

A Review on the Criminal Justice System: Understanding its Structural Components and Process in Pakistan

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Abstract: *Criminal justice system is fundamental to the cause of establishing a peaceful and nonviolent society; therefore, it is pertinent to understand criminal justice procedure in detail. This study was planned to know the procedure, structure and various parts involving in the criminal justice system. A secondary method of study was adopted by reviewing academic articles and books in order to review the criminal justice system. The article presents definitions of the criminal justice system, its components and also presents a detailed account of each component. Besides, the role and functions of different components including police, court procedures, and role of judges, bail process and correctional institutions were reviewed. It is concluded that criminal justice system has evolved and still evolving in the contemporary world including Pakistan and its complex elements may be made understandable to the common citizens while looking at the changing needs and problems in various times and spaces.*

Key Words: Justice, Fundamental, Contemporary, Police, Component

Introduction

The criminal justice system of Pakistan is one of the political and historical legacies of the British led colonial rules in the sub-continent (Arshad, 2017). However, some changes and modifications were being made through adding certain Islamic elements specifically to the judicial components. Generally, the operational definition of the criminal justice system is the procedure and mechanism established for the dispensation of justice by examining criminal conduct through certain legal procedures (Ried, 1997). It is a system of practices and procedures exercised by the concerned institutions authorized to maintain social equilibrium, minimize crime by punishing and rehabilitating the criminals. The Criminal Justice system is a formal apparatus of social control comprised on various agencies of the government responsible for enforcing the law, delivering judgment over the criminal cases, and after all correcting the criminal conduct (International Crisis Group, 2010). Moreover, the criminal justice system includes certain agencies and process set up by the government for controlling and inhibiting criminal behavior through imposing punishment to the offenders. Criminal justice system comprised of components that are well coordinated in support of each other for the dispensation of justice. It is a system involving some practices by government institutions to maintain social control and check the crime rate by sanctioning those who violate the law (Munir, 2009). Although certain informal means of social control such as family, friends, and media exist in Pakistani society, these are only effective to deal with moral but not the legal aspects of individual behavior. It is only the formal criminal justice procedure which is empowered to control crime and deals with criminals.

The criminal justice system of Pakistan is considered as exploitative, defective and unequal. It is generally believed that high crime rates are associated with these inherent problems found in the criminal justice system. The criminal as well as civil justice system in Pakistan has been reported to as plagued today with the issue of uncharacteristic delays. Abnormal delay in the litigation process of criminal and civil cases has largely become protracted and axiomatic. These inherent problems in the criminal justice system are not only limited to Pakistan and other third world countries; rather, it is historical and universal in nature. It can easily be observed in any of the judicial system, which potentially harming the practice of justice against the individual during civil disputes or criminal prosecution.

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Like other countries, the criminal justice system of Pakistan has three major components including police, courts and correction. The police are mainly charged with the responsibility of investigating, arresting and collecting evidence about crime, criminal and criminal acts. Court systems, which is presided over by the judges who listen to the prosecutors, examining the provided evidence, interpret the law, and decide the rewards and punishment. The final component is a correction which includes the detainment of defendants in jail before the trial and their confinement in jail, prison or other confinement after conviction [\[Anderson, 1999\]](#).

The Police

Police occupy a central place in the criminal justice system. Police organizations are disciplined services having strict hierarchies of authority, accountability and responsibility where individual performance is measured through standardized operating procedures [\[Bailey, 1991\]](#). The history of policing begins with informal policing when all members of a community were responsible for maintaining order [\[James, 1968\]](#). With the growth of more complex societies, informal methods of policing were evolved into a more rational and formalized method of policing [\[Asian Development Bank, 2006\]](#). Major obligations of the police are to protect life, property and other recognized human rights. More specifically, their role is to prevent, detect, and investigate criminal offences, misdemeanors and other contraventions under the applicable law. Other miscellaneous functions such as monitoring large public gatherings; assisting in civil emergencies and protecting the designated individuals and premises are also included in their duties [\[Independent Commission on Pakistan Police Reform, 2012\]](#). Due to their job nature and some coercive elements such as investigation, interrogation and arrest. People in Pakistan specifically feel uncomfortable with police, albeit they are indispensable in a modern complex society. Such of these stipulated duties may or may not exist or be endorsed by the government depending on the social and political conditions of the country. In some cases, police officers make a decision on how to investigate and make an arrest under certain circumstances. They also decide on their own about the release of an arrestee without filing the criminal charge (Model Police Act, 2006).

