

The Reality of Prosecutorial Powers in the Punjab Criminal Prosecution Service



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Abstract: *This research examines the disparities between the powers outlined in the Punjab Criminal Prosecution Service (Constitution, Functions, and Powers) Act 2006 (Act 2006) for the prosecutors and the challenges faced by them in the actual exercise of those powers. The Act 2006 grants them substantial powers; however, in reality they are facing various challenges such as political interference, lack of resources, security, etc. in the exercise of those powers. To conduct this study, eighty public prosecutors from various ranks participated in a survey consisting of ten questions, which was distributed to them through Google Forms. It also includes potential solutions, such as the discretion to send the case for trial, to add or delete an offence, to withhold and withdraw the prosecution, to plea-bargain with the accused, etc. and an independent prosecution service. The majority vote favors these solutions. This research concludes that prosecutorial independence, with the full use of their powers, is vital to uphold the rule of law and to ensure an effective and efficient administration of CJS in Punjab, Pakistan.*

Keywords: Prosecution, Punjab Criminal Prosecution Service, Prosecutorial Discretion, Powers of Public Prosecutor, Functions of Public Prosecutor

Introduction

Prosecutorial powers have now attained the status of fundamental components of the criminal justice system (CJS) globally. They possess the authority to make critical decisions concerning future accused persons in criminal cases. These decisions involve a wide range of responsibilities and demand a wide range of securities. Today, their roles have extended from mere gatekeeping and participation in legal enforcement mechanisms. Now they are serving as key architects of justice. They are wielding substantial influence on the conclusion of criminal cases. They are *sin qua non* for the effective and efficient working of CJSs (Jehle & Wade, 2006). In Europe, they possess more powers as compared to the sub-continent. There,

they are considered an important player in the CJS. Decisions regarding the conclusion of cases are being given to them instead of courts to ease the workload on courts. This is an effective method to make justice faster and cheaper. The UN, through the Guidelines of 1990, has recognized the proactive role of prosecutors (Gane & Mackarel, 1997).

Sometimes, the conviction rate is seen as a measure to gauge the success of a prosecutor, which is incorrect; however, the main goal of a prosecutor is to ensure justice and serve the public interest. They are primarily responsible for pursuing criminal cases fairly and independently rather than to merely seek convictions (Ludwig, 1956). This incorrect approach needs correction for the success of

Punjab Criminal Prosecution Service (PCPS). The correct approach is that fair, impartial, and independent prosecution is vital for the effective, efficient, and trust-based CJS in our society.

In Pakistan, prosecution services such as the PCPS are comparatively new and have some limitations as compared to global standards. In the PCPS, Prosecutors primarily offer guidance to the police during investigations; however, their guidance is not binding, and they lack the power to control investigations or to issue direct orders to the investigation agencies. They review police case files and investigation reports but they have limited influence over them. Although they can raise legal issues during their scrutiny, and they can request corrections, or they may recommend strict legal actions against negligent officers, yet they do not have the power to decide to drop or continue cases independently (Ramzan Kasuri et al., 2021). In words of PCPS, they have no power to not send the case before the court, if not fit for trial. This means they are lacking substantial power if compared with the worldwide CJSs (Azeem, Tariq, et al., 2023). However, there is a positive aspect: during the case review, they can add or remove offences in accordance with the facts and circumstances of the case and on the basis of evidence available on record and also keeping in due regards to public interest test. This provides them with some say into the charges presented in court (Azeem, Umar, et al., 2023).

The main job of a prosecutor is to represent the state in court. Their main goal is to make sure that justice is served. They work with the court to find out the truth by producing all important evidence in the trial (Vinegrad, 1999). Yet they have to be fair with everyone involved in the process of the trial: the court, the police, and the accused person(s) as well. According to the UN Guidelines they have many responsibilities. These include pursuing court cases and, if allowed by law, overseeing investigations. The benchmark for them is to protect the public interest (Melander & Alfredsson, 1997). And to serve and safeguard the public interest, they need substantial control over the investigations (Kremens, 2021).

