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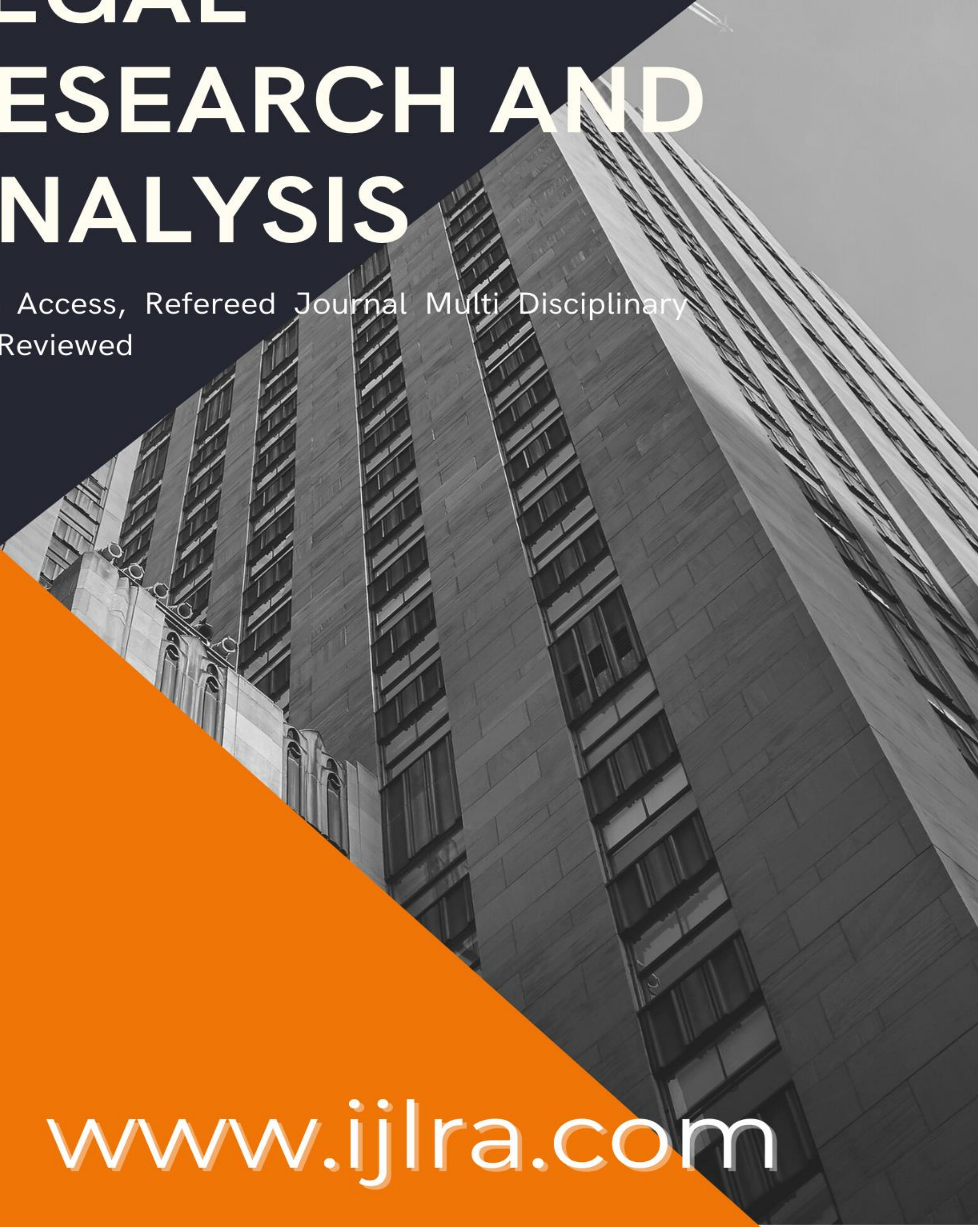

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A COMPARATIVE STUDY OF ADVERSARIAL AND INQUISITORIAL CRIMINAL JUSTICE SYSTEMS: EVALUATING LEGAL FRAMEWORKS IN INDIA, THE UNITED STATES OF AMERICA, THE UNITED KINGDOM, RUSSIA, AND FRANCE

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ABSTRACT

This comparative research paper critically evaluates the structural mechanics, theoretical foundations, and operational dynamics of adversarial (accusatorial) and inquisitorial systems of criminal justice across five distinct jurisdictions: India, the United States, the United Kingdom, France, and Russia. Anchored in a non-empirical, comparative legal methodology, the study addresses the core tension between procedural due process and substantive truth-seeking. It analyzes how party-driven presentation, passive judicial umpiring, and exclusionary evidentiary rules in common law jurisdictions contrast with judge-led inquiries, state-compiled written dossiers (*dossier de la procédure* / *ugolovnoye delo*), and holistic judicial evaluation (*intime conviction*) in continental civil law traditions. Through a contextual evaluation of landmark jurisprudence—including *Miranda v. Arizona*, *Brady v. Maryland*, and *Crawford v. Washington* (USA); *Woolmington v. DPP* and *R v. Ward* (UK); *DK Basu v. State of West Bengal*, *Nandini Satpathy v. P.L. Dani*, and the *Best Bakery Case* (India); *Brusco v. France* (ECtHR); and Constitutional Court Judgments No. 13-P and No. 4-P (Russia)—the study highlights systemic vulnerabilities inherent in both paradigms. It demonstrates how pure adversarial passivity frequently collapses into administrative plea bargaining or chronic docket stagnation, whereas unmonitored inquisitorial authority risks compromising defence rights and judicial neutrality during early pre-trial investigations. Focusing on the crisis of pendency, delayed investigations, and low conviction rates in India under its modernized statutory framework (*Bharatiya Nyaya Sanhita*, *Bharatiya Nagarik Suraksha Sanhita*, and *Bharatiya Sakshya Adhiniyam*), the paper outlines actionable reform pathways. It posits that a purely adversarial model is structurally inadequate for complex modern litigation and advocates for a synthesized hybrid framework. By incorporating proactive judicial evidence evaluation under Section 167 of the BSA, establishing specialized judicial investigative supervision, instituting mandatory UK-style pre-trial case management, and structurally separating police investigative functions, India can resolve procedural delays and enhance truth-finding capacity while preserving constitutional guarantees under Article 20(3) and Article 21.

