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CHALLENGES FOR THE SYSTEM OF ADMINISTRATION OF JUSTICE IN INDIA: FINDING TRUTH WITHIN THE ADVERSARIAL SYSTEM- A COMPARATIVE ANALYSIS OF INDIA AND ENGLAND

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Abstract

The most crucial objective in the preamble of the Indian Constitution is to secure Justice. The Indian justice system is a complicated, multidimensional institution that has a long history of development as well as current difficulties. Enshrined in the Indian Constitution, the principle of guaranteeing fair and equal justice lies at the heart of the country's legal architecture.

But there are major problems with the system that make it less efficient. One significant problem is the excessive backlog of cases. An ineffective case management system and a lack of judges are contributing factors to this backlog. In addition, socioeconomic constraints and the difference in access to justice between urban and rural communities point to a persisting injustice in the legal system.

Being influenced by the Common law, we have followed the adversarial system for our Criminal procedures. While the goal of an adversarial system is to bring about the best of evidence in a competitive environment, the goal of inquisitorial system is to envisage the findings of truth through the endeavours of the Judge. The point being that the Indian criminal procedure system is equipped sufficiently to bring out the Truth, something which is considered the goal of inquisitorial system at the same time maintaining the fairness and impartiality in the trial by broadly confining itself to the adversarial system.

The problem however lies in the way the adversarial system is implemented in India. On the Prosecution side, the duties of presenting the truth before the Courts is often foregone in the zeal to secure convictions. Prosecutors are enjoined to state the facts, however, external considerations such as the promotion policy and the pressures from the police department often lead them to forego certain piece of evidence or to mould the facts so that the Conviction is secured. On the defence side, we deal with the accused who in vast majority of cases are illiterate or belong to low socio-economic class for whom the maxim, "*ignorantia juris non excusat*" operates way too harshly. The success of adversarial system depends on Oral testimonies and Cross examinations all of which requires a lawyer adept in his art. To afford such defence counsel is a dream for vast majority of Indians. Further, the stringent bail provisions, the hesitancy of magistrates to exercise discretion under the above mentioned inquisitorial-like provisions, the normalcy of torture methods to extract confessions and overtly long trials makes the adversarial system operate contrary to its goals of fairness and impartiality. Truth, it seems is lost

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in the process. The comparative study of India and England consequently provides a framework for examining how an adversarial system can better reconcile the pursuit of truth with the fundamental requirements of fairness and justice.

Keywords – Administration; Adversarial; Comparison; Justice; Truth.

I. INTRODUCTION

The foundation of any civilized society is the administration of justice. It guarantees that people's rights are upheld and conflicts are settled amicably by embodying the values of justice, equity, and the rule of law. Justice is doing what is right and fair, and administration is managing. The administration of justice refers to the process by which a government uses its authority to enforce the law in order to maintain justice and equity within its boundaries. A government must have the authority to employ force when necessary to ensure that justice is served. Every administration must take two crucial actions. Defend the nation from its adversaries and maintain justice and equity within its boundaries. A government, according to Salmond, is a collection of local residents who are organized to maintain justice and order by resorting to force when necessary. To keep society secure and to preserve peace, governments enact and enforce laws. A government isn't truly a government if it can't accomplish this. Protecting people's rights, ensuring that the law is obeyed, and punishing lawbreakers are the primary responsibilities of the administration of justice. The system and procedures used to uphold the law and settle conflicts within a community are referred to as the administration of justice.¹ It includes applying legal concepts, looking into alleged infractions, and imposing penalties or remedies when people or organizations violate established laws and rights.

II. ISSUE

The Indian criminal procedure is formally adversarial in nature but contains several inquisitorial truth-seeking mechanisms. The real problem is the gap between these formal powers and their effective operation in practice.

¹ Kalasappa Sevanta, Concept of Administration of Justice in Ancient India: An Analysis, 1(2) Indian J.L. & Hum. Behav. (2016).

III. METHOD

This study examines the function of administration of justice in the criminal justice system using a case study method and thorough literature analysis. A literature review is a suitable process for discovering research in which challenges with the criminal justice system are being incorporated into several facets of justice. It is also to develop a framework to systematically understand the two systems of justice i.e., inquisitorial and adversarial justice system. The following factors to be considered here such as role of the judges and lawyers in the two different systems with proper research process.

IV. ADVERSARIAL FEATURES IN THE CRIMINAL JUSTICE SYSTEM

The adversarial legal system is a frequent practice in common law nations worldwide. Theoretically, in this system, two opposing sides, each represented by an attorney, submit their claims to an unbiased judge or jury, which then renders a verdict based on the evidence.

