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# **COMPARATIVE ANALYSIS OF POLICE INQUIRY AND INVESTIGATION: ADVERSARIAL AND INQUISITORIAL SYSTEM**

AUTHORED BY- HIMANSHU MISHRA

## **Abstract**

This research paper conducts an analysis on the police Inquiry and investigation on the two main legal system: Adversarial system and Inquisitorial system. within the contrasting frameworks of adversarial and inquisitorial legal systems. The inquiry into criminal offence is a primary aspect of a legal system and the approach towards this has a great impact on the process of justice, protection of people's rights, and to effectiveness of the criminal justice process. This research examines into the differences between the both legal system and fall light on the structure, guiding principles and the implication of their policy. This paper additionally analyses these system adaptability and effectiveness in various socio-cultural situations and the challenges come between the implementation. The paper aims to provide a deeper knowledge of how these different systems shape police inquiries and investigation as well as their consequences for the larger criminal justice system by integrating the empirical data and jurisprudential ideas. In last this paper provides understanding the possibility of combining from both systems to encourage a more equitable, fair and efficient system for law enforcement practices and paper conclude by giving a fair understanding about the pros and cons of both the system in serving better judicial delivery system.

## **1. Introduction**

There is diversity in the criminal justice systems across the globe, which reflects different approaches to ensuring justice and legal philosophies. The adversarial and inquisitorial systems are two prominent models that serve as opposing pillars that impact the investigation and inquiry procedures that fall under the purview of criminal law. This study examines the methods used by the police in these disparate legal systems for their inquiries and investigations in great detail. Based on the adversarial presentation of evidence, the adversarial system—which has its roots in common law traditions—places a strong emphasis on the roles of the prosecution, defence, and

opposing parties. On the other hand, the inquisitorial system, which is common in civil law jurisdictions, gives the judiciary greater authority to actively look into the facts of a case. The purpose of this study is to shed light on how police inquiries and investigations are conducted in relation to the fundamental ideas and procedural distinctions between adversarial and inquisitorial systems. The adversarial contest between the prosecution and defence, which emphasizes procedural safeguards and the presumption of innocence, is what drives the pursuit of truth in the adversarial system. However, under the inquisitorial system, the judge takes a more active role in the investigation and works independently to find the truth. This study will explore the historical evolution and theoretical underpinnings of both legal systems, providing a contextual foundation for understanding the dynamics of police inquiry and investigation. It aims to dissect the procedural nuances, roles of key stakeholders, and the impact of legal traditions on the methods employed by law enforcement agencies in both systems. Additionally, the research will analyse case studies and real-world examples from jurisdictions practicing each system, offering insights into the practical implications and effectiveness of police inquiries and investigations. By means of this comparative analysis, the study aims to provide significant insights to legal scholars, practitioners, and policymakers who are debating issues related to procedural justice, efficiency, and fairness within various criminal justice frameworks. This research attempts to contribute to discussions on possible reforms and improvements within the larger field of criminal justice administration by analysing the advantages and disadvantages of police inquiry and investigation in adversarial and inquisitorial systems.

## 2. Historical Overview

### A. History of Adversarial system

The roots of the adversarial system or adversary system can be traced back to ancient civilizations, with significant influence from the legal practices of ancient Rome and Greece. The adversary method of resolving disputes did not appear, fully formed, at a precise moment in history. Rather, it is one of the products of the slow evolution of English and American judicial procedure<sup>1</sup>. In Rome, the adversarial nature of legal proceedings was apparent in the form of a public trial where parties, often represented by advocates, presented their cases before a magistrate or jury. The Roman legal system emphasized the role of advocates who vigorously defended the interests of their clients, engaging in a combative exchange of arguments. This

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<sup>1</sup> Landsman, S. (1984). *The Adversary System: A Description and Defense*. United Kingdom: American Enterprise Institute for Public Policy Research.

