

## A COMPARATIVE OVERVIEW OF THE CRIMINAL JUSTICE SYSTEMS: INDIA, JAPAN, CHINA AND THE USA

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### ABSTRACT

*This article addresses the criminal legal administration and delivery of justice in the four major countries- India, Japan, China and the United States of America. The study aims to examine how these countries demonstrate the functioning of law enforcement agencies, highlighting their strengths and challenges. While countries like India and USA follow basically the adversarial system, highlighting the role of police, legal practitioners and the Courts, noteworthy to mention that countries like China adopt an inquisitorial system. Whereas, Japan adopts a blended approach of both adversarial and inquisitorial system. The 'presumption of innocence' is the foundational pillar of the Indian Criminal Justice system ensuring that the accused is presumed innocent until proven guilty. In contradistinction, the Chinese legal framework comparatively places less emphasis on this principle, often attributing significant evidentiary value to confessional statements of the accused. The reason behind this study is based on their global significance and varied approaches to their administration of criminal justice. This paper undertakes a doctrinal and comparative analysis of the criminal justice systems in the aforementioned jurisdictions while focusing on their broader implications for the lawful regulation and access to justice.*

*Keywords: Inquisitorial Systems, Criminal Laws, Criminal Justice Systems, Criminal Legal Administration*

- I. Introduction**
- II. Historical Developments of Adversarial and Inquisitorial Systems**
- III. Functional Dynamics of Criminal Justice System Operating Across the Following Countries**
- IV. Reflection on the Implementation and Effectiveness of Criminal Laws in various Countries**
- V. Findings of the Study**
- VI. Conclusion and Suggestions**

### I. Introduction

*Alexander Solzhenitsyn while commenting on justice states that it represents the conscience of the entire humanity. One who is able to identify his conscience also deems to identify what justice desires.<sup>1</sup>*

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Criminal Law aims at providing a secured and protective life for all people. For the State's smooth functioning and to support the autonomy of law, the system of an effective legal system is a sine-qua-non. The adversarial and inquisitorial system of criminal law administers justice in their own ways. The adversarial system of criminal justice system is followed in India in contradistinction to many Asian countries such as Nepal, China, and Japan etc. which followed the inquisitorial system since early history of the society.<sup>2</sup>

The Criminal justice system aims to provide reliefs to the victims in the form of restorative justice thereby punishing the wrong doers. It is a framework of laws, institutions, procedures etc. established to maintain social order and decorum. Further, it seeks to regulate the behavior and conduct of people, especially criminals. At the same time, it attempts to put the victim in an identical situation where he was prior to the filing of litigation, seeking for relief. This paper aims to present an in-depth analysis of the criminal legal administration and delivery of justice in India, Japan, China and USA and to draw a comparison between the functioning and effectiveness of the codes in these respective countries, thereby paving a way to provide suggestions for adopting beneficial provisions from such inquisitorial system suited to the circumstances depending upon facts.

It is the mandate of a welfare state to maintain peace and harmony in the society and hence proper execution and implementation of the procedural codes are a must to achieve the same. Fairness, justice and good conscience embodied in the natural justice principles are the basic tenet of the criminal justice system in all the states. Therefore, to realise that justice delivery system across nations smoothly functions, the law enforcing agencies has predominant role to play.

The system of Criminal Justice system operates at the three key levels- law enforcement, judiciary and corrections. The effectiveness and smooth functioning of the Criminal Justice system rests on a harmony between the enforcing the law and protection of individual rights while adapting to the dynamic requirements of the society. This paper highlights some context for discussions and reforms on the criminal procedure in the light of rule of law prevalent in India, Japan, China and the United States of America.

## **II. Historical Developments of Adversarial and Inquisitorial Systems**

The adversarial system is marked by certain key features. The system has its roots in ancient English common law. Safeguarding individual liberties, ensuring the rights of the accused for

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<sup>1</sup> Crime and Justice- Quotations, available at: <http://www1.udel.edu> (last visited on May 5, 2025).

<sup>2</sup> Yuvaraj Sangroula, Comparative Study of Criminal Justice System of China, India, Japan and Nepal, available at: <https://yubrajsangroula.com.np> (last visited on Dec 8, 2024).

fair trial and representation and presumption of innocence are the key facets of the adversarial system. Countries like India, Canada, Australia and South Africa follow this system of procedure.<sup>3</sup> The protection of life and liberty is recognized under Article 21 of the Constitution of India and has been identified as an essential human right throughout countries. It is the paramount duty of a welfare state to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace, law and order in the society. Substantive penal laws are enacted prescribing punishment for invasion of the rights and these can only be effective if the procedural laws for enforcing them are sufficient.<sup>4</sup>

In the inquisitorial system, the judge has a primary role in the process of investigation. In this system, the judge no longer sits as an arbitrator as opposed to the Indian system of criminal justice where the judge do not lead the case as it is the duty of the counsels to proceed with the case and discern the truth through proper evidence –oral or documentary, the admissibility of which depends upon the satisfaction of the court.<sup>5</sup> The onus of proof lies in the state and the case has to be proved beyond all shadows of reasonable doubt. In the inquisitorial system, the role of a judge in the investigation is that he sets a valuable decision of the case through interpretation of case with the legal principles.<sup>6</sup>

This system tends to treat the court, police and prosecution as parties to crime or partners in quest for truth or justice. The court can play active role in procuring evidence in the investigation of the case and the examination of the witness.<sup>7</sup> The accused is presumed to be innocent and it is the duty of the judge to discover the truth. The judge records the statements of witnesses that may form the basis for the prosecution case during final trial. The accused and the victim are entitled to participate in the hearing before the trial court judge. The standard of proof required is the inner satisfaction or conviction on the part of the judge and not proof beyond reasonable doubt as in the case of adversarial system. Another distinguishing feature of inquisitorial system is that in respect of serious offences, the

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<sup>3</sup> Adversarial and Inquisitorial Systems: Key Differences, available at: <https://lawbhoomi.com>> (last visited on Dec 16, 2024).

