

Comparing International Best Practices in Prosecution Services: Insights from the United States and England & Wales for Enhancing Pakistan's Prosecutorial System

Taimur Khattak* & Mark Carroll** O.B.E

Abstract

This research paper investigates the challenges faced by Pakistan's prosecution services, and reasons thereof, in effective discharge of duty due. Through a comparative analysis of the prosecution services in the United States and the United Kingdom, the paper proposes a "Unified Prosecution Service" for Pakistan, aiming to enhance prosecutorial controls, expedite justice for the public and victims, and fortify convictions for maintaining rule of law. The paper advocates for a unified prosecution service governed by a singular act of parliament, which sets forth comprehensive guidelines, a sustainable service structure, and well-defined roles and responsibilities to tackle organized crime, corruption, terrorism, and extremism. The research takes an analytical view of various legal documents, including the four prosecution Acts, Supreme Court rulings, the Constitution of the Islamic Republic of Pakistan (1973), legal research journals, newspapers, reports, and codes provided by the Ministry of Justice and the Code for Crown Prosecutors of England and Wales. It will be argued that

*Mr. Taimur Khattak, an officer from the Prosecution Services of Khyber Pakhtunkhwa, has extensive experience in prosecuting cases in both Ordinary and Anti-Terrorism Courts. Mr. Khattak has also served as Deputy Secretary (Judicial) at the Civil Secretariat in Peshawar and is currently the Director of Coordination at the NACTA. He can be reached at taimur_khattakpk@hotmail.com.

**Mr. Mark Carroll, a former Specialist Crown Prosecutor from the Crown Prosecution Service of England and Wales, has an illustrious career in criminal prosecution and international rule of law capacity building. He is an Officer of the Order of the British Empire (O.B.E.) having been recognized for his services to the Rule of Law in Afghanistan (2012) and is currently Director, Criminal Justice at <https://www.internationaljusticedevelopment.com>

Comparing International Best Practices in Prosecution Services: Insights from the prosecution in Pakistan suffers from the absence of a unified service, an insufficient service structure, and limited powers and functions. Through implementing the proposed " Unified Prosecution Service," Pakistan can strengthen its control over crime and criminals, streamline investigation procedures in prosecution services, and ensure a consistent standard approach nationwide.

Key Words: Prosecution Services in Pakistan, Central prosecution service, Unified Prosecution Service, Terrorism, Law.

1. Introduction

Criminal justice system plays a crucial role in ensuring the safety, security, and wellbeing of a society by enforcing the rule of law and protecting the fundamental rights of citizens. Within this system, the prosecution service is a critical component. It is responsible for presenting cases against individuals accused of criminal offenses in courts and seeking justice on behalf of the state and its people. In Pakistan, prosecution has faced numerous challenges in fulfilling its mandate, resulting in a justice system that is often perceived as inefficient and ineffective.

This paper aims to critically analyze the current state of the prosecution service in Pakistan and proposes a reformed model based on international best practices to improve its overall functioning and effectiveness. Drawing inspiration from the well-established prosecutorial systems in the United States and the United Kingdom, this study suggests the implementation of "Unified Prosecution Service" in Pakistan. The paper is organized into several sections, each focusing on different aspects of the prosecution service and the proposed reforms. The first section provides an overview of the current prosecution system in Pakistan, highlighting the lack of a uniform structure and legislation governing the service across the country. This is followed by a comparison with the prosecutorial systems in the United States and the United Kingdom, focusing on the key features and best practices that can be adopted in Pakistan.

Subsequent sections delve into the specific challenges faced by the Pakistani prosecution service, including legislative gaps, inadequate resources, lack of specialized training, and insufficient coordination among various stakeholders within the criminal justice system. The paper also discusses the importance of empowering prosecutors with the ability to drop charges, recommend cases for discharge, and engage in plea bargaining, among other functions. Based on this comprehensive analysis, the paper presents a set of recommendations aimed at revamping the prosecution service in Pakistan. These recommendations include the

Comparing International Best Practices in Prosecution Services: Insights from the

establishment of a single, unified prosecution service governed by a comprehensive legislation, specialized training programs for prosecutors, and improved coordination among key stakeholders within the criminal justice system.

By implementing the proposed reforms, including creation of "Unified Prosecution Service," Pakistan can significantly enhance the efficiency and effectiveness of its prosecution service, ensuring the timely delivery of justice and upholding the principles of social justice enshrined in the Constitution of the Islamic Republic of Pakistan. Ultimately, implementation of proposed reforms will lead to societal stability and fairness, where the rule of law is upheld and the rights of all citizens are protected. The administration of criminal justice is a fundamental responsibility of every state,¹ serving as a modern alternative to private retribution or self-help and distancing itself from Thomas Hobbes² famous doctrine "*bellum omnium contra omnes (War of all against all)*". The state, through a Public Prosecutor, brings forth accusations, while the court examines the charges and accordingly punishes the wrongdoer for their offenses. The criminal justice system is a vital instrument of social control that ensures peaceful coexistence within society by curbing crime and penalizing criminals.³ The importance of prosecuting perpetrators has even led the United Nations to establish guidelines for prosecutors in their "Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders".⁴

¹ Salmond, John William. *Jurisprudence: Or, The Theory of the Law*. Stevens and Haynes, 1907, page 67-75. https://books.google.com.pk/books?hl=en&lr=&id=g0kuAAAAIAAJ&oi=fnd&pg=PA1&dq=sir+john+salmond+jurisprudence&ots=1Fm5QQrm2_&sig=M_E98cwA8LD8wW9bcAB76BGwb4&redir_esc=y#v=onepage&q=sir%20john%20salmond%20jurisprudence&f=false

²Ibid.

