CHAPTER VII
THE ROLE OF PROSECUTOR IN INDIA- AN EMPIRICAL STUDY

The researcher has collected data in the form of empirical survey for getting more perfection on the area of research. The analysis has also done by the researcher and shown in the following diagrams.

7.1 RESPONSES ON THE LAWS GOVERNING PROSECUTORS IN INDIA

1) Comprehensiveness of the Laws governing Prosecutors in India

Chart No. 1

About the question of comprehensiveness of legal framework for the Prosecutors, 80% respondents responded negatively. It shows emergence of comprehensive legislation for the Prosecutors. Very few respondents, i.e. 10% said yes, the laws are enough. As per their opinion, Indian Laws are scattered into various statutes. And lastly, 10% respondents hold that they cannot answer this question. It
shows that there is a need to enact laws suitable for the effective functioning of Prosecutors. The stand of Prosecutors is given under the Code of Criminal Procedure, 1973. In exceptional cases the Special Legislation comes into picture. Thus, the laws governing Prosecutors in India needs to be comprehensive. This can be done by amendment in the existing legal framework or by enacting new legislation regulating the Prosecutors in India. However, while doing so, the law and order situation and the crime rate of each provincial Government shall be considered. If the Prosecutors stand is loud and clear with strong legal support, the Prosecutors can perform well. The police and the courts can also know their limits while they deal with the Prosecutors. Most of the times, the higher judiciary spend their valuable time in recognizing the rights, duties and the privileges of the Prosecutors. If the statute is clear on those aspects, higher judiciary also need not spent it’s time on the role of Prosecutors.

2) **Efficiency of the Adversarial Criminal justice systems**

**Chart No. 2**

Upon this question, 90% of the respondents hold that the existing criminal justice system has certain loopholes affecting their functions. Under the notion of Fair Trial, the Prosecutors powers are limited by law. The accused is presumed to be innocent. The burden of proof lies on the prosecution to prove the guilt of an accused beyond reasonable doubts. The failure of prosecution to prove the guilt of accused
leads to acquittal. The Prosecutor is not supposed to participate in Investigation. These are the negative side of the adversarial criminal justice pattern. Crime rate in India is increasing day by day. Society is losing it’s faith in the system since the accused goes unpunished. 6% respondents hold that the existing adversarial criminal justice system does not suffer from any loopholes. They feel the balance of rights of accused and the victim is well maintained in the existing system. Under human rights protections, the existing Adversarial Model is suitable. Lastly, a few of the respondents i.e. 4% hold that they have nothing to say about this question. Many of the respondents were not aware about the difference between adversarial and inquisitorial model. Hence they could not answer this question.

3) Reform by adopting compatible principles of the inquisitorial criminal justice system

Chart No. 3

On this question for reframing the Criminal Justice System in India by adopting compatible features from Inquisitorial model, most of the respondents i.e. 80% expect reforms in the existing criminal justice system in India. According to them, the demand for heavy burden of proof leads to failure of prosecution in the
case. Unnecessarily the accused get benefit of doubt. 10% of the respondents hold that for bringing more clarity in communication between Prosecutor and Police, India should adopt inquisitorial criminal justice system. Few respondents i.e. 10% respondents hold that Indian criminal justice pattern is exhaustive one and it is sufficient for the protection of the society.

4) **Communication of Laws, rules and precedents to the Prosecutors**

![Chart No. 4]

Updated knowledge of laws and the precedents is a must for the Prosecutors in order to do the best. On the question about updating knowledge of laws and the precedents, most of the respondent’s i.e. 90% hold affirmatively that there is a need of proper communication of the laws and policies of the Government to the Prosecutor for their effective performance. 2% holds that they get enough information about the laws and policies of the Government. According to them if the Prosecutors are working in the urban area, it is easier for them to collect information through library books and Internet facilities. A few of the respondents i.e. 8% respondents refused to react on this question.

The Prosecutors work is not only limited to the urban area but also to the rural areas as well. If the Prosecutors are working in the rural or remote areas, it is difficult for them to get the updated information quickly and easily. Libraries and the
Information Communication Technology are not available in most of the rural areas. Unless and until the Prosecutor is acquainted with the updated legal information, it would be irrational to expect better performance by him. The Parliament and the State Legislature enact various laws from time to time and whenever necessary, the ministry forms specific policies. Those developments should be known to each and every to enable him to remain updated.

