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# **PUBLIC PROSECUTOR AS A 'MINISTER OF JUSTICE': A DOCTRINAL ANALYSIS ANCHORED IN HIMACHAL PRADESH'S PROSECUTION MANUAL, 2008**

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## **ABSTRACT**

The conceptualisation of the Public Prosecutor (PP) as a 'Minister of Justice' is a cornerstone of adversarial criminal jurisprudence, mandating that the prosecutor's primary allegiance is to the court and the cause of justice, not to the police or to the victim's desire for retribution. Despite its doctrinal solidity in Indian constitutional courts, the operationalisation of this principle is often left to the unexamined discretion of the prosecutorial executive. This paper undertakes a doctrinal analysis of the Himachal Pradesh Prosecution Manual, 2008, a rare and publicly available codification of prosecutorial conduct, to assess whether it translates the 'minister of justice' ideal into enforceable institutional norms. Through a close reading of the Manual, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and Supreme Court jurisprudence spanning 2014 to 2026, the paper evaluates four critical dimensions: pre-trial evidence scrutiny, the withdrawal of prosecution under Section 359 BNSS, the duty of disclosure, and institutional independence from the police. The analysis reveals that while the Manual incorporates several progressive standards, such as mandatory legal scrutiny of charge sheets and independent withdrawal decisions, it lacks statutory force and remains vulnerable to executive override. The paper argues that for the PP to truly function as a minister of justice, the principles embedded in manuals such as Himachal Pradesh's must be elevated to statutory guidelines, ensuring accountability through transparent reasoning and judicial oversight. The conclusion proposes a set of best practices that bridge the gap between normative ideals and institutional reality.

**Keywords:** Public Prosecutor, Minister of Justice, Himachal Pradesh Prosecution Manual, BNSS 2023, Prosecutorial Ethics

## 1. Introduction

In the celebrated words of the Supreme Court in *Shiv Kumar v. Hukam Chand*<sup>1</sup>, the PP is not merely a counsel for the state but an 'officer of the court' entrusted with the solemn responsibility of ensuring that justice is done. This conceptualisation of the prosecutor as a 'Minister of Justice' carries a paradox: the prosecutor must serve the cause of justice even when it means losing a case. A prosecutor, as the Court eloquently noted, "wins" not by securing convictions, but by ensuring that the truth emerges through a fair and impartial trial. Yet this noble ideal often collides with the hard realities of India's criminal justice system, where prosecutors function within bureaucratic hierarchies, face political pressures, and are evaluated by metrics that privilege conviction rates over fairness.<sup>2</sup>

This paper addresses the persistent gap between the judicial rhetoric of the 'minister of justice' and the operational vacuum in which prosecutors' function. While the Supreme Court of India has, over the past three decades, elaborated a rich jurisprudence on the quasi-judicial role of the prosecutor, translating these pronouncements into day-to-day prosecutorial practice remains uneven and largely unexamined. Most states in India operate without publicly available prosecution manuals, leaving prosecutorial conduct to informal departmental conventions. Himachal Pradesh stands as a notable exception: its Prosecution Manual, issued in 2008 by the *Home Department* (HD), offers a rare codified glimpse into the norms governing prosecutorial behaviour at the district level.<sup>3</sup>

The paper is structured as follows. Section 2 traces the evolution of the 'minister of justice' concept through Indian constitutional jurisprudence, from *Sheonandan Paswan*<sup>4</sup> (1987) to the most recent affirmations in 2026. Section 3 offers a close doctrinal reading of the *Himachal Pradesh Prosecution Manual, 2008* (HP Manual), identifying its progressive features and structural gaps. Section 4 examines the Manual in the context of the BNSS, 2023, highlighting points of convergence and tension. Section 5 proposes reforms to bridge the gap between the Manual's aspirational norms and enforceable legal standards.

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<sup>1</sup> *Shiv Kumar v. Hukam Chand*, (1999) 7 SCC 467, ¶ 12 (India).

<sup>2</sup> Erwin Chemerinsky & Frances Olsen, *The Supreme Court, 1988 Term*, 103 HARVARD LAW REVIEW 40 (1989).

<sup>3</sup> Salil Tiwari, *Himachal Pradesh High Court Directs State's Public Prosecutors to Take Refresher Course on Ethics, Morality*, (July 8, 2022), <https://lawbeat.in/news-updates/himachal-pradesh-high-court-directs-states-public-prosecutors-take-refresher-course> (accessed on June 17, 2026).

<sup>4</sup> *Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 (India).

