

## **An Analytical Study of Criminal Justice System of Pakistan (with special reference to the Province of Punjab)**

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### **Abstract**

*The criminal justice system that Pakistan adopted in 1947 was tailor-made by the British colonial rulers that fits their needs and suits their colonial designs. The Pakistan Penal Code, 1860 and other laws creating offences and fixing punishments (substantive criminal law), the Code of Criminal Procedure, 1898 and other adjective laws including the law of evidence are classical examples of the British legacy. The march of civilization has loaded society with multiple complexities. Twenty-first century society is markedly by different from nineteenth century society. Technology, information explosion, rapid socio-economic cum-scientific changes have made the social and cultural norms at once multi-layered. This has rendered P.P.C. and Cr.P.C. inadequate, occasionally outdated and in many cases redundant. The change became imperative. President General Zia got promulgated Qisas and Diyat and Hadood Laws in 1979 and the Qanun-e-Shahadat Order in 1984. This was a half-hearted effort. The inadequacies of P.P.C. and Cr.P.C. are more than to meet the procedural practices of day to day need. Though the Code of Criminal Procedure, 1898, is the principal criminal procedural law of Pakistan yet we find some provisions relating to criminal safeguards provided to the accused in our Constitution of 1973 in the form of different articles such as right to life and liberty (Article 9), safeguard as to arrest and detention (Art. 10), protection against retrospective punishment (Art. 12), protection against double jeopardy and self-incrimination (Art. 13). Now after the 18<sup>th</sup> Amendment, a new Art. 10-A has been inserted to ensure fair trial. In spite of all that some radical changes are required for the overhauling of the existing criminal justice system of Pakistan. The purpose of this paper is to point out the main lacunas or shortcomings of our criminal justice system and provide viable recommendations to the legal fraternity so that necessary steps may be taken for its improvement.*

**Key Words:** Criminal law, adversary system, inquisitorial system, substantive law, adjective law, criminal justice.

### **Introduction**

Our criminal justice system is not delivering due to multiple ailments that range from reporting of crime to the police, mal-practices during the course of investigation, preparation of report under section 173 of Cr.P.C. by the I.O., submission of challan in the court by the Public Prosecutor without application

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of his independent mind owing to his tied hands and subsequently trial at the mercy of the defence counsel. Each steps has many slips and shorts at enforcement, judicial process and correction stages. The inbuilt inadequacies are rendering the system ineffective, the accumulation of the grievances of the complainants or aggrieved persons are posing big question mark to its performance. Patch work to improve and make it effective was done half-heartedly, thus remained ineffective. A scrupulous effort with pragmatic orientation is a must in the given circumstances. The scope of improvement must inter-relate all the shortcomings, both of substantive and procedural nature in accordance to the spirit of time. The anger and frustration that has been accumulating against the system over the decades is bound to trigger up in political chaos, and radicalism in society. The mass killings, blind murders and massive scale crime rocketing is less of social mal-adjustment and more of deprivation of our judicial delinquencies. Meaningful changes are must – a detailed study of historical contexts along the comparison of judicial system of the advanced countries will provide a practical insight into our shortcomings in the system and practical suggestions to improve it may help to pacify the lava already brewing in social echelons to social and administrative anomalies.

The Criminal Justice System encompasses the whole gamut of collection of evidence during the course of investigation, production of evidence before the trial court by the prosecution and its rebuttal by the defence counsel. Each step needs utmost care and diligence. To make the things easy to understand it is important to go through the important concepts of the System. Justice (R) Dr. Munir A. Mughal (2009) has explained this term beautifully in these words, “A system that deals with the crime and the criminals with a view to maintaining peace and order in the society”. But, Wikipedia has defined the concept of ‘criminal justice system’ in different context by highlighting that “Criminal Justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts.” It has been further elaborated by saying that the criminal justice system “consists of three main parts: (1) law enforcement (Police); (2) adjudication (courts); and (3) corrections (jails / prisons, probation and parole).

In fact, an efficient and effective system of criminal justice not only provides an appropriate remedy to a victim of crime but also takes care of the legitimate rights of the accused. It protects and respects the rights of all concerned with due regard to the ultimate end of dispensation of justice without fear and favour but unfortunately our system of criminal justice has failed to achieve these objectives and that is why our Supreme Court observed that “people are losing faith in dispensation of criminal justice by ordinary criminal courts for reason that they either acquit the accused persons on technical grounds or

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take a lenient view in awarding sentences. It is high time that courts should realize that they owe duty to the legal heirs / relatives of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offence”.

### **Nature of our system of Justice?**

Now, this question arises: “What is the nature of Criminal Justice System of Pakistan?” To find out the answer of this question, we have to study the two well-known systems of judicial procedure of the world: (1) Adversary System; and (2) Inquisitorial System

#### **i) Adversary System**

In Adversary System, the role of a Judge or a Magistrate is like a Referee or a Neutral person and it is the prosecution that has to prove its case beyond any shadow of doubt. Justice (R) Fazal Karim (2003) in his book “Access to Justice in Pakistan” has stated: “The nature of adversary litigation is such that it is the parties who are responsible for the preparation and presentation of their cases during the interlocutory stages and at trial. They decide on the legal and factual issues to be presented to the court and have complete control in the matter of factual investigation for that purpose. This necessarily means that the pace at which proceedings are pursued is largely dictated by the parties and the traditional role of the court is to adjudicate when called upon to do so.”

Adversary system has been defined in the Black’s Law Dictionary in the following words:

“Adversely system is a procedural system, such as the Anglo-American legal system involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker. – Also termed adversary procedure; (in criminal cases) accusatorial system. Accusatory procedure”. This system has been further elaborated as follows:-

“The term adversary system sometimes characterizes an entire legal process, and sometimes it refers only to criminal procedure. In the latter instance, it is often used interchangeably with an old expression of continental European origin, ‘accusatorial procedure.’ And is juxtaposed to the ‘inquisitorial’ or ‘non-adversary’ process. There is no precise understanding, however, of the institutions and arrangements

denoted by these expressions". (Black's Law Dictionary, 2009).