adversarial approach aimed at exposing the truth through the clash of opposing perspectives. In ancient Greece, especially in Athens which is also called as the birth place of democracy, the competitive system manifested itself in the democratic legal processes of the city-state. Citizens actively participated in the trials both as prosecutors and as defenders. Legal disputes were presented to a panel of jurors who then decided the outcome of the case. This participatory system created an adversarial environment where disputants were responsible for presenting evidence and arguments on their behalf. Athenian democracy, which flourished in the 5th and 4th centuries BC, was characterized by direct citizen participation in various aspects of administration, including the judiciary. Legal disputes and criminal cases were brought to the People's Court, which typically consisted of a large number of jurors chosen from among the citizens. In this democratic legal environment, the adversarial system manifested itself in the active role of litigants and their lawyers. Unlike in contemporary legal systems, there were neither professional judges nor attorneys in Athens' courtrooms. Rather, the people themselves took on the roles of both accuser and defender. The cases had to be presented to the jury by the litigants or their appointed representatives. There was a competitive exchange of arguments, proof, and persuasive strategies during this adversarial process. It was expected of litigants that they would be proficient speakers because a strong case was essential to persuading the jury. Athens' adversarial legal system was ingrained in the democratic culture of the city-state and served as a tool for dispute resolution as well. The pursuit of justice was actively pursued by the populace, which heightened civic engagement and civic duty. The goal of this adversarial and participatory system was to make sure that the people as a whole were responsible for administering justice, rather than just a small number of legal experts. While the Athenian legal system had its limitations, such as the absence of a professional legal class and potential for demagoguery, its use of the adversarial system reflects a historical commitment to the idea that justice is best served through a process where opposing parties vigorously advocate their positions, and the truth emerges from the clash of competing perspectives. The Athenian model, albeit different from modern adversarial systems, contributed to the development of legal principles and procedures that continue to shape contemporary legal practices. The evolution of the Romano-Germanic legal system, which served as the model for more contemporary competing systems, is another example of how these antiquated legal traditions influenced modern law. European jurisprudence developed competitive elements during the medieval period, and the importance of lawyers grew. This evolution laid the groundwork for the adversarial system that exists today, particularly in common law domains. The adversarial system and ancient roots suggest a historical commitment to the

idea that justice is best achieved through a process in which opposing sides vigorously defend their positions and the truth emerges from the collision of competing narratives. Although the modern adversarial system has evolved considerably, its historical foundations emphasize a deep belief in the effectiveness of adversarial procedures in uncovering the truth and ensuring fair and just outcomes. Sir Edward Coke, an eminent English lawyer and politician who lived from 1552 to 1634, is frequently referred to as the "father of the adversarial system". Sir Edward Coke is well-known for his substantial contributions to the creation of common law, as well as his pivotal role in establishing the adversarial judicial system. His important work, "Institutes of the Laws of England," had a significant impact on legal theory during the early modern period. Sir Edward Coke championed the adversarial system, which is a cornerstone of English and later Anglo-American legal traditions. The adversarial system, as proposed by Coke, is distinguished by an open, adversarial presentation of evidence before an impartial judge and/or jury. It contrasts with the inquisitorial system, in which the judge is more involved in researching and determining the facts of a case. Coke's advocacy for the adversarial system was founded on ideas of fairness, due process, and the belief that justice is best served through a process of legal contestation between opposing parties. Sir Edward Coke's contributions to the adversarial system have left an indelible mark on the evolution of legal procedures, assuring a dynamic and open legal process that is still a cornerstone of many legal systems across the world today. The history of the adversarial system is an intriguing expedition through legal traditions and cultural upheavals. The adversarial system, which originated in ancient Rome, rose to prominence in medieval England, and evolved over centuries of legal growth, has become the foundation of many current legal systems. Its roots lie in open and public court fights in which opposing parties present evidence and arguments before an impartial judge, emphasizing fairness and the pursuit of truth. This system has evolved over time to satisfy society's increasing demands, including legal experts, evidentiary regulations, and procedural safeguards. While the adversarial system has proven efficient in advancing justice, there are continuous discussions regarding its efficiency, accessibility, and ability to resolve power inequalities. Despite these debates, the adversarial system's ongoing history emphasizes its continued importance in moulding the administration of justice across varied legal contexts.

