

YEMEN V. INDIA: COURTS OF CRIMES

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Abstract

Yemen is a republic democratic Islamic country, located in the Middle East. After the huge immigration of the Yemeni Jewish to Israel, the whole country's population has turned to be 100 % Muslims. The Islamic rules (Sharia's rules) govern the system of the government. The crimes and their punishment are applied in accordance of the Islamic rules. Based on the article (3) of the constitution of Republic of Yemen, any rule of law conflicts with any Islamic rule is avoided. Courts of crimes in Yemen contain of three degrees of litigations; it starts from the primary court of crime and ends up with a Supreme Court's criminal circuit, which is the highest degree trial.

This paper will show a brief introduction about the Courts' Criminal Justice System in common. It also will explain the components of Criminal Justice System. Besides that it will clear the confusion between the systems of criminal courts in these selected countries. Short history about Indian Criminal Justice System will be illustrated as part of this article. On one hand, in details with help of diagram, the hierarchy of Indian Judicial System and Indian Courts' Structure will be brought into this paper to manifest different types of Indian courts in general and criminal courts in specific. On the other hand, the same will be applied for explaining the Yemeni Criminal Justice System. This work will conclude the main differences between two courts criminal justice systems.

Keywords: *Criminal Justice System; Courts of Crimes; Customary Law; Supreme Court; High Courts; Appellate Courts; Courts of First Instance.*

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INTRODUCTION

In very past society, the crimes occurred differently; *i.e.*, the tools of committing the crime of that time were very primitive whereas the tools of today are very fast and technological. Where the offences exist, there will be a criminal justice system to punish the offender and spread the peace and justice in the society. Medieval time showed a severe punishment and unkind torture for offences that today are not offensive. Medieval folks lived in fear, thinking of that kind of punishment. Therefore, the rate of crime at that time was very low.

Head of the tribe was the judge who can punish the offender on based of his/her crime. The criminal justice system in the Catholic community, the Church was the punisher for the criminals; torturing and imprisoning were the ways of taking confessions from the suspects of committing the crime. Suffocation the guilty in the water was a common punishment in the Egyptian civilization. Not only they suffocate the guilty in the water, but also they put him/her into boiled oil.¹

The slaves only can be tortured and punished in the law of Roman and Greek. But eventually, this law was amended to include the freemen in the punishment and torture.

A thousand and four hundred years ago, the thief's hand was cut off. Women committed an adultery act were stone until death. "*A tooth for a tooth, an eye for an eye, a life for a life*" was the criminal justice system at that time. Then as result of acceptance the compensation for the injured person, the compensation system appeared as part of evolution of criminal justice system. Subsequently, a sliding scale occurred place for satisfying ordinary offences.²

For safety of the society and deter wrongful conduct, Criminal Justice System is created. It is a system of legal rules designed to keep the public safe. The one breaks the law face incarceration, fines, and other penalties.³

Felonies are serious crimes such as murder, rape, and burglary, as well as white collar crimes like embezzlement and money laundering.⁴ These crimes have a long term punishments of a year or more in state or federal prison.⁵

¹ T. Nash, *Crime and Punishment in the middle Ages*, The Finer Times, Available at: <http://www.thefinertimes.com/Ancient-History/crime-and-punishment-in-the-middle-ages.html> (Accessed on Oct 26, 2019, 07:18 pm)

² 30 Y. V. Chandrachud & V. R. Manohar, *The Indian Penal Code* i-ii (30 ed. 2004).

³ HG.org Legal Resources. *Criminal Law, Guide to Penal Code*, Available at: <https://www.hg.org/crime.html> (Accessed on Feb 01, 2019, 01:33 am)

‘Stare decisis’ is a criminal terms which means precedent. Stare decisis, it is one of principals of interpretation of law; when judges and lawyers turn to previously decided issues under same circumstances that ruling is binding precedent for similar disputes that come before the court on a later date.⁶

The police department is the solo responsible of Law enforcement. It has a responsibility to investigate alleged crimes. Procedural rules are to protect the citizens’ constitutional rights from being violated by the police officers who investigate with the citizens.

