

# Uk legal system and compare



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United Kingdom and Northern Ireland consist of four countries which form three distinctive jurisdictions each of which has its own court system and legal profession. These three jurisdictions are England & Wales, Scotland, and Northern Ireland. The union of Great Britain and Ireland established United Kingdom in 1801, and it attains its present form in 1922 with the partition of Ireland and thus the independent Irish Free State has been established.

In 1973 UK joined the European Economic Community, which is the European Union, when it is required to integrate the European legislation into UK law and to become responsive to the jurisdiction of the European Court of Justice in issues of European Union. A significant constitutional transformation came into existence when the Labour government came into power in 1997. They straight away introduced a process of decentralization, i. e. decentralizing some areas of government to the constituent countries of the UK: separate Scottish Parliament and a Welsh Assembly were established. The European Convention of Human Rights which has UK as its participant and it is been integrated into UK law, in the same year the Human Rights act was passed i. e. 1998. Thus provisions of Conventions can be directly applied to the UK courts.

Actually there is no written constitution for the country. The Queen is the head of the state, even though the ultimate power of the Crown is conceded by the government of the day. The legislature is a two-tier parliament. A count of 659 Members of Parliament makes the House of Commons, by a general election that comes across every 5 years with a simple majority

vote. The Government has the power to call for an election at any time, but to make the electoral advantage secure they do these voting every 5 years.

The constitutional law of the UK is considered as consisting of statute law on the one hand case law on other, whereas the judicial model is applied in the courts by judges deducing statute law. The third element includes constitutional conventions which do not consist of legislative power but how ever has an obligatory force [1].

## **Constitutional Reform**

The Labour government now introduced constitutional alterations in 3 distinct areas: the transformation of the House of Lords, devolution, and the passing of the Human Rights Act 1998.

The reformation of the House of Lords was really a long process, by eradicating the voting rights of all the aristocrats who remains until the house is totally altered. Proposals that were put forward by the Royal Commission on the reformation of House of Lords were published in 2000 as a command paper: A House for the Future (Cm 4534) [2] along with government proposals put down in The House of Lords: Completing the Reform (Cm 5291) [3]. The Human Rights Act was passed in 1998, integrating into the UK law rights and freedoms assures by the European Conventions on Human Rights. Even though the UK had been a participant to the European Conventions on Human Rights since 1951, this act gives the provisions of the conventions to be integrated into the domestic law. This makes it clear that the concern of the human rights affects every part of the government. Some of the effects of decentralization were:

The Department for Constitutional Affairs (DCA) was launched in 2003, and it swaps the Lord Chancellor's Department. Its changed responsibilities such as holding and administering the judicial system, human rights, and electoral and constitutional reform. DCA administers the Court Service and watch over judicial appointments. The responsibility of Lord Chancellor has been modified, with the possessor renamed Secretary of State for Constitutional Affairs and Lord Chancellor, resigns his functions as Speaker of the House of Lords and as a judge. These changes are mainly brought in by the Constitutional Reform Act 2005 and it also made important changes to the courts and the judiciary.

## **The Court System**

### **Civil courts**

Civil cases initially are heard in the County Courts actually it's for minor claims or the high Court, which is divided into 3 divisions: Queen's Bench, Family and Chancery. Cases can be appealed to the Court of Appeal. Cases may also be appealed from the County Court to the High Court. The structure of the UK courts is shown below [4] .

The majority of civil actions are heard in the 218 county courts, which also handles family and bankruptcy hearings. The value of claim decides in which manner the case has to be dealt with. The work is handled by three divisions, depending on its subject:

Chancery Division: equity, trusts, tax, bankruptcy

Queen's Bench Division: contract, tort, commercial matters

Family Division: divorce, children, probate.

House of Lords is the supreme court of appeal. The judicial functions are quite different from its legislative work and the cases are heard by around 13 senior judges known as Lords of Appeal in Ordinary, or Law Lords. The Constitutional Reform Act 2005 endow with the establishment of a supreme court to reinstate the judicial functions of the House of Lords with an independent appointment system, thus making a constitutional division between legislature and the judiciary. Judicial Committee of the Privy Council is responsible for hearing cases from the British overseas territories and dependencies as well as domestic appeals. Cases regarding powers and functions of the devolved legislatures are also heard in these courts. Along with these courts there are also specialized tribunals, which take into account different appeals on decisions made by several public bodies and Government departments like employment, immigration, social security, tax and land.

