
Analysis of Challenges Faced by Indian Prosecution System

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ABSTRACT

This paper presents analysis of various challenges faced by Indian prosecution system. Paper contributes towards finding the challenges which are obstacle for smooth functioning of Indian prosecution system. The paper concludes with solutions to these challenges which the department faces in the proper adjudication of the routine duties in cooperative effort of criminal justice administration in India, with a contribution toward smooth functioning of Indian prosecution system. In this paper the challenges faced at the dispersal of duties by the Prosecution department with the three other important wings of criminal justice administration that is Police, Judiciary and Prisons are systematically analyzed and some suitable remedies eliminating these challenges and improving the inter departmental cooperation for the better criminal justice administration in India.

INTRODUCTION

Indian civilization is one of the oldest civilization of the world and being a rich society has always attracted foreign invasions from the time unknown. With each invader came a new prospect and knowledge and due to this reason the natural justice as well as the Law of land during different dynasties has a mix of several societies be it Persian, Roman, British etc. The history reveals that there used to be prosecutors in the royal courts also under different dynasties and the king during hearing of the case used to take guidance from the prosecutors while deciding the matters.

During the british rule the setting up of a prosecutor in the court to assist the judge and to prove the case of the government side, the provision during the formation of the modern criminal law was done and ever since the beginning the prosecution has been an important wing of Criminal Justice Administration under the Indian Constitutional setup. The foremost duty of the prosecution is to secure and maintain the confidence of the court and victim as to the proper discharge of justice by the court and to provide justice for victim. The institution and conduct of legal proceedings against a defendant for criminal behaviour is called prosecution. The prosecutor plays a pivotal role in the administration of justice. Prosecutor - The lawyer who represents the government i.e. the State in a criminal case. To the extent that the prosecutor is the lawyer for the state and in each case his client is not the police department or the individual victim of a crime, but society itself. Moreover, the prosecutor is not merely the attorney who represents society's interest in court, but also the public official whose job is to decide, the extent of damage done to the society by the accused and the society's interest in seeking punishment for the accused guilty. All participants to a court actions are deemed to do their utmost to seek the truth and to help administer the atmosphere of justice. This concept is so deeply ingrained into the psyche of the citizens of the country that many assume anyone charged is likely guilty, instead of the actual legal view that all the accused are innocent until proven guilty. Both prosecution and defense have a legal right to all evidence so that the rights of both parties i.e. victim and accused are protected.

Importance of Prosecution

The Prosecution is meant for providing legal assistance to investigators i.e. police officials in complex cases. Criminal trials are always prosecuted on behalf of the state, not on behalf of victims or individual citizens. Important difference between criminal cases and civil cases is that criminal cases are regulated by the Constitution to a much greater extent than civil cases. Many provisions like the right to confront witnesses and the right to a speedy trial are directed only to criminal cases. This

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concern in the Constitution reflects the fact that, unlike civil cases which are usually concerned with money damages and related to the movable or immovable properties, what actually involves a criminal case is usually the freedom of the defendant and in many cases even the life or death of the defendant. For this reason, the Indian constitution provides defendants with guarantees aimed at ensuring that their treatment at the hands of the state shall be proper and that the trials they receive will be fair and free of any pressure. The accused shall have the right to defend his case even at the state expenses if he is not able to manage for his personal lawyer and shall have the vast opportunities before the different levels of the courts starting from trial court, high court, and supreme court, so that the spirit of Justice prevails and no aspect of the case remains unexamined and unanswered.

The Indian constitution provides for the cases be heard starting in the trial court with the presence of the victim and the accused so as to ensure that the truth comes out before the court at the first instance. The prosecutor in constancy with the victim advocate, are expected to make every efforts during the hearings of the case to protect the safety of the victim and also protect the rights of the accused. For an instance, such efforts are required to be made in the offences against women especially in Rape cases, the confidentiality of the Victim and their Address shall be made along with the police reports, witness statements, and all other discovery materials provided to the defence shall be kept non public. In court, prosecutors are directed to never ask for the victim to disclose her current address, should advise victims to refrain from giving an address when testifying to avoid inadvertent disclosure and should object to requests for such information when made in the course of questioning by the defence. Further the investigators and prosecutors have been empowered by the constitution to consider whether all reasonable lines of enquiry have been pursued. The related sources of evidence and unused material should be explored and decisions made as to how this material should be obtained and produced in the court.

