

Manuscript ID:
IJEBAMPSR-2026-030406

Volume: 3

Issue: 4

Month: August

Year: 2026

E-ISSN: 3065-9140

Submitted: 07 July 2026
Revised: 12 July 2026
Accepted: 10 Aug. 2026
Published: 31 Aug. 2026

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DOI: 10.5281/zenodo.22990343

DOI Link:
<https://doi.org/10.5281/zenodo.22990343>



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How to Cite this Article:

Kavyashree N. (2026). Criminal Trial without Judicial Examination Leads to "Vulnerability": A Study. *International Journal of Economics, Business, Accounting, Agriculture and Management Towards Paradigm Shift in Research (IJEBAMPSR)*, 3(4), 31–35. <https://doi.org/10.5281/zenodo.22990343>

Criminal Trial without Judicial Examination Leads to "Vulnerability": A Study

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Abstract

The criminal justice system plays a vital role in protecting individual rights, maintaining social order, and ensuring the delivery of justice. In India, the adversarial system emphasizes the presumption of innocence and places the burden of proof on the prosecution. However, prolonged trials, judicial delays, inadequate infrastructure, inactive judicial participation, and limited consideration of victims' rights have created serious challenges in the effective administration of criminal justice. This study critically examines the problems associated with criminal trials without effective judicial examination and analyses how such shortcomings contribute to vulnerability, injustice, and erosion of public confidence in the justice system. The paper also examines the rights of the accused, victims' participation, compensation, victim impact statements, and the need for a victim-centric approach. It compares the adversarial model with inquisitorial and restorative approaches and argues for incorporating appropriate features of these systems, particularly proactive judicial supervision and truth-seeking mechanisms. The study further highlights the importance of timely judicial intervention at the preliminary stages of criminal proceedings and the effective implementation of statutory safeguards. It concludes that strengthening judicial accountability, improving court infrastructure, reducing delays, protecting the rights of both accused and victims, and promoting restorative justice are essential for ensuring fair, transparent, and effective criminal justice administration in India.

Keywords: Criminal Justice System, Judicial Examination, Adversarial System, Inquisitorial System, Victims' Rights, Rights of the Accused, Judicial Delay, Restorative Justice, Fair Trial, Vulnerability.

Introduction

The Popularly known Salmond opines, that though every man wants others to be righteous and just towards him, he himself being selfish by nature may not be reciprocal in responding justly. This is why some kind of external force is necessary for maintaining an orderly society. For Salmond, without justice, an orderly society is unthinkable. The concept of justice became more conspicuous with the growth of state which ensures justice to it people through the instrumentality of law. As the law grew and developed the concept of justice also expanded its tentacles to different. It is that the Spheres of human activities. Today we have civil justice, criminal justice, economic and social justice, distributive justice and so on.¹ The preamble of our constitution speaks of "we the people of India" resolving to secure inter-alia Justice- social, economic and political to all its citizens". The juxtaposition of words and concepts in the preamble is important. Most significantly justice is placed higher than the other principles of liberty, equality and fraternity. Again, the preamble clearly enjoins precedence to social and economic justice over political justice, people turn to the judiciary in the quest of justice. There is a need to review the working of the judiciary during the last half a century and more to assess how far our justice system has been able to ensure equal social economic and political justice to all the people as obtained by the constitution and its preamble.² It is among the many reforms canvassed for improving criminal justice is one that advocates a victim orientation to criminal justice administration.

