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Analyzing the British Judicial System: Ensuring Rights of the Accused During Investigation

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Abstract

This paper investigates the historical development of the British judicial system and its compatibility with the safeguards provided to the accused under the European Convention on Human Rights (ECHR). This study emphasizes the critical milestones and reforms that have influenced contemporary British jurisprudence by tracing the evolution of legal principles and institutions from medieval England to the modern era. Special emphasis is placed on the procedural safeguards and rights that are enshrined in the ECHR, with a focus on their implementation and impact within the British legal context. The paper illustrates how the British judicial system has evolved to maintain the principles of human dignity, equity, and due process by conducting a comprehensive examination of landmark cases and legislative changes. This research offers a valuable perspective on the relationship between international human rights standards and national legal frameworks, emphasizing the United Kingdom's ongoing dedication to the rule of law and justice.

Keywords: *Judicial System, Presumption of Innocence, Rights of Defense*

INTRODUCTION

The democratic governance of any nation, including the United Kingdom (UK) is fundamentally supported by its judicial system. The judicial system guarantees the application and interpretation of the law, establishes a mechanism for the resolution of disputes, and upholds the principles of justice and the rule of law. Something very interesting about the UK judiciary is the *Separation of Powers* (Benwell & Gay, 2011). This means that the judiciary functions independently of the executive and legislative branches, thereby ensuring a critical check and balance within the government. The judiciary guarantees that all individuals and institutions, including the government, are subject to the law, ensuring that justice is administered in an equitable and impartial manner.

Other critical aspects of the judicial role in UK are relevant to highlight here. Among many other things, the UK judicial system protects the rights and freedoms of individuals residing within the UK. This is also achieved by Court's ability to take cognizance of matters where public authorities are involved. Courts can ensure that public authorities do not violate citizens' rights by challenging their actions through judicial review. This accountability is also essential for the preservation of public trust and confidence in the legal system.

The judicial system also offers a structured process for resolving disputes, regardless of whether they are civil or criminal. This mechanism ensures that conflicts are resolved in a fair and orderly manner, thereby preventing the escalation of disputes. The interpretation of statutes and legislation is a critical responsibility of judges. Their decisions contribute to the clarification of the meaning and application of laws, thereby ensuring consistency in legal rulings and providing guidance for future cases. The judiciary's independence is crucial for the preservation of the government's power balance and in independent judiciary plays a crucial role in safeguarding democratic principles and preventing power violations by serving as a check on the executive and legislative branches.

This research is an attempt of the Author to trace the historical evolution of the UK judicial. Through a historical analysis, the study will examine the impact of historical developments on the contemporary judicial system, providing a comprehensive understanding of its evolution and present-day functions. The present research shall then delve into the safeguards provided to the accused under the British laws. Special focus will be on the judicial guarantees provided to the accused during the pendency of the trial. This research is carried

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out pursuant to an extensive review and analysis of scholarly literature, committee reports, research papers/thesis and judicial precedents to the extent it was possible by the Author.

Judicature of United Kingdom- Historical Analysis & Development

There has been a continuous evolution of the judicial system in England and Wales for more than a millennium. The earliest origins of the judicial system begun with "trial by ordeal" in the United Kingdom, in which the accused was compelled to extract a stone from a cauldron of boiling water, take up a red-hot iron bar, or engage in an equally hazardous and painful activity such as a combat. The accused were deemed to have God's support if their hand had begun to heal after three days, thereby demonstrating their innocence (Leatherdale, 2019). In recent times, a 60-year-old man requested a trial by combat to resolve a motoring fine in the year 2002. However, magistrates rejected his appeal and imposed a fine of £200 with £100 costs (Smith, 2022).

Originally, William II prohibited trial by ordeal and established *Curia Regis*. The King's Court, also known as Curia Regis, was the first court of law to be established in the United Kingdom. It was founded in 1066 BC and remained in existence until the end of the 13th century. The king of England would frequently convene a council, which provided the monarch with advice and occasionally functioned as a court of justice. This council was composed of the bishops and other prominent figures of the kingdom (Burnett, 2019). Curia Regis was actually the point of development for all common-law courts, the Chancery and even the Parliament. Post implementation of Curio Regis, Henry II (1154-1189) laid the groundwork for the contemporary justice system by establishing a jury of 12 local knights to resolve disputes regarding land ownership. Upon his accession to the throne, the United Kingdom had only 18 judges. In 1178, a new permanent court, the Court of the King's Bench, was established from Curia Regis, and judicial proceedings before the King became distinct from those before the King's Council. Additionally, Henry directed certain non-King's Bench judges to travel throughout the country and resolve disputes (Aleem, Et al., 2021).

