



THE ROLE OF PROSECUTION IN IMPROVING JUSTICE DELIVERY: A CASE STUDY OF PAKISTAN'S CRIMINAL JUSTICE SYSTEM

Shyam Lal
Session Judge & Ph. D Research fellow
School of Law
University of Karachi
Karachi – Pakistan
shyamlal.pano@gmail.com

Dr. Khadija Rasheed
Assistant Professor,
Faculty of Shariah and Law
Maldives National University
Male - Maldives
khadheeja.rasheedh@mnu.edu.mv

*Dr. Dastagir Ghulam**
Ph. D Research fellow
Department of Criminology
University of Karachi
Karachi - Pakistan
chanasar@gmail.com
**Corresponding author*

Abstract

The criminal justice system plays a crucial role in upholding social order and harmony, encompassing the characterization of offenses, the protocols for addressing crime and criminals, the appropriate punishments for offenders, and the safeguarding of victims within a society. In contemporary society, this system comprises three key institutions: the police, the prosecution, and the judiciary. Regrettably, in Pakistan, the criminal justice system has been severely impacted by flaws, exhibiting numerous idiosyncrasies and vulnerabilities. In the Haider Ali Case (2015 SCMR 1724), the Supreme Court of Pakistan pointed out that approximately 65% of cases are resolved without any convictions. Even if convictions secured in trial courts, offenders are often released during the appeal process, primarily due to inadequate investigations and a lack of admissible evidence. However, it is important to acknowledge another crucial component of the criminal justice system, namely the prosecution, which has been identified as weak and ineffective in administering justice, particularly in Pakistan.



Through qualitative data collection from the relevant population, the study's findings suggest that prosecutors in Pakistan perceive themselves as vulnerable, caught between two powerful institutions: the police and the judiciary. The lack of collaboration between two entities, namely the police and the prosecution, has led to significant rifts within the criminal justice system and consequently resulted in a remarkably low conviction rate. Furthermore, in Pakistan, the prosecution office is not permitted to intervene or provide assistance to the investigating agencies during the investigation process or in the preparation of charge sheets or final reports. This study proposes that prosecutors should be involved during crime investigations to guide the investigating officers in addressing any legal gaps, ensuring that the strongest evidence is presented in court. Additionally, it is suggested that the government shall establish a legal division within the police department to offer guidance to the investigating officers in the preparation of charge sheets, which appears to be a promising solution.

Key words: Criminal Justice System, Police Investigation, Prosecution, cooperation, Judiciary, Pakistan,

Introduction

The Criminal Justice System plays a crucial role in every society worldwide, serving as a vital component. Its primary function is to establish a sense of deterrence within the society. Without an efficient criminal justice system, a society or country cannot sustain itself in the long run. In contemporary times, the criminal justice system is composed of three key institutions, namely the police, prosecution, and judiciary. While the names of these institutions may differ across countries, they are present in almost all nations around the globe. (Jamshed, 2018) Furthermore, it is possible to examine the judicial system by assessing its accessibility, affordability, absence of discrimination, lack of corruption, independence from improper government influence, absence of unreasonable delays, timely resolution of cases, and, in the context of criminal justice, the effectiveness of criminal investigation and correctional justice systems in reducing criminal behaviour within society. It is also crucial to determine whether due process of law is being followed and whether the rights of the accused are being protected. (Conceptual Framework of the WJP,) Regrettably, Pakistan has experienced a significant decline in its ranking for criminal justice in 2020, dropping six positions to reach the 98th place. In the previous year, the country was positioned at 92nd place. (World Justice Project 2020) Numerous legal factors, including flaws within the criminal justice system (CJS), contribute to the wrongful convictions of innocent individuals. Even when these individuals are released by higher courts, the CJS fails to provide any form of compensation for the injustice they have suffered. This absence of a mechanism to address such tyranny within the justice system ultimately leads to a miscarriage of justice. (Khan, Saleem, Jalal ud Din, & Jawad, 2022).