## **Criminal courts**

Criminal cases initially are heard at the Magistrates' Court, serious ones being heard in the Crown Court. Appeals are mainly heard in the Court Of Appeal Criminal Division [5].

The Crown Court and Magistrates' Court can be replaced by a cohesive Criminal Court with 3 divisions: Crown Division now the Crown Court to hear jurisdiction over all criminal matters and the more serious offences allocated to it, the District Division, comprise of a judge usually a District Judge or Recorder and at least 2 magistrates, to hear the jurisdiction over a mid range

and in case of serious issues merit up to 2 years custody and the Magistrates' Division comprised by a District Judge or Magistrates are to work out their present jurisdiction. The Magistrates Division would assign cases according to the significance of the suspected offence and the situation of the defendant.

In the affair of an argument, a District Judge would determine the matter after hearing the version of prosecution and the defendant. The defendant has no right of selection of any of the division.

## **LEGAL SYSTEMS**

The United Kingdom has 3 legal systems for its 3 separate jurisdictions; English Law for England & Wales, Northern Ireland follows some common law principles and finally Scots Law for Scotland.

### **England & Wales**

#### **English Law**

English law, which refers to the legal system administered by the courts of England & Wales for both civil and criminal matters. English law has its own distinctive legal canon, separate from civil law [6] (civil law in which the sources known as reliable are legislation mainly codification in the constitution that are passed by the government and also the custom.) [7]. Actually the laws are not made a part of an organized system and also the laws are developed by judges in the court.

Earlier times the justices and the judges were in charge if adapting the Writ system for the everyday needs to for building up a consistent law [8]. For e. g., the Law Merchant began in the Pie Powder Courts. When the Parliament <https://assignbuster.com/uk-legal-system-and-compare/>

developed in its capacity and focus to the canon of separation of powers, the legislation overtook the judicial law making.

Senior Courts of England and Wales consist of Court of Appeal, the High Court of Justice and the Crown Court. The Supreme Court is the highest court for both criminal and civil appeal cases in England & Wales and also Northern Ireland.

English Law became one of the two legal systems in different parts of UK and also greatly influenced by Scots Law after the Acts of Union in the year 1707 [9] particularly in the development and incorporation of law merchant by Lord Mansfield and also with the development of law of Negligence.

## **Northern Ireland**

### **Common Law**

The law of Northern Ireland is a common law system. It is managed by the courts of Northern Ireland, with

The law of Northern Ireland is a common law system. It is administered by the courts of Northern Ireland, with supreme appeal to the Supreme Court of the United Kingdom in both civil and criminal matters. The country's law is almost similar to the English Law with some of the rules of common law being transferred to the Kingdom of Ireland. The basis for the law of Northern Ireland is English Common Law and Statute Law.

## **Scotland**

### **Scots Law**

Scots law is an inimitable legal system with an origin from Roman law. It also characterizes elements of common law with some feudal sources. This shows that Scotland has varied or mixed legal system compared to South Africa and to a certain extent it has codified systems of Louisiana and Quebec.

The Acts of Union has shared legislature with the rest of the UK. In those days Scotland, England & Wales each has separate or distinct legal systems, but the Union act brought some English influence on Scots law. Later on the Scots law was also affected by both European laws under the Treaty of Rome and with the Establishment of Scottish Parliament.

Court of Session, for the civil cases and the High Court of Justiciary for criminal cases are the chief courts. The Supreme Court of the United Kingdom functions as the ultimate court of appeal for civil cases under Scots Law. Sheriff courts deals with most of the civil and criminal cases including criminal trials with a jury known as sheriff solemn court with a sheriff and no jury which is known as sheriff summary court.

## **UK Legislatures**

### **United Kingdom Parliament**

The Parliament of United Kingdom is two- tier consisting of an upper house i. e. the House of Lords and a lower house i. e. the House of Commons. The House of Lords comprise of two types of members: the Lords Spiritual, he is the senior bishops of the Church of England and the Lords Temporal. The House of Common is an elected chamber democratically. These two houses



gather in separate chambers in the Palace of Westminster in the City of Westminster in London. All government ministers including the Prime Minister are members of either the House of Commons or House of Lords [10].

## **Northern Ireland Assembly**

The Northern Ireland Assembly is the decentralized legislature of Northern Ireland. It has got the authority to enact in broad areas that are not overtly reserved to the Parliament of the United Kingdom, and appointed the Northern Ireland Executive. It is situated at Parliament Buildings at Stormont in Belfast.