<sup>4</sup> Committee on Reforms of Criminal Justice System, available at: <https://www.mha.gov.in>> at 23-24 (last visited on January 5, 2025).

<sup>5</sup> *Id.*

<sup>6</sup> Rajit Bhakta Pradhananga, Diwakar Bhatta, Inquisitorial and Adversarial Legal System: Concept, Content and Major Differences, available at: <https://www.nepjol.info>> nlr (last visited on Dec 12, 2024).

<sup>7</sup> Anand K Deshmukh, Adversarial and Inquisitorial Modes of Criminal Justice System: A Comparative Analysis International Journal of Legal Science and Innovation, Vol,2, Issue 2, at 71-72

investigation is done under the supervision of an independent judicial officer who is responsible for gathering evidence backing as well as countering the accused.<sup>8</sup>

The Penal Code and Rules of Criminal Procedure in Japan gives an overview of the criminal legal system of Japan. The Court system in Japan consists of summary courts, district courts, family courts and the Supreme Court of Japan. The role of the public prosecutor is to present the facts and information to the court in order to establish the guilt of the defendant in accordance with the provisions of law. The decision to plead 'guilty' or 'not guilty' is entirely the decision of the defendant. The criminal justice procedure is set in motion by the investigation of the authorities. The investigation is affected by reports and notifications from the victims or witnesses of crimes, police interviews, questioning, complaints, accusations etc. depending upon the types and nature of the case of offense.<sup>9</sup>

### **III. Functional Dynamics of Criminal Justice System Operating Across the Following Countries**

#### **India**

The evolution of Criminal Justice system in ancient India can be traced from the concept of 'Dharma'.<sup>10</sup> The main goal of 'Dharma' is to regulate human behavior and it originated from the Vedas.<sup>11</sup>

The following verse is significant to showcase the existence of a just humane society which lingered around 'Dharma'.

“There was neither kingdom nor the king; neither punishment nor the guilty to be punished.

People were acting according to Dharma; and thereby protecting one another”.<sup>12</sup>

In ancient India, the Vedas in Hindu jurisprudence was the first source of Dharma which recognized law as a mighty instrument for the protection of individual rights and liberties. The 'Dharmasutras' and 'Dharmashastras' respectively provided guidelines for individual conduct and social order.<sup>13</sup> This has relevance with the functioning of the criminal law in

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<sup>8</sup> *Supra* note 5 at 25.

<sup>9</sup> Criminal Justice System of Japan, available at: <https://www.scribd.com> (last visited on Jan 18, 2025).

<sup>10</sup> Ankush Talwar and Kamakshee Khajuria, Dharma as Law and Justice: Increasing Religious Crimes in India, available at: <https://www.legimatescutiny.com> (last visited on May 8, 2025).

<sup>11</sup> Concept of Dharma and Dharma in Indian Jurisprudence, available at: <https://www.ijraset.com> (last visited on May 8, 2025).

<sup>12</sup> Rahul Tripathi, Evolution of Criminal Justice System in ancient India, International Journal of Multidisciplinary Research and Development, Vol. 5, Issue-1, at p. 153.

<sup>13</sup> Dharma and Natural Law: An Investigation of their influence on Ancient Indian Legal Systems, available at: <https://www.lawctopus.com> (last visited on May 3, 2025).

India in the present times in relation to the ideals of justice which is influenced by moral responsibility and community harmony, having its roots in Indian legal culture. The ‘dandaniti’ played a crucial role in the criminal legal administration as it related to policies of punishments.<sup>14</sup> With the advent of colonial rule, there was a birth of secular legal structure and uniformity and there was an overall acceptance of these British laws due to the inconsistencies of law prevalent among the hindus and muslims. The Indian legal philosophy again took a progressive mindset with the induction of Bharatiya Nyaya Sanhita. The transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita marking a paradigm shift from a punitive framework to restorative and justice oriented approach resonates profoundly about the changes in approach regarding punishments and restoration of justice. This also marked a shift to victim-centric approach rather than accused –centric in the Indian criminal justice system.<sup>15</sup>

The primary reason of the ruling party for introducing new Criminal laws in India was to increase the rate of conviction in criminal litigation to above ninety percent. The intended goal of the criminal justice system of the country was to make the system technologically adept, transparent and swift, credible and accountable and justice driven. Japan and China reports 99.9 percent conviction rate while UK and USA reports 80 percent conviction rate. It is evident that the conviction rate in India is extremely low.<sup>16</sup> In India, the public prosecutors play a tokenistic role in deciding the feasibility of cases. Therefore, the innocent persons are taken into custody and then released after long time due to lack of evidence. The offices of the public prosecutors in India are hardly paid attention to and hence the prosecution at times remains oblivion and ineffective due to which the ends of justice remains unmet. The new criminal laws seek to streamline the significant provisions to ensure greater contemporary relevance and speedy justice.<sup>17</sup>

The components of the criminal administration and justice delivery system in India are- Police, Prison, Prosecution and Courts. In India, the liability of gathering evidence rests with the parties and a duty is vested on the court for sovereign appraisal of the evidence collected during the investigation. During the trial, the prosecution and the defense submit their variant of events and argue their case in front of a judge. Unless the contrary is proved, the accused is

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<sup>14</sup> *Supra* note 9 at 157.

<sup>15</sup> The Role of Victim Rights in Bharatiya Nyaya Sanhita 2023, LexisNexis.

<sup>16</sup> Deepika Kinhal, Systematic assessment should precede criminal law reforms, *available at*: <http://judiciariesworldwide.fjc.gov> (last visited on January 1, 2025).

