

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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ADVERSARIAL V/S INQUISITORIAL MODEL OF JUDICIARY

AUTHORED BY - IFRAH HAYAT

Adversarial model of judiciary is a form of judiciary used by various common law following countries where the two parties opposing each other hire an advocate and present their case in front of the court. The judge is required to listen to the arguments, take a look at the evidences and interpret the cross examination performed by the lawyers of each party. He/she is then supposed to act fully as a neutral decision maker whose final decision should only depend on the evidences, statements and arguments presented before him/her.

Whereas, inquisitorial model of judiciary is followed by various civil law following countries where the role of judge/decision maker is active and he/she determines the facts and issues of the dispute. In this form of judiciary, the judge is fully trusted for legal claims and evaluating the evidence, cross examination and other techniques used by lawyers are considered less reliant. This model of judiciary is also known as Interventionist/Investigative model.

In India, adversarial model is followed and is considered much important because of its fair trial and justice, protection against abuse of power, empowerment of legal professions and protection of rights. The lack of inquisitorial model in India presents several issues such as case delay and backlog, variable advocacy skills, complexity and formalism

FAMOUS INSTANCE REPRESENTING ADVERSARIAL MODEL:

Both type of models have its own advantages and even disadvantages like Peter Murphy in his book, Practical guide to evidence gives an example of a frustrated judge of an adversarial court where he finally asked a barrister after going through all the witnesses that produced various conflicting accounts,

"Am I never to hear the truth?" barrister replied, "No my lord, merely the evidence". This single instance shows how an adversarial form of court works. Even inquisitorial model has its own disadvantages as when the judge itself starts to do the job of an investigator, he/she can no longer remain neutral and performing justice with an open mind would be a much difficult task.

India, U.K., U.S. and Australia follow adversarial model of judiciary, whereas countries like Russia, Continental Europe and Germany follow inquisitorial model and are much strictly dependent on these two models. But after getting to know all these things the only question that arises in your mind is that should the model of judiciary change with a change in nature of the case.

In India, we are having various less adversarial models also, like alternative dispute resolution (ADR), specialized courts and tribunals, etc.

Still there are some types of cases where our country might consider adopting the inquisitorial model of judiciary like Human rights violation, sexual and gender based violence and corruption.

India should consider adopting inquisitorial model of judiciary in some cases as it promotes reduction of backlogs, comprehensive fact finding and reduction of manipulative tactics.

We need to have many legislative reforms and provide better judicial trainings

In the constitution of India, it's nowhere written that India being a common law following country will follow adversarial model of judiciary but there are some key points from the constitution of India which officially represents our country as follower of adversarial model.

KEY POINTS FROM THE INDIAN CONSTITUTION:

Article 21- Right to life and liberty

Article 14 – Equality before law

Article 22 – Protection against arrest and detention

These Constitutional provisions guides towards the right to a free trial where the judge acts as a neutral arbiter and even the accused have the right to be defended by a lawyer of his own choice.

These all provisions that are followed by our country represents a core principle and as a characteristic of the adversarial system.

JUDICIAL INTERPRETATION FOR ADVERSARIAL MODEL:

The Supreme Court, High Courts and Lower courts present across the country have strengthened the value and principles of fair trial, which aligns with the adversarial system.

Like in Maneka Gandhi v/s Union of India (1978), the court gave an interpretation of Article 21 that enhanced the right to a fair and just procedure following under adversarial model of judiciary.

IMPACT ON JUSTICE:

ADVERSARIAL MODEL:-

It is of competitive nature, as judicial war between 2 parties can bring out facts, strict rules on evidences prevent pre judicial information from influencing the outcome. The result heavily depends on the skills of an advocate which creates imbalance.

INQUISITORIAL MODEL:-

The active role of judges leads to a comprehensive understanding of the facts; factual determination is considered a much big priority than legal tactics. It reduces delay in justice and leads to quicker resolutions.

Ultimately these models teach us lessons of balance. The most important point is that both the models work under the principle of transparency that helps a common man to analyze what's good for the society and the upcoming future. By working on the weakness we can move forward towards a much equitable and efficient justice system not only in India but all over the world. The adversarial model reminds us the importance of advocates and the power of cross examination in revealing out the truth. On the other hand Inquisitorial model sparks the value of investigation and the proactive role of judges in providing justice, but at the end of the day it doesn't matter that by which model of judiciary it is given but the only thing that matters is 'that the justice is given'.