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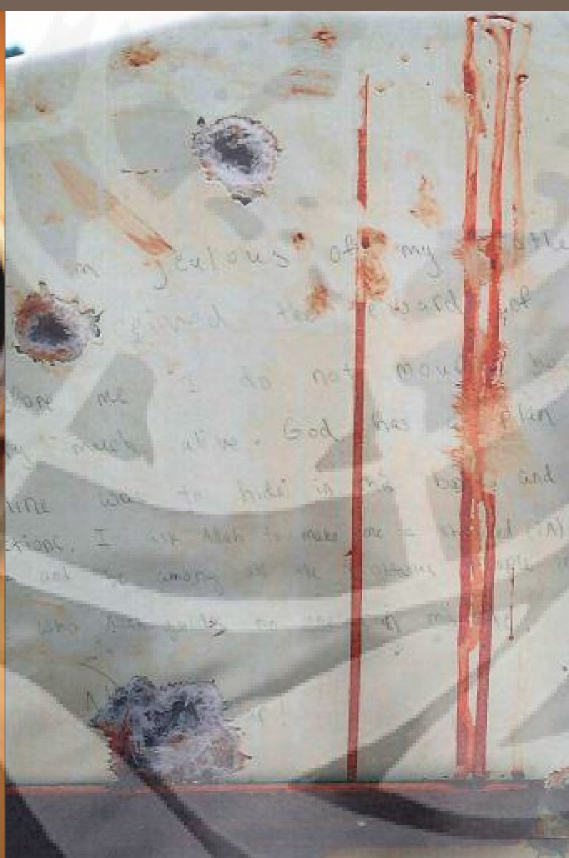
United Nations Office on Drugs and Crime

Prosecutors's Handbook

Guidelines for Prosecutors on

- Criminal Advocacy Skills
- Legal Procedures and Precedents
- Trial and Forensic Evidence
- Case Management and Monitoring System
- Cooperation Between Prosecutors and Investigators



Prosecutor's Handbook

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Introduction

These guidelines are designed to provide highly motivated prosecutors and lawyers with the opportunity to develop trial skills as advocates in the courtroom. It sheds light on how to gain a competitive edge when presenting a case in a court of law. The advocacy and courtroom skills guideline provide a suitable learning opportunity for legal professionals who work in courts. The objective is to identify messages for effective courtroom practice, develop understanding of the different roles in courtroom settings, manage authority and professional roles effectively, develop skills related to giving evidence and provide training in cross-examination.

The witness box is a lonely place. Many expert witnesses feel as though they are on trial in the dock rather than giving independent testimony to assist the court. Often experts are unfamiliar with this environment, but a poor performance can undermine confidence and credibility. The development of effective courtroom skills can require intensive and practical training. In order to demystify the process, this training must include the theory, practice and procedure of giving evidence. A professional trainer, who should be an experienced lawyer, will provide the trainee with constructive feedback throughout the programme.

Important learning points in Advocacy/ Courtroom skills

1.1. Introduction to Criminal Investigation and Trial

The prosecutor must know the basic procedures of inquiry and trial in a criminal case. The Criminal Procedure Code (Cr.PC) prescribes the authority of the courts and elaborates upon the constitution of the court system. It contains various provisions pertaining to the mandate of the country's magistrates and police, and it clarifies the procedures associated with arrest, escape and the process to compel appearance through summons, warrant of arrest, proclamation and attachment and other rules regarding processes. In addition, the code also prescribes the processes which are necessary to compel the production of documents and other movable property, and for the discovery of persons wrongfully confined through summons to produce and search warrants. The Cr.PC also assists in the prevention of offences by mandating security measures which are aimed at keeping the peace and ensuring good behaviour. Specifically, these measures are intended to prevent unlawful assemblies, public nuisances or apprehended danger and disputes regarding immovable property by enhancing the preventive capabilities of the police and their powers to investigate. The Cr.PC also covers proceedings that are related to prosecution and provides jurisdiction to criminal courts according to place of inquiry or trial, complaints to the magistrates, commencements of proceedings before magistrates and inquiry into cases triable by the courts of sessions or high courts. It also prescribes the nature and form of both charges and joinders of charges, and explains the procedure of trials by magistrates (including summary trial and trial before high court and court of sessions); furthermore, it explains the mode of recording evidence during inquiries, trials and finally judgement. The Cr.PC further defines the steps that are necessary for the submission of sentences related to the confirmation, execution, suspension, remission and computation of sentences, previous acquittals and convictions. This also dictates the steps of appeals, references and revisions. In addition, there are special provisions in the code related to cases concerning foreign nationals resident in Pakistan, the mentally ill and the maintenance of women and children. It also ordains specific actions and directions related to the nature of a Habeas Corpus, and has supplementary provisions regarding public prosecutors, bail, the disposal of property, bonds and commissions for the examination of witnesses, special rules or evidence.

Finally, the Cr.PC also specifies the appropriate conduct for irregular proceedings and other miscellaneous matters.

1.2. Criminal Trial

Every person has a right to a fair trial by a competent court for the sake of their life and personal liberty. The objective of providing competent legal aid to an undefended and unrepresented accused person is to see that the accused is afforded a free, fair, just and reasonable trial. A fundamental principle of criminal justice is that an accused person is always presumed to be innocent unless the prosecution can establish his guilt beyond the shadow of a reasonable doubt. A fair and expeditious trial is a fundamental human right which cannot be denied to anyone.

Chapter 2

Preparing an Opening Statement

2.1 How to Prepare an Opening Statement

A courtroom lawyer is both a writer and performer. A drafted opening statement is an essential component of the “prepare-produce-practice-present” process. It is important to write for the ear and not the eye. It is the lawyer who must read his/her own words, and use them to persuade the court. The preparation of an opening statement requires careful editing. Any inexperienced lawyer should bear in mind that their primary concern in editing a first draft will be to remove information that is not essential to their case. Most of what is not essential to a lawyer's story, i.e things that do not come from the witness stand, are arguments. One should never read one's opening statement verbatim to the court. Notes exist as a reference aid, and one should not become a slave to them. Any lawyer who refers to their notes frequently will steadily lose persuasive momentum. It is also important for a lawyer to remember not to hold their notes when they deliver an opening statement; it is extremely important for any successful lawyer to convey confidence.

The purpose of an opening statement is to provide the court with factual information that is intended and designed to create an embedded memory. As the case unfolds this embedded memory will cause each member of the court to perceive the evidence in accord with the lawyer's theory of the case (i.e., the evidence-based reason why the lawyers believe they are entitled to the court's verdict). In the opening statement the lawyer will try to convey both a view and certain feelings to a captive audience. The view of each respective lawyer will be slanted toward building a story of the case that will evoke a favourable verdict. It is essential to appear confident and logical from the start, or to copy the old expression: put your best foot forward. Lawyers never get a chance to make another first impression.

A professional appearance is also important (dressing to impress). A persuasive speaking voice, the strategic use of words and communication through physical mannerisms are all of equal importance. Courts have preconceived notions about how a lawyer is supposed to look and sound. Perhaps the most important question after preparing an opening statement is, "Are there important background facts that I have erroneously left out?"

2.2. Direct Examination

It has been said that, "A good lawyer turns evidence into fact and fact into truth." Because they bear the burden of proving the case beyond a reasonable doubt, prosecutors must call witnesses in every trial. Direct examination is the keystone in the prosecution's arch, and it is

equally important to the defence attorney who will call witnesses in support of their theory. Anyone can ask questions. The job of a lawyer is to argue persuasively and in a manner that establishes the foundation for court argument. If a lawyer wants to be a persuasive trial advocate, he must make the facts of your story come alive. The direct examination of a witness provides the opportunity to fluently communicate the theme of one's case and establish the credibility of witnesses.

2.2.1 Purposes of Direct Examination

You can use direct examination to present evidence in a form that is

- legally sufficient to meet the burden of proof
- understood and remembered
- convincing
- able to withstand cross-examination
- anticipatory and contradictory of evidence that the opposition will present

2.3 Cross Examination

To ensure effective advocacy, as per the Law of Evidence, 1984 (also known as the Qanun-e-Shahadat 1984), a witness summoned merely to produce a document does not become a witness for the purpose of cross examination. This is because he may either attend the court personally or may depute any person to produce the document in the court. If the witness intentionally omits the required documents, he/she will be committing an offence which is punishable under section 175 of the Pakistan Penal Code or section 480 of the Criminal Procedure Code. The respondent, after the conclusion of evidence from all parties, is allowed upon his/her request to produce documents by way of additional evidence to which the petitioner insisted for cross-examination of the respondent. The respondent, with a view to avoid delay, will often state that he/she has no objection if the petitioner is allowed to cross-examine him. The petitioner, in view of the statement of the respondent, is allowed by the high court one opportunity to cross-examine the respondent. Also, under circumstances where an assertion made in the examination-in-chief was not subjected to cross-examination, that assertion would be admitted to be true. In the event that a land-owner's witness having stated a specific amount as the market value of acquired land, failure to cross-examine him by the opposite party would amount to admission of his assertion regarding the market value. In addition, there are at least two different types of cross-examination:

- **Supportive Cross-Examination**

  This type of cross-examination is employed when the lawyer wishes to ask questions and get answers that support and advance his/her case. In a supportive cross-examination, lawyers do not use their questions to attack, pillage, and plunder the witness. Instead, they use cross-examinations to obtain favourable information (such as admissions, fill-in-the-gaps in the story, etc.) from the witness. If a lawyer can develop favourable evidence from the opposition's

witness, it adds credibility to their evidence if it comes from an opposing witness. If one is going to rely on evidence from an opposition witness, it may not make sense to attack the credibility of that witness.

- **Discrediting Cross-Examination**

A discrediting cross-examination occurs when a lawyer attempts to discredit the believability of a witness' factual testimony by showing that it does not jibe with common sense and/or with what others have said. Experienced lawyers may want to use a cross-examination to show what the witness does not know or what the witness did not do in the investigation. However, you may want to employ a cross-examination to impeach the witness. Evidentiary procedure and rules provide a number of traditional modes of impeachment.

Prepation of a Criminal Trial

3.1. Process to Compel Appearance of Witnesses

There are many cases where, despite repeated notices from courts, witnesses either do not come in the court, or in connivance with officials avoid attendance of the court. Sections 68 to 93 of the Cr.PC deal with the process to compel the appearance of witnesses. Summons or warrants are issued in the first instance, as determined by columns four and five of schedule of the code. In the event that it may need to be tailored, it is open to the court or magistrate to issue the warrant. If the offender is still a fugitive, the procedure for proclamation is provided in Section 87/88 of the Cr.PC which includes attachment of property and its sale. One more method of securing attendance is the taking of a bond with or without sureties. If practicable, summons may be served on the person summoned personally by delivering to him/her one of the duplicates which must be in writing and signed and sealed by the presiding officer or authority issuing the same. The person receiving the summons should acknowledge the same by signing their receipt on the back of the other duplicate. In case of incorporated companies or other juristic person or body corporate, the service is to be effected through a secretary, local manager, or other principle officer of the body. A registered post letter correctly addressed is also a sufficient intimation.

3.2 Cases where Recoveries made U/S 103 Cr.PC

Declared Doubtful by the Courts:

It has been noted in a number of cases by the courts that investigation officers by design conducted defective investigations. A few examples of defective investigations are appended below.

- Place where empty cartridge lay neither shown in site plan nor to person preparing the site plan.
- Occupants of house were excluded during search.
- No recovery witness residents of populated locality of recovery or occurrence.
- Conviction based on such evidence is not sustainable.
- Interested witnesses cannot be relied upon for pressing recoveries.
- Recoveries made on joint pointation of two or more persons- defective.

3.3. Any Defect in Investigation

Any defect, irregularity or even illegality in the investigation would not vitiate the trial unless it

is shown to have prejudiced the accused in any manner, and similarly no objection regarding any flaw in the investigation or trial can prevail at appellate or revision stage unless it is proved to have brought about a miscarriage of justice or occasioned a failure of justice. Nothing in the law prevents a police officer from making a complaint in a case of which the facts have come to their knowledge. Irregularity committed is curable u/s 537 of the Cr.P.C. Unless it has actually prejudiced the accused, it would not vitiate the trial.

3.4 Identify Defects of Charge

Defects of nature arising from inadvertence can only be cured u/s 537 of the Cr.P.C, and it is never intended to allow the court to violate or disobey an express provision of the law. Also, it would not apply to an infringement of a statutory requirement. By virtue of S.237 of the Cr.P.C, an accused who was not charged with an offence can be convicted for a lesser offence, and that defect in the charge is curable under provisions of Ss. 235 and 537 of the Cr.P.C. Even if particulars which are required to be stated have not been mentioned in the charge, errors are curable subject to the conditions that the accused was not misled or that it has not occasioned a failure of justice. Every conceivable type of error and irregularity referable to a charge that could possibly arrive can be cured.

The following irregularities are curable u/s 537.

- If a magistrate proceeds by warrant instead of summons
- If a magistrate puts his/her initial rather than not full signature in the warrant of arrest
- If the arrest itself was illegal
- There was an omission to notify the person arrested

Chapter 4

Basic Persuasive Skills

4.1 Judges know Everything

One of most inadvertent mistakes that advocates make is to subconsciously assume that the judge knows the file the way an advocate does. An advocate might know the file inside out, having gone through it at least once, if not on multiple occasions, but most judges would be dealing with the file for the first time when the matter is taken up. Apart from the information contained in the file, the mental faculties of a judge are consumed elsewhere; he is observing the demeanour of the advocates, the accused, the complainant and others around. The key therefore is not to jump to the conclusion and expect the judge to jump with you but to make a foundation before you make your point. This is an inadvertent mistake because matters such as informing the judge about the first version of the accused may seem simple to you, as you have perused the file, but for the judge it's not simple. For him/her it is new. Explaining and laying the basic information will make it simple for the judge too.

4.2 Submission / Questions

As a general rule, the most important submissions and questions should come at both the beginning and the end of every presentation. This technique can be employed for any submission before the court and direct examination; however, it may be difficult to use this technique in cross examinations since these change their course many times during questioning. Good advocates have to be flexible in order to run a successful cross-examination.

4.3 Repetition and Duration

It may sound a little strange, but the more time a lawyer spends on an argument or a line of questioning, the greater is the probability of them convincing the judge. Therefore, if an advocate genuinely believes in a submission, persistence will be rewarded; with every passing second they might be getting closer to convincing the judge. However, advocates must not overdo it as it may irritate the judge. Furthermore, repetition must not be exercised for the sake of repetition, but only when it could be meaningful.

4.4 Retention

Advocates hardly ever realise that an argument must be retained by the judge to be successful. The primary focus of advocates, especially in the lower courts, is to argue without focusing on how much the judge may be retaining. Employing simple techniques can ensure

that the judge remembers the points you make. If a judge is in the habit of taking notes during submissions, then an advocate can simply inform the judge about the importance of the point, and the judge will likely note it down. To ensure that the judge records the most important points, a lawyer may need to offer a polite reminder in the form of, "Sir/Madam this point is very important". If a judge does not take notes, it is up to the lawyer to make his/her points memorable.

4.5 Evocation

Advocates use words in the same way that artists use ink and paint. Unfortunately, most advocates in Pakistan, especially in criminal courts, do not appreciate the importance of words and the effect they carry. Words are the primary bridge between the minds of the judge and the advocate, and words used will determine whether a lawyer is able to paint the same picture in the judge's mind that he/she may have in their own. Therefore, words and words alone will make a picture authentic, memorable and compelling. There are certain types of words that are more persuasive. As a general rule nouns and verbs instead of adjectives must be used in the beginning of submissions. For example, if an advocate wishes to prove that a car is ugly, there are two ways to make the submission. One way is the typical way employed by advocates in Pakistan, which is to use flowery language, such as 'the car was ugly, extremely ugly, the ugliest really'. This submission may do the job; however, there is a more persuasive way to say the same thing. For instance, 'the paint had peeled off all over, there was a spider web of fracture lines on the wind screen, the bumpers were broken and the head lights were missing'. In this case, before submitting to the judge that the car is ugly, this advocate has already managed to paint a picture in his/her mind that the car is ugly. When the judge finally receives a submission that the car is indeed ugly, it will be far more compelling. The goal of every advocate is to paint a picture in the mind of the judge; the question is how to do it? The easiest way to make the testimony memorable is by pacing language in order to evoke time, distance and intensity; speaking rapidly creates a picture of a faster, closer together, more intense incident whereas speaking slowly gives a picture of a slower, further apart, more reasoned incident. If in cross examination, an advocate desires to show an event which was so fast that the witness did not see the entire event, short, rapid and single point questions must be used. However, if an advocate aims to prove that the witness saw the entire occurrence, he/she should ask slow detailed and drawn out questions.

How the court system works in Pakistan:

5.1 Supreme Court of Pakistan

The Supreme Court of Pakistan is the apex court in the country's judicial hierarchy; it is the final arbiter of legal and constitutional disputes. The court consists of a chief justice and sixteen other judges.

5.2 Federal Shariat Court of Pakistan

The Federal Shariat Court of Pakistan was established in 1980 to scrutinise all Pakistani laws and determine if they conform to Islamic values "as laid down in the Quran and the Sunnah". If a law is found to be 'repugnant', the court notifies the relevant government, specifying the reasons for its decision. The court also has appellate jurisdiction over penalties (hudud) arising under Islamic law; however, these decisions can be reviewed by the Shariat Appellate Bench of the Supreme Court. The decisions of the court are binding on the high courts as well as all subordinate judiciary.