<sup>17</sup> *Id.*

presumed to be innocent and since the accused can avail the benefit of doubt, there are fair chances of acquittal.<sup>18</sup>

Framing of charge is the basic requirement of criminal justice system which involves the allegations made by the prosecution based on the evidence received. In the process of trial, evidence is presented to prove and disprove the case from the ends of prosecution as well as defence. The Apex Court of the country in the case of *Ram Prakash Chandra v. The State of Uttar Pradesh* reported in 2024 Livelaw (SC) 475 that “In short, though it is permissible to shift and weigh the materials for the limited purpose of finding out whether or not there is a prima facie case against the accused, on appreciation of the admissibility of evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232 Crpc available only after taking the evidence for the prosecution and examining the accused.”<sup>19</sup>

The Malimath committee envisaged that even though the foundation of the criminal justice system is police investigation but the adversarial system does not compel the judge to undo the anomalies in the investigation with the endeavor of discovering the truth. Considering these lacunas in the system, the Committee in its report in 2003 laid down the foundations for a restructured criminal justice system. The judges in India only acts as a referee to see whether the case has been proved beyond all shadows of reasonable doubt.<sup>20</sup>

Capital Punishment is the highest legal penalty in India though it has been abolished in countries like UK, Canada, Australia and so forth which are developed. NCRB data reveals that capital punishment was awarded to 121 numbers of prisoners.<sup>21</sup> Even in Japan the capital punishment is still a legal penalty. Recidivism rate in India is lower when compared to developed countries of the world according to ‘Crime in India 2016’. But it is an issue of great concern in the United Kingdom and United States of America.<sup>22</sup> The current rate of recidivism in India has been decreased from 8.1 percent (2015) to 6.4 percent (2016). The low rate of recidivism is not because of the improvised rehabilitation techniques in India but because of the low conviction rates. According to National Crime Bureau (NCRB), the

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<sup>18</sup> K.N Chandrasekhar Pillai, R.V Kelkar’s Criminal Procedure Code, 7<sup>th</sup> edn, 2021.

<sup>19</sup> Workshop of Judicial officers on Criminal Law – Practice and Procedure, at p.62, available at: <https://cdnbbsr.s3waas.gov.in> (visited on April 21, 2025).

<sup>20</sup> Ankita Chakraborty and Dipa Dube, ‘The Quest for Truth in Criminal Justice – Revisiting the Malimath Committee Recommendations’, Indian Journal of Criminology, Vol.46 and 47, 2018-2019 at pp.5-8.

<sup>21</sup> S. Manikandan and K. Jaishankar, ‘Recidivism Among Prisoners in Tihar Jail and Contributing Factors: A Qualitative Study’, Indian Journal of Criminology, Vol.46 and 47, 2018-2019 at 46-47.

<sup>22</sup> *Id.*

current conviction rate in India is 46.8% (Crime in India, 2016) which includes the only cases registered under Indian Penal Code and excludes cases registered under special and local laws. On the other hand the pendency of cases registered under IPC for the year 2016 is 87.45 which affect both conviction rate and the rate of recidivism in India.<sup>23</sup>

## Japan

The criminal law system of Japan is marked by a combination of legal traditions influenced by German, French and Anglo-American systems, adapted to Japanese culture and societal norms. The basic rights related with the criminal justice system maintain an effective check against the arbitrary exercise of power by the police in course of arrest and detention. The Japanese police system is based on a democratic framework and is in itself a guarantee against arbitrary use of power by the police.<sup>24</sup> Based on the provisions of the Constitution of Japan and the Code of Criminal Procedure, it can be stated that Japanese police can arrest only if the judicial officer issues a warrant. No arrest or detention orders can be made by police officers or public prosecutors on its own motion. This acts as a check mechanism on the arbitrary use of the power by police officials in Japan. Beyond seventy two hours the detention of suspect may be lawful only if the court agrees to grant warrant for the same. But, the public prosecutors make multiple arrests on new charges to induce confession. Often confessions are outcomes of coercion in Japan as a result of lengthy detention and many are often convicted of the crimes, they have not committed.<sup>25</sup>

Japan is a signatory to the international human rights instrument- International Covenant on Civil and Political Rights. It states that anyone detained on a criminal charge be promptly charged before a court. The United Nations Human Rights Committee, an international expert body that provides authoritative analysis of the Covenant has stated that any accused should be produced before a judge within forty eight hours and in case of delay it has to be justified on a rational basis giving sufficient reasons for the same.<sup>26</sup> The judge is not empowered to provide bail in cases he has imposed pre-indictment detention.<sup>27</sup>

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<sup>23</sup> *Supra* note 21.

<sup>24</sup> Art 31 of the Constitution of Japan declares that a person can be deprived of his life and personal or if any penalty is to be imposed on any person, it shall be done only as per procedure established by law. Whereas, Art 33 states that while arresting a person, a warrant of arrest shall be issued by a competent judicial officer where the specific offence must be mentioned in relation to the charge made.

<sup>25</sup> Hiroshi Fukurai and Kaoru KurosawaI, Impact of the popular legal participation on forced confessions and wrongful convictions in Japan's bureaucratic courtroom: A cross-national analysis in the US and Japan, *US-China Law Review*, July 2010, Vol.7, No.7, ISSN 1548-6605, USA.

<sup>26</sup> Japan's Hostage Justice System, *available at: [www.hrw.org](http://www.hrw.org)* (last visited on January 1, 2025).

