

Proactive Role of Public Prosecutors in the Administration of Criminal Justice: A Way Forward for Pakistan

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Abstract: *The public prosecution service is an inevitable feature of the Criminal Justice System (CJS). A key position is assigned to the public prosecutor in the administration of the CJS, who exercises considerable powers and responsibilities, who acts with independence, impartiality, and integrity. In present era, neither the rule of law can be upheld, nor can the human rights be protected without effective role of prosecution services that has become one of the essential pillars of the CJS, an essential component of the Rule of Law, powerful center having a lot of authorities and center of attraction. The world is moving towards a prosecutorial justice system. With the help of comparative and qualitative research methodology, this article aimed to analyze the role and function of the public prosecutor in the CJS of different legal systems that enable us to revamp our system in the right direction for making it efficient expeditious, and cost-effective.*

Key Words: Adversarial, Administration of Criminal Justice, Inquisitorial, Public Prosecution Service, Public Prosecutor

Introduction

Public prosecutors (PPs) are gaining a significant role and importance throughout the world in the delivery of criminal justice. Important responsibilities are being assigned to them, particularly decisions on how to deal with suspects of the crime and to prosecute or not to prosecute. By this way, they are playing a very crucial role in the administration of CJS ([Jorg-Martin & Marianne 2006](#)). Across Europe, the PPs are gaining considerable powers day-by-day, and they are becoming powerful actors of CJS legally and factually. European Sourcebook indicates a gradual move of 'case-ending decision' to the PPs from the courts with the logic that burgeoning workload upon courts causing delay and reducing the workload coming to the courts is an obvious solution for expeditious and inexpensive criminal justice delivery. The importance of the pro-active role and functions of the PPs is dually acknowledged by the international community (UN Guidelines 1990). The prosecutor has a leading role in the criminal proceedings, and decisions 'to prosecute or not is his cofunction and on one of the great responsibilities in the administration of criminal

justice ([Jorg-Martin & Marianne 2006](#)). Although the conviction rate is considered a benchmark for the success of the prosecution, however, its main aim is to uphold justice and public interest (Sec. 13(9), PCPSA 2006). The basic responsibility of the PPs is to just notice and not to just seek and obtain conviction. It is becoming the norm of prosecutorial systems. Fair and impartial effective prosecution is essential for maintaining good law and order's situations in society, developing confine of the people upon the legal system, and enhancing respect of rule of law ([K. Babe 2014](#)). In continental countries (inquisitorial), and eastern countries (Japan, China, and Russia), the office of prosecutor is called procurator, which is derived from 'procuro' a Latin word which means 'I protect, secure, care. (Ms. Ayesha 2015).

Although recently the public prosecution services are established in all the provinces of Pakistan and Islamabad Capital Territory, the role and powers of the prosecutors kept very narrow and insignificant compared with the prosecution services in different countries. The prosecutor can only advise the police at the investigation stage and could not issue binding direction to them

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except few. The Prosecutors receive case files after completion of investigation along with reports prepared u/s 173 of Cr.P.C (finding of the investigation) for scrutiny of investigation and are required to file all such Reports before the court with his opinion/report u/s 9(7) PCPSA 2006. Although the prosecutor has power to raise objections, return the file to police for correction, and write a letter to the head of the investigation in case of defective investigation for initiation of disciplinary proceedings against the delinquent but, he is bound to forward the report to the courts so neither he can withhold the case nor can drop the same on any ground. So real decision 'to or not to prosecute' is not given to the prosecutor in Pakistan. The prosecutor has no power to re-investigate the matter if he finds some discrepancies in the investigations. The PP's involvement at the investigation stage is the superficial amount to non-existence. The prosecutor has the authority to add or delete offences at the time of scrutiny after applying evidential and public interest tests ([K.N. Chandrase 2008](#)). In Pakistan, firstly, the real prosecutorial powers are not granted to the prosecutor, and secondly, the prosecutors are very reluctant to exercise their given powers.