Keywords: Adversarial System, Inquisitorial System, Comparative Criminal Procedure, Dossier, Juge d'Instruction, Judicial Case Management, Due Process, Substantive Truth, Indian Criminal Justice Reform.

INTRODUCTION

The administration of criminal justice across civilized societies is fundamentally governed by two classical legal philosophies: the adversarial (accusatorial) model and the inquisitorial model. While the adversarial model treats a legal proceeding—particularly a criminal trial—as a structured contest between two opposing parties before a neutral, passive judge, the inquisitorial system views the trial as an official public inquiry led by an active judge seeking the factual truth. As global legal paradigms evolve, the strict division between these two traditions has blurred, giving rise to hybrid procedures aimed at balancing institutional efficiency with procedural fairness and human rights guarantees. Understanding how these procedural frameworks function requires a rigorous comparative examination across diverse legal systems. This study examines five key jurisdictions: India, the United Kingdom, and the United States—representing the evolution and variants of the adversarial tradition—and France and Russia—representing classical and transitional inquisitorial structures. By evaluating these jurisdictions, this paper critically assesses whether elements of the inquisitorial system can refine and strengthen the adversarial framework in developing and common law jurisdictions like India.

Need for the Study

Modern criminal justice systems face unprecedented structural pressures, including severe case backlogs, protracted trials, uneven equality of arms between the state and the accused, and low conviction rates in complex socio-economic crimes. Adversarial systems, while robust in safeguarding individual liberty and procedural due process, often reduce trials to tactical battles where wealth and legal representation dictate outcomes rather than pure factual truth.

Conversely, inquisitorial systems prioritize truth-seeking and judicial efficiency but are often criticized for compromising judicial impartiality and party autonomy during pre-trial investigations. There is an urgent need to re-examine these structural mechanisms comparatively to identify systemic deficiencies and discover cross-jurisdictional best practices that enhance institutional efficiency without sacrificing constitutional rights.

Significance of the Study

This study holds significant value for legal scholars, policy makers, judicial reformers, and legislative drafters. By providing a comparative, nuanced evaluation of procedural mechanics in India, the UK, the USA, Russia, and France, this paper offers actionable insights for legal reform.

Specifically, for jurisdictions like India—which suffer from massive judicial pendulum delays—assessing how inquisitorial elements (such as active judicial management, pre-trial docket control, and judge-led evidentiary scrutiny) operate in France and Russia can guide targeted procedural reforms.

Review of Literature

Extensive legal scholarship has scrutinized the merits and flaws of adversarial and inquisitorial legal frameworks. Classical scholars like Damaska highlight that adversarial systems prioritize procedural fairness and dispute resolution ("reactive state"), whereas inquisitorial systems prioritize substantive truth and official policy implementation ("activist state").[1]

Scholars examining Common Law jurisprudence (such as Spencer and Zander) emphasize that the adversarial process, particularly in the United States and the UK, relies heavily on party presentation, cross-examination, and judicial passivity. However, American legal commentators frequently point out that the reliance on plea bargaining has practically rendered the adversarial jury trial obsolete in the US, transforming it into an administrative process.[2]

In the continental tradition, French jurisprudence (analyzed by scholars like Hodgson) demonstrates how the *juge d'instruction* (investigating magistrate) theoretically ensures an impartial pre-trial search for truth, collecting evidence both *à charge* (incriminating) and *à décharge* (exculpatory). Meanwhile, studies on the post-Soviet Russian legal system reveal a complex hybrid structure; while the 2001 Code of Criminal Procedure introduced adversarial

[1] Mirjan R. Damaška, The Faces of Justice and State Authority: A Comparative Approach to the Legal Process 71–88 (Yale Univ. Press 1986).

[2] Michael Zander, Cases and Materials on the English Legal System 340–45 (10th ed. Cambridge Univ. Press 2007); *see also* Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2463, 2465–70 (2004).

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principles and trial by jury, vestiges of the Soviet inquisitorial past remain deeply embedded in pre-trial detention practices and prosecutorial authority.[3]

In the Indian context, committees like the Justice V.S. Malimath Committee Report (2003) advocated for integrating certain inquisitorial features into the Indian adversarial framework to raise conviction rates and speed up disposal times.[4] However, civil liberties experts argue that introducing inquisitorial powers without corresponding institutional accountability risks diluting constitutional guarantees under Article 21 of the Indian Constitution.[5]

Research Gap

While existing literature thoroughly documents the theoretical mechanics of adversarial and inquisitorial systems individually, there remains a critical gap in integrative cross-jurisdictional comparative analysis that simultaneously covers common law, civilian, and post-socialist transitional jurisdictions (India, UK, USA, France, and Russia). Furthermore, contemporary legal scholarship lacks a concrete evaluation of how practical judicial realities—such as plea bargaining in the USA, jury selection in the UK, inquisitorial magistracy in France, prosecutorial dominant pre-trials in Russia, and massive backlog crises in India—interact when considering hybrid procedural reforms. This study fills that void by analyzing all five countries holistically through a humanized, contextual lens.

Research Statement / Research Problem

The fundamental problem investigated in this study is the inherent tension between procedural due process and substantive truth-seeking across legal traditions. Purely adversarial systems often prioritize procedural formality at the expense of substantive justice and timeliness, whereas inquisitorial structures risk compromising judicial neutrality and defence rights in their pursuit of state-led truth finding. The central problem is determining how these two foundational models can be harmoniously synthesized—specifically within India's procedural jurisprudence—to eliminate procedural delays without violating fundamental human rights and due process guarantees.

[3] Jacqueline S. Hodgson, French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime 75–82 (Hart Publ'g 2005); *see also* Ugolovno-Protsessual'nyi Kodeks Rossiiskoi Federatsii [UPK RF] [Code of Criminal Procedure of the Russian Federation] No. 174-FZ, 2001 (Russ.).
[4] Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Govt. of India, Report of the Committee on Reforms of Criminal Justice System 25–32 (2003) (chaired by Justice V.S. Malimath).
[5] India Const. art. 21; *see also* Upendra Baxi, *The Criminal Justice System: An Agenda for Reconstruction*, 17 J. Indian L. Inst. 165, 168–74 (1975).

