



## Prosecution system in India and France: A comparative analysis

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### Abstract

Modern day Contracts and deeds come from age old development from Mesopotamian era where traders and merchants had developed concepts of partnerships and contracts. Common law tradition which is the source of almost every legal system applied worldwide, including India, is also based on the Roman framework and two are, to a great extent, related to each other. The foundation of the French legal gadget is specified in a key record in the beginning drawn up in 1804, and referred to as the Code Civil, or Code Napoléon, (Civil code or Napoleonic code) which laid down the rights and duties of residents, and the legal guidelines of property, contract, inheritance, and many others.. Essentially, it became an adaptation to the needs of 19th-century France of the ideas of Roman law and standard regulation. The Code Civil stays the cornerstone of French law to these days, though it's been updated and extended typically to take account of converting society. There are other codes, which include significantly the Code Pénal, or Penal code, which defines crook law. The modern-day Indian law derives its origins from the Common regulation system which is the end result of the imperial rule over India. The criminal justice system in India has been inherited from the colonial era. The objective of the Criminal Procedure Code is to provide for a machinery for the punishment of offenders for their crimes.

**Keywords:** prosecution system, civil code, supreme court, high court, criminal procedure code

### Introduction

The advent of law comes from age old customs and natural law which was considered to be a divine sanction meant to be followed by the humans in order to live in a civilised life. However, with evolution of new legal practices there resulted in new systems of law which evolved in different civilisations of the world. Modern day Contracts and deeds come from age old development from Mesopotamian era where traders and merchants had developed concepts of partnerships and contracts. Common law tradition which is the source of almost every legal system applied worldwide, including India, is also based on the Roman framework and two are, to a great extent, related to each other.

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### Prosecution System in India

The criminal justice system in India has been inherited from the colonial era. Under the British India, the Regulating Act of 1773 was enacted which established a court at Calcutta and later in Madras and Bombay. The Courts were to follow the British Procedural Law while deciding the cases. Subsequently, in 1861, the British Parliament passed the Criminal Procedure Code of 1861. The Code was amended in 1898 and then in 1973, as per the 41st Law Commission Report.

The Code of Criminal Procedure (CrPC) governs the procedure of criminal law in India. It was enacted in the year 1973 and came into force on April 1<sup>st</sup>, 1974. It provides for the procedure for the trial of offences defined under the Indian Penal Code <sup>[1]</sup>. The objective of the Criminal Procedure Code is to provide for a machinery for the punishment of offenders for their crimes <sup>[2]</sup>. Section 4 of CrPC states that all offences under the Code shall be investigated, tried and otherwise dealt with in accordance to the provisions of this Code <sup>[3]</sup>. The core object of the Code is to ensure that an accused gets a fair trial in order to safeguard the principle of natural justice.

### AMBIT UNDER CrPC

Every person, irrespective of whether arrested with or without warrant, must be informed of the grounds of his arrest. Every person who is arrested must be produced before a Magistrate without unnecessary delay. No person shall be detained by a police officer for over 24 hours without being produced before a magistrate. No accused can

<sup>1</sup>SurendraNath Banerjee v. Chief Justice and Judges of the High Court, (1882-83) ILR 10 Cal 109.

<sup>2</sup>In re Ganesh, ILR 13 Bom 590.

<sup>3</sup>Section 4(2), Code of Criminal Procedure, 1973.

be kept in the police custody for more than 15 days during the period of investigation even by an order of the Court.

Article 21 of the Constitution provides that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. In the case of *D.K. Basu v. State of West Bengal*, the court held that ‘torture, death, rape in police custody infringes Article 21 and strikes a blow at rule of law. Torture involves not only physical suffering but also mental agony.’

Article 21 would also include free legal aid in its definition<sup>[4]</sup>. In case of *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, it was held that speedy trial is an essential ingredient of ‘reasonable, fair and just’ procedure guaranteed under Article 21.

Article 20(1) states that a person can be only convicted for an offence which is a crime under the law in force at the time of commission of the crime. Article 20(2) provides protection against double jeopardy and Article 20(3) provides protection to the accused against self-incrimination. To attract article 20(3), the person must be accused of an offence and he must be forced to be a witness against himself. Right against self-incrimination arises when incriminating statement is made out of compulsion<sup>[5]</sup>.

### Prosecution System in France

France follows the “Civil law’ not like the English-speaking nations which use a device of ‘Common regulation’ which include India. Common regulation machine has developed over a long-time frame and are in large part primarily based on precedents and consensus, while Civil Law is based on a Code of Law.

