

JUSTICE SYSTEM IN CHINA AND HIERARCHY OF CRIMINAL COURTS

The Government has the doctrine of Separation of Power plays a vital role even in the **court system of People's Republic of China** (henceforth called as China) in spite of it being a popular doctrine in the western culture.

Doctrine of Separation of Power

The Doctrine of Separation of Power means when the organs of government do not interfere with each other's function.

three organs which are –

1. Legislature
2. Judiciary
3. Executive

According to the doctrine of Separation of Power, the functions of these three should be different from each other.

- The function of the **legislature** is to make laws.
- The function of **executive** is to implement the same.
- The function of the **judiciary** is to interpret the law.

In China, the doctrine of separation of power can be understood as 'One Mother and Three Sons'.

- The **legislative authority** has the highest power in the jurisdiction of China and the judicial and the executive have a parallel authority.
- The **executive** derives its authority from the legislature itself and the function is to administer the law.

- The **judiciary** has the power over the people's court as well as has the procuratorial power over the people's procurators.

As stated, **the power of courts is the highest judicial authority in China**. This power is based on the principles of rationality and justice but applying the same in operation, the basic foundation of power is interest. So the doctrine of separation of power even though prescribed in the western countries, it is taken differently in theory and in practice.

The Constitutional Status of People's Courts

China, even though has a '**Socialist Legal System**' as stated by the Government, it mostly follows the civil law system i.e. the model of the legal system is based on civil law system primarily.

The Constitution of the People's Republic of China was adopted in the year 1982 and Articles 123-128 deal with the Judiciary. More specifically the people's court.

As per the Articles of the Constitution:

- The people's courts of the People's Republic of China are the judicial organs of the state.
- The people's Republic of China establishes the Supreme People's Court, the people's court at various local levels and military courts.
- The people's courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.
- The Supreme People's Court is responsible to the National People's Congress and its Standing Committee; local people's court at various

levels are responsible to the organs of state power which created them.

- People's Court is the organ that exercises the state power to adjudicate in China.
- They are independent to executive organs and procuratorates and are responsible to organs of state power while supervised by them.