Research Questions

1. How do the foundational philosophy, judicial roles, and evidentiary standards differ between adversarial and inquisitorial legal traditions across India, the UK, the USA, France, and Russia?
2. To what extent do pre-trial investigation mechanics and prosecutorial/judicial authority shape the ultimate fairness and truth-seeking capacity of the trial process in these five jurisdictions?
3. What specific procedural shortcomings exist within India's adversarial system, and how can tested, ethical components of the continental inquisitorial tradition be adapted to resolve systemic delays and low conviction rates while preserving constitutional protections?

Hypothesis

A purely adversarial system creates structural vulnerabilities, including tactical delay, inequality of arms, and procedural formalisms that obstruct factual truth; conversely, adopting an integrated hybrid procedural framework—incorporating active judicial evidence evaluation and judicial management from the inquisitorial model while preserving adversarial safeguards such as cross-examination and independent defence rights—substantially enhances judicial efficiency, reduces case backlog, and ensures balanced substantive justice.

Aim and Objectives

- **Aim:** To critically analyze and compare the operation, structure, and procedural dynamics of adversarial and inquisitorial systems across India, the United Kingdom, the United States, Russia, and France, with a view toward proposing balanced procedural reforms.
- **Objectives:**
  1. To examine the historical evolution and theoretical foundations of adversarial and inquisitorial judicial models.
  2. To dissect the pre-trial, trial, and evidentiary procedures across India, the UK, the USA, France, and Russia.
  3. To analyze landmark judicial precedents across these jurisdictions that define party rights, judicial power, and trial procedures.
  4. To identify systemic flaws within the purely adversarial framework of India and offer pragmatic recommendations for procedural hybridization.

Research Methodology

This research employs a non-empirical, comparative doctrinal legal methodology. The study synthesizes primary legal materials—including national constitutions, codes of criminal procedure, statutory enactments, and landmark judicial decisions—alongside secondary sources such as peer-reviewed legal journals, authoritative treaties, law commission reports, and legal history scholars. The comparative approach utilizes a functional technique, evaluating how different legal structures across common law (India, UK, USA), civil law (France), and mixed/transitional law (Russia) address common procedural challenges such as evidence gathering, judicial intervention, pre-trial rights, and docket management.

Scope and Limitations

The scope of this research is strictly confined to criminal justice administration and constitutional procedure within the designated five sovereign nations: India, the United Kingdom, the United States, Russia, and France. The study focuses primarily on the role of judges, prosecutors, defence counsel, evidence admission, pre-trial detention, and trial mechanisms.

Limitations: The primary limitation of this study is its reliance on open-access doctrinal texts, legal statutes, and reported judicial precedents rather than direct empirical field surveys or observational court studies within foreign jurisdictions.

Additionally, rapidly evolving legislative amendments within Russia and France regarding emergency powers or procedural tweaks mean the research reflects established statutory frameworks and precedents up to the current state of legal scholarship.

CONCEPTUAL FOUNDATIONS: THE ADVERSARIAL VS. INQUISITORIAL

The Theoretical separation between adversarial and inquisitorial systems is rooted in distinct jurisprudential philosophies concerning state authority, individual liberty, and the ultimate objective of adjudication.

ADVERSARIAL PARADIGM (COMMON LAW):

The **adversarial model,** forged through centuries of English common law struggle against central monarchical power, views legal proceedings as a structured dispute between two equal adversaries. The core philosophy assumes that factual truth emerges most reliably when

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opposing parties have a direct self-interest in uncovering and presenting their best evidence before a passive, neutral umpire.[6] The primary goal is not the abstract realization of absolute truth, but rather the fair, procedural resolution of a conflict while shielding citizens from state tyranny.

INQUISITORIAL PARADIGM (CIVIL LAW):

Conversely, the **inquisitorial model,** derived from Roman law and codified across continental Europe during the Napoleonic era, views a crime primarily as an offense against society and the public order. Consequently, the state bears an absolute obligation to ascertain the objective, substantive truth of the event. The trial is conducted not as an artificial contest between private litigants, but as an official judicial inquiry driven by an active judge.[7] The judicial officer is charged with investigating all aspects of the case, gathering evidence independently, questioning witnesses, and determining guilt based on a holistic assessment of reality rather than legal technicalities.

While these theoretical constructs present stark contrasts, modern jurisdictions rarely function in their pure historical forms. Instead, contemporary systems balance these foundational principles with evolving human rights standards, international treaty obligations, and practical administrative pressures.[8]

ADVERSARIAL JURISDICTIONS IN PRACTICE: USA, UK, AND INDIA

a) **United States: Strict Adversarial Rules, Constitutional Protection, and Plea Bargaining**

The criminal legal system of the United States represents the most formalized, party-driven execution of the adversarial tradition. Grounded in the Anglo-American legal heritage, the system was deliberately designed to restrict state overreach through constitutional checks codified in the Bill of Rights. The Fifth Amendment guarantees protection against self-incrimination and mandates due process; the Sixth Amendment

[6] Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 Harv. L. Rev. 353, 363–71 (1978); *see also* William Blackstone, 4 Commentaries on the Laws of England *280–85 (1769).

[7] John Henry Merryman & Rogelio Pérez-Perdomo, The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America 125–33 (3d ed. Stanford Univ. Press 2007); *see also* Code d'instruction criminelle [Code of Criminal Instruction] 1808 (Fr.).

[8] Mireille Delmas-Marty & J.R. Spencer, European Criminal Procedures 14–28 (Cambridge Univ. Press 2002); European Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Nov. 4, 1950, 213 U.N.T.S. 221.

guarantees a speedy and public trial by an impartial jury, the right to confront accusers, and the right to effective assistance of counsel; and the Fourth Amendment enforces exclusionary protections against unreasonable searches and seizures.

In the American trial court, the judge acts as an impartial arbiter of law, taking a largely passive stance regarding the generation and presentation of evidence. The primary responsibility for shaping the narrative, identifying witnesses, conducting direct and cross-examinations, and framing legal issues rests entirely on counsel for the prosecution and defence. Because lay juries determine questions of factual guilt in serious matters, American law has developed highly complex rules of evidence designed to shield jurors from potentially misleading, prejudicial, or improperly obtained information.