<sup>27</sup> *Id.*

The role of the police is confined only to investigation of the crime. The public prosecutors can investigate all categories of cases on their own. They may proceed on their own without seeking the help of police and other enforcement agencies. If there are enough reasons for the public prosecutor to find the person guilty, seeking a warrant of detention, he may approach the court. An important fact worthy of mention that the police could hardly misuse their powers as the detention is subject to approval of a judicial officer. In Japan, a uniform procedure is followed in criminal prosecution under the Constitutional law on the basis of the Code of Criminal Procedure, 1948 and the Rules of Criminal Procedure. It reflects Anglo-American legal concepts which are crucial from the view point of protection of human rights.<sup>28</sup>

The police after completion of the investigation should immediately intimate the facts to the public prosecutor. The evidence and the relevant data collected by the police should also be referred to the public prosecutor. The case must be handed within forty eight hours to the public prosecutor when an issue revolves around confining of suspects and after that decision regarding pre-trial detention is taken. A large number of discretionary powers are provided to the public prosecutors in Japan with a view to control and direct criminal cases.<sup>29</sup> The prosecutors investigate where highly posted government officials involved in bribery and corporate crimes committed by executives done in breach of trust. Public prosecutor's power has been increased due to increasing number of special crimes.<sup>30</sup>

Trials are inquisitorial rather than adversarial due to the active role of the judges in determining facts. Suspects can be detained up to twenty three days without formal charges but this process is criticized due to abusive coercion and interrogation.<sup>31</sup> The conviction rate is extremely high in comparison to the SAARC region. Fair trial is the basic principle practiced in Japan and it aligns much to the procedure followed in Nepal because the concurrence of the trial court is mandatory.<sup>32</sup> Often known as a peace loving country, Japan has one of the lowest crime rates in the world and this is because of the the strong social cohesion, community policing and cultural emphasis on harmony. Japan prioritizes peace and stability. Henceforth Japanese values and social order influences attitudes towards conflict

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<sup>28</sup> Richard B. Appleton, Reforms in Japanese Criminal Procedure Under Allied Occupation, Washington Law Review, Vol 24, available at: <https://digitalcommons.law.uw.edu> (last visited on May 21, 2025).

<sup>29</sup> Art 248 of Japanese Criminal Procedure Code.

<sup>30</sup> Tadashi Moriyama and Takushoku, World factbook of Criminal Justice System, available at: <https://bjs.ojp.gov> (last visited on January 24, 2025).

<sup>31</sup> Arrests in Japan, available at: <https://japan.embassy.gov.au> (last visited on January 23, 2025).

<sup>32</sup> Yabaraj Sangroula, Comparative Survey of Investigation Systems in china, India, Japan and Nepal: Some Challenges and Best Practices, available at: <https://yubarajsangroula.com.np> (last visited on January 21, 2025).

resolution.<sup>33</sup>The Supreme Court, in the Shimoda case,<sup>34</sup> emphasized on the rights of the accused to fair trial and justice wherein the court concluded that the atomic bombings were unlawful under international law violating the Hague Conventions.<sup>35</sup> In Ashikaga case, wrongful conviction and coerced confessions brought into limelight the issues of public scrutiny.<sup>36</sup>

Healthcare services in Japan's penal detention facilities are understaffed and overstretched. The UN Standard Minimum Rules for the treatment of prisoners provide that prisoners 'should enjoy the same standards of health care that are available in the community'.<sup>37</sup>The suspects in Japan are detained for long and arbitrary periods and sometimes even for months or over a year to obtain confession which puts forth that the problems are very vast, ingrained and deeply rooted.<sup>38</sup>

## China

The basic principle of criminal justice that prevailed during the Maoist period was the so-called 'leniency' with those who confess and 'severity' with those who resist. Those who refuse to accept guilt would be awarded severe punishment and those who attempt to appeal a guilty sentence would most likely result in a more severe sentence. But, after the death of Mao, a new Criminal Procedure Code in 1979 was enacted with total 192 sections which specify the types of acts subject to criminal liability. The pre-trial proceedings of the Chinese criminal proceedings are composed of two principal parts- arrest and detention and investigation. The police must produce warrant in making an arrest. Article 5 of the Arrest and Detention Regulations states that the family of the detainee or the arrestee should be notified the reasons of arrest and place of confinement within twenty four hours unless there is an apprehension that such notification might hamper the investigation.<sup>39</sup>

China's criminal justice system is characterized by public security agencies, the people's procuratorates, the people's courts and the ministries of education, justice and public security. In USA, there are attorney general and public prosecutor which is similar to the people's

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<sup>33</sup> Establishing Japan as a "Peaceful Nation of Cultural Exchange", available at: <https://japan.kantei.go.jp> (last visited on January 1, 2025).

<sup>34</sup> Ryuichi Shimoda et al. v. The State, 1955.

<sup>35</sup> Solitary Death of actress Shimada underscores disturbing trend, available at: [www.asahi.com](http://www.asahi.com) (last visited on April 21, 2025).

<sup>36</sup> The Ashikaga case of Japan-Y-STR testing used as the exculpatory, available at: <https://www.fsignetics.com> (last visited on April 23, 2025).

<sup>37</sup> *Supra* note 10.

<sup>38</sup> *Id.*

<sup>39</sup> China's Criminal Justice System and the Trial of Pro-Democracy Dissidents, pp. 3-5 available at: <https://digitalcommons.law.umaryland.edu> (last visited on February 2, 2025).

procuratorates in China.<sup>40</sup> During the investigation stage, the tasks for law enforcement officers include interrogation of the accused and witnesses, search and seizure of property, examination of evidence and preparation of indictment. The Code of Criminal Procedure directs that police, judges and procurators are strictly forbidden from extorting confessions by the use of torture, threats, enticement, deceit, or any other illegal means.<sup>41</sup> This procedure aligns with the delivery of justice as prevalent in India.

