

Comparative Analysis of Judicial System in United States and India with Reference to New Criminal Law in India

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Abstract

The importance of studying and examining the comparative criminal procedure of countries helps us in understanding the differences and similarities which exists in different countries it helps us to identify the different model of crime control and also helps in achieving the goal of providing justice to the people effectively and efficiently. In the present time when globalization has attained its peak it become very important to understand the legal system of different countries. In India judicial system we have one Supreme Court at national level which act as the protector of the Indian Constitution and at State level we have High Courts and at the various districts level we have districts courts. Unlike in India the judicial system in United States of America has a two-tier structure which is Federal and the State and the important fact is that both are independent to each other. This system is the result of US constitution which focus on the federal. There are some similarities between the criminal justice system in both the countries but there are differences also which makes difference in the justice delivery system in both the countries. A detailed study of analysis will help us to improve the criminal justice system in India which is very important for the nation.0

Keywords- Globalization, Judicial System, Constitution

Process of Criminal Trial in India

The criminal trial in India is a structured and codified process governed primarily by The Bharatiya Nyaya Sanhita, 2023 (BNS), The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and The Bharatiya Sakshya Adhiniyam, 2023 (BSA). These three legislations have replaced the earlier Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act respectively, thereby modernising the criminal justice system in India. Together, they provide a statutory framework that ensures fair investigation, prosecution, and adjudication of criminal cases.¹

The stages of a criminal trial are sequential in nature and each step has its own legal significance. The trial process can broadly be divided into the following stages:

1. Filing of Complaint / Institution of Proceedings- The criminal process commences when an offence is reported to the police or a complaint is filed before a magistrate. If the information discloses a cognizable offence, the police must register a First Information Report (FIR) under Section 173 of the BNSS.² In cases of non-cognizable offences, the police can act only with prior approval of the Magistrate.
2. Framing of Charges- Once investigation is complete, a charge-sheet is filed before the competent court. The court then examines whether there exists a prima facie case against the accused. If sufficient grounds exist, charges are framed and read out to the accused, giving him clear notice of the allegations.³ The framing of charge ensures that the accused is informed of the precise offence he has to defend against.
3. Recording of Prosecution Evidence-After charges are framed; the prosecution is called upon to lead evidence. This involves examination-in-chief of witnesses, followed by cross-examination by the defence, and if necessary, re-examination by the prosecution.⁴ The court records oral testimony, documentary evidence, and material objects relevant to the case. Under the Bharatiya Sakshya Adhiniyam, cross-examination plays a vital role in testing the veracity of witness statements.⁵

¹ The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; The Bharatiya Sakshya Adhiniyam, 2023.

² BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, § 173 (equivalent to Code of Criminal Procedure, 1973, § 154).

³ BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, ch. XIX (Framing of Charges); State of Bihar v. Ramesh Singh, (1977) 4 S.C.C. 39.

⁴ BHARATIYA SAKSHYA ADHINIYAM, 2023, ch. X (Order of Examination of Witnesses).

⁵ State of Karnataka v. K. Yarappa Reddy, (1999) 8 S.C.C. 715.

4. Examination of the Accused-Once prosecution evidence is completed, the accused is given an opportunity to personally explain any incriminating circumstances appearing against him under Section 269 of the BNSS.⁶ This is not evidence under oath but a chance to allow the accused to clarify his position and present his version of events.
5. Defence Evidence-The accused has a statutory right to present his evidence. He may summon witnesses, produce documents, and testify in his own defence. Legal aid is also made available to indigent accused persons to ensure fair trial as guaranteed under Article 21 of the Constitution of India.⁷
6. Final Arguments-Once the evidence is complete, the prosecution and the defence are given an opportunity to make their final submissions. The prosecution attempts to establish guilt beyond reasonable doubt, while the defence highlights inconsistencies or lack of sufficient evidence. This adversarial argument stage ensures that the judge hears both perspectives before pronouncing judgment.⁸
7. Judgment-After hearing arguments, the judge delivers the judgment. The decision must be a reasoned or speaking order, meaning that the judge must explain the rationale behind conviction or acquittal.⁹ If convicted, the accused proceeds to the sentencing stage, where mitigating and aggravating circumstances are considered before punishment is imposed.
8. Appeal and Revision-The criminal trial process does not end with judgment at the trial court. The law provides for appellate and revisional remedies before higher courts. This ensures multiple levels of scrutiny and acts as a safeguard against judicial error.¹⁰ The process of criminal trial in India is designed to balance two competing interests: the rights of the accused to a fair trial and the societal need to ensure that offenders are punished. With the introduction of the BNS, BNSS and BSA, 2023, India has attempted to modernize its criminal justice system by making procedures more transparent and time-bound. Each stage of the trial—from framing of charges to pronouncement of judgment—serves as a vital link in the chain of justice, reinforcing the constitutional promise of fairness, equality, and due process.

⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, § 269 (Examination Of Accused).

⁷ India Const. Art. 21; *Hussainara Khatoon V. State Of Bihar*, A.I.R. 1979 S.C. 1369.

⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, Ch. Xx (Arguments); *Zahira Habibullah Sheikh V. State Of Gujarat*, (2004) 4 S.C.C. 158.

⁹ *Kranti Assocs. Pvt. Ltd. V. Masood Ahmed Khan*, (2010) 9 S.C.C. 496.

¹⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, Pt. Vi (Appeals, Reference And Revision).

COMPARATIVE ANALYSIS OF AMERICAN CRIMINAL JUDICIAL SYSTEM AND INDIAN CRIMINAL JUDICIAL SYSTEM

JUDICIAL TRANSPARENCY

In the United States of America, the public generally has an access to the records of the court in electronic manner which provides information to the public at large related to their cases in the court it is there since 1997¹¹. The availability of the data with respect to the cases results in the transparency in the working of the court as well as it encourages the judges to act in lawful manner and do justice in fair manner as the proceedings can be monitored by the person in general manner through the Internet accessibility¹². Other important factor related to the availability of the case data to the journal public is that it also reduces the chances of malpractices which can be opted by the lawyers and other legal officers¹³. The platform which is provided in the United States also provides help to the academicians as well as media to keep an eye on the working of the court and also helps in giving the overview with respect to the particular cases to the general public¹⁴ it ensures the working of the court in efficient and effective manner and also act as a tool in order to tackle corruption injustice delivery system.¹⁵

When it comes to the India the people often raised voices with respect to the transparency from the side of the government and taken into consideration this fact the government has provided the right to Information Act which is a statutory code which give right to the citizen of India to seek information from the government. It helps in knowing the various data which is important for the working of the government. When it comes to the judicial system the judiciary also supports this act but when it comes to the functioning of the judicial system in India it can be noticed that very often it is recommended that judiciary should be excluded from the right to Information Act some of the persons are of view that it will hamper the justice delivery system in India as there are chances of creating unnecessary hardships.

Judicial transparency in America and India reflects differing institutional practices shaped by their constitutional frameworks. In the United States, transparency is

¹¹ Public Access to Court Electronic Records, PACER: Federal Court Records, U.S. Courts, <https://www.pacer.gov>

¹² *Public Access to Court Electronic Records (PACER)*, U.S. COURTS, <https://pacer.uscourts.gov>

¹³ *Comparing Federal & State Courts*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts>

¹⁴ iPleaders, *Need for Reforms in the Indian Judiciary* (Khyati Basant), IPLEADERS (blog), <https://blog.ipleaders.in/need-for-reforms-in-the-indian-judiciary>

¹⁵ LAW COMMISSION OF INDIA, REPORT NO. 230, *REFORMS IN THE JUDICIARY: SOME SUGGESTIONS* 14–16 (2009).

strongly emphasized through open court proceedings, public access to judgments, and live broadcasts of significant cases, such as those before the Supreme Court¹⁶. Freedom of the press and the right to access government information under the Freedom of Information Act also strengthen judicial accountability¹⁷. In contrast, India, while constitutionally committed to open justice, faces challenges of accessibility and consistency¹⁸. Although court proceedings are generally public, the vast backlog of cases, limited use of technology, and inconsistent publication of judgments often restrict transparency. Recent initiatives, such as live streaming of constitutional bench hearings by the Supreme Court and the digitization of records, signal progress, but India still lags behind the U.S. in institutionalizing transparency as a systemic norm. Thus, while both democracies value openness, the U.S. judiciary enjoys a more entrenched culture of transparency, whereas India is gradually moving toward greater openness through reforms

