Chapter 1: Introduction

1.1 Manual of Guidance for Prosecution

This Manual of Guidance has been formulated to assist Prosecution in the performance of their duties both inside and outside the Court. It is not a substitute to statutory provisions or binding precedents. However prosecutors should have regard to the provisions of this Manual while performing work of both advisory and binding nature.

1.2 Aims and Objectives of the Prosecution Service

The aims and objectives of Prosecution Services are independence, fairness, and efficiency. Its decisions must be based on law and facts and in the furtherance of declared and accepted public policy imperatives.

The prosecution Service should perform its duties in and open and fair manner. It should not to be biased in favor of either complainants or against the defendants and it should ensure that justice is done to all persons involved in a criminal action. Again all work carried out by the prosecution service must meet the highest professional standards. Lastly the CPS must take its decisions and performs its work in an efficient and cost effective manner.

1.3 Definitions

The term prosecutor refers to a public prosecutor who is working as a prosecutor under the CPS act. The term 'Prosecution' (when used as noun) is however a larger term and refers to the broad prosecution apparatus including in suitable cases the police.

A suspect is a person who is suspected by the police of involvement in the commission of a crime or of deliberate misreporting of crime. An accused is a person charged in a criminal case. The terms are often used interchangeably in Pakistan despite judicial pronouncements to the contrary. The terms are not used interchangeably in this manual.

Types and classes of Prosecutors and their duties/powers

Prosecutors can be appointed both under the CPS Act and other legislative enactments. Prosecutors appointed under the CPS Act are of three classes, ii) Prosecutors working in special courts, and iii) Prosecutors working in the superior courts (Supreme Court of Pakistan, Federal Shariat Court and the Lahore High Court).

The various classes of prosecutors and power vested the them are given in the table at the end of this section. Where a duty lies on a prosecutor he has a corresponding power to perform the same. Where a power vests in a prosecutor he has a converse duty to exercise that power in appropriate circumstances. Powers that may be exercised by all prosecutors include scrutiny / review of police reports, asking the police to share information, conduct of prosecution, and ensuring adherence to legal processed and provisions. Important additional powers of prosecutors are as follows:

Prosecutor	Powers/duties	Exercise of Power subject to prior approval of
Prosecutor	Administer the prosecution service	
General	Make regulations for giving effect to the Government provision of CPS act 2006 provided they are in agreement with the rules contained therein Issue code of conduct for the Government Prosecutors Submit an annual report of the Service to the Government within three months of the conclusion of the calendar year	

	Issue guidelines to public prosecutors or investigating officers for effective and efficient prosecution
	Allocate work to prosecutors working at the Supreme Court, High Court, Federal Shariat Court and special courts
	Refer a case to the competent authority to initiate disciplinary action against any public servant working in connection with investigation or prosecution, for an act prejudicial to the conduct of fair and efficient prosecution.
	Take appropriate measures on an application sent by a prosecutor for enhancement of a sentence or filing of revision
	May request the Government for preferring an appeal in case of acquittal
	Grant permission to withdraw the prosecution with regard to an offence punishable by imprisonment to up to seven years
Additional Prosecutor General	Distribute work to prosecutors in the Supreme Court/High Court/Federal Shariat Court/special court if so authorized by the prosecutor General.
	Perform functions delegated by the Prosecutor General
Deputy	Perform functions delegated by the Prosecutor

Prosecutor General

General

District Withdraw prosecutions in respect of offences

Public punishable with imprisonment of up to three years

Prosecutor

Take appropriate measures on an application sent by a prosecutor for enhancement of a sentence of filing of revision.

Act as a member of the District Criminal Justice Coordination Committee

Recommend disciplinary action against any public servant working in investigation or prosecution for an act prejudicial to the conduct of fair and efficient prosecution.

Tender pardon

1.4 Powers of the Government with regard to Prosecutions and prosecutors

The work of the CPS is subject to the supervision of the Government, which is exercised through the Public Prosecution Department. The aim of this supervision is to ensure that the CPS acts in accordance with law and performs its mandate efficiently and effectively. Specific powers of the Government with regard to prosecution of offences and administration and management of the Prosecution service include:

(a) Appointment and removal of the Prosecutor General

(b) Appointment and removal of other prosecutors

(c) Transfer of prosecutors

(d) Assign duties of prosecutors

(e) Approve Code of Conduct

(f) Make rules for putting the provisions of the CPS act into effect

(g) Withdraw from prosecution

(h) Cease to prosecute any person before any trial court subordinate to the High court before judgment is passed

(i) Allow appeals

(j) Remove difficulties to give effect to the CPS act.

1.5 Role of prosecutors in case of offences under the Pakistan Panel Code

Prosecutors appointed under the CPS act are required to appear in all cognizable cases under the Pakistan Panel Code. They must also appear and act on behalf of the state in non-cognizable offences where the state is the complainant and lawful directions have been issued to them to appear and act as such.

1.6 Role of prosecutors in proceedings under local and special laws

The Code of Criminal Procedure is the procedure of default in offences under all local and special criminal Acts. This means that Prosecutors must appear in all cognizable cases under local and special laws unless special arrangements for prosecution have been made under these laws. They must also appear and act on behalf of the state in non-cognizable offences in the following situations:

(a) Where the state is the complainant and no special arrangements for prosecution have been made in the relevant law, and

(b) Where lawful directions have been issued to them to appear and act as such.

Chapter 2: Role of Prosecutors in arrest / detention decisions

2.1 Introduction

The power to arrest and detail a person for a period of up to twenty –four hours is that the police. The police are under on obligation to obtain sanction of a prosecutor prior to the making of an arrest. The prosecutor should therefore refrain from issuing any direction in matter of arrest and detention. However the prosecutor may need to given an opinion regarding arrest decision and continued detention decision made either by the police or a judicial authority. This chapter provides guidelines for prosecutorial conduct in such situations.

2.2 Role of prosecutor with regard to remands in police custody

A remand in police custody or an authorization to continue detention of a person in police custody is requested and made under section 167 of the Code. Rules regulation police applications for remand are contained in PR25.56 (2). A remand request is a request for authorizing continues detention.

After arrest a suspect must be produced before a magistrate as soon as practicable but not later than 24 hours of arrest. At this hearing the Magistrate usually confines his review to the ground(s) of arrest unless the police seek permission for extending the detention. An extended detention in police custody is referred to as the `police remand.

Where police wish to seek custody of the suspect foe a period longer than twenty-for hours they have to make a written request to the Magistrate for the purpose. Where a Magistrate is satisfied that grounds for extending detention are present he may extend the detention on police custody for a maximum period of 15days and in anti-terrorism asses for up to 30 days .In reaching a decision the magistrate has to weigh the lass of liberty of the suspect and the need for detention .When police consider a remand in police custody necessary, it may make an application to the court through the

relevant public prosecutor. In the former case the police may argue the application it self.

2.2.1 Information to be provided to the prosecutor

An application for remand should always be in relation to an ongoing investigation, it should be in writing and should be accompanied by the following:

i. Date and time of arrest

ii. Reasons for making the arrest

iii. Grounds for seeking remand and evidence in support thereof. Grounds include.

   (i) Need for Information form the arrested person concerning the Crime; or the

   (ii) Need to carry out some important task like taking a suspect to a distance that he may be shown to persons likely to identify him as having been seen at or near the scene of the offence, or for comparing foot prints evidence or for recovering stolen goods where the suspect has offered to point out the same.

iv. Evidence in possession of the police in support of the arrest decision

v. Evidence in possession of the police which may point away from the suspect

vi. Details of remand obtained earlier in the matter

vii. Period of remand requested

2.2.2 Review of an application from remand

Once the prosecutor gets and application containing the above-mentioned particulars, he should review the information with a view to determine whether he has reasons to support the application. The review decision of the prosecutor is dependent on the reasons cited by the police for the arrest, and the grounds for seeking remand, supporting evidence, and evidence justifying the release of the suspect/refusal of the remand application. Prosecutorial action in various situations should be as follows:

Reasons for arrest	**Appropriate grounds for remand**	**Prosecutorial action**
Presence of sufficient evidence	Collection of further evidence	Review existence of evidential grounds
		Review need for further evidence
Sufficient evidence + exigent circumstances	Collection of further evidence	Review existence of evidential grounds
		Review need for further evidence
Presence of exigent circumstances to make the arrest	Collection of further evidence	Review existence of evidential grounds
	Note: The police must collect some evidence that the detainee committed the offence seeking remand	Review need for further evidence

<u>Tests to be applied by the prosecutor with regard to arrest and police remand.</u>

Particular	Detail	Test
Reasons for making the arrest	Sufficient evidence	The probable cause, which means and implies the presence of enough tangible evidence in possession of the police which if left unrebutted would lead to an inference of guilt
	Presence of exigent circumstances	Whether any exigent circumstance
Grounds for seeking remand	Need for further evidence	Whether there is need for further evidence. A remand must not be supported: a) Where the purpose of remand is to seek verification of a suspect in magisterial / judicial custody. b) Where the suspect was brought in police custody before a court to record confession but he refused to do so or made a statement inconsistent with the expected confession. c) Where the reason for which an earlier remand was granted was fulfilled. d) Where Remand is barred by law (For example a remand in

	custody order cannot be passed in respect of the female unless the remand is sought in respect of offence of Qatal and / or dacoity) e) Where time granted earlier was not put to the use intended and wasted. f) Where ex-posted facto sanction of custody is requested.

2.2.3 Prosecutorial responses with regard to an application for remand.

Where on review the prosecutor finds that the arrest was correctly made and / or there is need for further investigation / evidence he should support the application for remand. A prosecutor should not argue a remand application in the absence of the arrested suspect, as this is a binding requirement. During the hearing of a remand application, a prosecutor is required to:

a. Justify the factor of arrest (either on evidential grounds or reducing the possibility of obstruction of justice).

b. Show that the arrested suspect is required for further investigation.

Where an application for remand is nor filed or is turned down the detained person may either be released or sent to judicial custody.

2.3 Role of prosecutors in remand in judicial custody

Remand to judicial custody is requested and made under both section 167 and 344 of the Code. Remand to judicial custody under section 167 is made where a period of 15 days has not elapsed from the date of arrest. Remand to judicial custody after that period takes under section 344 of the Code. While dealing with judicial remand cases, prosecutors should take into account the guidelines provided in Ghulam Sarwar's case.

2.4 Role of prosecutors with regard to bail applications.

A bail is a release of a suspect from custody pending trial on the condition that if he does nor fulfill the conditions contained in the bail order or absconds, the surety or sureties will pay the amount of money fixed in the bail order. A bound is a personal assurance that a person would surrender to custody as agreed and will pay a fixed sum of money on breach of his promise. A surety is a specified person who gives an undertaking that an accused will meet his obligations to appear in the court. He is not obliged to prevent the commission of further offences by the accused. A security, on the other hand, is an actual sum of money or other security that is offered to secure his liability under the bond. In practice, however, the court rarely accepts the deposit of an actual sum of money to secure appearance. It is provided in the bond that a sum of money may be forfeited, if the accused commits a breach of the condition to attend the court, when so required.

With respect to grant of bail, offences in Pakistan are divided into two categories and non-bailable. Bailable offence are those that are nor considered serious enough by law to justify a detention even if there is sufficient evidence to implicate the suspect in the offence pending the conclusion of the trial. A bailable offence means that a person connected

with the commission of bailable offence can obtain bail as a matter of right. Both the station House officer and the court can grant bail in bailable offences. The Police should take a bail decision in bailable matters in the first place and must nor wait for the matter to be taken to court.

In non-bailable offences, a person may also be released on bail either by the police or the court. The power of police to grant bail in non-bail able cases is available as long as the person is in its custody. The Prosecutors has no role to play in a police decision to grant bail. In Pakistan, Bail in non-bail able cases is sought and/or granted on one or more of the following types of ground:

(a) Evidential grounds.

(b) Grounds of public policy.

A suspect / accused may make bail application(s) to a court either before or after arrest. The effect of a pre-arrest bail is that police cannot arrest the suspect till such time as is given in the bail order or the conditions mentioned in the bail order remains extant. Bail decisions are important for the suspect, victim and the state and must always be taken after due consideration.

2.4.1 Particulars/Information required to be provided to the Prosecutor to enable him to formulate a response to a bail application

A prosecutor needs certain information to formulate an appropriate response to a bail application. This information is as follows:

(a) Age and medical condition of the arrested suspect

(b) Date and time of arrest.

