

POLICY BRIEF | POLICY RECOMMENDATIONS FOR  
**REFORMS IN PROSECUTION  
SERVICES OF PAKISTAN**

JANUARY 2016



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### **Abbreviations and Acronyms**

Cr. P. C.	Code of Criminal Procedures
PFSA	Punjab Forensic Science Agency
FIR	First Information Report
RPO	Resident Police Officer
IO	Investigation Officer
APP	Assistant Public Prosecutor

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## **Preface**

PILDAT has initiated a national and provincial level legislative and policy advocacy effort to bring reforms in Police, Prosecution and Free Legal Aid system in Pakistan. This brief principally is the compilation of proposed reforms originating from PILDAT Consultative Sessions held on Federal and Provincial level on Reforming Prosecution Services in Pakistan and ways and means to translate these reforms into reality. These sessions were held with the relevant stakeholders who proposed policy alternatives for the consideration of the legislatures.

### **Acknowledgements**

The Policy Brief on **Prosecution Services in Punjab and Sindh** has been commissioned by PILDAT and is co-authored by **Ms. Ayesha Hamid**, Senior Advocate, Lahore High Court and **Mr. Azam Nazeer Tarar**, Vice Chairman, Pakistan Bar Council, both of whom constitute the Committee of Experts facilitated by PILDAT to work on Prosecution Reforms

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### **Disclaimer**

The reform proposals contained in this brief do not necessarily represent the views of the Development Alternates Inc. (DAI).

Islamabad  
January 2016



## Executive Summary

The Policy Brief provides a set of recommendations to bring about reforms in the Prosecution service of Pakistan. This would require relevant stakeholders to lead and manage to achieve, at the very least, the following key objectives:

1. Amendments in Section 154 Cr. P. C;
2. Role of Prosecution, Section 173, Cr. P. C;
3. Police Rules 1934 to account for modern standards of presenting evidence;
4. Section 174 and Rule 25.36 of Police Rules 1934 to authorise Punjab Forensic Science Agency (PFSA) to carry out post mortems;
5. Punjab Forensic Science Agency Act 2007 to be given access to NADRA database; and
6. Improvement in Code of Conducts for Prosecutors.

Systemic reforms recommended include:

- i. Online FIRs
- ii. Reporting of poor investigation by District Public Prosecutors to Regional Police Officer;
- iii. Recruitment criteria of Prosecutors with a one-year probationary period;
- iv. Binding guidelines to be developed by Prosecutor Generals for prosecutors;
- v. Hiring of prosecutors through the Public Service Commission, as well as de-politicisation of the Prosecution Service.

In addition, suggestions for improving infrastructure such as better training of police investigators and prosecutors; allocation of separate training budgets; increasing the budget for more recruitments; mandatory training courses for Public Prosecutors at PFSA; and availability of forensic equipment in hospitals are proposed.

The reforms suggested cover the Prosecution Service(s) as well as police work and investigations that have a direct impact on the performance of prosecutors.





## **Analysis of Challenges and Suggested Reforms**

### **Proposed Amendments in Criminal Framework**

#### **1. Section 154, Cr. P. C.**

Section 154 should be amended in such terms that registration of FIR (though mandatory); subsequent actions by the police must be on the basis of solid reasons/ evidence to be brought on the record by the police officer(s) concerned. This would lead to more effective prosecution of cases.

#### **2. Role of Prosecution, Section 173, Cr. P. C**

The present system is deprecated for the reason that reports under Section 173 Cr. P. C are often delayed and this is used as grounds for acquittal by the defence.

Section 173 Cr. P. C. may be suitably amended so as to enlarge the time for filing a report. Nature of crimes has changed. Investigations are often complicated and the majority of them require some forensic report which is difficult to obtain within 14 days. It is suggested that a more realistic time line of four weeks be afforded for filing of report under Section 173 Cr. P.C. The present system is deprecated for the reason that presently reports under Section 173 Cr. P.C are often delayed and this is used as grounds for acquittal by the defense. Further, the prosecution department should be actively involved by the concerned police officer(s) before submission of challan and every report under section 173 Cr. P. C. should be actively and meaningfully scrutinised by the prosecution department/concerned prosecutor in order to amend any defects/lacunae therein.

