

The Criminal Justice System in Pakistan

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Abstract

A Criminal Justice System is the set of agencies and processes formed by the state government for the purpose of controlling the crimes and imposing punishments on the criminals. Different states have different laws, agencies and processes to control crimes and criminals. It is an essential tool for controlling criminal acts and criminal behavior in the society which causes unrest in the community. This system is subject to the regular change with the change of government initiators, under taken in cooperation with a variety of donor organizations that brings their own culturally specific views about criminal justice system. These contributors look the confronted challenges in their own ways. This paper is an attempt to look into the basics of a criminal justice system and focus is given on the system we have in Pakistan in particular. In this paper various components of our criminal justice system are discussed in detail, gaps and weaknesses in the implementation process are highlighted and leads to the recommendations in the end.

1. Introduction

The contemporary view about a Criminal Justice System is the institutionalized response by the society to a crime involving co-ordination between various components of Criminal Justice System like the police departments, prosecutors, courts and the correctional agencies. Societies formulate penal laws, and the violation of these penal provisions will amount to an offence and the offender will be subjected to a prescribed punishment thereunder.¹ The crime is a social phenomenon and is learnt behavior from normless environment internalized by an individual. If the crime is done against someone, it will have a tragic and bad effect not only on the person but his whole family will get affected at the same time. Thus, the commission of a crime profoundly affects the way we live and interact as society.

For the purpose to control crime and maintain public order the punishment of the criminals is very necessary in a system, and in this regard, jails are very important places in Criminal Justice Systems. Similarly, for maintaining peaceful living of the men, mutual respects, having social discipline and fulfilling the rights and obligations, this point must be made certain that an offender must be punished for the crime he committed.² It upholds social harmony, obedience to the law and compliance to the accepted rules. Severe punishment might not weed the crime but certainty of punishment is helpful in bringing down the crime ratio in a state. The responsibility of the police department is to detect and apprehend the criminals by investigating criminal cases and sending the offenders before the Court of law.

Police discharges some very important duties like arresting the criminals and carrying on other directions by the court or the prosecution. In the absence of the police or other organ, the functions of the justice system would be unable to be carried out comprehensively as well as smoothly.³

Basically, the term “Criminal Justice System” means that field of knowledge which specifically deals to control the crimes by using scientific administrations of police departments, courts and

¹ Khan, K. (2014). *The Criminal Justice System in Pakistan* (2nd ed.): Law Book Publishers & Sellers

² Pease, G. F. a. (1993) *Once Bitten, Twice Bitten: Repeat Victimization and its Implications for Crime Prevention. Crime Prevention Unit Series*. London, UK: Home Office Police Research Group.

³ Fasihuddin. (July 2009). Police Education and Training in Pakistan. *Pakistan Journal of Criminology*, 1.

various correctional agencies. Criminal justice system is an interdisciplinary area of knowledge which make use of psychology, sociology, laws, public polices and other concerned fields. In other words, it is the agency of social control as in a society some acts are considered destructive and harmful that it either bans it or declares it as outlaw. Here it becomes the duty of these agencies to prevent the occurrence of such actions by arresting or apprehending the criminals. Many researches have cleared that lack of punishment may lead to an intergenerational cycle of violence.⁴ While there are other tools in society for social control like the parental as well as school discipline and morality which deals the behavior on moral standard.

A Criminal Court regulates the process through which the defendant's criminal responsibility is determined in law. It is expected from the courts that it will sentence the convict who has committed the crime and to free the innocent person from any consequences and undue burden.⁵ The criminal courts have entrusted with the duties to protect the rights of individuals in all times, same is the case with the accused person who also has rights given under the law as to be treated with fairness and in due process of law. The accused person has the right to have a fair trial, must be informed about the charge to be presumed as innocent, to be present before Magistrate in 24 hours and to have a favorable witness appearance.

2. The Criminal Justice System of Pakistan

The Constitution of Pakistan 1973, dictates the Muslims to live their lives individually or collectively in accordance with the injunctions of Islamic religion as provided by Holy Qur'an and Sunnah of the Holy Prophet (S.A.W.W). The concept of the offence is considered an offence against the state, especially those crimes which are committed against an individual gives an important right to his legal heirs and in this regard, they play a very important role.