The latest embodiment of the Assembly was established under the Good Friday Agreement “ a commitment by all parties for exclusively peaceful and democratic means” of 1998[11] .

The Assembly is a unicameral democratically elected body consisting of 108 members who are known as Members of Legislative Assembly, or MLAs.

## **Scottish Parliament**

The Scottish parliament is located in the Holy rood area of the capital Edinburgh. Unofficially the Parliament is referred to as “ Holy rood”, the Parliament consists of 129 members who are democratically elected, and they are also called Members of Scottish Parliament or MSPs. The members of the Parliament are elected for four year terms under the Additional Member System of proportional representation” an attempt to ensure that the outcome of the election reflects the proportion of support gained by each competing group ” [12]. The original Parliament of Scotland or also known as <https://assignbuster.com/uk-legal-system-and-compare/>

Estates of Scotland was the national legislature of the independent Kingdom of Scotland, and it existed till the 13th century until the Kingdom of Scotland merged with Kingdom of England under the Acts of Union 1707 to figure the Kingdom of Britain. As a result the Parliament of Scotland unites with Parliament of England to form Parliament of Great Britain, which is situated at Westminster in London.

## **WORKING OF UK LEGAL SYSTEM**

### **England & Wales**

#### **Criminal law**

Criminal law or penal law, it's a body of rules that describes the behaviour which is considered illegal because it is believed to threaten, harm or otherwise imperil the safety and welfare of the public. The law is actually insisted by the state itself and the one who breaks these laws are prosecuted in court.

Capital punishment is obligatory in some jurisdiction for almost all serious crimes, physical or corporal punishments are also imposed such as whipping or caning [13]. Individuals are also enslaved in prison or in jail depending upon the jurisdiction. Length of imprisonment may vary from day to life. House arrest or fines are also imposed on the convicts who done the crime.

The main objectives of this law by punishment are retribution, deterrence, incapacitation, rehabilitation and restitution.

Some of the selected criminal laws are fatal offenses [14], personal offenses, property offenses, participatory offenses, mala in se v. mala prohibit a.

## **Civil Law**

Civil law deals mostly the disputes between the individuals or corporate bodies and swathe a large array of areas which includes: landlord and tenant disputes, insolvency, small claims, consumer disputes, personal injury claims, divorce cases, race, sex and disability discrimination cases, debt problems wills and libel.

[15]According to this law it is important that there should be 50 percent probability that the defendant is responsible for dispute.

In both these cases the prosecution and the defence try to convince the court that one side is right and other is wrong. In criminal cases, the jury decides whether the prosecution or the defence are guilty and the final decision of sentence is issued by the judge himself. But in the case of civil and family cases the judges alone decides or announces who is the convict based on the evidences presented.

In England and Wales prisoners are assigned different security classes when they are sentenced.

The categories of prisoners in descending order are:

Category A: prisoners whose escape would be highly dangerous to the public or national security.

Category B: prisoners, whom which do not require maximum security, but the escape needs to be made very difficult.

Category C: prisoners who cannot be trusted in open conditions but who are improbable to escape.

Category D: prisoners who can be quite trusted that they don't try to escape, and are given the privilege of an open prison.

## **Northern Ireland**

The country's legal system is almost similar to England & Wales [16].

The Lord Chancellor is responsible for court administration through the Northern Ireland Court Service. It deals with the policy and legislation concerning criminal law, the police and the prison system.

## **Criminal law**

Criminal law is mainly concerned with establishing and upholding social order and protecting the community. The rules of this law are meant to persuade and keep up an orderly and safe living for every citizen. If anyone is found at fault they can be fined, given a community penalty or may be sent to a prison.

## **Civil law**

Civil law is almost similar to the law of England and Wales i. e. cases must be verified by the "balance of probabilities" rather than the 'beyond reasonable doubt' which is applied in criminal cases.

## **Scotland**

The Scottish Executive Justice Department manages the issues regarding civil and criminal law. The Parliament makes or passes laws on those issues on which where it has the right to act independently, in such situation it can

change or discards the acts of UK Parliament and it can pass new and separate legislation for Scotland.

## **Scots Law**

The Scots Law and Scottish Legal system has a protracted history, which dates back to the medieval period. The uprightness and independence of Scots law were accredited in the 1707 Act of Union which eliminates the Scottish Parliament and forms a new UK Parliament at Westminster. Scots Law carves up many of the legislative provisions with the law of England and Wales [17], even though the Scots Civil Law remains significantly based on Scots Common Law. Scots Civil Law has some elements which got basis from the Roman Dutch Law.

