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Doi: 10.31703/ijlss.2022(I-II).02

Link: [https://doi.org/10.70540/ijlss.2022\(I-II\).02](https://doi.org/10.70540/ijlss.2022(I-II).02)



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Comparative Analysis of Various Judicial Systems across the World and Their Effectiveness



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Abstract: *The judicial system differs from state to state and sometimes within a state. They have been developed in different ways yet they might bear compliance with certain widely accepted historical norms of justice constituting the major judicial systems in the world. Hence, they resultantly fall within groups having distinct features e.g., the judicial system of the United Kingdom (UK), the United States (US) and commonwealth nations fall within the family of Common law while most of the European states, including France, Germany, and some North, Central, and South American countries like Mexico and Brazil, are influenced by the civil law family. Yet another set of the judicial system of countries including Russia, China, Cuba etc, is inspired by the family of socialist laws.*

This paper aims at a comparative analysis of major legal and judicial systems across the world by offering a paradigm for comparative analysis based on epistemological arguments with a special focus on China, Pakistan, the USA, Russia and France. A section of the paper is dedicated to the concept of famille juridique (Legal Family) maintained by the states across the world by adhering to certain models of legal and judicial systems despite the diversification of laws witnessed across the Globe. An attempt to answer the question, as to whether adherence to a particular predecessor judicial system influences the effectiveness and efficiency of the rule of law in certain jurisdictions, has also been made.

Keywords: Rule, Law, Systems, Judiciary, Romano-Germanic, Common Law, Socialist law, Civil, Stare, Decisis, Inquisitorial, Adversarial

Introduction

An effective justice system is the guarantor and guardian of the basic rights of citizens and the rule of law. Among other things, rule of law means that law is not only known to people but is easily accessible as well. So, equality before the law is the cornerstone of rule of law. The rule of law ensures checks and balances in the three principal organs of the state, i.e., the legislature, executive, and judiciary. An attempt has been made in this paper to examine legal and judicial systems in different jurisdictions and their efficacy. The legal and judicial system of a state comprises “rules, procedures, and institutions by which public initiatives and private endeavors can be carried out through legitimate means” (Alvendia, Kelly & Demarest Law Firm, 2018). The judicial systems across the globe have been developed in different ways yet they might bear compliance with certain widely accepted historical norms of justice constituting the major judicial

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Citation: Khan, Ehsan Ullah. 2022. "Comparative Analysis of Various Judicial Systems across the World and Their Effectiveness." *Indus Journal of Law & Social Sciences* I (II):5-18. doi: 10.31703/ijlss.2022(I-II).02.

systems in the world. The legal and judicial systems presently working in almost all states are inspired by one of the three main legal families which have acquired a well-recognized position of eminence. Those systems are: “the Romano-Germanic family, the Common law family, and the family of Socialist law”². There are also some other, but of less prominence, legal systems inspired by religious laws, customary laws, and hybrid systems.

Section 1 of this paper aims to introduce and impart a comparative analysis of major precursor groups to which the current judicial systems across the world adhere. The second part focuses on certain judicial systems in the world by offering a paradigm for comparative analysis. Section 3 is based on epistemological arguments according to comparative law with a special concentration on China, Pakistan, the USA, and France. A section of the paper is also dedicated to the concept of *famille juridique* (Legal Family) maintained by the states across the world by adhering to certain models of legal and judicial systems despite the diversification of laws witnessed across the Globe. An attempt to answer the question, as to whether adherence to a particular predecessor judicial system influences the effectiveness and efficiency of the Rule of Law in certain jurisdictions, has also been made.

Precursor Families of the Judicial System

Countries across the globe have adopted different legal and judicial systems, however, the majority of the systems have roots in the three main legal families i.e, the Romano-Germanic family, the Common law family, and the family of Socialist law, which have acquired a well-recognized position of eminence. Nevertheless, in some jurisdictions, legal systems are inspired by religious laws, customary laws, and hybrid systems. A bird's eye view of the three major legal families is given in the following paragraphs.

Romano-Germanic Family (jus civile)

The science of Law in this group is based on *jus civile* i.e., Civil Law. It mainly originated in Europe and was given a rational form within the scaffold of Roman law, since then act as a reference point for many other systems. The Civil law judicial system is influenced “by Napoleonic, Germanic, canonical, feudal, and local practices and doctrinal strains such as natural law, codification, and legal positivism”³. The *stare decisis* in such a system acts as a secondary option to parliamentary legislated codifications. It originated from the Intellectual efforts in the compilations of Emperor Justinian (A.D. 483-565)(David & Brierley, 1978), and developed into a juridical science, and adjusted to the realities of today’s world. The use of the term Romano-Germanic is an acknowledgement of the combined effort of academic institutions in the Latin and Germanic states, and was spread across the globe through colonization by European countries. In non-colonized states, it was felt that for modernization and Westernization, the adoption of Romano-Germanic legal tradition was a must.

