

## CHALLENGES FACED BY PROSECUTORS IN THE ADMINISTRATION OF JUSTICE IN PAKISTAN

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### **Abstract**

Criminal justice system is one of the fundamental formal structures to maintain a peaceful society. It covers the nature of offence committed, the procedures to deal with crime and criminal, the type of punishment for offender, and protection to the victim in a society. The system of criminal justice consists of three major institutions including police, prosecution and judiciary. Unfortunately, the institution of prosecution is found to be weak and ineffective in the administration of justice in Pakistan. Through in-depth interviews conducted with the prosecutors, the present study highlights the challenges faced by the prosecutors in Pakistani context of criminal justice. The study found that the prosecutors in Pakistan feel vulnerable between two powerful institutions of police and judiciary. They have no significant authority to contribute towards transparent access to justice. They are not only powerless but also face various personal, administrative and procedural issues while serving as prosecutors. The present study is a useful contribution in policy making and academic sphere of criminal justice system, especially in the Pakistani context.

### **Introduction**

Transparent and efficient justice system is essential for the survival of any society. Criminal justice system predominantly deals with crimes, penalties and the ways to punish those who violate laws of a society (Reiman, 2016). Criminal Justice refers to the institutions of

government that are created to implement laws, adjudicate crimes, and reform criminal conduct (Ali, 2015). Its main purpose is to control deviant behavior in a social system as some actions of the members of a society might tend to be hazardous and destructive (Ali, 2015). The criminal justice system provides access to justice and also makes sure availability of the fair and affective treatment of the victim so that peace may be brought in a society. In the modern world, criminal justice system has three main mechanisms i.e. police, prosecution and judiciary (Cole, 2010).

Prosecutors are potentially the most powerful aspect in any country's criminal justice system (Tonry, 2012). They settle what crimes to prosecute, whom to prosecute, how forcefully seek a conviction and what punishment to propose (Dammer, 2013). They act on behalf of the state during the proceedings of court, from the framing of charges against accused persons in court until they are released or punished (Petzschmann, 2010). Prosecutors assess the evidence brought to them by the law enforcement to decide whether allege the accused or drop the case (Petzschmann, 2010). On 7th September 1990, the 8<sup>th</sup> United Nations Congress provided various guiding principles on the role of prosecutors. It stated that the "prosecutors shall not commence or carry on prosecution, when a neutral investigation shows the fault to be unfounded". It also stated that the "prosecutors shall give proper attention to the prosecution of crimes committed by public officials, mainly corruption, abuse of power, grave infringements of human rights and other crimes recognized by international law and, where empowered by law or consistent with local practice, the investigation of such offences".

The investigative features of prosecution can be divided in two types. One is to supervise and guide police regarding investigation process and the other is to start investigation on their own initiative (Lewis, 2012). In various countries, prosecutors have massive powers during investigation and trial proceedings. In these countries, they are powerful to get directly involved in the process of investigation (Choe, 2018). However, in some countries including Pakistan, they merely perform a formality. They perform their duties after receiving the case from police by evaluating the investigation and concluding whether to proceed or not with the prosecution. Under such situation, the prosecution service does not seem to be directly mixed up in the investigation procedure (Choe, 2014). In Pakistan, the authority of the prosecutors falls in the second category. There is a need to understand the Pakistan's criminal justice system in its contextual setting. Most of the criminal laws existing in Pakistan were formulated by the British empire when India was a colony and Pakistan was the part of it (Wasti, 2008). As such, British rulers imposed that law according to the cultural circumstances and influences of the colony. However, same laws were implemented in India and Pakistan even after their independence from the British empire (Barakatullah, 2010). Such laws are not suitable in the present circumstances and conditions of the country (Rajput, 2020). In Pakistan, like other countries, police, prosecutors and judges are the major stakeholders in the criminal justice system. Prosecutors play a significant role in the administration of the criminal justice (Ellahi, 2010). However, in Pakistan, they are not empowered in a true sense. They do not get directly involved in the process of investigation or visit the place of occurrence after the time of commission of offence in order to guide the police (Rajput, 2020). Though they give their opinion regarding the availability of evidence against accused persons at remand stage, their major role starts when police submit challan in the office of prosecution after the completion of investigation. The rules and regulations of prosecution service are similar to the Crown Prosecution of England (Karim, 2010). Like Crown Prosecution, the prosecutors in Pakistan evaluate the effectiveness of evidence collected by the police (Mirza, 2010). However, unlike Crown Prosecution, they cannot

drop case at a pretrial stage if sufficient evidence is not available on record and there is no probability of conviction (Hess, 2016). In Pakistan, prosecutors are not only powerless, they are also facing various personal, administrative and procedural issues during the pretrial proceedings as well as court proceedings. The present study aims to investigate the challenges of various kinds that the prosecutors in Pakistan face in the administration of justice.