5.3 High Courts of Pakistan

There is a high court for the Islamabad Capital Territory and four provincial high courts. A high court is the principal court of its province

- Lahore High Court , Lahore, Punjab
- Sindh High Court, Karachi, Sindh
- Peshawar High Court, Peshawar, KPK
- Balochistan High Court, Quetta, Balochistan
- Islamabad High Court, Islamabad, ICT

5.4 Subordinate Judiciary (District & Sessions Courts)

District courts exist in the districts of each province, and they have both civil and criminal jurisdiction. In each district headquarters, there are numerous additional district & session judges who usually preside over the courts. District & sessions judges have executive and judicial powers in all the districts which are under their jurisdiction. The sessions court is also a trial court for heinous offences such as murder, rape, haraba offences (armed robbery where

specific amount of gold and cash is involved), and it is also an appellate court for summary conviction offences and civil suits of lesser value.

The high court of each province has appellate jurisdiction over the lower courts.

- The Supreme Court of Pakistan has exclusive jurisdiction over disputes between and among provincial governments, and appellate jurisdiction over high court decisions.

- In every town and city, there are numerous civil and judicial magistrates' courts. A magistrate, with the powers underlined in section 30 of the Criminal Procedure Code (Cr.P.C.), has the jurisdiction to hear all criminal matters other than those which carry the death penalty (such as attempted murder, dacoity, robbery, extortion, etc.), but may only pass a sentence of up to seven years' imprisonment. If the court thinks the accused deserves more punishment than seven years in jail, it has to refer the matter to a higher court with its recommendations to that effect. Every magistrates' court is allocated a local jurisdiction which usually encompasses one or more police stations in the area. The trial of all non bailable offences including police remand notices, accused discharges, arrest and search warrants, and bail applications are heard and decided by magistrate courts. Most judicial magistrates may hear civil suits as well; however, if they do so, they are usually called a civil judge cum judicial magistrate.

5.5 Special Tribunals and Courts

There are numerous special tribunal courts such as;

- Banking Courts
- Custom Courts
- Drug Courts
- Federal Services Tribunal
- Provincial Services Tribunals (one for each province)
- Income Tax Tribunals
- Anti-Corruption Courts
- Anti-Terrorism Courts
- Labour Courts
- Labour Appellate Tribunal
- Environmental Courts
- Board of Revenue.
- Special Magistrate courts
- Control of Narcotic Substances (Special Courts)
- Consumers Courts

Almost all judges from the above mentioned courts and tribunals, with the exception of the last one, are district and session judges or have the same qualifications. Revenue courts, operating under the West Pakistan Land Revenue Act of 1967, also exist. The revenue courts may be classified as the Board of Revenue, the commissioner, the collector, the assistant collector of the first grade and second grade. The provincial government that exercises administrative control over them appoints such officers, and their powers and functions are prescribed by the law.

5.6 Family Courts

The West Pakistan Family Courts Act of 1964 governs the jurisdiction of family courts. These courts have exclusive jurisdiction over matters relating to personal status. Appeals from these family courts rest with the high court where the family court is presided over by a district judge, an additional district judge, or a person notified by the government to be the rank and status of a district judge or an additional district judge. According to Section 17 of the Family Court Act of 1964, the provisions of the C.P.C. (Civil Procedure Code) and Qanun-e-Shahadat Order (Evidence Law) are not applicable to family courts, and the same are allowed to form or regulate their own procedure to decide cases expeditiously, properly and in the best interest and convenience of female litigants.

Expressing an Opinion by Prosecutors based on the foundation of Fact

According to the Balochistan Criminal Prosecution Service (Constitution, Functions and Powers) Act of 2003, it does not authorize the public prosecutor to order the submission of report/challan under S.173 of the Cr.P.C. against the accused for their trial or to recommend a departmental inquiry or registration of the criminal case. The public prosecutor has no authority to assume and abdicate the function, authority and jurisdiction of the trial court. If he/she travels beyond their jurisdiction, they will have committed a grave illegality by issuing the aforesaid directions. The function of the public prosecutor is to pin point any defects in the investigation or the report, and to direct the investigating agency to remove the same. In Germany prosecutors are by law responsible for leading investigations by themselves, and the police are only an investigatory body of the public prosecution office. However, in reality it is the police who are actually leading investigations in most cases. Prosecutors are vested with a similar responsibility in South Korea. In Japan prosecutors are also empowered to carry out investigations, but at the same time, the Code of Criminal Procedure states that the primary responsibility of investigation lies with the police. On the contrary, in other countries with common law traditions such as Kenya, Pakistan, Papua New Guinea, Tanzania and the United Kingdom, prosecutors play no role in investigations as such, but do exercise their advisory or supervisory authority to guide the police investigation in ways such as advising or instructing the police to carry out their investigation in a certain direction.

6.1 Techniques Lawyers use in Cross-Examination and how to handle them

There are number of techniques which are used by lawyers during the cross- examination of witnesses; however, a few important points are mentioned below:-

- Be brief
- Short questions, plain words
- Always ask leading questions.
- Don't ask a question, the answer to which you do not know in advance.
- Listen to the witness
- Do not quarrel with the witness
- Do not allow the witness to repeat his direct testimony
- Do not permit the witness to explain his answers
- Do not ask the one question too many times
- Save the ultimate point for summation.

6.2 Identification Parade

The idea of the identification parade is to test the veracity of the witness regarding his/her capacity to identify, from among several persons made to stand in a queue, an unknown person whom the witness had seen at the time of occurrence. In cases where the identity of the accused is not known to the eye-witness, it is essential for the investigating officer to get such suspect identified from the eye-witness in a test identification parade. This process has two objectives - a) Ensuring that the investigation proceeds on the right track, b) To ensure the reliability of the eye-witness's memory regarding the identity of the appellant. Furthermore, there are certain principles that must be followed while conducting the identification parade. The establishment of these principles can be done by examining the witnesses who conducted the identification parade i.e. they must be subjected to a cross examination by a magistrate.

Further, if the manner of holding the identification parade throws suspicion on police, the identification parade would not have any evidentiary value. It is also true that the presence of a police officer and the public prosecutor at the identification parade would not vitiate it when there was no prejudice against the accused. The parade should be held by a magistrate or any officer who is not a police officer because the police should not take part in the process. Police can make arrangements for conducting identification parades, but it must be done in the presence of a magistrate as it does not come in the purview of sec. 162 of Code of Criminal Procedure of 1898.

6.3 Identifying expert opinion evidence

When the court has to form an opinion upon a point of foreign law, science, art, handwriting identity, or finger impression, the expertise of professionals from that particular field shall be sought; these people are known as experts.

6.4 Finger – Prints

The evidence and professional opinion given by a finger-print expert need not necessarily be corroborated, but the court must be satisfied regarding the value of such evidence in the same way as it must be satisfied in the value of any other piece of evidence.

6.5 Age

A doctor's opinion as to the age of a person based on his or her height, weight and teeth, does not amount to legal proof of the age of that person. The opinion of a doctor as to the age of a person is a relevant piece of evidence. However; it is a different question as to what weight in a particular case ought to be attached to such an opinion. PLD 1950 Pesh.19. The age of a person can only be proved only by the opinion of a radiologist. PLD 1986 Kar.179.

6.6 Handwriting

It is necessary for the admission of the evidence of a handwriting expert that the writing with which the comparison is made should be admitted or proved beyond doubt to be that of the person alleged, and that the comparison should be made in open court in the presence of such person. The opinion of an expert that certain documents have been typewritten on the same machine is not admissible under this article which, as it stands, does not cover such expert opinion. The court may ask the witness to explain points in favour of his view, but must come to its own conclusion, and not treat such opinion as expert opinion relevant by itself.

6.7 Expert opinion- evidentiary value

Opinion of an expert is never binding on a court. Such evidence is admitted in evidence only to help the court in arriving at a correct decision, but it does not follow that the opinion of an expert is always correct (2003 PLD 1195). An expert may be defined as one who has specialised knowledge by education, training, experience, or skill (either formal training or experience will do). What are some of the relevant recognised fields of scientific, technical, and other specialised knowledge, and who are some of the people who testify in court as experts?

Chapter 7

Production of Documents/Exhibits

This section deals with the techniques for creating, presenting, and using tangible exhibits in a "show and tell" atmosphere. The idea is to achieve maximum persuasive influence by using left-brain visuals that complement right-brain word streams. One can almost always do this without exhibits, but they add visual and tactile dimensions of enormous persuasiveness to your oral presentation. Exhibits are visual. Exhibits can be used to give life to a story in the opening statement with proper pre admission. Exhibits are also the keystone building blocks of factual proof and graphic reminders that will enhance any final jury argument. The job of a lawyer is to present their exhibits in a way that makes them useful to the jury in understanding their story of the case. Real tangible exhibits appeal to the senses. They can be touched, seen, smelled, heard, and/or tasted. To elaborate, some tangible exhibits have a disproportionately persuasive impact; for example, courts display a tendency to believe what is in a document. Exhibits can make a witness seem more credible, particularly when the witness is explaining the exhibit. Of course, if a lawyer does not know how to establish a foundation (predicate) for the exhibit, or if laziness causes him/her to disregard the requirements of the rules, they will give their opponent the right to interrupt their examination with a distracting and valid objection. Lawyers must remember that their job is to present their exhibits in a way that makes them most persuasive to the court.

7.1 The Role of an Independent Educator in the Court

Trainers are taught by the prosecutors that there should be competency based investigations to ensure that those with an investigative role within their organisation have the knowledge, skills and confidence to perform to the best practice standards. These standards include improving convictions and successful investigations, reducing the risk of failure, learning court-standard procedures, ensuring that findings stand up to scrutiny in court and performing better as an investigator. Court room investigation training provides a structured development path for all investigators, and will help them carry out their work more effectively.

7.2 Key Skills for Presenting Effective Evidence

Expert witnesses play a fundamental role by providing opinion-based evidence to assist the courts in reaching decisions. Expert witnesses may be asked to write reports or statements and be called to give evidence in a wide variety of legal forums including civil, criminal and family courts, tribunals, arbitrations, inquiries, and professional conduct hearings. This

provides investigators with everything they need to stay entirely compliant with the law when securing evidence and writing statements. Thus, ensuring that investigators give evidence in court clearly and assertively.

7.3 Communication Skills

Communication is the foundation of all our interactions with others. It influences the way we perceive and judge, not only other people, but also the facts and circumstances of cases, affecting the decision-making process in ways we often are not aware. Advocacy and courtroom skills rest heavily on the communication skills of and the communication between the various participants. Clearly, cases involving self-represented parties present special communication challenges. Under the time pressure and stress of heavy and often highly charged calendars, how can one best perform their fact-finding and decision making functions with parties not legally trained? How can one be sure that parties who do not have attorneys as intermediaries understand and comply with their orders and rulings? How can a legal professional ensure that justice is not more difficult to attain for self-represented litigants? Communication skills—something that everyone can improve—will help determine success. The communication choices made by lawyers influence not only the amount and quality of the information successfully conveyed in the courtroom (both information given and information received), but it will affect the likelihood of compliance with orders and both the actual and perceived fairness of your court proceedings.

7.4 Familiarization of the Witness in the Courtroom

A witness familiarisation in courtroom skills is a process which provides witnesses with a comprehensive understanding of the theory, practice, and procedure of giving evidence and what is expected of them when they are required to give evidence. This includes familiarising the witness with the layout of the legal forum, the likely sequence of events when the witness will be giving evidence and a balanced appraisal of the different responsibilities of the various people at the hearing.

Differentiate various ways of recording, obtaining and presenting evidence

8.1 In electronic form

It is commonly known as digital evidence and probative information which is a staved or transmitted form used in the court for the purpose of trial. It is more difficult to destroy easily modified, easily duplicated, more expressive and readily available.

8.2 Hand written

If there are two reports that conflict with each other, neither of them can be relied upon. Using the report of an expert in handwriting is an option that is not binding on the court. However, a statement on oath by witnesses cannot be ignored.

8.3 The chain and custody of proof

It relates to chronological documentation showing the seizure, custody, control, transfer, analysis and disposition of physical or electronic evidence. It must be handed in careful manner and should be done in a chronological and logical procedure. It must be in physical custody.

8.4 By inspection

All documents produced for the inspection of the court are called documentary evidence. The court can inspect any property directly or through commission.

8.5 By observation

It can provide audit evidence about the performance of a process. Also, evidence can be gathered through qualitative observation via a research method (such as observation skills and others).

8.6 By inquiry and commission

The commission may be detailed by the respective courts for collection of evidence.

8.7 By analytical review

An analytical review may be carried out by way of observational inspection, external confirmation, recalculation, by assessment and other means.

8.8 By video.

Video cassettes fall outside of the purview of expression documents as defined in Section 29, P.P.C Article 2 (1) (b) of Qanun-e- Shahadat and Section 391 (6) of General Clauses Act of 1897. Recorded videos are the most important piece of evidence that could be produced by the prosecution. It forms part of the record, and it is an inalienable right of the accused to receive a certified copy thereof which they are entitled to get by virtue of the provisions contained in Section 548 Cr.P.C.

8.9 By images

These evidences are collected by background concept, images of materials, bagging evidence, collection of evidences, evidence stamp, foot print images, etc.

8.10 By equipment

Collection of evidence by laboratory equipment, crime scene forensic equipment and products for evidence, preservation products, and finger print products, etc.

8.11 Viewing by recorded testimony.

All witnesses are competent to testify unless the court believes that they are prevented from understanding the questions put to them or are incapable of giving rational answers due to tender age, extreme old age, disease or any other kinds of the same type.

8.12 Avoid hearsay evidence

The evidence of those who relate not what they know themselves, but what they have heard from others is referred to as “hearsay”. As a general rule, hearsay evidence of a fact is not admissible. If any fact is to be substantiated against a person, it ought to be proved in his presence by the testimony of a witness sworn or affirmed to speak the truth.

Strong evidence before the courts

9.1 Direct proof

In all cases, oral evidence must be direct. That is to say, if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; if it refers to fact which could be perceived by any other sensor in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds (law of evidence 1984)

9.2 Mean of Hearsay

The term hearsay is used with reference to what is done or written and what is spoken. In its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. That this species of evidence is not given upon oath, that it cannot be tested by cross-examination, and that in many cases it supposes some better testimony which might be adduced in the particular case are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which may be practiced with impunity under its cover, combine to support the rule that hearsay evidence is inadmissible. The word hearsay is used in various contexts. For example, sometimes it means whatever a person declares on information given, what a person declares on information given by someone else, or it can be treated as nearly synonymous with irrelevant information.

9.3 Proof of Contents in a Document

The contents of a document may be proved either by primary or by secondary evidence. Documentary evidence means all documents produced for the inspection of the court. There are two kinds of documents: public and private. Article 85 of the Law of Evidence, 1984, gives a list of documents which are regarded as public documents. All other documents are private. The production of documents in courts is regulated by the Civil Procedure Code, 1908 and the Criminal Procedure Code, 1898.

9.4 Primary Evidence

Primary evidence means the document itself produced for the inspection of the court.

9.5 Secondary Evidence

Secondary evidence means and includes

- Certified copies given under the provisions hereinafter contained
- Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies
- Copies made from or compared with the original
- Counterparts of documents as against the parties who did not execute them
- Oral accounts of the contents of a document given by some person

Chapter 10

Adopts Courts' Rules and Procedures

10.1 Supreme Court of Pakistan

The Supreme Court of Pakistan has been given powers under Article 191 of the Constitution of the Islamic Republic of Pakistan, 1973 to make rules for the purpose regulating to its practice and procedure. Article 191 of the Constitution of Pakistan states, "Subject to the Constitution and Law, the Supreme Court may make rules regulating the practice and procedure of the Court". The supreme court has been delegated power under the aforesaid article of the constitution to make rules for the purpose of regulating its business. These rules are regulatory in nature and do not in any case affect the jurisdiction of the court which is conferred by the constitution

10.2 All high courts

High courts are established under articles 192 and 193 of the constitution which also published their rules. One must know the meaning of single bench, double bench, full bench, etc, including the procedures for filing appeals and revisions.

Conclusion:

These guideline have been prepared to develop the analytical and argumentative skills of prospective lawyers. It aims to allow prosecutors the opportunity to practice the skills of an effective lawyer in a court or tribunal. This would enable them to enhance their knowledge regarding the workings of the legal system. They have to deliver arguments in different advocacy situations and improve their abilities in investigations and trials. Also, the guidelines will help to develop an understanding of the role and conduct of a lawyer in the court to provide prosecutors with experience in matters of criminal law.