The adversarial mode of proceeding is open to abuse resulting in unjustifiable and inexcusable delays and that it has been rightly said by Sir Jack I.H. Jacob (1982), that "it affects the litigant parties as well as the courts and even the State itself; it inhibits the recourse of deserving litigants to the courts; it induces settlement which may be neither fair nor just; it offends public opinion, and it diminishes the regards and respect for the law and the legal system."

## **ii) Inquisitorial System**

In the inquisitorial system, on the other hand, it is the duty of the Judge to find out the truth. Right from its inception, the judiciary takes over the case. While both the systems have the same object in view namely finding out the truth, this is the main distinction between the adversary and the inquisitorial systems.

Black's Law Dictionary has highlighted this system in these words, "A system of proof-taking used in civil law, whereby the judge conducts the trial, determines what questions to ask, and defines the scope and the extent of the inquiry. This system prevails in most of the continental Europe, in Japan, and in Central and South America".

## **Is the mode provided in the Code of Criminal Procedure, 1898 adversarial in nature?**

As this Code was enacted during the British time, and the system being followed in England was adversary system, it may be said that the procedural system in Pakistan is also adversary. There is however, nothing in this Code expressly so saying and the question whether our system is adversary or inquisitorial is a matter of inference. In this connection, two things readily occur to mind. The first is that Pakistan is an Islamic Republic and her 1973 Constitution among others, enables the Muslims "to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Qur'an and Sunnah." (Preamble of the Constitution of the Islamic Republic of Pakistan, 1973.)

In the report of Law Commission 1967-70 (Commonly known as Hamood-ur-Rehman Report), the commission has made a comparative survey of different procedural systems; showing the procedural law in Islam as more inquisitorial than adversarial in nature. Secondly, speedy trial and expeditious disposal of cases is the essence of any system of law; delay in trial by itself constitutes

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denial of justice. In the United States, speedy trial is one of the constitutionally guaranteed rights. The sixth amendment to the United States Constitution provides that “in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.” (Sixth Amendment of the Constitution of the United States of America.) There is no provision in our Constitution expressly guaranteeing speedy trial as a fundamental right but it was held by the Supreme Court in Hussain Ara Khatton case (1979) that “the right to speedy and expeditious trial is included in the right to life and liberty guaranteed by Article 9, which corresponds to Article 21 of the Indian Constitution.”

However, after the 18<sup>th</sup> amendment the concept of “fair trial and due process of law” has been included by inserting Article 10-A which is an addition in the fundamental rights already guaranteed in our Constitution. (Inserted by the Constitution, Eighteenth Amendment Act, 2010).

### **Our system of justice is mixture of both adversarial & inquisitorial systems**

These considerations must weigh heavily in tilting the balance against adversary system, if the latter means that the presiding judge of the court is helpless in controlling the pace of the proceedings and preventing the process of the law from being misused or abused. In fact, there are provisions both in the C.P.C and the Code of Criminal procedure strongly militating against the system followed by the courts in Pakistan being purely adversary system. The indications are that it is a mixture of adversarial and inquisitorial systems or at least there is nothing in our procedural laws to prevent the courts from making it so. For example, section 24 of the Code of Civil Procedure empowers the High Court or a District Court “of its own motion” to transfer any suit or appeal from one court to another. As regard the criminal trial the parties are the State and an ordinary citizen and their position is so unequal that it will be wholly inapt to describe the criminal system of trial as adversarial in nature. Thus, there is compelling evidence in the Codes themselves showing that the rules of procedure are not masters but servants.

## **Historical Perspective**

The history of development of legal system in the sub-continent can be divided into three main parts which formed basis of the Criminal Justice System in Pakistan. These three periods of the history are briefly discussed below:

### **i) Ancient Period**

The first period is from 1500 BC to 1500 AD which pertains to the Hindu dynasty. The information in respect of the judicial system during this period is not very clear. It has been ascertained from the ancient books like Dharamshastra, Smiritis and Arthashastra, and commentaries of the same by historians and jurists. According to these sources, the king used to be the Fountain of Justice who also discharged judicial functions. In this task, judges as well as his ministers assisted him. He was the final judicial authority and court of ultimate appeal. The court of Chief Justice existed in the Capital in addition to the Court of the King. This Court was next to the King's Court and appeal against its decisions lay to the King's Court.

In the villages, local level courts used to provide justice, through the assembly of the village consisting of the caste or the family. The village Headman acted as Judge / Magistrate for the community. Decisions by such tribunals were usually through conciliation. The decisions of village / town courts / tribunals were appealable in the higher courts and final appeal lay before the King's Court. Besides, judgments by the Courts, the system of arbitration was also invoked.

The law applied in these village courts was customary and moral as no formal rules existed. In that system, the aggrieved party used to lodge its claim and the opposite party was supposed to submit its reply. The parties at dispute had to produce their witnesses in support of their claims. After the trial the case was decided and decision was implemented.

### **ii) Mughal Period:**

The Muslim period began in the subcontinent in the 11<sup>th</sup> century A.D. In the beginning several Muslim Kings ruled India which continued till 1526 A.D. After that the Mughals came and ruled till the middle of 19<sup>th</sup> century. All these Muslim rulers had their own way of administering justice in their empire.