Various amendments have been made in the constitution for the purpose to have consistency in the prevailing laws with the spirit of Islam.⁶ The decision of the Supreme Court has given a vital effect to the relevant provisions of the penal laws. As a result of the Supreme Court judgement all those provisions have ceased its effects which were repugnant to the injunctions of Holy

⁴ Spatz, C. (1989). *The Cycle of Violence* (7th ed.): Science 244.

⁵ David, N. (2007). *Comparing Criminal Justice* Oxford University Press.

⁶ Tahir, W. (2009). *The Application of Islamic Criminal Laws in Pakistan: Sharia in Practice* Leiden, Brill.

Qur'an and Sunnah. Despite the attempt made by various jurists to make the system in accordance with the Injunction of the Islam both substantially as well as procedurally, still it is facing serious criticism. There are good and bad aspect of the systems, no doubt the poor and vulnerable community in our society still suffering from arbitrary actions.⁷ They are known as Laws for the poor rather than laws of the poor across the state. Our laws operate only on the weak section of our community not withstanding any constitutional assurance to the opposing. No solemn attempts have been made for reviewing or redraft our punitive system after six decades. No attempt is made for radicalizing penal process, humanizing prisons and making anti national and antisocial offenders capable to escape the legal coil.

2.1. Legislature

There are numerous criminal laws in Pakistan which mostly are contained in the Pakistan Penal Code, with the passage of time some special laws were also enacted for specification of some crimes for Example the Anti-Terrorism Act is designed to curtail terrorist activities, the Accountability Act for corruption etc., the Control of Narcotics Substance Act is designed to curb the menace of narcotics in society. There are many laws dealing with other crimes such as Income Tax, Customs and Copyrights. Though Pakistan has enacted a plethora of statutory legislation about criminal justice system but almost all these laws have their base in the earlier British Colonial Period mostly between 1860 and 1910. Our punitive Court which has all the important definitions of crime dates back to 1860, on the other hand our Criminal Procedure Code dates back to 1898.

If we look into the Criminal Laws and the Procedural Codes that are applied in Pakistan, these are very different from the laws followed by the developed states of the world. Since Pakistan has inherited this legal system and thereby interpreted and added things in it this has caused many issues plaguing in our legal system. The Pakistan Penal Code and the Criminal Procedure Code as prescribed statutes were conditioned for the cultures of the colonies in the British Era, the implementation of which in the contemporary conditions has resulted in a number of flaws. For example, in *Asia Bibi Versus State Case*, the death sentence that a district court handed down

⁷ Bank, A. D. (2008). Devolution in Pakistan an Overview. <http://www.adb.org/Documents/Studies/Devolution-in-Pakistan/devolution-pak-es.pdf>, accessed 19 November 2009.

to Asia Bibi, the defendant in this case, attracted criticism from various fronts including various legal and human rights experts. Due to the fact that no proper investigation was carried out and the case was aimed at religious emotionalism.

The Prison Act, the Prisoners Act and Reformatory Schools Act belong to the era of 1894, 1900 and 1897. With the start of 19th century influencing the idea of crimes and punishments, the principle revolves on deterrent beside a reformatory view, a company having passed colonial rule was influencing the legislators' mind should not surprising the critics. Most of the regulations which were enacted in that era fall within the natural schemes of the anticipated intimidating legislations.

The criminal laws of Pakistan took a deep religious touch in the era of Zia Ul Haq, some fatal crimes like Zina, Theft, Qazf and Deaths were looked into Hudood while the crimes having the low nature were looked into *Ta'azir*, penalties were whipping, fines and imprisonments.⁸ It appeared on the face of it that these Ordinances were just of bordering status in Pakistan system as no Hadd penalty took place in the history and two Hadd convictions were upheld by the Federal Shariat Court. Both of the cases were overturned by the Apex Court of Pakistan. In fact these crimes were existed in the books, and the *Ta'azir* punishments were the same as provided in the Pakistan Penal Code.⁹ In the prevailing process, serious disadvantage is caused to the primary humanitarian consideration like the public confidence and the rule of law in getting the credibility of the complete system has shaken.¹⁰ The outcome is quite disturbing the society and the society is losing trust in Criminal Justice System. Sensitivity with respect to human suffering and inevitable indifference of law has been dulled. This can be concluded that the loss of public faith and the administration of justice are attributed to weak and failed crime controlling system which seriously erodes the rule of law. The obvious and immediate impediment faced by the litigants particularly the trial prisoners can be summarized into the following three categories;

