

COMPARATIVE STUDY OF CRIMINAL PROCEDURE LAWS IN INDIA, U.S.A AND U.K

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Abstract

This paper tries to compare the criminal procedure code of India, USA, and UK. It emphasises on different aspects of investigation and trial procedure that are being followed by the Criminal Justice System of this countries. This paper also helps in understanding comparative criminal law in an efficient way, were the procedures of all three countries are being analysed which will help the readers to understand criminal laws of India, USA & UK.

“A society, which is based upon the letter of law, and never reaches any higher is taking very scarce advantage of high level of human possibilities. The letter of the law is too cold to have any beneficial influences on society. Whenever the issue of life is woven in legalist relations, there is an atmosphere of moral mediocrity, paralyzing man’s noblest impulses.”

- Russian Nobel laureate Solzhenitsyn

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INTRODUCTION

As rightly said by Emile Durkheim that, “Comparative sociology is not a separate branch of Sociology, but it’s a part of sociology”, for any comparative study it is very much required that the method adopted should be a scientific one. In the same context, Criminal Law demands much more than just a comparative study. The process of examining and studying of the comparative criminal procedure of different countries, not only helps us to understand the similarities and differences that exists in them, but it also makes us apprehend the punishments imposed for different crimes. Also, comparative study helps and as well as plays a predominant role in achieving certain goals such as accessing the criminal justice policies of the nations, coordinating transnational crimes, and extending theories of across the border.

In the current time when the globalisation is at its peak, it has become very much necessary to have a comprehensive understanding of thevarious legal systems across the globe. Given that, in this present write-up I will be analysing the criminal procedure laws of India, along with a comparative study of U.K and U.S.A.

INDIAN CRIMINAL JUSTICE SYSTEM

Unlike other jurisdictions (nations), the Indian judicial system consists of a single court system, wherein the Hon’ble Supreme Court of India being the apex Court of the country is bound to be the protector of the Indian Constitution.

Below the Apex Court, we have the High Courts at the State Level and under the High Court falls the District and Session Courts. Going further down, the Chief Judicial Magistrate is appointed to conduct trial in the criminal matters and the Executive Magistrates are appointed to protect law and order.

The Code of Criminal procedure (CrPC) 1974 which was enacted in the year 1973 and came into force on the 1st of April is an important legislation which consists of 484 Sections, 2 Schedules and 56 Forms. These Sections are divided into a total of 37 Chapters and the provisions help us to understand the procedure of investigation of crime, apprehension of suspected criminals, determination of punishment of the guilty, and so on.

INVESTIGATION IN INDIA

The entire process of Investigation plays a predominant role when it comes to the criminal justice system. It is during this time that the basic facts related to the crime are enquired and as such, it is very important that whenever an investigation is conducted, the same needs to be done with utmost fairness, efficient, and total impartially for attaining justice either from the point of the accused or even from the point of the victim.¹ In India we can see that the process of prosecution and investigation are both separate aspects of criminal justice administration, because after the implementation of

¹Arora B L, Law of speedy Trial In India, Universal Law Publishing co. Pvt. Ltd., 2006, p.90

Cr.P.C the investigating agency was separated by the police with the intention to ensure that the police would not have any form of control over the prosecution. But on the other hand, it is also a fact that it is also the exclusive duty of the police to determine whether a case needs to be sent to the court or not. Under Section 161 of Cr.P.C, the police officer is delegated with the power to examine the witnesses during the investigation period and after due investigation, the police officer shall submit a report under Section 171 of Cr.P.C.

TRIALS

Prior to enactment of the code of criminal procedure, the method of Jury Trial prevailed in India and when CrPC came into existence, trials in India were regularized to such an extent that they created a level of faith in the criminal justice system. One of the other reasons that added to its popularity was because of the reason that the proceedings before the magistrate could be done in 3 different ways, which were in the form of the summons case, warrant case and committal proceedings. The proceedings are based upon either a police complaint or a private complaint. In the event of a private complaint, the proceedings before the magistrate commences by taking cognizance of the offence.

