various statutes, under the authority given Congress by the Constitution. The basic statute effective at this time in conferring and controlling jurisdiction of the Supreme Court may be found in 28 U. S. C. Section 1251[8].

[7]Article 3 Section 2 Clause 1 has been affected by Amendment XI

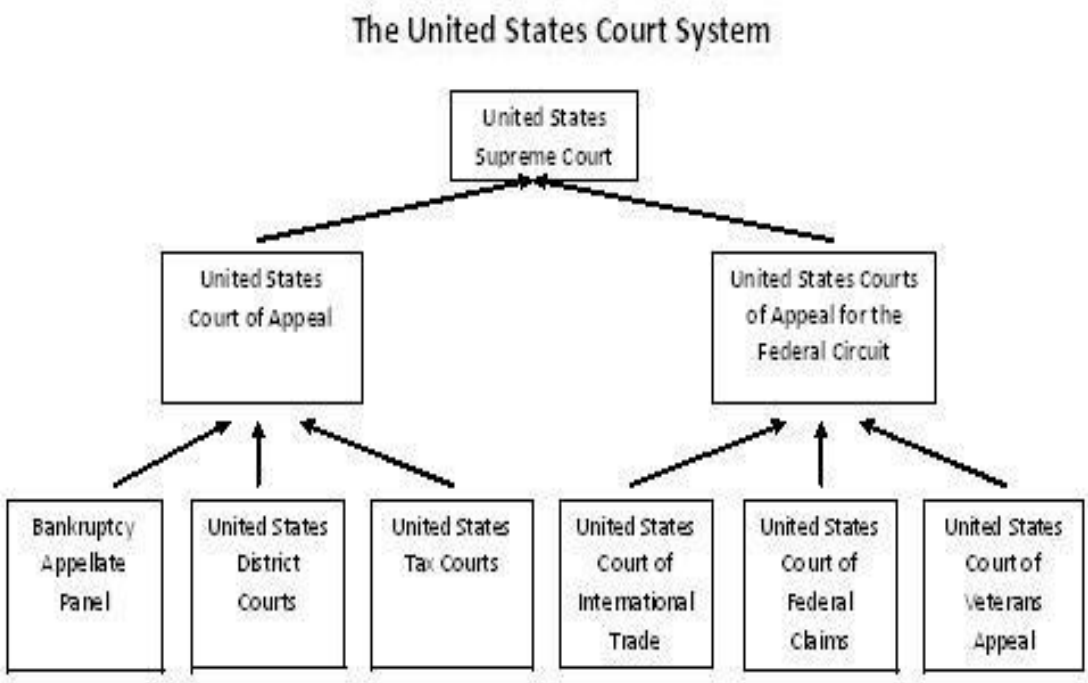
[8] Title 28 section 1251: Judiciary and Judicial Procedure

3.2.2.3. Specific subject-matter jurisdiction

1. United States federal courts with Original Jurisdiction over specific subject matter
2. Courts with Appellate Jurisdiction over specific subject matter

State courts hear about 98% of litigation; most states have courts of special jurisdiction, which typically handle minor disputes such as traffic citations, and courts of general jurisdiction responsible for more serious disputes.

The U.S. federal court system hears cases involving litigants from two or more states, violations of federal laws, treaties, and the Constitution, admiralty, bankruptcy, and related issues. The trial courts are U.S. district courts, followed by



(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b)The Supreme Court shall have original but not exclusive jurisdiction of:

(1)All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2)All controversies between the United States and a State;

(3)All actions or proceedings by a State against the citizens of another State or against aliens.

United States courts of Appeals and then the Supreme Court of the United States. The judicial system, whether state or federal, begins with a court of first instance, whose decisions may be reviewed by an appellate court, and then ends at the court of finality, which may review the decision of the lower courts. Federal laws are passed by Congress and signed by the President. The federal judiciary operates separately from the executive and legislative branches, but often works with them as the Constitution requires. The judicial branch decides the constitutionality of federal laws and resolves other disputes about federal laws.

Courts decide whether a person committed a crime and what the punishment should be. They also provide a peaceful way to decide private disputes that people can't resolve themselves. Depending on the dispute or crime, some cases end up in the federal courts and some end up in state courts.

3.2.3. Federal Courts system

The federal courts have jurisdiction over

- Cases that raise a "federal question" involving the United States Government , the U.S. Constitution, or other federal laws; and
- Cases involving "diversity of citizenship," which are disputes between two parties not from the same state or country, and where the claim meets a set dollar threshold for damages. [9]

3.2.3.1. Supreme Court

The Supreme Court is the highest court in the United States. Article III of the U.S. Constitution created the Supreme Court and authorized Congress to pass laws establishing a system of lower courts. In the federal court system's present form, 94 district level trial courts and 13 courts of appeals sit below the Supreme Court.

[9] http://www.uscourts.gov/about-federal-courts/court-role-and-structure retrieved on 21/04/2014

3.2.3.2. Courts of Appeals

There are 13 appellate courts that sit below the U.S. Supreme Court, and they are called the U.S. Courts of Appeals. The 94 federal judicial districts are organized into 12 regional circuits, each of which has a court of appeals. The appellate court's task is to determine whether or not the law was applied correctly in the trial court. Appeals courts consist of three judges and do not use a jury.

A court of appeals hears challenges to district court decisions from courts located within its circuit, as well as appeals from decisions of federal administrative agencies.

3.2.3.3. District Courts

The nation's 94 district or trial courts are called U.S. District Courts. District courts resolve disputes by determining the facts and applying legal principles to decide who is right.

Trial courts include the district judge who tries the case and a jury that decides the case. Magistrate judges assist district judges in preparing cases for trial. They may also conduct trials in misdemeanor cases.

There is at least one district court in each state, and the District of Columbia. Each district includes a U.S. bankruptcy court as a unit of the district court. Four territories of the United States have U.S. district courts that hear federal cases, including bankruptcy cases: Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands.

3.2.4. District Court System analysis

The structure of state courts is much varied than the structure of the federal court system. The 50 state have created a multiplicity of court structures. Some court system are unified and clearly organised, while others are a jumble of overlapping jurisdiction and confusion. Some states, such as Illinois and Florida, have unified court systems with uniform three or four tier court structure for the entire state. Other states, such as New York and Texas, have more complicated

system with multiple layers of courts that often have overlapping jurisdiction. In the state without unified court systems, there may even be variation in court structure from one county to the next.[10]

The first level of state courts is trial court of limited criminal jurisdiction. These may be called as justices of peace, magistrate court, municipal court and county court. These court are responsible for issuing search and arrest warrant and conduct preliminary hearing and arraignment. (Arraignment means "call or bring (someone) before a court to answer a criminal charge.").[11]

Proceeding in lower courts are more informal than it is in appellate courts or trial courts. There is generally no right to trial provided in these courts; if losing party wishes to appeal an adverse decision, but must prefer *de novo* trial[12] in the court of the original jurisdiction.

The next level in state court system includes the court of general jurisdiction. These trial courts are usually referred to as the district court, circuit court or superior court. In the New York these courts are referred to as Supreme court.

The next level of the court system are appellate court and referred as appeals court, appellate courts and appellate divisions. Appellate courts do not decide matters of the fact, such as whether a person convicted of a crime is actually guilty instead of that appellate court review the record from the trial court. Appellate courts have both mandatory and discretionary jurisdiction.The court of last resort is in state called the state supreme court. 42 states have one court and two state i.e. Oklahoma and Texas have two for criminal cases.

[10]Craig Hemmens, David C. Broody, Cassia C. Spohn, "Criminal Courts: A Contemporary perspective", SAGE Pub., New Delhi

[11] Oxford Advance Learner Dictionary

[12] "An appeals court hearing a case de novo may refer to the trial court's record to determine the facts, but will but rule on the evidence and matters of law without giving deference to that court's findings. A trial court may also hear a case de novo following the appeal of an arbitration decision."

3.2.5. The Federal Court System analysis

Article III of the Constitution invests the judicial power of the United States in the federal court system. Article III, Section 1 specifically creates the U.S. Supreme Court and gives Congress the authority to create the lower federal courts.

Congress has used this power to establish the 13 U.S. Courts of Appeals, the 94 U.S. District Courts, the U.S. Court of Claims, and the U.S. Court of International Trade. U.S. Bankruptcy Courts handle bankruptcy cases. Magistrate Judges handle some District Court matters.

Parties dissatisfied with a decision of a U.S. District Court, the U.S. Court of Claims, and/or the U.S. Court of International Trade may appeal to a U.S. Court of Appeals.

A party may ask the U.S. Supreme Court to review a decision of the U.S. Court of Appeals, but the Supreme Court usually is under no obligation to do so. The U.S. Supreme Court is the final arbiter of federal constitutional questions.

3.2.6. The State Court System analysis

The Constitution and laws of each state establish the state courts. A court of last resort, often known as a Supreme Court, is usually the highest court. Some states also have an intermediate Court of Appeals. Below these appeals courts are the state trial courts. Some are referred to as Circuit or District Courts.

States also usually have courts that handle specific legal matters, e.g., probate court (wills and estates); juvenile court; family court; etc.

Parties dissatisfied with the decision of the trial court may take their case to the intermediate Court of Appeals. Parties have the option to ask the highest state court to hear the case. Only certain cases are eligible for review by the U.S. Supreme Court.

3.2.7. Selection of Judges

3.2.7.1. In The Federal Court System

The Constitution states that federal judges are to be nominated by the President and confirmed by the Senate. They hold office during good behavior, typically, for life. Through Congressional impeachment proceedings, federal judges may be removed from office for misbehavior.

3.2.7.2. In The State Court System

State court judges are selected in a variety of ways, including election, appointment for a given number of years, appointment for life, and combinations of these methods, e.g., appointment followed by election.

3.2.8. Types of Cases Heard

3.2.8.1. In the Federal Court System

- Cases that deal with the constitutionality of a law;
- Cases involving the laws and treaties of the U.S.;
- Cases involving ambassadors and public ministers;
- Disputes between two or more states;
- Admiralty law;
- Bankruptcy; and
- Habeas corpus issues.

3.2.8.2. The State Court System

- Most criminal cases, probate (involving wills and estates)
- Most contract cases, tort cases (personal injuries), family law (marriages, divorces, adoptions), etc.
- State courts are the final arbiters of state laws and constitutions. Their interpretation of federal law or the U.S. Constitution may be appealed to the U.S. Supreme Court. The Supreme Court may choose to hear or not to hear such cases.

The Federal Rules of Criminal Procedure govern criminal proceedings and prosecutions in the U.S. district courts, the courts of appeals, and the Supreme Court. The original Rules of Criminal Procedure were adopted by order of the Supreme Court on December 26, 1944, and effective from March 21, 1946. The rules have since been amended numerous times, most recently in 2014.Their purpose is to "provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay." [13]

3.2.9. Public Prosecutor

The united state has dual system of criminal justice. Person's acts which violate the federal statutes are prosecuted in the federal court system. On the other hand violation of state laws are prosecuted in the state where the act occurred. Therefore, that prosecutors in the federal system and state level prosecutors operate in different sphere.

In the federal court system, the government is represented by the United State Attorney. According to the Judiciary Act 1789 , an attorney shall be appointed by the president . U.S. attorney is appointed by the President and approved by the senate. As the position is politically appointed, whenever new President sworn in most of the attorney are replaced by Newly elected President's choice. Each U.S. Attorney office are carried out by Assistant U.S. Attorneys. Assistant U.S. Attorney enjoy civil service protection and expected to carry out their duties as prosecutors sans political considerations. While the Assistant U.S. Attorney generally hold their positions and continue to represent the federal government in court.

District Attorney				
1st Assistant District Attorney				
Juvenile Division	**Law Division**	**Trial Division**	**Narcotic Division**	**Investigation Division**
Juvenile Court	**Appeal**	**Victim Services**	**Treatment Court**	**Special Investigation**

[13]Fed. R. Crim. P. 2. , As cited

In state system of prosecution there is extreme decentralization. Generally, violation of state laws are prosecuted by respective prosecutor located in the county or judicial district where the offence took place. The person in charge of prosecutor's office is generally referred to as the district attorney, prosecuting attorney, state's attorney, commonwealth's attorney, or county attorney. Most of the chief local prosecution attorney reaches office by way of popular election, generally for a 4 year term.

Depending on how a particular office is organised , different methods of prosecuting cases can be implemented. There are three general models are used by prosecutor's office-

3.2.9.1. Horizontal model of prosecution

Under this model assistant prosecutor are assigned to unit that handle specific steps or functions in the judicial process that are routine in nature and involve limited discretion.

3.2.9.2. Vertical method of prosecution

Under this model a case is assigned to a single prosecutor who is responsible for the case at each step in the judicial process from initial appearance through a final disposition. It has an advantage of allowing victims and witness to deal with but one attorney, adding to their level of comfort and trust in the prosecution as it goes forwarding.

3.2.9.3. Mixed model of prosecution

Most cases are handled in a horizontal model , specific crime such as homicide , sexual offence are handled at all steps along the process by a specialized unit.

3.2.9.4. Prosecutor's Duties

The primary role of the prosecutor's office is to oversee the adjudication of criminal matters. **Robert Jackson , Justice**, United State Supreme Court[14] laid out his perspective on the role and duties of the prosecutors in American criminal justice system as:-

> "it would be within the range of that exaggeration permitted in Washington too say that assembled in this room is one of the most powerful peace-time forces known to our country. The prosecutor has more control over life, liberty and reputation than any other person in America."

Further he said that:-

> "the prosecutor can order arrest , present the case to grand jury in secret session , and on the basis of his one side presentation of the facts, can cause the citizen to be indicted and held for trial. He dismiss case before trial, in which case the defence never has a chance to be heared. Or he may go on with a public trial."

Prosecutors works closely with law enforcement officers during criminal investigation. Prosecutor tender advise to the police on the legality of the investigation matters. The prosecutor also plays role in deciding how investigation proceed. Due to this provision sometimes charging decision more often intriguing and controversial because of the prosecutor's limitless discretion.

How does a prosecutor determine which case to prosecute? Firstly the seriousness and nature of the offence. Offences that cause grievous harm to a person are often given utmost priority. Keeping in mind the prosecutors answerability toward the locale electoral offence specifically changed with the local demand.

[14] Jackson R., "The Federal Prosecutor", Journal of Criminal Law & Criminology, 1940, Volume 31, pg.3

Secondly, the factor that is considered in charging decision is on whether an offenders' act is intentional involvement or negligent. Another aspect of culpability involves whether the offender has a prior criminal history.

Thirdly, prosecutor are less concerned about whether there is evidence to believe the offender probably committed the crime for which he was arrested than about whether the evidence is such that it is very to lead to a conviction

In the **Duke Lacrosse case**[15] , Mr. Michael Byron Nifong, attorney dropped rape charges against three white peoples from the Duke University lacrosse players who raped a black woman working as an escort and stripper, against these three white members. Mr. Nifong as prosecutor dropped charges on the ground that the accuser testimony was not credible. It's been clear for months that Mr. Nifong's case is riddled with flaws that raise serious questions about his motives and ethics. The accuser's story has been inconsistent and unreliable.

Mr. Nifong has admitted that he failed, as required, to turn potentially exculpatory information over to the defense. The fact of the was that the test results that showed the presence of semen from several other men, but not the Duke players, in swabs taken from the woman's body and clothing. Mr. Nifong says it was an accidentally overlooked. But director of the DNA laboratory said that he and the prosecutor agreed to leave that information out of his report because it was so "explosive."

Later , Mr. Nifong serve a one-day jail sentence for contempt of court and ignoring due process of law. The prosecution of the case was criticized by the legal analyst for the National Journal and New York Times. An investigation reveals disturbing facts about the conduct of the police and the district attorney, and raises serious concerns. Several writers have also criticized the prosecution's actions and have especially criticized the mainstream media for accepting prosecution claims at face value in spite of countervailing evidence. The case was blot on the USA legal history concerning more about the racial discrimination and impartial prosecution system.

[15] www.washingtonpost.com, Sunday, December 31, 2006 accessed on 15/02/2015

3.3. Criminal Justice System in UK

3.3.1. Court system in England[16]

United Kingdom does not have a single unified judicial system. Courts system England is complicated and in places confusing, because it has developed over 1,000 years rather than being designed from scratch.

The **Courts of the United Kingdom**[17] are separated into three separate jurisdictions,

1. Court of England and Wales
2. Court of Scotland
3. Court of Northern Ireland

3.3.1.1. Courts of England and Wales,

3.3.1.1.1. Court of Appeal

The Court of Appeal deals only with appeals lower courts. The Court of Appeal consists of two divisions:

1. Civil Division hears appeals from the High Court and County Court and certain superior tribunals,
2. Criminal Division may only hear appeals from the Crown Court. Its decisions are binding on all subordinate courts, including itself.

3.3.1.1.2. High Court

It consists of three divisions:

i. Queen's Bench,
ii. Chancery and
iii. Family divisions.

[16] https://www.judiciary.gov.uk accessed on 12/03/2015

[17] http://www.scotcourts.gov.uk accessed on 12/03/2015

The divisions of the High Court are not separate courts, but have somewhat separate procedures and practices adapted to their purposes. Although particular kinds of cases will be assigned to each division depending on their subject matter, each division may exercise the jurisdiction of the High Court.

iii. Crown Court

The Crown Court is a criminal court of both original and appellate jurisdiction. It was established by the Courts Act 1971. It replaced the Assizes whereby High Court judges would periodically travel around the country hearing cases, and Quarter Sessions which were periodic county courts. The Old Bailey is the unofficial name of London's most famous Criminal Court, which is now part of the Crown Court. Its official name is the "Central Criminal Court". The Crown Court also hears appeals from Magistrates' Courts.

3.3.1.2. Courts of Scotland

3.3.1.2.1. High Court of Justiciary

More serious crimes and appeals from the Sheriff Court are heard by the High Court of Justiciary. There is no appeal available in criminal cases to the Supreme Court of the United Kingdom,with respect to points of criminal law. Cases where the accused alleges a breach of the European Convention on Human Rights or European law can also be referred or appealed to the UK Supreme Court for a ruling on the relevant alleged breach. In these cases the UK Supreme Court is the successor to the House of Lords as the highest civil court having taken over the judicial functions of the House of Lords and the Privy Council from 2009; an appeal to it arising from a criminal case deals with the rights of the accused under civil law not any direct point of criminal law although a successful appeal has the capability of invalidating the preceding criminal trial if it amounts to a breach of the right to a fair trial required by the Human Rights Act 1998.

3.3.1.2.2. Sheriff Courts

Sheriff Courts act as regional criminal courts and deal with cases under both Alone (summary procedure)and Jury (solemn procedure). Cases can be heard either before the Sheriff or the Sheriff and a jury.

3.3.1.2.3. Justice of the Peace Courts

Less serious criminal offences which can be dealt with under summary procedure are handled by local Justice of the Peace Courts. Justice of the peace courts (also known as JP courts) are a unique part of Scotland's criminal justice system. A justice of the peace is a lay magistrate, appointed from within the local community and trained in criminal law and procedure. Justices sit either alone, or in a bench of three, and deal with the less serious summary crimes, such as speeding, careless driving and breach of the peace In court justices have access to advice on the law and procedure from lawyers, who fulfill the role of legal advisers or clerk of court.

3.3.1.3. Courts of Northern Ireland,

3.3.1.3.1. Court of Appeal

The Court of Appeal is the highest court in Northern Ireland. Appeal from the Court of Appeal lies to the Supreme Court of the United Kingdom. The Court of Appeal hears appeals from the Crown Court, High Court, county courts, courts of summary jurisdiction and tribunals.

3.3.1.3.2. High Court

The High Court is located in the Royal Courts of Justice, Belfast. There are three division of the High Court

1. Queen's Bench Division,

2. Family Division and
3. Chancery Division.

3.3.1.3.3. Crown Court

The Crown Courts hear more serious criminal cases. These are indictable offences and "either way" offences which are committed for trial in the Crown Courts rather than the magistrates' courts

3.3.2. Supreme Court of the United Court

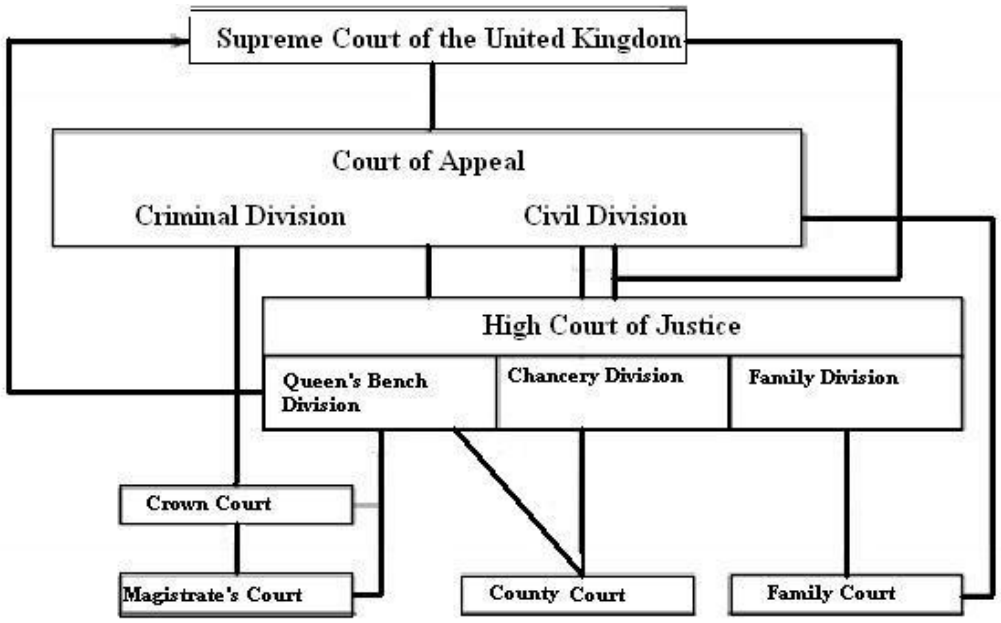
The Constitutional Reform Act 2005 made provision for the creation of a new Supreme Court for the United Kingdom. Before the Supreme Court was created, the 12 most senior judges ,the Lords of Appeal in Ordinary, or Law Lords as they were often called ,sat in the House of Lords. The House of Lords was the highest court in the land , the supreme court of appeal. It acted as the final court on points of law for the whole of the United Kingdom in civil cases and for England, Wales and Northern Ireland in criminal cases. Its decisions bound all courts below. As members of the House of Lords, the judges not only heard cases, but were also able to become involved in debating and the subsequent enactment of Government legislation.[18]

[18] The Constitutional Reform Act 2005

Section 5 Representations to Parliament

1. The chief justice of any part of the United Kingdom may lay before Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in that part of the United Kingdom.
2. In relation to Scotland those matters do not include matters within the legislative competence of the Scottish Parliament, unless they are matters to which a Bill for an Act of Parliament relates.
3. In relation to Northern Ireland those matters do not include transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.
4. In subsection (3) the reference to transferred matters has the meaning given by section 4(1) of the Northern Ireland Act 1998 (c. 47).
5. In this section “chief justice” means—

   (a)in relation to England and Wales or Northern Ireland, the Lord Chief Justice of that part of the United Kingdom;



The creation of a new Supreme Court means that the most senior judges are now entirely separate from the Parliamentary process.[19] It is important to be aware that the new Supreme Court is a United Kingdom body, legally separate from the England and Wales courts as it is also the Supreme Court of both Scotland and Northern Ireland. As such, it falls outside of the remit of the Lord Chief Justice of England and Wales in his role as head of the judiciary of England and Wales.

3.3.3. Public Prosecutor

3.3.3.1. Crown Prosecutor

(b)in relation to Scotland, the Lord President of the Court of Session.

[19]**The Constitutional Reform Act 2005**

Section 25 Qualification for appointment

1. (1)A person is not qualified to be appointed a judge of the Supreme Court unless he has (at any time)—

(a)held high judicial office for a period of at least 2 years,

(b)been a qualifying practitioner for a period of at least 15 years.

F4[(b)satisfied the judicial-appointment eligibility condition on a 15-year basis, or

(c)been a qualifying practitioner for a period of at least 15 years.]

Amendments (Textual) F4 S. 25(1)(b)(c) substituted (21.7.2008) for s. 25(1)(b) and preceding word by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, Sch. 10 para. 41(2); S.I. 2008/1653, art. 2(d) (with arts. 3,4)

In 1962 a Royal Commission recommended that police forces set up independent prosecution departments so as to avoid having the same officers investigate and prosecute cases. However, the Royal Commission's recommendation was not implemented by all police forces, therefore in 1978 another Royal Commission was set up and it has reported in 1981, recommended for the unified Crown Prosecution Service for all public prosecutions in England and Wales.

Pursuant to the enactment of Prosecution of Offences Act, 1985, the Crown Prosecution Service (CPS) headed by the Director of Public Prosecutions was constituted in England. Before that, except in certain cases reserved to the Attorney General or the Director of Public Prosecutions, the conduct of the prosecution in cases instituted by the police was the responsibility of the police who either presented the prosecution case in the Magistrates' Courts themselves or instructed lawyers to do so. After the new law came into force, the prosecution is now being conducted by the members of the CPS. In the Crown Courts, the Prosecution was and still remains in the hands of members the independent Bar. The prosecutors are now being briefed by the members of the 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.