This approach is sometimes promoted as a means of guaranteeing that both parties can tenaciously defend their arguments and that the adversarial process will ultimately uncover the truth. Oral testimony is usually given a lot of weight. It is customary for parties who rely on a witness to call them to testify orally in court, and opposing counsel is entitled to cross-examine the witness. Technical rules of evidence exist. Evidence is not always admissible just because it is pertinent. Although the standards of evidence have been greatly loosened in civil proceedings in recent years, they still have a considerable impact in criminal cases.

Theoretically, the claimant and defendant in a civil action or the prosecution and defense in a criminal case should be on an even playing field. We are all aware that this isn't always the case in practice, particularly Therefore, upholding a free society where individual human rights are paramount is a crucial role of the adversary system.² Accordingly, the right to legal representation is "the most precious" of when one party is unrepresented and the other is represented by knowledgeable attorneys. Even if it is perhaps more respected in violation than in observance, equality of arms is the theoretical foundation of our system.

Indian criminal justice system is basically an inclusive of adversarial system. The adversarial system, which was borrowed from the British model, is the primary foundation of the Indian criminal justice system. The adversary system, which is based on the accusatorial approach, was adopted by the

² Pathan Rajekhan Dastagir, Role of Adversarial Model in Indian Criminal Justice System: A Critical Analysis, 5(6) Int'l J.L. Mgmt. & Hum. 1019 (2022).

Criminal Procedure Code, 1973 (henceforth referred to as the Code). According to it, the judge's role in the trial is primarily non-interventionist. As per the system, the judge must determine whether the evidence presented is pertinent to the case at hand, whether it is admissible, and whether the prosecution has proven the accused's guilt beyond a reasonable doubt. The judges must follow the guidelines of the Criminal Procedure Code of 1973 and the Indian Evidence Act of 1872 during the trial; the judge has less discretion. A fact's relevance is determined by sections 6 to 55 of the Evidence Act, while relevant facts are only admissible under section 5 of the Act (with a few exceptions, such as those found in sections 65B and 155). The Evidence Act also specifies the method of proof, giving judges virtually no discretion. The Malimath Committee³, has stated its concern over the pendency of criminal cases and low conviction process due to the flaws in criminal justice system which is hampering administration of justice. The committee had observed that the entire system unavoidably favors the accused because the judges play a neutral role in the trial. In the case of *Zahira Habibullah H Sheikh v. State of Gujarat*⁴, the Supreme Court had observed that 'the main purpose of the judicial system is the discovery and establishment of truth.

V. DOWNSIDE OF THE ADVERSARY SYSTEM

Justice which is a fundamental pillar of any democratic society with fair and impartial outcomes, the justice system is occupied with adversary approach. However, it has certain flaws with respect to the criminal justice system. The adversarial system's excessive emphasis on winning at the expense of discovering the truth and advancing justice is one of its primary issues. It may sound odd coming from a litigator and trial lawyer, but in this system, winning the case rather than necessarily finding the truth is the main objective. Even if it might not be the most accurate or intellectually assessment of the case, attorneys are motivated to present it in the best possible light for their client. The disparity in resources between the sides is another serious problem with the adversarial system. Those with the financial means to retain the top attorneys and privileged frequently enjoy a major edge over those without financial means. This disparity may lead to unfair outcomes in which the party with the most resources prevails rather than justice being delivered. Furthermore, when one party is not represented, the adversarial system can be incredibly unfair. Those who can afford to launch a strong defense or prosecution are given preference in the administration of justice. Parties

³ Comm. on Reforms of Crim. Just. Sys., Ministry of Home Affs., Gov't of India, *Report of the Committee on Reforms of Criminal Justice System* (2003).

⁴ *Zahira Habibullah H Sheikh v. State of Gujarat* 2004 (5) SCC 353.

do not share resources and legal counsel fairly, which leads to create imbalance that may damage marginalized or vulnerable groups in society.

Another issue is that it mostly on cross-examination and oral testimony to measure the dependability and trustworthiness of witnesses. One of the most important techniques for revealing falsehoods and contradictions in a witness's testimony is cross-examination. However, the cross-examination strategy frequently depends on identifying the witness's inconsistency, presuming that the witness must be dishonest if they contradict themselves. This presumption, however, ignores the reality that human memory is extremely prone to errors and distortions over time.⁵ Additionally, cross-examination can lead jurors and judges to place an undue emphasis on a witness's mannerisms as a gauge of their honesty, which is a bad idea because some people may come out as apprehensive or self-assured despite being honest.

