
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

HARMONY IN DIVERSITY: A COMPARATIVE STUDY OF COMMON AND CIVIL LEGAL SYSTEMS

- Sania Shabbir Nagaria¹

Abstract

This research paper will help us examine jurisprudence principles, procedures, and philosophies that delve into the nuanced contrasts between civil law and common law legal systems. Civil and common law are the two dominating legal systems worldwide, with approximately 150 and 80 countries, respectively.

Although civil law and standard law systems address many legal issues similarly, there are still important distinctions between them in terms of language, legal structure, categorization, and basic ideas.

The argument of which legal system is superior and what benefits common law or civil law should be discussed in the study. This brief research aims to point out some of the most significant conceptual distinctions between the common law and civil law legal systems and investigate potential areas of convergence.

In some countries, the legal system is based on an extensive legal code, while in others, court rulings and legal tradition are the primary foundation. For example, civil law systems in Japan and China prioritize strict application of the law, leaving little room for interpretation by judges. In common law nations like India, England, and the US, judicial decisions and legal precedents are highly valued, creating an adversarial system. However, some countries have both types of legal systems coexisting or combined.

This paper helps to break down the basic principles, how they operate, each system's history, law sources, the role of judges, lawyers, and courts, and the availability of legal remedies.

¹ First Year Student at MIT World Peace University, Pune, Maharashtra.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

This paper aims to make the legal system more accessible to understand and comprehend by comparing them, highlighting their unique features, and explaining their impact on justice.

Keywords – *Legal systems, common law, civil law, legal codes, precedents, fundamental principle, unique features.*

Introduction.

Common law and civil law are the two leading players in the legal system. They have distinct histories and act in various ways. Civil law evolved from Roman law through the codifications of Justinian to the codifications in Western Europe, especially in France and Germany. On the other hand, under the English feudal system, the common law developed from the rulings of the King's Courts.

The primary distinctions between the two systems pertain to the origins of legislation, the configuration of the judicial system, and the functions of justice actors, specifically attorneys and judges. Judge-made laws are the primary source of law in the standard law legal system. Case laws are the primary sources of the law, even in cases where statutes supplement them. In contrast, the primary sources of law in the civil law legal system are parliamentary legislation. Legislation contains pre-enacted general legal rules that apply to all disputes.

Over time, legal systems have changed significantly, giving rise to different approaches in common law and civil law. This study seeks to emphasize the unique characteristics that make them unique. By contrasting them, we can demonstrate how they impact the process of enacting laws, the decision-making of judges, and the pursuit of justice in general.

This research advances the discussion of various legal traditions and helps us understand the finer points of the standard and civil law systems. We aim to clarify these legal systems for everyone, from those working in the legal field to those who are just interested in learning more about how laws operate, through an easy and educational exploration. This research will help us understand the fundamental differences between them and further enhance our knowledge of both legal systems.

Objective.

- I. What is the meaning of the Common and Civil Legal System?
- II. The characteristics of both legal systems.
- III. The countries that follow them.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

- IV. Questions that may arise.
- V. Differences between them.

The ultimate purpose of this research paper is to help all learners understand the difference, history, principles, procedures, roles of judges, lawyers, courts, and the availability of legal remedies.

Data And Analysis.

There are differences in legal systems between nations and occasionally even within one. Based on traditionally recognized judicial concepts, legal systems exhibit specific features despite developing differently. Around the world, there are five main categories of legal systems. They include:-

1. Customary law
2. Religious law
3. Common law
4. Civil law,
5. Hybrid or mixed legal systems.

Mixed or hybrid systems are commonplace nowadays Since every nation has a different system.

Common Legal System.