Victim orientation includes greater respect and consideration towards victims and their rights in the investigative and prosecution process provision for greater choices to victims in trial and disposition of the accused and a scheme of separation/compensation particularly for victims of violent crimes. Now the Government at the Union/Central level and in the State is well advised under the Directive Principles as well as International Human Rights Key international conventions such as International Covenant on Civil and Political Rights (ICCPR) Art 14 guarantees everyone the right to fair and public hearing by a competent, independent and impartial tribunal, the right to be presumed innocent, the right to tried in one's presence and the ability to examine witnesses,³ UDHR Article 10 and Art.11 establish that everyone is entitled to fair and public hearing by an independent tribunal and the right to be presumed innocent until proven guilty in a public trial with all necessary guarantees for defense. Obligations to legislate about an effective scheme of compensation for victims of crime without further delay. Similar protections are enshrined in regional Human Rights treaties at Article 6 of the European Convention on human rights, Art.8 of the American Convention on Human Rights and Art.7 of the African Charter on human and people's rights. There is a dearth of Courts and Judges and of buildings both for Courts and Judges and officers and staff. In several cases even minimum facilities have not been given. The reason is that there is no planning and proper budgeting of the Courts' requirements in consultation with the Judiciary as is done in other countries. Nor is there a long-range Plan or at least a Five-Year Plan's. The result is that most of the courts are overburdened with cases on the civil and criminal side and the civil and criminal courts do not take a decision on the maintainability of the case on law, facts and circumstances, the due process has also played a role in delay resulting in a serious infraction of right to speedy trials, to violation of human rights in various cases. A stage has reached when the parties are thinking of taking the law into their hands.⁴ The Indians are suffering from the injustice of not receiving the delivery of justice on time which is apparent violations under the statute.

Understanding Criminal Justice System In India

India inherited the adversarial systems from its colonial masters, the British adversarial system is guided by the innocence of the accused, and the burden is on the prosecution to prove beyond reasonable doubt that he/she is guilty. The accused also enjoys the right to silence and cannot

be compelled to reply; the aim of the criminal justice system is to punish the guilty and protect the innocent. The truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defense before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross examination of witnesses to observe the opposing case and to discover information the other side has not brought out. The inquisitorial system of criminal justice as employed in countries such as Italy and France are guided by the '*quest for truth*', it can be loosely defined as a procedure by which the judge attempts or tries to discover the raw facts regarding a particular case while at the same time representing the core interests of the nation in regard to the given trial. The judge in this particular system assumes a more proactive role and is chiefly accountable for overseeing the gathering of important facts that determine the case. Also, the judge takes the lead in questioning the eyewitnesses and the defendant. The lawyers tend to take more active roles, proposing routes of investigation for the judge. The inquisitorial system puts the right of the accused secondary to the search for truth. The system neither assumes the guilt of the accused and for has the presumption of innocence which is central to the adversarial system. We can take the example of France here. France follows the inquisitorial system and the power to investigate offences rests primarily with the judicial police officers, they investigate and draw the documents on the cases of their investigation. Hence, the most important advantage of the system remains its ability to allow for a more substantial role of the judicial system in the trial process.⁵

The problems of adversarial system of criminal justice

1. Lacuna with respect to discovering the truth.
2. Lacuna with respect to speed of trial.
3. Lacuna with respect to inactive role of judges.
4. Lacuna with respect to rights of victims.

The main disadvantage of this adversarial is that most of the procedural safeguards are in favor of the accused. Due to which it is described as a pro accused system. The succeeding safeguards are given to the accused: the right to remain silent, the right to appeal, the right to legal aid, the right to be free from unwarranted searches and arrest etc. It increases the self-assurance of the

people within the legal system because each party is allowed to challenge the evidence of the opposing party and therefore the judge acts as a referee/umpire and not interfere in the investigation of facts by limiting himself to acting as the “judge”. It means he applies the relevant law to the facts established at the trial. Administration of present-day criminal justice hardly serves any of the purposes for which it is set up; towards securing life and property. It does not bring deterrence in the minds of criminals because of the delay and uncertainties involved in its process and ridiculously ineffective punishments; it imposes on those few who get convicted. It provides wide discretion to the police and the prosecution, rendering the system vulnerable to corruption and manipulation and endangering basic rights of innocent citizens.⁶ It ignores the real victims, often compelling his/her to find extralegal methods of getting justice. It's very expensive, incurs economic costs on the state for its maintenance, without commensurate benefits in return with nearly 30 million cases pending in the system (the annual capacity of which is only half that number) and with much more cases being added each year. Whatever is left in the system too can collapse completely unless some radical alternatives are adopted urgently. It should be victim oriented criminal justice, means victim centric. Restoring the confidence of victims in the system and achieving the goal of justice.