7.2 PROSECUTORS NEXUS WITH CRIME CONTROL IN SOCIETY

1) Connection of Prosecutors with the crime control in society

About the question of connection between Prosecutors and crime control, firstly, maximum Prosecutors i.e. 60% said that the Prosecutor is one of the factor for crime control in society. As mentioned in Introduction, Prosecutor is one of the important factor in the administration of Criminal Justice System. The aim of the administration of justice is to control crime and maintain peace and security. The Prosecutors, being the representatives of the State in the law courts present the prosecution case before the court and can get conviction for the law breakers. Efficient and sincere Prosecutor can contribute to crime control through his industrious performance. Secondly, 20% of the respondents said that the Prosecutors are not connected with the crime control. According to their analysis, a Prosecutors job is to bring before the court the relevant records and the court decides the matter on that basis. The Prosecutor’s job is limited to bring facts before the court on the basis
of investigation done by the police officers. The Prosecutors are not expected to secure convictions at all the time. Lastly, 20% respondents hold that they cannot say anything this question.

2) Factors affecting conviction rate

Decreasing conviction rate in India is one of the failures of Indian Criminal Justice System. 60% of the respondents hold that this failure is due to lack of effective coordination between the Prosecutors and the police. If there is a communication gap between the police and Prosecutors about the matter they are dealing with, it may affect the success of the prosecution and lead to acquittals. As soon as crime is committed, the police officers investigate the matter, collect evidence and record the Statements of witnesses. Unfortunately, the investigation officers in India don’t have the necessary legal backup to enable them to perform their task well. Hence, there is a need of equipping them with required knowledge of law. If the investigation of crime is done in the wrong way, the crime rate goes up.

20 percent of respondents hold that hostile witnesses affect the prosecution case which leads to acquittals. Conviction rate and crime control are mutually connected to each other. Former is the cause and latter is its effect. Effective functions
of the police, prosecutors and court pave the way to establish peace and security in society. However, it is wrong to say that high conviction rate is a mirror of the clean society and the effective prosecution. However, it is right to say that low conviction rate can promote the criminal activities as criminals may indulge in crimes fearlessly and with abundant confidence thinking that they are far away from the clutches of law. Hence, crime control and conviction rate are interlinked. However, it is not correct to say that high conviction rate means high skilled prosecutors. Since securing mere conviction is not the goal of the prosecutors. However, being responsible organ of the State in the administration of criminal justice, prosecutors are a responsible factor for conviction rate in India. Lastly, 20% respondents hold that the faulty investigation done by the police officers leads to high acquittal rates.

7.3 RESPONSE ON THE PROSECUTORS ROLE IN TRIAL

1) Crucial task for the Prosecutor.

Chart NO. 7

80% respondents hold that examination in chief of witnesses is the most important task of prosecutors. The order and procedure for conducting examination of witnesses is described in the Indian Evidence Act, 1872. Secondly, a few respondents i.e. 10% responded that argument is the crucial task for the prosecutors. And lastly, 10% respondents hold that framing of charges is a crucial issue. The prosecutors need to appear for all these stages while dealing with the case in the law courts.
Examination of the witness is a very challenging task since it depends not only upon the skill of the Prosecutors but also on how the witnesses responds to the questions raised in the examination in chief and sometimes in the cross examination of prosecution witness.

2) **Challenge in examination of witnesses in the law courts**

*Chart No. 8*

- To make available the police who has investigated the offence: 80%
- To put on the record the required information from the hostile witnesses: 10%
- Both: 10%

On this question, most of the Prosecutors i.e. 80% hold that both the aspects are challenging for them, i.e. to ensure the presence of police officers in the court during hearing of the case who have investigated the offence and secondly to get correct Statements from the hostile witnesses. Prosecutors expressed their concern of making available the investigation officers in the court during hearing of the case. Most of the times, at the time of examination of witnesses, the investigation officer who investigated the case may get transferred to another station or are elsewhere busy. 10% of the respondents hold that ensuring presence of investigating officer in the court is a more challenging task. And lastly, 10% of the respondents hold that putting on record the correct and true information from the hostile witnesses is the most important challenge before the Prosecutors.
3) Mode of Examination of Witnesses in Trial