⁸ Affairs, M. o. L. a. P. (1979). *Government of Pakistan, A Collection of Islamic Laws : Section 11 of Offence of Qazf (Enforcement of Hudood Ordinances)* (Vol. 3).

⁹ Sections, S. Pakistan Penal Code, 1860, XLV of 1860, Section 366, 366A, 372, 373, 375-382, 493-498.

¹⁰ Bokhari, L. (2010). *Prisons and Terrorism: Radicalisation and De radicalisation in 15 countries.*

1. There is a desperate need to take measures to decrease the strength of prisons by reforming the jail administration and to restore the justice programs;
2. Unnecessary delay at investigation level; and
3. Delay caused at the trial proceeding.

Regular attempts were made in the past to overcome the issues in our system; one of the early attempts was the Law Reforms Commission chaired by Mr. Justice S.A Rehman in 1958. The commission was given the task to find out the reasons and factors which cause delay in the dispensation of justice by the courts and to come out with effective suggestions and recommendations for speedy and transparent disposal of criminal and civil cases.¹¹ The commission gave many suggestions but only some of them were accepted. This commission was followed by another law reform commission constituted in 1967 which was chaired by Justice Hamood Ur Rehman, assisted by Chief Justice of Pakistan to make sure to find out the factors of delay and to give suggestions for the removal of such hurdles in the dispensation of justice. A very comprehensive and exhaustive report was submitted in 1970. It gave suggestions on both legislative as well as administrative reforms, for the purpose to remove hinders and obstacles in the speedy disposal of the cases.

In 1978, a committee was established which was chaired by the Chief Justice of Pakistan, Attorney General, Chief Justices of High Courts as its members. This commission came up with a comprehensive report and suggested very suitable measures keeping in view the already made recommendations of preceding law reforms commission. The suggestions of this committee were put in actions and were accepted for implementation in an ordinance in 1980.¹² This commission was followed by a special commission on reforms of civil law which was established in year 1993. Chief Justice of Pakistan was head of the commission and was assisted by Chief Justices of the Provincial High Courts.

This commission focused on the civil law reforms as well as criminal justice system, though it did not give any attention to the basic criminal justice system. This was desperately hoped that

¹¹ Chaudhry, M. (1997). *Policing in Pakistan* Vanguard Books (Pvt) Ltd.

¹² Ibid.

the commission will take serious notice of the system; consequently, the laws and Justice Commission of Pakistan took an action for reforming the Criminal Justice System back in 1997. A comprehensive report was made and submitted by secretariat to the commission. Discussions and deliberations were made on the report and the commission unanimously approved the proposals and the suggestions *inter alia*. The suggestions were not given any consideration and most of them were ignored.

The Highest Court of Pakistan in Liaqat Hussain's Case took a very solemn notice of this issue and expressed that, our administration system is faced with serious case load. The Court further remarked that unless and until the legal requirements and timely solutions are not drawn, the current situation will move from bad to worst. Our courts must act according to the Procedural Laws i.e. our Criminal/Civil Procedural Codes, which is more than one hundreds of years old. This Code definitely needs to be reviewed and reforms for the purpose to meet the requirements of the day. This is also very important to mention that India has successfully reformed both civil as well as criminal laws. Now this is the time to thoroughly revise reform and review our procedural laws for the purpose to make them able to meet the need of the day. This attempt will produce a positive impact and far reaching result of removing the hurdle in the dispensation of speedy justice and the delaying factors from both criminal and civil justice system. For the purpose to improve our judicial system some key measures should be taken to eliminate the defect in the prevailing legal system.