Towards the end, the system must confer certain rights on victims to enable them to participate in the proceedings, the right to heard on critical issues and to assist the court in the pursuit of truth. Victims have the right to seek and receive compensation for injuries suffered including appropriate interim relief irrespective of the fate of the proceedings. Victims may also submit a victim impact statement to the courts setting out the effect of the crime on their lives. Victim centric approach in criminal justice can also mean healing the wound through reconciliation and restorative means of justice rather than letting it get prolonged in the system, leading to frustration and more wrongs.

Restorative, justice that it looks at the needs of crime victims which are today outside criminal justice concerns, leading to frustration and alienation of victims from the system itself. The victim is deprived of information on why he should suffer the injury and how it is going to be repaired. He would perhaps feel vindicated if the offender were to make an effort to right the harm, even if partially by restitution. The victim would respect the system if it could make the offender assume responsibility and persuade him to transform himself. Justice in other words, should engage with

victims, offenders and the right-thinking members of the community in an effort of reconciliation and repairing of harm.⁷ Limiting the adversarial model several countries across the world are now replacing the adversarial model of criminal justice partly or wholly with different models of restorative justice yielding promising results in crime control. The process is more collaborative, consensual inclusive, that is characteristic of indigenous systems of justice. The role of the state is reduced and the participation of communities encouraged. This is not to be confused with the khap panchayat model of arbitrary decisions making by a few elders of the locality. Due process requirements are followed in restorative justice while participation engorged and made transparent inclusive and accountable.

The inquisitorial system is certainly efficient in the sense that the investigation is supervised by the judicial magistrate which results in a high rate of conviction. The committee on balance felt that, a fair trial and in particular, fairness to the accused are better protected in the adversarial system. However, the committee felt that some of the good features of the inquisitorial system can be adopted to strengthen the adversarial system and to make it more effective. This includes the duty of the court to search for truth, to assign a proactive role to the judges, to give directions to the investigating officers and prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing to victims.⁸

Rights of Accused & Vulnerability

Administration of present-day criminal justice hardly serves any of the purposes for which it is set up; towards securing life and property. It does not bring deterrence in the minds of criminals because of the delay and uncertainties involved in its process and ridiculously ineffective punishments; it imposes on those few who get convicted. It provides wide discretion to the police and the prosecution, rendering the system vulnerable to corruption and manipulation and endangering basic rights of innocent citizens.⁹ It ignores the real victims, often compelling his/her to find extralegal methods of getting justice. It's very expensive, incurs economic costs on the state for its maintenance, without commensurate benefits in return with nearly 30 million cases pending in the system (the annual capacity of which is only half that number) and with much more cases being added each year. Whatever is left in the system too can collapse completely unless some radical alternatives are adopted urgently. It should be victim oriented criminal justice, means victim centric. Restoring

the confidence of victims in the system and achieving the goal of justice. Towards the end the system must confer certain rights on victims to enable them to participate in the proceedings, the right to hear on critical issues and to assist the court in the pursuit of truth. Victims have the right to seek and receive compensation for injuries suffered including appropriate interim relief irrespective of the fate of the proceedings. Victims may also submit a victim impact statement to the courts setting out the effect of the crime on their lives. Victim centric approach in criminal justice can also mean healing the wound through reconciliation and restorative means of justice rather than letting it get prolonged in the system, leading to frustration and more wrongs.

