

# Existing Court System in Bangladesh, India, UK and USA: A Comparative Study

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## ABSTRACT

This article focuses on the court structure and court system existing in leading states, including Bangladesh, India, America and England specifically influenced by common law. By comparing these courts systems, it helps society to give a better form and structure to the court system to ensure the administration of justice. This article provides a comparative study of the existing court system and explore the historical evolution, structure and jurisdiction of each country specifically their unique features and common law tradition. This article also examines judicial independence, case backlog, accessibility and reform initiative. The study aims to provide insight into the strengths and challenges of each system and their roles in upholding the rule of law.

**Key words:** Court, jurisdiction, judiciary, legal system, common law, Court hierarchy, judicial independence, Supreme Court, High Court, lower Court, Appellate Court, Civil Court, Criminal Court, Trial Process.

## INTRODUCTION

The present-day courts and adjudication system in Bangladesh, India, the USA and England are basically well-known common law. This article explores and compares the existing court systems of four diverse democracies states. United Kingdom represents distinct legal heritage like common law while USA is based on federal constitution based judicial system. India and Bangladesh reflect post-colonial legal system shaped by British influence. This article explores the structure, function and key features of the courts system focusing their development overtime.

## Research Problem

By this article it is to be compared institutional structures, function and jurisdiction of existing these countries. In comparing with Uk and USA it is to be seen that excessive delay in case of resolution of case in India and Bangladesh. Inequality, lack of awareness and injustice in access due to cost, legal aid availability, geographical and social barriers. There is also political interference and lack of functional autonomy. High rates of under-trial prisoners, lack of women and minority in higher judiciary and allegation or perception of corruption are existed in India and Bangladesh.

## Objectives of the Study

The objectives of this article are:

- This article is to provide a comparative study of the existing court system of these countries.
- It is to highlight institutional structure of the court.
- It is to be focuses the function and judicial process of such existing court.
- It is to inform the society about the similarity and dissimilarity of the judicial function of such countries.

## METHODOLOGY

This article applies a comparative legal analysis to examine similarity and dissimilarity of existing court system of four countries. A qualitative comparative approach is adopted to explain the structure, jurisdiction and function of the judiciary. For such study data is collected from primary and secondary sources like constitution, official government and judiciary website, academic article, law journal, case law databases and international legal bodies.

### Existing Court in Bangladesh

From Bangladesh Constitution<sup>1</sup>, there shall be a Supreme Court comprising the Appellate Division and the High Court Division. The Supreme Court shall be composed of the Chief Justice and other judges as the president may deem necessary to appoint to each division. Apart from the Higher Court, Bangladesh has two types of lower courts like civil and criminal court. Subordinate civil court have their basis in the Code of Civil Procedure of 1908 and the Civil Courts Act of 1887. Section 3<sup>2</sup> Creates five types of court and these are: Assistant Judge Court, Senior Assistant Judge Court, Joint District Judge Court, Additional Districts Judge Court and Districts Judge Court. There are also some special civil courts or tribunals such as the Small Cause Court, Administrative Tribunal, Tax Tribunal, VAT Tribunal, and Labor Tribunal. Subordinate Criminal Courts have their basis in the Code of Criminal Procedurals of 1898. In section 6<sup>3</sup>, There are two types of Criminal Courts, at first, Court of Session and this court are three types like: Session Judge Court, Additional Sessions Judge Court and Joint Session Judge Court. In second, Court of Magistrates and it is like: Chief Metropolitan Magistrate (CMM), Additional Chief Metropolitan Magistrate (ACMM), Metropolitan Magistrate; or Chief Judicial Magistrate Court, Additional Chief Judicial Magistrate Courts, Senior Judicial Magistrate Court, Judicial Magistrate Court (1<sup>st</sup> class), Judicial Magistrate Courts (2<sup>nd</sup> and 3<sup>rd</sup> class).