### **Methodology**

In the present study, the researchers mainly focused on the challenges faced by Pakistani prosecutors in administration of justice. The researchers were intrigued to know whether why Pakistan's criminal justice system is not effective to fulfill the peoples' needs and what are the failures that make available justice system as ineffective? For carrying out this study, the researchers selected district courts and prosecution offices located in district Kasur of Punjab province as research sites. The tools and techniques for conducting this research were selected in accordance with the ontological and epistemological stance of the study that was interpretive in nature (Finlay, 2002).

The researchers mainly relied on first hand interviews to gather non-numerical data from the prosecutors using a semi structured interview guide as a tool. This tool allowed the researchers for a proper and deep understanding of the topic. This technique asserts that deep knowledge is attached with personal information and experience of the participants ((Neuman, 2014). Therefore, special care and precautions were ensured to conduct in-depth interview. The interviews were conducted with prosecutors to know their issues and experiences with police and court regarding investigation and trial process that helped in reflecting their diverse viewpoints and the major problems faced by them regarding their job. In order to achieve an inclusive consideration of the challenges, barriers and problems faced by the prosecutors within present investigation process, probing techniques were effectively employed. The researchers used convenient sampling technique to select study participants for conducting in-depth interviews. Only those prosecutors were selected who were easily available and willing to participate in the interviews; in total twenty-five participants were interviewed.

Ethical considerations i.e. approval of the study, participant verbal informed consent, privacy, anonymity and confidentiality were kept in consideration during the entire research process. The researchers informed the study respondents about the study objectives and tried to conduct interviews in a relaxed mood to ensure report building. Questions regarding general topics such as information regarding the process of criminal justice system were asked from the prosecutors to make them comfortable with the research process and situation. This entails that a researcher is mindful about rapport with the participants in the process of gathering information (Neuman, 2014). After an introductory session, the researchers asked opening questions about the subject of the study. Such questions were asked for gaining more comprehensive details. This broader topic related information was asked through these questions. The topics under study such as personal, procedural and administrative issues were inquired. In addition to broad questions, key questions were also designed. These were the queries that were related with the crux of the study. Such questions provided vital and significant information relating to various problems faced by the prosecutors at different stages in the investigation process conducted by police and during trial stage. At the end of an in-depth interview, the researchers asked closing questions. The researcher thanked prosecutors for their time to participate in the research activity. Furthermore, they were also assured that the information that they shared would not be disclosed without their

consent (Neuman,2014). The researchers engaged themselves in a continuous self-critique to increase the reliability of the data and the integrity of the research process that helped to produce impartial results.

After collecting data, the analysis of the data was carried out. The researchers wrote down, interpreted and evaluated data by using thematic analysis technique. The researchers followed the following steps for data analysis: adaptation with data, creating initial codes, searching for themes among codes, reviewing themes, defining and naming themes, and producing the final report. The major themes of the data analysis included personal, administrative, hierarchical and procedural problems; training related problems; interaction and cooperation related problems faced by the prosecutors.

### **Findings**

The findings of in-depth interviews conducted with the prosecutors were explained. The findings are categorized in various themes including personal, administrative and procedural challenges faced by the prosecutors at pretrial and during trial procedure, and problems related with existing legal framework. The study found that the public prosecutors, along with police, perform a significant role in the procedure of investigation. Prosecution acts as a bridge between the investigators and the courts and is responsible for the correctness of investigation conducted by the investigation officers. Once the investigation is complete, report u/s 173 is submitted to the office of the public prosecutor who scrutinizes the challan considering the legal drawbacks involved in the investigation. Fairness of prosecution in the criminal cases without any influence is the determinant of dispensation of justice. Hence, the role of prosecutors with respect to investigation and trial of a criminal case is significant. This section discusses the obstacles faced by the prosecutors in the process of criminal justice system that inhabit them to work efficiently and effectively.

### **Personal problems faced by prosecutors**

During the course of in-depth interviews, questions about personal problems were asked from the prosecutors in different Tehsils of District Kasur. The participants talked about a number of issues that they faced and highlighted that these personal problems hampered their professional conduct. One of the senior prosecutors mentioned that “personal needs, if not fulfilled, lead towards de-motivation of employees”.