Policing is not an extemporaneous process; rather, it is functioning under some models such as the professional model and the community-oriented model. The former is considered as traditional, and the latter is a new model emphasizing greater community involvement and participation in problem-solving [\[Brookes, 2006\]](#). The community model of policing does not exist in practice in Pakistani society, however, the formal model of policing in vogue with a strict hierarchy headed by the police chief as a central authority [\[Mawby, 1990\]](#).

Policing is a stressful job as handling tension situation such as organized and violent crimes is highly a challenging task for police personals. Moreover, temperament and personality are important qualifications for policing [\[Bradley, 2005\]](#). A primary deliberation in recruiting police is what kind of personality traits he should keep. Unfortunately, many of the issues for recruiting potential police are not followed, which is very important to consider [\[Asad, 2009\]](#). During the police recruitment, certain important aspects such as intelligence, educational qualification, skills, judgment, physique, stability and impartiality [\[Ash et al., 1990\]](#). Research studies revealed that police were found as maladjusted, cynical, authoritarian, and excessive risk-takers. They have been reported as being inflexible, penalizing and aggressive. Therefore, their recruitment may be made based on conducting their psychological examination and testing their educational qualifications [\[Bradely, 2010\]](#).

Courts: Structural Components and Process

The second important component of the criminal justice process in Pakistan is the court system. It is the crux of the criminal justice system. It occupies a central place in the state machinery and administration. Within this system, different process such as pretrial, trial and post-trial motions, petitions, appeals, plea bargaining and sentencing occurs [\[Ried, 1997\]](#). However, courts procedure and process in dealing with a criminal act is not uniform, and every state follows varying court procedure while looking at the nature of the case. In this regard, prosecutors and judges have been authorized to arrive any judgment on the cases. However, courts are blamed for its inefficiency, red tape, buck-passing, delayed trials, complications and misappropriations [\[Ried, 1997; Charles, 1993\]](#).

The court is an integral part of the overall judicial system, which is empowered to process and decide the civil as well as criminal cases. Courts are working through certain formal procedures under the civil and criminal law and constitutions. It is pertinent to discuss some legal constructs to understand and analyze how courts are functioning. One of these concepts is jurisdiction, which means the authority of the court to hear and decide the legal cases. The courts cannot hear a case unless it has certain

jurisdiction over the subject matter of that case [\[Levenson, 2013\]](#). The jurisdiction of courts may be limited to civil or criminal cases, and inside a particular jurisdiction, their power and discretions may be further limited to deal with misdemeanors or felonies. Some court has appellate jurisdiction under which they have been authorized to hear and decide the appeals brought to them by the people from the lower courts [\[Fairchild, 2000\]](#). Often, courts receive some cases for which there are no fixed rules or law is available to interpret; judges are authorized to take help from the decisions already held in the legal procedures [\[Ried, 1997\]](#).

Once a person is arrested and charged, he or she must pass through the criminal justice procedure. The district attorneys on the local level have the power to charge the arrested with a specific crime and take legal action against them. If a person does not manage to pay for an attorney, he or she is supported by a public prosecutor. The system is established in such a way to ensure flexibility at all levels for smooth functioning and management of the overall workload in the judicial process [\[Gibbon, 1995\]](#).

Difference between the trial and appellate courts has been maintained. Trial courts decide the cases on the basis of accurate pieces of evidence. These decisions could be made by a jury or by a judge [\[David, 1999\]](#). When a trial court decides against a defendant, he or she may exercise his right to challenge the decision in the state or federal court. To maintain the dignity and trust of the lower courts, appellate courts are entertaining only limited cases appealed. The appellate courts have the authority to affirm or reverse the decision taken by the lower courts. Normally, the reversed case is sent back to conduct another trial that this case is remanded.

In the criminal justice system, lawyers act as prosecuting attorneys and their role in the criminal justice procedure is very important. The prosecutors are working under certain obligations and bound to obey the rules and ethics of their profession and constitutional mandates [\(Suddle, 1995\)](#). The function of lawyer, prosecutor or defence attorney is to protect the legal right of the defendants. As part of their duty, they should bring solid facts, evidence, and arguments and conduct a trial free of favouritism in which the case may be proved beyond any doubt and according to the legal procedures [\[International Crises Group, 2010\]](#).

