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MODELS OF JUDICIAL PROCESS: SHOULD INDIA ADOPT INQUISITORIAL SYSTEM?

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ABSTRACT

Judicial process is a method by which courts apply the laws to a particular situation. From the standpoint of an ordinary citizen it is a set of rules, binding norms, regulations, institutions within which he or she can avail the fruits of justice. However if we consider the global situation, then it is not every country that follows the same mode of judicial process. The different models of judicial system assign definite character and status to the courts of various countries. A specific model of judicial system ensue in granting specific rights and duties upon the parties to a litigation, courts and also the state functionaries involved in the system. There are different powers granted to the courts, police, prosecution, and state authorities which ultimately gives a unique shape to a specific mode of judicial system, that makes it different from other legal systems. The two most important models of judicial systems are the – Common law legal system or and the Civil law legal system. To be more specific they are the adversarial legal system and the inquisitorial legal system respectively. The aim of this paper is to comprehend the characteristics of both the systems and a comparative analysis between the two systems and knowledge of the procedures which are followed in different countries. Following this, it apprehends what model our country has adopted and the challenges before the system it follows and few suggestions to make it better by infusion of both the civil and common law legal systems.

Keywords: Adversarial system, inquisitorial system, judicial process, investigation, accused

INTRODUCTION: COMMON LAW AND CIVIL LAW SYSTEMS

A common law system is a legal system that gives weightage to the common law. Common law system is followed mainly by those countries which were parts of the british empire unless they had a different legal syste, because of other colonial subjugation. The countries which follow common law system are: United States of America, Bangladesh, Pakistan, Nigeria, Australia. India which earlier used to be a former colony of the british follows the British common laws though there are certain inquisitorial elements in indias system. Also the state of goa doesn’t follow the common laws and it has its separate Portuguese civil code. In common law countries the principles of law developed through cases are given unprecedential value and the judges play
a key role in shaping the laws and the branches of law. The consistency is maintained by the doctrine of precedents where the decisions of the higher courts are binding on the lower courts i.e, the doctrine of stare decisis.

The civil laws have its origin in Europe and the codified statutes are the basis of it. The civil laws are derived from the Justinian code but they are heavily influenced by the Napoleonic, Germanic, feudal, local practices and also natural laws and legal positivism. The countries which follow civil law system are France, Germany, Japan, Italy, Mexico. In civil law system there is not much relevance of judicial precedents, more emphasis is given to the statutory laws. This is because the civil laws are derived from abstractions and there are a lot of protection to procedural and substantive rights and so the courts refer to such laws instead of developing laws by themselves. There are highly codifies laws in the civil legal system with updated legal codes, the judges follow the law strictly rather than interpreting.

There are two modes of judicial process prevailing in the world – adversarial and inquisitor. As India inherited myriad British legal aspects ,it follows the adversarial system of litigation which is the basis of Indian judicial system. The Criminal procedure code,1978 is based on the adversarial system of litigation. The most important feature of this system is the neutral character of the judge who acts as a referee between both the parties. The very utility of both these two systems have become debatable issues.

**INQUISITORIAL AND ADVERSARIAL SYSTEM OF LITIGATION:**

**COMPARISON**

The above two are the two modes of judicial process followed under civil and common law jurisdictions. India largely follow the adversarial process. These two processes affect the scope of the dispute, the evidence to be brought on record, disputes which are brought before the court, the role of the functionaries of CRPC, the investigation process, the burden of proof, the guilt of the accused. So its very crucial to compare and contrast both the two systems to understand what is more beneficial to needs of our country.

**BURDEN OF PROOF**

In adversarial process, the accused is innocent until proven guilty and it is the duty of the prosecution to adduce evidence and establish the case beyond reasonable shadow of doubt. In inquisitorial system the accused is presumed to be innocent until proven guilty and it is the duty of the judge to find out the guilt. So we can see that the standard of proof lies in the inner satisfaction and conviction of the judge.
CONDUCT OF TRIAL

In adversarial system the parties select and adduce evidence and the veracity of the witness is judged by way of examination of witnesses. It advocates non interventionalist role of the judge who just oversees whether the case is proved or not and his role is very limited here.

In inquisitorial system, it bestows the judge the power to collect all the necessary materials and actively take part in the trial proceedings to unearth the truth and then send the record to the trial judge. As the judge asks questions here so the cross examination part loses importance, and the lawyers can only suggest questions that can be asked by the judge.

INVESTIGATION PROCESS

In adversarial model the duty to collect evidence rests upon the parties and a neutral judge applies his mind and weighs the evidence adduced. The prosecutors have discretion whether or not to send a case for trial if there is no sufficient evidence. The accused also have an option to plead guilty during the trial.

