

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is placed on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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VICTIM PARTICIPATION IN CRIMINAL TRIALS: **EVALUATING THE PROSECUTOR'S** **RESPONSIBILITY UNDER INDIAN LAW**

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ABSTRACT

The prosecutor's function in criminal proceedings has traditionally been perceived as representing the State and enforcing offender accountability. In modern criminal law, the prosecutor's function has broadened to include the protection and promotion of victims' rights within the criminal justice system. This study meticulously examines the role of prosecutors in safeguarding victims' rights during criminal prosecutions in India, emphasising practical challenges and institutional limitations. The paper analyses the legal framework governing prosecutorial duties, including legislative regulations, judicial interpretations, and policy developments aimed at improving victim involvement and safeguarding. It highlights the vital function of prosecutors as a key intermediary between victims and the criminal justice system by fostering equitable representation, guaranteeing the precise presentation of evidence, and preventing procedural abuses. Despite favourable legislative advancements, victims often remain disadvantaged due to limited participation, inadequate awareness, and systemic delays. The study analyses elements such as prosecutorial discretion, accountability, and coordination with investigative agencies, which significantly influence the effective protection of victims' rights. The paper highlights the need for a more victim-centered prosecutorial approach by evaluating existing methodologies and identifying analytical implementation inadequacies. Improving prosecutorial accountability, strengthening institutional support, and promoting victim participation are essential for ensuring equity, transparency, and justice in criminal procedures.

Keywords: *Victim Participation, Criminal Justice System, Prosecutorial Justice, and Criminal Trial.*

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Introduction:

“Today’s victim is not just a victim of crime but can also be a victim of the apathy of the criminal justice system.”¹

Criminal activity has been a persistent element within human civilisation, despite its varying degrees of acceptance throughout different historical contexts. It is to affirm that *“it is a factor in public health, an integral part of all healthy societies”²* according to Émile Durkheim. Thus, crime is thought of as a necessary component of every social system. Since criminal activity is inherent to all social structures, every culture has devised methods to regulate it and resolve conflicts. This need can only be met by establishing a structured criminal justice system. The criminal law system seems to prioritise punishment and the rehabilitation of offenders, often overlooking the needs and concerns of victims throughout this process. Law officials receive training focused on engaging with offenders rather than victims. This approach leads to insufficient communication with victims regarding trial updates, restitution awards, payment timelines, and the steps being taken to prioritise their interests. This neglect may result in individuals being uninformed about their entitlements and feeling discontent with the compensation procedure.³ Throughout its long and winding history, India’s legal system has evolved into a sophisticated framework that aims to do several things: punish offenders, maintain social order, and, finally, bring victims of crime the recognition they deserve for their suffering.

The Indian criminal justice system is complex, with many interrelated components, but its ultimate purpose is maintaining public safety through the punishment of offenders and the protection of the innocent.⁴ Law enforcement, the judiciary and other government agencies work around the clock to reduce and prevent crime, maintain public safety, and protect victims’ rights. There has been an increasing awareness that victims’ rights must be preserved for justice to be adequately delivered, even if investigation, prosecution, and adjudication have always

¹ Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran, *International Human Rights Law*, Chapter 6, 2nd ed., 2014. Online available at: <http://docs.manupatra.in/newslines/articles/Upload/116BE5E2-14EF-4753-BD49-3E308403D5E7.pdf>

² See https://us2.sagepub.com/sites/default/files/upm-binaries/30608_3.pdf

³ Sunishtha Moghe and Dr. Niti Nipuna Saxena, *“Victim Participation in Criminal Trials under New Criminal Laws in India Doctrinal”*, *International Journal of Legal Science and Innovation*, Vol. 7, Issue 2, (2025) at pp. 230-31, online available at: <https://ijlsi.com/wp-content/uploads/Victim-Participation-in-Criminal-Trials-under-New-Criminal-Laws-in-India-Doctrinal-Comments.pdf>

⁴ R. Thilagaraj, *“Criminal Justice System in India”*, <https://globcci.org/wp-content/uploads/2021/07/Criminal-Justice-System-in-India-2013.pdf>

been the fundamental duties of India's criminal justice system.⁵ The system as a whole served as a paradigm of State versus Accused for a long time, with the crime being perceived more as a societal wrong than an individual wrong. Many times, victims' active participation was overlooked as institutions prioritised perpetrator punishment and accused rights protection. Some have argued that the system's emphasis on structure allowed victims' financial, emotional, and psychological pain to go unresolved despite the institution's stringent protocols.