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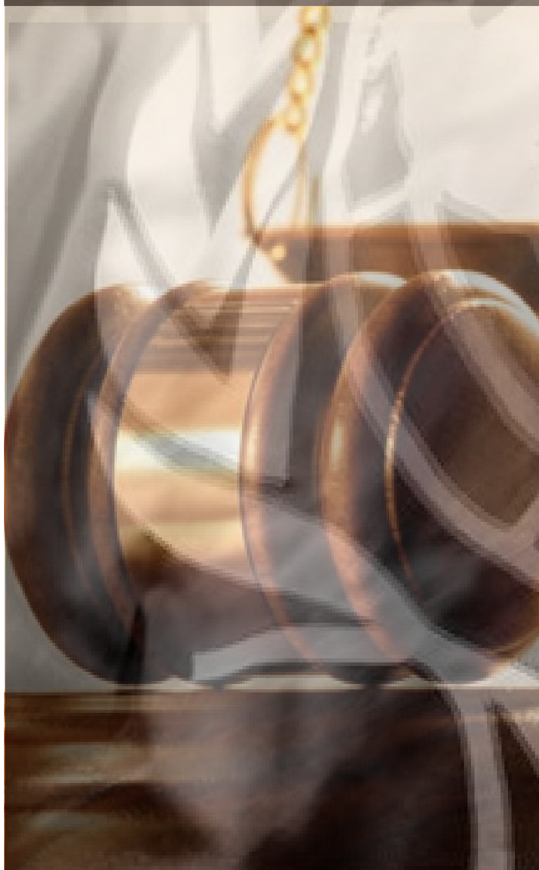
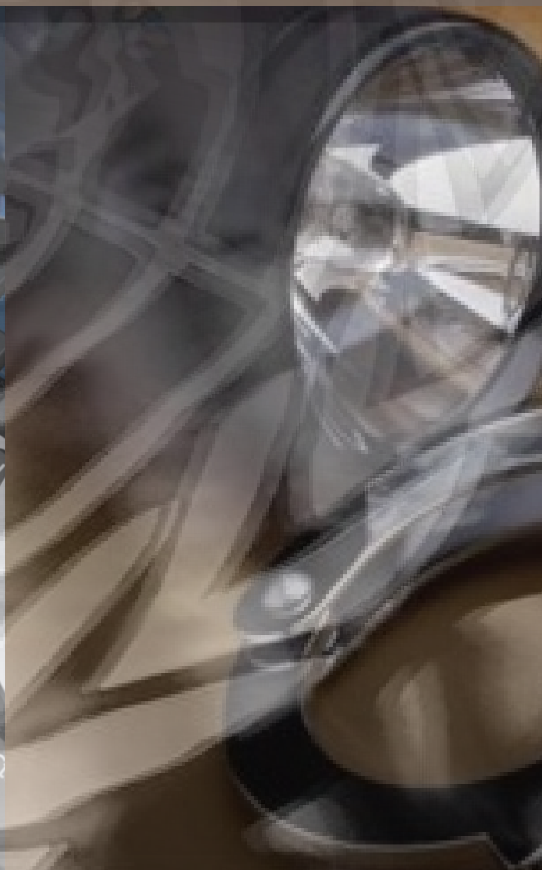
Legal Procedures and Precedents





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Legal Procedures and Precedents

1. Introduction

Every state has a set of procedural statutes (often called the Codes of Civil Procedure and Criminal Procedure), courts have so-called "local rules," which govern the amount of time necessary for filing documents, the conduct of the courts and other technicalities. Law practice before the courts operate under the Rules of Civil Procedure and the Rules of Criminal Procedure. Procedural law is distinguished from "substantive" law, which involves the statutes and legal precedents upon which cases are tried and judgments made. Whereas precedent law is law developed by judges through decisions related to case law, rather than through legislative statutes or executive branch action. A "common law system" is a legal system that gives great importance to legal precedents, on the principle that it is unfair to treat similar facts differently on different occasions. Future decisions are bound by this body of precedents known as "common law". The term itself is confusing as it has different meanings depending on the context. It could be used to refer to a law crafted by judges as they decide cases, this is what we refer to as case law, and this is in contrast to law established by legislation, which is also known as statutory law. It can also be used to refer to law that is not equitable. And, finally, it can be used to describe the legal system of countries which follow the common law tradition.

2. Procedure Law in accordance with law of evidence, 1984

The Law of Evidence is the *lex fori* which governs the Courts. Regardless of whether or not a witness is competent, a certain matter needs to be proved by writing, or certain evidence can be used to prove a certain fact, all of this is to be determined and enforced by a court of law.

The law of evidence is a component of the law of procedure. Where there is an absence of statutory rules of evidence governing a situation, the court is not prohibited from adopting any just and fair rule of evidence. This can be treated as ordinary law in the absence of any statutory constraints; however, exceptions can be made to this principle on account of a special subject of inquiry. The Law of Evidence, 1984 (also known as the *Qanun-e-Shahadat*) establishes comprehensive legal standards of how to treat evidence. It is a branch of what is known as adjective or procedural law; however, it is not exhaustive. The rules of evidence, apart from the *Qanun-e-Shahadat* (1984), are contained in other acts and statutes such as the Banker, Book Evidence Act Order XXXVI of the Code of Civil Procedure, Sections 7, 12 and 14 of the Divorce Act (1869), Sections 19 and 20 of the Limitation Act, Sections 49 and 50 of the Registration Act (1908),Section 63 of the Succession Act, and finally the Extradition Act.

3. Procedure Law in accordance with Criminal Procedure Court, 1898

The Code of Criminal Procedure (1898), like all other procedural laws, provides mechanisms to foster, rather than hamper, the cause of justice; too stringent an interpretation would not advance the cause of justice in any way, and more particularly when the case of the applicant or the accused is not prejudiced, they will get a full and fair chance to defend themselves. One must not lose sight of the fact that courts of law are not intended to sit as silent spectators; if a public prosecutor, for any reason, fails or neglects to discharge of their duties, the court is required as the guardian of the law to act in furtherance to the cause of justice. The Code of Criminal Procedure is provided to promote the cause of justice and; procedural intricacies or technicalities are never allowed to impede the cause of justice. Matters relating to remedy, mode of trial, the manner of taking evidence and all forms of actions are all matters relating to procedure. If there is no other express provision in the field relating to a matter or proceeding, courts are free to reach a just decision by evolving or adopting their own procedures. The absence of any provisions in a particular matter does not mean that the court has no power in that regard. The court may act on the principle that every procedure should be understood as permissible until shown to be prohibited. This is the only exception to the general rule, but it is also subject to the golden rule of the fair trial. The entire scheme of the Cr.PC is to streamline and facilitate the smooth running of the criminal justice system; therefore, while interpreting any provision, efforts are to be made so that there are neither any obstructions created, nor is the system thwarted in any manner. This would include the basis of small technicalities because giving effect to the form and not to the substance would certainly defeat the ends of justice and ultimately the purpose of the law itself. Such an approach would be prejudicial to our very system of criminal justice.

4. Case Law in Common Law Systems

In the common law tradition, courts decide the law applicable to a case by interpreting statutes and applying precedents which record how and why prior cases have been decided. Unlike most civil law systems, systems follow the doctrine of *stare decisis*, in which most courts are bound by their own previous decisions in similar cases, and all lower courts should make decisions consistent with previous decisions of higher courts. In England and Wales, for example, the High Court and the Court of Appeal are each bound by their own previous decisions, but the Supreme Court of the United Kingdom is able to deviate from its earlier decisions although in practice it rarely does so. Generally speaking, higher courts do not have direct oversight over lower courts as they cannot reach out on their own initiative (*sua sponte*) at any time to reverse or overrule judgments of the lower courts. Normally, the burden rests with litigants to appeal rulings (including those in clear violation of established case law) to the higher courts. If a judge acts against precedent and the case is not appealed, the decision will stand. Even if the lower court feels that the precedent is unjust, a lower court may not rule against a binding precedent. The lower court may only express its hope that a higher court or the legislature will reform the rule in question. If the court believes that developments or trends in legal reasoning render the precedent unhelpful and wishes to evade it, the court may either hold that the precedent is inconsistent with subsequent authority, or that the

precedent should be *distinguished* by some material difference between the facts of the cases. Decisions of this sort often prompt the evolution of laws. If that judgment goes to appeal, the appellate court will have the opportunity to review both the precedent and the case under appeal. It may perhaps overrule the previous case law by setting a new precedent of higher authority.

5. Pakistan Penal Code and Criminal Procedure Code

5.1 Pakistan has an extensive penal code containing 511 articles based on the Indian Penal Code of 1860 which has been extensively amended during both the pre-independence and the post-independence eras. The country also has an equally extensive Code of Criminal Procedure. Numerous other laws relating to criminal behaviour have also been enacted. Much of Pakistan's code deals with crimes against persons and properties including the crime of *dacoity* (robbery by armed gangs) and the misappropriation of property. The code contains copious provisions for punishment of crimes against the state or against public tranquility. These crimes extend to conspiracy against the government, incitement of hatred, contempt or disaffection towards a lawfully constituted authority, unlawful assembly and public disturbances. Punishments range from finite periods of imprisonment to life in prison, and can ultimately be extended to death.

5.2 Article 9 & 13 of the Constitution of Pakistan

In principle, articles 9 to 13 of the constitution and various provisions of the codes guarantee most of the same protections that are found in British and United States law. These rights include, for example: bail, counsel, habeas corpus, cross-examination, representation, being informed of criminal charges, appeal and prevention of double jeopardy.

5.3 Some Basic Rules of Criminal Procedure

Procedural law is exactly what the name implies. It sets out the procedure for how a criminal case will proceed. Every state has its own set of procedures that are usually written out in a set of rules called a *code of criminal procedure*. The basic rules, which most jurisdictions follow, include:

- An arrest must be based on probable cause
- A state or federal prosecutor files a charging instrument setting out what the accused allegedly did
- The accused is arraigned on the charges
- The accused advises the court whether or not they will seek court-appointed counsel
- A bond amount will be set in their case
- They will be sent notice of a court appearance

- If they cannot reach a plea bargain agreement, their case is set for a pre-trial and trial in case of the National Accountability Ordinance 1999
- If the accused is convicted at trial, they have the right to appeal.

5.4 Legal Procedure in Pakistan

The Code of Criminal Procedure professes to deal exhaustively with the law of procedure and provides in the minutest details the procedure to be followed in every matter pertaining to the general administration of criminal law. The procedure as provided in the court is not designed to aid the prosecution or accused, but to unearth an accurate interpretation of the law. In order to be effective, the code must be exhaustive in its scope. In cases where there is an absence of any legal provisions, the court may act on the principle that every procedure should be understood as permissible until it is prohibited by the law.

5.5 General Rules for Pre-Arrest/Anticipatory Bail under the Code

As per the criminal procedure code (1898), **t**he court will weigh various factors before granting bail to the accused in Pakistan. These factors include:

- *Mala fide*, ulterior motives or false implication are essential for pre-arrest bail. Pre-arrest bail can be granted when the arrest of an accused person with an ulterior motive, *mala fides* or due to false implication apparent on the face of their record is imminent. This normally happens when the purpose of a case (or a possible case) is to malign the accused.
- The gravity and seriousness of the crime as viewed by superior courts. If a case is serious, such as murder or rape, it does not necessarily mean that it is non-bailable. The gravity of the allegation(s) should not stand in the way of granting pre arrest bail
- The granting of pre-arrest bail in Pakistan helps protect innocent persons against victimisation through possible abuses of the law. Measures such as this ensure that justice is not beyond the reach of ordinary citizens
- An individual is willing to physically surrender to law enforcement agents with full cooperation
- The courts may take a lenient view if the accused is facing health problems and *prima facie* the case has been lodged to malign the same
- If the accused was not present at the scene when the crime was allegedly committed, or if no act can be attributed to them at that time, the court may grant bail
- The case turns out to be a civil dispute as opposed to a criminal one
- The jurisdiction of Pakistan's courts is clearly defined by the law. Jurisdiction will also affect the granting of bail.

6. Doctrine of Precedent

In the common law system, it is the doctrine of 'precedent' which courts depend upon, more than any other legal doctrine, while arriving at their decisions. The elements that constitute the doctrine of precedent are numerous and complex. Despite its considerable importance in the Pakistani legal system, the operation of this doctrine has so far drawn little academic attention. This work bridges that gap. It thoroughly examines the history, origin and context of this doctrine as well as the rules which guide its operation in Pakistan in the Supreme Court, the high courts, the Federal Shariat Court, and the various tribunals with examples and analysis of case law. How is the ratio of a precedent case determined? What is the interpretation of Article 189 of the Constitution of Pakistan? Are decisions of the Supreme Court binding on the Supreme Court itself? Are the lower courts bound by the dictum of the Supreme Court? Are there decisions of the Supreme Court that are not binding on lower courts? What are the respective positions of the superior courts in India and Azad Jammu & Kashmir (AJK) on these issues? What value should be attached to precedent in criminal cases? Can the Supreme Court, the high courts, and the Federal Shariat Court overrule their own previous decisions? Is the practice of the higher courts in Pakistan, under Articles 189, 201 and 203 GG, in conformity with Islamic law? These are some of the questions, vital to understand the operation of precedent in Pakistani law, which are discussed in this document.

6.1 Binding Precedents Ingredients

- The position in the court hierarchy of the court which decided the precedent relative to the position of the court trying the current case
- Whether the facts of the current case come within the scope of the principle of law in previous decisions.

6.2 Persuasive Precedents

Will precedents, and other examples of legal writing that do not qualify as binding precedent but are useful or relevant, guide the judge in making the decision in a current case? Persuasive precedent includes cases decided by lower courts, by peer or higher courts from other geographic jurisdictions, cases made in other parallel systems (for example, military courts, administrative courts, indigenous and tribal courts, and both state and federal courts in the United States). In a case of first impression, courts often rely on persuasive precedent from courts in other jurisdictions that have previously dealt with similar issues. Persuasive precedent may become binding through its adoption by a higher court.

6.3 Development of the Law through Precedent

- Issues for common law
- Previous cases can be;
  a. Distinguished
  b. Set aside *per incuriam*
  c. Overruled by superior court

7. Binding Precedents in Pakistan

- Decision of the Supreme Court of Pakistan
- Article 189 of the Constitution of Islamic Republic of Pakistan reads as any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.

7.1 Decisions taken by High Courts

- In the second place the decision of all high courts are binding on the courts that are subordinate to it.
- Article 201 of the Constitution of Islamic Republic of Pakistan reads as any decision of a High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it.
- Subject to Article 198, any decision of a high court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it. However, this means that if a decision on the same points is delivered by the Supreme Court that shall prevail.

7.2 Conflicting Views of different High Courts

- In case of contrary views being held by two high courts on one point, the decision of the local high court is to be followed irrespective of the chronological consideration.
- In the event of conflicting views from different high courts from outside of the court's province, the latest precedent is to be followed.

7.3 Conflicting Views within a particular High Court

- The decision of the full bench of the court cannot be dissented from by a division bench or a single bench
- The decision of a division bench of the court cannot be dissented from by a single bench or by a division bench
- The decision of a single bench can be dissented from by another or the same single bench and can be over ruled by a division
- The decision of a single bench can be dissented from by another or the same single bench and can be over ruled by a division bench.

7.4 Conflicting Views of the Supreme Court

- Where there is a conflict of opinion between two benches of the Supreme Court, the high court should follow the larger bench in preference to that of a smaller bench.

7.5 Decision of Privy Council and Federal Court of India

- The Government of India Act (1935) enacted that the law laid down by the Federal Court and Privy Council should be binding upon all the courts across the entire Indian subcontinent. That law remained applicable to courts within Pakistan after the 1947 partition. Since independence, when there is a conflict of opinion between the Privy Council and the Federal Court or Supreme Court of Pakistan, the law declared by either the Federal Court or Supreme Court will be binding
- However, it should be noted that although the decisions of the Privy Council are not binding in Pakistan, because they are expositions of the law from one of the highest judicial tribunals in the world, these decisions can be considered as guidelines for the proper exposition of the law
- Until a Privy Council decision is superseded by a Supreme Court decision on a particular point, the Privy Council decision shall continue to be binding upon the high court and the subordinate courts as at the commencement of the Constitution.

7.6 Rationale

- Certainty
- Equality
- Efficiency
- The appearance of justice

8. Types of Precedent

8.1 Verticality

Generally, a common law court system has trial courts, intermediate appellate courts and a supreme court. The inferior courts conduct almost all trial proceedings. They are also bound to obey the precedents established by the appellate court in their jurisdiction and the Supreme Court overall. The Supreme Court of California's explanation of this principle is that under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* would be irrelevant. The decisions of this court are binding upon and must be followed by every state court in California.

8.2 Horizontality

The idea that a judge is bound by (or at least should respect) decisions of earlier judges with similar standing is called horizontal *stare decisis*. In the United States federal court system, the intermediate appellate courts are divided into "circuits". Each panel of judges on the for a circuit is bound to obey the prior appellate decisions of the same circuit. A precedent set by a United States court of appeals may be overruled only by the court *en banc,* that is, a session of all the active appellate judges of the circuit, or by the United States Supreme Court, as opposed to a different three-judge panel. When a court binds itself, this application of the doctrine of precedent is sometimes called *horizontal stare decisis*.

8.3 Federalism and Parallel State and Federal Courts

In federal systems the division between federal and state law may result in complex interactions. In the United States, state courts are not considered inferior to federal courts but rather constitute a parallel court system. State courts must follow decisions of the federal courts on issues of federal law, and federal courts must follow decisions of the state courts on issues of state law. If an issue of state law arises during a case in federal court, and there is no decision on that point from the highest court of the state, the federal court must either attempt to predict how the state courts would resolve the issue by looking at decisions from state appellate courts, or, if allowed by the constitution of the relevant state, submit the question to the state's courts. While state courts must follow the decisions of the United States Supreme Court on issues of federal law, federal courts must follow the decisions of state courts in matters relating to state law.

8.4 Binding Precedent

A precedent that must be applied or followed is known as a *binding precedent.* Under the doctrine of *stare decisis*, a lower court must honour the legal findings made by a higher court that are within the appeals path of cases the court hears. In state and federal courts in the United States of America, jurisdiction is often divided geographically among local trial courts, several of which fall under the territory of a regional appeals court. All appellate courts fall under a highest court (sometimes, but not always, called a "supreme court"). By definition, decisions of lower courts are not binding on courts that are higher in the system, nor are appellate court decisions binding on local courts that fall under a different appellate court.

