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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE ROLE OF PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM IN INDIA: AN ANALYTICAL STUDY

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ABSTRACT

The police, the prosecution, the courts, and the administration of corrections make up the criminal justice system. All of these system components are meant to function in unison with one another. The criminal justice system's success will only be made feasible by these organs working together harmoniously. The prosecution system, which is regarded as the most important branch of the system, must carry out its duties without interference from outside parties. The duty of impartiality rests perpetually on the prosecutor, who is regarded as the minister of justice. The status, appointments, and function of prosecutors within the criminal justice system will be the subject of an analytical focus in this research study. It will also highlight the criticism of the prosecutor's function and the difficulties they encounter in carrying out their responsibilities. The article ends with several insightful recommendations that will help the criminal justice system—in general, and the prosecution system in particular—run smoothly.

KEYWORDS:

Criminal Justice System, Adversarial system, Police, Investigation, Trial and Coordination.

INTRODUCTION:

The history of crime as a multifaceted socio-legal issue predates human civilization.¹ The necessity for criminal law has always been present wherever men and women have structured themselves into a social structure.² Substantive and procedural laws are both included in criminal law. Adjective or procedural law activates the legal system's enforcement apparatus, while substantive criminal law establishes the rights and obligations of the parties involved in a case. The police, courts, and penal administration make up the three primary parts of the current criminal law enforcement apparatus. The judges, prosecutors, and defence attorneys make up the court itself. All of these elements must cooperate in order for the system to continue upholding the rule of law in society.

The criminal justice system's initial responders to an occurrence are the police, who use the law and their professional judgement to gather relevant evidence. Once they have done so, the case is moved to a court of law to proceed with the legal process. If some important evidence was overlooked by the investigating officer, there's a good chance it could eventually disappear (a process known as progressive change), which might be disastrous or even result in the accused being found not guilty. Because of this, the investigating officer's role in a criminal investigation is crucial to building the case against the accused. Crimes are classified into two main categories under the 1973 Code of Criminal Procedure: cognizable and non-cognizable acts.

In the event of a cognizable offence, the police are empowered to investigate the matter suo motu and gather the evidence required to bring a successful prosecution against the offender, as per Section 414 of the CrPC. The investigation becomes more challenging if the identity of the culprit is unknown, necessitating that the police use their expertise and the cooperation of informants to identify the criminal and his reason for committing the crime.

The prosecutor's role is the next crucial one in the criminal justice system. Every organised society has a sophisticated legal system in place to bring charges against members who violate the established norms of the organisation. Common law nations, like India, have different criminal justice systems than do civil law nations. But in both systems, the centre of attention is this office. It is recognised as a centre of power since it has a great deal of authority. It serves as the repository for the public's power to initiate and end criminal investigations.

Assistant Public Prosecutors are appointed to handle prosecutions in the Magistrate's Courts, while Public Prosecutors, Additional Public Prosecutors, and Special Public Prosecutors are responsible for handling criminal proceedings and prosecutions in High Courts and Sessions Courts, in accordance with Sections 247 and 258 of the Code of Criminal Procedure.

RESEARCH OBJECTIVES:

- To know the functions and responsibilities of the prosecution in the Indian criminal justice system.
- To identify the challenges faced by the prosecution in effectively carrying out its duties.
- To analyze the impact of prosecutorial discretion on the administration of justice.
- To look into how the prosecution interacts with other parties involved in the criminal justice system, like the courts and law enforcement.

- To study the resources and infrastructure available to support the functioning of the prosecution in India.
- To evaluate the mechanisms for accountability and oversight of the prosecution in India.

ROLE OF THE PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM:

The 197th Law Commission of India Report on Public Prosecutors Appointments (2006) cites Christmas Humphrey's work, which was published in Criminal Law Review in 1955 and is worth mentioning while analysing the prosecutor's position in the criminal justice system:

The prosecutor is a minister of justice, responsible for presenting a well-formulated case to the tribunal against the accused person and supporting it with evidence. They should not feel pride or satisfaction in securing a conviction, nor should they boast about the percentage of convictions secured over time. If a defense is raised incompatible with their case, they will cross-examine it dispassionately and with fairness, and then address the tribunal in reply, if they have the right, to suggest that their case is proved. If they fail to convince the tribunal of the accused person's guilt, their prestige is not rebuffed. Their attitude should be objective and indifferent to the outcome, as it is the tribunal alone, whether a magistrate or jury, to decide guilt or innocence.

