



Position Paper

Prosecution Services in Punjab and Sindh

October 2015



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Islamabad Office: P. O. Box 278, F-8, Postal Code: 44220, Islamabad, Pakistan
Lahore Office: P. O. Box 11098, L.C.C.H.S, Postal Code: 54792, Lahore, Pakistan
E-mail: info@pildat.org | Website: www.pildat.org

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PREFACE

PIL DAT has initiated a national and provincial level legislative and policy advocacy effort for reform in the areas of Police, Prosecution and Free Legal Aid in Pakistan. As part of this initiative, PIL DAT has commissioned experts in these three areas to develop position papers to serve as tools to hold consultative sessions with relevant stakeholders for formulating policy reform proposals and ways and means to translate these into reality.

This position paper presents an overview of the existing Prosecution Services in Pakistan. The paper closely examines weaknesses of the Prosecution Service in Pakistan and proposes policy alternatives for the consideration of the Legislature and the Executive.

Acknowledgments

The Position Paper on **Prosecution Services in Punjab and Sindh** has been authored by **Ms. Ayesha Hamid**, Senior Advocate, High Court, and published by PIL DAT for which it has received support from the Development Alternatives Inc. (DAI) under the Enhanced Democratic Accountability and Civic Engagement (EDACE) project.

Disclaimer

Views and opinions expressed in this position paper are those of the author and do not necessarily represent the views of PIL DAT and Development Alternatives Inc. (DAI).

Islamabad
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ABOUT THE AUTHOR



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 Punjab, Lahore and B.Sc. (Economics) from the London School of Economics and Political Science, the (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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Executive Summary

The Prosecution Service is an essential component of the Rule of Law. Fair and effective prosecution is essential to maintenance of law and order that certainly leads to public confidence and develops respect for the Rule of Law. How readily the law is accessible by a common man helps identifying the crucial gaps prevailing in a system. In addition, justice must also be delivered in terms of successful convictions to perpetrators of crime; however, this is glaringly absent in Pakistan where accused persons are often acquitted due to weak investigation and lack of evidence.

The paper, as the title suggests, is an attempt by PILDAT to lead to 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.

To achieve the desired reforms, however, it is important that policy makers and legislators should address a number of issues that would require relevant stakeholders to lead and manage to achieve, at the very least, the following key objectives:

1. Legislative amendments in Section 154 Cr. P. C; Prosecution Service Acts of Punjab and Sindh; Police Rules 1934 to account for modern standards of presenting evidence; Section 174 and Rule 25.36 of Police Rules 1934 to authorise Punjab Forensic Science Agency Act (PFSA) to carry out post mortems; Punjab Forensic Science Agency Act 2007 to provide PFSA access to NADRA database; and improvement in Code of Conducts for Prosecutors.
2. Systemic reforms including: computerised FIRs; reporting of poor investigation by District Public Prosecutors to Regional Police Officers; recruitment criteria of Prosecutors with a one-year probationary period; binding guidelines to be developed by Prosecutor Generals for prosecutors; hiring of prosecutors through the Public Service Commission, as well as de-politicisation of the Prosecution Service.
3. In addition, suggestions for improving infrastructure such as 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 do not cover only the Prosecution Services but also those aspects of police work and investigations that have a direct impact on the performance of prosecutors.

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Introduction

The aim of this Paper is to evaluate the current performance of the Prosecution Services of Sindh and Punjab and to suggest reforms to improve the performance and efficiency of both.

Criteria for 'Success'

In order to assess their performance it is necessary to establish a benchmark for 'success'. One of the conventional and accepted modes for measuring the performance of a prosecution service is to examine its conviction rate that is a measure of how many criminal cases entrusted to the Prosecution Service result in conviction of the accused. This is a fairly objective test. However, in the event that a high conviction rate is achieved by falsifying evidence and/or failing to disclose evidence favourable to the accused; this would hardly commend the performance of the Prosecution Service.

A more subjective measure of performance of the Prosecution Service is embodied in the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 which provides, at the preamble as under:

“Whereas it is expedient to establish an independent, effective and efficient service for prosecution of criminal cases, to ensure prosecutorial independence, for better coordination in the criminal justice system of

Article 37(d) of the Constitution 1973, enjoins the State to ensure inexpensive and expeditious justice. The Code of Criminal Procedure, 1898 governs the conduct of and the procedure pertaining to criminal cases. Prosecutorial services are governed by the provisions of Sections 492 to 495 of the Cr. P. C.

the Province and matters incidental thereto;” [emphasis supplied]

Further, Section 13(9) of the 2006 Act *ibid* enjoins the Prosecutor to “perform his functions and exercise his powers fairly, honestly, with due diligence, in the public interest and to uphold justice.”

Therefore the aim of this Paper is to evaluate the performance of the Punjab and Sindh Prosecution Services on the basis of due consideration of both their respective conviction rates as well as the public Perceptions in terms of independence, effectiveness and impartiality.

History of the Prosecution Services

Article 37(d) of the Constitution of the Islamic Republic of Pakistan, 1973, [hereinafter the 'Constitution'] as part of the Principles of Policy, enjoins the State to ensure inexpensive and expeditious justice.

The Code of Criminal Procedure, 1898 [Act V of 1898] [hereinafter the 'Cr. P. C.'] governs the conduct of and the procedure pertaining to criminal cases. Prosecutorial services are governed by the provisions of Sections 492 to 495 of the Cr. P. C.

