

THE SYSTEMS OF JUDICIAL PROCEDURES: ECCLESIASTICAL LAWS VIS-A-VIS INDIAN CIVIL LAWS

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Abstract

This paper explores the comparative judicial procedures in ecclesiastical and Indian civil law, emphasizing their respective legal frameworks and philosophical foundations. It examines the structural distinctions between the adversarial and inquisitorial systems, highlighting how these systems operate in ensuring justice. The adversarial model, dominant in Indian civil law, is characterized by party-driven litigation, judicial neutrality, and procedural safeguards, whereas the inquisitorial system, prevalent in ecclesiastical law, prioritizes judicial-led investigations and a truth-seeking approach. The study further analyzes procedural overlaps, including the integration of inquisitorial elements in Indian law, and adversarial features within ecclesiastical tribunals. It also critically assesses the strengths and weaknesses of both systems, evaluating their efficiency, fairness, and potential for legal reform. The research underscores the evolving nature of legal frameworks, advocating for a balanced approach that enhances justice and procedural integrity.

Keywords: Judicial Procedures, Ecclesiastical Law, Indian Civil Law, Adversarial System, Inquisitorial System and Procedural Systems.

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I. Introduction

Justice is a divine attribute, intrinsic to the very nature of God. While the Old Testament portrays God as deeply loving and compassionate towards His chosen people, it primarily presents Him as a God of justice. This emphasis on justice shapes the divine image in Scripture, revealing a consistent commitment to fairness and righteousness. In the New Testament, Jesus Christ, the incarnate Word, embodies divine love and mercy. Yet, He consistently upholds justice—demonstrating a standard that transcends human understanding and consideration. The Church, as the living continuation of the glorified Christ, serves as a beacon of justice. She is unwavering in her commitment to uphold justice and is deeply invested and dedicated in its proper administration. This mission is not optional but fundamental to her identity.

It is within this context that the theme of the symposium, held in connection with the Silver Jubilee celebrations of the Institute of Oriental Canon Law, Bangalore, takes on profound relevance: *Fiat iustitia ruat caelum*—"Let justice be done, though the heavens fall." This principle underscores the indispensable role of justice in every sphere of life, including both ecclesiastical and civil domains, that forms the backdrop for the present article, which explores a comparative study between the procedural systems of ecclesiastical and Indian civil laws. Here we try to examine their structures, approaches, and guiding principles, and thereby to uncover how these systems reflect their respective understandings of justice and their commitment to its realization.

II. Various Legal Systems

There are various legal systems prevalent in the world.¹ The judicial process attached to the different legal systems also differ according to the principles followed by each system. Based on their historical development, structure, and underlying principles, the main systems

¹ For a comparison of various legal systems, see Mathias Reimann and Reinhard Zimmermann, *Comparative Law: Cases, Text, Materials*, Oxford, Oxford University Press, 2008; H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, Oxford, Oxford University Press, 5th edition, 2014.

can be broadly categorized as common law system,² civil law system,³ religious law system,⁴ customary law system,⁵ socialist legal system⁶ and mixed legal systems.⁷

² Evolved in England and spread to countries colonized by the British, including the United States, Canada (except Quebec), Australia, and India. The key features are: Based on judicial decisions (precedents) and customs rather than codified laws; Courts have significant power to interpret and develop the law; Judges play a central role in shaping legal principles. For a detailed study on the historical development and principles of common law, see Oliver Wendell Holmes Jr., *The Common Law*, Boston, Massachusetts, Harvard University Press, 1881; To study the evolution of English law and its impact on common law systems worldwide, see Sir William Holdsworth, *A History of English Law*, London, Methuen & Co., 1922-1966; For a discussion on the relationship between common law and liberal political theory, see James Reist Stoner Jr., *Common Law and Liberal Theory*, Kansas City, University Press of Kansas, 1992.

³ Rooted in Roman law and developed primarily in continental Europe. Key Features: Relies on comprehensive codified statutes and legal codes; Judges apply the law as written and have limited power to create law; Legal scholars and legislative bodies play a significant role in law development. Examples: France, Germany, Japan, Spain, Brazil. For a comprehensive introduction to the civil law tradition, its history, and its modern application, see John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition*, 3rd edition, Stanford, California, Stanford University Press, 2007; For a work examining the foundational role of Roman law in shaping the civil law tradition, see George Mousourakis, *Roman Law and the Origins of the Civil Law Tradition*, Cham, Switzerland, Springer, 2015. For a work providing insights into the French civil law system, a key representative of the civil law tradition, see George A. Bermann and Etienne Picard, *Introduction to French Law*, Alphen an den Rijn, Kluwer Law International, 2008.

⁴ Based on religious texts and principles, such as the Quran, Torah, or other sacred writings. Key Features: Laws are derived from divine or spiritual sources; Often governs personal matters like marriage, inheritance, and family law; May coexist with civil or common law in some countries. Examples: Islamic Law (Sharia): Found in Saudi Arabia, Iran, and parts of Indonesia. Jewish Law (Halakha): Applied in matters of personal status in Israel. Hindu Law: Integrated into personal law in India for Hindus.

⁵ Based on traditional customs, practices, and norms of a community. Key Features: Unwritten laws passed down through generations; Often localized and specific to certain ethnic or cultural groups; May operate alongside formal legal systems. Examples: Parts of Africa, the Pacific Islands, and some Indigenous communities.

⁶ Developed in communist states influenced by Marxist-Leninist ideology. Key Features: The law is viewed as a tool for achieving social and economic goals; Focus on state ownership and collective rights over private property; Emphasizes the role of the state and party leadership. Examples: China, Cuba, North Korea, Vietnam (though reforms have incorporated elements of other systems).

⁷ Arise in jurisdictions where multiple legal traditions coexist and influence one another. Key Features: Combines elements of civil law, common law, customary law, or religious law; Often found in countries with diverse historical influences. Examples: South Africa: Combination of civil law, common law, and customary law.

Common law emphasizes case law and judicial precedent, while civil law relies on codified statutes and legislative clarity.⁸ Religious law is rooted in spiritual principles, while secular systems prioritize state-enacted legislation. Customary Law often complements formal systems but may conflict with modern statutory laws, especially on human rights issues. Mixed Systems reflect the complexity of global legal diversity and the blending of traditions. Most of the democratic nations follow either the common law system or the civil law system. Even in other systems one can notice the elements of these two in their various aspects.

III. Distinct Procedural Frameworks of Common Law and Civil Law Systems

Each legal system follows its judicial procedural system. The common law system, in general, emphasizes judge-made law based on precedents to ensure consistency in judicial decisions. Historically, it derived from the common practices of subjects, with judges shaping the law. This system is prevalent in former British colonies such as the United States, India, Pakistan, Australia, and Nigeria. In India, while the common law system dominates, certain elements of the civil law system also exist. Judges play a crucial role in common law systems, as many laws remain uncoded, and higher court decisions bind lower courts through the doctrine of precedent. The procedural laws of the common law system are predominantly adversarial.

Conversely, the civil law system, rooted in Europe, relies on codified statutes influenced by the Justinian Code and later developments like Napoleonic and Germanic laws. Countries like France, Germany, Italy, and Japan follow this system, characterized by comprehensive legal codes that minimize judicial discretion and prioritize statutory laws over precedents. Judges apply codified laws directly, avoiding creative interpretation. Accordingly, the civil law system generally adheres to an inquisitorial procedure.

India: Common law system with elements of Hindu, Islamic, and customary laws. Quebec (Canada): Civil law for private matters, common law for public matters. For an analysis of the mixed legal systems where both the common law and the civil law systems co-exist, see Vernon Valentine Palmer, ed., *Mixed Jurisdictions Worldwide: The Third Legal Family*, Cambridge, Cambridge University Press, 2nd edition, 2012.

⁸ For an exploration of the similarities and differences between common law and civil law traditions in various contexts, see Jan M. Smits, ed., *Common Law and Civil Law Traditions: A Comparative Perspective*, Cheltenham, United Kingdom, and Northampton, Massachusetts, USA, Edward Elgar Publishing, 2012.

In India, the British-introduced common law system was adopted post-independence through Article 372, with Article 141 incorporating binding precedents from the Supreme Court.⁹ Key codes, *The Code of Civil Procedure, 1908*,¹⁰ *The Bharatiya Nagarik Suraksha Sanhita, 2023*¹¹ and *The Bharatiya Sakshya Adhiniyam, 2023*¹² uphold common law principles. While India primarily follows the adversarial judicial process, it occasionally incorporates elements of the inquisitorial system to enhance the administration of justice.

IV. Adversarial and Inquisitorial Procedural Systems

The primary purpose of procedural laws is to resolve disputes. Courts aim to settle conflicts between individuals or between the state and individuals by establishing the facts and interpreting the law. In doing so, they adopt different approaches, primarily the adversarial and inquisitorial procedural systems. These systems differ in their judicial processes, influencing trials, investigations, and the roles of participants.¹³

The adversarial procedural system is a legal framework used primarily in Common Law jurisdictions,¹⁴ such as the United States, the United Kingdom, Canada, and Australia. In this system, the parties act as adversaries, engaging in contentious arguments and accusing each other as the cause of the dispute. Consequently, it is also

⁹ The Constitution of India, Article 141: The law declared by the Supreme Court shall be binding on all courts within the territory of India.

