

General Overview

- **Crimes endanger the harmonious socio-economic and political relationship in any society.**
- **Maintaining law and order requires the perpetrators of offences to be detected and brought to justice.**
- **Otherwise, individuals could take the law into their own hands to revenge. But, the enforcement of the criminal law has to respect the human rights of suspected or accused persons.**

- **That is why actions thought to be against the interest of a community have been criminalized and punished since time immemorial.**
- **Be that as it may, care has to be taken in order to avoid or at least reduce the danger on human rights in the running of the criminal justice system.**
- **To what extent it is allowed to affect the rights of persons so as to maintain law and order is a controversial issue.**
- **Thus the related procedural and substantive justice debate underlying the study of criminal procedure.**

- **Generally, law is broadly divided into substantive and adjective. The latter is also divided into procedural and evidence.**
- **The substantive law defines rights, duties, and liabilities.**
- **But, its implementation calls for the adjective laws. Procedure and evidence laws are corollaries of substantive rules.**
- **Hence, criminal procedure is part of adjective laws.**

Definition, Nature, Purpose, and Development of Criminal Procedure

Definition

- **The rules governing the mechanisms, under which crimes are investigated, prosecuted, adjudicated, and punished. It includes the protection of accused persons' constitutional rights.**
- **Criminal procedure regulates the whole process of detection, investigation, prosecution, and punishment of offenders. It also contains rules protecting the constitutional rights those apprehended for violating the criminal law.**
- **It has double functions. It applies the criminal law. At the same time, it helps to preserve the rights of a suspect or accused person. Hence, it is all about striking a balance between these two interests.**

Classification of Due Process of Law

- **Due process of law has two major components: substantive and procedural.**

Substantive Due Process

- **It refers to the content or subject matter of a law. It protects people against unreasonable, arbitrary, or capricious laws or acts of government.**
- **It refers to the laws governing rights, duties, and liabilities. The legal provisions set a limit for their application.**
- **Their substance can also be subject to dispute. For instance, vague, ambiguous, discriminatory, or unreasonable criminal laws may be challenged on the grounds of their constitutionality.**

Procedural Due Process

- It is concerned with the notice, hearing, and other procedures that are required before the life, liberty, or property of a person may be taken by the government.
- Procedural due process requires, among other things:
 1. Notice of the proceedings
 2. A hearing
 3. Opportunity to present defense
 4. Impartial tribunal
 5. Atmosphere of fairness

- Therefore, procedural due process pertains to the means of implementing substantive rights. It does not concern with the essence of the laws enforced. Rather the issue surrounds their mode of application.
- The substantive justice is more of an end. The procedural one is mainly a means to achieve that end.
- Nevertheless, procedural matters may be ends in themselves. Fair trial, the right to be heard, ... are rights to be upheld for their own sake besides their instrumentality in attaining a fair result.
- The formulation of substantive rules could affect procedural issues. For Eg, the penalty provided in the law is taken into account to decide bail/punishment. Thus, distinction between substantive & procedural justice is elusive.

Development of Criminal Procedure

- Criminal procedure and criminal law developed side by side. The primitive society relied on self-help. This was changed to compensating victims through public process.**
- Then there was a shift in the perception of crimes. They have been viewed as wrongs against the public instead of the person affected.**
- This has made government to take the responsibility to have those in contravention of the criminal law to be judged through the efforts of its institutions. The protection of the rights of a suspect/accused has got attention through time.**

- **Therefore, criminal procedure rules govern the process of detecting, arrest, investigation, adjudication, punishment, and execution.**
- **It is connected with the enjoyment of human rights. Consequently, it is prohibited to restrict human rights without due process of law.**
- **For the promotion of rule of law, constitutional and other legal limitations have to be respected.**

Sources of Criminal Procedure Rules

The English System

- The major current source of English criminal procedure is Acts of parliament, of which some 150 bear upon the subject. Some of these have what might be called in a loose sense 'constitutional status', notably Magna Carta 1215, the Bill of Rights Act 1688, and more recently the Human Rights Act 1998, incorporating most of the European Convention on Human Rights.
- But this special status, in so far as it exists, means no more than that these statutes are well known and particularly revered.
- Over the years the greater part of Magna Carta has been repealed, some of it quite unceremoniously, and in law there is nothing to prevent parliament repealing the Human Rights Act if it so desires.