During the period under reference, the Islamic Law was generally applied in the administration of justice but the rulers gave sufficient space to operate the

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customs and traditions of the local population in settling the secular matters. In fact, they were not very religious minded and had a tendency to use Islamic laws along with the local customs and practices as far as possible. The courts were set up at different levels in the empire such as Tehsil, District, Provincial and the Central levels. All these courts derived their authority from the King who was also the highest court of the time. The King was administrative as well as judicial Head and used to exercise original and appellate jurisdiction, both in dealing with judicial matters. It is a credit of the Mughals that they improved the system and set up various levels of administrative units. They retained the "Hindu Panchayat System" which consisted of elders of the Hindu community. They used to settle their petty issues by mutual consultation and mediation at their own level. However, at the town level and above the courts were set up. The courts of Qazis were established at district and provincial levels. It is interesting that the system during this period was so primitive in nature that neither territorial jurisdiction of each court was defined, nor there was a clear cut distinction between the Revenue and Criminal courts. Similarly, no pecuniary jurisdiction was fixed and the plaintiffs could file their suits / cases in any court of any town or district. Same was the case in respect of appeals and a complainant had an opportunity to lodge his complaint before another court if he was not satisfied with the decision of a court.

Javaid Aslam (1994) in his book, "Deputy Commissioner in Pakistan" has stated that "in 1784, Pitt's India Act was introduced which paved the way for far-reaching administrative reforms in India. The office of District Collector was established and he was entrusted with the collection of land revenue and had practically no other duty. Under the provisions of the Regulation Act 1784, the office of the District Judge was established, the judicial and magisterial work of the district was entrusted to newly appointed Judges." He has further highlighted that "the Commissioners supervised the work of Collectors and judge-magistrates. They possessed wide executive discretion, also acted as Sessions Judges and held assizes within their jurisdiction. In 1831, the Sessions work was transferred from Commissioner to District Judges while the magisterial work of the District Judges was transferred to the Collectors. The District Judge thus became the District and Sessions Judge while the District Collector assumed the added powers of District Magistrate." (Aslam, 1994:19)

The judicial system during the Mughal period was very effective because the learned and honest persons were appointed as judges who were directed to be fair and impartial. In case of complaints and corruption they were removed from the office. As regards procedure adopted by courts of that period, it was not much different from that of today. On receipt of a complaint, the court used to call the opposite party to submit its point of view. In case of confrontation,

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both the parties were required to give witnesses and evidence as a proof of their claims. However, the judge was also at liberty to conduct inquiries at his own level too, to find the facts of the case. Based on the evidence and inquiries, the cases were decided by the Judges. The parties to dispute could present their case themselves or through an agent, familiar with the court procedure.

#### **iii) British Period:**

When the British rule was established in the sub-continent and the role of East India Company changed from a trading company to a territorial power then it was authorized to decide the cases of its subjects in addition to its own employees. Naturally the Britishers applied English Laws in deciding their own cases in English Courts. Initially, they established courts in Bombay, Calcutta and Madras. The native subjects were governed under separate courts known as Sadar Dewani Adalat and Sadar Nizamat Adalat, which dealt with civil and criminal cases respectively. These courts applied local laws in their proceedings.

In the Annual Report of the Lahore High Court, 2013 it has been stated that “Prior to 1830, the conditions prevailing in the Principalities, ruled by independent Chieftains in the Punjab, were deplorable. Crime was rampant and had become a hereditary profession. Neither there were any judicial courts nor written laws nor any established authorities to maintain or enforce them. The cases were decided by Chieftains according to their own caprices.” (Lahore High Court Annual Report, 2013:23). It has been further highlighted that “For the first time in 1849, a Board of Administration was constituted and Punjab was divided into Divisions, Divisions into Districts and Districts into Tehsils. The Divisions were under the charge of Commissioners, Districts were controlled by Deputy Commissioners and Tehsils were supervised by Assistant and Extra Assistant Commissioners. By 1864, the necessity of expanding judicial machinery was keenly felt. A bill for the formation of the Chief Court of the Punjab was introduced on 16<sup>th</sup> February 1866 and the Chief Court Act-IV of 1866 was promulgated by the Governor General. On 17.02.1866, two Judges were appointed. In the same year a Civil Procedure Code was made applicable to the courts. In 1884, the following classes of courts, subordinate to the Chief Court were constituted:

The Divisional Court.

The Court of the District Judge.

The Court of the Subordinate Judge.

The Court of Munsif.” (Lahore High Court Annual Report 2013 at p. 13)



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S.K. Mahmud (1988) in his book, "District Administration" has narrated that "the pattern of administration in North India was adopted by the British largely from the Mughal Administration. This is reflected both in the territorial divisions and the Persian nomenclature of officials such as the Kanungo. Within the Mughal system, there was a separation of the judicial functions from those of revenue collection and enforcement of orders. From the Chief Judge, Qazi-ul-Qazat the chain extended through Qazi-i-Subah at provincial level, to the District Judge, or Shariat Panah. Yet in practice, these judges had less authority than that at Nizamat. In 1864, during the British Rule, the office of Qazi was abolished. From 1793, covenanted servants were appointed to the post of District Judge. Then followed a series of adjustments between the collector and the Judge, whereby revenue, police and magisterial powers were passed from one to the other. Finally, the District Judge emerged as the tribunal in civil cases and in serious criminal cases but the collector as District Magistrate retained a plentitude of judicial powers. While the Deputy Commissioner was invested with dual authority as Collector and Judge, the Divisional Commissioner served as a Court of Appeal." (Mahmud, 1988:8-9)

The Code of Civil Procedure, 1908 created principal civil courts, namely, the Court of District Judge, the Court of Additional District Judge, the Court of Civil Judge and the Court of Munsif. Their territorial and pecuniary jurisdictions were also defined. Similarly, criminal courts were established under the Code of Criminal Procedure, 1898 and substantive penal law was also framed in the form of Indian Penal Code (I.P.C.)

### **General Principles governing International Criminal Trials**

Each international court such as International Criminal Court (ICC), International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR) has its own rules of Procedure and Evidence which may come generally accepted by states and these turn into general international rules. However, this is a gradual process which takes a number of years. "These principles, which also give rise to basic human rights of the defendant (as well as, whenever appropriate, of the victims and the witnesses, are as follows: (i) the presumption of innocence (that is, the right of accused persons to be presumed innocent until proved guilty); (ii) the right of the accused to an independent and impartial court; (iii) the principle of a fair and expeditious trial; (iv) the principle whereby the accused must be present during trial (that is, the prohibition of trial in absentia)." (Antonio Cassese 2003:389).

