

Private Prosecution in Pakistan: Analysis of the Nur Elahi case and its implications for Public Prosecution

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Abstract

The traditional system of public prosecution, where the state assumes responsibility for criminal charges, has faced challenges in recent years due to the emergence of private prosecution. The case of Nur Elahi v the State paved the way for private prosecution alongside public prosecution in the administration of criminal justice system of Pakistan. Whereas the doctrine of public prosecution holds fundamental importance in the administration of criminal justice system, the decision in Nur Elahi v the State introduced exceptions to this rule by allowing private individuals to prosecute criminal cases through private complaints along with public prosecution. This significant change has weakened the doctrine of public prosecution, making it more arduous for both the state and private individuals to bring offenders to justice. It is also pertinent to note that the judiciary, not the legislature, made the decision in Nur Elahi v the State, which caused uncertainty about the laws for public and private prosecution in Pakistan. Therefore, a thorough examination of the ratio decidendi and the legal reasoning in Nur Elahi v the State is necessary to deal with complications arising from the addition of private prosecution to the public prosecution in criminal justice system of Pakistan. This research aims to provide clarity and guidance for all stakeholders involved in improving criminal prosecutions by clarifying and reassessing the legal framework for private complaints.

Keywords: *Public Prosecution, Private Complaint, Nur Elahi v the State, Criminal Trial Procedure.*

1. Introduction

The criminal justice system serves as a cornerstone of the rule of law, safeguarding the wellbeing and security of societies. It is the responsibility of states (Ma 2008) to actively fight crime both at the national (Lamond 2007a; Packer 1962) and international level (Roht-Arriaza 1990). Within this framework, the doctrine of public prosecution assumes a vital position in the criminal justice system (CJS) (Roht-Arriaza 1990). As the CJSs vary widely across countries, including differences in criminal

procedure rules, the prosecution systems also exhibit great diversity, reflecting the divide between common law adversarial and civil law inquisitorial systems (Teacher, Law 2021). In common law, prosecution is a part of the executive (Prakash 2004), though there are opposite views (Dangel 1990), whereas in civil law systems (Verrest 2000), it can be part of either the executive or the judiciary. However, effective modern-day CJSs fundamentally relies on the indispensable role of public prosecution (Ma 2008).

Though the public prosecutor emerged much later in history compared to judges and juries, who trace their origins back to the high Middle Ages (Gilliéron 2014), it does not diminish their importance. After the French Revolution, the public prosecution emerged and gradually established itself as a fundamental institution in the CJSs of mainland European law (Jehle 2006). The role of the prosecutor emerged as a prominent feature of Anglo-American criminal procedure during the Tudor era, but their significance should not be underestimated (Langbein 1973). According to Carolyn B. Ramsey's history of the New York County District Attorney's office, private prosecution gradually declined from the mid-19th century, and by the late 1800s, private complainants could only report crimes to the government and serve as witnesses (Ramsey 2002). In the past, prosecution was solely the responsibility of the victim, but it proved to be impractical. As a result, this responsibility shifted to state prosecution services (Smith 2006). In England, the Criminal Prosecution Service was established in 1986. Unlike other European prosecution systems, it lacks the same historical background and power. Its authority and interactions with other justice agencies are still developing (Lewis 2006). Pakistan is following it.

As representatives of society, public prosecutors bear the responsibility of upholding the law, acting in the best interests of the public (Moody and Tombs 1982). While some may perceive an overlap between the roles of prosecutors and judges (Fionda 1995), it is not entirely accurate. Public prosecutors' role (Mou 2017) includes vital functions such as deciding whether to initiate or proceed with prosecutions, conducting proceedings in court, and potentially appealing or handling appeals against court decisions (Lewis 2006). In few CJSs, public prosecutors may also be given responsibilities of overseeing investigations, providing effective support to victims, exploring alternatives to prosecution, supervising the execution of court rulings, and more (The Committee of Ministers 2000). Understanding the significance of public prosecution (Wade 2013) within the broader CJS sets the stage for an examination of recent developments that have introduced private prosecution alongside public prosecution in the form of private complaint (Sethi 2022a) in Pakistan. As Roger A. Fairfax, Jr. argues that although private lawyers had a significant historical role in criminal prosecution before the creation of office of American public prosecutor, delegation of prosecutorial work to non-governmental entities is rarely appropriate (Fairfax 2009). Thus, these developments, particularly the landmark case of *Nur Elahi v the State*, (Nur Elahi v the State 1966) have raised questions about the impact of private prosecution on the effectiveness and functioning of public prosecution in CJS of Pakistan.