### Jurisdiction of the Court

According to article 101<sup>4</sup>, identifies two sources of power and jurisdiction for the Higher Court Division like the constitution and ordinary law. Overall, the jurisdiction of the High Court is:

- **Original jurisdiction:** Original jurisdiction means the court can take a case or suit as a court of first instance like the companies Act 1994, the admiralty Act 1861 and the Banking company's Ordinance 1962.
- **Appellate jurisdiction:** Any law including the Code of civil procedure of 1908 and the Code of Criminal procedure of 1898 may grant the High Court Division appellate jurisdiction on any matter.
- **Revision Jurisdiction:** Revision Jurisdiction means the power to examine the decisions of its subordinate court like section 115 of the Civil Procedure Code.
- **Reference Jurisdiction:** Reference Jurisdiction means the power whereby the High Court Division can give an opinion and order on a case referred to it by any subordinate court like section 113 of the Civil Procedure Code.
- **Writ Jurisdiction:** Writ means a written document by which one is summoned or requested to do or refrain from doing something. Writ jurisdiction or petition means the power of the High Court Division of the Supreme Court under the constitution's provision, which can enforce fundamental rights as secure in part III of the constitution. .

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<sup>1</sup> Article 94

<sup>2</sup>the Civil Courts Act of 1887

<sup>3</sup> Code of Criminal Procedural Code of 1898.

<sup>4</sup> The constitution of people's republic of Bangladesh

- Advisory Jurisdiction: Article 106<sup>5</sup>, The president may seek the opinion on a question of law that has arisen as of such public importance that it is prudent to obtain the opinion.

In **Masdar Hossain case**<sup>6</sup>, 441 judicial officers who were judges in different courts filed writ petition no 2424 in 1995 and alleged: 1. Inclusion BCE judicial is ultra vires the constitution 2. 115 of the constitution are required to be made for giving full effect to this separation of judiciary 3. Judges of subordinate courts cannot subordinate to any tribunal.

### Jurisdiction of Lower Court

There are five types of the jurisdiction of the civil court and these are:

1. Territorial or local jurisdiction: section 13<sup>7</sup>, The government, by notification of the official gazette, fix and alter the local limits of any civil courts.
2. Subject matter related jurisdiction: Section 15-23<sup>8</sup>, Suits of which the subject matter is immovable property is to be instituted in the court within the local boundaries of whose jurisdiction the property is situated or where the cause of action arises.
3. Pecuniary Jurisdiction: Section 6<sup>9</sup>, Nothing shall operate to give any court jurisdiction over suits of the amounts or value of the subject matter that exceed the pecuniary limits. Section 19<sup>10</sup>, The pecuniary limitation of the assistant judge is 2 lacs, the senior assistant judge is 4 lacs, the joint district judge exceeds 4 lacs.
4. Original and Appellate Jurisdiction: A court entertains and decides suits as a court of first instance which is called original jurisdiction like an assistant judge court or senior assistant judge court. And the court that entertains and decides appeals is called appellate jurisdiction.
5. Administrative or Revisional or Transferred: The district judge may transfer to a joint District judge and additional district judges shall discharge the functions of the District judge.

### Constitution of Court India

There shall be a supreme court, such as the Supreme Court and the High Court. Apart from this, there are different types of lower court like civil courts mentioned in the Code of Civil Procedure and these are: District Court, Additional District Court, Senior Civil Court, Junior Civil Court and Small Cause Court. Besides, there is a revenue court (revenue, / SAT ACT), an authority (panchayat act, municipality act), and a tribunal (arbitration). The criminal courts existing in India are enumerated from the Code of Criminal Procedure and these are: Session court section, Additional session court, Assistant session court, First class magistrate court- Chief Judicial Magistrate Court, Additional Chief Judicial Magistrate Court. In metropolitan areas, these are called the Chief Metropolitan Magistrate and Additional Chief Metropolitan. In the executive branch, there are district magistrates and sub-divisional magistrates.