³Ibid.

⁴Clark, Roger S. "The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders-Havana, Cuba, August 27-September 7, 1990." *Crim. LF* 1 (1989): 513.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>

Comparing International Best Practices in Prosecution Services: Insights from the

Pakistan's prosecution system shares similarities with the contemporary British system due to its colonial legacy, which is responsible for enforcing the state's prosecutorial powers to address organized crime, transnational crime, corruption, terrorism, and extremism, ultimately delivering speedy justice to the public.⁵ However, Pakistan's dysfunctional criminal justice system and weak prosecutorial legal framework pose serious implications for domestic, regional, and international security.⁶ The country's multiple prosecution service structures with varying organizational functions have failed to achieve the objective of an independent prosecution service. To address this issue, it is essential to adopt a prosecutorial system that incorporates international best practices. This can be accomplished through legislative intervention and drafting a single piece of legislation.

2. Background Study

The term prosecution has been defined in Black's Law Dictionary as,

A criminal action; a proceeding instituted and carried out by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime. The continuous following up, through instrumentalities created by law, of a person accused of a public offense with a steady and fixed purpose of reaching a judicial determination of the guilt or innocence of the accused.⁷

A public prosecutor is defined in Section 2 (t) of the Criminal Procedure Code, 1898.⁸ His appointment procedure, powers and functions have been given in Part

⁵Dr Syed Kaleem. Imam and Hammad. Rohila, "The Plight of Prosecution", The Nation, September 12, 2022 <https://www.nation.com.pk/12-Sep-2022/the-plight-of-prosecution>

⁶Waris.Hussain, "The power of prosecution" DWAN. November 14, 2011, <https://www.dawn.com/news/673176/the-power-of-prosecution>

⁷Black, Henry Campbell. *Law dictionary*. St. Paul, Minn.: West Publishing Company, 1910. [c.https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf](https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf)

⁸Government of Pakistan, The Code of Criminal Procedure, 1898, Part IX, Supplementary Provisions, Chapter XXXVIII of the Public Prosecutor. Ministry of Law and Justice (molaw.gov.pk)

Comparing International Best Practices in Prosecution Services: Insights from the

IX, supplementary provisions, chapter XXXVIII whereby, under Section 492 it has been provided that Public Prosecutor is appointed through provincial government, Section 493 empowers him to plead in all courts under his charge and the private counsels have been instructed thereby to work under his directions. The effect of his withdrawal from Prosecution has been specified under Section 494,⁹ under Section 959, his conduct in respect of prosecution is mentioned¹⁰. This appointment has to be in accordance with Article 129 of the Constitution of Islamic Republic of Pakistan.¹¹ Moreover, it states that approval of appointment has to be made by the Governor through Chief Minister of the Province.¹² The consent of the provincial government is essential for the approval of the federal government.¹³

It is crucial to understand that there are various bodies and agencies responsible for delivering justice to the public and work in their respective jurisdictions in dispensing justice. The criminal justice system consists of four key components: police, prosecution, judiciary, and jail/prison system. The police serve as the first responders in cases of breached peace or reported crimes. At crime scene, the operational police secure the area and delegate the remaining tasks to the investigative unit, whose responsibility is to investigate the case, collect evidence, and apprehend the suspect(s). As soon as an offense is committed, role of the prosecution begins and the wheels of criminal law are set in motion. Prosecutors are legally obligated to supervise pre-trial investigations, provide guidance for the collection of any remaining evidence, and send only viable cases to the court for

⁹Ibid, page 84.

¹⁰Ibid.

¹¹Government of Pakistan, The Constitution of Pakistan, Page No. 73. file:///C:/Users/Dir%20Coord/Downloads/Constitution%20English.pdf

¹²Mughal, Justice R. Dr, and Munir Ahmad. "Law as to the Public Prosecutors in Pakistan: Cases and materials [Part ix, Ch. Xxxviii, Ss. 492-495 of the Code of Criminal Procedure, 1898]." Available at SSRN 2494632 (2014).

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2494632

¹³ Ibid.

Comparing International Best Practices in Prosecution Services: Insights from the

trial. However, in Pakistan, this process is not carried out professionally due to various impediments and obstacles.¹⁴

Pakistan is a federation comprising of four provinces and three regions. Legislation for these provinces and regions is enacted at both the provincial and Federal levels. Notably, there is no prosecution Act in Azad Jammu and Kashmir, and surprisingly, no prosecution Act for the Federal Capital to this day. The legal frameworks for each province's prosecution service differ significantly from one another. The Prosecution Acts are not identical in terms of prosecutors' powers and functions, resulting in numerous administrative discrepancies that lead to various issues in delivering justice. The details of the Prosecution Acts are as follows:

2.1. *Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005*

The Prosecution Act of Khyber Pakhtunkhwa has set up prosecution service confining it to the district level in the province and there is no Prosecutor General Office, which can take the charge of the cases defended at the district level to take them to the logical conclusion at the Supreme Court of Pakistan.¹⁵ The provision for Advocate General has been given in the Section 2 (a) of the act.¹⁶ He is an appointee of the provincial government under Article 140 of the Constitution of Islamic Republic of Pakistan, to give advice to the government and perform duties as assigned to him.¹⁷ The government of Khyber Pakhtunkhwa has issued a standing order in respect of management of criminal cases, wherein a mechanism

¹⁴Tamur. Khattak, and Amjad. Meraj, "Role of Prosecutor in examining Terrorism cases in Pakistan." *Pakistan Journal of Terrorism Research volume-4, Issue-2, 2022.* <https://nacta.gov.pk/vol-iv-issue-ii-july-dec-2022/>

¹⁵Government of Khyber Pakhtunkhwa, *Khyber Pakhtunkhwa Prosecution service Act, 2005.39. Prosecution Service Constitution Functions and Powers Act 2005.pdf* (theasiadialogue.com)

¹⁶Ibid.