(c) Reasons for making the arrest (i.e. whether the arrest was or is required to be made on grounds of sufficient evidence or there existed or exist exigent circumstances to make the arrest)

(d) Evidence in possession of the police

(e) Evidence in possession of the police which justifies the release or does not justify the making of arrest of the suspect

(f) Nature of obstruction to justice likely to be caused by the arrested suspect if not in detention

2.4.2 Response of the prosecutor to a bail application

The responses of the prosecutor are dependant on the grounds for seeking bail. Prosecutorial action in various situations should be as follows:

Grounds in the bail application	**Detail**	**Prosecutorial action**
Evidential grounds	Police have evidence in their possession	Review sufficiency of evidence in possession of the police
	Police have evidence to justify release of suspect	Review exculpatory evidence in possession of the police
	Basis of accusation	Review motivation
	Grounds of arrest (where bail is submitted at an early date)	Review grounds for arrest

Public policy grounds	Age of detained suspect	Review documentation
	Medical condition of suspect	Review documentation where available or request for medical information through the court
	Gender of suspect	Review documentation
	Long duration of trial	Review trail duration
	Likelihood of not facing trail	Review factors which may lead to an inference of the suspect absconding or likelihood of suspect not facing trail
	Prevention of further offences by the suspect	Review possibility of tempering of evidence

When a suspect files a bail application in a non-bailable case, the court is required to give notice to the prosecution to show cause why he should not be so released. On receipt of such notification, a prosecutor should require the police to provide him with all the relevant information pertaining to the case. It should include the police file and other relevant information / evidence gathered till that time. It is best that the police and prosecutor hold

consultations prior to the date of hearing of the bail application so that the prosecutor prepares the case properly and understands the police point of view appropriately.

Once the prosecutor is in possession of relevant police papers he should review / scrutinize the file. The evidential test in such cases is the test of reasonable grounds to justify continued detention. This is an objective test where evidence is sufficient to provide an inference of criminality. Again this is a more robust test than the test of probable cause required to make an arrest. Public policy grounds are factual and easy to review.

The evidential test requires the prosecutor to examine and assess the available evidence and the applicable law. The prosecutor while reviewing the police case should give due weight to the opinion of the police with regard to sufficiency of evidence against the suspect. Since the police collect the evidence and while doing so come in direct contact with the witnesses they are in an advantageous position to assess their credibility. However where the police opinion is not sound, or is contrary to the evidence collected, it should be ignored. The prosecutor must also check the following things before responding to a bail application as they are relevant factors in a bail decision: a) t commit further offences), b) whether the suspect is likely to abscond, c) whether there are chances of the suspect obstructing the course of justice, d) Age, health and gender of the suspect, and e) the views of the person entitled to compound in compoundable cases.

The recommendation of a prosecutor to a court in connection with a bail application should always be based on evidence, established principles relating to bail and in accordance with the principles of justice and fair play. The prosecutor should bring to the attention of the court the actual facts. Where the prosecution has collected and retained any material that supports the case of the defence it should not be suppressed and should be disclosed to the court. Where it is necessary to present a police officer or witness in court the prosecutor should never force a police officer or witness

to divulge any information to the court, which may prejudice the outcome of an investigation.

In view of the current state of collection of evidence and lack of information regarding likelihood of violation of bail conditions, the prosecutor may find it difficult to responds to a bail application. In such a situation a prosecutor may decline to respond to a bail application.

2.5 Role of prosecutors with regard to applications for recalling bail (cancellation of bail)

A prosecutor may consider making an application to the appropriate court for recall of bail (both pre-arrest and post arrest) when he is dissatisfied with a bail decision or where he comes in possession of some information, which was not available at the time of contesting an earlier bail application, and which may reasonably be a ground for cancellation of bail. The grounds for seeking cancellation of bail or supporting an application for cancellation of bail are as follows:

Type	**Detail**
Existing grounds	
Process and outcome based (includes both evidential and public policy considerations not attended to by the bailing court)	Non-reading or misreading of material(s) relating to the case including that in favour of defence
	Overlooking essential considerations in the grant of bail
	Where a bail decision is obtained by practicing fraud on the court.
	Non-existence of jurisdiction of the

	which granted bail
Fresh grounds	
Evidence based	Additional evidence has come into possession of the police
Public policy based	Person released on bail has obstructed he course of justice. Person release on bail has threatened the prosecution witness(s). There is an apprehension that the person released on bail may abscond Person released on bail has repeated and offence similar to one in respect of which he was granted bail Where bail order is conditional and non-fulfillment of condition is observed

The prosecution should ensure that is has sufficient material to support allegations forming basis of the application for cancellation of bail. Where recall of bail is sought the application should be filed with the court that granted bail. Prosecutors should not withhold any information in order to justify filing of subsequent applications to cancel bail. Where a court declines a request to recall bail, a prosecutor may apply a revision application to the superior court. Where a cancellation application is dismissed as being withdrawn, a subsequent application is permissible any may be filed. However the court should be informed of all previous applications and their outcomes.

2.6 Role of prosecutor where a post-conviction bail application is filed

Where a person has been convicted of a bailable offence, he may apply to the sentencing court to suspend the sentence and allow him to present an appeal and seek an order for suspension of sentence from the appellate court. The court has the discretion to allow or refuse the same. Where as convicted person appeals the decision f conviction, he may also seek an order of suspension of sentence from the appellate court. The court may suspend the sentence and release him on bail or personal recognizance. The prosecutor may contest a post-conviction bail application where the following circumstances exist:

(a) Where he is of the opinion that the conviction is unlikely to be reversed in appeal.

(b) Where he is of the view that the surety is not of appropriate standard and/or the convict will abscond.

2.7 Role of prosecutor in an application under S 87 of the Code

Where an application under section 87 is to be made by the prosecutor, he should firstly, ensure that meaningful attempt has been made to contact the absconder. Secondly he should seek details of the absconder's properties in order to apply for an attachment order from the court.

2.8 Role of prosecutor where a discharge report has been submitted

A discharge report is filed when the police wish to release a suspect from custody on account of insufficient evidence or lack of evidence. Discharge reports only deal with the issue of liberty of a particular suspect/accused and does not in any manner indicate a disposal of the FIR/case. It has been held that a discharges suspect cannot be sent up for trial until the discharge order stands. This is probably not in consonance with the other case lay,

which allows the police to investigate a discharged suspect. A discharge under section 63 or release on bail or bond is somewhat different from a discharge under section 173(3). The latter discharge is discharge of the bond taken by the police or the court and this discharge make the first release unconditional. A discharge order cannot be passed after cognizance of a case has been taken.

Chapter 3: Review of police file and filling of cases in court

3.1 Introduction

Police reports are the record of the process and outcome of a police investigation. In particular, police reports document the evidence collected by the police, the opinion of the police and the police decision to charge a particular person on the basis of the available evidence. Police reports are passed on to the prosecutor so that he may review them and formulate his opinion with regard to the same. A review is necessary because a prosecutor is under a duty not to initiate a prosecution or to stop a prosecution where an impartial investigation shows the charge to be unfounded. This chapter explains the content and process of prosecutorial review of police files.

3.2 The Investigation Process

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 suspect, or points away from him. The investigation process entails the collection, recording and retention of all relevant evidence such as statement of witnesses, results of forensic and other evidence. The Code, police law, other status and administrative orders in line with the same regulate the investigation process.

3.3 The role of the prosecutor during an investigation

The prosecutor has no role in the decision to commence an investigation or to direct the police to gather evidence for or against a person, or to bear upon the police to act in a particular manner, or to follow a particular line of enquiry. However once report of an investigation has been made, he may lawfully ask whether a particular line of enquiry was followed, what evidence was collected and/or whether the police acted in accordance with the guidelines issued by the CPS. This does not however mean, that police and prosecutors should not coordinate processes and standards either of them uses. These should be actively discussed and any ambiguities clarified so that the police and prosecutors are aware of the processes and standards used by each other in decision-making.

3.4 factors involved in prosecutorial review of police files

The factors that prosecutors should look for and base their decision while reviewing a case file include both investigative methodology and the resultant evidential product.

Investigative methodology

Investigative methodology refers to the lines of enquiry followed, the process of collection of evidence etc. With regard to investigative methodology the prosecutor may reasonably ask whether all reasonable lines of enquiry were followed and what evidence was collected to that end. The statement of a witness that he did not see the suspect is evidence of a line of enquiry, that the suspect has no involvement in the offence. Such evidence should not be blocked out merely because it does not lend credence to the case of the prosecution. Instead it should form part of the investigation material.

Evidence:

Material, which indicates whether process has been followed in the collection of evidence is also evidence – not of the crime but of the process followed. Failure to maintain this material may lead to exclusion of evidence. It may also be used by the Defence to attack substantive evidence on

grounds of due process. Poor and inadequate maintenance of record(s) may have an impact on the overall credibility and integrity of evidence. Evidence which has been collected by the Police may be used or unused. It is important that the Prosecutor looks at both used and unused materials so that he has a complete and comprehensive view of the case.

3.5 Police reports of investigation

The officer in charge of the police station makes the report of an investigation. The prosecutor has no formal role in the formulation of the report. However it does not become a report within the meaning of section 173 till such time as a Prosecutor files it in court[72].

All final reports including a report of cancellation are submitted under section 173 of the Code to a Magistrate (or a special court having powers of a magistrate)[73]. The orders which a Magistrate or a special court having powers of a magistrate may pass with regard to a police report are given in section 3.10.

Types of police reports:

There are three types of reports for conveying investigation results:

i) A report in which one or more person are recommended to stand trial. Such reports are commonly called *challans*. A *Challan* can be both interim and final.

ii) A report of cancellation. Such a report declares a case to be false or otherwise unfit to be prosecuted for defined reasons.

iii) A report of untraced. Such a report is intimation that the police have not been able to trace the person responsible for the offence in question and have no reasonable hope of doing so.

[72] 173 Cr.PC
[73] PLD 1987 SC 103; 1983 SCMR 370

All key evidence and material which the prosecution intends to rely upon and many evidence or material which it does not intend to use in support of its case, but which may assist the defence, should accompany the police report.

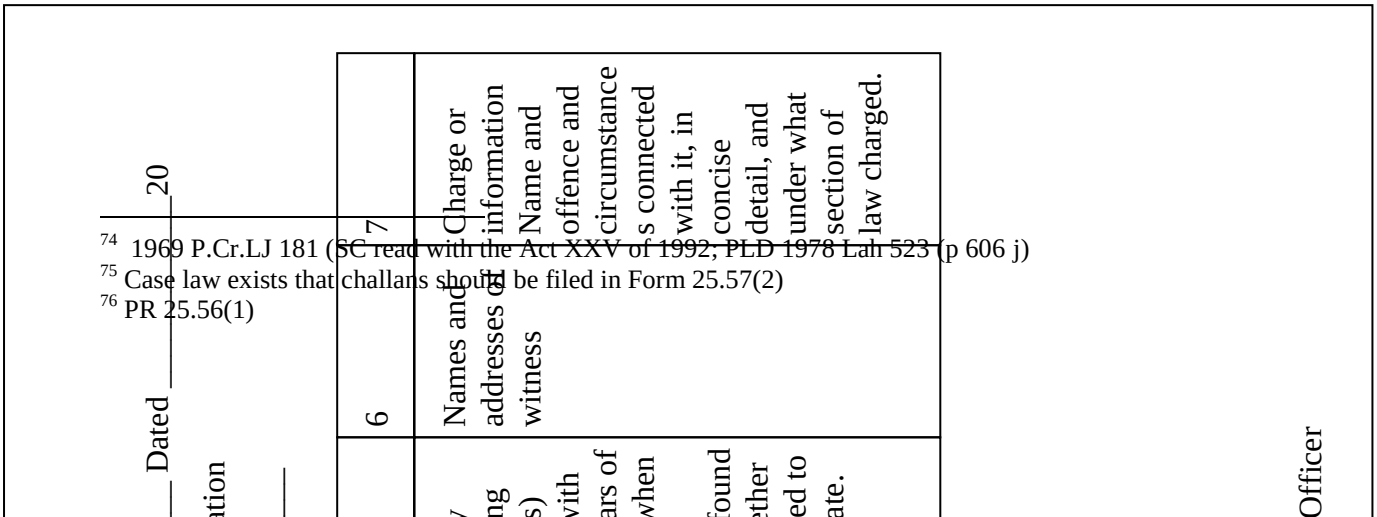
3.5.1 Report recommending persons to stand trial (challan)

A report, which recommends that one or more persons stand trial, is known as charge sheet or challan. It is failed when the police are satisfied that sufficient evidence exists against one or more suspects. A complete report/*challan* may be filed in the first instance or following the submission of an interim *challan*.