In the event of a summons case, as per the summons issued, the accused needs to appear before the Magistrate and when the accused appears before the magistrate, the magistrate will read out the offences to the accused and the

accused is asked whether he plead guilty or not of the offences read out to him. In the event if the accused pleads guilty, it is left to the discretion of the magistrate to pass necessary orders and the magistrate would pass the sentence only after he is satisfied that the accused has pleaded guilty voluntary without any coercion, threat or influence. In the event when the accused does not plead guilty, then the magistrate will call for evidence from the side of the prosecution. After which, the accused will be questioned, and the statement shall be recorded under Section 313 of CrPC. This process means that the accused is given a fair opportunity to disprove the circumstances appearing in the evidence produced against him. After recording evidence from the defence side, the magistrate goes on to hear arguments from both the parties and based on all the above mentioned procedures, the magistrate will either convict or acquit the accused in order to protect the interest of fair justice. In the event of conviction, the sentence would be decided after deciding on the question of probation.

In the matter of warrant cases, based upon the police report, the magistrate hears arguments from both the sides and either the case will be discharged in the preliminary stage itself of the charges would be framed against the accused. Again, in order to either acquit or convict the accused, the magistrate will once again follow the similar procedure that was followed in the summons case. In case of warrant trial, other than the police report, after the appearance of the

accused, the magistrate would be recording the evidence and will hear both the parties and then decide on the acquittal or conviction.

In the case of committal proceedings, the matter will be exclusively dealt by the sessions court and after the accused appears before the sessions court, the magistrate will either acquit or frame charge against the accused. If charges are framed, then the court goes on to record evidence from prosecution and the accused will be questioned and the statement shall be recorded under Section 313 of CrPC. Later if the court considers that there is no evidence against the accused, then the accused will be acquitted under Section 232 of the code. If not acquitted, the accused shall be called to produce defence evidence, after which the order of sentence will be passed if the court feels that he has committed the offence.

CRIMINAL JUSTICE SYSTEM IN U.S.A

Unlike in India, the American judicial system has atwo-tier structure i.e. the Federal and the State, both of which are independent to each other. This structure is the outcome of U.S constitution which is blended towards the structure of federalism. Under the federal court system there is the Hon'ble supreme court of America and the inferior courts will always be formulated by the congress from time to time. The Federal court structure also consists of the district courts, and above these district courts, there exists the United States court of appeal, which has jurisdictions over several type of

matters. When it comes to the State court system, which usually handles the serious matters, it consists of a3-tier structure which handles both civil as well as criminal matters. These courts include the Magistrate Court, the Police Court, the County Court, the Municipal Court and many more. It is very interesting to see that no two states in United States have the same attire of state court system².

In lieu of the above-mentioned court structure, it is interesting to explain the criminal process that is adopted in federal country so called U.S.A. In the United States, the criminal process immediately starts when there is violation of laws and it extends till the arrest, trial, and appeal. There is no single tier of procedure that exists in U.S. courts. The act cannot be said as crime and it shall constitute crime only if it violates the laws passed by the congress. The State considers others crimes only mildly reprehensible, such as double parking or disturbing the peace, and consequently punishments of a light fine or a night in the local jail are akin to an official slap on the wrist.³ Like other countries, even in the U.S., "Mens Rea" is considered as an essential element of the crime⁴.

GRAND JURY PROCESS.

² George Clack (ed), Outline of the American Legal System, Bureau of International Information Programs, United States Department of State, 2004, p.92

³*ibid*

⁴ Judicial system in France, UK, US a comparison, <https://www.scribd.com/document/262743384/judicial-system-in-france-uk-pdf> accessed on 25-09-2020

As per 5th Amendment, every accused has the right to consider their matter before the jury panel, but the same is not binding on the states. However, more than half of the states in the U.S. adopt the grand jury process in some cases, wherein the prosecutor alone presents evidence to the grand jury. Not only are the accused and his or her attorney absent from the proceedings, but usually they also have no idea which grand jury is hearing the case or when.⁵ There will be more than 20 jury elected from the voters registration list randomly and their tenure may last from one month to a year.