Role of Public Prosecutor

Pursuit of public interest is the most critical and central function of the public prosecutor. The role of a public prosecutor - being a public servant - is to protect the innocent from wrongful convictions, to protect the defendant's rights, and get convict the guilty. The PPs must evaluate the evidence independently; check the credibility of witnesses and their reliability impartially. The PPs are duty-bound to play their role for fair trial as innocent should not be punished and guilty should be punished but not with undue harshness ([Carolyn 2017 p. 1310](#)). The PPs are required to perform their duties and exercise their powers fairly, honestly, and with due diligence to uphold justice for the welfare of the public.

Minister of Justice's Role

In the legal systems of the different countries of the world generally and in the legal landscape of Japan & USA particularly, the prosecutors are expected to be neutral, impartial, independent, 'ministers of justice and not simply government officials and lawyers seeking conviction (American Bar Association Standards 2017). They are expected to exonerate the innocents. However, American prosecutors have punitive politics of prosecution. The American Supreme Court criticized the prosecutor's conduct of seeking conviction while stating that US Attorney

(PPS) is a representative of sovereign and not of a private party; therefore, his duty is to act impartially for fair trial and justice and not to win a case for conviction at any cost ([Berger v. United States, 1935](#)). The sole duty of the prosecutor is to maintain fairness, impartiality, justice and not only to obtain a conviction of the defendants. The district attorneys are representative of law and justice as the courts; therefore, they should be equally fair and impartial as the courts. ([People v. Tufts, Cal. 1914](#)) and [People v. Lee Chuck, Cal. 1889](#)) In Japan, reconciliation, rehabilitation, and restitution are the legitimate jurisprudential aims and purposes while treating offenders and deciding criminal cases, in contrast to American Prosecution, where harshly punitive rationales, deterrence, retribution, and revenge prevail due to political climate and electoral pressures which produce conviction psychology in the prosecutors ([Braithwaite 1989 p. 61](#)). It also "privileges their role as advocate seeking conviction over their role as officer of the court seeking justice" ([David 2002 p. 32](#)). The PPS Acts of different provinces of Pakistan describe the role of PPs as a seeker of the justice and not only seeker of the conviction as they expressly stated that the PPs should perform their duties and exercise their powers impartially, honestly, fairly, with due diligence to uphold justice and in the best interest of the public (Sec. 13(9) PCPSA, 2006, Sec. 11(8) SPA 2009 & Sec. 13(9) IPISA, 2020), however, in practice, conviction is considered the success of the prosecution.

Quasi-Judicial Role

The PPs are playing a quasi-judicial role in the CJS of most of the legal systems of the present world. The PPs are taking particularly crucial decisions, i.e., 'decision to or not to prosecute,' 'decision to add or delete offences,' 'decision to withhold or drop the prosecution,' 'decision to withdraw or continue the prosecution,' 'decision to call or give up the witnesses' and finally suggest the quantum of the punishment to the court, however, the PPs have no such powers in Pakistan except withdrawal of the prosecution and give up the unnecessary witnesses ([Jorg-Martin & Marianne 2006](#)).

Gate-keeping's Role

Police, prosecution, and judiciary are the main agencies responsible for the administration of the CJS in Pakistan. Gate-keeping means controlling access from one point to another. It may also be used as an authority to oversee how work is being done and whether it meets certain standards. The gate-keeping role of prosecution means its authority to have controlling access over criminal cases from investigation stage to trial stage. It

means its authority to oversee criminal cases and to observe that whether they meet certain standards. The PPs play their intermediary role as gatekeepers to protect society from impunity culture ([Report of the Special Rapporteur 2012](#)).