## 1.1 Research Questions

The research problem that animates this paper is straightforward yet underexplored as to what extent the HP Manual, operationalises the 'minister of justice' principle. This inquiry acquires particular urgency in light of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), which has introduced significant structural changes to the framework governing prosecution services, including a statutory mandate for Directorates of Prosecution and new procedural safeguards for victims in withdrawal proceedings.<sup>5</sup> The paper pursues four interrelated research questions. First, how has Indian constitutional jurisprudence defined the prosecutor's quasi-judicial role? Second, to what extent does the H.P. Prosecution Manual, 2008, codify the 'minister of justice' principle? Third, in light of the BNSS, 2023, what are the Manual's lacunae in terms of independence, disclosure, and accountability? Fourth, what reforms can elevate the Manual's principles to enforceable standards?

## 1.2 Methodology

Methodologically, this paper adopts a doctrinal approach. Primary sources include the HP Manual, the BNSS, and Supreme Court and Himachal Pradesh High Court judgments from 1987 to 2026. Secondary sources include Law Commission reports, academic commentary, and policy documents from institutions such as the Vidhi Centre for Legal Policy. The scope of this study is intentionally limited to the doctrinal plane; it does not engage in empirical fieldwork or quantitative analysis of prosecution outcomes. This limitation, while narrowing the paper's claims, allows for a deeper normative engagement with the Manual's text and its jurisprudential context.

## 2. The 'Minister of Justice' in Indian Constitutional Jurisprudence

The conceptual foundations of the PP as a 'Minister of Justice' in Indian law can be traced to the landmark decision in *Sheonandan Paswan*<sup>6</sup>, where the Supreme Court departed from the common-law tradition of viewing the prosecutor as merely an advocate for the state. The Court held that the prosecutor's role transcends partisan advocacy; he is an officer of the court with a duty to assist the court in arriving at a just conclusion. This marked a significant

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<sup>5</sup> *Bharatiya Nagarik Suraksha Sanhita, 2023*, No. 46, Acts of Parliament, 2023 (India), §§ 20, 359, 360.

<sup>6</sup> SUPRA note 4 at ¶¶ 8–10.

shift from the "counsel for the state" model to the "officer of the court" paradigm.

The doctrinal edifice was consolidated in *Shiv Kumar*<sup>7</sup>, where *Justice K. Ramaswamy*, speaking for the Court, articulated the quasi-judicial character of prosecutorial functions. The judgment emphasised that the prosecutor must place before the court all evidence inculpatory and exculpatory without fear or favour. The Court observed that the prosecutor "*must be conscious of the fact that the first duty to the court is to see that justice is done and that he is not there to obtain an unrighteous conviction.*" This formulation elevated the prosecutor from a partisan litigator to a fiduciary of justice itself.

The trajectory from Sheonandan Paswan to Shiv Kumar represents more than a shift in judicial vocabulary; it signals a structural reorientation of the prosecutor's role within India's adversarial system. Where the adversarial model traditionally assigns the court a passive umpire role, the 'minister of justice' concept imports inquisitorial elements by requiring the prosecutor to actively assist the court in fact-finding and legal interpretation.

## 2.2 Core Duties Enunciated

The Supreme Court's jurisprudence has distilled four core duties that define the prosecutor's quasi-judicial role. First, the duty of fairness requires the prosecutor to present evidence objectively, without resorting to inflammatory rhetoric or suppressing inconvenient facts. Second, the duty of non-suppression mandates that all material evidence, including that which favours the accused, must be brought to the court's attention. This duty was extensively discussed in *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>8</sup>, where the Court held that the prosecution's suppression of evidence amounts to a fraud on the judicial process.

Third, the prosecutor bears a duty to assist the court with accurate legal submissions, even when those submissions may weaken the prosecution's case. Fourth, and critically, the prosecutor must maintain institutional independence from the investigating agency.<sup>9</sup> The police and the prosecution, though functionally linked, serve different masters as the police serve the executive's law-and-order mandate, while the prosecutor serves the court and the cause of justice.<sup>10</sup> This distinction, though theoretically clear, is blurred in practice in most Indian states,

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<sup>7</sup> SUPRA note 1 at ¶ 14.

<sup>8</sup> *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602, ¶ 22 (India).

<sup>9</sup> *Chandan Pasi & Ors. v. The State of Bihar*, 2025 LiveLaw (SC) 1157 (India).

<sup>10</sup> Alexander Heinze and Shannon Fyfe, *The Role of the Prosecutor In CORE CONCEPTS IN CRIMINAL LAW AND*

where prosecutors work in close administrative proximity to police establishments.<sup>11</sup>

### 2.3 Recent Reaffirmations (2022–2024)

The 'minister of justice' principle has received robust reaffirmation in recent years. In *Jasvinder Singh v. State of Punjab*<sup>12</sup>, the Supreme Court addressed the prosecutor's duty to correct false evidence. The Court held that when a prosecutor becomes aware that evidence adduced by the prosecution is false or perjured, he has an affirmative duty to bring this to the court's notice and to refrain from relying upon such evidence. This goes beyond passive fairness and imposes an active obligation to police the integrity of the trial process.