Chart No. 9

90% respondents hold that it is a challenging task for the Prosecutor since much practice and expertise is a prerequisite for this aspect. They said that the Prosecutor needs to anticipate the answers which can be useful for establishing the guilt or innocence of the accused before the court. During examination of witnesses, Prosecutor brings before the court the relevant facts which help the court to identify the guilt of accused. The prosecution witnesses include victims, investigation officers, and experts, if any. The Indian Evidence Act, 1872 gives a right to conduct cross examination of their own witnesses. Here, the Prosecutor can conduct the re-examination of the witnesses too with court’s permission. 5% respondents hold that the Prosecutors need to ask simple and direct questions about the fact of the case. That makes the task easier and not challenging. 5% of the respondents hold that they cannot say whether the examination of witnesses is a challenging task for the Prosecutors or not.
Communication of the details of case from the investigation officers is a very important aspect for Prosecutors. That forms the very pivot of the entire case rests. Maximum Prosecutors i.e. 60% of them have responded negatively. They said that they don’t get sufficient feedback from investigating officers of the respective case. In India, the police officers are the first authorities to gather evidences. Consequently, it is expected that they communicate the relevant information to the Prosecutor’s office. If the Prosecutors are fed with sufficient information by the investigating officers, then only Prosecutor would be able to present proper picture of the case before the court. Since Indian Law does not permit Prosecutors to enter into the field of investigation of crimes, the Indian Law must impose an obligation on the police officers to feed the outcome of their investigation to the Prosecutors who is duty bound to present the case before the court. A few i.e., 20% of the respondents expressed their satisfaction about the communication made by the police. And a very few i.e. 20% responded that they Cannot Say on this question.
5) Prerequisite effective performance

On this question, most of the respondents i.e. 70% hold that witnesses’ cooperation is the most important prerequisite for their effective performance. As in the law court, the destiny of the case depends upon how the witness stick to their Statements once made and support the prosecution. Also, it can be inferred that if the witnesses are not supportive and they turn hostile, then irrespective of the caliber of the Prosecutors and the police involved in the case, justice would run far away. 15% respondents said that police cooperation is important as both, the police and the Prosecutors are the most important agencies of the criminal justice system, their mutual cooperation is essential. And lastly, few of the Prosecutors’ i.e 15% responded that court’s cooperation is also a prerequisite. It shows that in India, the Prosecutors get more cooperation from the court compared to what cooperation they avail from the prosecution witnesses. In Indian Criminal Justice System, huge importance is given for the support of the prosecution witnesses in the law courts. If the prosecution witnesses are biased or hostile, then the Prosecutors would not be able to get justice. Hence, the Prosecutorial functions to become successful there is a need of tripod cooperation made up of Prosecution Witnesses, Investigating officers and the Courts.
6) **Major hindrance in performance**

Answering this question, firstly most of the respondents i.e. 60% are dissatisfied with the casual attitude of police in the investigation. While recording of the evidence in the law court, the decision of the court depends upon how the prosecution witnesses stick to their Statements. Hence, casual attitude of the witnesses involved in the case is the most important hindrance in the performance of the Prosecutors. Secondly, 10% respondents hold that the casual attitude of judiciary is a hindrance. As mentioned earlier, the investigating officer’s sincere contribution is prerequisite for effective performance of the Prosecutors. And lastly, 30% of the respondents hold that casual attitude of the prosecution witness is the major hindrance in the performance of the Prosecutors as it is the courts which record the evidence and their casual attitudes affects the sincere work done by the Prosecutors.
7.4 RESPONSE ON THE COOPERATION AND COORDINATION WITH THE POLICE

1) Cooperation of the Investigation officers and the prosecution witnesses

Chart No. 13

Responding to this question, 70% of the respondents hold that they don’t get proper support from the police hence that is the barrier in their performance as Prosecutors. 15% respondents hold that the legal stand of the Prosecutor is not clearly defined. And lastly 15% of the respondents hold that they don’t get proper support from the prosecution witnesses.
2) Investigating Officer Prosecutors consultation while preparation of the investigation report of only Important Cases