¹⁷Government of Pakistan, *The Constitution of Pakistan Page No. 73.* file:///C:/Users/Dir%20Coord/Downloads/Constitution%20English.pdf

Comparing International Best Practices in Prosecution Services: Insights from the

has evolved to discharge the ordinary and anti-terrorism related cases.¹⁸ The government has also issued the Khyber Pakhtunkhwa Prosecution Service (Constitution, Function and Powers) Rules, 2012 to supplement the service, yet too many irregularities still exist in the rules.¹⁹ Likewise, there is Standard operating procedure in Section 8 (8) of the Act of 2005 and its Section 1 and 3 are yet to be followed in objective and effective manner.²⁰

The hovering sword over the prosecutor in Khyber Pakhtunkhwa is that there is no legal cover over certain sections of the laws that need legislative intervention. Furthermore, there is no prosecutor general office from among the same set of prosecutors who can defend the cases and secure conviction at the district level. Similarly, the prosecutors lament that their bail cancellation applications, appeals and revisions are not taken to their logical conclusion.

2.2. Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006

The prosecution service was formed under the Punjab prosecution statute and was only available at the district level in the province. A Prosecutor General's Office also exists, although appointments there are made based on quotas or via the Public Service Commission.²¹ Punjab's prosecution services are similarly not moving towards institutionalization; instead, they have supplemented the Act without making any significant changes.²² Simultaneously, a code of conduct for prosecutor

¹⁸ The standing order No. SO(Pros:)HD/1-2/2010-Vol-I dated October 11th, 2011.

¹⁹ Government of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Prosecution Service Rules, 2012.

²⁰ Government of Khyber Pakhtunkhwa Khyber Pakhtunkhwa Prosecution Service.

²¹ Government of Punjab, The Punjab Prosecution Service (Constitution, Functions and Powers) Act 2006 <http://punjablaws.gov.pk/laws/483.html>

²² Government of Punjab, The Punjab Prosecution Service (Constitution, Functions and Powers) (Amendment) Bill 2016.

Comparing International Best Practices in Prosecution Services: Insights from the
has not been given adequate legal backing so the situation of Punjab is more of the same
like Khyber Pakhtunkhwa.²³

2.3. *Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009*

The Prosecution Act of Sindh has established the prosecution service and constrained it to the district level in the province. There is also a prosecutor general office, however, the prosecutor general for the High Court are appointed by political government while the other additional prosecutor general etc. are recruited through Public Service Commission.²⁴ With the same bleak prosecution services picture, the outcomes of criminal cases in Sindh are identical to those of cases in other provinces of Pakistan.

2.4. *Balochistan Prosecution Service (Constitution, Functions and Powers) Act, 2006*

The Balochistan prosecution legislation service is limited to the district level in the province. There is a prosecutor general office, but appointments are made either on a quota basis or the prosecutor for the high court gets recruited through the Public Service Commission.²⁵ Thus, similar problems plague the Balochistan province.

2.5. *Gilgit-Baltistan Prosecution (Functions and Powers) Act, 2019*

The prosecution service has been established and is now restricted to the district level by the Gilgit-Baltistan prosecution legislation. Regular prosecutors are given

²³Government of Punjab, Code for Conduct for Prosecutors, The Punjab Criminal Prosecution Service.

²⁴Government of Sindh, The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act 2009. – Advocate Tanmoy Law Library

²⁵Government of Balochistan, Balochistan Prosecution Service Act 2003.

Comparing International Best Practices in Prosecution Services: Insights from the

some leeway, but political nominations control the remaining positions, rendering the system superfluous and largely ineffective (much like other provinces).²⁶

3. Challenges and Hindrances for Pakistan Prosecutorial System

A withering state of prosecution has resulted from the underperformance of prosecution due to incautious drafted service structures, staffing deficiencies, infrastructure problems, security issues and lack of funding.²⁷ However, instead of addressing these issues prosecutors are consistently being questioned vis-à-vis their performance.²⁸ It can safely be stated that fair and just prosecution is the only key for ensuring the public trust in the system.²⁹

3.1. Organizational Complications

Pakistan's Prosecution service is the remnant of colonial legacy that is largely incapable of coping with modern-day challenges.³⁰ There is no uniform organizational structure of prosecution services, either in provinces or in the sub- autonomous regions. One of the reasons for high rate of acquittal at the High Court and Supreme Court is that cases defended at the district level are handed over to advocate general and attorney general offices, who are not involved in the process of gathering evidence in these criminal cases. A case handled by a prosecutor from field formations, would be defended/ maintained effectively through collaboration mechanism.

²⁶ Government of Gilgit-Baltistan, Gilgit-Baltistan Prosecution Act 2019. <https://gba.gov.pk/gba/gba/tables/alldocuments/actdocx/2023-02-08%2011:51:11the-gilgit-baltistan-prosecution-functions-and-powers-act-2019.pdf>

²⁷ Syed. Muhammad Ishaq, "The Crippling State of Public Prosecution", *courting the law*, June 9, 2021. <https://courtingthelaw.com/2021/06/09/commentary/the-crippling-state-of-public-prosecution/>

²⁸ Bureau "Prosecutors' urged to improve performance" *Dawn*, March 26, 2023. <https://www.dawn.com/news/1744227>

²⁹ Fair and justice prosecution <https://fairandjustprosecution.org/news/articles/>

³⁰ Suddle, Muhammad Shoaib. "Reforming Pakistan Police: An Overview." *United Nations Asia and* (2003). https://link.springer.com/chapter/10.1007/978-1-4614-5218-8_17

3.2. Absence of Central Prosecutorial Academy

While there are Federal and Provincial Judicial Academies, there is however, no Central Prosecution Service Academy in Pakistan. This is despite the fact that initial and subsequent training of prosecutors is essential to cope well with the criminal quandaries.³¹ The provinces have established the prosecutorial academies but they are not as functional as is required.³²

3.3. No Concept of Specialized or blaze Prosecutor

If we start training prosecutors in specialized fields like prosecutor for conducting prosecution at the level of magistrate, session, anti-corruption, anti-narcotics, federal investigation, anti-terrorism, national accountability, etc., then that will make our prosecutors more effective in dealing with crime and criminals in Pakistan. The world is moving towards specialization while we appear to be stuck in the past.