Whether the PPs have a gate-keeping role in the CJS of Pakistan? According to some commentators, the prosecutor has a gate-keeping role, and according to others, he has no gate-keeping role. Those who believe that the prosecutor has a gate-keeping role they argue as the prosecutor plays its role at two steps, first at the time of registration of FIR as he receives copy of every FIR and secondly, on scrutiny of police investigation at the time of forwarding report u/s 173 of Cr.P.C in each case. The opponent of the arguments of gate-keeping role of prosecutor in Pakistan argues that the strength of present system is that police is responsible for investigation, prosecution after scrutinizing police report required to send all the police reports to the court who takes cognizance of the case, decide the same and finally give judicial finding on the matter. Although the prosecutor furnishes his opinion after applying evidential and public interest tests but throughout the process, he has no power to drop, suspend and withhold the prosecution, and the courts are also not giving due consideration to the reports/opinions of the prosecutors.

Powers of Public Prosecutor

Some of the important powers of the public prosecutor in CJS of different countries of the present world and Pakistan are discussed here.

Investigative Power

Investigation is the primary responsibility of police; however, a complementary authority to investigate any case is also given to prosecutors in different countries who either carry it while issuing binding direction to the police or by initiating it on their own. They often conduct interviews with victims and main witnesses. In Japan, a Special Investigation Department is established by the public prosecutors in major cities like; Osaka, Tokyo, and Nagoya ([UNAFEI's Paper](#) [athttps://www.unafei.or.jp/publications/pdf/RS_No53/No53_29RC_Group1.pdf](https://www.unafei.or.jp/publications/pdf/RS_No53/No53_29RC_Group1.pdf) p. 43). "First of all, Japanese police have less control over the power to investigate crimes and to control information than do American police, and Japanese prosecutors have more control than do American prosecutors" ([David 2002 p.52](#)). So, both in America and Japan, the prosecutor has power of investigation. In France, the PPs have all those powers which police has regarding the investigation of crimes; however, the decision to

take the case into the courts for trial is only vested in the hands of PPs. In Sweden, the power of initiation of criminal process and investigation of the crimes is vested equally with police and prosecution; however, in more serious crimes, the PPs take over and lead investigation (Akila 2011 p. 528). Despite the differences in the basic legal principles of different legal systems of the world, the PPs play some crucial role during the investigation of a criminal case in every state. In some countries, they have a limited role during the investigation; however, in some countries, they have overall responsibility to conduct or lead the investigation ([Criminal Justice Handbook p. 53](#)). The role of PPs during the investigation phase differs from jurisdiction to jurisdiction. In most of the inquisitorial or civil law countries, the PPs have a pro-active & controlling role during investigation as they can direct the investigation police the course of action even, they can take the investigation and conduct their own, and they solely decide that what charges should be brought against the accused. In a few adversarial or common law countries, the PPs also have these powers (Asia and Far East Institute p. 195). The PPs involvement during the investigation stage and greater cooperation between prosecutors and police increased due to the advent of new and sophisticated methods of criminals ([Despina 2010 p.6](#)). In Germany, Korea, USA, Japan, China, France, and many other countries, the PPs are legally bound to lead the investigation even they are empowered to carry out investigations by themselves whereas, in Pakistan, India, Kenya, Tanzania, Papua New Guinea, the United Kingdom, and many other countries, the PPs can only advise or guide the police during investigation and cannot do investigation themselves or direct to police for second investigation ([Criminal Justice Handbook p. 53](#)).

In Pakistan, the PPs have no investigative power; however, in many advanced countries, the prosecutor has this power. An effective investigation is a prerequisite of effective prosecution so without effective investigation, effective prosecution cannot be conducted. What does the prosecutor need for effective prosecution? Answer is effective investigation. How effective investigation can be ensured? The answer is that when the prosecutor is involved in the investigation from day first of registration of criminal case. So, empower the prosecutor to investigate or involve them in investigation from day first as they can lead towards effective prosecution resulting in releasing the innocent and getting conviction of the guilty. The prosecutor needs evidence; relevant, admissible, and qualitative for successful prosecution but when the prosecutor lacks such evidence due to his non-

involvement in investigation process or lack of police-prosecution cooperation, the real culprits take benefits of such faulty investigation resulting lawlessness in the society and extra-judicial killing (Asia Report N°196 2010).