Under the provisions of Sections 492 to 495 Cr. P. C., earlier the Prosecutors were police officers of the rank of inspectors and above, who had a legal background. The Police Service(s) were under the command of the Home Department(s).¹

In 2002 the Police Order was promulgated [which repealed the Police Act, 1861] as part of the restructuring of the Police Service(s).

The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Ordinance, 2006² placed the services of all district attorneys, public prosecutors and deputy public prosecutors under the newly formed Prosecution Service.

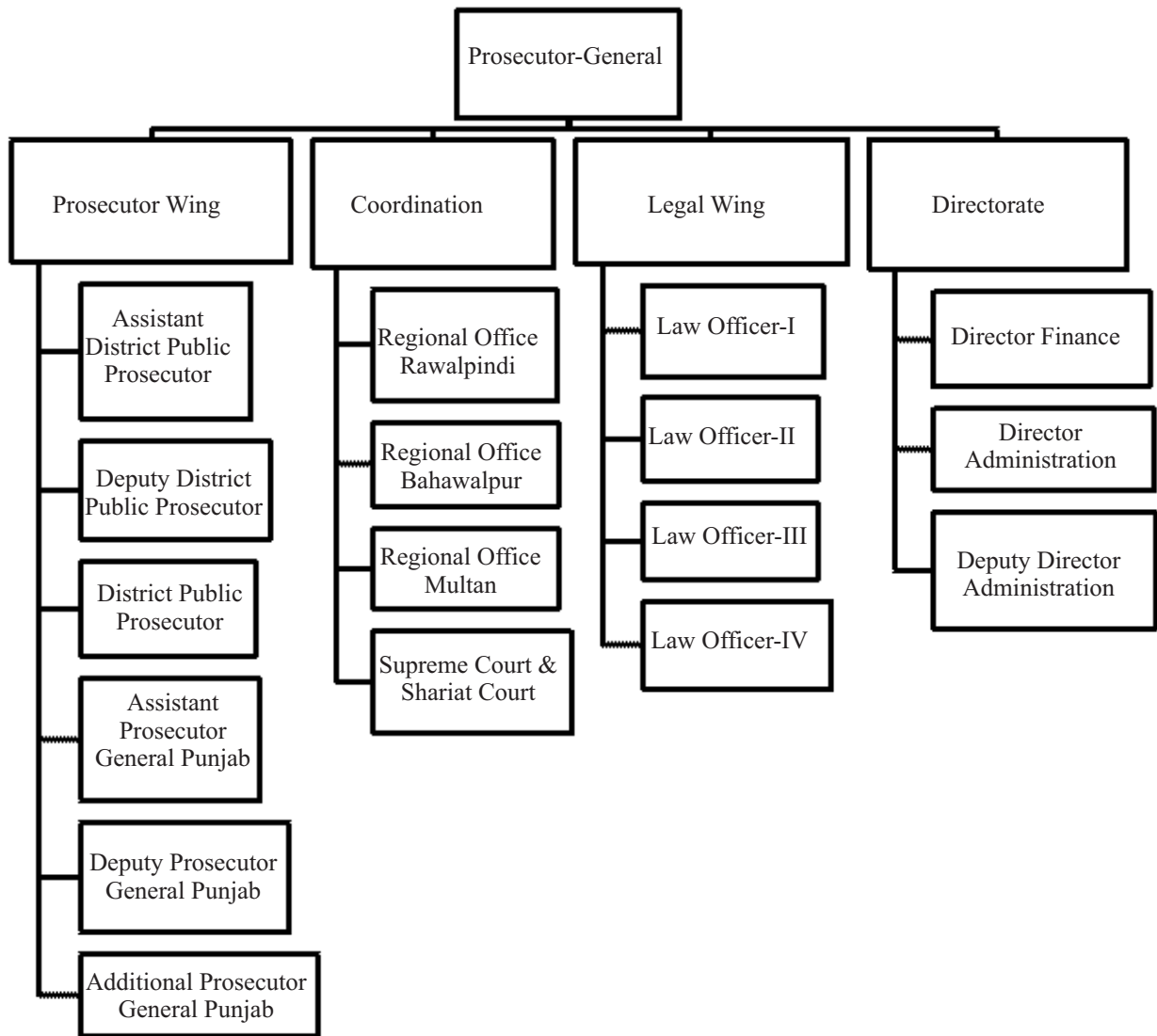
The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 established an independent service for the prosecution of criminal cases.³

1. Schedule A – Sections 492 to 495 Cr. P.C.
2. Subsequently replaced by the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009
3. Schedule B – Section 9 of the Punjab Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2006

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Structure of the Punjab⁴ Prosecution Service

Figure 1: Structure of the Punjab Prosecution Service



4. For the purposes of this paper the statistics relating to the Punjab prosecution service have been examined in greater detail but the lessons drawn from the examination thereof apply equally to the Sindh Prosecution Service.

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The total number of Prosecutors working in the Public Prosecution Department, Punjab in 2014 are given in Table 1.

Budget of the Punjab Prosecution Service

The budget of the Punjab Prosecution Service for the year 2014-15 was Rs. 1,215,078,000/- of which Rs.1,149,766,000/- was spent on the salaries [including various allowances] of the members of the Prosecution Service.

During the calendar year January 01, 2014 to December 31, 2014 the Punjab Prosecution Service is given in Table 2.