With such vast powers and responsibilities vested in it, still the Indian prosecution system is sadly termed as one of the most slow and non-punctual wing of the criminal administration in India. In the indian spoken vocabulary the prosecutors generally are termed in hindi as ‘Sarkari Vakil’ i.e. Government Lawyer, but sadly over the years this term has meant to be a person who is paid by the Government to handle the state cases to protect the larger interests of general public whether or not he does achieve Justice or not, may be due to certain technical or perceived reasons. The prosecution system is seen to be as a department from which a general public person may never expect to get any support or any proper guidance which may help the innocent person in getting justice. The prosecution department over the years with the increase in the crime rate and criminals in the society, has not been able to prove its reputation of protector of Truth and Justice.

In the present day situation the courts are highly overburdened due to the increase in the crime rate in the modern society and also due to the awareness of legal knowledge of the rights of the individual. But it has been seen that the number of the prosecutors are less in number as compared to the number of courts. In the present day scenario there are more number of Judges than compared to the number of prosecutors and this dazzling fact was revealed during the collection of data during this research. This discrepancy arose when a need of setting up new courts and forming new benches was felt and as a result to fulfill this requirement new courts are set up and also the vacancies of the Judges have also been increased and due to the proper follow up of the higher Judiciary and department of Home and Justice, new Judges have been recruited throughout. With the coming and working of the new judicial officers the paucity of the cases is now getting lesser and the cases are being heard at a fast rate, but now the courts are facing the shortage of the Law officers i.e. public prosecutors in the cases to assist the courts.

The study suggests that due to lack of public prosecutors the cases have to be adjusted as per the availability of the public prosecutor in the court. During research the respondents from the other wings of the criminal justice administration had revealed about this short coming in the prosecution department. The judicial officers had stated that at a number of times during the proceedings on any given day the judges are frequently compelled to hear the case at a time convenient to the public prosecutor and even have to wait for the prosecutor as he is busy in another court. The situation is so grave that in many districts one prosecutor has been given charge of several courts, so alarming are the circumstances that due to lack of the state counsel (prosecutor) the judges even are compelled to adjourn the cases as the public prosecutor is not available in the court even after calling the case severally during the hearing of the case on one given date. The lack of prosecutors is found to be a big hindrance in achieving the goal of speedy Justice for all in the welfare democratic state of India. The

prosecution system is required to recruit new prosecutors at the earliest so as to eliminate this short coming and to provide better services in coordination with other wings of criminal justice administration in India and especially with the hyper use of modern technologies which has given birth to new types of crimes such as cyber crime and use of advance technology in committing of crimes, the prosecutors further needs to be very well informed and trained for cyber and other technical crimes which are alarmingly on the rise.

As per the guidelines of the Supreme court of India and also by the strict instructions of the government emphasis has been laid on providing better infrastructure and man power to combat with this increase of crime and criminals. With a high increase in the crime rate and criminals there is a big inflow of criminal cases and for the proper adjudication of these cases a number of courts have been set up and new recruitments of the judicial officers, police personals, etc is being done at a fast pace but the research study has revealed that the number of prosecutors has not been increased in accordance with the increase in the numbers of Courts, Judges, Police officers etc. The police officials have also indicated during the study that due to lack of prosecutors they face a lot of problems not only at time of hearing of cases but also during the investigation of case and making and filing of the Challans in the courts. Being over burdened the prosecutors spare very little time to listen and solve the problems faced by the investigating officer during the investigation of the case.

So from above scenario it is clear that Prosecution system in India is facing various problems which need to be marked out so that these issues may be resolved and redressed to improve Indian Prosecution system. Through our work we present various challenges faced by Prosecution system in India and propose solution to them.