The majority of participants highlighted insufficient salary as the major problem faced by the prosecutor, which affects not only their family but their job as well. It was highlighted by one of the participants that “while both judges and prosecutors are selected on the basis of competitive exams with similar educational backgrounds, the difference in their salaries is approximately double that generates a feeling of professional inequality among prosecutors.”

Another most pointed out personal problems faced by the prosecutors was the lack of domestic facilities such as residence and transportation. Male prosecutors raised objections that the policy of home district posting is not available to them. It therefore becomes difficult for them to manage their domestic issues within limited income. In addition to this, the process of their promotion is very slow. While most of the them were not satisfied with their job, they mentioned that they would rather try to find some better job such as judiciary. One of the participants said that “trained prosecutors leave prosecution department every year by applying into other

organizations. Most of them are selected as civil judges. They prefer judiciary because of attractive salary, accommodation and transportation facilities for judges”.

Among the other personal issues, some participants highlighted security issues. While they deal with heinous criminal cases such as murder, rape and theft, they are not provided with sufficient security facilities.

### **Administrative problems faced by prosecutors**

While discussing the administrative issues, the participants highlighted inadequate basic infrastructure such as non-availability of offices and other working facilities as the major problems. There is dearth of computers, printers, stationery and photocopy machines etc. in prosecution offices. The study revealed that in courts, many prosecutors are not being given any sitting area or an office. Mostly prosecution department is hosted in a rented house, which is unlike government organizations. Another most stressed upon problem was the absence of appropriate service organization that describes employees’ promotion and caters other administrative spheres. While talking about their lower staff, most of them stressed that while they have sufficient lower staff, they are incompetent and untrained. The female prosecutors stressed that “challan clerks of prosecution take money from police at the time of receiving challan without any knowledge of concerned prosecutors. Although a mechanism is established by prosecution department to discourage this practice, it is not very fruitful”.

A significant number of prosecutors stressed that the attitude of police is not cooperative with them. They do not bother to come to prosecution office to scrutinize their challan. When a challan is returned to investigation officers for the removal of defects in investigation, they do not remove them properly. They neither conduct investigation seriously nor bother to collect valuable evidence at the place of occurrence. As a result, accused persons take benefit of defective investigation of police. One of the prosecutors said that “there should be parameter that if investigation officers do not cooperate with the prosecutor, action should be taken against them”.

Another administrative problem faced by the prosecutor is that they have to handle large number of cases. They have to perform dual kind of duties i.e. to scrutinize the challan and prosecute criminal trial in the courts. As they are less in number, they feel overburdened.

While discussing the induction trainings and other workshops related issues, the participants mentioned that their department did not conduct sufficient training for the prosecutors. Incomprehensive policy about the induction training of the prosecutors was also highlighted as one of the major causes of professional incompetence of the prosecutors in criminal justice system. One of the participants said that “at initial level, when we are inducted and placed in field, we are like a soldier in a battlefield without a weapon. More training should be imparted to prosecutors before sending them in field”.

### **Procedural issues faced by prosecutors**

The procedural problems highlighted by the participants included no authority of challan withdrawal, visit of crime scene by the prosecutors, reliance on oral evidence instead of physical or circumstantial evidence and posting of the investigator during an active investigation.

They repeatedly emphasized that for effective processing of trial and conviction, a prosecutor must visit crime scene in order to get a better picture and see for legal binding, as mentioned in SOPs as well. This is the phase to give proper guidelines to the investigation officers. However, this is not yet implemented due to various procedural lacunas and non-cooperation by the police investigators. One of the respondents mentioned that:

We are acting like a post office; they give us challan and we pass it on. We have no authority to drop challan even if we think the acquittal is likely, while in developed countries prosecutors only pass challan when conviction chances are high. As a result, courts are also overburdened.

The participants furthermore highlighted that the existing system in Pakistan runs on ocular evidence and pays slight importance to the modern evidence. Oral evidence is considered absolute and direct evidence. On the other hand, modern evidence, like DNA and medical reports are considered just corroborative and supportive evidence.