**Some Cardinal principles of our administration of Criminal Justice:**

The following cardinal principles of the administration of criminal justice have been laid down by the higher courts through their judgements pronounced from time to time for the guidance of the subordinate courts:-

1. "Prosecution has to succeed on its own merits. It has to prove case against accused beyond reasonable doubt if any dent is created by the defence, it is to be resolved in favour of accused." (Ahmad Saleem's case, 1997).
2. "It is cardinal principle of administration of criminal justice that justice should not only be done but should be seen to have been done. Short cut methods in doing justice cannot be appreciated." (Mst. Azima's case, 2000).
3. "It is settled principle of criminal justice that accused person is not required to prove his defence plea or to be definite in this defence. Benefit of doubtful circumstances must be given to him. If defence plea is spelt out from prosecution evidence itself, then the benefit of it cannot be denied to accused." (Fazalay Muhammad alias Khangai's case, 2004).
4. "It is cardinal rule of criminal law that an accused is presumed to be innocent until prosecution proves its case against him beyond shadow of reasonable doubt. If prosecution fails in its duty, which never shifts to defence, accused is entitled to benefit of doubt." (Liaqat Ali & Amanat Ali's case, 1998).
5. The basic purpose of criminal law and criminal justice administration is to save the society from evil, to free it of crime, or at least, to make crime an unpleasant detestable, unattractive and unacceptable activity or career. The criminal law, thus, has to be interpreted, applied and enforced in a manner so as to achieve these objectives. A dynamic and progressive approach in the application and enforcement of criminal law is required so as to eliminate the mischief which has crept into the criminal justice administration whereby accused frustrate its provisions by deceit, cleverness, sham excuses and contrivances or get away from the rigours of law due to loopholes in the law or procedure." (Niamat Ali's case, 2001).
6. "Courts are required to see the cases on the basis of the entire scenario which develops in the shape of a story or a version and if there is an overall coherence between the factums of forming the basis of a case, then the minor discrepancies can

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be overlooked being of no consequence.” (Muhammad Shahbaz’s case, 2002).

7. “Fundamental principle of criminal justice is that an accused person is always presumed to be innocent unless prosecution established his guilt beyond shadow of reasonable doubt. Fair and expeditious trial is right of an accused.” (Sardar Ibrahim’s case, 2009).
8. “Accused has no vested right to be tried by a particular Court. If bare reading of allegations levelled against him, *prima facie* make out a case to be tried by a Special Court to which it is sought to be transferred, then no exception can be taken to it. Any other interpretation would lead to an anomalous situation and would result in parallel proceedings.” (Akhtar Ali’s case, 2004).
9. “Evidence should not be considered in isolation but whole of it should be taken into consideration.” (Razzaq’s case, 2008).
10. “While deciding a criminal matter it is the quality and not quantity of the evidence which matters.” (Bao Saleem’s case, 2008).
11. “Supreme object with the Court always is to administer even handed justice to parties in a criminal case without unreasonably leaning in favour of a party, nor depriving the other party of its due right to offer defence. Court must keep the scale of justice even to both sides and the conduct of proceedings must visibly be reflective of its clean and unbiased mind in every sense.” (Rehmat Ali’s, 2005).
12. “Maxim ‘falsus in uno falsus in omnibus’ is not applicable in prevalent system of criminal administration of justice and there is no rule of universal application that here some accused persons have not been found guilty, the other accused would ipso facto stand acquitted, because the Court has to sift the grain from the chaff.” (Muhammad Zubair’s case, 2002).
13. “Each criminal case would stand on its own footings. Facts and circumstances in one case could not be quite similar or on all fours to the other.” (Shamshada’s case, 2004).

## **Comparative Study of Criminal Justice Systems working in Leading Countries of the World**

### **United States of America**

In the United States, criminal justice policy has been guided by the 1967 President’s Commission on Law Enforcement and Administration of Justice,

which issued a ground breaking report, “The Challenge of Crime in a Free Society”. The Commission suggested a “systematic approach to criminal justice”, which improved coordination among law enforcement, courts and correctional agencies. Christopher E. Smith has commented in his book that “The American Criminal Justice System reflects a commitment by society to prevent and control crime while dealing justly with those accused of violating criminal law. It is a system of people, politics, and procedures that interacts dynamically with agencies at all levels of government and with the interests and values of society at large. When we study the criminal justice system, we are studying a microcosm of American society.” (Cole & Smith, 1998).

### **United Kingdom**

The criminal justice system in United Kingdom aims to reduce crime by bringing more offenders to justice, and to raise public confidence that the system is fair and will deliver for the law-abiding citizens. The system’s salient features are that one is innocent, unless proved guilty that it works on adversarial principal in which the Judge is just an umpire and the burden for proving an offender guilty is on the prosecution. It provides a lot of protection to the rights of suspects or accused and gives benefit of doubt to the accused.

### **Canada & Sweden**

In Canada, the criminal justice system aims to balance the goals of crime control and prevention, and justice (equity, fairness, protection of individual rights) whereas in Sweden, the overarching goal for the criminal justice system is to reduce crime and increase the security of the people.

### **China**

As regards China, “she did not have a code of substantive or procedural criminal law, except a few statutes like Punishment of Corruption Act of 1952 and the Arrest and Detention Act of 1954. The reason for lack of codification was the bias of Mao against bureaucratization and preference for the mass line accounted mainly for Beijing’s past emphasis on the social (informal) model of law over the jural (formal) model and on the politicization of the legal process. However, the purge of the “gang of four” and their followers and the commitment to modernization of Chinese society by post-Mao leaders have created a new setting for improvement of China’s legal system. The National Peoples Congress adopted in July 1979 seven major legal codes like Criminal Law and Law on Criminal Procedure etc. The new law has made a little change. The court system is still composed of the Supreme People’s Court, the higher people’s courts, the intermediate people’s courts and the basic

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people's courts. In addition, there are special courts that include military courts, railway transport courts, water transport courts and new forestry courts. The new court law reiterates the 1954 provisions concerning judicial independence, equality before law, public trials, the right to defence, judicial committees and the two-trial (one appeal) system. The Criminal Law is devised to protect, first of all the socialist order and next, the people's personal rights." (Leng, 1981:440-469).