3.4. Administrative Difficulties

The "Indian Law Commission" was established in British India by the Governor General to oversee court activities, and prosecution was a crucial aspect of police services. This flaw continues to have a significant impact on fair and just prosecution in Pakistan.³³ The prosecution service has been separated from police service yet the police do not usually comply with the directions of prosecutors to build a strong case against the accused.

³¹Federal Judiciary Academy. <https://www.supremecourt.gov.pk/federal-judicial-academy/>
<https://www.kpja.edu.pk/https://sja.gos.pk/>

³²<https://tribune.com.pk/story/2369496/peshawar-gets-academy-to-train-prosecutors>
<https://cpd.punjab.gov.pk/background>

³³the role and function of prosecution in criminal justice Zafar Ahmad Farooqi
https://www.unafei.or.jp/publications/pdf/RS_No53/No53_26PA_Farooqi.pdf

3.5. Legislative Glitches

Sections 4 C (ii) and 5 (b) of the Khyber Pakhtunkhwa Act authorize the prosecutor to recommend a case be discharged in compoundable cases up to seven years, whereas the Director General can do so in cases where the sentence does not amount to life in prison or death. However, this is not always possible because such cases are handled by the courts where the concerned parties often come to a compromise.³⁴ Insofar, as additional statutes are concerned including federal and provincial, the prosecutor's function has been minimized and justice cannot be delivered directly, owing to lack of service structure for the field formation up to Supreme Court of Pakistan. The judgment of the superior courts has time and again upheld in its decision provisions of addition, deletion and insertion of section of laws is the job of prosecution, however, the laws have yet not been amended accordingly.³⁵

3.6. Legal Challenges

The police and prosecutor face numerous legal challenges. One of them is to submit the final report over cases within fifteen days, which is often not possible. In some of the heinous cases vis-à-vis in anti-terrorism act this limitation goes up to thirty days. This scenario makes it difficult for prosecutor to supervise the entire investigation and to issue guidelines for collection of all type of essential evidence. Second, a prosecutor cannot submit an application to the court for an adjourned *sin die* case because there is no such provision as the case is not covered by Section 344 of the Criminal Procedure Code 1898. This lack of provision may

³⁴ government of Khyber Pakhtunkhwa, the Khyber Pakhtunkhwa Prosecution service (Constitution, Functions and Powers) Act, 2005.39. Prosecution_Service_Constitution_Functions_and_Powers_Act_2005_.pdf (theasiadialogue.com)

³⁵ Pakistan Law Digest (PLD), 2009, Page No. 135.

Comparing International Best Practices in Prosecution Services: Insights from the

benefit the accused under Section 403 of the Code and Article 13 of the Constitution. Third, a prosecutor is required to make a court application pursuant to Section 540 of the Criminal Procedure Code, 1898 in order to enable the law enforcement agencies to produce a witness before the court for testimony (if his/hers name was not on the final report). If the court grants the request, the prosecutor may also requisition documents or other case-related items. Fourth, the forensic reports which if exhibited in the evidence are acceptable in terms of Section 540 of the Criminal Procedure Code, 1898 while in few cases the expert has to be called as a witness to testify in the court. This too is potentially a legal obstacle, as it does not provide one uniform standard of adherence. Fifth, Section 494 of the Criminal Procedure Code is in often in clear contradiction with its counterpart provincial Acts. Sixth, the repeated advice of the Supreme Court of Pakistan to the parliament to correct certain definitions of different offences such as Section 6 of Anti-Terrorism Act of 1947 has still not been entertained.³⁶ If these and other legal impediments are not adequately addressed and timely replaced, the system's performance will not get any better.

3.7. Limitation of Power and Functions

The duties and responsibilities of a prosecutor are different from one another, and they have been exempted from proper oversight, investigation, and recommendations in cases before the courts. This system comes to an end when the lower court's rulings are challenged at the appellate forum. The prosecutor cannot stop and drop the case if it was filed on the basis of *mala fide*, wrong, frivolous, etc. intentions. The prosecutor also cannot recommend that the case be discharged in order to avoid the double jeopardy provisions. These are all instances where the prosecutor's office lacks the authority to negotiate plea agreements in the public

³⁶Criminal Appeals No. 95 and 96 of 2019, Civil Appeal No. 10-L of 2017 and Criminal Appeal No. 63 of 2013.

Comparing International Best Practices in Prosecution Services: Insights from the
interest.

3.8. Procedural Complications

There are certain procedural complications, which disallows the prosecutors both in their own act and the legal documents of the country, for a case to go through necessary mechanical procedure. This can delay delivery of justice to the public.