INVESTIGATION AND PROSECUTION

The power to prosecute on behalf of people and to represent them is vested in the hands of the District Attorney and the District Attorney has an informal supervisory authority over investigators based on the investigator recognising that ultimately sanction of District Attorney will be required to prosecute certain cases or that undercharging may attract the attention of the District Attorney.⁶ There is also office of special prosecutor who helps in investigation. This office helps in attaining justice in the time when there is issues between the higher officials.

“Arraignment” is a process in which defence is brought before the court. The prosecutor in the open court will read out the offences to the

accused, similar to what the magistrate does in India and at this juncture it is left to the accused whether to plead guilty or not. The accused can plead guilty in the context of insanity or he can accept the facts narrated and prove it as not a crime within the context of law. If the accused pleads guilty, he will be sentenced as per the plea and in the event if he does not, then the judge will start the trial process.

PROCEEDINGS DURING THE TRIAL.

Similar to that of India, the justice system is adversarial in USA, but the major difference stands in the context of jury which is absent in India. The 6th amendment empowers for impartial jury system in USA. In a trial both the prosecution and as well as the defence will outline the objectives of their sides by way of an opening statement, which is done in the mediation process in India. An opening statement is neither a evidence in itself ⁷nor an argument⁸, but it only aims to allow the party to inform the court and the jury of the nature of his case and what he intends to prove⁹.

A legal trial at common law presupposes and generally is predicated upon the presence at all stages thereof of a presiding justice under whose direction the case is tried¹⁰. After which, the evidence collected by the state against the accused will be presented before the court from the prosecution side. Questions pertaining to the

⁵*Ibid* p.100

⁶Jayasankar.K.I., Investigation into Crimes - Supervision by Prosecutor, NALSAR Law Review, Vol. 4, No.1, 2008 – 2009, p.133

⁷ U.S. v. De Peri, C.A.3(Pa.)778 F.2d 963

⁸ State v. Bernier, 486 A.2d 147

⁹ People v. Roberts, 426 N.E.2d 1104

¹⁰ Carpenter v. Carpenter, 78 NH 440

propriety of the prosecuting attorney's conduct in examining or cross-examining witnesses must ordinarily be left to the sound discretion of the trial courts¹¹. In order to avoid the fabricating of witness evidence, the court has the power to direct other witnesses to move outside the court. This method is also followed in the courts in India during a trial. The District Attorney himself has the right to cross-examine the witnesses.

After the evidence of defence, the prosecution has a right to produce rebuttal evidence and the judge can accept the same and it is to be noted that the prosecution should not produce new matter which is not connected with the defence and it means that it should be directly related to the subject matter of the defence evidence. In the event when the prosecution in rebuttal is permitted to introduce new matter, the accused may and should be permitted to introduce evidence in sur-rebuttal¹². Under the Federal Rules of Criminal Procedure, once after closing of evidence, the prosecution shall be allowed to open the argument, defendant is then permitted to reply, and the prosecution is then allowed to reply in rebuttal¹³. It is the authority of the judge to propound questions to, and examine, witnesses for the purpose of eliciting facts material to the case¹⁴. If the judge finds that the

accused is guilty, then the accused shall be sentenced as per the laws prescribed for the offence which is been committed, and before passing the sentence, the court will analyse the probation post trial. The probation officer will give certain options about sentence which can be imposed by the judge¹⁵.

CRIMINAL JUSTICE SYSTEM IN U.K

Unlike USA there is no unified federal court structure in the U.K. England and Wales have one judicial system whereas Scotland and Netherlands have different system, which means all of them have different federal structures when it comes to the justice system. Interestingly, in matters related to immigration, a tribunal which is constituted shall have the power across the jurisdiction in U.K. The court of Appeal, High court of Justice and the Crown Court, are parts of Senior Courts which are established in England and Wales. High court of Justice consists of the Queen's Bench, Chancery division and the Family division.