### **France and Germany**

The Criminal Justice System of France and Germany is based on the "inquisitorial principles". Here, the dominant role in criminal inquiry is played, at least in theory, by the court. A dossier is prepared to enable the judge taking the case to master its details. The judge then makes decisions about which witnesses to call and examines them in person, whereas the prosecution and defence lawyers are assigned a subsidiary role. The judge has wide investigative powers, but more frequently this preparatory task is carried out by the prosecutor and police.

### **Australia**

In Australia, in the 1960s the thinking developed that crime is a business oriented economic activity. It implies that severity of punishment (representing cost of criminal behaviour) will reduce crime. So, it is basically a cost-benefit ratio. Another impact is that greater the crime rate, greater the resource allocation on Criminal Justice System to ensure more convictions and imprisonments to clean up society. The population, education, unemployment rates are considered directly related to crime rate and several economic, socio-economic measures combined with length of sentences are regarded to be a solution of the crime problem. The immigrants from other countries, the per capita income, age and sex of offenders i.e. males aged between 18 and 24 are the factors influencing the Criminal Justice System in Australia.

### **Criminal Justice System in the Province of Punjab**

There is a High Court in the province of Punjab with its principal seat at Lahore and its Divisional Benches at Multan, Bahawalpur & Rawalpindi. There are Sessions Courts in each District of the province headed by the Sessions Judges who deal with the Criminal cases. Then there are further subordinates courts of Additional Sessions Judges and Judicial Magistrates. Criminal cases punishable with death and imprisonment for life as well as cases arising out of the enforcement of laws relating to Hudood are tried by Sessions Judges. The Court of a Sessions Judge is competent to pass any sentence authorised by

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law. Offences not punishable with death are tried by Judicial Magistrates. An appeal against the sentence passed by a Sessions Judge lies to the High Court and against the sentence passed by a Judicial Magistrate, a Special Judicial Magistrate or a Special Magistrate to the Sessions Judge if the term of sentence is up to four years, otherwise to the High Court.

Working strength of judicial officers in the province of the Punjab during the year 2013 is depicted in the following chart:-

<b>Category of the Judicial Officers</b>	<b>Working strength in the field</b>	<b>Working strength on ex-cadre posts</b>	<b>Total</b>
District & Sessions Judges	36	80	116
Additional District & Session Judges	288	11	299
Senior Civil Judges-cum-Magistrates + Judge Small Causes Court	36 + 1 = 37	02	39
Civil Judges-Cum-Magistrates	816	2	818

Source: Lahore High Court Annual Report, 2013 at p-53.

**A brief study of the criminal cases in the province of Punjab during 2013**

The following data of criminal cases in different courts of the Province of Punjab has been taken from the Lahore High Court Annual Report, 2013 to have an overall picture of the institution and disposal of the criminal cases during the year 2013:

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**Consolidated statement showing pendency, institution & disposal of criminal cases in the subordinate courts in the province of Punjab**

Name of the Court	Pendency of all categories of cases as on 1.1.2013	Institution from 1.1.2013 to 31.12.2013	Disposal from 1.1.2013 to 31.12.2013	Balance as on 31.12.2013
District & Sessions Judges / AD&SJs	129798	749679	716350	163127
Senior / Civil Judges / Judicial Magistrates	894721	1444168	1394382	944507
Banking Courts	32813	18526	22559	28780
ATA Courts	437	1159	1216	380
Accountability Courts	147	114	156	105
Drug Courts	2075	3556	3536	2095
Anti Corruption Courts	3398	2917	2203	4112
Consumer Courts	2372	5619	5186	2805
Special Courts (Central)	4172	5032	4404	4800
CNS Courts	264	283	321	226
Child Protection Courts	349	905	936	318
Punjab Environmental Protection Tribunal.	1785	1191	1059	1917

**Source:** Lahore High Court Annual Report, 2013.

**Category wise statement showing institution, disposal and balance of cases as on 31.12.2013 in the Sessions Courts in Punjab.**

Category	Pendency as on 1.1.2013	Institution from 1.1.2013 to 31.12.2013	Disposal from 1.1.2013 to 31.12.2013	Balance as on 31.12.2013
Murder Cases	11733	13266	12113	12886
Session Cases	7076	13115	11459	8732
Hadood Cases	649	162	628	183
Narcotics Cases	9573	23941	22393	11121
Habeas Cases	294	18604	18562	336
Harassment Cases	997	33820	33530	1267
Registration Cases	12770	209624	203404	18990
Criminal Appeals	1443	2729	2370	1802
Criminal Revisions	2740	8728	8117	3351

**Source:** Lahore High Court Annual Report, 2013 at pp. 58 to 63.

These figures indicate that a large number of criminal cases are pending adjudication in our criminal courts such as the courts of Judicial Magistrates, Additional Sessions Judges / Sessions Judges, Anti Terrorist Courts (ATC), Anti Corruption Courts, Banking Courts etc. Therefore, if we want to improve the working of our criminal courts then we will have to reduce the burden of cases in their courts and not only to fix a suitable case ratio but also to maintain this ratio for better results. Several earlier Law Reforms Commission Reports and recently in June, 2004 have proposed such ratio to be 500 cases to a Judicial Magistrate and 450 cases to a District and Sessions Judge. It will be worth mentioning here that to maintain this ratio, the High Courts of different provinces will have to increase the number of their Judicial Officers.