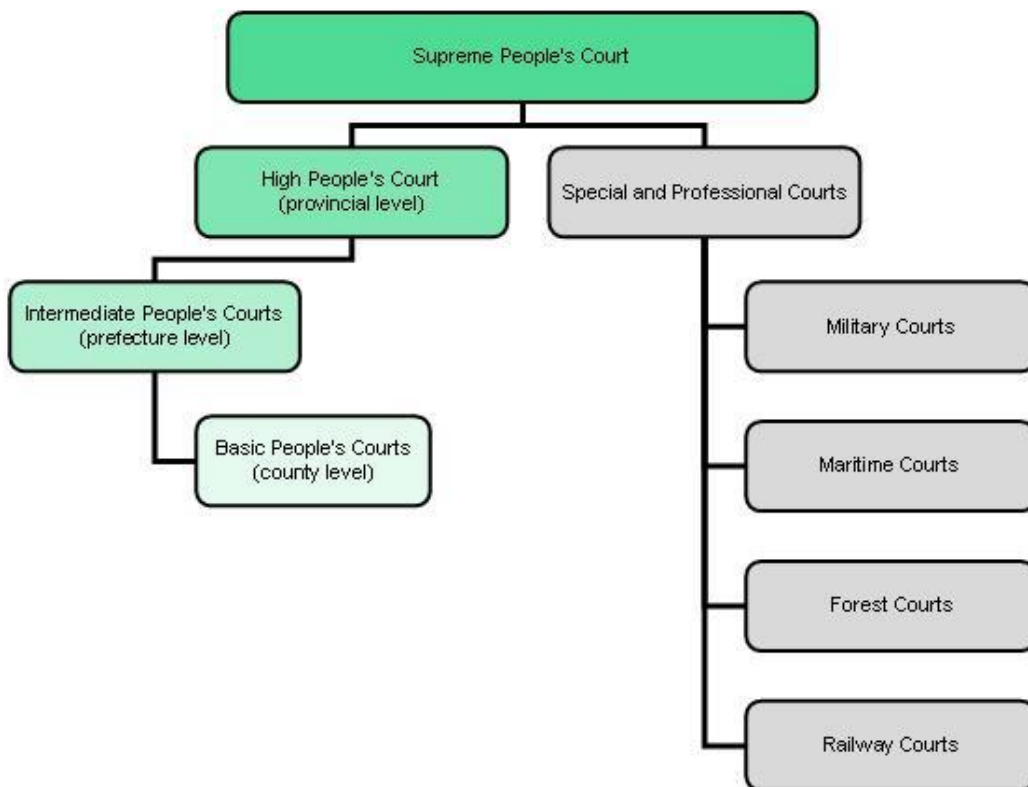


Figure 1: Showing the judicial structure of China

Structure of Judiciary

Judicial power on behalf of the states is exercised by people's court. In China, the Constitution as well as the **People's Courts Organic Law, 1979**, amended in 1983, a system of court is characterized as 'four levels and two instances of trials.

The structure is divided into two parts, one being people's court and other being special courts. There are local people's courts at various levels followed by military courts and also special people's courts and the highest authority being the Supreme People's Courts.

As shown above, the local people's court is divided further into people's basic courts, intermediate people's courts and higher people's courts.

People's Court

The system adopted by people's court in the matter of administration of adjudication, the matter should be decided after two trials. It means a case is first initiated in local people's court and the judgment has to be passed for the first instance in local people's court itself.

Only after the judgment is passed in local people's court, one of the parties can go for appeal in the higher court. The case in the higher court has to be presented by the people's procuratorate. If any of the party does not appeal in the limited time period and the period of limitation passes, the judgment of the lower court is considered to be final and binding and are legally effective.

Also, if the appeal is made, then, the judgments so passed by the courts of the second instance must be considered as effective and legally binding immediately. Since Supreme Court is the highest authority and if any case is presented before it as the first instance then, the same would be considered as legally binding immediately.

A state power exclusively exercised by procuratorial organs and none from the administrative organs, public organizations or individuals have the right to exercise it is procuratorial power.

The above requirement is set by the particularity and seriousness of procuratorial power. The organs, public organizations and individuals which

are not state organs or state organs that are not procuratorial organs have the right to exercise procuratorial power. **Whenever procuratorial organs exercise procuratorial power, they are required to obey the Constitution and the state laws only** and are not subject to interference by the administrative organs, individuals and public organizations.

The procuratorial organs shall not be subject to interference by other administrative organs' administrative orders which affect the exercise of procuratorial power and by other public organizations and some individuals with special privileges when the procuratorial work is carried out practically which is, in turn, the key to ensuring the fair and effective exercise of procuratorial power.

The procuratorial power must be exercised according to their legal functions, powers and methods by the procuratorial organs and should not be abused. The criminal, civil and administrative procedure laws and a series of internal regulations on procuratorial work that were formulated by the Supreme People's Procuratorate, contains concrete provisions on the procuratorial functions and powers of procuratorial organs and the procedures and methods for exercising legal supervision. Violation of these regulations or abusing the procuratorial power will impair the socialist legal system and thereby the legal responsibility will be investigated and affixed.

The procuratorial powers are exercised independently by the procuratorial organs thereby conveying that procuratorial powers are exercised independently at all the levels by the people's procuratorates. But that doesn't mean that the chief procurators or other public procurators personally exercise the procuratorial power independently.

This depicts that the democratic centralism is applied in exercising legal supervision and also the correct exercise of procuratorial power by avoiding the personal abuse of procuratorial power.

In accordance with the article of the Organic Law, " People's courts at all levels set up judicial committees" with the task of summing up judicial experience and discussing important or difficult cases and other issues relating to judicial work. Members of judicial committees of local people's courts at various levels are appointed and removed by the standing committee of the people's congress at the corresponding levels upon the recommendation of the presidents of these courts. The presidents of the people's courts preside over the meeting of judicial committees at all levels; the chief procurators of the people's procuratorates at the corresponding levels may attend the meetings without voting rights.

Within each court, there are usually several divisions such as – civil, economic, criminal, administrative and enforcement divisions. A court has one president and several vice-presidents, a division has one chief and several associate chiefs. Each court also has a judicial committee that is composed of the presidents, division chiefs and experienced judges.

