



COMPARISON BETWEEN THE CRIMINAL PROCEDURE OF ENGLAND AND INDIA WITH REGARD TO SIMILARITIES BETWEEN THEM

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ABSTRACT

Since India and England both follow the adversarial system and most part of the criminal law followed in India is adopted from the United Kingdom, it can be presumed that there will be substantial similarity between their criminal procedures. This project aims to compare the criminal procedures followed in these two countries with regard to various stages of the criminal justice system i.e. pre-trial, trial as well as correctional and aftercare services. Also, the relationship of police and prosecution will be discussed in detail. Eventually, this project will trace the similarity between the criminal procedure of these two countries.

INTRODUCTION

In order to have a comprehensive analysis of the criminal procedure in India, it is better to know the judicial systems, the nature and extent of the investigation, the nature of the trial process and the correctional and aftercare services in England.

There are basically two prevailing criminal justice system in the world i.e. the adversary system and inquisitorial system. Both India and England follow the adversarial system. Under the adversarial system, the judge just hears the case of

prosecution and defense and gives his judgment. He is not involved in the investigation process.

The criminal justice system is the process by which criminals are arrested, followed by investigation phases to determine evidence. Criminal offenses are usually investigated for facts and incidents, situations, scenarios, to prove the guilt of the individual. The charges framed against the individual are determined by the unruffled evidences, and a defense is made to oppose or object the prosecution of the criminal offense. To determine the guilt in the criminal process, the evidence is examined by the judge and judgment taken into consideration for the purpose of determining the result. After the conviction, various measures are adopted for institutional correction and aftercare of the offender.

All over the world there are many different types of criminal justice systems. There are two main justice systems: Adversary system & Inquisitorial system. In the Adversarial system, the judge just hears the case of the prosecution and the defense and gives judgment. It is basically a battle between the prosecution and the defense. However, in Inquisitorial system, the judge is a part of the investigation process and effort is made to know the truth. Both England and India follow the adversarial system.

This project will address the question of how the criminal procedure followed in England is different from that in India and what are the similarities they share?



HIERARCHY OF COURTS AND ORGANIZATION OF POLICE AND PROSECUTION

Organization of Police

INDIA

Judicial System

In India, the Criminal Courts are present all the States and Union Territories with an object to deliver justice. The Hierarchy of the Criminal Courts in India is governed under the Code of Criminal Procedure. Some of the important provisions of the CRPC are s.6, s.16, s.20, s.28, s.227 etc., The following the hierarchy of the criminal courts in India:

The functions of a police officer are based on various factors such as Social, Political and legal etc., Each state government is empowered under the Police Act, 1861, to establish its own police systems. Even other legislations like Indian Penal Code, Code of Criminal Procedure play a vital role in regulating this police system. There are several divisions under the structure of the police system of the state.

The divisions of the state police system in India are:

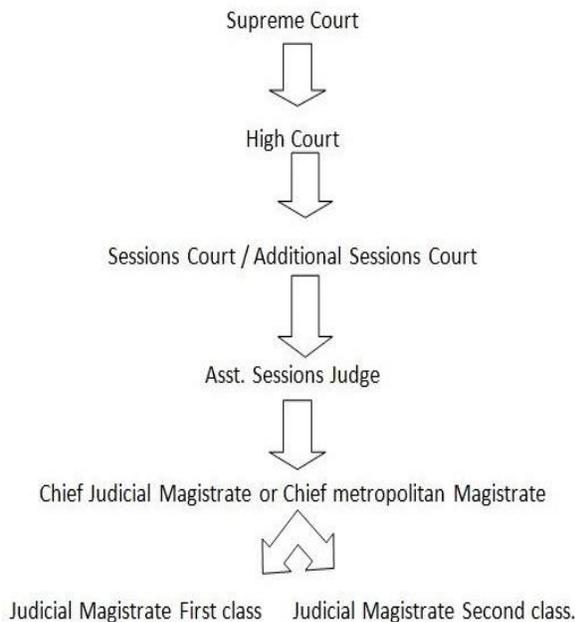


Fig.1: Hierarchy of Criminal Courts in India.

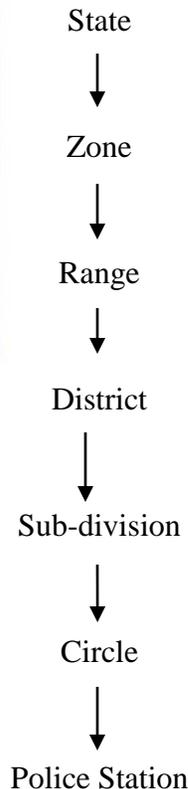


Fig.2: Hierarchy of the State Police System in India



Coming to the Hierarchy of the Police force in India, the Director General of Police (DGP) is the head and deals with administrating the entire police system within the State.