The Law Commission of India has emphasized the role of prosecutors in the criminal justice system, stating that they are ministers of justice who assist the state in administering justice. They are not representatives of any party and their job is to present all relevant aspects of a case to the court. Prosecution is a crucial part of the criminal justice system, and its function is critical to its effective operation. The prosecutor is appointed by the state and is responsible for prosecuting cases on its behalf. They must ensure that the trial results in a conviction, but they should not be overly preoccupied with the outcome. They are a court-appointed neutral officer who must provide a true picture to the Court of Law. Despite representing the state, the prosecutor must also ensure that the accused is not treated unfairly. They must be honest and impartial to ensure fair treatment for the accused. The prosecutor should only prosecute in exceptional circumstances to maintain public faith in the administration of justice.

1. That the executive branch's responsibility to prosecute offenders is fulfilled by the Prosecutor's office.
2. That the prosecutor's withdrawal from prosecution is an executive duty.

3. Because the prosecutor alone has the authority to decide whether or not to drop the case, and he cannot give this authority to someone else.
4. That while the Government may advise the Prosecutor to drop a case, it cannot force him to do so; in the end, the Public Prosecutor's opinion and discretion would be paramount.
5. That in order to serve the overarching goals of public justice, public order, and peace, the prosecutor may drop all charges, not just those based on a lack of evidence.
6. That the Prosecutor reports to the Court and is an official thereof.

RESEARCH METHODOLOGY:

The research methodology for using secondary data to examine the function of prosecution in India's criminal justice system entails a methodical approach to the collection, evaluation, and interpretation of extant literature, reports, case studies, and legal documents. First, a thorough analysis of the literature will be done in order to compile pertinent data from books, academic journals, government papers, and legal databases. A thorough grasp of the theoretical underpinnings, historical background, and important ideas pertaining to prosecution in the Indian criminal justice system will result from this. Second, information will be gathered from a range of secondary sources, including official government publications, court rulings, research papers, and legal studies, in order to study how prosecutions operate and identify areas that require improvement as well as their successes and obstacles. In order to provide context and insights, comparative studies with the legal systems of other nations may also be investigated. After then, depending on the type of information gathered, either qualitative or quantitative approaches will be used to evaluate the data in order to find patterns, trends, and implications pertaining to the prosecution's function in India's criminal justice system. In the end, the results will be analyzed, and judgments will be made to help comprehend the efficiency of prosecution, its difficulties, and possible improvements in the Indian context.

ROLE OF A PROSECUTOR IN PRE-TRIAL STAGE:

The terms "trial" and "criminal procedure" were not defined in the 1872 Code of Criminal Procedure or in the 1882, 1898, or 1973 laws that followed. One must use the dictionary definitions in order to determine the meaning of these idioms. Stroud's Judicial Dictionary²⁵ defines a trial as the resolution of an issue by a competent court in any legal action. A trial, as defined by Wharton's Law Lexicon²⁶, is a civil or criminal case that is heard in front of a judge who has jurisdiction over it. Therefore, the meaning of the expression "trial" must be determined by the specific context in which it is used, as it

lacks a general meaning.

The pre-trial stage in India involves minimal police involvement, allowing them to make arrests, conduct searches, and record confessions and statements. However, non-cognizable offenses require court sanction. Investigations follow Chapter XII of the CrPC, 1973. The prosecutor's role includes obtaining an arrest warrant, search warrants, custody remand for interrogation, declaring an accused person a proclaimed offender, confiscating assets, and recording advice in the police file. After the investigation, the prosecutor must submit a final police report to the court. The prosecution's duties include obtaining arrest warrants, search warrants, custody remands, declaring the accused a proclaimed offender, and recording advice on prosecution viability.

Following the completion of the investigation and the creation of a prima facie case against the accused, the prosecutor's office submits a charge sheet to the judge. At this point, the prosecutor's view on the establishment of a prima facie case is requested. The prosecutor's recommendations and brief comments are regularly considered to raise the standard of the inquiry. However, it is up to the police authorities to decide whether to take a case all the way to trial. In situations where the investigating officer (IO) and the prosecutor cannot agree on whether to bring charges, the District Superintendent of Police has the final say.

ROLE OF A PROSECUTOR DURING THE TRIAL STAGE

During the trial stage, the prosecutor plays an unrivalled role to represent the state than the government or police. It is the impartial role of the judge and prosecutor which decides the fate of the trial. In the actual trial, there are various stages and, in each trial, the prosecutor plays a pivotal role. After the charge sheet is filed in the court of law, the case is handed over to the prosecuting officer. The court on taking cognizance of the case frames the charges against the accused person if a prima facie case is made out. The court proceeds then to record the prosecution evidence and the statement of the accused. Eventually, the court hears the final arguments from both sides and makes the judgment public.