The French System, Legal Sources

Constitutional Sources

- The 'constitutionalisation' of the law mainly dates back to the *loi constitutionnelle* of 29 October 1974, which allowed not only the president of the Republic, the prime minister or the presidents of the *Assemblée Nationale* and *the Senat* to invoke the *Conseil constitutionnel*, but also sixty deputies or senators.
- The main body of constitutionality - '*le bloc de constitutionnalité*'. The *conseil constitutionnel* bestowed constitutional value on a number of general principles not expressly included in the Constitution of 4 October 1958.

Legislative Sources

- Only a statute may create rules of criminal procedure (article 34, Constitution). The *code penal* of 1810 had undergone no radical changes until its revision by the four laws of 22 July 1992, which came into force on 1 March 1994.
- However, the new criminal code did not alter the tripartite classification of offences in to *crimes, delits and contraventions* a classification which largely governs how the procedural regulations are organized.

The German System, the Sources of Law (Rechtsquellen)

- **Germany is a Federal Republic consisting of sixteen *Länder*: these are territorial units endowed with wide powers and their own decision-making bodies.**
- **Such a structure leads to a superimposition of the various sources of law: at the top is the *Grundgesetz* (the German Constitution); then Federal law and regulations; and finally the constitutions, the laws and the regulations of the *Länder*.**

Constitutional Sources

- ***Das Grundgesetz*** (the German Constitution). The purpose of the *Grundgesetz* of 23 May 1949 was to re-establish a State where the rule of law prevailed (*Rechtsstaat*) after the 12 years of the Third Reich, and it draws upon the classical sources of liberal democracy.

The Legislative Sources

- The ***Strafprozeßordnung*** (Code of Criminal Procedure). The *Strafprozeßordnung*, dating from 1 February 1877 (in force since 1 October 1879), comprises eight books dealing with:

History of Ethiopian Criminal Procedure

Criminal Investigation and Models of Litigation

- The body of law that was indigenous to Ethiopia and that marked a significant development in the previous decades was the regime of law known in modern legal science as civil and criminal procedure laws. It had been transmitted from generation to generation by oral tradition.**
- Before the Italian occupation in 1936, it was the procedural law that was comparatively well developed and that had attained a high degree of excellence.**
- It was also the same law that was more popular among the people than the substantive law, a fact that tends to show how much the people of Ethiopia give due respect and importance to the proper administration of justice.**
- Judges and all others engaged in the administration of justice were respected and honored.**

Criminal investigation devices

- In criminal cases, court proceedings were often preceded by the investigation of the alleged crime.
- There were 3 types of devices of crime investigation or detection under the old procedural law: *leba shay*, *afarsata*, & the investigations undertaken by the “market guards” (*arada zabagna*) & secret guards (*mist’ir zabagna*).
- The Leba Shay: device for detecting criminals (1900-1922) - a method employed to identify a thief by using a young boy who had not attained the age of puberty.
- the Afarsata: gathering to screen criminals (1900-1960) - a device by which all male members of a community would assemble to identify an offender.

- **Market guard and secret guard (1909-1936) - very close to what we now refer to as the metropolitan police force. Its main responsibilities were: to maintain peace & order in Addis Ababa, to guard at night the shops in the market places (arada), and to detain any person who breached the law and accepted ways of behavior, & cause such person to appear before the competent court.**
- **The secret guard (mist'ir zabagna), a unit of the market guard, was charged with the responsibility of crime prevention.**
- **Public prosecutor and legal Counselor - Not much is known regarding the establishment and development of the institution of public prosecutor in Ethiopia for the earlier period. One may find scattered facts that indicate the existence of a public prosecutor before the 18th century.**
- **A law establishing the office of public prosecutor was issued in 1943. According to this law, a public prosecutor should possess a sound knowledge of law or should have judicial experience. No person was to be appointed a public prosecutor other than those who had been an advocate, government official, or police officer who has above the rank of assistant inspector of police.**
- **Before 1943, the initiation of criminal proceedings was to a very large extent left to the aggrieved party or to his representative.**