8.5 Binding Precedent in English law

Judges are bound by the law of binding precedent used in England and Wales and other common law jurisdictions. This is a distinctive feature of the English legal system. In Scotland and many countries throughout the world, particularly in mainland Europe, civil law means that judges take case law into account in a similar way, but are not obliged to do so and are required to consider the precedent in terms of principle. Their fellow judges' decisions may be persuasive but are not binding. Under the English legal system, judges are not necessarily

entitled to make their own decisions about the development or interpretations of the law. They may be bound by a decision reached in a previous case. Two facts are crucial in determining whether a precedent is binding:

- The hierarchical status of the court that decided the precedent, relative to the position of the court trying the current case.
- Whether the facts of the current case come within the scope of the principle of law in previous decisions.

Conclusion

Although the application of precedent may appear to be mechanical, a simple means of matching facts and rules, it is a more subjective process. Legal rules, embodied in precedents, are generalisations that accentuate the importance of certain facts and discount or ignore others. The application of precedent relies on reasoning by analogy. Analogies can be neither correct nor incorrect but only more or less persuasive. Reasonable persons may come to different yet defensible conclusions about what rule should prevail.

The judicial system maintains great fidelity to the application of precedents. However, there are times when a court has no precedents to rely on. In these "cases of first impression," a court may have to draw analogies to other areas of the law to justify its decision. Once decided, this decision becomes a precedent.

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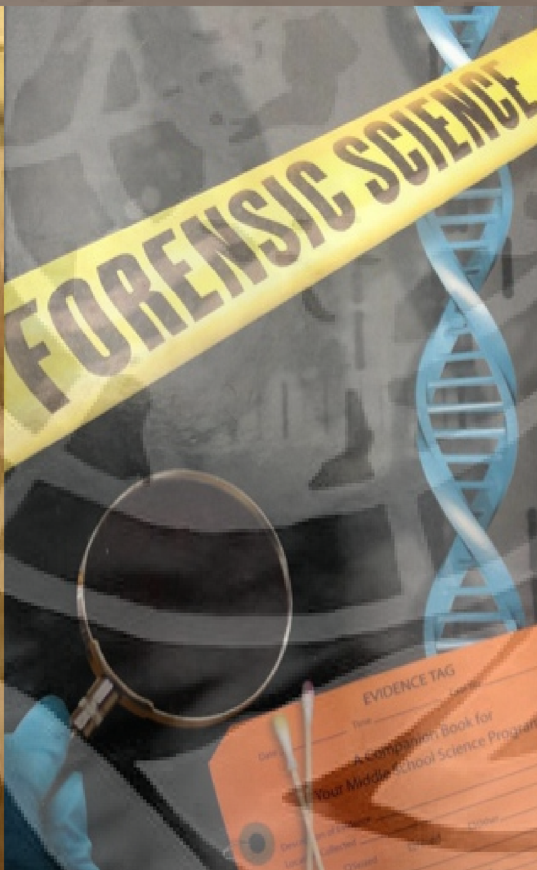
Trial and Forensic Evidence



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Trial and Forensic Evidence

Introduction

There are many rules about how you can bring evidence before the Superior Court of Justice. A lawyer cannot simply tell a story to a judge as though they were having a personal conversation. It is important to have a basic understanding of the rules before one goes to court. The type of evidence needed to prove a case in the Superior Court of Pakistan depends on the type of proceeding. This document explains the general principles of evidence and how to introduce evidence in court cases that have been commenced by a statement of claim. The hearing of an action takes place through a trial. In trials evidence may be introduced by witnesses who provide oral evidence (or testimony). This is distinct from other civil proceedings commenced in the Superior Court of Justice, which may involve only the introduction of written evidence.

Principles of Evidence

1.1 What is evidence

The Law of Evidence of 1984 (Qaunun-e-Shahadat) contains a wealth of useful information that can be used to prove or disprove an alleged fact. Examples include testimony (spoken evidence from witnesses given under oath), written documents such as affidavits, contracts and medical records. It may be helpful to think of evidence as material that assists the court in discerning facts. Once the facts have been determined, the court must apply the facts to the law. Gathering evidence is therefore the starting point for trying to prove any case.

1.2 The Rules of Evidence

The rules of evidence determine what matters may be admitted (or not admitted) for the purpose of proving the fact or facts at issue. The rules set out what documents will be admitted into evidence, whether they must be served on the other party, and the time limits for doing so. The rules of evidence help the trial run smoothly and efficiently because testimony and documents are presented to the court in a predictable way, and they also provide for a trial procedure that is fair to both parties.

1.3 Admissible Evidence

Admissibility, as defined by the Law of Evidence (1984), means that a judge can consider a party's evidence only if it is admissible. This means that it is relevant to a material fact in the case and is not excluded by any rule set out in case law, relevant statutes or the other general rules.

1.4 Material Facts

A material fact is a piece of evidence, which is necessary to discern the truth according to either party's perspective, and without which a proper determination cannot be made. In the civil context, what is material is often determined by the pleadings (written statements of fact such as the statement of claim, statement of defence, and/or third party claim, which are used to start and respond to a case), as the pleadings elaborate on what is being disputed.

1.5 Relevance

Evidence is relevant if it can be used to make the existence or non-existence of any fact appear more probable or less probable than would otherwise be the case.

To decide whether evidence is relevant, one must ask whether it helps to prove or disprove the facts in a case.

1.6. Rules to exclude Evidence

There are a number of exclusionary rules that apply within the Law of Evidence (1984). For example, the judge may not allow the use of evidence in court if:

- the evidence is privileged (a party has the legal right to keep the evidence confidential)
- it is in the interest of procedural fairness to exclude it (e.g., one party wishes to rely on a document that they did not disclose to the other)
- The exclusionary rules can be quite complex and difficult to ascertain as they are in many cases derived from common law principles.

1.7 Burden of Proof

The burden of proof falls upon the person who approaches the court for a remedy. This means they have the obligation of proving or disproving a fact or issue. This also refers to the obligation to point of evidence already on the record to raise an issue to the satisfaction of the trial judge.

1.8 Standard of Proof

In a civil case, the standard of proof rests on a balance of probabilities. This means that one must demonstrate that the existence of a contested fact is more probable than its non-existence, or if one is trying to prove the negative of an issue, they must prove that its absence is more probable than its existence. In all civil cases, the court must scrutinise the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred. The civil standard of proof requires a lower standard than its counterpart in criminal law, which requires proof beyond a reasonable doubt. The criminal standard of proof is never applied to civil cases.

1.9 Judicial Notice

A judge can acknowledge that a fact has been proven without the lawyer having to prove it if the community is generally aware of the fact; this is called judicial notice. A judge can only

take judicial notice of facts that are beyond dispute by reasonable persons or if they can easily be confirmed by reference to an authoritative and accurate source.

1.10 Admissions

A party can admit that certain facts or issues are not in dispute. Also, both parties can inform the court that they agree on certain facts in the case; this is called an agreed statement of facts. It will speed up the trial process because those facts do not need to be proved in court.

Evidence at Trial

2.1 Evidence given by Witnesses

A witness is a person who gives evidence to the court orally under oath or affirmation (see below) or by affidavit (a sworn written statement). Witnesses are a critical part of the trial process whether they are giving evidence about what they saw happened or confirming that a document is authentic. A witness must be prepared to answer questions and give accurate information to the court. It is the role of the parties, not the court, to call and examine witnesses.

2.2 Preparing Witnesses for Trial

Preparing a witness prior to a trial involves meeting with the witness in order to review the evidence that he or she will provide. If there is more than one witness, the lawyer should review the case with each of them individually. These are the most important matters to review:

- Evidence that the witness will be giving in court
- Documents that will be shown to the witness in court
- Types of questions that will be asked in the direct examination (examination in chief)
- Types of questions the other party may be asked in cross-examination
- How to answer questions clearly (in other words, just give the facts)
- Courtroom etiquette

2.3 Refreshing the Witness' Memory

Trials are often held several years after the event that led to the dispute. Unsurprisingly, witnesses may have trouble remembering the details that they are asked to provide to the court. A lawyer can help “refresh” the memory of their witness before and during trial

- **Before the Trial**: It is reasonable for witnesses to refresh their memories on information and events that they will be asked about. It is advisable for a lawyer to talk to their witness about the issues in dispute and the type of questions that will be asked. They may also want the witness to review documents that will be introduced into evidence. It is important to remember that a well prepared witness may affect the weight the judge gives to their testimony. For example, if a witness sounds as though they are reading from a pre-prepared script, the judge

may not believe that their answers are genuine and may not give much weight to the evidence.

- **During the Trial:** With permission from the judge, if a witness has no present memory, the witnesses can refresh their memory by referring to notes or documents that were made closer to the time of the event in dispute. The witness can do this if: the document was made by the witness at or near the time of the event while the witness's memory was fresh, or the document was created by a person other than the witness who was recording events or matters observed or heard by the witness. In the case of the latter, the witness must confirm that it was indeed accurate.

2.4 Oral Testimony of the Witness

Most evidence is introduced at trial to the court through witnesses giving testimony (spoken evidence given under oath). Witnesses can be the parties themselves or others who have particular knowledge or information about the case. It is usually a good idea to ask the judge to exclude witnesses who are not parties during the trial. This means that they have to wait outside the courtroom until it is their turn to give evidence. It prevents the witnesses from hearing each other's testimony and changing their evidence in response to what they have heard.

2.5 Telling the Truth

Before a witness gives evidence to the court, they must agree to tell the truth. Witnesses can take an oath to tell the truth and swear that the evidence they are about to provide will be factual. In this case, there is no religious meaning to the commitment to tell the truth. An affirmation has the same effect in law as an oath. The judge will give the same amount of weight to the evidence provided whether the witness takes an oath or affirms to tell the truth.

2.6 Requirement to give Evidence

Witnesses who do not want to testify or cannot be relied upon to come to court can be compelled to give evidence at trial by serving them a summons, notice or warrant at their home or place of work. A summons to witness is a legal document that tells a witness that they are required to attend court in order to give evidence. If witnesses under summons do not appear in court to give evidence, a warrant can be issued for their arrest and they can be brought to court to testify.

Examination of a Witness

3.1 Direct Examination (Examination in Chief)

The Law of Evidence (1984) reveals that when a witness has taken the stand to give evidence and been sworn in, their party will "examine" or ask them questions first. This is called "direct examination" or "examination in chief". After a direct examination, the other party will be allowed to cross-examine that witness. Witnesses provide critical evidence at trial, but they do not take the stand and simply talk about issues in the case. It is the responsibility of lawyers to structure their questions for the witness so that the evidence is presented to the court in a logical way.

3.2 Questioning Witnesses

When asking questions, it is important to allow the witness to answer them in their own words. This makes their evidence more credible. Some examples of appropriate questions, in a hypothetical action arising out of a motor vehicle accident, are:

- What happened when you reached the intersection?
- What did the other driver say to you after the accident?
- Where were you looking?
- Why did you go there?

3.3 Leading Questions

Generally, a lawyer cannot ask "leading" questions when they are examining their own witnesses. The most common example of a leading question is one that suggests the answer to the witness. Note that you can ask leading questions when you are cross-examining the other party's witness.

What is a Leading Question?

"The car was speeding, wasn't it?" is a leading question. But asking "How fast was the car going?" asks the same question in a way that is not leading. There are some exceptions to this general rule regarding leading questions. It is appropriate to ask leading questions of one's own witness when:

- The information is introductory (for example, the time, date, and location of the accident)
- People or things are being identified (for example, name and occupation of witness)
- The matter is not disputed (for example, ownership of the car)
- The court gives permission to ask a leading question (for example, when a party's witness is unwilling or unable to give responsive answers, the trial judge may decide, on the request of the prosecutor, to declare the witness as hostile.

3.4 Personally giving Evidence

If an individual wishes to personally represent their own case in court, they will not have anyone to ask them questions when they give evidence. Instead, the party in question will tell the court their own version of the case. This process involves getting into the witness stand, swearing or affirming to tell the truth and giving one's own version of events. It can be helpful if the individual in question imagines that they are responding to their own questions. This can make it easier to organise information in a logical and thoughtful manner.

Example: How to give Evidence

These questions from a hypothetical case involving a motor vehicle accident can be used as a guide for self-questioning:

- What day was it?
- What time was it?
- What was the weather like?
- Was it light or dark outside?
- Where were you going?
- Were you in a hurry?
- What was your route?

3.5 Cross-Examination

Cross-examination is when one party asks the other party and their witnesses questions. The purpose of cross-examination is:

- To get testimony from the other party's witness that supports a case
- To discredit the witness (make the witness's evidence look less believable).

The scope of questions in cross-examination is broad; you can ask any questions that are relevant to the case, as long as you do not harass the witness. Unlike the direct examination of a witness, lawyers will often ask the witness from the opposing party leading questions. When

a witness takes the stand to give evidence, their credibility is on the line. Therefore, in cross-examination, it can be advantageous to ask leading questions in order to make the witness appear less credible.

Case Study on Cross Examination

In a hypothetical case a witness may have testified under direct examination that they drove straight home after work on the day in question. A cross-examination from the opposing party may focus on their knowledge that, in fact, he or she was seen hanging out with friends at the restaurant for three hours after work.

A cross-examination can focus on the following areas:

- Showing that the witness favours the other party (he or she is biased)
- Showing that the witness has contradicted himself or herself in previous statements
- Challenging the witness's memory on certain points
- Challenging the witness's version of events

Neither party is required to cross-examine every witness, but if they choose not to cross-examine a witness, his or her evidence may be accepted because nothing has been introduced to contradict it. During cross-examination, the witness should have a chance to explain things that are being introduced as evidence against them. It is not appropriate to "ambush" the witness by bringing in unexpected evidence that they have not had a chance to explain or disagree with.

3.6 Re-Examination

A lawyer can choose to re-examine their own witness if the cross-examination raised an issue that they did not deal with in their direct examination. Re-examination is an opportunity to respond to new issues raised in cross-examination, but it should not be viewed as not an opportunity to raise new issues which may have been forgotten in the original examination. The judge may also give permission for a second cross-examination of a particular witness. This may happen if the other party raised new issues with the witness during their re-examination.

3.7 Hearsay

Hearsay is an oral or written statement that was made by someone other than the person testifying at the proceeding, made outside of court, that the witness repeats (or produces) in court in an effort to prove that what was said or written is true. As a rule, hearsay is generally not admissible as evidence in trial,

3.8 Opinion Evidence

A witness's role is to tell the facts to the court, and the judge's role is to draw a conclusion based on those facts. The opinion of a witness is generally not admissible; however, there are many exceptions to this rule.

3.9 Expert Witnesses

An expert is someone qualified with special knowledge, skill, training, and experience (such as an engineer or a doctor). An expert can express an opinion based on information that they have personally observed or information that was provided by others. An expert in motor vehicle accident analysis could go to the scene of an accident, measure skid marks, and give the court an expert opinion about the speed of the cars involved in the accident. Or, the expert might be able to give an opinion based on photographs of the accident scene. An expert witness's opinion is admissible if:

- It is relevant
- It helps the judge to make a decision
- The expert is properly qualified
- There is no other reason to exclude the evidence
- If a party in a trial hires an expert to give evidence to support their case, they must get the expert to give his or her opinion during the direct examination.
  The expert must explain:
- Their professional qualifications (specifically how it related to that particular issue)
- Their professional opinion
- The facts considered in reaching this opinion
- Any tests or experiments performed

During cross-examination, the other party will try to find reasons why the court should not accept the expert's opinion. For example, the other party may question the expert's qualifications and experience or the facts on which the expert's opinion was based. If the expert witness does not have personal knowledge of the facts of the case, the expert may be asked to consider a hypothetical question or situation where certain facts are assumed to be true. The expert will give an opinion based on those facts.

3.10 Documents as Evidence

Documents can also be used as evidence in court. The word “document” has a broad meaning. In general, a document is any physical or electronic record of information that has been recorded or stored by means of any device (including photographs, films, sound recordings, etc.)

When thinking about what type of evidence can be used to prove a case, it is important to remember that a document is anything that contains information. Items such as a memo, invoice, letter, drawing, transcript, information on a computer hard drive, floppy disk, or CD would all qualify.

3.11 Proving Documents at Trial

At trial, a document can be put into evidence:

- To prove that it is authentic (real)
- To prove its contents.

To prove that a document is authentic, the person who created the document can be called as a witness to give evidence about it. Or, the document's authenticity can be admitted, for example, under a request to admit. If a document is put into evidence to prove its contents, it will be considered hearsay and therefore not admissible,. However, if it falls within one of the exceptions to the hearsay rule, the use of documents as evidence is covered by the “best evidence” rule. Under these circumstances, the party in question must submit the original copy of the document if they wish to use it as evidence. If the original document cannot be produced, an explanation must be given to the court regarding the use of a copy. For example, the original might be lost, destroyed, or someone else may have it. The “best evidence” rule does not apply to a party who tenders a document solely for the purpose of identifying it or proving its existence.

Forensic Evidence

Introduction

Evidence refers to information or objects that may be admitted into court for judges to consider when hearing a case. Evidence can come from a wide variety of sources such as genetic material, trace chemicals to dental history, fingerprints and many others. Evidence can serve many roles in an investigation, such as to trace an illicit substance, identify remains or reconstruct a crime.

