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Globalization of Prosecutorial Justice: An Appraisal

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Abstract

In the present world, public prosecutors (PPs) have become the most powerful actors in the criminal justice system (CJS). They exercise unfettered discretionary powers, particularly 'decision to or not to prosecute,' 'add or delete the charges,' 'withhold or drop the prosecution,' 'withdraw the prosecution,' 'plea-bargaining with accused,' 'tender of pardon to the accomplice' and 'suggest the sentence for the convict.' By this way, the world is moving towards prosecutorial justice. It is a point of departure from judicial decision-making to prosecutorial decision-making. So, the theory of division of labor should be developed for standardizing decision-making power. With the help of comparative and qualitative research methodology, this research aims to examine the public prosecution of different legal systems; adversarial or inquisitorial, among the eastern and western countries. This article discusses comparatively the pro-active role of the PPs in the CJSs of Japan, the USA, China, the U.K, France, and Pakistan. Comparative study of public prosecution of different legal systems can enable us to revamp our system in the right direction for making it efficient, expeditious, and cost-effective.

Key Words: Public Prosecution, Criminal Justice System, Public Prosecutor, Plea-Bargaining, Prosecutorial Justice

Introduction

Throughout the world, public prosecutors (PPs) are exercising their vast discretionary powers, which have enormous impacts on individuals and communities (Bruce A 2019 p. 589). In the present era, prosecutorial discretion has become inevitable in the administration of CJS (K. Babe 2014 p. 286). In case of insufficient evidence, the PPs can use their discretionary power; not to take the case before the court, so the PPs act as the courts' filter. In Europe, the PPs have the power to drop the prosecution

where evidence is not strong enough, legal, or technical impediment in seeking a conviction. In this way, they ensure that the precious time of the court should not be spent on futile cases. The PPs can drop the prosecution on public interest or public policy grounds. Throughout Europe, except for Poland, the PPs are authorized to stop a criminal case on legal or technical grounds after applying prosecutorial mind (Jorg-Martin & Marianne 2006 p. 61). In America, the PPs are not required to file

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all criminal cases before the court, but they are especially required to select the cases for prosecution in which the public harm is greatest, the offense is the most flagrant, the proof is most confident, and conviction can be assured ([Jackson 1940 p. 19](#)). In America, The PPs have tremendous discretionary powers; thereby, liberty, reputation even the life of the citizens is more under their control than any other. They can investigate the citizens themselves or investigate them through professional experts ([Jackson 1940 p. 18](#)). The American prosecutors exercise unfettered discretionary powers at three crucial areas of decision making; i) at the level of charging alleged offenders, ii) at the level of filing charges before the court, and iii) when to discontinue the prosecution. The PPs have a leading role in law enforcement, and their prosecutorial discretion on each of the above aspects is beyond review ([Celesta A 1987 p. 292](#)). In America, two fundamental understandings of charging discretion of prosecutors; not to charge people with crimes they did not commit (fairly universal), and the criminals should not harshly be punished even in some cases should not be prosecuted or punished at all. (Special feature of American prosecution) ([Bruce A 2019 p. 599](#)). The Japanese Prosecutors have greater discretionary powers even than the American Prosecutors. In Japan, no other state agency is powerful than Procuracy ([David T. 2012 p. 3](#)).

Comparative study of public prosecution of different legal systems can enable us to revamp our system in the right direction for making it efficient, expeditious, and cost-effective. It is therefore needed of learning from the other jurisdictions of the world as their good features can be incorporated in our own system for coping the inefficiency and inadequacy of the CJS, for expeditious disposal of criminal cases, for reducing the heavy case flow and pendency of the courts and for making it efficient and cost-effective.