Unless and until there is a system of inspection about all the concerned departments of a criminal justice system, the problems regarding jail reforms, improve the prisoner's conditions, operative administrations of justice will be limited to the papers only. It is possible to reduce issues in the criminal cases if the Bar Associations and the judges strives together to resolve issues about unnecessary and frequent adjournments. The criminal laws that reflect the community aspirations and customs are intended to prohibit, forbade, punish and to change the offenders but it does not take notice of by-product of crime like (the victim of a crime). The people belong to backward areas and the poor victims are in very vulnerable condition. Most of the time they are misplaced, the guilty person is clothed, warmed, faded, lighted, logged and given entertainment in a very expensive cell of the prison but same is not available to the poor section of the state. It is a fact

that there are weaknesses in our criminal jurisprudence that a crime victim is failed to get due attention. During investigation process the great asset of the police is trust, confidence and belief of the people. Nowadays the police have lost its confidence in the people as basic and key intelligence in the investigation process can be achieved with the help of public. If the police, as it is, observed nowadays violating the laws themselves or if they are misusing their powers for the purpose of extortion, intimidation, the people will develop an idea of disgusting. In such situations it would be very difficult for the police to carry out its responsibilities. In order to restore trust, confidence of the people in our police department there is a need to have some periodical reviews of police administration in districts by reviewing the statistics of the arrested people and to look into that how much of the arrested people were made to furnish their charge sheet and how many were declared as unnecessary arrested.

This will give a clear picture of the unnecessary arrest tendency. A reference was made to the Apex Judge of Pakistan on 14th January, 2005 by the Secretary Law, Justice and Human Rights namely, The Law Reform Bill, for seeking comments and recommendations thereon. A conference of law and Justice Commission of Pakistan was convened on the 12th of February 2005, to have some serious discussion on a Bill and was consider for assertion as reforms in the legislation. These suggestions were to be officially inserted as the Law Reform Act by legislation. But unfortunately, this bill could not be brought before the light and remained in the status of deliberation. The suggestions which were given by various law reform committees during their period of working are also very important; they may be helpful to offer a focused and designed direction which may result in a guiding principle and also as a persuasive value.

3. The Appointment of Law and Police Officers

The next important area of our Criminal Justice System is to appoint the responsible police officers. Very poor performance and lack of training skills has been observed from the concerned department. This has resulted in number of problems in the investigation, prosecution and conviction process of the cases.

It is believed that this process does not exceed ten percent of the contemporary investigation techniques which are used in the area of forensic science and the finger print technology.¹³ In the field of forensic science it has also seen that the concerned medico legal officers have very limited amount of knowledge about the injury caused by the suspected firing arms. According to Sarmad Jalal Osmani; in a case, a very competent medical officer gave opinion about the fire arm case that the bullet entered in the left arm and exits at the inner side reentered in the chest and damaged the heart and cavity thereby caused death. There was the nomination of two accused in the FIR, stating that one has fired on left arm and other on the chest. In the trial Court it was decided that one bullet was fired and the person was announced with death penalty, and other nominated accused was announced as life imprisonment for causing fatal injury. It was strange that person causing fatal injury was punished for life imprisonment, and the conviction of the accused was maintained. This is an open example of the lack of forensic knowledge by our medical officers said Mr. Justice Sarmad Jalal Osmani, Judge Supreme Court of Pakistan.¹⁴

This branch of our Criminal Justice System needs urgent attention, all the components of the field like the prosecutors, investigators, lawyers and the judges required to full equipped with the knowledge and skills of the forensic science. This is an open challenge for our post-mortem and medico legal officer to differentiate between the pellet injury and the bullet injuries which are very evident in the criminal cases. These officers are required to get experience in the modern investigation science which prevails in developed states like DNA, fingerprints, and tracing cell phones. We clearly see that the system and departments of investigation clearly lack such equipment and skills, which are need of the day in the era of this complicated world.¹⁵ Our investigation officers are supposed to be well informed from the process of cell phone detections, computer data and recovery software which is frequently used in crimes by the criminals. These are the shortcuts to communicate and analyse the information collected in the cases of fraud, kidnapping etc. This will be helpful in increasing the ratio and certainty of convictions and will give edge to every component of our Criminal Justice System.

¹³ Sarmad, J. (2010). Overview of Criminal Justice System in Pakistan.

¹⁴ Ibid.