However, the operational reality of the American criminal system departs significantly from the constitutional ideal of an open courtroom contest. Modern American justice is almost entirely administrative, driven by extensive plea bargaining. Over ninety-five percent of federal and state criminal convictions are resolved through negotiated guilty pleas rather than adversarial trials.[9] Prosecutorial discretion in the United States is broad; prosecutors hold substantial leverage through statutory mandatory minimum sentences and charge stacking, which can compel defendants to waive their constitutional right to a full trial in exchange for sentence reductions.

The evidentiary framework in the United States relies heavily on oral confrontation. Under the landmark decision in **Crawford v. Washington (2004)**, the U.S. Supreme Court re-affirmed the constitutional primacy of live cross-examination, ruling that out-of-court testimonial statements are inadmissible unless the declarant is unavailable and the defence had a prior opportunity for cross-examination.[10] This principle underlines the American commitment to direct challenge over written records.

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[9] *See* Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2463, 2466–72 (2004); *see also* Missouri v. Frye, 566 U.S. 134, 143 (2012)

[10] Crawford v. Washington, 541 U.S. 36, 53–68 (2004); U.S. Const. amend. VI.

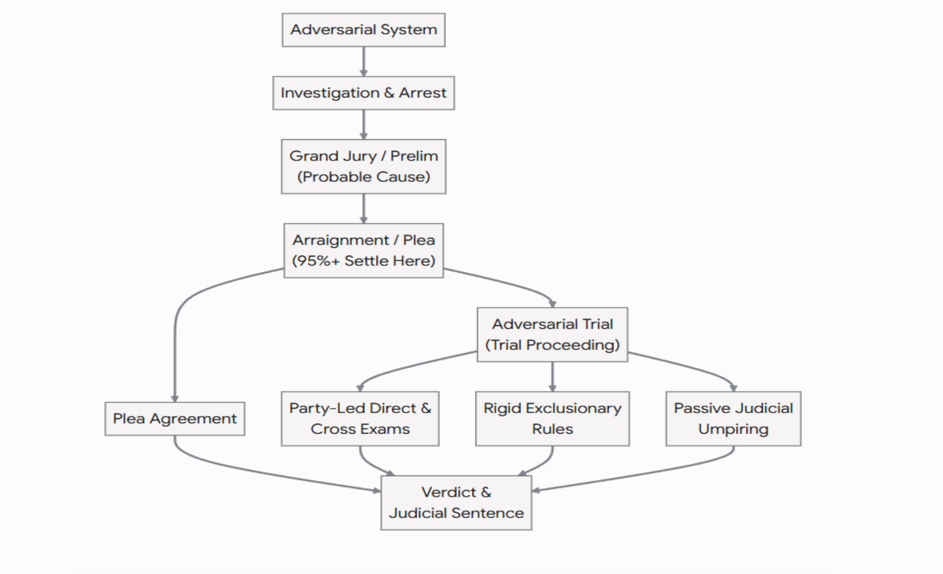

Fig 1: **American Adversarial Criminal Justice Process**

Furthermore, protection against state misconduct is enforced through strict exclusionary rules. In **Mapp v. Ohio (1961)**, the Supreme Court held that evidence obtained through searches violating the Fourth Amendment must be excluded from state criminal trials. This exclusionary rule serves a deterrent purpose, deliberately prioritizing constitutional integrity even if it results in excluding relevant, reliable factual evidence.[11]

Defence rights were further reinforced in **Gideon v. Wainwright (1963)**, where the Court established that state courts must provide legal counsel to indigent criminal defendants under the Fourteenth Amendment. The Court reasoned that an adversarial contest is fundamentally flawed if an unrepresented defendant is forced to face experienced state prosecutors alone.[12]

To prevent surprise at trial and balance party capabilities, the Supreme Court established strict prosecutorial disclosure rules in **Brady v. Maryland (1963)**. Under this precedent, the prosecution is constitutionally required to disclose all material exculpatory evidence to the defence.

This creates an exception to pure party competition by imposing an affirmative constitutional obligation on the state to assist the defence with favourable information.[13]

Lastly, the procedural protections governing police interrogations were defined in

[11] Mapp v. Ohio, 367 U.S. 643, 655–60 (1961); U.S. Const. amend. IV.
[12] Gideon v. Wainwright, 372 U.S. 335, 342–45 (1963); U.S. Const. amend. XIV.
[13] Brady v. Maryland, 373 U.S. 83, 87 (1963).

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Miranda v. Arizona (1966). The Court mandated that prior to custodial interrogation, law enforcement officers must explicitly inform suspects of their rights to remain silent and to consult counsel.

This ruling fortified the adversarial privilege against self-incrimination during early investigative encounters, preventing the police from using coercion to build an inquisitorial record before formal charges are filed.[14]

b) United Kingdom: The Home of Common Law, Legal Reforms, and Active Case Management

The United Kingdom, specifically the jurisdiction of England and Wales, serves as the historical birthplace of the adversarial common law model.[15] British criminal procedure developed around oral testimony, independent party presentation, the presumption of innocence, and trial by lay juries in the Crown Court for serious indictable offenses. However, over the past four decades, the UK system has undergone structural reform, evolving from a traditional police-centric model into a highly regulated, judicially managed procedural framework.

Historically, criminal prosecutions in England were conducted directly by local police forces. Following high-profile miscarriages of justice involving uncorroborated police confessions, Parliament enacted the Police and Criminal Evidence Act 1984 (PACE) and created the Crown Prosecution Service (CPS) under the Prosecution of Offences Act 1985.[16] The CPS acts as an independent prosecutorial authority, evaluating police evidence through a strict two-stage test: determining whether there is a realistic prospect of conviction, and assessing whether prosecution serves the public interest.

While the trial process in the Crown Court remains adversarial—with barristers conducting direct and cross-examinations before a jury—the traditionally passive role of the judge has been significantly reshaped by modern Case Management Rules. Under the Criminal Procedure Rules, judges exercise active management powers to control trial schedules, limit redundant oral evidence, require early identification of disputed legal issues, and enforce strict timelines.[17] This transformation has curtailed tactical

[14] Miranda v. Arizona, 384 U.S. 436, 467–79 (1966); U.S. Const. amend. V.
[15] *See* 1 William Blackstone, Commentaries on the Laws of England *63–68 (1765); *see also* Michael Zander, Cases and Materials on the English Legal System 1–12 (10th ed. Cambridge Univ. Press 2007).
[16] Police and Criminal Evidence Act 1984, c. 60 (Eng.); Prosecution of Offences Act 1985, c. 23 (Eng.).
[17] The Criminal Procedure Rules 2020, SI 2020/759, r. 1.1, 3.2 (Eng.); *see also* Sir Robin Auld, Review of the Criminal Courts of England and Wales 330–45 (2001).

delays while preserving the core elements of the adversarial trial.