The budget of Rs.1,215,078,000/- was allocated for the financial year 2014-15 though it does not correspond exactly to the calendar year January 01, 2014 to December 31, 2014, divided over the 712,888 cases dealt with by the Prosecution Service of Punjab [in calendar year 2014] shows that the average amount spent per case is Rs.1,704/-. This figure is crucial and must be constantly borne in mind when discussing the

Table 1: Number of Prosecutors Working in the Public Prosecution Department, Punjab 2014

No.	Designation	Sanctioned	Working	Vacant	Salaries per Month
1.	Prosecutor-General Punjab	1	1	0	0
2.	Additional Prosecutor-General Punjab	18	9	9	149171 (gross) 133951 (net)
3.	Deputy Prosecutor-General Punjab	68	23	45	101571 (gross) 91669 (net)
4.	District Public Prosecutors	40	27	13	84171 (gross) 74451 (net)
5.	Deputy District Public Prosecutors	328	272	56	59071 (gross) 54169 (net)
6.	Assistant Public Prosecutors ⁵	796	735	61	46634 (gross) 43021 (net)
7.	Total:	1251	1067	184 ⁶	

Table 2: Cases dealt by the Punjab Prosecution Service during 2014

Court	No. of Cases
Supreme Court of Pakistan [Principal Seat and Lahore Registry]	1,584
Lahore High Court [Principal Seat & Bahawalpur, Multan and Rawalpindi Benches]	25,491
Anti-Terrorism Courts, Punjab	1,612
District Courts Punjab	684,201
Total:	712,888

5. 24-26 Deputy District Public Prosecutors are assigned to Anti Terrorism Courts' in Punjab and receive Rs.50,000 p. m. in addition to their basic salaries.

6. 14.7% vacancies

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performance of the Punjab Prosecution Service and suggested reforms relating thereto.

Conviction Rate of the Punjab Prosecution Service

It can be seen that the total number of cases disposed off in 2014 was 247,827. The total number of convictions in 2014 was 66,378, which is a “success” rate of 26.78%. However this rate which at first appears to be very poor indeed needs to be clarified.

Section 249A of the Cr. P. C. empowers a Magistrate to acquit an accused at any stage of the case if after hearing the Prosecutor and the accused and for reasons to be recorded, if he considers that the charge is groundless and that there is no probability of the accused being convicted of any offence. Section 265K Cr. P. C. confers similar powers on the Sessions Court to acquit an accused at any stage of the case, if after hearing the Prosecutor and the accused and that for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence. In 2014, 30642(A) cases were disposed off under the provisions of Section 249A Cr. P. C. due to resiling of the witness(es). In addition, in 22416(B) cases the accused were acquitted due to a compromise. Therefore it can be seen that 53,058 cases (A+B) were uncontested in which the role of the Prosecutor in these acquittals is limited and/or minimal.

Section 249 Cr. P. C., in cases instituted otherwise than

upon a complaint, empowers a Magistrate of the First Class to stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and thereupon the accused is released. In practice the Magistrates use the provisions of the said section to discharge/dispose off cases where essentially no offence is made out. In 2014, 30676 (C) cases were consigned by Magistrates/ Courts under the provisions of Section 249 Cr. P. C.

Section 512 Cr. P. C. provides that in those cases where the accused person has absconded and there is no immediate prospect of arresting him, the Court empowered to try him may examine and record the depositions of witnesses produced on behalf of the prosecution and the same may be used in evidence against the accused as and when the accused is arrested. However, once this process of examining witnesses is complete the Courts is constrained to consign the cases on account of the fact that the accused has absconded. In 2014 91,261(D) cases were consigned by the Courts on account of the fact that the accused had absconded.

Therefore in 2014, as many as 121,937 cases (C+D) were consigned/disposed off by the Courts on account of lack of evidence and/or on account of the accused having absconded. Again, the role of the Prosecution Service in the aforesaid cases is minimal. [It is these cases that should never go to court either through scrutiny/warrant for non-appearance, so prosecutor's role is key].

Table 3: Conviction Rate of the Punjab Prosecution Service

			Contested			Un-contested		Consigned by Court		Trials in which prosecution was withdrawn	Total Disposal	Total Pendency
Pending from before	Fresh institution	Total	Total decided	Convictions	Acquittals after contesting the case	Acquittal u/s 249-A Cr. P. C. due to resiling of witness	Acquittal due to compromise	249 Cr. P. C.	512 Cr. P. C.			
413,832	270,369	684,201	72,832	66,378	6,454	30,642 (A)	22,416 (B)	30676	91261	121,937	247827	436374

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Conviction Rate of the Sindh Prosecution Service

The total number of criminal cases disposed off in the 27 District Courts of Sindh between January 2015⁷ and July 2015 are given in Table 4.

It may be seen that though the figures provided by the Sindh Prosecution Service are not as detailed as those provided by the Prosecutor General Punjab, nevertheless they also show an alarmingly low conviction rate.

Table 4: Cases dealt by the Sindh Prosecution Service during 2015

Total no. of criminal cases disposed off	No. of convictions	No. of acquittals	%age of convictions	%age of acquittals	No. of cases still pending
15981	4596	11385	28.76%	71.24%	71276

7. Detailed statement of the number of criminal cases disposed off in the 27 District Courts of Sindh between January and July 2015 is given as Schedule-C

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'Problems' with the Prosecution of Cases

Section 154 Cr. P. C.