The Punjab Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2006 and the Sindh Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2009 should be amended alongwith an appropriate amendment in Section 173 Cr. P. C. so that the Prosecution Services are empowered to reject the report under section 173 Cr. P. C. and demand that the police amend and/or supplement said report. It shall be binding on the police to comply with the demand of the prosecution service. In the event

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***Systemic Reforms must include: computerised FIRs; reporting of poor investigation by District Public Prosecutors to Regional Police Officer; recruitment criteria of Prosecutors with a one-year probationary period; binding guidelines for prosecutors; hiring of prosecutors through the Public Service Commission, as well as de-politicisation of the Prosecution Service***

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that the police fail to remove defects in the report under section 173 Cr. P. C. the District Public Prosecutor shall make a formal complaint to the RPO concerned. The RPO, vide a suitable amendment in the Police Rules 1934, shall investigate every such complaint and if appropriate, take suitable disciplinary action against the IO.

Similarly, instances of non-submission of reports under section 173 Cr. P. C. within the statutory period, non-production by the police of record requisitioned by the Prosecutor, non-furnishing of information by the police, failure of police officers to appear as witnesses and/or to produce witnesses may be made the subject of complaints to the RPO by the District Public Prosecutor.

#### **3. Arrest after FIR without Evidence**

It has been observed that FIRs are overly complicated and very difficult to decipher for an average litigant.

It is recommended that FIRs should be recorded in very simple language and must be factual. They should not form the basis for immediate arrest of those persons named in the FIR. In this regard, specific reference may be made to Haider Ali and Others v DPO Chakwal (Civil Petition No 1282 of 2014) judgment wherein the august Supreme Court has issued as many as 15 directions including:

*“...No person should be arrested unless there is sufficient evidence available with the police to*

*support such arrest. Where a person is unjustly deprived of his liberty, compensation will be required to be paid to him or her by the delinquent Police Officer”.*

The implementation of the instant suggested reform does not require any amendment in law but requires the political, administrative and judicial will to reinterpret and re-imagine the provisions of Section 154 Cr. P. C.

#### **4. Police Rules 1934**

The manner in which investigation takes place is now out-dated and must be updated according to modern standards. The Police Rules 1934 should be amended, with specific reference to Chapter XXV thereof with respect to the manner in which investigations are to be conducted. The Rules in Chapter XXV of the Police Rules 1934 should be updated in order to recognise the importance of physical evidence in light of the advances in the science of forensics. For example, the police should be required to take photographs and video of the scene of crime and the same should be presented in evidence.

#### **5. Reliance on Witness Accounts in Trials**

In line with the provisions of the Qanun-e-Shahadat Order 1984 at present a large number of witnesses are called at every criminal trial. This over-reliance on witness testimony in court is neither efficient nor practical in today's scenario.

It is suggested that suitable amendments be made to the Qanun-e-Shahadat Order 1984 in order to make certain documents admissible without calling the authors/makers thereof. For example it should not be necessary to call a doctor to prove the post-mortem report. The report should be admissible on its own strength. In this manner, criminal trials could be concluded more rapidly as fewer witnesses would be required.

#### **6. Witness Protection**

The Sindh Government promulgated the Sindh Witness Protection Act 2013 on September 18, 2013 to provide for protection of witnesses to enable them to give evidence in criminal proceedings in Sindh. Provisions of the said Act are far-reaching and ambitious. However, to-date (November 25, 2015) the Sindh Government has not allocated any budget whatsoever for setting up of the Witness Protection Unit and the Witness Protection Programme under the said Act. It is suggested that adequate funding be allocated for the specific purpose of establishing the Witness Protection Programme in an effective manner. Similar legislation should also be promulgated in Punjab.

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***Fair and effective prosecution is essential to maintenance of law and order Proposed reforms should not only focus on the Prosecution Service(s) but all those aspects of police work and investigations, which directly affect the performance of prosecutors due to weak Police-Prosecution liaison***

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## Procedural Capacity

### 1. Code of Conduct

At present there is no uniform Code of Conduct to regulate professional conduct of Prosecutors.