In inquisitorial system the investigation is typically supervised by the Judge of Instruction, who can seek particular evidence; direct lines of inquiry favourable to either prosecution or defence; interview complainants, witnesses and suspects; and ultimately determine whether there is sufficient evidence to take the case to trial. The Judge of Instruction then prepares a dossier and forwards it to the trial judge. Thus, the discretion of the prosecutor is limited and the defendant does not traditionally have the option to plead guilty.

ROLE OF JUDGE

In adversarial system the judge acts as a neutral person and ensures whether the due process is observed or not and determines the guilt of the accused based on the evidences and arguments placed by the advocates.

In inquisitorial system the judge acts as the principal interrogator of the parties and the witnesses and he is under a duty to take evidence until the truth is unearthed.

ADMISSIBILITY OF EVIDENCE

In the adversarial system, evidence which is prejudicial or of little evidentiary value, is more likely to be rejected from juries, as they are not well-versed with the amount of importance that is to be given to such evidence. Hearsay evidence, which is a statement made by any other person other than the witness is usually admissible if it is considered to be cogent and trustworthy.
In an inquisitorial system, the admissibility of evidence is dependent on the Judge’s evaluation of it being relevant. Thus, evidence is likely to be admitted irrespective of its reliability and prejudicial character, as long as the Judge considers it to be relevant.

**RIGHTS OF ACCUSED**

In adversarial system the accused enjoys a right to silence and he cannot be compelled to answer any question put to him and the trial is mainly oral, continuous and confrontational. The parties by way of cross examination impeach the credibility of the witnesses to know the actual truth that the opposite party has not brought before the court. In both the systems the accused is guaranteed a right to fair trial and gets protection from self incrimination.

However, in an inquisitorial system, the defence has only a limited right of suggesting questions that can be asked to the Judge. It is left to the will of the Judge whether he will accept the suggestions or not.

**ROLE OF VICTIM**

In adversarial criminal proceedings, victims are not a party to the proceedings, the State is a party. Prosecutors are appointed to act on behalf of the State and they do not in particular sense represent the victim, they are representative of the State.

In an inquisitorial system, victims have a more active role in all the stages of the trial and investigation which includes a recognised right to request particular lines of inquiry or to engage in interviews by the investigating authority. Even some civil law jurisdictions allow the victims to be represented by a lawyer.

**ELEMENTS OF INQUISITORIAL SYSTEM IN INDIAN LAWS**

We know India largely follows the adversarial judicial system but there are several instances where the judicial system has incorporated inquisitorial elements. In Maria Margarida Sequeria Fernandes v Erasmo Jack de Sequeria (Dead) through LRs, the Apex Court criticized the adversarial system as it lacks dynamism and held that truth should be a guiding star in the entire legal proceeding and it also referred to the truth-finding aim of the inquisitorial process.

In Ram Chandra v State of Haryana, the Supreme Court criticised the adoption of an entirely adversarial process and held that the role of a judge is like a mere referee between the two contesting parties where the trial is just like a competition between them. The judge must cease to become a mere a spectator and become a participant in the trial by showing active interest and by put questions to the witnesses to unearth the truth.

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1 2012 (3) SCALE 550.
2 AIR 1981 SC 1036.
In State of Rajasthan v Ani Alias Hanif and Others, the Apex Court confirmed that in criminal proceedings, the judge should play an assessing role and not remain merely a neutral third party. In Mohanlal v Union of India, the Supreme Court further held that such an assessing role is needed to bring the best available evidence to the notice of the court and avoid cases of prosecutorial misconduct. The charge against the accused is framed by the judge so the judge and not the prosecution has the power to refine the findings of the prosecution and come to a conclusion that whether a prima facie case is made out or not. Such powers are granted to the judge under sections 228 and 240 of CrPC respectively.

Section 165 of the Indian Evidence Act empowers the court to ask a witness any question in any form at any time and to order the production of a document or a thing. The judge also has the power to examine any person as a witness even if he has not been called by any party as witness under section 311 of the CrPC. Section 313 enables the judge to examine the accused at any time to get an explanation. Further, the prosecutor has to take permission of the court under section 321 before withdrawal of a case.

The residuary powers of the High Court under section 482 of the CrPC states that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers in civil matters are conferred to all courts under section 151 of the CPC.