Supervision of Investigation

Investigation is the responsibility of the police, which in all countries is independent and has an entirely independent structure. In countries having an inquisitorial system, the prosecution has a controlling role at the investigation stage. In Germany and Netherland, the Prosecutor is legally the 'ruler of the investigation.' In Sweden, for some offences, the prosecutor is declared in-charge of the Investigation. In England (Adversarial), where the police are independent but for investigation purposes, they are solely responsible to the Crown Prosecution ([Jorg-Martin & Marianne 2006 p. 40](#)). In all the legal systems, the PPs directly or indirectly influence the police investigation as they issue general guidelines for the collection of evidence even, they direct the police in using resources during investigation and sometimes specify the means for carrying the investigation. During the cooperation with the police, the PPs also have an influence on the police investigation. At the investigation stage, in England and Netherland, the prosecution has indirect influence, as in British by placing prosecutors in police stations whereas Dutch has it while sharing personnel of both the agencies, while tripartite consultation and policy discussion ([Jorg-Martin & Marianne 2006 p. 52](#)). At the investigation stage, prosecutor's influence is inevitable as he needs collection of admissible, reliable, and relevant evidence for using them during trial before the court ([Jorg-Martin & Marianne 2006 p. 49](#)). The European countries strengthened the PPs, however significant diversity of their powers is still clearly observed in different legal systems which indicates the increasing significant role of the PPs to uphold the justice and to enhance respect for 'rule of law.'

Scrutiny of Investigation

In all over the world, after completion of an investigation, police hand over their files to the PPs for scrutiny in all cases ([Jorg-Martin & Marianne 2006 p. 54](#)). The prosecution is an intermediary stage between police and court where strong prosecutorial decision-making is reflected in all legal systems.

In Pakistan, the main power given to the PPs at the administrative phase of the criminal case is scrutiny of a police investigation after preparation of reports u/s 173 of Cr.P.C. The Prosecution

Services Acts of the provinces and the Islamabad Capital Territory require the prosecutor to scrutinize them (Sec. 9(5) PCPSA 2006). The Code of Conduct for prosecutors of Punjab elaborates the scope of scrutiny, inquiries, directions, and guidelines issued by the prosecutor during an investigation and at the time of scrutiny of Police Reports. The meaning of the scrutiny is to examine the matter carefully while keeping all its pros and cons and to analyze all aspects of the matter with due care and caution. (Report of UNDP & KPK). The responsibility to scrutinize requires the prosecutor to examine the matter minutely and find out lacunae in the investigation as the same can be cured prior to its submission to the court for trial. Upon scrutiny of the police investigation, the PP has two options either returns the same to the police (I.O or SHO) while pointing out defects in the investigation with the direction to rectify the same or to forward it to the court with his opinion/report (Sec. 9(5)(7), PCPSA, 2006, Sec. 4 & 7 of KPK Prosecution Act 2005, Sec 7(b)(i)(ii) of Baluchistan 2003 Sec. 9(4)(a)(b) of Sind 2009 & Sec. 9(5)(a)(b) of Islamabad Prosecution Act 2020). The Superior court of Pakistan interpreted the term scrutinize as "The term 'scrutinize' has a wide connotation and includes the power to add or delete a section (offence)." ([Munir Aftab v. the state & others, 2021](#)) The Higher Courts held that the term 'scrutiny' has wider scope and includes search, examine, probe, and close watch ([Nadeem Alias Deema v. District Prosecutor Sialkot and seven others 2012](#)). At the time of scrutiny of the investigation, the prosecutor should consider certain questions for successful prosecution. It is the absolute authority of public prosecution to conduct independent scrutiny of the case, the police legal branch has no authority to conduct scrutiny, and if conducted, the same has no effect. ([Mazhar Hussain v. Ishtiaq Hussain and another, 2007](#)). It is held that the office of DPP is not post office for collection of police reports and their submission before the court, but it works like a bridge between police and court, is expected to apply judicial mind while performing his duties and submits police reports in a presentable manner to the courts for the achievement of goals of the service ([Nadeem alias Deema v District Public Prosecutor, Sialkot and seven others, 2012](#)). The Lahore High Court observed in ([Walayat v. The State 2008 470](#)) case, the process of scrutiny of police investigation received by the prosecutors after preparation of report u/s 173 Cr.P.C while stating that the process of scrutiny should be restructured and futile cases which have no sufficient evidence should not be submitted in the court for trial.