Prosecution & Procuracy in Different Advanced Countries

In the history of criminal law, public prosecution is a new feature that first appeared after the French revolution and gradually took up a central place in the criminal legal systems of the world. All European

countries have prosecuting authority created either through statutory law or Constitution. The PPs are either seen as part of the judiciary or through the ministry of justice; they are frequently connected with the executive. In most European countries, the heads of the prosecution authority through hierarchy are authorized to direct the PPs generally or specifically in accordance with the general criminal policy of the country. At the same time, the PPs are required to ensure fairness in the proceedings of the criminal cases ([Strasbourg Council of Europe. \(1997\)](#)). Throughout the world, the prosecution is an intermediary between the police and courts. After the commission of any offense, it is reported to the police that investigate the case. After investigation, the case is produced before the PPs who take the decision 'whether or not to prosecute.' This discretionary decision is one of the main tasks of the PPs who belong to the legal fraternity known as a public prosecutor or investigating magistrate/judge ([Jorg-Martin & Marianne 2006 p. 4](#)). In the present world, the public prosecution services are gaining increasing importance. They are being assigned more responsibility regarding how to deal with criminals and suspects and when to charge or decline to charge so, a vital role is being played by them in the criminal justice's dispensation ([Jorg-Martin & Marianne 2006 p. 6](#)).

Japan Procuracy

In Japan, the Procuracy (prosecution) is created through the Constitution and given immense discretionary powers. It is becoming a proposition that in Japan, the prosecutors have more control over the liberty, life, and reputation of the Japanese than any other organization ([David T. 2012 p. vii](#)). The way prosecutors perform their job determines the Japanese way of justice. Japan is a paradise for prosecutors, heaven for police, and hell for suspects and criminal offenders ([David T. 2012 p. 21](#)). A dominant role is assigned to the Japanese PPs in the CJS. The prosecutors possess very vast statutory and constitutional discretionary powers; therefore, the Procuracy is quite a powerful institution in Japan ([Mark D 1992 p. 686](#)). The most important characteristic in the Japanese prosecution system is the monopoly power of the procurators to

prosecute or suspend prosecution ([Inagawa 1995 p. 15](#)). Japanese law gives prosecutors monopoly powers over the charging decision; withholding prosecution evidence from the defendant; withholding charges permits a long time to investigate and make charging decisions, authorizes them to compose confession of the accused in their own words in the investigation dossiers, authorizes them to decide 'to or not to prosecute,' and allows them the right of appeal against unfavorable decisions of the courts and against acquittal orders. The 'decision to or not to prosecute the defendants in the courts is the prerogative of the prosecutor's ([David T. 2012 p. 35](#)). The public prosecutors can investigate the offenses when referred by the police or his own (Code of Criminal Procedure of Japan (The Code) Articles 189 & 191). Two key consequences of a direct investigation by prosecutor emerge; prior to making charge decision, they possess a deeper knowledge of the evidence, evidentiary problems, mitigating circumstances, if any, and they also get information of life environment and attitude of the suspect, which help in the rehabilitation of criminals ([David T. 2012 p. 53](#)). The prosecutors are empowered to compose confession -king of the evidence in Japan – in their own words and produce them in the shape of a dossier at trial, even a part or whole confession recanted by the confessor ([Ishimatsu 1989 p. 143](#)). In Japan Charge is framed by the public prosecutor (The Code, Article 250). The decision to charge is concentrated in one actor – the prosecutor – who has full authority to indict or not indict (the most crucial decision made by the prosecutors) ([Samuel 1993 p. 87](#)). Japanese prosecutors have discretionary power to suspend prosecution for reconciliation, rehabilitation, and restitution of offenders even in the presence of sufficient evidence to win the conviction from the court ([Inagawa 1995 p. 14](#)). The prosecutor is empowered by law to file an appeal against unfavorable decisions of the courts twice; to the high court and Supreme Court ([David T. 2012 p. 54](#)). The status of the public prosecutor and the judge is equal as both the creation of the Constitution, both receive training from the same academy, and receive an equal salary according to pay scale. They are considered impartial

representatives of the public interest, and their impartiality and independence is protected by law. Aside from disciplinary proceedings, they cannot be suspended, dismissed from the office except few exceptions (Japanese Public Prosecutor Office Law Art. 25). The conviction rate in Japan is nearly 100 percent which is the highest conviction rate in the world, and which is achieved due to synergy and collaborative working of police, prosecution, and courts ([Hiroshi 2013 p. 246](#)). The performance and activities of the prosecutors strongly shaped Criminal justice in Japan. The PPs exercise such great discretionary powers; therefore, it is called 'prosecutor justice.'