Criminal Justice System’s Pillars

Today’s Criminal Justice System has three pillars and cannot stand without them. The three pillars are in sequence; the Law Enforcement (Police), Criminal Courts, and the Corrections. These three elements are considered as the modern Criminal Justice System in anywhere of the planet. They are explained in details in the below.

The Criminal Courts

The court system of any country around the world consists of the prosecution and defence lawyers, judges and juries (but in some countries the juries do not exist as part of courts staffs). They are to make sure offenders are given fair trials. Each one of the court’s force work has different role such as Judge is the finder of the facts, hear the cases and preside over the participants to make sure that all laws are followed while the cases are being tried.⁷

The Police

The police force is the most significant part of the criminal justice system. It includes the local police department with its entire staff. They are on the apex of the criminal justice system because they are responsible to enforce the law on the territory. Perpetrators are captured by the law enforcement personnel who are also responsible for bringing forth charges against and ensuring the cases are strong enough to stand up in court.⁸

Corrections

⁴ 9 Oxford Advanced Learner’s Dictionary, Definition of Felony,

⁵ 30 Y. V. Chandrachud & V. R. Manohar, *Supra* note 1

⁶ *Ibid*

⁷ *Ibid*

⁸ Theresa Smith, *The Three Components of the Criminal Justice System*, LEGAL BEAGLE, Available at: <https://legalbeagle.com/6554727-three-components-criminal-justice-system.html> (Accessed on Feb 16, 2019, 12:55 am)

The corrections are the last element of the criminal justice system. Their function is to uphold and administer sentences handed down by judges. The corrections are twisted with the said two components. Likewise the above components have their corners, the corrections have their components which are for example; jails, prisons, correctional, probation and parole officers who ensure that a defendant's punishment and all of its stipulations are carried out.⁹

RESEARCH PROBLEM

The criminal justice system is an essential need for any civilized society in the world. Security and peace are the result of strong criminal justice system. When the criminal is punished; it is a warning punishment for the individuals of the community who think committing the same crime in future by showing them will happen to them if they did the same. With the advancement of the technology, the criminal justice system has developed positively which coincided with the progress of the crime's tools.

Courts of Crimes are the exclusive entities to decide in the criminal cases. The structure of these courts differentiates from one to another country. For instance, in this research article, the courts' structure of the Republic of Yemen is slightly different from the structure of the courts in India. Therefore, this paper is a humble attempt to explore the differences between the Courts of Crimes in Yemen and the Courts of Crimes in India. This work will be more focused on the structure of the courts of crimes of Yemen. The reason for that is that this research article will be publish in India, and it is an opportunity to show the judicial system of the republic of Yemen and present it in the 3rd International Conference on Criminal Justice which is conducted in the State of Haryana, India.

The curiosity to explore the differences between two countries' courts of crime structures was the main goal of this research paper. It is obvious that India is a huge country with a fabulous criminal justice system which is not as same as Yemeni's criminal justice system. This study will help the find some merits of the Indian criminal justice system and apply them to the Yemeni's one.

OBJECTIVES OF THE RESEARCH

- To identify the conceptual framework of the term (criminal justice system) and its components.

⁹*Ibid.*

- To explore the difference between the courts of crimes' systems of Yemen and India.

RESEARCH HYPOTHESES

- Whether the courts of crimes' system of India are similar to the Yemeni's courts of crimes' system?
- Whether India has a better criminal justice system than Yemeni's one or not?

LIMITATIONS OF THE STUDY

This study is conducted to make comparison between the courts systems of India and Yemen. Hence, the study is confined between these two countries (Yemen and India). Criminal Courts are the main aim to be compared, but the study will extend to show the judicial structure of the courts in general for manifesting where the courts of crimes are located amongst all kinds of courts in common.

RESEARCH METHODOLOGY

The major aim of the current study is to explore the courts of crimes' differences between India and Yemen. Therefore, the most suitable method of research is the exploratory method. It helps to clarify the problem that has not been defined yet; the Yemeni courts of crimes in comparison with Indian courts of crimes have not studied by any researchers before.