Victim participation, recompense, protection, and access to information are thus central to contemporary victim rights theories that seek to level the playing field in criminal prosecutions.⁶ Thus, the victims' rights movement, which seeks to protect victims of crime as well as the innocent, strengthens and augments the overall purposes of the criminal justice system. Instead than seeing victim interests as secondary, the researcher aim to build a criminal justice system that is more empathetic, inclusive, and restorative. They are known as the victims' rights movement, and they fight for victims' rights in criminal justice proceedings.⁷

The Concept of Term 'Victim':

The term "*victim*" has a broad etymological meaning that includes anyone who has been hurt or tragically affected, but in legal settings, it has a narrower definition that is imposed by statutes.⁸ Further, a person's guardian or legal heir would also be considered a "*victim*" in this context. However, it is usually reserved for describing the victim whose pain is a direct or impending consequence of the breach of trust.⁹ In a 2022 ruling, the Karnataka High Court established that the term "*victim*" encompasses the victim's legal heirs. These heirs would have the right to continue the criminal case prior to the police filing a charge-sheet in the event of the victim's death, as stated in Section 2(1)(y) of the BNSS, 2023. Justice M. Nagaprasanna stated "*victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes*

⁵ Ashi Bansal and Manisha Matolia, "*Victim-Centric Governance in the Criminal Justice System: Policy and Practice Analysis with Special Reference to India*", *Advances in Consumer Research*, Issue 5, on 2025, November 25 at pp. 92128-2134.

⁶ Shreya Saraiya, "*Victim Participation in Criminal Justice System: An Indian Perspective*", on Dec. 13, 2022, <https://www.livelaw.in/columns/victims-rights-code-of-criminal-procedure-victim-participatory-rights-216547>

⁷ Ibid.

⁸ "*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*", on Nov. 29, 1985, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

⁹ Debalina Roy, "*Victim Participation In Criminal Justice System: Status Quo And The Way Forward*", *JLRA*, Volume 2, Issue7, April 2023 at pp. 5-36.

his or her guardian or legal heir.”¹⁰

The term in the Code is limiting and qualifies; it states that the “*accused person be charged,*” which plainly doesn’t account for situations when the victim is hurt but the offender isn’t found or punished.¹¹

Legal Provisions of Victim Participation in Criminal Trials:

Victims in India can participate in procedures they initiate themselves according to specific rules in the country’s procedural legislation. By combining Section 18 with Sections 338 and 339 of the Bharatiya Nagarik Suraksha Sanhita, 2023, it becomes evident that the victim or informant does, in fact, have the right to select a lawyer to represent them in court. There are a few sections that are often called the “*Right to Assist Prosecution*”.¹² Legal representation for victims is a right guaranteed by law, but it is often curtailed because the decision to grant it rests with the public prosecutor in charge of the case. Also, while Section 338 addresses victims’ assistance for prosecutors, Section 339 allows victims or complainants to take the lead in prosecuting themselves through an application, therefore the two sections are not identical. Anyone may represent themselves or designate a pleader with the required authority from the Magistrate to bring charges against another person in the Magistrate’s Court using the methods provided in Section 339.¹³ Victims must once again obtain the Magistrate’s permission before they can be permitted immediate access to the proceedings. The rule in question is problematic since it applies exclusively to Magistrate Courts and does not delegate prosecutorial authority to Sessions Court.