High Court of Justice is the court of first instance. Again, the above mentioned three divisions do not divide the High court of Justice but instead the procedure followed is way different. Crown court has both powers to try civil as well as criminal matters, and also, there exists a separate court under the subordinate court that is called as the Youth Court which

¹¹Brown v. U.S., C.a., Cal., 222 F.2d 293

¹²Moore v. U.S., C.C.A.Ga., 123 F.2d 207

¹³ Lawrence J.Culligan & Milorad Nikolic, Corpus Juris Secundum, Vol.23A, West Publishing Co., St.Paul, Minn.,1989, p.149.

¹⁴ Glasser v. United States, 315 US 60

¹⁵ Judicial system in france, UK, US a comparision, <https://www.scribd.com/document/262743384/judicial-system-in-france-uk-pdf> accessed on 25-09-2020

deals with the offences committed by the offenders belonging to the age group between 10 to 17 years. In India the same is seen in the form of Juvenile Courts which were established under the Juvenile Justice Act, 2015 as a subordinate legislation under Code of Criminal Procedure, 1973.

INVESTIGATION AND PROSECUTION¹⁶

The British system continued to rely on the essentially private investigations and prosecutions until organised police services were legislated in the Nineteenth Century¹⁷. Establishment of Crown prosecution service in the year 1986 widened the jurisdiction of Office of the Director of criminal prosecution for England and Wales. Later the Royal Commission recommended that the Crown prosecution service will not have the power to supervise the police about investigation. In 2001, Auld report recommended that the responsibility about lay of charge should be transferred from the police to the government and Crown prosecution services. Before commencement of the criminal proceeding the prosecutor may require police to investigate further if the charging responsibility is on the prosecutor.

¹⁶ Judicial system in France, UK, US a comparison, <https://www.scribd.com/document/262743384/judicial-system-in-france-uk-pdf> accessed on 25-09-2020

¹⁷ Fiona Cownie, Anthony Bradney & Mandy Burton, English Legal System in Context, Fourth Edn., Oxford university Press, Oxford, 2007, p. 127

TRIAL

The Criminal trial can be conducted either as a summary trial or trials on indictment. With regards to mode of trials, there are three classes of offences which are as follows¹⁸:-

- An offence triable only on indictment is one for which an adult must be tried on indictment.
- An offence triable either way is one for which an adult may be tried either on indictment or summarily.
- An offence triable only summarily is one for which both adults and juveniles must be tried summarily

SUMMARY TRIAL

In U.K, Summary Trial is also called as Trial on Information. If the allegation is on two different individuals, then there will be a Joint Trial. This applies based on the Joint Principle Offenders, abettor, or the combination thereof. If the magistrate is of the view, then the single information which is alleging the accused can be combined with the other information relating to the accused in the interest of justice. In case accused pleads guilty then there is no need to call for evidence and the magistrate will directly move for the pronouncement of sentence. But in event if the accused pleads not guilty, then the prosecution makes an opening statement. Later

¹⁸ Christopher J. Emmins, A practical approach to Sentencing, Financial Training Publications Limited, London, 1985, p.5-6.

the prosecution evidence will be called, where the prosecution's representative will question carefully and there will be cross examination by the defence. In the event if the defence proves that there is no prima facie case against the accused, then the defence counsel may give the closing statement, after which the magistrate will either convict or acquit the accused. Where a person charged with having committed an offence not punishable summarily is brought before a magistrate's court, the court must hold preliminary inquiry for the purpose of determining whether, on consideration of the evidence there is sufficient evidence to put him upon trial by jury for any indictable offence¹⁹. This proceeding is conducted to ensure that no one shall stand trial unless there is a prima facie case against him²⁰. The trial on indictment is preceded as the committal proceeding which is before the magistrate court. The Magistrate will enquire into the offence and obtain the evidence of each witness, including the evidence of the witness. Such report is called as the deposition and as per the rule, the depositions will be read to the witness or the accused whomsoever the deposition is concerned, and the deposition will be signed by the concerned person²¹.

