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Comparative Study of Criminal Laws in U.S.A, UK And Germany

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ABSTRACT

Comparative criminal justice system is a subfield of study of criminal justice that compares justice system worldwide. Today, comparative research in criminal law is an absolute necessity. In the criminal justice, the only efficacious way to prevent and combat crime is by harmonisation and coordination of all efforts worldwide. A comparative perspective is necessary for overview of powers, laws, punishments and procedure to acquit or convict.

There is a huge impact of comparative criminal justice on public faith, judicature, amendment power of an arrest, structure of criminal judiciary system and reforms.

We often say illegality is an element of crime and government must enact a criminal law specifying the crime and its elements before it inflicts a penalty upon an individual on in requital for criminal behaviour. The plethora of laws differ significantly from state to state. Responsibility for criminal law and criminal justice differs as law is not static. The laws that govern behaviour also changes.

I. CRIMINAL LAW SYSTEM IN U.S.A

The court system in U.S.A is segregated into two system namely federal and the state, each of which is independent. The states, possessing the police power have the most general power to pass criminal laws in the United States. The federal government, possessing power granted to it by the Constitution, can pass criminal laws which are related to the powers granted to Congress.

The judicial power of the United States shall be vested with one Supreme courts and in inferior courts as per Article 3 of United States Constitution. The criminal process commences when there is infringement of a law and stretches towards an arrest, trial, indictment. An act which is hurtful or sinful can be termed as a crime. A crime which is sacrilegious towards the state is rightfully punishable by fine imprisonment or death.

Federal system has court process at national level and each state and territory have their own rules and regulation that exerts influence upon the judicial process.

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In a crime, the prerequisite are actus reus and mens rea elements². The prosecution in United States must prove each element of the supposed crime beyond a reasonable doubt for conviction as a burden of proof. The U.S legal system has always put together contrast between harm that was caused deliberately and harm by simple negligence or accident.

The grand jury consist of 16 to 23 generally chosen from voter registration list, who render decision by majority poll. The District Attorney is given the responsibility to prosecute criminal charges on behalf of people and to represent the people in grand jury procedure³.

In U.S.A there is also special prosecutor's office against president. The defendant is tried before the court through arraignment. If the accused pleads not guilty, the judge schedules a date for trial, henceforth leading to plea bargaining. U.S.A follows adversarial system of justice, burden of proof is on the state. The accused is said to be innocent until proven guilty. The function of an opening statement generally given by both the prosecution and defence is what he intends to prove,⁴ to state what evidence will be presented.⁵

District attorney has a right to cross-examine the witness. Under Federal Rules of criminal Procedure, the prosecution is allowed to open the argument, defendant is allowed to reply and prosecution is then allowed to reply in rebuttal⁶.

Sentencing is imposed by judge at federal level and in most of states.

II. CRIMINAL LAW SYSTEM IN UK

United Kingdom does not have a single unified federal system. England and Wales consist of one system. Scotland pursues another system and Northern Ireland another. Under Immigration Law the tribunal constituted has jurisdiction over the whole of U.K. Court in England and Wales can be bifurcated of senior courts and sub-ordinate courts. Under senior courts, there are Court of Appeal, High Court of Justice and Crown Court amongst which High court of Justice serves only for civil matters and appellate courts regards both criminal and civil matter from subordinate courts.

Crown court is criminal court of both original and appellate jurisdiction and is the only court in England and Wales to have cases on indictment under its jurisdiction. Minor criminal cases

² George Clack (ed), *Outline of the American Legal System*, Bureau of International Information Programs, United States Department of State, 2004, p.92.

³ 6 Jayasankar.K.I., *Investigation into Crimes - Supervision by Prosecutor*, NALSAR Law Review, Vol. 4, No.1, 2008 – 2009, p.133.

⁴ *People v.Roberts*, 426 N.E.2d 1104.

⁵ *U.S. v.Zielie*, 734 F.2d 1447.

⁶ Lawrence J.Culligan & Milorad Nikolic, *Corpus Juris Secundum*, Vol.23A, West Publishing Co., St.Paul, Minn.,1989, p.149.

are heard by lay magistrates. Supreme court is final court of appeal for criminal matters from England, Wales and Northern Ireland.

