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Adversarial and Inquisitorial; Two Rival Models of Criminal Procedure and Theory of Convergence: An Appraisal

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Abstract

Adversarial and inquisitorial are two models of procedure and can be termed as two models of justice. Both are western and seem to be rivals. Both have become life style of common and civil law countries. Role of the contesting parties and judge is more distinctive feature of both the models. In adversarial, parties and their legal counsels play active role and in inquisitorial, judge plays the active role. Development of case, presentation of evidence, modes of proof and arguments are different in both the models. Finding of truth is a fundamental aim of both the models with the purpose to punish the guilt and protect the innocent but means are different to achieve this aim and object. Screening and investigation phase is more important in inquisitorial however, trial phase is considered heart of the case in adversarial. The inquisitorial primarily focuses on discovery of factual guilt however, the adversarial emphasizes on the determination of charges (legal guilt). The portraits of both the models are of course idealized but presently no one is pure as originally structured. In recent past, systems based on both the models borrowed many features from each other with the aim to enhance the efficiency of the system. The world is transforming to the greater role of public prosecutor and moving towards global legal change and gradually moving towards hybrid and unified system of criminal procedure. With the help of qualitative and comparative research methodology, this research aims to discuss salient features of both the systems, explore dichotomy among them and shed light on the theory of convergence and new development. It concluded that the world is moving towards hybrid and unified system of procedure.

Keywords: Adversarial, Criminal Procedure, Convergence, Inquisitorial, Hybrid procedure, Public Prosecutor.

1. Introduction

Two models of procedure; adversarial and inquisitorial contributed much literature for criminal procedure. The key distinction in both the systems is role of the contesting parties and judge. Adversarial is party-controlled contest however, inquisitorial is officially controlled inquiry. The

civil law countries - continental Europe except U.K and their former colonies - applied inquisitorial system through hierarchically organized national bureaucracies, however Common law countries - U.K, and its former colonies – applied adversarial system through decentralized, ideologically motivated array of lawyers and private advocacy groups for enforcement of laws and policies and holding the government officials accountable to national laws and policies. The adversarial and inquisitorial are not only procedural systems but they have become life style of common and civil law countries. “We may also refer to them as two models of justice systems (Nyazee, 2020).” However, many adversarial elements emerged in inquisitorial system even quite conspicuous and many non-adversarial features, sometimes quite conspicuous can be identified in adversary system. The inquisitorial system is moving towards more explicit protection for accused and greater role of legal counsels (Damaska, 1986). In recent years many features of inquisitorial system were incorporated in adversarial model especially in criminal procedure in shape of pre-trial case management system and also many adversarial features incorporated in inquisitorial model. In Pakistan, according to Imran Ahsen Khan Nyazee “these developments highlight further the need for Pakistan to examine both models objectively and to determine its needs in the light of Islamic law” (Nyazee, 2020).

This Article explores and distinguishes two famous western models of procedure; inquisitorial which prevailed in practice and adversarial (accusatorial) which so called theoretically superior and preferable. It analyzes the nature and basic structure or pattern of these two famous western models of procedure, new developments in both the systems and their transition to hybrid and mixed system in addition to discuss some prominent features of criminal procedure of eastern countries i.e., Japan and China for better understanding the procedural systems. Criminal justice system (CJS) faces similar challenges in most of the nation states therefore; comparative study will provide opportunity to learn from the experiences of others. Comparative study of Models of Criminal procedure and new developments in their ambit is essential for highlighting key areas for revamping of Criminal Procedure of Pakistan and balanced process of Islamization in Pakistan.