A First Information Report [FIR] is the initiation of a criminal case. Section 154 Cr. P. C. provides that information given to an Officer Incharge of a Police Station relating to the commission of a cognizable offence, whether given in writing or so reduced into writing by him, shall be signed by the person giving it. In addition the substance of the FIR is separately entered in the book known as the FIR register. The provisions of Section 154 Cr. P. C. appear to be simple and straightforward. However, this seemingly simple provision has and continues to create multiple problems which have, inter-alia, a direct impact on the effectiveness and performance of the Prosecution Services. If we seek to measure the performance of the Prosecution Services in terms of conviction rate(s) then the FIR takes on critical importance.

We would have to look at the number of FIRs registered in a particular district, for instance, and compare the figure to the number of convictions eventually achieved as the comparison thereof would indicate what number of criminal cases initially registered eventually reach a 'successful' outcome from the point of view of the victim, complainant and the general public.

It is for the same reason that often the officer in charge of a police station refuses to lodge an FIR. Senior Police Officers are keen to demonstrate that crime has fallen under their command; an indication whereof is the fall in number of FIRs. For the victims of crime the self-same failure of the police to lodge an FIR is a galling obstacle in the quest for justice. They are often forced to

Often the Officer In-Charge of a police station refuses to lodge an FIR. Senior Police Officers are keen to demonstrate that crime has fallen under their command; an indication whereof is the fall in number of FIRs. For the victims of crime the self-same failure of the police to lodge an FIR is a galling obstacle in the quest for justice

approach a Justice of Peace [an Additional Sessions Judge as persona designate] under Section 22-A(6) Cr. P. C. to seek direction(s) to the police to register an FIR. The machinery of investigation of a crime is put into motion once the FIR is registered under section 154 Cr. P.C. The plain reading of the law (Section 154 Cr. P. C.) shows that this is meant to be just the first/initial report regarding occurrence of a criminal offence.

In practice, at the time of final arguments in any criminal case the FIR takes on a critical importance. The defence relies heavily on the contents of the FIR. In case an accused has not been attributed a comprehensive 'starring' role in the commission of the offence and in the event that the Prosecutor is unable to prove all the contents of the FIR, the defence often successfully argue for acquittal. This has led to a culture where the prosecutor is loathe to suggest or pursue a line of enquiry which differs in material particulars (or at all!) from the version of events recorded in the FIR which indicate that a particular offence has been committed.

For example, if an FIR records that the accused, 'A' viciously stabbed and killed 'B' and that an offence under Section 302 Pakistan Penal Code (PPC) has been committed; the Prosecutor becomes "trapped" by this version of events and would find it difficult to build a case wherein the accused "A" is said to have killed "B", but in self-defence.

Late Provision of FIR by Police Officers to Public Prosecutors

Section 12 of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 sets out the responsibilities of police towards prosecutors. This includes the duty to immediately report to the District Public Prosecutor the registration of each criminal case by sending a copy of the FIR.

In practice this prompt provision of FIR is honoured more in the breach than the observance thereof. The failure to promptly provide the Prosecution Service with a copy of the FIR limits the ability of the Prosecutor to play a guiding role in the investigation of the purported crime.

Defective Investigation by Police Officers

It is axiomatic that a prosecution based on defective investigation by the police is almost certain to fail.

A defective investigation takes many forms and includes but is not limited to the following:

1. The FIR records a version of events which is not

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- related to what actually occurred but the Investigating Officer (IO) makes determined efforts to 'prove' the FIR version;
2. There are no witnesses found willing to give evidence;
 3. The evidence gathered does not adequately prove the offence purportedly committed especially in cases involving cases of fraud(s) relating to banks or commercial frauds or cyber crimes as the nature of the crimes is technical, sophisticated and beyond the reach of the average IO;
 4. Failure to gather and make use of the latest methods of forensic evidence relating to DNA, fingerprints, trace materials, ballistics, photography, CCTV footage, wire taps, and others.

The Prosecution Service of Punjab may (and does) issue guidelines to the IO in terms of what evidence may be useful, etc. However, this 'advice' is not binding on the IO. It depends on the discretion of each individual Prosecutor whether or not he chooses to offer such advice and its 'usefulness' depends on whether the IO chooses to be guided by it. In short, there is no formalised systemic coordination and cooperation between the prosecutors and the police.

Reports under Section 173 Cr. P. C.

Within 14⁸ days of recording of the FIR the police is required to submit a report under the provisions of Section 173 Cr. P. C. setting out:

1. Names of the parties;
2. Nature of information;
3. Names of persons acquainted with the case; and
4. Whether the accused (if arrested) is in custody or released

This report is submitted to the Prosecutor for onward submission to the Court. Section 9(5) of the Punjab Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2006 empowers the Prosecutor to return the report to the IO if he finds the same to be defective for removal of such defects. However, it is not binding on the police to remove such defects and there are, in practice, no penalties or consequences, for the failure of the police to do so. This leads to a situation in which, more often than not, the Prosecutor is a 'post office' for purposes of the report under Section 173 Cr. P. C. The Court frames charges⁹ against the accused on the basis of said report and the trial commences.