Correctional Institutions

The third tier of criminal justice is the system of the correctional institution, which includes jails and prisons. The use of confinement for restricting people against an immoral act is primordial, but placing offenders in a formal institution for the purpose of punishment and rehabilitation is relatively a modern practice. The evolution of prison from severe corporal punishment had taken place in the early 18th century in different countries of the globe [\[Ried, 1997\]](#). In any criminal justice process, the convicted person who has been adjudicated for criminal acts are brought to the jail or prison for supervision to the local level or the state level by looking at to the nature of the crime and the length of imprisonment. In practice, lower offences are monitored at the local level, while high profile offences are sentenced to be supervised at the national level. According to law, persons who have already been served a prison sentence will be put on parole normally for a period of 3 years. Unlike parole, the majority of criminals are principally sending on probation after their incarcerated period [\(Elezebath, 2007\)](#).

Usually, most of the adult offenders are imprisoned in the jails, prison, or any other community-based institutions. In some jurisdiction, the under arrested adult is put behind the bars which are temporarily holding facilities for short term custody where they wait only for court hearings. Usually, police are held responsible for operating the lockups at the police stations. They may be used to detain juveniles until their parents or other guardian takes their custody [\[Christopher, 1998\]](#).

It has also been found that prisons are meant to confine the serious offenders who have been sentenced for a long period. The term prison has been previously used synonymously with highest security confinement places. There are several types of prison. In recent years, some prisons, or designed wings within them, have become total institutions, housing the most dangerous inmates. Once a criminal is brought to jail, his identity is tried to be completely changed. All his possessions, including titles, medals and uniform, is changed. He is allotted with a number in place of his name, and he is dressed in a proper jail uniform. This practice has been termed as a degradation ceremony, which is mostly practised in developed nations. They are confined individually and permitted out of their cells for short periods only [\[Christopher, 1998\]](#).

Stages and Procedures of Criminal Justice

The criminal justice process involves the following stages, albeit every state has its own method of

procedure to follow. Following general steps are involved in the criminal justice system.

If a person charged with criminal activity, the police need to have a search warrant that could allow them to search the surroundings, including the premises of the suspect [\[Bradley, 2005\]](#). A judge is responsible for examining the submitted information by the police and for deciding the case in the light of certain substantial evidence. Judges need to search whether the concerned officer has come up with sufficient facts that signify a clear indication of a crime at the point reported in the warrant. Having a warrant is not mandatory in certain exigencies. Police officials can investigate witnesses, and even interrogate suspects with the condition to safeguard the constitutional rights of the suspected are protected [\[Glanville, 2010\]](#).

Police have the power to arrest a person if they have a probable cause which makes them believe that a crime or misdemeanour was committed. The police need to have a warrant prior to take a suspected individual into their custody. If police witness a person while committing a felony or minor crime, he can arrest him/her without having a warrant. Police can also arrest a person when they have a probable cause that the person has conducted a felony, even if the crime has not been committed (Model Police Act, 2006). Police can also arrest a person without a warrant subject to the condition that he will do it in a public place; otherwise; they may obtain a warrant before arresting a person. Usually, the period for the law enforcement agencies and officials is short, which is normally between 24 to 48 hours that is varying across the states [\[Quinney, 1994\]](#).

Law enforcement agencies are authorized either to file a criminal charge before or after the arrest of the suspected person. A complaint is being reported with the criminal justice procedures in action. Furthermore, a prosecutor can also place the criminal justice procedure in action when he uses his authority to file a written charge, which is called information. If a complaint is made, the relevant officers are empowered to take the charged individual in their custody pending relevant proceedings, such as indictment and the fixing of bail [\[Englwood, 1999\]](#). Some countries practice the procedure of an initial hearing within which a judge takes the evidence given by the prosecutor to examine the existence of a sufficient reason in supports of the charges made against the convicted individual. Often, the judicial procedure is initiated with the filing of a complaint normally followed by a grand jury, which may be resulted in an accusation, or preliminary hearing. These cases which include, complaint, indictment etc. the ultimate document is only an accusation against a convicted individual [\[Israel et al., 2003\]](#). An arraignment is considered as the formal appearance of charges in the court openly. This presentation is called a preliminary hearing that is again varying across states. In an arraignment, the charges are openly presented to the concerned individual by the judge, and the defendant is usually allowed to plead against the charges. His lawyer may also be attending the gatherings if he has no lawyer; an attorney is appointed to stand for the defendant.