The Prosecutor Generals should develop and issue improved codes of conduct for the Prosecutors in relation to both scrutiny of cases and professional conduct. The violation of said codes should be liable to disciplinary action(s). Simultaneously the Prosecution Services should develop and ensure the development of Performance Evaluation Reports (PERs) with annual individual personnel objectives and prosecutors who perform well should be rewarded in monetary terms, and poorly performing employees should be subjected to review and disciplinary procedures.

### 2. Guidelines for Prosecution of Cases/Complaints

In the same vein, it is necessary to implement guidelines for determining whether a complaint is capable of being taken to court; at present, there is no such mechanism for ascertaining whether a case can be prosecuted successfully, that is, result in a conviction or not.

The Prosecutor Generals of the Prosecution services should develop and issue **binding** guidelines for prosecutors. The Punjab Prosecutor General has already produced a comprehensive guideline/checklist for prosecutors in this regard

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***Justice must also be delivered in terms of successful convictions to perpetrators of crime. Proposed reforms should not only focus on the Prosecution Service(s) but all those aspects of police work and investigations, which directly affect the performance of prosecutors due to weak Police-Prosecution liaison***

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but prosecutors are either unaware of them or how to implement the Code Test, based on sufficiency of evidence and public interest in prosecuting a case. The observance of the same or similar should be made binding/mandatory and violation of said guidelines should be liable to disciplinary action.

### 3. Complaints against Police Investigation

At present, no framework to monitor the quality of police investigation exists in order to ascertain the strength of evidence gathered during the process.

Therefore, it is imperative that the individual Assistant and Deputy District Public Prosecutors should be empowered to report poor investigations to the District Public Prosecutors who shall report every such case to the Regional Police Officer (RPO) concerned by way of a formal complaint. The RPO, vide a suitable amendment in the Police Rules 1934, shall investigate every such complaint and if appropriate, take suitable disciplinary action against the IO, including but not limited to directing remedial re-training for the IO in respect of investigative techniques.

### 4. Prosecution Reports

There is currently no mechanism for monitoring and evaluation of Prosecution departments.

Therefore, it is recommended that Prosecution Departments should publish on their websites district-wise detailed reports on a quarterly basis of the pendency of cases, conviction rates, etc. and other relevant details which would allow their success and effectiveness to be monitored independently.

### 5. Excessive Adjournments in Trials

One of the reasons identified for resiling witnesses is the lengthy nature of criminal trials. The witnesses incur a multitude of expenses to travel to court for numerous dates of hearing in which no proceedings take place and witnesses are thus discouraged for participation in trials due to monetary costs as well as time lost.

Therefore it is recommended that the respective Bar Councils take action against lawyers who seek numerous adjournments with the obvious purpose of delaying trials. In this regard the judiciary may

also, as a policy, impose stringent costs on such lawyers and make arrangements for cases to proceed on day-to-day basis whenever and wherever possible.

## **Operational Capacity**

### **1. Recruitment, Security & Incentives for Prosecutors**

#### **a. Hiring of Prosecutors**

In 2014, the total number of prosecutors working in Punjab was 1,067 who were sharing a case-load of 712,888 cases per year; this come out to about 628 cases per prosecutor.

Due to the excessive burden on prosecutors each year, it is recommended that the budget(s) of the Punjab and Sindh prosecution services should be increased in order to allow for hiring of a greater number of public prosecutors in order to bring the case/work load of individual prosecutors to a manageable level.

#### **b. Restricted Number of Cases for Prosecutors**

The budget(s) of the Punjab and Sindh prosecution services should be increased in order to allow for hiring of a greater number of public prosecutors in order to bring the case/work load of individual prosecutors to a manageable level.

Continuing from the above, it is suggested that no one prosecutor should be required to handle more than 300 cases on an annual basis.

#### **c. Mandatory Probation Period**

Prosecutors should be recruited to the prosecution services for an initial probationary period of one year. Their services should only be confirmed as and when their performance is found satisfactory both in terms of conviction rates and upon completion of mandatory training courses.

#### **d. Security of Tenure**

Prosecutor Generals should have security of tenure and should be recruited through the respective Public Service Commissions on the basis of advertisements. In this regard special mention may be made of the Sindh Criminal Prosecution (Constitution, Functions and Powers) Amendment Act 2014 whereby the Sindh Government has regrettably changed the secure tenure of 3 years

appointment for Sindh Prosecutor General to service at the will and pleasure of the Sindh Government.