Victims still encounter barriers when trying to fully exercise their right to self-prosecution, as a result. In 2009, the Code was amended to include a proviso to Section 372 (now Section 413 of BNSS) regarding criminal appeals. If victims have received a reduced punishment and the trial courts have failed to award them just compensation, they can now challenge the acquittal or conviction of the accused.¹⁴

Despite the fact that victims do not have the ability to represent themselves in court, it is very clear that they have an unfettered independent right to appeal the decisions made by the trial courts. The presence of the informant or his representation at the application hearing is

¹⁰ *Scania Commercial Vehicles India Pvt. Ltd. v. State of Karnataka*, 2022 LiveLaw (Kar) 457

¹¹ “*Victim’s Rights in Criminal Proceedings- Where does the Law stand Nationally and Internationally?*”, <https://www.numenlaw.com/victims-rights-in-criminal-proceedings-where-does-the-law-stand-nationally-and-internationally.php>

¹² *Ibid.*

¹³ *Subhash Chandran v. State of Kerala*, 1981 KLT Case No. 125.

¹⁴ *Ibid.*

mandated by the addition of Section 439 (1-A) to the Cr.P.C., 1973 (now section 482 of BNSS), Nevertheless, this clause is exclusive to the listed offences and does not apply to other generalised offences. As stated in Sections 376(3), 376-AB, and 376-DB of the Indian Penal Code, 1860 (now sections 65(1), 65(2), and 70(2) of the BNS, 2023), this was even applied in situations of bail for sexual offences. Therefore, it may deduce from the procedural rules that victims enjoy separate rights in criminal procedures before trial courts and appellate tribunals.¹⁵

In **Zahira Habibulla H. Sheikh v. State of Gujarat**¹⁶, the Apex Court was decided that a public prosecutor might not always know about the information that the victim has. Also, the victim does not have the authority to direct a public prosecutor; rather, it is the police. Additionally, it is possible to see that as a community evolves, the nature of offences also changes in response to the circumstances. It is for this reason that several specialised statutes have been passed, including “the Domestic Violence Act, 2005, the Dowry Prohibition Act, 1961 and the Negotiable Instruments Act, 1881”. These acts can be viewed as having a personal character, as the victim is often the best witness to criminal allegations.

Shielding the Victim’s Rights:

The rights of people who claim to have been victims of crime are very robust. As part of their job, prosecutors must ensure that these rights are upheld. They should have faith that they can access necessary resources, such as financial aid or legal representation, that they can track the status of their case, and that they can locate whatever information they require about the legal system. The burden of ensuring that the accused also receives a fair trial also rests with the prosecution.¹⁷ It was with pleasure that the Hon’ble Apex Court noted in **Nirmal Singh Kahlon v. State of Punjab**¹⁸, that Article 21 of the Constitution of India guarantees victims the right to a fair inquiry and trial, which extends to both the accused and the victim.

In **Vinay Poddar v. State of Maharashtra**¹⁹, begins with the Applicant submitting an Anticipatory Bail Application, which the Sessions Court rejected. Since the Sessions Judge had allowed the Victim to challenge the previously mentioned bail application, the Applicant primarily argued against the cancellation of bail. The court noted during its deliberations that, in theory, when anticipatory bail is granted, the victim or informant must be given an

¹⁵ *Sumit Yadav v. The State of Madhya Pradesh*, 2026 MPHC-GWL 6635.

¹⁶ (2004) 4 SCC 158.

¹⁷ Beulah Shekhar and Ranjani R., “Access to Justice for Victims of Crime in India: An Analysis of Section 372 CrPC”, Volume 6, Issue 1, (2023).

¹⁸ (2009) 1 SCC 441

¹⁹ 2009 CRI. L. J. 896.

opportunity to be heard. In order to gather important factual information at this first stage of the investigation, the court went to the extent of saying that the victim or complaint is an essential party. Notifying victims or complainants is not mandatory under the legislation, but it does not prevent them from having a voice in any legal challenges to the applications. This court decision makes it very clear that the victims have the right to an audience and that their opinions can be considered when deciding whether bail should be granted or not.