¹⁰ The **Code of Civil Procedure, 1908** (CPC) is a comprehensive statute governing the procedural aspects of civil litigation in India. It provides the framework for filing, conducting, and adjudicating civil suits in courts, ensuring uniformity and fairness in judicial proceedings. The CPC is divided into two parts: the first contains 158 sections dealing with substantive procedural law, while the second consists of the First Schedule, which includes 51 Orders detailing procedural rules. Over time, several amendments have been introduced to enhance efficiency and address evolving legal needs, with significant revisions such as the 1976 and 2002 amendments. Hereafter this will be seen as (CPC)

¹¹ *The Bharatiya Nagarik Suraksha Sanhita, 2023* is the recently enacted criminal law with effect from 01 July 2024 repealing *The Code of Criminal Procedure, 1973*. (Hereafter this will be seen as (BNSS))

¹² *Bharatiya Sakshya Adhiniyam, 2023* recently replaced *The Indian Evidence Act, 1872*. (Hereafter this will be seen as (BSA))

¹³ For an analysis of the different state structures influencing adversarial and inquisitorial procedural models, see Mirjan R. Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*, New Haven, Connecticut, Yale University Press, 1986, 121–165.

¹⁴ For an account of development of the adversarial system in England during the 18th century, see John H. Langbein, *The Origins of Adversary Criminal Trial*, Oxford, Oxford University Press, 2003.

known as the accusatorial system. Each party is represented by advocates before an impartial judge, who determines the facts and delivers a judgment based on the strength of the arguments and the evidence presented. Legal disputes are resolved through a structured contest between two opposing sides – the prosecution or plaintiff and the accused or defendant.¹⁵ A neutral judge or jury oversees the proceedings, ensuring fairness and adherence to legal rules.¹⁶

The inquisitorial system is predominantly used in countries that base their legal framework on Civil or Roman law codes, such as Italy, France, and Germany.¹⁷ This system requires the judge to take an active role in investigating the case. Unlike in other systems, the primary distinction lies in the trial and inquiry process, as well as the responsibilities of legal representatives. Neither the prosecutor nor the defense counsel has the right to cross-examine witnesses, though they are permitted to present closing arguments. The judge is responsible for conducting a thorough investigation, gathering evidence regardless of whether it supports the prosecution or the defense. During this process, the judge may consult with the police and the prosecution. If, after reviewing the evidence, the judge determines that there is sufficient basis to establish guilt and proceed with an indictment, a trial will be scheduled. Even during the trial, the judge maintains an active role by directly examining witnesses and evaluating the evidence to reach a fair and informed judgment.

V. Procedural Frameworks in the Ecclesiastical Law and Indian Civil Laws

According to the laws of the Church,¹⁸ there are primarily three types of procedures for the administration of justice: contentious, penal, and

¹⁵ For a work that examines how common law procedural rules shaped adversarial litigation, see F. W. Maitland, *The Forms of Action at Common Law*, Cambridge, Cambridge University Press, 1909.

¹⁶ For an analysis of the philosophical foundations of the adversarial trial and the way this system balance rationality and rhetoric, see Robert P. Burns, *A Theory of the Trial*, Princeton University Press, 1999.

¹⁷ To trace the origins of the inquisitorial process in medieval Europe, see F.W. Maitland, *The Constitutional History of England*, Cambridge, Cambridge University Press, 1908, 204-215. For a comparative study highlighting key features of the inquisitorial system in Germany, see John H. Langbein, *Comparative Criminal Procedure: Germany*, 2nd edition, St. Paul, Minnesota, West Academic Publishing, 2006, 1-30.

¹⁸ What constitutes the laws of the Church? CIC 1983, CCEO, The Apostolic Constitution *Praedicate Evangelium* constitute the whole corpus of the laws of the Church. With regard to the procedural laws both the Eastern Code and the Latin Code

administrative. A trial is termed contentious when its purpose is to prosecute or vindicate individual rights or to declare juridic facts. It is classified as penal when its aim is to impose or declare a penalty. Administrative recourses address disputes arising from acts of administrative authority.

Similarly, the Indian legal system also recognizes three primary types of procedures: civil, criminal, and administrative. Civil Procedure deals with disputes between individuals, organizations, or entities concerning private rights and obligations. It is governed by the *Code of Civil Procedure, 1908* (CPC) and typically encompasses matters such as property disputes, breaches of contract, family law issues (divorce, custody, inheritance), injunctions, and specific performance. Criminal procedure pertains to offenses against the state or society, focusing on ensuring justice through the punishment of offenders. It is regulated by the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS) and substantive laws such as the *Bharatiya Nyaya Sanhita, 2023* (BNS).¹⁹

Administrative procedures involve disputes related to governmental or administrative decisions and are often resolved through administrative tribunals, such as the Central Administrative Tribunal, State Administrative Tribunal, and the National Green Tribunal, etc. These procedures cover issues such as service disputes, environmental concerns, and tax-related matters.²⁰

have almost the same legislations because it was a guideline given to the framers of the Code that "all Catholics observe the same procedural laws." *Nuntia* 3 (1976) 23.

¹⁹ The *Bharatiya Nyaya Sanhita, 2023* is enacted with effect from 01 July 2024 repealing *The Indian Penal Code, 1860*. (Hereafter this will be seen as (BNS).

²⁰ Election Procedure: Involves disputes related to elections, governed by the Representation of the People Act, 1951. Heard by the High Courts or the Supreme Court, depending on the nature of the dispute. Arbitration and Conciliation Procedure: Alternative dispute resolution mechanisms aimed at settling disputes outside traditional courts. Governed by the Arbitration and Conciliation Act, 1996. Common in commercial disputes. Family Law Procedure: Handles matters under personal laws of various communities (Hindu, Muslim, Christian, etc.). Issues include marriage, divorce, custody, maintenance, and adoption. 8. Special Procedures for Juvenile Justice: For cases involving juveniles, the Juvenile Justice (Care and Protection of Children) Act, 2015 governs the process. Focuses on rehabilitation and reform rather than punishment. Procedures for Consumer Disputes: Governed by the Consumer Protection Act, 2019. Consumer disputes are handled by Consumer Disputes Redressal Commissions at the district, state, and national levels. Industrial and Labor Dispute Procedure: Covers disputes between employers and employees. Governed by laws like the Industrial Disputes Act, 1947 and addressed by labor courts, industrial tribunals, and arbitration. Taxation Procedure: Deals with disputes regarding taxation, such as income tax, goods and services tax (GST), customs, and

VI. Adversarial Procedure: Core Features and Indian Judiciary

The adversarial system follows its unique features in the pursuit of justice. It is beneficial to learn these features to see how far they are evident in the Indian judicial procedures. The Indian legal system inherited this model from the British common law system. Both civil and criminal procedures in India are structured around the principles of party-driven litigation, judicial neutrality, and the contest between opposing sides. Below is an analysis of the salient features of the adversarial procedural system and these characteristics in both civil and criminal procedures in India.

1. Party-driven process

The key characteristic of the adversarial system is that it is predominantly party-driven. In civil cases, the plaintiff and defendant, and in criminal cases, the complainant or prosecutor and the accused, play a central role by presenting arguments, evidence, and witnesses. The judge or jury, meanwhile, acts as a neutral arbiter. Although parties in both civil and criminal cases may present their case directly, they typically do so through legal representatives.²¹

Civil cases in India are initiated and conducted by the interested parties.²² The plaintiff brings the case against the defendant, and both sides are responsible for presenting their claims, arguments, and evidence. The court does not independently investigate facts but decides the case based on the acts and facts presented by the parties. CPC, Section 9 establishes that courts have jurisdiction to try all civil suits unless expressly or impliedly barred. Additionally, under Sections 104-106 of the BSA, the burden of proof lies on the parties to prove their claims.

In the Indian criminal procedural system, the prosecution and defense play central roles in presenting their respective cases. Criminal cases,

excise. Addressed by tax tribunals and courts. Environmental Procedure: Concerns disputes related to environmental protection. Primarily addressed by the National Green Tribunal (NGT) under the National Green Tribunal Act, 2010. Public Interest Litigation (PIL): A special form of judicial procedure where a person or organization can approach the court for the public good. Introduced to address social and environmental issues.

²¹ For a critique of the ethical dilemmas of adversarial advocacy, see David Luban, *Lawyers and Justice: An Ethical Study*, Princeton, New Jersey, Princeton University Press, 1988.