Organization of Prosecution

A Public Prosecutor plays a significant role in the Criminal Justice System. The Directorate of the Prosecution is formed for supervising and maintaining the discipline of prosecution agencies. In India, the hierarchy of the Prosecution is different in all the states. When it comes to Andhra Pradesh, the Additional and Deputy Director of Prosecution substitute the position of Deputy Director of Prosecution.¹ The powers, functions and appointment of the prosecution are envisaged under the Code of Criminal Procedure, 1973. Based of the mechanism of the Prosecution in India, the following categories are made:

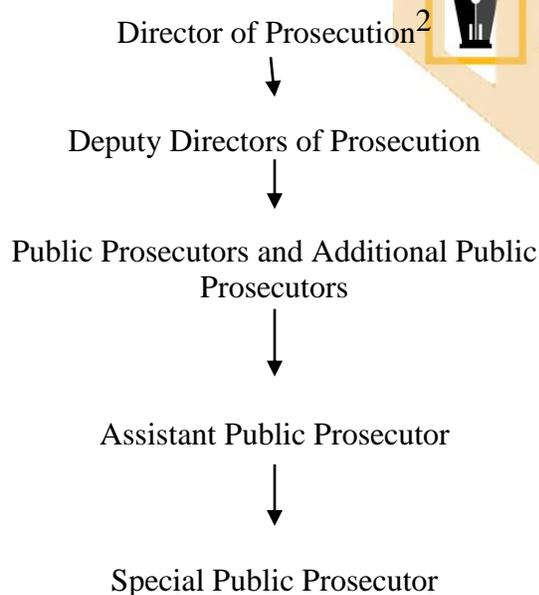


Fig.4: Hierarchy of Prosecution in India

Relation between Police and Prosecution in India

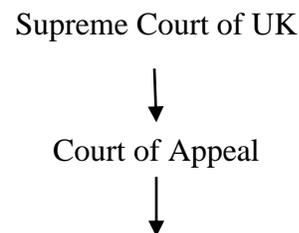
In India, the situation of the relationship between the Prosecution and the Police is deteriorating rapidly, which is leading to miscarriage of justice. No cooperation is present upon consultation, between the prosecution and the police while dealing with a case.³ Even the Apex court held that the police have stopped supervising over the prosecution after the amendment of the Code of Criminal Procedure in 1973⁴. Compared to other countries like USA, France and Japan etc., the conviction rate in India is comparatively low even in serious offences.

ENGLAND

Judicial System

Coming to the Judiciary in England, there is a unified federal system, which consists of one system in England and Wales, The Second system in Scotland and the last system is in Northern Ireland.

The following is the hierarchy of the courts in England and Wales-





High Court of Justice (in few instances)



Crown Court



Court of Magistrate

Fig.5: Hierarchy of Criminal Courts in England.

Director of Public Prosecutor



Chief Crown Prosecution



Crown Prosecution Service (CPS)

Fig.7: Hierarchy of the Prosecution in England

Organisation of Police

In England, the police force and its hierarchy is regulated under the Metropolitan police Act, 1829. The entire police force is divided into two parts to cover different areas⁵, they are

- Greater London Metropolitan Police Service
- City of London Police

The police force mainly performs functions like supervising and operating activities in order to maintain law and order and also to secure the Britain royal family.

Organisation of Prosecution

The Prosecuting agencies in England were privately handled till 19th Century and later it was centralized. The Crown Prosecution Service is present in 14 states in England, mostly in Magistrate ad Crown Courts.

Attorney General



Apart from the hierarchy of the Prosecution in England, there is private prosecution taken mostly by the Royal Societies through different organizations.

Relation between Police and Prosecution in England

In England, the prosecution and the police relation is clearly explained through informal arguments or through a statutory reform. In case of inquisitorial system, the role of prosecution and investigation is empowered to the prosecutor alone. But in general, the police is never given the responsibility of prosecution and are only regarded with the role of investigation. Only in case of less serious crime, the prosecutor has the control over the entire investigation.

PROCEDURE DURING PRE-TRIAL

PRE-TRIAL PROCEDURE IN INDIA

Stages of a Criminal Case before Trial

On receiving information about a cognizable



offence police register FIR and commence investigation. They collect evidence, arrest the accused and produce him before Magistrate and secure orders for police custody or judicial remand. On completion of investigation, if the police feel that no prima facie case is made out final report will be filled before court. If the investigating agency feels that a *prima facie* case is made out, it will file a charge sheet before court.

