

THE ROLE AND FUNCTION OF PROSECUTION IN CRIMINAL JUSTICE

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I. TRACES OF CRIMINAL PROCEDURE CODE AND APPLICATION OF CRIMINAL JUSTICE ADMINISTRATION

In British India, the Governor General had appointed the "Indian Law Commission" to deal with substantive criminal law and procedure of courts. The Indian Law Commission after descending and collecting various legislations, came up with the Code of Criminal Procedure, 1898. The Penal Code was prepared in 1837, though it came into operation on 1st January 1862. It was a nonpareil monument of the Indian Law Commission. In 1847, the said Commission was instructed to prepare a Scheme of pleading and procedures with forms of indictment in 1848 in order with the provisions of Penal Code. Later on, the draft on Criminal Procedure was examined and revised by the Commission, and was adopted in 1854, which repealed the earlier Act XXV of 1854 and the Amended Act VIII of 1869 and gave birth to Criminal Procedure Code of 1872 (Act X of 1872). Like its predecessor, this Code did not apply to certain courts and, therefore, was defective. The Presidency Magistrates Act (IV of 1877) was enacted to regulate the procedure of courts of magistrates in the Presidency-town. Several provisions of these three Acts—X of 1872, X of 1875 and IV of 1877 were similar though not couched in the same language. So it was thought advisable to consolidate the three Acts into one single Code of Criminal Procedure for

the whole of British India, and Act X of 1882 was, therefore, passed repealing the earlier said three Acts. The Code of Criminal Procedure, 1882 remained in force for sixteen years and after its repeal, it was replaced by the Code of Criminal Procedure, 1898. In British India, the Indian Penal Code (XLV of 1860), the Code of Criminal Procedure 1898 and the Evidence Act 1872 (Act 1 of 1872) were in force for prevention of offences. When Pakistan came into being in 1947, their nomenclature were changed as the Pakistan Penal Code (XLV of 1860), the Code of Criminal Procedure, 1898 (V of 1898) and the Evident Act, 1872 (1 of 1872) to deal with the offenders.

2. The substantive criminal law relating to Pakistan is contained in the Pakistan Penal Code, which defines offences and provides for punishment. Whilst the Code of Criminal Procedure 1898 has been framed to supplement the Penal Code by rules of procedures for preventing offences and bringing offenders to justice. The two hand in hand form the basis for criminal law in Pakistan.

3. In 1979, certain Islamic laws were introduced which enforced certain Islamic law i.e., (by repealing certain laws contained in the Pakistan Penal code) (1) The Offences Against Property (Enforcement of Hudood) Ordinance, 1979; (2) The Offences of Zina (Enforcement of Hudood) Ordinance, 1979 (3); The Offences of Qazi (Enforcement of Hadd) Ordinance, 1979; and (4) The Prohibition (Enforcement of Hadd) Order, 1979, which now deals with the offences of theft, dacoity, robbery,

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fornication/whoredom, slandering, false accusations, importing/exporting/transporting/manufacturing of illegal intoxicants, etc. Likewise, the Evidence Act 1872 (Act 1 of 1872) was repealed and replaced with the Oanun-e-Shahadat Order, 1984, which basically is the same but more in conformity with Islamic laws. One example is in Chapter XVI of the Pakistan Penal Code relating to the offences affecting the human body. This was replaced with the Qisas and Diyat Ordinance 1990 by virtue of which now the heirs of the deceased or the aggrieved can seek justice through payments as affirm of settlement. Cases involving the death penalty and transportation of life are taken cognizance by the Courts of Sessions as Hudood Courts at the district superior level, while the cases involving punishment up to seven years are within the competency of Judicial Magistrates.

II. SEPARATION OF PROSECUTION AGENCY FROM POLICE

4. It is pertinent to point out here that for administering the criminal administration of justice and a step for maintenance of the judiciary, independent of the executive in toto, the then President of Pakistan in February, 1985, through a phased programme, directed the amalgamation of both the aforesaid prosecution agencies, one concerning the provincial police and the other concerning the provincial law department, into one by separating the Police Prosecution Agency from the Police. The posts of Prosecuting Deputy Superintendents (PDSP), Prosecuting Inspectors (PIs) and Prosecuting Sub-Inspectors (PSIs) of Police were abolished. The PDSPs, who opted for Provincial Law Department, were re-designated as Deputy District Attorneys and both the PIs and PSIs, who too opted as such, were made as Assistant District Attorneys. The

Prosecuting Officers of Police PDSPs, PIs and PSIs, who wished to remain in the Police Department, not only ceased to be prosecutors, but their nomenclature was also changed to Inspectors (Legal). Hence they could not conduct prosecution of criminal cases on behalf of the State either in the Sessions Courts or Magistrates' Courts.