8. In case the investigation is not completed within 14 days an interim report is required, setting out reasons for delay

9. The Court may also discharge the accused on the basis of the report u/s 173 Cr. P. C.

The Prosecutor is entitled to submit to the Court his own assessment of said report stating therein his opinion of the evidence and applicability of offences against the accused. This report, assessment or scrutiny by the Prosecutor is not binding. In practice Prosecutors are loathe to submit a negative report as the Court may commence to put the accused on trial anyway and then the Prosecutor is in the unenviable position of prosecuting a case where he is on record as stating that no case or a weak case is made out.

Friction and Lack of Co-operation between the Public Prosecutors and Police Officers /Investigation Officers

The following acts and/or omissions lead to friction between the prosecutors and police.

1. Late provision of FIR by Police Officers to Public Prosecutors.
2. Defective investigation by Police Officers.
3. Non-submission of reports under Section 173 Cr. P. C. within the statutory period.
4. Non-production of record requisitioned by the Public Prosecutors.
5. Non-furnishing of information by Police Officers when required by the Public Prosecutors during the prosecution of the case.
6. Failure of police officers to appear as witnesses.
7. Failure of police officers, bound by the Court to do so, to produce witnesses.

Lack of Training

In 2014 the Punjab Prosecution Service handled 712,888 cases. Against the sanctioned strength of 1251 members of the Punjab Prosecution Service [including the Prosecutor-General himself] only 1,067 were actually serving, whilst there were 184 vacancies.

The entire case-load [712,888] divided across the 1,067 serving Prosecutors means that the average case-work load per Prosecutor is 668 cases per annum. This is a huge number of cases and results in a situation where Prosecutors are unable to prepare extensively for each case and do not have their own copy of the file with which to take ownership of the case.

The demands of this punishing workload are exacerbated by the fact that Prosecutors are thrown in at the deep end so to speak. There is no induction course or no mandatory training to prepare them for their role as

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Prosecutors.

They especially require training in the field of forensics to acquaint them with the possibilities offered by the technological and scientific advances in terms of physical evidence. Better training and knowledge in this regard would allow them to present physical evidence in Court with more regularity and confidence. The Pakistani criminal jurisprudence places undue reliance on the testimony of eye-witnesses [the problems with said witness testimony is discussed separately].

Lack of Independence

The Prosecutor-General Punjab is appointed by the Government of Punjab while the administration of the Prosecution Service vests in the Prosecutor-General. He is appointed for a period of 3 years. In practice he reports to the Secretary Prosecution who is a government appointee. This compromises the independence of the Prosecutor-General Punjab and leaves the door open to political influence in the working of the Prosecution Service.

In the case of the Prosecutor-General Sindh, under the Sindh Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2009, whereas he originally had security of tenure for 3 years, even this has been amended vide Sindh Criminal Prosecution Service (Constitution, Functions & Powers) (Amendment) Act, 2014 and now the Prosecutor-General Sindh shall hold office at the pleasure of the Sindh Government. This seriously compromises the ability of the Prosecutor-General Sindh to make independent decisions without reference to political considerations.

Forensic Evidence and Police Rules 1934

The Police Rules 1934 are still in the field. Chapter XXV thereof governs the manner in which the investigation is to be carried out. The Police Rules 1934 are badly out of date. Rule 25.13 requires the police officer(s) investigating the scene of the crime to make two plans of the scene. Due to this, photographs of the scene of the crime, which would be a more graphic and useful tool in terms of showing the Court the scene of crime, are not produced in evidence by the prosecutors often as they should be.¹⁰

Section 174(3) of the Cr. P. C. read with Rule 25.36 of the Police Rules 1934 provide that postmortem examinations are conducted by the nearest medical

officer authorised by the Provincial Government. These medical officers do not always have the requisite expertise in conducting postmortems. The equipment available to them at the district hospitals is often inadequate.

The Police Rules 1934 describes procedure whereby the police, when collecting evidence are to seal the same in cloth bags and/or bundles. The 'seal' is molten wax which when it hardens is liable to break/shatter and is not tamper proof.

The Punjab Forensic Science Agency (PFSA) was established vide the Punjab Forensic Science Agency Act, 2007. It was set up at the cost of US Dollars 37 million. It is an unparalleled facility with highly trained staff and state of the art equipment.¹¹

The PFSA has DNA and Serology, Forensic Toxicology, Firearms and Tool Marks, Questioned documents, Narcotics, Latent Fingerprints, Forensic Pathology and Histology, Polygraph, Computer Forensic trace evidence and Audio Visual Analysis Departments.

Picture 1, taken on September 14, 2015, shows the usual cloth bundle sealed with wax in which evidence is typically received from the police and next to it the polythene bags with red tamper proof tape sealing it, as used by the PFSA

Picture 2, taken on September 14, 2015, shows a cheque after analysis by the PFSA in which it was identified that the words "four lacs" had been changed to "fourty lacs" by adding the 'ty' after the word "four". The analysis is based on the different chemical composition of inks used.

The PFSA has highly trained experts who are able to conduct postmortems but their expertise is not fully availed for the reason that the requisite changes have not yet been made to Section 174(3) of the Cr. P. C. read with Rule 25.36 of the Police Rules 1934. The PFSA reports are verified and rechecked by peers and supervisors before the same are issued on security paper. At every point when data pertaining to the examination of evidence is entered by the scientists or technicians the same time is stamped and stored in the data system of the PSFA in two separate locations in order to ensure that no change and/or tampering thereof is possible.

