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CHAPTER ONE

GENERAL OVERVIEW

- This chapter lays the ***foundation*** for the subsequent discussions on different subject matters of criminal procedure. The ***theoretical*** and ***legal bases*** of criminal procedure are analyzed. It also describes the trends of criminal procedure in the world and Ethiopia since time immemorial; ***models of criminal justice***; ***major criminal justice systems*** of the world and their structure.

1.1. Definition, Nature, Purpose, and Development

1) Definition

- ***The rules governing the mechanisms, under which crimes are investigated, prosecuted, adjudicated, and punished. It includes the protection of accused persons' constitutional rights.***
- ***The framework of laws and rules that govern the administration of justice in cases involving an individual who has been accused of a crime, beginning with the initial investigation of the crime and concluding either with the unconditional release of the accused by virtue of acquittal (a judgment of not guilty) or by the imposition of a term of punishment pursuant to a conviction for the crime.***
- ***Due process, a course of legal proceedings according to rules and principles that have been established in a system of jurisprudence for the enforcement and protection of private rights. In each case, due process contemplates an exercise of the powers of government as the law permits and sanctions, under recognized safeguards for the protection of individual rights.***

2) Due process of law

- i) Substantive due process:- essence, end, substance, or content of the law]
 - ii}) Procedural due process:- means/process/enforcement to achieve ends
- Substantive due process refers to the **content** or subject matter of a law. It protects people against unreasonable, arbitrary, or capricious laws or acts of government. It is a requirement that enacted laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual. Vague, ambiguous laws may be challenged on the ground of their constitutionality. Focuses on end
 - Procedural due process requires that a course of formal proceedings (such as legal proceedings) carried out regularly and in accordance with established rules and principles. The means of implementing laws

- Procedural due process 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. In general, procedural due process requires the following:
 1. Notice of the proceedings
 2. A hearing
 3. Opportunity to present a defense
 4. An impartial tribunal
 5. An atmosphere of fairness

- *Nevertheless, procedural matters may be ends in themselves. Fair trial, the right to be heard, etc are rights to be upheld for their own sake besides their instrumentality in attaining a fair result.*
- *In addition, the formulation of substantive rules could affect procedural issues. For example, the penalty provided in the law is taken into account to decide bail or punishment. Thus, the distinction between substantive and procedural justice is elusive.*

3) Nature of Criminal Procedure Law

- 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 procedural rules. Hence, ***criminal procedure is part of adjective laws.***
- 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.

4) Criminal Procedure and Human Rights

- Handling criminal cases is a sensitive matter as it is **highly connected** with human rights. For example, **arrest** and **investigation** limit the right to privacy, movement, bodily integrity, work, etc. The attitude of the public towards crime also leads to psychological embarrassment. Thus, it could lead to socio-economic and psychological problems. Moreover, unlike civil cases, **criminal proceedings could result** in **deprivation of life, and liberty**. Upon conviction, death penalty and imprisonment could be imposed. There could also be **confiscation and fine**. This loss of property is accompanied by social stigma. The situation is different for civil liability. The latter has predominantly pecuniary effect. **So, criminal procedure is very much related with human rights.**

5)The Constitution and Criminal Procedure

- The FDRE Constitution has formally adopted a federal system. The level of government having the responsibility of enforcing the criminal law has to be distinguished. The FDRE Constitution lacks clarity in this regard. Enacting a criminal law is the mandate of the Federal government pursuant to Art 55/5 of the FDRE Constitution. But, regions can enact criminal law on matters not covered by federal criminal law. However, the constitution is not clear about the jurisdiction of the two tiers of government over the implementation of the criminal law. Different arguments are forwarded. Some argue that the federal government should have the mandate to apply the criminal law it has enacted. Others say that even though the federal government enacted it, the regions have the responsibility to apply it. According to Art 52/2/g of the FDRE Constitution, the regions have the power to organize police force and maintain law and order. These functions are highly connected with the application of the criminal law.

