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A Comparative Study of the Judicial System in India And France

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ABSTRACT

This research article presents a comparative study of the judicial systems of India and France, focusing on the hierarchy of courts in both countries and highlighting key similarities and differences. By examining the structural organization and functional roles of the judiciary in India and France, this study aims to provide insights into the evolution and operation of these systems within distinct legal frameworks. Through an analysis of court hierarchies, jurisdictional boundaries, and procedural norms, this research sheds light on the strengths and challenges of the judicial systems in both nations, offering valuable perspectives for cross-cultural learning and reform.

INTRODUCTION

The judicial systems of India and France serve as fundamental pillars of their respective legal landscapes, entrusted with the responsibility of interpreting laws, administering justice, and safeguarding individual rights. While both countries share a commitment to the rule of law and the protection of fundamental liberties, their judicial systems exhibit notable variations in terms of structure, organization, and legal traditions. This study seeks to explore these differences through a comparative lens, with a specific focus on the hierarchy of courts in India and France.

In India, the judicial system is characterized by a multi-tiered hierarchy of courts, comprising the Supreme Court at the apex, followed by High Courts at the state level, and subordinate courts at the district and lower levels. This hierarchical structure is designed to ensure access to justice and facilitate the adjudication of legal disputes at various levels of jurisdiction. In contrast, France follows a dual system of administrative and judicial courts, with the Cour de Cassation serving as the highest court of appeal for civil and criminal matters. The Conseil d'État, on the other hand, holds jurisdiction over administrative law and serves as the final arbiter in disputes involving the state and administrative authorities.

By comparing the hierarchical arrangements of courts in India and France, this study aims to identify commonalities and differences in their respective legal systems, examining the implications for judicial efficiency, accessibility, and accountability. Through an analysis of court structures, powers, and procedures, this research seeks to deepen our understanding of the functioning of judicial systems in diverse cultural and institutional contexts, paving the way for informed discussions on legal reforms and cross-border collaborations in the pursuit of justice and the rule of law.

HISTORY OF JUDICIAL SYSTEM IN INDIA

In ancient India, the family court served as the lowest judicial authority, presided over by a family arbitrator, with the king holding the highest judicial position. The sovereign's primary duty included dispensing justice, aided by advisors and ministers. Initially, justice was guided by 'dharma,' a set of rules defining individual responsibilities, often derived from customs. This system persisted until the Mughal era.

With the arrival of the British, the common law system was introduced, and the Sadar Diwani Adalat was established, followed by the creation of high courts. The first high court was founded in Calcutta in 1862, with subsequent establishments in Madras and Bombay. The federal court, established under the Government of India Act, 1935, had broader jurisdiction compared to the high courts. Consequently, India's present judicial system largely follows the common law.