10. Rule 25.33(9) does provide for photographing of the body in situ and of the scene of the occurrence.

11. The author visited the Punjab Forensic Science Agency on September 14, 2015 at the kind invitation of the DG, PFSA

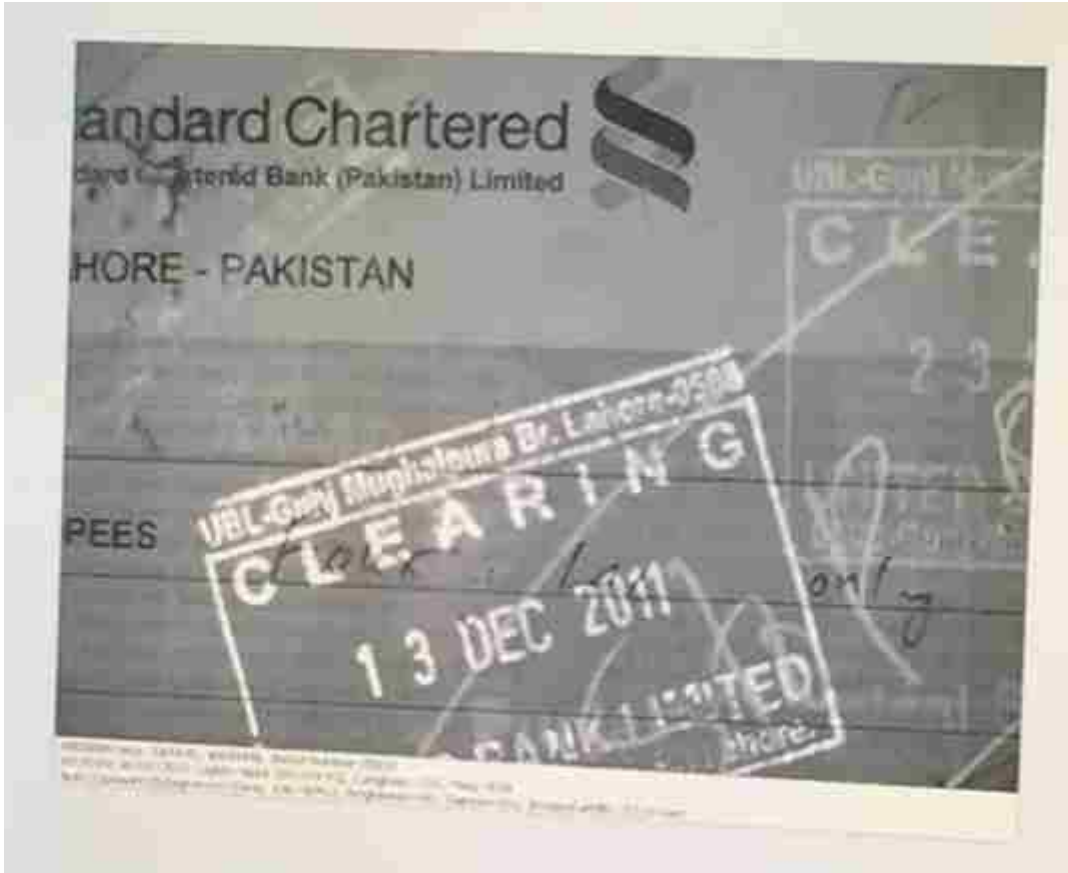
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Picture 1: Sealed Evidence



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Picture 2: Cheque Analysis



In the last 2.5 years the PFSA has received/dealt with successfully disposed off/reported on 175,000 cases. It is unfortunate that a facility of the undoubted excellence of the PFSA is underutilised and that due importance and regard is not given to forensic evidence by, amongst others, the judges of the Anti-Terrorist Courts (ATCs) of Pakistan. The ATCs especially suffer from low conviction rates on account of the fact that witnesses are loathe to come forward at risk of their own safety to give evidence in forensic related cases.

Resiling Witnesses

In 30642 cases handled by the Punjab Prosecution Service in 2014 the witnesses resiled. During the course of investigation the police is empowered to examine and record the statement(s) of witnesses. However, such statement, under the provisions of Section 161 Cr. P. C. does not have to be signed by said witness. Therefore, it is often the case that witnesses resile from their statements once trial commences.

There are a number of reasons for this including the

number of dates of hearing that witnesses are called upon to attend which occasion loss of time and money. Witnesses may be intimidated by the accused and are offered little or no protection. This problem is especially acute in the ATCs.

In 2012, 290 cases in Punjab ATCs resulted in acquittals due to resiling witnesses [total number of cases pending in 2012 were 1065]. In 2013, 181 cases in Punjab ATCs resulted in acquittals due to resiling witnesses [total number of cases pending in 2013 were 1052].