Investigation and the Public Prosecutor

Police is the Chief Investigative agency of the State. Administratively police is independent from Directorate of prosecution and the judiciary. As a principle, it is said that the court does not possess any supervisory jurisdiction over police and their investigation⁶. There is clear cut and well demarcated sphere of activity for the police in crime detection which is the Executive power of the State.⁷ During investigative phase evidence is collected. Police examine witnesses and record their statements, collect material objects, conduct searches and seizures, arrest the accused, record their statements and confessions, arrange for test identification parades, obtain scientific reports and opinions from experts and prepare a case diary of all of it for each of the cases investigated.

Arrest

Gathering and collecting evidence may span a number of days or weeks, yet law requires the accused to be brought before a court within 24 hours of arrest⁸. The power to arrest and the discretion whether to arrest or

not is always vested with the police⁹. When the police feel there are grounds for believing that the accusation is well founded they transmit the accused and case diary to the Magistrate for remand orders¹⁰. It is the Magistrate who has ultimate

control over police investigation¹¹. It is a matter of record that 60% of all arrests by police in the country are unnecessary and unjustifiable and 43% of the total jail expenditure in the country is wasted due to such arrests¹². Prof. Afzal Qadri reports in his survey that 85.7% of police officers agreed that arrests are made on extra legal consideration¹³.

Bail

At the bail hearings before a court of law, if the case is not grave, there is no legal requirement for the court to hear the prosecutor and bail would be granted to accused invariably¹⁴. In such cases, the Public Prosecutor does not get to know about the case until the police complete the investigation and file a final report or charge sheet before the court. If the offence is serious, the Public Prosecutor would be notified by the court about bail hearing¹⁵.

Witness Examination

During the course of investigation police examine witnesses and record their statements. They make perverse enquiries, the investigation is either delayed or poor in quality, and they do biased investigation, behave rudely, discourteously with victims and witnesses and sometimes minimize the gravity of offence by manipulation¹⁶. As



the mandate of law¹⁷ is that police shall not take the signatures of witnesses recorded during investigation. There is no attempt at law yet in India in evolving a prosecutor's independent status to control abuse of police practices.

PRE TRIAL PROCEDURE IN ENGLAND

The basic construction of the law governing pre-trial detention has been in place in England and Wales since the Bail Act (BA) 1976 came into force. Mainly, it provided for a guess in favour of bail for defendants in criminal proceedings, which can only be displaced - resulting in pre-trial detention (a remand in custody) - if certain, specified conditions are satisfied. Bail awaiting trial or sentence is thus the default position, and conditions can be attached to that bail only if they emerge necessary to the court in order to achieve defined objectives.

Generally, before a decision is made, the accused must be given an occasion to make representations and (subject to certain exceptions) he or she has a right to be present, and to legal representation. The court making the decision must make a record of its decision, and if the decision is to deny bail or to impose conditions on bail, must give reasons for its decision. The reasons must be recorded, and the accused must be given a copy of the report. When bail is denied on the first occasion i.e. accused appears before a magistrates' court, then generally he or she may make a further application to a magistrates' court, and when bail is still denied, may make an appeal to the Crown Court.¹⁸

At the same time as the structure of the

legislation has remained the same in the four decades since enactment of the Bail Act 1976, it has been amended on various occasions. In many cases the amendments have been firm by the need to expand the conditions in which bail can be denied, for example, where the accused was already on bail when the offence giving rise to the new proceedings was supposedly committed, or where the accused has purportedly committed further offences whilst on bail. On the other hand, amendments introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, were planned to restrict the use of remand in custody in cases involving an allegation of a summary-only offence.¹⁹

In addition, even as the Bail Act initially provided a complete code prevailing pre-trial detention, this was ended by the Criminal Justice and Public Order Act 1994, section 25, which restricts the use of bail for accused charged with certain grave offences, and by the Coroners and Justice Act 2009, section 115, which stops magistrates' courts from yielding bail in murder cases. According to a leading criminal lawyer the result, is that a statute that was once of 'great clarity... has become confused and difficult to apply without error', and which is in pressing need of consolidation in order 'to restore the order that is critical to achieving the right stability on a case by case basis'.²⁰

SIMILARITY IN THE PRE TRIAL PROCEDURES IN INDIA AND ENGLAND



The role of police in process of investigation is very essential in both India and England. Police is in charge of the investigation process. Evidence is collected in the process of investigation phase. Arrest or pretrial detention is very similar in India and England. Police has the authority to arrest the accused and to produce the accused before the concerned court.