## **B. History of Inquisitorial system**

The historical evolution of the inquisitorial system is entwined with moments of societal transformation, from its origins within the ecclesiastical structures to its adaptation in continental Europe's civil law traditions. The Catholic Church's ecclesiastical tribunals had a huge impact

on its growth, using inquisitorial procedures in trials such as the infamous Spanish Inquisition. The Catholic Church shaped the inquisitorial system, which prioritized the inquisitor's authority, often as a cleric, in seeking out and prosecuting alleged heretics. The emphasis was on confession, and torture was occasionally used to obtain information. While the inquisitorial system has evolved over time, with modern legal systems incorporating elements of both adversarial and inquisitorial approaches, its origins in the Church's efforts to maintain doctrinal orthodoxy remain indelible. The historical role of the Catholic Church in shaping the inquisitorial system reflects the intersection of religious and legal authority at a critical point in the development of legal institutions in medieval Europe. The inquisitorial technique stressed the judge's proactive involvement in investigating evidence, interviewing witnesses, and determining the truth. During the late medieval and early modern periods, the inquisitorial system became established in civil law jurisdictions, particularly in continental Europe. The Napoleonic Code and subsequent legal reforms codified inquisitorial concepts, ensuring their presence in judicial systems around the world. The Inquisitorial system not did not have a singular founder, but rather evolved over centuries, drawing from various legal traditions. However, its development is often attributed to the Roman jurist and scholar Justinian I (c. 482–565 AD), who played a significant role in codifying Roman law. Justinian's codification efforts resulted in the Corpus Juris Civilis, a comprehensive compilation of Roman legal principles, including the use of inquisitorial procedures. it emerged as a result of historical, legal, and religious developments, reflecting the changing needs and philosophies of different societies over time. While the inquisitorial system has historical connotations with abuses of power and lack of due process, it laid the groundwork for some features of modern legal systems, such as a more structured and investigative approach to fact-finding. Despite its controversial history, elements of the inquisitorial system persist in contemporary legal practices, particularly in civil law jurisdictions, where judges often play a more active role in examining evidence and determining the outcome of cases. The history of the inquisitorial system offers a captivating view at the evolution of legal methodologies and the pursuit of justice. The inquisitorial approach, which originated during the medieval inquisition and was later institutionalized by continental European legal systems, represented a shift away from adversarial traditions. The emphasis on investigative judges and the centralization of legal authority aimed to speed up proceedings and ensure thorough investigations of cases. While its historical roots point to a system designed to combat heresy, the inquisitorial model has evolved over time to meet current legal challenges. Modern inquisitorial systems incorporate adversarial practices as well as procedural safeguards, with the goal of balancing efficiency and fairness.

Despite its historical associations, the inquisitorial system now reflects a dynamic approach to justice, emphasizing thorough investigation and the protection of individual rights in an ever-changing legal landscape.