Interim Challans/interim police report are used for cases where investigation has not been completed within the statutory period of fourteen days. In such cases the police have to send an interim report indicating the result of the investigation finalized till that time along with reasons for not filing a final report. The court may then choose to proceed with the trial or to defer it for a certain period depending on the circumstances of the case. An interim report can form the basis of a trial and accordingly the police should be careful in formulating such a report[74]. Where the police have submitted a final report they can file a supplementary report.

Form of report recommending one or more persons to stand trial:

Final reports and incomplete reports recommending initiation of trial are sent in Form 25.56(1)[75]. Incomplete reports are to be attached with the final report[76]. The report consists of seven columns. A specimen of Form 25.56(1) is given below;



6	7
Names and addresses of witness	Charge or information Name and offence and circumstance s connected with it, in concise detail, and under what section of law charged.

Dated ____ 20

ution

Officer

[74] 1969 P.Cr.LJ 181 (SC read with the Act XXV of 1992, PLD 1978 Lah 523 (p 606 j)
[75] Case law exists that challans should be filed in Form 25.57(2)
[76] PR 25.56(1)

Anexplanation of the contents of Form 25.56(1) is given Table 3.5.1

Tabel 3.5.1 – Contents of challan reports

Column	Contents	Details
Column 1	Particulars of complainant or informant	This column contains the name, parentage, address and occupation of the complainant or informant.
Column 2	Particulars of accused not sent for trial	This column includes the names perentage, address and occupation of accused persons not sent up for trial by police[77]. In practice, column No. 2 includes persons against whom evidence is not available but who are sent to court in order to obviate the possibnility of a private prosecution or simply on the basis of abundant caution. There is judicial precedent that persons mentioned in Column No. 2 can be made to stand trial[78]. it has even been held that a Sessions court can summon a person not placed by the investigation agency in column No. 2 as an accused person, without recording evidence, although such discreation should be exercised judiciously and not arbitrarily[79]. Names of absconders are shown in red ink[80]. However the correct view seems to be that police must not place persons against whom there is no evidence or insufficient evidence in Column No. 2 just because they are liable to be summoned.

[77] PLD 1992 Kar 155
[78] PLD 1967 SC 425; 1971 P.Cr.LJ 1127; also see 1989 P.Cr.LJ 903
[79] 1998 Law Notes (Lah) 784
[80] 1977 P.Cr LJ 948

Column 3	Particulars of such accused sent for trial who are in custody	It lists the names and addresses of persons against whom prima facie or sufficient evidence exists (an indication of type should always be given) of involvement in the offence and they are sent up for trial.
Column 4	Particulars of accused sent for trial who are on bail or recognizance	Same as above
Column 5	Case property	It lists property including weapons found with particulars of where, when and by whom, found and whether forwarded to the Magistrate.
Column 6	Particulars of witnesses	It provides the names, addresses, of the witnesses for the prosecution[81].
Column 7	Charge or information	It provides the outline of the circumstances of the case and the proposed charges. It helps the prosecutor in reviewing police reports and making decisions relating to charges.

3.5.2 Cancellation Report

The police can recommend cancellation of the FIR, where the allegations in the FIR are found to be maliciously false or where it is founded on error of fact or mistake of law, or the allegations amount to a non-cognizable offence or the matter is predominantly a dispute of civil rights and it would be more

[81] This is also some times submitted separately as index of witnesses

appropriate to get the dispute determined in the civil court[82]. A case of poor evidence should be distinguished from a case of cancellation.

Cancellation on evidentiary grounds needs positive evidence. While the Code provides a process for disposal of cases with sufficient evidence it does not clearly provide a way of disposal of cases of poor evidence. Currently such cases are recommended for trial, which as discussed below is inappropriate. Since a cancellation is uncalled for in these circumstances, it is recommended that such cases be treated as pending until further evidence is collected or at best considered closed until further evidence becomes available.

3.7 Review of police reports by prosecutors

A prosecutor can take two actions after reviewing a police report namely:

(a) Rendering of advice to the police

(b) Forwarding the case to the Court with his opinion

When reviewing the police case the prosecutor must consider whether there are any defects and/or shortcomings in the police report, whether the case meets prosecutorial standards and what, if any, charges can be pressed on the basis of available evidence.

Action that prosecutor should take during review

In order to render advice or an opinion the prosecutor must complete the following tasks:

(a) Identify defects/non-provision of information

A prosecutor is required to identify defects in a police report. The term defect has not been defined in the statute but defects would include non-provision of essential documents, non-provision of essential detail in documents, jurisdictional shortcomings and evidentiary weaknesses. Defects may be

[82] PR 24.7

categorized into remediable and non-remediable. Remediable defects are those, the removal of which does not amount to miscarriage of justice. Non-remediable defects or non-rectifiable defects are those that may have an impact on the integrity of evidence.

Examples of remediable defects include situations where the police have indicated in the police report that the have recorded the statement of particular witness but the statement is not attached to the police report. Examples he non-remediable defects are where recovery memos are without signatures of the recovery witness (es). Asking the police to obtain signatures of a person who was not present during the search may amount to fabrication of evidence, although signature of a person who was present but missed out on signing does not amount to fabrication. The police must never be requested to remove a known non-rectifiable defect and any such removal must be noted if done by the Police on its own.

(b) Application of prosecutorial tests

There are two prosecutorial tests: Evidential test and public interest test both of which have been discussed in detail in the following chapter. The evidential test is a subsequent and negative test. In other words the public interest test need not be applied if the evidential test fails. Public interest factors against prosecution have not been exhaustively defined and listed. Some of the known factors are listed in chapter 4. The processes for the application of the evidential test are as follows:

Element	**Description**
Identification of the offender	The Prosecutor must look for positive evidence regarding identification where identification is disputed
Evidence	The Prosecutor must have evidence on each and every ingredient of and offence. Failure to have evidence on any on ingredient will not justify a

charge for that offence. Prosecutors must be cognizant of the fact that lack of evidence on one or more ingredients may require amendment or alteration of charge. The strength of evidence regarding each ingredient is a matter, which requires careful consideration.

Selection of charges

The prosecutor is the appropriate authority for selection of charges and he may add or delete charges proposed by the police. In giving such advice the prosecutor should ensure that charges reflect the seriousness and extent of offending.

3.8 The content and manner of rendering Prosecutorial advise

Prosecutorial advice refers to the observations/directions of the prosecutor with regard to shortcomings/defects in the police report. It is given once review of the police report has been completed. Advice should only be given where necessary and in writing. Before rendering advice a prosecutor should take the following actions in the priority listed:

(a) The prosecutor should identify procedural defects and non-provision of necessary information. Where a full review of the file is not possible because of procedural defects and non-provision of necessary information the case should be returned with a listing of the missing information. When seeking

information police should not be advised to remove non-rectifiable defects and these defects must not be cited in the reference to the police. The prosecutor may, however, keep a separate note of non-remediable defects for his personal record.

(b) Where prosecutor receives a police report or a discharge request in the proper format and accompanied with the required information, it is his duty to review/scrutinize it as soon as practicable. He should critically and thoroughly examine the police report and accompanying evidence, the statement and evidence of the defence. In case he finds the evidence to be insufficient or inadmissible he should specify the details of the same. Where the police report indicates outstanding forensic or medical or other reports, he should take appropriate steps to ensure their timely delivery.

(c) Where the Prosecutor is able to review the police report, he should formulate an opinion regarding selection of charges. In case his selection is different from the police he should inform he police about the same. However he need not return the case to the police for his purpose in all cases.

In order to scrutinize or perform al of the above actions the prosecutor may use the following checklist.

Sr. No	Check list Questions	Purpose	Prosecutorial action
	General		
1	Whether all required papers/documents are attached to the police and judicial files.	To find out the police case and its bases. To review the case holistically. The quality of a	To check the list of material / documents attached. To direct the police to submit missing material/documents. To

		particular prosecutorial review can be assessed by checking the material the prosecutor examined at the relevant time	review the file when the entire material / documents is / are provided.
2	Whether all the columns of the report u/s 173 are duly and correctly filled in?	The report under section 173 forms the basis of trial and there should be no discrepancy between the columns and the documents and material on which it relies inadequately completed columns hamper an informed prosecutorial review decision	Check the columns and direct the police to provide missing information / enter correct information
	Specific		
3	Does the list of case property Entered in the report u/s 173 tallies with the list given in the Road Certificate?	To ensure that the information Synchronizes with the property in possession	Check all the road certificate Pertaining to the case property and see if the information in them is the same as in column no.5
4	Whether the plan of scene of crime has been prepared according to PR	The plan help the prosecutor to understand the evidence it enables	(Review the maps (rough or / and final) and see if instructions contained in PR 25.13 were observed.

	instructions.	the prosecutor to identify inconsistencies and their impact on the entire case and to see if these can be remedied.	See if defects found in the map can be lawfully remedied Direct the police to remove remediable defects.
5	Whether the list of stolen/snatched property bears the signature of the complainant and the officer who prepared the list?	It enables the prosecutor to decide whether to make a summary proceedings request and / or prepare a compensation claim.	Check the list, the memos of recovery, if any and the road certificates relating to the property.
6	Whether the post mortem reports, inquests reports statements of injuries chemical examiner's report and serologist report are attached?	The evidence or material is significant in hurt and murder cases and a proper prosecutorial review may not be possible without the same.	Request the Police / concerned agency to supply the report.
7	Is the documentary evidence part of public record? If so, have certified copies been obtained.	To determine how documents are to be proved.	Obtain the relevant information from the police.
8.	Has all the documentary evidence relied upon by police attached with the police report? Who is in	To determine admissibility of evidence	Obtain the relevant information / documentary evidence.

	possession of original documents?		
9.	Whether search and seizure was conducted in accordance with law.	To determine admissibility of evidence.	Obtain the relevant information/documents from the police.
10.	Are the marginal witnesses to a document or those familiar with the handwriting of the executants of the document are prosecution witnesses and will they be available to testify	To ensure that documents can be fully proved	Obtain the names of marginal witnesses from the police and / or their availability / willingness to / testify.
11.	Whether the list of property recovered, produced or seized in the case has been correctly prepared, dated and signed by witnesses and the officer(s) preparing them?	The prosecutor needs to know if the evidence has been collected, recorded and forwarded in accordance with the procedural and evidential rules and if the evidence is admissible.	Check the memorandum of recoveries, the signatures of the witnesses and the calendar of witness to confirm whether names of witnesses of recovery have been correctly entered in the calendar of witnesses
12.	Whether the identification certification certificates of the accused have been attached to the	This enables the prosecutor to ensure identification	Ensure identification certificates are available in case of disputed identification.

	challan?		
13	Which of the accused are previous convicts and whether evidence regarding the same has been attached?	This allows the prosecutor to seek enhanced punishment and may also be used in making other important prosecutorial decisions like contesting bail applications.	Make notes of particulars of previous convictions and ensure that relevant evidence i.e. copies of the judgments etc is obtained at the earliest.
14.	Police has explained final outcomes with regard to every important suspect in the report?	The prosecutor may need to explain why particular persons nominated by the informant were not made to stand trial	Ask the police as to whether a particular line of enquiry had been followed or not and how was the case pertaining to nominated persons was processed.
15.	Is the police brief complete according to Government instructions? Note defects	This information assists the prosecutor in review and subsequent prosecution of the case. It is not disclosable to the defence.	Request for a complete brief indicating witness assessment, evidence that points to the guilt of the persons charged, weakness of the case, anticipated defence, discrepancies etc.
16.	Whether all necessary witness have been listed and their connection with the complainant noted?	A prosecution witness whose name does not appear on the list of witnesses may be precluded from giving evidence.	Request the police to include the names of all witnesses who are necessary (and ready to give evidence) and whose names have been

		A prosecution witness testimony may be attacked on the ground of relationship with the complainant/in formant.	overlooked.
17.	Were remands regularly taken and was the challan prepared in time?	An unlawful remand may result in the exclusion of evidence or may impact the outcome of a trial.	Ensure that all information relating to remands is available.
18.	Whether all the bail bonds and personal bonds of and recognizances of witnesses have been attached to the challan or not?	To ensure attendance of bailed out persons/persons released on personal bonds	Obtain necessary information/request the police to provide necessary information.
19.	Whether proceedings under section 87/88 have been properly initiated?	It is part of the obligation of prosecutors to ensure that proceedings to ensure that proceedings under section 87/88 are not sham and genuine attempt(s) have been made to contact any absconders.	Check relevant documentation
20.	Whether age of the	Age may be relevant	Ensure supporting

	charged suspects(accused has been ascertained in appropriate cases?	in certain cases and the prosecutor should have adequate information/proof regarding the same	evidence of age is provided if available.
21.	Whether statements of prosecution witnesses were properly recorded?	The prosecution is under a duty to provide the defence with copies of statements recorded under section 161 or 164 Cr.P.C	Request the police to provide statements.
22.	Whether information regarding the police officer who prepared a report u/s 173 is available.	Detail of the officer is essential for effective and efficient communication between the police and the prosecutor.	Ensure the details of the officer including name, rank and mobile number are available in the file.
23.	Whether more than one person / agency has investigated the case and if so are all the investigation results available?	Different persons may use the outcome of various investigations during the trial and the prosecutor must know the same	Obtain details of various investigations conducted by the police.