The judicial systems of this family are inquisitorial in nature whereby the trial judges are expected to act as the inquisitors who play their role in fact-finding by inquiring and questioning the defense counsels, prosecutors, and witnesses. They are also empowered to require the definite pieces of evidence to be scrutinized if they are of the view that the presentation by the defense counsels or prosecution is derisory. Before taking cognizance of the case and starting the trial, the magistrate judges (also known as the judges d’instruction in France) take part in the inquiry of a case, usually by evaluating material laid down by the police and conferring with the prosecutor. The prosecution and defense counsels have limited roles in litigation.

² David, R., and J. E. C. Brierley. 1978. *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*. <http://ci.nii.ac.jp/ncid/BA10808789>.

³ Arnold-Baker, C. 2016. *The Companion to British History*.

Common Law Family

The second major judicial system in the world is prevailing in England and those jurisdictions which are modeled by the Law of England. In such a system, the concept of *stare decisis* i.e., precedents or case laws stands primary to statutory Laws. Common law, as defined Black's Law Dictionary refers to "the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs" (Garner, 2010). Currently, around one-third of the judicial systems across the globe are influenced by Common law or a combination of Common and Civil laws.

Adversarial System

The adversarial system, aka the adversary system, is a judicial system applied by common law jurisdictions. Under the system two attorneys represent their clients' versions or stances before an impartial person or a bunch of persons, known as a judge or jury, whose task is to establish the truthfulness or falsity of their versions and pass the judgment accordingly. This practice is completely different from the civil law-based inquisitorial system where the court plays an active role in the investigation of facts and circumstances of the case.

As it is not the duty of the defendant party to provide evidence in the adversarial proceedings of a criminal case, although they can be cross-examined, or can testify if they don't to be cross-examined. The nature of evidence plays an important role in such cases as it requires the skills and expertise of the lawyers on both sides who have to argue their cases before an impartial juror.

The family of Socialist law

This paper employs John Quigley's definition of socialist laws— that is, any state where socialism is the reigning ideology and attaining a communistic society as their prime objective.⁴

Yet, there is a debate on whether the civil law family is different from the socialist law family. There is a school of thought that thinks that "socialist legal systems should not be placed outside the civil law family"⁵

John Merryman argues that socialist reforms imposed "certain principles of socialist ideology on existing civil law systems and on the civil law tradition"⁶.

which then leads to "producing a young, vigorous legal tradition that still displays its essentially hybrid nature"⁷. Below are some of the examples of the court system to implement socialist laws:

Change in the judicial sphere took place chiefly through the creation of courts which were called "People's Courts" or "Extraordinary People's Courts." Unlike ordinary courts the People's Courts had lay judges, including lay presidents of the court; and they had no specific rules of procedure. These functioned in Bohemia and Moravia-Silesia from 1945 to May, 1947, and in Slovakia from May, 1945, till the end of 1947. In Hungary, the People's Courts, established by county, formed the backbone of the judiciary. In

⁴ Quigley, J. 1989. "Socialist Law and the Civil Law Tradition." *The American Journal of Comparative Law* 37 (4): 781. doi:10.2307/840224.

⁵ Chen, A. H. 2000. "Socialist Law, Civil Law, Common Law, and the Classification of Contemporary Chinese Law." In *Brill | Nijhoff eBooks*, edited by Brill, 55–74. doi:10.1163/9789004480933_008.

⁶ Merryman, J. 1987. "Civil Law Tradition." *The American Journal of Comparative Law* 35 (2): 438. doi:10.2307/840406.

⁷ Hazard, J. N. 1969. *Communists and Their Law: A Search for the Common Core of the Legal Systems of the Marxian Socialist States*.

Poland, as early as September, 1944, special criminal courts were created to try war criminals. In Yugoslavia, the "People's Court" became the ordinary designation of the district, county, and supreme courts.⁸

What is common in the Socialist law family therefore is the establishment of people's court which cater for the welfare of the people, although their use for achieving selfish interests is not uncommon.

Comparative Analysis of Precursor families

The difference between the systems based on common law and those based on civil and socialist laws may well be comprehended by the nature of the laws influencing them. Common Law regards the court decisions to be of the same gravity and force as enacted laws. It has also been observed that common law courts can make laws in the absence of exact, well-defined statutes, while in civil law traditions, a court has to stick to the existing enacted laws. E.g., judges in France were strictly debarred from proclaiming broad principles of law by the Napoleonic code.⁹

Nature of System

One of the main differences between civil and common law judicial systems is the active participation of judges in the collection and evaluation of evidence. This question of the inquisitorial and adversarial systems relates to procedural law. The civil law judicial system is an inquisitorial system by nature in which the court or a section of court is actively involved in the investigation process. In the contrast, the common law judicial systems are comprised of an adversarial system in which the court has to act impartially and has to adjudicate the matter between prosecution and defense in an unprejudiced manner. In this system, the opposing parties are responsible to present relevant information and witnesses before the court.

