The role of the Public Prosecutor has become an important subject, with the Supreme Court pulling up the Prosecutor in the infamous Best Bakery case, for ostensibly siding with the accused. Cases of this sort, where the State has a vested interest in the accused, have highlighted public distrust in the handling of prosecution by the State. Demands are often made by the victims to let counsel engaged by them, carry out the prosecution. Further, where the victim is unaware of the functioning of the legal regime and her entitlements under it, she can quite often be exploited and be denied justice. Therefore, this paper attempts to argue for third-party intervention in criminal litigation, and examines how this is possible under the current criminal procedural laws.

Section 24 of the Code of Criminal Procedure, 1973 (CrPC) lays down that a Public Prosecutor shall be appointed for conducting prosecution, appeal or other proceeding on behalf of the Government, as the case may be. Section 301 CrPC states that the Public Prosecutor or the Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any court in which that case is under inquiry, trial or appeal. It further states that if in any such case any private person instructs a pleader to prosecute any person in any court, the pleader so instructed shall act under the directions of the Public Prosecutor or the Assistant Public Prosecutor and may with the permission of the court, submit written arguments after the evidence is closed in the case. Section 302 CrPC empowers the Magistrate inquiring into or trying a case to permit the prosecution to be conducted by any person other than a police officer below the rank of inspector. It further states that no person other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor shall be entitled to do so without such permission. Any person conducting the prosecution may do so personally or through his pleader.

The above sections clearly indicate that there is ample scope in CrPC for introducing the concept of third-party intervention in criminal cases. This may be required when the victim is not in a position to look after her own interests or is keen to see that the perpetrator of the crime is brought to book. That apart, third-party intervention can also be possible in situations analogous to public interest litigation under constitutional law. This envisages a situation where crimes have been committed but the State machinery is reluctant to prosecute as has been widely claimed in the recent carnage in Gujarat. In such cases public-spirited pleaders can intervene, with the permission of the court, and take up prosecution.

Most of the decisions so far have taken the view that third-party intervention in criminal cases is not desirable and that it is the duty of the Public Prosecutor to conduct the prosecution. In this paper, we intend to argue against the precedent set so far by the courts.

Section 301 came to be interpreted in a number of cases. In Thakur Ram v. State of Bihar the Supreme Court ruled that in a case which has proceeded on a police report, a private party has no locus standi. It further ruled that, barring a few exceptions, in criminal matters, the aggrieved party is the State, which is the custodian of the social interests of the community at large, and so it is necessary 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 Kuldip Singh v. State of Haryana the Punjab and Haryana High Court held that, the Court has no role to play as regards a person engaging her own pleader, since the pleader's role is confined to briefing the Public Prosecutor. The Court further held that it only has a say in the matter, if the pleader so engaged by the party, wishes to make a written submission.

In Praveen Malhotra v. State5 a third party sought to intervene in the matter and present oral arguments against a petition for bail filed by the accused. The petitioners relied on the judgment of the Supreme Court in Arunachalam v. P.S.R. Sadhanantham where the Supreme Court had ruled that under Article 136, it can entertain appeals against judgments of acquittal by the High Court at the instance of private parties also, as Article 136 does not inhibit anyone from invoking the Court's jurisdiction. The Court, in the present case, distinguished this case and said that the ruling made by the Supreme Court in the context of Article 136 cannot be relied upon in the context of a third party seeking to intervene in a bail application filed by the accused under Section 439 CrPC, exercising powers under Section 482. The second decision relied upon by the petitioners was Manne Subbarao v. State of A.P. where the issue was whether a third party, who is neither the complainant nor the first informant, can appeal to the Supreme Court, against an order of acquittal by the High Court, if the State does not prefer an appeal. The Court ruled that there is no black-letter law that permits the same. However, the criminal-justice system supports the view that a wrong done to anyone is a wrong done to oneself. Justice is outraged when a guilty person is allowed to get away unpunished. It held that access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action and pro bono proceedings are. The Court, in Praveen Malhotra5 again distinguished this case and said that it applied....
only to Article 136. It further stated that both the cases cited involved situations where a third party had sought to go on appeal and that the present case was one where the matter concerned opposition to an application for bail. Therefore it stated that the ratio of the two cited cases could not be applied. Keeping this limited view in mind the Court referred to the case of Indu Bala v. Delhi Admn.8 wherein the Delhi High Court took the position that there was no provision in CrPC allowing a complainant or a third party to oppose the application for grant of bail or anticipatory bail. Hence, the Court ignored two decisions of the Supreme Court and chose to rely on the decision given by a Single Judge of the Delhi High Court. The Court also dismissed the plea of the petitioner to exercise inherent powers under Section 482 to permit intervention, on the ground that Section 482 cannot be used to circumvent the law and to go against the settled law. It added that Section 482 cannot be used as broadly as Article 136. It is interesting to see that the Court did not go into the question of whether intervention could be allowed under Sections 301 and 302 CrPC, in this case.