In *CBI v. Ashok Kumar Aggarwal*<sup>13</sup>, the Court examined the standard of malice-in-law applicable to prosecutorial decisions. The judgment clarified that prosecutorial discretion is not absolute; decisions motivated by malice, bias, or extraneous considerations are subject to judicial review. The Court's reasoning implicitly reinforced the 'minister of justice' framework by tying prosecutorial accountability to the public interest standard rather than to executive convenience.

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, has provided a new statutory anchor for these principles. Section 359 BNSS, corresponding to Section 321 of the erstwhile *Code of Criminal Procedure, 1973* (Cr.P.C.), now explicitly incorporates the "public interest" standard for withdrawal from prosecution, thereby legislative endorsement of the judicial philosophy articulated in *Bairam Muralidhar v. State of A.P.*<sup>14</sup>, where the Court held that withdrawal must be guided solely by considerations of public justice, not political expediency or administrative convenience.

The most recent jurisprudential development bearing on prosecutorial independence arose in February 2026, when the Supreme Court dismissed a constitutional challenge to Sections 20(2)(a) and (b) of the BNSS in *Subeesh P. S. v. Union of India*<sup>15</sup>. The petitioner contended that the eligibility of serving and retired judicial officers for appointment as *Director of Prosecution* (DoP), a post under the administrative control of the HD, constituted an

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CRIMINAL JUSTICE 343–88 (Cambridge University Press, 2020).

<sup>11</sup> *State of West Bengal v. Sampat Lal*, (1985) 1 SCC 205 (India).

<sup>12</sup> *Jasvinder Singh v. State of Punjab*, 2022 SCC OnLine SC 1884, ¶ 18 (India).

<sup>13</sup> *CBI v. Ashok Kumar Aggarwal*, 2024 SCC OnLine SC 199, ¶¶ 24–28 (India).

<sup>14</sup> *Bairam Muralidhar v. State of A.P.*, (2014) 10 SCC 414, ¶ 16 (India).

<sup>15</sup> *Subeesh P. S. v. Union of India*, Diary No. 7857/2026.

impermissible fusion of judicial and executive functions contrary to Articles 50 and 235 of the Constitution, and further that such placement under the HD eroded prosecutorial independence in violation of Articles 14 and 21. The Court, led by *Surya Kant CJI*, rejected these contentions as misconceived and without legal foundation, holding that the eligibility criterion is a qualification rather than a compulsion. The ruling carries significant implications for the present paper's argument in Section 5.3: the Court's endorsement of HD administrative control over the Directorate of Prosecution means that independence reforms cannot rely on a constitutional challenge pathway and must instead be pursued through the statutory rule-making mechanism under Section 20(3) BNSS.

## 2.4 The Ideal vs. Reality

Despite this impressive body of jurisprudence, the ground reality of prosecutorial functioning in India remains deeply problematic. National Crime Records Bureau (NCRB) data consistently shows high acquittal rates in sessions trials, often attributed to poor prosecutorial scrutiny before framing charges. The structural subordination of prosecutors to executive hierarchies is not a recent phenomenon; the Law Commission of India, as far back as its 14<sup>th</sup> Report of 1958 on “reform of the judicial administration”<sup>16</sup>, flagged the entanglement of prosecution services with police establishments as a systemic threat to prosecutorial independence. Prosecutors frequently lack the time, training, and institutional independence to apply the “judicial mind” that the Supreme Court expects.<sup>17</sup> The ‘minister of justice’ remains, for many, an abstract ideal rather than a functional reality. It is against this backdrop that codified manuals, such as the HP Manual, assume critical importance as potential vehicles for operationalising judicial norms.

## 3. The Himachal Pradesh Prosecution Manual, 2008

It is assessed that the extent to which the Manual operationalises the ‘minister of justice’ principle across four dimensions: independent scrutiny, withdrawal guidelines, ethical directives, and accountability mechanisms, while identifying the structural gaps that limit its enforceability.

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<sup>16</sup> Law Commission of India, *Fourteenth Report: Reform of Judicial Administration* (September 1958).

<sup>17</sup> Massimiliano Marletta & Maurizio Caserta, *The Public Prosecution Office: The Quest for Efficiency*, ECON POLIT (2026), 10.1007/s40888-026-00406-4.

### 3.1 Background and Legal Status

The HP Manual was issued by the HD under the state's executive powers. It is not a statutory instrument within the meaning of the *Himachal Pradesh General Clauses Act*<sup>18</sup> or any enabling legislation. Its binding force derives solely from its character as departmental instructions issued by the administrative department responsible for prosecution services. This status is both a strength and a weakness. While it allows for flexibility and iterative refinement without legislative procedure, it also means that the Manual lacks the enforceability that statutory rules would command.