Crown Prosecutors, they are also known as reviewing lawyers, provide advice to the investigator and take charging decisions. Crown Advocates present prosecution cases in court; Associate Prosecutors represent the Crown Prosecution Services in cases with guilty pleas in the magistrates' courts; and paralegals assistants provide clerical assist in dealing with progressing cases.

Independent barristers may also be engaged to represent the prosecution in court in complicated cases generally in the Crown Court and appeal courts and to provide expert advice as and when required.

Headquartered of Director of Prosecution is situated in London and York. The Director of Public Prosecutions is assisted by the Chief Executive, Crown Prosecution Service in running the organisation. There are separate thirteen CPS

Areas, which are responsible for conducting prosecutions in specific parts of England and Wales; each area is led by a Chief Crown Prosecutor.

In United Kingdom before the Crown Prosecution System was introduced the prosecution was under the Head of the Police Department. The Royal Commission (1962) felt that it was impossible for the police to deal with both investigation and prosecution efficiently and effectively. The Crown Prosecution System was established in 1985 and under this the prosecution of criminal cases was done by the legal practitioners thus making it totally independent from the Police Department.

In Northern Ireland, the Prosecution of Offences (Northern Ireland) Order 1972, clearly states that the DPP should be an advocate having practice for a minimum period of 10 years at the Bar of Northern Ireland or as a solicitor of the Supreme Court of Northern Ireland and that he should not possess any investigating functions but only prosecutory powers. The Scotland Government also follows a similar system.

3.3.3.2. Role and Responsibility of the Crown Prosecutor

3.3.3.2.1. Pre charge advice

The CPS is often provide advice to the investigators on viability and complexity of a prosecution on request. Advices include clarifying the intent in which an offender committed an offence or address shortcomings in the available evidence. But the CPS has no power to order investigations or direct investigators to proceed. Whether the CPS is asked for advice or a charging decision is entirely at the discretion of investigators.

3.3.3.2.2. Charging decisions

The Code for Crown Prosecutors requires prosecutors to answer these questions in the 'Full Code Test':

(i) Advice on the sufficiency of the evidence;
(ii) Advice on the public interest considerations of the case;
(iii) Any observations on any special features which ought to be known to the Law Officers, e.g. Parliamentary or press interest in the case;

These questions must be answered in this order; if there is insufficient evidence, the public interest in prosecuting is irrelevant. According to the Code for Crown Prosecutors, if there is insufficient evidence to prosecute, no further action will be taken against the suspect or the prosecutor will ask the police to carry out further inquiries to gather more evidence. When there is sufficient evidence but a prosecution is not required in the public interest, prosecutors can decide that no further action should be taken or that a caution or reprimand is a suitable alternative to prosecution.

NolleProsequi

The power of the Attorney to issue a *nolleprosequi* has no statutory basis. The exact original of the plea of *nolleprosequi* is uncertain, one of the earliest known instances of its use. Its underlying basis seems to be drawn from the need for the Crown, in whose name criminal proceedings were instituted, to reserve the right to terminate the same proceedings at will.

The Attorney General may terminate criminal proceedings on indictment before a judge and jury by the entry of a *nolle.* It puts an end to the prosecution, but it does not operate as a bar or discharge or an acquittal on the merits and the defendant remains liable to be re-indicted. It can therefore be likened to a stay on proceedings.

Prosecutors can discontinue, withdraw or offer no evidence in their cases, but only the Attorney General may enter a *nolle*.

The Attorney General's discretion is extremely wide and cannot be questioned by the courts. In the modern era, it will usually only be exercised where the Attorney General is satisfied that its use is in the public interest, and where proceedings cannot be terminated in any other way. The most common ground of application is the ill-health of a defendant. Applications may be received from either party but the majority are from defendants.

3.3.3.3. Conducting prosecutions

Whether a decision to charge is taken by police or prosecutors, the CPS will conduct the case, which includes preparing the case for court hearings, disclosing material to the defence and presenting the case in court. The CPS will

be represented in court from the first hearing through to conviction/sentencing, and in some cases appeal.

3.3.3.3.1. Appeals

When an appeal against conviction or sentence is lodged by a defendant, the CPS will decide whether or not to oppose the appeal after considering the grounds of appeal. If it decides to oppose, it will present relevant evidence and material to assist the appellate court.

3.4. Judiciary in India

3.4.1. Supreme Court of India

The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President of India, as the sanctioned full strength. Supreme Court Judges retire upon attaining the age of 65 years Eligibility for being a judge of the Supreme Court in Article 124(3).[20] In order to be appointed as a Judge of the

Supreme Court, a person must be a citizen of India and must have been for at least five years a Judge of a high court or of two or more such Courts in succession or an advocate of a high court or of two or more such Courts in succession for at least 10 years or he must bein the opinion of the president a distinguished jurist. Provisions exist for the appointment of a Judge of a high court

[20] Article 124 (3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I.

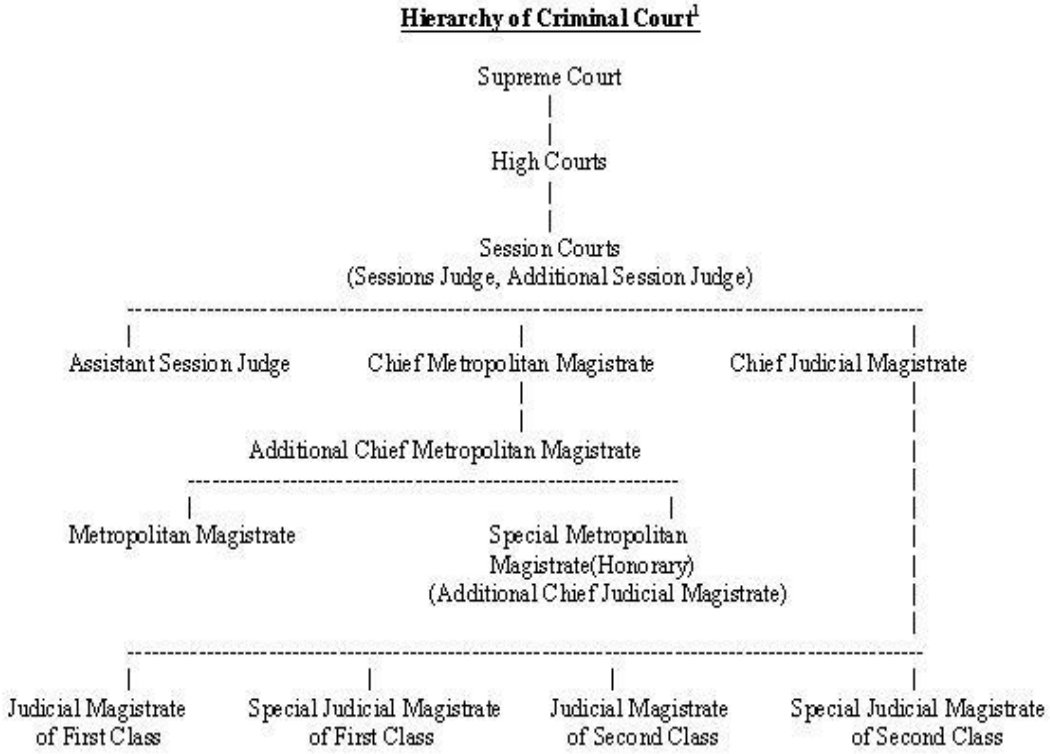
—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.

—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

as an ad hoc judge of the Supreme Court and for retired judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

The Supreme Court of India is the highest court of the land as established by Part V, Chapter IV of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court in civil and criminal matter which takes up appeals against judgments of the High Courts of the states and territories.



[1] Kelkar R.V., , Red. Dr. Pillai K.N.C. "Criminal Procedure ", Eastern Book Company, 2008, pg. 18

However, it also takes writ petitions in cases of serious human rights violations or any petition filed under Article 32 of the constitution of India which is the right to constitutional remedies or if a case involves a serious issue that needs immediate resolution.

3.4.2. High courts

There are 24 High Courts at the State level. Article 141 of the Constitution of India mandates that they are bound by the judgments and orders of the Supreme Court of India by precedence. These courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate courts such as the civil courts, family courts, criminal courts and various other district courts. High courts are instituted as constitutional courts under Part VI, Chapter V, Article 214 of the Indian Constitution.

High courts exercise their original civil and criminal jurisdiction only if the courts subordinate to the high court in the state are not competent (not authorised by law) to try such matters for lack of pecuniary, territorial jurisdiction. Primarily the work of most High Courts consists of Appeals from lower courts and writ petitions in terms of Article 226 of the Constitution of India. Writ Jurisdiction is also original jurisdiction of High Court.

Judges in a high court are appointed by the President after consultation with the Chief Justice of India, Chief Justice of High Court and the governor of the state. The number of judges in a court is decided by dividing the average institution of main cases during the last five years by the national average, or the average rate of disposal of main cases per judge per year in that High Court, whichever is higher.

High courts which handle a large number of cases of a particular region, have permanent benches (or a branch of the court) established there. For litigants of remote regions, 'circuit benches' are set up, which work for those days in a month when judges visit.

3.4.3. District courts

The District Courts of India are established by the State governments in India for every district or for one or more districts together taking into account the number of cases, population distribution in the district. They administer justice in India at a district level. These courts are under administrative control of the High Court of the State to which the district concerned belongs. The decisions of District court are subject to the appellate jurisdiction of the concerned High court.

The district court is presided over by District Judge appointed by the state Government.21 In addition to the district judge there may be number of Additional District Judges and Assistant District Judges. The Additional District Judge and the court presided have equivalent jurisdiction as the District Judge and his district court.

The district judge is also called "Metropolitan session judge" when he is presiding over a district court in a city which is designated "Metropolitan area" by the state Government. The district court has appellate jurisdiction over all subordinate courts situated in the district on both civil and criminal matters.

Subordinate courts, on the civil side (in ascending order) are,

- Junior Civil Judge (Junior Division)Court,
- Civil Judge (Senior Division)Court,

Subordinate courts, on the criminal side (in ascending order) are,

- Judicial Magistrate Court Second Class,
- Judicial Magistrate Court First Class,
- Chief Judicial Magistrate Court.

3.4.4. Historical aspect of Jury System in India

The jury system was found in the Code of Criminal Procedure 1898. According to the provision the number of jury persons varies from 6 to 9 in session and High court simultaneously. These number varies in trial of accused belong to Englishman. The discrimination was subjected to criticism therefore jury system was not popular. In 1920 a British Governor wrote that trial by jury in India was an exotic plant which is unsuitable to the country. Gandhi said that he was unconvinced by the superiority of "untrained juries" in comparison towards trained judges; for the future independent India, he wanted a judiciary independent from religious and castes prejudices. In the Mahatma Gandhi assassination, the trial of **NathuramGodse** was held by single judge.

[21] Article 233(1)

The jury found no place in the 1950 Indian Constitution, it was ignored in many Indian States and the Law Commission recommended its abolition in 1958 (14th Report).

3.4.4.1. The abolition of the Jury system.

In April 1959, Commander Nanavati of the Indian Navy shot dead his wife's paramour. In the session trial he was convicted by the session judge despite the acquitted by a Bombay jury (by a majority of eight to one). According to the law, the verdict was returned to the High Court. Two judges sentenced Nanavatito imprisonment for life. The sentence was confirmed by the Supreme Court in 1961. It was said that the verdict was "perverse" and influenced by Medias. Aftermath of the case was that jury trial was abolished in India by a very discrete process during the 1960s, finishing with the 1973 Code of criminal procedure.

3.4.4.2. Analysis of Jury System

Though the jury was not famous in the Indian Judiciary system its utility is very high in judicial process. The Supreme and High Courts is overburdened with cases. The Supreme Court is composed of 29 members and is judging more than 50 000 cases every year whereas the 21 High Courts (for 28 States and 7 Union territories) are composed of about 750 judges and they are judging all appeal cases from the subordinate courts. The subordinate courts with nearly 16,000 judges (district judges) are corresponding to the civil and criminal (Criminal Courts of session) courts. There is a great number of vacancies and about 10 judges for one million people that amount to pending cases for more than 350 years. 35 millions of cases are delayed and the weight of this backlog is huge Special Courts with lay assessors. As we search closely it is found that in Juvenile Courts are composed of one magistrate and two social workers (whose one is one woman). The implementation of this legislation has encountered many obstacles in different Indian States.

Lay assessors are present, besides one professional judge in different specialized tribunals: for taking off compensations, railways tariffs, work accidents compensations, rent control… some of the lays assessors are in fact experts in technical matters.

In 1984 Family Courts were created for promoting women rights in matrimonial cases. These courts are established only in cities with more than one million habitants, with a professional judge and the preference for settlement by professional conciliators. Although the 1984 act has foreseen for a majority of women judges, there were (2002) 18 women judges out of 84 family courts.

Village courts called "LokAdalats" (People's Courts) or NyayaPanchayats (Justice of the Villages) with villagers mediating between contending parties. They were recognized through the 1888 Madras Village Court Act, then developed (after 1935) in various provinces and (after 1947) Indian states. The model from the Gujarat State (with a judge and two assessors) was praised from the 1970s onwards. In 1976 the new article 39A of the constitution promised "opportunities for securing justice" to any citizen through legal aid. In 1984 the Law Commission recommended to create NyayaPanchayats in rural areas with laymen ("having educational attainments").

In 2005 a Draft Bill followed the Law Commission report, but the National Advisory Council rejected the concept of lay judges as "cumbersome, dilatory and expensive". The Gram Nyayalayas Act, passed in 2008[22], have foreseen 5 000 mobile courts in the country for judging petty civil (property cases) and criminal (until 2 years of prison) cases. Social workers can be appointed as civil conciliators.

Gram Nyayalayas Act 2008 had into force on October 2, 2009. The Gram Nyayalayas Act, 2008 has been enacted to provide for the establishment of the Gram Nyayalayas at the grass roots level for the purpose of providing access to justice to the citizens at their door steps. Objective of the act is to provide inexpensive justice to people in rural areas at their Panchayat level and dispose the work by going to the villages.[23] Each Gram Nyayalaya is a court of Judicial Magistrate of the first class and its presiding officer (Nyayadhikari) is appointed

[22] The Gazette of India, Extra Ordinary, Part II, Section I, No. 5, 9 January 2009, Accessed from http://doj.gov.in/sites/default/files/gramnyayalayas_0.pdf

[23] Objective of the Act: An Act to provide for the establishment of Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

by the State Government in consultation with the High Court.[24] A Gram Nyayalaya is established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district. Seat of the Gram Nyayalaya is located at the headquarters of the intermediate Panchayat, they go to villages, work there and dispose of the cases.[25] The judges who preside the Grama Nyayalaya are strictly judicial officers. They draw the same salary, deriving the same powers as First Class Magistrates working under High Courts.[26] A Grama Nyayalaya is a mobile court and exercises the powers of both Criminal and Civil Courts. Gram Nyayalaya try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act. Offences that may be heard by these Gram Nyayalay are as follows :[27]

1. Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
2. Theft as well as receiving or retaining stolen property, where the value of the property stolen does not exceed rupees twenty thousand
3. Offences related to central acts such as payment of wages, minimum wages, Protection of civil rights, Bonded labour, Protection of Women from Domestic Violence Act etc.
4. Offences under states acts which are notified by each state government.
5. Civil and Property suits such as use of common pasture, water channels, farms, right to draw water from a well or tube well etc.

The first schedule and second schedule of the Gram Nyayalaya act can be amended by both the central and state governments. Each Gram Nyayalaya exercises the power of a Civil Court with some modification such as special procedure as mentioned in the act. The primary focus of the Gram Nyayalaya is to bring about conciliation between the parties. The judgment and order passed by the Gram Nyayalaya is deemed to be a decree. A Gram Nyayalaya is not be bound

[24] Section 6. Qualifications for appointment of Nyayadhikari. - (1) A person shall not be qualified to be appointed as a Nyayadhikari unless he is eligible to be appointed as a Judicial Magistrate of the first class.

[25] Ibid Section 3

[26] Ibid Section 7

[27] Ibid Sections 12, 13

by the rules of evidence provided in the Indian Evidence Act, 1872 but is guided by the principles of natural justice and subject to any rule made by the High Court.

3.4.5. Trial

3.4.5.1. Stages of Criminal Trial

There are two recourse for setting criminal justice machinery in motion

1. Recording first information report to police by victim or informant
2. Filling complaint before the magistrate

3.4.5.1.1. Recording first information report to police by victim or informant

Preliminary stage after commission of crime:

1. Lodging of F.I.R. (S.154) or complaint at the P.S. by the Complainant in cognizable cases leading to investigation and filing of a Charge sheet resulting in filing of Prosecution Report (PR) or Charge Sheet or
2. The complainant approaches the Court of a Chief Judicial Magistrate to lodge a Complaint.

On receipt of a Police Report, if the CJM finds materials of commission of an Offence, he takes cognizance of the offence and after supplying copies of the evidence to the accused, Commits the case to a Sessions Court (If the Offence is triable by a Sessions Court) and if the offence is triable by a Magistrate, he either tries the case himself or sends it to a court of any other Judicial Magistsrate for trial. A magistrate can also send a private complaint **u/Sec.156(3)** of the Cr.P.C. to the Police for investigation directing him to treat the same as an F.I.R.

3.4.5.2. Filling complaint before the magistrate

In the case of private complaint, he examines the witnesses (All witnesses if the complaint is regarding a Sessions Triable case and only a few witnesses in other cases) u/Sec.200 Cr.P.C. and peruses the documents produced before taking cognizance of the Offence). In case an offence triable by a Court of Sessions, he

Commits the case to a Court of Sessions for Trial and if the offence is triable by a Court of Judicial Magistrate he after taking cognizance, either tries the case himself or transfers the case to any other Magistrate for trial.

3.4.6. Public Prosecutor

In most of the states in India adopted the Directorate of Prosecution System. Separate Directorates of Prosecution have been functioning for quite some time in several States. However, it is a common complaint of the Police, particularly, those in charge of investigation, that there is no proper coordination between the Police and the Prosecution. The Prosecutors, being no longer under the control of the Police Department, are not taking sufficient interest in their work. The ground position regarding the prosecution arrangement varies from State to State. Presently, most of the States have a separate Directorate of Prosecution.

Some States like Bihar, Maharashtra, Kerala, MP, Tamil Nadu, AP, Orissa, Rajasthan and NCT of Delhi have placed this Directorate under the Home Department. In some other States like Haryana, Himachal Pradesh, Karnataka and Goa, the Directorate is under the administrative control of the Law Department.

In some of the States, the Director of Prosecution is an officer belonging to the higher judicial service in the State. In Tamil Nadu and Uttar Pradesh, the post of Director of Prosecution is held by IPS officers of the rank of DGP/IG. In Gujarat, there is no separate Directorate of Prosecutions.

Hierarchy in directorate of prosecution according to section 25(A)[28] is as follows (Ascending order) :-

[28]Section 25A: Directorate of Prosecution

1. The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.
2. A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

1. Assistant Public Prosecutors – Assistant Public Prosecutor Officers scrutinise charge sheets prepared by the investigating agency and submit discharge/ acquittal. They evaluate the evidence in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgments, as well as conduct cases in Courts of Metropolitan Magistrates.
2. Additional Prosecutors – Additional Public Prosecutors conduct cases in Sessions Courts
3. Chief Prosecutors – Chief Prosecutors supervise the work of Assistant Public Prosecutors in the Courts of Metropolitan Magistrates
4. Public Prosecutor – Public Prosecutor is responsible for supervision of prosecution work conducted by Additional Public Prosecutors in the Sessions Courts
5. Director of Prosecution – The Director of Prosecution is the Head of Office. The Director of Prosecution looks after the Establishment and Accounts Branches and exercises overall control over officers of the Directorate

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The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

3. Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.
4. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (1), or as the case may be, Sub-Section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.
5. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (3), or as the case may be, Sub-Section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under Sub-Section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.
6. The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.
7. The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.

3.4.6.1. The Role of the Prosecutor:

Section 24 of the Cr.P.C.[29] states that appointment of public prosecutors in the High Courts and the district by the central government or state government.

[29]Section 24.Public Prosecutors.

1. For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.
2. The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.
3. For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.
4. The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.
5. No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless
    a. Subs. by Act 45 of 1978, s. 8, for s. 24 (w. e. f. 18- 12- 1978).
6. his name appears in the panel of names prepared by the District Magistrate under sub- section (4).
7. Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub- section (4).
8. A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.
9. The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

Sub-section (3) lays down that for every district, the state government shall appoint a public prosecutor and may also appoint one or more additional public prosecutors for the district. Sub-section 4 requires the district magistrate to prepare a panel of names of persons considered fit for such appointment, in consultation with the sessions judge. Sub-section (5) explains an embargo against appointment of any person as the public prosecutor or additional public prosecutor in the district by the state government unless his name appears in the panel prepared under sub-section (4). Sub-section (6) provides for such appointment wherein a state has a local cadre of prosecuting officers, but if no suitable person is available in such cadre, then the appointment has to be made from the panel prepared under subsection 4. Subsection 4 says that a person shall be eligible for such appointment only after he has been in practice as an advocate for not less than seven years.

Section 25[30] deals with the appointment of an assistant public prosecutor in the district for conducting prosecution in the courts of magistrate. In the case of a

10. For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

[30] Section 25 :Assistant Public Prosecutors

1. The State Government shall appoint in every district one or more Assistant public Prosecutors for conducting prosecutions in the Courts of Magistrates. 1A. The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.
2. Save as otherwise provided in Sub-Section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.
3. Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case;

   Provided that a police officer shall not be so appointed—

   1. if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or
   2. if he is below the rank of Inspector

public prosecutor also known as district government counsel (criminal) there can be no doubt about the statutory element attached to such appointment by virtue of this provision in the Cr.P.C. 1973.

3.4.6.2. Powers of the Public Prosecutor

The Public Prosecutor is the counsel for the government and conducts prosecution on behalf of the State Government or Central Government as the case may be. In criminal cases, the state and not the complainant is a party. An offence is an invasion against the public peace and wrong against the society at large and, therefore, every trial before a Session Judge should be conducted only by a public prosecutor and not by a counsel engaged by a complainant.[31] He can withdraw any cases at any time but before the judgement on his own discretion.

3.4.6.3. Duties of the Public Prosecutor

A public Prosecutor is an officer of the court and bears an obligation to the court to be fair, just and impartial. He is duty bound t represent state. Public Prosecutor is required to perform his duty fearlessly and with full sense of responsibility. The ideal Public Prosecutor should neither misstate the facts, nor conceal the truth in any case before him and laydown all evidences as appropriate and required. He should not consider himself as an agent of the government but an agent of the justice. He is a minister of Justice in the real sense.[32]

Presently, most of the States have a separate Directorate of Prosecution. Some States like Bihar, Maharashtra, Kerala, Madhya Pradesh, Tamil Nadu, Andhra Pradesh, Orissa, Rajasthan and National Capital Territory of Delhi have placed the Directorate under the Home Department.

In other States like Haryana, Himachal Pradesh, Karnataka and Goa, the Directorate is under the administrative control of the Law Department.

[31]section 25 of the Cr.P.C.

[32]Rondel v. Worsely (1967)1 QB 443(502)

In other States, the Director of Prosecution is an officer belonging to the higher judicial service in the State. In Tamil Nadu and Uttar Pradesh, the post of Director of Prosecution is held by IPS officers of the rank of Director General of Police(DGP)/Inspector General of Police(IG). In state of Gujarat, there is no separate Directorate of Prosecutions.

3.4.6.4. Special Public Prosecutor

According to the section 24(8) of the Cr. P.C. the central government or the State government can appoint any person who has been in practice as an advocate for not less than ten years as an special public prosecutor for conducting any particular case or class of cases. The appointment under this provision differs from an appointment under section 24(3). Appointment under section 24(3) is in general term. Appointment under section be made only in case where there is public interest in demand and grievances of a private person is not vindicated. The appointment under section should also be not made in routine bases. Power and duties of the special public prosecutor are same as a public prosecutor appointed under section 24(3) but differ in remuneration. There is no fixed remuneration for the special public prosecutor.

The Indian judiciary interpreted In various cases the role, responsibilities and duties of prosecution as follows:

1. The Public Prosecutor is not merely a attorney of the state whose prime function is not only to prove accusation in court but also secure justice. Public Prosecutor must place all relevant evidences before the court which is in their possession.
2. The primary and utmost aim of a Public Prosecutor is to aid the court in discovering truth. A Public Prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side.
3. Public Prosecutor is to representative of the State and not the police. A Public Prosecutor is an important officer of the State Government and is appointed by the State. Public prosecutor is an independent statutory authority.