4. Types of Forensic

4.1 Forensic Anthropology and Forensic Dentistry
4.2 Controlled Substances
4.3 Digital Evidence and Forensics
4.4 Why Traditional Forensics Techniques Are Less Effective With Digital Evidence
4.5 Types of Images Captured by Digital Evidence Investigative Tools
4.6 Case study

4.1 Forensic Anthropology and Forensic Dentistry

- **Forensic anthropologists** examine "skeletonised" or otherwise compromised human remains to assess age, gender, height, ancestry, identify injuries, and estimate the time since death. Examination of these remains may give information that can assist investigators in identifying a victim.
- **Forensic dentists**, or **odontologists**, examine the development, anatomy and any restorative dental corrections of the teeth, such as fillings, to make a comparative identification of a person.

Bones and teeth are the most durable parts of the human body, and they may be the only recognisable remains in cases of decomposition, fire scenes or mass fatalities. They are often used to identify an individual in such cases. For example, when law enforcement officials find unidentified human remains such as teeth, this critical piece of evidence may be the only resource investigators can use to compare to dental records of known missing persons to determine the person's identity.

4.2 Controlled Substances

Controlled substances are chemicals that have a legally recognised potential for abuse. They include “street drugs” such as heroin or ecstasy and prescription drugs such as oxycodone. Detecting and identifying controlled substances is a critical step in law enforcement's fight against drug-related crime and violence. Controlled substances present law enforcement and criminal justice professionals with the following problems:

- Large quantities of drug evidence are collected and submitted to crime laboratories, resulting in backlogs.
- New designer drugs emerge regularly, requiring crime laboratories to develop new analytical techniques and spend more time on analysis.
- Many drugs are similar in appearance and properties, creating a high degree of difficulty in distinguishing their exact identity.

New technology is needed to improve law enforcement efforts to address these issues. To achieve these goals, the following steps are important:-

- More sensitive detection tools to use at crime scenes.
- Improved tools and techniques to identify controlled substances including emerging “designer drugs” and evolving manufacturing techniques for existing drugs.
- New, faster and more efficient tools and techniques to analyse controlled substances in the laboratory.
- Improved ways to integrate tools, techniques and skill sets of other forensic disciplines to analyse controlled substances.

4.3 Digital Evidence and Forensics

Computers are often used for committing crimes, and, thanks to the burgeoning science of digital evidence forensics, law enforcement now uses computers to fight crime. Digital evidence is information stored or transmitted in binary form that may be relied on in court. It can be found on a computer hard drive, a mobile phone, a personal digital assistant (PDA), a CD, and a flash card in a digital camera, among other places. Digital evidence is commonly associated with electronic crime or e-crime, such as child pornography or credit card fraud. However, digital evidence is now used to prosecute all types of crimes. For example, suspects' e-mails or mobile phone files might contain critical evidence regarding their intent, their whereabouts at the time of a crime and their relationship with other suspects. In 2005, for example, a floppy disk led investigators to the BTK (Bind, Torture, Kill) serial killer who had eluded police capture since 1974 and claimed the lives of at least 10 victims. In an effort to fight e-crime and collect relevant digital evidence for all crimes, law enforcement agencies are incorporating the collection and analysis of digital evidence, also known as computer forensics, into their infrastructure. Law enforcement agencies are challenged by the need to train officers to collect digital evidence and keep up with rapidly evolving technologies such as computer operating systems.

Digital Evidence Investigative Tools

Digital evidence investigative tools are needed to efficiently and effectively collect digital evidence from crime scenes.

As technology advances, so has the knowledge required by law enforcement officers at a crime scene. The scope of evidence to be searched for and collected at a crime scene now includes digital evidence such as cell phones and computer networking devices. Some of these devices might be hidden in ceilings or other locations that are not immediately evident. At the same time, forensics experts face an ever-expanding backlog of digital evidence due to the increased use of computers. Training and preparing first responders to perform preliminary investigations could help reduce the digital evidence backlog and help law enforcement make significant headway into solving a range of crimes including:

- Computer threats
- Missing person cases
- Fraud cases
- Theft

It allows law enforcement officers who are not computer experts to conduct basic analysis of digital evidence at crime scenes. Onsite analysis by first responders would speed up initial investigative tasks, reduce the workload of digital forensics experts and allow them to focus on more in-depth digital evidence analysis.

4.4 Case Study – Daniel Pearl's Case

In the case of the abduction, and eventual murder, of the journalist Daniel Pearl in Karachi, the ransom notes were the tipoff. In sending those notes by e-mail, the kidnappers unintentionally gave investigators an electronic trail which they could trace back to the sender's computer. On February 4, 2002, the police traced the e-mails and photos announcing Pearl's kidnapping and ransom request to Speedy Internet, a Karachi Internet café owned by a Pakistani, Sheikh Naeem. The owner produced records showing that a young man, an unemployed computer programmer named Fahad Naseem, had sent the e-mails. The tipoff led police to him, and they successfully apprehended him. In addition, they found, sitting on a table in plain view, a laptop computer, hard drive and a scanner. For hours, at the U.S. Consulate, FBI computer forensics expert Ronald J. Wilczynski dug into the hard drive, which had been reformatted to hide its old contents. As he looked in the directory for clues, an initial search for Pearl's name produced nothing. He found a job inquiry letter that Naseem had written asserting, “I believe in personal ethics such as integrity, honesty, and accountability for actions taken.” Finally, the computer forensics expert took a word from one of the ransom notes: “Amreeka.” This provided him with his first real success: an electronic trail of the ransom notes. Wilczynski searched for photos and eventually found hostage photos of Daniel Pearl. The FBI agent also found web pages that showed browsing to news websites prior to the kidnapping and Naseem's résumé and cover letter to potential employers. Fahad Naseem later pointed the kidnaping instigator as a man named Omar Sheikh, an all-around bad guy known in radical circles for kidnappings and ties to Pakistani militants.

4.5 Sample Qualification Questions for Digital Evidence/Forensics Expert Witness

1. Please state your full name.
2. What is your official address?
3. Where are you employed?
4. What is your position there?
5. How long have you been employed at this organisation?
6. What is your job function at this organisation?
7. Where were you employed prior to your current job?

8. What was your position there?
9. How long were you employed there?
10. What was your job function at that company?
11. How long have you been doing computer forensics?
12. Have you ever been hired as a computer forensics expert in the past?
13. Have you ever testified in the area of forensics or appeared as a witness in a court?
14. How many times have you appeared as a digital forensics expert witness?
15. Have you received any training specific to computer forensics?
16. Do you hold any course certifications specific to digital forensics?
17. Do you have a degree or certificate in digital forensics?
18. Can you briefly explain what digital forensics is?
19. Can you briefly explain chain of custody?
20. Have you published any articles in the area of digital forensics?
21. Have you ever been invited to speak at any conferences related to digital forensics?

4.6 Some Useful Computer Terms

It is helpful to know the definitions of some terms related to electronic information when attempting to obtain discovery of computer-related information. The following list includes several basic terms that an attorney should know to assist in understanding electronic information.

Active Data - These are the currently-in-use data files. They may be stored on any computing device, not just the hard disks of a network server.
Backup Data - Information copied to removable media (tapes, zip TM drives, CD-ROMs, etc.) to be used to re-establish the system in the event of a failure. Normally the data is stored in a compressed form that must be “restored” before it is usable.

Bookmarks - More accurately called network addresses, these are shortcuts that mark a location on a network to which the computer can quickly return “at the push of a button.” The marker is typically created automatically upon the request of the computer user and stored on the user's computer.

Cache Files - These files record Internet addresses visited by the user and graphic elements of the webpages visited. These files are created and stored automatically by the user's computer, and provide detailed trail markers identifying the path the user has travelled on the internet.

Cookies - These files contain bits of information about the user and/or the use of the computer, such as the user ID, details the user may have filled out on a form, past purchases

and other personal data. The files are placed on the hard drive by the website operators. Cookie "crumbs" are sent back to the website every time the computer returns there, so the website can track the user's patterns and preferences.

Embedded data - This is information contained within an electronic version of a document that is not usually apparent on screen or in the printed "hard copy." Examples of the information revealed by these "byte-marks" are the date the document was created, the identity of the author, the identity of subsequent editors, the distribution route for the document, and even the history of editorial changes (for example, pieces of the drafts leading up to the latest version of the document may be invisibly and automatically saved by the computer and hidden in the files). This information is also called "metadata."

Legacy Data - Older information stored in an electronic format that can no longer be read using current software or hardware.

Replicant Data - These files are automatically created as part of a redundant system designed to eliminate system failures (or down-time).

Residual Data - This information includes the entirety or remnants of deleted files to which the file reference has been removed from the directory listings, making the information invisible to most application programs. Because the name is removed from the directory and from the file allocation table (FAT), the file does not appear to exist.
However, the digital information remains on the media until it is overwritten by new data.

4.7 Mobile Telephones

A mobile or cellular telephone is a long-range, portable electronic device for personal telecommunications over long distances. In addition to the standard voice function of a telephone, current mobile phones can support many additional services such as SMS for text messaging, email, packet switching for access to the Internet, and MMS for sending and receiving photos and video. Most current mobile phones connect to a cellular network of base stations (cell sites), which is in turn interconnected to the public switched telephone network (PSTN); the exception to this being satellite phones. Due to the high penetration rate of mobile phones, they will inevitably be connected to an increasing number of criminal activities. The following examples illustrate some of the possible ways in which a mobile phone can be involved in criminal activities.

- Mobile phones are the most common form of communication for people purchasing contrabands
- Mobile phones are common targets for thieves
- Telecommunication service theft (i.e. mobile phone theft, SIM cloning, etc.) make up a significant portion of telecommunications fraud
- The relatively large storage space of modern phones makes them a useful tool for data theft. An employee could steal sensitive corporate information by uploading

it onto their phone

- They are the primary device used for sending threatening SMS messages and making abusive phone calls to the victim. The call records, and SMS messages between both parties can play a significant part in such a case

Since they may contain information comparable to that of a desktop computer, they are a prime source of evidence. The following list of potential evidence that can be found in a mobile phone:

- Subscriber and equipment identifiers
- Date/time, language, and other settings
- Phonebook information
- Appointment calendar information
- Text messages
- Dialed, incoming, and missed call logs
- Electronic mail
- Photos
- Audio and video recordings
- Multi-media messages
- Instant messaging and Web browsing activities
- Electronic documents
- Location information
- Browsing history
- E-mails
- Audio and video recordings
- Pictures
- Appointment calendar entries
- GPS Data (locations the phone has been)
- Location of photos taken
- Hot list
- Pin data
- SIM card data
- Data stored on internal and removable memory service provider
- IMSI

Because of new features on mobile phones such as increased memory storage and third-party applications, both the quantity and complexity of the above evidence is increasing.

- The SIM card (if present)
- The phone's embedded memory
- The phone's removable memory (i.e. SD card), if present

In addition to these, subscriber and call related information is also stored by a service provider. Data can also be stored in a phone's memory. In addition to the SIM memory, memory is available within the phone to store phone software and additional data. This space can be used to extend the SIM memory, to store additional phone book data, call logs and so forth. The following are some examples of the additional information that may be found in a phone's memory:

- Phone settings
- Calendar information
- SMS / MMS messages
- Call log entries
- Time and date
- Ring tones
- Data required for / produced by the phone's extra features, such as audio and video recordings, and images
- Generic data stored in the phone's memory
- Application executables

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Case Management and Monitoring System

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Case Management and Monitoring System

Introduction

The Chief Justice of Pakistan and Chairman of the National Judicial Policy Making Committee (NJPMC), during a four day meeting (18-19 April & 16-17 May 2009) of the NJPMC, observed in their introductory speeches and remarks that the new policy seeks to ensure that the constitutional principle of equality before the law is strictly adhered to. Adherence to the law and constitution is essential to nation building. The chief justice has given great emphasis towards ensuring the expeditious disposal of cases. As a result of this policy, cases have been monitored and managed. For example, the Anti-Narcotics Force Pakistan achieved the disposal of 1034 cases from various courts of law during the year 2010 whereas previous records show that only 500 to 600 cases were disposed of annually. It has been observed that the management of the flow of cases is the responsibility of the judiciary. This document is an effort to provide an idea about the use of case flow management technique and information technology by the courts for the expeditious dispensation of justice, keeping in view the conditions of pending cases in Pakistani Courts of law. This case flow management is developed in response to the court's mandate and incorporates changes produced by the courts. The delay in case settling undermines the purpose of the courts itself because delaying justice often implies its negation. The great British statesman and nineteenth century champion of liberty, William E. Gladstone put it succinctly by stating that, “justice delayed is justice denied”. This case study has been prepared for judges and case flow management practitioners to assist them in developing and improving their case flow systems. Towards that end, it incorporates information about the following court management principles:

- Case flow management is the supervision or management of the time and events necessary to move a case from initiation to disposition or adjudication.
- Court supervision of case progress, including adjournments, is necessary for an effective and efficient case management system.

Every democratic State is bound to provide expeditious justice to its citizen and Pakistan is not an exception. Article 37 (d) of the Constitution of the Islamic Republic of Pakistan (1973) stipulates that the State shall ensure inexpensive and expeditious justice to its people. In all developed countries delay reduction has been one of the primary legal achievements of the twentieth century. American courts have developed a set of principles and techniques since the 1970s that we refer to as “case flow management”. Judicial support and leadership, and the involvement of the bar and justice agencies, are critical to the development and maintenance of a case flow management system. As mentioned above, case flow management is the coordination of court processes and resources so that court cases

progress in a timely fashion from filing to disposition. The best case flow management practice includes setting the case disposition time standard, early court intervention, continuous court control of case progress, the use of differentiated case management establishing meaningful pretrial events and schedules, maximising dispositions before setting specific trial dates, monitoring case load information systems and effective post-disposition. Management information, whether from an automated or manual system, is needed to determine if the court is meeting its case flow management goals and objectives, assess the effectiveness of case management procedures and practices, and determine the need for change.

Study on Case flow Management

Case Flow: Management

1.1. Supervision by courts
1.2. Adjournment Policy
1.3. Act of Dragging
1.4. Function of the Court
1.5. Plan
1.6. Identifying Problems
1.7. Disposal Report

The purpose of this document is to provide chief judges, judges, court administrators, other staff and prosecutors with necessary information about case flow management so that they can design and implement a case flow management plan for their court. The information presented in this guide tells each user:

- What case flow management is
- Why case flow management is important
- How to determine whether your court has a problem with case flow management
- What a case flow management plan should cover
- How to use your trial court's case management or information system effectively with a case flow management plan
- How to implement a case flow management plan
- How to monitor and successfully maintain the operation of your case management system and case flow management plan.

Another aspect of the case flow management policy should be related to the court's effort to avoid future backlogs, and maintain a pending case inventory that is manageable in terms of the workload for judges and court staff. What constitutes a "manageable" pending case inventory? In simplest terms, it is the number of pending cases that the court can maintain and still meet its time standards without heroic efforts on the part of judges and staff or undue burdens on parties and counsels. If, after having eliminated its backlog, a court disposes of as many cases each year as are filed, the size of the pending case inventory should remain relatively stable and manageable. Successful case flow management requires that a court continually measures its actual performance against the expectations reflected in its

standards and goals; therefore, the court should regularly measure the times of disposition, the size and age of its pending case load, determine whether it is disposing of as many cases as are being filed, and assess the rates at which trials and other court events are being continued and rescheduled.

1.1 Supervision by Courts

Case flow management is the court supervision of the progress of all cases filed in that court. It includes management of the time and events necessary to move a case from the point of initiation (filing, date of contest, or arrest) through disposition (regardless of the type of disposition). Case flow management is an administrative process; therefore, it does not directly impact the adjudication of substantive legal or procedural issues. For effective case management, time standards for the disposal of civil cases have been fixed, and for that purpose each stage of the case is to be completed within a specified time period. The schedule of the time standard is printed on the file covers of cases which are to be filled at the time of the institution of the case. The presiding officers and district judges monitor the disposal of the cases within the time standard. In this way the backlog of court cases has been tremendously reduced. Case flow management includes the establishment of early court intervention, meaningful events, reasonable timeframes for events, reasonable timeframes for disposition, and a judicial system that is predictable to all users of that system. In a predictable system, events occur on the first date scheduled by the court. This results in counsel being prepared, less need for adjournments, and enhanced ability to effectively allocate staff and judicial resources.

1.2 Adjournment Policy

The main reason for delays in case dispositions is indiscriminate adjournments and extensions at all stages of the trial in both civil and criminal courts. The close study of legal diaries indicates that a common circumstance under which adjournments occur is when the number of cases fixed for trial on a single day are excessive, and the judges react by granting adjournments.

Furthermore, sometimes the courts are willing to proceed with matters, but the parties themselves seek adjournment, which can be avoided if the members of the bar cooperate with the courts. In Karachi some judges fix the number of cases in view of their capacity to proceed. Usually not more than thirty cases are fixed in a daily cause list including formal cases which are not ready for trial. The judges do not show their leniency at unwarranted adjournments, and they refuse to grant them if they are unnecessary.

