

Administration of Criminal Justice in Pakistan

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Administration of Justice

- Main responsibilities of a state traditionally:
War & administration of justice
- Provision of justice according to predetermined or settled laws and principles
- Two kinds of administration of justice:
Civil and criminal
- Administration of civil justice deals with enforcement of rights and individual grievances
- Administration of criminal justice enforces penalties for commission of offences

Concept of 'Wrong' 1

- Administration of civil & criminal justice revolve around the concept of 'wrong'
- Definition of 'wrong' is a prerogative of a legislature & state through laws
- Laws define and categorize civil and criminal wrongs
- Civil wrong: breach of contract
- Criminal wrong: offences (murder, theft etc.)
- Shared civil & criminal wrong: defamation

Concept of 'Wrong' 2

- Civil and criminal wrongs are distinguished on following grounds:
- As to nature of wrong (Public & private)
- As to procedure (Civil courts & criminal courts)
- As to consequences (Remedies: Specific performance of contract; injunction; damages etc. and punishment of various kinds from physical incarceration to fines)

Theories of Punishment 1

- Various theories of punishment:
 1. **Deterrent theory**: Its main purpose is to deter an entire society from committing an offence by inflicting an exemplary punishment on an offender. Severe penalties are recommended by its proponents, e.g. death. Criticism: Excessive fear generates fearlessness.
 2. **Preventive theory**: Preventing and incapacitating an offender from committing an offence through severe punishments, e.g. imprisonment, transportation of life.

Theories of Punishment 2

3. **Reformative theory**: It aims to reform an offender to make him useful citizen during his punishment. Best for children and first offenders.
4. **Retributive theory**: Purpose of punishment is retribution for satisfaction of the victim or his family. Life for life and eye for eye.
5. **Theory of compensation**: Its purpose is to make an offender repay what he has illegally earned through his crimes, i.e. restitution of ill-gotten money and fines.

Important Laws of Criminal Justice

- General laws of land:
- Constitution of Pakistan 1973
- Pakistan Penal Code 1862
- Criminal Procedure Code 1898
- Qanun-e-Shahadat Order 1984
- Numerous laws dealing with special offences and laying down procedures for their trial and punishment

Constitution of Pakistan 1

- Article 4: Inalienable right of every citizen to enjoy protection of law and be treated in accordance with law.
- Article 9: No person shall be deprived of life and liberty save in accordance with law.
- Article 10: No detention without being informed about grounds of detention. Right to consult and being defended by an attorney of one's choice. Production before magistrate within 24 hours.

Constitution of Pakistan 2

- Article 10A: A person shall be entitled to fair trial and due process in any charge against him.
- Article 11: No one shall be required to perform any compulsory service of cruel nature or incompatible with human dignity while undergoing punishment.
- Article 12: No law shall retrospectively criminalizes an act or enhance punishment of an offence.

Constitution of Pakistan 3

- Article 13: No one shall be prosecuted or punished for the same offence more than once. No accused person shall be compelled to adduce evidence against himself.
- Article 14: Dignity of man and privacy of home shall be inviolable subject to law. No one shall be subjected to torture for extracting evidence.
- Article 24: No one shall be deprived of his property save in accordance with law.
- Article 25: No discrimination is allowed except reverse discrimination for women and children

Pakistan Penal Code 1862

- General law of crimes but exclusive law in this arena, e.g. Hudood laws
- Its main purposes are two:
- Definition of offences (e.g. offences against property & persons) and determination of their punishments
- 10 Kinds of Punishments: Qisas; Diyat; Arsh; Daman; Ta'zir; Death; Imprisonment for life; Imprisonment (rigorous & simple); forfeiture of property; fine.

Criminal Procedure Code 1898

- General law of procedure
- Categories of courts at district level
 - Sessions judge
 - Additional sessions judge
 - Magistrate section 30
 - Magistrate class first
 - Magistrate class second
 - Magistrate class third
- Jurisdictions of these courts
- Procedure for investigation, inquiry and trial

Sketch of Criminal Procedure

- Registration of FIR or through private complaint
- Investigation by police
 - Cognizable or non-cognizable offences
 - Bailable or non-bailable offences
- Presentation of charge sheet/challan to courts
- Commencement of trial by requiring evidence from both prosecution and defence
- Arguments of parties and finally a decision by court
- All decisions are appealable except made in summary trials

Qanun-e-Shahadat Order 1984

- General law of evidence
- Based on three basic principles:
 1. Hearsay evidence is not admissible
 2. Cases should be decided on the basis of relevant or legally admissible evidence
 3. Best evidence should be presented before courts
- Confession before police not admissible

Special Laws & Tribunals

- Military courts
- Banking courts
- Income tax tribunals
- Anti corruption courts
- Anti terrorist courts
- Consumer courts
- Drug courts
- Juvenile courts

General Principles 1

- No one shall be presumed guilty unless proved so.
- Prosecution has to prove its case beyond any shadow of doubt.
- Prosecution has to succeed on its own merits. And any doubt in prosecution's case would be construed in favor of an accused.
- An accused may make any plea or even contradictory pleas. Non-proving of his plea/s would not be of any avail to prosecution.
- If defence's plea is spelt out from the evidence of prosecution itself, its benefit would not be denied to an accused.

General Principles 2

- An accused person has no vested right to be tried by a particular court.
- Justice delayed justice denied.
- Justice rushed justice crushed.
- Evidence should not be considered in isolation but whole of it should be taken into consideration.
- While deciding a criminal matter, it is quality and not quantity of the evidence which matters.

General Principles 3

- Justice should not only be done, but should be seen to have been done.
- Courts must keep the scale of justice even to both sides and the proceedings must visibly be reflective of clean and unbiased judicial approach.
- It is better to acquit hundred guilty persons than convicting one innocent person.
- Mistake of a Qazi in releasing a criminal is better than his mistake in punishing an innocent person.

Reform Proposals

- Effective enforcement of existing laws
- Strengthening the institution of police through increasing their numbers and capacity building
- Elimination of external influence in investigations
- Strengthening the prosecution department
- Enhancing the numbers of judges
- Shortening or rationalizing the procedure of trial
- Facilitation of utilization of emerging modes and techniques of investigation such as DNA