METHODOLOGY

Analysis was conducted through questionnaire framed very keenly on most common challenges which the Prosecution department officials are facing as being an important wing of criminal justice administration, while performing their duties. The objective of the research was to locate and mark out the visible and the perceived issues that are big hindrance for the smooth and effective performance of the routine duties of the Prosecution system in India. In this regard a research questionnaire was prepared after deep literature survey and analysis of relevant available material from various libraries and official gazette records maintained by the relevant departments. For questionnaire preparation different case studies were analyzed to chalk out the various hidden and obvious challenges within the Prosecution department and the other concerned wings of Criminal justice administration in India. For the purpose of data collection survey was conducted from various prosecutors of different ranks and posted in different courts, selected randomly from the state of Punjab. The officials are selected at different ranks so as to confirm that no issue at any level of prosecutors remains hidden or overlooked. The prosecution officials were approached and they very keenly answered to all the questions given in questionnaire and asked during interviews. Various officials were interviewed for verbal and written interactions during research which gave a very fruitful outcome narrating exactly the challenges they face in this date while the performance of their daily duties. Statistics obtained are analyzed using scientific methods to produce comparative results as an objective to enhance their work conditions and improve their compatibility with other wings of criminal justice administration. The objective of this survey is to collect baseline information on prosecution department personnel's and expenditures to enable detection of problems as well as permit comparisons with the other wings of criminal justice administration in India i.e is Judiciary, Police and Prisons.

With the prior permission from the official Headquarter of the prosecution department which directed the respondent prosecution officials of different ranks (i.e. ADA, DDA, DA) deployed by the service (full-time equivalents), categorized by different ranks. Information on recruitments, vehicle facility, infrastructure facilities, duty hours, transfers, promotions was collected. Other questions of collected data on operating issues were broken down into salaries/wages, benefits, postings, trainings, interference and co-ordination with other wings of Criminal Justice Administration.

CHALLENGES FACED BY PROSECUTION DEPARTMENT

Fig. 1- 13 represent the responses given by the respondent prosecution department officials to the questions related to the challenges faced within the department while adjudication of their daily routine duty, apparently the answers are very clear and logical:

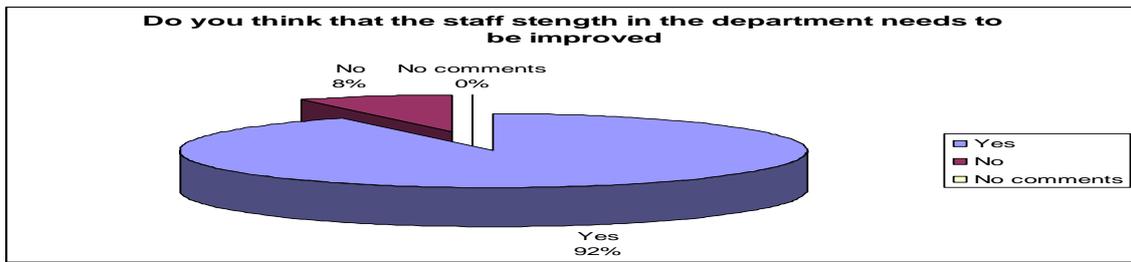


Fig1.



Fig2.

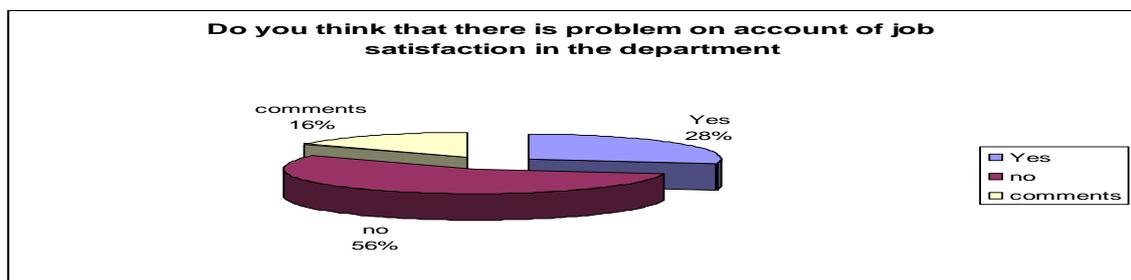


Fig3.