4. A Public Prosecutor should discharge prosecutor duties fairly and fearlessly and with full sense of responsibility that attaches to prosecutor position.
5. In case of withdrawal of cases the sole consideration for the Public Prosecutor is to act judiciously. Public prosecutor decides a withdrawal from a prosecution is the larger factor of administration of justice, not political favours nor party pressures nor executive intervention.
6. Superintendent of Police or District Magistrate bring to the notice of the Public Prosecutor materials and suggestion whether the prosecution should be withdrawn or not. on scrutiny public prosecutor decide whether case should be withdrawn or not.
7. If there are some issues that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor in the interest of justice because Public prosecutor functions as an officer of the court and not as the counsel of the State. The Supreme Court stated that the duty of the Public Prosecutor is to ensure that justice is done. Further, court stated that if there is some issue that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor.

3.4.6.5. Directorate of Prosecution

Section 25A is inserted in Code of Criminal Procedure (Amendment) Act 2005 after the recommendation of 197th Law Commission report. State government empowered to establish Directorate of Prosecution in which there shall be Director and as many Deputy Director as state government think fit. The Director of Prosecution will be in administrative control of the Home Department of state concerned. Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor shall conduct cases and work under the Directorate of Prosecution.

3.4.6.6. Judicial response of role of Public Prosecutors in India:

The expression "Public Prosecutor" is defined as "any person appointed under Section 24 of the Code and includes any person acting under the direction of a public prosecutor". But the Code does not specifically mention the spirit in which the duties of the public prosecutor are to be discharged.

In **Anant Wasudeo Chandekar v. King Emperor**[33]the court observed that the object of the criminal trial is to find out the truth and to determine the guilt or innocence of the accused. The duty of the prosecutor in such a trial is not merely to secure conviction at all cost but to place before the court whatever evidence is possessed by the prosecutor whether it be in favour of or against the accused and to leave the court to decide upon all such evidence whether the accused was or was not guilty of the offence alleged.

It was reiterated in 14th Law Commission Report that a public prosecutor should be personally indifferent to the result of the case. His duty should be in order to place all evidence before the court. The impartiality of his conduct is as vital as impartiality of the court itself.[34]

In the landmark judgment of **Sheonandan Paswan v. State of Bihar**[35]the Supreme Court observed that:

> (1) Under the Scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.
> (2) The withdrawal from the prosecution is an executive function of the Public Prosecutor.
> (3) The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

[33]AIR 1924 Nag 243

[34]14th Report Vol. II p. 765 para 2

[35] 1983 (1) SCC 438

(4) The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

(5) The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and we add, political purposes Sans Tammany Hall enterprise.

(6) The Public Prosecutor is an officer of the Court and responsible to the Court.

(7) The Court performs a supervisory function in granting its consent to the withdrawal.

It is on account of pronouncement of catena of judgments by High Court as well as Hon'ble Supreme court that some strength has been given to the office of Public Prosecutor to discharge his statutory duty as far as possible to meet out the requirement of law which has been dealt with in judgment of this Allahabad High Court **U.P. Shashkiya Adhivakta Kalyan Samiti v. State of U.P and others**,[36].

In **Deepak Aggarwal v. Keshav Kaushik and others**[37]Supreme Court considered the rights and duties of Public Prosecutor, held that the Public Prosecutors are officers of the court and play important role in the administration of justice, particularly in criminal justice system. They have to perform their duties fairly, consistently and expeditiously to protect human dignity, uphold human right and have to ensure that an accused is tried fairly. A Public Prosecutor is supposed to refuse evidence reasonably believed to have been obtained through the course of unlawful method.

In **State of Punjab v Union of India**[38], their Lordships of Supreme Court ruled that it is the duty of the Court while granting permission to the Public Prosecutor to withdraw from prosecution, to satisfy itself that the executive

[36] 2012(30)LCD 1066

[37] (2013)5 SCC 277

[38] (1986)4 SCC 335

function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. The administration of justice is the touch stone on which the question must be determined whether the prosecution should be allowed to withdraw. Not only the material or paucity of evidence but broad ends of public justice including appropriate socio economic conditions may be ground to move withdrawal application.

In **Abdul Karim v. State of Karnataka**[39], Hon'ble Supreme Court reiterated the principle emerging from Sheonandan Paswan and held that the Public Prosecutor may move application on the basis of the material provided by the State.

In **Jasbir Singh v Vipin Kumar Jaggi**[40], Supreme Court held that the provision contained in Section 321 CrPC is different than the power conferred by Section 307 of the Code. Unlike grant of pardon under Section 307, withdrawal from prosecution under Section 321 is unconditional though it requires express permission of the Central Government in specified cases. Implicit in the grant of the power is that it should be in the interest of administration of justice.

In S**.K. Shukla v. State of U.P.**[41], the Supreme Court ruled that the Public Prosecutor cannot work like a post box or act on the dictates of the State Govt. He has to act objectively as he is also an officer of the court. The court has to assess freely whether a case is made out for withdrawal of prosecution or not. It is always open for the court to reject the prayer.

In **Vijay kumar Baldev Mishra v. State of Maharashtra**[42], Supreme Court held that while taking a decision under Section 321 of the Code, it is necessary for the courts to apply mind with regard to ground of withdrawal from the prosecution for which an accused is tried.

[39] (2000)8 SCC 710

[40] (2001)8 SCC 289

[41] (2006)1 SCC 314

[42] (2007) 12 SCC 687

In **Yerneni Raja Ramchandar alias Rajababu v. State of Andhra Pradesh and other**s [43] , their Lordships of Supreme Court had shown displeasure to the interest shown by the State Government for withdrawal of criminal prosecution. The Sessions Judge had rejected the application for withdrawal of the case. High Court affirmed it. Supreme Court while affirming the order of the High Court deprecated the interest shown by the State Government in the accused and observed, to quote :

> "19. Even otherwise, the action on the part of the State, in our opinion, suffers from malice on fact as well. The State is the protector of law. When it deals with a public fund, it must act in terms of the procedure established by law. In respect of public fund, the doctrine of public trust would also be applicable so far as the State and its officers are concerned. It could not save and except very strong and cogent reasons have issued the said G.O. despite the orders of the High Court.

In **R K Jain's case**[44] , the Hon'ble Supreme Court held quoting **Shamsher Singh v. State of Punjab**[45], as regards the meaning and content of executive powers tends to treat the public prosecutor's office as executive. But the conclusions of some courts create doubt as to its exact nature. To the suggestion that the public prosecutor should be impartial, the Kerala High Court equated the public prosecutor with any other counsel and responded thus: Every counsel appearing in a case before the court is expected to be fair and truthful. He must of course, champion the cause of his client as efficiently and effectively as possible, but fairly truthfully. He is not expected to be impartial but only fair and truthful.

In **ZahiraHabibullah v. State of Gujarat,**[46] well as 'Best Bakery' case the Hon'ble Supreme Court accepted the transfer of case to Maharashtra from Gujarat and ordered retrial of the matter in the Hon'ble High Court of Maharashtra, and observed that in Gujarat, it appear that the Public Prosecutor was

[43] (2009) 15 SCC 604

[44] AIR 1980 SC 1510

[45] 1974 (2) SCC 831

[46]Appeal (Criminal.) 446, 2004

acted more as a defence counsel than prosecutor one whose primary duty was to present the truth before the Court.

In **Thakur Ram v. State of Bihar**[47], the Hon'ble Supreme Court held that the rationale behind the State undertaking prosecutions appears to be that no private person uses the legal apparatus to wreak private vengeance on anyone.

> "Barring a few exceptions, in criminal matters the party who is treated as aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all steps necessary for bringing the person who has acted against the social interests of the community to book"

In **Vineet Narain v. Union of India**[48], when the court focused that the CBI failed to investigate properly offence involving high political dignitaries. The Hon'ble Court emphasized the need to ensure that there are no arbitrary restrictions to the initiation of Investigations or launching of prosecutions''.

In **Jitendra Kumar v. State (NCT of Delhi)**[49], Delhi High Court, it was observed that In the Criminal Justice System this role is performed by the Public Prosecutor on behalf of the State. In several precedent court ruled that the Public Prosecutor is a Minister of Justice who plays a critical role in maintaining purity and impartiality in the field of administration of criminal justice.

In **S.B. Sahana v. State of Maharashtra**[50]Hon'ble High Court of Bombay directed the Government of Maharashtra to constitute a department of Prosecution having a cadre of Assistant Public Prosecutors. This department shall be directly responsible to the State government for administrative and functional purposes, thereby totally severing the relationship between the police department and the prosecution wing. The law laid down in this case is equally applicable to the other states also.

[47] AIR 1996 SC 911

[48]1998 (1) SCC 226

[49]Crl. W.P. 216/99

[50] 1995 SCC (Cri) 787

The Punjab & Haryana High Court in **Krishan Singh Kundu v. State of Haryana**[51] has ruled that the core idea of appointing a police officer to be in charge of a prosecution agency is in consistency of sections 24 and 25 of the Code. In the same vein the ruling from the Supreme Court in **S.B. Sahana v. State of Maharashtra**[52] found that irrespective of the executive or judicial nature of the office of the public prosecutor, it is certain that one expects impartiality and fairness from it in criminal prosecution.

The Supreme Court in **Mukul Dalal v. Union of India**[53] also ruled that the office of the public prosecutor is a public authority and therefore primacy given to the public prosecutor under the scheme of the court has a legal as well as social purpose. But the malpractices in the public prosecution office maligned the office dignity.

The Law Commission of India in its 154 Report has pointed out that the control of police department on prosecutions is not permissible in view of the Supreme Court' decision in S.B. Shahane's case[54].

[51]1989 Cri. LJ 1309 (P&H)

[52] 1995 SCC (Cri) 787

[53] 1988 3 SCC 144

[54] ibid

Chapter IV

Comparative Study of the Provisions of Withdrawal of Prosecution in India, USA and UK

CHAPTER IV

Comparative Study of the Provisions of Withdrawal of Prosecution in India, USA and UK

4.1. Legal Provisions Related to the Withdrawal from Prosecution in the United States of America

4.1.1. Discretion of the Public Prosecutor

Public Prosecutor in the United State is the focal point of the criminal justice system. Formal powers of the public prosecutor are coupled with the evidence presented to him by the police and present to the court. The prosecutor adjudge the evidence provided by police and decides whether to file charges or drop them. Then prosecutor consults with both the police and the courts and can exert much influence over both. An American prosecutor can use such power in his discretion and in the absence of outer controls.

4.1.2. Complaint

When there is reason to believe that a person has committed a crime, a law enforcement officer files a complaint seeking either an arrest or a search warrant.[1]The complaint is an official document but is not the formal act by which the prosecution starts. The complaint is presented, under oath, to a magistrate, who is required by law to determine whether there is probable cause to believe that the crime was committed and that the suspect might have committed the crime. The issuance of a warrant by the magistrate is the procedural act that formally marks the initiation of prosecution. The warrant itself is the initial, and, in the prosecution of lesser offenses, the only

[1]The fourth amendment of the United States Constitution provides that "no Warrants shall issue, but upon probable cause, supported by Oath." Henceforth, **California Penal Code** § 740 (West 1970), which provides that "all public offenses triable in the inferior courts must be prosecuted by written complaint under oath."

charging act, and the only document manifesting that formal proceedings have started.[2]

Thus, it may be said that in American criminal justice, prosecuting the accused is the right rather than the duty of the public prosecutor.

4.1.3. Procedure of trial

4.1.3.1. Rule 5.1. Preliminary Hearing[3]

(a) In General. If a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless:

(1) the defendant waives the hearing;

(2) the defendant is indicted;

(3) the government files an information under Rule 7(b)[4] charging the defendant with a felony;

(4) the government files an information charging the defendant with a misdemeanor; or;

(5) the defendant is charged with a misdemeanor and consents to trial before a magistrate judge.

(b) Selecting a District. A defendant arrested in a district other than where the offense was allegedly committed may elect to have the preliminary hearing conducted in the district where the prosecution is pending.

(c) Scheduling. The magistrate judge must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody and no later than 21 days if not in custody.

(d) Extending the Time. With the defendant's consent and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, a magistrate judge may extend the time limits in Rule 5.1(c) one or

[2]Vasility A. Vlasihin, "The Prosecutor in American Criminal Procedure: Observations of a Foreign Student", 12 Loy. L.A. L. Rev. 833 (1979).

[3]Title II – Preliminary Proceedings, Federal Rule of Criminal Procedure, accessed from http://www.federalrulesofcriminalprocedure.org/title-ii/

[4]Accessed from : http://digitalcommons.lmu.edu/llr/vol12/iss473

more times. If the defendant does not consent, the magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(e) Hearing and Finding. At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings.

(f) Discharging the Defendant. If the magistrate judge finds no probable cause to believe an offense has been committed or the defendant committed it, the magistrate judge must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.

(g) Recording the Proceedings. The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable Judicial Conference regulations.

(h) Producing a Statement.

(1) In General. Rule 26.2(a)–(d) and (f) applies at any hearing under this rule, unless the magistrate judge for good cause rules otherwise in a particular case.

(2) Sanctions for Not Producing a Statement. If a party disobeys a Rule 26.2 order to deliver a statement to the moving party, the magistrate judge must not consider the testimony of a witness whose statement is withheld.

4.1.3.2. Title IX, General Provision of Federal Rule of Criminal Procedure

Rule 48. Dismissal

(a) By the Government. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

(b) By the Court. The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

(1) presenting a charge to a grand jury;

(2) filing an information against a defendant; or

(3) bringing a defendant to trial.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

Title 2 Rule 32(i)(4)(B) speaks about the victim rights to contend the sentencing of the accused whatsoever.

(4) Opportunity to Speak.

(A) By a Party. Before imposing sentence, the court must:

(i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) By a Victim. Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard.

4.1.4. The Stages of a Criminal Prosecution

4.1.4.1. Investigation

A criminal prosecution usually begins with an arrest. In some cases, the arrest is the culmination of a police investigation; in other cases, it may occur with minimal police investigation. Either way, the manner in which the police investigate suspects and collect evidence is almost always an issue in a criminal case.

During an arrest, a criminal suspect is advised of his or her *Miranda* rights. These include the right to remain silent and the right to an attorney. After arrest, the defendant is subjected to a cursory search for weapons and contraband.

4.1.4.2. Discharge

While the person waits for this first appearance before the court, a police officer prepares a complaint against the suspect. The complaint is a document that describes the alleged crime. It is screened by prosecutors and then submitted to the court. The court reviews the complaint to determine whether there is sufficient legal basis to hold the person in custody. If the magistrate finds that the facts alleged do not establish probable cause to believe that the suspect committed the crime, the magistrate must dismiss the complaint and order the release of the person from custody.

The first appearance must be held without unnecessary delay. Many jurisdictions impose a twenty-four-hour limit on initial detention before a hearing, but this limit may extend to seventy-two hours if the arrest is made on a Friday.

In the first appearance, the magistrate informs the defendant of the charge or charges as set forth in the complaint. The magistrate also informs the defendant of his or her rights, such as the right to remain silent and the right to an attorney

4.1.4.3. Bail

If the magistrate finds probable cause, the magistrate sets bail in the first appearance. Bail consists of the conditions the defendant will have to meet to gain release from custody pending trial.

If the charge is a misdemeanor, the first appearance serves as an arraignment, where the defendant enters a plea of guilty or not guilty. The magistrate then allows the defendant to post bail or leave on her or his own recognizance, with the understanding that the defendant will reappear for trial.

4.1.4.4. Trial

The preliminary hearing is conducted by the magistrate to determine whether the prosecution has sufficient evidence to continue the prosecution. Unlike the first appearance, the preliminary hearing is adversarial. The prosecutor relies on witnesses to present the prosecution's evidence, and the defendant may do the same. Both sides are allowed to question, or cross-examine, the opposing side's witnesses. After this hearing, the court may dismiss the charges if they are not supported by probable cause.

Some of the cases is decided by a grand jury. Grand Jury is a group of private citizens summoned to review, in private, the prosecution's evidence. Generally, a grand jury consists of more jurors than a trial jury, which usually numbers twelve. In a grand jury proceeding, the prosecutor presents the evidence against the defendant to the grand jurors, and the grand jurors may ask questions of the prosecutor. The prosecutor then presents a proposed indictment, or a written accusation sworn to by the prosecutor. If a majority of the grand jury finds no probable cause for the prosecution, it returns a no bill, or a refusal of the indictment. If a majority finds probable cause, the grand jury returns a true bill, and prosecution continues.

After the indictment or information courts review criminal convictions for trial court errors. They rarely overturn verdicts on evidentiary bases. Even if an appeals court finds a trial court error, it will affirm the conviction if it feels the error did not affect the outcome of the case.

Generally, state court defendants appeal to a first court of appeals, then to the highest state court (usually the state supreme court), and then to the U.S. Supreme Court. In federal cases, defendants appeal to a U.S. court of appeals and then to the U.S. Supreme Court. The review of appeals after the first appeal is discretionary; that is, the court may decline to hear the case.

After exhausting all appeals, a defendant sentenced to incarceration may collaterally attack the conviction and sentence. This means the defendant attacks the conviction in an action other than an appeal. The most common method of collateral attack is submission of a petition for a writ of habeas corpus. This is a civil action against the warden of a prison, challenging the legality of the imprisonment. If the court approves the writ, the inmate must be set free.

A habeas corpus petition is not an appeal; courts will grant a writ of habeas corpus only if the defendant can prove that the court that sent the petitioner to prison was actually powerless to do so or that such detention violated the petitioner's constitutional rights. Generally, an inmate will ask for the writ in state court before filing in federal court.

All states also have a procedure in place to hear claims of newly discovered evidence. However, no relief is granted if the new evidence would not have made a difference in the verdict.

Some inmates are given early release from prison, or parole. Parole is granted by the state or federal parole board or correctional board. It allows the inmate to finish the prison sentence in the community. The court requires a paroled defendant, or

parolee, to meet certain conditions on release and to meet regularly with a parole officer for the duration of the sentence.

4.1.4.5. Clemency

Clemency is forgiveness and mercy, and it usually comes in the form of a pardon or of a commutation of a sentence. A pardon releases the inmate from custody and restores his or her legal rights and privileges. A commutation decreases or suspends an inmate's sentence. A commutation is a lesser form of clemency because it does not restore the legal rights of the inmate.

4.2. Legal Provisions Related to the Withdrawal from Prosecution in the United Kingdom

The police in England exercise their discretion to prosecute in a wide variety of offences from minor traffic offenses to cases of murder. In all these, the police make the initial decision to proceed against the defendant. In grievous cases, police are required to report to the Director of Public Prosecutions and, in complex cases police take advice of the solicitor. But in both instances, the initial decision to take the suspect to court is made by the police. Accordingly, in the vast majority of criminal cases, no public official charged with making an independent evaluation of the need to prosecute stands between the police and the courts.

Both the Metropolitan Police and the United States Attorney General exercise their discretion to prosecute free of significant judicial control. In the leading English case on this point, **R. v. Metropolitan Police Commissioner ex parte Blackburn**.[5] Lord Denning stated:

Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police, or the chief constable, as the case may

[5][1968] 1 All E.R. 763 (C.A.).

be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made, or a prosecution brought.[6]

The remarkable fact about the criminal justice system is that until 1985 there was no independent prosecution servicein England and Wales. This is due to localised and decentralised way in which the English system developed. The power of the King had been restricted by the Barons in Magna Carta in 1215. Justice therefore remained overwhelmingly a local affair, under the control of local aristocrats. The emergence of anything resembling a Royal prosecutor or procurator was therefore checked at an early stage. As the more centralised monarchies of Continental Europe became republics in the 18th and 19th centuries the centralised criminal justice systems were retained. The Royal prosecutor became the representative of the new republican state and was seen to act on behalf of the state (or 'the people') to prosecute crimes. But again, there was no revolution at that time in England but rather a slow process of constitutional evolution which did not disturb the existing, essentially local, arrangements. Elements of course of a centralised prosecution system did exist.

Well into the nineteenth century the responsibility for the initiation of criminal prosecution lay with the victim rather as in civil litigation. It is still possible to initiate a private criminal prosecution. In 1995 the family of the murdered black teenager Steven Lawrence, out of a frustration with the apparent lack of action by the authorities, took out a private criminal prosecution against those they suspected of his murder. This was the first private criminal prosecution for over 100 years. [7]

[6]Irving R. Kaufman "Criminal Procedure in England and the United States: Comparisons in Initiating Prosecutions", Fordham Law Review, Volume 49, Issue 1, 1980, pg 7

[7]PatrikBarkham, "Stephen Lawrence Case Q and A", The Guardian, 23/ February 1999, accessed from www.theguardian.com

4.2.1. Public prosecutor

4.2.1.1. Prosecution

The Crown Prosecution Service is the Government Department responsible for determining the charge and prosecuting criminal cases investigated by the police in England and Wales. Created by the Prosecution of Offences Act 1985, we are an independent body that works closely with the police. The head of the Crown Prosecution Service is the Director of Public Prosecutions . The Director is superintended by the Attorney General, who is responsible to Parliament for the Service. Headquarters of the Director of Public Prosecution is based in London, York and Birmingham. These Areas correspond with the boundaries of 43 police forces in England and Wales with The CPS London Area covering the operational boundaries of both City of London and Metropolitan Police Forces. Each Area is headed by a Chief Crown Prosecutor (CCP) who is responsible for prosecutions within the Area. In London the CCP is supported by Sector Directors. Although CCPs are directly accountable for their Areas, most of the responsibilities for the efficient and effective administration of the Area fall to the Area Business Managers.[8]

The Crown Prosecution Service is the principal prosecuting authority in England and Wales. It is responsible for determining the charge in all but minor cases, advising the police during the early stages of an investigation, reviewing cases submitted by the police for prosecution, preparing cases for court and the presenting those cases at court. The role of the Service is to prosecute cases firmly, fairly and effectively when there is sufficient evidence to provide a realistic prospect of conviction and when it is in the public interest to do so.

The decision to proceed with prosecution is the responsibility of the Crown Prosecution Service, and guidelines for their decisions are laid down in the Code for Crown Prosecutors issued under Section 10 of the Prosecution of Offences Act 1985.

Section 10 read as.

[8]Accessed from https://www.cps.gov.uk/victims_witnesses/resources/prosecution.html

1. The Director shall issue a Code for Crown Prosecutors giving guidance on general principles to be applied by them—

   (a)in determining, in any case—

      (i)whether proceedings for an offence should be instituted or, where proceedings have been instituted, whether they should be discontinued; or

      (ii)what charges should be preferred; and

   (b)in considering, in any case, representations to be made by them to any magistrates' court about the mode of trial suitable for that case.

2. The Director may from time to time make alterations in the Code.

3. The provisions of the Code shall be set out in the Director's report under section 9 of this Act for the year in which the Code is issued; and any alteration in the Code shall be set out in his report under that section for the year in which the alteration is made.[9]

Government policy is that mentally disordered people should not be prosecuted unless it is clearly in the public interest. In their decision-making, Crown Prosecutors have to evaluate whether the evidence is sufficient, and in doing so they should have regard to whether the requirements of the Police and Criminal Evidence Act 1984 and its codes of practice, discussed above, have been met. In particular, have the individuals in police custody been properly treated and are there doubts about the reliability of any confessions or other statements made by the accused, bearing in mind his/her intelligence and apparent understanding? The Code for Crown Prosecutors also suggests that they consider whether the accused has any mental disability which may affect his credibility, and whether the public would consider it oppressive to proceed against the accused.

[9] Prosecution of Offences Act 1985 accessed from http://www.legislation.gov.uk/ukpga/1985/23 on 21/12/2014

Secondly, having considered whether the evidence is sufficient the Crown Prosecutor should then decide whether a prosecution is required in the public interest. In particular, the Code specifies:

> "Whenever the Crown Prosecutor is provided with a medical report to the effect that an accused or a person under investigation is suffering from some form of mental illness or psychiatric illness and the strain of criminal proceedings may lead to a considerable worsening of his condition, such reports should receive anxious consideration . . .
>
> Where . . . the Crown Prosecutor is satisfied that the probable effect upon the defendant's mental health outweighs the interests of justice in that particular case he should not hesitate to discontinue proceedings" (para. 8 V(a)).

In appropriate cases, the provision of psychiatric reports at an early stage may have a useful role in influencing the prosecution decision.

4.2.1.2. Criminal Procedure

After being charged, a defendant is brought before the magistrates' court. Cases are then usually remanded for trial, and the defendant may be remanded on bail or in custody. A remand on bail would be the normal course of events, and remands in custody require substantial grounds for believing that the defendant, if released, would commit further offences, abscond or intimidate witnesses. Remands on bail for very grave offences are unusual. Defendants with limited financial means can have legal representation paid for by Legal Aid, and solicitors acting for such clients can seek approval from the Legal Aid authorities to cover fees for medical and other reports that may be necessary.

4.2.1.3. Remand on bail

Many psychiatric assessments for magistrates' courts are carried out while defendants are remanded on bail. Indeed, a remand to hospital for assessment should not be carried out unless the court thinks that it would be impracticable to obtain such

a report by means of a remand on bail. These defendants are normally assessed in an out-patient clinic.

4.2.1.4. Remand in custody

Courts also have powers to remand to prison for psychiatric reports, and these custodial remands tend to be more common than remands to hospital. A remand in custody for a medical report does not require the availability of a psychiatrist to make a medical recommendation and advise on the availability of a bed, and it is therefore a simpler and less time-consuming procedure for busy courts.