5. The entire prosecution (i.e., of the District inferior level confirming present level) rested with the District Attorneys, who headed the District Prosecution Agencies, and were purely the representatives of the Provincial Governments but not the Provincial Police. Prosecution of criminal cases in the Courts of Session is still conducted by the District and Deputy District Attorneys, and the prosecution in Magistrates' Courts, inclusive of Judicial Magistrates, was conducted by the Assistant District Attorney (Previously Prosecuting Inspectors and Prosecuting Sub-Inspectors of Police). It may be recalled that prior to February 1985, Rules 27.1 to 27.39, Chapter XXVII of the Police Rules 1934, dealt with prosecution and court duties including the role of the investigation officers and the prosecuting staff. As per Rule 27.4, Chapter XXVII of the said Rules, all the police officers, viz., all Superintendents, and Assistant and Deputy Superintendents of Police are, with reference to sections 270 and 492 of the Code of Criminal Procedure, ex-officio, public prosecutors in respect of all cases committed from their respective duties for trial before the Sessions Courts. As per Rule 27.4(2) of the said Rules, Prosecuting Inspectors and Prosecuting Sub-Inspectors of Police (redesignated as Inspectors Legal in 1985 under the Police and Assistant District Attorneys under the Law Department) were appointed. Additional public prosecutors to conduct trial of cases in the Magistrates' Courts including

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magistrates having powers under section 30 of the Code of Criminal Procedure (Judicial), were also appointed.

III. DUTIES OF PROSECUTORS

6. Rule 27.15 of the Police Rules provides the following duties for the head of prosecuting agency (had been suitably amended and incorporated in the Law Department Manual):

- (1) Thoroughly to scrutinise challans and intermediate reference and applications from police stations in connection with the prosecution of cases, the arrest of offenders, the confiscation of bail or security cases including security for keeping the peace (vide Rule 23.32), should receive as much attention from the district prosecuting staff as is practicable.
- (2) To prosecute, watch or direct the prosecution of cases in the courts of the district. In this connection, it must be realized that his duty embraces not only the presentation of the prosecution case but contesting the claims of the defence and ensuring the observance of conditions and restrictions imposed by the law on the discretion of courts to pass orders in certain circumstances, and the observance of all High Court orders issued with the object of expediting decisions and preventing abuses.
- (3) To supervise and distribute the work of prosecuting officers subordinate to him and of the police personnel attached to his office or to the courts.
- (4) To take charge of, and deal with, articles and property received in connection with cases, as well as of unclaimed and suspicious property received from police stations for orders of magistrates.

- (5) To supervise the transmission of warrants and summonses to the executive police under the orders of the criminal courts, and to see that returns to such processes are made without delay.
- (6) To keep the District Magistrate and the Superintendent of Police informed of all important matters in connection with criminal cases under trial, to bring to notice cases requiring to be specially reported to him, and to submit a daily diary in Form 27.15 (vi) of the Police Rules showing cases sent for trial, convicted, discharged and pending in court on that particular day. The instructions of the High Court as to the duties of the prosecuting agency towards the District Magistrate are contained in Appendix 27.15 (vi).
- (7) To see that the instructions in connection with the diet money and travelling expenses of witnesses are duly observed.

IV. EFFECTS OF SEPARATION OF PROSECUTION AGENCY FROM THE POLICE

7. By dint of the separation of the Police Prosecuting Agency (comprising PDSP, PIs and PSIs) and their amalgamation into the District Prosecuting Agency headed by District Attorneys, the Provincial Police had suffered a severe set-back, which further resulted in increasing the abnormal acquittal rate and the worst law-and-order situation. Thus, the Provincial Police departments had requested the Federal Government to withdraw the earlier order and repatriate the police prosecutors (PIs and PSIs) to conduct prosecution in the Magistrates' Courts, so that a maximum number of convictions could be secured. The reason being that by virtue of the separation of Police Prosecuting Agencies and their replacement under the Provincial

Law Departments, the conviction rate was reduced and the acquittal rate increased (See Appendixes A-1 to C-2 regarding a, statement of crime by the Sindh Police). As a result, the crime became unbridled and could not be controlled in its true perspective. Again, under the orders of the Federal Government, the prosecuting officers (PIs and PSIs) who had worked under the District Attorneys as ADAs, were registered to the Police Department to conduct prosecution of criminal cases in the Magistrates' Courts with their re-designation as Inspectors/Legal. This experiment has again ended in fiasco. Another move is in progress to again place the remaining prosecuting officers (PIS and PSIs) under the Provincial Law Departments. Because, as stated earlier, the District Attorneys have now been empowered to send up cases to the courts of competent jurisdiction under section 173 of the Code of Criminal Procedure, 1898.