### **3. Police Inquiry and Investigation**

#### **A. Police Inquiry and Investigation in Adversarial system**

The police inquiry is the process by which law enforcement authorities gather, evaluate, and document evidence related to criminal offenses. This process is critical not only for determining the accused's guilt or innocence, but also for laying the groundwork for future legal actions such as arrests, charges, and court proceedings. The quality and thoroughness of a police investigation have a significant impact on the overall integrity of the criminal justice system. In the intricate tapestry of the legal system, the process of police investigation emerges as an essential, with profound significance in the pursuit of justice and the maintenance of law and order. The police investigation, which is frequently the first step in the criminal justice system, serves as the entry point to the formal legal proceedings that follow. Its significance is highlighted by its dual role in determining the truth behind alleged criminal activities while also protecting the rights of both victims and accused individuals. Furthermore, police inquiries are instrumental in fostering public trust and confidence in law enforcement. A transparent and impartial inquiry process not only ensures the fair treatment of individuals involved but also upholds the principles of accountability and due process. The importance of police inquiry extends beyond its immediate investigative role; it shapes the broader narrative of justice, contributing to the legitimacy of legal institutions and reinforcing the rule of law. Before going forward it is relevant to understand the basic difference between the police inquiry and investigation. Police inquiry typically refers to the initial fact-finding stage in response to a reported crime or incident. It involves gathering preliminary information, interviewing witnesses, securing the crime scene, and determining whether a full-scale investigation is warranted. In contrast, police investigation is a more comprehensive and formal process that follows the inquiry. Investigations are initiated when there is credible evidence of a crime, and their primary goal is to collect, analyse, and present evidence that can be used in legal proceedings and in the process of police Inquiry, the police ascertain basic details, identify potential witnesses, and gather initial evidence. This phase is critical for deciding whether there is enough substance to proceed with a detailed investigation. Investigations, on the other hand, are more structured and involve the use of specialized techniques, forensic tools, and legal procedures. Detectives or investigators take

charge of the case, collecting evidence, interviewing suspects, and building a case for prosecution. The investigation phase aims to establish the facts of the case, identify perpetrators, and compile evidence that can withstand legal scrutiny in court. While a police inquiry is a preliminary and informal stage aimed at gathering initial information, a police investigation is a more systematic and formal process aimed at developing a case that can withstand legal challenges. When there is enough evidence to suggest a criminal act, the transition from inquiry to investigation occurs, necessitating a more thorough and specialized examination. Now if we see the police inquiry in adversarial system procedure operates within a framework that emphasizes the adversarial presentation of evidence during legal proceedings. The process typically commences with a crime being reported to law enforcement, prompting the police to gather evidence to support both the prosecution and the defence. The police, acting as investigators, are tasked with collecting information, interviewing witnesses, and securing evidence. In this system, the burden of proof rests on the prosecution, and the police play a pivotal role in building the case against the accused. While in an adversarial legal system police investigation procedure is distinctly characterized by the principles of adversarial justice, which centres on the idea of a legal contest between opposing parties – the prosecution and the defence. The investigative process begins when a crime is reported, and the police, as law enforcement agents, initiate the collection of evidence to build a case against the accused. The primary role of the police is to gather information, interview witnesses, and secure evidence to support the prosecution's case. police inquiry in an adversarial system includes the presumption of innocence, which places the onus on the prosecution to prove the guilt of the accused beyond a reasonable doubt. The defence has the opportunity to cross-examine witnesses and challenge evidence presented by the prosecution. The investigative process is expected to be impartial, and any evidence obtained unlawfully may be excluded during trial. The adversarial nature of the system encourages an open contest between opposing parties, with the judge serving as an impartial adjudicator. One important aspect of police investigation in an adversarial system is the presumption of innocence, a fundamental principle that places the burden of proof on the prosecution. The police operate under the assumption that the accused is innocent until proven guilty, and their investigations aim to build a compelling case that can withstand scrutiny in a court of law. During legal proceedings, the police's evidence is subjected to rigorous examination, with the defence having the opportunity to challenge its admissibility and credibility. Furthermore, the adversarial system promotes a clear separation of roles, with the police serving as neutral investigators rather than participants in the legal dispute. The defence has the right to cross-examine witnesses, present its own evidence, and question the prosecution's