Further during the trial, the prosecutor has the authority to withdraw a case from the trial as per Section 321 of the Code of Criminal Procedure.³⁰ Section 321 provides “for the withdrawal from prosecution does not indicate as to the grounds on which the prosecutor may make the application or the consideration on which the court is to grant its consent. The initiative is that of the prosecutor and what the court has to do is only to give its consent and not to determine any matter judicially.”³¹ In *Sheo Nandan Paswan v. State of Bihar*³², it was held that “the judicial function implicit in the exercise

of the judicial discretion for granting the consent would normally mean that the court has to satisfy itself that the executive function of the prosecutor has not been improperly exercised or that it is not an attempt to interfere the normal course of justice for illegitimate reasons.”

The Supreme Court in *Subash Chander v. The State*³³ has held that “under Section 321 withdrawal of prosecution is exclusively the jurisdiction of the prosecutor. No executive authority has the power to withdraw the prosecution. But the prosecutor too can withdraw it with the consent of the court. The consent of the court under Section 321 as a condition for withdrawal is imposed as a check on the exercise of that power. The consent, according to the Supreme Court, will be given only if public justice in the larger sense is promoted rather than subverted by such withdrawal. The Prosecutor has to act independently and apply his mind judicially. He has to act, in doing so, as a limb of the judicative process not as an extension of the executive. The decision to withdraw must be of the prosecutor, not of other authorities, even of those whose displeasure may affect his job status.” Again, in *Rahul Agarwal v. Rakesh Jain*³⁴, “the permission for withdrawal of the prosecution was granted on the ground that the case was pending for a long time and accused was not a habitual criminal. The case was posted for examination of the accused and no inquiry was made as to why the case was pending. It was held that the order permitting withdrawal of prosecution when prosecution evidence was about to be over at any point in time, is not proper. It was also held that the permission for withdrawal of the prosecution can be granted only in the interest of justice and for valid reasons. It may thus be granted in a case that is likely to end in acquittal and continuance of the case is only causing severe harassment to the accused, or to bring about harmony between the parties. Discretion to permit withdrawal of prosecution should not be exercised to stifle prosecution at the instance of aggrieved parties. Even if Government directs the prosecutor to withdraw prosecution the court must consider all the relevant circumstances and find out whether withdrawal would advance the cause of justice.”

ROLE OF A PROSECUTOR IN POST-TRIAL STAGE:

After the completion of trial and pronouncement of judgement by the competent court, the aggrieved party may go into appeal before the appellate court. On appeal to the higher court, the prosecutor plays an important role. As per the provisions of Section 374 of the Code of the Criminal Procedure, “Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court and any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of

imprisonment for more than seven years has been passed against him or any other person convicted at the same trial may appeal to the High Court, or if any person is convicted by the Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or the Second class may appeal to the Court of Sessions.”

The prosecutor as per section 377 of the CrPC also plays a pivotal role, “when the State Government may, in any case of conviction on trial held in any Court other than High Court, direct the prosecutor to present an appeal against the sentence on the ground of its inadequacy to upper court.³⁵ Again Section 378 of the CrPC provides that the District Magistrate or the State Government may, in any case, direct the prosecutor to present an appeal to the superior court.”.

KEY LAWS AND ACT:

Indian Penal Code (IPC):

The primary criminal code in India is the Indian Penal Code, which was passed in 1860. It lists different offenses, their definitions, and associated penalties. The Indian Penal Code is structured into multiple chapters, each addressing distinct types of offenses, including those against individuals, property, public order, and the state. Some noteworthy sections are:

Section 154: First Information Report (FIR) - This section deals with the procedure for recording information about cognizable offenses by the police.

Sections 299-377: Offenses against the human body, including murder, culpable homicide, rape, and unnatural offenses.

Sections 378-462: Offenses against property, including theft, robbery, dacoity, and mischief.

Sections 504-509: Offenses relating to defamation, insult, and outrage of modesty.

Sections 499-502: Defamation and related offenses.

Sections 511-530: Attempt to commit offenses, including attempt to murder, attempt to theft, etc.

Criminal Procedure Code (CrPC):

The 1973 Criminal Procedure Code established the legal framework for criminal investigation, prosecution, and sentencing. It contains clauses pertaining to investigations, bail, trials, and appeals.

Important sections consist of:

Section 154: FIR - It mandates the registration of FIR by the police upon receiving information about a cognizable offense.

Section 161: Examination of witnesses by the police.

Section 173: Submission of the police report upon completion of investigation.