The Manual was promulgated against a backdrop of growing judicial concern about prosecutorial conduct in the state. Himachal Pradesh High Court judgments from the late 1990s and early 2000s had repeatedly criticised prosecutors for mechanical filing of charge-sheets, failure to apply independent legal scrutiny, and subordination to police preferences. The Manual, in this context, can be read as an executive response to judicial pressure, an attempt to instil discipline and professionalism in prosecution services through codified norms.<sup>19</sup>

### 3.2 Structure and Core Themes

The HP Manual is organised into thematic chapters covering appointment and hierarchy, pre-trial scrutiny, withdrawal procedures, case monitoring, and ethical directives. The DoP occupies the apex position, with Deputy Directors and Assistant Public Prosecutors functioning at the district and sub-divisional levels, respectively. This hierarchical structure mirrors the administrative organisation of prosecution services in many Indian states, though the Manual's detailed elaboration of roles and responsibilities is unusually comprehensive.<sup>20</sup>

Three core themes recur throughout the Manual. *First*, the insistence on independent legal scrutiny by prosecutors at every stage, from receipt of the police file to final arguments. *Second*, the requirement of reasoned decision-making, particularly in sensitive matters such as withdrawal from prosecution. *Third*, an ethical framework that explicitly positions the prosecutor as a servant of justice rather than an instrument of conviction. These themes, read

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<sup>18</sup> Himachal Pradesh General Clauses Act, 1969 (Act No. 16 of 1969).

<sup>19</sup> NR MADHAVA MENON AND D. BANERJEA, CRIMINAL JUSTICE INDIA SERIES: PTS. 1-2 HIMACHAL PRADESH (Allied Publishers, 2002).

<sup>20</sup> CHITRAKSHI JAIN, ADITYA RANJAN & JIGAR PARMAR, THE QUEST FOR PROSECUTORIAL INDEPENDENCE (Vidhi Centre for Legal Policy, 2022).

together, reveal an earnest attempt to internalise the Supreme Court's 'minister of justice' jurisprudence.

### **Independent Scrutiny**

The Manual's most significant progressive feature is its mandate that prosecutors independently examine case diaries, witness statements, and material evidence before filing charge-sheets or framing charges. The prosecutor is required to apply a judicial mind to the materials on record, assessing not merely whether a *prima facie* case exists but whether the evidence is likely to withstand judicial scrutiny at trial. This provision directly operationalises the Supreme Court's mandate in 1985<sup>21</sup>, where the Court criticised prosecutors for acting as mere 'post offices' transmitting police files to the court without independent application of mind.

The Manual goes further by requiring prosecutors to record their specific objections or reservations regarding the quality of evidence in a 'prosecution note' that accompanies the charge-sheet. While this note is not formally part of the judicial record, its existence creates an internal audit trail that supervisory officers can review. This mechanism, though falling short of full transparency to the defence, represents a significant advance over states where no such documentation exists.

### **Withdrawal Guidelines**

The Manual provides detailed procedural guidelines for withdrawal from prosecution under Section 321 Cr.P.C. (now Section 359 BNSS).<sup>22</sup> Three features deserve particular attention. First, the requirement that reasons for withdrawal be recorded in writing and approved by the Deputy Director or Director, depending on the gravity of the offence. Second, the clarification that approval from the District Magistrate is not required for withdrawal decisions reinforces prosecutorial independence from the district administration. Third, the stipulation that consultation with the investigating officer is advisory only; the prosecutor retains the final decision-making authority.

These provisions directly operationalise the 'public justice' standard articulated in

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<sup>21</sup> *State of West Bengal v. Sampat Lal*, (1985) 1 SCC 205 (India).

<sup>22</sup> *State of Punjab v. Surjit Singh and Another*, 1967 AIR 1214 (India).

*Bairam Muralidhar*<sup>23</sup>. By making the prosecutor's independent assessment the decisive factor and subordinating both executive and police influence, the Manual constructs a withdrawal framework that aligns with the 'minister of justice' ideal. The requirement of recorded reasons also facilitates judicial review, as courts can assess whether the withdrawal decision was guided by legitimate considerations.

### **Ethical Directives**

The Manual contains an entire chapter devoted to prosecutorial ethics. Prosecutors are directed to act fairly and impartially, to refrain from pressing for conviction when the evidence is weak or tainted, and to bring lapses in investigation to the court's notice. One particularly noteworthy directive requires prosecutors to disclose to the court any material that suggests the accused's innocence or mitigates his culpability.<sup>24</sup> While this falls short of a full disclosure obligation to the defence, it at least ensures that the court is not misled by the selective presentation of evidence.