V. ROLE OF PROSECUTION DURING INVESTIGATION, TRIALS AND APPEALS

8. Prosecution plays an important role in the administration of criminal justice. Without successful prosecution, the desired objects cannot be yielded. The role of prosecutors not only commences soon after registration of a case, but it also lasts up to the final verdicts delivered by the criminal court. The First Information Report (F.I.R.), is the important document that sets the whole machinery of law into motion. If it is founded on feeble footing, it goes on to disturb the administration of criminal justice, as it becomes a Herculean task for the prosecutors to inject into a dead horse. So while drafting an F.I.R, its pre-requisites ought to have been incorporated strictly in accordance with Code of Criminal Procedure. The prosecution is required to be equipped with the latest decisions of the superior courts for proper

legal guidance to the investigating officer, who mostly banks upon the stereotype mechanism and blinks towards the latest guidelines given by the higher judicial forums. While the prosecutor renders valuable advice to the investigating officer during the course of investigation, he also removes the serious legal lacunas, whereafter the case becomes the best one possible to be presented in the court of competent jurisdiction. After submission of the challan, the role of the prosecutor is very pivotal because he has to finalize the trial after the prosecution witnesses are examined and cross-examined by the defence counsel and after he has cross-examined the defence witnesses adduced by the accused.

9. Sections 492 to 495 of the Code of Criminal Procedure, 1898 deal with the Public Prosecutors. Section 492 provides powers to appoint Public Prosecutors, and section 493 provides that the Public Prosecutor may plead in all courts in cases under his charge and pleaders privately instructed to be under his direction. Likewise, Chapter-29, Part-A of the High Courts Rules and Orders Criminal revised up to July 1996 to deal with the appointment of public prosecutors and their court duties, as envisaged in Chapter XXXIX of the Code of Criminal Procedure, referred to above. It is a recognized procedure in the administration of criminal justice that the courts take cognizance of the offences as incorporated in the police challan, i.e., report under section 173 of the Code of Criminal Procedure and the inculpatory evidence (both oral and documentary) marshalled by the investigating agency. If the case is imbued with the best piece of incriminating evidence directly linking the culprits with the commission of offences with which he is charged, the prosecutor can well present the State case and promote the cause of prosecution by bringing the offenders to

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book. Whilst in case of technically defective cases, the prosecutor and the court conducting inquiry or trial cannot extract punishment. The fact may not be lost sight of that although the prosecuting officers, viz., District, Deputy and Assistant District Attorneys (under the Provincial Law Departments), Deputy Superintendents of Police/Legal and Inspectors/Legal (under the Provincial Police), play a very pivotal role in the administration of criminal justice. Yet it is all the more astounding to note that they are not sent for special courses, training (not qualified lawyers, counsels or limited legal training etc.) as the officers of other departments are given the privilege of. Prosecutors ought to be given the chance to participate in all courses relating to crime, which are either conducted in Pakistan or abroad, so that they may get themselves out of the quagmire of deprivation and take keen interest whole-heartedly.

**VI. SEPARATION OF JUDICIARY
FROM EXECUTIVE**

10. Ever since Pakistan came into being in 1947, the judiciary in Pakistan was not independent of the executive in the real sense of the term as envisaged in the Constitution of the Islamic Republic of Pakistan. It so lingered on, only one way or the other, that the executive blamed the judiciary for the increasing acquittal rate; whereas the judiciary blamed the executive creating a law-and-order situation and especially the failure of the administration of criminal justice, which the judiciary could administer better than the executive. Be that as it may, in 1996 the Chief Justice of Pakistan, had directed the Federation of Pakistan and thus implemented the long-drawn decision of separating the judiciary from the executive in accordance with the vires of the Constitution of Islamic Republic of Pakistan 1973. Hence, the judiciary, an organ of paramount significance which plays a pivotal role in