Prosecution in the USA

In the USA, the PPs are powerful actors in the administration of CJS, who are zealous advocates, officers of the court, administrators of justice, whose prime responsibility is to seek justice and not an only conviction. They possess unfettered discretion powers, especially regarding 'to or not to charge' and 'to or not to prosecute' ([K. Babe 2014 p. 286](#)). Their primary duty is to ensure fair proceedings in criminal cases, seek justice after fulfilling all legal requirements, and not only to obtain a conviction at any cost. They must act with integrity and with balanced judgment for public interest and for public safety both by exercising his discretion 'not to pursue criminal charges in certain circumstances and 'to pursue appropriate criminal charges with appropriate severity.' They must struggle firstly for the protection of the innocent and secondly for getting a conviction of the guilty. On the one hand, they must think about the interest of the victims, and on the other hand, they must protect the rights of all the parties, including suspects, defendants, and witnesses (ABA Standards 2017 Standard 3-1(b). They have powers; to investigate the offenses themselves or participate in the investigation (ABA Standards 2017 Standard 3-1.1). They are under a responsibility to exercise their discretionary powers, and they must decide to bring the charges against the defendants in court or not. The American Bar Association for prosecutors prohibits to delegate charging decisions to the law enforcement agencies and makes it the primary responsibility of the prosecutor. The PPs must take a decision regarding 'to or not to initiate criminal

prosecution against the suspect's (ABA Standards 2017 Standard 3-3.4(a)). The prosecutor is a problem-solver responsible for considering broader goals of the CJS and not merely a case-processor. When injustices and inadequacies come to the attention of the prosecutor, he is responsible for seeking reform and improving the administration of CJS (ABA Standards 2017 Standard 3-1.2). The prosecutor is for public service; therefore, his client is public and not a particular government agency, victim, witness, or law enforcement officer (ABA Standards 2017 Standard 3-1.2). The state should ensure the availability of funds to the prosecutors who can employ the experts and professionals for getting professional investigation or other necessary services, i.e., forensic and other expert's services to ensure justice (ABA Standards 2017 Standard 3-2.3.).

In the USA, the PPs are given much discretionary power for settlement with the criminals through proceedings of plea-bargaining. Under CJS of USA, the prosecutor has authority to reduce the charges while tendering plea bargaining and on acceptance of plea-bargaining by the offenders, to suggest (award) them lesser and lighter sentence which coerce the offenders to accept a pretrial settlement and receive lesser punishment rather than to go to trial and receive bigger and harsh sentence by the court ([Brown D 2005 p. 1064](#)). In this way, the PPs use decision-making power which is the prerogative of the court. The nutshell of USA's plea-bargaining study is that; the majority of cases, about 90 to 95 percent, are being disposed off by way of plea-bargaining and by using discretionary power of the prosecutor to enter in settlement with the offenders; use of prosecutorial discretion in plea-bargaining is a cause of to reduce punishments and award lesser and lighter sentences to the offenders; those criminals who opt trial and not accept plea-bargaining they receive bigger and harsh punishment which is also a cause of acceptance of plea bargaining by the offenders; Previous record of offenders and seriousness of the offense committed are very important factors while deterring plea bargaining and reducing charge, and many studies show that whites are more to receive sentence by way of plea bargaining than blacks people in the USA (Maximo

2004 p.28).

Comparative Analysis of Japanese and American Prosecutor

In Japan and USA, there is a similar expectation from police and prosecutors; the expectation of prosecutors is that sufficient evidence to convict the accused be provided by the police with sufficient conformity to law and due process as the state's case is kept uncontaminated. However, the expectation of police is that the accused be charged by the prosecutors. There are three differences between the US and Japanese Prosecutors; i) much more active participation in an investigation by Japanese prosecutors than do their counterparts of USA Prosecutor, ii) frequently direction by the Japanese prosecutors to police for investigation than do prosecutors in USA and iii) more frequent interaction between police and prosecutor in Japan than in American Prosecutor and police during pre-charge investigation. Two significant patterns of CJS of Japan came out through these differences. First, the PPs are more proactive in their dealings with the investigating officers and not passively reactive, and second, they are more independent of police than their counterparts in the USA ([David T. 2012 p. 42](#)).