Historical Introduction to the Criminal Procedure Code of 1961

- **Prior to the 1960 Cr Pr Code, there was no systematic body of legislation in the field. Only a few proclamations enacted early during the post Liberation era were in existence. These showed a strong Anglo-Indian influence.**
- **In the early 1950's, the Ethiopian government decided to adopt new codes in all major areas of the law, and for that purpose to call in foreign experts to do the drafting in close consultation with local Ethiopian and expatriate colleagues.**
- **The task of drafting the criminal procedure code fell initially to the eminent scholar of comparative penal law and procedure, Professor Jean Graven of Geneva.**
- **But, professor Graven's draft was partially abandoned.**

Models of Criminal Justice Systems:

Two models: the 'Due Process' and the 'Crime Control' Models.

The Due Process Model

This model stresses the possibility of error in the stages leading to trial. It therefore emphasizes the need to protect procedural rights even if this prevents the legal system from operating with maximum efficiency.

The Crime Control Model

This model emphasizes efficiency and is based on the view that the most important function of the criminal process is repression of criminal conduct. Proponents of this model put a premium on speed and finally, and can not understand why obviously guilty defendants should go free simply because of errors by police or court personnel.

- **Generally, the former gives priority to fairness of procedure and to protecting the innocent from wrongful conviction, accepting that a high level of protection for suspects makes it more difficult to convict the guilty, & that some guilty people will therefore go free.**
- **The latter places most importance on convicting the guilty, taking the risk that occasionally some innocent people will be convicted. Obviously, criminal justice systems tend not to fall completely within one model or the other: most seek to strike a balance between the two. This, however, is not always easy.**
- **A criminal justice system has dual purposes. These are protection of the public against criminal harm and suspects or accused against unfair treatment along the process. It is not easy to reconcile these two competing and, at times, conflicting values. A state is expected to strike a balance between the two.**

Systems of Criminal Procedure: the Adversarial/Accusatorial, the Inquisitorial, and the Mixed Systems

Adjudicatory Processes

- **The process of adjudication is typically either *adversarial* (also called accusatorial) or *inquisitorial* in nature.**
- **Both systems have the finding of truth as a fundamental aim, and each is guided by the principle that the guilty should be punished and the innocent left alone.**
- **The differences between the two are in their assumptions about the best way to find the truth.**

- The adversarial system is often considered the successor to the private vengeance.
- The power to initiate action first lies with the wronged person (the accuser). That power eventually extends to relatives of the “victim,” then to all members of the person’s group, and finally to the government responsible for the well-being of the person.
- The setting for the accusation is before an impartial official serving as referee (judge). Because the disputing parties (the state & the accused) behave in a manner similar to a contest, they are considered adversaries.
- The adversarial system is often compared to a game or contest in which both sides are trying to win and a neutral umpire decides two things: (1) whether they are playing by the rules and (2) which side wins. Often, the judge acts as umpire for both these aspects of the contest.
- In some cases, the judge’s chief responsibility is to make decisions that ensure a fair contest, while a jury declares the actual winner.

- In the adversarial system, most of the procedural advantages are on the side of the accused. The right to an attorney, the right to remain silent, the right to be free of unwarranted searches and arrests, the right to compel witnesses to appear for the defense, the right to confront one's accuser, the right to appeal—these and other rules of criminal process help keep the prosecutor from automatically winning a case.
- These rules have been developed over centuries as a response to abuses of citizens by monarchs and governments in dealing with their citizens, and these rules recognize that arbitrary government action remains a real possibility.