case. This adversarial process ensures a fair and transparent examination of evidence, allowing for a thorough investigation of the facts in a courtroom setting. To summarize, the police inquiry and investigation procedure in an adversarial legal system embodies the fundamental principles of justice, transparency, and the pursuit of truth. The adversarial nature of the system emphasizes a fair and open contest between the prosecution and the defence, with the police playing an important role in gathering evidence. The presumption of innocence, stringent evidence rules, and the requirement that the prosecution prove guilt beyond a reasonable doubt demonstrate the court's commitment to protecting individual rights. While this approach provides a structured and systematic method for resolving legal disputes, there is ongoing debate about its effectiveness, the possibility of procedural delays, and the need to strike a balance between adversarial rigor and the pursuit of justice. The adversarial police inquiry process is still a cornerstone of many legal systems, reflecting a dedication to due process and the rule of law. Considering the United States as an example, the adversarial model emphasizes the principle of due process. When a crime is reported, law enforcement agencies launch a thorough investigation to gather evidence. This process entails interviewing witnesses, gathering physical evidence, and working with forensic experts to develop a case. The adversarial system in the United States ensures that the prosecution bears the burden of proof, and law enforcement is required to follow strict evidence rules. The information gathering process is meticulous in order to preserve the case's integrity and withstand scrutiny in a court of law. The adversarial system in the United States prioritizes the defence's ability to challenge the evidence presented by the prosecution. This approach, while ensuring a fair and open legal contest, also includes strict checks and balances to prevent abuse of power. The judiciary serves as an impartial arbiter, protecting the accused's rights and ensuring that the evidence presented meets admissibility standards. In essence, in countries following the adversarial system, police inquiry and investigation exemplify a commitment to due process, transparency, and the protection of individual rights. The adversarial model ensures a balance between the interests of justice and the preservation of civil liberties, contributing to a legal system that is both rigorous and fair.

## **B. Police inquiry and investigation in Inquisitorial system**

In an inquisitorial legal system, the process of police inquiry differs significantly from that in an adversarial system. The inquisitorial approach places a greater responsibility on judicial authorities, often investigative judges, to actively and impartially gather and assess evidence. Unlike the adversarial system where the police primarily function as neutral investigators, in the

inquisitorial model, the police often take on a more subordinate role to the examining magistrate or judge. The inquiry is initiated not solely in response to a reported crime but can be initiated by the judicial authorities themselves based on suspicions or concerns. In this system, the investigative judge has broad authority to conduct investigations, question witnesses, and order the collection of evidence. The emphasis is on conducting a thorough and objective investigation of the facts in order to discover the truth rather than constructing a case for prosecution or defence. The judge takes an active role in overseeing the investigation, ensuring that it is legal and fair. Throughout the investigation, the accused and their legal representatives can present their case and challenge evidence. The inquisitorial police inquiry process takes a more centralized and formalized approach, with the judge serving as both investigator and arbiter. This system is intended to reduce the adversarial contest and uncover the truth while ensuring a fair and just resolution. While the inquisitorial model is commonly associated with civil law jurisdictions, there are variations, and many legal systems combine elements of adversarial and inquisitorial procedures. In the inquisitorial system, the role of the police in investigations takes on a distinct character. where the police primarily gather evidence for the prosecution, in the inquisitorial model, the judge assumes a more active role in overseeing the investigation. The process is characterized by a judge-led inquiry aimed at uncovering the truth and ensuring a thorough examination of the case. Police investigations in the inquisitorial system require a meticulous examination of evidence by both judges and investigators. Instead of strictly adhering to evidence rules, the process seeks to uncover the truth. Investigators collaborate closely with the judiciary to ensure the accuracy and reliability of the data gathered. This collaborative approach aims to reduce the likelihood of procedural errors and omissions. the police investigation takes on a unique character marked by collaboration, centralized authority, and an emphasis on uncovering the truth. This departure from the adversarial model reflects a commitment to thorough inquiry and judicial oversight, challenging traditional notions of how justice is administered. While both systems seek the same goal – justice – the inquisitorial approach demonstrates that an alternative paradigm can be equally effective in safeguarding the rule of law and ensuring a fair and just investigative process. Taking France as an example of a jurisdiction with an inquisitorial system, the police inquiry is initiated when a crime is suspected, prompting an examining magistrate or judge to actively lead the investigation. Unlike in adversarial systems where police independently collect evidence for presentation during trial, the inquisitorial approach involves a collaborative effort between the judiciary and investigators from the outset. In France, for instance, investigating magistrates can conduct investigations, issue search warrants, and direct

