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The CJS in India is based on the adversarial system of common law inherited from the British colonial rules. The adversarial model is also called as the accusatorial model. This model is loaded in favor of the accused and is less sensitive to the plight of the victim. In this system the accused is presumed to be innocent until proven guilty. The police and the prosecution have to prove that the accused is guilty i.e. the burden of proof is on the police and prosecution. The accused need not prove that he is innocent. The police are not trusted and their version is largely disbelieved. Many legal experts feel that the adversarial model of criminal justice is to blame for the large scale acquittals in India. The attitude of the judges is in favor of the accused in this model. The judges are in general generous in the granting the benefit of doubt in favor of the accused as they hold fast to the maxim—‘let a thousand criminals go unpunished, no innocent man should be punished’. The defense counsels lavishly take advantage of this weakness in the system and they employ or attempt to employ various stratagems of court crafts to create some suspicion in the minds of the presiding officers. Thus the accused has to do precious little, other than creating an iota of suspicion in the mind of the judge in order to go scot-free. The prosecution has the uphill task of proving the guilt beyond all reasonable doubt.

The inquisitorial model is different and in obtained in the continental countries like France and Germany. Here the accused is presumed guilty until proved innocent. The accused has to prove his innocence. The burden of proof is on him to prove that he is not guilty. The police and prosecution are trusted and believed by the law. Here the system favors conviction rather than acquittal. The presiding officer of the court of law has a proactive role to play in the inquisitorial model. He can supervise the investigation and
guide the prosecution. He may also pose questions directly to the accused. In the adversarial model he is more like a neutral umpire leaving the business of proving the guilt to the prosecution. Thus in the inquisitorial model the judge actively participates in the quest for truth.

The Malimath Committee on Reforms of Criminal Justice System has made of very important recommendations in this area of criminal jurisprudence, which are reproduced below:

Adversarial System

The Committee has given its anxious consideration to the question as to whether this system is satisfactory or whether we should consider recommending any other system. The Committee examined in particular the Inquisitorial System followed in France, Germany and other continental countries. 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 pro-active 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 on justice to victims. Accordingly the Committee has made the following recommendations:

(1) A preamble shall be added to the Code on the following lines:
"Whereas it is expedient to constitute a Criminal Justice System, for punishing the guilty and protecting the innocent.
"Whereas it is expedient to prescribe the procedure to be followed by it,
"Whereas quest for truth shall be the foundation of the Criminal Justice System,
“Whereas it shall be the duty of every functionary of the Criminal Justice System and everyone associated with it in the administration of justice, to actively pursue the quest for truth.

It is enacted as follows:

(2) A provision on the following lines be made and placed immediately above section 311 of the Code,

“Quest for truth shall be the fundamental duty of every court”.

(3) Section 311 of the Code be substituted on the following lines:

“Any court shall at any stage of any inquiry, trial or other proceeding under the code, summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined as it appears necessary for discovering truth in the case.

(4) Provision similar to section 255 of the Code relating to summons trial procedure be made in respect of trial by warrant and session procedures, empowering such court code in addition to the evidence produced by the prosecution.

(5) Section 482 of the Code be substituted by a provision on the following lines:

"Every court shall have inherent power to make such orders as may be necessary to discover truth or to give effect to any order under this Code or to prevent abuse of the process of court or otherwise to secure the ends of justice".

(6) A provision on the following lines be added immediately below section 311 of the Code.

Power To Issue Directions Regarding Investigation:

“Any court shall at any stage of inquiry or trial under this Code, have such power to issue directions to the Investigating Officer to make further investigation or to direct the supervisory officer to take appropriate action for proper or adequate investigation so as to assist the Court in search for truth.
(7) Section 54 of the Evidence Act be substituted by a provision on the following lines: “In criminal proceeding the fact that the accused has a bad character is relevant”. Explanation: A previous conviction is relevant as evidence of bad character.

The need for combining some elements of the inquisitorial model in our present existing system cannot be overemphasized. There is no need to jettison the entire accusatorial model that we presently follow. We require only to infuse some ingredients of the inquisitorial model in the present law. The conviction rate will improve and the victims will get better justice.