VI. INQUISITORIAL FEATURES IN CRIMINAL JUSTICE SYSTEM

The inquisitorial system is common in nations whose legal systems are based on Roman or civil law. A more efficient and equitable option that is the inquisitorial system in continental Europe. Instead of depending on the parties to make their case, the judge actively investigates and gathers evidence under an inquisitorial system. This can lead to the disparity in resources between the parties and result in a more complete and effective analysis of the evidence. Certain parts of the Indian Evidence Act and the Criminal Procedure Code do not strictly follow the adversarial system, rather it has certain features of inquisitorial system in the Criminal Procedure Code's such as section 311, which gives the court the authority to call or recall any witness at any point throughout the case. Another provision 165 of the Evidence Act, allows the court to call for the production of any document or item. Section 165 of the Act grants the court the authority to examine the parties or witnesses at any point throughout the proceedings. The ultimate goal of these inquisitorial procedures is to discover the true facts in order to run the administration of justice fairly. The judge may then question the witness in accordance with section 165 of the Evidence Act.

The court also has the authority to question the accused under section 313 of the Criminal Procedure Code. The accused may be questioned by the court at any point throughout the trial; this clause is meant to allow the court to speak with the accused directly without the involvement of an attorney. Although the accused is not given the oath under this clause, the court nonetheless attempts to extract

⁵ H. Monroe Freedman, *Our Constitutionalized Adversary System*, 1 *Chapman L. Rev.* 57 (1998).

the truth in this case as well.⁶ Because of this, he cannot be cross-examined by the other party and is not regarded as a significant piece of evidence in the case. In accordance with section 173(8) of the Code, if the court believes that the investigation was not properly followed, it may require the police to conduct additional investigation after the police have filed their charge sheet.

Also, an occurrence report must be filed with the magistrate under section 157 of the Code and the accused must appear before the magistrate within 24 hours of the arrest and then every 15 days under sections 57 and 167 of the Code, it is impossible to overlook the fact that the magistrate's role begins the moment the FIR is filed.

These instances clearly indicate that along with adversarial system of justice inquisitorial features are also incorporated in criminal justice system. Even these has been carried further in the new Criminal Amendment Laws, 2024.

VII. THE ADVERSARIAL SYSTEM IN ENGLAND

England provides an appropriate comparative study for examining the challenges of truth-finding in India's adversarial criminal justice system because the Indian criminal justice framework has historically been influenced by the English common law tradition. Although the two systems have developed within different constitutional, institutional and social contexts, and common law principles both attach considerable importance to the adversarial method of criminal adjudication. The basic premise of the adversarial process is that the prosecution and defence present competing versions of the facts before an impartial judge, who determines the case on the basis of the evidence and arguments presented. The underlying assumption is that truth can be identified through the testing of evidence by the opposing parties.

However, the contemporary English system demonstrates that an adversarial process does not necessarily operate as an unrestricted contest between prosecution and defence. It is supported by institutional safeguards which are prosecutorial independence, disclosure of evidence, investigation, legal representation, judicial case management and fair trial. These safeguards are particularly relevant to the Indian context because they demonstrate that the effectiveness of an adversarial system depends not only upon its formal legal structure but also upon the institutional mechanisms through which that structure operates.

⁶ Shivanshu Goswami & Prakhar Srivastava, *The Power of Judge to Put Questions: An Exception to the Adversarial Justice System*, India L.J.

The Criminal Procedure Rules⁷ in England place overrides the objective of dealing with criminal cases justly with focusing of criminal procedure. Participants are highly involved to conduct proceedings in accordance with this objective, and the court is required to further it while exercising its powers. The emphasis is therefore not simply upon securing a conviction or winning an adversarial contest. The ultimate objective of the system seeks to ensure that the issues in dispute are identified at an early stage and that proceedings are conducted fairly and efficiently.⁸

This approach has important purpose for truth-finding. An adversarial system can only assist a court to approach a reliable conclusion if the parties are able to identify and test the relevant issues. If criminal proceedings become dominated by procedural system, delays or tactical withholding of information, the adversarial process may fail to perform its truth-finding function.⁹ English criminal procedure therefore attempts to place procedural competition within a framework of judicial control and cooperation under Institutional safeguard.

VIII. ROLE AND RESPONSIBILITY OF PROSECUTION

The role of the prosecution is one of the most important areas of comparison between India and England. In England, prosecution decisions are made within the institutional framework and process of the Crown Prosecution Service (CPS). The CPS operates independently from the police in making prosecution decisions. Its role is not simply to obtain convictions but to apply evidential test in the interest of public in determining whether prosecution should proceed to make more transparency and reliability.