## **INDIAN LEGAL SYSTEM**

The Government of India, formally known as the Union Government (Central Government) and was found by the Constitution of India and it is the governing power of a union of 28 states and 7 union territories, collectively called the Republic of India. It is situated in New Delhi, the capital of India.

The Indian Government consists of 3 branches: the executive, the legislative, and the judiciary. The Executive branch is headed by the President of Country who is known as the head of the state and he implements his powers through officers under him or directly. The Legislative branch or the Parliament has two houses: lower house called the Lok Sabha [18], and the upper house called the Rajya Sabha. The Judicial branch has the Supreme Court at its top level, 21 high courts and number of civil criminal family courts at the district level.

The civil and criminal laws governing the citizens of the country are governed by the parliamentary legislation such as the Civil Procedure Code, the Indian Penal Code and the Criminal Procedure Code. The legal system applied to the federal and individual state governments is based on the English Common (laws which are developed by the judges on the basis of decision of court and similar tribunals rather than by the legislative statutes) [19] and Statutory Law (law that is made by the legislature and codified or written in code books) [20].

[21]India has a Parliamentary system of government which is largely based on that of the United Kingdom i. e. the Westminster System[22] (A democratic system of government which was modelled after that of UK and it is followed in many of the Common wealth nations such as Canada, Australia, Singapore, Jamaica, Ireland, New Zealand India.)

The legislature of the country is Parliament. Its two-tier system, with two houses: Lok Sabha in which the 545 members are directly elected called “ House of the People” also known as lower house, Rajya Sabha in which the 250 members are indirectly elected called “ Council of States” also known as upper house. Council of Ministers as well as the Prime Minister is the members of the Parliament, if they are not members then they should be elected within a period of six months from the time they take up their respective positions.

### **Individual responsibility**

Every individual minister takes care of the specific bureau or bureaus. He is supposed to answer any act of failure in all the policies relating to his

ministry. In case any slip up, he himself is responsible to the Parliament. If a vote of no confidence" vote or motion in a legislative body censuring an aspect of or indicating a lack of majority support for a government policy [23]" is passed against a the minister then he is forced to resign from his position, in such situation the Prime Minister can ask for resignation of the minister to save his government and the people have say.

### **Collective Responsibility**

The prime Minister and the Council of Ministers together are answerable to the Lok Sabha. So if there is a policy failure from the government's part members of the council are responsible. In such situation if a vote of no confidence is passed then all the ministers headed by the Prime minister have to resign from their position.

### **Judicial System**

The Supreme Court in India is the eventual exponent of the constitution and the laws of the country [24]. It has appellate jurisdiction over all civil and criminal events involving substantial matter concerning the explanation of the constitution. The court has the unique and exclusive jurisdiction to determine the arguments between the central government and one or more states and union territories as well as between states and union territories. The Supreme Court has a broad or ample flexible powers to hear special appeals on any matter from any court except those of armed services. It is also known as court of records and oversees every high court.

Twenty five associate justices and one chief justice serve on the Supreme Court. Chief justice is appointed by the President, the associated judges are

also appointed by the President after consulting with Chief justice. The appointments do not require Parliaments accord, and the justices cannot be removed from their position until they reach the binding retirement age 65.

The Supreme Court has power to decide cases under [25].

## **Original jurisdiction**

Argument between central government and government of one or more states.

Argument between central government and the governments of one or more states on one side and the governments of one or more states on other side.

Argument between two or more states.

Appellate jurisdiction: Supreme court is the final court of appeal. An appeal against the high court can be filed in the supreme court. If any of the parties is not satisfied with the decision of the high court appeals can be brought to constitutional, criminal and civil cases.

Advisory jurisdiction: President may ask for the advice of the Supreme court on any matter of public importance.

## **Features of Indian Legal System**

### **Written Constitution**

Constitution is generally a written document and affirms India to be a sovereign, socialist, secular, democratic republic and it represents the reservoir of enormous power. The Indian Constitution is an inimitable mix of rigidity and flexibility and it is a political document and also known as ' Bag



of Borrowings' [26] which mete out the power of the state amongst different structures i. e. between central and state government. Indian government is democratic and republican and is governmental through adult authorization.

## **The Rule of law**

The term Rule of Law is derived from French phrase la principe de legalite (The principle of legality), that means a government based on the principles of law and not of men. According to ancient scriptures, Law is the King of Kings and there is nothing higher than law.