Most of the respondents i.e. 80% hold that before police report is made they should be allowed to consult the investigating officer so that they can guide police to record only the relevant and admissible information in the police report which would help the Prosecutors at the time of trial. Usually, the investigating officers collect irrelevant and inadmissible data which affects the prosecution case. Hence, Prosecutors hold that at the beginning of the case, if useful data is collected, then it would help the prosecution to prepare the case and successfully plead it. Secondly 10% of the respondents hold that it is not necessary to consult the police as it affects the rights of the accused as there can be certain manipulation of facts or fabrication of the evidence by both the police and the Prosecutors which may affect the interest of the accused. Lastly, 10% of the respondents suggest that only in important cases like cases registered under the Special Statutes or crucial cases of the offences against the State, there should be discussion between police and the prosecution while police conduct investigation of the case.
7.5 RESPONSE ON THE EFFECTIVE USE OF PLEA BARGAINING

1) Response on Plea Bargaining as an useful tools in the hands of Prosecutors

Chart No. 15

Maximum respondents i.e. 90% hold that in order to expedite the case quickly and effectively, there is a need of plea bargaining. This is an effective tool in the hands of Prosecutors for reducing excessive burden of the criminal cases. Secondly, a few of the Prosecutors i.e. 5% respondents hold that considering limited scope allotted for the use of plea bargaining, it is not such an effective tool in the hands of Prosecutors. And lastly, hardly 5% respondents responded negatively by saying that manipulations can be possible in that procedure. Hence it is not an effective tool in the hands of Prosecutors.
2) **Response of Use of plea bargaining**

**Chart No. 16**

- **Often** 60%
- **Sometimes** 20%
- **Not at all** 20%

60% of the respondents hold that they have used plea, bargaining tools often since the procedure is simple and less complicated. However due to certain limitations like court permission, and readiness of an accused to admit his offence, a few of the Prosecutors say that 20% respondents don’t use this tool often. And lastly very few respondents i.e. 20% hold that they do not use the tool of plea bargaining at all.
Most of the respondents i.e. 90% expect retention of job. For them, it is very important to continue with the service for years together. If their term is insecure, it may affect their economic stability and they may lose interest in their work. Secondly, 5% of the respondents hold that there is a need to reform the recruitment process. If the candidate is not selected on merit basis, then it may affect the quality of the prosecution and ultimately it would result in blunder in justice. And lastly, 5% of the respondents hold the hope that remuneration and perks shall be taken care of as and when reform process in initiated.
Most of the respondents i.e. 40% hold that the Prosecutors post should be made a constitutional post as they are the representatives of the State in the law courts. That would give more prestige and dignity to this profession. Secondly, 40% of the respondents hold that is should not be Constitutional post since Constitutional post is impossible destination considering the existing position and dignity of the Prosecutors. And lastly, few of the Prosecutors i.e. 20% hold that they cannot give their opinion on this question.
3) Workshops and Training Programs for Prosecutors

Chart No. 19

Most of the respondents hold that training is indispensible for them in order to cope with the challenging cases before the law courts. In order to get maximum benefits of the training, 60% of the Prosecutors hold that there should be weekly workshops and training. If the Prosecutors are trained weekly, they may be able to cope with the recent issues like cyber crimes, forensic science and economic frauds. Secondly 30% of the respondents hold that there should be monthly workshops and training in place of weekly workshops as it may not be possible for them to attend training every week due to work pressure. And lastly, 10% of the respondents hold that only annual training be imparted to keep the Prosecutors updated.
4) Motivation Factors for Prosecutors

Chart No. 20

50% of the respondents hold that Monitory aspects shall motivate them for better performance. This response is materialistic and is more practical since the Prosecutors engage themselves in their job of prosecution for better economic stability. Secondly, 40% of the respondents hold Prosecutors should be rewarded for their special contribution to the job. That reward shall motivate them to contribute to the system more effectively. And lastly, 10% of the respondents said that Prosecutors should be promoted. However, taking in to account the hierarchy of the Prosecutors in India, there are hardly any opportunities for promotion of Prosecutors. The researcher feels convinced that no human being can ever exert himself to excellence unless he is motivated. All these aspects like Rewards, Monitory compensation and promotion plays vital role in the motivation of Prosecutors.
7.7 AWARENESS OF INTERNATIONAL GUIDELINES