4.2.2. Criminal proceedings are begun in England by:

1. Arrest without warrant.
2. Arrest with warrant.
3. Summons.

After commitment of the prisoner by a magistrate the proceedings are continued by:

a. Information.
b. Indictment.
c. Coroner's Inquisition.

4.2.3. Arrest without Warrant.

Apart from the police arrest in case of breach of peace and upon suspicion where he has reasonable ground for believing felony has been committed.

4.2.4. Arrest without warrant: constables

(1)A constable may arrest without a warrant—

(a)anyone who is about to commit an offence;

(b)anyone who is in the act of committing an offence;

(c)anyone whom he has reasonable grounds for suspecting to be about to commit an offence;

(d)anyone whom he has reasonable grounds for suspecting to be committing an offence.

(2)If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

(3)If an offence has been committed, a constable may arrest without a warrant—

(a)anyone who is guilty of the offence;

(b)anyone whom he has reasonable grounds for suspecting to be guilty of it.

The reasons of the arrest are (1) causing physical injury to any person(2) causing damage to property (3)offence against the public decency(4) obstructing highway unlawfully.[10]

(6)Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

A private person may also arrest without warrant,

(1) one who commits a felony or inflicts a dangerous wound in his presence;

[10] Section 24

5 (a)to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);

(b)correspondingly as regards the person's address;

(c)to prevent the person in question—

(i)causing physical injury to himself or any other person;

(ii)suffering physical injury;

(iii)causing loss of or damage to property;

(iv)committing an offence against public decency (subject to subsection (6)); or

(v)causing an unlawful obstruction of the highway;

(d)to protect a child or other vulnerable person from the person in question;

(e)to allow the prompt and effective investigation of the offence or of the conduct of the person in question;

(f)to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

(2) a person who has committed a felony not in the arrestor's presence, where the arrestor has reasonable grounds for believing such person did commit the felony;

(3) persons engaged in an affray;

(4) a person about to commit a felony or treason;

(5) persons who commit offenses specified in certain statutes as the Coinage Act, Customs Act, etc.[11]

4.2.1.4. Arrest with Warrant.

A warrant for arrest is issued by a justice of the peace or magistrate upon a complaint made in writing and upon oath. When a person, against whom an indictment has been "found, is still at large, he may be compelled to attend by a bench warrant, or by a warrant issued by a justice of the peace.

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[11]Police and Criminal Evidence Act 1984, Section 24A , Arrest without warrant: other persons

(1)A person other than a constable may arrest without a warrant—

(a)anyone who is in the act of committing an indictable offence;

(b)anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.

(2)Where an indictable offence has been committed, a person other than a constable may arrest without a warrant—

(a)anyone who is guilty of the offence;

(b)anyone whom he has reasonable grounds for suspecting to be guilty of it.

(3)But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if—

(a)the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and

(b)it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.

(4)The reasons are to prevent the person in question—

(a)causing physical injury to himself or any other person;

(b)suffering physical injury;

(c)causing loss of or damage to property; or

(d)making off before a constable can assume responsibility for him.

4.2.1.5. Summons.

A summons may be issued upon an oral complaint, not made under oath. It directs the accused to appear before a named justice of the peace at a time stated to answer a specified criminal charge. If a summons is not obeyed, a warrant may be issued.

4.2.5. Discontinuation of prosecution

The prosecutor has the right to discontinue the prosecution at any time before trial or up to close of the prosecution case. After that time, the prosecution can only be discontinued with the consent of the court.[12]Public Prosecutor may discontinue a prosecution by

1. withdrawing all charges
2. offering no further evidences

4.2.6. Doctrine of NolleProsequi

The power of the Attorney to issue a nolleprosequi has no statutory basis. The exact origin of the plea of nolleprosequi is uncertain. Its underlying basis seems to be drawn from the need for the Crown, in whose name criminal proceedings were instituted. The Crown itself can terminate the same proceedings at will.

The Attorney General may terminate criminal proceedings on indictment before a judge and jury by the entry of a nolle. It puts an end to the prosecution, but it does not operate as a bar or discharge or an acquittal on the merits and the defendant remains liable to be re-indicted. It can therefore be likened to a stay on proceedings. Prosecutors can discontinue, withdraw or offer no evidence in their cases, but only the Attorney General may enter a nolle.

[12] R v Grafton [1992] 4 All ER 609

4.2.7. Conditions of NolleProsequi

The Attorney General's discretion is extremely wide and cannot be questioned by the courts. It will usually only be exercised where the Attorney General is satisfied that its use is in the public interest subjected to the condition that proceedings cannot be terminated in any other way. The most common ground of application is the ill-health of a defendant.Applications may be received from either party but the majorities are from defendants.[13]

4.2.8. Provision related to discontinuation of proceeding

The responsibility for continuing with or terminating proceedings is a discretion entirely with the Crown Prosecution Service. Prosecutors must continuously review each case and take account of any change in circumstances.[14]

Discontinuation of proceeding in the UK is generally based on the public policy. Attorney General is empowered to discontinue any proceeding at preliminary stage before the institution of case before the court. Public Policy as defined in the

There are several methods by which proceedings may be terminated prior to conviction. When termination of proceedings takes place before court, an order of termination is made on the file of what argument was laid by each of the parties and the court. A prosecutor have discretion at two stages :

4.2.8.1. Prosecutors can terminate proceedings in the magistrates' court by:

1. discontinuance - under section 23 Prosecution of Offences Act 1985;[15]

[13]Accessed from http://www.attorneygeneral.gov.uk/sub_our_role_work.htm, on 21/08/2014

[14] paragraph 3.6 of the Code for Crown Prosecutors

[15]**Prosecution of Offences Act 1985,**

Section 23 Discontinuance of proceedings in magistrates' courts.

(1)Where the Director of Public Prosecutions has the conduct of proceedings for an offence, this section applies in relation to the preliminary stages of those proceedings.

(2)In this section, "preliminary stage" in relation to proceedings for an offence does not include—

(a)any stage of the proceedings after the court has begun to hear evidence for the prosecution at a summary trial of the offence; or

2. applying to withdraw the summons or charge; or
3. offering no evidence

4.2.8.2. Prosecutors can terminate proceedings in the Crown Court by:

1. discontinuance under section 23A Prosecution of Offences Act 1985[16];

(b)any stage of the proceedings after the accused has been sent for trial for the offence.

(3)Where, at any time during the preliminary stages of the proceedings, the Director gives notice under this section to the designated officer for the court that he does not want the proceedings to continue, they shall be discontinued with effect from the giving of that notice but may be revived by notice given by the accused under subsection (7) below.

(4)Where, in the case of a person charged with an offence after being taken into custody without a warrant, the Director gives him notice, at a time when no magistrates' court has been informed of the charge, that the proceedings against him are discontinued, they shall be discontinued with effect from the giving of that notice.

(5)The Director shall, in any notice given under subsection (3) above, give reasons for not wanting the proceedings to continue.

According to subsection(7) of the section 23, if the accused wants the proceedings to continue, shall give notice to that effect to the designated officer for the court within the prescribed period. Criminal Procedure Rules govern the practice and procedure in criminal cases in magistrates' courts, the Crown Court and the Court of Appeal (Criminal Division), and the practice and procedure in extradition appeal cases in the High Court.

Section 23 (9) provide does not bar the fresh proceeding in case of same offence in which proceeding is discontinued.

[16]**23A Discontinuance of proceedings after accused has been sent for trial.**

(1)This section applies where—

(a)the Director of Public Prosecutions, or a public authority (within the meaning of section 17 of this Act), has the conduct of proceedings for an offence; and

(b)the accused has been sent for trial for the offence.

(2)Where, at any time before the indictment is preferred, the Director or authority gives notice under this section to the Crown Court sitting at the place specified in the notice under section 51D(1) of the Crime and Disorder Act 1998 that he or it does not want the proceedings to continue, they shall be discontinued with effect from the giving of that notice.

(3)The Director or authority shall, in any notice given under subsection (2) above, give reasons for not wanting the proceedings to continue.

2. offering no evidence in court;
3. leaving an indictment or counts to lie on the file;
4. applying for a motion to quash the indictment; or
5. inviting the Attorney General to enter a nolleprosequi.

4. Termination in Post conviction stage

It is possible for the prosecutor to terminate proceedings even after conviction, but only if there is a powerful " public interest" reason for doing so, such as:

1. the defendant has become gravely ill;
2. the defendant has received a significant custodial sentence in another court for another offence; or
3. it has come to light for the first time that the prosecution evidence is seriously flawed.
4. Termination by the Crown Prosecution Service can occur after conviction only if:
5. the court permits a change of plea before sentence is passed;
6. a magistrates' court exercises the power under section 142[17] Magistrates' Courts Act 1980 to reopen proceedings after conviction and/or sentence;

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(4)On giving any notice under subsection (2) above the Director or authority shall inform the accused of the notice; but the Director or authority shall not be obliged to give the accused any indication of his reasons for not wanting the proceedings to continue.

(5)The discontinuance of any proceedings by virtue of this section shall not prevent the institution of fresh proceedings in respect of the same offence.

[17]**Magistrates' Courts Act 1980**

Section 142 Power of magistrates' court to re-open cases to rectify mistakes etc.

(1) A magistrates' court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

(1A)The power conferred on a magistrates' court by subsection (1) above shall not be exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if—

(a)the Crown Court has determined an appeal against—

7. a Crown Court in its appellate function directs the case to be remitted to the magistrates' court for a change of plea;
8. the Court of Appeal directs a " venire de novo"[18] for the case to be re-heard in the subordinate court;
9. theCriminal Cases Review Commission[19]refers a case to the Court of Appeal.

(i)that sentence or order;

(ii)the conviction in respect of which that sentence or order was imposed or made; or

(iii)any other sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or

(b)the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.

(2)Where a person is convicted by a magistrates' court**]**and it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by different justices, the court may, so direct.

(2A)The power conferred on a magistrates' court by subsection (2) above shall not be exercisable in relation to a conviction if—

(a)the Crown Court has determined an appeal against—

(i)the conviction; or

(ii)any sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of the conviction; or

(b)the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction.**]**

(3)Where a court gives a direction under subsection (2) above—

(a)the conviction and any sentence or other order imposed or made in consequence thereof shall be of no effect; and

(b)section 10(4) above shall apply as if the trial of the person in question had been adjourned.

(4)Repealed.

(5)Where a sentence or order is varied under subsection (1) above, the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

[18]"A writ from a judge summoning a new jury panel because of a problem with the original jury's verdict or return. A venire facias de novo results in a new trial. Sometimes abbreviated as venire de novo."

Both the magistrates' court and the Crown Court have a discretionary common law power to permit a change of plea from guilty to not guilty at any time before the final disposal of the case. Both these courts may exercise its power at any stage of trial. Whereas a court has no power to allow a plea of guilty to be withdrawn after the judgement but Crown Court may direct magistrate to do changes in the pleas in appellate stage on the condition that irregularity of procedure sufficient to warrant that the magistrate court should be reheard. An application for a change of plea would generally be made by the defendant. It does not matter that why the prosecution have not done so.

4.2.8.3. Condition of Consultation with the Victim

Paragraphs 4.13[20] of The Code for Crown Prosecutors deals with the prosecutor's responsibility to consider the views of the victim. In a cases prosecutors

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[19]The Criminal Cases Review Commission is the independent organisation set up by the government to investigate suspected miscarriages from magistrates courts, the Crown Court in England, Wales and Northern Ireland and the Court Martial and Service Civilian Court.

[20]**Some common public interest factors against prosecution**

4.13 A prosecution is less likely to be needed if:

a the court is likely to impose a nominal penalty;

b the defendant:

i. is already the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing;

ii. has already been given an appropriate out-of-court disposal for the offence which remains in place or which has been satisfactorily discharged;

iii. has already been subject to any appropriate regulatory, punitive or relevant civil penalty proceedings which remain in place or which have been satisfactorily discharged;

c the offence was committed as a result of a genuine mistake or misunderstanding;

d the actions of the defendant, although sufficient to come within the definition of the crime, were of minor importance or of little influence in the overall commission of the offence;

should also consider views expressed by the victim's family. This could include situations such as homicide or where the victim is a child or an adult who lacks capacity.

Under the Victims' Right to Review (VRR) scheme, victims have the right to seek a review of a decision to terminate proceedings. In 2013, CPS launched a this

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e the defendant could not personally obtain or assist another to obtain any advantage or gain from committing the offence;

f the actions of the defendant did not influence others to commit an offence or influence their behaviour generally;

g the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;

h there has been a long delay between the offence taking place and the date of the trial, unless:

i. the offence is serious;

ii. the delay has been caused in part by the defendant;

iii. the offence has only recently come to light; or

iv. the complexity of the offence has meant that there has been a long investigation.

i a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on their physical or mental health;

j the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation);

k a prosecution might interfere with the investigation or prosecution of another criminal offence;

l a prosecution would undermine a promise made to the defendant [either by the investigator or the prosecutor] that he or she would not be prosecuted, although this does not include any case where the investigator or prosecutor has only informed the defendant that proceedings will not be brought or continued against him;

m details may be made public that could harm sources of information, international relations or national security;

n any court proceedings would provide the defendant with a further opportunity to express views which could appear in reports of court proceedings and cause further alarm or distress to recognisable sections of society;

o the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public.

scheme in accordance with the principles set out in a case **R v Christopher Killick**[21] and also Article 11 of the European Union Directive establishing minimum standards on the rights, support and protection of victims of crime.[22] Under the scheme, court should consider the right of a victim of crime in connection with CPS decision not to prosecute and concluded in clear terms that:

1. Victims have a right to seek a review in such circumstances
2. Victims should not have to seek recourse to judicial review
3. The right to a review should be made the subject of a clearer procedure and guidance with time limits.

Victims can seek a review of decisions not to charge, to discontinue or otherwise terminate all proceedings. However, prosecutors should note down how termination of prosecution affects the victim's position and the possible outcomes under the VRR scheme:

1. Following a decision to discontinue or withdraw all proceedings, the victim is entitled to a review with the possibility of reinstitution;
2. Following a decision to offer no evidence in all proceedings, the victim is entitled to a review but with limited redress (no reinstitution possible); and
3. Where proceedings are dismissed for want of prosecution, the victim is not entitled to a review.

Where all proceedings are terminated, the victim should properly be informed of the decision, the reasons for the decision.

When termination of proceedings takes place at court and the victim is present, prosecutors should take the opportunity to discuss the decision with the victim. Where they are not present, they must be informed of the decision as above. In every case a

[21][2011] EWCA Crim 1608

[22] The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA accessed from http://ec.europa.eu

full note should be made on the file of what was said by each of the parties and the court, and of any conversation held with the victim.

While discontinuing a case a public prosecutor incharge or director of public prosecutor must serve the notice to, the defendant or any custodian of the defendant mentioning clearly the offence, identity of person serving notice and the power of such person exercising.[23] . For the purpose of the rule 8.1 of the Criminal Procedure Manual 'prosecutor' means director of public prosecutor or another public prosecutor or any one of those authorities.[24]

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[23]Rule 8.2.—(1) A prosecutor exercising a power to which this Part applies must serve notice on—

(a)the court officer;

(b)the defendant; and

(c)any custodian of the defendant.

(2)Such a notice must—

(a)identify—

(i)the defendant and each offence to which the notice relates,

(ii)the person serving the notice, and

(iii)the power that that person is exercising;

(b)explain—

(i)in the copy of the notice served on the court officer, the reasons for discontinuing the case,

(ii) that the notice brings the case to an end,

(iii)if the defendant is in custody for any offence to which the notice relates, that the defendant must be released from that custody, and

(iv)if the notice is under section 23 of the 1985 Act, that the defendant has a right to require the case to continue.

(3)Where the defendant is on bail, the court officer must notify—

(a)any surety; and

(b)any person responsible for monitoring or securing the defendant's compliance with a condition of bail.

[24] Rule 8.1 of Criminal Procedure Manual 2014

Under section 23 of the Prosecution of Offences Act 1985, the Director of Public Prosecutions may discontinue proceedings in a magistrates' court, before the court—

(a)commits or sends the defendant for trial in the Crown Court; or

(b)begins to hear the prosecution evidence, at a trial in the magistrates' court.

Under section 23(4) of the 1985 Act, the Director may discontinue proceedings where a person

4.2.9. Position of the offender in case of withdrawal or termination

Offences can be withdrawn by the prosecutor only in the magistrates' court and not in appellate courts, at any time before judgement is delivered by the court. Applications to withdraw must be made before a plea has been taken. Court shall be clearly informed in if proceedings are withdrawn in anticipation that the case may be re-instituted if additional evidence comes to light. The court may or may not consent to grant leave. The defendant is entitled to make representations as to whether accused should be entitled to an acquittal. Further, if the court refuse leave to withdraw the proceedings. If this situation, the prosecuting advocate is still of the view that the matter should be abandoned, then no evidence should be offered. In this event principle of "autrefois acquit" applies and further proceedings may not then be commenced on the basis that the defendant has previously been acquitted of the same offence.

The English criminal law is, historically, founded on the basis that every citizen has the right to invoke it by private prosecution. The entitlement has survived the development in the 19th century of organised police forces, not least, as one contributor to the Review has observed, because of the absence until the introduction in 1986 of a national prosecuting authority in the form of the Crown Prosecution Service. Even now there is no single prosecuting authority for all matters. The Crown Prosecution Service, though by far the most comprehensive prosecutor on a national scale. The Philips Royal Commission in 1981 noted that, although the citizen had an

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charged is in custody but has not yet been brought to court.

Under section 23A of the 1985 Act, the Director of Public Prosecutions, or a public authority within the meaning of section 17 of that Act(c), may discontinue proceedings where the defendant was sent for trial in the Crown Court under section 51 of the Crime and Disorder Act 1998(d).In such a case—

(a)the prosecutor must discontinue before a draft indictment has been served under rule 14.1; and

(b)the defendant has no right to require the proceedings to continue.

Where a prosecution does not proceed, the court has power to order the payment of the defendant's costs out of central funds.

almost unlimited right to issue proceedings, there were such severe restrictions on it in practice that it was very rarely used. This is still the case. The Prosecution of Offences Act 1985, which established the Crown Prosecution Service under the leadership of the Director of Public Prosecution, expressly preserved the right of private prosecution in cases not instituted by the police and certain other agencies, but it also empowered him to take over any private prosecution. Having done so, prosecutor may discontinue it where (though only where) he considers there is no evidential or legal case to answer.[25] Whether DPP any discontinue private prosecution is decided in case **R. v. DPP ex.p. Duckenfield**[26] in this, a case concerning proceedings against two police constable linked to the Hillsborough disaster. The court found that section 10(1) of the Act requires that crown prosecutor is entitled to withdraw any case instituted on any behalf.[27]

4.3. Legal provision of withdrawal from prosecution in India

As a rule in criminal procedure once the cognizance of an offence is taken by the competent court the criminal proceeding shall end in conviction or acquittal of the accused. However, there are certain exception of the rule. The criminal case in this situation abruptly ended without full trial. These situation may arise in :

1. settlement of dispute between the accused and the victim;
2. happening of certain event
    a. death of the accused
    b. nonappearance of the complainant
    c. limitation

In **Subhash Chander v. State**[28]the Supreme Court observed that "Once a prosecution is launched, its relentless course cannot be halted except on sound considerations germane to public justice." But on the other hand demand of the justice

[25]Anuld Report pg. 415 accessed from www.legislation.uk

[26] R v DPP, ex p Duckenfield [2000] 1 WLR 55

[27]R. v. CPS[2011] EWHC 472 accessed from www.kingsleynapley.co.uk

[28]1980CriLJ 324

is that every case should be thoroughly reached to end and it should not be interrupted abruptly in course of trial. According to the criminal justice state become the custodian of the prosecution against the offender. But according the scheme of the Code of Criminal Procedure executive is entrusted upon the prosecution of serious offence generally which are punishable with above three of punishment and offence against women or child. In this term withdrawal from prosecution is an executive function of the public prosecutor.

Supreme Court in case of **Rajender Kumar v. State**[29] that primary function of the state and public prosecutor are:

(i) Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.

(ii) The withdrawal from the prosecution is an executive function of the Public Prosecutor.

(iii) The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

(iv) The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

(v) The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, political purposes Sans Tammany Hall enterprises.

(vi)The Public Prosecutor is an officer of the Court and responsible to the Court.

(vii) The Court performs a supervisory function in granting its consent to the withdrawal.

(viii) The Court's duty is not to re appreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether

[29] AIR 1977 SC 1510

the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

4.3.1. When prosecution can be withdrawn

The word "before the judgment is pronounced" in the section 321 of Cr.P.C. set the limit for the withdrawal of prosecution. There is clear-cut indication that application of withdrawal from prosecution can be made at any time between the cognizance of case and before the pronouncement of judgment. But at appellate stage of the case application for withdrawal cannot be sought. Appeal is not deemed as continuation of the original proceeding in purview of the section 321.

It should be further noted that Section 321 provides for **'withdrawal from prosecution'** and not the **'withdrawal of the prosecution'.** The accused shall be discharged if the withdrawal is before the framing of a charge and he shall be acquitted where no charge has been framed and such acquittal shall be a bar to a re-trial under Section 300 of the Code.

4.3.2. Specific Provision of Withdrawal from Prosecution in the Indian Code of Criminal Procedure 1973

For the scheme of discontinuation or withdrawal of prosecution is given in section 321 of the Code Criminal Procedure.

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the court at any time before the judgment is pronounced , withdraw from the prosecution of any person either generally or in respect of any or more of the offences for which he is tried; and upon such withdrawal ,-

a. if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
b. if it is made after a charge has been framed, or when under this code no charge is required he shall be acquitted in respect of such offence or offences:

Provided that where such offence-

i. was against any law related to a matter to which the executive power of the Union extends, or
ii. was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act ,1946(25 of 1946), or
iii. involved the misappropriation or destruction of, damages to, any property belonging to the Central Government, or
iv. was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the prosecutor incharge of the case has not been appointed by his the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the court for its consent to withdraw from the prosecution and the court shall, before according consent, directed the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

While in section 321 after the words:

"in charge of a case may"

the words:

" on the written permission of the State Government to the effect (which shall be file in Court)" is inserted by the Uttar Pradesh Act 18 of 1991.

4.3.3. Duty of Public Prosecutor in case of withdrawal from Prosecution

Section.321 Cr.P.C. provides the power of the prosecutor for withdrawal from prosecution. The section 321 does not specify any requirement for the prosecutor to consult his client i.e state, before taking a decision to withdraw case. However, public prosecutor may receive instructions from the government to withdraw from a prosecution. However, what public prosecutor has to do is that he must apply judicious mind to the facts of the case independently without being subject to any government influence. The Criminal Procedure Code is the only guiding master of the

public prosecutor and he has guide himself with reference to the code only.[30] He bows in front of the respective government for illogical or illegal instruction.

However, position of the Public Prosecutor is not absolutely as an independent officer. Public prosecutor is selected and appointed by the executive and conduct prosecutions on behalf of the respective Government. Section 24 of the Cr.P.C. read as:-

1. For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutor, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.
2. The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area.
3. For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district; Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.
4. The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district.
5. No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by me District Magistrate under Sub-Section (4).

Thus, Public Prosecutor an employee of the respective Government. Therefore, there may be chances that public prosecutor may have under the influence of its employer and in such circumstances sole discretion may not be away from the Government

[30]SheonandanPaswan v. State of Bihar AIR 1983 SC

decision to withdraw a case on certain occasion. But, literal meaning of Section 321 of Cr.P.C. does not lay any bar on government direction to withdraw prosecution and on such direction public prosecutor may take it in consideration. Malimath Committee Report 2003 recommended that there shall be a separate Directorate of Prosecution in each state which shall select, appoint and direct public prosecutors to preserve independence of judicial system. In accordance with the recommendation section 25A is inserted in Code of Criminal Procedure.

Section 25 A of Cr.P.C. creating directorate of prosecution can dilute the executive power. Section 25 A[31] read as :-

1. The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.
2. A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.
3. The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.
4. Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.
5. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (1), or as the case may be, Sub-Section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.
6. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (3), or as the case may be, Sub-Section (8), of section 24 to conduct cases in District Courts

[31] Inserted by the Code of Criminal Procedure(Amendment) Act, 2005, s.4,w.e.f.23.06.2006

and every Assistant Public Prosecutor appointed under Sub-Section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

7. The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.
8. The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.

The language of section 25 A is not mandatory but in the interest of fair justice it is advisable to state to form directorate of prosecution. But surprisingly, few states in India have initiated to established the directorate of prosecution and prosecution services for the selection and appointment of public prosecutor even without assigning and reason

In **Abdul Karim v. State of Karnataka**[32] the Supreme Court observed that though government ordered, directed or instructed the public prosecutor, it is for the public prosecutor to consider the government order, direction or instruction on its own depending upon the facts and circumstances of the case and in good faith in accordance with the appropriate law.