The authors of this paper concentrate on the significance of prosecution within the



framework of criminal justice administration. It can be contended that the achievement of desired outcomes relies heavily on successful prosecution. The responsibilities of prosecutors commence shortly after a case is registered and extend until the criminal court delivers its final judgments. (Mwalili, 1998) Prosecution plays a crucial role in alleviating the burden of excessive cases with deficiencies in the system. Prosecutors bear obligations towards the state, the public, the court, and the accused, necessitating them to carry out their duties in a fair and impartial manner.

Regrettably, prosecutors face numerous personal, administrative, and procedural challenges both before and during pretrial and court proceedings. One major issue is their lack of authority is to oversee investigations and dismiss cases that are not suitable for trial. As a result, prosecutors are compelled to pursue cases they know they will lose, wasting valuable time for themselves and the court. There are instances where the police refuse to address or rectify gaps in the evidence, and in such cases, prosecutors are forced to accept these shortcomings even though they are aware that it may weaken their case. However, in a contrasting ruling by the High Court of Sindh in the *Junejo v. State* case, (*Junejo v State*) it was stated that sections 173 and 494 of the Code of Criminal Procedure grant prosecutors the discretion to review case files and reject flawed cases. Nonetheless, under section 494 of the Pakistan Code of Criminal Procedure 1898 (CrPC), prosecutors require court consent to withdraw a case before a judgment is pronounced. (Mir Hassan) In contrast, other jurisdictions provide prosecutors with extensive pretrial discretion. (Iqra Khalil) In many countries, prosecutors possess significant powers during investigations and trial proceedings, allowing them to be actively involved in the investigation process. (Choe, 2018) However, in certain countries, including Pakistan, their role is merely ceremonial. They perform their duties by evaluating the investigation and deciding whether or not to proceed with prosecution after receiving the case from the police. Consequently, the prosecution service appears to have little direct involvement in the investigative procedure. (Iqra Khalil)

Chapter XXV of the Police Rules 1934 and Chapter XIV of the Criminal Procedure Code address the procedures, powers, arrests, and report submission to the court by the investigating officer. The primary responsibility for investigating criminal cases lies with the police. However, there are instances where the prosecution pursues cases without being fully aware of the facts and lacking strong evidence, thereby disregarding the courts' time and disrupting the entire system.

Given this context, one could argue that the role of the prosecutor should be more prominent. The prosecutor should be involved from the beginning of the investigation process. In addition to providing valuable advice to the investigating officer, the prosecutor should rectify any significant legal deficiencies, resulting in a well-prepared case to be presented in the appropriate court. (Mwalili) However, the issue is that in Pakistan, the prosecution office is excluded from interfering or assisting the investigating agencies in preparing chargesheets or final reports. This differs from other jurisdictions where the prosecution has extensive pre-trial discretion.

Literature Review

Justice serves as the fundamental essence and core principle of any judicial system within a civilized society. Nevertheless, the courts in Pakistan are overwhelmed with an excessive



workload. Nearly two million cases remain unresolved across various courts in the country, leading to an ongoing and escalating backlog that shows no signs of abating. (Shah, Khan, & Farid, 2014). Specifically, the Supreme Court of Pakistan alone had a backlog of 53,964 cases as of January 31, 2022. This extensive list of pending cases not only undermines the concept of prompt justice but also hinders the filing of new cases. (Ali, & Hassan. 2022) The causes for this backlog and the resulting delays are numerous and deeply rooted, stemming from factors both internal and external to the courts, as well as legal and procedural gaps. Undoubtedly, when justice is delayed, it is effectively denied. Consequently, addressing the issue of delays in the legal system has consistently remained a primary concern for civilized societies, aiming to identify and rectify the flaws and deficiencies in the administration of justice. (Owais 2023)

In the era of British India, the laws governing the prevention of offenses were the Indian Penal Code (XIV of 1860), the Code of Criminal Procedure 1898, and the Evidence Act 1872 (Act 1 of 1872). However, after the formation of Pakistan in 1947, these laws underwent a change in their titles and became known as the Pakistan Penal Code (XIV of 1860), the Code of Criminal Procedure, 1898 (V of 1898), and the Evidence Act, 1872 (1 of 1872) now Qanoon-e-Shahadat Order 1984 in order to address offenders. (Supara)