In Punjab Pakistan, the prosecutorial powers have not been substantially granted to prosecutors. They are also hesitant in exercise their powers, and they do have various reasons (Ramzan Kasuri et al., 2021) for this including political interference, inadequate resources, security concerns, pressure from administration, pressure from local bars, and lack of support from the department. Prosecutors are facing various challenges (Lawrence et al., 2019). Furthermore, in PCPS they are operating under bureaucracy. They consider that they are not working independently. They need independence (PAKSOY, 2014). Moreover, in PCPS they also advocate for the Prosecutor General Punjab to lead them in dealing with these issues.

This research is important. It looks into the gap between the powers granted to prosecutors in PCPS legally and the challenges they are facing in exercising those powers. This research aims to raise awareness among policymakers, the legal community, and the government about their challenges. Through comprehension of the divide between powers and their practical application, this research seeks solutions. It aims to explore the potential benefits of empowering them with their legal powers, such as power to prosecute, addition or deletion of offences, and plea bargaining, etc. Eventually, this research draws attention on the importance of independence of prosecutors working in PCPS and their free and full use of powers for the fair and efficient CJS in the Punjab.

1. Research Methodology

For the purpose of this paper, a mixed-method approach (Almalki, 2016) is employed to study the prevailing gap between the powers available to prosecutors and the challenges they face on a daily basis in the use of those powers. For this study, a total number of 80 public prosecutors from various ranks, including Additional Prosecutors General, Deputy Prosecutors General, District Public Prosecutor, Deputy District Public Prosecutor, and Assistant District Public Prosecutor, are selected to participate. We collected their opinions through a questionnaire distributed by means of Google Forms (Djenno et al., 2015; Vasantha Raju &

Harinarayana, 2016). The identities of these participants have been anonymized (Wiles et al., 2008), and their opinions are solely used for the purposes of this research paper.

We use a questionnaire to obtain their opinions (Jack & Clarke, 1998). These are now considered a vital tool in research methodology because they can efficiently gather data from diverse participants through the use of online information technology (Dewaele, 2018). We keep the identity of our participants anonymous (Hoft, 2021). We design it to encourage prosecutors to give their honest responses. A well-structured questionnaire, consisting of 10 questions, has collected quantitative data from them. Our questions are purposeful (Taylor-Powell & Marshall, 1998). We have received structured answers, and it helped us to streamline our data analysis. We are also able to draw statistical conclusions on the scope of our study.

2. Scope of the study

This research aims to highlight the gap that exists between the powers available to prosecutors under the Act 2006 and the practical challenges they are facing on daily basis in use of those powers. It also aims to highlight the gaps between the powers available to prosecutors worldwide and those working in PCPS. Furthermore, this research also sheds light on the desires of prosecutors for their future and for the better administration of CJS in Punjab.

Through the use of a 10-question-based survey, this study explores the above referred divide firstly by introducing the positions of prosecutors (Q1) and their perception about the powers granted by the Act (Q2). It then attempts to probe the reasons behind difficulties come across in exercising prosecutorial powers (Q3 & Q4). The questionnaire-based-survey, which we used, also assesses the importance of prosecutorial independence from the bureaucratic control for effective administration of CJS (Q5 & Q6). Furthermore, the study also has explored the significance of prosecutorial

decision-making authority during investigations: the most important ones about whether to prosecute (Q7) and addition or deletion of offences (Q8). Additionally, the research also examines the importance of pressure-free environment for the prosecutors in exercise of powers such as withholding/dropping prosecution and withdrawal, etc. (Q9). Lastly, our questionnaire-based-survey examines the value of granting plea-bargaining power to prosecutors working within the PCPS and its future (Q10). Through the analyses of these responses, this study aims to provide a comprehensive picture of the challenges facing by prosecutors and the potential benefits of a more empowered and independent PCPS in Punjab.