For data collection, the study takes its merits through the secondary data, the primary data as well. The primary legal sources of the study were collected from the both Indian Constitution and Yemeni Constitution. Some Statutes were included as primary sources of this legal research like *e.g.*, the Yemeni Ministry of Justice Statutes.

The secondary legal source of this legal research collected from the Central Library of Dr. Babasaheb Ambedkar Marathwada University. Further, the online data were quite enough to enrich this study. The study had advantages of the website of the Supreme Court of India which was vital for this research. In respect of the Yemeni online data, it was available only in the native language (Arabic), so the researchers had to translate it from Arabic into English.

YEMENI COURTS OF CRIMES: BACKGROUND

Understanding the background of the Republic of Yemen will lead to clear picture on its criminal justice system; it shows the different civilizations that controlled and applied there criminal justice system on Yemen for a period of time. North of Yemen was governed by the Ottoman Empire from 1872 to 1918. After the Ottoman Empire, the Kingdom of Mutawakalia took the control over the north of Yemen. ImmamYahya ruled from 1918 to 1948 then his son Ahmed ibenYahya until the revolution against him in 1961. The south of Yemen was under the British governance.¹⁰

The criminal justice system during those periods of time witnessed many changes. For example, in the Ottoman Empire, the courts' system was led by the Ottoman Commissioner who was empowered by the Emperor himself to settle the disputes in Yemen and to punish the offenders.

In the second period, Al-Matawaklia Kingdom, the Immam was the ruler and the dispute settler. He had a full power of control over the north part of Yemen. Imamm with help of his nominated Shakhs ruled all areas that were under his power. The year of 1961 was the year of converting the whole system of the Mutawakalia Kingdom into the Republic Democratic of Yemen. The government system had changed from kingdom to democratic system on based the election process in choosing the president of Yemen.

YEMENI STATE AND NON-STATE CRIMINAL JUSTICE SYSTEM

The Yemeni Criminal Justice system is a complex system; it is a combination of a unified formal state law, and historically strong informal justice regimen involving classical Sharia'a and customary laws. Those laws are correlated and are not separated. The Yemeni formal laws are derived from the pluralistic sources of law. There are, however, circa 70 Yemeni state laws which incorporate the Islamic laws and customary/tribal laws. They are extracted from the Egyptian, Arab, and International principles.

The Yemeni laws can be categorized into three types of laws as follows:

1. Personal Status Laws
2. Commercial Law
3. Criminal Law
4. Arbitration Law

¹⁰ Laila Al-Zwaini, State and Non-State Justice in Yemen, United States Institute Of Peace, (1STed, 2006).

Yemeni Criminal Law

The first criminal law in Yemen was issued in 1994, before this date; there was not any criminal law. The judges depended on the Sharia's rules to settle and punish in the disputes. Article (2) of the Yemeni Criminal Law provides that "Criminal liability is personal, and there is no crime or punishment without a statutory law." This article obviously, on one hand, manifests the common liability which is not legitimated by the statutory law. On the other hand, it indicates that crimes and punishments can only be defined by state law.¹¹

Arbitration Law

Law of arbitration is the law which governs the procedural relationship between formal and informal rules of law. It is concerned with the regulation of all procedures of the state and non-state laws. The latest law of arbitration was issued in 1992, the law mentioned in article (3) that all types of arbitration on Yemeni territory fall directly under the state's exclusive jurisdiction. The law also provided that all customary settlements should be based on statutory principles.