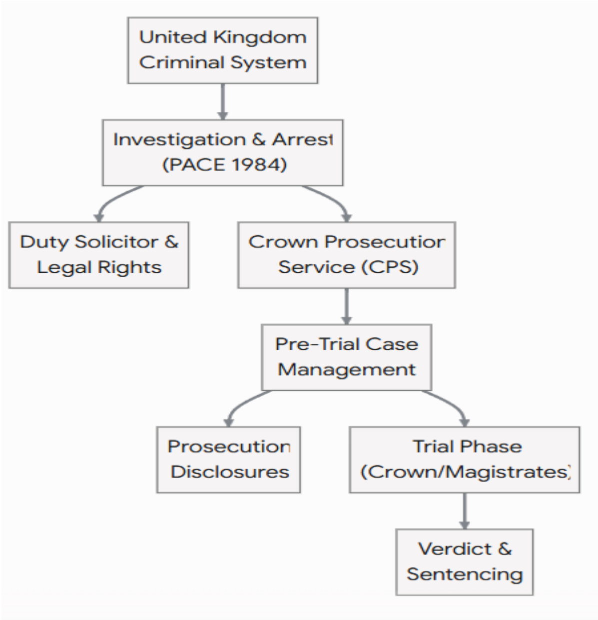

Fig 2: **UK Criminal Justice Process**

The English legal framework maintains strict standards regarding the burden of proof. In the landmark case of **Woolmington v. Director of Public Prosecutions (1935)**, the House of Lords established the foundational principle of English criminal law: the "golden thread" holding that the burden of proving the defendant's guilt beyond a reasonable doubt rests throughout the trial entirely on the prosecution.[18]

The privilege against self-incrimination during police questioning was historically absolute, as affirmed in **Rice v. Connolly (1966)**, which established that a citizen has a common law right to refuse to answer police questions.[19] However, Parliament modified this position through the Criminal Justice and Public Order Act 1994, which allows courts to draw adverse inferences from a suspect's silence during police interrogation or at trial under specific conditions.[20] This statutory change nudged the UK framework slightly away from pure adversarial protections toward an expectation of civic cooperation in truth-seeking.

In terms of evidence disclosure, British jurisprudence enforces comprehensive obligations on the state. In **R v. Ward (1993)**, the Court of Appeal quashed a murder conviction because the prosecution had withheld scientific reports and witness

[18] Woolmington v. Director of Public Prosecutions, [1935] AC 462 (HL).
[19] Rice v. Connolly, [1966] 2 QB 414 (DC).
[20] Criminal Justice and Public Order Act 1994, c. 33, §§ 34–37 (Eng.).

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interviews favorable to the defence.[21]

This decision led directly to the enactment of the Criminal Procedure and Investigations Act 1996 (CPIA), which sets out a statutory framework for two-stage prosecutorial disclosure and defence statement requirements, ensuring balanced access to evidence prior to trial.[22]

c) **India: Inherited British Laws, Constitutional Rights, and Modern Statutory Reforms**

India inherited its adversarial framework from the British legal system during the colonial era, codifying its provisions within the Indian Penal Code of 1860, the Code of Criminal Procedure, and the Indian Evidence Act of 1872. Following independence, these statutory roots were reinforced by the Constitution of India, particularly Article 20(3), which protects against compulsory self-incrimination, and Article 21, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. Recently, India modernized these colonial-era statutes through the enactment of the *Bharatiya Nyaya Sanhita* (BNS), the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), and the *Bharatiya Sakshya Adhiniyam* (BSA).[23]

The Indian trial process operates as a bench trial conducted by professional judges; jury trials were effectively phased out following the landmark decision in **K.M. Nanavati v. State of Maharashtra (1962)**, where the Supreme Court observed that lay juries were susceptible to media influence and emotional bias.[24] Consequently, the trial judge acts as both the arbiter of law and the ultimate finder of fact.

[21] R v. Ward, [1993] 1 WLR 619 (CA).
[22] Criminal Procedure and Investigations Act 1996, c. 25, §§ 3, 5 (Eng.).
[23] Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India); Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).
[24] K.M. Nanavati v. State of Maharashtra, AIR 1962 SC 605: (1962) 1 SCR 567.

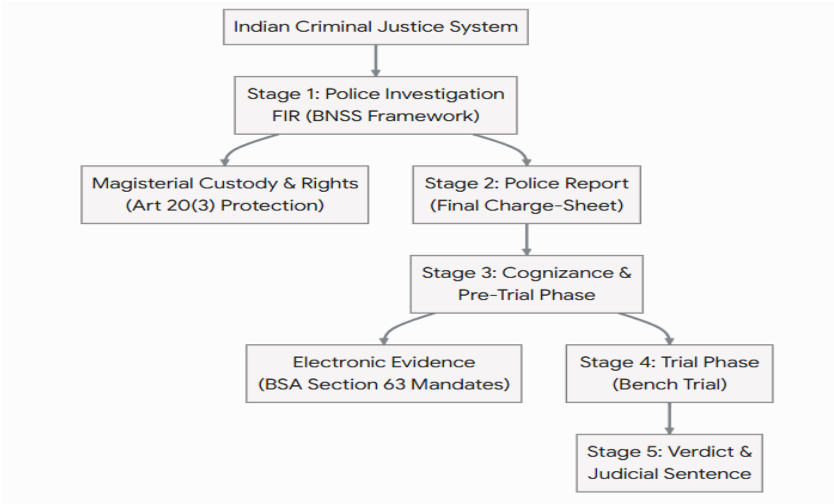

Fig 3: **Indian Criminal Justice Process**

Despite operating under an adversarial design, the Indian criminal justice system faces structural challenges, including severe court congestion, millions of pending cases, delayed investigations, low conviction rates, and poor forensic resources.

While Section 165 of the Indian Evidence Act (now reflected in Section 167 of the BSA) gives judges broad authority to ask any question or order the production of any document to discover relevant facts, Indian judges historically relied on party-led presentation, maintaining traditional adversarial passivity.