The *Nur Elahi v the State* has significantly influenced the landscape of private prosecution in Pakistan. By allowing private individuals to engage in the prosecution of criminal cases through private complaints, alongside public prosecution, the decision has introduced various challenges. These challenges encompass the weakening of the public prosecution doctrine (Ouziel 2021), increased difficulties for the state in safeguarding the public interest during criminal prosecutions, heightened complexities for private individuals in pursuing justice against offenders, and a sense of uncertainty surrounding the law of private prosecution in Pakistan. This research paper aims to explore the implications arising from the aforementioned decision within the context of private prosecution through private complaints (Sethi 2022b) in the realm of public prosecution system. Furthermore, the

paper will argue that the *Nur Elahi v the State* case underscores the failure of criminal procedure to adapt to the evolving dynamics of public prosecution's role as the designated prosecuting authority in all criminal trials.

2. Significance of Public Prosecution

Criminal prosecution involves a legal proceeding conducted on behalf of the public within the bounds of the law and before a competent forum. Its purpose is to determine whether an individual alleged to have committed a crime is guilty or innocent. The role of a prosecutor is to bring charges against another individual for a crime in the name of the government (Research Society of International Law | RSIL n.d.). Some advocate for a revival of private prosecution as a mechanism to curb excessive prosecutorial discretion (Kress 1976). And not everyone believes that a prosecutor is always a good person (Smith 2000). However, it is not appropriate (Fairfax 2009). Prosecutors are the gatekeepers of criminal justice (Roiphe 2015) and serve as the primary means of punishing criminal behavior. In CJSs, they represent the state and watch the interests of society, victims, suspects, and witnesses (katharina.kiener-manu n.d.). They play a vital role in the CJS, as evident from Rule 27.15 of the Police Rules. They ensure the prosecution of crimes and hold offenders accountable for their actions. They also ensure that justice is administered fairly and impartially, representing the interests of society, victims, suspects, and witnesses with a balanced approach to the trial process. Moreover, their efficient case management and supervision of investigations help expedite decisions and prevent delays in the judicial system (Farooqi n.d.). Being a public servant, a prosecutor also ensures the protection of defendants' rights along with convicting the guilty (Gershman n.d.).

They wield significant decision-making power, determining whether prosecutions should proceed and skillfully conducting cases before the courts. In some systems, they take on additional roles, such as implementing crime policies, overseeing investigations, and providing assistance to victims. Their authority to choose on alternatives to trial and their supervision of working of court further demonstrate their crucial role in ensuring fair and effective justice (The Committee of Ministers 2000).

The function of a public prosecutor is of a paramount importance in any CJS. In the United States, private prosecutors are almost nonexistent. Similarly, France (Verrest 2000) and Germany (Siegismund 2017) have systems that exclude private prosecution, unless when initiating state actions. In England (Kurland and Waters 1959), private prosecutions are rare due to official agencies taking charge on behalf of the community, and statutory laws increasingly mandate public officers to initiate prosecutions (Burns 1975). This also highlights the essential role of public prosecutors in CJS.

There is no denying that prosecutors have contributed a substantial part in the rising population of prisons and jails in the nation (Baughman n.d.; Davis 2009). There are currently 51,684 prisoners in Punjab jail, comprising 753 females, 645 juveniles, and 9,063 individuals categorized as "Narcotics & Addicts" (Anon n.d.-d). As of 2022, Pakistan's prison system is severely overcrowded, with a population that far exceeds its intended capacity, with many of its 91 jails and prisons operating at over 100 percent capacity. The country's healthcare budget, consistently below WHO standards, allocates less than 3 percent of its GDP. This results in widespread deficiencies in prison health care, impacting a total prison population of over 88,000 individuals (Human Rights Watch 2023). Prosecutors, being influential in court and criminal law matters, can use their power to advocate for fairer laws and policies. This can lead to a decrease in mass incarceration and create a more fair and just society (Barkow 2021). However, private prosecution is a hurdle in this task. Be that as it may, prosecutors should prioritize seeking justice over winning cases, even though adversarialism can be a challenge. Their primary responsibility is to act in the interest of justice. A just prosecutor is the one who upholds

civil liberties, ensure equal protection, and safeguard due process rights for both criminal defendants and victims throughout the entire criminal process (Hasbrouck 2021).