6) Sources of criminal procedure law

- i. At the federal level, the sources of criminal procedure rules are the
 - ***FDRE constitution***,
 - ***federal legislations like*** criminal procedure code, proc 25/96, other penal legislations
 - ***Sentencing guideline*** enacted by the Federal Supreme Court directive No 2/2005,
 - Federal Supreme Court ***cassation division decisions***,
 - Criminal justice system policy, etc.
- ii) At state level, besides the federal sources mentioned, the sources include regional constitutions, policies and legislations.

- To sum up, the sources of criminal procedure principles and rules have to be seen the overall political, constitutional, and legal system of a country. In every nation, the ***constitution*** is the first legal document to be referred to. In many countries, there has been a trend of constitutionalisation of criminal procedure rules. ***Legislations*** also play a crucial role. The statutory sources of criminal procedure rules come next to constitutional criminal procedure rules. There may also be ***case laws***.

7. Models of Criminal Justice Systems: the 'Due Process' and the 'Crime Control' Models

- 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. But, it is unthinkable to achieve absolute balance. The balance could tilt towards one over the other. Consequently, **depending upon the approach of the state towards the two interests**, two models of criminal justice system have been developed. These are the due process model and crime control model.

- The due process model is distinguished for its **emphasis** on the avoidance of convicting **innocent**. It tolerates the escape of criminals for the sake of not harming innocents. This may affect the public interest as offenders are sent free.
- On the contrary, the policy of the crime control model, as its name implies, is the **prevention of crime**. It gives lesser emphasis to the protection of the rights of a suspect or accused. There is a possibility to convict innocent persons since the major target is repressing crime.

- Determining the orientation of a jurisdiction is not an easy task. Comprehensive understanding requires the examination of a constitution, statutes, case laws, and law enforcement activities. The approach can not be static amidst the dynamism of socio-economic and political reality. Thus, the policy of the criminal justice system has to be seen in light of the overall arrangement and operation of the justice system.

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

There are two major criminal procedure systems, i.e., adversarial (accusatorial) and inquisitorial. Their difference lies in the selection of the appropriate *procedures and processes* for effectively detecting and prosecuting criminals. They are two *paths* to filter out the guilty from the innocents. The adoption of these systems is influenced by legal tradition. Generally, common law systems follow the accusatorial system and civil law countries adopt the inquisitorial approach.

- In the adversarial system, a judge plays the role of a referee in the contest between the prosecution and defense. This is thought to be the ideal system to arrive at a fact.
- On the contrary, in the inquisitorial system, the judge is supposed to inquire in to the case to arrive at the truth. In the former, the court is passive, whereas in the latter, the judge plays a key role in examining the parties and evidence.
- Hence, the adversarial approach focuses on the existence of fair process which is considered to have an inbuilt method of finding facts. In the inquisitorial system, the criminal justice system is inclined towards finding the truth.

- 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.
- To sum up, the adversarial and inquisitorial systems are the procedures and processes utilized for adjudicating criminal cases. The former is characterized by ***limited judicial intervention*** and the latter is identified for its ***active involvement*** of the judiciary.

Comparison

- 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, who assumes that the defendant will maintain silence.
- 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 being able to decide the case. The judges ask most of the

9) Fundamental principles and Structure of criminal justice

- The materials in this section deal with the institutional set up of the criminal justice sectors and fundamental principles of criminal procedure. The main actors in the criminal justice system discussed are the police, prosecution, and courts. The organization of the organs of government is affected by the legal tradition of a country. The role of victims also varies from jurisdiction

- 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.
- In short, the major institutions that are involved in the criminal justice system include the police, prosecution, and courts. Their organization varies from jurisdiction to jurisdiction. The role of victims can not also be undermined. Irrespective of variation in the legal systems of states, all share fundamental values of criminal procedure. Our country is not also exception to that.