JURY SYSTEM

The jury system presents a striking contrast between India and the United States. In the United States, juries form an essential part of the criminal justice system, where ordinary citizens are entrusted to determine the guilt or innocence of the accused, thereby reinforcing democratic participation and ensuring community involvement in justice. Jury trials are considered a constitutional right under the Sixth Amendment, particularly in serious criminal cases. In contrast, India abolished the jury system after the famous *K.M. Nanavati v. State of Maharashtra* (1962) case, where the jury's verdict was found to be influenced by media and public sentiment, leading to questions of fairness and impartiality. Today, India relies solely on professional judges to adjudicate both facts and law, aiming for consistency and expertise, though critics argue that this sometimes distances the judiciary from community perspectives. Thus, while the U.S. continues to uphold juries as a symbol of participatory justice, India prioritizes judicial professionalism over lay participation.

EVIDENCE RECORDING SYSTEM IN COURTS

The Hon'ble Supreme Court of United States in the case of *Chandler vs Florida*¹⁹ has clearly held that state may opt rules allowing digital photography and video recording of the proceedings in their courts. After that all the 50 states of the US have established a practise of recording in the court. It helps the general public in

¹⁶ *Comparing Federal & State Courts*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts>

¹⁷ Freedom of Information Act, 5 U.S.C. § 552 (2018).

¹⁸ INDIA CONST. art. 145; see also *Naresh Shridhar Mirajkar v. State of Maharashtra*, A.I.R. 1967 S.C. 1 (India).

¹⁹ *Chandler v. Florida*, 449 U.S. 560 (1981)

accessing the judicial proceedings and it also helps the media houses and as a result of which awareness with respect to the court proceedings and etiquette has been delivered to the public at large²⁰. As the proceeding is available for the public at large and the media it results in the noticing the act by the judicial officers and the status of a case which result in the transpiracy on the part of the judicial system which helps in strengthening the reliance by the public to the court proceedings. The media also got the opportunity to create awareness of the cases which are affecting public at large to the public. We cannot deny a fact that when it comes to the availability of court proceedings to the public at large the chances of taking arbitrary decision by the judges is very low as the people will notice if the proceedings are diverted in a particular person's favour.

Traditionally, evidence in Indian courts was recorded manually by judges in longhand or in a summarized form, which often led to delays and discrepancies.²¹ Over time, reforms and judicial directions have emphasized verbatim recording, the use of stenographers, and in some courts, the adoption of audio-visual recording systems. The Supreme Court, in *State of Maharashtra v. Dr. Praful B. Desai* (2003), permitted the use of video conferencing for recording witness testimony, recognizing it as compliant with Section 273 of the CrPC.²²

Moreover, electronic evidence has gained importance under Section 65B of the Indian Evidence Act Now Section-63 of Bharatiya Sakshya Adhiniyam, 2023 making digital records such as CCTV footage, emails, and electronic communications admissible, provided procedural requirements are met.²³ Despite these reforms, in practice, evidence recording still suffers from delays, inadequate technological infrastructure, and frequent adjournments.

COURT CLERKS AND STAFF

The judicial and administrative staff in the justice delivery system in United States of America plays a very important role in delivering justice to the people. The United States always focus on providing adequate resources and essential training to the both administrative and judicial staff so that they can deliver justice in professional as well as public friendly manner. The judicial officers are selected after they passed series of tests and examination. They are given training with respect to the proceedings, legal research, drafting and other operations required in the court. By providing adequate training and resources to the officers it results in the efficient working of the staff and which ultimately result in lowering the burden on the courts as the court works in efficient and effective manner. When it

²⁰ *Comparing Federal & State Courts*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts>

²¹ Law Commission of India, 14th Report on Reform of Judicial Administration (1958).

²² *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601.

²³ Section 65B, Indian Evidence Act, 1872. See also *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

comes to the Justice system In India it is not like that training to the judicial and administrative staff is not provided but what is important to note here is that effective and efficient training should be given to the judicial officers so that they can work in effective and efficient manner in the justice delivery system. The question of effectiveness and efficiency arises when it comes to the Indian Justice delivery system which can be easily seen by seeing the pendency of the cases in lower courts as well as in high courts and Supreme Court. When it comes to the pendency of cases in lower courts there are more than 29 million cases which are pending in the lower courts and when it comes to the high court and Supreme Court there are additional approx. 3.5 million cases of the pendency of the cases can deflect that there is an urgent need to recruit more judicial staff and requirement of efficient training to the judicial staff so that functioning of the court can be done in smooth and efficient manner²⁴.