3.9. Infrastructural and Financial Issues

Despite repeated promises from the Chief Justices of the Supreme Court of Pakistan to assist the prosecution and overcome the financial and infrastructure issues facing the prosecutors, nothing substantial and concrete has transpired thus far.³⁷

3.10. Criminal Courts Structure

In this region of the world, the history of criminal justice dates back to the prehistoric times, which has evolved over many centuries incorporating features and characteristics of different eras.³⁸ The Criminal Courts of Pakistan are created under Section 6 the Criminal Procedure Code, 1898. There is a Supreme Court of Pakistan, Federal *Shari'at* Court and High Courts at the provincial level, Session and magistrate courts.³⁹ This court arrangement requires court-sifting work, which has occurred at various times but subsequently it all reverted over to the old routine. Recently, model courts have been established on the civil and criminal sides under the auspices of the National Judicial Policy. This initiative, in hindsight, was shortsighted. Instead, specialized court structures and specialized prosecutors could

³⁷<https://www.reuters.com/article/uk-pakistan-justice-courts-idUKBRE88N0ZY20120924>

³⁸ The Judicial System of Pakistan Dr Faqir Hussain Director General Federal Judicial Academy Islamabad.
https://www.supremecourt.gov.pk/downloads_judgements/all_downloads/Judicial_System_of_Pakistan/thejudicialsystemofPakistan.pdf

³⁹ Government of Pakistan, The Code of Criminal Procedure, 1898, Part IX, Supplementary Provisions, Chapter XXXVIII of the Public Prosecutor. Ministry of Law and Justice (molaw.gov.pk)

Comparing International Best Practices in Prosecution Services: Insights from the
have been created to improve the criminal justice system in Pakistan.

3.11. Different Types of Pressures

Since the country's founding, there has been a police force, and the top brass of the police have never agreed to separate the prosecution from the police. This is precisely why they consider issuance of guidelines from prosecution as interference in their police work. There is no indemnity clause in prosecution acts, therefore the pressure from bar, bench, police, civil administration, advocate, attorney general and elite class pose a serious challenge for effective prosecution service.

3.12. No Standard Mechanism between Police and Prosecution

While there are enabling rules along with guidelines between police and prosecution services, however, the Article 129 of the constitution does not provide them with any sound legal backing.

3.13. No Standard Mechanism between Prosecution and Judiciary

There are certain laws such as Investigation of Fair Trial Act 2013 and others that reflect close coordination between prosecution and judiciary. However, the legal provisions are not fool proof and are therefore open to manipulation.

3.14. No Standard Mechanism between Prosecution and Prison

At the moment there is no standard mechanism between the prosecution and prisons of Pakistan. Coordination will be necessary for effective and timely dispensation of justice. The prosecutors can, for instance, play a vital role to lessen the burdens on prison and send list of cases to courts where the court can only impose fines and dispose of causes related to plea-bargaining.

3.15. Low Conviction Rate

One of the primary causes of low conviction rate in Pakistan is the absence of an independent prosecution service. There are a number of other factors as well for

Comparing International Best Practices in Prosecution Services: Insights from the

this failing, such as the existing legal framework, bureaucratic models, and social categorization.⁴⁰

3.16. Delay in Justice

The victims of aggression often have to wait for a final decision. This means constant and prolonged engagement with the prosecution process that suffers from delays caused by due process of law taking its course. Prosecution often sends cases for adjudication without completing investigative process; such cases take longer in trial courts due to legal shortcomings and factual lacunas. The judiciary follows the procedural formalities and unnecessary adjournments further delay justice, which compels the victim to lose hope in the system.⁴¹

3.17. Political and Elite Class Influence

This has also remained one of the problems in dispensation of justice in Pakistan.⁴² The laws are often liberally interpreted to serve ruling parties and the influential elite.⁴³

3.18. Old and Conventional Methods of Investigation

A number of cases suffer due to use of old methods of investigation by the prosecution. Often no heed is paid to modern forensic evidence collection methods. Police also do not consider taking guidance from prosecutors to collect the relevant evidence as per the nature of offences.⁴⁴ Legislative action is required, with an emphasis on reducing reliance on eye accounts and giving circumstantial and

⁴¹Muhammad Athar Waheed. Participant's paper, "victims of crime in Pakistan", https://www.unafei.or.jp/publications/pdf/RS_No81/No81_14PA_Waheed.pdf

⁴¹Angbeen Atif Mirza, Delays and lapses in Pakistan's criminal justice system, December 6th, 2016. <https://blogs.lse.ac.uk/southasia/2016/12/06/delays-and-lapses-in-pakistans-criminal-justice-system/>

⁴²Criminality and Politics in Pakistan, Published in Dawn, August 17th, 2015, <https://www.dawn.com/news/1200870>

⁴³Ibid.

⁴⁴ Today's Pakistan, Defective Investigation must not be the sole ground for acquittal. <https://www.pakistantoday.com.pk/2021/07/25/defective-investigation/>

Comparing International Best Practices in Prosecution Services: Insights from the forensic evidence their due place.

3.19. Non-Attendance of Witnesses

There is an alternate in the law in shape of Section 249, which provides for provision if the complainant is not appearing before the court in person. In cases where material witness's attendance cannot be procured, the cases may be adjourned *sin die* till the arrival of witness or evidence so required for the just decision of the case.

3.20. No Power to Summon Material Witness

The superior courts have repeatedly ordered the prosecution to assure witness attendance, but no law to that effect has been incorporated.

3.21. No Power to Requisition Material Record

There is no mechanism for the prosecutor to requisition material records or evidence, and the court only requisitions the case directly mentioned in the final report.