1.3 Act of Dragging

Delays refer to any elapsed time other than what is reasonably required for pleadings, discovery, and court events. To instil public confidence in the fairness of court systems, delay must be eliminated by the nation's courts. An effective case flow management system does not initiate or cause delay. It is not possible to obtain the maximum turnover in the matter of disposal. This is one of the factors which certainly contributes to the accumulation of arrears. The problem with respect to the punctuality of judicial officers in courts can be mitigated by monitoring their punctuality in court sittings through close circuit television. Their absence from courts is seriously viewed by the district judges who will insist that such absentee judges provide adequate explanations.

1.4 Function of the Court

The overall function of the court is to carry out justice, resolve disputes, protect individuals, deter and punish crime, ensure fair access to the legal system, provide for restitution, and generally uphold the law. An effective case flow management system should ensure these functions of the court are accomplished. Additionally, this system should provide for the fair treatment of all litigants by the court, ensure that the time established for disposition is consistent with the nature of the case, enhance the quality of the litigation process, and instil public confidence in the court itself.

1.5 Plan

A case flow management plan is a court's strategy for actively overseeing the progress of all cases filed in that court. Its primary purpose is to prevent delay in case processing and it is used to implement and maintain case flow management. Case flow management plans will support the reasons for the court's existence and will support and promote the responsibilities of the court and the bench. It should be designed for the user, not the individual judges, and it should be designed with a typical case in mind.

1.6 Identifying Problems

To determine whether there is a case flow management problem in one's court, it is important to review the court's historical data. There are a number of reports that can be produced in order to identify problems. Simply put, if filings are outpacing dispositions, the age of a court's pending case load will exceed the time guidelines. This constitutes a problem. Generally in all Pakistani courts, and especially in subordinate courts, case backlogs are gradually increasing, and if the problem is not tackled by employing modern techniques (case flow management) the backlog will be a stigma for the institution. An appropriate case flow management system makes justice possible both for individual cases and the entire judicial system. The case flow

management system must involve the entire set of actions that a court takes to monitor and control the processing of cases from initiation through trial, or other initial disposition, to the completion of all post disposition court work to make sure that justice is done promptly. In Pakistan this technique is uncommon, but in other countries it has played a vital role in clearing the case backlogs and reducing the period required for case dispositions.

1.7 Disposal Report

Information should be provided by both case type and by method of disposition. Although information on disposed cases is historical by definition, it is extremely valuable because it provides baseline data at the commencement of a delay reduction program, enables the court to measure performance in light of time standards and facilitates planning for efforts such as differential case management.

Distribution of the Judicial Work

2.1 How to control the case
2.2 Goals and objectives for case processing
2.3 Time Standards

For improved case flow management, efforts should be made to achieve an even distribution of the workload among judges, occasionally review the pendency of the cases in each court and take necessary steps to ensure a manageable caseload. Monthly and annual aggregate data on filings, dispositions, and the number of hearings per case are useful if they are available for several years because they can yield information on trends and effectiveness in case processing. This data can be used to generate reports on filing trends, the pace of dispositions compared with filings (clearance rate), and adjournment rates. Clearance rates can be calculated by dividing the number of cases filed by the number of cases disposed. These should be calculated for distinct groups of cases such as general civil, criminal, and divorce, etc., to identify sources of a case flow management problem. The rates do not necessarily need to be compared to another court because a clearance rate of 100 percent indicates that the court is keeping up with its current caseload, a rate greater than 100 percent indicates that the court is reducing a pending caseload and a rate less than 100 percent indicates a pending caseload is being created.

2.1 How to Control Cases

To adequately control cases, the court must monitor case initiation, screen cases, achieve event date certainty through the control of schedules and adjournments, and manage trials. When the court assumes responsibility for a case at initiation and intervenes at the earliest meaningful point, possible problems, which may result in adjournments, can be identified and addressed early in the process. Also, when the court institutes pretrial management from the time the case management plan is issued to the projected trial date, trial preparation focuses on preparing the case for trial including the setting of a firm trial date only in cases likely to go to trial, thereby reducing unnecessary time and litigation costs.

2.2 Goals and Objectives for Case Processing

Setting goals and objectives is essential to case management. The process of setting goals and objectives accomplishes three things: it forces those designing or proposing change to articulate the purpose of the effort, provides a basis for identifying the resources and time

needed to implement the change, and finally, perhaps most importantly, it provides the basis for evaluating the success of the programme or procedure. The following aspects of case management can be used as a basis for goal setting:

- Time standards or guidelines
- Adjournment rate
- Scheduling accuracy
- Time for completion of discovery; or
- Dispositions per judge.

2.3 Time Standards

A key element to achieving the goals of an effective case flow management system is the creation of time standards for governing case progress and disposition. These standards help judges, administrators, lawyers, and others:

- The appropriate time from filing to disposition
- How rapidly cases should be prepared for disposition; and
- How soon a court should be able to provide a trial.

Case Study

3. Automation of The Court

3.1 Facilitations for Information Technology
3.2 Judicial Transformation
3.3 Encountering Problems
3.4 Case filing and electronic indexing
3.5 Case Proceedings
3.6 Process Serving Management
3.7 Information Kiosk
3.8 Website (www.karachieast.org)
3.9 AGEHI Court Information Network (ACIN)
3.10 Monitoring
3.11 Closing Note
3.12 Following Recommendations are Envisaged

Use of computer and information technology is not something new in Pakistan particularly in the Supreme Court and high courts. However, in subordinate courts the use of computers was reserved for typing only. The use of information technology for the purpose of case flow management systems has been very useful in our nation's courts.

3.1 Facilitations for Information Technology

An information technology (IT) training centre should be established having multimedia facilities to enable judges and their staff to receive basic training on computer applications and accessing customised court related software on ongoing basis.

- Private consultants should be hired to conduct workshops and symposia on the use of technology to facilitate the case flow management.
- The training centre should train the instructors (trainers) for other courts as well. A law library should also be established to provide judges access to legal materials, including journals, as well as providing Internet facilities. Case law should be available online and on CDs prepared by an electronic law journal.
- All the courts within a district or vicinity, the IT training centre, and the library should be connected by a local area network following the Integrated Monitoring

Model. Information at all levels about bar and court management should be available to court users, litigants, members of the bar, and judicial officers and staff.

3.2 Judicial Transformation

Judicial transformation is an ever going and never ending process as new methodologies and practices are evolving. Any automation is built upon sound practice and procedures.

3.3 Encountering Problems

The above picture seems very rosy, but actually venturing into an alien field will involve substantial risks and high costs in the development of infrastructure, human resource training and a complex software. Even if this is all done, the sustainability of such technology must have a strong footing. The courts do not possess advanced technical means to deliver such a solution; furthermore, the changes in technology happen at such a fast pace that it is difficult to keep up.

3.4 Case Filing and Electronic Indexing

- All cases pending and the cases filed should be updated in the system in accordance with defined guidelines. This should be done for the purpose of creating a complete database of cases in the most comprehensive form. It should also include case categories (multilevel), parties' advocates, witnesses and their current status.

- Case information should be known to everybody and statistics should be updated on a daily basis.
- Cases in scrutiny can be carefully examined for objections and delays.
- Case filed and instituted in a day are known to all through regular updates to the website
- Case indexing and institution.
- Cases should be indexed in a unique order by a system so that they cn be accessible anywhere.
- Preparation of the cause list

3.5 Case Proceedings

Every day the court is automatically fed by the system so that the proceedings are entered on the day's cause list. It tracks the time spent by the court on the case, the concerned parties present in the court, and various recordings of witnesses, judges, orders and judgments etc.

This is all run by trained readers of the court without any technical assistance. Once they update the system with the court's daily diary, these should be simply printed out and filed while the electronic copy should be uploaded for online viewing.

3.6 Process Serving Management

Likewise, the requests are routed to notices and summons for onward monitoring and production to process the serving agency. The next updates are done then and from there, the system updates the judges' calendars and even updates the internet in a matter of a few hours to make the new information available to all. These new comprehensive procedures are appreciated greatly by the court readers who have discovered that it has reduced their workload.

3.7 Information Kiosk

A centralised information Kiosk delivers information value to all stockholders in a free manner.

- Case Information.
- Cause List Information.
- Case proceedings histories, orders and diaries.

3.8 Website (www.karachieast.org)

The website of Karachi East is not limited to only a few pages and pictures; it is an interactive site which is updated by an automatic system. It is meant to provide people with comprehensive updates on a daily and sometimes on a minute to minute basis. An online complaint system has been established against illegal detention so as to take action under section 491 Cr.P.C. and for the non-registration of FIR. There are also downloading options for statutes and commonly used court forms for litigants to have ready access. It is a comprehensive resource for all stakeholders serving day to day needs. An updated cause list is available at the end of day; furthermore, the past calendar of case fixations by each court can also be seen with all the details of a case.

3.9 AGEHI court information network (ACIN)

An Information Marvel; **www.agehi.org.** District Karachi-East has defined the monitoring rules altogether by making available the courts' data online. This enables the Sindh High Court and the Member Inspection Team to simply log on and make use of the system without having to ask for reports. Trends, disposal, judges and district performances can all be seen on the website. Even the backlog, clearances and the age of various cases are shown online. The

beauty of it is that the ACIN's technological impact on courts is none as the entire system is robust and automated. Much of the work is done by intelligent software, thus freeing the court staff to focus on their other responsibilities.

3.10 Monitoring;

Online monitoring provides information on cases, delays and performance within seconds for a district judge to be able to make vital decisions. Observing the utility of the information technology and court automation in District Karachi-East, the Sindh High Court with the assistance of Ministry of Information and Technology (the Government of Pakistan) has undertaken the task of introducing the same system in other districts of the province.

3.11 Following Recommendations are Envisaged

- A national level body should be made which can enforce upon the standardisation of processes and technology.
- Technology decisions are very vital: consensus needs to be evolved to stop high investments on hardware which is not required.
- Judicial officers and court staff need to be extensively trained to make use of technology. This may be included in the curriculum of judicial academies.
- Rules of business and job description of the court staff need to be re defined for the impacts of charges to have sound backing.
- Resources requirement of automated solutions and overall transformation need to be sustained beyond certain personal interest.

Conclusion

The enormous effort of the last few years has resulted in the expeditious disposal of pending cases by managing and monitoring every step, and it has set new benchmarks in technology, methodology, human resource development and a sound strategy for transitioning the courts to greater automation and data dissemination under standards. DE has used inexpensive hardware and computer systems along with using Java programming to keep the software on an open platform. The success of the solution is a testimony that we do not always need expensive hardware in order to resolve such problems.

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IV

Cooperation Between Prosecutors and Investigators

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Cooperation Between Prosecutors and Investigators

Introduction

The purpose of suggesting possible directions with which the police and prosecutors can work together is to improve effectiveness in the investigation and prosecution while maintaining the accountability of the criminal justice system. The purpose of the criminal justice system is to realise the rule of law, which is one of the most fundamental conditions for the sustainable development of societies. For this purpose, justice has to be given to those who have broken the law while protecting the due process of law. Accordingly, the police are empowered to conduct investigations to give justice to suspects, whereas prosecutors are empowered to check the investigation conducted by the police and to dispose the case for the prosecution, following the due process of law. In other words, prosecutors are vested with the responsibility of checking the police investigation against the due process of law. Pakistan's prosecutors lack resources and training and are routinely characterized as the weakest link in the criminal justice system. They seldom work with police, do minimal trial preparation, and are significantly less skilled than defence counsel. These deficiencies have led to a 70 percent criminal acquittal rate. To improve this deficiency, the Bureau of International Narcotics and Law Enforcement Affairs (INL)-funded DOJ Resident Legal Advisor (RLA) began developing a programme to improve prosecutorial skills in 2009, including increased police/prosecutor coordination and the development of institutional capacity. The RLA programme has developed partnerships with key prosecution entities, including the Punjab Department of Public Prosecution (Pakistan's largest independent prosecution agency), the Federal Judicial Academy, and the Khyber Pakhtunkhwa prosecution service. The partnerships have resulted in improved internal institutional development, including the provision of expert legal advice and workshops on the development of internal procedures for the selection, training, evaluation, review, supervision, and promotion of prosecutors. The RLA programme also developed Pakistan curricula including programmes on the use of counter-terrorism laws and the handling of sensitive witnesses as victims, such as women, children, and minorities.

Scope of Co-operation

Police and prosecution co-operation shall extend to all steps of administrative and judicial criminal process that includes the pre-trial and trial stage of a criminal case. In all cases this co-operation shall fall under the Pakistan Penal Code (1860) and other special criminal laws, especially the Anti-Terrorism Act (1997), Control of Narcotics Substances Act (1997), etc.

Problem Areas between Prosecutors and Investigators in Cooperation

1.1 Psychological traits of the Police and Prosecutors
1.2 Conflicting Views over Case Disposition
1.3 Lack of Shared Common Goals
1.4 Lack of Objectivity
1.5 Lack of Discretion by Investigators in Investigations
1.6 Independently Conducting an Investigation
1.7 Supplementing Police Investigations
1.8 Clear Legislation
1.9 Close Collaboration
1.10 Sharing Common Values
1.11 Checks and Balances

1.1 Psychological Traits of the Police and Prosecutors

The psychological traits of the police and prosecutors after undergoing a lengthy, laborious and complicated investigation process, police investigators generally tend to develop a feeling of exclusiveness, and feel that the entire investigation domain is their responsibility. As a result any sort of advice and instructions from outside are taken as interference and unnecessary. Resistance is shown if they are told to bring more substantial evidence, or amend or improve the evidence collected. Police officers and organisations tend to take their entire work, and especially the case handling, as a professional and skilled job. Though they work and do the investigation within their own legal and procedural codes, their practical and operational framework makes them believe that they have their own chain of command system, which works as efficiently as prosecutorial agencies and can provide them with guidance and instructions. With academic backgrounds in jurisprudence hence having greater sensitivity to human rights, the rule of law and due process, prosecutors tend to develop a more legalistic approach in handling police files. Prosecutors will first examine the appropriateness of evidence and will then evaluate its fitness for the court proceedings. Pressure from colleagues in an investigating agency for the prosecution may embarrass them in case their disposition appears to lead to acquittal. Similarly, as is the case in Nepal, investigators may bring applications for arrest warrants to a prosecutor even at midnight and ask for speedy scrutiny, which will put pressure and strain on the prosecutor.

1.2 Conflicting Views over Case Disposition

Conflicting views exist over case dispositions despite the differences in the legal systems of each country, which governs the relationship between the police and prosecutors. Police officers often feel frustrated when the prosecutors' case-disposition conflicts with their expectations. It is extremely disappointing for investigators if an arrested suspect is set free by prosecutors on the grounds that the prerequisites have not been fulfilled for keeping the suspect in custody or where investigatory activity despite the great deal of time and effort involved leads to the termination of the proceedings. It was pointed out that in such cases prosecutors also feel stress, which may lead to negative influence on the working relation between the police and prosecutors.

1.3 Lack of Shared Common Goals

It was reported that, in England and Wales of the United Kingdom, there had been a lack of confluence in the aims and objectives of the police and the Crown Prosecution Service. The conviction of charged defendants had not been considered as a priority in the policing plan. A lack of sharing common goals with prosecutors as such can cause difficulty for prosecutors to motivate police to produce quality files on their investigations, especially in some of the countries with common law traditions where the prosecutors are empowered only to prosecute but not to investigate. In such cases where the police and prosecutors do not share the common goals in criminal proceedings, the police may develop practices, which are not compatible with the prosecutorial purposes, such as relying only on information that is not admissible as evidence in the court.

1.4 Lack of Objectivity

In some of the countries with common law traditions such as Australia, Kenya, Pakistan, Papua New Guinea and Tanzania, prosecutors who are full-time serving members of the police force conduct most criminal prosecutions in the lower courts. Even though there should be no disagreement between police investigators and prosecutors on the disposition of cases in such a system, several participants from those countries reported that a lack of independent prosecutions in such a system leads to a lack of objectivity among prosecutors, which results in inappropriately screened prosecutions. As prosecutors are full time members of the police department themselves, and in some countries they wear the same police uniforms and share the same hierarchical chain of command structure as their colleague investigators, they feel inhibited to write advice, which may substantially affect the investigations. A lack of appropriate supervision of and guidance to investigations in such a system may also result in a low conviction rate in the court. It is also reported that, in some of these countries, there are cases in which those lawyers who otherwise do not foresee any future for themselves in private practices join the police as prosecutors. Such police prosecutors in some cases do not possess sufficient knowledge and ability to furnish appropriate guidance to police

investigators. Moreover, in such countries these prosecutors are sometimes unsatisfied with their promotion, level of pay and other facilities in the police organisation. Accordingly, violations of due process, regulations and laws by the vested interests can go unchecked, as prosecutors do not possess enough skill and authority to caution or challenge any wrongdoing.

1.5 Lack of Discretion by Investigators in Investigations

In the countries with civil law traditions such as Brazil, Chile, El Salvador, Germany, Indonesia, Italy, Japan and Korea, prosecutors are entrusted authorities concerning investigations, which includes the authority to implement investigations of their own and to supervise, at least to some extent, police investigations. In almost all civil law countries the entrustment of both investigations and the supervision of investigations to prosecutors has historical connotations. In some countries the irrelevance of the police to human rights at certain times in the past or a particular event, such as the arrest of a suspect who was later acquitted, led to the greater involvement of prosecutors in the course of investigations. On the other hand, events have taken place where the police have taken refuge behind the argument that their failure or inefficiency is due to the interference by prosecutors. Some of the participants from those countries, however, reported their concerns over the excessive interference of prosecutors into police investigations. In some of those countries, the police are given very little discretion in the course of their investigation, resulting in a lack of flexibility in police investigation. In this context, it is worth noting that in Italy there is an argument that the police's stifling dependence on prosecutors is gravely undermining the professional competence of the police in the conduct of investigations. It was also pointed out that the increase in both the complexity and multitude of crime is making prosecutors' complete supervision over all aspects of police investigations increasingly unrealistic and ineffective. It was also suggested that the establishment of a supervising organ such as a coordinating committee might be beneficial to mediate and coordinate the discretionary authorities of the police and prosecutors. In Germany, the police are now intensifying their demands for an expansion of their police powers in criminal proceedings at the expense of the functions exercised by the public prosecution office and by judges, which has been greeted with extreme caution by the judiciary. There is an opinion in Germany that, even though it is often considered appropriate to limit the power of prosecutors supervising investigations to the basic issues and central aspects of the investigation proceedings and to give the police a free hand with regard to the details, the police authorities should only be given additional powers if there is no doubt that they are fully capable of exercising them.