Both the citizens of China and foreigners are subjected to Chinese criminal law whenever crime is committed within the territory of China. The police in China can arrest the suspects for up to thirty seven days before the prosecutor approves the arrest. After a person is detained, the police files normally within three days and make an arrest request for the prosecutor's review and approval. Under special circumstances, the filing time can be extended by one to four days. An important feature about Chinese law is that it does not recognise the right to remain silent, marking a significant deviation from the legal systems of India and the U.S.A.<sup>42</sup>

Chinese Criminal Justice system is characterized by long periods of investigatory detention, high confession rates and administrative penalties that tantamount to incarceration without trial. The suspects of any offence do not get the benefit of 'presumption of innocence' and this is in contradistinction to the laws in India and the USA, where the accused is always presumed to be innocent unless otherwise proved. In Chinese criminal justice system, the accused have no right to refuse interrogation, no matter what.<sup>43</sup> Noteworthy to mention that in India, the accused can refuse to answer irrelevant questions and seek protection under Article 20 (3) of the Constitution which deals with rule against self incrimination.<sup>44</sup> Access to counsel in China is extremely limited in the investigatory phase of a case and although there is a right to counsel at trial, that right is circumscribed by the absence of pre-trial discovery along with the limited ability of the defense to conduct its own investigation.<sup>45</sup>

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<sup>40</sup> R.A Myren, Criminal Justice System of China, Justice Reporter, Vol. 2, Issue:4, available at: <https://www.ojp.gov> (visited on April 21,2025).

<sup>41</sup> *Id.*

<sup>42</sup> Qi Zhang, Study on the right of silence system in China, available at: <http://www.dl.edi-info-ir> (last visited on May 20, 2025).

<sup>43</sup> Ira Belkin, China's Criminal Justice System: A Work in Progress, Yale Law Journal, at 62-64.

<sup>44</sup> Khagesh Gautam, The Right Against Self-Incrimination Under Indian Constitution and the Admissibility of Custodial Statements under the Indian Evidence Act, 1872, available at: <https://www.repository.law.indiana.edu> (last visited on May 20, 2025).

<sup>45</sup> *Supra* note 42.

In China, the court plays a predominant role in investigating evidence unlike USA and UK which parties collect and present before the court to establish their respective cases. However, Chinese Courts can request additional evidence for the right and justice. The burden of proof in the common law countries remains with the persons who alleges but in China even though the initial burden remains with the person who raises the allegations, interference by the judges to assess and shift the burden makes the process more collaborative rather than adversarial.<sup>46</sup> Just like India, China too follows the burden of proof principle while in India this principle is much stricter.<sup>47</sup>

The case of Astellas Pharma espionage in 2023 highlighted many challenges in gathering evidence, raising doubts on the fairness and transparency of the legal proceedings. The accused has to face punishment for indefinite period beginning at three years of imprisonment if an espionage charge is proved against him.<sup>48</sup> Under Chinese judicial system, the formal arrest of a suspect triggers a more intensive investigation by prosecutors before charges.<sup>49</sup>

The concept of ‘rule of law’ is officially recognized in China and it could be described as eventual goal. Under China’s central government model, the criminal legal administration and justice delivery system is more uniform throughout the country with just one criminal code and one criminal procedure law. In China, Public Security Bureau investigates most of the crimes as that forms a segment of executive branch of the government. Criminal offences committed by government officials are investigated by the Procuratorate. The procuratorate also has a government employees’ misconduct unit which investigates other criminal conduct committed by government workers in their official capacity. It is also worth mentioning that under Chinese legal system, the police has wide discretion to decide. The police may also send a person to labour camp without judicial interference.<sup>50</sup> This is however illegal in India where the police cannot detain any person or send them in any camps unless the judicial proceedings states so. In India, as soon as a person is arrested, he has to be produced before a judicial magistrate within twenty four hours.

## United States of America

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<sup>46</sup> Burden of Proof in China: Legal Framework and Compliance Guide, 2025 available at <https://www.chinalegalexperts.com> (last visited on April 21, 2025).

<sup>47</sup> *Id.*

<sup>48</sup> Chinese ambassador says Astellas Pharma incident involved spying, available at: <https://www.staitstimes.com> (last visited on April 24, 2025).

<sup>49</sup> Kiyoshi Takenanka and Kaori Kaneko, China formally arrests Asthellas employee suspected of spying, Japan urges release, available at: <https://www.reuters.com> (visited on April 25,2025).

<sup>50</sup> *Supra note* 26 at 63.

There is a federative structure in the United States, the federal government and the states prescribe their own criminal justice processes, federal criminal procedure law and fifty different state jurisdictions. In U.S.A, there are two parts of criminal procedure procedure-pre-trial i.e. investigatory process and trial i.e. the adjudication process. The USA follows an adversarial system of justice just like India. The defendant has to simply prove that he did not commit the crime. Both the sides are to present their cases and then it goes to the jury. The jury after taking into consideration all the facts and circumstances and the relevant rules decide the cases on merit and pronounce the verdict in the jury room. If the accused is convicted by the jury, he has the right to appeal.<sup>51</sup>

In the United States of America, plea bargaining takes place even in heinous crimes such as homicide. Once the defendant pleads guilty, the court recalls its rights. The parties participate in a discussion in which they try to agree on a particular sentence range. Once they have agreed upon the terms and conditions, the case is disclosed in an open court. The authority is vested upon the court to accept or reject the petitions for plea bargaining.<sup>52</sup>

The following phases of the criminal justice system in the U.S.A may be discussed as follows:<sup>53</sup>

**Police-** The police shall secure a search warrant before search. The US Constitution under the fourth amendment states that a probable cause shall be established before the police make a search of person's property or belongings however having certain exceptions. An impartial judge is required to issue search warrant to conduct search and that is required to substantiate due process. The beginning is arrest and then investigation when crime is committed.

**Courts**<sup>54</sup> – The subsequent component of justice delivery system in relation to crime are the Courts. The court's main functionaries are prosecutors, defense attorneys, judges and a reasonable jury of one's peers. The court ultimately decides the charges to be fixed on the offender. The officer then intimates to the district attorneys review. Thereafter, the district attorney determines the kind of charges filed against the accused. The offender is also informed of regarding his rights under the Constitution. Further, the accused is informed that

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<sup>51</sup> Analysis of Laws Relating to Criminal Procedure in India, USA AND UAE, *available at*: <https://enhelion.com> (last visited on January 24, 2025).