This was followed by King John's reign (1199-1216) which arguably is the most pathbreaking period of the UK judicial history. King John of England was compelled to sign the Magna Carta in 1215 by his subjects after he violated a number of ancient laws and customs that had governed England. This document enumerates what would later be considered human rights. Among them were the rights of all free citizens to own and inherit property, to be protected from exorbitant taxes, and the right of the church to be free from governmental interference. It established the right of widows who owned property to choose not to remarry, as well as the principles of equality before the law and due process. Additionally, it included provisions that prohibited official misconduct and extortion (United for Human Rights). The Magna Carta, or "Great Charter," was undoubtedly the most significant early influence on the extensive historical process that resulted in the rule of constitutional law in the English-speaking world.

This period also marked the creation of positions for first professional judges and magistrates. A new form of court began to emerge, which is now recognized as the Magistrates' court. Magistrates' courts have their origins in the Anglo-Saxon moot court and the manorial court; however, their formal establishment occurred in 1285, during the reign of Edward I, when "good and lawful men" were appointed to maintain the King's tranquility. Magistrates, who are also referred to as Justices of the Peace, have been responsible for the majority of the judicial work in England and Wales since that time (Courts & Tribunal Judiciary). It's clear that up until this point, there was no separation between Judiciary and Politics. The problem with this approach was that judiciary did not have any absolute authority and was mostly vested in the King's authority. Whereas, contrary to what was going on an independent judiciary is must for uninfluenced and independent decision making. In 1387, six judges advised Richard II that a parliamentary commission established to restrict his own powers was "invalid and traitorous." They were all convicted, impeached, and sentenced to execution. Despite the fact that only one individual was executed, the remaining individuals were exiled to Ireland (Fletcher, 2008).

From 15th century onwards and during the wake of wars, judiciary started to get separate from the politics. The judges were essentially unaffected by the changes in government and stood apart from both the warring Houses of Lancaster and York during the War of Roses. Henry VIII's advisory body, the Privy Council, was devoid of justices from 1540 onward. Although his son Edward VI and daughter Mary I did include judges on their

respective Privy Councils, Mary I removed three judges from office, and Elizabeth, I subsequently excluded them for 40 years. The judiciary gradually separated from the administration. The Reformation expanded the sovereign's authority, as the state had assumed the Church's role in establishing the laws of God and had eliminated the Pope's role as the ultimate arbiter on Earth, despite the fact that it was generally acknowledged at the time that even the King was subject to the laws of the land. Consequently, the King continued to serve as the primary legislator, while the judges served as the interpreters of the law, a conceivably uneasy arrangement in those times (Courts & Tribunal Judiciary).

The Petition of Right, which was produced by the English Parliament in 1628 and sent to Charles I as a declaration of civil liberties, was the subsequent recorded milestone in the development of UK judicial system. The king's government was compelled to impose forced loans and station military in the homes of his subjects as a cost-cutting measure after Parliament declined to provide funding for his unpopular foreign policy. The violent hostility toward Charles and George Villiers, the Duke of Buckingham, that had been generated in Parliament as a result of arbitrary arrest and imprisonment for opposing these policies. During this same time, the Petition of Right was incepted by Sir Edward Coke. This was founded on earlier statutes and charters and proclaimed four fundamental principles: (1) Parliamentary consent was required for the imposition of taxes, (2) habeas corpus was reaffirmed, (3) the citizenry was not to be quartered with soldiers, and (4) martial law was not to be implemented during periods of peace. This era truly marked the rise of an independent judiciary as during this period the number of appointments and salary per judge also increased (Stevens).