People's Procuratorate of China

Criminal justice of China is a multi-organizational sector containing public security branches (police), procuratorate (prosecution), judiciary, and correctional. For accuracy and effective enforcement of the law, they have separate responsibilities; as the police is responsible to investigate, detain and prepare examination of a criminal case, the prosecution is responsible for approving arrest, conducting prosecutorial work (including investigation in some cases), and bring criminal charges in the court for initiation of a criminal trial, the judges are responsible to adjudicate the criminal cases resulting in acquittal or conviction and the correctional is responsible for executing sentences (Art. 3 of the CPL of China). The stakeholders of CJS are constitutionally responsible for synergy working relationships by coordinating with each other, by ensuring correct and effective enforcement of the law, and by

creating checks and balances upon each other.(Art. 135 of the Constitution of China) Both courts and prosecution are free from executive interference, and they exercise their powers according to the law (Art. 126 and 131 of the Constitution of China). Several pieces of legislation regulating the criminal justice sector are available including Criminal Procedure legislation (CPL) containing comprehensive rules for arrest, investigation, prosecution, adjudication to the sentencing. The Procuratorates (prosecution) is a national-wide hierarchical system consisting of Supreme People's Procuratorate, local People's Procuratorate, and Special People's Procuratorates parallel to the courts. Local procuratorates consists of three levels: provinces, autonomous regions or counties, and cities or municipal districts (Art.2, Organic Law of the Prosecution in China). The prosecutors are accountable to the People's Congress and Standing Committees at corresponding levels as they are appointed and can be removed by them. The procuratorate is not an agency under executive control. Indeed it is a separate constitutional state organ having equal status and footage to the courts. According to Article 129 of the Chinese Constitution, public prosecution is a state organ created through the Constitution for legal supervision. In China, the public prosecution is considered as a Sifa organ of the state because it is an independent 'law supervision organ' of the state, and it is legally responsible for supervising the working of the courts, especially their adjudicatory power ([Chuan Feng 2016 p. 48](#)). In China, very vast and important function in criminal justice is assigned to the PPS. There are several key responsibilities of the PPs such as; (i) procuratorial authority over heinous nature crimes severely impeding the unified enforcement of state laws, policies, administrative orders, decrees, (ii) directly conduct an investigation of criminal cases, (iii) To examine cases received from police and to decide within one month whether the case is fit for prosecution or not while taking into account several factors including to examine whether sufficient incriminating material is available, whether the facts of the case are clear and whether investigation conducted in accordance with the law, (iv) to initiate public prosecution in the court, to supervise

the judicial activities in all criminal proceedings to ensure compliance with the law and (v) to supervise the execution of orders and judgments, activities of prison to ensure that such activities and execution are in accordance with law(Art.5 & 13, of the Public Prosecution in China). Further, he has the responsibility to approve arrests of suspects presented by police or decline the same within seven days of a written request, to investigate directly certain cases, i.e., bribery, embezzlement, violations of a citizen's personal rights, and dereliction of duty by the state officials. If, in the opinion of the PPs that further investigation is required, he can remand the case to the police for this purpose or can conduct himself (Art. 10, 11, 12, of Public Prosecution in China). The PPs are also responsible for protecting the rights of citizens and register complaints against state functionaries who infringed citizens' rights (Art. 6 of Public Prosecution in China).The PPs are responsible for discovering the truth while paying high regard to actual facts and law while laying stress on evidence than to compel for confession or give credence to oral statements and serve people whole heartedly and be faithful to the socialist cause (Art. 7 and 8 of Public Prosecution in China). The PPs have the power of not prosecuting a crime or exempting the criminal suspects from prosecution (Art. 13 of Public Prosecution in China). The decision not to prosecute or exempt from prosecution involves judging a suspect as not guilty ([Chuan Feng 2016 p. 175](#)). Recently, the practice of foregoing prosecution or conditional non-prosecution started by the office of PPs through demanding to fulfill certain requirements such as giving some sort of financial reparation, apologizing to the victim, not harassing the victim or his family. This practice not only reduced the burdens of the office of the PPs and courts but also made the criminal procedure more lenient and merciful to the Chinese. In this way, the PPs play an especially important gate-keeping role. Even they can exclude illegal evidence prior to or during the trial. So, China's legal system is in contrast with the legal systems of many countries where only courts are the sole body responsible for excluding illegal evidence ([Chuan Feng 2016 p. 176](#)).