The members of the committee are appointed by the standing committee of the courts at the corresponding level. The judicial committee is the most authoritative body in a court which is responsible for discussing important or difficult cases, making directions concerning other judicial matters and reviewing and summing up judicial experiences. Its direction shall be followed by judges and collegial panels. In the case of differing opinions, the majority's opinions shall be adopted.

Collegial panels are the basic units in each court. They are not permanent bodies but organized to adjudicate individual cases. A collegial panel is composed of three to seven judges, the number of which must be odd. Simple civil cases, economic cases, minor criminal cases and cases that are otherwise provided for in law can be tried by a single judge. Cases of the second trial are heard by a collegial panel of three to five judges. The president judge of the panel is appointed by the president of the court or the division chief. When a

president or a division chief participates in a trial, he/she shall be the presiding judge of the panel.

People's assessors may be selected by the standing committee of local people's congresses and the list of the same would be provided to the courts at the corresponding level. Courts are allowed to select people's assessors for participating in the case of the first trial.

The collegial panels for the first trial may be composed of any one of the following –

1. Judges and people's assessors or
2. Judges exclusively.

The people's assessors system is different from the jury system in common law jurisdiction in a way that the people's assessors are not selected on the basis of citizenship, they function as judges and have the authority to decide issues of facts and law.

A crucial part of adjudication is trial process which is greatly influenced by the civil law jurisdiction in which the judge is the dominant party in conducting a trial. Recently an effort has been made to bring an adversarial pattern into the Chinese adjudication process by "**the reform of adjudication format**". The reform will be promoted by the revised Criminal Procedure Law.

Each case shall have at the most two trials according to law, meaning thereby that, the litigants to a case and their legal representatives who challenge the judgments made by the local court in the first instance trial have the right to appeal the case to a next higher level court only once.

The higher court is required to try the case again once an appeal is filed. **The judgment of the second trial shall be final and cannot be appealed.** However, the final decision or the effective decision may be challenged by the parties to litigation through the trial supervision procedure

to the appellate or the higher court. The president after the review of the complaint may ask the judicial committee to make the decision of accepting or rejecting the appeal. Under no circumstances does the re-trial initiated by trial supervision procedure suspend the enforcement of the effective judgment that is challenged.

People's courts are allowed to exercise state judicial powers independently that is free from interference from any organizations or individuals by the Constitution and the Organic Law of Courts. The word "court" carrying a pivotal importance, according to the authoritative explanations means the individual judges having no judicial power but the courts where the judges perform their duties have the power. The judgment by the collegial panels, which are trial units and not the individual judges, are made in the name of the courts.

Due to that, the courts are given the power of adjudication and not the judges and presidents and division chief may have a legitimate right to review and advice changes in the draft judgments prepared by collegial panels based on the previous explanation.

This practice strictly speaking has no direct legal grounds except for the judicial committees as this constitutes an internal interference with the independent adjudication of collegial panels. The final decision may be concluded by the judicial committee of a court rather than the designated collegial panel if the case is important or complicated. This mechanism is said to be designated to safeguard the correct and impartial exercise of judicial powers but in practice, it may also be used as a device by some committee members to interfere improperly with the collegial panel's function and to provide favours to one side of litigation.

The Supreme People's Court

The highest judicial organ of the State is the Supreme People's Court which is located in Beijing, a capital of China. The NPC and its standing committee elect the president of the Supreme People's Court. His term of office is five years which can be extended to no more than two consecutive terms. The vice-presidents, head and associate heads of divisions and judges are appointed or dismissed by the NPC standing committee.

The Supreme People's Court has three divisions namely –

1. Criminal Division
2. Civil Division
3. Economic Division

The court may have other divisions as it deems necessary. The cases over which the court has its jurisdiction include the following –

- Cases of the first instance assigned by laws and other cases that it considers it should try itself.
- Appealed and protested cases against judgments and other orders of higher people's courts and special people's courts.
- Protested cases filed by the Supreme People's Procuratorate.
- The work of the local people's courts at various levels and even the special courts is supervised by the Supreme People's Court.
- The interpretation on the questions which concerns the specific application of laws and decrees in the judicial proceedings are given by the Supreme People's Court.