Sections 227-231: Procedure for framing charges and trial in Sessions Courts.

Sections 238-243: Procedure for summary trial.

Sections 265-265L: Plea bargaining provisions.

Sections 291-299: Appeals, Reference, and Revision.

Sections 319-325: Provisions for the court to proceed against other persons appearing to be guilty of the offense.

Sections 406-412: Provisions related to bail.

Evidence Act:

The guidelines and requirements for evidence that apply in criminal trials are outlined in the Indian Evidence Act. It sets rules for the weight, relevance, and admissibility of evidence. Relevance, admission and confession, documentary evidence, and witness examination are among the crucial sections.

Protection of Children from Sexual Offences (POCSO) Act, 2012

Children are protected by this act from sexual assault, sexual harassment, and pornographic material. To protect children who are victims of such crimes and to ensure that justice is served quickly, it establishes unique protocols for their trial.

Narcotic Drugs and Psychotropic Substances Act, 1985:

This law addresses offenses involving psychotropic and narcotic drugs. In an effort to stop drug abuse and trafficking, it imposes severe penalties for the illegal trafficking, possession, and use of these substances.

Prevention of Corruption Act, 1988:

This act deals with corruption-related offenses by public servants and prescribes punishment for bribery, abuse of official position, and possession of disproportionate assets acquired through corrupt means.

Criminal Law (Amendment) Act, 2013:

This amendment introduced changes in the IPC and CrPC, particularly concerning sexual offenses against women. It expanded the definition of rape, introduced new offenses such as acid attacks and stalking, and enhanced punishments for such crimes.

Juvenile Justice (Care and Protection of Children) Act, 2015:

This act deals with children in conflict with the law and provides for their care, protection, treatment, and rehabilitation. It aims to ensure that the rights of juveniles in the criminal justice system are protected and that they are treated with compassion and understanding.

Mental Healthcare Act, 2017:

This act deals with mental health issues, including the treatment and rights of persons with mental illness who are involved in criminal proceedings. It aims to ensure that persons with mental illness are treated with dignity, their rights are protected, and they receive appropriate mental healthcare.

CRITIQUE OF THE ROLE OF PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM:

The prosecuting officers in the criminal justice administration are not the pawns in the hands of the government. They are required to play their role in an impartial and unbiased manner. The prosecutor has to represent the state than the government. He must be the defender of the cause of his client as efficiently and effectively as possible. However, in the performance of his duties, it is an obligation on him to work in synchronization with the other wings of the criminal justice system. When the researcher approached the different stakeholders (respondents groups for empirical study) for their opinion regarding the coordination between the police and prosecution, the majority of them are of the inference, that there is a lack of cooperation between the different wings of the prosecution in general and police and prosecution in particular.

The prosecution and investigation no doubt are the two different aspects of the criminal justice system. The role of the police in the criminal justice system is important because he is the first who reaches the scene of the occurrence and while applying the law and his professional expertise collects material evidence based on which the case is sent to the court for legal trial. If the police investigating officer ignores certain evidence which subsequently disappears or gets destroyed then it may prove fatal to the case in hand. The police and the prosecution sometimes lack coordination on investigative issues. Their acts are independent of each other as investigation work is outside the court, whereas the role of the prosecutor is inside the court. It is also true that they are interdependent, hence they should act in harmonizing the things in the delivery of justice.

As per the National Crime Records Bureau (NCRB) report, Crime in India, 2018, the conviction rate in the country is less than 50% which is very lower than countries like the USA (85%), China (99.9%), UK (84.5%), Israel (93%), Japan (99.5%) and Russia (99.78%). The reasons for the low conviction rate in the country may be many, but it has been time and again highlighted by the courts in India that prosecution also does not play its role as per the mandate of law. The Hon'ble Supreme Court of India in the Best Bakery case³⁸ has criticized the role of the prosecutor for opposing the issuance of arrest warrants against the accused persons before a Mumbai court. The Court has observed that such a person should not continue as the public prosecutor for the state.

Again, in Jayalalitha's Disproportionate case³⁹ when the public prosecutor stated, he has no

objection to granting of conditional bail to the convicts has put the impartiality and independence of judicial system into question. The Court has held that the public prosecutor is appointed by the state to perform the functions of the state. But when the public prosecutors which is one of the most important branches of our legal system, acts on behalf of wrongdoers then the impartiality and purity of judiciary come into question.”