2. Conceptual Realm of Adversarial Model

Adversarial model of procedure, as articulated by Mirjan R. Damaska, can be envisioned as a heuristic framework where proceedings unfold as a dynamic dispute between two parties, both positioned on an equal theoretical footing before a court. Within this framework, the court is tasked with the critical responsibility of adjudicating the outcome of this contest (Damaska, 1973). According to Professor Landsman, its fundamental principle is that “out of the sharp clash of proofs presented by adversaries in a highly structured forensic setting is most likely to come the information upon which a neutral and passive decision maker can base the resolution of litigated dispute acceptable to both the parties and society” (Landsman, 1988). So, the utilization of neutral and passive fact finder, reliance on party presentation of evidence and use of a highly structured forensic procedure are its key elements. In the words of Lon Fuller, a former Professor of Harvard Law School, “a certain philosophy of adjudication, a conception of the way the trial of cases in courts of law should be conducted, a view of the roles that should be played by advocates and by judges and jury in the decision of a controversy (Kubicek, 2006).” In this model, at least three participants are required; two advocates of the opposing parties and one fact finder or decision-maker. The nature of function of advocate of each party is presentation of the strongest available evidences during trial for sustaining the claim of his party to whom he represents whereas the decision maker remains a passive auditor and a neutral who fashions his decision after presentation and conclusion of the case by both the advocates. The resolving conflict and disputes stemming from the allegation of commission of offence is procedural aid of the entire endeavor. According to Charles Maechling Jr. “the function of the trial is not to establish the truth. It is to provide the prosecution with a forum to

convince the jury beyond a reasonable doubt that the accused is guilty of the specific crime he is charged with, and nothing else” (Kubicek, 2006). So, discovery of truth is not subject of trial in adversary system, it deals only with prove of charge. The judge is not responsible to find out real culprits but to decide guilt or innocence of the accused facing trial.

Since contest shapes the proceedings, the pleading and stipulations are essential devices through which the existing contest and delineate borders are established. Independent and conflicting functions of the prosecutor and defendant are the protagonist of this model as the former’s role is to achieve conviction and latter’s role to obstruct these efforts. The prosecutor is expected to be partisan while determining factual propositions, producing evidence in support of his factual contentions, attempting to prove his case. He has burden of proof as well as burden of persuasion for proving his factual contentions. On the other hand, the defendant will neither be examined by the prosecutor nor by the court as source of evidence. The adjudicator plays the role of umpire for checking procedural requirements abided by the parties or not. Primarily he will remain passive throughout trial and will intervene only on the objection of either adversary side affected. On the end he must to render his decision on the outcome of the contest. A large number of procedural rules - regulating proper behavior of the protagonists - are an important outgrowth of the fundamental matrix. Therefore, the proceedings tend to become ‘over-lawyered’ (Damaska, 1973). So, it’s a philosophy of adjudication where prosecutor, defendant, advocate, jury and judge has distinct important role and function and each one works on a distance (Kubicek, 2006).

In this model, trial is considered its heart in which each side presents its own case, produces relevant evidence, and attacks the case of other side before the neutral responsible to listen both sides, determine the issues and make a rational judgment on the basis of presented evidence. Parties are responsible to prepare, present their respective cases during investigation, interlocutory stages and trial. They have to decide on their factual and legal issues to be presented before the court so proceedings in the court largely dictated by them. The behavior of the litigants regulated through elaborated sets of procedural, evidentiary and ethical rules in which contesting parties retain extensive control over their case (Landsman, 1980).

The adversarial system, the cornerstone of criminal trial courts, engages in a dynamic interplay between the prosecution and the defense. Justice prevails when the most compelling and just adversary persuades the judge or jury of the validity of their perspective on the case (Muhammad Naeem case, 2019).

2.1. Essential Elements of Adversary Model

Some authors made two essential and key elements of adversary system; litigant activism – contesting parties fully control their case in its development and presentation before neutral and passive judge, acting primarily through lawyers - and neutral and passive decision-maker who know nothing of the case until the parties present before him (Sward, 1989). Some other made two elements; litigant activism and formal legal contestation through high structured rules of procedure, evidence, and ethics (Kagan, 2003). However some authors, made its three key elements; presentation of case/evidence by contesting parties, use of highly structured procedure and utilization of passive and neutral fact finder (Landsman, 1983). Adversarial system have two characteristic consequences; costliness – protracted, complex and costly – and legal uncertainty – variable and unpredictable decisions due to malleable and complex legal norms , powerful adversarial advocacy and fragmented and non-hierarchical decision-making authority. These consequences make the adversarial system fearsome and controversial (Kagan, 2003).