There has always been a division between Common Law Courts and Court of Chancery in UK. Parliament passed the Judicature Act in 1873, which combined the common law and equity, as well as the common law tribunals and Court of Chancery. Despite the fact that the Chancery Division remains one of the Divisions of the High Court, all courts are now capable of administering both equity and common law, with equity having the final say in any dispute. The High Court and the Court of Appeal were established by the same Act, which also granted the Court of Appeal the authority to appeal civil cases. Criminal appeal rights were restricted until the Criminal Appeal Act of 1907 established a Court of Criminal Appeal. The Criminal Appeal Act 1966 terminated the Court of Criminal Appeal's status as a distinct entity, which it had maintained for nearly 60 years. Its authority was transferred to the Court of Appeal (Perkins, 1914). This was followed by the establishment of Crown Courts in 1956 in Liverpool and Manchester. These courts took the quarter sessions work in their cities. This was followed by UK joining the European Union (EU).

In October 2000, the Human Rights Act 1998 of the United Kingdom was also implemented, which established a remedy for violations of the European Convention on Human Rights (ECHR) in the UK courts. In appropriate cases, all UK courts, including the Supreme Court, were tasked with determining whether public bodies have acted in accordance with the ECHR. Furthermore, Parliament mandated that all UK courts, including the Supreme Court, interpret legislation in a manner that is consistent with the ECHR, where feasible, through the Human Rights Act (Liberty).

Subsequently, the Constitutional Reform Act, 2005 was enacted and Lord Chancellor's office capacity was altered. This considerable transformation has been characterized as the most significant to impact the justice system since Magna Carta. The Lord Chief Justice was made the President of the Courts of England and Wales and the Head of Judiciary, a position that had been held by the Lord Chancellor since 1873. The Lord Chancellor and other Crown Ministers were granted an explicit statutory obligation to safeguard the independence of the judiciary for the first time. The judiciary was officially recognized as a completely equal branch of the State and fully independent from the government and Parliament for the first time in its 1,000-year history (Hazell, 2022). Subsequently, the House of Lords was also replaced by the Supreme Court in the year 2009, creating a separation between the legislature and the judiciary, making judiciary fully independent in its truest sense. As of today, the UK judicial system follows a hierarchy system with Trial Courts and some Crown Courts being the courts of first instance, followed by High Courts, Courts of Appeal and ultimately the Supreme Court of the United Kingdom being the highest Court of Appeal in all cases.

On the other hand, the Court of Justice of EU and European Court of Human Rights is the highest court in EU created to safeguard ECHR convention as discussed above. The European Convention on Human Rights

and the European Court of Human Rights are distinct entities from the European Union. The European Convention on Human Rights is not affected by Brexit, as it is an international treaty rather than a treaty of the European Union (Courts & Tribunal Judiciary). It's established by the Council of Europe which should not be confused with European Union. In this next section, the Author shall discuss the safeguards and guarantees provided to those who are accused or under trial.

Safeguards for the Accused - Interplay of UK laws and ECHR

The European Convention on Human Rights (ECHR) is a fundamental component of the protection of human rights in Europe. It was established by the Council of Europe in 1950 with the objective of protecting the fundamental rights and freedoms of individuals within the member states. ECHR guarantees the protection of individuals within its jurisdiction from state violations by offering a comprehensive list of civil and political rights. All ECHR violations, including those that occur in the UK are addressed before the European Court of Human Rights. ECHR lays a very interesting interplay of regulations which protect the "fair-trial" rights of an accused. The European Convention on Human Rights (ECHR) endeavors to safeguard human rights by employing a comprehensive and multifaceted approach that includes legal obligations, enforcement mechanisms, and interpretative principles (Dawson & Robinson, 2024). The ECHR imposes legally binding obligations on its signatory nations. Governments, including the UK government are obligated to guarantee that their domestic laws and practices adhere to the standards established in the Convention.

The right to an impartial trial is guaranteed by Article 6, which is one of the most critical provisions of the ECHR. Article 8 enshrines the principle of the rule of law, upon which a society is based and built. It protects the rights of individuals who have been accused of a crime by providing them with several essential guarantees.