In matter of bail also if the offence is not grave the police can grant bail. There is no need for the consent of the magistrate. So they are very similar in India and England.

The submission of no case by the accused or his counsel after the close of the evidence by the prosecution in U.K. resembles the hearing under Sec. 232 Cr.P.C. during the sessions trial in India. Such a procedure is not there after framing of charge in the cases triable by the magistrates. The public prosecutor also plays a very vital role in both India and England. The public prosecutor has the task to collect all the evidences and to convict the offender. Well there is a little difference in case of England is that a private prosecutor can be appointed.

The witness examination also takes place the same way in England and India. The witness is examined and then a report is prepared by the police accordingly. Witness Examinations helps the police get vital information related to the case.

PROCEDURE DURING TRIAL

TRIAL IN ENGLAND

U.K. does not have a single unified federal system. England and Wales have a system, Scotland has another system and Northern Ireland has a third system. In some cases,

the Tribunal Court under the Immigration law has jurisdiction over the whole of the United Kingdom. Other courts constituted by other laws have jurisdiction over England, Wales and Scotland. The court of England and Wales is made up of higher courts and subordinate courts. The upper courts are the Court of Appeal, the High Court of Justice and the Court of the Crown. The court of appeal deals with the appeal of other courts. The High Court of Justice consists of 3 divisions, namely the Queen's Bench, the divisions of Chancery and Family. These divisions are not separate courts, but have independent procedures and practice adapted to their purposes. Any High Court judge can sit down to hear cases in the Crown Court.²¹ As for other matters, the Crown Court is a lower court. The subordinate courts consist of magistrate's court, family proceeding court, juvenile court and the district court. The Magistrate's courts are presided over by a bench of place magistrates or a legally trained District Judge. Lay magistrates are assisted in their work by legally qualified judicial secretary and they hear minor criminal cases. Juvenile courts deal with offenders to the age of 10 to 17. Some Magistrate's courts also act as family proceeding courts dealing with family matters. The county courts have only civil jurisdiction.

Types of trial

Criminal trials in England and Wales are of two forms – they are either summary trials or trials on condemnation. The Summary trial takes place in magistrate's courts. The judges are magistrates also known as 'justice of the peace'.²² Three classes of offences are-



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

Summary trial

A summary trial also known as 'trial on information', commences with the charge or information being put to the accused by the clerk. Where it is alleged that two or more persons acted together to commit an offence they may be jointly charged in one information, and will normally be tried together. An information must claim only one crime, but two or more information can be tried together if the defendant consents or the magistrates think that the information is united in such a way that the interest of justice are best served by a single test.

If the accused pleads guilty to the information, the magistrates initiate the procedure that led to the sentence being pronounced. If the accused pleads not guilty, the accusation makes a brief opening speech; the prosecution witnesses are called, each of whom is first questioned 'in chief' by the prosecution's legal representative and then cross-examined by the defence. The defence may, if they so wish, submit that there is no prima facie case against the accused, and if the magistrates agree they acquit forthwith; if no submission of no case is made or if one is made unsuccessfully, the defence may call witnesses who may include

the accused; after the defence evidence if any their verdict.

When a person accused of committing a non-punishable crime is summarily brought before a court of magistrates, the court must conduct a preliminary investigation in order to determine whether, at the time of considering the evidence, there is sufficient evidence to submit it to trial by the jury for any indictable offence.²³ The function of these procedures is to ensure that no one is prosecuted unless there is a prima facie case against them.²⁴ Justices so acting is known as examining justices and their functions may be discharged by a single justice. They are not a court of trial.²⁵ The trial on condemnation is nearly always preceded by interment proceedings which take place in a magistrates' court.²⁶ As soon as possible after examination of the witness, the court must have its statements read in the presence and hearing of the accused and must request that the witness sign the declarations.²⁷ After the evidence for the prosecution, including any written statement, and after hearing any submissions, if any, has been submitted, the court must read the accusation and explain it in the common language.

Indictment

The Courts Act 1971, assize courts and courts of district sessions were abolished and replaced by the Crown Court, which is part of the Supreme Court of England and Wales. All proceedings on condemnation must be brought before the Crown Court. The course of the trial is controlled by a professional judge of the Crown Court.