The law of arbitration forbade the following cases:

- Al Hudud
- Al Thohar
- Annulment of the marriage contract
- Impeachment and prosecution of judges
- Disputes related to the procedures of compulsory enforcement
- Other matters in which no mediation (*Sulh*) is allowed,
- Everything connected to the public order.¹²

Mediation (Al-Sulh) and Arbitration (Al-Tahkeem) in Yemen

The mediation and arbitration are the two common Yemeni Non-State Dispute Resolution Mechanisms. The litigants are tribe's members or rural area people. In this kind of disputes, parties are subjected to the traditions of the tribes in resolving the issue. Some folk feel that it is shameful to go to the court to get the dispute settled by the court. Hence, they prefer to resort to the tribe's leader for settlement. All kinds of the disputes can be resolved by this

¹¹ *Ibid* at 11

¹² *Ibid*

mechanism. Whether the dispute is criminal or commercial, arbitration and mediation system are the best options for the tribal and rural people in Yemen.¹³

YEMENI COURTS OF CRIMES

The May, 1991 Constitution of Republic of Yemen has guaranteed the separation and the independence of the judicial authority from other authorities of the government. The independence of judiciary stated in Section 3, Article 145 that “the judiciary is an autonomous authority in its judicial, financial, and administrative aspects. The General Prosecution is one of the judiciary’s sub-bodies. The courts shall judge all disputes and crimes, and its judges are independent, and are not subject to any authority but the law.” This Article mentioned the autonomy of the judiciary financially, judicially, and administratively. Furthermore, it gave a protection to the courts’ judges; they must be free of all pressures in deciding all matters. They are only subjected to the law.¹⁴

Section 3 of the Yemeni Constitution is concerned with the Judicial Authority. Therefore, articles of the Constitution (149, 150, 151, 152, and 153) explained the authority of the judiciary, the process of selection the judges, the constitutional protection for the judges and the prosecutors.

All kinds of litigations in Yemen pass two layers of trial; this first layer is the litigation in the courts of the first instance (Primary Courts). The second layer of the litigation in court trial is the cases that decided by the courts of the first instance have to go to the Appellate Courts, if they were appealed.

To sum up the Courts of Crimes in Yemen in a few lines; the demonstrations in the below will take the structure of courts’ system in Yemen in general way. To paraphrase that we are going to see where the criminal trial begins and where it ends up. On the contrary, not all criminal cases go to the criminal courts, but as it was previously explained, there are the mediation and arbitration system, which can resolve the criminal issues in the tribes, rural areas as well. In each level of the litigations, the courts of crimes are involved in the same building of other divisions. Even though, there is no a separate court of crime in the courts of first instance to look in the criminal cases, a specialized judge is appointed to look in the criminal disputes. Similarly, the same thing is in the Appellate Courts of Crimes; a criminal

¹³ *Ibid at 3-4*

¹⁴ Yemeni Constitution Art. 145, 23

judge or judges are meant to resolve the cases rose from the courts of first instance. Further, the criminal division in the Supreme Court is to settle the cases coming from the Appellate Courts by five specialized judges.