**Shortcomings in the system and recommendations for its improvement**

The following suggestions will not only improve our Criminal Justice System but will also pave a way for the improvement of quality of justice and ensure “inexpensive and expeditious justice” as enshrined in Art. 37(d) of the Constitution of Pakistan, 1973 resultantly promoting the “good governance” and “rule of law”.

**i) Amendments in Substantive and Procedural Laws:**

The Pakistan Penal Code, 1860; the Code of Criminal Procedure, 1898; and the Evidence Act (presently the Qanun-e-Shahadat Order, 1984) form the



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basic framework of our criminal law which remained just the same as was framed by the British. Some minor tinkering has been made but the overall spirit has not changed. In fact, providing justice to the citizens was not priority of the authors of these laws. The basic idea was to administer India and maintain law and order at the least possible cost so as to exploit the resources of the colony most profitably.

There is a need of hour to amend our penal laws to bring them in conformity with the changing environment and culture of the society, such as P.P.C. and Cr.P.C. which were framed in 1860 and 1898 respectively. Most of the accused persons involved in the terrorist activities are acquitted by the Special Judges of Anti Terrorist Courts (ATCs) due to the shortcomings / lacunas of the prosecution evidence which need that our law of evidence may be amended keeping in view the exigencies of time. Though the Qanun-e-Shahdat Order, 1984 “permits the production of evidence that has become available because of modern devices or techniques” (Article 164 of the Qanun-e-Shahadat Order, 1984). yet there is a need to extend the scope of these provisions for which further legislation is required.

Further, quantum of punishment for giving false evidence / statement before a public servant to injure a person under Section 182, P.P.C. may be increased to stop the trend of perjury in the society. Likewise, there are a number of provisions where quantum of punishment should be revised such as offences under sections 184, 186, 187,188 P.P.C. Moreover, punishment in the offences which affect the public health, safety, convenience, decency and morals (i.e. public nuisance) which fall under Sections 269, 270, 271, 272, 273, 277, 279, P.P.C. may be increased keeping in view the changing circumstances of the society.

There is also dire need to revise the punishments of offences committed by the Police Officers under Sections 155 to 157 of the Police Order, 2002 because they should be more accountable and if the offence is proved, then they should be dismissed from service in addition to their conviction.

It will not be out of place to mention here that new provisions of Section 22-A and 22-B, Cr.P.C. have been added in the Statutory Law whereby Sessions Judges and Additional Sessions Judges, being justices of the peace, can exercise all the powers of a Police Officer u/s 154 Cr.P.C. These provisions in the Cr.P.C. were introduced to reduce the burden of High Courts under Article 199 of the Constitution but unfortunately these provisions have created problems for the general public due to non-compliance of orders of the courts by the SHOs because these order are not judicial orders. It was held that “actually powers of the Justice of Peace are very limited which have been

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given to add, assist and authorize Criminal Jurisdiction System, and said powers are neither supervisory nor judicial, but are administrative and ministerial in nature. (Asif Mahmood's case, 2009).

Introduction of new provisions of section 22-A & 22-B, Cr. P.C. has promoted false, frivolous or vexatious prosecution in the society. Moreover, orders under these provisions are passed by the Additional Sessions Judges as Justices of the Peace and that is why most of the S.H.Os are reluctant to register the cases because these orders are not judicial orders rather they are administrative and ministerial in their nature. Thus, it is sheer wastage of precious time of the courts. Moreover, a new trend has developed among the civil litigants that they are trying to convert the civil litigation into criminal cases by taking the advantage of section 22-A & 22-B, Cr. P.C. It is, therefore, proposed that heavy fines and punishments should be imposed upon false, frivolous, fabricated, and vexatious litigants. It is further suggested that to ensure the implementation of the orders of the Sessions Judges/Additional Sessions Judges under section 22-A & 22-B, Cr.P.C., an amendment may be made in the statutory law and these powers may be declared as 'judicial powers'.

It is alarming to note that the crime rate has increased in Pakistan due to various reasons such as unemployment, poverty, outdated criminal system of justice, socio-economic in-equality but the statutory period for submission of report under section 173, Cr.P.C. (challan) remains the same i.e. 17 days making it difficult for the Investigating Officers to complete the challan within this short span of time. If we want qualitative investigation from the Police then this stipulated period of 17 days should be enhanced reasonably according to the nature of the cases and to achieve this aim an amendment may be made in section 173 of the Code of Criminal Procedure, 1898.

#### **ii) Wide and discretionary powers of Police u/ss 54 & 169 Cr.P.C. should be under strict check and control.**

Our Police enjoys vast discretionary powers under sections 54 & 169 of the Code of Criminal Procedure, 1898. Section 54 of the Code of Criminal Procedure authorizes Police Officers "to arrest any person without warrant under the circumstances specified in the various clauses of the section such as when a person has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned." (Section 54 of the Code of Criminal Procedure, 1898). In fact, legislature has given these wide powers to police officers for taking precautionary measures against the commission of offence by vagabonds and

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loafers and these are not applicable to ordinary citizens. Though guidelines were laid down in “Ghulam Sarwar’s case” (1984) by our superior judiciary yet our Magisterial Courts are not following these instructions in letter and spirit and that is why these powers are being misused by the police officers against the general public for their ulterior motives. Police officers get physical remand of poor people under section 54 of the Code of Criminal Procedure by making a concocted story and accused persons are tortured to extort money. They are kept under constant threat and pressure by saying that they will be involved/ implicated in false cases or murdered in fake police encounters if they failed to fulfill their illegitimate demands. There are instances when poor people could not arrange hush money for the Police, they were either involved in the untraced cases or killed at the Police Stations due to torture.