²² The adversarial nature of Indian civil proceedings is affirmed in *K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275, where the Supreme Court emphasized that courts decide cases based on the evidence presented by the parties.

especially those involving serious offenses, are prosecuted by the State (Government), which is represented by the Public Prosecutor. The Public Prosecutor is responsible for presenting evidence against the accused and ensuring that justice is served in accordance with the law. On the other hand, the accused have the fundamental right to defend themselves, which includes the right to legal representation. They may either hire a defense lawyer of their choice or, if unable to afford one, seek legal aid provided by the State. The court acts as an impartial arbiter, ensuring that both parties adhere to procedural rules and that justice is administered fairly.²³ This party-driven approach, where the prosecution and defense actively contest the case, is a defining feature of all adversarial legal systems, including India's.

2. Cross-Examination

A key feature of the adversarial system, cross-examination allows opposing parties to challenge each other's evidence through direct questioning. This process is crucial for testing the credibility of witnesses, uncovering inconsistencies, and ensuring that the presented evidence withstands scrutiny. By subjecting testimonies to rigorous examination, cross-examination helps reveal the truth and strengthens the integrity of the judicial process.²⁴

The adversarial nature of civil procedure in the Indian judiciary is most evident during the trial phase, where both parties actively present and challenge evidences through cross-examination. Each side has the opportunity to question witnesses, highlight inconsistencies, and weaken the opposing argument, ensuring a rigorous evaluation of the facts. Additionally, oral arguments play a crucial role in shaping judicial decisions, as lawyers present legal interpretations and precedents to persuade the judge. This structured

²³ See *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, where the Supreme Court of India reaffirmed that the Indian legal system follows an adversarial model, wherein the prosecution and defense bear the primary responsibility for presenting their respective cases, while the judge remains a neutral umpire ensuring fairness and adherence to legal procedures. Also, refer to the *Bharatiya Nagarik Suraksha Sanhita*, 2023, Sections 18-19, 340-341 which outline the roles of the prosecution and the accused respectively in criminal trials.

²⁴ For an examination of whether adversarial trials genuinely promote truth-seeking, see Gerald F. Uelman, "The Trial as a Search for Truth," *University of Pittsburgh Law Review* 49, no. 2, 1988, 289-316.

contest between opposing parties ensures that justice is achieved through a fair and balanced hearing.²⁵

In the adversarial system of Indian criminal procedure, both the prosecution and the defense engage in the examination and cross-examination of witnesses to test the credibility and reliability of testimony. The prosecution presents evidence to establish the guilt of the accused, while the defense has the right to challenge this evidence through rigorous questioning and by presenting counter-evidence to create reasonable doubt. Section 143 of the BSA, outlines the right of cross-examination. This dynamic process ensures that the truth emerges through argumentation and scrutiny, upholding the principles of fairness and justice in criminal trials.²⁶

3. Burden of Proof

In the adversarial system, the burden of proof primarily rests on the prosecution in criminal cases. It is their responsibility to establish the accused's guilt beyond a reasonable doubt, ensuring that no conviction occurs without compelling and credible evidence.²⁷ This high standard of proof serves as a safeguard against wrongful convictions, reinforcing the principle that an accused is presumed innocent until proven guilty.²⁸ By placing the burden on the prosecution, the system upholds fairness and protects individual rights within the judicial process.

In civil cases in India, the burden of proof is on the plaintiff. They must establish their claim through preponderance of evidence. At the same time, in accordance with Order XVIII of the CPC, both the parties have the opportunity to present and counter arguments through affidavits, documentary evidence, and witness testimonies, ensuring an adversarial process where each side has the right to challenge the

²⁵ See *State of Punjab v. Jagir Singh*, (1974) 3 SCC 277, where the Supreme Court of India emphasized that cross-examination is a fundamental right of the accused, serving as a powerful tool to test the veracity of witnesses and expose inconsistencies in their statements. Additionally, refer to section 143 of BSA, which explicitly provides for the right of cross-examination as an essential aspect of a fair trial.

²⁶ See *State of Kerala v. Rasheed*, (2019) 12 SCC 446, where the Supreme Court emphasized the importance of cross-examination in testing the veracity of witness testimony in an adversarial trial.

²⁷ For a foundational text on evidentiary rules in adversarial trials, see John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, Boston, Little, Brown & Co., 1904.

²⁸ For a study of how evidence theory shapes adversarial litigation, see William Twining, *Rethinking Evidence: Exploratory Essays*, Cambridge, Cambridge University Press, 2006.

other's claims. Under the BSA Sections 104-105, the burden of proof in civil cases lies on the plaintiff, who must establish their claim. The standard of proof required is the preponderance of evidence, meaning the plaintiff must demonstrate that their version of events is more likely than not.²⁹

The adversarial nature of Indian criminal procedure is rooted in the fundamental principle that an accused person is presumed innocent until proven guilty.³⁰ This presumption places the burden of proof squarely on the prosecution, which must establish the guilt of the accused beyond a reasonable doubt.³¹ The defense, in turn, is not required to prove innocence but can challenge the prosecution's case by exposing inconsistencies, questioning the reliability of evidence, and presenting counterarguments. Section 104 of the BSA affirms that the party asserting a fact bears the responsibility of proving it, and in criminal cases, this obligation rests with the prosecution. This system ensures that justice is not arbitrary but is determined through rigorous legal scrutiny, protecting the rights of the accused while upholding the rule of law.

4. Right to Legal Representation

The right to legal representation is a cornerstone of the adversarial procedural system, ensuring that every individual has a fair opportunity to present their case. In this system, both parties—the prosecution and the defense in criminal cases or the plaintiff and the defendant in civil cases—are represented by legal professionals who advocate on their behalf. This right is particularly crucial in criminal proceedings, where an accused person is entitled to defense counsel, even at the state's expense if necessary.³² By enabling parties to argue their case effectively, challenge opposing evidence, and navigate

²⁹ In *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752, the Supreme Court reaffirmed that civil cases do not require proof beyond a reasonable doubt but rather a balance of probabilities.

³⁰ The principle of presumption of innocence until proven guilty is also upheld in *Datar Singh v. State of Punjab*, (1975) 4 SCC 272.

³¹ See *Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190, where the Supreme Court of India reiterated that the burden of proof in criminal trials lies entirely on the prosecution, which must establish the guilt of the accused beyond a reasonable doubt.

³² For a detailed study of the emergence of defense counsel and how legal practitioners became integral to criminal trial process, see chapters 3 and 5 respectively of John H. Langbein, *The Origins of Adversary Criminal Trial*, Oxford, Oxford University Press, 2003. See also Article 14 (3) of the International Covenant on Civil and Political Rights (ICCPR), which guarantees legal assistance for accused persons if they cannot afford to it.

complex legal procedures, the right to legal representation upholds the principles of fairness, equality, and justice in the adversarial system.

In both Indian civil and criminal procedures, the right to legal representation is a fundamental safeguard to ensure fairness and justice. In criminal cases, the accused has the right to be defended by legal counsel, with the state providing free legal aid if the individual cannot afford a lawyer, as mandated under Article 39A of the Constitution of India.³³ Section 341 of the BNSS outlines the right of an accused to be defended by a legal practitioner in criminal trials. Similarly, in civil matters, parties have the right to be represented by lawyers to ensure that their legal rights are effectively argued and defended in court.³⁴ This right allows individuals to navigate complex legal processes, challenge evidence, and present their case, reinforcing the integrity of the judicial system and upholding the principles of equality before the law.

5. Role of the Victim

In the adversarial legal system, the victim's role is typically secondary to that of the prosecution and defense, as the primary contest is between the state and the accused.³⁵ While the victim is often a key witness, providing testimony and evidence to support the prosecution's case, they do not have direct control over the proceedings. Their interests are usually represented by the state, which prosecutes the case on behalf of society rather than the individual. However, in some jurisdictions, victims' rights have been increasingly recognized, granting them opportunities to present impact statements, receive updates on case progress, and, in certain instances, engage legal representation to advocate for their interests.³⁶

³³ See *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 1 SCC 174, where the Supreme Court reaffirmed the right to free legal representation for indigent defendants in criminal cases.

³⁴ See *K.K. Verma v. Union of India*, (1954) 2 SCR 197, where the Court emphasized the importance of legal representation in ensuring access to justice in civil cases.

³⁵ For a discussion on the role of the State, see Mirjan R. Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*, New Haven, Connecticut, Yale University Press, 1986.

³⁶ On the rights of the victims, see Andrew Ashworth, "Victims' Rights, Defendants' Rights and Criminal Procedure," *Oxford Journal of Legal Studies* 8, no. 2, 1988, 185-210; Carolyn Hoyle and Lucia Zedner, "Victims, Victimization, and Criminal Justice," in *The Oxford Handbook of Criminology*, ed., Mike Maguire, Rod Morgan, and Robert Reiner, Oxford, Oxford University Press, 2012, 488-520; Kent

Despite these developments, the adversarial system remains focused on the contest between the prosecution and defense, with the judge and jury acting as impartial arbiters.