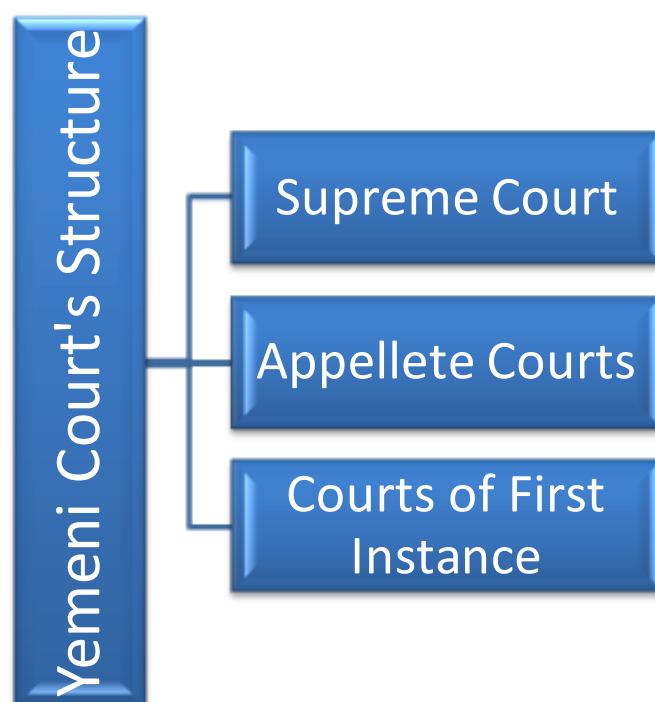


Figure No. 1

THE SUPREME COURT OF YEMEN

Starting with the highest court in the country, the Yemeni Constitution in Article (153) provides that “the Supreme Court of the Republic is the highest judicial authority.”¹⁵ The Supreme Court of the Republic of Yemen is located on the apex of the judicial authority. Currently, due to the conflicts the location of the Supreme Court has changed to the temporary capital city of Yemen (Aden) in south of the country. The structure of this court consists of the president of the Supreme Court on the top of the structure; the president has two deputies assist him in his work. 50 judges are members of the Supreme Court. These 50 judges work in 8 divisions in sequence; the constitutional, civil, commercial, family, administrative, criminal, military, and appeals scrutiny divisions (See Figure No. 2). Each division contains of five judges *e.g.*, the constitutional division has five judges to look in the constitutional matters that rose to the Supreme Court. The Supreme Court of Yemen’s judges are appointed by the Supreme Judicial Council. The chairperson in committee of selection the

¹⁵ *Ibid.*

Supreme Court's Judges is the president of Yemen, and 10 high profile judicial officers. The appointment of the judges is for lifetime with a mandatory retirement at the age of 65.¹⁶

Article (152) says that “the judiciary shall set up the supreme judicial council. The law shall organize it; stipulate its jurisdiction and system of nominating and appointing its members.”

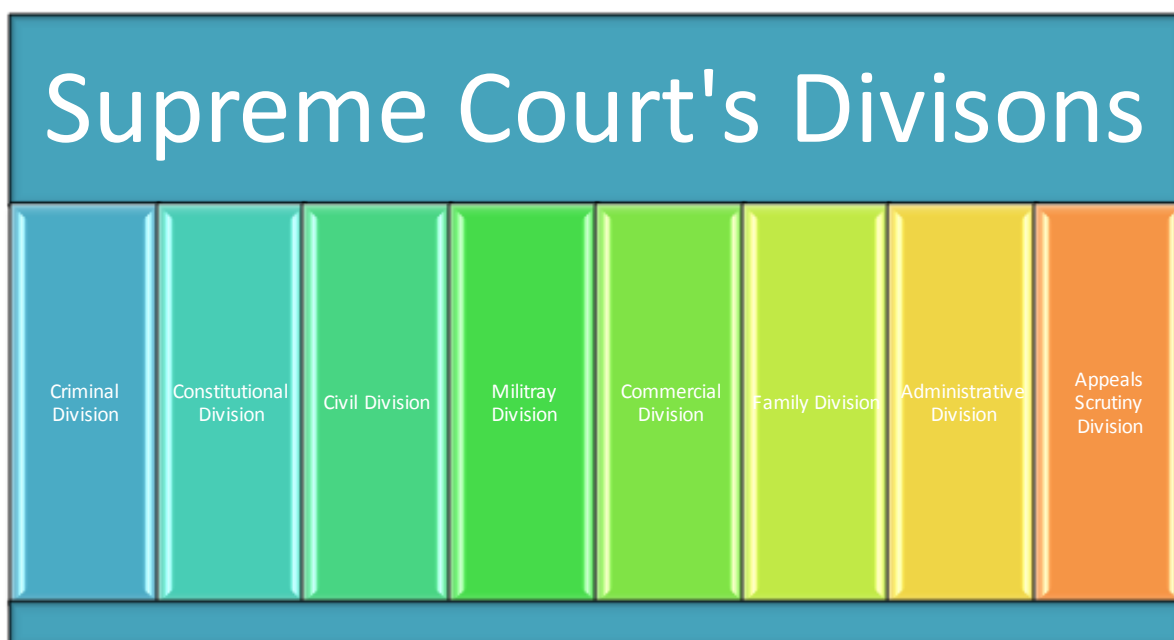


Figure No. 2

THE APPELLATE COURTS

The appellate Courts are established in each province all over the country. These types of courts administer by a president and his vice president. Besides that there are three divisions headed by a single judge such as the commercial division, and criminal divisions *etc.* the heads of the divisions of the Appellate Court with the judges work under the supervision of the president. In the Appellate Courts there are three divisions; Criminal, Commercial, and Civil (See Figure 3).