1) Awareness of the International Guidelines issued by the International Association of Prosecutor (Under United Nations Organization)

Most of the respondents i.e. 90% hold that they are not aware of the existence of International Association of Prosecutors. They justified that they deal only with Indian Laws and they never get any exposures in International Law to deal with international issue or the guidelines of the International Association of Prosecution. 5% respondents hold that they are aware about it since it is an important branch of the United Nations Organization. They also said that if these important guidelines are followed in India, the Indian Prosecutors shall get more prestige and stability. And lastly, very few i.e. 5% said they are not sure to answer this question. This shows the lack of awareness amongst the Prosecutors about international regime in the field of Prosecutors.
2) Awareness of the Guidelines issued by the International Criminal Court (ICC)

Chart No. 22

Most of the respondents i.e. 90% hold that they are not aware about the International Criminal Court's Guidelines about the Prosecutors. 5% respondents hold that they are aware about it since International Criminal Court is the only criminal court exclusively dealing with the criminal cases at the International level. They also said that if those guidelines were followed in India, then Indian Prosecutors shall get more prestige and stability. And lastly, 5% said they are not sure to answer this question.
3) Need of a body for the International Body to regulate and control Prosecutor

Most of the respondents i.e. 90% hold that there is a need of International Body for regulation and control of the Prosecutors all over the world at global level. As per them, such body can help to resolve issues and challenges before the Prosecutors at the international level. Few of the respondents i.e. 5% hold that there is no need of such a body since the State Government or the central Government is proper authority to look at the Prosecutor’s wing. They also claimed that every country has a crime rate and there is mechanism to cope with the crime. Hence, it would be difficult for the body regulating International Prosecutors to deal with different Prosecutors in one criterion. And lastly, 5% respondents hold that they cannot answer these questions.
7.8 RESPONSES ON APPOINTMENT PROCEDURE, DIGNITY, JOB SATISFACTION AND CONCERNS, ETC.

1) Response on the mode of appointment of Prosecutors

Chart No. 24

Appointment of the Prosecutor is a very essential aspect in the administration of justice. Most of the respondents i.e. 90% hold that the Prosecutors should be appointed exclusively on their experience and without any entrance examination. As per them, experience of handling criminal matters in court is much important than passing theoretical examinations. And specifically, for conducting examination of witnesses before the law courts, arguing the cases, convincing the court, etc. crucial aspects such as experience of the Prosecutor matters a lot. Few of the respondents i.e. 5% hold that there should be entrance examination in addition to the court experience. As per them, entrance examination tests the theoretical knowledge of candidates and it prevents immature candidate’s entry in this profession which is fatal to the administration of criminal justice pattern. And lastly, very few respondents i.e. 5% hold that they are unable to answer this question.
2) **Response on Attractive Factor for the post of Prosecutors**

Upon this question, most of the respondents i.e. 60% hold that they are working as Prosecutors not for any monitory gain but for doing service to the society. Secondly, 20% Prosecutors hold that comparing to private legal practice; they are receiving stable amount of remuneration out of this Prosecutor’s job. Lastly, 20% of the respondents hold that they are contributing to the National service as Prosecutor is a State representative. The law practitioner who is passionate for the social work can join the Public Prosecutor’s office.
3) Position and dignity as a Prosecutor

Chart No. 26

80% of the respondents hold that they are not happy with the position and dignity they get. According to them being representatives of the State they should be treated with honour. There are many factors which negatively affect the dignity and position of the Prosecutors. Secondly, 10% hold that they are happy with their present status. Here, the number of satisfied respondents is very less. And lastly, 10% of the respondents cannot say anything on this question.
4) Response on concerns about low remuneration