Inquisitorial system

In the civil law family, the trial judges are expected to act as the inquisitors who play their role in fact-finding by inquiring and questioning the defense counsels, prosecutors, and witnesses. They are also empowered to require the definite pieces of evidence to be scrutinized if they are of the view that the presentation by the defense counsels or prosecution is derisory. Before taking cognizance of the case and starting the trial, the magistrate judges (also known as the judges d'instruction in France) take part in the inquiry of a case, usually by evaluating material laid down by the police and conferring with the prosecutor.

Adversarial System

Another feature to consider in comparative analysis is the adversarial system also known as the adversary system in the judicial set up of common law jurisdictions. Under the system two attorneys represent their clients' versions or stances before an impartial person or a bunch of persons, known as a judge or jury, whose task is to establish the truthfulness or falsity of their versions and pass the judgment accordingly. Such practices go against the civil law-based inquisitorial system where the court plays an active role in the investigation of facts and circumstances of the case, as noted earlier.

It is the right of the defendant party not only not to provide evidence but they can also avoid being questioned by prosecutors or the jury. Nevertheless, they could be made to testify if there exist some doubts of perjury in their testimonies. The case therefore hinges on the skills of lawyers on both sides how persuasively they argue their cases against an unbiased judge.

⁸ Slapnicka, H. 1963. "Soviet Law as Model: The People's Democracies in the Succession States." *Natural Law Forum* 8: 106. https://scholarship.law.nd.edu/nd_naturallaw_forum/97/

⁹ Crabites, P. (1927). Napoleon Bonaparte and the Code Napoleon. *ABA Journal*, 439. <https://www.imdb.com/title/tt0018192/>

Comparative Analysis of Major Judicial Systems. Pakistan, Russia, USA and China

Institutional structure of Pakistan and its Effectiveness

There is no denying that Pakistan's judicial system is heavily influenced by the English common law system. Pakistan is a federal state with parliamentary democracy. The judicial system has undergone quite a few periods, comprising the Hindu period, the Muslim era including the Mughal kingdom, the British Imperial era, and the post-independence era. Despite the continuous alterations, innovations, and substitution of one period by the other, which has transformed the Indian society in multiple ways, i.e., socially, economically, and politically, the judicial system steadily progressed towards amalgam and sophistication without being subjected to any major disturbance or breakdown.

Superior Judiciary

The Constitution of Pakistan, 1973 has explained the supreme judiciary of Pakistan in a quite comprehensive way which enshrines provisions about the composition, powers, functions, and appointment procedure of judges to these courts. The Constitution mandates the "separation of judiciary from the executive" and the "independence of the judiciary"¹⁰. It obligates the superior courts to "preserve, protect and defend" the Constitution. There is a detailed discussion on the qualifications, appointment, perks and privileges of judges. The salaries of judges and other administrative expenditures of the superior courts are paid from the Federal/Provincial Consolidated Fund, which means it may be debated but cannot be voted upon in the parliament. The Constitution ensures the freedom, independence, and fairness of the superior courts.

Supreme Court of Pakistan

The Supreme Court is the apex Court of Pakistan invested with threefold jurisdictions including original, appellate, and advisory jurisdiction. It is the Court of eventual plea and final authority of law and the Constitution. Its judgments are peremptorily compulsory to be followed by all other courts. The Supreme Court of Pakistan is comprised of a Chief Justice and other judges, appointed by the President in accordance with the procedure mandated by the Constitution of Pakistan. The number of Judges of the Supreme Court has been fixed by the Supreme Court Number of Judges Act (Act No. XXXIII) Of 1997 at 17 comprising of Chief Justice and 16 judges. The constitution of Pakistan also provides the appointment of acting and ad hoc judges in the Supreme Court. Anybody with five years of experience as a Judge of a High Court or fifteen years of experience as an advocate of a High Court is qualified to be selected as a judge of the Supreme Court.

The Supreme Court exercises its original jurisdiction in resolving inter-governmental matters which also includes disputes between the Federal Government and a provincial government or between provincial governments. The Court also exercises original jurisdiction concomitantly with High Courts to safeguard the Fundamental Constitutional Rights, when it is a matter of 'public importance'. The Court is also invested with the appellate jurisdiction in civil and criminal matters. In addition, the Court enjoys the advisory jurisdiction in giving opinion to the Government on a question of law.

¹⁰ The Constitution of the Islamic Republic of Pakistan, 1973.

High Courts

The high court is the second superior court to Supreme Court in Pakistan. Each province and Islamabad Capital Territory has one High Court. Each High Court consists of a Chief Justice and other puisne judges. The strength of Lahore High Court, Sindh, Peshawar, and Balochistan, and Islamabad High Court courts are 60, 40, 20, 11, and 7 respectively. Anybody with a ten-years of experience as an advocate of a High Court or 10 years' service as a civil servant, including 3 years 40 experience as a District Judge or 10-year experience in a judicial office. Each High Court is invested with the original jurisdiction to ensure the provision of Fundamental Rights and appellate jurisdiction against the decisions of its Subordinate Courts in all civil, criminal, family, corporate and constitutional matters. One can also appeal against the decisions of Special Courts.