The evidential dimension is particularly relevant to the search for truth and reliable. Prosecutors are expected to consider the evidence as a whole and remove the material that may weaken the prosecution case. The prosecution process is therefore not conclusively based upon the assumption that every piece of evidence collected by the police must be refer to establish guilt. Rather, the prosecutor must assess whether the available evidence provides a sufficient basis in favor of prosecution.

The CPS rules¹⁰ also place importance upon investigating reasonable process of inquiry that point towards the suspected accused or away of it. This principle creates a base to truth-finding because it prevents investigation from being properly restricted to the construction of a case against an

⁷ Criminal Procedure and Investigations Act 1996, c. 25 (UK).

⁸ Criminal Procedure Rules 2025, SI 2025/909 (UK).

⁹ Police and Criminal Evidence Act 1984, c. 60 (UK).

¹⁰ Crown Prosecution Service, *Disclosure Manual* (2022).

identified suspect. Current CPS framework expressly states that investigators must pursue all reasonable process of inquiry, including those that may point towards innocence.

This principle focusses an important point of comparison with India. The Indian criminal justice system also expects the investigation process to be fair and objective, and it majorly highlights the prosecutor has a duty to assist the court in the administration of justice.¹¹ However, the major concern about the relationship between investigation and prosecution, police practices and institutional pressures raise questions regarding whether the adversarial process always receives a balanced evidentiary material. This comparison raises an important institutional question i.e., with respect to safeguards necessary to ensure that the function of prosecution remains a fair determination of the case rather than deciding conviction.

IX. DISCOVERY OF TRUTH (INQUISITORIAL PROCESS)

The most significant comparative feature of the English and Indian system for the purposes of this research is generally its framework of discover of truth. Under the Criminal Procedure and Investigations Act 1996 and associated guidance, investigators and prosecutors have continuing responsibilities concerning the identification, retention, review and disclosure of relevant material for the strong evidence.

The CPS¹² explains that discovery of truth process begins at the investigation stage. Investigators are required to pursue reasonable process of inquiry and to consider material evidence that may highlight towards or away from a suspect. Once a person is charged, relevant evidence that may undermine the prosecution case or assist the defence must be disclosed in accordance with the appropriate legal framework.

Discovery and disclosure of material evidence is important not merely as a procedural safeguard for the accused but as a truth finding mechanisms. The adversarial system assumes that the defence can challenge the prosecution case effectively. Such challenge becomes meaningful only if the defence has access to information of material supporting evidence that may undermine the prosecution's version of events.¹³

Illustration: Suppose CCTV footage collected during an investigation appears initially to support the prosecution but another portion of the same material supports the accused. If the defence receives only the material relied upon by the prosecution, the adversarial process becomes weak. The court

¹¹ Crown Prosecution Service, *Disclosure* (2026).

¹² Crown Prosecution Service, *The Code for Crown Prosecutors* (2025).

¹³ Police and Criminal Evidence Act 1984, c. 60 (UK).

is not testing two competing evidence on the basis of the complete relevant evidentiary picture. Disclosure seeks to minimize this problem of disputed supports by imposing obligations concerning material that may assist the defence.

England experience is particularly relevant to India because modern criminal investigations in the AI era increasingly generate more amount of digital evidence, including CCTV footage, mobile-phone data, social-media material and electronic communications. England disclosure guidance recognizes that investigators must adopt a proper reasonable procedure to such material and pursue reasonable process of inquiry rather than either ignoring potentially relevant information or conducting unlimited speculative searches.

India faces a similar challenge in the era of digital process of investigation. The comparative question is therefore whether Indian criminal procedure can develop stronger institutional mechanisms for identifying, preserving and disclosing evidence as well as incriminating material in order to identify the truth.

X. ADJUDICATOR ROLE

Another important aspect of comparison concerns the role of the judiciary. The ideal traditional system of an adversarial process is that the judge acts as an impartial adjudicator who determines the dispute brought before him. England broadly follows such a model. The judge does not normally carry out the investigation which would be performed by police detectives in America, nor does he act as prosecutor.¹⁴ On the contrary, the judge's role is to safeguard a fair trial in accordance with applicable legal and procedural rules.

At the same time, the modern English judge is not entirely passive. The Criminal Procedure Rules impose a duty on the court to manage cases actively. The court has a responsibility to further the overriding objective, and participants in the trial have a responsibility to point out any failings that could undermine the fairness of the trial or lead to substantial delays.

This is an important lesson for India. Indian criminal procedure also has various provisions that empower courts to examine evidence and the accused. The previous Code of Criminal Procedure, 1973 contained several provisions indicating that Indian criminal procedure is not adversarial in nature. The present Bharatiya Nagarik Suraksha Sanhita, 2023 also retains various judicial powers for examining the accused and dealing with the evidences in the charges.¹⁵

¹⁴ Prosecution of Offences Act 1985, c. 23 (UK).