3. Nur Elahi v the State

A. Facts

The brief facts are as follows: There was a murder trial which was reported to the police, implicating three accused persons as the alleged perpetrators. However, the police proceeded to prosecute two different accused after their investigation. Two accused were found not involved in the case by the police. The complainant, Nur Elahi, filed a separate complaint providing his own account of the incident different with that of the first information report (FIR). During the committal proceedings, the issue arose regarding how to handle the complaint case (private prosecution) and the challan case (public prosecution). This matter was brought before the High Court of West Pakistan in a Criminal Revision. The High Court directed the consolidation of the complaint and the challan case for the purpose of recording evidence. Witnesses common to both cases were to be produced once and examined first by the State Prosecutor, then by the complainant's counsel, and cross-examined by the accused's counsel. The complainant was also allowed to present additional evidence beyond the testimony of witnesses mentioned in the challan, following the same procedure.

As a result of the committal inquiry, the learned Magistrate issued separate committal orders for the two cases. However, the learned Additional Sessions Judge in Rawalpindi rejected the complainant's application seeking separate trials and intended to conduct a joint trial for the two groups of accused. The complainant subsequently approached the High Court once again, seeking revision of this decision. The same judge who initially heard the Revision Petition concluded that a joint trial of the two sets of accused would be illegal. The judge overruled the Additional Sessions Judge's order, directing two separate trials. This decision was appealed to the Supreme Court of Pakistan, which had to determine whether the complaint case or the challan case should be heard first.

B. Majority Decision

The Supreme Court determined that a fair trial would require the trial judge to commence with the complaint case. This would empower the trial judge to summon the witnesses listed in the police challan, if they had not already been examined as court witnesses under Section 540-A of the Criminal Procedure Code (CrPC) on behalf of the complainant. This will allow for cross-examination by both parties and ensured the consideration of all relevant evidence in a trial. The accused individuals will also retain the right to produce defence evidence, if any. In the event of a conviction in the first trial, the Public Prosecutor will have to deliberate whether or not to withdraw the case of prosecution in the police challan case, with the Court's permission as per Section 494 of CrPC. And in the event of an acquittal in the first case, the Public Prosecutor will have an opportunity to go for the second trial to its regular conclusion, with the benefit of using the material from the earlier trial. This suggested procedure was aimed to avoid potential difficulties that the complainant might have faced. Proceeding with the police challan first would have placed the complainant at a disadvantage, as they would have been unable to cross-examine the prosecution witnesses before they testified in the complaint case. Additionally, challenges may have arisen regarding the party responsible for conducting the case on behalf of the complainant in the first trial. *Usually, the Public Prosecutor would have taken charge of the case, even if it was based on a private complaint.* As per judgement, this approach will ensure that the complainant receive full justice and does not left with any sense of grievance.

C. Dissenting View

In his dissenting opinion, Justice B. Z. Kaikaus disagreed and emphasized the legal principle that every criminal proceeding had to be decided based on the evidence and record specific to that case. He pointed out that taking into account evidence or findings from another case would have compromised the integrity of the judgment. Justice Kaikaus stressed that findings recorded in one criminal case did not carry legal weight as evidence in another criminal proceeding.

Furthermore, in his view, the law allows for multiple criminal proceedings concerning the same matter. This may include cross cases where each party accuses the other of offenses related to the same incident or different versions put forth by different parties involved. Cross cases are considered separate cases, and the same principle applies to other scenarios. And despite recognizing the importance of deciding cases on their individual merits, conflicting decisions in proceedings related to the same incident or matter are not acceptable. It would be illogical for different individuals to be convicted in different proceedings based on inconsistent stories.

In civil cases, conflicting decrees regarding the same property between different parties are not problematic since they are judgments in *personam* with no adverse consequences. However, in criminal cases where punishment is involved, it is intolerable for more than one person to be convicted for the same incident based on mutually exclusive stories. To address this difficulty, the consolidation of proceedings has been employed, particularly in cross cases or cases involving multiple prosecution stories and sets of individuals.