In Pakistan, in criminal cases, if an accused is acquitted from his criminal charges, there is a penal provision in PPC that is implemented against the complainant for his wrong allegation against the accused. When the participants were questioned why proceedings against the complainants who lodge fake FIR not taken against the accused, they explain that:

Section 182 PPC is non cognizable offence. So, only police can file complaint against the complainant. As, police is already overburdened, the proceeding u/s 182 is seldom conducted. However, if section 182 PPC becomes cognizable, then complainant will be aware that if he fails to prove his case then he will be given punishment for filing a wrong case. In this way, the ratio of fake cases will be reduced

### **Pressures faced by prosecutors**

During in depth interviews with the prosecutors, it was revealed that they have to perform their duties under various pressures that upset the equilibrium of justice by making it hard for the prosecutors to be free and impartial. While taking about these pressures, one of the experienced prosecutor stressed that “these pressures may be from the complainants, accused, bar members or counsels, high-ups and politicians, especially in famous criminal cases in which the safety of a prosecutor is at risk”. Deficient security in important criminal cases was one of the major apprehensions raised during interviews. Apart from it, they do not have adequate security in offenses relating to property e.g. theft and robbery. The study found that one of the main problems faced by the prosecutor is the pressure from the bar. Sometimes, the lawyers from accused side pressurize the prosecutor to remain silent during the criminal cases.

### **Laws related problems faced by prosecutors**

The participants shared that there are too many laws in Pakistan; sometimes more than one acts are attracted to the same situation that make the situation complicated. One of the participants said that “even in CrPC, there are various provisions that can be applied on same situation”. Almost all of the participants were of the view that the 164 Provision of QSO should be executed properly in the criminal procedure. Moreover, section 9 and 10 of Prosecution Act 2006 should

be altered and the prosecutors should be empowered to withdraw challan if there is no probability of conviction in a case. Moreover, the prosecutors stressed that the provisions of CrPC should be modified and the role of prosecutors should be explained clearly. Section 182 PPC should be properly implemented against the complainants who filed fake FIR, so that the practice of fake cases may be discouraged. A senior prosecutor suggested that “the laws should stress on the need of modern technology and gadgetry such as polygraphs”. Additionally, it is need of the hour to implement Police Order 2002 in letter and spirit to improve the investigation mechanism and its transparency by reducing external interference.

## **Discussion**

Article 10A of Pakistan Constitution ensures the right of fair trial. It says that “for the determination of civil rights and obligation or any criminal charge against him a person be entitles to a fair trial and due process” (Article 10 of Pakistan Constitution, 1973). Additionally, according to Article 37(d) of Pakistan constitution, State shall ensure inexpensive and expeditious justice. Such fair trial and expeditious justice is not possible without an independent and transparent criminal justice system. Criminal Justice system plays an important role not only to control deviant behavior of the criminals but also to create peace in the society (Jamshed, 2016).

Criminal justice deals with the institutions of government that enforce law, adjudicate crime, and correct criminal conduct(Sahito, 2009). These Agencies consist of police officers, prosecutor and judges. The job of such agencies is to prevent deviant behavior of the offenders by apprehending and punishing them so that they may not repeat the same act again in future ((Wasim, 2008)). In spite of the informal social institutions for social control, only criminal justice system has the power to control crime and convict the offenders(Rasmusen, 2009). However, the present study found that although in Pakistan the institutions of police, prosecution and judiciary are present, they have failed not only to prevent crimes but also to punish the offenders.

Investigation of the criminal cases is mainly done by investigating officials of low ranks, whereas most of the national and international level trainings are given to senior supervisory officers (Jami, 1997). In each of the four provinces, the police force acts separately and independently of one another and there is no countrywide assimilation in terms of training principles and management (Abbas, 2011).In the present research, the prosecutors also disclosed that investigating officials are not given proper training to conduct investigation by adopting modern techniques, which affects their performance badly. As a result, they waste important pieces of evidence, and prosecutors have to face difficulties to prove the guilt of accused person.

In criminal justice system, the prosecution department is considered an important pillar without which speedy and transparent trial is not possible. Prosecutors represent the state throughout the court process, from the first appearance of the accused in court until the accused is found guilty or innocent (Petzschmann, 2010). Hence, a prosecutor is expected to help the court in a fair trial by placing all evidence before it, whether it is accusatory or exculpatory in nature (Sultan, 2016). The present study also reached to the same conclusion that the role of the prosecutors is not to get the accused convicted but to assist the court in criminal trials to come to the truth of the case. Prosecutors are expected to behave impartially. They represent the state, not the victim, until the case is disposed of (Mirza, 2010).