¹⁵ Horgan, B. B. a. J. J. (1998). *Criminal Investigation* (3rd ed.): Glencoe/Mc Graw- Hill.

3.1. Criminal Investigation

The police department is the main source for the criminal investigation in Pakistan. This process begins by the contact of the victim with the police or some police officers, counsellors, watch man or the head of community. About the occurrence of any offence even a private person can lodge a report by visiting a police station, calling or complaining about the crime. The court of competent jurisdiction thereby issues direction to the local police station or it may take a *Suo Moto* notice of a crime in a particular community and some cases are straight away detected by the concerned police department. The violation of the law is reported by the head of the police department for taking action which is called FIR (First Information Report). Here if the crime is felony (Cognizable) offense then the FIR must be lodged. If it is a misdemeanor (non-cognizable offense) then the FIR will not be lodged in the concerned book.

FIR is worthy of great importance in the criminal justice system of Pakistan particularly in criminal cases. It gives the possible clue to reach to a certain point about the crime.¹⁶ FIR is basically the statement given just after occurrence of the incident and the sooner it is, the better it is. In cognizable cases the lodging of FIR by police officer is mandatory under section 154 of the Criminal Procedure Code and in cases of non-cognizable offenses the information is registered in the relevant book and refusing to enter such information is out of question. Here the police are not supposed to cause delay.¹⁷ With lodging of FIR it becomes the duty of the police department to conduct a just and fair investigation ignoring the influence of any higher officer. The police officer who is in charge of a police station is empowered by the law to investigate a cognizable offense even without the orders of the magistrate. After lodging the FIR, the police are duty bound to initiate investigation which includes the following steps;

1. To proceed to the spot;
2. To prepare site plan for the offence;
3. Ascertaining the circumstances and facts of given case;
4. Discovering and arresting the suspected offenders;
5. Collecting the evidence.

¹⁶ Chadhary, A. K. (2006). *Jurm Nishan Chorta Hi* (pp. 72): Urdu, Jahangir Printers.

¹⁷ Razvi, N. A. (1961). *Our Police Heritage* (pp. 112). Lahore: WAPDA, Printing Press.

Only in-charge of the police stations has the authority to investigate a cognizable offense. However, in our society FIR is supposed to be registered by the SHO (Station House Officer) who is in charge and the head of the police station. Generally, SHO assigns the duty of writing a FIR to his lower rank officer like ASI (Assistant Sub Inspector) or SI (Sub Inspector) for conducting investigation. Mostly lower staffs do not have sufficient training, experience and technical skills.¹⁸ They will accomplish their job in the context of their experience and will move further conducting inquiry, preparing report which is generally known as Challan and will submit it to the court of competent jurisdiction.

During investigation, many sources are applied by the concerned branch. This includes;

1. The finger prints;
2. Eye witnesses;
3. Expert opinion;
4. Circumstantial evidence;
5. Forensic laboratories;
6. Dog branches;
7. Foot tracking;
8. DNA facility;
9. Tracking phone calls and
10. Computer data.

3.2. Prosecutor

A prosecutor is duty bound to the state, to the people, to the courts and to the accused person. Therefore, the prosecutors have to play a fair role in discharging their functions. The police department has the power for conducting investigation and providing justice to the suspect, in the same way a prosecutor is empowered to look into the conducted investigation of the police and disposing the case after following the prescribe process of law.¹⁹ In other word we can say that investigation conducted by the police is the basic responsibility of a prosecutor. A public

¹⁸ Majeed, A., & Khan, A. R. (2005). *Crime and Criminology* Lahore: Federal Law House.

¹⁹ Article. (2.1). International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures.

prosecutor is a part of judicial process and is considered as a court officer.²⁰ The public prosecutor is supposed to and is in a position to act fairly without any influence or obstructions by the public officials or by the executive to prosecute any offender especially in corruption, violation of human rights and misuse of the entrusted powers by the public officials.²¹ The services of the prosecution department were subject to the control of home department, and police was the administering agency but after Police Order 2002, each province has their own separate laws regarding prosecution services and as far as the provincial prosecution is concerned, it is at nascent stage of growth.