Although there is no specific section for consolidating criminal proceedings in the CrPC, it is well-established that *the court possesses inherent powers to consolidate proceedings for the sake of justice*. The consolidation of proceedings in criminal cases is akin to consolidation in civil cases, where separate proceedings are merged into one. Even if joint trials are not clearly provided for in the CrPC, the consolidation of proceedings and joint trial of accused individuals are distinct matters. Even assuming that joint trials might contravene certain provisions, it cannot be categorically stated that the trial would be invalidated. Given the choice between holding a joint trial and violating the principles of not being affected by findings in another case, the former seems more reasonable as it does not conflict with statutes or fundamental principles of justice administration. Therefore, in such like cases, he recommended to consolidate the proceedings and conduct a single hearing. He also referred Section 270 of the CrPC, whereby *every trial before a Court of Session is to be conducted by a Public Prosecutor*. However, complications arise when the Public Prosecutor does not support the version of a complainant. While it may be argued that the Public Prosecutor can hand over the prosecution to the private complainant in such instances, but this would be an attempt to circumvent a legal provision. Nevertheless, *the appropriate course of action for the Public Prosecutor is to present both versions of the incident, produce all relevant evidence, and allow the Court to ascertain the truth. The Public Prosecutor should not assume the correctness of a particular narrative*. Furthermore, there is no prohibition in the Criminal Procedure Code regarding a joint committal of both sets of accused, which could offer a comprehensive solution to the issues at hand.

D. Jurisprudence developed after Nur Elahi Case

Syed Muhammad Hussain Shah Case

The complainant filed an FIR naming seven accused individuals for a double murder and causing harm

to several others. However, the police report listed four accused in Column No. III/IV (guilty) and the remaining accused in Column No. II (innocent). Subsequently, an injured from the incident filed a private complaint against six of the accused. Initially, the trial court ordered the complaint case to be tried first, however, revised its order deciding that both cases would be jointly tried. The accused challenged it before High Court, which directed the trial of the complaint case to proceed first. The complainant appealed to the Supreme Court which observed that there were differences in the names of accused individuals between the FIR and the private complaint, and the two cases presented distinct allegations, including variations in the weapons used and the roles assigned to the accused individuals; it was held that when there are substantial differences in the allegations and roles attributed to the accused in two cases, priority should be given to the complaint case (Syed Muhammad Hussain Shah Case 1981).

Mumtaz Case

In this case an FIR was filed for a single murder, naming nine accused individuals. In the police report: four accused (two from the FIR and two others) were listed as guilty, while the remaining seven accused from the FIR were marked as innocent. The complainant proceeded to file a private complaint against all nine accused. Following an inquiry, the Sessions court summoned only the six accused. However, in a revision, the High Court ruled that the complaint case should be tried first. The accused appealed to the Supreme Court; it was held that since the challan case included two different accused individuals not mentioned in the FIR or private complaint, the procedure outlined in the *Noor Elahi case* should be followed (Mumtaz case 1984).

Rasheed Ahmad Case

In this case the Supreme Court of Pakistan affirmed the applicability of the *Noor Elahi case*. The FIR was pertained to a single murder, against three accused. The police filed a challan, listing two accused (one from the FIR and one additional), while two accused from the FIR as innocent. A complaint was filed against all three accused. The trial court summoned all the accused mentioned in the complaint. Following the principles established in the *Noor Elahi case*, the Supreme Court of Pakistan ruled that the complaint case should be tried first, with the state case (if applicable) to be addressed afterwards (Rasheed Ahmad case 1986).

Zulfiqar Ali Bhutto Case

In this case, the court also addressed the issue arising from the *Noor Elahi case* and provided valuable insights. The court noted that conducting separate trials for the two cases was unnecessary when there were no distinct sets of accused persons and no additional evidence to be presented by the complainant (Zulfiqar Ali Bhutto Case 1979).