- **Advocates of the adversarial systems of justice believe that the competition between the two parties is the best process for obtaining truth.**
- **Advocates of the non-adversarial system, which we will discuss later, believe that judicial control of the investigative process is the best way to uncover the truth.**
- **These fundamental beliefs create the differences in the role of witnesses, attorneys, and judges found in the common and civil law systems.**

The Inquisitorial System

- **In modern civil law systems, the inquisitorial system refers not to any legacy of the inquisition but to the extensive pretrial investigation and interrogations that are designed to ensure that no innocent person is brought to trial.**
- **Criminal procedure in civil law countries is characterized as inquisitorial, as opposed to adversarial.**
- **Many countries of the world can be classified as having inquisitorial systems, including France, Germany, China, and even, in some respects, Japan. But there are important disparities in criminal procedure among them.**
- **Despite individual variations, certain aspects of criminal procedure in the civil law countries give this procedure a distinctive character.**
- **Among these are the relative ease with which procedural rules are adopted and changed and the relative length and importance of the pretrial process in determining the outcome of a case.**

- **Generally, civil law countries have adopted many of the rules of procedure that protect the accused from arbitrary action by the state.**
- **Common law countries have modified the excesses of the adversarial system by allowing for pretrial investigations, by allowing judges to participate in trial if they choose to do so, and by making various arrangements for avoiding trial through the use of plea bargains.**
- **However, in the actual world, there is no clear cut demarcation between the two systems. It is common to find an element of both in the functioning a criminal justice system.**
- **There are also variations in their implementation within jurisdictions following the same system. Some countries have adopted a mixed system combining the features of both. Besides, it is mistaken to conclude that one is apt to favor suspects or accused and the other society. Each system has mechanisms to strike a balance between the interest of individuals and the public. The efficiency and effectiveness of a system has to be seen on a case by case basis.**

Contrasting Adversarial and Inquisitorial Processes

- The inquisitorial systems emphasize the screening phase of the criminal process with the idea that a careful investigation will determine factual guilt. The adversarial systems emphasize the trial phase, where the idea that complex rules of evidence to produce substantive results will ensure the defendant a fair trial.
- The adversarial systems are much more likely to restrict the involvement of the judiciary in both the investigatory and adjudicatory process. The direct involvement of the judge in inquisitorial systems contrasts with his or her more indirect involvement in adversarial systems.
- Because the inquisitorial system assumes that all involved persons are seeking the truth, the defendant is expected (though not required) to be cooperative. That cooperation includes supplying information to investigators and answering questions at trial. The adversarial systems, on the other hand, neither expect nor require the defendant to assist investigators. The burden of proof is on the prosecutor.
- The role of the judge in adversarial proceedings is primarily one of referee. The attorneys develop and present their respective cases, and then a jury decides between the two versions of the facts.
- The court in an inquisitorial system is another investigator with the added power of deciding the case.

The Mixed Court

- **The mixed court is another variation of criminal procedure that is used primarily in civil law countries but that is also found in Socialist and Common Law legal systems.**
- **It is a method of adjudication in which one or more lay judges help the professional judge come to a decision. Lay judges are typical citizens, not professional legal personnel. They are usually elected (on a local level) or chosen by a government agency responsible for monitoring courts.**

The Convergence (Mixed) System

- Each country develops its own code of criminal procedure, at least partially as a result of its own history.
- Convergence can be seen in Islamic and Socialist legal systems. In Saudi Arabia, Islamic law reflects the inquisitorial system through strong cooperation between the judge and the investigator. In addition, the defense attorney is less adversarial than in common law trials.
- Islamic procedural law is a mixed system combining adversarial and inquisitorial aspects. Because the Shari'a is a religious law based on divine command and revelation, it did not develop through judicial precedent or legislative codification. Furthermore, it does not require administration of justice to be a combined office (for example, the inquisitorial judge) or divide in to many (for example, the adversarial attorney, judge, and jury).
- At the same time, Islamic law includes provisions for the right to confront accusers and to remain silent and for the presumption of innocence. And with the changes in the role of judges and in the standard of proof, the Chinese may actually have moved from a strict inquisitorial to a semi-adversarial model.

