

Inquisitorial system versus adversarial system argumentative essay

[Law](#), [Criminal Justice](#)



Most significant purpose of any legal system is to punish guilty and defend those who are innocent. There are two common criminal justice trial systems, inquisitional system and adversarial system, that are used to determine whether an alleged person is guilty or not. Both these legal system ensure that guilty should be punished but any innocent person should not suffer in the hands of law however different measures are applied by inquisitional system and adversarial system in this process.

Both legal systems are capable in adjudicating disputes irrespective of the fact that both systems have been developed in different backgrounds. This paper discusses inquisitional system and adversarial system and further discusses how they work in different countries along with discussing several other related aspects of these criminal justice systems.

Inquisitorial method of criminal justice system belongs to Romano Germanic law system. This system is also recognized as civil system of law while others recognize it as continental system of law. The specialty of this legal system lies in the fact that in the course of attaining justice, this system works as a joint effort of prosecutor, defense attorney, police and the trial court (Kubicek, 2006). Court plays an active role in the entire exercise of acquiring evidence, examining the witness and also in investigating the case. Since the trial court itself remains very active, the Accused is supposed to help the court in the most possible way.

As stated above since the court itself plays very active role to attain justice in Inquisitorial method of criminal justice system, it ensures speedy trial to get justice and not bothering much about the minor error of proceedings. In this system proceedings are considered less important while justice is

considered supreme. Since all parties of a trial like police, defense attorney, prosecutor, and the court are actively involved in course of getting justice, accused is less likely to lie or hide anything from court. It ensures speedy and fair justice. In this system of legal system, chances of distorting evidence or illegal practice by lawyers are visible as court itself plays a very active role in the whole proceedings.

On the other hand there are some negative aspects of Inquisitorial method of criminal justice system. Since the court plays a very active role in whole trial process there is a strong presumption of being biased. Court may take a bias approach towards an accused for various reasons and defense lawyer will not be able to defend his client.

In this course there are chances of biasness and judge may hang an innocent or may set free a guilty. In this system, right to remain silent or right to privacy of an accused is not recognized and this violates fundamental right of a human being (Malleon, 2007). Prosecutor or police are also in position to misuse their position which again defeats the legal rights of a person.

As a consequence of negative aspects of Inquisitorial method of criminal justice system, it is easier for criminals, rich, powerful and influential people to manipulate laws and authorities in their favor. In society like Mexico where crime rate is very high and there is a clear division between rich, powerful and influential and common people, this system is easily prone to manipulations.

Customary legal system of Mexico was developed during the monopoly of one political party i. e. institutional revolutionary party for more than seven decades. This turned the whole criminal justice system in favor of that

political party and was used against anyone who used to oppose government and also other opponents who challenged the government rule. All Provisions of criminal justice system were designed to keep Power with government and their machinery. Wide powers were given to prosecutor who worked for government and always looked the interests of employers rather than ensuring justice. Prosecutor was almost in the position of a judge and his chances of being were very high (Koppen, 2003).

Prosecutor used to play very important role in investigation, procuring evidence and finding decisions. Whatever was found by a prosecutor was considered final and in very rare cases findings of a prosecutor was challenged. Very low numbers of cases are registered and number of serious crimes is even smaller. Influential people, big criminals and politicians used to manipulate the system with power and money and doing this was easier to them because they had to influence the prosecutor instead of whole system. It becomes clearer when 90 % of convicted people belong to poor category.

Adversarial legal system believes in supremacy of law and imagines a society where everybody, irrespective of his belief, economic status or influence, is equal before the law. In this legal system, court remains neutral and both parties are given ample opportunities to prove his part. The accused has right of privacy as well as right to remain silent.

Prosecutor and police play their role that is assigned to them and are not allowed to intervene unnecessarily in the proceedings. Judge observes proceedings but cannot influence the case according to his observations. Defense lawyer is provided full opportunities to present his arguments,

witnesses and evidences (Jenkins, 2011).

Adversarial legal system believes in supremacy of justice and proceedings are very vital part of this system. Due process of law as well as completing all proceeding is necessary in this criminal justice system. Prosecution and accused both present their versions and court plays the role of a neutral umpire. Lawyers from both sides are an integral part of this system and accused are provided lawyers if they are unable to hire themselves. Accused has a right to claim advantage of doubt. Main duty of Judge is to observe the proceedings and ensure that one of them is being violated.

This system has also negative aspects. Since, accused has a right to remain silent, he does not disclose the truth easily and police is compelled to find the truth without cooperation of accused. Proceedings have a very important place in this system which causes unnecessary delays in the whole process. Technical as well as procedural errors are debatable and judge can not do much to avoid unnecessary delay. Judge remains silent and neutral which is again a negative aspect of this system as his experience and suggestions at some places can make the proceedings easier as well as fairer.

Adversarial legal system is exercised in US courts to attain justice.

Adversarial system in America functions on the basis of four key purposes i. e. investigation, allegation, fact assessment and penalty. Role of Police as well as lawyers is to investigate the allegation; jury places charges on the accused on the basis of feedback of prosecution.

Lawyers of both sides argue and put evidence in their favor and judge pronounces the verdict. Judge has a limited role in this whole exercise and is considered to be in a role of third umpire though judge has a power to decide

the culpability of the accused (Fletcher, 2005). Proceedings are integral part of adversarial system of America and procedural as well as technical errors consume precious time of courts.

Role of related parties are assigned and none can cross their limits in American Adversarial system. Prosecutor is not supposed to mere charge the accused but he is supposed to disclose everything that serves the purpose of attaining the justice. Defense lawyer is expected to help the court by putting only true and relevant facts before the court. Fabricating the evidences, lying is considered ethical in American adversarial system of justice. Judge has his role to play in order to attain justice for the innocent.

Presumption of innocence is a traditional idea of criminal justice system that suggests an accused innocent unless he is proven guilty in a trial by court of law. Now growing crime incidents suggest a change in the approach and what appears from the ongoing trends of the authorities is the idea of proven guilty unless proven innocent. Now an accused is considered guilty unless he gets acquitted by a court of law. There is a difference in opinion of people on the recent change in the traditional law. Some consider it necessary and advocate in favor considering the growing law and order situation while others consider it against the principles of law and natural justice.

References

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