To safeguard suspects during police custody, Indian jurisprudence enforces strict constitutional protections against police-coerced confessions. In **Nandini Satpathy v. P.L. Dani (1978)**, the Supreme Court ruled that the constitutional right against self-incrimination under Article 20(3) extends to police interrogations during pre-trial investigations.[25] The Court held that an accused person cannot be compelled to answer police questions if the answers would expose them to criminal liability, establishing a safeguard against investigative overreach.

The court's role in actively managing adversarial trials was highlighted in **Zahira Habibullah Sheikh v. State of Gujarat (2004)** (commonly known as the **Best Bakery Case**).[26] Addressing a trial where key witnesses turned hostile due to threats, the Supreme Court declared that an Indian judge must not sit as a passive spectator when truth is compromised. The Court affirmed that trial courts possess an affirmative duty to exercise statutory powers—such as summoning material witnesses under Section 311 of the CrPC (now Section 348 BNSS)—to ensure that trials are fair and directed toward uncovering the truth.

[25] Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424: AIR 1978 SC 1025; India Const. art. 20, cl. 3.
[26] Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158: AIR 2004 SC 3114; *see also* Code of Criminal Procedure, 1973, § 311 (now Bharatiya Nagarik Suraksha Sanhita, 2023, § 348).

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Regarding personal liberty and pre-trial arrest, the Supreme Court constrained arbitrary police action in **Arnesh Kumar v. State of Bihar (2014)**.[27] The Court established strict guidelines requiring police officers and magistrates to assess the necessity of arrest under statutory criteria rather than making routine arrests, thereby reinforcing procedural due process within the pre-trial phase.

Furthermore, in **DK Basu v. State of West Bengal (1997)**, the Supreme Court addressed custodial violence by creating mandatory requirements for police arrests, detentions, and interrogations. The Court mandated clear identification of arresting officers, official memos of arrest, legal counsel access, and compulsory medical examinations, embedding human rights guarantees into the initial stages of criminal procedure.[28]

INQUISITORIAL AND HYBRID JURISDICTIONS: FRANCE AND RUSSIA

a.) France: The Classic Inquisitorial Model, Investigating Judges, and Written Case Files

France represents the classic civil law inquisitorial system, anchored historically in Napoleonic codifications and currently governed by the *Code de procédure pénale*.[29] The core legal philosophy of French criminal procedure is the pursuit of substantive truth (*la vérité matérielle*), viewing the adjudication of crime as a duty of the sovereign state that must not depend on the unequal litigation resources of private parties.

The French system separates criminal offenses into three categories: *contraventions* (minor offenses), *délits* (intermediate offenses), and *crimes* (severe offenses). For serious crimes, the defining feature of the French system is the formal pre-trial investigation (*information judiciaire*) directed by an independent magistrate known as the ***juge d'instruction*** (investigating judge).

The *juge d'instruction* does not act as a prosecutor or a defence attorney; rather, they act as an impartial judicial officer charged with conducting an objective inquiry into the event. The investigating judge has the legal authority to direct police investigators, issue search warrants, order forensic expert analyses, intercept communications, and question witnesses and suspects.

[27] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273: AIR 2014 SC 2756.
[28] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416: AIR 1997 SC 610.
[29] Code de procédure pénale [C. pr. pén.] [Criminal Procedure Code] (Fr.); *see also* John Henry Merryman & Rogelio Pérez-Perdomo, The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America 125–33 (3d ed. Stanford Univ. Press 2007).

By statutory mandate, the *juge d'instruction* is required to collect evidence both incriminating (*à charge*) and exculpatory (*à décharge*).[30] All gathered materials, witness transcripts, expert opinions, and police reports are compiled into a central written case file known as the ***dossier de la procédure***.

When the investigation concludes, the *juge d'instruction* evaluates the dossier to decide whether the evidence justifies committing the accused to stand trial before the *Cour d'assises* or *Tribunal correctionnel*, or whether the charges should be dismissed (*non-lieu*).

During the trial phase, the written *dossier* forms the primary evidentiary foundation. Rather than passive observation, the presiding judge leads the trial proceedings directly. Using the *dossier*, the judge examines the defendant, questions witnesses, and evaluates scientific evidence. Defence counsel and prosecutors are present and actively participate, but they do not conduct direct or cross-examinations in the Anglo-American tradition; instead, they submit proposed questions to the presiding judge, who puts them to the witness at their discretion.

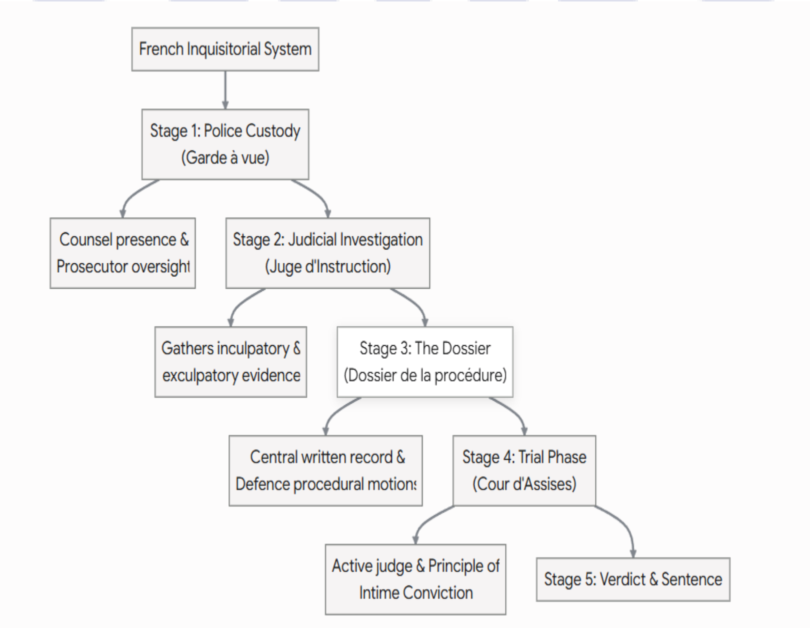

Fig 4: **French Inquisitorial Justice System**

Unlike common law systems that use technical rules of evidence to exclude certain materials from lay juries, French judicial evaluation is guided by the principle of ***intime***

[30] Code de procédure pénale [C. pr. pén.] art. 81 (Fr.); *see also* Jacqueline S. Hodgson, French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime 75–82 (Hart Publ'g 2005).