French Procuracy

In France, the PPs hold vast and broad discretionary powers (Article 40(1) of the Code of Criminal Procedure (CCP) of France). The PPs can initiate public prosecution before the court for the imposition of penalties and sentences (Article 1, CCP, France). The PPs are the only authority to decide whether the case is fit to be sent to the courts for adjudication. The PPs have all those powers that the judicial police officer of specific rank in connection with the investigation and inquiries of a criminal case (Akila & Thomas 2011 p. 528). The judicial police carried on their operations under the command and directions of the District Public Prosecutor (DPP) (Article 12 CCP France). It is the prerogative of the PPs to decide whether to send the case to the courts or to any alternative or to close it without taking further action (Article 40-1 CCP France). The PPs are under a duty to inform the victim and complainant about his decision. However, the victim has the right to bring private prosecution for enforcement of his right. The DPP has the authority to suspend the public prosecution while imposing a fine where the main penalty is fine or imprisonment up to 5 years (Article 41-1 CCP France). The law-enforcement agencies are bound to assist the DPP in the performance of his duties (Article 42 CCP France). The investigating police are responsible for informing the DPP about the commission of any offense upon receiving information. They are also responsible for sending whole record of their cases, including original, certified copy of any document or instrument related to the offence along with the seized articles to the office of the DPP upon concluding the operations for further action (Article 19 CCP France). The PPs formally request to enforce the laws while exercising the public action, they appear before trial courts, take part in the hearing, every judicial decision is read in their presence, and they ensure the enforcement of the judicial decisions (Article, 31, 32 and 33, CCP, France). The office of the PPs is so powerful and mostly uses the discretionary authorities. The prosecutor is empowered with such discretions, which seem to be adjudicatory in nature.

Crown Prosecution Service (CPS) of England

In 1985, the independent CPS was established in the UK. The CPS plays a key and significant role in the administration of CJS. The Crown Prosecutors take the most crucial decision 'to or not to prosecute' (Section 3, the Code of Conduct for Crown Prosecutors), determine the appropriate charges in more complex and more serious offenses, to withhold or drop the prosecution, to prepare the cases and present them before the courts, to aid the victims of offenses, produce prosecution witness and finally conduct the prosecution in the court (<https://www.cps.gov.uk/about-cps>). The Crown prosecutors are bound to observe the Code for Crown Prosecutors at the time of taking the decision to or not to prosecute while keeping in view the realistic prospect of conviction in the light of available evidence and public interest known as the Full Code Test. The main responsibility of the PPs is to ensure that the right person should be prosecuted for the right offense, and offenders should be brought to justice whenever and wherever possible. The PPs take their decisions impartially, fairly, and with integrity to ensure justice for all, victims, witnesses, defendants, suspects, and the public at large. The PPs are responsible for ensuring the proper applicability of laws, proper compliance of the procedure, proper applicability of offenses, and proper production of relevant evidence before the court, and proper disclosure of evidence before the defendants (Section 2.5, the Code for Crown Prosecutors). The crown prosecution has power to stop, drop and discontinue the prosecution (Section 3.4, the Code for Crown Prosecutors). The Crown prosecutors are required to be fair, objective, and independent. The prosecutor is required to work closely with the stakeholders of criminal justice; police, judiciary, and other partners (Section 2.7, the Code for Crown Prosecution). The prosecutor is required to advise the line of inquiries during the investigation of offenses by the police to guide them in the right direction. Although the police and prosecutor work closely the decision 'to or not to prosecute' is the main responsibility of the Crown Prosecution (Section 3.4, the Code for Crown Prosecution).