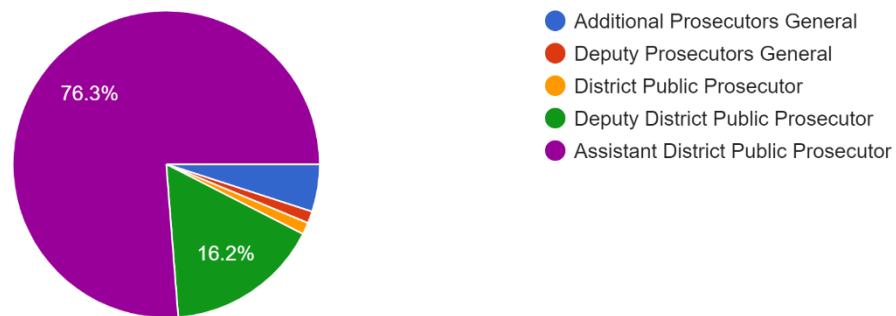
3. Questionnaire-Based Survey, Responses and Analysis

In order to comprehensively analyze the responses, which we have received: we have organized them into four distinct segments. Firstly, we look into the perspectives of participants, on the basis of their positions within the PCPS, about their understanding and opinions regarding the powers outlined in the Act 2006. Secondly, we try to explore their challenges in the exercise of their prosecutorial powers: we focused on both the frequency of these challenges and the primary reasons behind them. Afterwards, we attempt to examine their views on prosecutorial independence. It includes the degree to the extent of which they believe the prosecution service should operate independently from bureaucratic control. Lastly, we obtain their opinions on specific prosecutorial powers: power to withhold or drop prosecution, to add or delete offences during investigation, to decide whether to prosecute a case or not, and to analyse the future of plea-bargaining procedure with the accused in our CJS. Through these segments, our goal is to highlight and to provide insight into the perspectives and experiences of prosecutors working within the PCPS for their improvements.

3.1. Participants Positions and their perspectives about Powers in the Act 2006

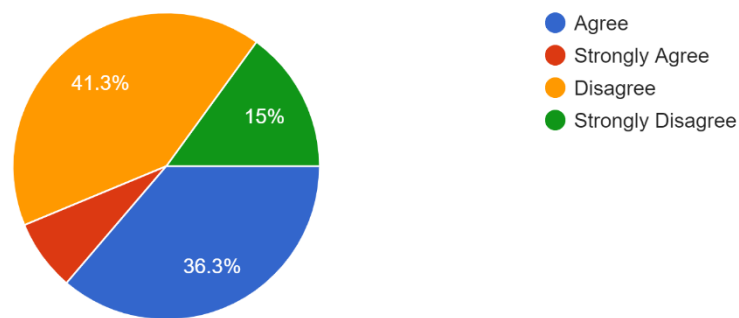
What is your current position within the Punjab Criminal Prosecution Service?

80 responses



To what extent do you agree that the Punjab Criminal Prosecution Service (Constitution, Functions, and Powers) Act 2006 (Act 2006) grants prosecutors...dminister the criminal justice system in Punjab?

80 responses



In the initial segment, our focus was to obtain opinions from diverse participants on the basis of their positions within the PCPS about the prosecutorial powers provided in the Act 2006. To achieve this, we cautiously selected a sample of 80 prosecutors: it covers all, from the highest to the lowest. Among them, 76% were field prosecutors, mostly Assistant District Public Prosecutors, while the remaining were in senior positions. This deliberate sampling strategy was aimed to receive a comprehensive range of perspectives during our research.

Thereafter, we asked participants to rate their level of agreements regarding the substantial powers granted to them by the Act 2006. They could choose from options: varying from Agree to Strongly Disagree. The responses revealed fascinating results. A substantial proportion of

participants, covering 56% (15% strongly disagree and 41% disagree), expressed doubt and mostly showed absolute disagreement with the belief that substantial prosecutorial powers have been granted by the Act. On the other hand, only 36% indicated agreement it.