Right to a Fair & Public Hearing

Article 6(1) guarantees that an independent and impartial tribunal shall conduct a fair and public inquiry within a reasonable timeframe for all individuals. This encompasses the right to public pronouncements of judgments, although the press and public may be excluded from all or a portion of the trial in specific circumstances such as in the interests of morals, public order, or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice (European Convention on Human Rights, 1953). The rule of law and a functioning democracy are fundamentally dependent on the right to a fair prosecution, which is safeguarded by this Article 6 of ECHR. This fundamental right has been the subject of numerous judgments by the European Court of Human Rights and more times than often, the Courts have tried in good faith to expand the scope of its applicability and effectiveness. For example, in Golder (Golder vs. United Kingdom, 1975), it was established the principle that an individual has the right to access a court and legal representation in order to safeguard their civil rights and obligations, even while being in prison. Similarly, in the case of *Barberà* (Case of Barberà, Messegué, and Jabardo v. Spain) the significance of impartiality in judicial proceedings and the concept of "equality of arms," which stipulates that all parties to a case must have the same opportunity to present their case effective was established.

Presumption of Innocence

According to Article 6(2) (European Convention on Human Rights, 1953), individuals who are accused of committing a criminal offense are presumed innocent until proven culpable in accordance with the law. This principle is essential to criminal justice systems and safeguards individuals from unjust treatment. This scope of this Article (2) also extends to the judges and the members of the Court. As rightly established in Barberà*, Messegué, and Jabardo v. Spain,* under the presumption of innocence inter alia, it necessitates that the members of a court refrain from commencing their duties with the preconceived notion that the accused has perpetrated the offense in question; the prosecution bears the burden of proof, and any uncertainty should be advantageous to the accused. It is also a consequence of this that the prosecution is responsible for informing the accused of the case that will be presented against them. This will enable the accused to prepare and present their defense in a manner that is appropriate and to present evidence that is sufficient to convict them. In criminal proceedings, the presumption of innocence is applicable regardless of the prosecution's outcome (Minelli v.

Switzerland, 1983). It pertains to the totality of the proceedings (Konstas v. Greece, 2011). Nevertheless, Article 6(2) is no longer applicable during the sentencing process once culpability has been established in accordance with the law (European Court of Human Rights, 2024).

Among other government officials, the presumption of innocence may be violated by a variety of public authorities, including the President of the Republic, the Prime Minister or Minister of the Interior, the Minister of Justice, the President of the Parliament, a prosecutor, and other prosecuting authorities, in addition to a judge or court such as in the case of *Khuzhin* (Khuzhin and ors. vs. Russia). It is also prohibited by Article 6(2) for public officials to make statements regarding pending criminal investigations that encourage the public to believe the suspect is guilty and prejudge the assessment of the facts by the competent judicial authority (See for example, *Ismoilov and Others v. Russia; Butkevičius v. Lithuania*). In spite of other considerations under Article 6(1), such as those related to adverse pre-trial publicity, such prejudicial statements also pose an issue under Article 6(2).

Minimum Rights of Defense

Article 6(3) (European Convention on Human Rights 1953) specifies the minimum rights of individuals who have been charged with a crime, guaranteeing the following-

Information of Charges: The accused must be promptly informed of the nature and cause of the accusation against them in a language that is comprehensible to them.

Adequate Time and Facilities: The accused must have sufficient time and resources to prepare their defense, thereby guaranteeing that they can effectively address the allegations.

Legal Assistance: The accused is entitled to defend themselves or to seek legal assistance of their own choosing. When the interests of justice necessitate it, legal assistance should be provided at no cost to those who are unable to afford it.

Witness Examination: The accused must be afforded the opportunity to examine or have witnesses examined against them, as well as to obtain the attendance and examination of witnesses on their behalf under the same conditions as those against them.

Interpreter Assistance: The accused is entitled to the free services of an interpreter if they are unable to comprehend or communicate the language used in court.

The requirements of this Article 6(3) regarding the rights of the defense/accused are to be interpreted as specific aspects of the right to a fair prosecution, which is guaranteed by Article 6(1) of ECHR, thereby creating a strong foundational relationship between the two. This also significantly increases the scope of interpretation of Article 6 as a whole through its various sub-sections. In the context of typical procedural circumstances that arise in criminal cases, the specific guarantees outlined in Article 6(3) exemplify the concept of a fair trial. However, their fundamental objective is to guarantee or contribute to the fairness of the criminal proceedings as a whole. Therefore, the guarantees enshrined in Article 6(3) are not an end in themselves and must be interpreted in the context of the proceedings as a whole (European Court of Human Rights, 2024). See for example, the European Court of Human Rights' footing in the case of *Ibrahim* (Ibrahim and Ors. vs. The United Kingdom).