<sup>52</sup> *Id.*

<sup>53</sup> Alison S. Burke, David Carter, Shanell Sanchez, Introduction to the American Criminal Justice System, The Three C's: Cops, Courts and Corrections at 29-30

<sup>54</sup> *Id.* at 30-31.

he is having the right of legal attorney. The accused then enters into pleading guilty or not and accordingly date is fixed for trial.

Sometimes, if the defendant opts for pleading guilty, plea bargaining may be given. As the defendant admits his guilt, they agree that they are liable to be sentenced by the judge. But, with the increasing number of cases, with every passing day, plea bargains have become a 'necessary evil.'<sup>55</sup> Over the time, minimum and maximum punishments are fixed by the Congress. The United States Sentencing Commissions has also prepared set criterion that recommended certain penalizing principles for various crimes while taking into consideration different factors. The judges therefore, look into the pre-sentence report and take into account statements of the victims as well as the accused and lawyers. The judges consider a number of factors while deciding any case like whether the offended has repeated the offence is habitual one or whether he expresses regrets over his acts of commission of the crime and so forth.

**Corrections-** Once the defendant's culpability is proved, the correctional system assists to carry out the court's order of punishment. The accused may be imposed with a fine or may be put behind bars at either jail or prison where sentence is to be served under the supervision. The correctional system assists former inmates with prisoner re-entry or reintegration into the societal framework through parole, community based supervision or serving time on closed environment and may also require drug testing assistance for searching employment, education and social support.<sup>56</sup> The correction system nationwide involves employment of many individuals and large expenditures of public funds. The correctional functions are handed by agencies like Department of Corrections, the Board of Pardons and Parole, Adult Probation and Parole and the Department of Social Sciences, Sheriff's office jail staffs and juvenile probation units. In addition, there are private correctional facilities where juveniles can be placed voluntarily by parents.<sup>57</sup>

The process of evaluating the evidence is in some way subjective. Forensic evidence is the most impactful. Some eyewitness identification has inherent reliability concerns though it still continues to be influential. The value of evidentiary package may be assessed by the number of different pieces of evidence that prosecutors are able to marshal in the guilt phase. These may include police witnesses, eye witnesses, confessions by the accused persons and physical evidence connecting the defendant to the crime. In *Daubert v. Merrell Dow*

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<sup>55</sup> *Id.* at 29-30.

<sup>56</sup> *Id.* at 33-34.

<sup>57</sup> The Criminal Justice System, chapter 5 at p.12, retrieved from <https://www.uen.org> (last visited on 28.01.2025).

*Pharmaceuticals* (1993), the Supreme Court formulated fresh norms and standards for determining the admissibility of scientific expert opinion in court.<sup>58</sup>

#### **IV. Reflection on the Implementation and Effectiveness of Criminal Laws in various Countries**

In Japan, the public prosecutors enjoy wide discretion while conducting any criminal investigation. The very purpose of interrogation is to make the accused confess his guilt. It cannot be denied that though the police control is restricted because of the extensive role played by the prosecutors, the confession is often induced by threat and coercion which further gives rise to abuse of the process of criminal investigation. The suspect is severed from his kith and kin in order to extract confession for a period of twenty three days and during this period; the suspect has to face interrogation of varying degrees.<sup>59</sup>

Police responsibilities under the Police Act include protecting the lives, bodies and property of individuals, preventing suppressing and investigating crimes, apprehending suspects, traffic enforcement and ensuring public safety and order. The police also maintain close proximity with the local communities which help them to prevent crimes, handle lost property, give guidance to juveniles, aid people while happening of disasters, provide care for lost children and runaways and also offer counseling to help citizens solve their problems.<sup>60</sup>

In India, the police play a major role in criminal investigation and hence police torture is quite evident there. But, it is pertinent to note that in India, confession before police is not independent or exclusive. It is to be deposed before a judicial magistrate to become admissible. The National Police Commission has given a more detailed list of duties for the police, which includes-<sup>61</sup>

- a) Promoting and protecting public order.
- b) Investigating crimes and arresting wrong doers.
- c) Identifying situations that could lead to a crime being committed.
- d) Reducing the chances of crime through preventive measures.
- e) Collaborating with other relevant agencies to prevent measures.
- f) Assisting individuals at risk of physical harm due to crimes.

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<sup>58</sup> Esther NIR, The Role of Evidentiary Weight in Judicial Sentencing Determinations, *available at: <https://rucore.libraries.rutgers.edu>* (last visited on April 21,2025).

<sup>59</sup> *Supra* note 1 at 15-16.

<sup>60</sup> Police of Japan, *available at: <https://www.npa.go.jp>* (last visited on February 22, 2025).

<sup>61</sup> Sumit Nain, Role of Police in Criminal Justice System- A Study in Indian Perspectives, *International Journal of Creative Research Thoughts, An International Open Access, Peer Reviewed Journal, Vol. 12. Issue 5, 2024 at p.5.*

- g) Creating and maintaining a sense of security.
- h) Providing essential services and assistance to individuals in distress.
- i) Collecting intelligence related to issues affecting public harmony and crimes overall.
- j) Performing other duties as mandated by law.

While Indian legal system is a mix of statutes, regulations like the Bharatiya Nayaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and the Civil Procedure Code, the Code of Criminal Procedure of Japan states that on the commission of an offence, the offender shall be investigated and evidence shall be collected by the police. The police authorities do not only investigate offences under penal code but also all illegal as declared under Japan's criminal judicial system. The Prosecutors in India acts as a representative of the state government as they do not take prime role on investigation like in Japan where the prosecutors have wide powers and control over the criminal justice system. In India, however, the police after conducting the necessary investigation, present evidence to the prosecutors.<sup>62</sup>

In USA, the criminal law is set in motion immediately whenever there is a violation of laws. Both the prosecution and defense outline the objectives of their sides. Mens rea is an important element of crime and this aligns with many other countries in the world including India. The grand jury system holds an important place in the justice delivery system in USA as per the Fifth Amendment to the Constitution. However, the decision of the jury system is not binding on the states.<sup>63</sup> In China also, the criminal law is set in motion involving different stages including investigation, prosecution, trial and sentencing.<sup>64</sup> Slavery was abolished by the 13<sup>th</sup> amendment of US Constitution except in the form of punishment and it aligns to the community service in India as it is an unpaid work for the benefit of the community.<sup>65</sup>