Article 32 of the Indian Constitution provides the right to constitutional remedy which again serves as an example of incorporating inquisitorial elements in the judicial process. While dealing matters under article 32 the Supreme Court is not bound to follow the adversarial model as in such cases it is likely that the poor people are at greater distress than the rich. So the apex court when a poor person approaches the court under article 32 can follow different procedures to secure his fundamental rights. Article 32 is not confined to only writs and it includes all such actions which are appropriate. This power was exercised in the landmark case of Bandhua Mukti Morcha v Union of India, here the Supreme Court appointed two persons as commissioners to make investigation and make a report ‘on the condition’ of the petitioners, who were workmen. The respondents contended that the report of these commissioners have no probative value, as it had its basis on ex-parte evidence that had not been subjected to cross-examination but the court rejected this contention and held that the appointment of the commissioners and their report came within the ambit of powers of the Supreme Court under article 32.

3 (1997)6SCC162.
5 Rashid Ahmad v Municipal Board Kairana AIR 1950 SC 163.
6 1984 AIR 802.
JUSTICE MALIMATH COMMITTEE REPORT

The committee felt that the present adversarial system which weighs in favour of the accused doesn’t adequately focus on justice to victims of crime. The six member panel came up with 158 recommendations after laboriously scrutinizing the various aspects of the criminal jurisprudence, examining the various national legal systems and some of the suggested key reforms pertaining to the present topic are as follows-

Borrowing of the inquisitorial system- The panel favoured the borrowing inquisitorial system of investigation practised in France, Germany, Europe where the investigation is supervised by a judicial magistrate. The committee recommended that the courts should be empowered to summon any one whether or not he is listed as a witness, for examination if the court feels necessary.

Right to silence- The panel recommended that modifications be made to article 20(3) where the accused is protected from being compelled to be a witness against himself or herself and suggested that the courts be given freedom to elicit information from the accused to fetch information and draw an adverse inference against him in case he latter refuses to answer.

Presumption of innocence- In India we follow “innocent until proven guilty’’- the basis to convict an accused in criminal trials, the committee felt that it was an unreasonable burden on the prosecution and hence suggested that a fact should be considered as proven if the court considers it to be true after evaluation of evidence.

Role of victims- The committee made numerous recommendations to ensure justice to the victims of offences by suggesting that they should be allowed to participate in all stages of the trial and given adequate compensation.

Police investigation- On the question of making the investigation process more efficient the panel recommended setting up of a state security commission, as recommended by the NCP to insulate the police from political pressure.

REFORMS NEEDED IN THE ADVERSARIAL SYSTEM

Criminal justice system is in a state of ambiguities and currently going through many impediments. The extent to which the problems will be tackled by the adversarial process is less adequate. For this a clear policy is required to be drafted with simultaneous changes in the
statutes, police, prosecution, judiciary, prison systems. The pendency of the cases before the courts, overburdened Indian judicial system, procedural delay, etc. is rendering the law reforms ineffective. The following are the reforms needed based on the above discussions:

1. The judges should assume greater roles and keep a check on the trial and investigation.
2. Separation of investigation from the law and order wing of the police.
3. The investigating agency should be separated from the law and order wing of the police as stated in Malimath committee report also.
4. The inquisitorial elements should be adopted either partially or fully to do complete justice as it is evident that the British justice system is failing in modern days.
5. The victims of crimes should be given better protection and also the witnesses by incorporation of witness protection schemes, compensation and restitution the victims.
6. Litigation process should be dealt with more seriousness and be rationalised and it should not be frivolous, the reluctant attitudes of the advocates, delaying tactics, and misuse of the process of law for money making are one major hinderance in the system and also their payment should be increased because they will also work efficiently otherwise the reluctance will remain.
7. Adversarial system should not be completely followed which needs high burden of proof and involves a high cost which makes justice not accessible to the poor segments of people.
8. The settlement of disputes outside court like ADRs should be encouraged more and also it decreases the over burdens of the judiciary.
CONCLUSION

From the above discussion it is very well understood that both the forms of judicial system has its own benefits and burdens, neither of the two can be said fall under the perfect category. Mere criticizing the system wont suffice, innovative ways should be brought up so that all the hurdles and dilemmas are sorted. The rights of the accused persons are better protected under the adversarial system of litigation whereas the rights of the victims are better protected under the inquisitorial system of litigation. So the correct approach would be not to comply with any one of the two systems rather we can take up elements from both the systems and develop a system which would be beneficial to our judicial system and would work efficiently. The Indian judicial system is to be infused with dynamism in its way of deciding cases in line with Malimath Committee report. Greater emphasis should be given upon free legal aid, speedy trials, access to justice for all, removal of barriers from the path of justice. So the time has come for the Indian legal system to revamp its procedure so that delivery of justice becomes more faster and convenient.