A petition **S.K. Shukla & others v. State of U.P. & others**[33] delivered on 10 November, 2005, is filed against the order passed by the State Government whereby public prosecutor was directed to withdraw the POTA cases against the accused persons. An application was moved by public prosecutor for withdrawal of those cases before Special Judge, though no order was passed permitting withdrawal of these cases. Further court observed that the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government, since a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government. Unlike the Judge,

[32] AIR 2001 SC 116

[33]Writ Petition (crl.) 132-134 of 2003

the Public Prosecutor is not an absolutely independent officer. According to facts of the case the petitioner has stated that there will be no chance of fair trial in the State of U.P. as most of the witnesses are afraid to speak against the respondents and even one Shri RajenderYadav was killed as he deposed against these persons. It was also mentioned that the State Government is not serious. The State Government has already withdrawn the POTA cases against the accused persons and directed the public prosecutor to withdraw these cases. In this background, there is no likelihood of fair trial in the State of U.P. The respondents failed to file counter affidavit, but an affidavit has been filed by one Dinesh Priyadarshi on behalf of respondents No. 2 to 4. But no affidavit was filed by the respondents though they were made a party to the petition. We failed to understand why the affidavit has not been filed by respondents themselves. It is alleged that accused Raghuraj Pratap Singh alias Raja is an independent MLA who is supporting the present government and is a Minister in the government. After going through the transfer petition and counter affidavit on behalf of the respondents, we are of the opinion that there is likelihood of miscarriage of justice in the background mentioned above. It is alleged that murder of ShriRajenderYadav has taken place and his younger brother is connected with this case. Therefore in the interest of justice both these cases be transferred to any other court where, in a proper atmosphere, the matter can be dealt with fairly. Court held that in the interest of justice ordered to transfer case to M.P. High Court.

4.3.4. Judicial Response in withdrawal from prosecution

In **Sheonandan Paswan case**[34] the majority held that public prosecutor have sole discretion to withdraw prosecution and only limitation on this power is consent of the court. And the court must decide judicially whether the application is made in the interest of public policy and justice and does not overturn the process of law.

Further, in case court held that statutory discretion of the public prosecutor is not barred for judicial review. It would be subject to judicial review on certain limited grounds like any other executive action.

[34]Sheonandan Paswan v. State of Bihar (1983) 1 SCC 438

Permission for withdrawal from prosecution on the ground that there is lack of proper evidence and in case where subsequent information before prosecuting agency appeared that such evidence falsify the prosecution and relying on such evidence accused may be acquitted by the court.

In these circumstances merely paucity of evidence is not sufficient but it should also be based on the ground of public justice, public order and peace. Public justice as enumerated in the preamble of Constitution of India; justice social economic and political. To further as that fundamental rights of a person promulgated and interpreted by the courts accordingly. A light of interpretation may be according to the case of Tammany Hall enterprises economic mischief was committed by the certain people which had created a social disturbance and economic losses of mass in United States of America.

In **Rahul Agarwal v. Rakesh Jain and another**[35] it was held by Hon'ble Supreme Court that withdrawal from prosecution may be permitted when valid reasons are made out for the same and it can be allowed only in the interest of justice.

The law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice.

1. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution.
2. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution.

The discretion under Section 321 Code of Criminal Procedure is to be carefully exercised by the Court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved

[35] 2005 SCC (Cri) 506

parties or the State for redressing their grievance.

In **Mahmadhusen Abdulrahim Kalota Shaikh**[36], Supreme Court held that Section 321 CrPC is a codified version of judicial review. It ensures that the judiciary makes the final decision by approving or disapproving the decision of Public Prosecutor. In the matter concerning judiciary, the judiciary should have final say over the cases that has been placed before it. It goes without saying that the courts' decision to grant consent to an application for withdrawal is a judicial function. The final decision rests with the Judge.

In the **Rajinder Kumar Jain v. State**[37] Supreme Court observed that the government may be more sensitive and responsive to the feeling and emotion of the people, justify if the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing calm which has descended it decides not prosecute the offenders involvement or not to proceed further with the prosecution already launched.

In such contradictory reasons:

1. That public prosecutor is boundless discretionary power to withdraw from case and state executive may only suggest public prosecutor to withdraw case
2. State government is more competent than the public prosecutor to understand the feeling and emotion of the people and maintain public tranquility create misunderstanding.

To answer these question firstly it should be understood the periphery of the executive power and independence of judiciary. As it was discussed in the chapters that state is responsible for the peace security and public order and prosecutor those who commit offence according to law. There is separation of power among executive, legislature and the judiciary.

4.3.5. Public peace, order and policy

[36] (2009) 2 SCC 1

[37](1980) 3 SCC 435

Public order is synonymous with peace, safety and tranquility of the community. Maintenance of public order is a core function of governance. The Indian Constitution, while according a pre-eminent position for the fundamental rights of citizens, recognizes the importance of public order, by providing for legislation imposing reasonable restrictions in the interest of public order.

No developmental activity is possible in an environment of insecurity and disorder. Failure to manage the multifarious problems arising out of violent conflicts based on religious, caste, ethnic, regional or any other disputes, can lead to unstable and chaotic conditions. Such conditions not only militate against realization of our economic dream, but also would jeopardize our survival as a vibrant democracy. We have to look at the problem of public order management and the role of law enforcement in that regard, in this perspective. We should not forget that it is the weaker sections which suffer the most in any public disorder.

Prosecutions may have arisen out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest etc. To restore peace, to free the atmosphere from the surcharge of violence, to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm, the Government may think it fit to withdraw cases since persistence to prosecute in the name of vindication of law may be utterly counterproductive. In that situation government is competent to decide whether it is baneful or beneficial to continue the prosecutions because it is government which elected by the people and government can understand the nature of the people who is governed where sensitive issues of public policy are involved. In such of situations, the Public Prosecutor with his limited resources and sources of information may not be in a position to take initiative. Once the court is satisfied it gives its consent for withdrawal[38]. In those cases the prosecutor must consider the available facts with him and see whether withdrawal would further the broad ends of public Justice, public order and peace. He may consider social, economic and political purposes deciding withdrawal.

[38] *Rajender Kumar Jain v. State through Spl Police Establishment,* 1980 CriLJ 1084

For some time, it was thought the Government need not assign reasons before instructing the Public Prosecutor to take steps for withdrawal since there is no such postulation in Section.321 of Cr.P.C[39]. It is quite logical that if the Government does not give reasons for withdrawal, the prosecutor cannot be in a position to record reasons for withdrawal in his application to court. In such order it can concluded that the prosecutor has not applied his mind to the facts of the case in taking decision to withdraw.

In **Phoolan Devi's case i.e., State of U.P. v. Third Additional District & Sessions Judge,**[40]the Allahabad High Court upheld the order of the trial Court rejecting the request for consent for withdrawal from prosecuting the former woman dacoit from various charges as she belongs to a lower caste and had committed various heinous crimes to take revenge upon the atrocities committed against her. The Public Prosecutor requested for withdrawal as proceeding further with the prosecution was likely to create a situation of caste-war in the State.

In **Veerappan's case**, Veerappan was a forest brigand who lived in forests of State of Karnataka and Tamilnadu. He and his brigade were for decades engaged in several illegal and unlawful activities including terrorism, smuggling of precious sandalwood and poaching of elephants. Veerappan once kidnapped a famous film star Mr. Raj Kumar in Karnataka. Veerappan bargained with the State Governments that they should withdraw cases against his associates in release of the kidnapped cine actor. Keeping in mind the intelligence reports from police that if any harm were to be caused to the cine actor Raj Kumar, it would lead to problems between linguistic communities. Therefore it conceded to the blackmailing of the kidnapper Veerappan and passed orders for withdrawal of cases against associates of Veerappan and instructed the Public Prosecutor to apply to the court for withdrawal. Abdul Karim , Superintendent of Police , the father of deceased police sub-inspector Ahmad Sakeel challenged the decision of withdrawal of cases.[41]the decision matters were carried to

[39]K.V.V.KrishnaRao v. State of A.P, 2003 (1) ALD (Crl) 457 (AP).

[40] Judgment date 31st March 1997

[41]Abdul Karim v. State of Karnataka, 2001 SCC (Crl) 59.

the Supreme Court of India. The Supreme Court reversed the lower courts orders holding that the application for withdrawal from prosecution moved by the prosecutor indicates that the prosecutor was 'informed' by the Government about the precarious situation revealed by the intelligence reports. Courts found that :

> "It is well established that real purpose for withdrawal of TADA charges was to facilitate the grant of bail to the accused. In such circumstances, why the camouflage? Why it is not so stated in the application filed under Section 321? In fact, it is a deceit. These are the questions for which there is no plausible answer. No court of law can be a party to such a camouflage and deceit in judicial proceedings. The answer to these basic questions cannot be that the judge knew about it from the very nature of the case. Under these circumstances, it cannot be said that the application was made in good faith."[42]

Further, Supreme Court while dealing with a matter public policy and justice and peace has framed certain questions which should have been looked into by Special Public Prosecutor while exercising discretion in favour of withdrawal from prosecution. The relevant portion is quoted as under :

> "The decision of the Government of the State of Karnataka, therefore, was that, in view of its apprehension of the unrest that would follow if any harm were to come to Rajkumar, it was better to yield to Veerappan's demand and to withdraw the TADA charges against Veerappan and his associates, including the accused respondents. In this context, the Special Public Prosecutor should have considered and answered the following questions for himself before he decided to exercise his discretion in favour of such withdrawal from prosecution of the TADA charges ?
>
> 2. Was there material to show that the police and intelligence authorities and the State Government had a reasonable apprehension of such civil disturbances as would justify the dropping of charges against Veerappan and others accused of TADA offences and the release on

[42] Ibid

bail of those in custody in respect of the other offences they were charged with?

3. What was the assessment of the police and intelligence authorities and of the State Government of the risk of leaving Veerappan free to commit crimes in future, and how did it weigh against the risk to Rajkumar's life and the likely consequent civil disturbances?
4. What was the likely effect on the morale of the law enforcement agencies?
5. What was the likelihood of reprisals against the many witnesses who had already deposed against the accused respondents?
6. Was there any material to suggest that Veerappan would release Rajkumar when some of Veerappan's demands were not to be met at all?
7. When the demand was to release innocent persons languishing in Karnataka jails, was there any material to suggest that Veerappan would be satisfied with the release of only the accused respondents?
8. In any event, was there any material to suggest that after the accused respondents had secured their discharge from the TADA charges and bail on the other charges Veerappan would release Rajkumar?
9. Given that the Governments of the States of Karnataka and Tamil Nadu had not for 10 years apprehended Veerappan and brought him to justice, was this a ploy adopted by them to keep Veerappan out of the clutches of the law?

While making aforesaid observation, framing questions which were required to be considered by the Prosecuting Officer, their Lordships have further observed that the trouble apprehended by the State of Karnataka in aftermath of the incident of kidnapping of a prominent person was no ground to permit the State or the Prosecuting Officer to withdraw the pending case under TADA. Their Lordships held that the Prosecuting Officer is required to apply his independent mind and record satisfaction of his own.

It has been further held by their Lordships that only with intention to restore peace and normalcy in the border area does not make a ground for withdrawal of prosecution.[43]The court found that withdrawal would overt the process of law or it would cause injustice and hence did not accord its consent for withdrawal.

4.3.6. Withdrawal from prosecution in Contempt of court cases

In the famous *Kissa Kursika* case,[44] when a contempt of court petition was pending before the Supreme Court, the Union of India filed petition to withdraw. It was observed that there is a marked difference between a complaint made by an individual for wrong done to him and a case of contempt committed against court. It was held that State cannot withdraw contempt cases stating :

> "The contempt is of the court and not of the individual. Therefore, Sec.15 of the Contempt of Courts Act, 1971 confers power on this Court as well as on the High Court to take suomoto action or on a motion made by amongst others, the Solicitor General. It is for the court to determine whether the act complained of tending to scandalize the Court if viewed with certain severity with a view to punishing the person would in the larger interest of the society enhance respect for the judicial process, or too sensitive attitude in such matter may even become counter-productive."[45]

It is another matter ultimately in that case, the Supreme Court allowed the withdrawal of contempt case sought for by the Union of India. The marked difference enunciated above between those two sorts of cases unmistakably allows one to infer that in case of wrongs committed against private individuals, the State's power to withdraw prosecutions is complete, however subject to the rules indicated already.

4.3.7. Remedy for Victim against the Withdrawal from Prosecution

There is no provision for appeal against the order passed under Section 321 hence the only remedy available is to invoke the revisional jurisdiction of the Court of Session or the High Court under Section 397 of the Code.

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[43] Supra note 33

[44]ShriAmritNahta v. Union of India1986 Cri.LJ.806 at 807.

[45] ibid

In **State v. L. Ganeshan and others,**[46] trial Court permitted withdrawal from prosecution in few cases on the application of the Public Prosecutor, at the instance of the Government of Tamil Nadu, but thereafter when another political party came to power, the Public Prosecutor was directed to get the withdrawal cancelled and prosecution restored. The High Court of Madras held that the State Government which moved the applications for withdrawal from prosecution could not seek to set aside the order granting withdrawal, as it would lead to uncertainty as to the finality of the proceedings under Section 321.

Cases in where no appeal has been provided by law or in cases where the remedy of appeal has for any reason failed to secure fair justice the Criminal Procedure Code provides for revision. Revision can be filed before High Court or Court of Session as the matter may be in both pending and decided cases. Vast discretionary powers have been conferred on the High Court and the Sessions Court.

The purpose of revision is to enable the revision court to satisfy itself as to the correctness, legality or propriety in any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court.

Revision under section 397 Cr.P.C.

- The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
- The powers of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

[46]1995 Cr.LJ 3849

- If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

The revisionary power of the court is derived from three sources:

1. The writ of certiorari.
2. Article 227 of the Constitution of India;
3. Section 397 to 401 of the Cr PC;

Under Section 397(1) of the Cr PC, call upon records and direct inferior court as required. Under Section 398 Cr PC, the revision Court may order for further inquiry. The power under Section 398[47]Cr. P.C. is not parallel with Section 397. The power of the court under section 398 more wider in sense of 'otherwise' contained in the section by the revision Court without recourse to Section 397, Cr PC.

Section 399,[48] Cr PC deals with Sessions Judge's power of revision. Under sub section (1), the Sessions Judge, in any proceeding of the case the record of which has

[47] Section 398,of the Cr.P.C. "On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 of Sub-Section (4) of section 204 or into the case of any person accused of an offence who has been discharged;
Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

[48] Section 399 Session Judge's Power of revision

1. In the case of any proceeding the record of which has been called for by himself the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Sub-Section (1) of section 401.
2. Where any proceeding by way of revision is commenced before a Sessions Judge under Sub-Section (1), the provisions of Sub-Sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.
3. Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no

been called for by session judge under Section 397(1), may exercise all or any of the powers which are exercisable by the High Court under Section 401(1) [49]of the Code of Criminal Procedure.

> In **Om Pratap Singh v. State**[50] Allahabad High Court has observed that : "These two Sections (section 397 and 401 of the Cr. P.C.) do not confer unfettered jurisdiction on this Court for reappraisal of evidence. In fact, the revisional power of this Court is to see that justice is done in accordance with the recognized rules of criminal jurisprudence and the subordinate Courts do not exceed their jurisdiction or abuse their powers vested in them under the Code of Criminal Procedure."

Section 401 empower revisional court to order retrial whereas it is not empowered to turn acquittal into conviction itself unlike section 386 in which court can reverse the order of the acquittal into conviction. High Court, however, would not disturb a finding of fact unless it appears that trail court shut out any evidence or overlooked any material evidence or admitted inadmissible evidence or where there has been manifest error on a point of fact. The Circumstances in which retrial may be ordered:

(i) where the appellate court has wrongly held evidence admitted by trail court as inadmissible.

(ii) where trail court has wrongly shut out evidence which prosecution sought to produce;

(iii) where trail court has no jurisdiction to try a case;

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further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

[49] Section 401(1) of the Cr. P.C. High Court's Power revision:

In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

[50]1995 Cr LJ 3887

(iv) where material evidence has been overlooked;

(v) where acquittal is based on a compounding of the offence which is invalid under law;

In **Ayodhya Dubey v. Ram Sumer Singh**[51] court justified the retrial in case where accused was acquitted without considering material evidence with faulty and inconsistent reasoning and value of FIR was also ignored.

In **Dharam Pal v. State of Haryana**[52] has held that reinvestigation can be ordered by constitutional court in event of miscarriage of justice to the victim. Court held that:

> " the power to order fresh, de-novo or re-investigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation."

Contrary to the decision set in state of West Bengal v. Committee for Protection of Democratic Rights, West Bengal and others held by constitution court.

4.3.8. Who can apply for the revisional jurisdiction?

The complainant is entitled to move a revision even if state does not do so. When the case was instituted on the police report and accused was acquitted after trial, informant can also invoke revision power of the high court under section 401(1) and section 397. High Court is empowered under Section 401(1) to exercise power of revision *suo-motu* apart from the application from a party. Therefore the revisionary power high court can also invoked in case of the withdrawal from prosecution when victim or complainant put forward exculpatory evidence before the revision court. In the interest of justice court may consider the evidences on merit and order full trial once again.

In case of **Kaptan Singh v. State of Madhya Pradesh**[53] the revisional jurisdiction when involved by a private complainant against an order of acquittal

[51]AIR 1981 SC 1415

[52](2014) 3 SCC 306

[53](1997) 4 supreme 211.

ought not to be exercised lightly and that it could be exercised only in exceptional case where the interest of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice.

4.3.9. Revisional power under section 397 and inherent power of the High Court under Section 482, Cr.P.C.

Section 397(2)[54] clearly bars the jurisdiction of the Court in respect of interlocutory orders passed in appeal, inquiry or other proceedings. Inherent power of the Court can be exercised only in the case when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance.

In the decision of the Supreme Court in case of **Madhu Limaye v. State of Maharashtra**[55], where Supreme Court held that Section482 of the Cr PC had a different parameter and has a clearly distinct and independent of Section 397(2).

> "1. On a plain reading of section 482 it would follow that nothing in the code which would include section 397(2) shall be deemed to limit or affect the inherent powers of the High Court. However, it cannot be said that the said bar is not to operate in the exercise of the inherent power at all because it would be setting at naught one of the limitation imposed upon the exercise of revisional powers. A happy and harmonious solution would be to say that the bar provided in section 397(2) operates only in, exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision in relation to any interlocutory order.The inherent power would come into play there being no other provision in the code for the redress of the grievance of the aggrieved party. in case the impugned order brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit of affect the

[54]Section 397(2) of the Cr.P.C. The powers of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding

[55]1978 AIR 47

> exercise of the inherent power by the High Court. Such cases would be few and far between. The High Court must exercise the inherent power very sparingly."

The Apex Court in **Mohit v. State of UP**[56], observed that any orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding are not interlocutory orders in the true sense because it affect accused rights. Unlike other interlocutory order, such orders may be maintainable for revision under Section 397(2) of the Cr.P.C. A three Judge Bench Court discussing the object of the two provisions i.e. Section 397(2) and Section 482 of Cr.P.C. observed as under:-

> "10. As pointed out in Amar Nath's case (1977) 4 SCC 137, the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub- section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the

[56](2013) 7 SCC 789

High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between."

Further Supreme court observed and cautioned about the usage of section 482 that:-

" The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of *autrefois* acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of

the power of the High Court in accordance with Section 482of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

An order passed on a petition Under Section 321 of the Code of Criminal Procedure, is not merely an interlocutory order and that the revisional jurisdiction of the High Court in respect of such orders is not barred Under Section 397(2)Cr.P.C. [57]Further reading in the Public Prosecutor v. PagaPulla Reddy case the important questions that arise for determination are:--

1. Is the revision application against the order of the Magistrate refusing consent, maintainable in view ofSection 397(2)Cr. P. C. ?
2. Did the lower court act illegally or improperly in refusing consent for the withdrawal from the prosecution ?

Answering the question no. one the court said that in the instant case, having refused to give his consent under the impugned order, the Magistrate has no option, but to proceed with the case and he cannot entertain any further application Under Section 321Cr.P.C. Unless set aside by a competent court, the order of the Magistrate refusing permission to withdraw from the prosecution is conclusive and it would be difficult to construe the same as interlocutory or provisional.

The learned Magistrate acted improperly in refusing consent for the withdrawal. We therefore, set aside the order of the learned Magistrate refusing consent. The permission applied for by the Public Prosecutor for withdrawing from the prosecution is hereby granted.

4.3.10. Locus Standi of a person who is affected by the order of withdrawal

The question of the locus standi of a private person or of any other person in the matter of the proceeding under section 321 has not yet decided. De facto complainant has no locus standi in the matter of withdrawal of prosecution against the accused by the public prosecutor. It therefore no necessary for the court to issue notice to the complainant or to afford hearing.

[57]Public Prosecutor v. PagaPulla Reddy 1977 Cri.L.J. 2013

But in **M. Balkrishna Reddy v. Principal Secretary to Government, Home Department**[58]court held that a person who has suffered as a result of the offence shall have the right to prosecute if the state withdraw the prosecution.[59]

4.3.11. Investigation v. Prosecutor

According to Section 173 of Cr.P.C., the prosecutor has absolutely no discretionary power to decide to launching prosecutions but he is pivotal in withdrawing prosecutions. On the other hand, the Police are not under a statutory duty to consult the prosecutor in initiating prosecutions before the courts. The decision to file a case before court is with police[60]. The court observed that:

> "...It is also clear that the final step in the investigation viz., the formation of the opinion as to whether or not here is a case to place the accused on trial is to be that of the officer in-charge of the police station." [61]

The Supreme Court had an occasion to consider a similar question in **Sarala v. Velu**[62]. In this Case Justice K.T. Thomas., held that:

"In this context we may also point out that the investigating officer, though is subject to supervision by his superiors in rank is, not to take instructions regarding investigation of any particular case even from the executive Government of which he is a subordinate officer. This position of law which was well delineated by the celebrated Lord Denning, has since been followed by this Court. In R. v. Metropolitan Police Commr. (1968 (1) All ER 763) Lord Denning had said thus:

> "I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State …. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected;

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[58]

[59]Kelkar R.V. " Criminal Procedure", Eastern Book Company, Vth Ed., 2008, pg 465

[60]AbhinandanJha& others v. Dinesh Misra 1968 AIR117

[61] Ibid

[62] AIR 2000 SC 1731

> and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

In the above Case Supreme Court clarified that the investigating officer cannot be directed to be influenced by the opinion of the Public Prosecutor or any other authority. Thus the Public Prosecutor is to deal with a prosecution and he is not involved in investigation.

In case of offence investigated by the CBI(Central Bureau of Investigation) that there are specific instructions in CBI Manual that the Final report shall be submitted to the Legal Officers/Prosecutors for legal scrutiny. Regarding the validity of instructions in CBI manual, the Constitution Bench in **Lalita Kumari v. State**[63] it is held that:

> "Crime Manual (of CBI) is not a statute and has not been enacted by the Legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code (Cr.P.C)".

Therefore, legal position the public prosecutor in CBI investigation process does not validate the involvement of public prosecutor in the investigation is just advisory and not the decision maker.

Actually in **Taz Corridore Case**[64] Supreme Court disapproved the practice of taking opinion from prosecutors. Justice Kapadia held that

> "As stated by this Court in the case of R. Sarala v. T. S. Velu, the formation of opinion, whether or not there is a case to place the accused on trial has to be of the officer in charge of the police station. One fails to understand why an

[63] AIR 2014 SC 187

[64]M. C. Mehta v. Union of India AIR 2007 SC 1087

opinion of Sr. P.P. had been taken in the present case. He is not a member of the hierarchy. The S. P. is not legally obliged to take his opinion".

4.3.12. Contemporary development

In **Ranjana Agnihotri PIL**[65] it was prayed that order of withdrawal of cases against the accused of terrorist activity in Uttar Pradesh by the state government be set aside. Government ordered withdrawal of accused on the bases of certain community which was challenged on ground that it is not in favour of victims those acts and according to the doctrine of natural justices.

The facts of the case are: A number of offences were committed between the period 2000 and 2009, including under various provisions of The Explosive Substances Act 1908, The Prevention of Terrorism Act 2002, The Unlawful Activities (Prevention) Act 1967, The Official Secrets Act 1923, offences under Chapter VI of the Indian Penal Code 1860 and The Criminal Law Amendment Act in various districts viz. Varanasi, Gorakhpur, Bijnor, Lucknow, Kanpur Nagar, Rampur and Barabanki. The crimes, thus committed, included bomb-blasts at different places at different times in various districts. Consequent to commission of crimes, first information reports (F.I.Rs.) were registered. On investigation, incriminating material was collected against certain accused whereupon charge-sheets have been filed in various Courts. In some cases, trial has commenced, whereas in some cases accused are absconding. In pursuance of instructions issued by the State Government, the Public Prosecutors, Incharge of those cases, moved applications for withdrawal from the prosecution of the accused in the said cases.

The petitioners preferred Writ Petition No.4683 (MB-PIL) of 2013, thereby challenging vires of Section 321 of the Code of Criminal Procedure 1973 (for short 'Cr.P.C.') as well as the instructions issued by the State Government to the Public Prosecutors for withdrawal from the prosecution. The petitioners seek direction to ensure trial of the cases to be concluded in accordance with Law.