The Chinese criminal justice system heavily relies on confessions which should be subject to scrutiny at times. Another significant thing to mark is that the guarantor of bail in Chinese legal system undertakes to bear heavy risk as his personal property becomes liable to be attached if the accused doesn't present him before the court. The guarantor may also be liable for arrest under certain circumstances. A suspect may be on bail awaiting trial for up to

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<sup>62</sup> *Id.*

<sup>63</sup> Pavan Kumar and Sneha Kataria, Comparative Study of Criminal Procedure Laws in India, USA and UK, Indique Law Journal, Vol.I, Issue 3.

<sup>64</sup> Form and Function in the Chinese Criminal Process, available at: <https://scholarship.law.columbia.edu> (visited on April 21, 2025).

<sup>65</sup> Thirteenth Amendment to the US Constitution : Abolition of Slavery, available at: <https://www.archives.gov> (last visited on May 20,2025).

twelve months or under house arrest for up to six months.<sup>66</sup> Wider economic reforms in China and subsequent changes in its legal system have also affected the nature and consequences of criminal confessions.<sup>67</sup> The Chinese legal systems also emphasizes that the confessions should not be induced by coercion and must be voluntarily made to serve as a crucial form of evidence for conviction.

## V. Findings of the Study

The criminal justice system plays a pivotal role in maintaining peace and security of the state. Reform, transparency and accountability are essential tools to ensure the smooth functioning of law and order in the society. Rule of law in collaboration with social justice and equity should work hand in hand to ensure the smooth running of the state machineries and all efforts should be to attain the fruits of justice. Law should cater to the changing needs of the time.

Criminal legal system in China is influenced indirectly by confucianism as it focuses on social order and preventing future crime.<sup>68</sup> In China, confucianism stressing on public interests and social harmony is embodied in the legal cultural values whereas in the United States of America, ‘the right to silence’ is moulded by strong individualism. The USA’s criminal justice system is based on the principle states ‘Nemo tenetur seipsum accusare’, meaning ‘nobody shall be compelled to accuse himself’.<sup>69</sup> In contradistinction, the Chinese legal system under criminal law relies heavily on truthful confessions, reflecting a signal of repentance in moral attitudes. But it is pertinent to note that the accused will be labeled as an evil doer if he refuses to confess.<sup>70</sup> ‘Rule against self incrimination’ in India under Article 20(3) of the Constitution recognizes protection to the accused as it directly states that the accused cannot be compelled to be a witness against his own self. The similar provision finds mention in the fifth amendment of the US Constitution which provides- ‘No person shall be

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<sup>66</sup> Ire Belkin, China’s Criminal Justice System: A Work in Progress, *available at: <https://law.yale.edu>* (last visited on April 23, 2025).

<sup>67</sup> Terance D Miethe, Confessions and Criminal Case Disposition in China, *available at: <https://www.jstort.org>* (last visited on May 16, 2025).

<sup>68</sup> The Confucianization of Law and the Lenient Punishments in China, *International Journal of Criminal Justice Sciences, available at: <https://ijcjs.com>* (last visited on May 21, 2025).

<sup>69</sup> Honglan Shuai, Obligation or Right? A Historical Comparison of the Criminal Confession System between China and the USA, *available at: <https://www.scrip.org>* (last visited on May 21, 2025).

<sup>70</sup> *Id.*

compelled in any criminal case, to be a witness against himself'.<sup>71</sup> Japan's 'coerced confession' is often criticized and it has led to the abuse of the criminal justice system.<sup>72</sup>

In India, the public prosecutor's role is limited as they do not indulge in providing guidance to the police in framing charges, preserving evidence and ensuring legal compliance by drawing their attention to the countries like Japan where the prosecutors are actively involved in the process of investigation right from the very beginning. Specialized training models for the prosecutors can be developed in India too to ensure fairness and competence in the trials. It is pertinent to note that many Indian states are yet to have directorate of prosecution so the process in this regard should be expedite in order to ensure accountability and justice.<sup>73</sup> In USA, the public prosecutors represent the state in criminal proceedings while in Japan, when new charges are made, the prosecutors try for new arrests to induce confessions.<sup>74</sup>

The Law Commission in its 154<sup>th</sup> report highlighted the need for the protection and facilities to the witnesses for the enhancement of conviction rate in India.<sup>75</sup> It recommends the introduction of a scheme for concessional treatment of offenders who voluntarily plead guilty and reduce delays thereby increasing the rate of conviction through systematic procedural improvements. It states as follows: 'We recommend that the allowance payable to the witnesses for their attendance in courts should be fixed on a realistic basis and that payment should be effected through a simple procedure which would avoid delay and inconvenience. Adequate facilities should be provided in the court premises for their stay. The treatment afforded to them right from the stage of investigation up to the stage of conclusion of the trial should be in a fitting manner giving them due respect and removing all causes which contribute to any anguish on their past. Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality'.<sup>76</sup>

Every individual in this earth is bound by power relations in public as well in private life. In human societies, the power dynamics are inescapable, influencing even the most personal

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<sup>71</sup> Sachin Bhardwaj, Right against Self Incrimination: A Comparison between India and U.S.A, available at: <https://www.reserachgate.net> (last visited on May 22, 2025).

<sup>72</sup> *Id.*

<sup>73</sup> Legal Position of Prosecutors in India and USA: A Comparative Perspective, available at: <https://bildbd.com> (last visited on May 21, 2025).

<sup>74</sup> Japan's 'Hostage Justice' System, available at: [www.hrw.org](http://www.hrw.org) (last visited on May 21, 2025).

