



## ***Book Review: Asian Courts in Context***

**By Markus Zimmer, IJCA Executive Editor**

**Book Review: *Asian Courts in Context*, Jiunn-Rong Yeh and Wen-Chen Chang, Editors. Cambridge, UK: Cambridge University Press, 2015. ISBN 978-1-107-06608-3**

The Asian Continent encompasses *circa* 50 autonomous states and comprises the central and eastern portions of the Eurasian landmass, the world's largest. Taken as a whole, the continent's rich cultural, intellectual and political histories extend over tens of centuries, highlighted by the powerful Mongol Empire, the imperial dynasties of China, and the majestic Persian empires, among others. In the 19<sup>th</sup> and early 20<sup>th</sup> Centuries, key Asian states were invaded and conquered, then colonized. In the latter half of the 20<sup>th</sup> and early 21<sup>st</sup> Centuries, those states have largely reasserted their autonomy, and the more proactive and ambitious among them reversed their economic and political malaise to emerge as powerhouses on the global stage.

A key component of the institutional framework of these emerging states is the alliance of legal mechanisms and authorities that define, interpret, and apply the laws and administer justice. Within those alliances, two of the core elements are (i) the legislative power of government that formulates the positive laws of the state, and (ii) the judicial power that interprets and applies those laws and administers justice.

To contribute to global understanding of how these emerging Asian powerhouses established and construe the authority of the judicial power in their governments, Law Professors Jiunn-Rong Yeh and Wen-Chen Chang of National Taiwan University's College of Law invited distinguished professionals -- law professors, adjuncts, lecturers, and a barrister -- to contribute articles setting forth the legal context, organizational structure, and administrative authority of the court systems in their home states. The invitation proposed a general framework of specific topics on which to focus. The two editors subsequently compiled the 14 articles into this useful and very interesting comparative anthology, adding an introduction and a conclusion.

The work is divided into two major sections; the first covers court systems in the advanced economies of Hong Kong, Japan, South Korea, Singapore and Taiwan. The second reviews court systems in what the editors classify as "fast-developing economies" that include Bangladesh, China, India, Indonesia, Malaysia, Mongolia, Philippines, Thailand and Vietnam. Governments in the more forward-looking of these states recognized early the merits for domestic economies of securing the confidence of the international investment community. To ensure access to their justice systems not only by their domestic business sectors but, in addition, multi-national corporations, they created specialized business-oriented forums such as commercial, intellectual property, international trade, bankruptcy, admiralty, and economic courts. Other domestic social and economic exigencies fostered the creation of other categories of specialized forums such as religious, labor, consumer protection, tax, small claims, traffic accident, family, coroner, and military courts. Hong Kong lays claim to the most unusual special court, the Obscene Articles Tribunal pursuant to the "Control of Obscene and Indecent Articles Ordinance."

Unlike the indigenous court systems in developed western countries such as Great Britain, Germany, France, Netherlands, and the United States, systems whose evolution spanned a minimum of several centuries, gradually increasing in sophistication, maturity, capacity, and procedural complexity, those of most Asian states covered in this work were spawned much more recently and quickly. Although each had indigenous dispute resolution mechanisms, most were redefined when they were colonized and, subsequently, when they were founded as constitutionally based governments. Indonesia's defining Act on Basic Provisions of Judicial Power became law in 1964. The constitutions of China and Japan were officially promulgated in 1947; South Korea's in 1948; India's in 1950; Singapore's in 1965; the Philippines' in 1987, and Mongolia's in 1992. The emergence of the global economy prompted future-oriented Asian governments focused on economic growth to fast-track the design, organization and modernization, and accessibility of their court systems.

---

The anthology's value as a resource and reference work derives from two distinct sources. First are the statistics, the operational descriptions, and the structural profiles of the court systems it includes. It is extraordinarily useful and convenient to have this type of factual information on numerous separate systems accessible in a single volume. Second are the diverse contexts – historical, political, social and cultural – in which these various court systems evolved and currently function. To varying degrees, each of the 14 articles delves into these elements, providing largely candid, helpful and often intriguing detail. The legacies of European, British, Dutch and to a smaller extent American colonialism influenced how these court systems evolved into the structural and procedural adjudicative frameworks in states such as India, Japan, Hong Kong, Indonesia, South Korea, and Singapore. Those legacies notwithstanding, to varying degrees each system also draws on indigenous traditions sourced in customary law, Asian monarchical government law, Islamic Sharia law, and karmic and other laws deriving from Buddhist and Hindu codes, among others.