French Criminal Procedure is known as d’coaching Penale and governs all of criminal system in France.

Petty crimes and everyday offences are dealt with either a local magistrate or the police court. More serious offences are dealt by the Tribunal Correctionnel, the criminal law equivalent of the TGI. Gruesome crimes like murder and rape are referred to a Courd’ Assises, also known as the Assize Court where the trial takes place with the help of a jury.

The duty to research below Criminal Procedure Code originates from Sections a hundred and sixty (1), 163(1) and 170(1). The research doesn’t need to be in opposition to a specific individual however may be conducted towards an unknown man or woman. In order to investigate and give upward push to the criminal liability of the accused, the prosecutor ought to have sufficient reasons to consider his involvement within the crime.

The French crook technique includes three main steps:

- Police investigation and the prosecution
- Judicial investigation
- Trial

French Criminal Procedure Code offers a number of significances to confidentiality. Any man or woman who entails himself in the procedure is sure by the professional secrecy, which if breached is punishable underneath the Code.

The system to prosecute an accused largely involves the police officers. France has types of police officials –

- a. Crime Prevention Police

- b. Crime Investigation Police
- c. National Police (works in urban regions and belongs to Home Office)
- d. The Gendarmes (work in rural regions and are connected to the Ministry of Defence)

These officials save you the crimes in the Country and if committed, conduct the investigations so that you can punish the wrongdoer. Gruesome or critical crimes are regularly given precedence and are handled expedited research.

An accused may be detained for the purpose of interrogation for 24 hours, which can be 48 hours in case of certain situations and may be extended as much as 98 hours.

Under the French Criminal Procedure Code, an accused is granted with some rights. For example, he has a right to fulfill his attorney while in custody. Even the police officers have to put together an affidavit containing all the details of the accused for the time spent in police custody.

### Comparative Analysis

The first point of contrast among the prosecution methodologies of the two nations lies inside the truth of the device followed i.e. Inquisitorial and opposed. Under the Inquisitorial System, which is accompanied by using France, the pre-trial listening to for bringing a likely indictment is typically under the manage of a judge whose duties consist of the investigation of all aspects of the case, whether favourable or unfavourable to either the prosecution or defense. Witnesses are heard, and the accused, who is represented by counsel, may also be heard, though he is not required to speak and, if he does, he is not put under oath. Whereas, India follows an Adversarial System, wherein each side is responsible for conducting its own investigation. In criminal proceedings, the prosecution represents the people at large and has at its disposal the police department with its investigators and laboratories, while the defence must find its own investigative resources and finances.<sup>3</sup> In both the countries, the Code of Criminal Procedure works to regulate the functionalities of the Prosecutors. In India, the method of appointment, eligibility, criteria of qualification and experience, the provisions for the courts, offences and the Prosecutors, the prerogatives, powers, duties of Prosecutors, etc. is specifically mentioned in the Code of Criminal Procedure, 1973. Before 1973, the Prosecutors in India were ruled under the Police Laws of the respective States since the Prosecutors were part and parcel of the State police departments. The concept of Public Prosecutor was introduced by the British Rule in India. French Criminal justice system like India has sacrosanct historical background. Before

1958 the State, in their judicial functions delegated their powers as State representative to the employees working with the courts. State employees had a task to investigate the crime, collect evidences, execute sentences, etc. At that time, legal knowledge by the State employees was not a criterion. With the passage of time, it was felt that there should be somebody legally sound and capable to represent the interest of victims in the law courts on behalf of the State. On the basis of this reason, posts of the Prosecutors were created in France. The Code of Criminal Procedure in India is of 1973 and that of France is of 1958.

<sup>4</sup>*Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.

<sup>5</sup>*Selvi v. State of Karnataka*, (2010) 7 SCC 263.

**Conclusion**

The common objective of the prosecution systems of both the countries is to ensure dispensation of justice and ensure that the guilty must be subjected to the mandates of law and not roam freely, which is undoubtedly one of the very pre-requisite as to why law is made in the first place.

Both legal systems of India and France are very different in its approach. The procedure followed in France is a bit stringent as compared to India, and might lead to various human rights violations. Although Indian Procedural laws favour the accused, they result in unnecessary suffering by the victims.

Therefore, there needs to be a balance. Both the systems in India and France have their pros and cons and are ever-evolving.

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