Federal Shariat Court (FSC)

FSC has eight Muslim judges and headed by its chief justice. The procedure for the appointment of judges of FSC is slightly changed by the 18th and 19th constitutional amendments: previously "the judges were appointed by the President from amongst the serving or retired judges of the Supreme Court or a High Court or from amongst persons possessing the qualifications of a judge of the High Court." The key duty of the FSC is to determine whether laws passed by the parliament are repugnant to Islam or not.

Subordinate Judiciary of Pakistan

The Subordinate Judiciary of Pakistan is widely classified into two groups depending upon the nature of dispute tried by it, first the civil courts, instituted under the Civil Courts Ordinance 1962, and two classes of criminal courts, established under the Code of Criminal Procedure 1898. Furthermore, various special laws have also established their respective courts e.g. Anti-terrorism courts, Service tribunals, etc. Their jurisdiction, powers and role are laid down in the statutes, enacting them. The decisions of such subordinate courts are appealable before the superior judiciary through revision or appeal. The provincial governments finance the justice sector. The administrative proceedings of the civil and criminal court are regulated under the provincial rules and the respective High Court.

Special Courts

The Constitution of Pakistan empowers the central Legislature to create special courts and tribunals to deal with federal subjects. At federal level, certain special courts have been established as a result of this provision. Such courts/tribunals include: "Special Courts (Control of Narcotics Substances), Banking Courts (Recovery of Loans), Special Courts (Offences in Banks)" etc. At provincial level, provincial governments can establish special courts/tribunals. Such provincial courts/tribunals include: "Labour Courts, Consumer Protection Courts, Anti-terrorism Courts and Anti-Corruption Courts. The judicial officers presiding over these courts are mostly appointed on deputation from the provincial judicial cadre."

Institutional Structure of Judiciary in Russia and Its Efficacy

There is a civil law system in Russia. There are both codified laws (civil and criminal) and other laws which must be consistent with other prevailing codes in there. The legislature can make or unmake any law.

The judicial system of the Russia was established through legislation and the system includes civil, criminal, administrative, and commercial Procedural Codes. It encompasses all features of the adversarial system, i.e., the oral proceedings, public and direct representation. Judges take active part in the

investigative process. It is the duty of the parties to the case to collect and present evidence before the court. The evidence is then put to the court both by the claimant and the defendant in civil cases. It is upon the court to decide which evidence is admissible, relevant, and reliable. The court is not required to collect evidence. That said, the court can facilitate the parties regarding collecting evidence (that otherwise cannot be acquired by the parties involved) in order to come up with clear, impartial judgments.

Constitutional Court

The Constitutional Court of Russia deals with matters relating to compliance with the Constitution, judicial disputes between two or more federal bodies, between a federal body and a member of the Federation, and between members of the Federation. As such, it performs "constitutional review" and opines whether a certain federal law, presidential decree and commands, and local laws comply with the federal constitution, as well as agreements signed by the national government and regional governments.

Supreme Court

The Supreme Court of Russia is the apex court and leads the subordinate courts of general jurisdiction. It also acts as a court of the first instance in matters concerning state interests.

Ordinary Courts

The Ordinary courts hear matters of criminal nature, administrative cases, civil disputes, and cases of organizational offenses with the exemption of cases under the authority of arbitration courts. They are further categorized into 2 classes namely; military and non-military.

Cassation courts

Cassation courts in the judicial system of Russia are invested with the powers to perform cassation review of matters which were heard by the district courts or garrison military courts as the First instance courts.

Regional courts and Military courts of Military districts/fleets

Regional courts (also known as *kray* courts and city courts) are the courts at the regional level. This includes the supreme courts of the Republics of Russia, courts of the krais, courts of the oblasts, city courts of the federal cities of Russia (Moscow and Saint Petersburg), courts of the autonomous oblasts, and courts of the autonomous okrugs. Such courts operate both as first instance and appellate courts. The military courts of military districts/fleets hear and review the cases relating to the military personnel only.

District courts and Garrison Military courts

District courts are principally the 1st instance courts but sometimes also entertain appeals against the decisions of the magistrate. While acting as the first instance court, they hear criminal cases of offenses punishable with imprisonment of more than 3 years. The Garrison Military courts hear the matters concerning the military employees only.

Magistrate courts

Magistrate courts in Russia hear criminal cases of petty offenses punishable with the imprisonment of less than three years. An independent judiciary is one of the key constitutional principles of the Russian legal

system. The judges are bound only by the Constitution and federal laws. The independence of judges is provided for by the irrevocability of their appointment, their immunity from legal process (special procedure of prosecution by the consent of the relevant judicial qualification committee) and social guarantees including lifetime maintenance, obligatory insurance of the judge and the judge's family members, provision of medical services, compensation of travel expenses, and so on.