INDEPENDENCE OF JUDICIARY IN INDIA

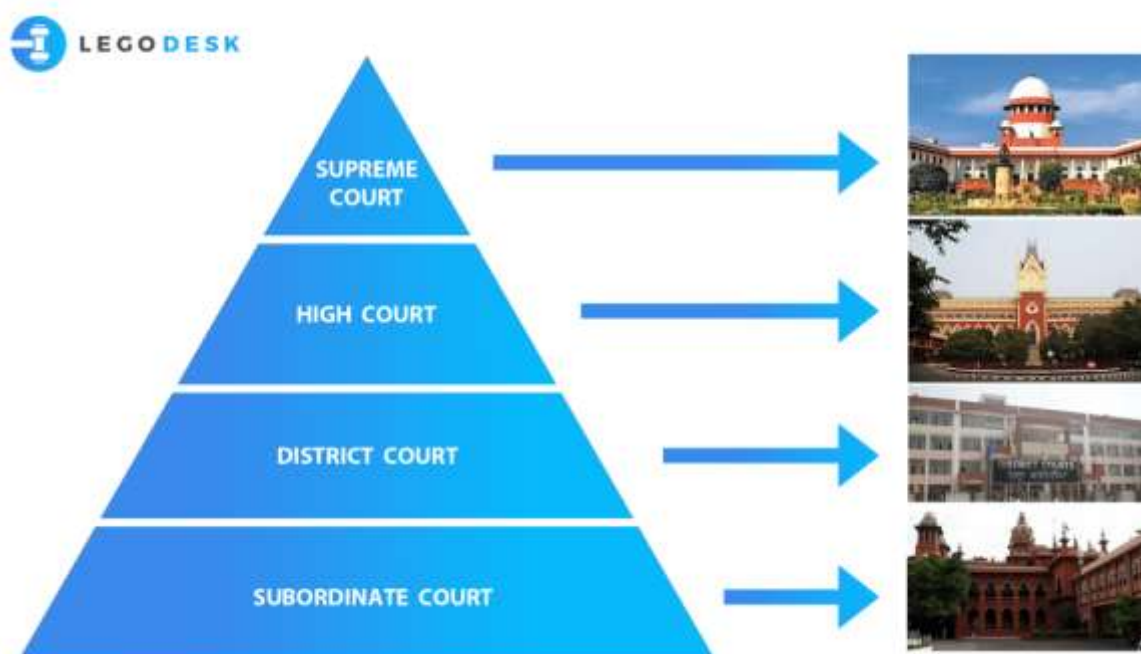
The judiciary plays a important role in upholding democracy. Merely enacting laws through democratically elected bodies does not suffice; it's equally crucial to have mechanisms for just interpretation of these laws. This task can only be effectively carried out by an independent judiciary. As laws increase in volume and complexity, the importance of judicial independence becomes even more pronounced. In nations like India, where democratic traditions are still being established, the independence of the judiciary holds fundamental significance. Our constitution rightfully upholds the principle of an independent judiciary as a cherished ideal.

Judicial independence encompasses two facets. It involves not only freedom from external pressures but also entails an impartial and autonomous mindset from the individual judge. A judge should possess the ability to think independently. They must not be unduly influenced by one party's arguments while disregarding those of the other. Instead, they should be capable of impartially assessing arguments from both sides and reaching a just conclusion. A judge should demonstrate self-reliance and refuse to succumb to undue influence.

HIERARCHY OF JUDICIARY IN INDIA

In India, courts are categorized based on their jurisdiction over subject matter, territory, or pecuniary jurisdiction. At the base level, there are civil and criminal courts. Civil courts commence with the position of a Munsif. In Uttar Pradesh, a Munsif's pecuniary jurisdiction is at Rs. 10,000, with limited authority in small claims court. Civil Judges preside over cases with unlimited pecuniary jurisdiction. Additionally, there are Small Cause Court judges within the Civil Judges' ranks, handling specific types of cases. Appeals from Munsif decisions are directed to Civil Judges. Moving up, there are District Judges' Courts and various High Courts. Both District Judges' Courts and High Courts possess original and appellate jurisdiction.

Presidency High Courts possess expanded original jurisdiction, whereas other High Courts hold original jurisdiction concerning matrimonial, testamentary, probate, and company matters. High Courts also wield extraordinary jurisdiction, enabling them to transfer cases from subordinate courts for trial and determination. Additionally, the Supreme Court operates with three types of jurisdiction: original, appellate, and advisory. It exercises original jurisdiction in disputes involving the Government of India and States or among States. Appellate jurisdiction extends to constitutional, civil, and criminal matters, including appeals against judgments or orders from any court or tribunal in India. Moreover, the President may seek advisory opinions from the Supreme Court on legal or public interest matters.



Hierarchy of courts in India

In criminal proceedings, an appeal may be made to the Supreme Court from any judgment, final order, or sentence issued by a High Court under specific circumstances. These include instances where the High Court, upon appeal, overturns an order of acquittal and imposes a death sentence, or when it transfers a case from a subordinate court and, upon trial, convicts the accused person, also imposing a death sentence. Alternatively, the High Court may certify a case as suitable for appeal to the Supreme Court. Recently, the Supreme Court's appellate jurisdiction in criminal matters has been expanded to include cases where the High Court reverses an order of acquittal and imposes a death sentence, or certifies a case as appropriate for Supreme Court appeal.