#### **e. Salaries**

The Assistant Public prosecutors (APP) in Punjab earn Rs. 516,252/- net per annum. The **average** number of cases dealt by said APP is 668. This amounts to a “fees” of Rs. 772 per case. This is **not** adequate compensation for the work/case load. Salaries of all levels of public prosecutors need to be increased quite substantially, most especially of the prosecutors working at the District level.

The best candidates will not be attracted to the prosecution services without better terms and conditions. Part-time or job-sharing roles would also allow for maintaining quality employees who have other responsibilities, such as young families till the remuneration offered is not improved.

#### **f. Career Prospects**

The management and career structure of the prosecution services at present is not satisfactory and therefore should be improved. In the last induction into the Punjab judiciary (recruitment of Criminal and Civil Judges), 84 public prosecutors resigned from the Punjab Prosecution Service in August 2015.<sup>1</sup> There should be more scope for promotion within the Service, in addition to improved salaries, in order to retain trained and experienced prosecutors. Reference may again be made to Haider Ali and Others v DPO Chakwal (Civil Petition No 1282 of 2014) judgment in wherein the August Supreme Court has directed as follows:

*“Adequate funds should be dedicated towards the training and development of public prosecutors. The Attorney General and the respective Prosecutors General of each Province shall submit in Court within 3 months from the date of this order details of (i) hiring requirements and compensation packages of public prosecutors, and (ii) accountability mechanisms and review systems of public prosecutors”.*

## **2. Capacity Building and Training**

### **a. Investigation Officers and Prosecutors**

Police Investigators and Prosecutors should be better trained and it should be mandatory for the

1. Similarly in 2014, 72 public prosecutors resigned from the Punjab Prosecution Service and joined the judiciary as civil judges.

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***There is a need to have an informed debate and productive discourse on required amendments and improvements in existing legislation, prevailing system and contemporary infrastructure of Prosecution Services, specifically in the provinces of Punjab and Sindh***

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Investigation Officer (IO) to consult with the Prosecution Service **before** concluding the investigation in order to be guided in a meaningful manner as to what possible offence(s) may be made out and how proved. The Punjab Prosecution Service and the Punjab Police have agreed to and signed SOPs with respect to cooperation as far back as 2011 but the same need to be vigorously implemented.

**b. Practical Training for Judges**

Many judges are appointed and murder trials handed over to them without adequate practical training, which leads to delays and inconsistencies in terms of the quality of judgments. Therefore, judicial officers should be given practical training on writing and delivering judgements.

**c. Budget for Training**

Presently, the prosecutors in Karachi and Lahore tend to be nominated for training courses in preference to those in other districts because the budget(s) are limited and do not stretch to residential courses.

The Provincial Governments may be called upon to allocate separate amount(s) in the budgets of the Prosecution Services for purposes of providing training. This budget should be adequate to cover the cost of offering residential training courses to those prosecutors who are not stationed in Lahore and Karachi. The Punjab Prosecution Service has already established the Centre for Professional Development (Training Wing); its working should be expanded and professionalised to assist with the

delivery of courses to police on cooperation, scrutiny and FIRs in order to make cooperation between the prosecution and police more effective.

Induction courses should be mandatory for all public prosecutors. Initial/new recruits to the prosecution services should be made to work alongside a more senior colleague for at least six months before being allowed to handle cases on his/her own.

Travelling to Lahore and Karachi is expensive and time-consuming for the prosecutors and therefore e-learning should be introduced in the prosecution departments with websites with personal login codes for each prosecutor to ensure a minimum number of hours of training are conducted annually and prosecutors are made aware of new laws/amendments.

**3. Use of Forensic Techniques**

**a. Forensic Training for Prosecutors**

All public prosecutors should attend mandatory training courses at the state of the art Punjab Forensic Science Agency. Sindh public prosecutors should also be offered training at this facility or at the fledgling Sindh Forensic Science Lab. Greater familiarity with forensic science and the possibilities of physical evidence will ensure that prosecutors rely on said evidence to a greater extent and will be able to confidently explain the same in Court. This will lead to better conviction rates, especially in terrorism related cases where witnesses are notoriously reluctant to come forward to give evidence.

**b. Equipment**

At present, there is no specialised forensic equipment or the requisite training for testing samples or conduct medical examinations.