Structure and Fundamental Principles of Modern Criminal Procedure

The Status of the Public Prosecutor

- **The status and structure of the public prosecutor varies from country to country.**
- **In England and Wales, the crown prosecution service is comparatively new and its status is comparatively lowly. It has no power to direct the police during investigation, and for the first 15 years of its existence, until 2000, crown prosecutors did not even have the right to appear in the crown court to present the case against defendants accused of serious offences. Crown prosecutors are, in law, civil servants, and enjoy no particular immunity or security of tenure.**
- **In continental Europe the public prosecutor is a long-established office, the status of which is considerably higher. It has, in principle at least, the right to give the police directions when offences are being investigated and it is he, not they, who decide if someone shall be prosecuted.**
- **Public prosecutors routinely appear before the courts to prosecute, and for them to engage a barrister for this task would be unthinkable.**

- In France, Belgium & Italy, public prosecutors enjoy what is called in French *le statut de magistrature*, which means for a number of legal purposes they are equated with judges.
- In France, Italy and Belgium it is customary to refer to both judges and prosecutors to gather as a single group.

The Status and Organization of the Police

- **In the four continental countries mentioned earlier, police forces are differently organized than they are in England, and in several ways their status is different.**
- **In England and Wales there are different police forces all organized and administrated locally.**
- **In continental Europe, by contrast, the trend is to organize police forces on a national basis. That said, however, a balance of power is usually maintained in various ways.**
- **As regards the status of the police, one difference is that when investigating crimes they operate (at least in theory) under the direction of the public prosecutor.**
- **A second difference is that, unlike in England where broadly speaking all police officers have similar powers, the various coercive powers that exist to enable continental policeman to investigate crimes are usually the monopoly of a restricted group within the police who are known in French as la police judiciaire.**

The Status, Recruitment and Training of Judges

- In England and Wales, professional judges are recruited from the ranks of successful legal practitioners (predominantly from the bar). The consequence is a professional judiciary that is predominantly male and universally middle-aged.**
- In the other countries in this study, as in Europe generally, there is a career judiciary. Those who wish to become judges apply to do so at the end of their law studies at university, and, like those who in England wish to join the civil service, make a formal application, which leads to their sitting an exam, on the basis of which they are selected or rejected.**
- A period of training follows, which in France even takes place at a special residential college, the Ecole nationale de la magistrature. The continental judge then starts in a lowly post, from which he or she hopes to move upwards by a series of regular promotions.**

- The different method of recruitment leads to other subtle differences, too. One of these is the different relationship that exists between Bench and Bar.
- On the whole, English barristers and English judges get on well together, and barristers usually treat the professional Bench with respect-which is not always the case in continental Europe.
- But here there is another paradox. The English method of recruiting judges from the ranks of successful middle-aged practitioners is, of course, extremely expensive, and it is probably true that this costly system is only tolerated in England and Wales because (in sharp contrast to the situation in continental Europe) over 90% of all criminal cases are tried by lay magistrates, who give their services free and who have formal legal training.

Legal Status of the Victim

- In English law, the victim of the offence has no special status in the criminal proceedings. Like any other citizen, he has the right to bring a private prosecution. He has no right to any kind of help from the state if he decides to do this, however-and a private prosecution is fraught with a number of serious hazards, the risk of having to pay the successful defendant's costs if the proceedings result in an acquittal.**
- If the police & the Crown Prosecution Service decide to bring proceedings, the victim has no legal right to join in. He has no legal means of making sure that the court hears his side of the story, and no right to ask the court to order the convicted defendant to pay compensation (although the court indeed has power to make the order).**
- In the other systems, the defendant has (at least in theory) considerably greater rights. In France and in Belgium the victim can make himself a partie civile, and as such either institute proceedings or make himself a party to them if the public prosecutor has started them already.**
- In Italy & Germany victim has second of these rights, but not the first.**

In Ethiopia

- **In Ethiopia, the justice sectors are organized at the federal and regional level. The main actors in the criminal justice system are separately organized. But, the police and the prosecution act together on judicial matters of handling criminal cases.**
- **They are differentiated for administrative affairs of the institutions like budget, training, salary, discipline, etc.**
- **There are also specialized institutions like ethics and anti-corruption and revenues and customs involved in the criminal justice. These institutions are unique as they are accorded both police and prosecution powers.**
- **Our country also shares the fundamental principles of criminal procedure. The FDRE Constitution and other laws have directly or indirectly incorporated these basic principles of modern criminal justice system.**