* 1. **Criminal justice system and its objectives:**

Criminal justice system in a country comprises of the legislature, the enforcement agencies, the courts and the correctional services. It has objective to provide protection to life and property of citizens and to ensure order in the society. The chief aim of the system is to ensure that the innocent are acquitted and the guilty are punished; respecting the basic theme of criminal jurisprudence that no offence should go unchecked while no offender should go unpunished.

* 1. **Crime and Criminal Law:**

Citizens of a State are expected to act in accordance with norms and law of that society. A law is a command which obliges a person or persons. Legislation is the source of law which consists in the declaration of legal rules by a competent authority. Criminal law is a body of such norms which is formally recognized and promulgated by State. Crime may be defined as the violation of such rules and regulations; i.e. criminal law; which are enforceable by the State and the society.

It follows that one of the three main kinds of law is the ‘Judge-Made Law‘: the other two being, statutory law (written law made by Parliament) and customary law (that which acquires force by long-established usage).

Ruling of the Court, i.e. case law as also called judge-made laws are the Court decisions which establish legal precedents which are cited as authority in a later case involving similar facts. A judgment of superior Court which decides a point of law holds ground till it is altered or modified by a subsequent judgment. The decisions of the Supreme Court in so far as they decide questions of law or are based on or enunciate principles of law are binding on all other Courts in Pakistan. This would also give binding authority to the Supreme Court’s obiter dicta (P.G. Osborn defines obiter dictum in his ‘A concise Law dictionary’ as “an observation by a Judge on a legal question suggested by a case before him, but not arising in such a manner as to require decision.”. Even a decision of the Supreme Court for which no reasons are given in the order would be binding upon all the Courts in the country.

However, a Court shall not be bound to follow a decision if given per incurium. A decision is per incurium when the Court has acted in ignorance of a previous decision of its own or of a Court of coordinate jurisdiction which covers the case before it, or when it has acted in ignorance of a decision of a Superior Court. Besides, a precedent cannot bind a higher Court, and, the Supreme Court binds all the courts and executives except itself for future cases. It has an authoritative force and becomes the law, until and unless rejected or changed by a higher Court.

* 1. **Elements of crime:**

A person cannot ordinarily be guilty of a criminal offence unless two elements; mental and physical; are present. These terms are expressed as mens rea and actus reus. Mens rea implies a guilty mind while actus reus denotes the actor criminally liable if combined with mens rea. For establishing crime, there should be concurrence of guilty act and guilty mind.

* 1. **Adversarial system:**

The courts in Pakistan function under adversarial system. This implies that in criminal trials, the Court is only to decide upon the accused being guilty or otherwise of an accused of alleged offence. It is not the job of the court to find out the real culprit if the court is satisfied that the accused being prosecuted before it stands either innocent or not guilty beyond reasonable doubt. During the trial, the Court is assisted by two sides, the prosecution and the defence. Being assisted so; the Court plays a role of a referee or umpire and decide the matter in question in accordance with the law of land.

* 1. **Age of criminal responsibility in Pakistan:**

In Pakistan, minimum age of criminal responsibility is seven years. Provisions of Section 82, Pakistan Penal Code (referred as P.P.C. hereafter), 1860, read with Section 83 of the Code provide that a child below age of seven years is incapable of committing offence because he is incapable of forming or possessing necessary mens rea for an offence whereas a child between age of seven and twelve years can be capable of forming or possessing necessary mens rea for an offence, unless it is established that he has not attained maturity of understanding to judge nature and consequences of his conduct.

* 1. **Components of criminal justice system:**

In Pakistan, the criminal justice system has a number of components such as police, prosecution, defence lawyers and courts. Police are concerned about the need to satisfy public opinion requiring the criminals to be caught, convicted and sentenced, and that, criminality in the society is checked. Prosecution is an agency which plays intermediary role between the judiciary and the police. A Defence counsel is an officer of the court and represents the accused; and, has the objective to protect the rights of the accused in accordance with law so that he may not be deprived of the benefit of the law due to his being a layman. The court has a duty to supervise the work of the police, prosecutor and the defence lawyer; it determines the guilt or innocence of the accused and imposes sanctions.

* 1. **Courts and their hierarchy:**

The courts in Pakistan for the purpose of criminal matters are classified in order: the Supreme Court of Pakistan, the High Courts (in each province and in Islamabad) and the Sub-ordinate Courts (the Court of Sessions with the Sessions Judge, Additional and Assistant Sessions Judges, and, and the Court of Magistrates).

* 1. **Sentences which Magistrates can pass:**

As a general rule (vide Sec. 32, Cr.P.C.), Magistrates of First Class may pass sentences of imprisonment upto three years including solitary confinement as authorized by law and, or, fine not exceeding forty five thousand rupees and [arsh, daman], whipping etc.; exception is where Magistrates are empowered under section 30, Cr.P.C. in various parts of the country (not in Sindh) instead of Assistant Sessions Judges and such Magistrates are empowered by their respective Provincial Governments to try all offences not punishable with death and pass sentences as authorized by law except sentence of death and imprisonment for a term not exceeding seven years (Sec. 34, Cr.P.C.).

