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**WITHDRAWAL OF PROSECUTION UNDER THE CRIMINAL LAW:  
AN ANALYTICAL STUDY**

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**PEER REVIEWED**

**Abstract**

Public prosecutors are the backbone of the criminal justice system. The increasing number of cases before the courts is concerned for the judiciary. The Supreme Court of India took cognizance of pending cases and observed that the judiciary should speed up the adjudication of cases and also the appointment of judges is another concern. However, in this paper author has attempted to discuss the withdrawal of cases under the criminal law and the role of the public prosecutor. The objectives of the study are to discuss the intent of the legislature behind Section 321 of the Criminal Procedure Code and to examine the duty of the public prosecutor under Section 321 of the code. It will also focus on the duties of the court to deal with pending cases and withdrawal of prosecution. The present study is purely doctrinal and analytical.

**Keywords:** Criminal Law, Withdrawal of Prosecution, Public Prosecutor.

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## Introduction

It is many times the case that the public prosecutor avoids adjudication of an issue pending before the court. Instead of determining the guilt or innocence of the accused, he may think of it as practical to pull back from arraignment and drop the proceedings against him or if the prosecutor feels convenient may even opt for the option of plea bargaining. In actuality in every such occurrence, the Public Prosecutor disavows his entitlement to indict the accused, straightforwardly or in a roundabout way.

Section 321 of the Criminal Procedure Code, 1973 provides for withdrawal from prosecution. Any proceeding before the court of Magistrate or Sessions Judge which are trailed by the state and for which a judgment is yet to be announced i.e. during the pendency of the case before the bench, the public prosecutor appointed for the case can affect a withdrawal of the accused from the proceedings. The values of public justice and tranquility are indispensable for bringing a halt to the ongoing prosecution. One more indispensable requirement for the whole process is the consent of the court. The factors upon which the court can grant its consent can be public peace and harmony, a colossal reflection of public justice and even advancing stringent security in a sensitive area, and also for bringing a stoppage to a fallacious and vexing proceeding. It is an empowering arrangement and vests the public prosecutor in control of the attentiveness to apply to the court for it agree to pull back from the indictment of any individual. The impact of award of assent by the court is the release or quittance of the blamed, as per the phase at which the application is made.

## Withdrawal of Prosecution under the Criminal Law

The foremost principle behind Section 321 is the consent of the court. The amendment to the section has brought in various changes that have also made the Central Government's consent mandatory in certain cases. The researcher has made efforts to break down the important ingredients of Section 321 and lucidly explain its significance. This paper also highlights all the requisites, principles, and scope of Section 321 i.e. withdrawal from prosecution. Along with this, the researcher has also given his views regarding the same.

According to section 321 "the Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, withdraw from the prosecution of any person either

generally or in respect of any one or more of the offenses 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 any one or more of the offenses for which he is tried; and, upon such, (b) He shall be acquitted in respect of such offense or offenses if it is made after a charge has been prepared or when no charge is necessary under this Code. If the offense 3 I was committed in violation of any law relating to a matter within the Union's executive power, (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, destruction, or damage to any Central Government property, or (iv) was committed by a person in the Central Government's service while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has been appointed by the Central Government, he shall not move the Court for its consent to withdraw from the prosecution unless the Central Government has permitted him to do so, and the Court shall, before giving consent, direct the Prosecutor to produce before it.

Any wrongdoing is said to be submitted not against simply the individual but the whole society. Since the whole society is harmed by the demonstration of the denounced and since the whole society can't sue the charged individual, the State arrogates the force and duty to start prosecution against the guilty party.<sup>4</sup> It isn't the situation that the private individual can't start a prosecution or that the person in question can't be spoken to by direction of their decision, yet such insight will be administered by the public prosecutor. In this way, for the most part, the Public Prosecutor is the power dependable to direct the body of evidence against the blamed in the court of law. Principles and Requisites of Section 321 The case of *Subhash Chander v. State* illustrated that Section 321 is one of the few departures from a continual course of the court's elongated process. The code solely entrusts the public prosecutor the capacity for withdrawal from the prosecution and for that also the court's consent is a requisite. Court's consent act as a check for abuse of power. The Public Prosecutor must apply an independent mind and exercise the discretion vested in him by law. The court consents to the request of the prosecutor only when it opines that public justice in the whole society is promoted. It is the fundamental duty of the court and the public prosecutor to see if the withdrawal of the accused from the will result in a positive impact on society. If a government makes a policy regarding the same it should look to it that it advances the administration of justice. The case of *Balwan Singh v. the State of Bihar* illustrates the same. This brings us to the important requisites of Section 321. The person competent enough to withdraw from the prosecution of a person