In the context of history, the separation of prosecution services from the police and their placement under the Law Department occurred through the implementation of the Police Order 2002. This significant change took place to enhance the functioning of the criminal justice system. Subsequently, between 2006 and 2009, all four Pakistani provinces enacted legislation known as the Criminal Prosecution Service Act. The purpose of these Acts were to establish an independent, efficient, and effective service dedicated to prosecuting criminal cases and promoting better coordination within the provincial criminal justice system. (Arshad, 2017) Each provincial service is headed by a prosecutor general who is appointed by the respective provincial government. Supporting the prosecutor general are additional prosecutors general, deputy prosecutors general, and assistant prosecutors general. At the district level, there are district public prosecutors, deputy district public prosecutors, and assistant district public prosecutors.

The long-awaited separation of the police and prosecution was necessary, but the recently established organization is encountering significant obstacles. One of the main challenges is recruiting individuals with a deep understanding of criminal law, especially considering that the prosecution services have not yet established a distinct institutional identity. According to a former inspector general (IG) of Punjab, there is a concern that district attorneys or assistant district attorneys are serving in these roles with only three or four years of experience. Additionally, a former Chief Justice of the Supreme Court emphasized that for the separation to be effective, it is crucial to provide adequate funding and competent legal professionals to support the prosecution. Unfortunately, this essential aspect has not been fulfilled. (Arshad, 2017)

In the Pakistani criminal justice system, the prosecutor has limited discretion. The process involves three stages: the investigation stage, where the police form an opinion on the likelihood of a trial; the charging stage, where ideally the prosecutor should provide independent assistance to the court based on the police report, but ultimately the court makes the charging decision; and



finally, the decision to withdraw from prosecution, which requires court consent for the prosecutor's prerogative to be executed. (Arshad, 2017) In contrast, in many developed countries like the USA, Japan, Germany, and South Korea, prosecutors have full authority to decide whether a case should proceed to trial and determine if the evidence is sufficient. (Ishikawa, Ngo Mandeng, Sharma, & Mwalili, 2015) For instance, in the UK, the Crown Prosecution Service (CPS) dropped 24% of cases (87,992 out of 367,067 cases) at the pre-charge stage during 2011-12, while 10% of cases were dropped after charges had been filed. (Sultan, 2016).

The Guidelines on the Role of Prosecutors were adopted in 1990 during the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. (Cheng, 2017) These guidelines outline the expectations for prosecutors to fulfill their duties with professionalism, skill, and integrity, while adhering to clearly defined prosecution policies. Prosecutors have the responsibility to maintain the highest standards when handling criminal cases. They should approach their interactions with others in a candid and truthful manner, showing consideration and sensitivity when dealing with crime victims and witnesses. It is crucial for prosecutors to ensure fair treatment and respect for individuals charged with offenses, being meticulous in protecting the interests of those suspected or accused of crimes. The guidelines emphasize that a fair trial requires the presence of a fair prosecutor. (Cheng, 2017) According to the United Nations Guidelines, prosecutors are required to carry out their responsibilities in a fair, impartial, and consistent manner, while upholding human dignity, protecting human rights, and avoiding any form of discrimination based on political, social, religious, racial, cultural, sexual, or other factors. (United Nations Guidelines on the Role of Prosecutors)

The newly established service had the responsibility of assuming control over the handling of all criminal prosecutions initiated by the police, as well as providing guidance to the police forces regarding matters related to criminal offenses. Additionally, it had the authority to discontinue prosecutions or modify specific charges if they disagreed with the initial decisions made by the police. In an adversarial legal system, the primary objective of the CPS was to support the police in achieving a high conviction rate. The police retained their authority to charge individuals and make the initial determination to initiate a prosecution, while the CPS had a limited role of reacting to and reviewing police decisions to prosecute, solely based on evidence collected by the police themselves. (Kyprianou, 2009)