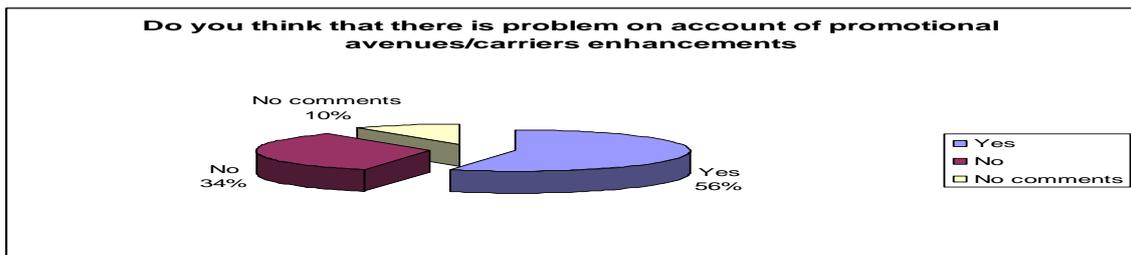


Fig.4

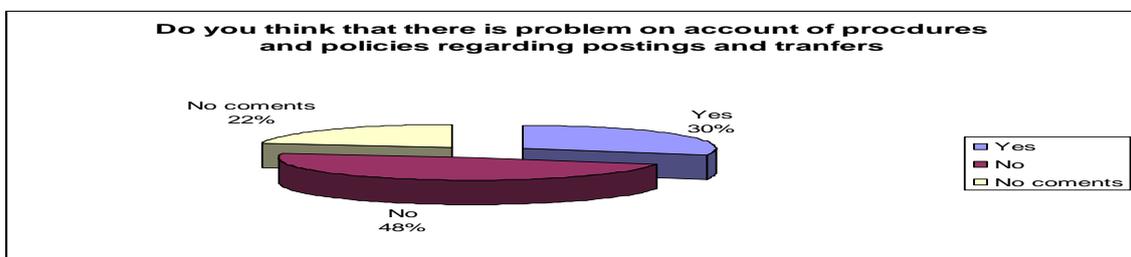


Fig.5

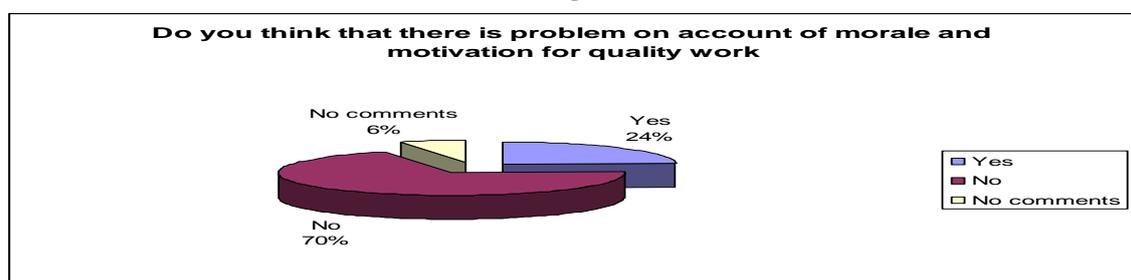


Fig.6

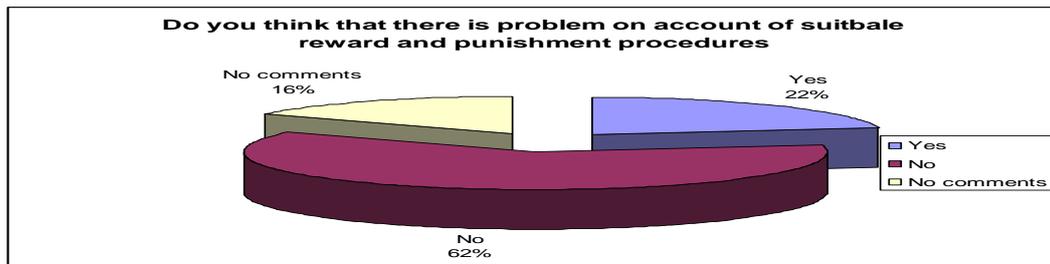


Fig.7

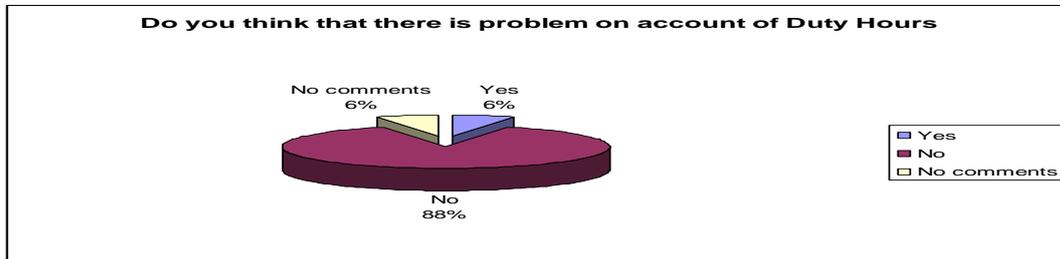