the administration of criminal justice, has now become quite independent of the executive. Results of this separation have made substantial differences. Now the Executive Magistrates have been placed under the administrative control of District Magistrate and the Judicial Magistrate under the exclusive administration of the District and Sessions Judge. The offences falling under Chapters VIII, X, XIII and XIV of the Pakistan Penal Code (Act XLV of 1860) shall be tried by the Executive Magistrates, which consist of Magistrates of the First, Second and Third Class. The Executive Magistrates are now empowered to try cases in which only 3 years' punishment can be awarded. On the other hand, the Judicial Magistrates, who are under the District and Sessions Judge, are now Illaqa Magistrates and try the criminal cases in which 7 years' punishment can be awarded. The Sessions Judge, who is subordinate to the High Court, can award the death penalty. In Hadood cases, the Sessions Court tries the offences as the District Shariat Court and can award life imprisonment and 40 stripes, besides imposing "Hadd" penalty, i.e., amputation of limb, stoning to death, etc.

**VII. PRINCIPLES OF
PROSECUTION**

11. For successful prosecution, prosecutors ought to consider the following principles enumerated hereunder:

- (1) Whether the provisions of the Code of Criminal Procedure have been violated. Is so, how to get the necessary rectifications?
- (2) If the F.I.R contains technical flaws, how is the case put on straight lines during investigation and trial, whatever the case may be?
- (3) Whether the investigation officer conducted investigation properly as per the law. If not, how can the case be improved?

- (4) Is the oral, documentary and circumstantial evidence in order with the criteria laid down by the Qanun-e-Shahadat Order, 1984 (Revisions the repealed Evidence Act, 1872)?
- (5) Whether all facts reflected in the F.I.R are commensurate with the challan, i.e., Report under section 173 of the Cr.P.C.? If not, how to plug the loopholes?
- (6) Whether the challan has been submitted in court within the prescribed period as laid down in section 173 of the Code of Criminal Procedure?
- (7) Whether the accused's defence is plausible. If so, how to get him discharged or acquitted by the court?

12. As regards the role of prosecutors in the Provincial High Courts, the Agency of Law Officers consists of the Advocate General, Additional Advocates General and Assistant Advocate General. The Provincial Advocate General heads the Add: A.G. and A.A.G. They represent the State/Provincial Government not only in criminal matters, but also in civil matters where the interest of the Provincial Government is involved, in the High Courts. The Federation of Pakistan is represented by the Central Law Officers, appointed by the President of Pakistan under the Central Law Officers Ordinance, 1970, who are designated as Attorney General, Additional Attorneys, or Deputy Attorneys General Standing Counsel. Besides the Provincial High Courts, the Attorney General, Deputy Attorneys Generals and the Standing Counsel represent the Federal of Pakistan in the Apex Court, i.e., the Supreme Court of Pakistan not only in criminal matters, but also in civil matters involving the interest of the federal government.

13. The above facts would denote that the prosecutors from the district inferior

criminal courts up to the Supreme Court of Pakistan play a pivotal role in the administration of criminal justice. The prosecutors/law officers representing the State in the High Courts and the Supreme Court of Pakistan are well-paid and also elevated to the High Courts as judges. However, as for the prosecutors/law officers representing the State in the Sessions Courts and Magistrates' Courts, they are neither well-paid, nor made judges in the subordinate judiciary. As a result, they having fallen prey to deprivation and disappointment and most shun to take keen interest in administering justice. If given a chance to become a judge in the subordinate judiciary, they would definitely represent the State tooth-and-nail and also help expedite the quick dispensation of justice in the administration of criminal justice.

14. In regards to the role and duties of prosecuting officers or public prosecutors as to the investigation of cases relating to the District superior and District inferior criminal courts in the administration of criminal justice, they not only impart legal guidance to the investigating officer during investigation up to the submission of the challans for promoting the cause of prosecution, but they also represent the State in courts during bail petitions and the trials of offenders.

15. The role of law officers attached with the High Courts (Advocate General, Add. Advocate General and Assistant Advocate General) and the ones attached with the Supreme Court (Attorney General, Add./ Deputy Attorney General and Standing Counsel) is quite different from the public prosecutors, as discussed in the above para. They present the cases already investigated by the provincial level and Federal Investigation Agency at the federal level respectively.

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16. Sometimes, the Law and Justice Division of the Government of Pakistan appoints/nominates Special Public Prosecutors from amongst some eminent lawyers to conduct the trial of criminal cases which involve public importance and heinousness of crimes. These Special Public Prosecutors represent the State in cases investigated by the investigation agency under the legal guidance of public prosecutors.