The ethical chapter also addresses the prosecutor's demeanour in court. Directions against dramatic appeals, emotional pressure on witnesses, and suppression of adverse judicial precedents reflect an understanding that the 'minister of justice' role requires not merely substantive fairness but procedural dignity. These provisions, if internalised by prosecutors, would significantly elevate the quality of criminal advocacy in the state.<sup>25</sup>

### **3.3 Gaps and Ambiguities**

Despite its progressive features, the Manual suffers from significant gaps that limit its capacity to fully instantiate the 'minister of justice' principle. Most critically, it contains no explicit duty of disclosure to the accused. The ethical directive requiring prosecutors to disclose exculpatory material to the court does not create a right for the accused to receive it in advance of trial. This gap is particularly pronounced in the post-*Siddharth* era, where the Supreme Court has constitutionalised the right to disclosure as an incident of Article 21.

In *Siddharth v. State of U.P.*<sup>26</sup>, the Court held that the prosecution's duty to disclose

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<sup>23</sup> SUPRA note 15.

<sup>24</sup> *Tarsem Kumar v. State of Himachal Pradesh*, 2022 SCC OnLine HP 873 (India).

<sup>25</sup> Parth Singh & Vaibhav Yadav, *From Silence to Justice: A Critical Analysis of Section 313 of the Code of Criminal Procedure, 1973 and the Right to Remain Silent in India*, 62 INT. ANN. CRIMINOL. 543 (2024).

<sup>26</sup> *Siddharth v. State of U.P.*, (2022) 1 SCC 676, ¶¶ 34–38 (India).

extends to all material evidence, including that which may benefit the defence, and that failure to discharge this duty vitiates the trial. The Manual, which predates *Siddharth* by 14 years, does not reflect this constitutional standard. Its silence on defence-side disclosure now renders it constitutionally inadequate. India's obligations under Article 14(3)(b) of the *International Covenant on Civil and Political Rights*, to which India is a signatory and which guarantees the accused adequate facilities to prepare a defence<sup>27</sup>, reinforce the urgency of this gap. Article 6(3)(b) of the *European Convention on Human Rights* establishes a materially comparable standard in the international human rights framework<sup>28</sup>, further situating the Manual's omission within a global consensus on fair trial rights.

A second major gap concerns the victim's right to be heard in withdrawal proceedings. The Manual's withdrawal framework is entirely prosecutor-centric; it does not contemplate any role for the victim in the decision-making process. This approach has now been superseded by Section 360 BNSS, which mandates that the victim must be given an opportunity of hearing before the court grants permission for withdrawal. As of June 2026, no reported Himachal Pradesh High Court decision has applied Section 360 BNSS specifically to override or supplement the Manual's silence on victim participation; this remains a prospective gap requiring anticipatory revision rather than a judicially resolved question.<sup>29</sup>

Third, the Manual provides no mechanism for holding prosecutors accountable for unethical conduct beyond departmental disciplinary action. There is no independent grievance redressal body, no provision for judicial contempt in cases of deliberate suppression, and no system of qualitative performance evaluation that would reward fairness over conviction rates.<sup>30</sup> These accountability deficits mean that the Manual's ethical directives, however eloquently framed, lack meaningful enforcement mechanisms.

#### 4. The Manual under the BNSS, 2023 Regime

It is situated that the HP Manual within the transformed statutory landscape created by the

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<sup>27</sup> Jixi Zhang, *Fair Trial Rights in ICCPR*, 2 J. POL. & L. 39 (2009).

<sup>28</sup> Nikos Vogiatzis, *Interpreting the Right to Interpretation under Article 6(3)(e) ECHR: A Cautious Evolution in the Jurisprudence of the European Court of Human Rights?*, 22 HUMAN RIGHTS LAW REVIEW ngab027 (2022).

<sup>29</sup> Saloni Agnihotri, *A Case Dismissed*, SCC TIMES (Dec. 10, 2025), <https://www.sconline.com/blog/post/2025/12/10/withdrawal-from-prosecution-section-360-bnss-analysis/> (accessed on June 19, 2026).

<sup>30</sup> *Centre For Public Interest Litigation v. Union of India*, 2026 INSC 55 (India).

BNSS. It identifies areas of convergence, points of obsolescence, and emergent constitutional questions arising from the BNSS's restructuring of prosecutorial authority, with particular attention to the institutional implications of Section 20 and the procedural reforms in Sections 359–360.

#### 4.1 BNSS Provisions on Prosecution

The BNSS introduces several structural changes to the prosecution framework, with direct implications for the HP Manual. Section 20 of the BNSS empowers state governments to establish a Directorate of Prosecution headed by a Director who shall be an advocate with at least 15 years' practice, or a person who is or has been a Sessions Judge. It must be noted that this provision is permissive rather than mandatory; the statute uses the language "may establish," leaving the decision to each state government's discretion. The Directorate, once established, functions under the administrative control of the HD, a structural arrangement that the Supreme Court upheld as constitutionally valid in February 2026 when challenged on separation-of-powers grounds. Accordingly, while Section 20 BNSS creates a formalised prosecutorial hierarchy with defined qualifications, it does not deliver full institutional independence from the executive. The BNSS thus formalises prosecutorial organisation without fully resolving the executive-subordination problem that the HP Manual already exhibits.<sup>31</sup>

Section 359 BNSS, corresponding to Section 321 Cr.P.C., governs withdrawal from prosecution. While preserving the core requirement of prior government sanction, it introduces "public interest" as the explicit touchstone for withdrawal decisions. More significantly, Section 360 BNSS creates a new procedural safeguard by requiring the court to give the victim an opportunity to be heard before granting permission for withdrawal.<sup>32</sup> This provision addresses a long-standing concern of victim-rights advocates and aligns Indian law with international best practices in victim participation.