The most serious offences are triable only on indictment, e.g. murder, manslaughter, causing death by hasty driving, causing grievous physical harm with intention, using a firearm to resist arrest, rape, buggery, incest, robbery, aggravated burglary, ordinary crime if it involved the threat of violence to a person in a lodging, blackmail, criminal damage with intention to imperil life and perjury in judicial proceedings. When a defendant appears on the dock, he is called by his name and then tried by the court clerk. A trial process begins with the court clerk who charges the accused to the accused. The hearing is to read every count of the indictment, ask the defendant if he is guilty or not guilty the defendant is entitled in all cases to declare guilty in addition to any complaint or special declaration; he can also plead not guilty of any other suspicion in the indictment, but guilty of another charge. If you plead guilty to all the charges, the court will embark on the procedures leading to the conviction.

Summoning of Jurors

If the accused pleads not guilty of all charges in the indictment, a jury will swear to prove the case. The Lord Chancellor is responsible for summoning jurors for service. A jury consists of twelve men and women, selected mostly by chance from a large (but not complete) cross section of the adult population under the age of 65. The prosecution lawyer opens the case to the jury will present a summary of the salient features of the case and the nature of the evidence to support it intends to gather. The public prosecutor must consider himself as justice ministers who frequent his administration rather than as advocates.²⁸

After opening of the case, the prosecuting counsel calls his witness and tenders any written statements. When a witness is called, objection may be taken to his competency before he is sworn or affirmed. If there is no such objection, it is objected and rejected; each witness takes an oath or affirmation and is examined in the head. He can then be examined by the defendant or his lawyer and can be reviewed by the attorney for the prosecution.

When the lawyer for the prosecution has called all his witnesses and submitted written statements of witnesses who have not been called, you are entitled to close his case. After the case has been closed by the prosecution, the defendant or his lawyer can declare that it is not appropriate to go to the jury. The presentation can be confirmed if there is no evidence to show that the defendant has committed the tests. The same is the case in which there is some evidence and it is such that the jury correctly addressed could not condemn for this. In these circumstances, it is the judge's task, in a presentation that is made, to stop the case.²⁹

If there is no successful submission that there is no case of going to the jury, it is up to the accused, if he wishes, to present evidence. If he decides to give evidence, he must do so on oath and he is liable to be cross-examined. The general rule is that all matters of law must be decided by the judge, while all the facts must be decided by the jury.³⁰ The judge is usually not obliged to determine matters of fact. However, there are times when a question of fact under discussion must be determined to decide whether to admit a piece of evidence. On



these occasions, only the judge determines the questions of fact. The procedure is called “Trial within a trial” or “*voir dire*”. After completing the evidence of the accusation and the defendant, the lawyer of both sides will address the court. At the end of the interventions of the council, the judge of the trial has summarized the case before the jury.

Verdict: Summing up

The conclusion of the summing up, the members of jury think about their verdict. The members of the jury may award together then and there, but it is useful for a bailiff to be sworn and for the members of the jury to be conducted to their retiring room to consider their verdict. While there is nothing that prevents the trial judge to urge the jury to reach a verdict, it is a fundamental principle of criminal law that, since the verdict of a jury involves the freedom of the subject, the jury must decide completely and without inhibitions freedom, uninfluenced by any extraneous consideration whatsoever. Judgment must be prominent orally in open court by the trial judge. The sentence in the Crown Court is pronounced by a Crown Court judge. If the offender appears before the Crown Court as a result of being convicted, the Crown Court judge must meet two lay judges.³¹

INDIAN TRIAL PROCEDURE

The criminal law consist of three main acts: Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872. The trial process in India is governed by the Code of Criminal Procedure, 1973. Prior to the promulgation of the 1973 Code,

the jury trial system existed in India. It was complemented by the promulgation of the Code of 1973. The national court of jurisdiction in the criminal side is the first judicial magistrate class that there are fields of meetings, short auxiliary sessions, high courts and the Supreme Court. Except for matters for which the original jurisdiction has been granted to the court of sessions in very rare cases, all proceedings begin before the judges of the judiciary.

Types of criminal trial

- Warrant Trial (7 years or more)
- Summons Trial (Maximum 2 years)
- Summary Trial (Maximum 6 months)

Stages of criminal trial in a Summons case

In summons case³², whether it is on the basis of a police report or private complaint, when the accused appears before the Magistrate's court, the particulars of the offence shall be read more than to him and he shall be asked as to whether he pleads guilty or not. If he pleads guilty, the Magistrate, after satisfying that the plea was voluntary and that the accused is guilty of the offence and after deciding the question of probation, impose sentence on him. After the evidence has been closed, the defendant will be examined under Sec. 313 Cr.PC.³³

- Pre-trial: In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
- Charges: In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the



court then the Magistrate would orally state the facts of the offense he is answerable.