Fig.8

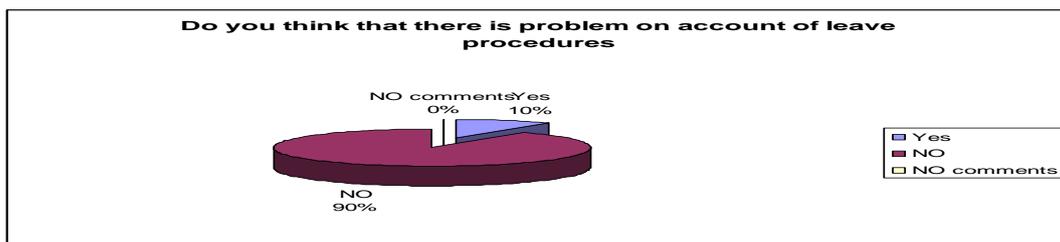


Fig.9

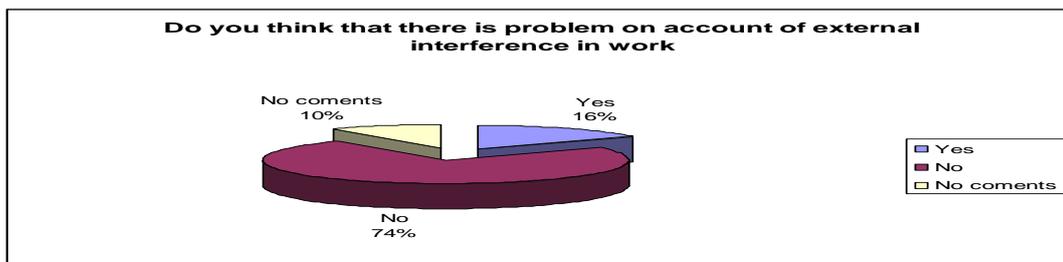


Fig.10

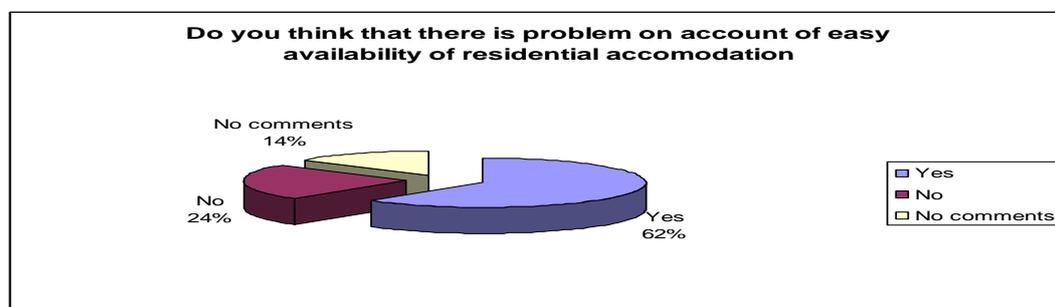


Fig11.

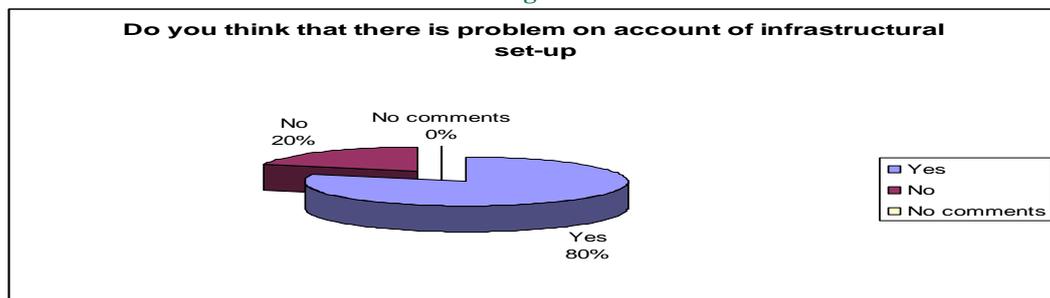


Fig12.