As has been rightly observed by Avory J. in *R v. Banks* that:

“Prosecutors are the gatekeepers in the criminal justice system. It is now a well-settled rule that prosecutors are independent of the police and the courts. While the police, the Courts and the prosecutors have responsibilities to each other, each also has legal duties that separate them from others. The prosecutor does not direct police investigations, nor does he advise the police. The Government should ensure that prosecutors are independent of any executive influence and can discharge their professional duties and responsibilities without any interference.” (Law Commission of India)

Criminal prosecution aims to support the court in promoting justice and does not serve as an



advocate for any specific party. The role of a public prosecutor is not to intensify the case against the accused, but rather their sole objective is to assist the court in uncovering the truth. The term 'act' in section 493 does not imply anything other than the process of examining and cross-examining witnesses or presenting arguments before the court. (Dr. Munir Ahmad Mughal)

Research Method & Study Findings

The Criminal Justice System is a web of government agencies entrusted with prosecuting and convicting criminals. The role of prosecution in the country having vital importance and significance to achieve the goal for criminal administration of justice. However, prosecutors are unable to participate meaningfully in investigations. Pakistan's poor conviction rate, believed to be between 5% and 10%, is understandable in a system that lacks cooperation among criminal justice agencies. Pakistan's inefficient CJS accrued dire implications for internal, regional, and international security. By using qualitative method of surveying, the researcher wants to know from the people and experts within Pakistan's criminal justice system about the role of prosecution in improving justice delivery. Data was collected from lawyers' fraternity including public prosecutors, judges and court staff to know the awareness about the issue.

There were almost 109 potential respondents approached, among them 84 (80.8%) were identified themselves as males and 20 of them (19.2.8%) were females. However, 6 participants did not respond about their gender identification. Regarding the occupation and identification of the participants, there were 34 lawyers which is biggest group among participants i.e., (31.4%), 21 of them were from prosecution department, that is (19.6%), 17 of them were judges that are (16.7%), 3 of them District Attorneys. There were 15 Police officers (14.7%) percent were also participated in the study.

When asked regarding trust on criminal justice system, this question acted as the crux of our discussion, as we find the entire audience of participants relatively divided on this issue. 24.8% have extensive confidence on criminal justice system, whereas 7.9% have no confidence at all. On the other hand, 35.6% have some trust and 23.8% have a little confidence on the existing criminal justice system. On the other hand, fewer have a great deal of confidence on the criminal justice system. The concept of the essentiality of the prosecution as fundamental to ease the docket of overloading caused by flawed cases in the criminal justice system of the Islamic Republic of Pakistan is an issue at hand. Our participants give us 97 responses, where 21.6% remained neutral, 10.3% strongly agreed, 7.2% strongly disagreed 9.3% disagreed whereas an overwhelming majority of 51.5% simply agreed to this notion. When the participants posed a question regarding the cooperation among police and prosecution, as correctly observed, 58.2% agree, and 23.5% strongly agree on this notion that relationship between prosecution and investigation department of Police is essential. This leaves a mere minority of voters in the opposition.

The prosecutors were asked to what extent they be agreed if find some lacunae or weaknesses in the charge sheets, whether they were frequently forced to submit a charge sheet without reviewing. This question created a lot of stares amongst our audience. As we can see the 30% agree with the argument. A mere population remain neutral pertaining to 23% of the voters.



9% strongly disagreed with this notion whereas 8% strongly agreed with the situation. The lack of command to oversee the investigation of cases or to discard them is a significant problem to the prosecution department. Our audience affirms this fact as we can clearly see 55.6% agreed, 7.1% strongly agreed where is a mere 19.2% remain neutral and last but not the least a simple minority of 12.1 percent disagreed with this notion.