A Supreme Court judge is appointed by the President of India following consultation with the Chief Justice of India and such other Supreme Court and High Court judges as the President deems appropriate. The judge shall serve until reaching the age of sixty-five.

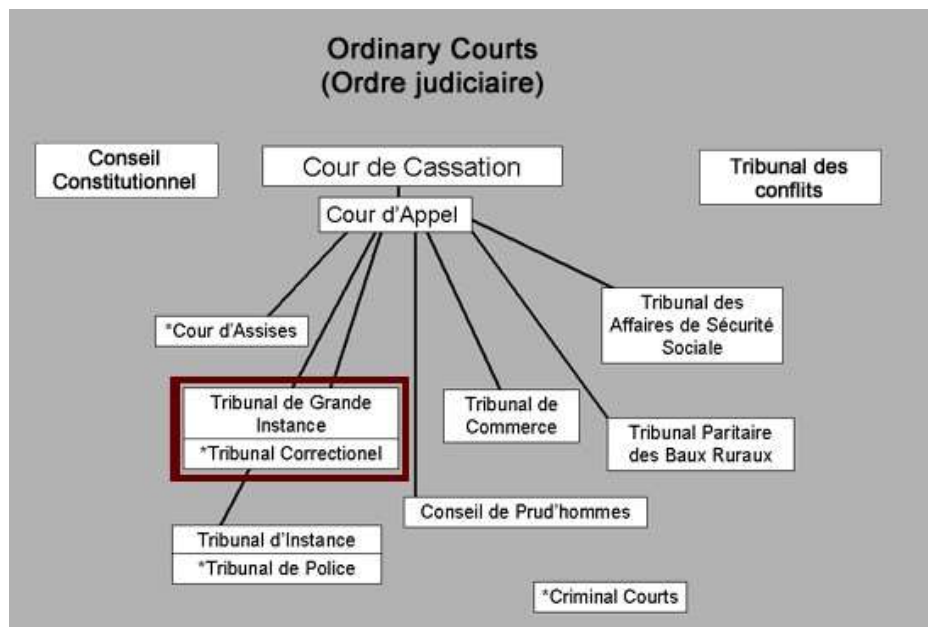
HISTORY OF JUDICIAL SYSTEM IN FRANCE

In France, like in many other continental European countries, the judiciary is not established by the constitution. Instead, the organization of the courts, their jurisdiction, the appointment and dismissal of judges, their qualifications, and their tenure are all governed solely by statute. The current constitution's silence on this matter, along with various other customary topics typically addressed in fundamental law, can be partly attributed to the unique circumstances surrounding its drafting. Additionally, there is a belief in France that the judiciary is merely a subdivision of the executive branch. This

omission of the judiciary from the constitution as one of the "major public powers" has led to criticism from French writers who argue that it should be recognized as a significant authority rather than merely a function. They lament that this omission has subjected the judiciary to a state of dependence on the executive branch and diminished its rightful role in the nation's affairs. This reliance on the executive is cited as one reason why the French judiciary has refrained from asserting or exercising the authority to declare legislative acts unconstitutional. However, some commentators argue that the constitution's silence on the judiciary does not necessarily imply its subordination to the executive branch. They point out that in earlier French constitutions; the judiciary was indeed treated as a major department, often with a separate chapter or title dedicated to it. It is evident that the drafters of the current constitution overlooked the judiciary due to the specific circumstances they faced and their focus on creating a provisional instrument primarily addressing the organization of executive and legislative powers and their interrelations.