The prosecutorial advise should be rendered in the following format. Where police fail to comply with adivde, the prosecutor has a number of options available depending on the nature of the case, the stage of the investigation and reasons for refusal to rectify the defect. These options include repeating the request, bringing the fact of refusal to the notice of a superior police officer or prosecutor, allow the

prosecution to go ahead, or refuse to initiate a prosecution or drop the prosecution at an appropriate stage.

Punjab Criminal Prosecution Service Department of Public Prosecution Government of Punjab			
Reference No.			
FIR No.			
Police Station			
Defects			
Sr. No.	Defect	Action required from police	Time line
Non-provision of information			
Sr. No.	Missing information	Action required from police	Time line
General			

Sr. No.	General query/explanation	Action required from police	Time line

Prosecutors details			
Name of Prosecutor		Designation	
Signature		Date	

3.9 Opinion of the prosecutor to the Court

Once prosecutorial advice has been tendered and complied with, or the prosecutor decides to move ahead without writing to the police, or where the police has not responded to the advice in time and it is necessary to submit an opinion to the court, the Prosecutor may, render and opinion to the Magistrate concerned.

A prosecutorial opinion must attend to and address the following things:

(a) In case of a report recommending trial, which persons should stand trial, for what, and what?

(b) In case of a report of closure, whether the recommendation of the police to suspend the investigation is justified or the police may collect more evidence?

(c) In case of a cancellation, whether in view of the factors listed section 3.5.2 a cancellation is in order or the case should be returned to the police for collecting further evidence in the matter.

(d) In case of an interim report, whether a trial may commence against one or more persons or the police may be granted more time to complete the investigation. It may be appropriate to request for postponement of trial if one or more of the following grounds exist

i. There are reasonable chances of obtaining additional evidence and evidence to be collected will have an impact on the outcome of the trial.

ii. Evidence could not be collected despite best efforts of the police.

iii. Commencement of trial will prejudice the prosecution or the accused.

iv. Accused has absconded and it would not be fair to resort to the proceedings under section 512 of the Code.

v. Potential witnesses are not available. For example, the witness is abroad or is suffering from some serious medical conditions etc.

It may be appropriate to request for commencement of trial where the following circumstances are present:

(a) The delay may cause losing important evidence.

(b) Whether there is a deliberate attempt to cause interruption in the trial.

(c) The interest of the security of state.

3.10 Actions, which a Magistrate may take on a police report

All orders and directions passed by Magistrate with regard to reports under section 173 are of an administrative nature except taking of cognizance of a case. Whilst examining a report under section 173, a Magistrate is not bound to hear any party, however, when he hears a party it is in the interest of justice that he hears the other party as well. After reviewing a police report, a Magistrate may agree or

disagree with the same. When a Magistrate issues and order to submit a challan as in section 35.1 but a police a police report.

Police can consider recommending cancellation of an FIR till such time as the magistrate takes cognizance of the case. A reinvestigation into a case, which has been cancelled on the orders of a Magistrate, can only take place with the prior permission of the Illaqa Magistrate. The power to summon a person not recommended to stand trial by a prosecutor is apparently available with courts in Pakistan although it has been hold that the power to prosecute or not to persecute is an exclusive power of the executive authorities.

Chapter 4: Introduction

4.1. Introduction

The two prosecutorial tests – the evidential and public interest tests are widely recognized and are at the heart of all prosecutorial work. The tests are applicable during all pre-trial and trial/appeal/revision proceedings.

In making a decision to prosecute a suspect, the tests are first applied during review of the police case. They should then be applied from time to time at the discretion of the prosecutor. However the tests must remain satisfied at all times. The grounds of review (insufficient evidence and /or public interest) are established by practice and are recognized by the Supreme Court of Pakistan in Mir Hassan's case.

4.2 Evidential test

There are two evidential standards or tests that can be applied during a prosecutorial review – the prima facie test and the Realistic Prospect of Conviction Test. The first is a low threshold test while the latter is a mid level threshold test. The Crown Prosecution Service in the UK uses the Realistic Prospect of Conviction Test. The Police rules and some case law suggest the use of prima facie test. The Realistic Prospect of Conviction Test is an objective test. The prima facie test is a subjective test. This Manual recommends the use of the Realistic Prospect of Conviction Test.

The reason for having a sufficiency test is both moral and utilitarian. Weak cases cause both wastage of time and resources of the state and it is unjust to prosecute a person against whom there is insufficient evidence and it is also an abuse of the process of law.

The evidential test is based on the theory that, as criminal convictions require proof beyond a shadow of doubt, only those cases should be brought to court which have reasonable evidence. It is also based on the evidencial premise that the prosecution has to prove its case independently of the defence version and hence there should be substantial evidence in it. The evidential test requires the prosecutor to assess the prosecution evidence for sufficiency. The sufficiency standard in the prima facie test is simple. It means the evidence is considered sufficient if, it were accepted by a court, it would be enough to justify a verdict of guilty. Evidence must be available on all ingredients.

Evidence is not sufficient if it comprises entirely inadmissible evidence. It may also be insufficient if it comprises of oaths and solemn affirmations. The process of collection affects the value of evidence and a violation of process may lead to exclusion. However a prosecutor should only exclude evidence if the law is settled on the point or if he is of the opinion that the law on that point is incorrectly stated and a review is required or needed.

4.3 Public Interest

The public interest test is a negative test. It means that all prosecutions are in the public interest unless there are factors in existence that require that a prosecution may not be made. The question of public interest only arises if a case clears the evidential test. All public interest factors are competing factors, which mean that negative public interest factors need to be balanced with factors in support of a prosecution. Public interest factors have not been exhaustively defined or listed in Pakistan law. However some of these factors are as follows.

(a) Public Interest Factors in support of prosecution

(i) Seriousness of offence; an offence is serious if it involves a substantial unlawful gain or substantial loss to some person.

(ii) Where the offence involves breach of trust by a person holding money or property in trust for a child or a vulnerable person or in relation to a charity.

(iii) Where the offence involves the inflicting of an intentional debilitating injury to a person.

(iv) Where the offence is planned or is the outcome of a concerted and coordinated activity.

(v) Where offence committed by a group.

(vi) Where the offence is against a vulnerable person.

(vii) Where the offence was committed against a public servant while acting in the discharge of his duties.

(viii) Where an offence is the outcome of hatred on account of race, religion or sect.

(ix) Where the accused has previous convictions of the same or serious nature.

(x) Where the accused has committed the offence while on bail or on probation.

(xi) Where the offence causes a public nuisance, restricts use of public health or morals.

(xii) Where the offence includes an element of corruption or misappropriation of public money.

(xiii) Where there is a likelihood of recurrence of offence.

(xiv) Where the offence involves a terrorist act.

(b) Public Interest Factors against prosecution

(i) Where the sentence to be imposed is likely to be minor.

(ii) Where the offence carries a small punishment and is not likely to be repeated.

(iii) Where the accused is an elderly person.

(iv) Where before or during the trial the accused is suffering from a significantly seriously mental or physical illness.

(v) Where the victim or the witnesses would be subjected to risk of serious physical or mental trauma if the case is allowed to proceed.

(vi) Where the loss or harm caused by the offence is slight and was a result of single incident or it was caused by an error of judgment or genuine mistake.

(vii) Where the loss or harm caused by the offence is slight and was a result of single incident or it was caused by an error of judgment or genuine mistake.

(viii) Where the offence is a result of a misunderstanding of the law and the offender has not obtained any advantage from the act.

(ix) Where there is a long passage of time between the time of occurrence of offence and date of trial unless the offence is serious, or the delay is attributable to the accused or the offence has recently come to light, or the investigation is complex and the delay six justified due to it.

(x) Where the3 offender has cooperated in the investigation and is ready to undo the effects of his action.

(xi) Where the offence has been lawfully compounded or may be compounded.

(xii) Where the offence is not of a serious nature and has occurred as a result of grave provocation.

Chapter 5: Introduction

5.1 Introduction

A prosecutor spearheads the trial on behalf of the state. Prosecutor does not appear for the informant, the police or any other person. He appears on behalf of the state. His primary and only duty is to ensure that offenders are brought to justice in a fair and equitable manner. Therefore a Prosecutor must always act in the interest of justice and never solely for the purpose of seeking a conviction. Further the pursuit of justice must always be in accordance with law and procedure and never in violation of due process. A

Prosecutor must not advance a proposition that he knows to be incorrect, or misleading, or fail to bring to the notice of the court a contrary view of the law then what he has urged. As a state legal service professional the prosecutor must ensure that;

(a) He fully assists the court on all matters of law and practice pertaining to the case.

(b) All relevant and credible evidence from the evidence available is produced before the court.

(c) The case of the defence is properly and fairly challenged and cross examination of accused or the witnesses for the defence is properly and fairly conducted.

(d) A prosecutor must acquaint himself fully of the fact and circumstances of the case under his charge, and should not resort to any delayingor other tactic for the benefit of any person. Where a prosecutor is unable to act fairly in a case due to any pre-existing prejudice or attachment on his part, he should request the prosecutor responsible for assigning cases to him for transfer of the case. However he should avoid making a request for transfer on grounds of any fear or danger.

5.2 Analysis of the Case

A prosecutor must analyze a case from all aspects. A brief description of his analysis is a follows:

(a) Facts

The prosecutor should always stick to facts. In order to know the facts of the case, the prosecutor must be able to distinguish between information and conclusion. Information is knowledge acquired from one or more senses while a conclusion is the outcome of mental processing of information. For instance knowledge about the speed of car is information, while the statements that the car was speeding or the suspect was aggressive are conclusions. The statements and evidence of the witnesses should preferably be about facts and not conclusions. The fact, which support the prosecution case, are called supporting facts whereas those, which rebut or negative the prosecution's case are called negative facts.

(b) The law

The prosecutor must have a complete command of substantive law and procedural law. In substantive law he should know the ingredients of an offence and the regime of general exceptions. In the realm of procedure he must know the rules regarding collection and processing of evidence and the impact of failure to follow these rules. He must be cognizant of the rule that all violations do not entail exclusion. He must also be able to evaluate the standing of witnesses in view of their past record and relationship with the actors in the case. A prosecutor must be aware of the forensic evidence in a case. He should in particular give attention to the following aspects;

(a) Integrity of the evidence

(b) Identification of evidence

(c) Packaging

(d) Preservation

(e) Issues of continuity and contamination.

The prosecutor should be able to anticipate the objections and explanations of the defence and should therefore prepare his case in advance.

5.3 Sharing information with the defence/disclosure

Sharing of certain information with the defence is a requirement of the law. This is so because accused persons need to have fair notice of the charges against them and the evidence in possession of the prosecution so that they have ample opportunity to gather information, which may assist them in their defence. Information, which needs to be shared with the defence, is of two types: a) information on which the prosecution is relying Disclosure of used material, and 2) information on which the prosecution is not relying but which, the police has collected and retained during the course of its investigation Disclosure of unused material.

The duty to share information is triggered when a suspect is summoned/made to stand trial and remains in operation till the conclusion of trial. However, in appropritate cases such information should be supplied at an early stage to enable the disclosed his/their defence, the prosecution should re-assess unused material in its possession to find out if such material can assist the defence in any manner and then make appropriate disclosures.

Public Interest exceptions to disclosure

There may be material, which may not be shared with the defence on grounds of public interest. Some of these public interest factors are:

(a) The need for protection of intelligence sources.