These findings suggest that the majority of prosecutors demand further powers to enhance their efficiency in CJS. This demand is reasonable for several reasons: firstly, it can enable them to work as gatekeepers of CJS; to tackle complicated cases more swiftly and conclusively (Jacoby & Ratledge, 2016). They will be able to ensure expeditious justice not only for victims but also for the accused persons equally (Nedrud, 1964). Additionally, more powers can strengthen their confidence and morale, they will play proactive roles (Williams,

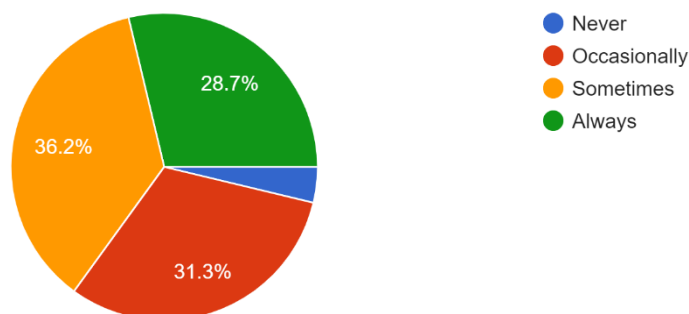
1991) with dedicated approaches to their duties. Ultimately, it is necessary to enhance the better working of the CJS, to reduce backlog of cases

(Bibas, 2009), and to improve outcomes for all stakeholders involved in the CJS.

3.2. Challenges in the use of Prosecutorial Powers: Frequency and Main Reasons

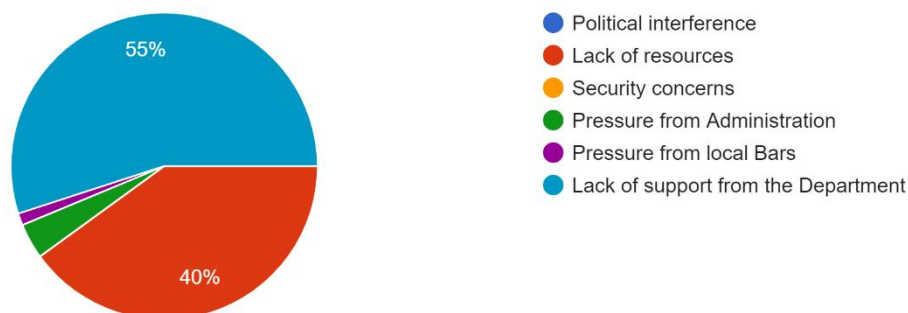
How often do you encounter challenges in exercising the following prosecutorial powers granted by the Act 2006?

80 responses



What are the main reasons you face difficulties in exercising these prosecutorial powers?

80 responses



This segment is to highlight the nature and types of challenges, which prosecutors are facing in exercising their powers. It also offers valuable insights into the obstacles faced by them. The data reveal that a number of prosecutors, 36% choose the option of "sometimes" and 31% "occasionally," in our question about challenges in the exercise of powers. Additionally, 28% conveyed that they "always," face challenges during their jobs. It indicates that they are persistently struggling in their daily work. Then it was necessary to find out reasons behind these difficulties. Upon this query, the majority of respondents, 55%, cited political interference as a noteworthy factor. This number suggest that external pressures or influences from political

entities of local areas are a true and prevalent issue which is affecting their ability to perform their duties effectively and independently.

In Pakistan, political interference (Aslam et al., 2023) in the justice system is another persistent issue. Courts also recognized this fact (*Govt. Of NWFP v. Muhammad Tufail 2004; Muhammad Afzal v. Secretary Education, Govt. Of the Punjab 1992*). Political persons often try to influence prosecutorial decisions and court decisions for their own gain. This interference, as above data shows, undermines public trust in the judiciary and also in the prosecution. We need to stop this interference for the rule of law and justice in Pakistan. Our CJS needs

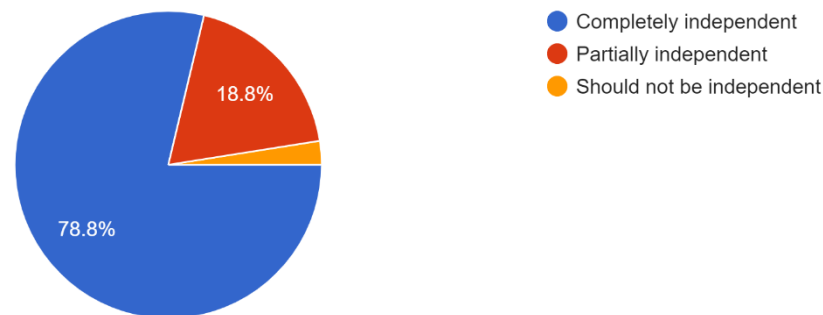
improvements (Ali, 2015). Furthermore, 40% of respondents pointed out lack of resources as another primary reason as a challenge in exercising their powers. This highlights the importance of adequate resources, such as

security, residence, appropriate staff, funds, and infrastructure, in supporting prosecutors working in PCPS (KHALIL et al., 2021; Sultan, 2016).