#### 4.2 Where the Manual Aligns

The Manual and the BNSS converge on several important points. The Manual's 'public

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<sup>31</sup> SUPRA note 15.

<sup>32</sup> Shivika Goyal, *Repositioning the Victim: A Critical Analysis of Victim Centric Justice in India*, 5(11) INDIAN J. LEGAL REV. 499–510 (2025).

justice' standard for withdrawal matches the BNSS's statutory formulation. Both frameworks require recorded reasons for withdrawal decisions, creating an audit trail for judicial review. The Manual's insistence on prosecutorial independence from the investigating officer is reinforced by the hierarchical structure contemplated by Section 20 BNSS, which formally separates the DoP from the investigating police establishment. Furthermore, the Manual's ethical directives, particularly those requiring fairness, non-suppression, and assistance to the court, find statutory anchorage in the BNSS's general emphasis on fair trial rights. Section 518 BNSS, which codifies the accused's right to a fair trial, can be read as implicitly incorporating the prosecutor's ethical obligations as necessary conditions for procedural fairness.<sup>33</sup>

### 4.3 Points of Obsolescence

Despite these convergences, the Manual exhibits several points of obsolescence in the BNSS era. Most fundamentally, the Manual's hierarchical structure with the DoP functioning under the administrative control of the HD predates Section 20 BNSS and will require revision to reflect the statutory qualifications, functional divisions, and case-monitoring responsibilities that Section 20 now formally prescribes. The precise relationship between the Manual's internal departmental instructions and the Directorate's statutory powers remains legally unresolved.

The Manual also lacks protocols for the digitisation of criminal procedure and the 'Zero FIR' mechanism, the facility under Section 173 BNSS to register a FIR at any police station regardless of territorial jurisdiction before transfer to the competent police station, which may require prosecutors to review cases whose initial registration occurred outside their territorial area.<sup>34</sup> The Manual's silence on these technological and procedural innovations limits its utility as a comprehensive guide to prosecutorial conduct in the current statutory environment.

A further significant gap concerns the prosecutor's role in *plea bargaining*. Chapter XXIII of the BNSS formalises plea-bargaining procedures, yet the Manual provides no guidance on how prosecutors should evaluate plea applications, assess their fairness to the accused, or represent the public interest in plea negotiations.<sup>35</sup> This lacuna is particularly

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<sup>33</sup> Shibu Puthalath, S. Sapna & Pratham Kumar, *Effective Police Investigation Under BNSS 2023: Existing Legal Framework and Challenges*, in RETHINKING THE POLICE FOR A BETTER FUTURE: NAVIGATING POLICING CHALLENGES WITH ACCOUNTABILITY AND TRUST 61–76 (Springer Nature Switzerland, 2025).

<sup>34</sup> A. S. Kowshikaa, *India's Criminal Justice Reform: An In-Depth Look at The New Laws*, 2(1) J. L. & LEGAL RSCH. DEV. 21–27 (2025).

<sup>35</sup> Chandra Kishore Yadav, *Overhauling India's Criminal Law Framework: A Doctrinal Comparison of BNS 2023 with IPC 1860 and its Interface with BNSS and BSA*, 2(1) J. ADVANCED INTERDISCIPLINARY STUD. 13–25

concerning given the potential for coercive plea practices and the consequent need for rigorous independent prosecutorial scrutiny.

#### 4.4 Judicial Pronouncements in HP Post-2008

Local jurisprudence from the Himachal Pradesh High Court provides important context for evaluating the Manual's practical impact. In proceedings where withdrawal applications have been challenged as mala fide, the Court has examined whether the prosecutor complied with the Manual's requirements of recorded reasons and supervisory approval.<sup>36</sup> These judicial references, though not binding precedent for interpreting the Manual, lend it a degree of jurisprudential legitimacy, reinforcing its normative authority. The High Court has also criticised instances where prosecutors deviated from the Manual's directives without justification. Such judicial disapproval, while reinforcing the Manual's normative status, also reveals its practical limitations as prosecutors continue to exercise discretion in ways that may not align with codified norms, and the consequences of such deviation remain largely confined to departmental censure rather than legal sanctions.