(b) The need for protection of life or property of citizens,

(c) National security,

In certain cases evidence may consist of both sensitive and non-sensitive parts. In such cases the prosecutor must assess if it would be fair to continue to prosecution without sharing the material, or the manner in which this material may be shared without compromising on security and protection. For example when dealing with a document containing both the name of block out the name of the informant and reveal the rest.

The power to decide what material is subject to the Public Interest Immunity (PII) lies with the prosecutor.

The decision to invoke the PII should be taken in accordance with the following:

(a) The power should be exercised objectively. The prosecutor should maintain a balance between securing the public interest and enabling the accused to defence his case in an informed manner.

(b) A decision not to provide the material should be conveyed to the accused as soon as practicable. It needs to be in writing and it need not identify the material/evidence.

5.3.1 Disclosure of used material

Where a trial originates on the basis of a police report or a complaint by the state, the accused is entitled to have access to all material collected during investigation by the police and relied upon by the prosecution, unless he has waived his right to it, or it is against the public interest to disclose that material. It includes statements of all witnesses recorded under section 161 Cr.PC, statement(s) and confession(s) recorded under section 164 Cr.PC and notes of inspection by police recorded on the first visit to the scene of from/occurrence. The duty to provide the material should be scrupulously observed. Where the accused is not provided with the required material, he may not understand the nature of allegations and the strength of the evidence on the basis of which the prosecution will proceed against him. This is likely to prejudice his right to defend himself effectively.

Advance information has to be provided at least seven days before the commencement of trial. Providing photocopies of the statements and the inspection notes free of cost does this. Effects should be made to obtain receipt of material when handing it over to the charges suspect/accused. It is also advisable to have this action recorded in the order sheet of the court proceedings as well as in the file of the prosecutor. It should set out the time and date of receipt.

5.3.2 Disclosure of unused material

The police must retain and record any material it find relevant during investigation. All such evidence should form part of the investigation file. However all such material is not used either by the police or the prosecutors The evidence the prosecution does not intend to use is regarded as unused material. The prosecutor must examine unused material to determine the need for disclosure. The test for determining as to which unused material is to be disclosed is that the disclosure shall extend to any prosecution material, which has not been previously disclosed to the accused and which might reasonably be considered capable of undermining the case of the prosecution against the accused or assisting the case for accused.

The prosecution should not abdicate its duty by the expedient of allowing the defence to inspect the non-sensitive material and find out if it meets the Test of Disclosure. Following are example of material, which will meet the test of disclosure because it will undermine the case of the prosecution against the accused and strengthen the case for the defence:

(a) Where any material cast doubts on the integrity of any prosecution witness.

(b) Where any material points to a co-accused or a person not charged with the offence.

(c) Any material, which may create doubt on the reliability of a confession.

(d) Any material, which casts doubts on the credibility of a prosecution witness.

(e) Any material which creates doubts on the admissibility or integrity of the process of collections of evidence relied upon by the prosecution.

(f) Any material, which might support and existing or prospective defence plea.

5.4 Selection of appropriate charges/alteration of charges during trial

In the interim or final report the police select offences, which in its view should be pressed. This selection of charges is subject to review by the prosecutor at the time of scrutiny. A prosecutor may advise the police to select the appropriate offences or in the alternate give an opinion directly to the court. In any case the prosecutor must only recommend charges for which there is sufficient evidence.

5.4.1 Charge

A charge is framed by the court and is considered by many as the starting point of a trial. A charge is necessary so that the accused (charges suspect) knows the nature and particulars of allegations against him. A charges is necessary in order to give structure to the trial and avoid fishing expeditions. While the court has the power to frame charge a prosecutor may prepare a draft of the potential charges and put it before the court in the shape of the opinion of the prosecutor. Where the charge is materially different from the recommendations of the prosecutor, or is otherwise lacking the essential particulars, or is made contrary to law, the prosecutor may take exception and invite the attention of the court to these matters. Where a court is barred from taking cognizance of a case, it must not formulate a charge unless the relevant sanction has been presented to it. If a sanction is not available, the prosecution should request the court to stay the proceedings till the required consent or approval is obtained.

A charge must be in the English language or the language of the court, and should contain the following information:

Nature of information	**Detail**
Name and description	It should contain the name of offence, if any and of statutory provision regarding its definition and

offence	punishment. For example where allegation involves stealing a car from premises, it should say 'theft under section 378 PPC'. Where no name is ascribed to an offence the definition of the offence should be set forth.
Date and time of commission of offence	It is important to bear in mind that particular of exact time may not be available in certain offences. In such situation the period within which the alleged offence is committed should be given. Where it is not known which part of the day or night the offence was committed, the expression 'in and about' should be used. When the exact date of commission of offence is not known, it would appropriate to choose exclusive dates within which the offence is alleged to have occurred.
Location of offence	The location of the offence should be stated where it forms as an essential ingredient of offence as in the offences of dacoity or mischief or theft.
Details of property (if offence involves property)	Where the offence is against property the name of the aggrieved person should be mentioned. Where the property belongs to a company or to and unincorporated group of people it should be mentioned as such without disclosing the name of each and every individual. Details of property must always be provided. Where property comprises a number of items the number of items or, where appropriate, the quantity should be mentioned. Where the amount of stolen property is unknown, the term 'sum of money' or approximate amount should be written. Where the value or property is material the value should be mentioned.
Manner of commission of	Where the particulars mentioned in the name/date and time of commission do not give sufficient

offence	notice of the matter in issue, the manner of commission of offence should be stated.
Details of victim	The age of the victim should be mentioned where such fact is part of the definition of offence. In a case of a company, the trading name or style of the company should be mentioned.
Details of previous conviction	Where the previous convictions of the accused are likely to have bearing on the sentencing of the accused, the details of such previous convictions should be noted in the charge.

5.4.2 Joinder of Charge

The court may formulate a charge in which one offender is charged with more than one offence (Joinder of offences) and where tow or more offenders are charged with on offence (Joinder of offences), or where two or more offenders are charged with two or more offences (Joinder of offences and offences). A misjoinder is a Joinder, which violates the provisions of any law pertaining to Joinder of charges.

Joinder of offences

Ordinarily a charge shall contain only one offence. However a person may be jointly charged with two or more offences in the following cases.

(a) Where an accused person commits two or more offences of the same kind during a period of one year the accused may be tried for any number of them not exceeding three. Normally, there will be separate FIRs and related police reports for each of such offence. A

prosecutor will determine if it is in the interest of justice to request for a joint trial.

(b) Where the offences committed by an accused person form part of the same transaction, all such offences may be charged and tried together. There has to be some nexus between such offences like timing, placing etc.

(c) Where and act or omission constitutes an offence under two or more definitions of law, an accused may be charged with each of such offences at the same trial. Where several acts, each of which by itself is an offence or offences, constitute when combined together a different offence, the accused may be charged with all such offences at the same trial.

Joinder of offender

A number of accused can be tried at one trial provided the following conditions are satisfied.

(a) Where different persons are accused of committing the same offence during the course of the same transaction.

(b) Where some of the persons are accused of committing the criminal act in question, while the remaining persons is/are accused of abetment of attempt to commit that offence.

(c) Where a number of persons have committed different offences in the course of the same transaction.

(d) Where the accused person have been accused of jointly committing the same offence repetitively over a period of one year.

(e) Where one or more persons are to accused of committing the offence of theft, extortion, criminal misappropriation and others are to be charged with offence of handling, receiving etc of the property transferred by means of such offences.

(f) Where one or more accused persons are accused of an offence under Chapter XII of PPC relating to counterfeit coin and, the other

accused person(s) are accused of committing offence(s) concerning the same coin.

The trial of more than one accused may be conducive for the prosecution. The merit in joint trial is that is saves time and money and it is convenient for witnesses. It is not appropriate when it is unduly burdensome or unmanageable or is prejudicial to the accused.

5.4.2 Effect of defective charge

A count in a charge or the charge itself may be defective. The defect can be either minor or material. A defect is considered material when the defendant is misled by it and there occurs a miscarriage of justice. There are both subjective and objective test for determining defects. A material defect may lead to the following consequences:

(a) Quashing of conviction by appellate court or in revision hearing
(b) Restart of trial
(c) Acquittal of accused
(d) Addition of charge
(e) Alteration of charge

5.4.3 Amendment/alteration of charge

The prosecution should apply to the trial court to amend the charge where it is defective, or where additional material becomes available to justify alteration. Where the application succeeds, the court may amend or add new charge. Where the court finds that accused or prosecution would be prejudiced if the trial was processed in the event of alteration or addition, it may order the trial to start again, or it may adjourn the trial for an appropriate period. The factors to be given weight in determining whether a trial should restart on the framing of a new charge or alteration of the previous charge are as follows:

(a) Where the new charge is framed subsequent to the calling of some or all of prosecution witness or completion of prosecution evidence.

(b) Where the new charge requires evidence by the prosecution

Where the original charge was of an offence for which sanction was pre-requisite amendment or alteration must not be made, unless fresh sanction is obtained to all alteration of the charge if the alteration will result in a charge, which requires previous sanction.

5.5 Recording of evidence

Rendering of evidence follows the framing of charge. The prosecution first opens evidence and the prosecutor should, at this stage, have his case prepared. Case preparation amongst other things, should include a summary of prosecution witnesses for quick reference and easy access. A template form for the purpose is as follows:

Case No		Court		
Exhibits				
RC No	Description	Exhibit No	Current location	Detail of health risk
Witnesses				
No	Detail	Type (expert witness, eye witness, pro froma witness, material	Whether witness will prove a document	Details of document

		witness, interested witness etc)		
Name of prosecutor		Signature of Prosecutor		Date: __ / __ / __

Choosing witnesses

The power of the public prosecutor under section 265-F to present witnesses is circumscribed by two things, namely there evidence must have been recorded under section 161 or 164 Cr.PC and secondly their names must have been entered in the calendar of witnesses.

In the formulation of the calendar of witnesses the prosecutor should be guided by consideration of reliability, however witnesses essential to the unfolding of the narrative, on which the persecution is based, must, of course be called by the prosecution, whether in the result, the effect of their testimony is for or against the case for the prosecution. While presenting witnesses in court prosecutor may give up witnesses as unnecessary, or as having been won over after ascertaining whether they are in fact ready to support the case of the prosecution. However, as to whether a prosecutor should give up a necessary but hostile witness he should be guided by the rule in Stephen's Case.

Evidence not in possession of the Prosecutor

Not all evidence is in the possession of the prosecutor. A prosecutor can therefore make a request to the court to issue an order section 540 of the

code to summon witnesses or produce evidence, which is necessary for a just decision of the case. However a request or an application by a party to examine a witness not mentioned in the list of witnesses is not to be equated with an application to examine certain persons as court witnesses.

Appointment of Local Commissions

The High Court or the Sessions Court can appoint local commissions in respect of cases pending before them. Magistrates however need to make a request to the Sessions Court or High Court for appointment of Local Commissions.

Where during a trial or enquiry a prosecutor find that some important witness for the prosecution is unable to appear before the court to give evidence due to a justified reason he may make an application to the court for appointing a Local commission. Where the defence has made a similar request he should take an appropriate view of the application. Before making an application for appointment of Local Commission the prosecutor should assess the need for the evidence and the fact that there is no other way of having the evidence recorded and preserved. The reasons for not attending the court include serious illness, inability to travel and/or residence abroad. The prosecutor should request the court to appoint a Magistrate or officer for recording of deposition in important and/or complex cases. The appointment of a local commission should not be lightly or arbitrarily exercised.

When the court has agreed to appoint a Local Commissioner, the prosecutor should decide whether he should attend the proceedings himself or prepare interrogatories to be put to the witness by the Local Commissioner. The form and substance of interrogatories will depend on whether the witness to be examined is of the prosecution of defence. A prosecutor should write all questions in the form of interrogatories, which he could have asked the witness. Where any exhibits are to be proved, arrangements to deliver the exhibits to the proceedings should be in place. A prosecutor may seek order of appointment of Local Commission even if he has not applied for summons to be served on the witness. Once the Local Commission has concluded its work the prosecutor should apply for certified copy of the deposition to determine if the Local Commission has asked questions in accordance with the interrogatories. A prosecutor should consider challenging any irregularity committed in the course of the proceeding, which has prejudiced the case of prosecution.