Institutional Structure of Judiciary in the USA

The United States is a federal state, with a central government, and state-level governments for each of the 50 states. In every federating unit (states in the US), there exists a judicial system, known as state courts, and federal judiciary (federal courts) are also there. There are differences as well as some similarities between the state-level and federal-level judicial structures.

United States Supreme Court

The framers of the Constitution of the US supported the idea of a national judiciary; therefore, Article III was made part of the Constitution, which provides for a Supreme Court and vests the power of establishing lower courts in Congress. The federal courts may settle disputes between various states. They are also invested with powers to hear cases arising under the Constitution and laws of the United States. It also vests powers in the federal courts to interpret and implement the constitution of the United States and all other laws framed by Congress.

The US Supreme court is the highest court in the judicial structure of the country. It possesses the power to decide appeals about all cases which are brought to the federal court and/or those case that are brought in state courts but deal with federal laws.

District Courts (DC)

There are district courts i.e., general trial courts, in the hierarchy of federal courts in the US. There is at least one President-appointed, Senate-confirmed (for life time) judge in each District Court. DCs deal with both civil and criminal cases within the federal judicial system. The primary federal judicial functionary at DC level is the U.S. Attorney.

The primary responsibilities of a DC judge include the managing of the court and overseeing the courts' functionaries. Although they are appointed for life so they can serve as long as they exhibit "good behavior" but can be impeached for violation of rules by US Congress. According to the US Justice Department, there are over 670 DC judges in the country¹¹.

Structurally, the DCs can elect a magistrate by a majority vote of the judges who then can serve for 8 years (if full-time) or 4 years (if part-time), with a chance for re-appointment. The magistrate can issue search, arrest warrants, conduct preliminary hearings, grant bail, decide on the motion to suppress evidence, etc., in criminal cases. s/he can also deal with issues such as pre-trial motions. It must be borne in mind that Federal trial courts have limited jurisdiction as they have a few specific subjects to deal with at district level.

Circuit Courts

Appeals against the decision of the DCs can be made to the US Court of Appeal. The country is sub-divided into regions by twelve federal circuits' courts. The jurisdiction of these courts pervades nation-wide but over specific issue areas such patents.

There is no fixed number of judges in the courts, so the number ranges between six to nine in the First

¹¹ United States Department of Justice. 2022. "Introduction to the Federal Court System."
<https://www.justice.gov/usao/justice-101/federal-courts>.

Circuit while up to 29 in the Ninth Circuit. The President appoints and senate confirms judges of Circuit court for life-time.

Besides “interlocutor appeal” wherein an appeal could be made once a decision is finalized or in some case even if not finalized, to the circuit courts against the verdicts of the DCs. A three-member panel hears appeals at the circuit courts. The procedure is such that parties have to file their briefs to the courts arguing about affirming or reversal of the decision of a trial court. The court can the set a time for “oral argument” in which lawyers have to argue their case and answer questions put to them by judges.

Institutional Structure of Justice System in China

Technically speaking, the judicial system of the People’s Republic of China (PRC) is comprised of the people’s court system. According to the provisions of the Criminal Procedure Law of the Public Republic of China, (PRC), the people’s court, the people’s procuratorate and the public security organ are expected to perform their assigned tasks during the criminal proceeding respectively and as well as work in a collaborative manner with each other. So, Judicial powers in China are vested both in the people’s procuratorate and the public security organ; however, their judicial role is quite limited. Overall, one can argue that there is a three-tier judicial system in China, i.e., the people’s court system, the people’s procuratorate system and the public security system.

The People’s Courts of China

The People’s courts of China are the judicial organs invested with the judicial powers to adjudicate the disputes on behalf of the states. As per the provisions of the Constitution and the Organic Law of the People’s Courts of 1979 as amended in 1983, China’s judicial system is comprised of a network of courts illustrated by “four levels and two instances of trials.” In China, local people’s courts perform judicial functions, and it has several levels. The local people’s courts are divided into basic people’s courts, intermediate people’s courts, and higher people’s courts. Besides that, there are other courts such as military courts and special people’s courts and the Supreme People’s Courts.

The Supreme People’s Court

The Supreme People’s Court is the topmost judicial body in In the Chinese judicial structure. The National People’s Congress (NPC) and its Standing committee elect the chief judge, called the president, of the Supreme People’s Court. In terms of structure, the Supreme People’s Court is divided into three divisions: criminal, civil division, and an economic. There is no limit on the establishment of new divisions. The jurisdiction of the Supreme People’s Court include: appellate, protested, and cases put forward by the Supreme People’s Procuratorate.