1.6 Independently Conducting an Investigation

In the countries where prosecutors are empowered to conduct investigations, they can initiate their own investigations. In many cases, prosecutors conduct their own investigations in such areas that they have a competitive advantage over the police. Those areas include large-scale economic crime, political corruption cases, and so forth. For example, in Hanover,

Germany the public prosecution office set up a pilot investigation unit where investigations relating to property assets are conducted separately from other investigations. This unit has the sole task of tracing criminally tainted assets and of freezing them for the benefit of the state or of the victims of the offences concerned. The classical functions of clearing up the offence and conducting criminal prosecution are the responsibility of other prosecutors acting in the same case. This central office for "organised crime and corruption" principally has a coordinating and response function for legal and organisational questions. It is also responsible for organising and coordinating supra-departmental training events and exchanges of experience, the drafting of forms, and the assessment of success, including securing the frozen assets. It is worth noting that even in the jurisdiction of England and Wales of the United Kingdom, where the principles of strictly separating the responsibility for investigation and prosecution was established in 1986 on the creation of the Crown Prosecution Service, such principles were swiftly jettisoned in relation to serious fraud offences. The Serious Fraud Office, which is staffed by lawyers, accountants and others with relevant experience, was created in 1988. It is a unified organisation properly resourced with the statutory powers of investigation. Working closely with the police, this office controls investigation and prosecution. Similarly in Thailand, where the prosecutors are not empowered to investigate by themselves, the establishment of the Special Investigation Bureau was recommended in 2001 by the Committee for the reorganisation of the Ministry of Justice, which was chaired by the Deputy Prime Minister. The Special Investigation Bureau has the jurisdiction to investigate "sophisticated crimes" as defined by law. The establishment of this bureau provided a scheme for prosecutors to work closely with the special investigators from the start so as to make more effective investigation and prosecution of such "sophisticated crimes".

1.7 Supplementing Police Investigations

In the countries where prosecutors are empowered to conduct investigations, prosecutors, if needed so as to ensure convictions in court, can supplement police investigations. In some countries, prosecutors are empowered to instruct police officials to assist their investigations. In this context, a conflict could occur between such an instruction to the police officer from prosecutors and the organisational chain of command of the police.

1.8 Clear Legislation

There should be legal provisions to clearly provide the role of prosecutors and the police. For example, in Brazil, after the promulgation of the constitution in 1988, the power of prosecutors was increased and they were given supervisory powers over the police. As a result, the police have since lost discretion as to the extent of their responsibility or duty toward prosecution, creating imbalances between the police and prosecutors. One of the problems here is a lack of a provision with a clear definition of the authority of prosecutors in these criteria.

1.9 Close Collaboration

It is worth noting that, in the United Kingdom, the placement of prosecutors in police stations, even though the efforts to offer pre-charge advice to police investigators was not proven to be effective, indeed produced an improved working relationship between the police and the prosecutors. Furthermore, consideration should be given to the secondment of personnel between the police organisation and the prosecutors' office. Also, in the countries with civil law traditions, the relocation of offices, such as having the police criminal investigation department at the prosecutors' office or else having prosecutors at the police criminal investigation department, is considered useful for intensifying cooperation and reducing bureaucratic sequences as a result of the closer proximity. It is considered to be obvious that adjacent accommodation for the prosecutors' office and the police may also be beneficial. In fact, the police headquarters of some of the largest German cities have made an office available on their premises to prosecutors. In Germany there is also a police project where they have established “the House of Juvenile Justice” where the youth welfare office, the police and prosecutors are under one roof, and the nearby local court keeps time slots for the hearing of cases. All institutions involved exchange their knowledge and coordinate assistance measures in the event of investigations or sanctions.

1.10 Sharing Common Values

Effective criminal justice management requires the concerted action of all relevant authorities in the government, which have the same ultimate goal of realising the rule of law. Those authorities should share substantial common values which are supported by strong political will, such as the “Joint Business Plan for the Criminal Justice System” in England and Wales of the United Kingdom. Such a notion of “joined-up working” should surely promote practical cooperation between the police and prosecutors. It was pointed out that, insofar as the prosecution concepts and investigation strategies of the police can have an impact on criminal prosecution, involvement of the public prosecution office in the form of mutual consultation and coordination seems to be effective. There might otherwise be a reason to fear that the measures taken by the police would not be followed up by prosecutors and would thus prove fruitless. In Germany the arrangement spelled out from the “Joint Guideline of the Ministers of Justice and Ministers of the Interior to Cooperation between the Public Prosecution Office and the Police in the Prosecution of Organised Crime” is a prime example of how to structure cooperation extending beyond individual cases between the public prosecution office and the police to combat organised crime. Strategies for combating domestic violence have also been developed in Germany by the public prosecution office and the police, in collaboration with other authorities, in order to effectively protect women and children against violence, impose appropriate sanctions for offences and prevent recidivism.

1.11 Checks and Balances

Participants were of the view that it is rather natural and desirable for the two organisations, which bear different responsibilities, to have conflicting views over certain case dispositions. Such conflicts between the police and prosecutors should be considered as evidence for the proper functioning of the checks and balances mechanism of the criminal justice system. Accordingly, the police should welcome, or at least try not to avoid, such checks from prosecutors. On the other hand, the prosecutors' supervisory functions, such as giving advice/instructions to police investigators, should always be accompanied with clear and reasonable explanations of their grounds. It was pointed out that, in order to make such a relationship more effective, both sides should make efforts to understand and respect each other's responsibility in criminal procedure. The police should respect the prosecutors' advice with a view to sustain successful prosecution, and try their best to protect the due process of law in the course of their investigation. Prosecutors should try to understand the difficulty the police are facing in the course of police investigations and to pay as much respect as possible, within the existing legal framework of each country, to the discretion of the police in their investigation.

Separation of Prosecution Agencies from the Police

2.1 Administration of the Criminal Justice System
2.2 Role of Prosecutors: Provincial Prosecution Acts
2.2.1 Punjab.
2.2.2 Sindh
2.2.3 Balochistan
2.2.4 Khyber Pakhtunkhwa
2.3 Role of Prosecutors in Investigations

2.1 Administration of criminal justice system

It is pertinent to point out here that for administering the administration of criminal justice and maintenance of the judiciary, independent of the executive in toto, the then President of Pakistan in February, 1985, through a phased programme, directed the amalgamation of both the aforesaid prosecution agencies; one concerning the provincial police and the other concerning the provincial law department were merged into one by separating the police prosecution agency from the police.

- The posts of prosecuting deputy superintendents (PDSP), prosecuting inspectors (PIs) and prosecuting sub- inspectors (PSIs) of police were abolished. The PDSPs, who opted for provincial law departments, were re-designated as deputy district attorneys and both the PIs and PSIs, who too opted as such, were made as assistant district attorneys. The prosecuting officers of police, PDSPs, PIs and PSIs, who wished to remain in the police department, not only ceased to be prosecutors, but their nomenclature was also changed to inspectors (legal). Hence, they could not conduct prosecution of criminal cases on behalf of the State either in the sessions courts or magistrates' courts.
- The entire prosecution (i.e., of the district inferior level confirming present level) rested with the district attorneys who headed the district prosecution agencies and were purely the representatives of the provincial governments but not the provincial police. It may be recalled that prior to February 1985, Rules 27.1 to 27.39, Chapter XXVII of the Police Rules 1934, dealt with prosecution and court duties including the role of the investigation officers and the prosecuting staff. As per Rule 27.4, Chapter XXVII of the said rules, all the police officers, viz., all superintendents, and assistant and deputy superintendents of police are, with reference to sections 270 and 492 of the Code of Criminal Procedure, ex-officio, public prosecutors in respect of all cases committed from their respective duties for trial before the Sessions Courts. As per Rule 27.4(2) of the said rules,

prosecuting inspectors and prosecuting sub-inspectors of police (re designated as inspectors legal in 1985 under the police and assistant district attorneys under the law department) were appointed. Additional public prosecutors to conduct trial of cases in the magistrates' courts.

2.2 Role Of Prosecutor: Provincial Persecution Acts

2.2.1 Punjab:

- **Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2006**
  Prosecutors under provincial acts have been delegated vast powers and Section 10 (1) of the Punjab Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2006 deals with the district prosecutors in Punjab for effective and efficient prosecution of trial cases and to make use of these for effective scrutiny of police reports under Section 173 of the Code of Criminal Procedure (CrPC). Section 9(4) of the Act provides that a police report under section 173 of the CrPC (1898), 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 the Act. Section 9(5) of the Act provides that the prosecutor shall scrutinise the report on the request and may return the same within three days to the officer in charge of the police station or an investigation officer; however, as the case may be, if they find the same to be defective, for removal of such defects as may be identified by them, or if it is fit for submission, they may file it before the court of competent jurisdiction. Section 9(6) provides that on receipt of an interim police report under Section 173 of the CrPC, the prosecutor shall examine the reasons assigned for the delay in the completion of the investigation, and if they consider the reasons compelling, request that the court postpone the trial. In case the investigation is not completed within reasonable time, they may also request that the court commence the trial, and in cases where reasons assigned for a delay in the completion of investigation are not compelling, request the court commence the trial on the basis of the evidence available on record.
- Section 9 (7) of the Act provides that a prosecutor may submit to the court results of their scrutiny in writing as to the available evidence and applicability of offences against all or any of the accused as per facts and circumstances of the case. Section 10 (3) of the Act provides that a prosecutor may call for a report within a specified time from any officer of law enforcing agency in relation to an investigation, or call for records or any other document within a specified time from a law enforcement agency and if necessary, from any other government department or agency as may be necessary for the purposes of prosecution.
- Section 12 (1) of the Act provides that an officer in charge of a police station or the investigation officer shall send the police report under Section 173 of the CrPC to the concerned prosecutor within the period prescribed by law, and if an

investigation is not completed or cannot be completed within the time provided under the law, record reasons for the delay and inform the prosecutor. Section 12 (2) of the Act provides that an officer in charge of the police station or investigation officer shall, within the time specified by the prosecutor, comply with the directions and remedy the defects pointed out by the prosecutor in a police report under Section 173 of the CrPC (including a report for cancellation of the first information report or a request for discharge of an accused or suspect). Section 13 (9) of the Act provides that a prosecutor shall on receipt of the police report, final or interim, including a report for the cancellation of the first information report or a request for the discharge of an accused, scrutinise the same and process it under Section 9. In the event that a report to the district public prosecutor is conducted in violation of the law or instructions issued by the prosecutor general, or not completed in the time provided under the law without reasonable cause, the district public prosecutor may inform the head of investigation and the prosecutor general for appropriate action. In the light of the provisions of the law in Sections 9,10,12, 13 and 173 of the CrPC the following guidelines are issued to the prosecutors for effective and efficient prosecution of criminal cases:

2.2.2 SINDH

- The prosecutors shall be responsible for the conduct of prosecution on behalf of the Government. A district public prosecutor shall distribute work to the prosecutors with respect to the lower court within a district. A police report under Section 173 of the CrPC, including a report of cancellation of the first information report or a request for the discharge of a suspect or an accused, shall be submitted to a court through the prosecutor appointed under this Act. The prosecutor shall scrutinise the report or the request and may return the same within three days to the officer in charge of the police station or an investigation officer, as the case may be, if they find the same to be defective, for removal of such defects, as may be identified by them. If it is fit for submission, they may file it before the court of competent jurisdiction.
- On receipt of an interim police report under Section 173 of the CrPC, the prosecutor shall examine the reasons assigned for the delay in the completion of the investigation, and if they consider the reasons compelling, request the court for the postponement of trial. In case the investigation is not completed within a reasonable time, they may request the court for commencement of trial; finally, in cases where the reasons assigned for the delay in the completion of the investigation are not compelling, they may request the court for commencement of trial on the basis of the evidence available on record.

- **Conduct of Prosecution**

  The prosecutor may submit to the court results of their scrutiny in writing as to the available evidence and applicability of offences against all or any of the accused as per facts and circumstances of the case. Section 10 (1) states that: an officer in charge of a police station or the investigation officer shall immediately report to the district public prosecutor on the registration of each criminal case by sending a copy of the first information report, under Section 173 of the CrPC, to the concerned prosecutor within the period prescribed by law, and if an investigation is not completed or cannot be completed within the time provided under the law, record reasons for the delay and inform the prosecutor. An officer in charge of the police station or an investigation officer shall, within the time specified by the prosecutor, comply with the directions and remove the defects pointed out by the prosecutor in a police report under Section 173 of the CrPC. This includes a report for cancellation of the first information report or a request for the discharge of an accused or suspect.

2.2.3 Balochistan.

- A public prosecutor, in discharge of his lawful duties and in respect of a case the prosecution whereof, is lawfully assigned to him shall perform the duty of a public prosecutor to safeguard the interest of the state in the prosecution of cases before the competent courts. The public prosecutor, being competent with respect to a particular case or class of cases, shall on receipt of the final report send the same before the competent court for trial, or they may withhold the same for want of proper evidence and return it to the investigation officer with written directions to resubmit the report after the removal of the deficiencies identified by him. With respect to the compoundable offences, other than those which are punishable by death or life imprisonment, the prosecutor general, and with respect to compoundable offences punishable with imprisonment for seven years or less, the district public prosecutor, may withhold prosecution if reasonable grounds exist for the public prosecutor to believe that the same shall be compounded. Provided that if the offence is not compounded within a period of one month, they shall send the report to the competent court for prosecution and trial.
- With respect to offences, other than those which are punishable by death or life imprisonment, the prosecutor general, and with respect to offences punishable with imprisonment for seven years or less, the district public prosecutor, may apply supported with reasons to the court of competent jurisdiction for the discharge of case if the institution of the case has been found to be *mala fide*, wrongful or weak from evidentiary view point. Provided that an application under this section shall accompany the report under Section 173 of the CrPC. Provided further that the competent court may dispose of the application as it may deem fit. With respect to any case instituted by a public prosecutor before a

competent court, any private person representing the complainant shall act under the direction of the public prosecutor.

- **Conduct of Prosecution.** The prosecution of criminal offences shall be conducted in the following manner: namely the investigation officer shall send the case together with the evidence to the concerned public prosecutor. Prosecution shall not take effect against persons other than those designated as the accused on the basis of available evidence by the competent public prosecutor, and the public prosecutor shall have the right of audience before any court with respect to any case assigned to them. A public prosecutor may, within their jurisdiction, issue general guidelines to police officers regarding the state of their investigation and other matters necessary for the fulfillment of the purpose of effective prosecution. The district public prosecutor may ask the head of investigation in the district to take disciplinary action against an investigation officer if sufficient reasons exists to believe that the investigating officer has colluded or has not exercised due diligence in conducting the investigation, misrepresented the facts of the case or prepared the report inefficiently. In addition, the prosecutor general or the district public prosecutor may, when they deem necessary in cases where police officers fail to follow any suggestions or instructions of public prosecutor, call for disciplinary action against the investigation officer with the competent authority, and the government and Prosecutor General shall keep liaison with the Advocate General to ascertain the progress of criminal appeals, revision and other legal proceedings pending before the Supreme Court, High Court or any other court established under the law.
- **Powers of a Public Prosecutor:** A public prosecutor in discharge of their lawful duties and with respect to a case lawfully assigned to them, may exercise the following powers: namely upon expiry of time period mentioned in the CrPC for submission of final report or after submission of final report if necessary for proper and thorough investigation of an offence, a public prosecutor may request the court to issue warrants for search, seizure or inspection of evidence for compliance by the investigation officer; a public prosecutor may call for a record or any other document from any law enforcement agency upon expiry of time period mentioned in the CrPC for the submission of a final report; the district public prosecutor, in case of offences carrying seven years or less imprisonment, and the prosecutor general for all other offences may withdraw prosecution, subject to prior approval of the government.

2.2.4 Khyber Pakhtunkhwa

- The Prosecution Service (Constitution, Function and Power) Act, 2005, was promulgated by the KPK Government and as per the act ibid various powers had been assigned to the prosecutor under the Act; therefore, they should fully implement the law and should remove flaws from the charge sheet (challans) prepared by the police before submitting it to the courts concerned.

- Various powers are assigned to the prosecution service. Under Section 9(2) on registration of the FIR, and the SHO of the police station concerned should send a copy of the FIR to the district public prosecutor/public prosecutor who on receipt should inspect the same and issue necessary directions to the head of investigation. They should also inspect, scrutinize and supervise the whole investigation process of cases registered in the district.
- The law also empowered the director-general and the district prosecutor to keep a check on the investigation officer. Under Section 5(e) the district prosecutor may ask the head of investigation in a district to take disciplinary action against an investigation officer, where sufficient reasons exist to believe that the investigation officer colluded or had not exercised due honesty in conducting investigation or misrepresented the facts of the case.