Examination of witnesses

The prosecutor should present his witnesses in accordance with the list of witnesses. The prosecutor should also inform the defence in advance of any evidence it intends to produce. Before the start of evidence, a prosecutor must check every exhibit to confirm its identity, ensure exhibits are properly labeled and the witness expected to prove it is available to give evidence. Where secondary evidence is to be produced, the prosecutor must obtain reasons for the production of secondary evidence contra primary evidence. The prosecutor should object to a general examination of the accused prior to completion of prosecution evidence.

Recording of evidence in absence of the accused

The general principle is that evidence against an accused cannot be recorded in his absence. The exceptions to this rule are provided in section 512 of the Code.

Where evidence has been recorded and the accused appears subsequently, the evidence needs to be re-recorded unless witnesses are not available because they are dead or incapable of giving evidence or it would delay the trial if they were called to give evidence. The decision by the court to record evidence in absentia should be carefully made as it may prejudice the right of fair trial of the accused. Where evidence is to be recorded despite the absence of the accused, prosecutors should double check the address of the accused persons or make request to the court, to verify the address and whether the reports of the process server(s) are based on facts.

Refreshing the memory of witness:

Witnesses may be allowed to refer to a document as aide memoir during the course of giving evidence. The test to allow such inspection is whether the memory was better at the time when the notes were taken than at the time of giving evidence. It is also necessary to make this fact a part of the prosecution evidence before the permission to inspect is sought.

Expert witnesses

Where expert witnesses are necessary to assist the court in proper understanding of any evidence, they should be presented. Expert

evidence is admissible on certain topics indicated in section 59 of the Qanun-i-Shahadat Order 1984. These topics include foreign law, science, art, and identity of handwriting or finger impression. The word 'science' and 'arts' in section 59 of the Qanun-i-Shahadat Order 1984 are to be construed widely. Where the prosecution has to call an expert witness, it should ensure that the expert is as an expert by study, experience or training.

Examinations – in – chief

Examination-in-chief is a difficult art. It is usually conducted by asking 'What Happened Next? This is inappropriate. There are basically two aims of an examination-in-chief:

(a) For testimony to be logically organized and relevant; and,
(b) To be natural and without influence

Both of these aims cannot be achieved unless the advocate/prosecutor prepares well for direct examination. Testimony elicited during direct examination can be broadly divided into two categories – Educative testimony (testimony aimed at informing the court), and Persuasive testimony (testimony aimed at building the credibility of the witness and to convince the court that he/she is a witness of truth). In Pakistan mostly advocates focus on educative testimony when persuasive testimony is equal important. The prosecutor may also insulate witnesses in appropriate cases.

When the witness refers to objects, which may be tendered in evidence, the prosecutor should pass the object to him for identification a court may impose conditions as to the manner in

which exhibits are to be handled. Prosecutors should avoid handling exhibits stained with bloodstains or body fluids to minimize health risks.

Where the handwriting or signatures on a document are disputed, a prosecutor should consider various ways to prove them. He may consider calling the witness who has seen the writing or signing of the document or someone who is acquainted with the handwriting, or by calling an expert witness to give his opinion on the genuineness of the signatures(s). Where a prosecutor makes a request to the court to send a document for forensic analysis to determine if it is forged, the prosecutor should recommend to the court the questions or information that may be asked from the expert. Where the court decides to compare the signatures itself, the prosecution should ensure that both prosecution and defence are present at the time of comparison. A prosecutor should produce the report of an expert appointed under section 510 even if it goes against the prosecution.

Cross-examination

Cross-examination is not just about discrediting the defence evidence; it is also about obtaining evidence in support of the prosecution and/or missing information. Within the area of discrediting evidence, Cross-examination may focus on one or both of the following:

(a) Calling into question the testimony

(b) Calling into question witness credibility

Cross-examination can be done, by both building up momentum, and by putting unexpected questions.

Summing up of the prosecution case:

Where defence call no evidence, the prosecutor can start the closing speech, which is known as the summing up of the prosecution's case. The defence has a right to reply. The summing up is important and it is a summary of the prosecution's case. It is the responsibility of a prosecutor to prepare and deliver his summing up speech effectively. The preparation for the speech must refer to, and include, a brief description of the offence, its ingredients, testimonies and exhibits given or tendered during the trial, the impact of the evidence in the view of the prosecutor and his arguments in support of the credibility and sufficiency of evidence. The prosecutor may highlight the deficiencies in the case of the defence but he must not rely on these deficiencies to prove his case. He must be able to prove his case independently. However, where the defence makes an assertion under the general exception provisions, he may refer to the failure of the defence to prove the asserted provisions. A good prosecutor must always state the uncontroverted facts and focus on the disputed ones. For example the prosecutor may say, Sir, it is not a in dispute that the victim was missing on Sunday and it is also not disputed that victim is not related to the accused etc'. The prosecutor should prefer to quote the actual wording in the deposition and should refer to the paragraphs numbers and page numbers.

A prosecutor may address the court on sentencing and demand a sentence. A prosecutor, while demanding a sentence, must keep in mind the facts of the case and the presence of mitigating or aggravating circumstances. Good conduct of the accused, cooperation with the court or the investigation, and acceptance of the guilt are some of the usual mitigating factors. Previous convictions, threats to witnesses and aggrieved persons are aggravating circumstances. Poor or weak evidence is no ground for a lighter sentence, but a ground for acquittal. A prosecutor may take into account the wishes of an aggrieved person if they are in accordance with law.

5.7 Compensation orders

Where an offence has caused death, mental or physical injury, loss of ability to work, damage to property, loss of property, etc., it is appropriate for the prosecutor to seek compensation for the victim/loser of the property under section 544-A and 545 of the Code.

In making an application under the aforesaid sections, a prosecutor should seek guidance from the principles laid down in Hari Kishan's case. In order to make a compensation claim on behalf of an aggrieved person the prosecutor must discuss the damage with the relevant person. He must also obtain details of the damage, the cost of repairs (in case of damage to property cost of medical expenses, effect of injuries etc. The best way to obtain this information is through a compensation claim for An appropriate way to do this is as follows:

Compensation Claim form			
FIR No.		Claimant	
Type of Claims			
Item	Description	Damage	
Other financial loss (e.g. loss of earning, traveling expense			
Type	Detail	Damage	
Medical claims			

Type	Detail	Amount

5.8 Possession Order

Where property is lost as a result of an offence listed or described in section 522 or 522-A of the Code, the prosecutor may make a claim for restoration of property for the benefit of the person disposs4essed. Where possession of immoveable property has been lost, a prosecutor may request for a possession order under section 522 of the code. Where possession of movable property has been lost, request for restoration of possession can be made under section 522-A of the code. A possession order by a criminal court is subject to final determination of rights by a competent civil court.

5.9 Composition

Section 345 of the Code lists those offences that may be settled by the parties through personal agreement. The composition of offences can be achieved at any stage of criminal proceedings even when the accused has been convicted. A valid and lawful composition results in the acquittal of an accused. Composition of offences listed in section 345(2) of the Code requires permission of the court before which a prosecution is pending.

A prosecutor, while dealing with a matter of composition should act in the interest of justice and bring to the attention of the court any fact, which may assist it in dealing with any question concerning composition; for example information that certain compromise is the outcome of coercion and fraud or whether a person entitled to compromise is mentally incompetent. A prosecutor should assist the

court in identifying the person authorized to enter into a compromise to prevent any impersonation. A prosecutor should assist the court in determining the terms and conditions of the compromise to see if it is not based on any unlawful consideration.

The prosecutor should not encourage or discourage a victim or any person authorized to compound, to make a composition. However a prosecutor may on the request of the victim or complainant advise on the prospects of the conviction of the accused in the light of available evidence.

5.9 Unrepresented defendants and the role of the prosecutor

Where a defendant is unrepresented due to financial or other reasons, the prosecutor has an extra responsibility regarding reasons, the prosecutor has an extra responsibility regarding review of the state case against him. In addition to that the prosecutor should write to the concerned government agency to provide Defence assistance to such a defendant.

5.10 Private counsel in state prosecutions

Private counsel in state cases act under instructions of the state prosecutor. The prosecutor may use their services to assist him but he must not abdicate his role to them. Private counsel must never be allowed to perform the function of prosecutors with regard to review of the case.

5.11 Transfer of cases

The power to transfer a case rests with the provincial government, High Court and the Sessions Judge. The Provincial Government can, with the consent of another provincial government, transfer a case in the interest of justice or the convenience of parties or witnesses.

(a) From one High court to another.

(b) From one High Court to a criminal court subordinate to another High Court

(c) From one criminal court under a High court to any other criminal court under a different High Court.

A High court can withdraw a trial, an inquiry, an appeal or any other criminal proceedings from one subordinate court to another court subordinate to it or hear it itself. Similarly the Sessions judge can transfer a case or an appeal from an Additional Sessions Judge before the trial of the case or hearing. Of the appeal has commenced, to another Additional Sessions Judge or hear it himself.

Applications for transfer

A prosecutor or an accused person may make a request for transfer to an appropriate authority. A Prosecutor may present a request for transfer where:

(a) the trial or enquiry cannot be conducted in a fair or impartial manner. Examples include where a non-routine action creates an apprehension in the mind of a party that he is unlikely to receive a free and fair trial; where a court indicates the decision it is going to make while the case is in progress and has not reached a stage warranting such indication; where the court has made adverse statements against a party; where there is evidence of extraneous considerations.

(b) he considers applying to the court to inspect the scee of crime or any other site under section 539-B Cr.Pc and the scene of crime or the site is far from the court, which is hearing the case.

(c) it could be convenient for the parties or witness to attend and pursue the case to another court.

When a prosecutor wishes to make an application, he should immediately intimate the court in writing before which the trial or enquiry is pending. The court may stay proceedings.

An accused may also apply to the High court to seek transfer of cases on the above-mentioned ground. On the filling of an application by an accused the court has to notify the prosecutor about the same. A prosecutor has a right of audience in all such application and he is entitled to be given reasonable time to make his representations to the court. This should not be less than 24 hours in any case from the date of notice of the application. A prosecutor is required to make representation only after he has received the copy of grounds and supporting material.

Chapter 6: Appeals and revisions

6.1 Appeals

An appeal system performs a number of functions. The important ones are as follows:

(a) To test the validity of the decision of the court,

(b) To correct a mistake of fact or law or erroneouse exercise of discretion resulting in injustice,

(c) To ensure that the decisions made by the subordinate court are uniform, and

(d) To advance public confidence in the administration of justice.

Appeals can be preferred against acquittal, conviction or sentence. An appeal may be preferred on question(s) of fact, on question(s) of law and on mixed questions of fact and law.

6.2 Procedures and Practice of Appeal

All appeals are submitted in the form of a petition. A petition should specify the grounds of appeal, arguments in favour of the appeal and supporting case law. The appellant need not be present at the appeal hearing unless required by the court.

An appeal court can assess the testimony given at trial, receive oral or documentary evidence in limited circumstances and give its findings on points of law. An appeal is first examined to find out whether there are sufficient grounds to proceed with it. The appeal court is required to hear the appellant or his counsel before reaching any decision as to summary disposal of appeal. Where the judge allows the appeal to proceed, notice is served on the appellant, his pleader and other respondents. The relevant transcripts including the impugned judgment and grounds of appeal are provided to the respondents on request. Where the appeal is against the decision of acquittal, the court may issue a bailable warrant of arrest the accused.

Procedure to be followed by Prosecutors while filing an appeal

An appeal against acquittal to the High Court lies on the directions of the government. The decision to appeal should be taken after due diligence and never as a matter of routine. On the pronouncement of a decision, the prosecutor should immediately apply for certified copy of the transcripts of the judgment and notify the outcome of the trial to the district Public Prosecutor. The recommendation to file an appeal should be made by the district Public Prosecutor to the Prosecutor General in consultation with the Prosecutor in all cases under his charge. Special prosecutors can directly recommend the filing of appeal to the Prosecutor General. Where the Prosecutor General considers to filing of appeal appropriate he should send his recommendation to the Secretary to the government of the Punjab, Public Prosecution Department. An appropriate format for making recommendations for filing of appeal is as follows:

Recommendation for filing appeal to the Government of the Punjab			
Reference No.			
Date of Reference			
FIR No:		Case Title/No.	
Police Station		District	
Details of order			
Court			
Date of Charge			
Date of Judgment /order			
Names of accused (use additional sheet if necessary)			

Grounds of appeal	
Merits of order	
Likelihood of success factors	
Public interest factors	
Details of appeal	
Level of appeal court	
Other information	
Name and signature of Prosecutor/special prosecutor	
Endorsement of District Public Prosecutor, where required	
Recommendations and remarks	
Name and signature of DPP	
Endorsement of Prosecutor	

General	
Recommendations and remarks	
Name and signature of Prosecutor General	

Grounds for filing an appeal

The decision to file an appeal must be exercised judiciously and on the basis of the record. An appeal should be filed where the decision is against the law or, where the court has exercised its discretion arbitrarily. While taking a decision as to whether an appeal should be filed or not, a Prosecutor should take the following factors into account:

(a) Merits of the judgement.