VIII. STRUCTURE OF THE COURTS

17. The Supreme Court of Pakistan is headed by the Chief Justice (also known as the Chief Justice of Pakistan) and consists of twelve judges; whereas the sanctioned strength of the judges of the apex court is fourteen. Of the twelve Judges, two deal with the appeals pertaining to the Federal Shariat Court (Supreme Court Appellate Jurisdiction). The State is represented by the Attorney General, Deputy Attorneys General and the Standing Counsel in both in criminal and civil matters, involving the interest of Federal Government of Pakistan.

18. Besides, there are Provincial High Courts set up at the Punjab, Sindh, Baluchistan and NWFP Provinces. The Punjab Court is called as the Lahore High Court with its benches at Rawalpindi, Multan and Bahawalpur. The Provincial seat is at Lahore. The State is represented by the Advocate General, as well as Additional and Assistant Advocates General. Likewise in the other provincial High Courts and Karachi (Sindh) and Peshawar (N.W.F.P), the State is represented by the Advocate General, as well as Additional and Assistant Advocates General both in criminal/civil matters, involving the interest of the provinces.

19. Besides the High Courts, there are two classes of criminal courts, i.e., the District

superior criminal (which include the Sessions Courts as enshrined in section 6) and the District inferior criminal courts, which include the Magistrates' Courts (as provided by section 6). The prosecution agencies run parallel to conduct the prosecution of criminal case in the district superior and district inferior criminal courts. At the district superior level, prosecution is conducted by the District, Deputy and Assistant District Attorneys, who are under the Provincial Law Departments and are the representatives of the provincial government. The prosecution of Magistrates' Courts is conducted by the Inspectors/Legal (previously Prosecuting Inspectors and Prosecuting Sub-Inspectors), who are under the Provincial Police. Section 173 of the Code of Criminal Procedure 1989 has now been amended and the District Attorneys, who conduct prosecution in the Session Courts, have been empowered to send up challans to criminals courts, whereas prior to February 1985 in terms of Rule 27.15 of the Police Rules, 1934, it was the job of the head of Police Prosecuting agency whether he be of the rank of Deputy Superintendent of Police or Inspector. However, the post was abolished and redesignated as Deputy Superintendent of Police/Legal w.e.f. February, 1985. As regards civil matters relating to the Provincial governments, the same are conducted by the District, Deputy and Assistant District Attorneys in the civil court, which include the Courts of Civil Judge and District Session Judges.

IX. INVESTIGATION

20. Chapter XXV of the Police Rules 1934 and Chapter XIV of the Criminal Procedure Code deal with the investigation procedure, powers, arrest and submission of a report before the court by the investigating officer. The police is basically responsible for the investigation of criminal cases. In

Pakistan, the maintenance of law and order is the basic responsibility of the provincial governments, and the police is under the provincial government. The Head of the police in a province is the Inspector General of Police, and the police work is divided into Ranges and Districts. A district is further divided into police stations, and is where the investigation of criminal cases are conducted. The incharge of the police station is known as the Station House Officer, with whom some investigating officers are posted in different ranks. The supervision of investigation is being conducted by a sub-divisional police officer and by the district incharge of police, who is known as the Superintendent of Police.

21. The officer in charge of a Police Station is empowered by section 156 of the Criminal Procedure Code to investigate any offence which occurs within the limit of his jurisdiction. He is also empowered to depute his subordinate officers to investigate cases as well as to take measures for the discovery and arrest of offenders. He is empowered under section 156(1) of the Criminal Procedure Code.

22. When the police receives any information regarding a cognizable offence, the police is bound to register an information report under section 54 of the Cr.P.C. When an F.I.R. is registered, the machinery of law is set into motion. The police is bound to complete investigation without unnecessary delay and as soon as it is completed, a report under section 173 of the Cr.P.C., thereof, has to be submitted to the court of competent jurisdiction. The powers and privileges for investigation are derived from sections 154 to 175 of the Criminal Procedure Code. These sections deal with the powers to investigate and arrest an accused, search and seize property involved in crime, and finally the submission of a challan under section 173 of the Cr.P.C. The investigating officer is

supposed to issue day-to-day case diary about the investigation and incorporate all action taken in respect of investigation under section 172 of the Cr.P.C. It is the duty of an investigating officer to find out the truth of the matter under investigation.

