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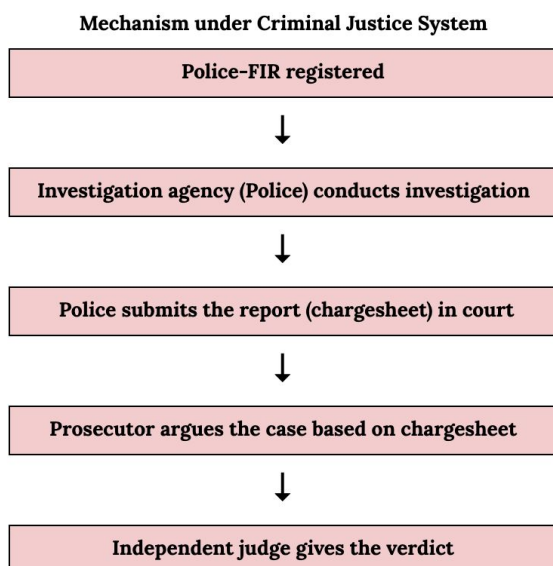
Overcoming Deficiencies in India's Criminal Justice System

In March 2019, a special court in India acquitted four men accused of bombing the Samjhauta Express. The reason cited was failure of the prosecutor in producing sufficient evidence. Prior to the acquittal, the National Investigation Authority (NIA) had been investigating the case for

close to 12 years without any success.

Role of Prosecutor

In our criminal justice system, the prosecutor comes into picture after the charge sheet is prepared. The burden of proof lies with the prosecutor. Ironically, the prosecutor neither has a serious role in the investigation process nor are there any mechanisms which ensure coordination between the investigation agencies and the prosecutors. This faulty mechanism weakens Indian criminal justice process thus adversely affects justice delivery.



Adversarial and Inquisitorial Models of the Criminal Justice System

In 1973 by separating judiciary from investigation, India adopted adversarial model of criminal justice system which is also prevalent in the USA and the UK. On the other hand,

countries like France and a few other European nations follow the inquisitorial model which is quite distinct from the adversarial model. The differences are presented in the table below:

Features of Adversarial and Inquisitorial Models		
	Adversarial model	Inquisitorial model
Aim of the trial	Fair trial	Discover the truth
Role of the judge	Judges do not interfere in the investigation process; they act as neutral persons	<ol style="list-style-type: none"> 1. Police, prosecutor and judge collectively work in pre-trial phase 2. In respect of serious and complex offences investigation is done under the supervision of independent judicial officer
Standard of proof	Prosecutors have to prove the case beyond reasonable doubt	Either inner satisfaction or conviction of the judge
Acceptance of Evidence	Court can consider only the evidence produced by the prosecutor and not any other evidence collected by invoking court power	All kinds of evidence are accepted in the court for better conviction

Deficiencies in India's Adversarial Model

In Indian criminal procedure, the separation of roles among the police, the prosecutor and the judiciary has created a weak coordination link between the three agencies, especially between the police and the prosecutor. This is because an effective justice delivery requires closer cooperation between the two. To illustrate this, let's consider the Hashimpura massacre case which had been lingering for around 30 years until a verdict was pronounced recently. In 2015, a trial court had acquitted all the accused because the prosecutor had failed to provide proper evidence - a decision which was later overturned by the Delhi High Court.

The erroneous acquittal at the subordinate court has been attributed to the shoddy investigation carried out by the Uttar Pradesh Crime Branch Central Investigation

Department (CBCID) and weak charge sheet which left ample scope for the destruction and tampering of crucial circumstantial and corroborative evidence. In the current architecture, the prosecutor's task is enormously difficult as he/she has to prove the case, with whatever little and faulty evidence is available, beyond a reasonable doubt. This can be said to be one of the primary reasons leading to poor conviction rates in the country.

According to a NITI AAYOG report, conviction rate in India is only 49%.¹ Where as in developed countries like the USA and UK it is above 80%.² The low conviction rates not only underscore deficiencies in our criminal justice system but also

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<https://niti.gov.in/writereaddata/files/coop/IndiaAc tionPlan.pdf>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/att achment_data/file/734069/criminal-justic e-statistics-quarterly-march-2018.pdf

reflect poorly on the state of rule of law in our country.

Which is better - Adversarial or Inquisitorial?

The issue is not about which one of them is better. Countries like the USA and UK are performing well with adversarial model. In the adversarial model, fairness of trial is adequately assured by the judge who maintains a position of neutrality. In the USA, prosecutors review the evidence brought to them by law enforcement to decide whether to file charges or drop the case. Prosecutors have great discretion on how to prosecute the case with proper clarity of their roles. They have a witness security programme where the person can give testimonies fearlessly. This makes the US criminal justice system work well with greater coordination between investigation officer and prosecuting officer.



In India, poor coordination between the investigation wing and prosecution wing leads to systemic inefficiencies as discussed earlier. The police officials are entrusted to conduct the investigation. Unfortunately, evidence collection is often marred by poor application of knowledge, negligence, bad forensic infrastructure and even ulterior motives. Also, the police officials do not apprise the prosecutor of the material facts of the case. The case is brought to the prosecutor's notice just before the filing of charge sheet and it is already too late to do anything about the investigation by then. The scale of the

problem is aggravated by the inadequate technical and legal knowledge of the police department which leaves them poorly equipped to sufficiently handle investigation. Also, there is very little scope for active participation of the victim in criminal trial. Finally, lack of a sound witness protection scheme creates an atmosphere where a victim has to wait and fight for years to get justice. The above tortuous process imposes enormous financial and emotional trauma on the victim and is antithetical to the social justice principle enshrined in the Indian constitution.

Way Ahead

In order to improve the criminal justice system, a system of collaboration between investigative officer and prosecution officer needs to be established to consult each other right from investigation to charge sheet preparation. The Malimath Committee on Criminal Justice System has also

made pertinent recommendations:

- The standard of proof beyond reasonable doubt presently followed in criminal cases should be done away with and recommended in its place a standard of proof of “courts conviction that it is true”.
- A mechanism for coordination amongst investigators, forensic experts and prosecutors at the State and Dist. level for effective investigations and prosecutions should be devised
- Separate investigation from law and order.
- The right of the victim to participate in cases involving serious crimes should be acknowledged.
- Witness protection scheme on the lines of the USA can be incorporated.

William Goldstone’s famous statement, “justice delayed is justice denied” is very relevant in

the context of India's judicial system. Inordinate delays in the judicial proceedings erodes public trust in the state often resulting in subversion of the judicial system. Therefore, the need of the hour is to reinforce the rule of law by initiating reforms that promote coordination among the judiciary, the police and the citizen, and reduce delays.

However, the question is not of one versus the other (adversarial system vs inquisitorial system), it is about how efficiently justice can be delivered by adopting the best features from both the systems. •

- G Vamshi Krishna