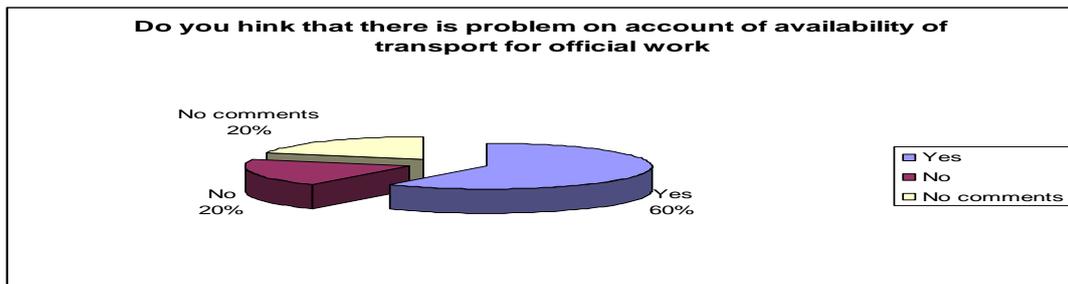


Fig13.

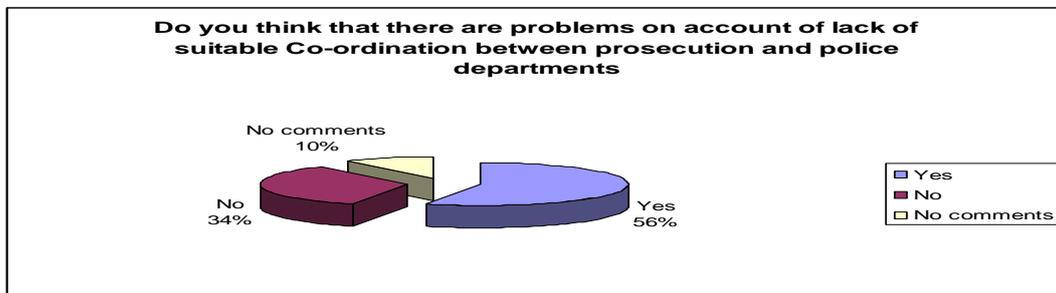


Fig14.

Major Challenges Observed During Study

Following are the comments given in response to the questions as depicted in the fig.14 to fig.17 relating to the coordination challenges faced with other wings of criminal justice administration i.e. Judiciary, Police and Prosecution:

When asked regarding any coordination problems being faced between the Prosecution and Police department, the majority of the Prosecution officials clearly indicated that there are problems on account of co-ordination between Prosecution and Police departments. They commented on these problems by stating that the police department is delegated with the duty of registering and investigating a crime but the police officials don't do their duty with prudence as they don't collect valuable informations and evidence from the crime scene due to lack of knowledge or many times deliberately due to which the vital link between the crime and criminal is lost and the case is not proved in the case resulting in acquittal of the criminal. The police officials also do not apprise the prosecutor regarding the material facts of the case and negligently hide many valuable informations from the prosecutor which result in the failing of the prosecution case in the court. The police officials of the I.O. rank are seen to be less prudent with the law and do not possess the legal knowledge which should be a must for the police investigation officer.

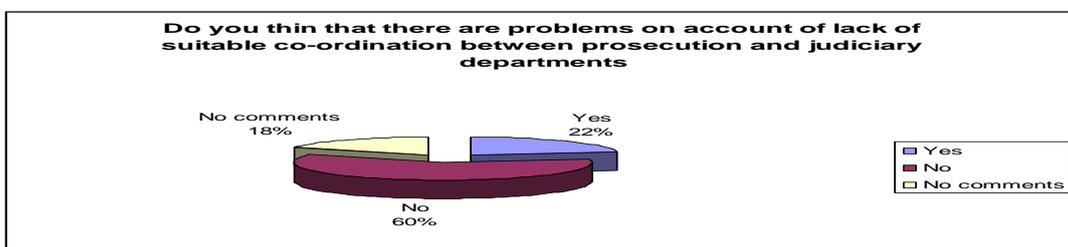


Fig15.