Some of the commentators, even the courts of laws say that the office of the DPP is not post office, but according to the researcher, without granting powers of withholding and dropping prosecution on justifiable grounds, the office of the prosecutor remains as post office and not have major effect in the improvement of speedy justice.

Add or Delete the Offences

At the time of scrutiny and evaluation of investigation reports u/s 173 Cr.P.C including incriminating material available against the accused, if prima facie case is made out, the prosecutor has authority to recommend charges in accordance with the available evidence ([Aziz Ullah Khan v SHO Police Station City Mianwali and two others 2001](#)). The power to add or delete the offences is not expressly provided in the prosecution Services Acts of different provinces of Pakistan. Initially the higher courts held that the prosecutor has no authority to add or delete the offences and he can only scrutinize the police reports, point out the defects, and can return the same to police for removal of such defects ([Fayyaz Ahmed & others v. the state & others, 2008](#)). Subsequently, the Higher Courts of Pakistan held that the public prosecutor has exclusive domain to add or delete the offences, amend the investigation reports as the office of DPP is not a post office but given worthwhile ambience because its purpose is to check legal formalities for decorating and making police reports in presentable manner and to forward it to the court for conviction of accused, so the prosecutor is required to narrowly scan the legal defects and laps on the account of shabby and shaky investigation ([Rasoolan Bibi v Additional Sessions Judge and other, 2009](#)). In 2017, through Amendment, the word shall at the place of 'may' was substituted in Section 9(7), which requires the prosecutor to submit his assessment or result of scrutiny to the court while recommending charge(s) against all or some of the accused persons and make request to start prosecution or otherwise (Sec. 9(7) PCPSA 2006). The *Sindh* High Court held that the PPs are in a better position to evaluate the available evidence while applying judicial mind and recommend the appropriate charges against any or all accused persons as they have capacity and expertise of legal field ([Abdul Hafeez Junejo v. The State 2010](#)). In Punjab, Charging Standards for Anti-terrorism and rape cases in which guidelines given to the prosecutors in selecting appropriate charge(s) for effective and efficient prosecution; however, these standards could not supersede the Code of Conduct and public interest test and merits of the case.

Withholding or Dropping Prosecution

The 'decision to or not to prosecute' is an important prosecutorial decision. Bringing charges in all cases is far easier than declining prosecution after meaningful scrutiny and review of the investigation. In America, the prosecutor has primary responsibility to decide whether to or not to persuade charges (ABA Standards 2017). In case of insufficient evidence, the prosecutor can use discretionary power not to take the case before the court, so the prosecutor acts as the courts' filter. In Europe, the prosecutor has the power to drop the prosecution where evidence is not strong enough, legal, or technical impediment in seeking conviction, so; the PP's role is to exclude futile cases having no probability of conviction for saving precious time of the court. The prosecutor can drop the prosecution on public interest or policy grounds. Across Europe except for Poland, considerable discretionary powers are given to the PPs to drop or stop the prosecution without bringing the case to the court for legal judgment as the court could not be engaged in a futile exercise ([Jorg-Martin & Marianne 2006 p. 61](#)). In America, the prosecutor is not required to file all criminal cases before the court. Still, he is especially required to select the cases for prosecution in which the public harm is greatest, offense is the most flagrant and the proof is the most certain ([Roert H 1940 p. 19](#)).