Regarding the misuse of the power of withdrawal from prosecution by the prosecutors under Section 321 of the CrPC, Hon'ble Supreme Court in Sheo Nandan Paswan v. State of Bihar and others⁴⁰ have opined that “Section 321 of the Code enables the Public Prosecutor to withdraw from the prosecution with the consent of the Court. Before the prosecutor makes an application under Sec. 321 of the CrPC, the Prosecutor has to apply his mind judiciously to the facts of the case without being subject to any executive influence.”

PROBLEMS OF THE PROSECUTORS IN THE CRIMINAL JUSTICE SYSTEM

In our country, the criminal justice system is based on the idea that any crime committed against citizens is a crime against the state. The state takes on the burden of prosecuting perpetrators on behalf of the victims based on this premise. Although Indian prosecutors are nominally independent, they are subjected to a variety of unlawful influences and pressures.⁴¹ The problems of the prosecutors in India can be summed up in the following heads:

1. Lack of Coordination between the Police and Prosecution
2. Overburdened Prosecution
3. Lack of Proper Training
4. Lack of Infrastructure
5. Executive and Political Influence

SCOPE OF THE STUDY

An overview of the Indian criminal justice system is given at the outset, and then the historical background and the legal framework controlling prosecution are examined. The study explores the roles and responsibilities of prosecutors across the criminal justice system, stressing the difficulties they encounter, such as resource limitations and outside pressures. Additionally, it looks at prosecutorial independence, responsibility, and discretion and evaluates the consequences of each in the Indian setting. Furthermore, the study assesses how prosecutorial procedures affect the

administration of justice, drawing on case studies or empirical data as needed, and compares its findings with those of other jurisdictions to pinpoint best practices. In the end, the study offers suggestions for improving the function and efficiency of prosecution in India's criminal justice system.

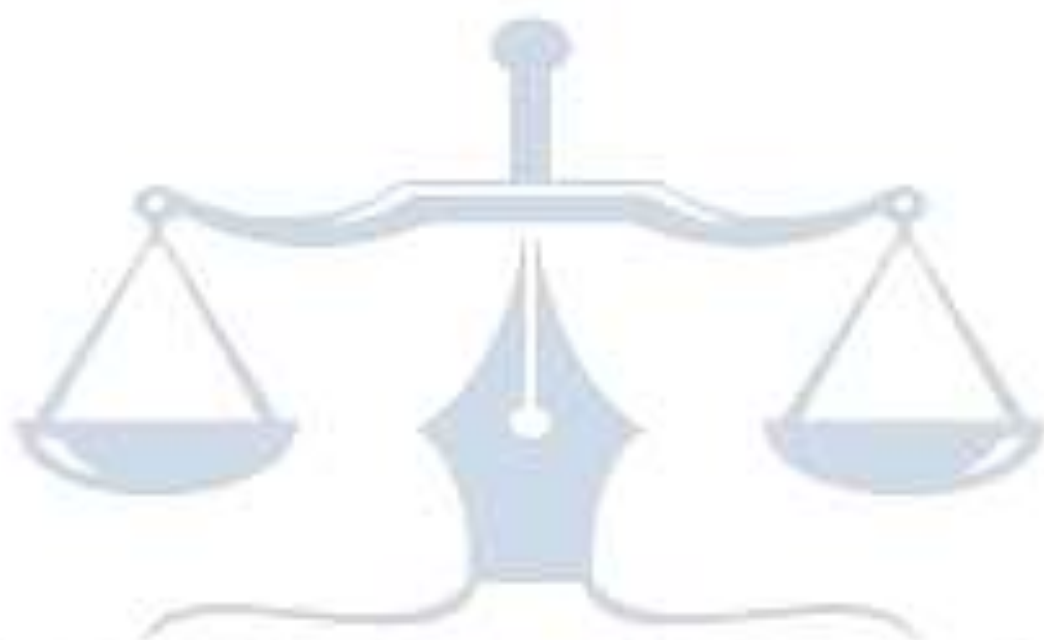
CONCLUSION:

To sum up, a critical examination of the prosecution's function in India's criminal justice system reveals how crucial it is to guarantee the impartial administration of justice. The prosecution is the branch of the legal system that is in charge of putting forth arguments, gathering evidence, and defending the rights of the people and the state. Prosecution contributes significantly to maintaining the rule of law, discouraging illegal activity, and defending the rights of both defendants and victims. Nonetheless, obstacles like a lack of resources, a backlog in court proceedings, and structural inefficiencies highlight the necessity of ongoing reform and enhancement in the prosecution system. Strengthening the efficacy and integrity of prosecution in India's criminal justice system requires improvements to infrastructure, coordination, and training amongst stakeholders. In the end, promoting the values of justice and equity in society, upholding social order, and building public trust all depend on a strong and responsive prosecution system.

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