The standard legal system first evolved in England around the 11th century and eventually spread to the United States, Canada, Australia, New Zealand, and other British Commonwealth nations. A standard legal system is a body of law formed by judges and other quasi-judicial tribunals because it is expressed in written decisions. It is often called judicial precedents, judge-made laws, or case laws. Both statutory laws created by legislators and court-established legal precedents are the foundation for the laws that apply in situations. While common law does rely on some scattered statutes, which are legislative decisions, it is primarily based on precedent, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and reports. The presiding judge determines the precedents to be applied in the decision of each new case. As a result, judges have an enormous role in shaping American and British law.

The corpus of unwritten laws, common law, is grounded on the legal precedents established in court. However, there are exceptional cases where the outcome cannot be determined from existing legislation or written legal regulations. In such cases, judges will have to rely on common law.

A precedent is a body of past court decisions regarded as a benchmark for future situations. However, without an official system of justice that can apply to each case, common law, also known as case law, relies on recorded facts of similar circumstances and statutes.

A judge overseeing the case is the one who determines which precedents apply to it. In subordinate courts, cases must follow in the footsteps of those rulings from higher tribunals that have gone before. This system makes the American judiciary more stable and consistent than other systems worldwide. However, lower courts may choose to correct or disregard some of these precedents if they need to be updated or if there is a material difference between the facts of this case and those of the previous one. Lower courts can sometimes reject a precedent, but this rarely happens.

Common law is an adversarial system, a contest between two opposing parties before a judge who moderates. In an adversarial system, the judge impartially resolves disputes between disputing parties. A jury may find specific facts, but a judge will apply the law.

Characteristics of Common Legal System.

Precedent-Based - Common law systems mainly rely on the concept of precedent, which states that rulings from higher courts should be regarded as authoritative or persuasive by lesser courts. Judges make decisions in the present based on earlier rulings, resulting in a body of case law that develops over time.

Stare Decisis - The principle of stare decisis, which translates as "to stand by things decided," is a cornerstone of common law. Mandating that subordinate courts adhere to precedents established by superior courts fosters uniformity and predictability within the legal system.

Judge-centered- Judges have a significant say in how the law is interpreted and applied in standard law systems. They must evaluate statutes, precedents, and principles to make decisions. The judge's function in forming the law by their decisions is vital.

Case-specific Judgement - Individual cases settle legal disputes in standard law systems. Judges render judgments based on the particular facts and circumstances of each case, and these rulings influence the law in related cases in the future.

Prioritising Legal Reasoning - In standard law systems, judges are supposed to give thorough justifications for their rulings. This focus on legal reasoning advances legal doctrine by making the guiding ideas of a decision more straightforward to understand.

Adaptivity and Mobility - Common law systems are renowned for their flexibility in responding to shifting social mores and contextual factors. Judges have the power to create and amend legal principles through their decisions, enabling the law to change over time.

Legislation's Limited Function- In standard law systems, written legislation is given less weight than in civil law systems, where statutes and codes serve as the primary sources of law. Statutes are significant, but precedents and court rulings frequently guide their interpretation and application.

The function of legal experts - Legal professionals, such as solicitors, play a crucial role in standard law systems by conducting research, presenting arguments, and advocating for their clients. Common law systems are distinguished by their adversarial legal proceedings, in which disputing parties argue their cases before an unbiased judge.

List of countries following Common Legal System.io

1. Australia
2. England
3. Canada (except Quebec)
4. Jamaica
5. Pakistan
6. United States

Does the legislation encourage unfair judicial review and prosecution?

If the judicial decision interferes with establishing the board's rights or duties without sufficient reason, it will lead to the problem of excessive jurisdiction. In other words, it occurs when the court exceeds its authority and intervenes in the order of law. The law decides because the law is the rule of the judges.

Judges often create new laws by applying existing laws to new situations. Judges perform judicial duties and examine historical, social, and legal texts. It was considered radicalism and became the right-wing itself. Judiciary makes room for the judiciary or the legal system, which is the abuse of the law given to it. Judicial decisions are influenced by various social and political factors that lead to radicalism and over-judgment.

The law makes the law, and the judiciary must interpret and apply the law, not make the law.