3.3. Perspectives on Prosecutorial Independence

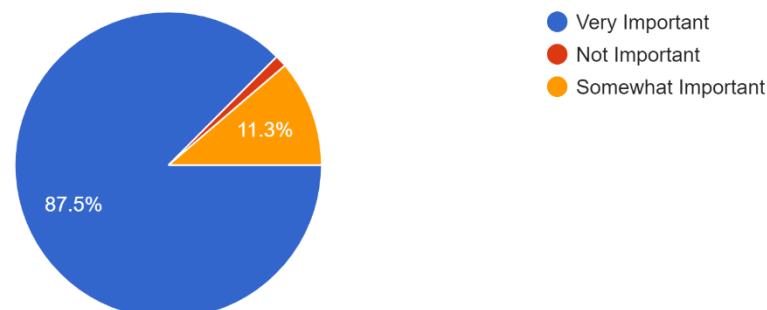
The Act 2006 calls for an independent prosecutorial system. To what extent do you believe the prosecution service should be independent from bureaucratic control?

80 responses



How important do you think a fully independent prosecutorial system under the administration of the Prosecutor General is for effective for the CJS in Punjab?

80 responses



In this segment we focus on obtaining perspectives of participants on prosecutorial independence. When we asked about their perspective on this matter, the data revealed that majority, 78%, advocated for the solution of complete independence of the prosecution service from bureaucratic rule. This indicates a strong desire among participants to operate separately, free from any external pressures or interference (Baig et al., 2024). Furthermore, when we inquired about the importance of a fully independent prosecutorial system under the administration of the Prosecutor General, an

overwhelming majority, 87%, considered it "very important." These findings highlight the common consensus prevailing among prosecutors about the necessity of independence in their powers and roles in CJS. They demonstrate their collective belief that autonomy from bureaucratic control is essential for efficient CJS (IMRAN & NORDIN, 2023).

In a recent case, the Lahore High Court observed that the head of PCPS is the Prosecutor General (PG); his position was created by the Act 2006. The Act 2006 also gives the PG the right to

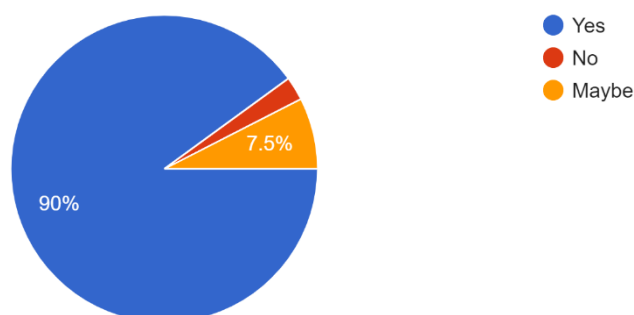
represent the government in all courts of Pakistan. Further, the court clarifies that there is a distinction between "supervision" and "administration" of the PCPS. Supervision deals with policies. The government of Punjab has this responsibility. Whereas, the "administration" deals with the operations of day-to-day affairs. This is the job of PG. Further, the court also passed few observations regarding the independence of PCPS that the Service operates as an attached department of the Punjab

Government and falls under the control of the Public Prosecution Department, according to Serial No.32 of the First Schedule of the Rules of Business; however, it is important to understand and recognize its distinctive function. The court held that the preamble of the Act 2006 underscores its aim to establish an independent, effective, and efficient PCPS. The preamble ensures prosecutorial independence (*Fawad Ahmed & 1 other v. Government of Punjab etc 2023*).