- Plea of guilty: The Magistrate after stating the facts of the offense will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
- Plea of guilty and absence of the accused: In cases, where the accused wants to plead guilty without appearing in the court, the accused is supposed to send Rs.1000/- by post or through a messenger (lawyer) to the Magistrate. The absentee should also send a letter containing an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.
- Prosecution and defense evidence: In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.
- Judgement: When the sentence is pronounced in a summons case, the parties need not argue on the amount of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

Stages of criminal trial in a Warrant case

Regarding a warrant case³⁴ on police report, after appearance of the accused, the

magistrate will listen to both parties and dismiss the defendant or file an accusation against him. In case of conviction, he will hear the defendant on the question of the sentence and, after having decided the question of probation, he can impose the sentence on the accused.

- On the filing of the complaint, the court will examine the complainant and its witnesses on the same day or any other day to decide whether any offense is made against the accused person or not.
- After examination of the complainant, the Magistrate may order an inquiry into the matter and submit a report for the same.
- After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.
- After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

Summary Trial

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offenses to reduce the burden on courts and to save time and



money. Those cases in which an offense is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

4.3. Similarity in the Trial Procedures in India & England

Both the jury system and the bench system have their pros and cons. It is important to look at the advantages and shortcomings of each of these systems. Since trial by judges might be beneficial in one case while, trial by jury might be beneficial in another. Summary Trial is common in India and United Kingdom. Both the countries follow adversarial system, Public Prosecution opens the case and charges are framed by the court. In UK, examination i.e. chief & cross is a lengthy procedure often followed by the Crown's Court. In UK there courts are named as Crowns and Magistrate's Court whereas in India, there are Session's court & Magistrate's court. Functions followed by magistrate's court is same in both the countries i.e. trial of summons case and petty offences. Jury system is followed in Crown's court (indictable offences) of United Kingdom & Judges in Sessions Court of India. Moreover, wigs are a essential part in the jury system of UK.

CORRECTIONAL AND AFTERCARE SERVICES

MEANING AND PURPOSE

The longer an offender stays in the prison the greater is likelihood that he might be harmed psychologically and will suffer. Several studies have revealed that many casual offenders turn out as hardened criminals after their term. Even though he comes out as a penitent and reformed person, his friends and relatives detest him and he acquires a stigma.

Time and again, when offenders are released from correctional institutions, they are confronted by social, economic and personal challenges which act as obstacle to a crime-free life style they are required to live.

In such situations, aftercare and correctional services come to the rescue. It is often stated that aftercare is rather based on the understanding of the needs and outlook of the person who is going out of a correctional institution to face an unkind and inhospitable world outside³⁵.

Once a person is convicted of any crime, he can be given the following kinds of punishment based on the offence he committed and as enumerated in the Indian Penal Code³⁶.

- Fine
- Forfeiture of property
- Imprisonment
- Solitary confinement
- Capital punishment



Prisons Act, 1894

It is the Prisons Act 1894, on the basis of what the present jail management and administration operates in India. In the report of the Indian Jail Committee (IJC) 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the main objective of the prison administrator.

The following provisions of the Prisons Act, 1894 discuss about the reformation of prisoners-

- Accommodation and sanitary conditions for prisoners,³⁷
- Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison³⁸
- Provisions relating to the examination of prisoners by qualified Medical Officer³⁹
- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners,⁴⁰
- Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners⁴¹

In 2016, the Parliament of India passed the Prisons (Amendment) Bill, 2016 to make amendments to the Prisons Act, 1894 with a view to provide protection and welfare of the prisoners.

Reformation

The institutional care of offenders involve

reforming them while they are inside the Prison. The Prison authorities play a significant role in the process of reformation.

▪ Role of State Welfare Officers in Reformation of Prisoners

In various states of India, welfare officers are appointed to keep in touch with the prisoners and help them to adjust to their new situation and also help prisoners in maintaining their family ties. They have a vital role in the rehabilitation of offenders.

▪ Reformation of Under-trials

The under trial prisoners are not under an obligation to work under but remaining unemployed not only works against their self-interests but is also the waste of potential and labour. Therefore, it was advocated that a policy of persuasion rather than coercion to engage under trial prisoners in work should be adopted and if they chose to work they are paid wages.

▪ Reformation of Women Prisoners

The process of reformation of female prisoners involves generous treatment and the permission to meet their children frequently. It helps keeping them mentally fit and responds favourably to the treatment methods. Also, the idea of setting up separate jails for women provides the free environment to them.