2.1.1. Neutral And Passive Judge/Decision Maker

A passive and neutral adjudicator is identified as a fundamental facet of the adversary system. He should know nothing of the case until presented by the litigants. The passivity prohibits him to become a party in the case by actively involving in the gathering of evidence or actively resolving dispute of the parties. The judge is expected to abstain from giving any judgment until the contested parties conclude the case (Jacobs & Baglay, 2013). According to the adherent of adversary system, neutrality and passivity are essential for convincing the people and building their trust in the system and if he actively participates in the case or actively becomes questioner, the society will perceive him as partisan rather than neutral. According to this model, maintaining judicial passivity is crucial for upholding the façade of fairness. (Landsman, 1983).

2.1.2. Active Control of The Party's Over the Development of The Case

Development of a case, gathering, production and presentation of evidences before the neutral decision-maker is the responsibility of contesting parties. Both the parties have their voice in the case being responsible to bring best available evidence in the case. The control and responsibility of development of case make the system highly individualistic. The individual who is most interested in the result, may argue the case selfishly, may distort or hide evidence being motivated to get individual benefits and secure his self-interest and may ignore to articulate societal benefits (Sward, 1989). In reality, control and responsibility of trial falls to advocates and according to legal ethics and zealous advocacy, advocates should give their utmost endeavor to protect the interest of their client. "Advocates, in their ethically required zeal, may push the client to extremes that the client would not otherwise choose" (Jacobs & Baglay, 2013).

The active involvement of contesting parties in the case, provide opportunity to them, to focus on relevant, controversial and more important issues and to produce their most persuasive evidence before the neutral for decision based on presented evidence. In adversarial model, skilled professional advocates are necessary for formulation of issues and organization of evidence to insure a sharp adversarial contest. In the adversary model, each party in the dispute typically relies on a openly biased advocate, tasked with advancing their party's interests while endeavoring to validate their arguments (Landsman, 1980). In adversarial model, advocates keep up a high degree of disputant control over the case of their clients so their failure to carry out their duty will falter the progress of the case and will undermine the rules of procedure.

2.1.3. Highly Structured Procedure

The third integral element of adversary process is highly structured procedural, evidentiary and ethical rules designed to ensure fair contest between the parties. Two vital functions are served by the procedural rules; firstly, to ensure the adjudicator's neutrality and passivity and secondly equal opportunity to each side for making the best possible case (Landsman, 1983). For preservation of passivity and neutrality of judge, the adversary process relay on a set of rules of evidence by which integrity of the testimony is protected, use of unreliable evidences are prohibited and also use of unfair prejudice evidences prohibited. Rules of the evidence also enhance the control of the parties over production of evidences, their admissibility in the court. "thus the rules confine the authority of the judge to manage the proceedings" (Landsman, 1983). Judges has to obey the evidentially rules and they are not free to pick and choose. For controlling the behavior of counsels, the adversary system lays set of ethical rules. These ethical rules require zealous advocacy and loyalty to the client from attorneys. These rules also prohibit the attorneys to harass or intimidate opponent party or to mislead the decision-maker (Landsman, 1983). In adversarial system, appellate courts were established to ensure that mandated procedures complied by litigants and judges. Appellate judges

were empowered to redress the harm after reviewing the record of trial proceedings. Trial judges and attorneys are encouraged to obey the requirement of law as to avoid reversal of case by the appellate judge (Landsman, 1983).

3. Conceptual Realm of Inquisitorial Model

The central structural idea of inquisitorial proceedings is active involvement of decision-maker; in initiating the action, gathering and presentation of evidences, control of judicial proceedings, determining sequence and nature of proceedings and rendering decision (Jacobs and Baglay, 2013). In other words “the trial is dominated by a presiding judge, who determines the order in which evidence is taken and who evaluates the content of the gathered evidence ... without being constrained by strict rules in that respect” (Parisil, 2002).