FEES OF LAWYERS

In the justice delivery system of the United States, they usually follow the system of contingent fees.²⁵ In this type of system, the fees will be charged by the client only if the result favourable to the client has come. This is the system where the fees which is taken from the client is for the service paid only if the lawsuit is successful; in other words, the fees are only taken when the judgment comes in favour of the client and the amount of the fees in this contingent fee system is calculated as per the gain which is received by the client. If a situation arises in which the client loses its case, then in such situation the client does not have to pay amount or fees to the lawyer who is representing him. This kind of system encourages the people in legal fraternity to work hard for protection of the right for their clients; this is also helpful in ensuring proper legal aid from the lawyers.

In India, the system of contingent fees is not recognized.²⁶ The fee of the lawyer in India is not contingent upon the relief given by the court; the client has to pay fees to the lawyer and the lawyer's fee is not affected by the outcome, unlike the justice system in the United States. One of the bitter truths in the justice delivery system in India is that the lawyers often charge a very huge amount of money in defending the clients, and it is not wrong to say that justice is very costly in India.

²⁴ Pleadings, *Need for Reforms in the Indian Judiciary*, (Khyati Basant), IPLEADERS (blog), <https://blog.ipleaders.in/need-for-reforms-in-the-indian-judiciary/>

²⁵ MODEL RULES OF PRO. CONDUCT r. 1.5(c) (AM. BAR ASS'N 2020) (permitting contingent fees in civil cases, subject to limitations); see also Charles Silver, A Restitutionary Theory of Attorneys' Fees in Class Actions, 76 CORNELL L. REV. 656, 659–61 (1991).

²⁶ THE ADVOCATES ACT, No. 25 of 1961, INDIA; Bar Council of India Rules, Part VI, ch. II, § II, r. 20 (prohibiting advocates from stipulating fees contingent on the results of litigation).

In cases before the High Courts and the Supreme Court, a common man is not capable enough to hire a private advocate for defending the case, and as a result only the richer class of society in India often has access to justice.²⁷

Even though the Indian Constitution provides that each and every person has a right to have justice delivered and it does not depend upon the financial status of a person, when it comes to the actual scenario, we cannot deny the fact that money plays a very important role in accessing justice in India.²⁸ The main motto of the criminal justice system in India is to provide justice to the people in equal manner, but we cannot deny the fact that equal delivery of justice nowadays has merely become a chapter in a book rather than the actual justice delivery to the public at large.

The Constitution of India provides that if a person is not financially capable to afford the services of an advocate, then in such case it is the duty of the state to provide legal aid to that person.²⁹ We cannot deny the fact that poor people are given legal aid services, but the real situation is that the advocates who are provided in legal aid are not always competent enough to defend the person in an efficient or effective manner, which most of the time ultimately results in the conviction of the person. There is a need for providing proper training to the persons who are working as legal aid lawyers, and proper scrutiny should be done from time to time so that rights of each and every person, irrespective of their financial status, are protected.³⁰

FREE LEGAL AID IN INDIA AND THE USA

Free Legal Aid in India

The concept of free legal aid in India is rooted in the constitutional promise of justice to all, irrespective of economic or social status. Article 39A of the Indian Constitution, introduced by the 42nd Amendment Act of 1976, directs the State to ensure that justice is not denied to any citizen by reason of economic or other disabilities.³¹ To implement this mandate, the Legal Services Authorities Act, 1987 was enacted, leading to the establishment of the National Legal Services Authority (NALSA), along with State, District, and Taluka level legal services authorities.³²

²⁷ Law Commission of India, Report No. 266: The Advocates Act, 1961 (Regulation of the Legal Profession) 43–44 (2017).

²⁸ INDIA CONST. art. 39A (Directive Principle mandating equal justice and free legal aid).

²⁹ Id.; see also LEGAL SERVICES AUTHORITIES ACT, No. 39 of 1987, INDIA, §§ 12–13 (establishing entitlement and framework for legal aid).

³⁰ Law Commission of India, Report No. 197: Public Prosecutors' Appointments 37 (2006) (noting quality concerns in state-appointed counsels).