A review of orders and studies is considered valuable and appropriate. Decision-making is sometimes seen as interfering or interfering with the work of other branches of government. The effectiveness of the judicial system is based on the principle of judicial review.

Does the law lead to judicial challenges and protests?

The adversarial process is used in common law countries where two lawyers represent their clients to present a case to a jury or judge. They judge the truth and pass judgment accordingly. This is a two-sided model.

A trial without a jury, in which a judge decides questions of fact and law, is called a jury trial. Lawyers can get free advice on the questions they ask. The judge presides over the hearing, the rules of procedure, and the evidence and asks the witness questions to clarify the evidence. He concluded the trial by summarizing the facts for the jury and informing them of the law. In the case of opposition, the judge cannot question the facts and evidence from the opposing party's lawyer. The role of a judge is often unclear, but sometimes judges may be biased in making their opinions or decisions.

Civil Legal System.

Civil legal System is "the law of the State or the law of the land, the law of lawyers and the law of courts," according to eminent jurist John Salmond.

The word "civil law" comes from the ancient Roman phrase "jus civile," which translates to "citizens' law" and was used to refer to the laws that were only enforced in Rome. Another name for it is Romano-Germanic law.

A set of laws or regulations about an individual's civil or private rights—rather than the rights of the general public—is known as civil law. It is often formalized and focuses mainly on the personal relationships between two or more persons.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

The civil legal System has its origin in Roman law, as preserved in Justinian's Corpus Iuris Civilis, which is the source of civil law. It originated in Italy and France and has since spread worldwide. The civil legal system is a codified legal system. Its extensive and regularly updated legal rules outline all cases that can be heard in court, the relevant process, and the suitable penalty for each infraction.

This legal system distinguishes three areas of law: procedural law determines how to decide if certain conduct is criminal in nature, substantive law specifies whether activities are subject to criminal or civil prosecution, and penal law defines the appropriate penalty. The judge's duties in a civil law system include determining the case's facts and applying the relevant code's requirements. Even while the judge frequently files formal charges, investigates, and renders a decision, they operate under a vast codified legislation framework. As a result, the judge's judgment has less influence on the development of civil law than that of the lawmakers and legal experts who create and interpret the codes.

It extensively uses Roman law, which was the most complex legal system before the modern period.

Civil law can be referred to as Romano-Germanic, continental, or neo-Roman law. The civil law system, which is in effect in around 150 nations, is the most commonly employed legal framework worldwide.

It is noticeable to everyone with even a cursory knowledge of international legal systems that there are several subfields within the field of law. The general branches include procedural and substantive law, international and municipal law, public and private law, and civil and criminal law. The branches mentioned above must be classified for procedures to run smoothly and for justice to be served effectively.

The primary source of law in civil law legal systems that includes codes is the law code, an organized set of connected articles grouped according to subject matter in a predetermined sequence. Codes explain legal concepts, rights and obligations, and the operation of fundamental legal systems. The goal of codification is to give all citizens a written compilation of the laws that govern them and that judges must adhere to. Even though they are typically far lengthier than other laws, law codes are nonetheless passed by a legislature.

Branches Under Civil Legal System.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Civil law encompasses a vast domain within the legal sphere, addressing various disputes about individuals' rights and responsibilities. Under its umbrella, different branches that contain distinct aspects of civil litigation can be identified. Some examples include:

Contract Law

Contract law, a subdivision of civil law, encompasses the regulation, enforcement, and interpretation of agreements about exchanges involving goods, services, properties, or monetary transactions. Beyond outlining the rights and obligations established by contracting parties within these agreements, it also delineates the available remedies for any party that suffers harm. Furthermore, contract law prescribes procedures governing the utilization of said remedies.

In India, contract law is governed by the Indian Contracts Act of 1872. This legal statute defines a contract as an enforceable agreement under applicable laws (Section 2(h)). The Indian Contract Act additionally provides comprehensive categorizations such as contracts related to bailment arrangements, indemnity matters, agency contracts, and more. Notably, the act specifies criteria for determining whether a given contract qualifies as valid or voidable.