<sup>75</sup> Law Commission Report No. 154- The Code of Criminal Procedure, 1973 (Act No.2 of 1974) Vol. 1, available at: <https://www.scribd.com> (last visited on May 9, 2025).

<sup>76</sup> Report No. 198, 154<sup>th</sup> Report of the Law Commission (1996): Lack of facilities and wrath of accused referred, available at: <https://www.scribd.com> (last visited on May 8, 2025).

aspects of life. Drawing from the Hohfeldian legal theory, the conceptual framework of claim-rights-liberties, powers and immunities provides a critical lens for analyzing the foundations of legal obligations and enlightenments.<sup>77</sup> The paradigm shift in legal theory reflects a move away from a purely punitive model towards a relational and rights based approach in criminal justice.<sup>78</sup> This shift highlights how legal systems increasingly recognize the multidimensional nature of justice.

There is a need to promote accountability and the principles of mimansa to assess the regularity and fairness in Indian Criminal laws.<sup>79</sup> Initiatives should be taken for promoting community based resolution for petty offences in alignment with the Indian Knowledge system. Traditional Practices like Panchayat raj and restorative justice models would definitely help in reducing the burden of the courts.<sup>80</sup> These methods would also foster harmony and social solidarity with a sense of belongingness, more particularly at the community level.

## VII. Conclusion and Suggestions

A thorough analysis of the study draws attention to these following principles and the best practices which are adopted in the countries suited to their needs and social order-

**Presumption of innocence**-Presumption of innocence in the Indian criminal law is fundamentally derived from the principle of protecting individuals from wrongful convictions. In India, the benefit of doubt always goes to the accused.<sup>81</sup> The Japanese criminal law system also affirms about presumption of innocence but in practice its much weaker compared to India and USA. The conviction rate is very high in Japan which is a clear vindication of the fact that the rule of ‘presumption of innocence’ is sparingly used.<sup>82</sup> Investigations in Japan are frequently intrusive and sometimes coercive as such the Japan’s legal system is often subjected to criticism.<sup>83</sup> In contradistinction, India and USA adopts the

<sup>77</sup> The Hohfeldian Theory and Its Alleged Limitations- ORBilu, available at: <https://orbilu.uni.lu> (last visited on May 13,2025).

<sup>78</sup> Victim Justice: A Paradigm Shift in Criminal Justice System in India, available at: <https://journals.sagepub.com> (last visited on May 15, 2025).

<sup>79</sup> JS Verma, Interpreting Law with Mimansa Sutras, available at: <https://bhartalawhouse> (last visited on May 14, 2025).

<sup>80</sup> Sustainable Development Goals and Gram Panchayat, available at: <https://www.undp.org> (last visited on May 8, 2025) .

<sup>81</sup> Soumya GB, Comparative Analysis of the Principle of Presumption of innocence in criminal law and its implications for human rights and judicial activism, Indian Journal of Integrated Research in Law, Vol. IV, Issue III, p. 426

<sup>82</sup> Wrongful Convictions and Recent Criminal Justice Reform in Japan, available at: <https://scholarship.law.uc.edu> (last visited on May 21, 2025).

<sup>83</sup> Yukiko Nishikawa, The Principle of Presumption of Innocence in Law and Judicial Practices in Japan, available at: <https://law.unimelb.edu.au> (last visited on May 21, 2025) at 1-3.

principle of fair trial. China also emphasizes on the principle of innocence though practically its implementation faces challenges.<sup>84</sup>

**Plea Bargaining-** Plea bargaining is entrenched in the U.S Constitution which is based on ‘nolo contendere’.<sup>85</sup> It has the same effect as pleading guilty but it is not admissible to establish guilt in subsequent cases. In India, this concept of ‘plea bargaining’ can be categorically applicable to certain offences only. The rationale in India was to dispose of cases quickly and expeditiously. But in USA, it is not limited to any kinds of offences as the main object was to avoid the chances of lengthy trials. Japan, on the other hand uses a cooperation based system rather than sentence reduction model as it is used to elicit information against others for conviction. China’s plea bargaining is more state-controlled.<sup>86</sup>

**Restorative Justice-** The US model draws attention to the individual liberty and adversarial system and that cannot be suited to China taking into consideration the social set up existing there.<sup>87</sup> The transformation from accused centric approach to victim centric approach has a wider role to play in the BNS dwelling on the aspects of restorative justice which is community focused rather than individualistic. Japan’s model is retributive and certain restorative practices like victim healing approaches can be adopted depending upon the background of a case.

**Pilot Programs-** Certain pilot programs could be identified and tested at schools and colleges to check the minor offences and workable solution could be attempted and deduced in the aforementioned jurisdictions.

Taking into consideration the social, cultural, political legal set ups of each country, it could be stated that the systems of one country cannot serve as a model for the other. Moreover, it is brought to notice that India’s large diversified system needs to be relooked to serve the needs of local realities.

**Community based Solutions-** All the countries can adopt ways and means to adopt community based solution with the help of N.G.O’s and social centric drives for social solidarity and harmony.

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<sup>84</sup> Zhiyuan Guo, The Presumption of Innocence in China, *available at*: <https://law.unimelb.edu.au> (last visited on 21.05.2025).

<sup>85</sup> The Plea of Nolo Contendere, *available at*: <https://digitalcommons.law.umaryland.edu> (last visited on May 21, 2025).

<sup>86</sup> China’s Vow of ‘Leniency’ in Plea Deals Erodes Rights to Fair Trial, *available at*: [www.nytimes.com](http://www.nytimes.com) (last visited on May 23, 2025).

<sup>87</sup> Restorative Justice in the USA: Ongoing challenges during the pandemic, *available at*: <https://www.euforumj.org> (last visited on May 23, 2025).

In the words of **Janet Reno**, “*The keystone to justice is the belief that the legal system treats all fairly*”.<sup>88</sup>

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<sup>88</sup> Legal System- Brainy Quote