Corrupt and greedy Investigating Officers have become a constant threat for peace-loving poor citizens due to misuse of these wide powers. Unfortunately, there is no proper accountability of Police against misuse of powers under Section 54 of the Code of Criminal Procedure. Though an illegal detention can be challenged by filing a “Writ of Habeas Corpus” (Section 491 of the Code of Criminal Procedure, 1898) and detenus are set at liberty yet no automatic action is taken against the Police and the matter ends there. Similarly, a detenu could have filed a “private complaint” (Section 200 of the Code of Criminal Procedure, 1898) before the introduction of Police Order, 2002. Now, “Police Order, 2002 has imposed bar against filing private complaint against the police officials.” (Article 155(2) of the Police Order, 2002). It was held that “in the presence of bar under Article 155(2) of the Police Order, 2002 against private complaint, private complaint against police officials would not be maintainable.” (Haji Muhammad Qasim’s case, 2008). Therefore, it is proposed that right to file private complaint under the Police Order, 2002 against the police officials be given to meet the ends of justice and redress the grievances of the aggrieved party.

Similarly, Officers-in-Charge of the Police Stations and Investigating Officers have been empowered under the Code of Criminal Procedure “to release an accused (if he is in custody) on his executing a bond with or without sureties when they find that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate”. (Section 169 of the Code of Criminal Procedure, 1898). Though it is an interim relief made permissible under the law to an innocent person yet it is without proper check from the Senior Police Officers and judiciary. Therefore, there is a need to amend the law to avoid the misuse of authority by the Investigating Officer or Officer-in-Charge of the Police Station and it should be mandatory to inform the DIG or S.P. (Investigation) concerned and get his permission before releasing the accused because Investigating Officer should not have free

hand in releasing the accused under section 169 of the Code of Criminal Procedure and he should avoid to exercise this power illegally or in a fanciful manner to extort money from the accused. It is pertinent to mention here that it was held that “powers u/s 169 of the Code of Criminal Procedure can only be exercised by the Police during the course of investigation when the accused is in police custody.” (Muhammad Akram’s case, 2002). Once the challan is submitted in the Court u/s 173, Cr.P.C. the provisions of Section 169, Cr.P.C. cannot be invoked. Our superior judiciary has also shown its concern on this issue and remarked that “Resort to section 169, Cr.P.C. by Investigating Officers during investigation or re-investigation has become a frequent phenomenon which required to be discouraged. Serious notice should be taken by superior police officers including S.Ps. & D.I.Gs concerned in the interest of justice by having a strict observance over investigation so that discretionary powers of Investigation Officers under section 169 are not misused in any way nor exercised blindly without any valid and legal basis.” (Syed Sikandar Shah’s case, 2000 and Muhammad Suleman’s case, 1999). It was also observed that “a Police Officer while exercising powers under section 169, Cr.P.C. has to act with great care and caution, lest a guilty person should not go scot free without facing a trial.” (Dildar’s case, 1990). Thus, it is necessary to evolve a system of checks and balances among the Police Department to maintain fairness, transparency and impartiality during the course of investigation.

### **iii) Crime Reporting, Collection of Data and its Analysis**

The crime reporting, collection of data and its analysis is a big problem and weak area in Pakistan as no complete and reliable data is available. The main reason being that a large number of crimes are not reported by the victims themselves due to their own personal problems. Secondly, the police also resists in registering FIRs to keep its crime rate at the minimum level. In Western countries, various studies on different aspects of crime such as “activation, maintenance, aggravation and desistance (termination) of criminal activity” first by Sheldon and Glueck in 1950 and subsequently by Marvin Wolfgang in 1972 were made. Similarly, Rolf Loeber and Marc Le Blanc had worked on “Developmental Criminology” (Aulakh’s case, 2007:84).

In fact, non-availability of complete and reliable data is an obstacle in the way of formulation of an appropriate policy to prevent crimes and for dispensation of justice. In advanced countries, the FBI and similar institutions collect statistics of crimes and Universities conduct researches on various aspects and theories of crimes but unfortunately, Pakistan is lacking to adopt this policy in the country.

**iv) Enhancing the Role of Public Prosecutors:**

It is pertinent to mention here that before introducing the “Punjab Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2006”, public prosecutors were working under the administrative control of Police Department. They were not independent rather they were subordinate and accountable to the senior police officers and that is why Punjab Government felt the need to establish an independent, effective and efficient service for prosecution of criminal cases. Now, “Public Prosecution Department” has been established and Public prosecutors are working under the administrative control of this Department. Though public prosecutors working at different levels have been empowered to check the investigation reports under section 173, Cr.P.C., or a discharge report and these reports are submitted to the courts through them yet they are not enjoying those powers which are being enjoyed by the Public Prosecutors working in England because final reports like our challans (report u/s 173 Cr.P.C.) are prepared and submitted by them in the courts. Therefore, if we want that accused persons should not go unpunished or scot free due to shortcomings committed by the Investigation Officers then we have to empower our public prosecutors to prepare the challans themselves or to enhance their powers while scrutinizing the Investigation Reports of different kinds including challans. They may be empowered to recommend the dropage of the proceedings in a criminal case if it is not made out due to deficiency of evidence and there is no probability of conviction of the accused. If we want to improve our administration of criminal justice then we have to ensure independence and empowerment of our public prosecutors at all levels.

**v) Promoting the Alternative Dispute Resolution (ADR)**

The main problem which increases the backlog or load on the lower judiciary especially at the level of Magisterial Courts is the failure to develop suitable Alternative Dispute Resolution (ADR) forums to reduce the burden on these courts of law as most of the litigation starts from Magisterial Courts being the courts of the first instance.

