



THE COURTROOM IS NOT A LEVEL PLAYING FIELD: RETHINKING FAIRNESS IN ADVERSARIAL JUSTICE

Kapil Gaikwad*

ABSTRACT

The study investigates how structural inequalities operate within the Indian adversarial justice system, which fails to deliver equality according to constitutional law. The study shows how wealth gaps and restricted access and power imbalances demonstrate that the adversarial model functions as a legal fiction which does not deliver genuine fairness. The Supreme Court recognised free legal aid as a fundamental right according to Hussainara Khatoon vs. State of Bihar, yet the adversarial justice system benefits wealthy people while it pushes poor individuals to the edges of the legal system. The research challenges the belief that equal procedures lead to complete justice by proposing legal aid systems which include inquisitorial methods and economic advantage limitations as necessary changes. The research demonstrates that formal equality establishes an urgent requirement which needs to change into actual judicial access for individuals.¹

Keywords: Adversarial Justice, Equality, Legal Aid, Access to Justice, Fairness.

INTRODUCTION

The adversarial justice system stands as the foundation of India's legal framework, inherited from British colonial rule. The legal system operates through its two competing parties, who present their case to an impartial judge, who assumes that truth will emerge from detailed arguments and cross-examination methods. Article 14 of the Constitution guarantees equality before the law, while Article 39A² directs the State to ensure the legal system promotes justice based on equal opportunity. The system uses formal procedural equality, which raises basic

*BA LLB, FIFTH YEAR, PDEAS LAW COLLEGE, PUNE.

¹ Code of Civil Procedure 1908; Bharatiya Nagarik Suraksha Sanhita 2023.

² Constitution of India 1950, arts 14, 39A

https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf accessed 18 January 2026.

issues about whether adversarial justice can achieve actual fairness when wealthy people control resources and power.

This essay challenges the normative assumption that adversarial proceedings create substantive equality under Indian law. The adversarial model functions as a procedural fiction which protects existing structural injustices instead of achieving actual equality. The essay demonstrates that adversarial justice creates unequal results through its examination of economic barriers which affect Indian litigants, its study of cognitive and informational disadvantages faced by marginalised parties, and its assessment of systemic advantages that rich defendants possess. The implications of this matter extend to fundamental constitutional rights, which Article 14 and Article 21 protect and to the effectiveness of Legal Services Authorities Act 1987 remedial schemes and to the essential nature of justice in democratic societies.

THE ADVERSARIAL SYSTEM IN INDIAN LEGAL SYSTEMS

The system of adversarial justice system processes justice through its system of party adversaries who present their cases. The two parties in a trial compete to prove their case through witness examination and evidence presentation before a judge who makes decisions based on the presented case materials.³ The model presupposes that both parties in a lawsuit possess equal litigation capabilities through their shared resources, which match their knowledge and their courtroom presentation skills. The Bharatiya Sakshya Adhinyam, 2023 and procedural codes operationalise this assumption through rules governing examination, cross-examination, and burden of proof.⁴

However, this theoretical framework was developed in situations that were completely different from the present-day conditions of India. The Supreme Court in *Hussainara Khatoun vs. State of Bihar* recognised that for indigent accused persons, an adversarial trial without legal representation violates fundamental rights.⁵ Justice Bhagwati explained that the adversarial system requires both parties to have legal representation because "in our adversary system of

³ Bharatiya Sakshya Adhinyam 2023, ss 137-166 <https://www.indiacode.nic.in/handle/123456789/20063> accessed 18 January 2026; Code of Civil Procedure 1908, Order XVIII https://www.indiacode.nic.in/bitstream/123456789/13813/1/the_code_of_civil_procedure%2C_1908.pdf accessed 18 January 2026.

⁴ Bharatiya Sakshya Adhinyam 2023, ss 101-114 (burden of proof).

⁵ *Hussainara Khatoun & Ors v Home Secretary, State of Bihar* (1979) AIR 1369.

criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided."⁶

The formal commitment to equality masks profound practical inequalities. When one party commands vast financial resources permitting engagement of senior advocates, teams of lawyers, expert witnesses, and prolonged litigation, while the opponent struggles to afford basic representation, the adversarial contest becomes fundamentally unequal. The assumption that procedural rules create substantive fairness collapses when parties possess radically different capacities to utilise those procedures.

ECONOMIC BARRIERS AND WEALTH DISPARITIES⁷

The adversarial system needs both parties to have money for proper legal defence. The situation proves that extreme economic obstacles create barriers which stop poor people in India from obtaining justice. The Supreme Court in Hussainara Khatoon found that approximately 70% of people in rural areas are illiterate and unaware of legal rights, with poverty preventing them from securing legal assistance. The economic disadvantage displays itself through several different aspects.