The Crown Prosecution Services maintains a strict divide between its work of prosecutor and work of investigation thus centralizing the control over prosecution for England and Wales. The Crown Prosecution Services do not advise or have any power vested to direct or supervise police in any query. Criminal trials are either summary trial or trials on indictment in England and Wales.

The Lord Chancellor summons an jury to try the case if the accused pleads not guilty to all counts in the indictment. The jury normally consist of 12 men and women aged under 65. The prosecution opens the case by outlining the facts of case and witnesses are brought in. Cross – examination is also done. Objection may be sustained or over-ruled. The general rule is that all matters of law are to be decided by the judge while all matter of facts are to be decided by the jury⁷.

The verdict hereby is considered by the member of jury unanimously. There is a fundamental principle of criminal law that trial judge would encourage the verdict given by jury only if the verdict is reached in a uninhibited freedom without any irrelevant contemplation. Judgement is declared orally in open court by trial judge. Sentence in crown court is declared by a crown court judge.

III. CRIMINAL LAW SYSTEM IN GERMANY

In Germany, when there are any probable presence or occurrence of a crime, the district attorney must himself start off an official investigation. It is solely the court's duty to pursue further such official investigations, if the case comes to a trial. Henceforth the court obligates to look for evidence, whether or not defence counsel or district attorney ask that evidence is heard. In criminal proceedings, all evidence must be presented during the trial. As per Sec. 261 and 264, Code of Criminal Procedure, only the results of the main(oral) hearing may serve as a basis for the sentence.

Dates for criminal matters are open to public as per Sec 169, Court Constitution Act) Confidentiality is considered to outweigh the basic rule of public access to court proceeding in cases of national security. There is a tad bit of restriction for media coverage as per Sec 169, Court Constitution Act. Although there isn't any restrictions for pre-trial and post-trial

The trial is overall the main determining part of any proceeding. The central role of trial is

⁷ Richard Mary, *Criminal Evidence*, Sweet and Maxwell, London, 1986, p 23.

extremely pivotal to ensure a fair trial.

According to German Criminal Code (Strafgesetzbuch- StGB) an act can only incur a penalty if criminal liability was established by law before the act was committed. German criminal law applies to offence committed on German territory. Judges play an active role in criminal proceedings, according to principles of official investigation (section 244), German Code of Penal Process (Strafprozessordnung) Defense's counsel generally presents the defendant's version

German criminal proceedings uses an inquisitorial system⁸ where the judges are actively involved in investigating the facts of the case, criminal process is initiated by the state, and the verdict is meant to reflect the defendant's actions. Judges interrogate the accused, call and interrogate witnesses and examine other evidence.

There is no role of jury in the criminal proceedings. The trivial matters are heard by one career judge.

The other considerably important matters are tested by the judiciary comprise of one career judge and two lay judges. In certain other contemplative matters involving death or (for example, cases involving the death of the victim), the court comprised of three career judges and two lay judge.

According to Sec 29 of Court Constitution Act -

- The bench shall consist of a Local Court judge as presiding judge and two lay judges. A judge on probation may not serve as presiding judge during the first year after his appointment.
- Upon application by the public prosecution office, it may be decided at the opening of the main proceedings that a second Local Court judge be added to the bench (extended bench) if his participation appears necessary in the light of the scale of the matter. An application by the public prosecution office shall not be required if a court of higher rank opens the main proceedings before a court with lay judges⁹.

Sec 74 of Court Constitution act implied that-

The criminal divisions, as adjudicating courts of first instance, shall have jurisdiction over all serious criminal offences that do not fall under the jurisdiction of the Local Court or the Higher Regional Court. They shall also have jurisdiction over all criminal offences where a sentence

⁸ <https://germanlawarchive.iuscomp.org/>.

⁹ Courts Constitution Act published on 9 May 1975 (Federal Law Gazette I p. 1077).

of imprisonment exceeding four years or placement of the accused in a psychiatric hospital in lieu of or in addition to a penalty or placement of the accused in preventive detention is to be expected or where the public prosecution office prefers charges before the Regional Court ¹⁰.

A recent amelioration in criminal procedural law allows criminal courts to decide on civil law compensation claims in an auxiliary proceeding. This spares the victim from a second proceeding examining the same facts (*section 403 and following, Code of Criminal Procedure*).

¹⁰ *ibid* p. 1187.