The victim is deprived of information about why he should suffer the injury and how it is going to be repaired. He would perhaps feel vindicated if the offender were to make an effort to right the harm, even if partially by restitution. The victim would respect the system if it could make the offender assume responsibility and persuade him to transform himself. Justice in other words, should engage with victims, offenders and the right-thinking members of the community in an effort of reconciliation and repairing of harm.¹⁰ Limiting the adversarial model several countries across the world are now replacing the adversarial model of criminal justice partly or wholly with different models of restorative justice yielding promising results in crime control. The process is more collaborative, consensual inclusive, that is characteristic of indigenous systems of justice. The role of the state is reduced and the participation of communities encouraged. This is not to be confused with the khap panchayat model of arbitrary decisions making by a few elders of the locality. Due process requirements are followed in restorative justice while participation engorged and made transparent inclusive and accountable. While doing so, the system respects diversity as a social fact, interrelatedness as a virtue and correctional healing the harm as a major objective. The inquisitorial system is certainly efficient in the sense that the investigation is supervised by the judicial magistrate which results in a high rate of conviction. The committee on balance felt that, a fair trial and in particular, fairness to the accused are better protected in the adversarial system. The committee felt that some of the good features of the inquisitorial system can be adopted to strengthen the adversarial system and to make it more effective. This includes the duty of the court to search for truth, to assign a proactive role to the judges, to give directions to the investigating officers and prosecution agencies in the matter of

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The Law & Execution:

Today, the Judiciary in India is blamed for the huge backlog of cases. It is time that the public became aware that during the last around 75 years after independence, little attention has been paid by the Government for improvement of the working pattern of the Judiciary in criminal cases. The author Quote's, "ANGER", "VENGEANCE" & "CIRCUMSTANCES" which are temporary in human nature which are closed at the moment which is of prosecution trial brought in for the purposes and intent, furthermore, there is legal consideration under the Section 227¹² of Cr.P.C (presently sec.250 of BNSS of 2023) in respect of the initial discharge of the "consideration" is off course the due process of law and procedure, WHICH IS NOT ACTIVE IN THE PRACTISE, resultantly delay in justice would be violative of fundamental human rights and also of the guarantee under the constitution of India , the critical analysis is that there is no examination of the issued under would be trial which may consume years together ; that consideration is not done under the provisions of Section 227 (Presently sec.250 of BNSS of 2023) wherein the courts are not taking interest in resolving the issue at the initial stage, unfortunately the apex court has miserably failed to monitor on this issue failure is of the justice

Conclusion and Suggestions

In the existing federal system of governance in the country, acceptability of a common criminal justice policy by the central as well as state Governments is necessary if it is to be functioned and Effective in a multiple system of enforcement with divergent perspectives and varying degrees of law enforcement capacities.¹³ Crime and violence constitute a major impediment for development and social integration for a plural society like India. The adversarial model of criminal justice, with punishing the offender as its only aim, has proved costly and counterproductive. Communities have to be involved and victims given rights in finding ways to correct the wrong. While keeping the adversarial system for certain serious and complex offences, India needs to experiment with more democratic models aimed at reconciliation and restoration of relationships. India has the proud record of not only having the second largest number of practicing lawyers in the world but also one which has been in the forefront of freedom movement and constitutional development. In the field of criminal justice, this,

change in public perception has done a lot of damage not only to the profession but also to the quality and efficiency of criminal justice administration. Being an independent and autonomous profession, it is not for the Government to force change on their part, rather the Government should provide opportunities for professional development, facilitate their role as agents of reform and accommodate their legitimate aspirations in judicial administration. In this regard it is necessary for the profession to appreciate why the committee has great expectations from the criminal law- Legal legends without their willingness to support, the reform process may even not take off. For example, delay and arrears are serious problems.¹⁴ The men and women who run the system also need to be trained, motivated and finally made accountable. This is essential in a democracy which requires both transparency and accountability from such public servants; it is difficult to expect the laws and procedures to make up for the deficiencies of the human element and vice versa.¹⁵ The Triumph of justice SHALL PREVAIL and if not, there is failure of constitutional mechanism in delivery of justice.

Financial support and sponsorship

Nil.

Conflicts of interest

The authors declare that there are no conflicts of interest regarding the publication of this paper.

Acknowledgement

I would like to express my sincere gratitude to all those who supported and encouraged me in the completion of this research work entitled "Criminal Trial without Judicial Examination Leads to 'Vulnerability': A Study."

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