Bail is one of the integral parts under criminal proceedings whereby an accused person puts forth some money or property as security in order to ensure his/her attendance in the forthcoming criminal proceedings. The bail could be presented in cash, in the form of a bond or an assurance of property etc. [\[Trotter, 1990; Ried, 1997\]](#). To be released on bail is not guaranteed. Granting of bail could be denied if a judge considers that a charged person can flee and his crime is serious. An individual with a less serious offence and having a job and family, which could further support the court, could be granted bail on flexible conditions [\[Scollin, 1972\]](#).

After the charges have been made, the defendant's lawyer may consistently negotiate with the prosecutors to reconcile the matter whether they may reach a plea bargain. Plea bargain normally involves the defendant pleading guilty to minor charges reported than those in the complaint, indictment or information. This is also mean for a guilty plea to only one against the numerous charges. It may also be included in the plea-bargaining that to agree on the prosecutor on a minor recommended sentence for the charges to which the defendant is also concurred to plead guilty [\[Zmann, 1990; Ried, 1997\]](#). If a plea agreement is not fixed among the parties, then the proceedings further move into a trial stage. Usually, the trial is conducted in a speedy manner with the condition that the defendant does not waive the speedy process in case he asks some time to get him prepared for defence. A defendant convicted for a case, which is punishable by six, or more months of incarceration, he is liable for a public trial by the jury. The defendant has also entrusted with the right to opt to give up that right, either by pleading guilty or by approving to decide his case by the judge. He also has the choice to refer to the bench trial under which the judge carries out the truth-finding role of the jury. A defendant may choose to go for a bench trial and to pass up the jury trial under certain conditions which include cases with certain complex legal issues that a jury could not be able to easily comprehend the case and similarly in the cases which the defendant thinks that a jury may be irritated [\[Englwood, 1999\]](#).

The defendants have also been granted the right to bring some witnesses and certain other evidence in support of their case. They have also given the right to tackle and check the witnesses presented by the prosecution. After the submission of evidence by the prosecutor, the judge orders the jury by giving an order. The prosecutor presents pieces of evidence before the jury based on the presented facts presented and the law under consideration. The orders in which presentations are made varies across the courts. In a few cases, the court dismisses the charges soon after the prosecutor present the evidence (Zamann, 1990). When the court concludes that the prosecutor is unable to bring any substantiated proof to support the offence, then the court can decide without processing the same to the jury for further consideration. As soon the jury arrives at a judgment, its finding is read out to the defendant in the court. In few cases, based on the evidence provided and the instructions ordered by the court, a jury has the authority to convict a defendant of a minor crime than noted in the indictment (Elizabeth, 2007). Majority of the states have a complex appellate court system in which an appeal is taken by a middle-level court from the trial courts that in many cases not further processed to the upper-level appellate courts. It is also not mandatory for the middle-level courts to process the appeals from the lower courts. The right to an appeal is reasonable in a criminal procedure in which legal omissions could occur at any stage of the criminal justice process. The errors may be of including inadmissible evidence that violates the defendant's legal rights and importantly, the lacking of sufficient evidence to support a verdict of guilty (Asian Development Bank, 2006).

Conclusion

It is concluded that the criminal justice system is a ubiquitous phenomenon, and its operational procedures are varying across nations and communities. However, many of its procedures, process and stages are universal and uniform which aims to serve the legal and constitutional rights of the individuals, groups and the community with the intention to enhance and ensure public security by establishing just social order. This is possible only when all the individual actors, institutions and parties involving directly or indirectly in the legal system put integrated efforts and strategies. To fulfil this objective, the criminal justice system deals with different parties which include sufferers, the accused, criminal justice officials and institutions such as court, police and prisons. For its formal and complex nature, it is difficult for a nonprofessional to operate in the formal and highly bureaucratized system. This study has concluded that certain elements inside the justice system are still facing duplicity and complexities, which needs to review in order to make it more easy and friendly users. To keep pace with changing world and to fulfil public demands, it is pertinent to develop an improved information and participation channel for educating the public about the process and procedures of the criminal justice system. Understanding, dissemination and replication of various logical and critical practices are needed for establishing a crime-free society.

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