Abdul Rehman Bajwa Case

In this case, it was determined that the situations in the *Nur Elahi case* and the *Zulfiqar Ali Bhutto case* were significantly diverse for the applicable facts of present case. Unlike the *Nur Elahi case*, the suspects in both the private complaint and the police case were the same. As a result, *it was concluded that the prescribed procedure in the Nur Elahi case does not need to be followed in every instance* (Abdul Rehman Bajwa Case 1981).

Atta Jilani Case

In this case the issue revolved around a single murder where five accused individuals were named in

the FIR. During the investigation, the Magistrate discharged accused Atta Jilani, while the police deemed the remaining four accused guilty. The complainant filed a private complaint against both Atta Jilani and the remaining accused. The trial court noted that there were no distinct sets of accused or differing versions, leading to the decision to consolidate both the police case and the complaint case for a joint trial. Atta Jilani challenged this order in the High Court, but the petition was dismissed. The High Court observed that since the accused mentioned in both the complaint and the police case were the same, *there was no harm in consolidating the two cases* (Atta Jilani Case 1980).

Aziz Ur Rehman Case

The Lahore High Court, in this case, endorsed the decision of the *Atta Jilani Case*. The case involved an FIR against five individuals for the murder of a lawyer. In the police report, two accused were discharged, two were mentioned as guilty, and one was a proclaimed offender. A private complaint was filed against all five accused. The High Court held that if the police case and the complaint had the same story but differed in the number of accused, the procedure in the *Atta Jilani Case* should be followed. However, if the complainant named some accused as guilty, some as innocent, and the police implicated additional accused not named in the FIR in their report, then the procedure laid out in the *Noor Elahi case* should be followed (Aziz Ur Rehman Case 1987).

Muhammad Zaid Case

In this case, the police concluded, that the accused named in the FIR were innocent and therefore did not arrest them. Subsequently, the complainant, feeling aggrieved, filed a complaint, and the respondents were summoned. The trial court took cognizance. The court also initiated proceedings in the challan case, which went under dispute before High Court. The Court observed that the Investigating Officer, who was mentioned as a witness in the challan case, had not been mentioned in the complaint case. If the challan case took precedence, the complainant would be deprived of the opportunity to cross-examine the Investigating Officer and present the truth. Therefore, the impugned order was set aside, directing the trial court to halt proceedings in the challan case and prioritize the complaint case (Muhammad Zaid Case 2006).

Therefore, the legal principle derived from the aforementioned case laws is that the *Noor Elahi case* applies when there is at least one accused who is different in the police case (Public Prosecution Case) and the complaint case (Private Prosecution Case). However, if the accused named in both cases are the same, then the procedures outlined in the *Atta Jilani* and *Aziz ur Rehman* cases should be followed. So, the settled law is that in a situation where the same party lodges an FIR and subsequently files a private complaint regarding the same allegations, and expresses dissatisfaction with the police investigation, the complaint case is to be given priority and tried first. If deemed necessary, the challan case is to be tried later (Punjab Judicial Academy 2020) .

However, in cases where the challan case and the complaint case are filed by different parties, presenting different versions of events and targeting different sets of accused individuals, the legal position is significantly different. In such circumstances, the trial of the complaint case and the challan case should be conducted simultaneously and in parallel, rather than sequentially (Muhammad Sadiq case 1971).

4. Implications of private prosecution in the context of Nur Elahi Case

The Nur Elahi Case has significant implications for criminal justice in Pakistan as it has allowed for the parallel prosecution of private complaints alongside public prosecution. As a result, the Law

Reforms Ordinance of 1972 brought about changes in the trial procedures before Sessions Courts. A new section titled "Trials before High Courts and Courts of Session" was added. This section mandates that in trials initiated based on a police report the prosecution must be led by a Public Prosecutor. And the benches have now interpreted this to mean that the public prosecutor does not have authority over a case being tried under a private complaint (introducing private prosecution). This is being observed that previously Section 270 of the CrPC plainly provided that the prosecution in every trial before the Court of Session was to be conducted by the Public Prosecutor. However, the existing legal position has undergone a complete transformation. The earlier provision in section 270 did not differentiate between private and public prosecution. Now, following the new amendments, the courts have noted that the Legislature aims to limit the public prosecutor's role in conducting trials before the Courts of Session exclusively to cases initiated by a police report (Anon n.d.). In a recent case (Anon n.d.-b), the Lahore High Court observed that Section 265-A of the CrPC, clearly states that the public prosecutor's role is limited to trials initiated upon a police report before a Court of Session. And held that this provision makes a clear distinction between cases initiated by the State and those initiated through private complaints.