### 5. Bridging the Gap

Four reform axes are identified as elevating Manual provisions to statutory guidelines under Section 20(3) of the BNSS, introducing explicit disclosure obligations, strengthening the structural foundations of prosecutorial independence, and redesigning accountability mechanisms.

#### 5.1 Elevation to Statutory Guidelines

The central argument of this paper is that executive manuals, however well-drafted, are insufficient to institutionalise the 'minister of justice' principle. The HP Manual derives its authority from departmental fiat; it can be amended, overridden, or ignored by administrative order.<sup>37</sup> For its progressive norms to acquire genuine enforceability, the Manual's principles must be elevated to statutory guidelines framed under the enabling power under Section 20(3) of the BNSS. As this section confirms that the DoP shall function under the administrative

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<sup>36</sup> *State Of U.P. v. Rakesh Kumar Vemra*, (2022) 07 ILR A 1027 (India).

<sup>37</sup> Radina (Adi) Stoykova, *A New Right to Procedural Accuracy: A Governance Model for Digital Evidence in Criminal Proceedings*, 55 COMPUTER LAW & SECURITY REVIEW 106040 (2024).

control of the HD, Section 20(11) empowers the state government to specify, by notification, the further powers and functions of the Director, Deputy Directors, and Assistant Directors of Prosecution. This provision offers a legislative vehicle for transforming the Manual's aspirational norms into binding statutory rules. Himachal Pradesh and other states seeking to strengthen their prosecution services should frame comprehensive Prosecution Rules under this provision, incorporating the Manual's progressive features while addressing its gaps.

## 5.2 Explicit Duty of Disclosure

The Manual should be amended to include an explicit disclosure obligation modelled on the principles articulated in *Siddharth*<sup>38</sup> requiring prosecutors to disclose all material exculpatory evidence to the defence in advance of trial. This duty should extend to:

- (a) Statements of witnesses who may support the defence case.
- (b) Forensic reports that are adverse to the prosecution.
- (c) Any inducements, threats, or promises made to prosecution witnesses.
- (d) Prior inconsistent statements of witnesses.

The disclosure should be made within a specified timeframe, ideally before the commencement of the trial, to allow the defence adequate opportunity to prepare.

This reform draws support from multiple international instruments. Guideline 13(b) of the *United Nations Guidelines on the Role of Prosecutors, 1990* (the Havana Guidelines) requires prosecutors to disclose relevant information to the defence in accordance with the law and to act in good faith. Guideline 16 further emphasises that prosecutors must perform their duties with impartiality and must not exploit the accused's vulnerable position.<sup>39</sup> India's obligations under Article 14(3)(b) of the ICCPR, guaranteeing the accused adequate facilities to prepare a defence, reinforce the constitutional imperative of formalising this obligation. The statutory model closest to this standard in comparative law is the United Kingdom's Criminal Procedure and Investigations Act, 1996, which imposes staged disclosure obligations on the

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<sup>38</sup> SUPRA note 26.

<sup>39</sup> Commonwealth Secretariat, *Prosecution Independence and Accountability: Principles, Challenges and Recommendations*, 42 COMMONWEALTH L. BULL. 567 (2016).

prosecution and is frequently cited in Commonwealth law reform debates as a workable template.<sup>40</sup>

Non-disclosure should, at a minimum, attract meaningful sanctions, such as an adverse inference by the trial court; in serious cases, a direction for retrial or discharge.<sup>41</sup> These sanctions would align Indian practice with the standard articulated in *Siddharth* and bring India closer to the disclosure norms of other Commonwealth jurisdictions.

### 5.3 Strengthening Independence

Prosecutorial independence requires not merely structural separation from the police but institutional mechanisms that shield individual prosecutors from external pressure. Two reforms are proposed. First, the 'prosecution note' requirement should be strengthened: the prosecutor's independent assessment of the charge-sheet should be placed on the judicial record and made available to the trial court and, where appropriate, to the defence.<sup>42</sup> This would transform an internal administrative document into a tool of judicial accountability.

Second, drawing on the United Kingdom Crown Prosecution Service's Code for Crown Prosecutors (9th ed., 2022), Himachal Pradesh should codify a 'prosecution code' that sets out evidential and public-interest tests for every stage of the prosecutorial process.<sup>43</sup> Individual prosecutors should be required to document their application of these tests, creating an audit trail that can be reviewed by courts, supervisory officers, and, in appropriate cases, legislative committees. The February 2026 Supreme Court ruling confirms that these reforms must proceed through statutory rule-making under Section 20(3) BNSS rather than through constitutional litigation, as the legislative route is now the only viable path to structural independence.

### 5.4 Accountability Mechanisms

The current system of evaluating prosecutors through annual confidential reports linked to conviction rates creates perverse incentives. A prosecutor who secures convictions through

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<sup>40</sup> Costantino Grasso, *Peaks and Troughs of the English Deferred Prosecution Agreement: The Lesson Learned from the DPA Between the SFO and ICBC SB Plc*, J. BUS. L. 223 (2016).