Settlement with Accused Persons "Plea-bargaining"

In the USA, the PPs have authority to negotiate with the accused on the plea-bargaining. The plea-bargaining has become a prominent feature of American CJS. Under the process of plea-bargaining, the PPs can negotiate with the accused persons and can make arrangement whereby the criminal pleads guilty for a lesser and lenient sentence and prosecutor dispose of a criminal case. Plea Bargaining is being used fluently in Anglo-American Legal System. About 95% of convictions are obtained through plea-bargaining; therefore, it became a prominent feature of American CJS and dominates its day-to-day operation ([Michael 2008 p. 407](#)). It is also very surprising that not only conviction is being sought by plea bargaining but also about two-thirds cases are being resolved by plea bargaining ([Michael 2008 p. 408](#)). Plea negotiation is a simple model in the USA for disposing of criminal cases in contrasting complicated, expensive, labor-intensive, and anxiety-provoking model of jury trial ([Robert A 2003 p. 84](#)).

Plea-bargaining and negotiation is a simple model for disposing of criminal cases which saves time and expenses of all parties involved in the

case. The guilty pleas are not product of deceit and coercion methods but due to stressfulness and extraordinary complexity of adversarial jury trial, which vastly increase the difficult job of the prosecutor and trial judge and cast fear of conviction, high costs, delay into the heart of the accused and unpracticed defense counsel. Much research indicates that the accused who insists on trial through courts in the presence of sufficient incriminating material and evidence receives stiffer sentences as compared to the accused who pleads guilty. Due to this attitude of the judges, the defense lawyers suggest and sometimes pressure the accused that prefer trial in presence of sufficient incriminating material to plead guilty for getting lesser punishment as Japanese defendants are encouraged to confess and apologize ([Robert A 2003 p. 85](#)). Many countries have adopted this concept in their criminal justice system, such as Germany, Guatemala, Brazil, Argentina, Costa Rica, France, and Italy ([Maximo 2004 p. 28](#)). Plea Bargaining or charge negotiation is also found in many legal systems, especially in the common law system. "Charge negotiation can be an effective tool as it can lessen the burden on a court system by expediting a case directly to the sentencing phase instead of taking the time and resources of a trial. The system works only if both the prosecution and the defense have a solid, trustworthy working relationship with mutual respect for each other's roles and responsibilities." The system of plea-bargaining in the CJS reduces the workload upon the courts; expedites the disposal of criminal cases, and effectively saves the time and expense of all the stakeholders as a case directly goes to the sentencing phase instead of a lengthy trial. The system of plea-bargaining works properly where all the stakeholders of CJS have a trustworthy and solid working relationship, and they mutually respect the role and responsibilities of each other especially the prosecutors and defense lawyers ([Vivienne 2012 p. 26](#)).

The main purpose of introducing plea bargaining in U.S.A legal system was to avoid the time and expense of trial. By this way, a considerable number of cases are disposed of quickly and efficiently. About 90% of cases are being resolved through plea bargaining both in federal as well as in-state systems. The accused/defendant normally prefers to plead guilty rather than go to a full-fledged trial. During this research, it was found that countries having adversarial justice are incorporating the proactive role of the PPs to minimize its adverse effect, especially to expedite the disposal of the criminal case. Under an umbrella of "Plea Bargaining," the prosecutor has given vast power to negotiate with criminals, settle the case and dispose of the

criminal case by awarding lesser and lenient punishment. Almost 90% of criminal cases are disposed of by the PPs in the USA. This concept also reduced the delay, the expense of the case and the burden of the court.