3.22. No Authority to Act Independently and to become bridge among the Pillars of Criminal Justice System

Pakistan has not institutionalized the prosecution services or established the filed formation system at the high court or Supreme Court. Instead, the prosecution services are designed to operate within the home department. The primary responsibility of prosecution services is to uphold the public interest, which helps the public avoid unjust convictions, unwarranted harassment, and quick justice for both victims and innocent people. To be the true gatekeeper, the prosecutor must assess each case objectively, send it for specific evidence gathering, make the appropriate recommendations, and only send cases that are suitable for trial. The idea of "Unified Prosecution Service" is a current necessity. The reforms have been

Comparing International Best Practices in Prosecution Services: Insights from the repeatedly emphasized, but to no avail.⁴⁵ Only by fixing the aforementioned issues can Pakistan's judicial system be reformulated.

4. Methodology

The study has sought to identify and discuss the challenges faced by Pakistan's prosecution system, such as the lack of a unified service, poor service structure, limited powers, and restricted functions. In conducting the present research, a content analysis scheme has been employed, which involved collecting data from various sources such as law books, legal journals, research papers, newspaper articles, the Constitution of the Islamic Republic of Pakistan (1973), Black's Law Dictionary, codes, prosecution acts, rules, standard operating procedures, and caselaws from superior courts. To effectively evaluate Pakistan's existing prosecution service, it has been compared to those of the United States and the United Kingdom to identify the shortcomings of Pakistan's system. This analysis included examining their legal frameworks, functions, powers, and administrative structures to gain insights into best international practices. By studying prosecution systems of the United States and the United Kingdom, the research has identified best practices that could be applied in Pakistan to improve its prosecutorial set-up. By researching these categories and themes, the research aims to provide a comprehensive understanding of Pakistan's prosecutorial system and offer actionable recommendations for improvement by incorporating international best practices. Based on the comparative analysis and identification of challenges, the research proposes reforms and recommendations for Pakistan's prosecution service. These suggestions aim to create an efficient and effective prosecutorial system that would ensure speedy processing, resulting in increased deterrence for criminals, and upholding the rule of law. The research also

⁴⁵<https://www.dawn.com/news/1221398>

Comparing International Best Practices in Prosecution Services: Insights from the discusses potential implementation strategies for the proposed reforms, including legislative interventions, collaboration with domestic and international stakeholders, and capacity building for prosecutors and other criminal justice personnel.

4.1. Data Analysis

It is of utmost importance for a country to reassess its existing prosecutorial set-up in light of international best practices. This is especially necessary for countries like Pakistan where courts are overwhelmed with criminal cases that frequently results in inordinate delays in judgments. By addressing our outstanding issues and learning from best international practices, justice can be served both swiftly and judicially. Establishing a unified, independent prosecution service in the country, empowered to assist officers of law and justice, aligns perfectly with the spirit of the Constitution. This would require granting the authority regarding decision of whether or not to prosecute to a competent office, who must then prove the charges in a court of law. Additionally, the power to enter into plea bargains, coupled with proper management practices and key performance indicators for prosecutors, would not only increase the conviction rate but also alleviate the financial burden of the state.

Conversely, some argue that prosecution services are the domain of provinces and regions, this argument, however, lacks logic since it is the state's primary responsibility to provide justice to its citizens. By centralizing the prosecutorial system and incorporating international best practices, Pakistan can enhance the effectiveness of its criminal justice system, ensuring a fair and timely administration of justice for all citizens. Moreover, streamlining the prosecutorial process will not only result in a higher conviction rate but will also foster public trust in the justice system, ultimately contributing to a safer and more just society.

5. Lessons from the US and the England and Wales for Improving Pakistan's Prosecutorial System

Taking lessons from the United States, England and Wales prosecution services' best practices, Pakistani prosecutors' services could be reformed.⁴⁶ In England, the Crown Prosecutor has the primary responsibility of selecting cases that will result in conviction.⁴⁷ In USA, development in prosecution service has surged in last ten years, this is due to their commitment to combat the rising challenges of terrorism, organized crime, and corruption. Similarly, in Pakistan, the criminal justice system can be made more effective in terms of convictions, if the forensic teams work in close collaboration with the prosecutor officer. It shall remain the primary duty of prosecutor to legally establish *actus rea*, *mens rea*, general defenses, and cross-check alternate defenses in light of the general principals of criminal law. It shall be the prosecutor office's responsibility to evaluate the accusations as to determine what types of offenses (non-fatal assault, sexual offences, homicide, property offences, anti-corruption cum accountability, and terrorism offenses) require which type of essential evidence to be maintained in court of law.

To ensure efficient working of the criminal justice system, prosecutors need to carry out their obligations in a fair, consistent, and timely manner while also respecting, defending, and upholding human dignity.⁴⁸ The emphasis on good case management techniques, strategic planning, performance-based standards, efficient use of modern technologies, and sustained cooperation with other law enforcement agencies, both domestically and internationally, distinguishes modern

⁴⁶Dr Syed Kaleem Imam is PhD in Politics-IR and Ex-Federal Secretary-IGP and Hammad Rohila is a corporate commercial lawyer. The Plight of Prosecution, September 12, 2022, THE NATION. <https://www.nation.com.pk/12-Sep-2022/the-plight-of-prosecution> ⁴⁷Criminal Law and Criminal Justice and Introduction. [file:///C:/Users/Dir%20Coord/Downloads/Noel%20Cross%20-%20Criminal%20Law%20&%20Criminal%20Justice_%20An%20Introduction%20%20-%20Sage%20Publications%20Ltd%20\(2009\).pdf](file:///C:/Users/Dir%20Coord/Downloads/Noel%20Cross%20-%20Criminal%20Law%20&%20Criminal%20Justice_%20An%20Introduction%20%20-%20Sage%20Publications%20Ltd%20(2009).pdf)

⁴⁸ Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>

Comparing International Best Practices in Prosecution Services: Insights from the prosecution services from those of the past.⁴⁹ Since mechanisms for cooperation are developing quickly, it is imperative to keep up with new best practices to control and contain crime and criminals.