In most of the developed countries, such as USA and Japan, Germany, South Korea, the prosecutors have complete power to determine whether a case should be sent for trial or not, and he alone determines if the evidence is sufficient (Ishikawa, 2015). The UK Crown Prosecution Service (CPS) during 2011-12 dropped 24% case (87,992 out of 367,067 cases) forwarded by the police, at a pre-charge state, while 10% cases were dropped after a charge had been framed (Sultan, 2016). Such kind of power is not provided to the prosecutors in Pakistan under Cr.PC or Punjab Public Prosecution Act 2006. The role of the prosecutors as defined in section 173 of Cr. PC is not absolute. The present study also found that, in Pakistan, prosecutors have no power to withdraw the case at a pretrial stage if there is no sufficient evidence and no chance of conviction. When challan is presented before the prosecutors, they have to forward those challan to the courts for initiation of criminal proceedings even if there is no chance of conviction. They just offer their opinion at the time of passing the challan that whether it is fit for trial or not. In most of the cases, it happens that courts conduct criminal trial for years and reach the same conclusion that was assessed by the prosecutors at the time of passing the challan that it was not fit for trial. Magistrates acquit the accused person U/S 249 A of CrPC and session judges acquits U/S 265K CrPC during trial when they found charge is groundless or there is no probability of conviction. In this way, courts not only feel overburden but also waste most of its precious time in the handling of such kind of insignificant cases.

The prosecution department in Pakistan is yet to establish itself in terms of infrastructure (Mirza, 2010). In most districts, prosecutors are facing issues of office space. For example, in Lahore, there are 40 prosecutors in session court, while there are only 8 rooms to accommodate them (Sultan, 2016). The present study also found that assistant district public prosecutors are appointed through public Service commission in PBS 17. However, they are not provided with separate offices like judges so that they may scrutinize challan and study the criminal cases that are pending in the courts. Not to speak of offices, they are not even provided table and chairs by their department. On the other hand, civil judges are also recruited in 17 scale but they have proper air conditioner retiring room along with other facilities. The study found that the prosecutors in Pakistan, as a result, lose interest in their job and apply in other departments for better job opportunities such as judiciary.

It is also observed that the pay package and other incentives offered to the prosecutors are inadequate (Jamshed, 2018). The present study observed that the male prosecutors are not allowed to be appointed at their home district. They are also not provided with an accommodation facility by the government. In this way, they have to live in a rented house in other district or travel on local transport or on their personal vehicle, which is very expensive. As a result, they find it difficult to meet the household expenses within their limited income. They are also not provided with transportation facilities (Khan, 2020). The majority of district public prosecutors, though in BS-19, and head of district prosecution department, they are not provided with an official vehicle, and they are required, under the rules, to carry out periodic inspections of sub-divisional offices. Moreover, the promotion of prosecutors is very slow and lethargic (Gul, 2020) that affects their performance badly. The study found that the assistant district public prosecutors who were appointed ten years ago are still working in the same rank.

## **Conclusion**

Enforcement of rights and privileges is not possible without an effective system of prosecution.

Public prosecutors, along with police, play a significant role in the process of investigation and trial. This study concludes that it must be made compulsory for the prosecutors to visit crime scene in order to get a better picture of the crime. This is the proper time to give appropriate guidelines to the investigation officers. In addition to this, most of the participants were of the view that investigation officers do not investigate criminal cases in an appropriate way. Most of the proceedings of the investigation are planted and fake. Even, the cases, in which police officials are complainant, are planted. They give FIRs just to prove their competence. Such cases are no more than a burden on the performance of prosecutors and judges. Moreover, at the time of challan scrutiny, the prosecutors have no authority to withdraw challan if there is no probability of conviction. In prosecution department, there is a shortage of primary and basic infrastructure such as non-availability of offices and other working conveniences. Most of the investigation officers do not oblige prosecutors, when they direct them to rectify defects of investigation. As a result, accused persons take benefit of defective investigation of the police. The prosecutors also mentioned that they are not given proper training by their department. They were also not satisfied with their salary package. They furthermore revealed that both prosecutors and judges with same educational background are selected on the basis of competitive exams and in the same grade, however, the salary of the judges is almost double as compared to the prosecutors. As a result of this discrimination, they become least interested in their job and try finding out better job opportunities such as judiciary.

### **Recommendations for Reforms in Prosecution Domain in Pakistan**

This study focused upon a number of issues, however, some of the important issues are selected for suggesting reforms in prosecution domain in the context of the present research.

- a) It is essential to empower prosecutors to visit the place of occurrence immediately after the registration of FIR and give guidelines to the investigation officers at the spot so that important evidence may not be wasted.
- b) It is essential that the Article 164 of QSO should be enforced properly so that the modern techniques can be used for heinous and sensitive nature of crimes.
- c) Prosecutors should be provided with proper offices adjacent with every court so that they may perform their duties in a comfortable environment.
- d) It is imperative that the pay package of the prosecutors should be equal to the judges, so that they do not leave prosecution department and can properly focus on their job.

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