When a query posed to the participants regarding the deep breaches in our criminal justice system possibly due to faulty investigations and in-sufficient evidence, by adducing 33 percent in strong agreement, whereas a huge chunk of participants voted as 48.5 percent to allude to the seriousness of the flaws in the criminal justice system of Pakistan. Very few percent disagree along with few who were neutral while answering. The problem that prosecution containing some lacunae or weakness in the charge sheets is a frequent issue in the Pakistan criminal law, majority of 45.9% agreed and 7.1% strongly agreed, however, in disregard our participants short neutrality by 24.5 percent not giving an opinion. 17.3% disagreed. The issue of prosecution containing some lacunae or weakness in the charge sheets is a frequent issue in the Pakistan criminal law. In disregard our participants short neutrality by 24.5 percent not giving an opinion. 17.3% disagreed whereas majority of 45.9% agreed and 7.1% strongly agreed.

The general mood amongst the participants remained quite blame worthy of the law administration of Pakistan. As 30.1% blamed the corrupted police and the 28.2% were defence lawyers. A spark rises in the condemnation of judges as well, as 22.3% blamed them for the state of affairs. The bone of contention still holds in place for prosecutors, as only 7% ought to blame them. This low percentage clearly indicates that many people, have not experienced the role of prosecution in criminal cases. When asked about the deficiencies the policing system suffers in number of areas, including equipment, technology, personnel, training, and intelligence capability, we can see that 35.6% warded in stronger agreement whereas 41.6% voted in simple agreement. 14.9% remain neutral, and a very insignificant minority disagreed with this important notion.

The issue of police reports is the filing of a significant nature to any crime investigation. In the case of Pakistan, we have witnessed a great deal of determination by the police to stick to their viewpoint irrespective of the facts. In this regard our pie chart clearly shows us a 54.5 persons agreement, 9.9% strong agreement, whereas 18.8% remain unsure. On the other hand, around 20% disagreed with the phenomenon. All this seems “the prosecutor’s office works like a post office,” it means that prosecution office is simply submitted investigation report (charge-sheet / police investigation findings / challans) to courts without having been reviewed the attached investigative reports. As we can see 33.7% are in simple agreement whereas 11.2% strongly agree with the fact that the prosecutor’s office is today considered as a post office. 23.5% do disagree with it whereas 12.2% disagree in completion. A marginal population of 19.4% of the participants does want to remain neutral.

In response to another query, the accountability of the prosecution department is directly proportional to the accountability of courts, police, the federal investigation agency and all other law enforcement agencies. Our voters contributed greatly to the subject whereas 46.4% are in agreement and 14.4% are in stronger agreement, whereas 7.2% strongly disagree with 18.6% simply disagree however 13.4% remain neutral. Our participants have agreed with the notion that



prosecution should be independent alone to drop prosecution at investigation stage as it happened in other common law jurisdictions. With a thirteen percent 13% strongly agreed and more 52% in agreement. Whereas 27 percent remain neutral. The disagreement or strongly disagreement did not deter our path.

Discussion and Analysis on Major Findings

The present study sheds light on the difficulties faced by prosecutors within the criminal justice system of Pakistan, as revealed through in-depth surveying. In this context, prosecutors lack significant authority to contribute effectively to the attainment of transparent access to justice. (Iqra Khalil) As a society, we have a collective interest in safeguarding ourselves from criminals and the harm they inflict. Our law enforcement system investigates crimes and brings offenders to justice. (Munir Supara) However, it is crucial for the justice system to also safeguard our fundamental rights and freedoms and only convict those who are genuinely guilty.

The role of prosecutors involves navigating these distinct and often conflicting interests, ensuring that their actions during the prosecution process serve them all to the best extent possible. Moreover, prosecutors have a responsibility to strike a fair balance between the competing interests of convicting the guilty, safeguarding the rights and freedoms of citizens, and protecting the public from criminals. However, prosecutors find themselves burdened by the excessive workload imposed by the overall criminal justice system. This burden is exacerbated by the overwhelmed state of the courts.