In the Indian criminal justice system, the victim's role has traditionally been limited, as the state assumes the primary responsibility for prosecuting offenses under the adversarial model.³⁷ However, with growing recognition of victims' rights, legal reforms have sought to enhance their participation in the process. The BNSS provides certain rights to victims, such as the right to be heard in bail proceedings, the right to assist the prosecution, and, in cases of grave offenses, the right to engage a private lawyer under Section 18 (8). The Criminal Law (Amendment) Act, 2008³⁸ strengthened victim participation by allowing victim impact statements and improving access to compensation under the Victim Compensation Scheme which is now included in the BNSS, Sections 395-397. Furthermore, the Justice Verma Committee Report (2013)³⁹ recommended broader victim-centric reforms, particularly in cases of sexual violence. While these developments mark a shift toward a more victim-inclusive process, the Indian system remains primarily state-driven, with the prosecution representing societal interests over individual grievances.⁴⁰

6. Role of the Judge

In the adversarial system, the judge takes on a passive and neutral role, focusing on ensuring procedural fairness rather than actively investigating the case. Unlike in inquisitorial systems, where judges may take part in gathering evidence, adversarial judges act as

Roach, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice*, Toronto, University of Toronto Press, 1999.

³⁷ Mirjan R. Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*, New Haven, Yale University Press, 1986, 3-5.

³⁸ *Criminal Law (Amendment) Act*, 2008, Gazette of India, No. 2 of 2009.

³⁹The Justice Verma Committee Report (2013) was a landmark document submitted by a three-member committee led by Justice J.S. Verma, along **with** Justice Leila Seth and Gopal Subramaniam. The committee was constituted in the aftermath of the 2012 Delhi gang rape case to recommend legal and policy reforms for strengthening laws on sexual violence and crimes against women in India. The recommendations influenced the Criminal Law (Amendment) Act, 2013, which introduced stricter punishments for rape, acid attacks, stalking, and voyeurism. However, key suggestions like criminalizing marital rape and reviewing AFSPA (Armed Forces Special Powers Act) were not implemented.

⁴⁰ Upendra Baxi, *The Crisis of the Indian Legal System*, New Delhi, Vikas Publishing, 1982, 98.

impartial arbiters who oversee the legal proceedings, rule on matters of law, and ensure that both parties adhere to established legal principles. Their primary duty is to facilitate a fair trial by upholding due process and making determinations based on the arguments and evidence presented by the opposing sides.

In the Indian civil procedures, the judge does not actively participate in fact-finding but ensures legal procedures are followed.⁴¹ The decision is based on the arguments, witness testimonies, and evidence presented by both parties. CPC, Section 9 establishes that courts adjudicate civil disputes based on the claims and evidence presented by the parties. Additionally, under the BSA, Sections 104-107, the burden of proof rests on the parties to substantiate their claims. The Supreme Court of India reiterated that courts do not independently investigate facts but rely on evidence adduced by the parties in several cases.⁴² Section 168 of the BSA grants the judge the authority to put questions to witnesses to clarify facts but does not permit them to take on an investigative role, reinforcing the adversarial nature of the Indian legal system.

In the adversarial system of Indian criminal procedure, the judge functions as an impartial referee, ensuring that the trial adheres to principles of fairness and due process. Unlike the inquisitorial system, where judges actively investigate and gather evidence, Indian judges do not take on an investigative role. Instead, they evaluate the evidence and legal arguments presented by both the prosecution and the defense, making determinations based on the merits of the case.⁴³ This separation of roles reinforces the adversarial nature of the system, where the burden of proving guilt lies with the prosecution, and the defense has the opportunity to challenge the case against the accused.

⁴¹ See *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158, where the Supreme Court of India underscored the role of the judge as a neutral arbiter responsible for ensuring a fair trial while refraining from assuming an investigative function.

⁴² In the case *Krishna Rao v. Shankargouda*, (1999) 4 SCC 396, the Supreme Court affirmed that the role of the judge is primarily to ensure procedural compliance and fair conduct of trial.

⁴³ See *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158, where the Supreme Court emphasized the judge's duty to ensure a fair trial while remaining neutral, reaffirming the adversarial nature of Indian criminal proceedings.

7. Decision-Making

In the adversarial system, the responsibility for determining the outcome of a case typically lies with either a jury or a judge.⁴⁴ Their decision is based solely on the arguments, evidence, and testimonies presented by both parties during the trial.⁴⁵ The jury, composed of impartial members of the community, evaluates the facts and reaches a verdict, while a judge may decide cases in bench trials.⁴⁶ This process ensures that the judgment is derived from an objective assessment of the case rather than judicial investigation, reinforcing the principles of fairness and impartiality in the legal system.⁴⁷

Articles 136 and 142 of the Constitution of India empower the Supreme Court to ensure justice, but the decision-making process in trials remains dependent on the evidence and arguments presented by the parties. In Indian **civil litigation**, both parties are responsible for presenting their claims and defenses through pleadings, documents, and witness testimonies.⁴⁸ The judge evaluates the merits of the case based on procedural and substantive law but does not conduct independent fact-finding.⁴⁹ The CPC emphasizes party-driven litigation, where the burden of proof lies on the litigants.⁵⁰

In criminal cases, the prosecution and defense present their evidence, examine witnesses, and argue their case before the judge. Section 392 of the BNSS stipulates that judgments in criminal cases must be based on evidence recorded during the trial, reinforcing the principle of objective decision-making.⁵¹ The judge, acting as a neutral arbiter,

⁴⁴ Mirjan R. Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*, New Haven, Yale University Press, 1986, 16-20.

⁴⁵ There are authors who argue that in this system judicial decision-making is influenced by personal biases, see Jerome Frank, *Courts on Trial: Myth and Reality in American Justice*, Princeton University Press, 1949.

⁴⁶ John H. Langbein, *The Origins of Adversary Criminal Trial*, Oxford, Oxford University Press, 2003, 185-190.

⁴⁷ See SCC in *R. v. Sussex Justices, ex parte McCarthy*, [1924] 1 KB 256, where Lord Hewart famously stated that "justice should not only be done but should manifestly and undoubtedly be seen to be done," emphasizing the importance of impartial decision-making.

⁴⁸ CPC, Sections 26-35.

⁴⁹ M.P. Jain, *Indian Constitutional Law*, New Delhi, LexisNexis, 2018, 987-990.

⁵⁰ C.K. Takwani, *Civil Procedure*, Lucknow, Eastern Book Company, 2021, 72-75.

⁵¹ The Supreme Court of India has consistently emphasized the importance of judges acting as neutral arbiters in criminal trials. In the case of *Shanti Bhushan vs. Supreme Court of India Through Its Registrar & Anr.* (2018), the Court underscored that the Chief Justice, as the master of the roster, must exercise this power in a manner that is fair, just, and transparent, highlighting the judiciary's commitment to

determines the verdict based on the material brought before the court. Unlike some legal systems that employ jury trials, Indian criminal trials are decided exclusively by judges, ensuring that the decision is based on legal reasoning and statutory provisions.

8. Appeal Mechanism

The appellate mechanism is a fundamental feature of the adversarial procedural system, ensuring that judicial decisions undergo scrutiny at multiple levels.⁵² In this system, a party dissatisfied with a trial court's verdict has the right to appeal before a higher court, which reviews the case for legal, procedural, or evidentiary errors. This process acts as a safeguard against miscarriages of justice, reinforcing fairness and accountability. By allowing higher courts to overturn or modify lower court rulings, when necessary, the appellate mechanism upholds the rule of law and strengthens public confidence in the judicial system.

The appeal mechanism serves as a crucial adversarial feature in both Indian civil and criminal procedures, ensuring a system of checks and balances within the judicial process.⁵³ In civil cases, if a party is dissatisfied with a lower court's decision, they can appeal to a higher court, which reviews the case to correct any procedural or substantive errors. Appellate courts examine whether due process was followed and if the judgment aligns with established legal principles, ensuring that the rights of litigants are protected and preventing miscarriages of justice. Section 96 of the CPC provides the right of appeal in civil cases from a lower court's decision to a higher court, ensuring review of any errors in procedure or law. Section 100 of the CPC, which allows for a second appeal in civil cases, further reinforces the adversarial system by offering an opportunity to correct legal errors.⁵⁴

impartiality. Furthermore, in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* (2024), the Supreme Court reinforced the importance of independence and impartiality in adjudicatory roles, striking down clauses that permitted unilateral appointments of arbitrators, which it considered a violation of equality principles under Article 14 of the Constitution.

⁵² Mirjan R. Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*, New Haven, Yale University Press, 1986, 95-100.

⁵³ Durga Das Basu, *Introduction to the Constitution of India*, New Delhi, LexisNexis, 2021, 215-220.

⁵⁴ See *K.K. Verma v. Union of India*, (1954) 2 SCR 197, which reaffirmed the importance of appeals in civil cases for ensuring due process and protecting legal rights.