1. Pre-Trial Role of Prosecutor:

In the 1872 Code of Criminal Procedure and subsequent statutes from 1882, 1898, and 1973, neither the words “*trial*” nor “*criminal procedure*” were defined. To find out what these idioms imply, you have to look them up in a dictionary. The process by which a competent court decides the outcome of a legal action is called a trial, according to Stroud’s Judicial Dictionary.²⁰ According to Wharton’s Law Lexicon²¹, every matter that is heard before a judge with jurisdiction over it is called a trial. Since the word “*trial*” does not have a universally accepted definition, its meaning is dependent on the particular context in which it is used. Furthermore, Indian law enforcement agencies are free to make arrests, search suspects, and take statements and confessions during the pre-trial phase. Nonetheless, a judge must rule on the matter of non-cognizable offences. The prosecutor is responsible for a variety of tasks, including as obtaining warrants for arrest and search, placing an accused individual in custody for interrogation, announcing the person’s status as a proclaimed offender, seizing their assets, and documenting any recommendations made to the police. A prosecutor is required to submit a final police report to the court following the conclusion of the inquiry. The prosecution is responsible for collecting various legal documents such as warrants to arrest and search, detention remands, declarations of the accused as proclaimed offenders, and recommendations regarding the viability of the prosecution.²²

In the case of **Jagjeet Singh v. Ashish Mishra**²³ (*Lakhimpur Kheri case*) the Court observed that during the year 2020 Farm Bills demonstrations, when the defendant was said to have run over protesting farmers, killing two of them and a journalist. After the Allahabad High Court announced bail, the matter was presented to the Supreme Court. The core issue was the entitlement to a hearing for victims before bail decisions were made. Aside from the

²⁰ Daniel Greenberg and Alexandra Milbrook, *Stroud's Judicial Dictionary*, 3rd Edn., Vol. 4, 1890, at p. 3092

²¹ Wharton, J.J.S., *Wharton's Law Lexicon*, 14th Edn., Soule and Bugbee, Boston, 1883, at p. 1011

²² Tejal Panchal, “*The Role of Prosecution in the Criminal Justice System in India: An Analytical Study*”, White Black Legal Law Journal, Volume 2, Issue 16, April -2024.

²³ 2022 SCC OnLine SC 453.

prosecution and the accused, the Court also recognised victims as an important stakeholder in criminal proceedings. With a focus on victims and the expansion of their rights to participate from investigation to appeal, it improved victim engagement in India's criminal justice system before trials began.

(i) Prosecutorial Role during Trial Stage:

At trial, the prosecutor's position in representing the State is second to none, even to that of the government or the police. What determines the outcome of the trial is the judge's and prosecutor's impartiality. As the trial progresses, the prosecutor's role becomes increasingly important at each level. The prosecution takes over the case once the charge sheet is submitted to the court. If the prosecution establishes prima facie evidence, the court will issue charges after taking cognisance of the case. The next step is for the court to take notes on the accused's statement and the prosecution's evidence. After hearing the last arguments from both sides, the court will announce its decision.

The criminal justice system must prioritise the needs of crime victims if we are to reduce the likelihood that victims will harbour resentment and, worse, seek revenge through the legal system. In the case of **P. Ramchandra Rao v. State of Karnataka**²⁴ the Supreme Court expressed its alarm about the plight of crime victims, saying that those without a redress may seek retribution through illegal methods, leading to an increase in both crimes and offenders.

In **R. Sarala v. T.S. Velu**²⁵, the Supreme Court held that the public prosecutor's role should be confined to the post-investigation phase, as they are court officers whose responsibilities lie within the courtroom, thereby absolving them of any duties during the investigation stage.

The Supreme Court in **Subash Chander v. The State**²⁶ has determined that, pursuant to Section 321, the withdrawal of prosecution is solely within the jurisdiction of the prosecutor. No governmental authority possesses the capability to terminate the prosecution. However, the prosecutor may also retract it with the court's approval. The court's consent under Section 321 is mandated as a prerequisite for withdrawal, serving as a safeguard on the exercise of that authority. The Supreme Court stipulates that consent will be granted only if the broader principles of public fairness are advanced rather than undermined by such withdrawal. The

²⁴ JT 2002 (4) SC 92

²⁵ AIR 2000 SC 1731

²⁶ 1980 SCR (2) 44.

Prosecutor must operate autonomously and exercise judicial reasoning. He must function as a component of the judicial process, rather than as an extension of the executive branch. The decision to withdraw must originate from the prosecutor, not from other authorities, including those whose dissatisfaction may impact his employment situation.

