

Federal Criminal Prosecution Service and The Criminal Justice System Of Pakistan

Kamran Adil

I- Introduction

On 30th October, 2023, a new law styled as the Federal Prosecution Service Act, 2023 was enacted. The law was long awaited. It is an important legal development, but unfortunately, it did not get much attention in the media. The purpose of the instant write up is to examine the context of the new law, its salient features and its comparison with provincial prosecution laws. As a point of departure, it may be noted that the criminal justice system of Pakistan is two tiered i.e. federal and provincial. The relationship of the federation and the provinces is regulated through the constitutional law. Article 142 of the Constitution makes the criminal law, criminal procedure and law of evidence concurrent subjects for the sake of legislation and article 143 provides the primacy of federal criminal law over the provincial criminal laws. The two articles were rewritten at the time of the introduction of the Eighteenth Constitutional Amendment in 2010. Quintessentially, the two articles preserved the earlier scheme that kept the areas of criminal law, criminal procedure and law of evidence shared responsibility of the federation and the provinces. With this division of legislative design, historically, prosecution of criminal cases was done by police in Pakistan. Only after the introduction of Crown Prosecution Service in the United Kingdom in 1986, there was a realization to separate the functions of prosecution from policing in Pakistan. Consequently, through administrative measures, the prosecution was separated from police in the Punjab in the same year. The scheme, however, was reversed in 1991. Later, in 2003, after the commitment of the funding from the Asian Development Bank (ADB), through legislation, first prosecution department was established in Balochistan by enacting the Balochistan Prosecution Service (Composition, Functions and Powers) Act, 2003. This was followed by the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005. In 2006, the Punjab Prosecution Service was established through the Punjab Prosecution Service (Constitution, Functions and Powers) Act, 2006. The Sindh Prosecution Service (Constitution, Functions and Powers) Act, 2009 completed the provincial legislation on the subject. With all the provincial prosecution laws in place, still there was strong case for introduction of the federal prosecution service as the major criminal laws like the Anti-Terrorism Act, 1997, the National Accountability Ordinance, 1999 (though it has provisions for its own Prosecutor General and other Prosecutors), the Control of Narcotics Substances Act, 1997, and the Official Secrets Act, 1923 (to be investigated and prosecuted by the Federal Investigation Agency to the

extent of civilian accused) were federal statutes. The need was acutely felt when the Islamabad High Court (that was established through the Eighteenth Constitutional Amendment in 2010) started passing orders for establishing federal prosecution service for the Islamabad Capital Territory (ICT). All these circumstances led to the establishment of the Federal Prosecution Service through this latest legislation. It may be noted that in 2019, prosecution service was established in the Gilgit Baltistan through the GB Prosecution (Functions and Powers) Act, 2019.

II- The Federal Prosecution Service (Composition, Functions and Powers) Act, 2023

The salience of the new law is that it establishes the Federal Criminal Prosecution Service in Pakistan. This is significant in many ways. First, it will separate prosecution from police in the Islamabad Capital Territory (ICT). This act will provide the control of a criminal case in court, prima facie, to the prosecution in the ICT. Secondly, it will, at least in theory, provide police an opportunity to work more professionally on the investigation of criminal cases. Thirdly, the service will bring the criminal justice system at federal level at par with the provincial criminal justice system. Some important points related to the Federal Prosecution Service Act, 2023 are:

1. It vests the 'superintendence' of the prosecution with the Federal Government and entrusts the 'administration' to the Federal Prosecutor General (FPG): this arrangement is akin to the colonial legislative design that puts 'policy' and 'governance' in the hands of generalists and the day to day work is assigned to the specialist. This dissimulation of authority and responsibility in colonial statutes, which is still continuing, has weakened the specialists.
2. The office of the FPG will be filled from the bar by the government, as per the new law. This idea needs to be reconsidered given the fact that professional prosecutors have repelled it in the provinces and this factor has not let the service grow in a natural manner.
3. The law provides for the appointment of the District Public Prosecutor (DPP) for the ICT. The DPP will be head of prosecution in the district. The relationship between the PG and DPP has not been clarified in the statute.
4. All the prosecutors other than the FPG will be appointed through the competitive process of the Federal Public Service Commission (FPSC). Their bar licenses, however, will not be suspended or cancelled. The condition of allowing bar licenses has not worked well in the provinces as

the prosecutors take part in politics of the bar by voting in elections and this is a source of administrative inertia in transfer/posting of prosecutors for rotation purposes.

5. The relationship of the police and prosecution has been statutorily recognized. The police are required to submit timely the reports to the courts through respective prosecutors.
6. The law enables the government to appoint special prosecutors. The special prosecutors will have no power to withdraw a criminal case and can be removed anytime from the assignment.
7. The financial administration of the service has been given to a Chief Executive Officer, under the law. The CEO is supposed to work under the supervision of the FPG. This is a new feature of the law as there is no such arrangement in the provincial laws.
8. The new law has been given overriding effect over the Code of Criminal Procedure and has given power to transfer prosecution work from other federal agencies to the FPG. This is very important power given the service turfs and politicization of criminal cases in Pakistan.

III- COMPARISON WITH PROVINCIAL PROSECUTION LAWS

In juxtaposition, the federal prosecution service law is not much different from the provincial prosecution laws. Similar powers with minor differences of drafting can be observed in the two sets of laws. Some points of differences are:

1. The Punjab and Sindh prosecution laws provide for establishment of a process serving agency that had to provide human resource for summons/warrants/interim orders. The federal statute does not consider it at all.
2. The Balochistan and the KP prosecution laws provide for liaison clauses that oblige the Prosecutors General of the respective provinces to liaise with the Advocates General for prosecution in constitutional courts i.e. Supreme Court, Federal Shariat Court and the High Courts; no such provision is there in the federal law vis-à-vis the Advocate General of the ICT or vis-à-vis the Attorney General for Pakistan.

IV- IMPACT ON THE CRIMINAL JUSTICE SYSTEM

There is no gainsaying in not agreeing with specialization of functions in the criminal justice system, but every such effort must be properly resourced. In case of Pakistan, new structures are established without properly investing in the field. Halfhearted and partially implemented laws only exacerbate the problems and often result in fragmentation of the already diluted criminal justice machinery

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that is under tremendous stress due to increasing population and media pressure. There is need to fund the newly established Federal Criminal Prosecution Service to make sure that the rights of people are properly protected especially in the areas of gender based violence, child protection and enforcement of anti-terrorism laws in the country.