Similarly, in criminal cases, the accused has the right to appeal a conviction to a higher court. This appellate process allows for a re-examination of the trial court's decision, scrutinizing errors in law, procedure, or the assessment of evidence. Section 415 of the BNSS grants the accused the right to appeal a conviction in criminal cases, ensuring a review of legal and procedural aspects by a higher court. Higher courts ensure that the conviction is based on sound legal reasoning and that the accused received a fair trial, thereby safeguarding against wrongful convictions.⁵⁵ In both civil and criminal procedures, the appeal mechanism upholds the integrity of the legal process by ensuring that decisions are fair, just, and in accordance with the law.⁵⁶

The Indian judicial system follows the adversarial model in both civil and criminal cases, emphasizing party autonomy, judicial neutrality, and the contest between opposing arguments. While this model ensures fairness and procedural safeguards, it also has challenges like lengthy trials, backlog of cases, and potential power imbalances due to disparities in legal representation. Efforts are being made to incorporate elements of the inquisitorial system, such as judicial case management and *suo motu* interventions, to improve efficiency while maintaining fairness.

VII. The Strengths and Weaknesses of the Adversarial System

No system is perfect. All the different systems have their own strengths and weaknesses. The adversarial procedural system, based on a contest between opposing parties, with an impartial judge or jury determining the outcome is praised for several reasons. Notwithstanding its merits, it also has inherent weaknesses. A fast look into the strengths and weaknesses of the adversarial system provides insight into its effectiveness in delivering justice while highlighting areas for potential reform.

1. In the adversarial system since the judge remains impartial, and both sides present their strongest arguments it is easier to ensure fairness through neutrality.

⁵⁵ See *State of Uttar Pradesh v. Raja Ram*, (1973) 2 SCC 794, where the Supreme Court emphasized the role of appellate courts in ensuring the accused's right to a fair trial by reviewing trial court judgments for legal errors.

⁵⁶ See *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, where the Supreme Court affirmed that judicial review through appeals is essential for safeguarding fairness and justice, preventing miscarriages of justice.

2. This system tries to protect the individual rights especially by emphasizing due process and presuming the innocence of the accused until the crime is finally proven.
3. This system gives both parties an equal right to fair hearing.
4. The system of cross examination ensures the rigorous testing of the evidences presented.
5. The adversarial system contributes to the development of law by ensuring that lawyers, through their diligent efforts, explore all nuances of a given law while formulating arguments. This rigorous process ultimately leads to the evolution of legal principles that govern similar issues.

However, this system is not free from disadvantages and weaknesses.⁵⁷ They are in order:

1. There is a possibility of inequality and imbalances, which may lead to injustice because the wealthier and powerful parties may have better legal representation.
2. Due to procedural complexities, the process may be prolonged, making it more expensive. As a result, access to justice may become challenging for the poor, given their social and economic constraints.
3. Additionally, cases may take an extended time to resolve, and the system's structure can encourage delays, ultimately hindering effective fact-finding.
4. Over focus on winning may overshadow the pursuit of justice and the danger of truth becoming secondary.

VIII. Inquisitorial Procedure: Core Features and the Ecclesiastical Procedural System

The inquisitorial procedure is a legal framework in which the judge takes an active role in investigating and establishing the facts of a case, rather than relying solely on the parties to present evidence. Rooted in civil law traditions, this method emphasizes the pursuit of truth, with the judge acting as both an investigator and an impartial arbiter, often representing the interests of the State. This procedural approach has played a significant role in various legal systems, including

⁵⁷ For an analysis of the American adversarial model for prioritizing strategy over truth-seeking, see William T. Pizzi, *Trials Without Truth: Why Our System of Criminal Trials Has Become an Expensive Failure*. NYU Press, 1999.

ecclesiastical courts, where it has shaped the administration of justice within the Church.⁵⁸ Examining its core features and its influence on ecclesiastical procedural systems provides insight into its enduring relevance and distinctive characteristics.

1. Judge-led Investigation

In the inquisitorial system, judges play an active role in the investigation of a case. Unlike the adversarial system, where the responsibility of gathering evidence lies with the opposing parties, the judge in an inquisitorial system takes charge of collecting and examining evidences. They have the authority to question witnesses, order forensic tests, and even visit crime scenes if necessary. This proactive role ensures that the case is thoroughly investigated before reaching trial, reducing the chances of evidence being overlooked or manipulated by either party.⁵⁹

The ecclesiastical procedure follows an inquisitorial system, where judges take an active role in investigating the case, unlike the adversarial system where they act as neutral arbiters. Code of Canons of the Eastern Churches (CCEO) canon 1362 and its parallel legislation in the Code of Canon Law 1983 (CIC '83) canon 1676 requires judges to attempt conciliation between the parties before proceeding to trial, highlighting the proactive role of the judge in resolving disputes.⁶⁰ In this system, the judge is not only responsible for overseeing the trial but also for gathering and evaluating evidence, ensuring that the truth is diligently pursued. This approach reflects the central role of the judge in facilitating justice, focusing on the comprehensive exploration of the case rather than merely responding to the arguments of the disputing parties.

⁵⁸ For an analysis of the inquisitorial approach in contrast to adversarial systems in the ecclesiastical tribunals, see John M Huels, *The Inquisitorial Process in Canonical Trials*, Washington D.C., Catholic University of America, 1992; on the historical and procedural aspects of the inquisitorial system in ecclesiastical law, see Mario Savio, *Il Processo Canonico nel Sistema Inquisitorio*, Roma, Urbaniana University Press, 2011.

⁵⁹ For a study on the active role of judges in the inquisitorial system, highlighting how they oversee and control the investigation process, including questioning witnesses and collecting evidence, see A. A. S. Zuckerman, *The Inquisitorial System of Justice: Principles, Practice, and Reform*, Cambridge, Cambridge University Press, 2003.

⁶⁰ CCEO c. 1362. "Before accepting a case and whenever there seems to be hope of a favorable outcome, a judge is to use pastoral means to induce the spouses, if possible, to convalidate the marriage and restore the partnership of conjugal life." The Latin parallel CIC '83 c. 1676 has the same legislation.

2. Limited Role of Parties

In contrast to adversarial proceedings, where lawyers play a dominant role in arguing and presenting evidence, the inquisitorial system grants them a more restrained function. While legal representatives still provide input and defend their clients' interests, they do not drive the investigation. Their role is primarily to assist in legal interpretation and procedural matters rather than engaging in aggressive cross-examination or strategic litigation.⁶¹ This shift in emphasis ensures that legal proceedings remain focused on fact-finding rather than courtroom tactics.

The inquisitorial nature of ecclesiastical procedure is further exemplified by the ability of ecclesiastical courts to initiate cases independently, particularly in matters related to faith, morality, and discipline. Unlike adversarial systems where cases must be brought forward by the parties involved, ecclesiastical tribunals can act on their own initiative to address issues such as clerical misconduct, including sexual abuse, even if no formal complainant is present. In cases like marriage nullity, CCEO canon 1361 §1 and CIC '83 canon 1675 §1 empower tribunals to investigate the validity of a marriage without requiring the consent of both parties.⁶² This proactive role of the judge ensures that the pursuit of truth and the protection of Church doctrine and discipline are central to the judicial process, reinforcing the inquisitorial approach in ecclesiastical law.

In ecclesiastical procedure, while advocates as per CCEO 1139 §§1-3 and CIC '83 c. 1481 §§1-3 can assist parties in presenting their case, they do not control the proceedings, which remain firmly under the direction of the tribunal.⁶³ The tribunal takes the lead in guiding the process, ensuring that the inquiry is focused on uncovering the truth rather than being driven by the strategies of legal representatives. The

⁶¹ For a comparison of the roles of legal representatives in the inquisitorial and adversarial systems, emphasizing the restrained function of lawyers in the former, see Kelsen, *General Theory of Law and State*, Cambridge, Massachusetts, Harvard University Press, 2006, 170.

⁶² CCEO c. 1361 §1 & CIC'83 c. 1675 §1: "A marriage that was not accused while both spouses were living cannot be accused after the death of either one or both of the spouses unless the question of validity is prejudicial to the resolution of another controversy either in the canonical forum or in the civil forum."

⁶³ For a discussion on the role and function of the advocates according to the 1917 Code of canon Law, see Charles Augustine, *A Commentary on the New Code of Canon Law*, vol. 6, St. Louis, B. Herder Book Co., 1921, 37-45. Of the current legislations, see James J. Hogan, *Judicial Advocates and Procurators: An Historical Synopsis and Commentary*, Washington D.C., Beard Books, 2000.

role of legal advocates is less dominant compared to civil or common law systems, where attorneys play a central role in shaping the case.⁶⁴ This structure reinforces the inquisitorial nature of ecclesiastical procedure, where the judge or tribunal actively directs the proceedings, evaluates evidence, and seeks to ensure a fair and thorough investigation.