3.4. Perspectives on Key Prosecutorial Powers

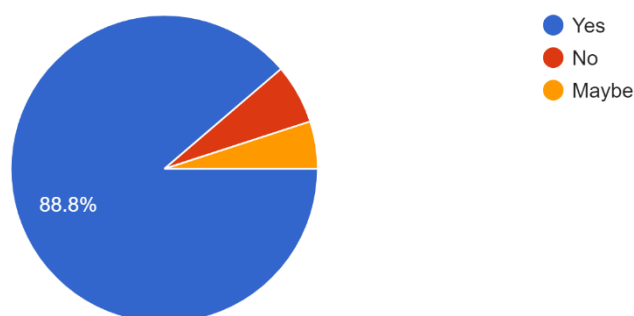
Do you believe prosecutors should be able to exercise the powers of withholding or dropping prosecution, and withdrawing from prosecution, independently and without undue pressure?

80 responses



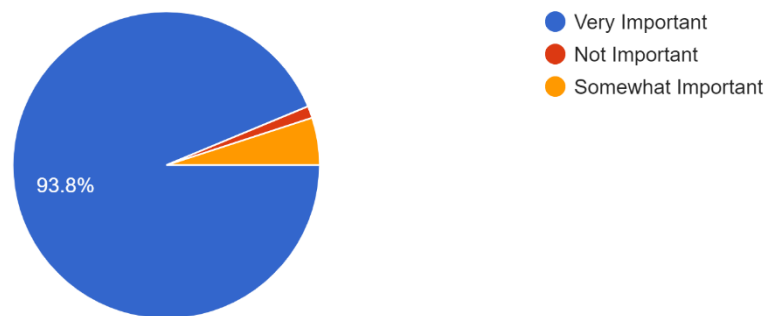
Do you believe prosecutors should be able to exercise the power to add or delete offences during an investigation, independently and without undue pressure?

80 responses



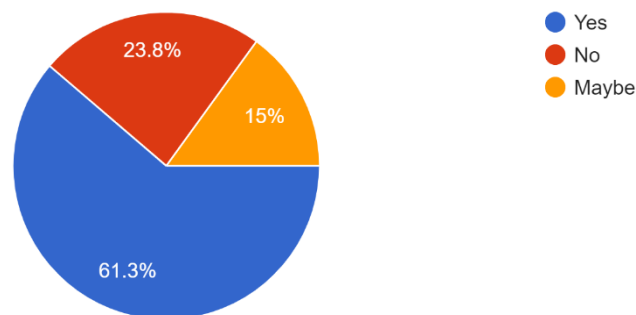
Do you believe that the power to decide whether or not to prosecute a case during the investigation stage is an important power for the effective administration of the Criminal Justice System in Punjab?

80 responses



Do you believe the power to plea-bargain with the accused should be available to prosecutors working in the Punjab Criminal Prosecution Service?

80 responses



In the last segment, we conducted a collective analysis of our last four questions, as they all are pertaining to the perspectives of participants on their prosecutorial powers. Some prosecutorial powers are the important ones, such as to withhold or drop prosecution, withdraw from prosecution, and to add or delete offences during an investigation. According to the responses we collected, a substantial majority, constituting 90% of respondents, advocate for the proposed solution that prosecutors should have the freedom to utilize these powers independently and without any undue pressure. This consensus among participants also highlights their collective belief in the necessity of prosecutorial independence.

Dr. Ramzan Kasuri in his work observed that in Pakistan, prosecutors are playing a vital role in

reviewing police investigations reports before cases enter in courts. This is a legal requirement. It is called scrutiny. It involves a thorough examination of the investigation report. Prosecutors have two options: 1) return the case to police for further investigation if flaws are found in it; 2) send it forward with their own evaluation on available evidence for trial. They also can add or remove offences. However, they are expected to go beyond simply processing police reports or acting as post office; rather they must act as a bridge between police and court. Their job is to apply critical judgment in order to ensure that cases presented in courts have a good chance of success (Ramzan Kasuri et al., 2021).

Furthermore, regarding the query about significance of the power to determine whether or not to prosecute or to send or to not send a

criminal case during the investigation stage the data reveals an outstanding unanimity among participants: 93% of participants considered this power as "very important." This high level of consensus highlights the fundamental role that this decision-making power plays in an effective prosecutorial system (Azeem, Tariq, et al., 2023; Bibas, 2009). However, the our participants do not have this power and we need this one (Ramzan Kasuri, 2021).