Each of the country-specific chapters includes details that confirm the uniqueness of these systems. The reader learns, for example, that Taiwan's Code of Criminal Procedure sets no restrictions on the frequency with which the prosecution or defense is entitled to appeal. Neither are there limits on Supreme Court remands in a particular criminal case. Prior to passage of the Fair and Speedy Trial Act in 2010, a criminal case might be subject to myriad retrials spanning ten years or longer. Western arrogance often assumes, mistakenly it turns out, that the administration of pre-colonial justice verged on the crude and primitive. In India, the Bengal Regulation of 1772 mandated that in disputes regarding marriage, inheritance, caste, and personal status, judges should apply "the laws of the Koran with regard to Mohammedans and those of Shaster with regard to Hindus." When the British colonial administration subsequently established its own courts, staffed by judges trained in and familiar with the style and process of common law, they engaged indigenous legal experts – *pandits* in Hindu law and *kazis* in Sharia law -- as judicial advisors until the 1860s.

In Singapore, shortages of judges in the past prompted amendments to the Constitution that enabled the appointment first of "supernumerary" or "contract" judges, which enabled Supreme Court justices, among others, to remain on board in a temporary capacity after the mandatory retirement age of 65. Eight years later in 1979, the Constitution was amended to provide for the appointment of "judicial commissioners" from among the ranks of active practitioners for temporary judicial assignments ranging from six months to three years. A successive amendment in 1993 authorized the president to appoint judicial commissioners for even shorter terms and to adjudicate particularly complex and lengthy cases otherwise disruptive of court hearing schedules.

The Indian system currently faces enormous challenges that stem from its multiplicity of dispute resolution and other forums ostensibly created to supplement and to relieve enormous backlogs within all levels of the framework of India's formal or regular courts. These fall into several categories or tiers, beginning with the quasi-judicial administrative courts authorized to hear matters relating to government pensions, social security, real property, etc. The third tier embraces a large assortment of alternative specialized forums with limited jurisdiction. These include family, labor, consumer, motor vehicle accident and women's courts, the latter of which hear crimes against women. A fourth tier comprises informal forums where a formal link to state authority may or may not exist. Examples falling within this tier are rural village forums, women's shelters, NGOs, legal aid offices and *Tanta Mukta, Gaon Mohim* or dispute-free village programs.

This patchwork of forums is neither ordered nor comprehended under any unifying national statutes or legislative mandates. Contributors to this proliferation and the quiet pandemonium that results from include the national government, state governments, and local authorities, culminating in a confusing hodge-podge of dispute resolution forums with overlapping jurisdiction; multiple inconsistent and sometimes conflicting procedural rules, protocols, and requirements; and frequently unclear authority, leaving litigants and lawyers unsure at times of where to file their claims. Moreover, in the regular courts, myriad judicial vacancies have exacerbated the challenge of processing huge caseloads in a timely manner, resulting in over 30 million backlogged cases, including over 66,000 in the Supreme Court alone as of January 2013.

In the Peoples' Republic of China, the manner in which successive administrations approach the competing values of implementing the supremacy of the rule of law and maintaining the leadership role of the Communist Party has resulted in significant vacillation in how the Chinese Supreme Court approaches judicial reform. Its Second Five-Year Reform Plan (2004-2008) established 50 bold objectives for improving the country's court system in areas such as increased professionalism, greater judicial independence and integrity, diminished corruption, enhanced legal and business education, and use of a national qualifications examination for judicial personnel. By March 2009, however, the Third Five-Year Reform Plan dramatically shifted direction to focus more on following the Party's leadership and facilitating social harmony. Where the incumbent Chief Justice had graduated from a prominent university law faculty and had other practical legal qualifications, his successor in late 2008 had neither formal legal education nor judicial experience; his previous employment was as a Party Central-Legal Committee official, and he was appointed on the basis of his political and administrative background.

---

Although lengthy at over 600 pages, *Asian Courts in Context* is a valuable addition to a growing collection academic texts which, increasingly, focus on the practical and institutional sides of the judicial and courts components of government. It would be a useful addition to law library reference collections in law schools, international law firms, international investment advisors, and multi-national corporations with subsidiaries or divisions in one or more of the countries represented. Law and political science faculty who specialize in court systems will find it an important addition to their personal libraries and might even consider it as the primary text for a graduate- level survey course comparing Asian court and justice systems.

To the extent that there are flaws, they are minor. The lengthy introduction includes numerous comparative analyses of the subject states, and some readers may grow impatient grinding through all of them. Moreover, some of the individual state chapters occasionally include discussions on topics that are incidental and diversionary. Overall, however, the editors have produced a work that not only contributes substantially to our understanding of court systems in Asian states but makes for an interesting read.