Property Law

Property law is a segment of civil law that pertains to the possessions and assets owned by individuals. It encompasses regulations concerning citizens' rights concerning the utilization or transfer of their belongings and limitations imposed on them concerning others' property. Two primary categories of property exist: real estate and personal property. Personal property refers to movable items such as vehicles, furniture, stocks, etc., which possess tangible or intangible qualities. Conversely, real estate comprises immovable properties like land and buildings.

India has established various statutes governing property law, including but not limited to the Transfer of Property Act (1882), Indian Contract Act (1872), and Indian Easement Act (1882). These legal frameworks contribute significantly towards maintaining order within India's jurisdiction about matters explicitly related to properties held by its residents.

Family Law

The domain of family law pertains to the intricate dynamics and engagements among individuals belonging to a specific familial unit. This legal discipline encompasses an array of rights and responsibilities concerning matrimonial dissolution, nuptial ties, child adoption, financial upkeep, and other related matters.

Several statutes that regulate family law practices lie within the jurisdiction of India. Notably, these include acts such as the Hindu Marriage Act from 1955, which governs marriage customs within Hindu communities; the Indian Christian Marriage Act established in 1872, catering specifically to Christian matrimonies; The Dissolution of Muslim Marriages Act formulated back in 1939, facilitating divorce proceedings within Muslim unions; Lastly but not least is The Muslim Women (Protection of Rights on Divorce) Act put into effect recently in 2019 focusing on safeguarding women's entitlements post-divorce under Islamic traditions.

Tort Law

A tort is a civil crime committed by a person or organization against another, causing injury or property damage. According to tort law, the injured party can receive compensation from the person who committed the tort. Generally speaking, there is no law on torture. Examples of torts include trespass, negligence, defamation, etc. takes place.

Corporate Law

The law regulates the rights and responsibilities regarding the legal entity's activities (i.e., the company). The corporate law part of civil law governs companies' formation, business, investment, and other aspects. Some laws related to company law include the Companies Act of 1956, the Sale of Goods Act of 1930, the Indian Partnership Act of 1932, etc. takes place.

Administrative Law

According to Ivor Jennings, politics is the policy that determines the economy. Organization, powers, and responsibilities of regulatory bodies. It deals with the work of the executive committee of the government. It usually needs to be codified; However, some specialized courts or tribunals deal with matters related to the application of law.

Characteristics of Civil Legal System.

Codified-Civil legal systems are usually codified, which means that legislation or comprehensive legal codes comprise the laws. These codes function as the primary source of

law, offering precise and methodical guidelines for a range of legal issues. Legal codes cover many topics, including torts, property, family law, and contracts.

Minimal Precedent - Civil legal systems lay less weight on precedent than standard law systems, which mostly rely on precedent (previous court rulings) to make decisions. Although rulings from higher courts have weight, lesser courts are not required to follow them. Legislative codes and laws are the primary sources of legislation.

Inquiry-based Technique - Inquisitorial legal proceedings are frequently used in civil legal systems. Unlike the adversarial method utilized in common law regimes, judges in this system are more active in conducting investigations and obtaining evidence. Judges take the lead in questioning witnesses, seeking information, and ensuring the trial is completed relatively and effectively.

Judicial Experts - Trained legal professionals, such as judges, attorneys, and notaries, usually participate in civil court proceedings. Judges are professionals in the legal field who have traditionally completed formal legal education and training.

Documented Agreements - In civil legal systems, contracts and agreements are usually subject to strict establishment and necessitate written documentation. Written agreements may be more enforceable than oral contracts, and parties must abide by their conditions.

Court Particularization - Distinct categories of matters are handled by distinct courts in civil legal systems, such as family courts, administrative courts, and commercial courts. Because these specialized courts are knowledgeable areas of the law, disagreements can be resolved more quickly and expertly.