Prosecutors exert meaningful power in determining whether to proceed with charges or not. In words of PCPS, whether to send the case for trial or not. This gatekeeping role also benefits the judicial system by means of sifting non trial able cases due to lack of sufficient evidence at the investigation stage (Jacoby & Ratledge, 2016). In the United States, prosecutors are primarily known for this power (Davis, 2005; Ramsey, 2002). Similarly, European prosecutors (Wade, 2013) possess this power to dismiss charges in cases of weak evidence. Public interest in an important part in this decision making (Hetherington, 1987). Nevertheless, this broad discretion enables them to prevent the allocation of valuable resources and wastage of time in futile cases. Moreover, worldwide justice systems characteristically empower their prosecutors to halt prosecutions without judicial intervention (Jehle & Wade, 2006). Our prosecutors need this power to play their active role.

Finally, with regard to the question of plea-bargaining power, our participants responded with 61% in favour and 15% with "maybe" option. This support for plea bargaining (61%) suggests a prevalent acceptance of this practice for our CJS. The other 15% "maybe" option indicate a level of ambiguity or hesitation about its implications or effectiveness. It has been observed during our study that worldwide (Ma, 2002) plea bargaining is considered as a vital tool within the CJS for several reasons (Lippke, 2011). It expedites case resolution. It reduces court backlog. It optimizes prosecutorial resources. It facilitates instant justice. It offers accused persons a chance to accept responsibility. It also helps to spare victims from lengthy trials. Furthermore, it promotes fairness

by permitting negotiations (Maynard, 1984). It is equitable administration of justice. Furthermore, in the United States, it has been extensively utilized. There Prosecutors are vested with the power to engage in negotiations for plea agreements. That is why, there accused persons pleaded guilty in exchange for a more favourable decision. This expedites case resolution for them (Jones, 1978). Plea bargaining has emerged as a fundamental aspect there CJS: an estimated 95% of convictions are because of this plea (Alschuler, 2020; Langer, 2021; O'hear, 2007; Ralston et al., 2023).

4. Recommendations

On the basis of the above data analysis, it is recommended that first of all, measures should be taken to enhance prosecutorial independence, their safety and security, and to safeguard them from political interference. They must be separated from bureaucratic control. Furthermore, adequate resources must be allocated to support them in their fieldwork, including funds, residences, staff, infrastructure, modern devices, etc. Additionally, they also need continuous training and professional development programmes to enhance their skills and standards. Transparency and accountability mechanisms should be established to ensure fairness and public trust, and not to use it as a tool to pressurize them. Furthermore, available powers must be allowed to be used independently, and new powers like plea bargaining and power to prosecute or not must also be provided to them. Then they will be able to play their proactive role in CJS.

These recommendations are based on the above said data collection and analysis. They aim to improve the effectiveness, efficiency, and fairness of the CJS. By empowerment of prosecutors with necessary power, authority, support, and place in CJS, stakeholders and policy makers can work towards a system that will uphold the rule of law and promotes public trust and confidence in the fair administration of justice.

5. Conclusion

In conclusion, this research has attempted to shed some light on the reality of prosecutorial

powers within the PCPS, and the challenges faced by them in exercising these powers. Though they have been granted substantial powers under the Act 2006, yet they encounter various obstacles such as political interference, resource limitations, and security concerns in the execution of their duties on daily basis. Through the survey conducted with eighty public prosecutors, it became evident that there is a dire need to enhance prosecutorial independence, to provide them adequate resources and moral support within the CJS. Furthermore, they also need more powers, as the majority of participants voted in favour of the proposed solutions such as the discretion to prosecute and plea bargaining.

It is very important that these recommendations should be considered by concerned authorities and they may be implemented to ensure the effective and efficient administration of the CJS in Punjab, Pakistan. Through the empowerment of public prosecutors with the necessary authority and required support, we can step towards a system that will uphold the rule of law and fosters public trust and confidence in the fair administration of CJS.

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