The questions, thus framed by the Division Bench, are as under:

[65]Ms. Ranjana Agnihotri and others[P.I.L.] v. Union Of India Through Secy. Ministry of Home Affairs & others MISC. BENCH No. - 4683 of 2013

Whether the State Government can issue Government Order for withdrawal of cases without there being any request by the public prosecutor in charge of the case?

The Government can issue an order or instruction for withdrawal from prosecution without there being request from the Public Prosecutor Incharge of the case, subject to the rider that the Public Prosecutor shall apply his/her independent mind and record satisfaction before moving an application for withdrawal from prosecution.

Whether the prosecution can be withdrawn without assigning any reason as to why the prosecution was sought to be withdrawn and is therefore unconstitutional and violative of Article 14 of the Constitution of India?

The prosecution cannot be withdrawn without assigning reason, may be precisely. If an application is moved for withdrawal from prosecution in a case relating to terrorism and waging of war against the country, special and specific reason has to be assigned keeping in view the discussion, made in the body of judgment.

Whether the prosecution of offence relating to Central Act be withdrawn without taking permission from the Central Government?

Prosecution under Central Acts where with regard to the offences, executive power of the Union extends, prosecution cannot be withdrawn without permission of the Central Government (supra). For offences under Unlawful Activities (Prevention) Act, 1967, Explosive Substances Act, 1908 and Arms Act, 1959 etc and the offences falling in Chapter VI of Indian Penal Code or alike offences the executive power of the Union of India extends, hence permission from the Central Government with regard to withdrawal of prosecution under Section 321 CrPC shall be necessary.

Whether the State Government after giving sanction for prosecution, review its own order by issuing orders for withdrawal of the cases?"

State Government has got power to issue instruction or pass order even after sanction for prosecution has been given in a pending criminal case, subject to condition that the Prosecuting Officer has to take independent decision with due satisfaction in accordance with law on his own, before moving the application for withdrawal from prosecution in the trial court.

Chapter V

Effect of Withdrawal of Prosecution on Victim Right in Socio-Political Context

CHAPTER V

Effect of Withdrawal of Prosecution on Victim Rights in Socio-Political Context

"Wherever law ends, tyranny begins."

—John Locke

There is a criminalization of politics in the sense that the role of money and criminals have been increasing in electoral process. The political parties and leaders are using money and muscle power as a means to win the elections in mass democracy. Political parties use unethical means to ensure their victory. Candidates are chosen on the basis of their money power and capability to spend it in election to allure people to give them votes. In some cases people are pressurized and threatened to give votes to a particular candidate. Political parties and their leaders most of the time attack opposition and involve in resolving their own conflicts rather than to act upon policies and to legislate. In the global economy the political party which comes to power has duty to promote public welfare with their policies. Party leaders are answerable to the people; have to win electoral battles and face people's wrath.[1] There is a need of political reforms in Indian party system and can only be achieved through pressure from public, which can be exercised in the form of voting power for public welfare. People should chose their representative and make them responsive, as they have power to remove the bad governance. In order to achieve this purpose there must be awareness among people to understand the importance of their right to vote. There is a need of regulation on the Political parties to perform in a democratic manner but there should not be excessive regulation. [2]

In the working of parties, caste, religion, language and region also have acquired ideological overtones. Religion has been an active element in party do main before and after Independence. Today we have parties that claim to represent the interests and culture of specific religions.[3]

[1]http://www.democracy-asia.org/qa/india/KC%20Suri.pdf

[2]http://www.jpg.net.in/Journal%20of%20Politcis%20&%20Governance%20Vol.%201%20No.%204/JPG-June_2013.pdf

[3] ibid

5.1. Victim vs. Accused

It is the prime duty of the State to protect and safeguard the property and persons. Where a crime is committed against a person, it means that the State has failed in effectively discharging its responsibility. The rights of a victim originate from this failure. It is in this context that the State has a greater responsibility towards the victim. The victim has the right to demand from the State that the offender be punished. State must ensure that there is an effective and efficient criminal justice administration to meet this end. This cannot be achieved by merely enacting laws. The victim is invariably the complainant. It is he who activates the legal process. Investigations are carried out by the police. There is unfortunately a perception, often justified, that the secondary victimization of the victim commences at the stage he visits the police station to make a complaint.[4]

Commonly a victim is reluctant to visit the Police Station in India and in most of the cases police reluctant to file FIR. The Supreme Court in the case of **State of Haryana and others v. Bhajan Lal and Others**[5], **Ramesh Kumari v. State (NCT of Delhi)**[6], P**arkash Singh Badal and Another v. State of Punjab and Others**[7] held that if a complaint alleging commission of cognizable offence is received in the Police Station, then the police has no option but to register an FIR under section 154 Cr.P.C. On the other hand Supreme Court in the cases, namely, **Rajinder Singh Katoch v. Chandigarh Administration** [8], **State of U.P. v. Bhagwant Kishore Joshi**[9], have taken contrary view and held that before registering the FIR under section 154 Cr.P.C, it is open to the Station House Officer(SHO) to hold a preliminary enquiry to ascertain whether there is a prima facie case of commission of cognizable offence or not. In this contrary judicial

[4]Kamlasabayson K. C., Attorney General, "Balancing Rights of the Accused with Rights of the Victim", accessed from http://alrc.net , on 10/02/2015

[5] 1992 Suppl.1 SCC 335

[6] (2006) 2 SCC 677

[7] (2007)1 SCC 106

[8] (2007)10 SCC 69

[9] AIR 1964 SC 221

pronouncement, the matter was referred to a Constitution Bench of the Supreme Court in **Lalita Kumari v. State of U.P**[10] in this court held that:-

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

[10](2012) 4 SCC 1

e) Cases where there is abnormal delay/latches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be time bound and in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. Since the General Diary is the record of all information received in a police station, the court directed that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an investigation, must be mandatorily caused to entry in General Diary and the decision to conduct a preliminary investigation must also be reflected.

There are complaints by victims and common people that when an offence is reported the police do not take quick action or do improper investigations. There are several judicial direction on this issue but most of them are not followed by the investigation agency in the state.

According to National Crime Record Bureau(NCRB) nearly 3,13,65,409 cases pending in the courts. According to data available with the apex court, the number of pending cases with the Supreme Court is 64,919 as on December 1, 2014. The data available for the 24 High Courts and lower courts up to the year ending 2013 showed pendency of 44.5 lakhs and whopping 2.6 crores, respectively. Of the over 44 lakh cases pending in the 24 high courts of the country, 34,32,493 were civil and 10,23,739 criminal. The maximum pendency of civil and criminal cases together was in Allahabad High Court with 10,43,398 cases while the minimum was in Sikkim with 120 cases pending at the end of 2013. The Delhi High Court had a total of 64,652 cases pending before it. As per the data, the Allahabad High Court had the maximum number of pending criminal cases - 3,47,967. Of the 2.6 crore cases pending in lower courts, Uttar Pradesh

subordinate judiciary tops the chart with over 56 lakh cases pending by the end of 2013, out of which 41,98,761 are criminal matters.[11]

The overload is due to the increase in the crime rate and many shortcomings in the law enforcement system of the country. It is the right of the accused as well as victim, to see that there is speedy justice. It is almost impossible to provide for speedy justice in this context. Such observations clearly point towards the pathetic plight of a victim of crime. Often he is victimized at two stages, initially in the hands of the offender and then by the State Agencies. This agony continues when he repeatedly visits the Court. There may be several adjournment. In the witness box victim is often harassed by the Counsel. His suffering continues unabated. Having suffered in the hands of the principle offender, the victim instead of being comforted and protected by the State machinery, is in fact harassed. This feature makes the balancing exercise difficult if not impossible. In this background one could identify a clear duty on the part of the State to ensure that there is no secondary victimization.[12]

Victim of crime in Indian criminal justice system as described by V. R. Krishna Iyer, J. –

> "The criminal law in India is not victim oriented and the suffering of the victim, often immeasurable is entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminal, yet it overlooked the by-product of crime i.e. the victim"[13]

That conception can changed with the change in attitude towards recognizing the role of victim in the criminal justice system. The philosophy about the role of victim in criminal justice system has changed from 'informer' or 'complainant' to that of someone has fundamental interest in the case and thereby

[11]Accessed from www.ndtv.com on 11/12/2014.

[12]Kamlasabayson K. C., Attorney General, "Balancing Rights of the Accused with Rights of the Victim", accessed from http://alrc.net, on 10/02/2015

[13]V.R. Krishna Iyer, " Access to Justice: A Case of Basic Change", BR Publishing Corporation, 1991, pg. 14

connects to the 'rule of law'. Denial of justice to the victim would amount to violation of Rule of Law, the fundamental of democracy and constitutionalism.

Article 14 of the Constitution of India ensure equal protection of laws that demands care and protection of victim by and within the code of Criminal Procedure which till now may have tendency to protect rights of offenders.

Article 21 of the Constitution of India ensures human dignity to all and it must recognize rights of the victim by providing them better care and protection.

Article 41 of the Constitution of India has wider relevance with the victim right it mandate that the state shall make effective provision for securing public assistance in case of disablement and in other cases of undeserved want.

Article 51-A of the Constitution of India make fundamental duty of every citizen of India to protect and improve environment and to have comparison for living creature and to develop humanism. If emphatically interpreted and imaginatively expanded, one can find here the constitutional beginnings of victimology.

In **Nirmal Singh Kahilon v. State of Punjab**[14] the Supreme court observed that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under article 21 of the of the Constitution of India. Therefore, a victim of the crime is equally entitled to fair investigation and trial.

Section 9 of the Indian Evidence Act 1872 states that after filling and taking cognizance of the case by the magistrate, victims' participation in investigation and trial is mere to confirm the identity of the accused or identification of material.

In **Bodhisattwa Gautam v. Shubhra Chakraborty**[15]is landmark judgment for the victim in accordance with the principle of UN Declaration of Justice for Victims of Crime and Abuse of Power 1985. In this case, apex court directed that victim should be provided legal assistance at police station; police should inform the victim of his or her rights. There should be a penal of advocates who are willing to serve victim in the police station.

[14](2009) 1 SCC 441

[15]AIR 1996 SC 922

5.2. Events in Withdrawal of cases and offenders acts

5.2.1. Withdrawal in West Bengal [16]

According to the Ms Mamata Banerjee political promise a review committee was formed to review withdrawal of cases of the hundreds of political party workers ,those were languishing in jails for years and thousands of political workers released on bails.

In continuation of the decision taken by the Cabinet in its first meeting on 20th May 2011 the new Mamata Banerjee Governement has notified in the Kolkata Gazatte the formation of the Review Committee for the release of Political Prisoners in West Bengal. The 4th June notification published the names of the 13 member committee along with the terms of reference. Retired Justice Moloy Sengupta of Kolkata High Court is the Chairman of the Committee. Out of the 12 others there are 4 IPS Officers and 2 IAS Officers. The IPS Officers are ADG(Law & Order), Special Commissioner of Police, Kolkata, Director of Prosecution and IG(Prison).

The notification claimed to include 6 members as "Representatives from Human Rights Organisation/Social Organisation/Legal Profession". They are: Debabrata Bandopadhyay, SujatoBhadra, Debashis Bhattacharjee, Rajdeep Majumdar, Subrata Hati and Ansar Mondal. But no names of the organizations are mentioned from where they are chosen. Last three named persons are all practicing lawyers close to the ruling Parties. All the other members are close advisers of the Chief Minister. One of the members is a known Human Right activist and fought well during the last regime.[17]

The Review Committee directed to consider prisoners on seven clauses. These were :

1) to identify the politically motivated first information report (FIR) ;

[16]Ranjit Sur, "West Bengal Movement For Release of Political Prisoners" 04/07/2011 Accessed from http:\\countercurrents.org

[17] ibid

2) to identify the under-trial political prisoners who have been undergoing trial for the offences pertaining to political movement as per section 24 of the West Bengal Correctional Services Act, 1992[18];

[18]The West Bengal Correctional Services Act, 1992.

Chapter VII. - Classification of prisoner. - Section 24.

24. (1) the prisoner detained in correctional homes shall be classified as follows:-

(a) Civil prisoners,

(b) Criminal prisoners,

(c) Under-trial prisoners,

(d) Convicted persons,

(e) Habitual offenders,

(f) Non-habitual offenders,

(g) Political prisoners,

(h) Detenus ,

(i) Lunatics -criminal and non-criminal.

(2) The prisoners referred to in clauses (a) To (h) shall further be classified into male prisoners and female prisoners according to their sex and into divisions I prisoners and division II prisoners in terms of the privations of sections 25.

(3) (i) Any person committed to a correctional home by a civil court under the privations of the code of Civil Procedure, 1908, or any other law for the time being in force, shall be classified as a civil prisoner.

(ii) Any person committed to a correctional home by any court or authority for any offence punishable under the Indian Penal Code or any other law for the time being in force or by an order of a court-marital under a writ or order, duly sealed and signed by such court or authority, shall be classified as criminal prisoner.

(iii) Any person committed to a correctional home having been accused of any offence shall, until he is a convicted for that offence or any other offence by any court, be classified as under-trial prisoner.

(iv) Any person committed to a correctional home in respect of whom any order of conviction Has been made by any competent court and a person committed to the custody of a correctional home in default of payment of fine or furnishing security under any proceeding under sections 107 to 110 of the Indian Penal Code shall be classified as a convicted prisoner.

(v) Any person coming within the meaning of clause of section 2 shall be described as a habitual offender. All other prisoners shall be described as non-habitual offenders.

(vi) Any person arrested or convicted on a charge of having committed or attempting to commit aiding or abetting the commissions of any political offence, whether or not the act constituting such offence comes within the preview of any offence punishable under the Indian Penal code or any other law for the time being in force, or any person believed to have been prosecuted out of political animosity or grudge, shall be classified as political prisoner.

Explanation.- For the purposes of this clause,- (a) any offence committed or alleged to have been committed in furtherance of any political or democratic movement or any offence arising out of an act done by an Individual with an exclusive political objective free from personal greed or motive shall be a political offence. Explanation.-

(1) an offence coming within the preview of chapter VI of an Indian Penal Code shall always be deemed to be a political offence.

(2) The privation of a law under which an offender is charged shall not be material.

(a) A person charged under section 302 or section 379 or section 395 or section 411 of Indian Penal Code may be classified as a political prisoner if his case satisfies the requirement of this clause;

(b) any movement or public agitation sponsored or carried on by any political party or any other group or association of persons for furtherance of any political ideology or for securing or safeguarding any political right, objective or relief with a view to obtaining common good for the people in general or any section thereof or for the remedy of any injustice of political nature done to any individual shall be interpreted as a political movement.

(c) any movement or public agitation sponsored or carried on by any political party or any group or association of persons for securing common good for the people in general or any section thereof or for securing and safeguarding any well -recognized human right , or for undertaking activities in the field of social reform or for ameliorating the living condition of the afflicted or poorer section of the community or for securing reforms or for safeguarding public interest in social, economic, educational and cultural matters, or for securing remedy of any injustice done to any individual or body of individuals in those matters, shall be interpreted as a democratic movement:

(d) for the removal of doubts it is hereby declared that trade union activities and collectives activities sponsored or carried on for securing justice and well being of the working class and collective activities for safeguarding the interest of tillers of land or for betterment of conditions of their labour and living shall be deemed to be a democratic movement:

Provided that a movement or public agitation by any communal, regional, linguistic, religious, racial, sectional or caste group sponsored or cared on against any other like group shall not be deemed to be a political or democratic movement: Provided further that any movement based on religious, regional, communal, racial or caste consideration or any movement for promoting any interest, other than social or economic interest, by any religious, regional, communal or racial or caste people or any movement for placing impediments or obstruction in the matter of advancement of any section or sections of the people, shall not be treated as a political or democratic movement.

(vii) Any person who has been committed to a correctional home by warrant, writ or order issued under any law providing for preventing detention or any person detained without any opportunity of trial under any law for time being in force, shall be classified as a detune.

(viii) Any person who has been committed to the custody of a correctional home by a

3) to identify the persons who have been convicted for the offences pertaining to political movements as per section 24 of the West Bengal Correctional Services Act 1992 ;

4) to identify the nature/characteristics of the offences and the background leading to the commission of such offences ;

5) to examine the conduct of prisoners in the correctional homes ;

6) to ascertain the probability of their reverting back to the commissions of offences;

7) to examine the probability of instigating others to commit offences.

The first three clauses mentioned to identifying the politically motivated FIRs and finalizing the list of political prisoners according to provision of the West Bengal Correctional Services Act 1992.

These clauses will find whether the released prisoners will be involved in politics again or whether the released prisoners will influence others to join in their politics. Joining and preaching politics is ones fundamental right. So ascertaining their chance of joining politics again as a precondition of release or demanding undertaking of not doing politics of his choice or preaching to others is highly objectionable.

Similarly, in 1977 late Charan Singh, Home Minister of the then Janata Dal Government raised such a demand as a precondition for release of political prisoners. But a thunderous protest across the Nation forced him to withdraw the humiliating proposal.

Now, the Mamata Banerjee government wish to place the same demand through back door and that too with consent from a section of leading Human Right activists. This is alarming in all respects, particularly for the Human Rights Movement of the State in future. Moreover, the Committee will look into the

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warrant, writ or order made by a court for an alleged offence under any law for the time being in force or for serving a sentence for an offence punishable under any law for the time being in force shall be classified as a criminal lunatic if he- (a) is found to be of unsound mind of the date of his admission into a correctional home: (b) is found to have developed unsoundness of mind after his admission into a correctional home but before his conviction; (c) is found to have developed unsoundness of mind after his admission into a correctional home and after his conviction ;

behaviour of Prisoners inside the jail. History shows that the Political Prisoners always demanded their dues inside the jails and initiated movement against the jail authority for corruption and high handedness . So jail authority will never certify them of good conduct . Interestingly IG (prison) against whom they fought will finally prepare the report and will judge the report as well as a Review Committee member .

What is the intention of the Government ? Do the Government really want to release the political prisoners or just wish to release some persons of their choice to show that they kept their Election Promise.[19]

One more point to add, right activists all over India are closely watching the movement for release of political prisoners in West Bengal.

The Opposition Bhartiya Janata Party slammed the Nitish Kumar-led government for withdrawing a case against coalition partner Rashtriya Janata Dal chief Lalu Prasad, his two sons and 262 other party workers.

A case against them was filed on 27 July 2015 for indulging in vandalism, preventing government officials' work and stopping vehicles of judges who were on their way to the court during RJD's Bihar bandh.

The issue were raised by the Shushil Kumar Modi, BJP Leader, whether the State government taken permission from the Patna High Court which had earlier taken *suomotu* cognizance of the issue and has been hearing the case, before withdrawing the case from the lower court? He also alleged that the government worked under pressure of Lalu Prasad to withdraw the case against him, his two sons and over two hundred party workers. It was also contended that the State government may withdraw cases against RJD leader and former party MP Mohd Shahabuddin who is in Jail for a long time and several other RJD and JD(U) MPs and MLAs under pressure of political coalition.

Mr. Shushil Kumar Modi further added that what the State government would do over thousands of such cases involving agitation by employee unions and citizens who staged protest and jammed road against the state government? Mr Modi also hit out at the Chief Minister for "bowing to the RJD chief Lalu Prasad for the sake of being in power".

[19] Accessed from http://indiatoday.intoday.in

The charge sheet in the case had been filed on May 27, 2015 and it was withdrawn on Wednesday on the request of the public prosecutor. The chief judicial magistrate of the Patna Civil Court had accepted the plea of the government lawyer for withdrawal of the case under section 321 of Cr PC. However, of the 24 FIRs registered under various police stations against RJD supporters during the bandh call only one involving the RJD chief Lalu Prasad and his two minister-sons were withdrawn.[20]

"This is the height of political appeasement by Nitish Kumar," Modi told The Indian Express. However, RJD spokesperson Manoj Jha said, "The government made a request to withdraw the case purely on merit. These are frivolous cases and there have been past instances of withdrawal of such cases. The BJP is bereft of any work or agenda."[21]

5.3. Government's Inability towards Kidnappers

5.3.1. Plane Hijacking

Indian Airlines Flight 814 commonly known as IC 814 was an Indian Airlines Airbus A300 en route from Tribhuvan International Airport in Kathmandu, Nepal to Indira Gandhi International Airport in Delhi, India on Friday, 24 December 1999, when it was hijacked. Harkat-ul-Mujahideen, a Pakistan-based Islamic extremist group, was accused of the hijacking. The aircraft was hijacked by terrorists shortly after it entered Indian airspace at about 17:30 IST. Hijackers ordered the aircraft to be flown to several locations. After touching down in Amritsar, Lahore and Dubai, the hijackers finally forced the aircraft to land in Kandahar, Afghanistan, which at the time was controlled by the Taliban. The hijackers released 27 of 176 passengers in Dubai but fatally stabbed one and wounded several others.

The motive for the hijacking appears to have been to secure the release of Islamist figures held in prison in India. The hostage crisis lasted for seven days and ended after India agreed to release three militants – Mushtaq Ahmed Zargar,

[20] The Hindu, accessed from www.thehindu.com on 21/01/2016

[21] http://indianexpress.com/article/india/india-news-india/nitish-kumar-govt-withdraws-case-against-rjd-chief-lalu-prasad/#sthash.Px1ZM262.dpuf accessed on dated 28/01/2016

Ahmed Omar Saeed Sheikh and Maulana Masood Azhar. These militants have since been implicated in other terrorist actions, such as 9/11, the kidnap and murder of Daniel Pearl and Mumbai terror attacks.

Negotiations in the event taken place between terrorist hijackers and government of India.Hijackers demanded release of following accuseds :

1. MaulanaMasoodAzhar – founded Jaish-e-Muhammed in 2000 which gained notoriety for its alleged role in the 2001 Indian Parliament attack.
2. Ahmed Omar Saeed Sheikh – arrested in 2002 by Pakistani authorities for the abduction and murder of Daniel Pearl.
3. Mushtaq Ahmed Zargar – has played an active role since release in training Islamicmilitants in POK.

After the three militants landed in Kandahar, the hostages aboard the flight were freed. On 31 December 1999, the freed hostages of the Indian Airlines Flight 814 were flown back through special plane. Meanwhile, the Taliban had given the hijackers ten hours to leave Afghanistan. The five hijackers departed with a Taliban hostage to ensure their safe passage and were reported to have left Afganistan. Pakistan denied that any of the militants are in Pakistan, but it was discovered later that all three terrorists MaulanaMasoodAzhar (living in Muzaffarabad, Pakistan), Ahmed Omar Saeed Sheikh (who kidnapped and killed Daniel Pearl from Lahore, Pakistan) and Mushtaq Ahmed Zargar (also living in Muzaffarabad, Pakistan) were in Pakistan.[22]

5.3.2. Rubiya Sayeed kidnapping Case

Rubaiya Sayeed was the daughter of Mufti Mohammad Sayeed, then the Home minister of India in the V. P. Singh government in 1989. The kidnapping of Rubaiya Sayeed was done by Jammu Kashmir Liberation Front, a Kashmiri Muslim militant organization, on December 8, 1989 in Jammu and Kashmir. She was kidnapped at 3:45 p.m. on December 8, 1989, about 500 metres from her home at Nowgam when she was returning from the LalDed Memorial Women's

[22] "Cover Story: Hijacking; ... in Lahore, there is a political sideshow". 10 January 2000. Accessed from www. India-today.com on 18 September 2014.

Hospital in a local mini bus. Four militants forced her out of the vehicle at gunpoint into a waiting Maruti car and disappeared.

The kidnappers demanded the release of five persons accused of terrorist activities, in exchange for Rubaiya's safe release. The government accepted their demands, withdrawn the cases and freed the jailed terrorists.

The negotiations opened through Zaffar Meraj of the Kashmir Times, while Shabnam Lone, daughter of A.B. Ghani Lone and Maulvi Abbas Ansari of the Muslim United Front were tapped as possible channels. Later, a judge of the Allahabad High Court, MotiLal Bhat, entered the picture. A friend of Mufti, he began negotiating directly with the militants on behalf of the home minister.

On December 13, 1989 Dr. Rubaiya Sayeed was set free, as soon as the government released the five jailed militants.

Years later Farooq Abdullah claimed that his government was threatened with dismissal by the central government if the militants were not exchanged for Rubaiya. The kidnapping set the stage for heightened militancy in the state. Many say the abduction was the watershed in the Kashmir insurgency. Releasing the militants was nothing short of a blunder. Had the V P Singh government not buckled down, things would have been different," they say, "The JKLF would not have harmed Rubaiya due to public sentiment. In 1999 three JKLF militants Shoukat Ahmed Bakshi, Manzoor Ahmed Sofi and Mohammad Iqbal Gandroo were granted bail after 9 years.[23]

5.3.3. Veerappan Episode (Rajkumar Kidnapping case)

Veerappan was well known sandalwood smuggler who was active for years in forest land in the state of Karnataka, Kerala and Tamil Nadu. In early criminal history Veerappan developed sandalwood and Ivory smuggling and later he started killing those who resisted his activities. He committed muders of police officers, forest officers and informant. His notoriety came in light when he killed the forest officer.