the collection of evidence. This centralized control system is intended to ensure a thorough and impartial examination of the facts, with judges actively overseeing the investigation process. The police's role is to assist the examining magistrate by providing expertise and carrying out judicial orders. France prioritizes a non-confrontational approach. Rather than an adversarial setting with opposing parties, investigators, and the examining magistrate lead the questioning, aiming to elicit a detailed understanding of the case. This method seeks to uncover the truth collaboratively, as opposed to the confrontational style of cross-examination often seen in adversarial systems. France, reflects a unique and collaborative approach. By placing an active role in the hands of examining magistrates or judges, these systems seek to ensure a thorough and impartial examination of the facts, fostering a legal environment where justice is pursued through cooperation between the judiciary and law enforcement.

#### **4. Conclusion**

A well-functioning legal system is crucial for several reasons. Firstly, it establishes a set of rules and regulations that define acceptable behaviour and prescribe consequences for violations. This creates a predictable and stable environment, fostering social harmony. Secondly, a legal system provides a mechanism for dispute resolution, allowing conflicts to be addressed through a structured and impartial process. This not only prevents the escalation of disputes but also promotes a sense of justice and equity. Furthermore, a legal system serves as a safeguard for individual rights and liberties. It establishes the boundaries of government authority, preventing abuse of power and protecting citizens from arbitrary actions. The legal system also helps to promote social and economic development by establishing a framework for contracts, property rights, and business transactions. By concluding the adversarial research system offers a nuanced framework with both clear advantages and significant disadvantages. Additionally, the adversarial approach promotes transparency and ensures a fair and open legal contest where evidence is rigorously examined. It promotes the search for truth and the protection of individual rights and prevents unfair or arbitrary accusations. In addition, the system allows for zealous advocacy by defence attorneys, which promotes a solid defence that protects against potential overreach by law enforcement agencies. But adversarial system is not without its drawbacks. The emphasis on the adversarial presentation of evidence can sometimes prioritize legal manoeuvring over the pursuit of absolute truth. This may lead to delays in legal proceedings and a focus on procedural technicalities rather than the substantive merits of a case. The burden of proof placed on the prosecution can be onerous and, in some instances, may lead to guilty parties

escaping accountability due to insufficient evidence. On the other hand, the Inquisitorial system for investigation presents a distinctive set of advantages and disadvantages, shaping the dynamics of the legal process in unique ways. On the positive side, the inquisitorial system often leads to a more streamlined and efficient investigative process. The centralized authority, typically vested in a judge or investigating magistrate, facilitates a comprehensive examination of facts, minimizing the risk of procedural errors. The collaboration between investigators and judicial authorities promotes a thorough inquiry, enhancing the likelihood of uncovering the truth. However, the centralized nature of authority can potentially lead to a concentration of power, raising concerns about judicial impartiality and the risk of abuse. The more limited role of the defence during the investigative stage may be seen as a disadvantage, as it could impact the system's ability to catch wrongful accusations early on. The inquisitorial model's departure from the confrontational nature of the adversarial system may also raise questions about transparency and the adversarial system's crucial function in ensuring a fair legal contest. Determining which legal system, inquisitorial or adversarial, is best for justice is a complex question. Both systems have advantages and disadvantages, and their effectiveness is often determined by cultural, historical, and societal factors. The adversarial system, which is prevalent in common law countries such as the United States, emphasizes a fair and open legal contest, allowing for strong defence and evidence scrutiny. The inquisitorial system, which is prevalent in continental Europe, emphasizes a collaborative approach between investigators and the judiciary, with the goal of uncovering the truth more systematically. The most effective legal system for justice is determined by a society's values and priorities. A balanced and context-specific approach that draws on elements from both systems may provide a more comprehensive and effective model for pursuing justice. The ongoing global debate on legal system reforms strives to strike the right balance between adversarial rigor and inquisitorial thoroughness in the pursuit of a fair and just legal system.