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'In a free society the state does not administer the affairs of men. It administers justice among men who conduct their own affairs.'

Walter Lippman,
Inquiry into the Principles of a Good Society, 1937.

CONTENTS

- **Need for an Independent Prosecution Service**
- **Police Order 2002 turned upside down**
- **Police must stop doctoring *Roznamcha* to cover up illegal detentions**
- **Experts demand Independent Prosecution Service**
- **Parliamentarians, civil society demand fairer Freedom of Information (FOI) law**

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Need for an Independent Prosecution Service

Questions pertaining to the need for an independent prosecution service (IPS) have been resonating in discussions within provincial bureaucracies, assemblies, civil society and rights related circles for some time. The current IPS debate assumes significance for at least two reasons. Firstly, prosecution in Pakistan has essentially functioned as an extension of the police with devastating consequences for the ordinary citizens - who are frequent victims of mistrials, false cases, miscarriage of justice, and violation of their rights.

But prosecution is not just about getting offenders convicted in a court of law, it is a critical link between investigation and adjudication, and it seeks to ensure that the ends of justice are adequately met in the best public interest. Prosecution filters out major offenders from minor ones and the innocent, and serves as a check on investigation and contributes to the quality of justice dispensed by the courts. Presently, however, lack of an effective prosecution service is one of the reasons perpetrators of serious crimes are able to evade the law and the weak and vulnerable continue to suffer. Our prosecution services, no doubt, remain seriously flawed and need to be thoroughly revamped.

Secondly, the country's criminal justice system is in a state of virtual collapse. People have lost faith in both police and the courts, and are increasingly forced to either 'purchase' justice or accept iniquitous out-of-court settlements dictated by factors such as power, wealth and social pressure. Recent efforts at salvaging the criminal justice system have largely focused on police reforms while accord- ing insufficient attention to prosecution.

Thus public prosecutors are still the 'underdogs' of the system, under-resourced, under-trained, understaffed and generally neglected.

A meaningful reform of the criminal justice system must provide for an independent prosecution service, exercising unfettered administrative, operational and financial autonomy, staffed by a specialized cadre of well-qualified and well-paid public prosecutors under the Prosecutor General, appointed transparently on the basis of high integrity and proven ability and enjoying a constitutionally protected fixed tenure. The proposed service must be impartial, highly professionalized, socially responsive and fully accountable. While remaining under overall government control, its autonomous character should ensure the following:

- The independent prosecution service (IPS) must be immune from political and bureaucratic interference.
- The government must 'speak' to IPS through prescribed rules rather than through exercise of discretion, the standard tool for misuse of public authority.
- The IPS should function in conformity with public interest, defined by the government through expressed rules.
- The decision whether to prosecute or not under public interest, as defined in clearly laid out rules by the government, will lie with the prosecution and NOT the government.

The corrosion in Pakistan's criminal justice system is too deep and complex for IPS alone to remedy. Nonetheless, IPS will be one of the several key measures in reversing the decline of our judicial serv-

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ices. In this regard, TheNetwork for Consumer Protection took a timely initiative in convening a well attended consultative workshop on Independent Prosecution Service in Islamabad (see report inside),

enabling civil society representatives, knowledgeable lawyers, prosecutors and some senior provincial officials to intensively deliberate on this important but understudied issue in the justice sector.

NWFP implements newly enacted Prosecution Service Act, 2005 on March 1. Monthly insaaf will publish an analysis of the Act and its implementation in a subsequent issue of the newsletter. Editor.

Police Order 2002 turned upside down

Recent amendments in Police Order 2002 tend to re-politicize police performance and undermine its professional integrity.

Police Order (Amendments) Ordinance 2004 promulgated on Nov 26 negates the spirit of PO 2002 envisaging relief to the public against police excesses by depoliticizing the institution, besides making it accountable and people friendly. Amendments in Police Order 2002 have resulted in several changes:

Changed composition of public oversight

Police Order 2002 envisaged equal representation of government and opposition parliamentarians in the provincial Public Safety Commissions (PSCs). The amended Police Order provides for increased representation of the ruling party's parliamentarians in these Commissions. Each District Public Safety Commission would now include three MNAs or MPAs, three members of the district council and three independent members selected by a selection panel. Consequently, the idea of public oversight over police functions has suffered a serious blow. With almost no check on police, the amendments further endorse the politicizing of police functions.

Changed composition of the provincial selection panel

Under the new amendments, the composition of the provincial selection panel stands changed. The chief justices of the high courts are no longer required to man these panels, as against the original idea. The panel now includes the provincial ombudsman, chairman of the provincial Public Service Commission and one

member appointed by the province chief minister. In view of this new arrangement, the selection panels have lost their independence significantly, as the provincial government appoints all three members.

Merging of Public Safety Commissions and Police Complaints Authority

Under PO 2002, Police Complaints Authority (PCA) was envisaged at provincial level. PCA was provided for as recourse to public on matters pertaining to serious police misconduct. The provision for having provincial PCA has now been abolished and its functions are shifted to the Provincial and District Public Safety Commissions (PSCs). This means that the functions of public oversight and grievance redress are now vested in a single entity having majority membership from the government side. Also, the provincial and district PSCs are not sufficiently empowered to perform its functions. This has further impaired the concept of public oversight on police matters and checking police excesses.

Relationship between Nazim and the District Police Officer (DPO)

The Local Government Ordinance 2001 empowers Nazim to write Performance Evaluation Report (also known as ACR) of the District Police Officer. This reasonably rendered policing as local function. The amended Police Order though provides for chief minister of the province to okay the ACR prepared by a nazim. This is tantamount to weakening the role of nazim as well as the district government institutions, as police has been

formally made to observe provincial government's guidelines.

Provincial government dictating Provincial Police Officer (PPO)

The PPO has now been made an ex officio secretary with "total autonomy in operational, administrative and financial matters subject to policy, oversight and guidance given by the Chief Minister". This arrangement has reversed the attempts to make policing a local function independent of political interference. PPO is now made to observe the guidelines by province home departments. For instance, the PPO can only appoint a district police officer (DPO) with the approval of the provincial government [s. 15(1)]. This is a clear departure from the original idea of responsive policing as envisaged under PO 2002.

Transfers & promotions

To appoint the PPO, the federal government - and not the National Public Safety Commission - will now recommend a panel of three officers to the provincial government. The PPO, as mentioned above, can only appoint a DPO and that too with the approval of the provincial government. This amendment further weakens the attempts aimed at depoliticizing the police functions.

Station House Officer (SHO) given control over the investigation

The amended PO empowers SHOs to exercise control over investigation functions of the police. So doing overturns the idea of nurturing specialized police force, with separate mandates for watch-and-ward and investigation branches of the police.