3. Search for Truth

The inquisitorial system prioritizes uncovering the objective truth rather than framing legal arguments for victory. Since the judge oversees the investigation, their primary aim is to establish an accurate and impartial understanding of events. This system minimizes the possibility of cases being won or lost based on legal technicalities, strategic maneuvering, or gaps in legal representation. By emphasizing fact-finding over adversarial competition, the system seeks to enhance the overall fairness of judicial outcomes.⁶⁵

In ecclesiastical trials, the inquisitorial nature is reflected in the reliance on written depositions instead of oral arguments and cross-examinations commonly seen in adversarial systems. The tribunal takes on an active role in questioning witnesses privately, aiming to uncover the truth without the influence of combative tactics between opposing parties. Rather than being questioned by the opposing party's representative, parties and witnesses are interrogated directly by the judge or appointed officials, ensuring that the focus remains on gathering accurate and impartial testimony. This process underscores the judge's responsibility to lead the inquiry and maintain a fair, thorough search for truth.⁶⁶

In marriage nullity cases and the cases concerning the nullity of sacred ordination ecclesiastical tribunals do not approach the matter as a

⁶⁴ A discussion on the ethical standards of the advocates in the ecclesiastical tribunal is seen in R. H. Helmholz, *The Profession of Ecclesiastical Lawyers: An Historical Introduction*, Cambridge, Cambridge University Press, 2019, 207-226.

⁶⁵ For a study on the role of the judge in actively investigating the case and the system's emphasis on truth-finding over strategic legal argumentation reducing the influence of legal technicalities and manoeuvrings, promoting a fairer and more impartial judicial process, see P. Roberts, *The Inquisitorial System and Its Use in Modern Courts*, Oxford, Oxford University Press, 2004.

⁶⁶ For insights into how ecclesiastical tribunals handle witness testimony and documentary evidence, see John A. Renken, *Church Tribunals and Due Process*, Roma, Gregorian University, 2009, 120-125, For an analysis of the procedural aspects of ecclesiastical trials, emphasizing the reliance on written depositions and the role of the judge in questioning witnesses, see Mario Savio, *Il Processo Canonico nel Sistema Inquisitorio*, Roma, Urbaniana University Press, 2011, 89-93.

contest between two opposing parties, but rather as an inquiry into the validity of the sacred ordination and of the marriage. The role of the defender of the bond, as outlined in CCEO c. 1096 and CIC '83 c. 1432, serves as a safeguard to uphold the validity of the ordination or marriage, presenting arguments in favor of its preservation.⁶⁷ The tribunal conducts a thorough examination, evaluating testimonies, psychological assessments, and documentary evidence, all under the direction of the judge rather than being driven by the parties involved. This process emphasizes the inquisitorial nature of ecclesiastical procedure, where the judge takes an active role in investigating the facts and determining the truth based on canonical principles, rather than relying on adversarial tactics or the arguments of opposing counsel.

4. Burden of Proof

Unlike in the adversarial system, where the burden of proof rests solely on the prosecution or the plaintiff, the inquisitorial model distributes this responsibility between the judge and the prosecution. The judge plays an investigative role, ensuring that all relevant evidence is considered, whether it supports the prosecution or the defense.⁶⁸ This shared burden prevents the prosecution from having an undue advantage and ensures that the facts of the case are examined in a neutral and thorough manner.

In ecclesiastical procedure, judges have broad discretion to accept or reject evidence based on its relevance and credibility, reflecting the inquisitorial nature of the system. Unlike adversarial courts, where attorneys strategically present evidence, ecclesiastical judges take an active role in determining what evidence should be considered, ensuring that only pertinent information is evaluated.⁶⁹ CCEO c. 1217 and CIC'83 c. 1536 further empowers judges to assess the credibility of a party's testimony by considering the specific circumstances of the case. This allows the judge to make a thorough, informed decision,

⁶⁷ For an examination of the function of the defender of the bond as outlined in CCEO c. 1096 and CIC c. 1432, see John A. Renken, *The Tribunal and the Role of the Defender of the Bond in Marriage Nullity Cases*, Roma, Gregorian University, 2005.

⁶⁸ For an overview of how evidence is handled in inquisitorial courts, see, John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd ed., Stanford University Press, 2007, 110-129.

⁶⁹ On the judge's responsibility in evaluating evidence and testimony to ensure an impartial decision-making process, see P. J. Doyle, *The Role of the Judge in Canonical Trials*, Washington D.C., Catholic University of America, 1988, 65-70; John A. Renken, *Church Tribunals and Due Process*, Roma, Gregorian University, 2009, 98-102.

prioritizing the pursuit of truth over the tactics of the parties involved, and ensuring that the judicial process remains focused on justice and accuracy.

5. Role of the Victim

In the inquisitorial procedural system, the victim plays a more active role compared to adversarial systems, as the process is primarily judge-led rather than a contest between the prosecution and defense.⁷⁰ The investigating judge oversees the collection of evidence, and victims often have greater participatory rights, including the ability to present evidence, suggest lines of inquiry, and even challenge prosecutorial decisions.⁷¹ In many civil law jurisdictions, victims can join the proceedings as *parte civile* (civil party), allowing them to claim compensation and directly influence the case.⁷² Some systems also grant victims the right to appeal prosecutorial decisions not to prosecute. Additionally, victims may be entitled to legal representation, financial support, and protection measures to prevent secondary victimization.⁷³ These features ensure that the victim's interests are more integrated into the judicial process, making the inquisitorial system more victim-inclusive while maintaining its focus on truth-seeking and judicial impartiality.⁷⁴

In ecclesiastical procedures, the role of the victim varies depending on the nature of the case. In the Catholic ecclesiastical laws, the victim's

⁷⁰ For a detailed study on the victim's role in the inquisitorial procedural system, see John D. Jackson and Sarah J. Summers, *The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions*, Cambridge, Cambridge University Press, 2012; Stephen C. Thaman, *Comparative Criminal Procedure: A Casebook Approach*. Carolina Academic Press, 2008; Jan Van Dijk and Marc S. Groenhuijsen, "Victims' Rights in the Criminal Procedure: A Comparative Assessment," *European Journal on Criminal Policy and Research* 9 (2001) 385-422; Mireille Delmas-Marty and J.R. Spencer, *European Criminal Procedures*, Cambridge, Cambridge University Press, 2002.

⁷¹ For an exploration of the balance between victim participation and judicial impartiality in civil law systems, see Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*, Oxford, Hart Publishing, 2008, 176-180.

⁷² On the role of victims in civil law jurisdictions, including *parte civile* participation and appeal rights, see Richard S. Frase, *Comparative Criminal Justice*, Cheltenham, Edward Elgar Publishing, 2019, 112-115.

⁷³ For a discussion on victim support measures, financial aid, and protection from secondary victimization in inquisitorial systems, see Dijk Van, Jan, et al., *Handbook of Victimology*, London, Routledge, 2019, 210-215.

⁷⁴ On victim rights in inquisitorial systems, including compensation claims and legal representation, see Harry R. Dammer, & Jay S. Albanese, *Comparative Criminal Justice Systems*, Boston, MA, Cengage Learning, 2013, 85-88.

role is generally limited, as proceedings focus on upholding doctrinal and moral order rather than direct victim advocacy. However, in cases involving canonical crimes, such as clerical sexual abuse, victims have gained increasing recognition, particularly following reforms by Pope Francis, including *Vos Estis Lux Mundi* (2019).⁷⁵ Victims can now report offenses directly to ecclesiastical authorities, and they may participate in the investigative process by providing testimony and evidence. While the Church primarily seeks to address offenses through internal disciplinary measures rather than punitive justice, victims may also seek reparation through canonical procedures. In some cases, particularly where civil and ecclesiastical law intersect, cooperation with secular authorities ensures that victims' rights and legal recourse are not overlooked. Despite these developments, ecclesiastical procedures remain primarily focused on maintaining ecclesial integrity rather than serving as a conventional forum for victim advocacy.

6. Decision-Making

In the inquisitorial system, judgments are typically rendered by a judge or a panel of judges who have actively participated in the investigation. Since they have directly examined the evidence, questioned witnesses, and supervised fact-finding, their decisions are based on a comprehensive understanding of the case.⁷⁶ This method contrasts with the adversarial system, where judges or juries rely solely on the arguments and evidence presented in court. By allowing judges to engage deeply with the investigative process, the inquisitorial system aims to deliver well-informed and just verdicts.

In ecclesiastical procedure, decisions are not solely based on the legal arguments and evidence presented by opposing parties, as in adversarial systems. Instead, the judge's verdict is grounded in moral certainty, as outlined in CCEO c. 1291 and CIC '83 c. 1608,⁷⁷ meaning the judge must be personally convinced that the truth has been

⁷⁵ *Vos Estis Lux Mundi* is an apostolic letter issued *motu proprio* by Pope Francis on May 7, 2019, in response to the ongoing crisis of sexual abuse within the Church. It establishes universal norms for addressing allegations of abuse and cover-ups, reinforcing accountability among clergy, including bishops and religious superiors. Francis, Apostolic Letter given *motu proprio* *Vos Estis Lux Mundi*, *Acta Apostolicae Sedis* 111 (2019), 723-733.

⁷⁶ H. Kelsen, *General Theory of Law and State*, Cambridge, Massachusetts, Harvard University Press, 2006, 156.

⁷⁷ CCEO c. 1291 §1 & CIC '83 c. 1608 §1: "For the pronouncement of any sentence, the judge must have moral certitude about the matter to be decided by the sentence."

sufficiently established before issuing a ruling. Unlike adversarial courts, where strict legal formalities often guide the process, ecclesiastical judges rely on a comprehensive evaluation of facts, conscience, and canonical principles. This approach emphasizes the judge's responsibility to discern the truth through reflection, moral judgment, and alignment with Church doctrine, underscoring the inquisitorial nature of ecclesiastical trials.