Nevertheless, Indian Supreme Court in *Shiv Kumar Case* (Shiv Kumar Case 1999) observed that the Public Prosecutor plays an active and direct part in the prosecution, ensuring fairness and adherence to legal procedures. He is empowered to lead the prosecution in all cases, upholding fairness towards the court, investigating agencies, and the accused. The Public Prosecutor ensures the accused gets a fair trial by presenting all relevant information.

The restriction on the involvement of private prosecution in the conduct of public prosecution is based on the rationale of upholding the principles of fairness, neutrality, and the public interest. A crime is perceived as an offense that moves from the personal realm to the broader public sphere (Lamond 2007b). The State, as the prosecutor, represents the collective will and interest of society in seeking justice and maintaining peace and security. By entrusting the responsibility of prosecution to the State, it ensures a level playing field where cases are treated as proceedings amongst the State and the accused, rather than being influenced by personal motivations or biases of private individuals. This approach recognizes that criminal offenses are not just offenses against individuals, but also against the entire society (The Nation 2016). The State, with its neutral stance, aims to protect innocent individuals from unjust and vexatious prosecutions, promoting a balanced and unbiased legal process. By appointing prosecutors with expertise and knowledge, the State ensures that the prosecution is conducted professionally and efficiently, safeguarding the rights of both the accused and the public. Overall, this restriction serves the larger public interest by maintaining the integrity and fairness of the CJS (Chauhanjmu n.d.).

However, the parallel private prosecution in the form of a private complaint lacks the essential characteristics of fairness, neutrality, and adherence to the public interest. Unlike the State as the prosecutor, a private complainant may be driven by personal motives or biases, potentially compromising the integrity of the legal process. The private complainant does not possess the same level of accountability, expertise, and impartiality as the State-appointed prosecutors. This divergence raises concerns regarding the objectivity and reliability of the prosecution. Moreover, private complaints may lead to multiple and potentially conflicting prosecutions, creating confusion and inconsistency within the judicial system. By restricting private participation in the conduct of prosecution, the justice system would be able to maintain a standardized and impartial approach that upholds the principles of justice, fairness, and public welfare. (Rana, 2022)

Another implication is the principle of double jeopardy. In the *Atta Muhammad Case*, the order passed by the Trial Court, which consigned the challan case to record and declared that no further proceedings were required, was challenged by the complainant. It was held by the court that the accused persons in the case had already undergone trial for the murder of the deceased in the private complaint filed by the complainant. Since the challan case involved the same set of accused and witnesses as the private complaint, the commencement of trial in the police case would be affected by the principle of double jeopardy. In support of this view, the court referred to the *Noor Elahi's case*. Moreover, in private complaint, high level investigation is also not possible.

5. Precedence of Public Prosecution over Private Prosecution

Public prosecution takes precedence over private prosecution in numerous aspects. Prosecutors worldwide have a dual function within the CJS. While they are tasked with securing convictions for the guilty in contested criminal cases, they also bear the heavy responsibility of safeguarding the rights of the accused and ensuring that no innocent is unfairly prosecuted, convicted, or penalized (Kempinen 2006; Pirsig 1987). This is not available in private prosecution. A lawyer will only represent his client; a prosecutor represents all. Moreover, the *Berger v. United States* (Berger case 1935) case highlighted that prosecutor have a special role in a society. The Court emphasized that he is not just a normal participant before court, but rather a representative of the government with a responsibility for unbiased governance as vital as its overall duty is. In criminal cases, his focus is not solely on winning; he is to make sure that justice is being maintained. His role sets him apart from a typical advocate; his primary obligation is to pursue justice, rather than simply securing convictions (Anon n.d.-g). Furthermore, Prosecutors also have ethical duties to offenders throughout the criminal trial process, including a duty not to present false evidence at trial (Bessler 1994), but private counsel is not bound for this. Hence, the exclusion of the state from a criminal case is deemed unjustifiable, as every crime is committed against the state (Ashworth and Horder 2013). The application of the principle of double jeopardy is preventing the trial of accused individuals who have been acquitted in private complaint cases. Thus, it is recommended that law laid down by Nur Ilahi may be reviewed and an amendment be made to the existing law to address this issue.