The extent to which the practice of interpreting laws and decrees by the Supreme People's Court has developed in the recent years is called "Judicial Legislation", in reality, which was not previously defined in the Constitutional Law.

The legislation, however, does require the guidance for filling the gaps and to solve the conflicts and for more clarity among the laws, for ensuring effective enforcement by the judicial branch.

The Higher People's Courts

The courts of provinces, municipalities and autonomous regions that are directly under the Central Government are called Higher People's Courts. As per the definition of organic law, the internal structure is the same as that of the Supreme People's Court.

- The first instance cases that are assigned by laws and decrees, the cases of the first instance that are transferred from people's courts at the next lower level, cases of appeals and protests lodged against judgements and orders of people's courts at the next lower level and that of protests lodged by people's procuratorates are dealt in by the Higher People's Court.
- The cases having considerably bigger complication in question or which are further transferred by Intermediate Courts are tried in the Higher Courts. Orders such as death penalty given by lower court can be appealed in higher court for review which further can be appealed in Supreme Court if the same is rejected or not changed in the Higher Court.
- The Higher Court can also guide and provide assistance to lower court as and when it thinks necessary on its discretionary power.

The Intermediate People's Courts

The courts that are established in capitals or prefectures in the provincial level are Intermediate People's Courts.

- The cases of the first instance assigned by laws and decrees, cases of the first instance that are transferred from the basic people's courts and appealed and protested cases from the lower court are within the scope of jurisdiction of Intermediate People's Court.
- The Intermediate People's Courts guide and direct the Basic People's Court in their proceeding and look after whether the same has been performed within their jurisdiction or not, wherever they have gone beyond their judicial power in any verdict or order, the Intermediate Court can re-open the case even though the order has already taken the effect.

The Basic People's Courts

The lowest level, basic courts, also known as grassroots-level courts, are generally located at the county, autonomous counties as well as municipal districts. In accordance with the conditions of the locality, population and cases involved, a number of people's tribunal may be set up by the basic people's court.

- A component of the basic people's court is people's tribunal where the judgments and orders are considered as the judgments and orders of the basic people's court with the same legal effects. A tribunal of this nature is generally set up in big town or townships having concentrated population. The basic people's court adjudicates all criminal and civil cases of the first instance except where the law provides otherwise, as per the definition in the Organic Law.
- A basic people's court besides trying cases is also responsible for settling civil disputes, handling minor criminal cases not requiring formal handling as well as directing the work of the people's mediation committees which is also known as People's Arbitration Committees.

The Special Courts

An important part of the unified organization system of people's court in China, including military courts, railway courts and maritime courts are Special People's Court. Special institutions set them up as tribunals for deciding special cases.

Judicial organs that are established in the army and regarded as special courts belonging to military organization system are Military court.

Primarily divided into three categories, Military courts include –

- Military court of army, military court having army units, military court of fleet air force, military courts of greater military area, military courts of garrisons directly managed in Beijing.
- Military courts of greater military areas and of services and arms, containing military courts of greater military areas, military courts of Air force and navy, military courts of the second artillery, military court of general troops directly managed by PLA.
- Military court of People's Liberation Army of China. Military courts are special courts administered by the Supreme People's Court which is also their highest instance of trial. This is a relatively closed system.

The special courts that adjudicate maritime cases and maritime commerce cases are Maritime courts.

Supreme court has established five maritime courts at port cities of Shanghai, Qingdao, Dalian, Guangzhou and Tianjin which have jurisdiction over maritime cases and maritime trade cases of first instance which include any disputes of this category taking place between Chinese and foreign citizens, enterprises and organizations. But they have no jurisdiction over the criminal and other civil cases belonging to ordinary courts.

When there is a higher court in the maritime court's locality, it shall have jurisdiction over appeals against the judgment and orders of maritime court.

There are two categories of Railway Transportation Court –

1. Basic Railway Court

2. Immediate Railway Courts

There are special courts besides the above-mentioned courts of agriculture, forestry, seaports and oilfield. Criminal cases and economic disputes relating to railways and transportation are dealt by the railway and transportation courts.