7. Possibility of Hierarchical Appeals

The possibility of appeal is an important feature of the inquisitorial system, ensuring a safeguard against potential errors in judgment or procedure. In this system, while judges actively investigate and direct the case, the opportunity for an appeal allows higher courts to review the decision made by the trial court. This ensures that the pursuit of truth and justice is maintained, as appellate courts can assess whether the trial process was fair and whether the facts were properly evaluated.⁷⁸ The appeal process helps correct any legal or factual errors, offering a check on the power of the trial judge and reinforcing the integrity of the judicial system, while still maintaining the primary focus on uncovering the truth rather than being driven by adversarial competition.

Decisions in ecclesiastical courts can be appealed to higher tribunals. The higher tribunals vary according to the status of the *sui iuris* Churches. For the patriarchal and major archiepiscopal *sui iuris* Churches, above the eparchial tribunals, which often serve as the first instance, there are many higher instances such as metropolitan tribunal, ordinary tribunal of the patriarchal or major archiepiscopal Church, synodal tribunal, and the Synod of Bishops itself. In addition to them they have the apostolic tribunals of the Roman Rota, Apostolic Signatura or the Dicastery for the Doctrine of the Faith (CDF), particularly in cases involving matters of doctrine or faith. The Eastern *sui iuris* Churches of other juridical status and the Latin Church have the metropolitan tribunal and the apostolic tribunals as their second and further instances respectively. These appeals go beyond merely addressing procedural errors; they often involve a comprehensive re-evaluation of the facts, as the Church prioritizes the pursuit of truth over technicalities. This appeals process reflects the inquisitorial

⁷⁸ For a discussion on the mechanisms of appeal in different legal systems, including the inquisitorial system, see H. Kelsen, *General Theory of Law and State*, Cambridge, Massachusetts, Harvard University Press, 2006, 230-250.

nature of ecclesiastical procedure, where the focus is not limited to legal formalities but includes a thorough review of the case to ensure that justice is achieved based on the full and accurate examination of the facts and the underlying moral and doctrinal principles.

The Catholic ecclesiastical judicial system operates predominantly under an inquisitorial model, emphasizing the search for truth rather than a contest between opposing parties. The judge takes an active role in investigating, evaluating evidence, and ensuring justice is served according to canon law and moral certainty. This approach reflects the Church's pastoral mission, focusing on the salvation of souls (*salus animarum*) rather than legalistic victories.

IX. Strengths and Weaknesses of the Inquisitorial System

The inquisitorial system, characterized by a judge-led process aim at uncovering the truth thorough investigation and active judicial oversight. Unlike the adversarial system, where opposing parties present their cases, the inquisitorial model places greater responsibility on the court to gather and assess evidence impartially. This system offers several strengths, but however, is not without any weaknesses.⁷⁹ To gain a clearer understanding of its impact on justice, fairness, and legal outcomes it would be helpful to pinpoint the strengths and notable weaknesses of the system.

Strengths:

1. Trials are quicker and more cost-effective since judges actively manage cases.
2. Judicial involvement ensures a thorough review of evidence through fact-finding.
3. The undue influence of wealth and power is minimized due to the judge's direct intervention and reduced reliance on expensive legal representation. This system ensures an equal access to justice.
4. A more victim-inclusive approach is ensured.

⁷⁹ For a detailed analysis of the strengths and weaknesses of the inquisitorial system, see John H. Langbein, *Comparative Criminal Procedure: Germany*, Chicago, IL, University of Chicago Press, 1977. For a discussion on the use of torture in early inquisitorial procedures and its eventual abolition, see John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancient Régime*, Chicago, University of Chicago Press, 1977, 33-67.

Weaknesses:

1. Since judges are responsible for the investigation, they may develop preconceived notions, potentially leading to bias and partial judgment.
2. There is a risk of miscarriage of justice when trials are rushed in an attempt to meet deadlines.
3. The absence of strong cross-examination weakens the scrutiny of evidence, increasing the risk of judgments based on inadequate or incorrect information. In many cases, inquiries are conducted *in camera*, with minimal participation from the defense.
4. Excessive concentration of judicial power may lead to corruption and abuse and may raise concerns over procedural transparency.

The advantages and disadvantages of the inquisitorial system reveal that, when properly implemented, it reduces the potential for manipulation, ensuring fairness for all parties involved. The system necessitates an objective approach from everyone, including the court, to achieve an outcome that accurately reflects the facts of the case. While the primary goal is to uncover the truth, there is a risk that investigators may shape their own interpretation of the truth, potentially at the expense of the defendant's rights.

X. Inquisitorial Elements in the Indian Civil and Criminal Procedural System

Although India follows an adversarial legal system, certain inquisitorial elements exist within both civil and criminal procedures. These elements allow for judicial intervention, fact-finding by the courts, and proactive measures to ensure justice. Below is an analysis of inquisitorial features in both civil and criminal procedures in India.

Inquisitorial Elements in the Civil Procedure

1. *Suo Motu* Powers of the Court

In certain circumstances, the Courts can take up cases on their own initiative (*suo motu*) in matters of public interest, especially under Public Interest Litigation (PIL).⁸⁰ Besides, the Supreme Court and

⁸⁰ Articles 32 and 226 of the Indian Constitution, which empower the Supreme Court and High Courts to issue writs for the enforcement of fundamental rights and other legal rights in matters of public interest. "Public Interest Litigation is not adversarial in nature. It provides an opportunity to Government and its officers to

High Courts often intervene in cases affecting fundamental rights, social justice, or constitutional issues.

2. Power to Frame Issues

Different from a purely adversarial system where parties define the case's scope, Indian courts can frame issues (questions of law and fact) based on pleadings and evidence. Order XIV, Rule 1 of the CPC permits the courts to frame issues based on the pleadings of both parties and the material on record.⁸¹ This enables the judiciary to identify the key questions of law and fact that need to be adjudicated, ensuring that the essence of the dispute is addressed rather than being confined to the arguments presented by the litigants.

3. Appointment of Commissions for Fact-finding

Order XXVI of the CPC empowers courts to appoint commissions for fact-finding in various matters, including local investigations, boundary disputes, property valuations, and examination of accounts. This provision ensures that courts have accurate and impartial evidence before making a judgment.⁸²

4. Power to Call for Additional Evidence

According to Order X of the CPC the court can examine parties personally to clarify any fact. Courts can also summon documents and witnesses if they find that existing evidence is insufficient.⁸³

make basic human rights meaningful to deprived and vulnerable sections of community. It advances social and economic justice promised in the Constitution." *State of Uttaranchal v. Balwant Singh Chauhan* (2010) 3 SCC 402; (2010) 1 SCC (L&S) 807; (2010) 2 SCC 425.

⁸¹ In *Makhan Lal Bangal v. Manas Bhunia & Ors.*, (2001) 2 SCC 652 case, the Supreme Court of India emphasized that courts have the duty to frame proper issues under Order XIV, Rule 1 of the CPC based on the pleadings and material on record. The judgment clarified that the framing of issues is crucial to determining the real points of contention between the parties and ensuring a just adjudication of the dispute.

⁸² In *Chaudhary Sohan Lal v. Smt. Shashi Bala*, AIR 1982 All 408 case, the Allahabad High Court emphasized that the appointment of a commissioner under Order XXVI of the CPC is meant to assist the court in ascertaining facts that require specialized investigation, such as property valuation and boundary disputes. The court highlighted that a commissioner's report serves as evidence but does not replace judicial adjudication.

⁸³ In *Baghichand v. Bhagwan Das*, AIR 2007 Raj 181 case, the Rajasthan High Court emphasized the power of courts under Order X of the CPC to examine parties personally to clarify material facts. The court held that such an examination is essential to ensure that ambiguities in pleadings are resolved and that the real matters in controversy are identified before proceeding with the trial.

5. Mediation and Reconciliation Powers

Section 89 of the CPC empowers courts to refer disputes for alternative dispute resolution (ADR), including mediation, conciliation, arbitration, and settlement through *Lok Adalats*.⁸⁴ This provision aims to reduce the burden on courts and promote amicable settlements.

Inquisitorial Elements in the Criminal Procedure

Certain inquisitorial elements can be traced in the criminal procedure of India particularly in the investigation and judicial oversight.

1. Judicial Oversight in Investigations

Unlike a purely adversarial system where the investigation is entirely under police control, Indian courts have oversight powers. Under section 175 (3) and 223 of BNSS, magistrates can direct police to investigate or even conduct preliminary inquiries themselves.

2. *Suo Motu* Intervention by Courts

Courts can take *suo motu* cognizance of serious offenses, particularly in cases involving human rights violations, corruption, and custodial deaths. Certain high-profile cases involving environmental crimes, sexual violence, and corruption have seen proactive judicial intervention.⁸⁵

3. Magistrate's Role in Inquiries

Section 225 of BNSS permits a magistrate to conduct an inquiry before issuing process in a private complaint case. This allows the court to assess the validity of accusations before commencing trial.