On July 30 2000 Veerappan kidnapped a famous Kannada actor, Rajkumar and three others for release of some his aids of brigand in ransom. Government of Karantaka was not willing to fulfil his demand resulting public outcry and

[23] Accessed from http://wikipeadia.com on 02/12/2015

violence ensued in Bangalore as well as other parts of Karnataka. A bandh was observed in 22 September 2000 in Banglore. Negotiations were conducted by R. Gopal , editor Nakkeeran a Tamil magazine with several round of talk with Veerappan. On the other hand Veerappan demanded justice for Tamil Nadu in the Cauvery Water dispute and making Tamil the second official language of Karnataka and release of certain Tamil extramists jailed in Tamil Nadu.[24] Later Rajkumar was released unharmed after 109 days captivity in November 2000. Unofficially it was said that huge some of money was being paid in ransom.

On August 25 2002, Veerappan abducted H. Nagappa a former minister for Agricultural Marketing, Karnataka from his villege house district Chamarajanagara Karnataka. All effort of safe release was unfruitful on recovery of dead body of minister. Government of Karnataka increased the amount of reward Rs. 5,00,00,000 on Veerappan head.

Broadly, what Veerappan is asking for can be classified into political demand on various public issues and those pertaining to the 'release of detenus' by withdrawal of cases or grant of pardon. What is at stake is the life of Mr. Rajkumar. The political demands strike at the very foundation of the constitutional system. Normally, the government is accountable to the people through Parliament and elections. But Indian democracy would be dormant if it presented its case only through periodic elections and through protest is necessary to keep governance on its toes.[25]

5.4.Casteist and Religious Overtone

5.4.1. Phoolan Devi Case

Phoolan Devi, popularly known as "Bandit Queen", was an bandit and later a Member of Parliament. Born to a low caste Mallah family in village Ghura Ka Purwa in Jalaun District Uttar Pradesh.Phoolan endured poverty as a child, had an unsuccessful marriage, and took to a life of crime. In her in law village Behmai,

[24]Nambnath, " Veerappan as Robinhood", The Hindu 20/11/2004, accessed from www.thehindu.com on 20/02/2014

[25]Dhavan Rajeev, "Veerappan's Rules, OK", The Hindu 08/09/2000, accessed on 20/02/2014

few people of high caste gangraped her. Later she joined a dacoit gang to take revenge. In 1981 she killed 22 upper caste villegers in Behmai. [26]

The press portrayed the Behmai massacre as an act of righteous lower-caste rebellion and Phoolan herself as an oppressed feminist Robin Hood. The respectful sobriquet 'Devi' was conferred upon her by the media at this point. Phoolan evaded capture for two years after the massacre before she and her few surviving gang-members surrendered in 1983. She was charged with forty-eight major crimes, including multiple murders, plunder, arson and kidnapping for ransom. After eleven years pending trial, the state government headed by Mulayam Singh Yadav of the Samajwadi Party withdrew all charges against her, and Phoolan was released in 1994. She then stood for election to parliament as a candidate of the Samajwadi Party and was twice elected to the LokSabha as the member for Mirzapur.

5.4.2. Allegation of Withdrawing criminal cases against particular Community, by Akhilesh led UP Government[27]

In the challenge against the decision of the High Court of Allahabad Judicature regarding the withdrawal of the cases against the "Yadav' community, the concerned State Government had preferred present appeal before the Hon'ble Supreme Court of India.

In its decision in the matter, the High Court of Allahabad had issued directions against the State Government of UP requiring it to adduce details of all Criminal cases booked in the last three years, where 'Yadav' Community members were involved and in which prosecutions thereof were withdrawn from Courts of Law. In the decision of the High Court concerned, it had observed that the concerned State Government was withdrawing criminal prosecution by keeping in mind the 'class consideration'.

Questioning the Uttar Pradesh government, the Allahabad High Court has sought records from the Legal Remembrancer of the state about total number of applications filed for withdrawing cases against persons belonging to a particular

[26]Accessed from http://wikipeadia.com on 02/12/2015

[27] Accessed from http://lawyerslaw.org on 18/05/2015

class filled by it in the last two years and also the circumstances in which they have been filled.[28]

In an appeal, the Supreme Court while admitting the same, said that it will examine the issue that whether the concerned State Government is really involving in withdrawing the criminal cases pending against the Yadav Community in the State of Uttar Pradesh, and also in the meantime, the Apex Court has stayed the operation of the decisions of the High Court of Allahabad.

While challenging the decision of the Allahabad High Court, the State Government had found erroneously indicating themselves favouring a particular class or caste and also it was stated on behalf of the State Government that the decision of withdrawing Criminal Cases was within the scope of powers of Executive organ of the state.

Supreme Court has granted interim relief in favour of the Mr. Yadav's led Government of State of UP by way of staying effect of High Court of Allahabad's decision.[29]

5.4.3. In matter of Muslim community

In the Public Interest Litigation filed before Allahabad high court by Ms. RanjanaAgnihotri and others. [30] The PIL aroused from the a number of offences were committed between the period 2000 and 2009, including under various provisions of The Explosive Substances Act 1908, The Prevention of Terrorism Act 2002, The Unlawful Activities (Prevention) Act 1967, The Official Secrets Act 1923, offences under Chapter VI of the Indian Penal Code 1860 and The Criminal Law Amendment Act in various districts viz. Varanasi, Gorakhpur, Bijnor, Lucknow, Kanpur Nagar, Rampur and Barabanki. The crimes, thus committed, included bomb-blasts at different places at different times in various districts. On investigation, incriminating material was collected against certain accused whereupon charge-sheets have been filed in various Courts. In some cases, trial has commenced, whereas in some cases accused are absconding. In

[28] Accessed from http://indianexpress.com on 10/05/2015

[29] Accessed from http://lawyerslaw.org/supreme-court-to-find-out-issue-of-withdrawing-criminal-cases-against-yadav-community-by-akhilesh-led-up-government/

[30]Ms.RanjanaAgnihotri and others. v. Union of India Through Secy.Ministry of Home Affairs &others , MISC. BENCH No. - 4683 of 2013

pursuance of instructions issued by the State Government, the Public Prosecutors, Incharge of those cases, moved applications for withdrawal from the prosecution of the accused in the said cases in the public interest.

The petitioners MsRanjanaAgnihotri preferred Writ Petition No.4683 (MB-PIL) of 2013, thereby challenging vires of Section 321 of the Code of Criminal Procedure 1973 (for short 'Cr.P.C.') as well as the instructions issued by the State Government to the Public Prosecutors for withdrawal from the prosecution. The petitioners seek direction to ensure trial of the cases to be concluded in accordance with Law. Division Bench of this Court, after providing opportunity of hearing to learned Additional Advocate General of the State as well as counsel for the Union of India and going through the affidavits/pleadings furnished by the parties, formulated four questions, and by order dated 07.6.2013 requested the Hon'ble Chief Justice of the High Court to constitute a Larger Bench.

From the records submitted by the learned Addl. Advocate General, it appears that different letters of identical nature were sent to the respective Districts inviting opinion of the District Magistrate, Senior Superintendent of Police and the Prosecuting Officer with regard to withdrawal of cases which contains 13 points. In pursuance of this the state government issued an order dt. 05/07/2012 to District Magistrates , Superintendent of Police and Railway Police to head forward for the withdrawal of cases.[31]

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[31]संख्या 341/छः–पु–15–2012

प्रेषक,

आर0एम0 श्रीवास्तव,

प्रमुख सचिव, गृह

उत्तरप्रदेश शासन ।

सेवामें,

1–समस्तजिलाधिकारी,

उत्तरप्रदेश ।

2–पुलिसमहानिदेशक/

वरिष्ठपुलिस अधीक्षक/पुलिस अधीक्षक, प्रभारीजनपद

उत्तरप्रदेश ।

3–अपरपुलिसमहानिदेशक, रेलवेज, लखनउ ।

गृह (पुलिस) अनुभाग–15 लखनउ : दिनॉक 05 जुलाई, 2012

विषय :–दहशतगर्दी के खिलाफकार्यवाही की आडमेंबेकसूरनौजवानोंकाउत्पीड़नरोकने के सम्बन्ध में

महोदय,

उपर्युक्तविषय के सम्बनमेंमुझे यह कहनेकानिदेशहुआहैकि शासन के संज्ञानमें यह तथ्य आयाहैकिदहशतगर्दी के खिलाफकार्यवाही की

In pursuance to the afore-mentioned letter, the District Magistrates, SSPs and District Government Counsels (Criminal) have forwarded their comment through the District Magistrate concerned. The comment sent by the District Magistrate of districts concerned are in 13 columns. Columns 10, 11, 12 and 13 relate to the opinion of the Presenting Officers, SSP and District Magistrates. SPs, DMs and the District Government Counsel of the Barabanki, Lucknow, Rampur, Kanpur Varanasi and Gorakhpur have clearly submitted that withdrawal of cases against the respective cases are not in the public interest, national interest, national integrity and justice.

After receipt of information, the government passed an order directing the District Magistrate to proceed with withdrawal of cases and submit a compliance report as is evident from the letter dated 5.3.2013 sent to the District Magistrate, Varanasi. Thus, it appears that in spite of dissenting notes of the Presenting Officers, the government took a decision for withdrawal of cases, in pursuance of which, the applications were moved.

Findings

(i) Whether the material placed before the government, Public Prosecutor or the court makes out a case for dropping of the proceeding of an offence relating to terrorist activities, (1967 Act) or Chapter VI of the I.P.C. Or offence under Explosives Act or alike offence ?

आड़ मेंउत्तरप्रदेश के अनेकबेकसूरनौजवानों के विरूद्ध उत्पीड़नात्मककार्यवाहीविगतवर्षोंमें की गईहै । इससम्बनमेंकार्ययोजनातैयारकरबेकसूरोंकाउत्पीड़नरोककरउनकोइंसाफदियाजानावर्तमानसरकारकीप्राथमिकताहै ।

2–इसकेलिए शासनस्तरपरविचारकरनेहेतुजनपदस्तर के प्रत्येकप्रकरणमेंससुगतसूचनाकीआवश्यकताहै । ऐसेप्रकरणवेहोसकतेहैंजिनमें संलग्नक–1 की सूचीमेंवर्णितअधिनियमों की इंगित धाराओं/प्राविधानों के समूह के अन्तर्गत एफ0आई0आर0 दर्जहुयीहोऔरप्रकरणअभीभीविवेचनाधीनहों या अभियोजनप्रचलितहो । इनमें ऐसेभीप्रकरणहोसकतेहै ।जिनमेंसफलअभियोजन के पश्चातव्यक्ति मा0 न्यायालय सेदण्डितहुए होंऔरवर्तमानमेंकारागारमेंनिरूद्ध हों । यह सूचनाप्रत्येकजनपद के सम्बन्ध में 1–1–2000 सेअग्रेतरअवधि के लिए वांछितहै ।

अतः अनुरोध हैकिकृपयाउपरोक्तसूचना संलग्नक–2 के प्रारूप के कालम 1 से 29 पर एक पक्ष के अन्दर प्राथमिकता के आधारपपुलिसमहानिदेशक, उ0प्र0 कोप्रेषितकरनेकाकष्टकरें । पुलिसमहानिदेशक, प्राप्त सूचनाकासम्यक रूपसेपरीक्षण एवंसंकलनकरनिर्धारितप्रारूप (संलगनक–2) के कालम 1 से 29 परवांछित सूचनाअतिशीघ्र अधोहस्ताक्षरीकोउपलब्ध कृपयाकरायेंगे ।

संलग्नक–उपरोक्तानुसार

भवदीय

आर0एम0श्रीवास्तव

प्रमुख सचिव ।

(ii) In the assessment of the police and intelligence authorities and of the State Government, the risk of leaving the accused free to commit crimes in future and how did the government and Prosecuting Officer weigh against the risk to citizens' life and consequential civil disturbance ?

(iii) What will be effect on the morale of the law-enforcement agencies who apprehended the terrorist or accused involved in offence under Chapter VI of IPC or alike matters ?

(iv) What would be the likelihood of reprisals against the witnesses who stood in favour of prosecution to make a statement in the court or who has already made a statement?

(v) Whether there is any material on record which indicates danger to national security, public peace and tranquility in case the accused is released without trial?

(vi) Whether withdrawal will be violative of resolution of UN Security Council in pursuance to which, 1967 Act as has been amended in 2008?

(vii) Whether from the material on record, prima facie, a case is made out that the accused has got link or association with foreign terrorist organisation or a government?

(viii) Whether withdrawal of case against the accused shall be justified in national and social interest of the country?

5.4.3. Withdrawal of prosecution against 13 for safe release of the MLA Jhina Hikka from Maoist captivity

The State Government of Orissa directed the public prosecutor for the withdrawal of prosecution against 13 persons, as agreed for the release of the two Italian nationals and Laxmipur MLA Jhina Hikaka from the Maoist captivity.

The 13 persons are Argu Sirika, Rupana Huluka, Dora Hantal, Dhana Hantal, Wadeka Diba, Nachika Suba, Rabi Tadingi, Huluka Keshab, Setu Pangi, Murla Neelam Reddy, Deba Madhi, Ganga Sodi and Bhima Padiami, State Government contended that it is taking all steps to honour the commitments made for the release of the two Italian nationals and the Laxmipur MLA, spokeperson of the state government agreed to facilitate the release of four persons in exchange of the Italian tourists' release.

They are Subhashree Das, wife of Maoist leader Sabyasachi Panda, Arati Majhi, Suka Nachika and Chakra Tadingi. Subhashree has been acquitted by the court in a case and has come out of jail. The Home Secretary said bail has been granted to Arati Majhi in two cases and rejected in three cases in the sessions court. She can approach the High Court in these cases. The bail petitions of Suka Nachika and Chakra Tadingi have been rejected in the lower court.

Maoist alleged that the State Government that bail applications of Arati and Suka were rejected because the Government pleaders opposed them.

The Home Secretary said bail has been rejected in eight cases by the lower court. The cases involve Rupuni Sirika, Ina Tadingi, Ramesh Nachika, BijayTadingi, MangarajDarua, DebaMadhi, Ganga Sodi and BhimaPadiami. Behera said those, whose bail applications have been rejected, can appeal in the higher court. The remaining eight are yet to file their bail petitions. They are Miniaka Sandal, MiniakaJama, SauraKartasiya, HulukaKeshab, NarsiKendruka, JorukaKendruka, MurlaNeelam Reddy and SetuPangi. Behera said their release will be facilitated on filing of their bail petitions. [32]

BJD MLA Jhina Hikaka on April 26 walked to freedom, escorted by a group of tribals, after 33 days in Maoist captivity in Odisha's Koraput district.

The 37-year-old Laxmipur MLA was freed at Balipeta in the Maoist hot-bed of Narayanpatna in the district where a Maoist *praja* (people's) court had decided to release.

"I was treated quite well and not tortured, "Hikaka said shaking hands with the lawyer. Looking cheerful after his grueling ordeal, Hikaka said, "I am free now. I am in good health."

The legislator said he ate the same food as the Maoists who moved him from one place to another at least thrice during his captivity. The MLA had reportedly told the *praja* court held on April 23 and 24 that he would resign as MLA, snap all ties with BJD and live as an ordinary citizen and work for the people.

[32] Accessed from http://www.ibnlive.com/news/india/withdrawal-of-prosecution-against-13-474687.html news report on 16/05/2012

His relieved wife, Kaushalya said, "I am thankful to the tribals and the media for their support. I was very anxious to see my husband."

Chief Minister Naveen Patnaik said, "We are extremely happy and glad that Hikaka is free and reunited with his family members who were in a state of distress."

According to the Maoist's Andhra-Odisha Border Special Zonal Committee (AOBSZC), which had held him hostage, the tribal MLA had given a written undertaking that he would resign from the state Assembly and from the BJD and work for the people.

The tribals, who escorted Hikaka, also played an audio tape in which the MLA purportedly told the *praja* court that he had failed as a people's representative after being elected three years ago and that he would quit as a legislator after being released.

Hikaka was, however, non-committal on quitting as MLA and the party and said, "You will know about it in due course."

Categorically asked whether he would put in his papers, Hikaka said a *praja* court was not a platform to resign.

The MLA said his release was possible because of support from the tribals and the media and his own efforts.

The MLA side-stepped questions about the *praja* court proceedings, saying its specific decisions would be shared later as he was not mentally prepared to give a detailed account at the moment.

Soon after Hikaka's release, Mahatma Gandhi's favourite *Ramdhun* was played in the Odisha Assembly and Chief Minister's office at the state secretariat here.

It was very surprising that Assembly Speaker Pradip Amat said."We are happy that the tribal MLA from Laxmipur was released in a peaceful and non-violent manner by the Maoists,"

Apart from Hikaka's abduction, another Maoist group, Odisha State Organising Committee, had kidnapped two Italian nationals Claudio Colangelo and Paolo Bosusco on March 14 in Kandhamal district.

While Colangelo was released on March 25, Bosusco was freed on April 12.

The twin hostage crisis took place about a year after the then Malkangiri district collector R Vineel Krishna was abducted by Maoists in February, 2011 while attending a development programme in Naxal-hit Chitrakonda area of the tribal-dominated district.

5.5. Social and Political Effects on the Victims

In **Shatrughan Chauhan & others v. Union of India & Ors.** Supreme Court observed that the victim rights as important and necessary as the accused in the criminal justice administration.

> "This Court is conscious of the fact, namely, while Article 21 is the paramount principle on which rights of the convicts are based, it must be considered along with the rights of the victims or the deceased's family as also societal consideration since these elements form part of the sentencing process as well. The right of a victim to a fair 26 investigation under Article 21 has been recognized in State of West Bengal vs. Committee for Democratic Rights, West Bengal, (2010) 3 SCC 571, which is as under:
>
> Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:
>
> (i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.
>
> (ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include

its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State…"

We do comprehend the critical facet involved in the arguments by both the sides and we will strive to strike a balance between the rights of the accused as well as of the victim while deciding the given case.

"Another vital aspect, without mention of which the present discussion will not be complete, is that, as aforesaid, Article 21 is the paramount principle on which rights of the convict are based, this must be considered 42 along with the rights of the victims or the deceased's family as also societal consideration since these elements form part of the sentencing process as well. It is the stand of the respondents that the commutation of sentence of death based on delay alone will be against the victim's interest."[33]

In **Sheonandan Paswan case**[34] the court has to examine that all relevant aspects have been taken into consideration by the Public Prosecutor and/or by the Government in exercise of its executive function.

Their court gave word of caution, that a democratically elected government should not give an impression to the citizens of the country, being lawmakers, which would breed contempt for law and does not invite citizens to become a law onto themselves. It may lead to anarchy. When people see public authority flouting law and helplessness of the government, it shall amount to paralyzing and discrediting the democratic authority.

Whenever an initiative is taken by the State Government, it shall be necessary for the State Government to look into the aforesaid aspects and record a finding and thereafter may issue instruction to the Prosecuting Officer for the purpose, and the Prosecuting Officer while moving application must inter alia include specific pleading with regard to aforesaid aspects. In the same manner, the court has to also record a finding with regard to aforesaid issues while passing an order for withdrawal of case or rejecting the application.

[33] W P (Cri.) No. 55 of 2013

[34] (1983) 1 SCC 438

In the **Abdul Karim case**[35] court said that:

"The Governments have to consider and balance the choice between maintenance of law and order and anarchy.The self-preservation is the most pervasive aspect of sovereignty. To preserve its independence and territories is the highest duty of every nation and to attain these ends nearly all other considerations are to be subordinated. Of course, it is for the State to consider these aspects and take a conscious decision."

In the **Ayyub v. State of U.P.**[36] it has been held that it shall not be necessary for the State Government to give reason while issuing direction for withdrawal of cases from prosecution. Mere expression in the form of 'Janhit' is sufficient for according consent.

5.6. Rule of Law

The fundamental aspect of the modern legal system is the rule ‘ how high you may be ; the Law is above you’. It signifies that law is supreme and that no human being is higher than the authority of law. According to the Rule of Law is the government treat each individual equally and fairly regardless of racial, gender, educational, or economic differences. It creates sense of security and respect among citizen. Observation of rule of shows that nation values individual dignity and freedom. In contrary, violation of Rule of Law a nation acts may unjust and arbitrary. Non-observance of the Rule of Law produces an elitist society. Most of the democratic countries adopted Rule of Law into the constitution.

A. V. Dicey stated three principle of Rule of Law:-

1. Supremacy of law

   According to this principle law is supreme and oppose the arbitrariness and discretionary power. The government is subject to the rule of law rather than the law being subject to the government.

2. Equality before law

   The principle of equality before law or equal subjection of all classes to the ordinary law is cardinal principle.

[35] AIR 2001 SC 116

[36] 2002 SCC (Cri) 673

3. Predominance of legal spirit

   Right would be secured more adequately if they are enforceable in courts rather mere written in the constitution.

The framers of the USA and Indian Constitution attempted to incorporate Rule of Law into the Constitution's by expressly limiting the government's powers. Problems arise when governments conveniently ignore the Rule of Law when it conflicts with their political whims.[37]

The Rule of Law refers to various established legal principles imposing limitations on governmental authority. English legal scholar Albert Venn Dicey defined the Rule of Law as follows:

> "[It] means in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government .... It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts ... [and], lastly,.. . that, in short, the principles of private law have with us been by the action of the courts and Parliament so extended as to determine the position of the Crown and of its servants; thus the constitution is the result of the ordinary law of the land."[38]

Although the U.S. and Westminster Governments are founded on principles of democracy, the political reality is, unfortunately, that these authorities largely ignore Dicey's definition of the Rule of Law whenever they find it inconvenient. By examining recent examples wherein government authorities in the United States and Great Britain ignored the legal limitations the Rule of Law imposes, this Essay proffers that authorities

[37]Michael L. Principe, Albert Venn Dicey and the Principles of the Rule of Law: Is Justice Blind? A Comparative Analysis of the United States and Great Britain, 22 Loy.L.A. Int'l & Comp. L. Rev. 357 (2000). Available at: htp://digitalcommons.lmu.edu/ilr/vol22/iss3/2

[38] Ibid As referred

should either discard the Rule of Law altogether or begin living up to its standards.[39]

International Bar Association adopted the Principle of Rule of Law Resolution in September 2005 elaborated these fundamental principles of the Rule of Law in 21st Century, which are as follows,

(a) An independent, impartial judiciary,

(b) The presumption of innocence,

(c) Fair and Public trial without undue delay,

(d) A rational and proportionate approach to punishment,

(e) Strong and independent legal profession,

(f) Strict protection of professional confidential communication between lawyer and client.

(g) Equality of all before the law,

Accordingly:

(a) Arbitrary arrests;

(b) secrete trials,

(c) Indefinite detention without trial,

(d) Cruel or degrading treatment or punishment,

(e) Intimidation and corruption in electoral process,

are not acceptable or contradictory to Rule of Law.

The Rule of Law is the foundation of a civilized society. It establish :

(a) a transparent process,

(b) an accessible and equal trial.[40]

No doubt executive have wide discretion over the public interest and run the government accordingly. While dealing with abduction of public figure and their safe release while abductor demand of release of offenders in ransom, government should consider the effort of the security personal and security of public at large after release. Government should draft the policy regarding this conditions to maintain rule of law as far as possible. That will secure democracy

[39] ibid

[40] "Rule of Law Resolution", adopted by International Bar Association on September 2005 accessed from http://www.ibanet.org on 12/08/2015

and reduce the event of ransom that create the insecurity among people along with reduction in unnecessary withdrawal of cases. Withdrawal of prosecution should only be in genuine cases of insufficient evidence which uphold the justice to the victim and accused.

Chapter VI

Conclusion and Suggestions

Conclusion and Suggestions

यत्र धर्मोह्यधर्मेणसत्यं यत्रानृतेनच।

हन्यते प्रेक्षमाणानांहतास्तत्र सभासदः।।

"***Jatrodharmohyadharmena Satyam Jatranrutenacha***

HanyateprekshyamananamHatastrataSabhasadah"[1]

(Where in the presence of Judges "*dharma*"(justice) is overcome by "*adharma*"(injustice) and "truth" by "unfounded falsehood", at that place they (the Judges) are destroyed by sin)

Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside.

In every democratic civilized society, Criminal Justice System is expected to provide the maximum sense of security to the people at large and minimizing pain to victim by dealing with crimes. The aim of criminal administration is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice and to prevent recidivism.

The status of the Criminal Justice system throws many challenges to the Indian Criminal Justice System. The fundamental principles of criminal jurisprudence and the relevant laws have to be critically examined to bring out reforms in the following among other areas.

i. To set an inspiring ideal and a common purpose for all the functionaries.
ii. To instil a sense of urgency, commitment and accountability.

[1] Manu Samhita, Chapter 8th, Stanza 14

iii. To improve professionalism, efficiency, expedition and transparency in all the functionaries.

iv. Quickening the quality of justice by streamlining the procedures.

v. To enhance the level of professional competence and to take measures to enhance credibility, reliability and impartiality in the investigation agency.

vi. To improve the level of professional competence of the prosecutors and to ensure their function in co-ordination with the investigation agency.

vii. To focus on the role of the accused in contributing to better administration of criminal justice.

viii. To focus on justice to victims.

ix. To tackle the problems of perjury and to ensure protection and better treatment to witnesses.

x. To find effective response to the menacing challenges of terrorism, organised crime and economic crime.

xi. Restoring the confidence of the people in the Criminal Justice System.