Suggested Reforms

1. **Section 154:** Rather than legislate to bring about amendments in the scope of Section 154 Cr. P. C. it is suggested that, in an appropriate case, the August Supreme Court may be requested to constitute a larger bench and definitively determine the (limited) scope of Section 154 Cr. P. C. This would allow the police and Prosecutors the latitude to depart from the initial version of events as recorded in the FIR and even change the nature of the offence, if appropriate, which would lead to move effective prosecution of cases. Improved scrutiny of reports based on a realistic prospect of conviction is vital.
2. **FIRs to be Computerised:** All FIRs should be computerised 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.
3. Police investigators and prosecutors should be better trained and it should be mandatory for the 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.
4. 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.
5. 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

All FIRs should be computerised to 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

- demand of the Prosecution Service. In the event 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.
6. 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. Presently, the Prosecutors in Karachi and Lahore tend to get 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 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

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- 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 and amendments.
7. 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.
 8. 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 and/or checklist for prosecutors in this regard 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.
 9. 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 and work load of individual prosecutors to a manageable level. It is suggested that no one prosecutor should be required to handle more than 300 cases on an annual basis.
 10. 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.
 11. The Prosecution Departments should publish on their websites district-wise detailed reports on a quarterly basis of the pendency of cases, conviction rates and other relevant details which would allow their success and effectiveness to be monitored independently.
 12. Similarly in 2014, 72 Public Prosecutors resigned from the Punjab Prosecution Service and joined the judiciary as Civil Judges
12. The Prosecution Services should be independent. The Prosecutors General should have security of tenure and should be recruited through the respective Public Service Commissions on the basis of advertisements.
 13. 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.
 14. 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 “fee” of Rs.772 per case. This is not adequate compensation for the work and 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/enhanced.
 15. The management and career structure of the prosecution services 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 2015.¹² There should be more scope for promotion within the service, in addition to improved salaries, in order to retain trained and experienced prosecutors.
 16. The Prosecutors General 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

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- implement 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.
17. 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, instead of relying on out-dated hand drawn site plans.
 18. Simple but 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.
 19. 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.
 20. 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.
 21. 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.

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APPENDICES

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Appendix-A

The Code of Criminal Procedure, 1898

492. Power to appoint Public Prosecutors (1) The Provincial Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) The District Magistrate, or subject to the control of the District Magistrate, the Sub-Divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Provincial Government may prescribe in his behalf to be Public Prosecutor for the purposes of any case.

493. Public Prosecutor may plead in all Courts in cases under his charge; Pleaders privately instructed to be under his direction. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution and the pleader so instructed shall act therein, under his directions.

494. Effect of withdrawal from prosecution. Any Public Prosecutor may, with the [...] consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal:

- a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
- b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

495. Permission to conduct prosecution (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Provincial Government in this behalf but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Provincial Government in this behalf, shall be entitled to do so without such permission. (2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494 and the provisions of that section shall apply to any withdrawal by such officer. (3) Any person conducting the prosecution may do so personally or by a pleader. (4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

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Appendix-B

The Punjab Criminal Prosecution Service (Constitution Functions and Powers) Act 2006

9. Conduct of prosecution.

- 1) The Prosecutors shall be responsible for the conduct of prosecution on behalf of the Government.
- 2) The Prosecutor General or if so authorized by him, an Additional Prosecutor General shall distribute work to the Prosecutors in the Supreme Court, the High Court, the Federal Shariat Court or a Special Court established under any law for the time being in force.
- 3) A District Public Prosecutor shall distribute work to the Prosecutors with respect to the Courts of Session and Courts of Magistrates within a district.
- 4) A police report under section 173 of the Code including a report of cancellation of the first information report or a request for discharge of a suspect or an accused shall be submitted to a Court through the Prosecutor appointed under this Act.
- 5) The Prosecutor shall scrutinize the report or the request and may—
 - a) return the same within three days to the officer incharge of police station or investigation officer, as the case may be, if he finds the same to be defective, for removal of such defects as may be identified by him; or
 - b) if it is fit for submission, file it before the Court of competent jurisdiction.
- 6) On receipt of an interim police report under section 173 of the Code, the Prosecutor shall—
 - a) examine the reasons assigned for the delay in the completion of investigation and if he considers the reasons compelling, request the Court for the postponement of trial and in case investigation is not completed within reasonable time, request the Court for commencement of trial; and
 - b) in cases where reasons assigned for delay in the completion of investigation are not compelling, request the Court for commencement of trial on the basis of the evidence available on record.
- 7) A Prosecutor may submit to the Court results of his scrutiny in writing as to the available evidence and applicability of offences against all or any of the accused as per acts and circumstances of the case.

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Appendix - C

Monthly Statement of Criminal Cases (District Courts of Sindh) January 2015 to July 2015

S. No.	Name of District Court	Total Disposal	Acquittals	Convictions	%age of Acquittals	%age of Convictions	Cases still
1	SOUTH	1410	484	926	34.33%	65.67%	7797
2	EAST	949	369	580	38.88%	61.12%	7256
3	WEST	439	210	229	47.84%	52.16%	10157
4	CENTRAL	1066	624	442	58.54%	41.46%	3775
5	MALIR	948	492	456	51.90%	48.10%	5127
6	HYDERABAD	682	461	221	67.60%	32.40%	3893
7	DADU	902	843	59	93.46%	6.54%	3306
8	BADIN	503	436	67	86.68%	13.32%	1054
9	THATTA	525	402	123	76.57%	23.43%	951
10	MIRPUR KHAS	447	246	201	55.03%	44.97%	1424
11	SANGHAR	796	652	144	81.91%	18.09%	1413
12	THAR at MITHI	117	105	12	89.74%	10.26%	250
13	SUKKUR	472	368	104	77.97%	22.03%	2865
14	S H A H E E D	393	331	62	84.22%	15.78%	2917
15	N A U S H E H R O	792	671	121	84.72%	15.28%	2197
16	KHAIRPUR	895	826	69	92.29%	7.71%	3724
17	GHOTKI	756	674	82	89.15%	10.85%	1966
18	LARKANA	357	254	103	71.15%	28.85%	1357
19	SHIKARPUR	706	619	87	87.68%	12.32%	2063
20	JACOBABAD	440	376	64	85.45%	14.55%	1337