(b) Whether there is likelihood of success of appeal.

(c) Public interest

(a) Merits of the judgement / Order

Generally the order itself provides the reasons for filing an appeal. Where the order suffers from the following infirmities an appeal is in order:

(i) Where the court has not considered material evidence.

(ii) Where the court has failed to exercise discretion vested in it.

(iii) Where the decision is wrong in law.

(iv) Where the court has exercised his discretion in an unreasonable manner.

(b) Likelihood of the success of appeal

Once the prosecutor has found infirmities in the order he should consider whether the appeal would succeed or not. An appeal may be unlikely to succeed because the infirmities are minor or the finding is sustainable in dependently of the infirmities or the sentence is unlikely to be substantially varied. The likelihood test requires the prosecutor to assess the case with a view to predict if the appeal court would allow the appeal. The nature and extent of error of law or principle or the unreasonableness of discretion is an important factor in decision-making regarding the success of an appeal.

(c) Public Interest Test

Regardless of the chances of success of the appeal, the public interest test needs to be satisfied. In deciding whether or not to appeal a decision, following factors should be given due regard:

(i) Seriousness of offence,

(ii) If there were no appeal public confidence would be undermined,

(iii) Serious risk of harm to any person,

(iv) Health of the accused,

(v) Whether new evidence has come to surface, which creates reasonable doubt about the involvement of the accused in the crime.

Action on obtaining sanction for appeal

The prosecution should observe time limits in filing an appeal. If the prosecutor wishes to proceed with a time barred appeal, he should apply to the court for condonation of delay, However provisions for condonation should not be used without adequate reason. Again reasons should be supported with evidence. For example if delay is due to medical reasons, the relevant, certificate should be obtained and produced. Grounds of seeking condonation should not be imaginary or frivolous. Workload or inefficiency of a prosecutor is no ground for seeking condonation.

While drafting the appeal petition, the prosecutor should carefully consider whether fresh evidence is to be produced. Application for calling fresh evidence should only be filed if the evidence is credible, the evidence forms the subject matter of the appeal, the evidence will affect the outcome of the appeal and there is reasonable explanation for failure to adduce that evidence at trial.

The appeal should put forward the whole case and not reserve any point for a later stage although in some cases courts have allowed a law point to be raised for the first time at the appellate stage.

6.3 Revision

The High Court and Sessions Judge have powers to revise certain orders and judgment passed by courts subordinate to them. With regard to final judgements, this power is usually exercised to review sentences, which are alleged to be unjustifiable lenient. The court may enhance them.

Ground for filing a revision

The decision to file revision petitions should also be taken carefully. Before deciding or recommending whether a review petition is in order the prosecutor should review the basisi of the order and evaluate its impact. The grounds of the revision are similar to the grounds for filing an appeal. However a revision petition should not be made in the following circumstances:

(a) Where the impugned order or judgment is appealable.

(b) Where the order is an administrative order like an order of cancellation of an FIR passed by a Magistrate, or an order of discharge.

(c) Where the object of revision is to have the finding of acquittal converted into conviction.

(d) Where the Sessions Court in a revision petition passes the impugned order.

The procedure for obtaining permission for filing a revision is the same as in an Appeal. Format for filing of a revision application to the Government is as follows:

Recommendation for filing Appeal to the Government of the Punjab			
Reference No.			
Date of Reference			
FIR No:		Case Title/ No.	
Police Station:		District	
Details of Order			
Court			
Date of Charge			
Date of Judgement/order			
Names of accused (use additional sheet if necessary)		Offences charged	
Grounds of appeal			
Merits of order			

Likelihood of success factors	
Details of appeal	
Level of appeal court	
Other information	
Name and signature of prosecutor/special prosecutor	
Endorsement of District Public Prosecutor, where required	
Recommendations and remarks	
Name and signature of DPP	
Endorsement of Prosecutor General	
Recommendations and remarks	
Name and signature of Prosecutor General	

6.4 Transfer of Appeals and Revisions

The law and practice regarding Appeal and Revisions is the same as in the case of trials.

Chapter 7: Early termination of prosecution

7.1 Introduction

The Prosecution has the following powers to discontinue and/or withdraw a criminal case:

(a) The power to withdraw a case under section 10(3)(e) of the Punjab Criminal Prosecution Service Act, 2006 and section 494 of the Code.

(b) The power to withdraw counts under section 240 of the Code.

(c) The power to stay a case under section 10(3)(f) of the Punjab Criminal prosecution Service Act, 2006.

7.2 Withdrawal of Cases

A prosecutor is under a duty to continuously review the case under his charge so as to ensure that the Evidential and Public Interest tests remain satisfied. In other words the prosecutor must not only ensure that the case is fit for trial but that it remains fit for trial continuously. An important time to review a case is when the defence submits an application under Section 249-A or 265-K of the Code (application for premature acquittal). When a test fails the prosecutor should submit an application under section 494 of the Code read with section 10(3)(e) of the CPS Act 2005. The prosecutor can make this application in respect of one or more accused and with regard to one or more offences. The discretion to withdraw a case during the course of trial is not unfettered. It is subject to the consent of the court and prior approval of various prosecutorial authorities.

The decision to withdraw a case should ideally be initiated by the prosecutor at court i.e., the one who is conducting the case. However senior prosecutors having authority over the prosecutor at court and the Government may also initiate a case for withdrawl either on their own or on

the application of any person. The following persons can take the final decision of withdrawal:

Offences	Person empowered to take final decision
Imprisonment up to three yeas	District Public Prosecutor
Imprisonment up to seven years	Prosecutor General
Death or imprisonment for a period exceeding seven years	Government of Punjab.

The discretion to withdraw can be exercised at any stage of the trial before the judgement is passed. It is not in any way dependent on the recording of evidence by the court, although where some evidence has been recorded it becomes easier for the prosecutor to evaluate the case.

While the main basis for a review remain the two prosecutorial tests and the prosecutors should review the case on a periodic basis a formal review should be triggered by one or more of the following events:

(a) The prosecutor had over looked or ministerpreted some important information or evidence in reaching its decision.

(b) Some new evidence has come to light.

(c) The prosecution witnesses have given evidence contrary to the expectations of prosecution and the case is unlikely to sustain in the absence of the supporting evidence of these witnesses. Such instances should be carefully assessed to ensure that the witnesses have not been won over.

Once the prosecutor decides on discontinuing a case, he should draft an application under the relevant law citing reasons for not wanting to continue the case. The facts and grounds forming basis of the application should be self-explanatory and should enable a judicial officer to make his decision in

an informed manner. The prosecutor should avoid discussing the evidence in detail because if the application is declined it may prejudice the role of the prosecutor in prosecuting it. The draft of application should be forwarded to the concerned authority for seeking consent. If the consent is required from the Prosecutor General or the Government, it should be forwarded through the relevant hierarchy. The consent should always be sought on a separate application.

The final discretion to allow the withdrawal of prosecution lies with the court. The courts are required to dispose the application in accordance with law and within the parameters laid down by the Supreme Court in Mir Hasan's Case. The outcome of withdrawal depends on the time when the withdrawal application is made. If it is made prior to framing of charge, it will have effect of discharge, whereas if is make consequent to the performent of charge it will amount to acquittal.

Where the application for withdrawal is declined and the prosecution is not satisfied with the order of the court it can seek to set aside the order of the court through a revision application.

7.3 Dropping charges

In case of multiple charges against an accused, when the court convicts the accused on one or more counts, the complainant or the prosecutor may withdraw the remaining counts with the consent of court. Such a withdrawal should operate as an acquittal. A possible ground for such an action may be when the accused has already suffered or will suffer an appropriate period of imprisonment.

7.4 Nolle Prosequi

Nolle prosequi is the discretion exercised by the State, in its sovereign capacity, to discontinue prosecution of a case. The power of withdrawal is different from the power to enter a nolle Prosequi. This power existed under the repealed section 333 of the Code and is available in the United Kingdom.

It is now available under section 265-L of the Code and under section 10(3)(f) of the CPS Act. The Court has no control over the exercise of this discretion. The Court has no control over the exercise of this discretion. The Supreme Court in saad Shibli's case has held that the grounds in such a case need not be objective, may not be disclosed at all and the court has no discretion to refuse an entry of Nolle Prosequi.

Chapter 8: Victims and Witnesses

8.1 Victims

A prosecutor does not represent the victim or informant of an offence and is therefore not required to follow his instructions in prosecuting the offence. However a prosecutor needs to undertake a number of actions vis-à-vis the victim(s) of an offence. These actions include the following:

(a) Provision of information to the victim regarding progress of the case from time to time

(b) Attending to and answering any questions put by the victim relating to the case except where provision of information is against the public interest.

(c) Provision of information to the victim regarding a decision to withdraw or discontinue a prosecution.

(d) Taking of steps for provision of security or protection to the victim where he or she is facing danger.

(e) Taking of steps for provision of assistance to the victim where he or she requires assistance due to age, financial problems, mental or physical disability

(f) Taking into consideration the views of the victim when applying the public interest test provided such views are necessary for decision making

(g) Not to ask the victim to attend the proceedings unless his attendance is deemed necessary.

(h) Treat the victim with respect and kindness

(i) Not to persuade nor dissuade a victim from entering into a compromise with the offender in respect of any offence compoundable or not,

(j) Where a victim has intimated a prosecutor that he is considering a compromise with the accused, he should allow him ample time necessary to make an informed decision and may seek adjournment from the court for it.

(k) Request the victim to provide details of loss suffered and file a compensation or restoration of possession application

(l) Ensure regular communication with the victim

8.2 Witness

Witnesses are central to the criminal justice system. The process of meeting the witness and assessing their credibility and reliability begins during the investigation. The police perform this task and prepare a calendar of witnesses. However a prosecutor has the final say as to what witnesses will be used in relation to proving the prosecution case. In reaching such decision, a prosecutor should pay importance to the following:

(a) Whether a witness could speak to the facts necessary to prove the prosecution case.

(b) Whether a witness is competent to give evidence.

(c) Whether the proposed witness can be compelled to give evidence.

(d) Is the proposed witness reliable, credible and natural?

(e) Is the proposed evidence admissible?

A prosecutor should be mindful of the fact that Government expert reports are admissible in evidence without calling their authors as witnesses. Where a list has been finalized and a prosecutor needs to present a witness not

mentioned in the list he should submit an application under section 540 of the Code.

This application can be given at any stage of the case before the passing of judgment.

A prosecution witness should not be dropped solely on the ground that his account of events is at variance with the one given by other prosecution witness, unless there is evidence that the witness has changed his testimony to assist the defence. The prosecutor may face a more crucial situation where a material prosecution witness is reluctant to give evidence. This reluctance may arise because of some threat or fear, or where a matter is non-compoundable and a compromise has been effected, or where the witness has been won over. In such situations the prosecutor may request the court to issue summons to compel the witness to give evidence where there are strong reasons in favour of a prosecution, and there is no other way to proceed in the matter.

Where the law allows evidence of a witness to be admitted and read despite his absence, the prosecutor should prove the circumstances in which such evidence is permissible.

The prosecutor while selecting or dropping witnesses should consider the necessity of calling particular witnesses and take an appropriate decision. The court should always be informed of the reason to drop a witness. In difficult situations i.e., where the attendance of the witnesses cannot be procured except through substantial financial costs, or the witness is untraceable, the prosecutor shall explor if a relevant statement of such a witness could be produced and proved without calling him as a witness.

8.2.1 Hostile witnesses

A witness who shows that he is not desirous of telling the truth is a hostile witness. Where a prosecutor considers that the prosecution witness is not desirous of telling the truth the prosecutor should take measures to declare

the witness hostile. The decision should be made on the basis of some material. An unfavourable statement does not necessarily mean that the witness is hostile. Where the prosecution comes to know in advance that a material prosecution witness will turn hostile he should undertake a comparative analysis of the advantages of producing a hostile witness and the disadvantages of dropping him.