Furthermore, the Supreme People’s Court not only oversees the work of the local people’s courts but also of the special courts. The Supreme People’s court interprets the law regarding specific applications of laws and decrees. Nevertheless, the legislature can intervene to fill the vacuum and resolve issues pertaining to legal questions to remove any legal ambivalence so that the judicial branch interprets and enforces the law in an effective, unbiased manner.

The Higher People’s Courts

There is a separate judicial hierarchy, Higher People’s Courts, in provinces, autonomous regions, and municipalities. The jurisdiction of a higher people’s court include: original (case of first instance), cases of appeal and protest lodged against judgements of the lower courts, “cases of the first instance transferred from people’s courts at the next lower level, and cases of protests lodged by people’s procuratorates.” The Higher People’s Courts are controlled by the central government.

The Intermediate People's Courts

They are the courts established in capitals or prefectures at the provincial level. The intermediate people's court deals with “cases of the first instance assigned by laws and decrees, cases of the first instance transferred from the basic people's courts, and appealed and protested cases from the lower court.”

The Basic People's Courts

The lowest category of courts in the judicial hierarchy of China is the Basic People's Courts. They are located in municipal districts and in the counties of the autonomous regions. They have the authority to set up tribunals if they deem necessary. Such tribunals are legal bodies and have same powers as Basic People's Courts. Usually, tribunals are formed in thickly populated towns. According to the Organic Law of the land, Basic People's Courts jurisdiction is original, and they adjudicate all criminal and civil cases save where the law provides otherwise. Besides all this, they deal with minor offences that do not require formal handling and supervise the work of people's mediation committees.

The Special Courts

The Special Courts include courts such as military, railway, and maritime courts. Due to the special nature of crimes, these courts have special jurisdictions. For example, cases related to military servicemen are adjudicated by the military courts of the People's Liberation Army (PLA). Similarly, railway courts deal with cases related to transport and other economic disputes. So is the case of maritime courts: to settle disputes involving Chinese citizens and foreign citizens, companies, etc.

People's Procuratorates

According to Article 134 of the Constitution of the People's Republic of China, “the people's procuratorates are the legal oversight organs of the state.” It, inter-alia, deals with cases of anti-state activities include putting hurdles in the implementation of state laws and policies. Likewise, review powers in cases related to security and investigated by the public security organs also given to these courts.

Efficacy of China's judicial System

Article 131 of the Constitution ensures the independence, fairness of the judiciary in China. The courts deploy a fixed system that combines the characteristics of both adversarial and inquisitorial judicial systems. In civil law, litigants are responsible for providing evidence for their assertions. Where a litigant and their agent are unable to gather evidence on their own due for objective reasons, or where the evidence is deemed by the court to be necessary for the trial of case, the court can investigate and gather the evidence. In criminal law, the people's procuratorate bears the burden of proof for establishing the suspect's guilt in public prosecution cases. The burden of proof for establishing the suspect's guilt in the private prosecution of criminal cases is borne by the private prosecutor, not the suspect. The Constitution and the Organic Law of Courts ensure that the judiciary operate freely, independently, and judiciously. The term “court” is of utmost importance as it “means that the individual judges do not have the judicial power but the courts where the judges perform their duties do.” It is the courts in whose names judges are appointed and collegial panels are constituted. This shows that the power of free and fair adjudication is vested in courts, not in judges. So, respective heads of the judicial branches have the authority to revise draft judgments passed by collegial panels. This practice can be called “internal interference with the independent adjudication of collegial panels and, strictly speaking, has no direct legal grounds except for the judicial committees.” It needs to be added that a judicial committee has to make a final decision, not the collegial panel, in serious, complicated cases. This sounds like a fool-proof system to ensure a fair and impartial exercise of judicial

functions, but this can be used as ploy by the committee member to encroach the powers of the judiciary and interfere in the working of the judiciary for their own ulterior motives.

Judicial System of France

There are separate courts for civil and criminal cases in the judicial system of France. For civil cases, there are lower courts, called *tribunaux d'instance*) and higher courts, called *grande instance*. It is apt to note that the later courts replaced the Justices of the Peace in 1958. The hierarchy of courts for criminal cases include: *tribunaux correctionnels* (“courts of correction”) and *tribunaux de police*, or “police courts,” which deals with minor offenses. Appeal against the decisions of these courts can be made to one of the thirty-five courts of appeal¹². Besides these courts, there are special courts, called, the administrative courts (*tribunaux administratifs*) for the enforcement of public law. The Council of State (Conseil d'Etat), which has eight courts of appeal (**courts administratives d'appel**) and forty-two **tribunaux administratifs**, is the highest court in the hierarchy of administrative court. In all, the Supreme Court of Appeals (**Cour de cassation**) is the highest court in France.

Nevertheless, the uniqueness of French judiciary lies in the fact that there is a Constitutional Council (*Conseil constitutionnel*), which not only oversees the enactment of statutes but also supervises national elections in France.¹³

Hence, the French judicial structure comprises judicial courts (civil and criminal), administrative court (for public law), and a Constitutional Council (for overseeing statutes and elections).