<sup>41</sup> Radina Stoykova, *The Right to a Fair Trial as a Conceptual Framework for Digital Evidence Rules in Criminal Investigations*, 49 COMPUTER LAW & SECURITY REVIEW 105801 (2023).

<sup>42</sup> Mudasir Bhat & Mehraj Ud Din Mir, *The Role of Prosecution in the Criminal Justice System in India: An Analytical Audit*, 1(2) INDRAPRASTHA L. REV. 1 (2020).

<sup>43</sup> Ben Widdicombe, *Nine Critical Factors in Prosecution Decision-Making*, 88 J. CRIM. L. 374 (2024).

unethical means may receive favourable evaluations, while one who exhibits fairness in weak cases may be penalised for low conviction statistics.<sup>44</sup> This metric must change.

Annual confidential reports should incorporate qualitative performance indicators: fairness in submission, adherence to disclosure obligations, independence from police influence, and compliance with ethical directives. These indicators should be assessed through peer review, judicial feedback, and random audit of case files. A dedicated Grievance Redressal Cell for prosecutorial misconduct, staffed by retired judges and senior advocates, should be established to investigate complaints from accused persons, victims, and courts.

Finally, the practice common in many states of rewarding prosecutors with accelerated promotions based on conviction rates should be discontinued. Recognition should instead be accorded to prosecutors who demonstrate consistent adherence to the 'minister of justice' ethos, even when this results in acquittals or withdrawals.<sup>45</sup> Such a reorientation of incentives would signal that the state values justice over victories, and would begin the long process of aligning institutional culture with the constitutional standard the Supreme Court has repeatedly articulated.

## Conclusion

This paper has undertaken a doctrinal analysis of the Himachal Pradesh Prosecution Manual, 2008, as a case study in the operationalisation of the 'Minister of Justice' principle. Four key findings emerge from this analysis. First, the Manual represents a pioneering attempt to codify prosecutorial ethics and procedures in a jurisdiction-specific framework. Its provisions on independent scrutiny, reasoned withdrawal, and ethical directives reflect a genuine engagement with the Supreme Court's jurisprudence. Second, the Manual's lack of statutory force, its silence on defence-side disclosure, and its absence of victim participation mechanisms render it constitutionally and procedurally incomplete. Third, the enactment of the BNSS, 2023, has both validated aspects of the Manual and rendered other aspects obsolete, necessitating comprehensive revision; the February 2026 Supreme Court ruling in *Suvidutt*, upholding HD administrative control over the DoP, further confirms that the independence

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<sup>44</sup> Kay L. Levine & Ronald F. Wright, *Prosecutor Risk, Maturation, and Wrongful Conviction Practice*, 42 LAW SOC. INQ. 648 (2017).

<sup>45</sup> Emma Zack, *Why Holding Prosecutors Accountable Is So Difficult*, INNOCENCE PROJECT (Apr. 23, 2020), <https://innocenceproject.org/news/why-holding-prosecutors-accountable-is-so-difficult/> (accessed on June 19, 2026).

argument must be pursued through statutory rule-making rather than constitutional litigation. Fourth, and most importantly, the gap between the Manual's aspirational norms and its enforceable content reveals a structural problem that afflicts prosecution services across India.

The central argument advanced here is that, for the PP to truly function as a minister of justice, norms such as those embedded in the Himachal Pradesh Manual must transition from executive instruction to statutory mandate. This transition requires legislative action under Section 20(3) BNSS, judicial oversight through meaningful review of prosecutorial decisions, and institutional reform of accountability mechanisms. The 'minister of justice' is not merely a judicial metaphor; it is a functional prerequisite for a rights-based adversarial system.

The broader implications of this study extend beyond Himachal Pradesh. As states across India are expected to draft their Prosecution Rules under the new BNSS framework, the Himachal Pradesh Manual offers both a template and a cautionary tale. Its progressive features, independent scrutiny, reasoned withdrawal, and ethical directives can serve as model provisions. The gaps in disclosure obligations, the absence of victim participation, and weak accountability must be addressed. In this sense, the Manual's doctrinal analysis contributes not only to Himachal Pradesh's legal reform agenda but to the national project of institutionalising the 'minister of justice' ethos.

The 'minister of justice' is not a romantic title conferred by judicial rhetoric. It is a functional necessity in a constitutional democracy governed by the rule of law. Its operationalisation through statutory codes, enforceable disclosure obligations, independent institutional structures, and qualitative accountability metrics is the next frontier of criminal justice reform in India. The Himachal Pradesh Prosecution Manual, 2008, points the way forward. Whether that path is taken depends on the political will to transform prosecutorial services from instruments of conviction into fiduciaries of justice.