23. During investigation, the investigating officer tries his best to collect evidence, i.e., direct, oral, documentary and circumstantial evidence which could directly link the accused with the commission of the charge, which he committed. The investigating officer shall also take assistance from the technical experts for their expert evidence in fingerprints, hand writing, chemicals, explosives and medicine under Article 59 of the Qanoon-e-Shahadat 1984 (previously section 45 of the Evidence Act, 1972). The opinion of experts/third persons are relevant under Articles 59 to 65 of Qanoon-e-Shahadat 1984. Also the investigating officer can produce modern devices or technology (which include audio-video, etc.) under Article 164 of Qanoon-e-Shahadat 1984.

24. In 1974, at the federal-level, an agency known as the Federal Investigation Agency, came into existence for the investigation of matters related to bribery; corruption of the federal government and private sector corporations; the detection of such offences bank fraud, currency racketeering, violation of the Passport Act and the Immigration Ordinance; and the crime of economic evasion.

25. In order to prosecute public or government servants, two agencies were set up, viz., the Federal Investigation Agency (FIA) and the Anti-Corruption Establishment (ACE). The FIA was constituted in 1974 under the FIA Act, 1974 (VIII of 1975) for the investigation of certain offences committed in connection with matters concerning the federal

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government and for matters connected therewith. The ACE, at the provincial level, deals with matters pertaining to provincial subjects. As many as 37 local and special laws and 131 sections of the Pakistan Penal Code are on the schedule of the FIA. Besides dealing with the white collar crime, it also deals with the cases of immigration and anti-smuggling. As regards the prosecution of cases in FIA, the same is conducted by the legal officers (Inspectors/Legal, Assistant Directors/Legal and Deputy Director/Legal) who are also designated as Special Public Prosecutors in this regard. While the prosecution in ACE is conducted by the legal officers (Class-I Gazetted Status) borrowed from the provincial police.

**X. INDICTMENT AND TRIAL
PROCEEDINGS**

26. When the Police Investigation Agency submits a challan, i.e., report under section 173 of the Cr.P.C. before the competent court, such court conducts an inquiry or trial under Chapter XV (sections 177 to 186) of the Cr.P.C. Further Chapter XIX (sections 221 to 240) of the Cr.P.C. empower the criminal courts to indict the accused in accordance with the available inculpatory evidence.

27. Chapter XIV (sections 177 to 199-B) of the Cr.P.C. deals with the jurisdiction of the criminal courts in inquiries and trial. As regards the examination of witnesses, Chapter X (Articles 130 to 161) of the Qanoon-e-Shahadat, 1984 deals with the procedure regarding the examination-in-chief and the cross-examination of witnesses.

28. After submission of the final report (challan) by the police as per section 173 of the Cr.P.C., the trial court issues a charge sheet to the accused according to the offence which he committed and was

proved during police investigation. The charge shall contain such particulars as the time and place of the alleged offence and the person against whom, as the thing in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. The charge shall also contain particulars of the manner in which the alleged offence was committed.

29. Before trial proceedings start, all statements recorded by the police as per section 161 of the Cr.P.C. and confessional statements under section 164 of the Cr.P.C. recorded during police investigation are provided to the accused. If the accused pleads guilty, the court may punish him, and if he denies the charges, the court shall start regular proceedings. During trial, the court summons all the prosecution witnesses and records their statements. Afterwards the defence of the accused starts. The prosecutor and defence counsel can argue and examine all the evidence. The prosecutor also examines the accused. After completion of the proceedings, i.e., examination of the witnesses and accused, when the court feels that all relevant points are discussed, it will pronounce the judgement. It can convict or acquit the accused.

30. During trial, if the police finds additional evidence which can further strengthens its prosecution, it can submit an additional charge report under section 173 of the Cr.P.C. It should be submitted before the judgement of the case.

**XI. PROPOSALS AND
RECOMMENDATIONS**

31. No system is perfect in the world as to criminal justice administration and the role of prosecution can always be improved:

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- (1) An independent prosecution service may be set up, which is independently funded with qualified lawyers. The lawyers would be able to give advice/opinion to the police and various agencies, as well as determine whether prosecution can take place. If they feel there can be no case, then they should offer an opinion which may be implemented by the various agencies.
- (2) The agencies would thus serve to promote a sense of impartiality and fairness, and in the event of a case for prosecution, the lawyers would represent the agencies.
- (3) This service would take a heavy load off the agencies, leaving them to investigate and do their duties without worrying about completing the cases.
- (4) Private prosecutions should be encouraged for some offenses such as shop lifting or common assault.
- (5) Individuals and public bodies should perform their own prosecutions. At the present moment, cases of the Nationalized State Bank are referred to the FIA, which then prosecutes. However, these bodies should instruct their own lawyers to prosecute in court.
- (6) Once a criminal is convicted, the legal costs involved should be recovered from the criminal from his assets, his properties, etc. even his family.
- (7) Plea bargaining should be encouraged so as to enable other crime to be detected.
- (8) The media should be used to enable public awareness of criminal activities, and information must be encouraged from the public-at large.
- (9) The prosecution of cases should not be detailed in media. Moreover, prosecution lawyers and the judge should not be mentioned in press reports.
- (10) Taps and video should be admissible as evidence.
- (11) A watch-dog body may also be set up, independently funded and comprising lawyers, journalists and academics, who would ensure that prosecution cases and justice are followed.
- (12) A special reference to human rights must be made to ensure that prosecution is conducted in conformity with international treaties as to, for example, torture.
- (13) A jury system may also be introduced, although expensive, to ensure a fairer system for justice.
- (14) Law officers at the provincial level should be able to become court judges. This would enable law officers to pursue their careers more zealously.
- (15) Modern equipment and resources should be made available to prosecutors.
- (16) Review has to be made of the Pakistan Penal Code and the Criminal Code of Procedure. They are outdated and old.
- (17) More prosecution is needed.
- (18) General conditions for prosecutors should be improved, e.g., more salary and better equipment.

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APPENDIX A-1

TOTAL CRIME POSITION IN THE COURTS

SINDH POLICE

STATUS \ YEAR	85	86	87	88	89	90
No. of pending previous years	74044	78384	81938	92310	103275	112615
No. of cases reported	48125	51267	49257	48648	58736	53995
Total cases for investigation	122169	129652	136197	140978	162011	166610
Send up to court	39634	40750	41877	34520	47449	41460
Conviction	25025	26028	23795	16705	25123	16046
%	63.14	63.87	56.82	48.38	52.94	38.70
Acquitted	8731	8384	9357	9339	10865	14315
%	22.02	20.57	22.34	27.05	22.89	34.52
Pending court	5878	6338	8725	8485	11361	11099
Pending police	78384	86938	92340	104258	112522	122761

APPENDIX A-2

TOTAL CRIME POSITION IN THE COURTS

SINDH POLICE

STATUS \ YEAR	91	92	93	94	95
No. of pending previous years	115719	127159	122437	134158	138453
No. of cases reported	43958	40179	41930	44628	50216
Total cases for investigation	159677	1673382	164367	178987	188669
Send up to court	7205	28549	33522	38733	45965
Conviction	12601	7633	13731	14280	23391
%	33.87	26.74	40.96	36.86	50.88
Acquitted	10785	9251	10543	12360	12380
%	28.99	32.40	31.45	31.90	26.93
Pending court	13839	11665	9248	38733	10194
Pending police	19947	136595	128747	137435	138040

RESOURCE MATERIAL SERIES No. 53

APPENDIX B-1

OFFENCES AGAINST PERSONS

SINDH POLICE

(Murder, Hurt, Kidnapping, Rape, and Negligent Act, Etc.)

STATUS \ YEAR	85	86	87	88	89	90
Total cases handled by police	37212	38575	41061	43821	46989	49762
Sent up in the court	6665	6189	6592	6760	7369	7174
Convicted	2178	1906	1647	1680	1872	1166
Acquitted	3583	3376	3702	3856	4116	4039
Pending court	904	907	1243	1176	1381	1505

APPENDIX B-2

OFFENCES AGAINST PERSONS

SINDH POLICE

(Murder, Hurt, Kidnapping, Rape, and Negligent Act, Etc.)

STATUS \ YEAR	91	92	93	94	95
Total cases handled by Police	49200	49489	47929	51330	53145
Sent up in the Court	7261	5698	6675	7305	8734
Convicted	1453	1148	1761	1738	2852
Acquitted	3968	3110	3620	3975	4340
Pending Court	1840	1440	1294	1592	1542

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APPENDIX C-1

OFFENCES AGAINST PROPERTY

SINDH POLICE

(Dacoity, Robbery, Trespass, and Theft)

YEAR STATUS	85	86	87	88	89	90
Total cases handled by Police	11961	12403	13502	14131	20320	16906
Sent up in the Court	3229	2811	3443	3211	4105	3602
Convicted	750	567	552	520	651	370
Acquitted	788	605	724	760	1274	790
Pending Court	1691	1639	2167	1933	2180	2211

APPENDIX C-2

OFFENCES AGAINST PROPERTY

SINDH POLICE

(Dacoity, Robbery, Trespass, and Theft)