8.2.2 Interviewing witnesses

A prosecutor must meeting and interviews his witnesses well before they appear for evidence. This interview is part of the preparation of a case and is an important duty of the prosecutor. The prime objectives of an interview are:

(a) Assessment of the witness and his testimony,

(b) Seeking missing information or obtaining clarifications,

(c) Knowing the concerns of the witness and providing information where necessary, and

(d) Preparing the witness for proceedings in court.

Prosecutors should always be mindful of the purpose of interview and should always adhere to interviewing protocols. These protocols are as follows:

(a) No person other than the prosecutor, a support person, the investigating officer or another prosecutor should be present during a witness interview.

(b) The prosecutor should take extra care in interviewing children and old people.

(c) A witness should be informed of the objectives of the interview and allowed to read and understand statements he made before the police. Where a witness

is required to prove a document, he must be shown the document.

(d) A witness must never be coached. There is difference between preparing a witness and coaching a witness. The law permits the preparation of witness but a prosecutor should not influence or train or coach a witness. This amounts to falsification of evidence and is a criminal offence.

(e) The prosecutor must not shown any reactions or indicate his sanction or displeasure to any answer. He should avoid asking leading question. If there are inconsistencies between the accounts of the witnesses, he may ask the witness about the different account without disclosing the source of the accounts. He should not suggest the witness adopting any alternative account.

(f) When a witness makes a further statement during his interview, he may be advised to get that statement recorded with the investigating officer.

(g) A prosecutor who will not conduct the case in the court may conduct an interview.

(h) The proceedings of the interview should be succinctly recorded and placed in the prosecution file.

Preparation of witnesses for court appearance

Once other matters have been attended to in the interview the prosecutor should prepare the witness for court proceedings ever mindful of any thing, which may amount to coaching. A witness is prepared in order to save court time and to allow the witness to present his evidence in an efficient,

confident and impartial manner. Preparation includes and entails the following actions:

(a) Assisting the witness in understanding the court environment and court process i.e. sequence of events, examination and cross-examination etc., which will contribute to improving his skills.

(b) Informing the witness regarding his right to refer to his earlier statements to the police or read any relevant documents necessary for his evidence.

(c) Informing the witness regarding the significance and manner of taking oath.

(d) Advising the Witness regarding the manner of speech i.e. that he should speak in an audiable voice and in a measured tone so the judge can write or dictate the evidence to the typist.

(e) Advising the witness regarding question where he has not understood the question i.e that he should request that the question be repeated.

(f) Advising the witness to listen to questions carefully and to make an effort to understand them because questions in cross-examination are cleverly formulated and at times misleadingly put.

(g) Advising the witness to remain honest and candid and to keep his evidence simple and to the point.

(h) Advising the police witnesses to remain honest and candid.

(i) Advising the witnesses to avoid point scoring.

Chapter 9: Private prosecutions and complaints

9.1 Private Prosecutions

A complaint may be lawfully filed in respect of a number of offence under section 190 of the code. Public prosecutors have no role to play in complaints brought by private persons and this rule is applicable in instances where a private complaint is brought prior to, or during a state prosecution. However public prosecutors need to be congnisant of the law and practice in such situations as a private prosecution affects a state prosecution. Public prosecutors also need to be cognizant of the complaint procedure generally as they may need to represent the State where it has filed or intends to file a complaint under section 190.

9.2 Procedure to be adopted where private complaint is filed prior to or during a state prosecution

When it comes to the knowledge of a prosecutor that a private complaint has been filed in a state case, or in a transaction which is also the subject of a state case, a public prosecutor should examine the contents of the complaint and any accompanying documents to determine, whether the complaint and the police report can be consolidated as one case and tried together, or should be dealt with separately. In order to determine whether a police case and private complaint are different the prosecutor should consider the following factors:

(a) Whether the accused in both private complaint and police report are different.

(b) Whether the versions as to the commission of offence of both cases are divergent.

(c) Whether the evidence or the witnesses to be produced in support of the state and private cases are different.

Where a state prosecution substantially varies from a private prosecution, the prosecutor should notify the court and await the decision of the court. The court in accordance with Nur Elahi's case will put the state case on hold and try the private prosecution first. Once this is done, the prosecutor should examine the outcome in the complaint case and decide whether the prosecution based on police report should be initiated or continued against accused persons not convicted or acquitted in the private complaint. In the latter event he may choose to file an appeal against the conviction or acquittal. This determination should be made in a fair and just manner and after applying the two prosecutorial tests.

Again the withdrawal of a private prosecution does not give rise to any duty on the public prosecutor to discontinue or withdraw its case. Prosecutors must remain cognizant of the possibility of Collusion/personal vendetta between the private complaint and the accused persons and act to thwart the same.

Where nur Elahi's case is not applicable and the facts of the case attract the rule in Raja Khushbukhtur Rahman's case, proceedings are consolidated. In such instances the prosecutor should conducted his own case, while the private prosecutor may put his considers such a course of action appropriate.

9.3 Complaint cases by the State

Prosecutors may represent the State in a complaint filed by the state. Every complaint needs to be in writing and signed by the competent person or authority. The complaint should set out in general terms the case of the prosecution. There is no particular form for the complaint.

9.4 Sanctions for prosecution

Some offence need written authorization from the Government, or other specified person in order to enable a Magistrate to take cognizance. The Authority is under no legal compulsion to accord reasons for the sanction.

The sanction to prosecute must be obtained prior to start of trial. Where an amendment is sought in the case a fresh consent may need to be obtained.

Chapter 10: Tender of Pardon

10.1 Definitions

Pardon is tendered to an accomplice where the need for his evidence is great. An accomplice is a person who knowingly, voluntarily and intentionally participates in the commission of an offence. Persons who cannot be charged on account of absence of mens rea are not accomplices. The position of decoy witnesses is similar to such persons.

10.2 Pardon to an accomplice

An offender may be brought to justice by the evidence of a co-offender. However the value of such evidence is weak where an offender is not in possession of a tender of pardon. The decision to grant pardon is dependent on the value of the evidence of the accomplice and the need for it. Hence such evidence should only be considered where the offence is of a serious nature and there are overwhelming reasons for the prosecution to go ahead.

The agreement to grant pardon can be reached at any stage of the criminal proceedings before the passing of judgement. A pardon must be recorded in writing and should be accompanied by reasons unless the information is protected or should not be disclosed in the public interest. Where an offer of pardon has been made or going to be made the actions required on the part of the accomplice must be clearly indicated. An offer of pardon may not be in writing. Similarly an offer must never be couched in such terms that the approver considers falsifying evidence.

The power to grant pardon was formerly available to the District Magistrate and after 2011 is available to the District Public Prosecutor. Apart from the District Public prosecutor, the power to grant pardon is available to the High Court and the Court of Sessions in respect of specified offences. It is not clear whether senior prosecutors have the power to tender pardon and the law needs to be clarified in this respect. The decision of the authority giving pardon is independent of the court and there is no need to obtain the

endorsement of any court. A pardon cannot be granted to a person involved in an offence relating to heart to Qatl without permission of the victim or as the case may be, of the heirs of the victim.

Pardon can be given at any time that is during an inquiry, an investigation or a trial. A prosecutor may initiate the process of grant of tender on his own while reviewing the police file or during the course of trila or he may initiate the process on the request the concerned police officer or on the order of the appropriate court.

Form of pardon

A pardon may take the following form:

To,

Xxx

Subject: GRANT OF PARDON

Whereas you _____ son of _____, resident of _____ have undertaken to make a full and true disclosure of the whole of the facts _____ within your knowledge regarding the criminal activities of _____ sone of _____ and _____ son of _____ etc and whereas the District Public Prosecutor of Lahore has decided that on condition of your making such a full and true disclosure no proceedings shall be taken against you with regard to the said offences, you are hereby informed that no proceedings shall be taken against you, if you make a full and true disclosure of the whole of the circumstances of the case in question within your knowledge and repeat the same when called upon to do so in any court of justice.

Lahore,

District Public prosecutor, Lahore

Dated January 1, 2010

Government of the Punjab

Effect of Pardon

The effect of a pardon is acquittal. Another effect of the tender of pardon is that such a person must be examined as a witness in the subsequent trial.

Procedure to be employed by prosecutor before grant of pardon and criteria to determine whether it is appropriate to grant pardon

Where a grant of pardon is contemplated, the prosecutor should endeavour to meet the accomplice in person to determine whether he is trust worthy, or whether he could assist the prosecution in a material way. When the case is at the investigation stage, the prosecutor should require the police to arrange such a meeting. The prosecutor should always encourage the accomplice to consult or be represented by a legal counsel in such proceedings so that he understands the terms of the offer and/or the grant of pardon. While considering a matter of grant of pardon, a District Public Prosecutor should apply the following tests:

(a) Whether a conviction could be obtained without the testimony of the suspect person.

(b) Whether, in the interests of public safety and security, the obtaining of information about the extent and nature of a criminal act is of greater importance than the possible conviction of the suspect person.

(c) Whether it is very unlikely that any information could be obtained without an offer of immunity.

(d) Whether the evidence could be safely relied upon.

The conditions of pardon and the effects of the same for the accomplice can be reduced in writing. However an accomplice does not have a right to have such an agreement made. Where an agreement is proposed to be made, it should mention the name and parentage of the accomplice, the offences in respect of which and the case in relation to which the pardon is sought and the scope of information to be provided. The name of the prosecutor granted the pardon should be also indicated.

To avail the concession of pardon the accomplice has to concede to his involvement in the criminal act an d indicate his willeingness to make a true and full disclosure of the whole of the circumstance within his knowledge relavent to the offence and to every other person concerned in the same whether a principal or abettor. Where an accomplice agrees to these conditions it is best that the accomplice be requested to make a statement before the magistrate in accordance with section 164 .

The pardon should ideally be granted prior to any such statement.

Consequence of non-Compliance with the conditions of pardon

Where a prosecutor finds that the accomplice has committed material brech of the obligations of the accomplice, he may consider revoking the tender of pardon. In any case where the accomplice does not make a true and full disclosure the prosecutor should request the court to disregard the statement and intimated hi intention to revode tender and prosecute the accomplice.

Where a tender of pardon is revoked the accompliced can tried for the offence for which he was granted pardon. However such a trial should be separate. A new police report should be submitted in the circumstances to the trial court. The person who received the tender of pardon may plead at such trial that he complied with the conditions of the tender.

A person, who fails to give truthful evidence before the court after receiving a tender of pardon, may face charges of perjury in a separate trial.

Chapter 11: Ethical decision making

11.1 Ethics

Ethics are relevant and important for varied reasons. In the first place rules and law do not provide clear-cut guidelines in all situations. Secondly even where rules are present some discretion is available to the decision maker and this discretion must not be used for personal or institutional reasons. Thirdly ethical considerations are essential to raise the standard of advocacy.

It should be borne in mind that ethical principles are not to be equated with legal rules. However rules may be based on ethical principles. The basic principle to be followed is that the prosecutor should always act independently, fairly and fearlessly and should play its part in promoting and sustaining a justice system, which seeks lawful conviction and protects the innocent.

11.2 Ethics for prosecutors

The prosecutor should abstain from conducting prosecution or participating in any prosecutorial decisions where,

(a) he has or is likely to have a financial interest in the matter.

(b) He could be a witness.

(c) He has or is likely to have a conflict of interest.

(d) His personal predilections and biases may affect decision-making.

The prosecutor should always maintain the highest professional standards, which include the following:

(a) A prosecutor must never falsify evidence or present evidence, which he knows to be false.

(b) A prosecutor must never hide evidence in favour of the accused.

(c) A prosecutor must state the law correctly and bring to the notice of the court all divergent opinion(s) on a matter.

(d) A prosecutor must keep himself abreast of the development in law.

(e) A prosecutor must draft petitions and applications carefully, clearly and precisely.

(f) A prosecutor must not divulge privileged information to any person except a senior prosecutor.

(g) A prosecutor must correct, exact and accurate while taking decisions.

(h) The prosecutor should conduct prosecutions in a robust, fair and efficient manner with a view to procure rightful convictions.

(i) A prosecutor must not be afraid of the consequences of his professional work.

(j) A prosecutor should never prosecute a person against whom there is no or insufficient evidence.

(k) A prosecutor should continually review cases under his charge to ensure continued applicability of the prosecutorial tests.

11.3 Private conduct of prosecutors

Prosecutors should not indulge in any activity in their private lives, which may undermine their integrity, impartiality fairness or independence. Prosecutors must not conduct themselves in a manner, which brings their profession or professional work in disrepute.