In the case of P.V. Narashimharao v. State9 the petitioner sought to intervene in an appeal filed by the accused against the order of the trial court. The Delhi High Court ruled that there was no provision in CrPC analogous to Order 1 Rule 10 of the Civil Procedure Code. It further stated that a reading of the section shows that a private party has no role in a proceeding instituted by the State. Hence, the application of the petitioner to intervene was rejected.

In All India Democratic Women's Assn. v. State10 the High Court of Madras stated that Section 301(2) CrPC gives a third party only a right to assist the prosecution. The prosecution of the criminal proceedings, the Court held, is primary responsibility of the State, and if third parties are allowed to intervene, then there will be a number of associations to represent one party or the other in criminal proceedings, and this would give rise to confusion and chaos.

In Shiv Kumar v. Hukam Chand2 the Supreme Court, attempting to explain the rationale behind Section 301, stated that the reason behind the provision is to provide fairness to the accused, during the trial. It further stated that the duty of the Public Prosecutor is to ensure that justice is done. It stated that if there is some issue that the defence could have raised, but has failed to do so, then that should be brought to the attention of the Court by the Public Prosecutor. Hence, he functions as an officer of the Court and not as the counsel of the State, with the intention of obtaining a conviction. It stated that if the victim or the informant is allowed to have her own counsel, then the situation would not be the same, since the aim of such a counsel would be to obtain a conviction. It stated that the role of the advocate appointed by the third party to the proceeding would be similar to a junior counsel. The Court cited the decision of Queen Empress v. Durga11 where the Allahabad High Court had ruled that it is the duty of the Public Prosecutor to see that justice is vindicated, and he should not obtain an unrighteous conviction. It also quoted the case of Medichetty Ramakistiah v. State of A.P.12 where the Court had ruled that prosecution should not mean persecution, and the Prosecutor should be scrupulously fair to the accused and should not strive for conviction in all these cases. It further stated that the courts should be zealous to see that the prosecution of an offender should not be given to a private party. The Court also said that if there is no one to control the situation, there was a possibility of things going wrong. It would amount to a legalised manner of causing vengeance.

The trend has changed in recent times with the court recognising that it would be iniquitous to disallow the victim or other affected parties from having any representation. In Delhi Domestic Working Women's Forum v. Union of India13 giving parameters with respect to assisting victims of rape, the Supreme Court, inter alia held that the complainants in sexual assault cases would be provided with legal representation. The Court said that it is important to have someone who is well acquainted with the criminal-justice system. The role of the victim's advocate would not only be to explain to the victim, the nature of the proceedings, prepare her for the case and to assist her in the police station and in court, but also to provide her with guidance as to how she might obtain help of a different nature. The Court said that it is important to secure continuity of assistance, by ensuring that the same person, who looked after the complainant's interest in the police station, represent her till the end of the case. This could be interpreted to mean, that an intervenor be allowed, to assist the victim.

The Supreme Court went a step further in J.K. International v. State (Govt. of NCT of Delhi)14 where it was seized of a matter that involved the interpretation of Section 301. In this case, the accused had moved the High Court seeking quashing of the charges framed. The petitioner, who was the complainant sought to intervene in the case. The Court ruled that a reading of Section 301 makes it clear that the fact that the police have investigated the case, based on the information given by the informant and filed a charge-sheet, on the basis of which cognizance is taken, does not in any way mean that the informant is wiped out from the scenario of the trial. The Court referred to Section 301 and stated that in the case of a trial before a Court of Session, one needs to read the said section with Section 225, which states that only a Public Prosecutor is empowered to argue the case before the Court. Even in such a situation, a third party is allowed to present written arguments to the court, albeit with the permission of the court. Once such arguments are presented, the Supreme Court ruled that the Sessions Court has a duty to consider the same before deciding the case. The Court then went on to interpret Section 302 and stated that the power under Section 302 was much wider. It empowers the Magistrate to permit a private person to carry on the prosecution. Hence, the Court stated that a third party's role is not negated by CrPC.

It follows from the above discussion that though the courts have generally been reluctant in allowing private persons to intervene, the recent trend has been to allow for participation by those affected, in the criminal-justice-delivery mechanism.
A plain reading of Section 301 reveals that though oral submissions before the court cannot be independent of the Prosecutor, a pleader instructed by a private person can definitely file written submissions before the court independent of the Public Prosecutor, if the court so permits. That apart, Sections 301 and 302 cover two different situations. Section 301 envisages a situation where the Public Prosecutor is in charge of a case and a private person instructs his pleader to intervene. In such cases, as has been rightly held, it is the Public Prosecutor under whose overall conduct and supervision the prosecution is carried on. However, Section 302 is concerned with a situation where any person not being a police officer below the rank of inspector, can prosecute a case, with the permission of the court, either himself or through his pleader. This amply signifies that CrPC contemplates a situation where the whole conduct of the case is with a private person. Thus two levels of intervention by private persons are envisaged under CrPC. One is under the supervision and control of the Public Prosecutor and the other independent of the Prosecutor. Thus clearly, in a case where a private person seeks the permission of the court to intervene, it is the discretion of the court to decide which level of intervention should be allowed in any given case.