Withdrawing Prosecution

Only the public prosecutor has authority to apply for withdrawal from prosecution with the consent of the court ([Momin Khan v. Special Judge Anti-Terrorism Court-II Quetta 2019](#)). According to the Sec. 494 of Cr.P.C, Sec. 10(3)(e) of Punjab Prosecution Act and the Code of Conduct, the PPs have authority to withdraw the prosecution of anyone or all the accused persons after obtaining approval from the competent authority and with the consent of the court. Sec. 4.4 of the Code of Conduct provides that after applying Full Code Test, the prosecutor can take a decision to with the prosecution if the case lacks sufficient evidence or public interest. In 2017, a letter containing general guidance and procedure for withdrawal of prosecution was issued by the PGP in which the prosecutor was required to apply 'Evidential Test' and shall file a request before the DPP for withdraw the prosecution if there is no probability and likelihood of conviction. If a case comes within his ambit, he shall grant sanction after examination and recommendation of the Committee, and he shall submit the same request to the PGP or the Government if case does not come within his ambit ([Prosecutor General Punjab 2018](#)). In 2018, the PGP issued a letter directing the prosecutors to apply 'Evidential Test' in all cases registered under the Narcotic Substance Act, 1997, the Pakistan Arms Ordinance 1965, and Prohibition (Enforcement of Hadd) Order 1979 and pending before trial court, wherein the version of the complainant is that "the accused flee away from the spot on seeing the police party leaving behind illicit arm/narcotic substance/intoxicant as the case may be, and the recovered arms/narcotic substance/intoxicant is secured through recovery memo prepared in absence of accused," in such case, the prosecutor is required to withdraw from prosecution if there is no probability of conviction after following the procedure ([Prosecutor General Punjab 2018](#)). Under KPK prosecution services Act, prosecution can be withdrawn of offence having seven years or less imprisonment and all offences by the DPP and DPG respectively with the consent of the court. (Sec. 7(c) KPK Prosecution Act 2005). It is held by the LHC that the approval and consent of the court at the time of withdrawal of the prosecution is a check to regulate the prosecutor's power as it could not be used arbitrarily ([Allah Yar v Hussain Ali and another 2009](#)). It is held by the Supreme Court (SC) that upon the withdrawal of

prosecution by the prosecutor, the court shall pass an order of acquittal or discharge and both the orders will be judicial in nature liable to revision if the discretion is exercised by the court either arbitrarily or improperly ([Mir Hassan v. Tariq Saeed and 2 Others 1977](#)). In many other cases, it was held that the order of discharge by the court is an administrative in nature ([Haji Abdul Rehman v Sultan and another 1971](#)). The power to withdraw from prosecution is of government discretion and the court has no power to control it. The SC of Pakistan ruled that the PP is not bound to disclose the grounds of withdrawal of prosecution and same could not be objected by the court and request should not be refused to enter *Nolle Prosequi*. ([Saad Shibli v The State and another 1981](#)). In 2016, in Punjab, only 56 requests were submitted for withdrawal of prosecution u/s 9(6)(a), 55 cases were withdrawn u/s 10(3)(e), and 16 declarations were made u/s 10(3)(f) of PCPSA 2006 in all districts of Punjab. "This small number is both due to prosecutor's reluctance to take these decisions and their inability to reach a decision due to lacunae and shortcoming in the investigation." ([Annual Report 2016](#), Punjab Criminal Prosecution Service, p. 38).

Adjudicatory Power

In the recent past, true adjudicatory functions have started to be exercised by the public prosecutors in most of the advanced countries just to enhance the efficiency of CJS and expedite disposal of criminal cases. Today the prosecutors become the 'judge before the judge' as they can stop, drop, or discontinue the prosecution. The prosecutor can also negotiate with the accused persons on pleading guilty with the commitment to award lesser and lenient punishment. The accused gets a reduction in the punishment while making confession, and PPs get procedural simplifications on offering lesser punishment. ([Jorg-Martin & Marianne 2006 p. 68 23](#)). In certain European countries, i.e., Germany and Netherland, the prosecution has not only the power to drop the prosecution but also can bind the suspected to pay a sort of fine. Sometimes, the prosecution can take independently this kind of decision, and sometimes formal consent of the court is required as a final check ([Jorg-Martin & Marianne 2006 p. 21](#)). In the USA, the discretionary power of the prosecutor for settlement with criminals and disposing of the case is too much compared with judge's power. It is a point of departure from judicial decision-making to prosecutorial decision-making. In this way, the actual control over sentencing is moving to the prosecutors from the judges so, the prosecutors are becoming judges before the judge

([Lindsey 2011 p. 2](#)). The prosecutors multiply the initial charges and freely reduce the charges to fortify their bargaining positions.

