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# Role of Adversarial Model in Indian Criminal Justice System: A Critical Analysis

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## ABSTRACT

*India adopted adversarial system being a common law country for dispensing its criminal justice system. Said system has been inherited and adopted from the British colonies. In adversarial system, the investigation is conducted by Police and other investigating agents, and relying on investigation the trial is conducted against the accused. In this system the accused enjoys privilege of being innocent until proven guilty by the prosecution. The prosecution has to prove the guilt of accused beyond reasonable doubt. All this concept of innocence is premised on the doctrine of “Ten criminals may go unpunished, but one innocent person should not be convicted”. But now a days there is a huge cry about the acquittal of accused, and questions are raised, whether said doctrine and premise is unduly favouring accused? Whether presumption of Innocence is favoring the accused? In this regard, the report of Justice Malimath Committee has recommended several recommendations and recommended to adopt some provisions of inquisitorial system to strengthen the present adversarial system. This shows that the adversarial system is not strong enough to dispense the justice to the victim and punish the wrong doer. The Judges in the adversarial system have to take active participant in the trial to search the truth, to protect the rights of victim and punish the wrong doer.*

**Keywords:** Adversarial, Inquisitorial, Accused, Victim etc.

## I. INTRODUCTION

The criminal jurisprudence in adversarial system still strongly holds the presumption of innocence of accused. The accused should not hold guilty until his guilt is proved beyond reasonable doubt. All these principles are premised on the doctrine that “Ten criminals may go unpunished, but one innocent person should not be convicted”. The emphasis of this doctrine is that an innocent should not be punished for others wrong. Convicting an innocent lead to serious flaws in criminal justice system.<sup>2</sup> That’s why the doctrine is still in existence, and the accused is enjoying its benefits. There is huge cry on said doctrine which benefits the accused and results in acquittal. The other side of coin is “Victim”. The said doctrine is totally unjust towards the

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<sup>2</sup> Dinubhai Boghadha Solanki v. State of Gujarat, (2018) 11 SCC 129) PN.154.

victim, as it could not avail justice to the victim. The victim till recent, was a forgotten character in the crime scenario. In order to punish the criminal who committed the crime, victim justice has become equally crucial. This guarantees justice for the victim as well as for the entire society.<sup>3</sup> Because victimology is now a major focus of the subject, traditional criminology, which was previously based on deviant theory and was offender-focused, has suffered significantly. The problem of victims has been highlighted by the Hon'ble Apex Courts in various judgments in an effort to simplify the process.

## **II. INDIAN CRIMINAL JUSTICE SYSTEM**

The criminal justice system in India takes care of the interest of victims, and victim-oriented policies are introduced for betterment of victims. Two-fold strategy has been now adopted, firstly, necessary provisions are introduced which expands role of victim in procedural part and secondly, obligation is put on the State and culprit to provide compensation to the victim. Even though, the larger prospect in the interest of society is that, the wrong doer has to be punished and should not be left unpunished. If it is done, it leads to weaken the criminal justice system and the society would lose the faith in it. Therefore, the doctrine of “Ten criminals may go unpunished, but one innocent person should not be convicted” is not to be taken routinely, but it can be used exceptionally. No doubt, the latter part of the aforesaid phrase i.e., “innocent person should not be convicted remains still valid”. That does not, however, mean that 10 people will necessarily escape punishment during the process and that law will stand by helplessly as a spectator to this event. Criminals should not escape punishment in order to maintain the criminal justice system's vitality and effectiveness, and every effort should be taken to close any gaps that may lead to the aforementioned scenario.<sup>4</sup>

The perspective that takes shape is that, on the one hand, there are some fundamental presumptions in favour of the accused in a criminal trial that are intended to prevent the conviction of innocent people. On the other hand, it has also been realised that in order for the criminal justice system to be effective, criminals must be brought to justice and crime victims must be cared for. After all, the fundamental goal of any effective legal system is to uphold justice, which means making sure that no citizen is subjected to injustice. This necessitates striking a balance between the victims' and the accused's interests, which in turn depends on a fair trial.<sup>5</sup>

In India the criminal justice system that prevailed is based on the adversarial form of

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<sup>3</sup> Ibid. at 155.

<sup>4</sup> Ibid. at 155.

<sup>5</sup> Ibid. at 156.

adjudication. It is to borne in mind that; the history demonstrates various forms of dispute resolution system which are introduced time to time. At present, almost all sorts of disputes in the societies are resolved by the Courts, even though the judicial system may differ as per the respective jurisdiction. The nature and method of adversarial system is now questioned as disillusionment and frustration is witnessed among the people. After all, what is the purpose of having a judicial mechanism - It is to advance justice.<sup>6</sup>

Warren Burger once said “the obligation of the legal profession is to serve as healers of human conflict. We should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”<sup>7</sup>

The adversarial system itself functions to be harmful for the weaker portion, in addition to socio economic inequities concentrating the weaknesses in the poor in an uneven conflict. In such a case, the Courts must be compassionate to the weaker parties while upholding the proper balance to prevent a miscarriage of justice. Instead of just making decisions on cases, the Courts must maintain their problem-solving methodology by using therapeutic measures. They need to be bridging the divide between the law and justice and between the law and life.<sup>8</sup> The concept of access to justice must be interpreted broadly; its goal should be to provide the weak with fair answers to their problems, which would constitute access to justice in its genuine sense.