It is therefore recommended that specialist forensic equipment should be provided to all District Hospitals to examine victims of sexual violence and medical officers at District Hospitals should be trained at the Punjab Forensic Science Agency in the manner of processing victims of sexual assaults and/or other victims with reference to gathering physical evidence. Half (**50%**) of the samples of physical evidence received by the PFSA are found contaminated. This necessitates better training in collection of samples by both the police at scene of crime and by medical officers.

**c. Forensic Samples**

It should be mandatory for police to use tamper proof tape to seal evidence gathered at scene of crime and the use of cloth bundles sealed with wax should be abandoned.

**d. Post-Mortems**

The PFSA should be authorised to carry out post mortems through suitable amendments in Section 174(3) Cr. P. C. and Rule 25.36 of Police Rules 1934.

**4. Use of Modern Technology**

**a. Online FIRs**

All FIRs should be online in order that the same can be forwarded simultaneously to the prosecution service so as to involve the latter in the case from its very inception. This will provide an element of oversight to the police and prosecution services as well as protecting the rights of the accused under the Constitution.

**b. Fingerprints Database**

The PFSA should be given access to the NADRA's database of fingerprints and records in order to immediately identify suspects, through suitable amendments in Punjab Forensic Science Agency Act 2007. Presently, the FIA also has a large depository of fingerprints. This too should be made available to the PFSA for purposes of identifying suspects through said system.

**5. Independence and Depoliticisation of Prosecution Services**

There should be no political interference in the working of the prosecution services. In the case of Punjab for example, the Chief Minister Punjab has appointed a Special Assistant to advise him with respect to the Prosecution Service. This is undue political interference. The Prosecutor General should not be required to report to the Secretary of the Punjab Prosecution Department on any matters relating to individual case(s). In the case of Sindh, the Prosecutor General should not be required to report to the Law Ministry on any matters relating to individual case(s). The Prosecutor Generals need to be independent heads in their professional work.

## **Committee of Experts**

### **Ms. Ayesha Hamid**



Ms. Ayesha Hamid, Advocate Lahore High Court is a Senior Associate at Hamid Law Associates, a leading law firm in the country. Her law career spans over a decade starting from 2008 till date during which she has been conducting litigation on behalf of Hamid Law Associates in various courts which include the Lahore and Islamabad High Courts, Lahore and Islamabad Civil Courts, Sessions Courts, Environmental Tribunal, Labour Courts, Consumer Courts and Revenue Authorities.

Ms. Hamid holds a LLB degree from University of the Punjab, Lahore and B.Sc. (Economics) from the London School of Economics and Political Science, (LSE) U.K. She has a CELTA Certification from the International House, London. She also has an extensive teaching background in various leading institutions of the country.

Ms. Hamid particularly deals with litigation relating to tax, banking, property, contract, trademark, constitutional, revenue, and environmental matters.

Being a Senior Advocate, Ms. Hamid has been providing her advisory services to various international and national organisations. Her prominent clients include various government departments and public sector organisations, banks and financial institutions as well as the corporate sector. Ms. Hamid has worked with international organisations such as Polysius AG (Germany) and Alokozay Group of Companies.



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### **Mr. Azam Nazeer Tarar**



Mr. Azam Nazeer Tarar is an advocate of Supreme Court of Pakistan and an elected Vice Chairman of Pakistan Bar Council (PBC). He is also serving as a member Press Council of Pakistan for three years term. He began his career as an outstanding Advocate of High Court in 1994 after completing his LL.M from Edinburgh University, U.K.

Mr. Tarar has acquired expertise essentially in the areas of criminal and constitutional law. Having over 1,500 concluded cases at the level of High Court and Supreme Court, he has also represented Pakistan Lawyers elected bodies at many international forums such as various conferences, seminars and workshops.

Mr. Tarar has contributed as Honorary Secretary Lahore High Court Bar Association (2004) and enrolled as Advocate Supreme Court of Pakistan in 2006. After being elected as a member of Pakistan Bar Council in 2010, the apex regulatory body of legal practitioners in Pakistan, he performed his duties as Designated Chairman Legal Education Committee of PBC (2011), Chairman Free Legal Aid Committee of PBC (2012) as well as Member Disciplinary Committee of PBC (2013).

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