2.3 Role of Prosecutors in Investigations

- Apart from their responsibility to dispose criminal cases for prosecution, prosecutors in every country play some important roles in criminal investigation despite the differences in basic legal principles. In some countries, prosecutors have an overall responsibility over an investigation, while in others they have a limited role in carrying out an investigation.
- The investigating officer had the sole prerogative to put the name of an accused person in column No. 2 or in column No.3, subject to the result of their investigation.
- **Giving Guidance/Instructions to Police Investigators** One of the most important and common roles of prosecutors is to check police investigations against due process of law, whilst keeping the effectiveness of the police investigation. In order to meet the rule of law standards, promote acceptance of court decisions by the accused and strengthen public confidence in the police's right to conduct searches and seizures in private premises, the investigation work of the police should be, at least in principle, critically monitored. Prosecutors' authorities in supervising and giving advice/instructions to police investigators can be viewed in this regard. The extent of such authorities varies from country to country from non-binding advice to complete control over police investigation. However, it should be noted that, in countries where prosecutors exercise complete control over police investigations, prosecutors tend to be directly responsible for police investigations themselves, rather than just checking police investigations, resulting in a diminished sense of responsibility amongst the police investigators.

Chapter 3

3.1 Court Decisions

- The district public prosecutor whilst scrutinising the cancellation report submitted by the investigating officer in the case, did not agree with the same and directed the S.H.O. to prepare challan under S.173 of the CrPC against the accused for their trial in the court in accordance with law. Sections 9 and 10 of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, did not authorize the public prosecutor to direct for submission of report/challan under S.173 of the CrPC against the accused for their trial or to recommend a departmental inquiry or registration of criminal case. A public prosecutor had no authority to assume and abdicate the function, authority and jurisdiction of a trial court and they had travelled beyond their jurisdiction and committed a grave illegality by issuing the aforesaid directions to S.H.O. The function of a public prosecutor was only to pin point the defects in an investigation as well as in the report and to direct the investigating agency to remove the same. However, trial courts, while passing orders even on the cancellation report, could issue necessary directions to the investigating officer after examining and perusing the available material to submit a challan against the accused. A public prosecutor had no jurisdiction to direct the S.H.O. for doing the same. Impugned direction was set aside and the constitutional petition was accepted accordingly.

Tanveer Hussain Qureshi and 8 others Versus District Public Prosecutor, Sialkot and 2 others. 2009 P Cr.L J 1043. Before M.A. Zafar,

- The petitioner had called in question an order passed by an ex-officio justice of the peace, dismissing the petition under Ss.22-A & 22-B of the CrPC filed against an order passed by the district public prosecutor that concerned deleting S.324, P.P.C. in the case F.I.R. registered under Ss.324/354/337-A(i)/337-F(i)/337-L(ii)/34, P.P.C. Under the provisions of S.9(7) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, the district prosecutor had the powers to scrutinise the available evidence and applicability of offences against all or any of the accused as per the facts and circumstances of the case. The deletion or insertion of any offence fell within the exclusive domain of the district prosecutor. The question whether the district prosecutor had rightly deleted S.324, P.P.C., would be seen by the trial court at the time of framing the

charge, but the petitioner could not assail such an order either under provisions of Ss. 22-A & 22-B of the CrPC or in the constitutional jurisdiction of the High Court as it would amount to interfering with the process of investigation which was not the mandate of the law. Under the circumstances, the ex-officio justice of the peace had rightly dismissed the application of the petitioner.

Rasoolan Bibi Versus Additional Session Judge and others PLD 2009 Lahore 135 Before Khurshid Anwar Bhinder, J

- Under S.9 of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, the prosecutor was required to scrutinise the report under S.173 of the CrPC in order to decide as to whether or not the same was fit for submission before the court of competent jurisdiction. The public prosecutor, mechanically submitted the challan in court without application of a legal mind. Under S. 190(1)(b of the CrPC the court would take cognizance of the offence and not of the offender. In the present case, the trial court took cognizance of the challaned accused in utter disregard of said mandatory provisions of the law. The investigating agency, prosecution and trial court, under the circumstances had completely failed to discharge the obligations cast on them by the law.

Lal Khan and another Versus Station House Officer, Police Station Kotwali Jhang and 6 Others 2010 P Cr. L J 182 [Lahore] Before Kazim Ali Malik, J

- S.449 of the CrPC --- Withdrawal from prosecution---Rule of caution--- Guide lines---Court, in view of the discretionary power vested in the public prosecutor to withdraw from the prosecution of a case under S.494 of the CrPC acts in a supervisory capacity to see that such power is not used arbitrarily and contrary to public interest causing interference with the ordinary course of justice. The court must satisfy itself about the reasons advanced by the public prosecutor. Any executive opinion of the district prosecutor counselling the case should not have prevailed upon the said judicial order of the trial court. The trial court should not have permitted the withdrawal of the case by a mechanical order. The impugned order was not in accordance with the dictums of superior courts and was therefore, illegal.

Allah Yar Versus Hussain Ali and another PLD 2009 Lahore 87 Before Muhammad Akram Qureshi, J

- S.8(2) of the KPK Province Prosecution Service (Constitution, Functions and Powers) Act, 2005 makes an S.H.O. bound to send a copy of each F.I.R. of his police station to the district public prosecutor, and it bestows an extraordinary

responsibility on the district public prosecutor to inspect F.I.R's and wherever necessary to Suo Motu issue necessary guidelines to the investigating officer and the head of the investigation. They can also inspect, scrutinise and supervise the whole Investigation process of the cases. Whilst reporting to the government under Section 8(6) of the Act, the district public prosecutor can highlight lapses of the investigating officer in acute cases of negligence for appropriate departmental level punitive action to promote sense of responsibility and accountability in the investigating officers.

Chapter 4

The Role of Prosecutor : Federal Statutory Provisions

4.1 The Investigation Process u/s 173 CrPC
4.2 Acquittal u/s 265 K CrPC
4.3 Section 494 Cr.P.C

4.1 The Investigation Process u/s 173 CrPC

Investigation is an objective process aimed at identifying the actual offender. It requires the investigator to pursue all lines of enquiry that appear reasonable. The police should therefore be open to any and all evidence whether it confirms the involvement of a particular accused, or points away from them. The investigation process entails the collection, recording and retention of all relevant evidence such as the statements of witnesses, results of forensic and other evidence. The Code, police law, other statutes and administrative orders in line with the same regulate the investigation process.

4.2 Acquittal u/s 265 K CrPC:

The objective of S. 265-K is to acquit the accused if the court considers that there is no probability of them being convicted of an offence, and such an order can be passed at any stage of the case including the stage even before conclusion of the trial. Provisions of S.265-K of the CrPC are meant to prevent a prolonged trial when it is apparent from the record that there is no probability of the accused being convicted of any offence. The burden of proof is on the prosecution. The trial court is under an obligation to record reasons to justify the interference and in all probability why the verdict of guilt would not be returned. There has to be a judicious exercise of discretion when depriving a complainant of the right to prove their case through oral or documentary evidence; it is not a fair exercise of jurisdiction. Recourse to S.265-K of the CrPC for acquittal of the accused though could be made at any stage of the case, but it could not be pressed into service to stifle prosecutions. Parties to litigations should be given a fair opportunity to place on record their respective cases. When it is apparent from the record that there is no probability of the accused being convicted of the charge levelled against them but the complainant equally deserves justice and fair treatment in that regard, even the sole testimony of the victim is sufficient for conviction.

4.3 Section 494 of the CrPC

This particular section is worded in very wide terms, and it does not lay down any principle or guideline on which the consent of the court may or may not be granted. However, there is a consensus of judicial opinion that an order of acquittal or discharge passed u/s 494 of the CrPC

consequent on the withdrawal of the public prosecutor from the prosecution of any person with the consent of the court is a judicial order, and it is liable to revision by the high court if the discretion vested in the court to give consent has been improperly or arbitrarily exercised. The discretion of the court can be exercised based on available material even though evidence is not judicially recorded. The state or the public prosecutor has no absolute power to withdraw a criminal case and the consent of the court is required. The court is obliged to apply its mind to the question, whether request for withdrawal is bona fide warranted by facts of the case and is intended to foster the cause of justice. This decision cannot be made in bad faith with the object to favour an accused person at the cost of the victims of the criminal offence involved.

Chapter 5

Statutory Provisions: Role and Responsibility of the Police

5.1 Guide for Investigation
5.2 Co-operation Tiers
5.3 General Guidelines Regarding the Seeking and Provision of Legal Advice
5.4 Seeking and Providing Legal Advice: Police and Prosecution Responsibilities
5.5 Importance of Ongoing Communication between Police and Prosecutors
5.6 Protocols for Resolving Disputes between Police and Prosecution
5.7 Conclusion
5.8 References

5.1 Guide for investigation

The police are subject to rules pursuant both to the Code of Criminal Procedure as well as the various provincial prosecution acts. These rules guide their investigations and define points in the criminal process when they come into contact with the prosecution. These are defined and mandatory points in the process, where the prosecution has the opportunity to review the results of an investigation and to apply the law to these results. These points should be taken as an opportunity for the police and the prosecution to discuss the case. Federal statutory provisions mention the laws of Pakistan and its provinces impose certain obligations upon the police with respect to their duties to the citizenry and the government of the country. The common law, as enunciated by the courts, has been referenced in the previous pages. However, there are also statutory provisions emanating from a variety of sources, which further articulate the roles and responsibilities of the police. Sections 149 to 176 of the CrPC cover many procedural and operational aspects of a police investigation such as: powers of arrest, the taking of witness statements, and the procedure to be followed to charge an individual with a criminal offence.

5.2 Co-operation Tiers

For the convenience there will be three tiers of co-operation:

- Primary Level: Covers I.O.s and concerned district prosecutors and includes the joint investigation team in high profile. This level shall co-operate on case to case basis.
- Mid-level: Covers regional police officers/district police officers and district public prosecutors. This level shall streamline the co-operation mechanism by monitoring the process by interactive and intra-active strategy, settling the grievances and reporting to the higher level.
- High Level: Covers the headquarter level i.e. inspector general police and the prosecutor general of the province. This shall be the approval and reporting level.

Duties of Police	Duties of Prosecutor
a. The police shall bring into notice of the prosecution the incidence of a crime immediately by providing a copy of the FIR to the DPP Office or informing through a mutually shared I.T. networking system or by any available telecommunication facility, whatever is first available.	a. The prosecutor shall provide pre-trial advice as to the preservation and collection of evidence in accordance with best crime scene preservation practices.
b. The I.O will share their observations of the first visit to the scene of occurrence with the prosecutor.	b. The prosecutor shall discuss early investigative support and the evidential requirements of that particular case with the I.O.
c. Pre-trial advice of the prosecution shall be positively dealt with. Advice should include any further steps to be taken by the I.O, including lines to pursue and advice on how to strengthen the evidential basis of the case. All potential difficulties with the case shall be discussed with solutions suggested. Pre-trial	c. The prosecutor shall advise the I.O according to the checklist of the case.

advice, assistance and support will minimize the need for curing remedial and non-remedial defects in the police reports and will minimise the number of cases deemed not fit for trial.	
d. The I.O shall frequently discuss the checklist with the prosecutor to ensure smooth progress of the cases and will follow the advice given by the prosecutor.	d. The prosecutor shall with all due expedition assist in the preparation of the report under section 173 of the CrPC. paying particular attention to the procedural, legal, substantive and evidential requirements of the case. Engagement at this early stage must be undertaken with the trial process in mind. The "scrutiny" of the report under Section 173 of the CrPC. should be at this early stage.
e. Not limited to but particularly, the police shall seek pre-trial advice from the prosecutor on the identification parade, remand and pre-trial bail matters.	e. The prosecutor, upon certifying a case fit for trial, shall keep the I.O informed of all developments and progress.
f. If an investigation is not completed, or cannot be completed within the time prescribed by law, the reasons for the delay shall be communicated to the court through the prosecutor.	f. The prosecutor will use all of their skills, knowledge, experience, expertise and professionalism to ensure that the case is prosecuted fairly and robustly. They will undertake thorough preparation of the case prior to hearing.

5.3 General Guidelines Regarding the Seeking and Provision of Legal Advice

Legal advice should be sought by any police officer having a question pertaining to an ongoing or potential investigation, and prosecutors should make themselves available to provide legal advice to any police officer as requested. Following this policy will lead to better communication between police and prosecutors and allow them to identify or resolve problems with a case at an early phase in the investigation. In turn, early communication will lead to the identification of weak cases and help strengthen the prosecution of cases that should go to court.

The police should always advice a prosecutor if they have sought or received legal advice from another prosecutor on the same case, and prosecutors should always ask police officers if they have received any legal advice from other sources on the same questions. Knowledge of previous legal advice is important as advice, and the action taken as a result may change over the course of an investigation as new facts arise or facts not previously mentioned become known. For the best legal advice to be given all of the facts surrounding the question being asked, including previous legal opinions, must be made available.

5.4 Seeking and Providing Legal Advice: Police and Prosecution Responsibilities

Whenever advice on a legal issue has been requested by the police from a prosecutor, all of the facts in the case, advice requested in question/answer from keeping in view law of the land under which advice is sought may be mentioned to the fullest extent so that the prosecutor may be able to render proper and timely advice in the light of all laws available to them and also keeping in view the prosecutors of the superior court. The prosecutors must also have the knowledge of the Criminal Procedure Code and other substantive laws applicable to the case. When seeking advice, the police should provide as much information as possible to the prosecutor so that potential legal issues can be identified. The police should also be prepared to answer any questions with respect to their file, or actions that have been taken to date, as past actions have a bearing on those in the future. Questions should be answered openly and honestly; this is the only way that proper legal advice can be obtained. Prosecutors should be fully conversant with the rules of criminal procedure, evidence, and the criminal code, so that they can provide sound and timely legal advice to investigators. If a specific legal issue needs greater legal analysis, this should be done. Providing quick, simple answers to complex legal issues, for the sake of early efficiency, can make for larger problems later on. Prosecutors should also be aware of the most recent court decisions pertaining to the relevant criminal law, so that both they and their fellow prosecutors provide legal advice that is consistent with the present state of the law. Remember that there may have to be multiple meetings between the police and prosecutors to fully communicate and understand the type and degree of the legal challenges that have to be overcome.

5.5 Importance of Ongoing Communication between Police and Prosecutors

Though the presentation of a criminal case to the court is solely the responsibility of the

prosecutor, there is still a large role to be played by the investigator. The police can ensure a case is presented in a cogent and professional manner. Organisation is key with definite and ongoing availability of exhibits, reports, and witnesses allowing for the presentation of a smooth and compelling case by the prosecution. Keeping victims and other witnesses informed of the trial process and scheduling creates confidence in the justice system and the respective roles of the police and prosecution. As a result, witnesses will feel more confident in testifying. Prosecutors and police officers should speak to one another as often as needed to ensure that their case can be presented in the best manner possible. The courts will also have confidence in the prosecution if the case is organised as it will allow the judge to concentrate on the case and its merits, instead of being bogged down with adjournments, delays, and applications that could have otherwise been avoided. At the conclusion of a trial, particularly a major one, a debrief or lessons learned session should take place between the police and the prosecution. At this time, both the positive and negative aspects of the investigation, and the trial itself, can be reviewed. The objective of this should not be to place blame on either the police or the prosecution, rather it should be viewed as a learning exercise that will educate and influence the future conduct of both groups. Examples of lessons learned are: the police discovering that a standard police investigative method of gathering evidence has been ruled by the court to be improper and cannot be appealed, or that the number of co-accused the prosecution decided to try in a conspiracy was found to be too cumbersome and the case collapsed as a result. These examples are, of course, not exhaustive, but the police and prosecution will be able to view relevant aspects of individual cases if given an opportunity to do so.

5.6 Protocols for Resolving Disputes between Police and Prosecution

It is the duty of the prosecutor to render advice keeping in view statutory provisions, and their advice in any manner should not by pass the law. The police are also responsible to tackle issues if raised by the prosecutor on any legal matter. Arbitration is not allowed; therefore, an amicable solution must be respected by both sides keeping in view law and not otherwise. As mentioned previously, there may be times when the police and the prosecution may not agree on the advice being provided or the course of action being taken. Some of the provincial prosecution acts address this issue, making it mandatory for legal advice to be followed; however, some do not. It is recommended that individual prosecution and police services should address how they will resolve disputes. It is further suggested that investigators and prosecutors attempt to resolve disputes at the individual level, before raising the matter with supervisors or higher authorities. Forcing the use of legal advice by resorting to statutory provisions should be avoided as it does not promote cooperation. Efforts should be made to discuss the matter before resorting to legislation.

Conclusion

This manual began with a plea from the Chief Justice of Pakistan that investigators and prosecutors embrace the new system of independent prosecutors, and that both parties create strong professional relationships. The views are of the courts on the roles and responsibilities of police and prosecutors and the need for them to operate without interference. An overview of the legislative framework that now defines the relationship between investigators and prosecutors in each province is also available. This showed that concrete steps have been taken to formalise and promote a strong working relationship between these two groups.

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KPK Province Prosecution Service Act

Punjab Criminal Prosecution Service Act

Sindh Criminal Prosecution Service Act

Code of Criminal Procedure

National Judicial Policy

Balochistan criminal prosecutor Act