³¹ Constitution of India, Article 39A.

³² Legal Services Authorities Act, 1987 (Act No. 39 of 1987).

Legal aid in India is provided to marginalized sections of society, including women, children, Scheduled Castes, Scheduled Tribes, persons in custody, and those with an annual income below a prescribed limit.³³ The services include representation in courts, legal advice, and drafting of legal documents. Lok Adalats and mediation centers also serve as cost-effective and speedy mechanisms for dispute resolution. However, despite the extensive legal framework, challenges such as lack of awareness, inadequate infrastructure, and shortage of trained legal professionals hamper the effective implementation of free legal aid in India.³⁴

Free Legal Aid in the USA

In the United States, the right to legal representation, particularly in criminal matters, is firmly embedded in the Sixth Amendment to the U.S. Constitution, which guarantees the accused the right to counsel.³⁵ The landmark judgment in *Gideon v. Wainwright* (1963) held that states are required to provide attorneys to defendants in criminal cases who cannot afford one.³⁶ This ruling led to the establishment of the Public Defender System, where government-appointed lawyers represent indigent defendants.

For civil matters, the United States has a network of Legal Aid Societies and non-profit organizations, often funded by the Legal Services Corporation (LSC), a federally funded body created in 1974.³⁷ These organizations provide legal assistance in cases involving housing, domestic violence, consumer rights, and immigration, among others. However, access to civil legal aid in the U.S. is limited due to funding constraints, resulting in what is often described as a “justice gap,” where many low-income individuals remain unrepresented in critical legal matters.³⁸

Both India and the USA recognize free legal aid as a fundamental component of ensuring access to justice, but their approaches differ significantly. India’s system is statutorily driven, with free legal services extended primarily to vulnerable groups identified by legislation. The focus is broad, covering criminal, civil, and administrative matters, but implementation remains inconsistent due to structural and resource-related issues.³⁹ On the other hand, the USA emphasizes the constitutional right to counsel in criminal proceedings, ensuring that no accused

³³ National Legal Services Authority (NALSA), Annual Report 2023.

³⁴ Marc Galanter & Jayanth K. Krishnan, "Bread for the Poor: Access to Justice and the Rights of the Needy in India," *Hastings Law Journal* 55 (2004): 789.

³⁵ U.S. Constitution, Sixth Amendment.

³⁶ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³⁷ Legal Services Corporation Act, 1974, 42 U.S.C. § 2996.

³⁸ Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (American Bar Foundation, 2014).

³⁹ Galanter & Krishnan, *supra* note 4.

person is deprived of legal representation due to poverty. While civil legal aid exists, it is not guaranteed as a constitutional right, leading to disparities in access.⁴⁰ In India, the challenge lies in effective execution—awareness campaigns, better funding, and training of lawyers are crucial for improving outreach. In the USA, while the criminal defense system is comparatively robust, reforms are needed to expand civil legal aid, especially in areas like housing and family law where the consequences of lack of representation are profound.

Free legal aid in both India and the USA plays a crucial role in advancing the principle of “equal justice under law.” While India focuses on statutory entitlement through institutional frameworks like NALSA, the USA ensures constitutional protection in criminal cases through the public defender system. Both systems, however, face challenges—India with its implementation gaps, and the USA with its limited access in civil matters. Strengthening these systems requires a combination of increased funding, greater awareness, and policy reforms to bridge the justice gap and make access to justice a reality for all.

CONCLUSION

The Indian Justice System provides various principles for ensuring fair justice to the public at large. The Indian judicial system focuses on providing justice to each and every person irrespective of their status but we cannot deny a fact that the victim of the crime has been neglected in the criminal justice system in India and there is need to do many changes when it comes to the effective justice delivery to the victim of a crime. Developing of the infrastructure and the various aid should be given in order to do justice in real sense. A comparative analysis of United States of American criminal justice system and Indian criminal justice system clearly points out the various loop holes which should be followed up in order to do justice to the public at large. Allowing cameras and recording of judicial proceeding will be a very good change which will ultimately result in the easy availability of judicial proceedings for the public. Hon’ble Chief Justice of India DY Chandrachud has also focussed on the live streaming of the judicial proceedings in the Supreme Court and High Court and the committee has been also formed in order to ensure that the smooth live streaming of the court is to be attained.

⁴⁰ Sandefur, *supra* note 8.