Instead of being perceived merely as a dispute, these inquiries are regarded as formal and comprehensive investigations, prompted by the initial suspicion that a potential crime has been committed (Damaska, 1973). In the presence of active and independent fact finder, parties are required to actively develop their case because fact-finding proceeding is unilateral and detached. The defendant is source of information therefore may be subjected to interrogation and. “Obviously, then this much simpler structure of proceedings leads to fewer technicalities.” The inquisitorial model is thus under lawyered (Damaska, 1973). France and Germany are two major nations utilizing Inquisitorial Model among others. Various similar terms are used for inquisitorial process such as, ‘more active involvement of decision-maker, ‘inquiry decision-making model’, ‘investigatory process’, and activist adjudication.

3.1. Elements Of Inquisitorial System of Procedure

3.1.1. Active Role of Judge

The state dominantly control the case usually through the judiciary as the judge regards himself as more than umpire whether as investigating magistrate or as presiding judge at trial. Investigative and administrative processes are accustomed, participated and directed by the judiciary. For assurance of merits in guilt and innocence and for reaching correct decision and assessment, the judge is expected to take the initiative in amassing evidence. Judge has active role and lawyers have passive role (Landsman, 1983). In inquisitorial, the state has overriding responsibility to elicit the facts of the offence, make comprehensive inquiry and dig out the truth and parties are not responsible to develop their case themselves. In pure form of inquisitorial model, judges are responsible on behalf of state to this responsibility during investigation and trial. However many variations took place in the inquisitorial model. For instance, presently public prosecutors substituting or sharing this responsibility with the judge during investigation but the judge is required to initiate trial, dig out the truth while using dossier (file) prepared during investigation either by the public prosecutor or by an examining magistrate. Some commentators made active role of trial judge - to question and inquire witnesses and accused during trial with the aim to reach the truth – most distinctive feature of this model (Langbein, 1974). State agencies are required to prepare whole case through objective criminal investigation and prosecution and to present only one case. The prosecutor and examining judge collaborate to guide the police in assembling a comprehensive dossier for the case. While distinct, the trial judge also has access to this dossier. During the trial, the judge assumes a significantly proactive role, tasked explicitly with uncovering the truth (Cryer, Friman & Wil Mshurt, 2010). The judge is central figure of this system having proactive role for the enforcement of policy and law whether substantive and procedural. Enforcement of criminal law is the primary concern of the inquisitorial system and the manners in which it is done have secondary and incidentally concern.

3.1.1.1. *Investigatory Magistrate*

Investigating magistrate (juge d'instruction or judge of inquiry) take control over the case from the movement of registration of the case, arrest of the accused to charge and he seeks all logical evidence and he is bound to many rules while recording statements, investigating the accused, authenticating documents, delegating to the police for detain, search and question the accused. The judiciary is the main and central actor for the enforcement of the criminal law and legal norms and not expected to subordinate to the wishes of police, prosecution, legal counsels and accused. The investigating magistrate expected to prepare dossier upon which accused can be convicted if case send to the trial. The dossier of the investigating magistrate is also reviewed by other judicial officers before sending the files for trial. In all cases recommended by the investigating magistrate must be tried even accused plead guilty as state may not be abandon its obligations (Goldstein, 1974).

3.1.2. **Written Dossier**

Instead, the oral presentation and cross examination by legal counsels, the written materials in shape of dossier compiled by investigating magistrate during pretrial process, are given more importance in this system. The Code usually states the applicable legal norms, relation of presiding judge and investigating magistrate in concern of the investigation and charge. The trial judges mostly rely upon the written dossier at trial stage.

Hopefully, this long discussion has led to 'a momentary stay against confusion' and enough clarification. In studying the opposition between adversarial and inquisitorial, some other conceptual constructs have also been canvassed.