▪ Reformation of Juveniles Offenders

For the reformation of juveniles,



correctional institutions like Special homes⁴², certified schools and borstals are constituted for providing the special treatment, medical care, education, accommodation and vocational training to juveniles.

Non-custodial Methods in Reformation of Prisoners

The earlier penological considered custodial measure as the only way to curb crime. However, the modern penological approach believes in new forms of sentencing which aim to balance the needs of the community as well as the best interests of the accused.

Such punishments will involve the positive cooperation of the offender which is likely to be effective in his reformation.

▪ Probation

Probation is basically the release of an offender from detention, subject to a period of good behaviour under supervision. The Probation Officer guides the offender to rehabilitate himself.

Section 360 of the Criminal Procedure Code, 1973 talks about the order to release on probation of good conduct or after admonition. It states that if the convicted person is-

- Above 21 years and is punishable with fine only or with imprisonment for a term of seven years, or less;
- Any person under twenty-one years of age;
- Any woman convicted of an offence not punishable with death or imprisonment for life

Also, the offender must not have any previous conviction proved against him, the Court should consider his/her age, character or antecedents and the circumstances in which the offence was committed and instead of sentencing at once to any punishment, direct to release the offender on a bond, with or without sureties, to appear and receive sentence when called upon during such period (which should not exceed three years) as the Court may direct and in the meantime to keep the peace and be of good behavior.

Further, the Probation of Offenders Act, 1958 is the act governing probation in India. Under section 9 of the Act, if the offender fails to follow any conditions mentioned in the bond into by him, the Court can issue an arrest warrant or issue summons to him. The court can then either remand him to custody until the case is concluded or grant bail, with or without surety, to appear in the Court on the said date.

▪ Parole

Parole is the conditional release of an offender who has already served a portion of his sentence in a correctional institution. In India, the grant of Parole is governed by the Prison Act, 1894 and Prisoner Act, 1900. However, each State has its own parole rules, which have minor variations with each other.

Certain convicts are not eligible for parole like prisoners involved in offences against the State, or threats to national security, non-citizens of India, people convicted of murder and rape of children or multiple murders.

The paroled person is required to always



carry the permit and should produce on being asked for it by any police officer/ magistrate/ any other competent authority. He should not associate with anti-social elements and not indulge in coercing any of the witnesses or complainant to adduce evidence in his favor. He is required to report change in the address or his movement and leaving the locality or jurisdiction. He should also obey all laws and public ordinances and not indulge in alcoholism, intoxicating beverages and narcotics.

Aftercare services

The term 'After-Care' refers to the programme and services organized for the rehabilitation of inmates from correctional institutions. After-care plays an important part in any integrated

programme of crime prevention. In the absence of proper after care and a strict follow-up the best of penological practices will be meaningless. The hardest part of punishment that ex-prisoners, particularly young ex-prisoners, will have to face is when they come out of the correctional institution.⁴³

After-care has not been compulsory in India as there is no legal compulsion for an ex-inmate or a destitute to accept the services provided by an after-care institution.

In India, the after-care work was done for a very long time by philanthropic organizations which, in spite of some good work done by them, had all the limitations which such private organizations tend to have in this country. The Indian Jail

Conference of 1877 for the first time discussed the question of helping ex-convicts but did not take any positive steps to implement it. Various Jail Committees in their reports emphasized the need for having effective aftercare programmes but hardly anything was achieved.

Section 44 of the Juvenile Justice Act, 2000 as well as the Model Prison manual, 2016 contain specific provisions with regard to after-care services.

IN ENGLAND

The Prison Act, 1952 governs the correctional services in England which lays down the procedure for prison setup and the correctional system followed therein.

In the prison, there are basically five formal commissioners. Below them, there are many subordinate officers like inspector, a governor, a medical officer and other officers.

In England and Wales there are five different types of penal institutions. There are fifty-six Local Prisons, five Convict Prisons, four Borstal Institutions, two Inebriate Reformatories and two Preventive Detention Prisons. There are also many institutions for the purpose of dealing with juvenile delinquents under the age of sixteen which are educational in character and are not included in the prison system.⁴⁴

In men's prisons, the offender has to work for a month alone in solitary confinement. After that, he is set at labor in association with fellow prisoners. If he disobeys the rules, he can be sent back to solitary labor in his cell.



In the women's prisons, the prisoners work in association from the beginning. However, their work is optional, and they receive \$1.20 a week.