If the accused pleads not guilty of indictment, a jury is appointed to try this matter. The Lord Chancellor will summon the jury and each jury consist of 13 members in total. The prosecution counsel will call his witness to give evidence and the credibility of the witness can be questioned before he is sworn for giving witness. If no such objections are raised, then there will be examination in chief, once the witness affirms the oath. Later he will be further examined by defence counsel and re-examined by prosecution counsel. It is a general rule that "All matters of law are to be decided by the judge while all matters of fact are to be decided by the jury"²². Judge will not normally determine the question of fact; however in certain Gray matters in order to obtain evidence there will be need to determine the question of fact, normally the judge will hear the witness. This procedure is called "Trial within a trial" or "voir dire"²³.

At the time of passing the verdict the judgement should always be pronounced in the open court by the trial judge. Sentence in the crown court will be pronounced by the crown court judge by following the rules prescribed under Crown Court Rules 1982.

A COMPARISION

¹⁹ Lord Hailsham of St. Marylebone, Halsbury's Laws of England, Volume II (2), Butterworths, London, 1990, p.686

²⁰ R v. Epping and Harlow Justices, ex p Massaro [1973] I QB 433

²¹ Judicial system in france, UK, US a comparision, <https://www.scribd.com/document/262743384/judicial-system-in-france-uk-pdf> accessed on 25-09-2020

²² Richard May, Criminal Evidence, Sweet & Maxwell, London, 1986, p.23

²³Ibid.

The power of magistrate to investigate a matter was dealt in *Sakiri Vasu v. State of U.P.*²⁴ by the Hon'ble Supreme Court of India, "...the concept that the judge is not an Umpire, the broad interpretation of the power of the judge u/s. 165 of Evidence Act etc. are approaches towards an inquisitorial system". Even though all the three nations i.e. India, U.K., U.S.A. follow adversarial systems of trial, but still youwe can see the inclination towards the inquisitorial approach when it comes to jury trial regarding USA. I.e. we can find prosecution control on investigation. Interestingly it is only U.S.A. and U.K. who follow jury system. In India, CrPC, 1973 dissolved the concept of jury trial. But still we can find certain similarities and dissimilarities like session trial in India under Section 232 of the code resembles the close of no case from the accused after the closing of evidence from prosecution side. In USA there are federal as well as state courts in order to conduct trial with regard to criminal cases, but in U.K. there is no such liberty which means the Supreme Court of U.K cannot exercise its jurisdiction on the criminal matters of Scotland. Ever since plea bargaining came into existence in India there is a slit deviation from the conventional form of court proceedings. Which means plea bargaining is playing a predominant role in the criminal justice system of not just in India but other nations too.

CONCLUSION

²⁴*Sakiri Vasu v. State of U. P.*, AIR 2008 SC 907

Study of a foreign law is the second stage, but before making any comparisons on the first hand, we need to be thorough with the laws of our nation or else it is certain get misled. Even though Comparative criminal Law is aimed at comparing law of different nations across the world and assessing the criminal justice system of the nations, it demands more than just mere comparison, as its structure and goals are different from place to place. Along with giving us an insight of the different punishments across societies and the method in which they are executed, Comparative analysis enriches the understanding of the global criminal procedures and even though Comparative criminology has been an ever growing region to study and due to the reason that globalization has affected the field in numerous ways resulting in the increase in transnational crimes, it still feels that it is still in infant stage. In the Criminal justice system, even though till the stage of arrest, almost all nations have the same system, but post-arrest, things change.

To understand comparative criminal law in an efficient way, it is necessary to know the history of criminal law along with a deep insight of the society and its functioning. Humanity is not dead. The concept of punishment by way of imprisonment was introduced not to confine someone out of their comforts, but to provide them with an opportunity to realize and refine themselves and to understand their true potential. Instead of trying to eradicate criminals, focus should be given towards eradicating

crime. This can be done by educating the criminals and reforming them to a more refined individual. Law is proved to be effective in bringing exceptional changes in the society. As Law and society complement each other, in order to assure that there is compatibility, as and when there are changes in the society, it is very much necessary that law needs to be reformed, either by way of amendments or by enacting new legislations.