5.1. Best Practices of Crown prosecution Service

Through the Offences Act of 1985, the Crown Prosecution service was founded in 1986 in England and Wales.⁵⁰ The Crown Prosecution Service was initially given only a few functions and powers, however, it has grown to include pre-trial, trial, and sentencing recommendations as well as the ability to charge, treat witnesses, and reach interagency agreements on the forfeiture of criminal assets.⁵¹ The Crown Prosecution Service makes decisions independently of the government and police.⁵² The duty of the crown prosecutor is to keep both the public interest test and the evidential test in front of him.⁵³ As a result, it is the prosecutors that are essentially the real gatekeepers.⁵⁴ The prosecution services in England and Wales have adopted the method of evaluation reports to learn and improve over time. It is now being considered that crown prosecutor shall handle all types of major

⁴⁹Dandurand, Yvon. "Strategies and practical measures to strengthen the capacity of prosecution services in dealing with transnational organized crime, terrorism and corruption." *Crime, Law and Social Change* 47 (2007): 225-246.

<https://link.springer.com/article/10.1007/s10611-007-9071-7>

⁵⁰effective administration of the police and the prosecution in criminal justice Peter Boeuf.

https://www.unafei.or.jp/publications/pdf/RS_No60/No60_14VE_Boeuf.pdf

⁵¹Lewis, Chris. "The Evolving Role of the English Crown Prosecution Service." *The Prosecutor in Transnational Perspective* (2012): 214-234. <https://academic.oup.com/book/11823/chapter-abstract/160911700?redirectedFrom=fulltext>

⁵²<https://www.cps.gov.uk/>

⁵³ A short guide to the criminal justice system, Research Briefing Number 9331 By Joe Ryan 11 January 2022. <https://commonslibrary.parliament.uk/research-briefings/cbp-9331/> ⁵⁴Justice Committee. "The crown prosecution service: gatekeeper of the criminal justice system." *HC* 9 (2008): 2008-09. <https://publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186.pdf>

Comparing International Best Practices in Prosecution Services: Insights from the offences and adopt new organizational, structural, and management practices so that they can play a better role in the criminal justice system.⁵⁵

5.2. Few of the Best Practices of Crown Prosecution Service are given as under

The functioning of crown prosecution vis-à-vis their role and responsibilities authorizes them to charge a person and not the police because it is their responsibility to effectively prosecute and get a sentence.⁵⁶

Decides which cases should be prosecuted: Terms like suspect, defendant, offender and victim have been clearly defined and every step of the prosecutor is to evaluate each case on merit and in the light of guiding codes and general principles.⁵⁷

Determines the appropriate charges in more serious or complex cases, and advises the police during the early stages of investigations: It is the responsibility of the prosecutor to accurately represent the gravity and scope of the offence, grant the court sufficient authority to sentence and impose appropriate post-conviction orders, permit the making of a confiscation order when necessary, find out where a defendant has benefited from criminal activity, and make it possible for the case to be presented in a straightforward and understandable manner.⁵⁸

Prepares cases and presents them at court: In order to prevent an acquittal, the Crown Prosecutor, who is in charge of prosecutorial matters, must make sure that the case has passed the evidential, public interest, threshold, and full court tests.

⁵⁵The Review of the Crown Prosecution Service, Summary of The Main Report with the Conclusions and Recommendations Chairman: Rt. Hon. Sir Iain Glidewell Presented to Parliament by the The Attorney General by Command of Her Majesty, June 1998. published by The Stationery Office The full text of the Report has been published as Cm3960 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/259808/3972.pdf

⁵⁶ Davies, Croall and Tyrer Criminal Justice An Introduction to the Criminal Justice System in England and Wales Third Edition.

⁵⁷The Code for Crown Prosecutors | The Crown Prosecution Service (cps.gov.uk)

⁵⁸Ibid.

Comparing International Best Practices in Prosecution Services: Insights from the

It is he/she who has to prepare, present and plead the case for securing deserving conviction.⁵⁹

Provides information, assistance and support to victims and prosecution witnesses: It is another key responsibility of the prosecutor under the code for crown prosecutor.⁶⁰

Out of Court Disposals: The prosecutor may, in the public interest, go for out of court disposal- subject to established guidelines, rules and procedures.⁶¹

Accepting Guilty Pleas: The prosecutor may accept the guilty pleas if the court can come up with the sentence which commensurate with the quantum of sentence of punishment.⁶²

6. Best Practices in the prosecution system of the United States

The prosecutor in the United States enjoys immense discretionary powers in order to deliver justice to the public. The role of a prosecutor is that of one complementing the rule of law. He cannot ignore legal standards, public safety, local priorities, and policies for a responsive service to control crime and criminals.⁶³

6.1. Few of the best practices of their prosecution service are given as under: Power to Charge: There was a time when the judges had to decide the cases in the light of evidence so produced before them and in case of insufficient evidence they had to acquit the accused. However, this practice has changed with the passage of time and the prosecutor has to prove the case so it is his decision to call on for charges or to drop the case altogether.⁶⁴ The American prosecutors are the ones

⁵⁹Ibid, page No. 102.

⁶⁰Ibid.

⁶¹Ibid.

⁶²Ibid.