4. **Dichotomy Of Adversarial and Inquisitorial Systems**

Tracing similarities and differences of both the systems adversarial and inquisitorial can assist us to better understand the contrasting systems. Adversarial and inquisitorial are two contrasting systems of procedure having quite different structure of police investigative supervision and police accountability, different police – prosecutor relationship, different notions of prosecutorial independence, different ways and notions to protect the rights of the suspect, different role of prosecutor, defense lawyers and judges. In adversarial system parties and their legal counsels play active role and in inquisitorial system judge plays the active role for resolution of disputes. The adversarial approach arises from a contest or dispute, featuring a dynamic interaction between two adversaries in front of a decision maker whose primary role is to render a verdict. In contrast, the non-adversarial approach is characterized by an official inquiry format. (Damaska, 1986). So, one procedural system entrusts the procedural action to non-partisan officials whereas other entrusts it to the contending parties. How passive the judge in the adversarial process and how active the officials in inquisitorial process? Who has the control over initiation and termination the case?

Developing case, presenting proof and arguments are different in the both of systems, direct examination and cross-examination by lawyers in adversarial system whereas judicial interrogation in inquisitorial system. Right of trial can be waived by accused while pleading guilty in adversarial system (American) but cannot be waived in continental (inquisitorial) system as in this system all the cases must go to trial whether accused plead guilty or not. The civil party has a right not to testify which is acceptable in inquisitorial system but shocking to the adversarial lawyers. There are unlimited points and many aspects of comparison between two criminal procedure; adversarial and inquisitorial. Here are major points of differences of adjudicatory process of both the models;

Finding of truth is a fundamental aim of both the systems with the purpose to punish the guilt and

protect the innocent but means are different to achieve this aim and object. For example; (a) The screening phase of criminal process is given more emphasize in inquisitorial system for determination of factual guilt through careful investigation however, trial phase is given more emphasize in adversarial model for insurance of fair trial of defendant by applying complex rules of evidence to produce substantive results. (b) In inquisitorial model, the judge has direct involvement in investigation and adjudication contrasts adversarial model where strict restriction upon judge to have any direct involvement in investigation and adjudication process. (c) In inquisitorial model, accused is expected (though not required) to be cooperative as it assumes that all involved persons seeking the truth, whereas, in adversarial model, accused will maintain silence, neither expected nor required to be cooperative and whole the burden of proof is upon the prosecution. (d) In adversarial model, the judge is passive having role of referee, whole the case is developed and presented by the parties through their attorney however, in inquisitorial model, the judge has active role as another investigator (continuing investigation), responsible to develop case, discover truth and decide the case. Parties on either side may hide the truth having interest therefore, investigation must discover the truth in early screening or continually investigation (e) Inquisitorial model focus on discovery of truth through screening and investigation however, adversarial model focus on proving of charge through contest of adversaries (Reichel, 2013). In inquisitorial procedure, the pre-trial phase is very important and same is conducted by prosecution or the judge d'instruction (examining judge) however actual trial is conducted by other trial judge or trial court whereas in adversarial procedure the trial is important phase. Truth seeking in adversarial is by the parties however, in the inquisitorial the same lies in the hand of state (Ambos, 2003).

The nine Member Bench of the Supreme Court of Pakistan while comparing both the systems delineated that the adversarial system operates with two advocates advocating for their respective parties' positions before an impartial entity, typically a jury or judge, in the pursuit of uncovering the truth of the case. Conversely, the inquisitorial system features a judge, or a panel of judges collaborating, tasked primarily with probing into details of the cases for discovering factual truth (Wattan Party case, 2012). This Bench further stated that an inquisitorial system, in contrast to an adversarial one, involves the active participation of the court, or a segment thereof, in uncovering the facts of a case. Unlike the impartial referee role assumed in adversarial systems, where the court mediates between prosecution and defense, inquisitorial systems are more proactive. Commonly employed in civil law jurisdictions, they diverge from the adversarial approach prevalent in common law systems. Notably, even countries adhering to common law principles, such as the United States, are using inquisitorial framework for expedited hearings concerning misdemeanors, such as minor traffic offences (Wattan Party case, 2012).