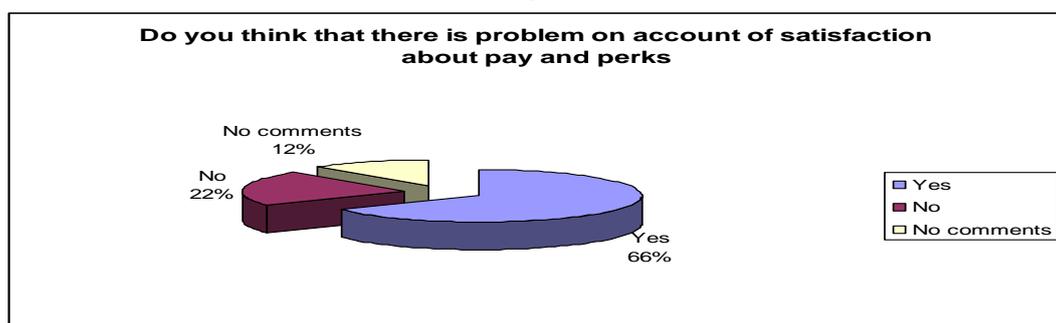


Fig16.

The prosecutors stated that they don't have much interaction with the prisons department but they revealed that the prisons officials are seen to not sent the accused/prisoner in the court on the day of the hearing on one pretext or the other, which results in the lingering on of the litigation. The prisons officials shall make sure that the under trial is sent to the court on the day of hearing at appropriate time so that the case achieves finality and justice is done at the earliest. It is a very dangerous situation as there should be very cordial and proper co-ordination required between these wings of Criminal Justice Administration in India.

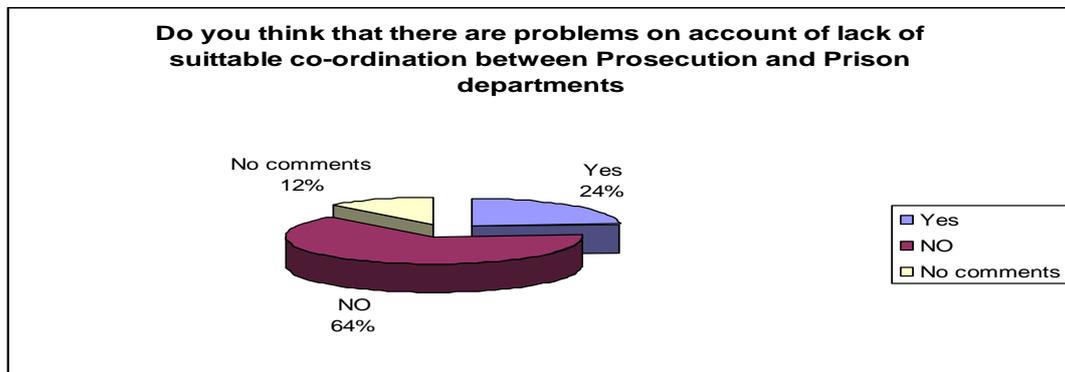


Fig17.

The Prosecution officials have indicated that a lot is required to be done for the improvement and better co-ordination between the Prosecution and Police department. They stated that the police officials don't bring or inform them regarding the status of the investigation or other aspects of the investigation and at the fag end only at the presentation of charge sheet in the court the police IO brings the case file to the prosecutor and by that time it is too late for them to do much good at that stage. They stated that the police investigation officers take the matters very lightly for one reason or the other don't inform them regarding the proceedings in the FIR. On inquiring, problems associated with prosecution in co-ordination with judiciary, prosecutors reported that there are not many co-ordination problems faced in regards with the Judiciary. In this regards the biggest challenge is that the Judges in many cases where the crime involved is of lesser gravity or the first timers do not grant bails to the accused person, which is resulting in the lack of trust of the under trials in the court and in many cases later on the completion of the trial the accused person is acquitted of all the charges but by that time he has served two years behind the bars. Also in this age of technology where cyber crimes are on increase the police investigation officers are stated to be lacking in any such expertise and thus in such cases the prosecutors find it difficult as the IO has due to lack of knowledge failed to collect the relevant evidence and due to which it is not possible to prove the case in the court. The courts should have a liberal view in such cases as the non giving of bails is resulting in the over crowding of the jails and also increasing the scope of indulging of the innocent under trial with the habitual offender king pins who are languishing in the prisons and facing several trials in many cases.