It is pertinent to mention here that the Civil Code (1804) occupies a central position in terms of sources of French Law (Lawson, 1959), while the decisions of the higher courts also have some influence on the lower courts even if they are not bound to go by the decisions of the higher courts (Ministry of Justice, 2012). The case of family courts is interesting. Before the family courts (*tribunal de famille*), there was monopoly of royal courts and church over the marriage and family related matter. James F. Traer rightly has rightly observed that “under the ancient regime, the task of settling marriage and family difficulties had been divided and royal courts, which applied both royal and canon law, a law of the north or the Roman law of the south for proper marriage contracts, wills and gifts. The church had the power to transmit the sacrament of marriage and it claimed authority over the marital relationships and aspects of the parent-child relationship as well [...] The family court (*tribunal de famille*) was a form of private arbitration designed to resolve disputes within the family, thus avoiding the delay, expense and notoriety of public litigation” (Traer, 1974). The family courts thus decide all issues pertaining to marriage and parent-child relationship.

Comparative Analysis of Efficacy and Effectiveness on Standards of Rule of Law

Having gone through a detailed overview of the institutional structure of the judicial systems of Pakistan, USA, Russia, France and China, this section will assess how effectively these systems work on the index of Rule of Law and administration of justice. While the section exposes tenacious shortcomings of some of the judicial systems, it also highlights main areas of the progress made so far, especially the willingness of courts to reforms and the recent endeavours taken in these judicial systems. International standards and indexes/reports have been incorporated for this purpose to show a clear view of the position of a country's institutional structure and judicial system in adherence to Rule of Law.

¹² Britannica. n.d. "Justice of France." In *Encyclopaedia Britannica*.

<https://www.britannica.com/place/France/Justice>.

¹³ Georgetown Law Library. 2022. "The Layout of the French Legal System." Accessed June 28, 2024.

<https://guides.ll.georgetown.edu/francelegalresearch/legalsystem>.

An overview of the Corruption Perception Index on Judicial Systems

The Corruption Perception Index (CPI), as the name shows, measures the perception of the people of a country about the level of corruption in the public sector. It employs a scale of 0 to 100, where zero represent highly corrupt and the score 100 means extremely clean. In its 2021 edition, a hundred and eighty states were ranked based the perception of corruption in the public sector, and the ranking was based on the assessment of thirteen experts and business CEOs. Pakistan’s score in the 2020-CPI ranking was thirty-one and it was ranked a hundred and twenty four out of a hundred and eighty countries while its score has come down to 28 and was ranked 140 out of the total states assessed by the CPI expert team.

On the similar index China was ranked 66th with a score of 45, which shows a much brighter and more optimistic view of its institutional structure and its working. While Russia on the other hand paints a gloomy picture of its institutional structure as it was ranked 136th with a score of 29. This index shows how corrupt the state departments, including bureaucracy and judiciary are in their functioning. The USA and France stand glorious on the catalogue of transparency with ranking of 27th and 22nd with a score of 67 and 71 respectively.

An overview of World Justice Project Rule of Law Index

The most credible source for the degree of rule of law in any country is the “Rule of Law Index” of the World Justice Project, and it covers a hundred and thirty-nine states. Its 2021 index was based index on the national survey of more than 130,000 households and around four thousands legal experts 4,000 legal practitioners and experts to assess how the rule of law is seen, felt, and perceived across the globe (Project, 2021). The index ranks the overall judicial system of a country on the scale of eight inter-related factors.

Factor 1 of the *WJP Rule of Law Index* is named as check on government powers and basically calculates the magnitude of how law is obeyed by those who are in power within a state. It includes the means— both legal and institutional— through which state officials can be held accountable. It also takes into account informal checks on state’s powers such as free, fair, and independent media.

Factor 2 of the *WJP Rule of Law* is the presence or absence of corruption in government. This factor focuses on three areas to assess corruption: “bribery, improper influence by public or private interests, and misappropriation of public funds or other resources.” This kind of corruption is assessed by looking at the behavior and assets of the office holders in a state.

Factor 3 of the *WJP Rule of Law Index* deals with the openness of government— that is, whether the citizens of a state have access to information or not; they have any role in policy-making; and how they can hold state officials accountable to them.

The fourth factor on this index is basic human rights. This factor establishes that if a state does not honor human rights cannot be called a rule of law-based system. It mainly relies the United Nations Universal Declaration of Human Rights reports and assessment as it is well-nigh impossible for the WJP to keep an eye on every state what is happening inside its territories.

Fifth factor of the index is Order and Security within a state and how well a state guarantees the safety and security of its citizens and their properties. One of the primary duties of a state is to protect the lives and properties of its people.

Factor 6 of the *WJP Rule of Law Index* is regulatory enforcement— that is, how justly rule and regulations are put into practice. It also takes into account whether state officials operate within the domains or not. It also focuses on whether rules and regulations are selectively applied by state officials.