However, under the Victims' Right to Review Scheme, the victims can request to review the prosecutorial decision 'not to prosecute or to stop the prosecution' (Section 10.3, the Code for Crown Prosecution). In England, the decisions to prosecute and initiate criminal proceedings in all but minor cases are in the hand of Crown Prosecution. The CPS advises and scrutinizes the case after receiving a case from the police while applying for the evidential test and public interest test. The Crown prosecutor is given authority to decide whether the case is fit for prosecution or not, and he can decide not to prosecute. Once the Crown Prosecutor decides not to prosecute, then prosecution of that case stops and is discontinued. The decision 'not to prosecute' is taken based on clear and visible legal guidance and not arbitrary to that (<https://www.cps.gov.uk>). In the UK, the police and prosecutors have unambiguous separate roles. Due to this fact, a separate independent prosecution service with the name of CPS was established. The investigation concentrates on the discovery of facts, and prosecution concentrates on assessing weaknesses and strengths of the case for taking 'decision to or not to prosecute' ([Royal Commission 1993 p.69](#)). Prior to 1985, the prosecution was part of the police. After division between the investigation and prosecution, the PPs have faced practical problems; therefore, the researchers were critical regarding whether the PPs have the power to exert a form of control at the investigation stage ([Lidstone 1987 p. 296](#)). Though the concept of Plea Bargaining is not existed in Crown Prosecution, the Crown Prosecutor is given power and authority to decide whether the case is fit for prosecution and can decide not to prosecute upon which the case will be stopped and discontinued. Much research shows that the Crown prosecutor has the power to drop prosecution of cases where he feels that case is not fit for trial due to insufficient evidence. The Crown prosecutor is also given authority to withdraw the prosecution.

Public Prosecution in Pakistan

In foreign jurisdictions, the PPs play a pivotal and significant role in the administration of CJS and strive hard to meet the highest professional standards to

uphold the rule of law, but in Pakistan, the PPs are not empowered enough to meet the standard to uphold justice. Although the Prosecution Services in Pakistan acknowledged that the prosecutor should place his key emphasis on independence, efficient and effective prosecution of criminal cases to uphold justice (<https://pg.punjab.gov.pk>) But the law required to forward every police report to the court and did not provide - to the prosecutor - the right of withholding, draping or suspending the prosecution on the basis of public interest even the real decision 'to or not to prosecute' is not in the hand of the prosecutor. It is claimed that previously, the prosecutor seen as the minor partner in CJS, the handmaiden to other organizations such as the police, and presently he is playing a pivotal role as being responsible for taking a decision about charging and prosecuting the criminals but still the decision 'to or not to prosecute' is not being exercised by the prosecutor, indeed still police and courts are exercising this power as the police prepare report u/s 173 Cr. PC and courts take cognizance (in-fact decision to or not to prosecute), but the prosecutor is required to forward every such report. It is claimed that the PPs play the role of minister of justice and gate-keeping in the administration of CJS of Pakistan. Let us examine these roles of the prosecutor in Pakistan.

The 'decision to or not to prosecute' is the heart of prosecutorial decisions and is the main function, responsibility, and duty of the PPS. The 'decision to or not to prosecute' is an extremely critical, crucial, and major step of the criminal case which affects the accused, state, the public at large, including victim and witness therefore required to be taken with the utmost care and caution, justly, fairly, honestly, neutrally, and impartially after applying Full Code Test and the Threshold Test. In Pakistan, so-called 'decision to or not to prosecute' granted to the prosecutors is indeed the responsibility of the prosecutor to furnish his opinion only to the court in the name of the decision. The prosecutor is required to forward all police reports either on receiving them directly if in order or after pointing out defects for correction of curable defects (Section 9(5), the Punjab Prosecution Service Act, 2006). Although the Code of conduct of prosecutors provides rules regarding

'decision to or not to prosecute' but indeed, that is not rules of decision but rules of opinion (Sections 3 to 6 of the Code of Conduct for Prosecutors of Punjab). What is the difference between decision and opinion? The opinion means "a statement of advice by an expert on a professional matter" (<https://languages.oup.com/google-dictionary-en/>). Whereas the decision means "the act or process of deciding; determination, as of a question or doubt, by making a judgment" (<https://www.dictionary.com/browse/decision>).