Monetary consideration is one of the important criteria in any organization. Upon this question, 60% respondents showed deep dissatisfaction about their very low remuneration for the Prosecutor’s job. As per them, considering their expertise and work, they should be paid more by the State. Secondly, a few of them i.e. 20% are anxious about less supportive laws. Hence as per them, less supportive laws is the major drawback in the Prosecutor’s job. And lastly, 20% respondents said there is no retention of services. Therefore, this is major drawback in the job of Prosecutors. It shows that less remuneration paid to the Prosecutor is one of the important drawbacks. Less remuneration will discourage many eligible candidates from this profession. And it also shows that supportive legislation favorable for work and retention of job is also vital aspect for assurance of their job security.
5) **Response on pressures or threats from outsiders while dealing with the prosecution case**

**Chart No. 28**

Being representatives of the victim in the case, there is a possibility of threat to the Prosecutors. Most of the Prosecutors i.e. 50% hold that they have never faced any pressure or threat from the outsiders while dealing with the prosecution case. And for that reason they discharge their duties without any fear or favor. Secondly, a few of the respondents i.e. 25% hold that they have faced pressure or threats from the outsiders while dealing with the cases. For that reason they are concerned about their safety which should be considered by the State as they are representatives of the State. And lastly 25% of the respondents hold that they cannot answer this question.
7.9 RESPONSE TO THE ROLE OF PROSECUTORS IN REFRAMING OF CHARGES

Chart No. 29

Most of the respondents i.e. 90% hold that they reframe the charge sometimes. Only one respondent holds that he has not at all reframed the charge as reframing of charges depends upon facts and circumstances of the case. Secondly, 5% of the respondents hold that they often reframe the charges when and where required. And lastly, 5% respondents hold that they never came across the case to reframe the charges at all.
2) Response on the appointment of Special Public Prosecutors for the special Cases

Chart No. 30

80% of the respondents hold that there is no need to appoint Special Prosecutors as they themselves are quite capable of handling those cases effectively. And they are concerned about the exorbitant burden on the Government for paying those Prosecutors. Secondly 10% of the respondents hold that for the special cases like offences against the State or under the special laws there is a need of expertise of the special Public Prosecutor. Hence they should be appointed in those special cases only and not in all the cases. And lastly, 10% respondent hold that they cannot say whether to appoint Special Public Prosecutors or not for the special case.
3) Factor for not getting support by the prosecution witnesses

Chart No. 31

Most of the respondents i.e. 70% hold that both; the forgetfulness of the witness and hostile witnesses affects the prosecution case. Secondly, 15% respondents hold that hostile witness is the major factor as those witnesses do not support the Prosecutors and it affects the prosecution case. And lastly, 15% of the respondents hold that forgetfulness of the witnesses in spite of giving idea them an about the case is a major factor affecting prosecution cases.
4) Cooperation of witnesses in the trial

Chart No. 32

Most of the Prosecutors i.e. 50% respondents hold that they are uncertain about the prosecution witness support in the chain of trial since each case is different from one another. Each case has different facts and prosecution witnesses change their Statements as per the direction of different cases. 25% respondents hold that every time they get assistance of the prosecution. And lastly, few of them i.e. 25% hold that they never got the support and that has affected their performance as a Prosecutor in the law court.

7.10 CONCLUSION BASED ON EMPIRICAL STUDY

In the theoretical framework for Prosecutors, many things are mentioned. However, in the field work, the situation of Prosecutors is challenging one. Insufficient legal protection, heavy burden to prove the guilt, need of clarity in laws and communication of laws in all the Prosecutors’ offices, lack of police support, etc. are the hindrances in the Prosecutors work. The laws governing Prosecutors in India, their communication amongst all the Prosecutors, their clarity needs to be changed towards betterment of the Prosecutors. The Adversarial model of justice is becoming time barred and there is a need to adopt principles from the Inquisitorial model. The adversarial model has created barriers for the Prosecutor functions effectively.
Considering need of hour, for better performance the Adversarial model needs to adopt compatible principles from the Inquisitorial model.

The Prosecutors are one of the most important organs in crime control in society. Directly and indirectly they contribute to these most important functions of the system. Hence the Prosecutors need to be recognized. The Prosecutors claim that they face is most challenging tasks conducting examination of witnesses in the courts. In order to rejuvenate the institution of Prosecutors in India, all those aspects need to be considered. Thus the Prosecutors can contribute effectively in the society and bring down the ever increasing crime growth.