Many countries of the world have started making use of Alternative Dispute Resolution to relieve their over-burdened Civil & Criminal Justice Systems. In fact, it has acquired a very prominent position in some of the countries like United States. We also need to use this method particularly with reference to the resolution of minor cases and petty disputes. The peaceful resolution of disputes (through ADR) would not only be in consonance with the Islamic injunctions but is also embedded in our centuries old culture and traditions. It involves arbitration, mediation, reconciliation and negotiation. Therefore, we

should establish Alternative Dispute Resolution Centres and annex them with the courts. These Centres should be manned by skilled staff to provide mediation/pre-trial counseling. Simple and small claims and petty disputes, if handled by trained and skilled staff under the supervision of courts, can effectively be resolved, relieving the courts of day to day increase in institution of cases. A beginning has already been made in this direction as following legislation can provide necessary structure for Alternative Dispute Resolution:-

- i. Small claims and Minor Offences Courts Ordinance, 2002 has been introduced which provides detailed procedure for amicable settlement of minor offences and petty claims.
- ii. The arbitration mechanism has been provided in the Local Govt. Ordinance, 2001.

Alternative Dispute Resolution should base on the concept of mediation and conciliation and this process should commence only after getting the willingness of parties involved in the dispute. ADR should promote justice and it should not result in the exploitation of one party and undue advantage to the other party.

The petty matters should go to ADR or community conciliation courts. However, the decisions of ADR or such like forums should be subject to the authenticity of the District Judiciary ensuring the legality and fairness of the decisions. In India, "Nyaya Panchayat system" which comprised of non-elected but literate and respectable arbitrators have achieved considerable success without involvement of professional lawyers.

#### **vi) Scientific Criminal Investigation**

It is suggested that we should adopt scientific techniques during the course of investigation rather continuing the traditional way of beating or torturing the accused at the police stations or extra-judicial killings in the form of fake police encounters. B.R. Sharma, an Indian Forensic Science Expert has emphasized on the need of scientific criminal investigation by saying that "Science is helping the investigator in his various investigational activities increasingly. In fact, the societal sea change is making the scientific methods of investigations indispensable. They are costly but they are being made available by the governments, as there are no alternative options." He has further elaborated that "Forensic science has developed its own specialties: Police Photography, Ballistics, Serology, Handwriting Identification, Odontology, Dactylascopy, toxicology, Psychotropic drug analysis and DNA profiling." (Sharma's case, 2010 p. 5). Thus, it can be inferred that we can get better results by adopting the scientific techniques/ methodology in our criminal investigation.

**vii) Reformation of Prisons and Police and steps to end violence against women:**

Prisons in Pakistan are in bad shape and need reforms. The overall condition of jails is deplorable and inhuman and brutal treatment is given to prisoners by the Prisons Department. There is hell of discrimination in practice in prisons so much so that the poor and downtrodden are dealt with ruthlessly there while the well connected are showered with concessions and friendly attitude in the shape of allowing them use of and have mobile phones, drugs and even weapons. There have been incidents of violent protests by the prisoners against such discriminatory misbehavior of Prisons staff, but to no avail. In retaliation many prisoners and the staff members of Prisons have been killed in such standoffs. This shows that there is a compelling urgency to address the problem and give practical shape to enforce and implement 'Reformative Programs' for the betterment of internees in jails.

Similarly, the much needed police reforms are not enough. The fact is that without updating the prehistoric 'Criminal Procedure Code of 1898', the objectives suitable to a free nation likes ours, cannot be achieved. Our colonial police was designed to be a public-frightening organization which was semi-literate, semi-militarized and bodies of underpaid personnels which was created for maintaining law and order situation by using the force of stick. Most of the politicians of this country used the police to crush their opponents. Thus, this force could not succeed to maintain its independent status due to various reasons including the political interference whereas an effective, impartial, merit-oriented, people friendly, viable, independent but publicly accountable police is crucial in the dispensation of criminal justice in Pakistan.

Equal so, the area of 'violence' against women also needs attention. Pakistan must take solid steps to end violence against women. The Acid Control and Acid Crime Prevention Bill, 2010, and the Prevention of Anti-women practices (Criminal Law Amendment) Bill, 2008, aims to empower and protect women and increase penalties for perpetrators.

**Conclusion**

The fault lines that are eroding and jostling our entire social set up are multiple and of different orientations. An exhaustive study that has been given in the previous pages acquaints us all those inroads that expose the inherent weaknesses of the system. The comparative study is always helpful to look into the shortcomings and imbecilities of the system. The complexities of civilization have given birth to the complexities of crime, the old and redunent system that is being propped up with emotional and traditional set up needs

radical and meaningful changes. The range of changes must move from procedural practices to the improvement of those discretionary powers that are giving birth to corruption, favouritism and injustice. Ruthless discretionary powers must be under strong vigilance. Besides the inserting of new amendments in the old statutes to meet the needs of hour, it is high time to look into the each required amendment with pragmatic eyes, so that an effective and result oriented system must be devised where each criminal should not go unpunished or scot free. A dire lacking in our system is the paucity of crime data as most of the crimes either not reported for the reason of saving of one's honour or remained unreported owing to the attitude of our policemen. A true picture of crime ratio is definitely a good addition to data analysis. A systematic analysis of data will go long way to suggest practical remedies and will open an oriel to the overhauling the system. The last but not the least, the mitigating environment that Investigating Officers are not investigating the cases efficiently and properly due to their lower standard of education, poor skills, handicaps in their learning, over-burdened with multifarious types of duties, and political interference. To enhance their capabilities, it is very important that modern states of art courses in criminology be made essential to them. The role of Alternative Dispute Resolution (ADR) needs to be enhanced in dispute resolution methods. The ADR system is successfully being practiced in western democracies. It helps to reduce encumbrance upon the judicial system and discourage the frivolous suits / cases at preliminary level.

The advanced techniques that are applied in the investigation that range from the applying of forensic sciences to the most advances psychological methods must find ways in our system of collection of evidence. This will definitely go long way to improve our Criminal Justice System. It is true that subtleties of procedural or substantive laws, sensibilities of crime and nicities of legal acumen remains poles apart, as long as they are not converged with honest practice and responsibilities of the officers. It is time to put an all out effort to make the system practical and result oriented.

All we need to press upon is that there is need to bring about a workable 'Criminal Justice System' which can handle the criminals justly and ultimately carve out a crime free society, safer to live for all rich and poor.



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