Independence of the judiciary - Civil legal systems often prioritize judicial independence, with judges shielded from political pressure to guarantee that decisions are made impartially.

List of countries following Civil Legal System.

1. Argentina
2. Colombia
3. Cuba
4. Egypt
5. Italy
6. Japan

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

7. Russia
8. South Korea
9. Sweden
10. Spain

Remedies under Civil Legal System.

In addition to protecting the injured, civil lawsuits aim to restore the rights of the wounded. The assistance and treatment to be provided to him/her will be determined by the court or appropriate court applying the law according to the injury or damage caused to the injured person. That's why asking for help always receives some degree of consideration. However, in *Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg & Anr (1977)*, the court said, "If the court below does not act by law or justice or fairness or rules of procedure, the lower court may decide the high court." "

Generally, there are four public remedies for aggrieved persons: financial assistance, special operations, judgments, and clarifications.

Difference between Common and Civil Legal System.

1. The Common and Civil Legal Systems' Historical Roots.

Common Legal System - The English monarchy, which once issued official instructions known as "writs" when justice was required, is the source of the standard law system. Ultimately, courts of equity were created to hear complaints and determine suitable remedies based on equitable principles drawn from various authoritative sources (such as Roman law and "natural" law) because writs were insufficient to cover all circumstances. Courts could find prior rulings and apply them to ongoing cases when these rulings were compiled and made public. The common law evolved as a result.

Civil Legal System - Conversely, the origins of civil law in other European countries may mainly be found in the legal system created by Roman Emperor Justinian in the year 600 CE. These laws, or others, served as the foundation for authoritative legal codes that evolved over several centuries in different nations, giving rise to comparable legal systems, each with its own body of laws named the Civil Legal System.

2. The Functions of a Judge and Attorney in Each System

Common Legal System – In a nation with common law, lawyers present arguments to the judge; at times, the judge even questions the witnesses themselves. The hearings are thereby “refereed” by the judge, giving them greater flexibility than in a civil law system for determining a suitable solution at the end of the case. In certain circumstances, lawyers appear before the court, present arguments on facts and law, and play an immensely active role in the courtroom procedure.

Civil Legal System –Judges are often called "investigators" in civil law jurisdictions. Typically, they issue charges, gather evidence via interrogating witnesses, and use punishments from applicable laws to take the lead in the proceedings. Even though they play a less significant part, lawyers nonetheless advocate for their clients' interests in civil lawsuits.

3. Law's Origins.

Common Legal System –In common law countries, the primary sources of law are statutes and judicial decisions made by judges in past cases, known as case law or precedent.

At the beginning of the Middle Ages, when the Common legal system was first established, there was solely one royal court, the King's Court. Like many earlier justice systems, it offered procedural remedies instead of substantive rights. The contemporary system, where rights have priority above procedure, results from gradually establishing these procedures. The Common Legal System was primarily established by judges, not politicians, until the late 19th century.

Civil Legal System - In civil law countries, the primary sources of law are codes and statutes created by the legislature, and legal scholars' writings. Originating in Italy and France, civil law is a legal system that has since been adopted by several nations worldwide. The basic concepts of civil law are codified into a corresponding system that functions as the primary source of law, and the structure is evolved within the frameworks of French and Roman civil law. In the past, a civil law system was a collection of legal doctrines and systems that eventually emerged from the Corpus Juris Civilis. However, these legal doctrines and systems were strongly influenced by local, feudal, Napoleonic, Germanic, and canonical practices and by doctrinal currents like natural law, codification, and legal positivism.

4. Acronym Used in Jurisprudence

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in
<https://www.ijalr.in/>

Common Legal System – Nations that follow the common law frequently use English as a framework for their legal terminology, which includes words like plaintiff, defendant, precedent, tort, contract, and negligence.

Civil Legal System – Legal systems in civil jurisdictions often employ Latin-derived legal terminology, which includes terms like in rem, in personam, bona fide, and res judicata.