4. Our Courts System

The next and very important component of our criminal justice system is the Court. There are three levels of our Federal Judiciary and three divisions of our lower courts. Similarly, in every district we have district Courts exercising both civil and criminal jurisdiction. Each province has a High Court which exercise civil and criminal jurisdiction and hear appeals from the lower courts. The Apex Court of Pakistan is situated in Islamabad which has jurisdiction over the issues between or among the province and federation or between provincial governments. It has Appellate, Original and Exclusive jurisdiction, appeal may be made from the decision of High Court to the Supreme Court. Beside these we have a Federal Shariat Court, which enjoys exclusive jurisdiction in determining the laws which are in conformity with the injunctions of Islam or not and then we have Islamic Ideology Council.

4.1. Criminal Courts

Basically, the word criminal court is not specifically defined in our Criminal Procedure Code, there powers and kinds are described in the Cr.P.C. This includes the judges, magistrates and all other persons except the arbitrators, lawfully approved to collect evidences and should be given the judicial junction.²²

²⁰ Prosecutor, P. Public Prosecutor means a person appointed as Public Prosecutor under this Act for the purpose of section 492 of Cr.PC and includes District Public Prosecutor, Additional Public Prosecutor, Deputy Public Prosecutor and Assistant Public Prosecutor as well as Special Public Prosecutor.

²¹ Nasir, Z., & Akmal, W. The province of Sindh as a case study on the prosecution service 2007.

²² AIR 1969 SC 724 (732).

4.2. Supreme Courts

Supreme Court is the Apex Court of Pakistan and its decisions are final and binding upon subordinate courts. The Supreme Court exercises Original, Appellate and Advisory Jurisdictions; it has given the duty to interpret the Constitution of Pakistan and the power to solve dispute between the province and federation and the disputes among the provinces. It enforces and protects the fundamental rights of the individuals and can declare a law null and void if it is against the spirit of Islam. In criminal matters the Supreme Court of Pakistan enjoys appellate jurisdiction and has advisory jurisdiction while giving an opinion on law to the government.

4.3. High Court

At the provincial level there are High Courts which are the highest Court of criminal appeals or revisions u/s 4 (j) of Cr.P.C. High Courts have the powers to award death punishments, and have the powers to confirm death sentence provided that at the time of confirmation minimum two judges be there. The High Court issues the petitions of Habeas Corpus, transferring a criminal case from one court to another court, can award imprisonment up to 25 years. It can impose fine, order for the forfeiture of the property and supervise the works of the subordinate courts. It has the power of writ jurisdiction u/A 199 of Constitution of Pakistan 1973 and can issue the writ of habeas corpus, mandamus, writ of certiorari, quo warranto and the writ of prohibition.

4.4. District Courts

At district level in Pakistan, there are district courts. The District courts are the lowest in the court's hierarchy. District courts deals with cases of civil and criminal nature. The offenses which are punishable by awarding death penalty and the case arise from the implementation of the law which relates to the Hudood and trialed by the Session Judge. The Session Judge has the authority to pass punishment authorized by the laws. The offenses which are not punishable with death penalty can be trialed by the Magistrate. The Magistrates are classified as Magistrate First class, Second and Third class. Appeal lies from the Session Court to High Courts, and a sentence passed by the Magistrate to the Session Judge if the punishment crossed four years otherwise it will be made to the High Court.

4.5. Session Courts

The authority of the Session Courts are extended u/s 9 of Cr. P.C 1898 to the entire district, controlled by the Session Judges and gets the assistance of Additional Session Judges together with Magistrates and Assistant Session Judges which are inferior to it. The session judge has vast powers of conducting trials of the crimes of serious nature like murders, homicide, robbery, theft and habitual offenders etc. With the confirmation of High Court it can pass a death penalty, a Session Judge hear appeal from the subordinate courts if the sentence has crossed the limit of four years. It has the power u/s 22.A (6) of the code of criminal procedure 1898 to issue commissions, appropriate directions to the police officials for the non-registration of criminal cases, can transfer the investigation officer, in case of failure or excess in power of police officer concerning to his functions and duties.