First, the cost of legal representation creates prohibitive barriers. Senior advocates charge fees which start at lakhs for every courtroom appearance. Junior advocates demand retainers which ordinary citizens cannot afford. Defendants who face serious criminal charges and civil litigants who handle property disputes both face their weakest position when they cannot pay for expert legal help. Wealthy parties can engage teams of lawyers, conduct extensive discovery, hire expert witnesses, and pursue appeals indefinitely. The resources which poor parties need to defend themselves in court make it impossible to achieve equality during the initial stages of legal proceedings.

Litigation expenses include more than just attorney fees. The total expenses include court fees and documentation charges, and travel expenses for court appearances and the opportunity costs from time spent in legal proceedings. Daily wage workers experience income loss because every court date requires them to miss work. Marginalised communities who live far away from district courts need to spend money which they do not have to travel to urban areas.

⁶ Ibid [18].

⁷ ibid [15]-[16].

The economic barriers which exist in the system prevent poor people from successfully exercising their rights through the adversarial process.⁸

Third, wealthy litigants use procedural complexity as their main legal weapon. The parties who have resources to control the litigation process use their ability to file useless motions and request multiple delays, and complete their appeals process to create delays that force their opponents to spend money they cannot afford. The Supreme Court has repeatedly lamented this "legal terrorism" where procedural weapons serve not truth-seeking but opposition to justice.⁹ The adversarial system's formal equality functions as a tool that enables people to oppress others.

INFORMATIONAL ASYMMETRIES AND COGNITIVE DISADVANTAGES¹⁰

The system of adversarial fairness encounters its fundamental challenge from two factors, which include economic obstacles and informational and cognitive disadvantages. The legal system presumes that both parties share identical abilities to comprehend judicial procedures and assess evidence, and develop their litigation strategies. This assumption fails catastrophically for India's marginalised populations.

The most basic obstacle to progress exists because people cannot read. Adult literacy rates stay beneath 75% in addition to showing much lower rates among marginalised castes and tribal communities, which creates a situation where most people cannot read court documents or understand legal notices, or comprehend pleadings.¹¹ The National Legal Services Authority acknowledges legal illiteracy-ignorance of legal rights and procedures- affects overwhelming majorities even among literate populations.¹² This informational deficit means poor litigants cannot effectively participate in adversarial contests requiring documentary evidence, written submissions, and legal argumentation.

Disadvantages become worse when language barriers between people create additional challenges. The court system operates mainly in English and Hindi, which prevents access to

⁸ Legal Services Authorities Act 1987, Statement of Objects and Reasons

<https://www.indiacode.nic.in/bitstream/123456789/1925/1/198739.pdf> accessed 18 January 2026.

⁹ *Salem Advocate Bar Association v Union of India* (2005) 6 SCC 344.

¹⁰ Census of India 2011, Literacy Rate Data.

¹¹ National Legal Services Authority, 'Legal Awareness/Literacy' <https://nalsa.gov.in/legal-awareness-literacy/> accessed 18 January 2026.

¹² Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law & Society Review* 95.

court proceedings for hundreds of millions who speak only regional languages. The specialised legal terms used in the legal field become impossible to understand for people who lack legal knowledge, despite their educational background. The difference between legal language and common understanding prevents low-income litigants from telling their attorneys about their cases and understanding what happens in court, and taking part in their own legal battles.

Psychological disadvantages create deeper social class divisions, which lead to permanent social inequality. The courtroom environment directly challenges individuals who lack knowledge of its official processes. The psychological subordination which affects marginalised litigants who battle against strong opponents creates obstacles to their legal representation. Studies show that dominant caste parties from educated urban backgrounds operate adversarial systems better than those of the Scheduled Castes and illiterate villagers and women. The adversarial system presents itself as impartial but actually provides psychological benefits to those who hold power.

SYSTEMIC ADVANTAGES OF REPEAT PLAYERS

The legal system gives "repeat players", which include corporations, government agencies and wealthy litigants who frequently engage in court battles, an advantage over "one-shotters" who seek to resolve their specific legal matters. The system exhibits a structural bias which operates through several distinct pathways. First, the legal system requires players to acquire specialised knowledge through their continuous participation in legal proceedings. They learn to navigate court procedures while recognising how judges make decisions and developing the most effective methods to conduct their legal cases. One-shotters lack this accumulated knowledge, approaching each case *de novo* without institutional memory or strategic sophistication.

The second point shows that repeat players use their ability to develop extended strategies, which enable them to win multiple cases instead of trying to win single cases. They can afford to litigate test cases to establish favourable precedents, invest in appeals that benefit future litigation, and absorb costs individual litigants cannot bear. The strategic advantage creates an uneven playing field during the adversarial process.

Third, repeat players cultivate relationships with legal system actors. The combination of frequent court visits and judge acquaintance, and continued interaction with court personnel, creates informal advantages that formal regulations do not provide. The relational resources

that one-shotters possess are insufficient because they approach courts as strangers who lack knowledge about their environment.