The rule of law contains 3 principles [27].

**Supremacy of Law:** This means that no man is punishable or can legally be made to bear in body or goods except for a discrete violation of law launched in an ordinary legal manner. It means that a man can be penalized for the violation of law but cannot be penalized for any other things. A suspected offence is supposed to be attested before the ordinary courts in harmony with the ordinary procedure

**Equality before Law:** This means that no man is above the law. Every citizen whatever his position focuses on the ordinary law of the land and agreeable to the jurisdiction of the ordinary tribunals.

**Predominance of Legal Spirit:** This means that general principles of the constitution are the result of judicial decisions for determining the file rights of private person in association with the cases brought to the court.

## **Independence of Judiciary**

It is a principle that the judiciary should be politically defended from governmental and the exclusive power, this means that the court should not be exposed to culpable influence from other sections of government or personal interest [28].

One way to prop up judicial independence is by giving life term or long term for judges, which allows them to decide cases and make laws according to the rule of law and judicial discretion.

## **Overview of Indian Court Structure**

The exclusive feature of Indian constitution is its judiciary. Single incorporated system of courts manages both union and state laws.

## **The Supreme Court of India**

The Supreme Court of India is the highest court of the land. It is the vital explainer and protector of the constitution and the laws of the land. It is the highest court of petition or appeal. It takes up request against judgments of the regional high courts.

The Supreme Court of India consists of Chief Justice of India and 30 other judges who are appointed by the president.

## **High Courts**

High court is head of each state's judicial administration. There are around 21 high courts for India's 28 states, 6 union territories and one national capital territory. These courts have a power over a state, a union territory or a group of states and union territories. As the part of the judicial system the

high courts are officially free of state legislatures and executives. Each high court within the country is a court of record for implementing original and appellate jurisdiction inside a state or territory. It also issues proper writs in cases regarding constitutionally assured fundamental rights. The high court controls or oversees all courts within its jurisdiction, except for which deals with armed forces and can transfer constitutional cases to it from the lower courts. The said court have original jurisdiction on revenue matters. They undertake original criminal cases by a jury, but not civil cases. According to article 141 of the Constitution of India all courts in the land including high court are bound by the orders of Supreme Court. High courts are controlled by the chief justice. Judges of high court are appointed by the president of India after consulting with the Chief Justice and the governor of the state.

## **Lower Courts**

High court has the power of supervising the lower courts within its jurisdiction namely the district and session courts and their lower courts [29]. The district and the session courts consist of the lowest level of courts and are also known as trial courts and it applies both federal and state laws.

States are divided into districts and inside each district a district judge and session's judge heads the judiciary. A district judge is in charge of all civil cases and session's judge over the criminal cases. State Governor after consulting with the state's high court appoints these judges.

Civil cases are filed in Munsif courts, also known as sub district courts. Lesser criminal cases are handed over to the subordinate magistrates working

under the high court. Village level disputes are mostly resolved by Panchayats or Lok adalats.

## **Executive**

The President of India is the Head of the State and the Commander-in-Chief of the armed forces [29]. He is elected by the democratic board composed of members of both the Houses of Parliament and the legislatures of the nation's constituent states. The President holds the position for 5 years and he can be re elected. The president does not normally implements any constitutional powers on his own inventiveness. But these are done based on the instruction given by the Prime Minister and the Council of Ministers. The Prime Minister is appointed by the President, who is chosen by the legislators of the political parties. President then appoints other ministers on after consulting with the Prime Minister. Prime Minister can remain in office only when he or she enjoys the majority support from the Parliament.

The Vice President is elected by the members of both the houses the lower and the upper houses of Parliament. The Vice President takes the power of President in case of death or resignation of the current President.

Indian legal system is mostly based on the English common law and statutory law, and most of the state and the territorial law are based on English common law.

India's dedication to law is created in the constitution which made India into a sovereign democratic republic, which contains a federal system with law-making form of government in the union and the states.

The main resources of law in India are the Constitution, statutes, customary law and case law. Parliament, state legislatures and Union Territory legislatures endorse the statutes. In addition to that there is a huge body of laws known as subordinate legislation in that form of rules regulations made by central and state governments and local authorities like municipal corporations, municipalities, Gram Panchayats and other local bodies.

Subordinate legislation is made under the authority s assigned either by the parliament or state or union territory legislatures. The official publications of laws of India are recorded in major parliamentary legislation such as the India Code. Indian laws stick on to the United Nations guidelines on human rights laws and the environmental law.

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