3. Prosecutor Role in Post-Trial phase:

After the trial concludes, the prosecutor still has a long way to go. For example, they might be necessary for an appeal by a defendant who has been found guilty. Or, after pleading guilty, they may need to seek a more appropriate sentence. Thus, the trial and the issuance of a judgement by the appropriate court, the party aggrieved by the decision may seek to file an appeal with the appellate court. In the appellate process, the prosecutor assumes a significant role.²⁷ The prosecutor as per section 377 of the Cr.P.C., 1973 (Section 418 of BNSS, 2023) also plays a pivotal role, “*when the State Government may, in any case of conviction on trial held in any Court other than High Court, direct the prosecutor to present an appeal against the sentence on the ground of its inadequacy to upper court.*”²⁸ Again, Section 378 of the Cr.P.C. 1973 (Section 419 of the BNSS, 2023) provides that “*the District Magistrate or the State Government may, in any case, direct the prosecutor to present an appeal to the superior court.*”²⁹

The Importance of the Prosecutor’s Role:

As public servants, prosecutors play a vital role in maintaining public trust in India’s justice system. Beyond simply upholding the law, their responsibilities also encompass ensuring the safety of our society. Since prosecutors are required to behave ethically at all times and are subject to continual scrutiny, this is a challenging position to be in. Prosecutors are sometimes forced to present cases in a way that ensures a fair and reasonable conviction because of evidence and public safety considerations. The ultimate purpose of any prosecutor’s task, regardless of the outcome of their case, is to fulfil a significant public obligation while safeguarding the integrity and justice of the court proceedings.

In **Shiv Kumar v. Hukam Chand**³⁰, the Apex Court observed that Public Prosecutor

²⁷ Dr. Mudasar Bhat and Dr. Mehraj Ud Din Mir, “*The Role of Prosecution in the Criminal Justice System in India: An Analytical Audit*”, ILR, Vol. 1: Issue 2, Winter 2020 at pp. 1-15, online available at: https://indraprasthalawreview.in/wp-content/uploads/2021/09/GGSIPU_USLLS_ILR_2020_V1-I2-010-Dr_Mudasir_Bhat_Dr_Mehraj_Ud_Din_Mir-1.pdf

²⁸ Section 418 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

²⁹ Section 419, Ibid.

³⁰ (1999) 7 SCC 467.

is the sole official with the authority to bring charges before Sessions Courts based on the code's logical organization. Legislators want the state to remember that Session Court trials must adhere strictly to principles of justice and equity. That a private attorney, if granted absolute discretion, would prioritise obtaining a conviction regardless of whether the case merited one seems to be the reasoning behind Section 301 of Cr.PC. (now section 338 of BNSS). So that doesn't happen, he has to do his job as the Public Prosecutor's orders. With the goal of maintaining the ideals stated in Article 21 and guaranteeing a fair trial, the provisions of Section 301 have been crafted. As a whole, society benefits when an impartial figure like the Public Prosecutor handles prosecutions. The victim's right to justice and equity, however, is being violated in the process. Consequently, a clause that seeks to enforce the victim's rights and involvement in the criminal process is urgently required.

In **State of Andhra Pradesh, Department of Legislative Affairs and Justice v. Margadarsi Financiers rep. By Ramoji Rao**³¹, the case highlights the crucial role of prosecutors, especially Special Public Prosecutors (SPPs), in ensuring that criminal proceedings are fair and effective. It stresses that the government has discretion over the appointment of SPPs; these prosecutors are apart from regular prosecutors in both role and scope, and they are appointed to handle certain cases or groups of cases that need specialised attention. To emphasise the autonomous, case-specific character of these positions, the framework permits nominations based on ten years of advocacy experience for SPPs, without obligatory consultation or panel preparation. In addition, it is mentioned that SPPs work in tandem with normal Public Prosecutors, but they are distinct from them. The boundaries between the two roles do not allow for the automatic transfer of responsibilities to broader prosecutorial roles. Ensuring the integrity and dignity of the legal profession is preserved in prosecutions, the text goes on to examine professional ethics and constraints when Senior Advocates are appointed as SPPs. All things considered, it lends credence to the idea that nominations of prosecutor must be thoughtful and ethically sound if the criminal justice system is to maintain public confidence, ensure fair prosecution, and respect for due process.