In default of payment of fine, Magistrate may award the term of imprisonment which shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, in case the offence is punishable with imprisonment as well as fine (Sec.33, Cr.P.C., also see sec. 65, P.P.C.).

Besides, the words used in the section 33, Cr.P.C. for imprisonment in default of payment of fine, “shall not exceed one fourth” imply less than; and not exact; one fourth of the maximum punishment Magistrate may be competent to award in a particular offence. Imposition of sentence in default of payment of fine should be commensurate with the substantive sentence given. Thus, where an offence carries two years as maximum punishment and or fine, and the Magistrate award sentence of simple imprisonment for the period of ten days with fine of Rs.50; the scheme law would be defeated if the imprisonment in default of payment of such fine, the offender is awarded to further suffer for six months.

Notably, such imprisonment in default of payment of fine will be in addition to the substantive sentence of imprisonment awarded. Such fine can be tendered at the prison with the written permission of the Superintendent after adopting proper course described in Rule 47, Pakistan Prison Rules. If a prisoner is sentenced to a fine in addition to a substantive sentence and the order of the Court does not mention any imprisonment in lieu of fine, the prisoner will be released on the expiry of his substantive sentence (Ref. Rule 48, Pakistan Prison Rules).

Exceptionally, there are offences in different statutes and even in P.P.C.such as offence under section 509, P.P.C. where Magistrate is empowered to pass sentences more than provided under section 32, Cr.P.C.

* 1. **Mechanism / Overview of criminal case:**

In general parlance, a criminal case in Pakistan has four stages: pre-investigation stage, investigation stage, inquiry or pre-trial stage and trial stage. First Information Report sets law in motion. It follows investigation. A report upon completion upon investigation is submitted before the court. The court conducts inquiry and decides for the disposal of report if the same is fit for trial or for disposal in some other manner. If the Court deems it fit for trial, it takes cognizance of the offence. Then the trial commences with the framing of charge (reflecting statement of accusations) against the accused and is followed by evidence as per law of land. Upon conclusion of evidence, arguments from both sides are heard. Then the judgment is announced or the decision is given by the judge; the decision culminates into either acquittal or conviction of the accused of such offence. Then there is a provision for direct complaint before the Court and it more or less involves similar trial procedure with difference of inquiry / investigation stage; it will be discussed in separate chapter on “complaint”.

**Section 5 CrPC:**

**Trial of offences under Penal Code:** (1) All offences under the Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

**Trial of offences against other laws** (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

**PART II - CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES –**

**CHAPTER II - OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES**

**A. Classes of Criminal Courts**

**Section 6. Classes of Criminal Courts and Magistrates:--**

(1) Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts in Pakistan, namely: (i) Courts of Session; (ii) Courts of Magistrates.

(2) There shall be the following classes of Magistrates, namely:

(i) Judicial Magistrates:--

(1) Magistrates of the first class.

(2) Magistrates of the second class.

(3) Magistrates of the third class.

(4) Special Judicial Magistrate.

(ii) Executive Magistrates:-

(1) District Magistrates.

(2) Additional District Magistrates.

(3) Sub-Divisional Magistrates.

(4) Special Executive Magistrates.

(5) Magistrates of the first class.

(6) Magistrates of the second class.

(7) Magistrates of the third class.]

**B. Territorial Divisions**

**Section 7. Sessions divisions and districts:**

(1) Each Province shall consist of session; and every session divisions shall, for the purposes of this Code, be a district or consist of districts.

(2) Power to alter divisions and districts. The Provincial Government may alter the limits or the number of such divisions and districts.

(3) Existing divisions and districts.

The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

**Section 8. Power to divide districts into sub-divisions.**

(1) The Provincial Government may divide any district into sub-divisions, or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

(2) Existing sub-divisions maintained. All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code. C. Courts and Offices

**Section 9. Court of Sessions.**

(1) The Provincial Government shall establish a Court of Session for every session division, and appoint a judge of such Court.

(2) The Provincial Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but until such order is made, the Court of Session shall hold their sittings as heretofore.

(3) The Provincial Government may also appoint Additional Sessions Judges and Assistant Session Judges to exercise jurisdiction in one or more such Courts.

(4) Sessions Judge of one sessions division may be appointed by the Provincial Government to be also an Additional Session Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Provincial Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

**Section 10. District Magistrate:**

(1) In every district the Provincial Government shall appoint a District Magistrate

(2) The Provincial Government may also appoint Additional District Magistrate to exercise jurisdiction in one or more Districts and such Additional District Magistrates shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the Provincial Government may direct.

(3) For the purposes of section 192, sub-section (1) and section [407, sub-section (2) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.