5. Development Of Non-Adversarial Elements in The Adversary System

Many innovations and modification introduced in the adversary system based on non-adversarial elements, although these modifications are not uniform (Sward, 1989). Such as concept of Discovery, Class action litigation, Specialized Courts, Masters and court-appointed Experts, Case managers-judicial, Non-judicial case managers, Alternative Dispute Resolution and Establishment of prosecution department. Public prosecution services established by adversarial system for filing criminal charges without relying on a grand jury is also feature of inquisitorial system (Reichel, 2013).

Discovery which is a non-adversarial element is introduced in American Adversarial system for equalizing parties in information, making lawyers to aware strengths and weaknesses of their own case and of opponents for expediting the administration of justice. It's a generic term for a number of procedures and devices which are used to enable the parties for obtaining information from opponent parties or learning the facts that opponent party possesses or knows (Speck, 1951). Discovery, as a

non-adversarial component within adjudication, catalyzes transformations in both party control dynamics and judicial passivity (Sward, 1989). It compels to share some evidence with opposing side for search of truth, its more inquisitorial than adversarial process. Due to discovery and disclosure, the parties losses some of their control over case and also play some active role in its process (Reichel, 2013).

The Concept of ‘class action’ litigation - which was created through the Bill of Peace, in English equitable procedure – has non-adversarial element. In class action litigation, the unnamed class members have no effective control over course of the litigation as they have no knowledge of the development of case, even do not consult the lawyers to their choices and they bound by the judgment in which they have no adversarial participation. Although the named party can initiate the suit but it also loses its control over termination of the case. In class action litigation, the adversarial principle of judicial passivity is often disregarded. When neither the class members nor the named representative wield control over the litigation process, it becomes logical to vest that power in the judge (Sward, 1989). The judge has active power in class action cases as he has power over settlement and choice of counsel and can also conduct inquiry for determining question of fact and law in class action case. Furthermore, Expertise of the judge might be a cause of his influence in decision making process. specialized courts pose a higher risk of encountering a biased judge, as their extensive expertise and personal inclinations may influence their decisions in the case at hand (Sward, 1989).

6. Theory of Convergence: Combination of Two Systems

The portraits of inquisitorial and adversarial systems are of course idealized. Presently neither the inquisitorial nor the adversarial based systems are pure as originally structured (Stahn, 2019). Abraham S. Goldstein said neither the inquisitorial nor the adversarial are pure as initially structured. The inquisitorial system is moving towards explicit protection for accused and greater role for counsel (Goldstein, 1974). Criminal justice scholars are recognizing a growing inadequacy in relying solely on single theory models of criminal procedure, whether categorized as inquisitorial or adversarial. These models, designed to manage certain phenomena, are now being stretched beyond their intended capacity. Across various jurisdictions, the formal systems of charging and adjudication are struggling to align with their foundational premises. The sheer volume of offenses, offenders, and limited resources pose significant challenges to enforcement. Consequently, there’s a discernible trend towards legal systems converging, as they increasingly adopt elements from others that offer potential relief from these pressures (Mahmood & Ramzan, 2017).

Hybrid and mix system of procedure is being developed while taking good features from two famous systems of procedure because no single procedure can handle all procedure problems for speedy and inexpensive justice. The researchers think that single procedural model is not able to handle all procedural issues hence, integration of these procedural systems are inevitable. The new trend is combination of features of procedural systems with or without improvement. Here important questions are that whether the conflict-solving model can be combined with policy-implementing model in order to observe the panorama? Whether centralized bureaucratic machinery of government required following policy-implementing forms of justice? Is a centralized and professional government required for effecting a far-reaching transformation of society? Combination of conflict-solving model of governance with police-implementing model can better serve the society. This combination cannot be denied with the argument that “a state with many independent power centers and a powerful desire to transform society can be linked to a man with ardent appetites and a poor instrument for their satisfaction” (Damaska, 1986). Particular organization of authority can better serve and realize certain objectives of the state or smooth realization of particular objectives can be achieved through certain types of governance structure. Some combination can be viewed as stressful