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conviction (inner judicial conviction).[31] Judges and lay assessors evaluate all evidence in the *dossier* holistically, determining guilt based on their reasoned personal conviction regarding the truth of the charges.

While the French inquisitorial system places significant power in judicial hands, it operates within constitutional checks overseen by the European Court of Human Rights (ECtHR). In **Brusco v. France (2010)**, the ECHR ruled that subjecting a suspect to police questioning under oath without access to legal representation violated Article 6 of the European Convention on Human Rights (ECHR).[32] This judgment prompted reforms in France, strengthening defence rights during early police custody (*garde à vue*).

Similarly, the French judicial high court, the **Cour de Cassation (Criminal Chamber, Judgment of June 19, 2012)**, reinforced these European mandates by ruling that statements made by suspects during police custody without access to a lawyer cannot form the basis of a criminal conviction, ensuring that early inquisitorial investigations respect procedural defence guarantees.[33]

b.) Russia: Post-Soviet Legal Mix, Strong Prosecutors, and Modern Trial Realities

The legal system of the Russian Federation represents a hybrid operational model that combines a historical civil law foundation, vestiges of Soviet legal structure, and modern adversarial constitutional reforms. Following the dissolution of the Soviet Union, Russia adopted a new Constitution in 1993 and enacted the Code of Criminal Procedure (CPC) in 2001, which formally declared that Russian criminal proceedings are based on the principle of adversarial contestation (*sostyazatel'nost'*).

Under Article 12 of the Russian CPC, the court is designated as an impartial body that is not an agency of criminal prosecution and must not act on behalf of either the state or the defence.[34] The CPC reintroduced **trial by jury** (*sud prisyazhnykh*) for severe criminal offenses, allowing defendants facing serious charges to elect a trial before lay

[31] Code de procédure pénale [C. pr. pén.] art. 353 (Fr.); *see also* Mireille Delmas-Marty & J.R. Spencer, European Criminal Procedures 210–25 (Cambridge Univ. Press 2002).
[32] Brusco v. France, App. No. 1466/07, Eur. Ct. H.R. ¶¶ 45–55 (2010); European Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Nov. 4, 1950, 213 U.N.T.S. 221.
[33] Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 2012, Bull. crim., No. 11-88.140 (Fr.).
[34] Ugolovno-Protsessual'nyi Kodeks Rossiiskoi Federatsii [UPK RF] [Code of Criminal Procedure of the Russian Federation] No. 174-FZ, 2001, art. 12 (Russ.).

citizens alongside a presiding judge.[35]

However, despite these formal statutory guarantees, the operational reality of Russian criminal procedure remains influenced by its inquisitorial origins, particularly during the pre-trial phase. Pre-trial investigations are conducted by specialized state bodies, primarily the **Investigative Committee of the Russian Federation** (*Sledstvenny Komitet*), working alongside prosecutorial authorities. Investigators compile a formal written criminal case file—the ***ugolovnoye delo***—which contains all collected witness depositions, forensic reports, and physical evidence descriptions.[36]

At the trial stage in standard non-jury bench proceedings, the *ugolovnoye delo* exercises significant influence over the judicial evaluation. Judges review the written file prior to trial and frequently guide the questioning of the defendant and witnesses around the initial investigative findings. Although defence attorneys (*advokaty*) possess statutory rights under the CPC to gather evidence, request expert reviews, and cross-examine state witnesses, challenging the pre-trial record remains difficult in practice, as evidenced by low overall acquittal rates in non-jury proceedings.

The Russian judiciary and Constitutional Court have issued key rulings to define the boundaries of this hybrid procedure. In **Constitutional Court of the Russian Federation (Judgment No. 13-P of April 20, 1999)**, the Court struck down statutory provisions that allowed trial courts to return criminal cases to prosecutors for additional investigation whenever trial evidence appeared insufficient for a conviction.[37] The Court ruled that returning cases to help prosecutors fix evidentiary gaps forced judges to take an active prosecutorial stance, violating the constitutional requirement of an impartial, adversarial judiciary.

In **Constitutional Court of the Russian Federation (Judgment No. 4-P of May 20, 2013)**, the Court addressed the scope of jury trials, ruling that the constitutional right of citizens to have their cases heard by a jury trial cannot be restricted through arbitrary legislative amendments or changes to offense definitions.[38] This precedent protected

[35] Ugolovno-Protsessual'nyi Kodeks Rossiiskoi Federatsii [UPK RF] [Code of Criminal Procedure of the Russian Federation] No. 174-FZ, 2001, arts. 30, 324–53 (Russ.); *see also* Stephen C. Thaman, *The Resurrection of Trial by Jury in Russia*, 31 Stan. J. Int'l L. 61, 65–75 (1995).

[36] Ugolovno-Protsessual'nyi Kodeks Rossiiskoi Federatsii [UPK RF] [Code of Criminal Procedure of the Russian Federation] No. 174-FZ, 2001, arts. 150–70 (Russ.).

[37] Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii [Judgment of the Constitutional Court of the Russian Federation] No. 13-P, Apr. 20, 1999, Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Collection of Legislation of the Russian Federation] 1999, No. 17, Item 2205 (Russ.).

[38] Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii [Judgment of the Constitutional Court of the Russian Federation] No. 4-P, May 20, 2013, Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Collection of Legislation of the Russian Federation] 2013, No. 22, Item 2871 (Russ.).

the jury mechanism as an essential adversarial counterweight within the state-dominated pre-trial landscape.

COMPARATIVE MATRIX: CROSS JURISDICTIONAL ANALYSIS

Primary Objective of the System:

- **USA / UK / India:** Systemic design prioritizes procedural justice and individual protection against arbitrary state action. Truth is viewed as a procedural outcome derived from an artificial, structured contest between opposing parties before an independent arbiter.
- **France / Russia:** Systemic design prioritizes discovering substantive factual truth (*la vérité matérielle*). Truth is treated as an objective reality that state officials are obligated to uncover through comprehensive, centralized investigation.