The Prosecution officials when asked regarding any coordination problems being faced between the Prosecution department and Prisons department, the majority of the Prosecution officials indicated that there are no major problems on account of co-ordination between Prosecution and Prisons departments. They commented that as they don't have any direct interaction with the prisons wing and thus there is no significant problem.

PROPOSED SOLUTIONS TO THE PROBLEMS

The prosecution department officials when asked regarding the above questioned challenges faced within the department and with other departments of criminal justice administration in India, the respondents replied to all these challenges with a very professional approach and seasoned way. From the interviews and discussions conducted the following are the few proposed solutions to the problems:

Staff Strength

During the study of the prosecution wing a big short coming of the lack of staff strength has been seen. There is a huge shortage of the prosecutors in the courts as has been seen during the study and

this short coming has been repeatedly emphasized by the other wings of the criminal administration i.e. judiciary, police specifically and they have all laid stress over the improvement of the staff strength in the important agency such as prosecution with the increase of crimes in this age of hi-tech crimes. So much so the some judicial officers have even proposed for having parity in the number of prosecutors in the court in ration of the judicial officers. It has been observed that due to lack of staff strength even the judges have to wait for the prosecutor during the proceeding of a case as the concerned prosecutor may be busy with another case in another court. Thus by improving the staff strength in the prosecution wing, the motto of speedy trial and quick justice can be achieved with the proper and equal cooperation of the prosecution with other agencies of criminal administration.

Working Atmosphere and Job Satisfaction

The officials of the prosecution wing have been seen to be over burdened. This over burdening of the prosecutors is not a healthy sign and may result in a chaotic situation and hence decreases sense of job satisfaction among them. The prosecutors have firstly to attend court proceedings and then have to check and help the police in the process of forming ‘challans’ in the several cases. The prosecutors have revealed during the study that they seldom find any time to sit and relax or even have lunch during day time as they have to perform several duties not only in the court but also help the police officials for several legal lacunas during the investigation of the cases. Due these reasons there is lack of job satisfaction and sheer lack of working atmosphere where the person in regular routine seldom gets time to take breath, whereas in this date they have to run from one court to another and do their duty.

Infrastructure Enhancement and use of Technology

The infrastructure needs to be drastically improved and the use of technology be made accessible to the prosecutors as this will help a lot in the proper investigation and pleading of the case before the court. The provisions of the technical devices for serious offences such as the bio engineering facilities like the narco analysis tests and lie detectors and their utilization should be delegated within the powers of the prosecutors as this will necessitate during the police investigation of a case whereas in the present day the permission of doing these tests has to be taken from the court which is time consuming and takes a lot of time. The infrastructure in the prosecution should be highly modernized and the staff should be trained accordingly and be literated as per the changing technology. The training programs in accordance to the changing crimes and criminals should be organized frequently to train prosecution staff, so as to make them well prepared accordingly. In this era where the use of modern technology has raised new types of crimes as in the form of cyber crime where the knowledge and equipment for tackling such crimes should be provided at the disposal of the prosecution wing along with the posting of an expert in each court. The use of advanced technology in committing of crime by the criminals is an alarming situation and to counter this situation the prosecution and the police needs to be highly equipped and informed so that the case can be proved before the court. The prosecution department has been found to be even lacking in transport facilities and they have to look to other departments at every such requirement. The infrastructure of the prosecution wing needs to have a big facelift and it should no longer be treated as a neglected wing of criminal justice administration.

CONCLUSION

This paper presents various challenges faced by the Prosecution department as being an important wing of criminal Justice administration in India. This paper focuses on the actual challenges faced by the prosecution officials within the department and in coordination with other department of criminal justice administration. It present statistical results on the major concerns obtained in the form of questionnaire from the prosecution officials serving on various ranks in the department. It presents various views and interesting facts obtained after interviewing prosecution officials. It concludes with the solutions to various important challenges faced by the prosecution department that can help in the smooth working of the most important wing of criminal justice administration.

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