### Constitution and jurisdiction of Supreme Court

There shall be a Supreme Court of India consisting of a Chief Justice of India and until Parliament prescribes a larger number by law no more than seven other Judges.<sup>11</sup> Each Judge of the Supreme Court shall be appointed

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<sup>5</sup> *ibid*

<sup>6</sup> 1999

<sup>7</sup> *Civil Court Act, 1887*

<sup>8</sup> *The Code of Civil procedure of 1908*

<sup>9</sup> *ibid*

<sup>10</sup> *Civil Court Act, 1887*

<sup>11</sup> 124 of the constitution of India

by the president through a warrant signed by him and sealed based on the recommendation of the National Judicial Appointments Commission. They shall hold office until they reach the age of sixty-five. Judges may resign their office through a written notice to the president and they may be removed from office in accordance with the prescribed procedures. The age of a Supreme Court judge shall be determined by the authority and in the manner as provided by law. A person is not eligible for appointment as a Judge of the Supreme Court unless they are a citizen of India; they have served as a Judge of a High Court for at least five years or have been a Judge in two or more High Courts consecutively; They have practiced as an advocate in a High Court for at least ten years or have worked as an advocate in two or more High Courts consecutively. In the opinion of the president, they are a distinguished jurist. Subject to the provisions of this Constitution,<sup>12</sup> According to this Constitution, the Supreme Court has exclusive original jurisdiction over any disputes involving the Government of India and one or more States; the Government of India and any State or States on one side versus one or more other States on the other, or two or more States provided that the dispute concerns any question.

### Court System Existing in United Kingdom

There are two types of court systems in the United Kingdom: the lower court and the higher court. There are different types of lower courts existing in the United Kingdom and these are:

1. **Magistrate Court:** It is the inferior court in England. In addition to their criminal jurisdiction, they exercise certain family law, administrative law and minor civil functions. Now, the magistracy is regulated by the Justice of the Peace Act<sup>13</sup> and the Magistrate Court Act 1980. These are the real identities of the UK court. On the instruction of the Lord Chancellor, the queen appoints a justice of the peace.
2. **Stipendiary Magistrates:** They are professional magistrates and real judges. They are government servants in the true sense. They sit single in a proceeding while three justices of the peace sit at a time. There was provision for appointing up to 60 full-time paid and stipendiary magistrates in London and up to 40 in the local areas.
3. **County Court:** It is the first civil court in England established in 1846. Its object is to help the poor and make their lives easier and it is popularly known as the Court of the Poor. The composition of such a court is that there are more than 400 county courts in England manned by single judges. In addition, there are 125 circuit judges.
4. **Circuit Judges:** They are also assigned to the county court. There is no fixed court for them. All the countries are divided into several circuits, and the circuit judges are assigned to such circuits.
5. **Registrar:** He may act as the judge and decide a case when the claim is within \$200. He must be a solicitor with no less than 7 years of standing. The registrar keeps the records, prepares the hearing and advises the jury and the judges.

### Higher Court

According to the Judicature Act<sup>14</sup>, The court had five divisions: Queen's Bench, chancery, admiralty and divorce, probate, the Court of Exchequer and common plea. In 1880, the division's divorce, admiralty, exchequer, and common pleas were amalgamated with the Queen's Bench division. Now, the Queen's Bench Division (chief: lord Chief Justice), The Chancery Division (Chief: The Lord Chancellor), and The Family Division (Chief: The President).

1. **Queen's Bench Division:** England's most active superior court. There are 45 judges out of 85 puisne judges who assist the lord chief justice. So, the vast majority of judges are here. Sometimes, 50 puisne judges sit in this division. It sits in 25 cities including London. The qualifications for the appointment of judge are must be

<sup>12</sup> 131 of the constitution of India

<sup>13</sup> 1979

<sup>14</sup> 1875

a barrister of not less than 10 years of standing. Generally, judges of the county court are appointed in this court. The crown, on the instruction of the lord chancellor appoints the judges. The original jurisdiction is all civil matters, admiralty, and commercial matters. Appeals from the county courts, magistrate courts, or any tribunal might go to this division.