Critical Issues in the UK judicial System

No provision for Impeachments

Judges are supposed to possess judicial independence in England and Wales, and one of the primary components of that independence is the difficulty of removing them. It is nearly impossible to remove justices from office against their will in the senior judiciary, which includes those at the High Court level and above. The only person who has the authority to remove them is the King, who must receive an address from both Houses of Parliament. This process has never been employed to remove a Welsh or English judge; the sole instance in which it was employed was in 1830, when Sir Jonah Barrington, a judge of the Irish High Court of Admiralty, was removed for corruption (Bulmer, 2017).

This does not imply that they are entirely unaccountable. A judge may be compelled to resign if they are no longer trusted by their colleagues. For instance, the Court of Appeal issued a severe critique of Mr. Justice Jeremiah Harman in 1998 for his failure to render a judgment in a civil case for a period of 20 months. Harman was already a controversial figure, who was frequently accused of rudeness and discourtesy toward barristers who appeared before him, particularly women. In 1992, he was criticized for striking a taxi driver under the mistaken belief that he was a press photographer. After the Court of Appeal's criticism, Harman resigned (Telegraph, 2021). However, it would have been exceedingly challenging for his colleagues to remove him had he declined to resign. Conversely, a disparity exists between the upper and lower level as the Lord Chancellor may dismiss judges who are below the High Court level with the approval of the Lord Chief Justice. The authority to suspend them from office is also present. Therefore, they are substantially less secure in their employment.

Executive's Influence on independence of Judiciary

Another significant avenue for political involvement in the judiciary is the executive branch's capacity to influence legal reforms. Legislative changes that directly impact the judiciary's functionality and scope are frequently initiated and driven by the government. These reforms have the potential to influence judicial practices and priorities, thereby ensuring that they are more closely aligned with the current government's agenda. For instance, the Constitutional Reform Act of 2005. Political objectives were the driving force behind the Constitutional Reform Act 2005, which established the Supreme Court of the United Kingdom and reformed the role of the Lord Chancellor. The reforms were designed to enhance the modernization of the judiciary and to more clearly delineate the division of powers. Nevertheless, the reform's process and content were significantly influenced by political factors, such as the current political craze for transparency and accountability.

Recommendations

Firstly, it can be guaranteed that the judicial appointments are exclusively determined by merit, with other explicit criteria that prioritizes impartiality, integrity, and legal expertise. Judicial committees can establish an independent judicial appointments commission to supervise the selection process, thereby reducing political influence. It must also be ensured that judiciary has access to adequate funding to function efficiently without being subjected to financial constraints that could potentially compromise its independence. To further prevent executive interference in judicial finances, transparent and autonomous budgeting processes can also be established. It is equally important to maintain the independence and impartiality of justices by providing them with ongoing professional development and training and ultimately the function of judicial councils or associations in the regulation of judicial conduct and professional standards can also be enhanced to anticipate a positive change.

CONCLUSION & OUTCOMES

In the past millennium, the law of the United Kingdom has undergone significant changes, transitioning from a system in which justice was administered by monarchs to one that is distinguished by a distinct and independent judiciary. The king's courts and the king himself played a prominent role in legal decisions during the early days, frequently combining executive and judicial functions. The Magna Carta, the establishment of the judiciary as a distinct branch, and the enactment of the Constitutional Reform Act 2005 have all played a role in the progressive separation of powers, which has been instrumental in the attainment of judicial independence. In spite of this advancement, there are still instances of political interference in the judiciary, particularly in politically sensitive cases and judicial appointments. These examples underscore the persistent obstacles associated with preserving complete independence from legislative and executive influences. Nevertheless, there is a sense of optimism that these dependence-related issues will be increasingly alleviated as societal values continue to evolve and legal frameworks continue to adapt. The trajectory of UK law indicates a steadfast dedication to the improvement of judicial independence, which is essential for the preservation of impartiality and the absence of undue political influence.

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