Coming next to the objections raised by the courts, it is clear that these are based on legal fictions and assumptions, which lead to distortion of reality, at least in India. The first fiction that operates is that when a crime is committed, it is the society that is affected and the State should hence prosecute the offender. While this may be true, the role of the victim should not be completely negated. While the State may or may not be affected, the victim definitely is. The very assumption that the State derives the right to prosecute because of its being the victim goes to show that law recognises the right of affected persons to prosecute. Since the victim is most directly and substantially affected, she should be allowed to prosecute in the first instance. Only if she is unwilling or unable to do so, should the State take over on the ground that it is an affected party as well. The victim should be allowed to have a major role in the prosecution and in fact, should be allowed to engage her own counsel to carry on prosecution. Alternatively, if such a radical measure, which would equate a criminal trial to a civil prosecution is problematic, then in all cases, the victim should be permitted to engage her own counsel, who will argue the case, along with the Public Prosecutor. This will ensure that the society, through the State, also has a stake in the matter.

The second fiction, in relation to the Public Prosecutor is that the Public Prosecutor is an officer of the court, and not the counsel of the State, and hence she should be absolutely impartial, and should not work towards a conviction, but should strive to uphold the truth and assist the court in doing the same. This is an idealistic position, and practice has shown that the Prosecutor has basically become the counsel of the State. This is because, ultimately, the Prosecutor is appointed and removed by the State. Hence, she has no choice, but to be briefed by the State and to put forth the views of the State in the court of law. This has very clearly come through in the Best Bakery case, wherein the Public Prosecutors seem to have followed the instructions of the State Government at every step.

If we examine the option that a third party has under CrPC one thing that stands out is that Section 397 empowers the High Court or the Sessions Court to call for the records of any proceeding, before any criminal court inferior to it to satisfy itself as regards the correctness, legality and propriety of any finding, sentence or order, recorded or passed by the lower court. This can be done suo motu or if an application is filed by a party, including a party alien to the proceedings. Hence, the victim or a third party can point out the illegality, impropriety of order at the stage of revision. It makes no sense in allowing this at a later stage of the proceeding, but not at the trial stage itself. Also, as we have seen earlier, the Supreme Court has held that under Article 136 of the Constitution, it can hear the petition filed by a third party in any criminal proceeding. The same logic should be extended to the lower court and to the trial stage. This would also save the time of the High Court and the Supreme Court, which are already facing severe docket explosion.

Another issue that needs to be addressed is whether it makes sense to introduce a concept akin to public interest litigation, in criminal prosecutions. In our opinion it would, since the aim of criminal law is to punish infractions of life and property of individuals. This is similar to the rights guaranteed under the Constitution, which are enforceable using public interest litigation as a tool. As regards the issue of meddlesome interlopers, the court has the discretion to decide as to who should be allowed to intervene and who should not. The court can examine the intention of the party seeking to intervene and her bona fides, as is clearly evident from a perusal of the sections mentioned above. If it seems that the person is a meddlesome interloper, then a proceeding for malicious prosecution can also be initiated. These steps will ensure that the floodgates of litigation are not opened.

Finally, one of the major aims of punishment under criminal law is deterrence. With abysmal rates of conviction, deterrence is becoming meaningless. The criminal-justice system is becoming overburdened and unreliable. Hence, in our opinion, it makes sense to permit third-party intervention in criminal cases.

Thus it is seen that under CrPC as it stands today, it is possible to allow third-party intervention in criminal matters. The only problem that arises is with respect to a trial before a Court of Session. Section 302 speaks about trial before a Magistrate. This has to be read with Section 225 CrPC which states that, in every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. Hence, the arguments given above, with respect to the counsel of the victim or a third party conducting a prosecution independently, though theoretically sound, cannot be extended to prosecution in a Court of Session in practice, since CrPC does not allow for it. Hence there is need for an amendment in CrPC to align the prosecution procedures in the Sessions Court with those before the Magistrate.
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- 3 AIR 1966 SC 911
- 4 1980 Cri LJ 1159 (P&H)
- 5 (1990) 41 DLT 418 (Del)
- 6 (1979) 2 SCC 297
- 7 (1980) 3 SCC 140
- 8 1991 Cri LJ 1774 (Del)
- 9 1997 Cri LJ 3117 (Del)
- 10 1998 Cri LJ 2629 (Mad)
- 11 ILR (1894) 16 All 84
- 12 AIR 1959 AP 659
- 13 (1995) 1 SCC 14
- 14 (2001) 3 SCC 462