4. Functioning of the Special Courts

Certain special courts such as the National Green Tribunal (NGT), Consumer Forums, and Human Rights Commissions function with an inquisitorial approach with an ultimate aim of fact-finding. These bodies actively investigate cases rather than waiting for adversarial contestation.

⁸⁴ The Legal Services Authorities Act, 1987, provides a statutory framework for *Lok Adalats*, which play a crucial role in resolving disputes efficiently and equitably.

⁸⁵ In the landmark judgment of *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 case, the Supreme Court of India took *suo motu* cognizance of bonded labor and human rights violations based on a letter received from a social activist. The court held that under Article 32 of the Constitution, it had the power to intervene in matters of public interest to ensure justice, reinforcing the judiciary's proactive role in addressing serious offenses and human rights violations.

5. Power to Call for Additional Evidence or Local Inspection

Under section 348 of BNSS, any court can summon new witnesses or recall witnesses if it is necessary for the adjudication of the case. In accordance with section 347 of BNSS, any judge or magistrate may at any stage visit personally any place of the commission of the crime or any other place related to the crime. This allows judges to independently seek the truth beyond what the prosecution and defense present.

6. Power to Examine the Accused

Under section 351 of BNSS, the court can directly question the accused to obtain their explanation on evidence presented, resembling an inquisitorial approach. The accused is expected to respond, though they are not required to testify under oath

While India's legal system remains predominantly adversarial, it incorporates several inquisitorial elements to ensure fairness, efficiency, and judicial oversight. These elements help address gaps in adversarial litigation, particularly in fact-finding, judicial intervention, and proactive case management. As legal reforms evolve, India continues to adopt a hybrid model, balancing adversarial justice with inquisitorial safeguards to enhance access to justice.

XI. Adversarial Elements in the Catholic Ecclesiastical Judicial Procedural System

The judicial procedural system followed in the Catholic Church primarily follows an inquisitorial model where the judges involve actively in the investigation and gathering of the evidences. The canons on the judicial procedure of the Code of Canon Law and the Code of Canons of the Eastern Churches testify the integration of the following adversarial elements to ensure greater efficiency and fairness in the process.

1. The Presence of Opposing parties in Trials

Two opposing parties are involved in almost all the ecclesiastical trials such as the contentious trials, penal trials, marriage nullity cases, etc. In all these cases the petitioner (*actor*) initiates the case and the respondent (*pars conventa*) defends against the claim. In this system where one party raises a claim and the other defend against it reflects the adversarial system of procedure. In the marriage annulment cases, the petitioner usually argues for the nullity of marriage, while the respondent has the right to contest the nullity of marriage and present

the counterarguments. In the penal case also, the accused has the right to defend themselves against the charges levelled against them by the Church authorities. The tribunal listens to both the parties before reaching a final decision.

2. Right to Legal Representation

Both the Codes, Latin as well as Eastern permit both the parties to appoint advocates and procurators for them to represent them legally.⁸⁶ Though not equal to the adversarial system, these legal representatives are entitled to argue on behalf of the party, they can present written or oral submissions, and they can challenge the procedural errors. In the penal cases, it is mandatory that there should be an advocate for the accused.⁸⁷

3. Role of the Defender of the Bond

In marriage nullity cases and the cases for the declaration of the validity of sacred ordination, the presence and intervention of a defender of bond is indispensable for the validity of the process. He acts almost like a public prosecutor in the adversarial system. Their role is to uphold the validity of the marriage and the validity of the sacred ordination, and will present objections against the declaration of nullity in both the cases.⁸⁸ This makes sure that the case is not one sided and it reflects the adversarial nature.

4. Opportunity for Cross-Examination and Rebuttal

Ecclesiastical courts primarily rely on written depositions, but parties may indirectly question witnesses through the judge. According to CCEO c. 1240 and CIC'83 c.1559 the advocates or procurators are permitted to be present during the examination of the witnesses unless the judge has decided to conduct it secretly owing to a special circumstance. This gives them the opportunity to review witness testimonies and raise objections. Moreover, the publication of the acts gives the parties and their advocates to inspect the acts and propose new proofs if there is any.⁸⁹ In penal cases, the accused has the right to refute evidence, present counterarguments, and call witnesses in their defense.

⁸⁶ CCEO c. 1139 §1, CIC'83 1481 §1.

⁸⁷ CCEO cc. 1474, 1139 §2, CIC'83 cc. 1723, 1481 §2

⁸⁸ CCEO c. 1096, CIC'83 c. 1432.

⁸⁹ CCEO c. 1281 §§1-2, CIC'83 c. 1598 §§1-2

5. Appeals and Higher Tribunal Review

The adversarial system in ecclesiastical courts provides a structured appellate review, ensuring procedural fairness. Cases begin in the First Instance Tribunal and may be appealed to the Metropolitan Tribunal, Patriarchal or Major Archiepiscopal Tribunals or the Roman Rota on legal and factual grounds.⁹⁰ The Supreme Tribunal of the Apostolic Signatura serves as the highest canonical court, overseeing procedural integrity. In line with adversarial principles, the right to appeal allow parties to contest unfavorable rulings.

6. Burden of Proof on the Petitioner and the Church

In marriage nullity cases, the petitioner bears the burden of proving the marriage's invalidity, mirroring the principle in adversarial trials where the claimant must establish their case. Similarly, in penal trials, the Church must prove the accused's guilt beyond reasonable doubt, as mandated by CCEO c. 1471 §2 and CIC'83 c. 1728 §2,⁹¹ reflecting the standard used in criminal justice within adversarial systems.

7. Use of Oral Argument and Written Pleadings

Although ecclesiastical trials are primarily document-based, the judge can permit parties to present oral arguments before the tribunal.⁹² Advocates can also submit written pleadings and counter-pleadings, mirroring the procedural practices of adversarial court systems.

Although the Catholic ecclesiastical judicial system is fundamentally inquisitorial, it incorporates adversarial elements such as party representation, legal advocacy, burden of proof, and appellate review. These elements enhance fairness, protect rights, and ensure that both sides of a case are properly heard. This blend of inquisitorial investigation with adversarial safeguards helps maintain procedural justice while prioritizing the search for truth in accordance with Canon Law.

XII. Ecclesiastical Judicial Procedures Vis-à-vis Indian Judicial Procedures

The procedural steps of the ecclesiastical trial and of the trials of Indian civil law are almost similar though they vary in their details

⁹⁰ CCEO cc. 1309-1321 and CIC'83 cc. 1628-1640 deal with the provisions of appeal.

⁹¹ CCEO c. 1471 §2, CIC'83 c. 1728 §2: "The accused is not bound to confess the delict nor can an oath be administered to the accused."

⁹² CCEO c. 1287 §2, CIC'83 c. 1604 §2: "If the discussion of the case has been done in writing, the judge can order a moderate oral debate to be held before a session of the tribunal in order to explain certain questions."

and execution. But the main difference lies in the system followed by both the laws. The ecclesiastical judicial procedures chiefly follow the inquisitorial system though at times certain features of the adversarial system are found, the Indian legal system follow predominantly the adversarial system with certain inquisitorial elements. The Justice Malimath Committee on Reforms of the Criminal Justice System highlighted the strengths and limitations of India's adversarial judicial process while advocating for the inclusion of inquisitorial elements to enhance effectiveness.⁹³

Conclusion

Every judicial system aspires to deliver the highest degree of justice, yet no system is without flaws, as all are human constructs. While the adversarial system prioritizes procedural fairness and individual rights, it can sometimes lead to inefficiencies. Conversely, the inquisitorial system focuses on uncovering the objective truth but risks concentrating excessive power in the hands of judges. Recognizing these strengths and limitations, many jurisdictions are adopting hybrid models that integrate elements of both systems to enhance fairness and efficiency.⁹⁴

The ecclesiastical judicial system, with its predominantly inquisitorial nature, seeks to administer justice in service of the people of God. Similarly, the Indian legal system, though primarily adversarial, incorporates inquisitorial elements where necessary to ensure a more balanced approach to justice. A mixed system, tailored to the evolving needs of society, may offer the most effective path forward—preserving fairness while improving efficiency in the pursuit of justice.

⁹³ The Justice Malimath Committee on Reforms of the Criminal Justice System (2000-2003) was established by the Government of India to recommend changes for a more efficient and just criminal justice system. The committee, chaired by Justice V.S. Malimath, proposed several reforms, including shifting from an adversarial to a more inquisitorial system, enhancing victim rights, increasing judicial discretion, and making confessions to police admissible under certain safeguards. The report emphasized 'justice to victims' and suggested reforms to improve conviction rates and reduce delays. See Government of India, Report of the Committee on Reforms of the Criminal Justice System, Ministry of Home Affairs, 2003.

⁹⁴ For a discussion on the ongoing global trend of combining adversarial and inquisitorial elements in the judicial procedures of different nations, see, Richard Vogler, *A World View of Criminal Justice*, London, Routledge, 2005, 200-230.