should be a public prosecutor. The full authority of the case should be given to the appointed public prosecutor. Consent of the court is indispensable. This leads to the conclusion that the public prosecutor does not have the last say in the matter but the court. The case of *Rajendra Kumar Jain v. State* also signifies that withdrawal is permitted only after the judgment is pronounced. This means that the privilege of this section is given only to trial courts and not to the appellate courts. This is an exceptional power given to the courts before those proceedings are pending. The Supreme Court in the abovementioned case expressed its views: "In the past, we have often known how expedient and necessary it is in the public interest for the public prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest, etc. whenever issues involve emotions, there is a threat of violence in the air, it is frequently important to withdraw from prosecutions to restore peace, clear the air of the threat of violence, reach a peaceful resolution of disputes, and preserve the calm that may follow the storm. Continuing to prosecute cases involving sensitive matters for the sake of upholding the law may even be counterproductive. An elected government that is sensitive to and receptive to the people's feelings and emotions will be successful.

If it decides not to prosecute the offenders implicated or not to continue with the prosecution already started to establish an atmosphere of goodwill or not to upset the quiet that has descended, it is fully justified. Who else but the government can and should decide, in the first instance, whether launching or continuing prosecutions is harmful or beneficial?

**Consent of the Central Government** The code provides for certain cases where the consent of the Central Government is a prerequisite for withdrawal from prosecution. Four cases fall under this category. The case of *State of Bihar v. Ram Naresh Pandey* explains these four scenarios: a) When the matter directly affects the Central Government b) The offense is looked over by the Delhi Special Police Establishment. c) The offense substantially affects the property of the Central Government. d) An offense committed by an employee of the Central Government during his employment. **The Duty of Public Prosecutor and Court** The primary duty for implementation of Section 321 is that of the Public Prosecutor. The case of *S.K Shukla v. the State of U.P* explicitly illustrated that he cannot act as a post office or act at the dictates of the State Government. The public prosecutor cannot affect a withdrawal due to lack of evidence but has to consider relevant factors such as public order, peace, and tranquillity. The court has to determine if the prosecutor is acting in good faith. If the public prosecutor is acting in good

faith and makes a case for withdrawal due to paucity of evidence the court may allow such withdrawal. If the government requests the public prosecutor for withdrawal of the accused from a certain offense, then it is the impartial duty of the prosecutor to evaluate the grounds upon which the government is seeking withdrawal. The court has to evaluate the conduct of the public prosecutor and should consent to a withdrawal only when the request is bona fide. The case of *Citizens of Traitor v. State* held that when the concept of withdrawal derived from the government and the prosecutor acts as a mere post office the court should not accede to the request of the public prosecutor. In re *Withdrawal of Criminal Cases by State Government*, it was established that it is one of the court's fundamental duties to not discharge its power in a biased or arbitrary manner and without rational and just reasons. The court must consider all relevant circumstances and find out whether the withdrawal of prosecution advances the cause of justice. Revision and Appeal The application of Section 321 is an independent proceeding. It is considered an independent proceeding because it is separated from the trial on merits. 15 As a result an order passed under this section is not an interlocutory order and revision lies for the same on the ground of granting or refusing consent as held in the case of *State of Bihar v. P.P Yadav*. Thus a revision lies against a court order which granted refusal on inapposite consideration. The inherent power given to the High Court under Section 482 of the Code allows them to restrain a withdrawal by the trial court when proper grounds have not been taken into consideration. An appeal also lies to Supreme Court regarding the grant or refusal of consent in appropriate cases.

Nothing in this Code shall be construed to limit or influence the High Court's inherent rights to issue such orders as may be necessary to carry out any order made under this Code, to prevent abuse of any Court's process, or to otherwise safeguard the objectives of justice.

## Conclusion

Section 321 is an enabling provision that allows the prosecution to withdraw from the prosecution when certain conditions are met which has been explicitly elucidated by the researcher. Withdrawal from arraignment is a significant part of the criminal technique in India. The Public Prosecutor or the Assistant Public Prosecutor who is considered an official of the court and the specialists or agents of the state government assume a key job in deciding withdrawal from the indictment. All the aims and objectives of the researcher have been comprehensively covered. The main intent of the Section is to provide withdrawal of the accused on bona fide grounds. The withdrawal should promote public peace and harmony. The culminating effect of all this is that the public prosecutors generally surrender these discretionary powers in front of the state government for the sake of their job and thus ultimately risking the public justice. However, there is a safeguard though weak which provides the guidelines on basis of which the public prosecutor can seek withdrawal from prosecution. The essential condition is that such withdrawal should lead to service of the larger interest of public justice.

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