Factor 7 of the *WJP Rule of Law Index* looks into the civil justice system and its efficacy in a state. It reflects on whether a common person can resolve his/her grievances peacefully and effectively through the civil justice system provided by the state. It also takes into account other associated factors such as accessibility and affordability i.e., whether a judicial system is within the access and affordability of the citizens, and it is free of bias, embezzlement of state functionaries. Moreover, it also covers the scope and

depth of “the accessibility, impartiality, and effectiveness of alternative dispute resolution mechanisms within states,” if any.

Factor 8 of the *WJP Rule of Law Index* evaluates a country’s criminal justice system. An effective criminal justice system is the backbone of the rule of law. An assessment of the delivery of criminal justice, including all stakeholders, i.e., counsels, juries, and police officials, etc., is done and calculated over the index.

As per WJP Rule of Law index, Pakistan was ranked 130th out of 139 countries which portrays a non-satisfactory picture of the overall situation of judicial system in Pakistan. Unfortunately, many reasons contribute to the present scenario but the top most according to this index are Corruption and Order and Security. It is worthy to mention that as compared to the judicial and executive branches, the corruption index and use of public office for private gains were much higher in officers working in Police, military and legislative branches. Having said that, for the second factor which is Order and Security, the judiciary alone cannot be held responsible.

Nonetheless, the other side of the coin reflects an improvement in freedom of expression and Assembly where Pakistan stands at 81/139 and this has been improving since 2017-2018 on the index.

China with its intuitional structure ranks 98th which is again not a very good place to be. The contributing reasons are restrictions on fundamental rights and free working of state or non-government institutions. Sadly, Russian Federation ranks 101st out of 139 with its exceptionally corrupt bureaucracy.

Again, on the pattern of the Transparency Index, the United States with its inquisitorial judicial system and transparent working of different state departments, here on the WJP Rule of Law index also show a much higher level of performance and efficiency of its judicial system. Out of the comparative countries, the USA ranks 27th out of 139 countries on rule of law.¹⁴

At the world level, countries experienced the biggest declines over the past year in the areas of basic human rights (fifty-four declined, twenty-nine improved), checks on Government Powers (fifty-two declined, twenty-eight improved), and the Absence of Corruption (fifty-one declined, twenty-six improved). However, there is nothing new in this: there is a continual backsliding of human rights with sixty-seven states scoring low on all the above-mentioned three accounts since 2015, and if the trend continues, WJP data shows the same three factors were the largest decliners over a five-year time horizon as well and that there is a chance of further deterioration in the next five years (Project, [2021](#)). Not a very pleasant picture of the future indeed.

Conclusion

The judicial systems across the globe have formed the *famille juridique* (Legal Family) by getting adhere to a specific family of the judicial and legal system. For instance, in our above discussion, the judicial systems of the United States and Pakistan are influenced by the British common law system while the other two i.e., Russia and China seem to be influenced by the Romano-Germanic family to a larger extent. This paper endeavored to impart a comparative analysis of major legal and judicial systems across the world by offering a paradigm for comparative analysis based on epistemological arguments according to comparative Law with a special concentration on China, Pakistan, the USA and Russia.

The last part of the paper provides a summary of the impact and influence of adherence to a particular predecessor judicial system upon the effectiveness and efficiency of the Rule of Law in certain jurisdictions, by offering the WJP reports on the Rule of Law by having a relative study with corruption perception index, CPI.

Recommendations

1. The countries that have scored better in the WJP Rule of Law Index have speedier justice delivery

¹⁴ World Justice Project. "World Justice Project Rule of Law Index 2021

systems in place. Pakistan needs to shift focus from short-term solutions like the establishment of model courts to long-term solutions for speedier justice aimed at countering threats to internal stability, security of the judicial staff and enhancing the confidence of the public in the institutions.

2. Another factor that matters in the WJP Rule of Law Index is the absence of corruption in government. Countries like the US and France that scored high in the index have low level or no corruption at all. This factor takes into account three areas to judge corruption: bribery, improper influence by public or private interests, and misappropriation of public funds or other resources. There is a need to take steps to curb the menace of corruption in the judicial process in Pakistan.
3. An important factor in the Rule of Law Index is the protection of fundamental rights. The justice system that fails to respect core human rights is at best “rule by law,” and does not deserve to be called a rule of law system. Thus policies aimed at protecting and promoting human rights will contribute in improving Pakistan’s ranking in the Rule of Law Index.
4. According to the *WJP Rule of Law Index*, a country’s criminal justice system is the backbone of the rule of law. Pakistan needs to establish a robust witness protection system that prioritizes the protection of witnesses, investigators, prosecutors and judges.

The WJP Rule of Law Index considers the involvement of the people in policy-making as an important contributing factor to the rule of law. There is a dire need that all the stakeholders especially the public as one of the most important one shall be involved in policing by making them part of different committees like Citizens Liaison Committees etc