### III. VIEWS ON ADVERSARIAL SYSTEM

The Hon’ble Justice Malimath opined in their report that, as under the inquisitorial system, when the inquiry is unsuccessful, Judges seldom take any action to rectify the issue, it has not been charged with a positive obligation to seek the truth. A higher standard of proof is needed to convict an accused person under the adversarial system. This is a component that the inquisitorial system lacks, which gives Judges more freeway in determining whether the accused is guilty.<sup>9</sup>

The majority of Hon’ble High Courts gave stress to make some changes in the existing Criminal Justice System. The former President of India, Dr. R. Venkataraman had strong dissent over the adversarial system, wherein he has stated;

*“The Adversarial system is the opposite of our ancient ethos. In the panchayat justice, they were*

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<sup>6</sup> Narendra Vs. State of U.P., (2017)9 SCC 426 : 2017 SCC OnLine SC 1093) PN.436.

<sup>7</sup> Ibid. at 436.

<sup>8</sup> Ibid. at 437.

<sup>9</sup> Justice Malimath Committee, Report on Reforms of Criminal Justice System, 27, (2003).

*seeking the truth, while in adversarial procedure, the Judge does not seek the truth, but only decides whether the charge has been proved by the prosecution. The Judge is not concerned with the truth; he is only concerned with the proof. Those who know that, he acquitted accused was in fact the offender, lose faith in the system”<sup>10</sup>*

The Hon’ble Apex Court in **Ramchandra v. State of Haryana**,<sup>11</sup> has held that, the Trial Judges in the adversarial system during trial act as referee or umpire and allow to contest the trail between prosecutor and the defence. If the criminal courts want to be an effective instrument for dispensing justice, the trial judges must not be mute spectator or mere recording machines, they must participate in the trial by evincing intelligent active interest by putting questions to the witnesses in order to ascertain truth.

Even the President of India and the Hon’ble Apex Court are known to hold divergent opinions about the adversarial system. Adopting inquisitorial components, however, offers some protection against the persistent issue of passive adjudication. It is necessary to foresee greater synthesis of the adversarial and inquisitorial systems in the criminal justice process since the convergence of the criminal justice system may be a natural process.

#### **IV. VIEW OF JUSTICE MALIMATH COMMITTEE**

*“The Judge, in his anxiety to demonstrate his neutrality opts to remain passive and truth often becomes a casualty. Failure to ascertain truth may be on account of errors or omissions on the part of the investigation agency, the prosecution or the faulty attitude of the parties, the witnesses or inadequacies in the principles and laws regulating the system. There is no provision in the Code which expressly imposes a duty on the court to search for truth. It is a general feeling that it is falsehood that often succeeds in courts.”<sup>12</sup>*

In the report of Hon’ble Justice Malimath, it is strongly opined that there should be reform in adversarial system. The committee has recommended 158 recommendations regarding reform in adversarial system. In the report, the committee has given deep thought on the question whether adversarial system is satisfactory in dispensing criminal justice system or whether it is need of hour to reconsider it. Comparing to the inquisitorial system, the committee has examined the various aspects of inquisitorial system. At the end of the report, the committee concluded and opined that, adversarial system is ideal with fair trial and fairness towards the accused are very much protected. The committee also recommended that as that the adversarial

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<sup>10</sup> Ibid. at supra 9.

<sup>11</sup> Ramchandra V/s State of Haryana, (AIR 1981 SC 1036 : (1981) 3 SCC 191).

<sup>12</sup> Ibid. at supra 9.

system is not fulfill in its own and to strengthen the system some features of inquisitorial system has to be adopted.

With judges being required to be dynamic in their approach to an efficient inquiry and the goal of justice, the influence of recommendations would have shifted toward the inquisitorial system. These suggestions, however, did not make India strictly adhere to the adversarial theory since there are many other aspects of the system, such as the blending of the prosecutor and judge duties or the flexible approach to guilt determination. This serves as an excellent illustration of Prof. Goldstein's claim that criminal justice ideas are convergent. The committee criticized the adversarial system and said that it was to blame for many of India's judicial shortcomings.

## **V. CONCLUSION**

While concluding this paper and considering the above discussion, a question remains unanswered that, whether Adversarial system is beneficiary to the Criminal Justice System of India? Indian criminal justice system is still attached to the doctrine “Ten criminals may go unpunished, but one innocent person should not be convicted”. Even though, the innocence of accused has to be protected, it has to be seen that there should not be unjust on the victim, who is looking for justice from the Courts. The judges during the trial must actively participate and must have the ability to ask questions, and they should not be mute spectator. The adversarial system is not fulfilled in its own, therefore as recommended by Hon’ble Justice Malimath committee, some recommendations from the inquisitorial system has to be adopted to strengthen the present adversarial system. Although the adversarial system favours the accused far more, the Court should have a strategy to bridge the gap between justice and the law as well as between life and the law. Each system has its own advantages and disadvantages, none of which make it perfect in and of themselves. Numerous Courts have voiced their opinion that, in light of the Indian criminal justice system, it is time to incorporate some elements of the inquisitorial system in order to balance and preserve the rights of the accused and victim and, ultimately, to achieve the goals of justice. As a result, the adversarial system in India has to be strengthened and changed by incorporating some aspects of the inquisitorial system, as suggested by the committee led by Hon. Justice Malimath in their report.

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