2. The Chancery Division: The judicature Act<sup>15</sup> express by assigning to the Chancery Division those matters that belonged to the court of chancery. There are 13 puisne judges who assist him. The chancery division sits in London and in 8 other big cities. Annually, it deals with 47000 cases, 1/3 of which are company matters. The original jurisdiction of the court is the execution of the trust, the redemption and closure of the mortgage, the administration of companies and bankruptcy, and probate. Appeals from county court are related to bankruptcy, land and registration matters.

3. The Family Division: It has superseded the former court of probate, divorce, and admiralty division by the Administration of Justice Act. It is assisted by 16 puisne judges. It sits in 23 different places including London in England and Wales. The qualification of the judge is that a person has to be a barrister of not less than ten years standing in order to be a judge. The original jurisdiction of the court is all sorts of family matters, such as maintenance of wife, custody of children, legitimacy, presumption of death, adoption, guardianship, custody of minor, title to property and validating of marriage. From the decision of magistrates and the county court in this court apply.

## **Court System Existing in USA**

In the USA, there are higher and lower courts to handle civil and criminal matters. These are:

### **Federal Court**

Specialty matters are dealt with such as patents, trademarks, copyrights, trusts, customers, monopolies and bankruptcy. About 30 million cases are disputed by US courts of which 5% are dealt with by Federal Court and 95% are by State courts.

1. Federal District Court: It was created by an act of 1789 in which congress exercised the power to create lower federal courts. There are 100 district courts in the USA. At the same time, a large population may be divided into two or more districts each of which has district courts and there are about 650 district judges who normally sit along, although, on occasion, a bench of three may hear certain cases. All are professional judges. Each district court has a clerk usually a young lawyer completing university training who assists him in his research.

2. Federal Court of Appeal: For an appeal from a judgment of the district courts, there are 12 courts of appeals. These were formally called the US Circuit Court of Appeals. As has been said, there are 12 courts of appeal, the catchments area or circuit of 11 of them includes several states each and there is one for the districts of Colombia circuit. There are 168 judges in these courts. In these courts, three judges hear and decide on a case. Generally, it is decided based on the briefs of the trial courts.

3. Supreme Court of USA: The Supreme Court stands in Washington with 9 judges. Originally, this court was established on Wall Street in New York City then it was shifted to Philadelphia and it is now situated in Washington. For conducting the trial, the quorum is of 6 judges. Supreme Court was established on 1st February 1790. Initially, it consisted of one chief justice and 5 other judges. The number of judges has been changed from time to time. Presently, there is a chief justice and 8 other judges in the Supreme Court. Now, it sits with 9 judges in all cases. According to normal practice, the Supreme Court will proceed to a decision on the merits if after a summary consideration of the case at least 4 judges are in so doing.

### **State Court in the USA**

The USA has 50 states and there has 50 different court structures in the USA apart from the federal court system and these are:

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<sup>15</sup> 1875

1. **Justice of Peace:** At the bottom of the state judicial system in rural and semi-rural regions stands the justice of the peace who has limited inferior jurisdiction in petty civil matters. In fact, it is a significantly simplified informal procedure for the resolution of disputes of very petty matters.
2. **Municipal Courts:** Municipal courts are conducted by professionally trained judges. This court concentrates on high-way offences as traffic courts do. Undoubtedly, the jurisdiction of municipal courts is very significant in this country. Because this is a highly mobile country. This court deals with civil matters of small importance as a small claim court. Private law disputes can also be settled by the municipal court.
3. **County Court:** In county courts normally, there is one judge. These courts exercise both civil and criminal jurisdiction in exercising original and appellate jurisdiction in some states by merging two or three courts where a district or circuit court has been established. The procedure of county court is very formal. To make things confusing, county courts are known as district courts in some other places like federal district courts and to make things more and more complicated in New York, the county court is known as Supreme Court. The decision of the county court or district court appeal lies with the court of appeal or the highest court of the state.
4. **Appellate court:** These are mainly vested with appellate jurisdiction. In 15 states, there are courts of appeal. Usually these courts have appellate jurisdiction, although in certain states they also enjoy original jurisdiction in certain matters. In some states, judges are appointed by the governor. In some states, they are appointed by the legislature. Overall, judges in most cases are elected. About 12 states elected partisan and 17 are non-partisan.