4.5.1. Civil Judges Cum Judicial Magistrate Court

There are many Judicial Magistrate Courts in towns and cities having the powers under section 30 of the Cr.P.C. It has the power of hearing the offenses of criminal nature and don't have the power to award a death penalty. It hears cases of attempted murders, dacoities, robberies and extortions. It can award punishment up to 7 years. It can make a recommendation to the Higher Court if it thinks fit that the offender deserves more punishment. The Magistrate Courts decides the offenses which are non-bailable and includes police remand, notice, accused discharging, arresting and search warrant and the bail applications. The confessions are recorded by the Magistrates under section 164/364 of the Criminal Procedure Code 1989.

4.5.2. Court of Magistrate

In one district there are several Magistrates who exercise their powers within their prescribe limits. These courts are formed for the purpose to reduce the case load on the judges and provide an opportunity to an accused person to get a quick remedy if his right to appeal is refused.

4.5.3. Special Courts and Tribunal

In Pakistan several special courts and tribunals are formed for the purpose to handle the cases of special nature. These special courts include;

- i. Justice of peace

- ii. Trial of offenses in banks
- iii. For recovery of bank loans
- iv. Under the customs act
- v. Traffic courts
- vi. Anti-corruption courts
- vii. Anti-narcotics courts
- viii. Anti-terrorist court
- ix. Commercial courts
- x. Board of revenue
- xi. Drug courts
- xii. Labor courts
- xiii. Insurance appellate tribunal
- xiv. Income appellate tribunal
- xv. Service tribunal
- xvi. Special Magistrate Courts

4.6. Special Courts

A. Juvenile Courts

Special Courts for the purpose to protect children from criminal litigation was established in 2000 under the presidential ordinance and it is of worth importance. Juvenile justice looks into the offenses committed by the children and it is provided under section 5. The juvenile courts cannot pass a death penalty to a child nor can it impute his hand. They are not given any sort of punishment, torture or humiliation during custody.

B. Anti-Terrorism Courts

For the purpose to prevent terrorism, sectarian violence and for the disposal of heinous crimes anti-terrorism courts were established. It provides severe punishment to the fatal criminals. These courts do not have the power of releasing the offenders on bail except anti-terrorism court. These courts are established in the government of Nawaz Sharif. Most of the provisions of the anti-terrorism act were declared as unconstitutional by the Supreme Court of Pakistan.

Luckily the selection and the trainings of a judicial officer is done by the Judiciary, but their wages and salaries are calculated in other province which is no way satisfactory and causing hurdle in attracting talented students.

4.7. The Learned Council

The learned council is another important branch of our criminal justice system, as mentioned above that the legal fraternity should be well experienced and must strive towards getting excellence in the field of criminal laws together with forensic sciences, medicines, collecting the evidences, technical detail about firing armors and the like weapons that are frequently used in the crimes, which are very evident and helpful for the courts of law to reach to a final and better conclusion.

Legal profession is a very respectable and the noble profession.²³ This is not supposed to be used for the business purpose or making money, which is very good for the judicial services. Without any doubt it can be said that there is no favoritism in a judicial system and the potential of the judges and the lawyers should be used only for the supremacy of rule of law and right decision.²⁴ A learned counsel is the officer of the court who exercises all his efforts, potential and talents to help the court of law and not for the purpose to try and get his client off the hook.

5. The Prisons

The prisons are also very important components of a criminal judicial system in Pakistan. The prisons and other correctional facilities are used for the purpose to help out the convicted and the under-trial prisoners. This is a fact that currently our prisons are overburdened. The accused persons in our prisons lacks the access to basic needs like proper living, televisions, telephones and books etc.²⁵ The prison system of Pakistan needs an immediate attention of our respective government for the want of new building, and maximum facilities. The prevailing structure of the prisons system is inherited from the British Prison System which was used as a tool to suppress the political opponents.

²³ Auulakh, & Majeed, A. (1986). *Criminal Justice: Crime, Punishment and Treatment in Pakistan* Lahore: Muslim Academy Urdu bazaar.

²⁴ Barkan, & Steven. (2006). *Criminology, A Sociological Understanding* (3rd ed.): Pearson Prentice Hall.