Role of the Judicial Officer:

- **USA / UK / India:** Judges act primarily as passive arbiters, enforcing rules of evidence and procedure while relying on counsel to present their cases. (Though Indian judges retain statutory authority under Section 165 Evidence Act / Section 167 BSA, and UK judges exercise active schedule management, the trial narrative remains party-led.)
- **France / Russia:** Judges act as active directors of the proceedings. In France, the *juge d'instruction* directs the pre-trial search for truth, and trial judges directly question witnesses and defendants. In Russia, trial judges heavily scrutinize the pre-trial *ugolovnoye delo* file and control trial inquiries.

Pre-Trial Investigation & Evidence Gathering:

- **USA / UK / India:** Investigation is police-led and party-driven. Evidence is presented through live oral testimony at trial, subject to strict cross-examination. Written pre-trial police files serve limited purposes and are generally inadmissible as substantive trial evidence.
- **France / Russia:** Investigation is state-directed and compiled into a unified written case file (*dossier de la procédure* in France; *ugolovnoye delo* in Russia). This dossier forms the central foundation of the trial, with oral proceedings serving to verify and supplement the written record.

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Trial format and Rules of Evidence:

- **USA / UK / India:** Characterized by formal exclusionary rules that bar hearsay, unconstitutionally obtained evidence, and prejudicial information from lay juries or fact-finders.
- **France / Russia:** Subject to few exclusionary legal barriers. Evidence is evaluated holistically under principles of judicial conviction (*intime conviction* in France), allowing the court wide latitude to assess any relevant information compiled within the official file.

SYSTEMIC VULNERABILITIES AND COMPARATIVE EVALUATION

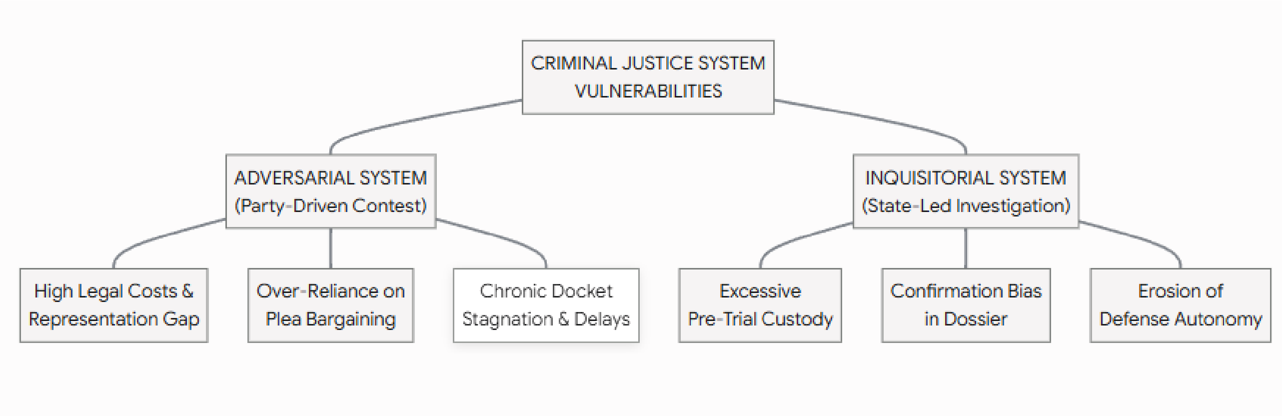

Fig 5: **Criminal Justice System Vulnerabilities**

PRACTICAL MEASURES TO IMPROVE THE INDIAN CRIMINAL JUSTICE SYSTEM

The comparative analysis across these five nations illustrates that neither pure adversarial passivity nor unmonitored inquisitorial authority offers a complete answer to modern procedural challenges.

The American model shows how an over-reliance on pure adversarial dynamics can collapse into administrative plea bargaining, while the post-Soviet Russian experience highlights the risk of prosecutorial bias when inquisitorial institutions lack robust judicial checks.

For India, the central challenge is overcoming systemic delays, massive case backlogs, and poor investigative quality without undermining Article 21 constitutional due process protections. Incorporating targeted, ethical features of the inquisitorial system provides a realistic path forward for Indian judicial reform.

STRATEGIC REFORMS FOR THE INDIAN SYSTEM

c.) Activating Judicial Evidence Evaluation

Indian trial judges must be encouraged to move away from passive observation during trials. While retaining the neutral arbiter role, judges should actively utilize statutory powers under Section 167 of the *Bharatiya Sakshya Adhiniyam* to summon material witnesses, order independent forensic tests, and clarify ambiguities when party counsel fails to present critical facts, fulfilling the active judicial duty mandated in the **Best Bakery Case**.

d.) Establishing Judicial Oversight over Police Investigations

To resolve the chronic problem of flawed police inquiries and low conviction rates, India should consider creating a specialized cadre of **Judicial Magistrates of Investigation**, adapting aspects of the French *juge d'instruction*. These magistrates would oversee major criminal investigations, supervise evidence collection, enforce proper chain-of-custody protocols, and ensure that both incriminating and exculpatory evidence are gathered before formal charges are filed in court.

e.) Instituting Mandatory Pre-Trial Case Management

Adopting the UK's Case Management approach, the *Bharatiya Nagarik Suraksha Sanhita* framework should incorporate mandatory pre-trial management hearings. Pre-trial judges should actively narrow the legal issues in dispute, set firm timelines for evidence disclosure, rule on procedural motions prior to trial, and establish non-negotiable trial schedules to eliminate the culture of endless adjournments.

f.) Structural Separation of Police Wings

To ensure investigative independence and shield evidence gathering from local political interference, the investigative branch of state police forces must be completely separated from daily law enforcement duties. This independent investigative wing should operate under judicial supervision, ensuring that pre-trial case files maintain high standards of integrity and reliability.

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CONCLUSION

The evolution of criminal justice systems reveals a clear global trend toward procedural synthesis. Pure adversarial passivity often struggles under heavy case volumes, leading to administrative compromises like American plea bargaining or prolonged judicial backlogs as seen in India. Conversely, classical inquisitorial systems have adapted to incorporate adversarial defence guarantees, early access to counsel, and strict human rights oversight under European jurisprudential checks to protect individual liberties. Ultimately, the goal of any legal system is to ensure fair, efficient, and accurate justice. By selectively adapting the proactive judicial oversight, structured pre-trial management, and truth-seeking mechanisms of the inquisitorial model, common law adversarial nations and India in particular, can build a more efficient, equitable, and effective criminal justice framework for the modern era.

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