5. **Judicial Procedure.**

Common Legal System - An adversarial judicial system, in which opposing parties submit their cases and supporting documentation to a jury or a judge, is the foundation of common law jurisdictions.

Civil Legal System - The judiciary in civil legal countries is frequently inquisitorial, indicating that judges are more actively involved in interrogating witnesses and collecting evidence.

6. **Prioritizing Written Law**

Common Legal System - Common law relies primarily on court decisions and legal precedents, which are not always codified.

Civil Legal System - Civil law countries place great importance on written law, statutes, and codes since their judicial systems are highly codified.

Suggestions.

Most nations have realized that each strategy has its advantages and disadvantages. For instance, in the 19th century, no law was written under the standard law system. However, even common law nations are now governed mainly by statutes and codes, realizing the benefits of codified law in terms of accessibility and uniformity in adjudication. Though the justifications for citing precedent may differ, judges in the civil law field increasingly write comprehensive and well-reasoned judgments that reference and interpret the law and precedent, just as in the common law. A common feature, judge-made law, is also permitted in many countries.

Common law fosters a more equitable justice system by allowing judges greater latitude to discern sometimes subtle differences between cases. Still, the notion that civil law is inflexible and full of loopholes has only been confirmed for a while. The truth is that most countries have adopted a "buffet menu" approach to the law throughout time, including

aspects of it that suit their unique governments and communities. As a result, the distinctions between the two systems are less significant than they once were.

Conclusion.

There are some shortcomings in the law, but there are solutions. From a legal perspective, no two cases are the same, so the judge does not need to adapt to the facts of the case. Most of the laws started in England. This is because different cases have different circumstances, so judges create precedents rather than using general principles. But the system also has some disadvantages. When a decision is made, it must be made according to the rules and cannot be changed as needed. It is solid and unchangeable. Long records should be kept, and access to past events should be consistent. Nothing is as legal as another law. In other countries, the system is popular with judges. The concept of moral justice emerged to compensate for the deficiency of law. Also, laws sometimes lead to excessive prosecution, which can be overcome. In the past, the primary purpose of the law was to prevent judges from ensuring the consistency and uniformity of judicial decisions. Still, at the same time, this issue was also strictly regulated. Perhaps the law applies differently here than in England because the needs and wants of the Indian community are different from those of the British people.

Civil law is the laws and regulations that affect the civil rights of citizens. India is divided into caste, religion, gender, etc. It talks about a unified set of civil liberties that would apply to all citizens no matter what. Although Article 44 of the 1949 Indian Constitution states that this is a national policy, achieving "one country, one law" in India is complicated due to the diversity of the population. But despite the laws of diversity, India proves to be an almost perfect example of the concept of "unity in diversity." Let us hope that the brothers and sisters of the "Indians" can overcome any differences of opinion and identity.

In conclusion, the present piece analyzed the subtle differences between the common law and civil law systems, emphasizing their unique traits and critical differences. The civil legal system strongly emphasizes codified statutes and legislation, whereas the standard legal system depends upon precedent and judge-made law. Understanding these frameworks is essential for maneuvering through international legal environments. Legal practitioners and researchers must acknowledge the unique characteristics of each system once jurisdictions adopt one or both of them. This study builds a basis for cross-jurisdictional understanding and analytical legal analysis in a constantly changing legal environment by promoting a sophisticated grasp of legal systems.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Reference.

IPleaders.com

IndianKanoon.com

Practicallaw.com

Wikipedia.org

International Journal of Law and Legal Jurisprudence Studies.

Civil Law and Common Law: Two Different Paths Leading to the Same Goal - Research Gate PDF

Geeksforgeekspanchayat education pvt ltd chrome page.

National Committee on Accreditation PDF

Key Difference Between the Civil and The Common Law Legal System by Kamil Abdu Oumer- Wollo University School of Law PDF.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>