6. Conclusion & Recommendations

The difference between public and private prosecution is outdated, as argued by Professor Daniel Richman. This boundary is a relic of a time when private prosecutors played a primary role in criminal enforcement. However, in today's context, state-run professionalized agencies carry out most criminal enforcement, possessing significant power to decide whom to investigate, charge, and convict. He points out that this outdated boundary leads to several negative consequences. Firstly, it hampers the understanding of law enforcement patterns. Additionally, it weakens traditional channels of accountability, such as judicial review, and undermines public trust in the criminal justice system (Ouziel 2021). Moreover, in most situations, entrusting private actors with criminal prosecution authority is unwise and improper. It goes against the principles of sovereignty and the essential values that guide public prosecution. Moreover, it can foster conflicts of interest, breed corruption, encourage underperformance, and erode accountability (Fairfax 2009). On the other hand, in their pursuit of "seeking justice," a sense of responsibility pervades prosecutorial work. Prosecutors perform a dual role, functioning as advocates seeking convictions while also being "ministers of justice." (Fisher 1987)

In the present, lawyers dominate criminal trials, a shift that occurred over a century, from the 1690s to the 1780s. Although the courts intend to limit defense counsel to examining and cross-examining witnesses, accused individuals are still expected to reply in-person to the charges against them, as seen

in section 342 CrPC. However, defense counsel manipulates the adversarial procedure dynamics. This ultimately silences the accused; the trial has only become a chance for defense counsel to challenge the prosecution's case (Langbein 2005). Therefore, it is prosecutor's duty to say the truth for both victim and suspects (Gershman n.d.). And only he can do justice (Zacharias 1991), not private counsel (Kempinen 2006).

Pakistan needs a responsive and efficient public prosecutor who values justice, and plays a pivotal role in upholding the rule of law. This role should be strengthened through institutional checks and balances (Farooqi n.d.; Research Society of International Law | RSIL n.d.) in line with democratic ideals, rather than solely relying on the prosecutor's individual ethics (Wright 2017). However, this does not imply removing the public prosecutor from their role through the introduction of private prosecution. Prosecutor role is still evolving (Colvin and Stenning 2019).

Based on the research findings, it is recommended the judiciary to consider adopting Justice B. Z. Kaikau's view on "the consolidation of proceedings," especially in cross cases or situations involving multiple prosecution stories and individuals. Despite the absence of a specific provision for consolidation in the CrPC, the court possesses inherent powers to consolidate proceedings in the pursuit of justice. The benefits of consolidation include cost-effectiveness as joint trials are more economical and reduce the burden on witnesses, prosecutors, and courts. It will expedite the trial process, avoiding unnecessary delays in bringing the accused to trial. Additionally, it will save the prosecutor's time due to overlapping evidence against different suspects. It will also more convenient for witnesses, sparing them from multiple appearances, and parties can stipulate undisputed noncritical cross-examination. Furthermore, it will conserve limited judicial resources and lower the cost of appeals (Dawson 1978).

Additionally, it is also recommended that the legislature reenact Section 270 of the Criminal Procedure Code, which mandates that all trials before a Court of Session be conducted by a Public Prosecutor. This measure holds immense importance in advancing justice and building greater public confidence in the public prosecution service. In this regard, it's worth noting the provision in the Indian criminal procedure, specifically Section 225, which acknowledges the role of the Public Prosecutor in conducting trials before a Court of Session. By entrusting prosecution to a qualified and unbiased Public Prosecutor, the Indian system underscores the significance of impartiality in the trial process.

Considering the impact of this provision, it is proposed that the Pakistani CrPC undergo amendment to align with the approach adopted in the Indian CrPC. Section 265-A, which currently mandates the participation of the Public Prosecutor in trials initiated based on a police report before a Court of Session, should be revised to explicitly require the Public Prosecutor's participation in all Court of Session trials. Such a modification wouldn't just bring uniformity and coherence to the CJS but also uphold the values of fairness and impartiality during trials. Entrustment of trials to capable and impartial public prosecutors for prosecution will enhance the criminal justice system, foster public trust, and protect the rights of trial participants.

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