HIERRCHY OF THE JUDICUARY IN FRANCE

The French judicial system underwent a significant reorganization through ordinances and decrees dated December 22, 1958. Prior to this reform, at the lowest level were the justices de paix, or Justices of the Peace. They were required to hold a diploma along with two years of practical experience either at the Bar or in a Court office. Their appointment followed a professional examination set by the National Ministry of Justice, with promotions based on merit. Justices of the Peace presided over minor civil cases and decided on matters related to minor offenses on the criminal side. Since March 2, 1959, the system transitioned to 467 tribunaux d'instance (including 10 in overseas departments), each presided over by a single judge, with expanded jurisdiction both in terms of territory and matters handled. Additionally, 178 collegiate tribunaux de grande instance (including 6 in overseas departments) replaced the 357 tribunaux de premiere instance. All petty offenses (contraventions) now fall under the jurisdiction of Police Courts (Tribunaux de Police) overseen by the Juge d'instance. For more serious offenses, including those carrying sentences of up to 5 years, the Correctional Courts, composed of three judges administering both criminal and civil justice, handle the cases without a jury.



Hierarchy of courts in France

• Appellate Courts:

The next tier in the judicial hierarchy comprises appellate courts. Each appellate court is staffed with five judges organized into sections or chambers. These sections are supported by various personnel including Public Prosecutors, Assistant Prosecutors, Marshals, Recorders, among others. Typically, these courts handle appeals, and their decisions on factual matters are conclusive. There are a total of 30 appellate courts (including 3 in overseas territories), each led by a president and comprising a varying number of members. For criminal appeals, there exists a separate entity called a Court of Assize, comprised of one judge from the Court of Appeal with territorial jurisdiction and two Assize Judges selected from local Courts of First Instance. Criminal cases are adjudicated by a jury of nine individuals.

• Courts of Cassation:

The apex of the judicial system is the Court of Cassation, situated in Paris. It is composed of a General President, three Presidents of Sections or Chambers, and 45 other Judges referred to as Conseillers. The Court of Cassation is divided into three sections: (i) a Chamber of Requests which preliminarily examines civil appeals; (ii) a Civil Chamber which hears cases forwarded by the Chamber of Requests; and (iii) a Criminal Chamber which adjudicates criminal appeals. This court does not possess original jurisdiction. The Court of Cassation holds the authority to annul any judgment, necessitating retrial by an appellate court. Precedents established by the Court of Cassation guide its decisions. French judges undergo specialized training, with recruitment

primarily from lower levels and promotion to higher ranks. Removal of a judge can only occur for misconduct upon the recommendation of the Superior Council of the Magistracy.

COMPARING THE SUPREME COURT OF INDIA AND THE COURT OF CASSATION IN FRANCE

1. The Supreme Court of India can handle different kinds of cases, while the Court of Cassation in France focuses mainly on legal questions, not facts.
2. The Supreme Court of India gives final decisions, but the Court of Cassation sends cases back for another trial without making its own decision.
3. The Court of Cassation in France has different sections for different types of cases, unlike the Supreme Court of India.
4. The Supreme Court of India can cancel a law if it goes against the Indian Constitution, but the Court of Cassation can't do that.
5. The Supreme Court of India deals with government matters, but the Court of Cassation doesn't get involved in those.
6. The Supreme Court of India has the highest say in legal matters across India, while the Court of Cassation in France mainly corrects mistakes made by lower courts.
7. The Supreme Court of India has fewer judges than the Court of Cassation.
8. In India, there are specific rules about when you can appeal to the Supreme Court, but in France, the Court of Cassation can step in even if the parties involved don't appeal.
9. The judges of the Supreme Court of India are appointed by the President of India from among judges of the High Courts who have been the at least five years a judge of High Court, from amongst advocate been for more than ten years standing or from among persons who in the opinion of the President are distinguished jurists. In France judiciary is regarded as belonging to a profession akin to the profession of law. They are appointed by promotion-judges of higher rank reach their posts by promotion. Recruitment is entirely at the lower levels from candidates who pass searching oral and written examinations.
10. Going to the Supreme Court in India can be expensive and take a long time, but dealing with the Court of Cassation in France is simpler and cheaper.

BIBLIOGRAPHY

Book: comparative constitutional law

Websites: JSTOR, <https://doi.org/10.2307/785923>

JSTOR, <https://doi.org/10.2307/785923>

JSTOR, <http://www.jstor.org/stable/41854044>