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21	UMERKOT	254	147	107	57.87%	42.13%	410
22	JAMSHORO	455	331	124	72.75%	27.25%	1069
23	MATIARI	249	223	26	89.56%	10.44%	954
24	T A N D O M U H A M M A D	251	165	86	65.74%	34.26%	722
25	T A N D O	237	193	44	81.43%	18.57%	576
26	KASHMORE at KANDHKOT	501	475	26	94.81%	5.19%	1505
27	K A M B E R a t SHEHDADKOT	439	408	31	92.94%	7.06%	1211
	Total	15981	11385	4596	71.24%	28.76%	71276

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Appendix - D

Criminal Cases before ATCs of Sindh

January 2015 to July 2015

S. No.	Name of ATC Court	Total Disposal	Acquittals	Convictions	%age of Acquittals	%age of Convictions	Cases still pending
1	ATC-I KARACHI	58	27	31	46.55%	53.45%	209
2	ATC-II KARACHI	91	69	22	75.82%	24.18%	415
3	ATC-III KARACHI	38	32	6	84.21%	15.79%	338
4	ATC-IV KARACHI	34	22	12	64.71%	35.29%	209
5	ATC-V KARACHI	58	31	27	53.45%	46.55%	189
6	ATC-VI KARACHI	32	14	18	43.75%	56.25%	233
7	ATC-VII KARACHI	35	32	3	91.43%	8.57%	212
8	ATC-VIII KARACHI	65	36	29	55.38%	44.62%	188
9	ATC-IX KARACHI	46	27	19	58.70%	41.30%	244
10	ATC-X KARACHI	38	25	13	65.79%	34.21%	199
11	ATC HYDERABAD	77	68	9	88.31%	11.69%	176
12	ATC BADIN / NAUSHEHRO	49	27	22	55.10%	44.90%	83
13	ATC MIRPURKHAS	8	3	5	37.50%	62.50%	17
14	ATC SHAHEED BENAZIRABAD	23	22	1	95.65%	4.35%	25

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15	ATC KHAIRPUR MIR	34	11	23	32.35%	67.65%	239
16	ATC SUKKUR	32	24	8	75.00%	25.00%	520
17	ATC LARKANA	36	24	12	66.67%	33.33%	32
18	ATC SHIKARPUR	17	8	9	47.06%	52.94%	127
19	ATC KASHMORE / KANDHKOT	25	22	3	88.00%	12.00%	31
Total		796	524	272	65.83%	34.17%	3686

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Appendix – E

**Monthly Statement of Criminal Cases (District Courts of Sindh)
January 2014 - December 2014**

S. No.	Name of District Court	Total Disposal	Acquittals	Convictions	%age of Acquittals	%age of Convictions	Cases still pending
1	SOUTH	2378	1019	1359	42.85%	57.15%	7056
2	EAST	1247	742	505	59.50%	40.50%	7623
3	WEST	1319	781	538	59.21%	40.79%	8627
4	CENTRAL	2396	1375	1021	57.39%	42.61%	3350
5	MALIR	1656	929	727	56.10%	43.90%	4804
6	HYDERABAD	1453	1106	347	76.12%	23.88%	3320
7	DADU	1996	1918	78	96.09%	3.91%	2824
8	BADIN	1077	804	273	74.65%	25.35%	932
9	THATTA	945	690	255	73.02%	26.98%	933
10	MIRPURKHAS	631	485	146	76.86%	23.14%	1236
11	SANGHAR	1281	952	329	74.32%	25.68%	1647
12	THAR at MITHI	212	194	18	91.51%	8.49%	247
13	SUKKUR	1135	955	180	84.14%	15.86%	2863
14	S H A H E E D BENAZIRABAD	896	797	99	88.95%	11.05%	2649

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15	NAUSHEHRO FEROZ	1198	907	291	75.71%	24.29%	2453
16	KHAIRPUR	1471	1365	106	92.79%	7.21%	2943
17	GHOTKI	1398	1203	195	86.05%	13.95%	1934
18	LARKANA	1281	1080	201	84.31%	15.69%	1413
19	SHIKARPUR	924	851	73	92.10%	7.90%	1772
20	JACOBABAD	684	583	101	85.23%	14.77%	1208
21	UMERKOT	511	387	124	75.73%	24.27%	410
22	JAMSHORO	502	438	64	87.25%	12.75%	968
23	MATIARI	386	362	24	93.78%	6.22%	886
24	TANDO MUHAMMAD KHAN	494	285	209	57.69%	42.31%	879
25	T A N D O ALLAHYAR	286	199	87	69.58%	30.42%	632
26	KASHMORE at KANDHKOT	713	685	28	96.07%	3.93%	1140
27	K A M B E R a t SHEHDADKOT	935	824	111	88.13%	11.87%	1045
Total		29405	21916	7489	74.53%	25.47%	65794



Islamabad Office: P. O. Box 278, F-8, Postal Code: 44220, Islamabad, Pakistan
Lahore Office: P. O. Box 11098, L.C.C.H.S, Postal Code: 54792, Lahore, Pakistan
E-mail: info@pildat.org | Website: www.pildat.org