mismatches. However, combination on the principles of impartiality and discovery of truth can make the systems useful and beneficial. The judge should be impartial as he can conduct fair adjudication. The impartiality prevents the judge from bias – positive or negative - in the resolution of controversies between the parties (Sward, 1989). The theorists of adversary process focus on passivity of the decision-maker as he can remain impartial hence they made passivity as ground for impartiality. The impartiality and passivity are two distinct concepts but some confuses impartiality with passivity. Impartiality is required for fair trial and not passivity. The judge can remain impartial even while playing active role in development of case as in inquisitorial system. The adversary system frustrates the quest for justice (Kagan, 2003).

The nature of mixed system can be analyzed from the new criminal procedure of Germany that came into existence after revolution. The new procedure separated function of investigatory from the function of trial judge. Mostly the public prosecutor required supervising the investigation and filing the charge sheet before trial judge. In the old procedure, the judge (inquiry magistrate) was required to investigate the case and sometime, inquiry judge and trial judge were identical or sometimes the trial judge were deciding the case on the available evidence in the dossier according to the rule of legal proof even without seeing the accused face to face (Goldstein & Marcus, 1977). After German revolution, the role of public prosecutor is enhanced as he is now the only official charged with directing pre-trial investigations. In the eastern Asian countries, the formal criminal procedure is mixture of both adversarial and inquisitorial models of procedure (Reichel, 2013).

In China, the formal criminal procedure leans towards an inquisitorial approach rather than an adversarial one. However, it's challenging to categorize China as solely an inquisitorial-based country. This difficulty arises because all three stages of the criminal process operate independently and distinctly from one another. The investigation is solely managed by the police, charging decisions rest with the prosecution, and adjudication falls under the jurisdiction of the courts. Unlike typical inquisitorial systems where police, prosecution, and courts collaborate continuously to determine factual guilt, this feature is notably absent in China's criminal procedure. Therefore, labeling the formal Chinese process as strictly adversarial or inquisitorial would be inappropriate (Reichel, 2013).

Criminal trial in Japan was influenced by U.S adversarial system after World War-II however; still, it retains the influence of inquisitorial system so it's a unique hybrid system. Japan's criminal justice system is a unique fusion, blending fundamental aspects of continental European law, particularly influenced by German practices, with elements drawn from American legal frameworks. This distinctive combination is highlighted by procedural safeguards embedded within the postwar Constitution and the revised Code of Criminal Procedure. Notably, diverging significantly from European conventions, Japan's approach, rooted in regulations dating back to the mid-nineteenth century, grants a considerable degree of discretion to law enforcement, prosecutors, and judges' alike (Haley, 1991). In 1948, the enactment of a fresh Criminal Procedural Code bore the significant imprint of Allied Powers, adopting a model influenced by the American party system. Under this framework, the impetus for action lay with the prosecutor and defense, while the judge assumed a passive role, devoid of prior knowledge of the case. Yet, alongside this adversarial approach, elements of the inquisitorial tradition persisted, with both prosecutors and judges entrusted with the pursuit of truth and the dispensation of justice (Oda, 2009).

The performance and actions of prosecutors have significantly influenced Japan's criminal justice system. Their extensive discretionary powers have led to what is often termed as 'prosecutor justice'. Although Japan theoretically operates under an adversarial system, with judges expected to play a passive role, overseeing the clash between opposing prosecution and defense teams, in practice, prosecutors wield considerable influence. They not only dominate the defense but also exert control

over the entire criminal court community, a level of authority unparalleled in other jurisdictions. While judges serve as a check on the powers of prosecutors to some extent, they rarely intervene in prosecutorial prerogatives, particularly concerning the decision to charge or not to charge individuals (Johnson, 2002).