²⁵ Khan, M. (1989). *Introduction by Pakistan delegation in Tenth Asian and Pacific Conference of Correctional Administrators*. Islamabad.

Prison department was constantly ignored by the successive governments of Pakistan that's why the prisons did not play their role in reforming the criminals. However, under the Chairmanship of Salamat Ullah due attention was given to the prison system of Pakistan in 1950. The security of the prison can be identified from the walls, arms guard, towers and the restricted rules for the prisoners. Currently we have 99 prisons in Pakistan with only one jail for women in Punjab.²⁶ The basic object of a prison is to confine an inmate for the satisfaction of the court, maintaining discipline, providing basic needs to the prisoners, to provide human treatment, mental and psychological counsel for the purpose to rehabilitate and reform the criminals.²⁷ Due care, facilities and a peaceful environment is very necessary for an offender to make him a valuable and beneficial member of the society.

After 18th amendment, issues regarding the jail system are transferred to the respective provincial government. The Federal Ministry of interior with the consultation of ministry of law and justice, a national reconstruction bureau striving best to reform the prison conditions in Pakistan. In Pakistan the rise of problems is attributed with the increase of population and lack of corresponding from the criminal justice system. Unbearable pressure has been put on the crowded and under staffed prisons in Pakistan, the management of which is almost impossible.

This problem is still out of sight from the law makers and the policy makers. This is resulting in problems not only to the prisoners but also to the jail officials and instead of becoming a good citizen, these jails are becoming the dens of criminals. In the conditions where a state is not able to construct a new jail building, effective and viable way out is to shift emphasize toward increasing professional competence and training of prison officers and the staff to effectively manage the prisons. Basically, the prison reflects the society. The happening of the outside can easily be perceived inside the prisons. A comprehensive and in-depth examination is very necessary for the purpose to understand the object and the prison structure in Pakistan not only for the purpose to reform the prisoner but also to keep in view all the important roles of various organs of the criminal justice system.

²⁶ Manual, P. J. (1955). *Punjab Jail Manual*. Lahore.

²⁷ *Ibid.*.

6. Future Plans and Needs

Our Criminal Justice System strongly necessitates the second look; higher standard of professionals is required in the criminal investigation system accompanied with technical support. Classification should be made for the serious offenses in order to specialized investigation, experience, skillful and trained investigators should be encouraged. These investigators must not be over-burdened by performing other responsibilities like to maintain law, security and bank duties etc. They should be given the power to investigate the cases of serious crimes. The numbers of forensic science institutions together with latest technology like DNA test, finger prints technologies must be made available. Plea bargaining which is suggested by the law commission must be provided as a part of process of decriminalization. For the purpose to overcome the gaps and weaknesses in our Criminal Justice System the following steps are suggested;

1. For conducting investigation, the investigating officers must be duly certified while preserving the crime seal, collecting the evidence, packaging and dispatching to the laboratory. For the purpose to make the certification mandatory new provisions should be added in the police laws. For the purpose to secure and preserve the crime scene, new rules must be framed, it will help in collecting evidence which will include the physical evidence, its packaging and sending to the labs.
2. To analyze the crime pattern for the purpose to identify the responsible person, trainers and the facilities needed at national, provincial and districts level. Further investment should be made for the production of new units, skillful specialist in the investigation branches, specifically to overcome the serious crimes like homicide, counter terrorism, cyber-crimes and kidnapping.
3. The police department needs to be strengthened by computerize and maintain centralized service for lodging FIR. The Telegraph Act needs to be amended for establishing a clear protocol for investigating officers to have unlimited access to cell phone's data and to ensure that this access is not interrupted by any government military or other intelligence agency. There is a need to amend the evidence act to require the investigators to use the scientific techniques of investigating data.

4. To guarantee the rights of the prisoners under remand and to ensure that full facilities are provided in prisons which includes sufficient vehicles for transporting the prisoners to the Court and their attendance to the courts for hearing must be assured in every condition.

The national judicial policy must give focus on the long-term solutions for speedy disposal of cases and to solve the issues that are raised to the internal stability and instils public confidence in the state. To strike down all those laws which causes discrimination on the basis of religion, sects and genders and to declare them as unconstitutional in case of failure by the respective governments in repealing them.