In **Swami Chinmayanand Saraswati v. State of U.P.**³², the Allahabad High Court observed that the power to discontinue a criminal prosecution under Section 321 Cr.P.C. (now section 360 of BNSS) with Court agreement is at the heart of the issue. It is crucial to note that the Public Prosecutor must demonstrate impartial, deontological reasoning instead of behaving

³¹ 2009 2 ALD (Cri) 300.

³² 2023 1 All LJ 335.

as a state agent. Withdrawal, the court ruled, should serve public justice and the administration of justice rather than private or misguided objectives, and should be backed by clear, concrete evidence rather than empty claims of an “*independent mind.*” To avoid unfair treatment and guarantee justice, the courts must examine the merits of the case as well as its potential effects on victims and society at large. A well-reasoned, open justification is more important in cases involving serious offences. It is the responsibility of the state to guarantee victims’ rights and due process, and it is the responsibility of the courts to oversee the withdrawal to make sure it’s in line with public policy and justice. This case highlights the importance of thorough and systematic examination when invoking Section 321 Cr.P.C., instead of relying on routine or forced approvals.

Judicial Verdict with regard to Prosecutors’ Role:

In spite of a lack of victim rights legislation, the Indian judiciary has taken the initiative to strengthen victim rights on occasion. The father of a victim who had already died has the legal right to challenge his son’s acquittal, according to the Supreme Court’s decision in **Satya Pal Singh v. State of Madhya Pradesh**.³³ The Court also broadened the scope of appeal rights under Section 372 of Cr.P.C. (now section of 413 of BNSS) in the case of **Mallikarjun Kodagali v. State of Karnataka**.³⁴ The victim’s status as an interested party has been recognised by the judiciary in cases like these and **Reena Hazarika v. State of Assam**.³⁵ Still, there is far too much room for judicial discretion as these acknowledgements lack a clear statutory mandate.

In **Rattiram & Ors. v. State of M.P.**³⁶, Apex Court observed that victimology, or the study of trials from both the defendant’s and the victim’s perspectives, has grown in prominence within criminal law over the years. The social context is used to view both. Some nations really value and honour the victim’s perspective. The credibility of the victim’s account is crucial in cases involving specific crimes under our current criminal law. It is sometimes believed that the court has an obligation to ensure the victim’s right is safeguarded.

The Supreme Court ruled in the case of **Mangal Singh & Anr vs Kishan Singh & Ors.**³⁷ that the two parties involved in a criminal trial, as well as society at large, suffer greatly when a trial drags on for too long. However, it would be exceedingly naive to think that the

³³ (2015) 15 SCC 613.

³⁴ 2019 (20 SCC 752.

³⁵ 2019 (13) SCC 289.

³⁶ AIR 2012 SC 1485.

³⁷ AIR 2009 SC 1535.

victim of the crime does not endure immense pain and misery as a result of the trial's delay. Accused people don't always come out on top; victims often take a heavier burden. Consequently, there's no justification for granting the accused all benefits related to the trial delay while utterly denying the victim of the crime any justice.

Conclusion:

Therefore, it is hereby concluded that, the prosecutor's role in the criminal justice system extends beyond only protecting the State; they are also entrusted with the responsibility of ensuring victims' rights are protected, as well as justice and fairness. An essential function of the prosecutor is to act as an intermediary between the victims and the legal system, bringing their concerns, evidence, and interests to the attention of the Court. Although there are legal measures aimed at strengthening victims' engagement, victims' rights are still not properly achieved due to practical barriers such as low knowledge, procedural delays, and institutional limits. Consequently, the prosecution needs to change its approach to prioritise victims, highlighting transparency, responsibility, and compassion for those impacted. By improving prosecution training, coordinating better with investigative agencies, and making sure victim-related legal protections are properly enforced, criminal processes can be substantially more successful. A just and responsible system of prosecution is crucial in this area for the protection of victims, the public's faith in the justice system, and the administration of justice.