The Indian context makes these dynamics more intense because it presents its own unique challenges. The government functions as a litigant, which demonstrates how repeated legal battles create advantages for litigants who appear in court multiple times. The Income Tax Department, Police, and Municipal Corporations possess extensive resources for legal battles, and their staff have built up institutional knowledge which enables them to pursue cases without limit. Individual citizens who battle the government in court face extreme structural disadvantages even when both sides have equal access to legal procedures.

LEGAL AIB: THE INADEQUATE REMEDY

Recognition of adversarial injustice led to constitutional and statutory remedies. Article 39A mandates State provision of free legal aid, which enables all individuals to access justice without charge. The Legal Services Authorities Act, 1987, operationalises this directive through the creation of the National Legal Services Authority and state legal assistance authorities, which deliver free legal support to economically disadvantaged, socially excluded and disabled individuals.

The existing legal aid programs fail to provide sufficient support for people who face structural inequality. First, eligibility restrictions exclude many who cannot afford effective representation. Income criteria vary by state but generally limit aid to those earning below ₹9,000-₹12,000 annually, figures failing to reflect actual capacity to afford legal services. Middle-class litigants unable to afford competent counsel but exceeding aid thresholds face particular hardship.

Second, legal aid quality often proves inferior to paid representation. Legal aid panel advocates often lack the required experience because they work on legal cases with insufficient dedication, while they treat their responsibilities as pro bono work instead of professional duties. The Supreme Court has noted "legal aid must be competent legal aid", yet implementation frequently falls short. Poor litigants defended by overworked legal aid lawyers who lack resources must battle against wealthy opponents who possess teams of senior advocates, which creates an illusion of equality that hides actual injustice.

The legal aid system provides funding only for lawyer expenses instead of covering all costs associated with court proceedings. Legal aid fails to cover all expenses associated with court fees and document charges, expert witness payments, and all other legal costs. The system of legal aid fails to provide wealthy litigants with their advantages because it cannot restore their informational deficits and mental disadvantages, and their repeated court appearances. The limitations of legal aid systems demonstrate that procedural solutions cannot solve fundamental problems of social inequality.

ALTERNATIVES: INQUISITORIAL ELEMENTS AND SUBSTANTIVE EQUALITY

The existing adversarial system deficiencies need to be solved through different methods. The Indian legal system uses inquisitorial elements, which enable judges to investigate cases through active truth-seeking instead of employing the pure adversarial system, where judges passively handle disputes between parties.

The Bharatiya Sakshya Adhiniyam Section 168 allows judges to question witnesses in their search for the truth. The Bharatiya Nagarik Suraksha Sanhita Section 348 enables courts to bring new witnesses to court, while existing witnesses can be recalled for thorough investigations. The Supreme Court has established that judges must take active steps to find the truth because their main responsibility is to uncover the truth in court proceedings.

The inquisitorial elements handle some issues that arise during adversarial proceedings. Judges who conduct witness examinations obtain a method to counteract ineffective legal representation by unskilled litigants. The court system becomes less reliant on the different investigative capacities of the involved parties when it demands extra evidence. The regulations need judges to decide their actions because institutional practices create a situation where judges maintain their authority through inaction.

The need for fundamental changes exists because existing reforms only provide superficial equality. Legal fee restrictions for specific court cases will create financial advantages for litigants. The establishment of fast-track courts will help low-income litigants who face delays caused by their affluent opponents. The implementation of tougher penalties for unworthy lawsuits will help prevent people from misusing legal procedures. The legal system should move away from its current system, which allows parties to handle their own investigations, because judges should undertake this task instead.

CONCLUSION

The Indian legal system implements adversarial justice through its procedural framework, which creates equal opportunities for both parties but results in unjust outcomes through its actual application. The system depends on three false assumptions, which state that all parties will have equal access to resources and that both sides possess identical abilities to compete in court. Adversarial justice systems create unfair results because they benefit wealthy, powerful individuals while they push disadvantaged people to the margins of society.

The Supreme Court established a landmark decision in *Hussainara Khatoon*, which declared free legal aid as a fundamental right protected by Article 21 of the Indian Constitution. The legal aid programs face challenges in their execution because they fail to tackle the deep-rooted structural problems of society. The system of providing lawyers to poor people who need legal representation fails to establish true equality because their opponents possess much greater financial and institutional advantages.

Reform requires moving beyond incremental improvements toward fundamental reconsideration of adversarial assumptions. The system needs to establish inquisitorial processes which give judges the power to balance between different parties while implementing restrictions on economic benefits and establishing that justice needs structural solutions. The Indian legal system needs to discard the myth of equal opportunity because this belief prevents all citizens from experiencing constitutional equality and justice.

The question posed-whether the courtroom is a level playing field-has a clear answer: it is not. The first step to building a justice system that respects human dignity and provides equal rights to all people in India is for people to accept this truth.