In the prison used for both men and women, separate buildings or parts of a building are assigned for men and women to prevent them from seeing or communicating with each other. There is no provision of corporal punishment except in some exceptional cases.

Probation

The National Probation Service for England and Wales (built up in 2000) is a legislative Service, which falls under the expert of the Ministry of Justice (since May 2007). The National Probation Service is sorted out into Probation Trusts. Every Probation Trust has a Chief Officer and a Board. The Chief Officer is responsible for the expenditure within the area and for all operational performance issues. He also advises the Board on strategy and policy.

The Probation Service guarantees, during the trial, that litigants who have been remanded on conditional bail in an Approved Premise conform to the prerequisites. Preceding conviction, the Probation Service can give confirmed data to the Crown Prosecution Service and the Courts to aid decision making on bail.

The Probation Service oversees Community Orders which can contain up to twelve prerequisites including drug treatment, unpaid work, mental treatment, living arrangement limitations, electronic checking and so on. Few offenders are liable to Suspended Sentence Supervision Orders.

Parole

The Parole Board was set up in England in the year 1967 to advise the Home Secretary. At that time the Home Secretary was responsible for the release of prisoners on licence and their recall to prison. Now, Offender Management is the responsibility of the Ministry of Justice.

Since 1967 the Parole Board has been transformed from initially an advisory body, which usually made decisions on the papers about a prisoner and did not have the final say as to release, to finally a judicial body which determines the length of time a prisoner is supposed to spend in custody. It holds oral hearings where prisoners are present and legally represented. However, some decisions are still made 'on the papers' sometimes by a single member of the Board. The Board consist of members working as part-time. They include judges, psychiatrists, psychologists, probation officers and independent laypersons.

The Board has the status of an executive non-departmental public body (NDPB) which means although it receives the funding from central government (the Ministry of Justice), its day-to-day operations are totally independent from the Ministry. However, the Secretary of State for Justice appoints members of the Parole Board and is able to issue guidance to the Board about how it should make its decisions.

Aftercare services

In England, law provides for compulsory after-care for certain categories of



offenders.⁴⁵ The concept of after-care of prisoners in the United Kingdom can be traced as far back as 1776. Later, the Discharged prisoners' Aid Society was created.

In 1967, The Central After-care association was abolished and probation officers became directly responsible for all form of compulsory supervision for discharged offenders.

The Department of Health and Social Security has the general responsibility for meeting the financial needs of discharged prisoners. Where a person is released from an institution, he is placed under supervision for two years from date of his release. Probation officers are responsible for the supervision and after-care of the released inmates.

Comparison

The correctional and aftercare services that are provided by the criminal justice system in India and England are similar in many manners. The basic concepts of parole, probation and aftercare are the same.

The Prison Act, 1894 governs the institutional reformation and rehabilitation of the offender. This act is derived from the United Kingdom. This fact makes the process of reformation and institutional correction of offender very similar in India and England.

The idea behind correcting the convict with the help of reformation, rehabilitation, probation, parole etc. is the same in both India and England. However, there is minute difference with respect to the procedures

followed thereunder.

In India, the application for parole should be made to the appropriate authority or the jail authority.⁴⁶ In England, the Parole Board has the authority to determine the grant or rejection of parole and the Board consist of many members.

With regard to probation, in India, the Probation of Offenders Act, 1958 governs the process of probation and in England, there exist the National Probation Service which oversees the correctioning of offender through probation.

In England, there is mandatory aftercare services provided to the convict after his term get over in the prison. However, in India, only recommendations and suggestions exist with respect to the aftercare services. The Juvenile Justice Act, 2000 and the Criminal Procedure Code, 1973 do mention about the significance of aftercare services and how they should be provided, but they are not compulsory and are only provided whenever it is very important to do so.

Thus, even if there are few procedural and administrative differences between India and England when it comes to correctional and aftercare services provided to offenders, the basic concept of reforming and rehabilitating the offender remains the same and the fact that the Indian prison system is adopted from the English counterpart, adds to that.

CONCLUSION

Both India and England follow the adversarial system. However, there exists



difference between the procedures followed by these countries with respect to various stages of criminal procedure, be it the relationship between the police and the prosecution, the pre-trial procedure, the trial procedure or the correctional and aftercare services provided thereafter to the offender.

But again, since both countries follow the adversarial system and the criminal law followed in India is influenced from that in the United Kingdom, the basic concept and idea behind the criminal procedure remains the same.

So we would like to conclude our project by stating that a parallel can be drawn between these two common law countries as there exist similarities in the criminal procedure as well.

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