Victim rights in the United States of America was gradually grown by the victim rights movement since and it gained momentum after the judicial pronouncement Linda R.S. v. Richard D. case. In this case, court laid down that "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." The decision sparked row over victim rights which ultimately satisfied by the legislation for the Victim and Witness Protection Act. In 1984, the Victims of Crime Act and The Violence Against Women Act were passed. In 2004, the landmark Crime Victims' Rights, Victims of Crime Act(VOCA) was enacted.

Certain rights of the victim of crimes is recognized and incorporated in the Title 18 - Part II-Chapter 237 Crime Victims'Rights section 3771 of the US Criminal Procedure. Significant procedure laid that victim of crime in the United States may

apply for the compensation during investigation or actual trial despite whatever the outcome of the case.

1. Victim rights to participate in the proceeding,
2. rights to be heard on sentence or acceptance of bail and
3. right to protection against overreach of the accused are well recognized.

All measure fundamentally protects and involve victim in the criminal administration because there is although ultimate goal of criminal justice is to satisfy the victim and protect society at large against heinous crime. There were many agencies e.g. Office of the Victim Services and authorities working for the victim of crime in states all over USA. The Federal Crime Victims Fund was created to compensate Victim of Crime by the federal government as well as states government.

There are two type of court system in the United States namely federal and the state each of which is independent. Except few power e.g. the Federal government deals foreign matters, defense etc whereas state government have scope of power in Federalism. Therefore, both federal and state government needs their own court system to apply and interpret their laws. Such power is also applicable in criminal offences. Most of the offences are tried in the state jurisdiction like felony, theft and burglary etc. but federal court deals the matters in which the United States is a party, violation of the U.S. Constitution, bankruptcy copyright and maritime law cases involved. United States Constitution creates a federal governmental.

According to Article 3 of the United States Constitution, the judicial power of the United States shall be vested with one Supreme Court and in such inferior courts as the congress may from time to time ordain and establish. There are federal district courts in almost all state, which have original jurisdiction in most of the federal law. The President appoints the District Court judges and they serve for life. The state governments and federal government are supreme in these matters.

The State Court System is complex all over the United States because not all the state applies the same principle of court hierarchy. Three level of court is

adopted namely lower court of Magistrate Court, which handles minor civil and criminal cases, State District Courts or Circuit Courts try serious offences. State District Court hear appeal from inferior courts and original jurisdiction from major and civil cases. The major portions of the judicial trials occur in these courts. Above it all States have court of appeals or State Supreme Court which hears appeals from State District Courts or Circuit courts. At the federal level all accused are entitled to have their cases considered by a grand jury as per the 5th amendment of the US Constitution. However, it is not binding on the State. Not all the states adopted the grand jury process in some cases.

Grand juries may consist of 16 to 23 common citizens, usually selected at random from the voter registration lists. Their terms may last from one month to one year and have no limitation of how many cases they can hear during their term. Secrecy is maintained while selecting the jury even the accused and his attorney may have no idea which grand jury is hearing the case or when. The jury is bound by the law as laid down by the court and gives it full effect, but its application to the facts, and the facts themselves, are for them to determine. It is the province of the jury to decide or determine the facts of the case from the evidence adduced, and to render a verdict in accordance with the instructions given by the court.

The criminal process United States is called arraignment when the defendant is brought before the judge in the court where accused is to be tried. The prosecutor or a clerk will read the charge against the accused in the open court. At this instance if accused pleads not guilty, the judge will schedule a date for trial. If the accused pleads guilty, he may be sentenced after accepting the plea.

There is no national level Police force in USA. Policing is organised on state and local level. City police are concerned with local crime and offences outside their jurisdiction are usually dealt with by the state police or federal investigator namely Federal Bureau of Investigation(FBI). During investigation, police forward the application to Attorney for adequate disposal on worthiness.

Prosecutor which generally called District Attorney in USA is an elected or appointed official and is the highest officeholder in the legal department of the jurisdiction. District attorneys may be appointed by the chief executive of the jurisdiction or elected by the voters of the jurisdiction. Prosecutors evaluate the case and use all the statements and information prosecutor have to determine if the government should present the case to the grand jury. The grand jury listens to the prosecutor, witness, and vote in the secret. The grand jury is constitutional requirement for certain type of crimes. When defended is charged accused can hire an advocate for the defense after that defendant is brought before the judge for initial hearing of the case.

In USA, states have their own prosecutor, mostly elected to office. At federal level, a district attorney is appointed for each federal district by the US Attorney General and belongs to the executive branches of the government. The office of district Attorney and independent prosecutor in United States of America have wide inquisitorial jurisdictions and exercise great influence on the institution and withdrawal of cases at any stage of trial. Prosecutor have their machinery independent of police and move the court only when they are satisfied that case is fit enough to be taken to court, otherwise they are empowered to drop the case. Prosecutor role in 'plea bargaining' is well known so much so some people feel that justice system operate in the main deals by the lawyers in the back room of the court house corridors. In the year 1982, initiative adopted a victim's Bill of Rights, which curtailed the plea bargain to a great extent, in a state of California. The Attorney General of Alaska banned the plea bargaining in his state in 1975.

The responsibility of prosecutor in USA includes preparation of formal charges. He may press certain charges and not press others. He may suspend a trial in progress. **In USA, the prosecutor enjoys the enormous powers or discretion in the criminal justice system. The discretion is beyond the control of court and answerable only to legislature, the electorate, and the press**. The prosecutor play significant role in determining the sentence by plea bargaining process. Whenever the

likelihood of obtaining conviction is slight, the prosecutor may declaim prosecution. Arrest is made with permission of prosecutor and studies revealed that majority of arrests of non-serious offences were rejected by prosecution because of insufficiency of evidence to prove the guilt beyond doubt. The prosecutor always shows interest in obtaining guilty pleas and will seek negotiated pleas in preference to adversary proceedings.

When formal prosecution has begun, the prosecutor may decide to terminate prosecution through the *noliprosque*. A *noliprosque* is a request made by prosecutor to the court for termination of further criminal prosecution. The prosecutor made such request to reduce case load, court backlog, and delay in bringing defendant to trial. In some states of USA, the prosecutor may lies as many as half of the cases.

United Kingdom

In England and Wales, victims' rights are mainly procedural and service rights. The code of Practice for Victims of the Crime has played a major role in providing victims with minimal level of service they can expect from criminal justice agencies including a comprehensive and detailed list of rights. All the agencies have very diverse role to provide requisite information to the victim. Prosecutor's role is to inform victim regarding decision why prosecution is dropped in certain cases. Witness care agency has duty to provide case progress. Procedural rights include interest of victim in prosecution in public interest and victim personal statement. Victims' may enforce their rights in case of breach under Code of Crown Prosecutors in court. This include cases in which a decision of prosecutor not to prosecute. Since these rights are not specifically given in legal document parliament introduced a Victims' Bill of Rights 2014 for legal rights enforceable by court.

In the United Kingdom(UK), four territories England, Wales, Ireland and Scotland are distinct in administrative setup but judicial system more or less are similar. Parliament of the UK passed legislation applicable on whole UK territory.

There is no federal system in United Kingdom throughout the territory of England, Wales, Scotland and Northern Ireland. The court in England and Wales consists of higher courts and subordinate courts. Higher courts are Court of Appeal, High Court of Justice and Crown Court. Court of appeal deals with appeal from other courts. The High Court of justice functions as a civil court of first instance and an appellate court in criminal and civil matters from subordinate courts. It consists of 3 divisions namely Queens's bench, Chancery and Family divisions. These divisions are not separate courts but have separate procedures and practice adapted for their purposes. Each division is exercising the jurisdiction of the High Court.

Crown Court is a criminal court of both original and appellate jurisdiction and hears appeal in certain civil cases of first instance. Crown court in England and Wales have only jurisdiction to try cases on indictment, in this regard it is superior court. High Court shall have no appellate jurisdiction in that matters.

Subordinate courts consist of magistrate's court, family proceeding court, youth court and county court. The Magistrate's courts are presided over by a bench of lay magistrates or a legally trained District Judge. Legally qualified Justice's Clerk assists lay magistrates in their work. Justice's Clerk hears minor criminal cases. Some Magistrate's courts also function as family proceeding courts dealing with family matters. The county courts have only civil jurisdiction. They are presided over by a District Judge.

Supreme Court is the highest court of appeal in United Kingdom for civil cases and criminal cases from England, Wales and Northern Ireland. Constitutional Reform Act 2005 established Supreme Court. Prior to the establishment of the Supreme Court, this jurisdiction was with the House of Lords. The transfer of the authority from the House of Lords to the Supreme Court was affected on 1st October, 2009.

The police in England exercise their discretion to prosecute in a wide variety of offences from minor traffic offenses to cases of murder. In all these, the police

make the initial decision to proceed against the defendant. In grievous cases, police are required to report to the Director of Public Prosecutions and, in complex cases police take advice of the solicitor. But in both instances, the initial decision to take the suspect to court is made by the police. Accordingly, in the vast majority of criminal cases, no public official charged with making an independent evaluation of the need to prosecute stands between the police and the courts.

The Crown Prosecution Service reviews the charge framed by the Police and if it is necessary, it applies a more stringent test to examine evidence than that of the police. The police and Crown prosecutor are institutionally, financially, and culturally separate and independent from of each other. The Prosecution of Offences Act 1985, which established the Crown Prosecution Service under the leadership of the Director of Public Prosecution, expressly preserved the right of private prosecution in cases not instituted by the police and certain other agencies, but it also empowered him to take over any private prosecution. **Public prosecutor is independent to discontinue prosecution if there is no evidential or legal case to answer.** In the year 2001 the **Anuld Report** recommended that the responsibility for deciding whether to lay a charge should be transferred from the police to the CPS and the British Government has indicated that it intends to implement this recommendation. Once the prosecutor has charge responsibility, the prosecutor can require the police to investigate further before agreeing to the commencement of criminal proceedings.

There are two type of criminal trials in England and Wales, summary trials or trials on indictment. Summary trial takes place in magistrate's courts. The judges are magistrates court arealso known as 'justice of the peace'.

There are trial mode in three classes of offences:-

(i) An offence triable only on indictment is one for which an adult must be tried on indictment.

(ii) An offence triable either way is one for which an adult may be tried either on indictment or summarily.

(iii) An offence triable only summarily is one for which both adults and juveniles shall be tried summarily.

The Lord Chancellor summons jury if the accused pleads not guilty to all the counts in the indictment. A generally jury consists of twelve citizens, drawn largely at random from adult population under the age of 65. At the conclusion, the members of the jury consider their verdict. The members of the jury may award together without delay. The members of the jury may meet on verdict totheir retiring room to consider their verdict. Although there is nothing to prevent the trial judge from exhorting the jury to reach a verdict, it is a cardinal principle of the criminal law that, since the verdict of a jury involves the liberty of the subject, the jury must deliberate in complete and uninhibited freedom, uninfluenced by any extraneous consideration whatsoever.

In England, the Attorney General is minister and the titular head of the service with his functions as government's chief legal representative and the head of bar, but de facto head of the service is the director prosecutions with the headquarters at London. In metropolitan city of London, the chief crown prosecutor has a prosecutor for each area with large complement of Barristers and Solicitors who work for the service.

After the enactment of the prosecution of offences Act 1985, prosecution of criminal cases has undergone a big change in England. A potential public prosecutor has to consider each case and decide whether he think that criminal proceedings are justified. As a first step the police must decide whether the proceedings to be filed or not and then the crown prosecutor must decide whether he will carry the prosecution or not.

The guideline of the Attorney General for prosecution circulated in 1982 include that the prosecutor should prosecute cases unless there are more than fifty per

cent chance of conviction. The object is to ensure uniformity in prosecutor's decisions. The Public Prosecutor has to satisfied that there is substantial and admissible evidence in the proposed prosecution.

The United Kingdom has chosen to create the office of director of public prosecution to secure the services of an experienced legal practitioner who can handle the every day work of prosecution subject to guidelines .the evident intention was to divorce the government and the attorney general in particular, from daily decision making in these areas. The Attorney General, as the first law officer, has borne the ultimate responsibility for prosecution decision and the legislation enacted in England did not alter the position

India

The status of victim in criminal proceedings in India is dealt with in a few provisions of the Criminal Procedure Code. If the victim of a cognizable offence reports to the police, the police is required to reduce the information into writing or if information is in writing it shall be recorded in FIR and read it out to the informant. The informant is required to sign it and receive a copy of the First Information Report(FIR) . If the police refuse to record the information, the informant victim is allowed to send it in writing and by post to the Superintendent of Police concerned. If the police refuse to investigate the case for whatever reason, the police officer is required to notify the informant of that fact. In this circumstance, alternate remedy available to the victims are to institute complaint case under section 190 of the Cr. P.C. In the granting and cancellation of bail, victims have substantial interests though not fully recognised by Indian Criminal law.

After the Code of Criminal procedure (Amendment) Act, 2008 and Criminal law amendment act 2013 some rights of victim are included such as, victim includes a guardian or legal heir of the victim as a victim and confers them the rights equivalent to the victim, victim may engage advocate of his choice to assist the public prosecutor, that offense under section 376 and 376 (A) to 376 (D) of the Indian penal

code shall be tried as far as practicable by a court presided over by a woman judge. Second proviso of the section 157 to facilitate rape victim to record statement at the residence of the victim or in a place of her choice or as far as practicable by the woman police officer in the presence of her parent or guardian or near relative or a social worker of the nearby locality. It is mandatory specific time of three months for the investigating agency to complete the investigation if the allegation relates to the offence of rape of a child. A "Victim Compensation Scheme" is to be implemented for the purpose of compensation to the victim or his dependents who suffered loss or injury as a result of the crime.

Unfortunately, there is no specific provision in the Cr.P.C. to provide legal assistance to the victim but according to section 12 of the Legal Services Authority Act 1987, member of the SC/ST community, a victim of trafficking according to article 23 of the constitution of India, a woman or child, disabled person, victim of mass violence or disaster and industrial workman may apply for the legal services free of cost provided by the state.

Justice Malimath Committee on Reforms of Criminal Justice System, 2003 proposed certain rights of the victim in criminal procedure to know the status of investigation and to move the court to issue directions for further to the investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth, to be heard in respect of the grant or cancellation of bail to be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution, advance arguments after the prosecutor has submitted arguments, participate in negotiations leading to settlement of compoundable offences. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation.

Criminal justice administration in India is divided in independent investigation, prosecution and trial court. Investigation agency is primarily in state

domain. Under the constitution, public prosecutor is subject matter of concurrent list of 7th schedule of constitution of India. Unlike investigation agency, prosecution officer is appointed and function under state direction but is responsible toward the court for fair and independent trial whether in trial court or in High Court. The central or state government appoints public prosecutor. However, public prosecutor is appointee of the respective government. Public prosecutor has responsible duties toward true and fair justice. Being an officer of the court public prosecutor is believed to represent public interest and seek conviction of an accused is in either instance whether accused is found to be innocent. In that case, prosecution officer may apply to court for withdrawal from prosecution if accused is found to be innocent, there is lack of evidence, or on government direction in public interest, it becomes necessary. The nature of office of public prosecutor is sometime doubtful.

Investigation is the prerogative of the police. The control of trial is in the hands of the trial judge. The police have no power to withdraw case. Although, the withdrawal of the prosecution can also be done only with the permission of the court by the public prosecutor incharge of the case. However, it is generally believed that traditional right of *nullepresque* is available to the public prosecutor in India.

Public prosecutors are really ministers of justice whose job is none other than assisting the state in the administration of justice. Their job is to assist the court by placing before the court all relevant aspects of the case. They are required to put the innocence or accusation of the accused without any prejudice unlike the pleader engaged by a private person who is a de facto complainant cannot be expected to be so impartial. Not only that, it will be his endeavor to get the conviction even if a conviction may not be possible.

The impartiality of the Public Prosecutor is directly depends upon who control the agency. In some states, it is in control of police, and in some other sates like Goa and Karnataka it is control of Law department and in Rajasthan judiciary controls it.

Most of the state governments are yet to implement recommendation of law commission and verdict of Apex court provisions.

Under the garb of political ambition, the government may exercise control over prosecuting agency. Despite the amendment in the Code of Criminal Procedure on the recommendation of the Law Commission report made with regard to appointment of Public Prosecutors, the services of the Public Prosecutor is being unsecured, even no public prosecutor could dare to take a decision on his own while exercising power with regard to withdrawal of cases. The political abuse of power through the public prosecutor may be noticed from the fact that still the government has not created an autonomous Directorate of prosecution keeping in view the provisions contained in Section 25-A of Code of Criminal Procedure, 1973.

The commission of a criminal act is commonly regarded as an offence against the State which to be dealt with by the Criminal Justice machinery of the State Executive. Fundamental duty of public prosecutor is to ensure that justice is delivered and in pursuance of this, they should lay before the court all relevant evidence including the evidence that favours the accused. Corollary to this, the duty of a Public Prosecutor to bring to attention of the Court, any issue that the defense could have raised, but has failed to do. However, in doing so, public prosecutor cannot defend the victim, nor can appear on behalf of the accused. When the Prosecutor acts in a manner as if Public prosecutor was defending the accused, then there is no fair trial.

A Public Prosecutor is an independent entity from police. Police cannot desire to conduct prosecution in a particular way. Police, politicians or any other extraneous party cannot influence prosecutor actions, including prosecutor discretion to decide withdrawal of a case. The Public Prosecutor can only be influenced by public interest. Public Prosecutor has the responsibility of a minister of justice and not simply that of an advocate.

Withdrawal of Cases in India, USA and UK, provisions of withdrawal of cases is deferent. District Attorney in USA has unfettered power to withdraw case before

the trial begins. While in UK, Public Prosecutor have not wide discretionary power as the police to put accused in charge or not. In the USA, the prosecutor bridges the gap between the police and the courts by exercising his independent judgment concerning the need to initiate criminal proceedings in a particular case. His independence from governmental investigative agencies contributes to the impartial discharge of a prosecutor's responsibilities. Broad powers vested in the prosecutor, together with an unchallenged privilege to use them at his pleasure is an American phenomenon. Another characteristic of the American prosecutor that is very important for a concrete understanding of his potential is the close connection between the prosecutor and politics. Unlike European prosecutors, who are usually career officials, American prosecutors are active politicians. Whether elected or appointed, the American prosecutor comes to his office through politics and, in many instances, subjects the policy of his office to political considerations. The key to understanding the prosecutorial system is political. The fact that the broad discretionary powers of the prosecutor are an integral part of the USA system of criminal justice. Elected district attorneys with extensive control over individual liberty create a dangerous formula. It sometimes surfaces in personal vendettas, crusades for publicity, or improper announcements concerning unproven guilt.

In UK, power of withdrawal of cases rest in prosecutor some what similar to the USA counterpart. In England, however, the police make the decision to prosecute in all criminal cases. Without disparaging the dedication of British policemen, one must concede that their involvement in criminal investigations prevents their objective assessment of the many considerations for and against instituting criminal actions.

Admittedly, the American prosecutorial system may not provide the perfect model. Adopting Procurator Fiscal of the Scottish system or expanding the duties of the Director of Public Prosecutions may be worth alternatives.

Position of prosecutor in India is distinctly different. Power of withdrawal of cases rest in prosecutor but its status is doubtful which was discussed in various judgments by High Court and Apex Court make it conspicuous that though prosecutor is uncontrolled to prosecute and withdraw cases in the interest of justice but some times controlled by the executive a default master. Government may direct prosecutor in public interest to withdraw cases. In this situation role of judiciary and prosecutor become crucial.

Broad powers to control the criminal process, combined with uncontrolled discretion, create a formula dangerous to the ideals of justice, destructive of constitutional values, and unworkable in reducing crime.In this sphere of law, where personal freedom, dignity, reputation, or even the life of an individual are in jeopardy, the individual's rights can hardly remain protected as long as the right of the state to use its powers within its free discretion dominates. Broad discretion inevitably opens the way to arbitrariness.

Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same in rarest of rare case. Victim should be actively involved in all cases of withdrawal from prosecution in criminal justice system with utmost priority by providing assistance, compensation and above all right to participate in proceeding, right to be heard in case of bail or release of an accused and revision of withdrawal. Victims' right in India and UK are not encorporated in procedure code. Victims' rights are just service rights in India.

Withdrawal of cases is unwarranted termination of judicial process. It also intervention of executive in the judiciary. If such intervention is due to judicial purpose like in case where there is clear indication of malafide accusation and investigation which badly affect the accused then withdrawal should be sought.

Victim right to participation in legal process and right to be heard should be strictly followed in each case of withdrawal. If the withdrawal of cases based on the casteist religious or other political overtone than that cases may be decided by the Jury.

Suggestions

Awareness is better protection of rights. Hence a mass campaign is necessary to make aware of victim's rights, and about the advancements in these fields of the judiciary. These elements may be deduced from the Article 38 and 41 of the Constitution of India, which direct the State to promote the welfare of the people-by striving to secure a social order where justice, social, economic, and political shall prevail.

It is suggested that insurance sector should be involved for effective realization of compensation, restitution, and reparation policy to victims of crimes. The government should invoke the insurance sector, an arrangement that will relieve the government of the need to cater for victims claim.

Compensation to the victim should be made statutory right and it should be easily available to the victim. Compensation to the victim's is an attempt to compensate some of immediate costs of victimisation. However, every effort should maximize to reduce crime and protect victim against such offence, which may give bodily and mental pain. By providing compensation during trial or earliest without any special effort either from the state or from the court the victim will participate in the proceeding voluntarily and actively. If the victim will be vigilant in the proceeding then the prosecutor cannot conduct the case casually. As a result, the rate of conviction will be high, which ultimately inspires confidence of the public on courts. It will dissuade others to commit crime.

The victim need to be compensated at the earliest. Scheme should be adequately enacted so that victim of certain crime like rape, mass violence be provided prompt compensation and assistance. Since it is the obligation of the State to protect the individual interests, state should be made to pay immediate compensation to the victim without the burden of any additional civil suit to be filed by the victim.

A comprehensive Legal Code for victim's rights to compensation or assistance is a need of time. There is an urgent need to establish "Compensation to the Victim's of Crime Authority."

In case of delay in investigation on trial of the case, the victim should be granted adequate compensation on the merit of the case to the victim himself or to the survivor after death of victim.

All the states in India should implement Victim compensation scheme drafted by the government of India in 2014 at the earliest and compensation amount should be univocal.

If the victim engage a lawyer in case of withdrawal, litigation expenses and fee of lawyer of the victim should be given to the victim by way of assistance.

Rights and duties of the victim should be incorporated in separate Schedules in the Criminal Procedure Code. These should be translated in the respective regional languages and made available free of cost to the citizens in the form of easily understandable pamphlets.

The victim's right to participate in criminal trials should include:

i. to produce evidence, oral or documentary
ii. to ask questions to the witnesses or to suggest to the court questions which may be put to witnesses
iii. to know the status of investigation and to move the court to issue directions for further to the investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth.
iv. to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer
v. to be heard in respect of the grant or cancellation of bail
vi. to be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution
vii. to advance arguments after the prosecutor has submitted arguments

Prosecution Directorate should be separated from the executive and recruitment and appointment of the Prosecutor should be entrusted to independent recruitment agency to fulfill independence of Prosecutor.

Clear scheme should be introduced in the Criminal Procedure Code for the withdrawal from prosecution. Most of the heinous crime cases should be kept out of the withdrawal purview.

The victim should have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation as well as in case of order passed in withdrawal of cases against his will. In addition, investigative and prosecution agency should provide adequate assistance to proceed in appeal.

Inquisitorial System should be adopted for the trial of heinous offences related to spreading enmity among community, sedition, rape, murder, rape, dacoity, robbery or terrorism etc.

Jury system should be introduced in withdrawal of prosecution. Commonly, it is believed that Juries system is not suitable for a multi-castes society; they risk provoking racial and social discrimination. Law education has increased in manifold in India. People are more aware of their right and performing duty toward nation. The risks that with personal laws in family matters and community violence jury system may not be suitable. In case of withdrawal of prosecution the jury system may tender verdict to the presiding judge independently of situation in withdrawal is sought so that improper application of withdrawal by the public prosecutor on behalf of respective government. Jury members are to be selected among the well-educated persons from social, legal, political, and economic field. Jury may have more knowledge of society then the presiding judge, which can better understand the criminal behavior. Collective opinion of jury is not mandatory on judge to follow in case of dissenting opinion.

There should be proper coordination between Police and Prosecution . The quality of criminal justice is closely linked to the efficiency of the prosecution

agency. Poor investigation is lethal and poor prosecution in trial as well and if it was found the laxity in part of investigator and prosecutor, they shall be punished. The Law Commission, in its 14th Report, pointed out that one of the causes of defective investigation, often resulting in acquittal, was lack of legal assistance at the stage of investigation.

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