⁶³Wright, Ronald F. "Reinventing American prosecution systems." *Crime and Justice* 46, no.1 (2017): 395-439. <https://www.journals.uchicago.edu/doi/full/10.1086/688463> ⁶⁴Sklansky, David Alan. "The nature and function of prosecutorial power." *J. Crim. L. & Criminology* 106 (2016): 473.473. <https://extras.springer.com/?query=978-3-319-04503-0>

who charge the offenders and it is neither police nor judiciary that can bring charges against the accused.⁶⁵

Plea Bargaining: Prosecutors are the mediating figures in the prosecution system of the United States. According to an estimate, around 95% of the culprits enter into plea-bargaining. The main reason for this is that the prosecutor is a public official that determines the terms of the plea-bargaining, which then cannot be challenged by others.⁶⁶

7. Result and Discussion

To help patrons and policymakers take appropriate and effective measures in reviewing their prosecutorial services, the following conclusions have been drawn: Because there is no uniform prosecution service and a single Act that gives clear authority to the prosecutors across the country (which authorizes them to determine cases that should be brought to court for trial or cases that warrant a court challenge), existing criminal cases tend to linger on without merit and direction. While there is a separate Prosecutors Act in KP, however for the remaining provinces of Pakistan, prosecutor cannot propose the accused be discharged when the evidence is insufficient and cannot re-involve the accused in the investigation when new evidence becomes available. Further there is a need to revisit the prosecution act and the criminal procedure code in KP to remove the existing ambiguities and empower prosecutors to recommend the accused for discharge or re-hearing. Moreover, the power to drop charges and launch prosecution in certain cases should be added to strengthen rule of law and sift dispensation of justice in the country.

⁶⁵Davis, Angela J. "The power and discretion of the American prosecutor." *Droit et cultures. Revue internationale interdisciplinaire* 49(2005):55-66.
<https://journals.openedition.org/droitcultures/1580?lang=en>
<https://doi.org/10.4000/droitcultures.1580>

⁶⁶Ibid.

Comparing International Best Practices in Prosecution Services: Insights from the

In crucial instances where the conviction of the accused depends on the testimony from witnesses whose attendance cannot be secured (for example in cases where the abductee is to be recovered and that is to be the star witness for prosecution in such cases), there is no procedure for adjourning the case. Instead, the accused is freed on bail, tried and acquitted and the case then cannot be reopened at a later stage when witness attendance is secured. Moreover, under Article 13 of the Constitution the case cannot be reopened against such accused so application for adjourning cases sine die should be inserted in the Act as well as procedural law.

8. Recommendations

Key recommendations include:

- i. Introducing legislation for a unified prosecution service across Pakistan.
- ii. Establishing a prosecution service with a clear service structure till Supreme Court, while ensuring no miscarriage of justice.
- iii. Efficient prosecutorial controls to provide speedy prosecution and only sending cases with sufficient evidence to trial courts.
- iv. Empowering prosecutors with similar functions and duties as those in the US and UK.
- v. Establishing prosecution as an independent institution with specialized roles for various types of cases.
- vi. Posting specialized prosecutors in courts according to service rules.
- vii. Empowering prosecutors to drop cases at the pre-trial stage if they appear malicious, false, or frivolous.
- viii. Allowing prosecutors to enter into plea bargains, waivers, and pardons subject to certain predetermined codes and conditions.
- ix. Developing a mechanism for collaboration between police, prosecution, judiciary, and prison.

Comparing International Best Practices in Prosecution Services: Insights from the

- x. Creating a well-resourced training academy for fresh inductees in the prosecution services.
- xi. Establishing sub-academies with research and data centers to develop trainings and keep prosecutors updated on national and international developments and best practices.
- xii. Developing a code of coordination between police, prosecution, judiciary, and prison to deal with matters in the interest of justice.
- xiii. Providing indemnification to safeguard prosecutors, subject to checks under the prosecutor general and efficiency and disciplinary rules.

9. Conclusion

In conclusion, the current prosecution system in Pakistan grapples with substantial challenges in delivering justice, primarily due to the absence of a uniform prosecution service and comprehensive legislation that defines the powers and authority of prosecutors. These shortcomings have implications for the effectiveness and efficiency of the criminal justice system and hinder the ability to provide timely justice to the public. To address these concerns and strengthen the rule of law in the country, it is crucial to adopt a reformed model of prosecution that draws inspiration from the best practices employed in the United States and the United Kingdom.

This study proposes the implementation of "A Unified Prosecution Service", which encompasses a set of recommendations aimed at revamping the prosecutorial system in Pakistan. By adopting these recommendations, our country can establish a robust, unified, and efficient prosecution service that effectively tackles crimes and ensures a fair judicial process. The suggested measures include the creation of a single parliamentary legislation to govern a unified prosecution service across Pakistan, the establishment of specialized prosecutors for various courts, and the empowerment of prosecutors to drop cases at the pre-trial stage in

the interest of justice. Moreover, this new model emphasizes the need for enhanced collaboration among various stakeholders, including the police, judiciary, and prison authorities, in order to successfully administer justice. A well-structured training program should be implemented to equip prosecutors with the necessary skills and knowledge to fulfill their duties effectively. This training program should comprise theoretical and practical sessions, as well as attachments to relevant offices, to provide a comprehensive understanding of the prosecutorial process.

Furthermore, the establishment of a code of coordination among key stakeholders and the provision of indemnification to safeguard prosecutors will contribute to a more transparent and accountable justice system. These measures will not only improve the efficiency and effectiveness of the prosecution service but will also foster a culture of trust and collaboration among different entities within the criminal justice system. In summary, adopting the recommendations outlined in this paper is essential to developing a more effective and just prosecutorial system in Pakistan. By implementing the proposed "Unified Prosecution Service", Pakistan can ensure that justice is served efficiently, fairly, and timely, thereby contributing to a more stable and equitable society. The successful execution of these reforms will significantly enhance the rule of law in the country, ultimately benefiting all citizens and promoting the ideals of social justice enshrined in the Constitution of the Islamic Republic of Pakistan.