Public Prosecutor v. Procurator

In Continental countries and eastern countries (Japan, China, Russia, Korea), the office of the prosecutor is called 'procurator,' a Latin word means 'I care, secure, protect.' The office of public prosecutor in common law (Adversarial) countries has no similar status of procurator in inquisitorial. However some powers of the prosecutor are same as of procurator. There are some differences; the procurator - in continental countries - prohibits, prevents, and punishes; therefore, they have become strict eye of the state upon the stakeholders, and defense lawyers have become defenders. The prime duty of the office of the chief procurator is to legitimate and protect the rights and interest of the citizens as prescribed by the law through his actions and not words. This position is not available to the prosecutor in common law countries ([K.N. Chandrase 2008p. 631](#)).

Nature of Prosecutor's Office

Whether the nature of the office of the prosecutor is judicial, executive, or quasi-judicial? In the system of inquisitorial justice of civil law countries, although the PPs are independent but considered part of the judiciary. They do exercise their powers and functions as part of the judicial hierarchy under the regulated limitations in exercise of their discretions. However, in the system of adversarial justice of common law countries, although the PPs are independent but considered a part of the executive. They enjoy extremely high independence, and their powers and discretions are regulated through internal rules and regulations (United Nations 2015 p. 131). Irrespective of judicial, quasi-judicial or executive nature of the PP's office, his impartiality and fairness is expected in criminal case from initiation to its end ([K.N. Chandrase 2008p. 629](#)). Prosecutorial functions in Japan are quasi-judicial in nature; therefore, the PPs have considerable influence on police, judiciary, and other stakeholders of the CJS. In Japan, prosecutorial functions are part of executive vested in the cabinet. Although the minister of justice has supervisory power upon the prosecution as a member of cabinet but in exercise of their powers and discretions, the PPs are solely responsible to the Diet (Japanese Constitution), and minister of justice cannot control an individual public prosecutor directly (Japanese Public Prosecutors Office Law).

Conclusion

In the different legal systems, the public prosecution services are established to enhance the efficiency of the CJS, to expedite disposal of cases, and to curtail excesses of the adversary nature of the justice system. The PPs are expected to be neutral, impartial, independent, 'ministers of justice and not simply government officials and lawyers seeking conviction. Pursuit of public interest is a most critical and central function of the public prosecutor. The PPs are duty-bound to play their role for fair trial as innocent should not be punished and guilty should be punished but not with undue harshness. In most of the advanced countries, prosecutors are using considerable discretionary powers, and their powers have become inevitable. The most of the discretionary powers of the prosecutors are; power to investigate the crime, power to supervise the investigation and to check procedural compliance by the investigators, power to give bails as interim release, power to or not to prosecute, power to withhold or drop the prosecution, power to withdraw the prosecution from the court, power to enter in settlement with the accused to reduce the charges or sentence, power to prepare plea and sentence agreements,

power to divert the offenders to alternatives to prosecution, and power to supervise victim support program. In this way, the public prosecutors are exercising adjudicatory powers. In recent reforms, the prosecutors are empowered with some adjudicatory functions just to enhance the working and efficiency of the CJS. The discretionary powers of the PPs became inevitable for making the CJS efficient, expeditious, and cost-effective. Although, traditionally, the task and function of the PPs was limited but due to the pressure of workload on the criminal courts, his discretionary powers got extended as trial worthy case can be brought to the court and futile cases can be excluded. So, the world is moving towards prosecutorial justice system. Therefore, strengthening the role of public prosecutor is a practical solution to minimize the inefficiency of the CJS of Pakistan, to expedite the disposal of criminal cases and to curtail the excesses of the adversary nature of CJS. As the innocent should not be convicted similarly innocent should not be prosecuted in cases of insufficient evidence or in which no-probability of conviction. Therefore, the PPs should be encouraged to drop, stop, discontinue or withdraw the prosecution of cases having no probability of conviction.

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