### **Comparison of Court Systems in Bangladesh, India, the United States of America and England**

The similarities of these court systems are:

- a. The traditions of Bangladesh, India, the USA, and the English courts in the administration of law and justice are the same.
- b. There is the absence of a broad distinction between ordinary law and administrative law and between the ordinary court and administrative court.
- c. At the lower level the organization courts is based on the vertical division between criminal and civil cases. There are two sets of subordinate courts like civil and criminal courts.
- d. The trial procedures are virtually the same. The court judges are appointed on similar lines. The cases in the lower levels courts are heard and decided by a single judge.
- e. All have the same tradition of common law.

The differences between these court systems are:

- a. The features of Bangladesh, the USA, and India's judiciaries are that there is one system of court throughout the whole country, but in the United Kingdom, there is one scheme of courts in England and Wales, another in Scotland, and a third in Northern Ireland.
- b. Bangladesh and the United Kingdom have a unitary form of government. In Bangladesh, the highest court is the Supreme Court and all other civil and criminal courts are subordinate courts like the United Kingdom. On the other hand, India and the USA are federal republics. As such, with the Supreme Court at the Centre, there is also a High Court in each state. Under such a High Court, civil and criminal courts exist.
- c. As the constitution is written in Bangladesh, the court has the constitutional right to declare a law made by the parliament unconstitutional. Such a provision exists in India and the USA. However, in the United Kingdom, there is an unwritten constitution and parliamentary supremacy is exercised.

- d. The village panchayat system is unknown to the USA, English, and Bangladesh. But it is well known in India.
- e. In Bangladesh and India's Supreme Courts, a case is decided by a single judge; this is known as a single bench decision. However, in the USA and English systems, a group of judges decides a case.
- f. In Bangladesh and India, jury trials are unknown. However, jury trials still exist in England and the USA.
- g. In Bangladesh and India the judges sit only at their specified places of court. But in the USA and England, there is a circuit court and the judges sit at certain places from time to time.
- h. In USA, judiciary is the most decentralized with strong state-level court but it is not the other countries.
- i. India and Bangladesh inherited British system but developed constitutional safeguard and judicial review power.

### Suggestion

- It is important of a well-structured judiciary in democratic governance.
- For exploring similarity and dissimilarity among the court system of four influenceable law countries, an idea is to be gain to introduce a better court system to ensure justice properly.
- By comparing four system about the derivation of common law, it should be properly used in justice system.
- In judicial appointment and independence, the influence of political power and executive power is totally abolished.
- Use of technology and reform online court or e-court.
- There must be created awareness about the delay, backlog and inaccessibility.
- For ensuring justice, corruption, pendency and procedural delays must be removed.
- There must be taken step ongoing reforms and innovation in each country.
- There should be given chance to call for shared learning and mutual legal cooperation.

### CONCLUSION

The court system of Uk, USA, India and Bangladesh reflects their unique legal histories, constitutional framework and social needs. While UK and USA operate under common law principles with distinct federal and unitary structure. In Bangladesh and India inherited and developed the British legal legacy. USA judiciary is characterized by strong judicial independence, the UK balances tradition with modern reform. But in this sense Bangladesh and India face challenges and judicial backlog. Above all, these states strive to uphold the rule of law, ensure justice and maintain the rights of citizen, highlighting both the diversity and shared values of common law traditions.

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