YEAR STATUS	91	92	93	94	95
Total cases handled by Police	15710	15863	17428	18381	19494
Sent up in the Court	3167	2690	3437	3731	4671
Convicted	391	372	474	533	1879
Acquitted	874	6689	966	1216	1091
Pending Court	1922	1749	1999	1982	1701

APPENDIX D

THE COURTS IN PAKISTAN

ATTORNEY/ PROSECUTORS	CRIMINAL JUSTICE COURT	GOVERNMENT
FEDERAL LEVEL	Supreme Court of Pakistan (Highest Appellate Court) Federal Shariat Court	Attorney General/Deputy Attorney General
PROVINCIAL LEVEL General/Government	Provincial High Court (Appellate/Writ Jurisdiction) Sessions Courts	Advocate General/ Additional Advocate Pleaders/Solicitors District Attorney/Deputies Prosecutors/Assistant District
DISTRICT LEVEL	District Magistrates' Courts Special Courts	Attorneys Prosecutors

APPENDIX F

PRINCIPLES OF PROSECUTION

1. To rectify the Code of Criminal Procedure, if violated.
2. To remove the technical flaws in the First Information Report (F.I.R).
3. To improve defects in investigation.
4. To gather oral, documentary and circumstantial evidence according to Qanun-e-Shahadat (Evidence Act).
5. To remove/plug the loopholes between F.I.R. and the final report.
6. To submit the final report in the court according to the G.P.C.
7. To identify any legal problem precluding successful prosecution like missing witnesses, double jeopardy, and wrong involvement by police.
8. To take into account the accused's right of defence.
9. To be aware of public agitation for the wrong involvement by police.

APPENDIX G

LAWS REGARDING PROSECUTION

1. Criminal Procedure Code.
2. Police Rules 1934.
3. Qanun-e-Shahadat Order, 1984 (Previously Evidence Act, 1872).
4. High Courts Rules and Orders Criminal Practice.

APPENDIX H

COURT WORK 1990-94 OF THE FIA, PAKISTAN

STATUS \ YEAR	1990	1992	1993	1994	1995
Cases pending in the Courts at the end of the year	4224	4220	4142	3669	3554
Challenged	1808	2322	1798	1454	1149
Total	6032	6542	5940	5123	4703
No. of Cases Decided	1812	2400	2271	1523	945
Convicted	1254	1315	1244	866	509
Acquitted	158	574	503	194	212

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APPENDIX I

DUTIES OF PUBLIC PROSECUTORS

1. To promote the cause of prosecution.
2. To thoroughly scrutinize challans, i.e., Reports under section 173 of the Cr.P.C. including applications received from the police station in connection with the arrest of offenders [Police Rules, 27. 15(1)].
3. To prosecute, watch or direct the prosecution of cases in courts.
4. To ensure the observance of conditions and restrictions of courts [Police Rules, 27. 15(ii)].
5. To ensure the observance of all High Courts orders issued with the object of expediting decisions and preventing abuses.
6. To supervise the transmission of warrants and summons to the executive police under the orders of criminal courts and to see that returns to such processes are made without delay.
7. To guide the investigating officer to remove the legal lacunae during investigation, so that best evidence is presented in court.
8. To examine whether the challan has been put in court within the prescribed period, as laid down in section 175 of the Cr.P.C.
9. As soon as final report of investigation under section 173 of the Cr.P.C. is received from police, it is the duty of the public prosecutor to vet it minutely and, if found fit, he should immediately send up the same to the court and, if found not fit due to serious legal lacunae, he may withhold the same directing the investigating agency to re-submit it in the best manner.
10. To file revision petition under sections 439 and 439-A of the Cr.P.C., provided the impugned orders merits revision.
11. To prepare acquittal appeal under section 417 of the Cr.P.C.
12. To cross-examine necessarily the accused according to Article 44 of Qanun-e-Shahadat Order, 1984 (Evidence Act). It was not previously done so.
13. According to section 232 of the Cr.P.C., whenever a charge is altered or added by the court after the commencement of trial, the public prosecutor is empowered to recall or summon and examine the witness with reference to such alteration or addition.
14. According to section 265 of the Cr.P.C., in every trial before a Court of Sessions, the prosecution shall be conducted by a public prosecutor.
15. As per section 494 of the Cr. P.C., the public prosecutor may, with the consent of the court before the judgement is pronounced, withdraw from the prosecution any person tried for the offence(s).