In the Eastern Asia especially in China & Japan, the formal criminal procedure may not easily be categorized either inquisitorial or adversarial but its informal procedure which is very flexible can be more clearly explained. By the virtue of Art. 37 of the criminal law of China, if a person is deemed minor and doesn't warrant criminal punishment, they may be eligible for exemption. Nevertheless, depending on the specifics of the case, they could face reprimand, be required to express remorse, issue an apology, compensate for damages, or be subject to administrative penalties from the relevant authorities. (Article 37, Criminal Law of China)

In Anglo-America and Modern Europe, the mixed model of criminal procedure is being followed and the position in Pakistan is also same (Karim, 2020). According to Justice Mansoor Ali Shah, the bedrock of our criminal justice system mirrors an adversarial framework, wherein the strength of evidence presented by each party determines the outcome. Nevertheless, in exceptional cases, our criminal courts wield inquisitorial authority as stipulated by specific provisions within the Criminal Procedure Code of 1898, all in pursuit of ensuring the rightful dispensation of justice (Muhammad Naeem Case, 2019). Justice (R) Fazal Karim highlights that our legal framework seamlessly integrates aspects from both adversarial and inquisitorial systems, suggesting that our procedural laws are flexible enough to accommodate either approach. He notes that numerous provisions influenced by the inquisitorial justice system have been incorporated into the Cr.P.C underscoring the adaptability and evolution of our legal system (Karim, 2020). Recently the Honorable Double Bench (DB) of Lahore High Court astutely noted that our criminal justice system operates on the well-established principles of being inquisitorial rather than adversarial (Ch. Muhammad Anwar case 2021). It is widely acknowledged that numerous inquisitorial elements have been incorporated in Cr.P.C to diminish the passive role of the court and to encourage the trial judges to play their active role in discovering the truth for dispensation of justice.

7. Development of Public Prosecution Services

In the recent past, the pro-active role of public prosecutor emerged in both adversarial and inquisitorial systems though it was old in inquisitorial system. Presently both the systems of justice almost transformed to the prosecutorial justice (Taleb & Ahlastrand, 2011). In the administration of criminal justice systems worldwide, the pivotal role of the public prosecutor as the third pillar has become firmly established. The authors discussed pro-active role of the public prosecutors (Kasuri, Mahmood & Ghufan, 2021) and world is moving towards prosecutorial justice (Kasuri, Mahmood & Abbas, 2021) in their separate articles. Interested readers are encouraged to explore these articles for a comprehensive grasp of the evolving landscape towards prosecutorial justice.

8. Conclusion

In Adversarial system, the great importance attached to the oral evidence and normally the witnesses appears in the court and face lengthy cross-examination, however in inquisitorial system, judges normally relied upon written evidence or dossier. The role of parties and judge is the fundamental difference in both system of procedure; adversarial and inquisitorial. Both the systems designed to find the truth but methods and means vary. Adversarial Model is contest model whereas, the inquisitorial model is considered inquest model. In adversarial the truth is considered to be best emerged through confrontation of the parties on subjective points of views whereas, in inquisitorial, the truth is discovered through inquiry. In adversarial, the parties control the proceedings from

initiation to the termination, whereas the judges have more control over the case and seek the truth with the cooperation of the parties. In adversarial, the whole case is developed by the parties and judge is an adjudicator or an umpire who listen the evidences and arguments of the parties and decide a dispute between both the parties, whereas in inquisitorial, judge develops the case, orders to produce the evidence, interrogates the witnesses and accused to discover the truth and reach to the just decision. The focus in inquisitorial system is on objective truth finding through investigation whereas the focus of adversarial system is on fair trial right of the accused as provided by international human rights instruments. Although ideally, inquisitorial and adversarial are often seen a choice between two possible systems but in reality, not a single system is completely adversarial or completely inquisitorial. Even there are considerable differences between the systems based on same model or tradition and no single domestic system represent a pure adversarial or inquisitorial model. Comparative study illustrates that there is no perfect system; every system has positive and negative attributions. However, the world is transforming to the greater role and status of the public prosecutor. Through the central and greater role of the public prosecutor, the world is moving towards global legal change and gradually moving towards unified system of procedure.

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