¹⁵ Bharatiya Nyaya Sanhita, No. 45 of 2023, India Code (2023).

The very fact of such powers proves that the Indian system is not obliged to renounce adversarial to be able to enhance truth-finding. The only issue is whether courts were right to use their existing powers in order to avoid the risk of procedural formalism, which may hide the existence of relevant facts while preserving judicial neutrality.

XI. INVESTIGATION AS THE BASIS OF TRUTH-FINDING

The comparison also shows that truth-finding starts before the trial. An adversarial court can only decide the truth on the material before it. If the investigative process fails to identify relevant evidence, a subsequent trial may not necessarily be able to correct that failure.

English disclosure principles acknowledge the problem by placing responsibilities on investigators from the start of their investigation.¹⁶ They require recording, retaining and reviewing material and pursuing reasonable lines of inquiry in both directions. The principle is especially important where digital evidence is involved.

The Indian system has similar challenges which involve delayed investigation, unreliable witness testimony, inadequate forensic infrastructure, non-collection of relevant evidence and prolonged proceedings. These issues directly impact truth-finding since passage of time can affect witness memory, evidence preservation and the availability of reliable material. As a consequence, enhancing the adversarial trial alone cannot address the issue. The pre-trial investigative stage too must be able to produce a reliable evidentiary foundation.

XII. FINDINGS AND CONCLUSIONS

The Criminal Procedure Code of 1973 and the Indian Evidence Act of 1872 place more stress on the "proof" than the "truth." As a result, the judge serves as a checkpoint for the evidence presented to him at different points. However, Indian judges have made sure that fair investigations and trials have taken place by switching, particularly in recent years, from the passive adversarial system to the participatory inquisitorial system. In the case of *Sakiri Vasu vs State Of U.P. And Others*¹⁷, it was held that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. In

¹⁶ Police and Criminal Evidence Act 1984, c. 60 (UK).

¹⁷ *Sakiri Vasu vs State Of U.P. And Others*, 2007 INSC 1243.

*Ramnaresh & Ors. v. State of Chattisgarh*¹⁸ held that it is a settled principle of law that the obligation to put material evidence to the accused u/s 313 Crpc is upon court. Even prosecutor should play a crucial role for the balancing of the two systems such as in *Anant Wasudeo Chandekar v. King Emperor*¹⁹, it was held that a public prosecutor's job is to represent the State, not any one side, and that the goal of a criminal trial is to ascertain the accused's guilt or innocence. The accused must be prosecuted in the most equitable manner possible. The State is pursuing the case solely to safeguard the community and is not motivated by any desire for retribution. Therefore, there shouldn't be an apparent need for or grasping for a conviction. Hence, the inquisitorial system has certain advantages. In contrast to the adversarial system, which conceals the facts in a contest for victory, this system seeks the truth. Thus, it becomes the responsibility of Indian courts to reveal the truth by using the proper instruments provided by the law. Because the justice system should only be guided by the search of truth.

The comparative study of India and England shows that the primary problem with the adversarial system is not adversarial per se, but the potential for the adversarial contest to take place in a context which lacks sufficient safeguards for equality, transparency and reliable evidence.

The English system shows that the adversarial process can take place alongside substantial truth-seeking obligations. Investigation is expected to take due account of reasonable lines of inquiry leading towards and away from a suspect; disclosure obligations require that relevant material capable of assisting the defence or undermining the prosecution case be taken into account; the availability of legal-aid mechanisms seek to facilitate meaningful defence participation; and judicial case management seeks to ensure that proceedings take place justly and efficiently. Similarly, the Indian system has various safeguards and judicial powers that can aid in truth-finding. The issue appears to be one of their effective utilizations. As such, the comparison suggests that India does not have to switch between adversarial and inquisitorial models. Instead, it is preferable to focus on the institutional conditions required for the effective functioning of the adversarial model.

In short, the legitimacy of the criminal justice system relies on the effective balance between truth and fairness. The system that prioritizes convictions will risk losing truth in the name of victory. Meanwhile, the system that prioritizes truth may fail to respect the rights of the accused. As such, the challenge for India appears to be the need to create adversarial processes in which the contest

¹⁸ *Ramnaresh & Ors. v. State of Chattisgarh*, 2012 INSC 117.

¹⁹ *Anant Wasudeo Chandekar v. King Emperor*, AIR 1924 Nag 243, 245.

between prosecution and defense serves as a tool for testing evidence. The experience of England can be used as a basis for considering how such a balance can be achieved institutionally