The Code of Conduct considers starting of prosecution equal to the decision to prosecute (Section 4(1), The Code of Conduct for Prosecutors of Punjab). However, the researcher is in the opinion that the real 'decision to or not to prosecute' is being exercised by the Area Magistrate at the time of taking cognizance of a criminal case ([Fazal Karim 2020 p. 338](#)). "The term 'cognizance' is a term of art implying application of judicial mind to the facts of a case in order to determine whether the facts disclosed constitute an offense" (*Raja Khushbakht Ur Rehman* case 1985 SCMR 1314), so the Magistrate checks at the time of cognizance whether the materials placed before him, make out a prima facie case triable either by the Magisterial courts or Session's courts. In fact, the area magistrate (judicial officer) is exercising many administrative powers which were given to him in 2001 under the devolution plan of General Musharraf at the time of abolishment of District Magistrate and Executive Magistrate's office, but these are executive in nature; therefore, these should be transferred to the prosecution department. The prosecutor plays his role at administrative and judicial phases of the criminal case; however, his role at the administrative phase of a criminal case is still not explored fully in Pakistan, and still, the judiciary is playing more actively at administrative phase by its supervisory role mostly administrative in nature which is exercised by the prosecutor in different countries. The higher courts in Pakistan held that the DPP could not direct the IO to place the name of the accused in Column No. 3 of Report u/s 173 Cr. PC who are found innocent during the investigation and placed in column No.2 of the Report while stating that "such powers did not fall in the ambit of duties of the DPP." The court

has final authority to charge the accused persons for relevant offenses based on the available evidence (*Muhammad Ashraf alias Bhuller v The State* 2008 YLR 1462). So, where is the power of the prosecutor to prosecute the accused? Same as the prosecutor furnishes his opinion that the case is not fit for trial, but courts normally initiate the judicial/prosecution proceedings without considering the opinion of the prosecutor. So, where is the power of the prosecutor not to prosecute? The researcher is of the opinion that the courts are not accepting the power of prosecutors regarding the 'decision to or not to prosecute' by their conduct, and the same could not be achieved without giving the power to stop or drop the prosecution. The prosecutorial 'decision to or not to prosecute' is discretionary executive power. LHC held that 'it is well established that if the exercise of power to prosecute involves a violation of the Constitution or a statute, the courts will intervene (PLD 2020 LHR 226).

Comparative Analysis

It is clear from the above discussion that the prosecution service is one of the main and powerful pillars of CJS. Now a day, most of the jurisdictions in the world have powerful independent prosecution services in their CJS. As concerned as countries having adversarial justice as the USA, the prosecutor is empowered to negotiate with criminals based on available evidence and offer them settlement based on pleading guilty with the object to reduce the burden of the courts and expedite the disposal of a criminal case. Normally the offenders accept lenient punishment by way of plea bargaining. In this way, 90 to 95 percent of cases were disposed off at the stage of the investigation. By way of plea bargaining between the prosecutor and the criminals during investigation or trial, the burden of the courts reduced, and it has been seen, the accused that went to court for full trial received major punishment than offered by the prosecutor. Whereas in the UK, the prosecutor is given the power to declare a case not fit for prosecution based on available evidence and not send the case to the court for trial. The second main power given to Crown Prosecutor is the withdrawal of

prosecution from the court where he feels that there is no probability of conviction in the case. By way of dropping prosecution and withdrawal of prosecution, the crown prosecution reduces the burden of the court and focuses on cases where suspects can be punished at the conclusion of the trial. Many countries introduced plea-bargaining in their CJS either in minor offenses or both in minor and major offenses, as discussed above. "The courts in England and America are reluctant to allow judicial review of this executive discretion." ([Fazal Karim2020 p. 257](#)) In England and America, "it has never been ruled that suspected criminal offenses must automatically be the subject of prosecution and trial in the court," but the decision to or not to prosecute is largely uncontrolled by the courts ([Fazal Karim2020 p. 257](#)). In England and America, there are extremely limited ways to control prosecutorial discretion. The Rule of selective prosecution is upheld in many judgments in England and America. When the PPs have probable cause to believe that the offense is committed by the accused, they have the right to decide about the charges, whether to bring the charges in the court or not, whether to initiate the prosecution or not, and whether to send the case to the court or drop the same without sending it to the court ([Fazal Karim2020 p. 256](#)).