The police force in Pakistan falls significantly below average and lacks privileges in various aspects such as their training manuals, performance levels, upbringing, commitment to promoting peace, and notably, their implementation of internationally recognized best practices. It is evident that Pakistan considerably behind other common law jurisdictions like the Republic of India, Malaysia, the Republic of Singapore, Australia, and New Zealand when it comes to the effectiveness of their law enforcement. Analysing the superiority of prosecutions and comparing them to these aforementioned countries, it becomes apparent that Pakistan is severely delayed in adopting international best practices. In jurisdictions where prosecutors are adequately supported with essential resources, the rates of conviction are significantly higher.

Prosecutors play a crucial role before a trial commences. The prosecutor examines the police report and, if necessary, returns it to the police station or investigation officer for correction of identified defects. If the report is satisfactory, the prosecutor accepts it and submits it to the appropriate court. It is undeniable that the prosecution is essential for alleviating the burden caused by flawed cases on the judicial system. Numerous unresolved cases arise from insufficient prosecution, highlighting the need for proper support in state cases. Stephen Wooler CB, Chief Inspector of the CPS, emphasized the importance of enhancing statutory charging for both the CPS and the police. He called for greater flexibility and responsiveness from the CPS in making pre-charge decisions, as well as improved file preparation and supervision of investigating officers by the police. These improvements aim to ensure that the CPS receives the necessary material to make informed and sound decisions. (House of Commons Justice Committee)



The leading purpose of the criminal justice system is to serve the interests of the public as a whole, rather than focusing solely on individual concerns. This approach is justified by several valid reasons. A crucial aspect of this system is the role of the Crown Prosecution Service (CPS) as an independent arbiter responsible for making decisions about prosecutions. (House of Commons Justice Committee) It is essential to effectively communicate this role to victims, managing their expectations realistically to avoid raising them unrealistically and leading to disappointment.

In various other legal systems, such as those in certain jurisdictions, the police and the prosecution collaborate closely while maintaining their respective independence. This has been achieved by giving the prosecution a "senior role" in the relationship. For instance, in Scotland, the decision to prosecute lies with the appropriate prosecutor, not the police. (Amnesty International (2003) In countries like France and The Netherlands, the investigative police are accountable to the prosecutor, who guides and supervises their activities. Similarly, Belgian law designates the prosecutor as the authority responsible for overseeing criminal investigations conducted by the judicial police. Consequently, prosecutors play a significant role in the investigative process, ensuring a close connection between the two entities. (Amnesty International (2003) These comparative law examples underscore the universal trend in criminal justice systems, where a clear distinction is made between the responsibilities of the police and the prosecution. Such demarcation is essential to safeguard the independence of the prosecution and prevent potential biases during investigations that could compromise the accused's right to a fair trial.

Conclusion and recommendations

This article aims to examine the existing cooperation between the police investigation department and the prosecution department, which are two crucial components of the criminal justice system. It also proposes recommendations based on international standards and best practices. The researchers noted that the relationship between the prosecution and investigation departments of the police is generally acknowledged and supported by most participants, with only a minority in opposition. The article highlights the potential benefits of establishing an independent prosecution service, like what is observed in other common law jurisdictions. This independent service would have its own funding and employ qualified lawyers who could provide legal advice to the police and other agencies. These lawyers would also assess whether a case can proceed to prosecution, and if they determine that there is no viable case, their opinion could guide the decision-making of the agencies involved. To address the existing challenges within the criminal justice system in Pakistan, the prosecution department should develop pre-trial and post-trial pro-formas to introduce checks and balances on their responsibilities. The police investigation report prepared under section 173, CrPC, undergoes scrutiny by means of pre-trial pro-forma before being submitted to the court for trial. This pro-forma, also known as a checklist, outlines the reasons for either rejecting the investigation report entirely or sending it back for further investigation. Once a case is concluded in court, prosecutors should be obliged to analyse and provide a report on their reflections using a post-trial pro-forma. They can elucidate the reasons behind the failure to secure a conviction, offer clear explanations, identify shortcomings in the



investigation and prosecution process, and provide a detailed account of the factors that contributed to either a successful conviction or what went wrong. Lastly, the establishment of a legal division within the police department that can provide guidance on the preparation of chargesheets appears to be a feasible solution.

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