Prosecutor's Immense Power and Possibility of Its Abuse

The famous American Federal Prosecutor Robert H. Jackson acknowledged the immense power of the American Prosecutor and possibility of immense harm by abusing it when he stated that in American society, the PPs are the most beneficent forces of law if they do their best, however, they are one of the worst if they do on malice or other ill and illegal motives (Roert H 1940 p.18). In response to the question 'the immense discretion of prosecutor can easily subject to danger and abuse,' Jackson stated that perhaps the best protection against the abuse of prosecutorial power is sensitiveness to fair play. The PPs, who seek truth, temper zeal with kindness, approach their task with humanity, serve the law and humans and not their factional purposes, they are the real protectors of the safety & liberty of the citizens and servants of the state (Roert

H 1940 p.20). Extensive responsibilities, power, and influence of the prosecutors increase the apprehension of abuse of power, so how can this abuse and misuse be prevented? The answer is not to thwart the discretionary authority of the prosecutor but to ensure his public accountability and visibility or to create a mechanism of check and balance as in America and Japan, respectively.

In Japan Prosecution Review Commission (PRC) was established in 1948, which consists of eleven randomly chosen citizens who examine the appropriateness of non-indictment decisions of the prosecutors. The PRC may issue one of the three recommendations; (i) non-indictment is improper, (ii) non-indictment is proper, and (iii) indictment is proper (Art. 27, PRC Law). For checking the procurator decisions to prevent the greatest danger of abuse of procurator's power for indictment or non-indictment, the PRC plays its active role, especially in non-indictment decisions as almost all indictment decisions lead to conviction ([Hiroshi 2013 p. 523](#)). PRC law was revised in 2004, according to which, PRC has authority to demand an explanation from the prosecutor for the decisions of non-prosecution and can make indictment mandatory where prosecution was recommended by the commission twice. If the commission decides to prosecute and the prosecutor not chooses to prosecute or fail to indict within three months, the commission can demand an explanation, thereafter, the case will be re-evaluated, and a legally binding decisions can be made by the commission for the indictment of the accused (Art. 41, PRC Act 2004). So, in case of non-indictment of defendant by the prosecutor, the victim or a suitable proxy can invoke the authority of PRC for hearing about the non-indictment decision of the prosecutor. It is a unique and hybrid mechanism adapted from the US grand jury system in the context of the Japanese legal system ([Mark D 1992 p. 685](#)). The unique features of revised PRC – its ability to issue legally binding prosecutorial decisions and its ability to extend the investigative jurisdiction in determining misfeasance, malfeasance, or nonfeasance of public officers – it has become the single-most-important institution of civic oversight against the government abuse of power ([Hiroshi 2013 p. 558](#)).

Conclusion

We can conclude that the PPs are playing a proactive role in the CJS in both adversarial and inquisitorial justice systems, which are leading towards the globalization of prosecutorial justice. In this way, the world is moving towards a prosecutorial justice system. However, in Pakistan, the PPs have narrow and small powers as they can submit only their result of scrutiny to the courts after applying 'Full Code Test' while recommending specific charge(s) but have no power of stopping or dropping the prosecution. The 'decision to or not to prosecute' is a discretionary executive power. The real 'decision to or not to prosecute' is not available to the PPs in Pakistan as it is contingent on the power of stoppage and droppage. The 'decision to or not to prosecute' is still being exercised by the Area Magistrate (previously executive Magistrate & presently Judicial Magistrate after the abolishment of executive magistracy) at the time of taking cognizance of criminal case u/s 190 of Cr. PC and still not transferred to the PPs even after the establishment of independent provincial prosecution services. The abolishment of the offices of District Magistrate and Executive magistrates and establishment of independent provincial prosecution services has left drastic effects on the administration of CJS but still the provisions of Cr.

PC is not amended accordingly, which is causing an imbalance between the executive and judicial functions during criminal cases and non-exercise the real prosecutorial decisions. There is a dire need to amend or change the whole Cr. PC while placing all three main actors and players; Investigation Police, public prosecutor, and judge along-with their function; investigation, prosecution, and trial equally and with balance and while defining their specific role and powers in the administration of CJS, to ensure that everyone works properly, efficiently, and with due care in his sphere while observing better cooperation and coordination in the delivery of justice for all including the victim, accused and society without favoring to anyone. The structure of the administrative and judicial phases of a criminal case should be clearly designed. The PPs should be empowered to stop and drop the cases of insufficient evidence having no probability of conviction and should be required to forward only trial-worthy cases having the probability of conviction. The PPs should also be empowered to bring settlement (plea-bargaining) with the accused, out of the court, during the administrative phase of the case on the parameters of American prosecution for reducing the burden of the court and bringing the only real trial worthy case to the courts.

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