¹⁶ Anees Jamaan, *Legal details about the Organizational Structure of the Yemeni Judicial System*, ADEN NEWS NEWSPAPAR, Available at <https://adenkbr.news/44929/> (Translated into English) (Accessed on: Oct. 27, 2019, 02:44pm),

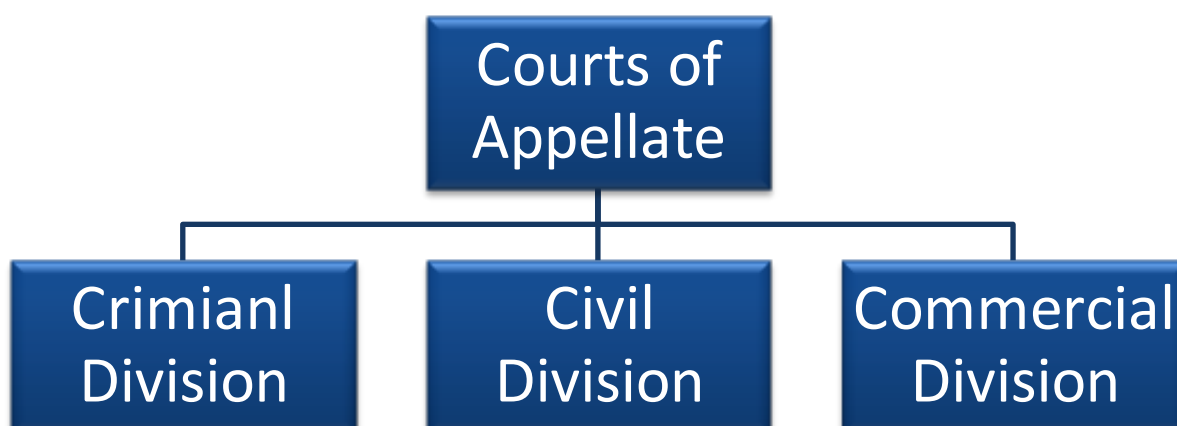


Figure No. 3

COURTS OF FIRST INSTANCE

Courts of First Instance are considered as the courts of first degree of trial. The reason for this name is that the dispute comes first to these courts at first. The Courts of First Instance have the jurisdiction to look all kind of cases in Yemen unless the law provided exceptions. A single judge looks each issue; this judge is specialized in one area of law *i.e.*, Commercial law, Criminal law, or Civil law. For the juveniles, there is a juvenile court to look in the cases of the persons who are less than the legal age which is 18 according to Yemeni laws (See Figure 4).



Figure No. 4

INDIAN COURTS OF CRIMES

Indian Criminal Courts' Structure:

To study the Indian criminal courts' structure, one has to mention the whole Indian Courts' System. Indeed, courts' system in India has three divisions of courts; begins with the bottom of the hierarchy, where a numerous of courts are existed. On the bottom of Indian Courts, there is the lowest division of courts. This division of courts is known as (the District Courts Division). The second division of court is the middle court division (High Court Division). India has many middle courts (High Courts) throughout the country. Supreme Court is the only court of the highest and top division in the country. It is named as the top division (Top Court Division). The SC is located on the apex of the hierarchy of Indian Judicial System figure (5). Finally, each division will be explained from the lowest to the top division in the following:

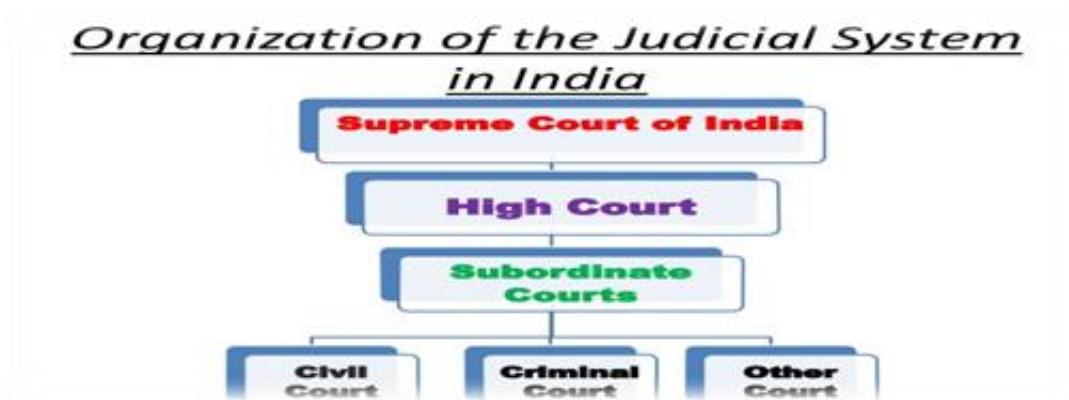


Figure (5) shows the hierarch of Indian Judicial System

INDIAN DISTRICT COURTS (IDCs)

Indian Territory is a very huge which makes travelling to attend courts sessions too hard for the parties of the conflict. Hence, the government of India has established in the district level these three kinds of District Courts in sequence; Session Courts, Lower Courts (Subordinate Courts), and Panchayat to facilitate reaching the courts sessions for the citizens.

At the bottom of the judicial system of India, there are the District Courts which are controlled administratively and judicially by High Courts in the same jurisdiction. There are, however, three tiers of District Courts as follows:

- Session Courts
- Lower Courts
- Panchayat (See figure 6)

Session Courts

For the people who live in the urban areas in India, it has been created this type of courts. Session Court of the District is the highest court in the district; this kind of courts has power to issue the death penalty in the criminal cases as per Indian Criminal Procedure Code. While the District Court deals with the civil case in nature.¹⁷

Subordinate Courts (Lower Courts)

This kind of courts is established all around the districts of the States in India. It was explained above that there are three divisions of Indian courts; the Subordinate Courts are part of the District Courts at the lowest division of Indian Courts. The States' Districts have several Subordinate Courts like *e.g.*, Civil Courts, Criminal Courts, and Revenue Courts. Hearing the civil case is the function of the civil courts at the district level. Likely, the criminal cases are heard by the criminal courts. And finally, the revenue issues are looked by the courts of revenue (See figure 5).¹⁸

Panchayat

The word of "Panchayat" indicates to the assembly in English. The Panchayat Council, generally, consists of five elderly wise people selected by the local community. The Members of the Council must have the experience of dispute settlement between the people who are in conflict. As per census of January 2019, there are more than 3 million elected representatives (more than a million are females) all over India.¹⁹

For the dispute occurs in the village level, there is the Panchayat (Village Council). It is an old way to settle the dispute amongst the fighters. It is the oldest system of the local government; it has been created in India for a long time. This system is originally established by old Indian folks to resolve the quarrel. In based on the customary law, the matters are resolved in traditional way. Before 1992, the Panchayat system was not recognized by the Constitution of India.

¹⁷ Rahul Ajmera, *What is the Distinction between Court of Session Judge and District Judge?*, Available at: <https://www.quora.com/What-is-the-distinction-between-court-of-session-judge-and-district-judge> (Accessed on: Oct. 29, 2019, 05:44 pm)

¹⁸ IAS Planner, *the Judiciary*, IAS PLANNER, Available at: <http://www.iasplanner.com/civilservices/ias-pre/gs-polity/judiciary-subordinate-lower-revenue-courts-judicial-review-india> (Accessed on: Oct. 28, 2019, 07:44pm)

¹⁹ PRIA, *What is a Panchayat?*, PRIA, Available at: https://pria.org/panchayathub/panchayat_text_view.php (Accessed on: Oct. 28, 2019, 08:48pm)

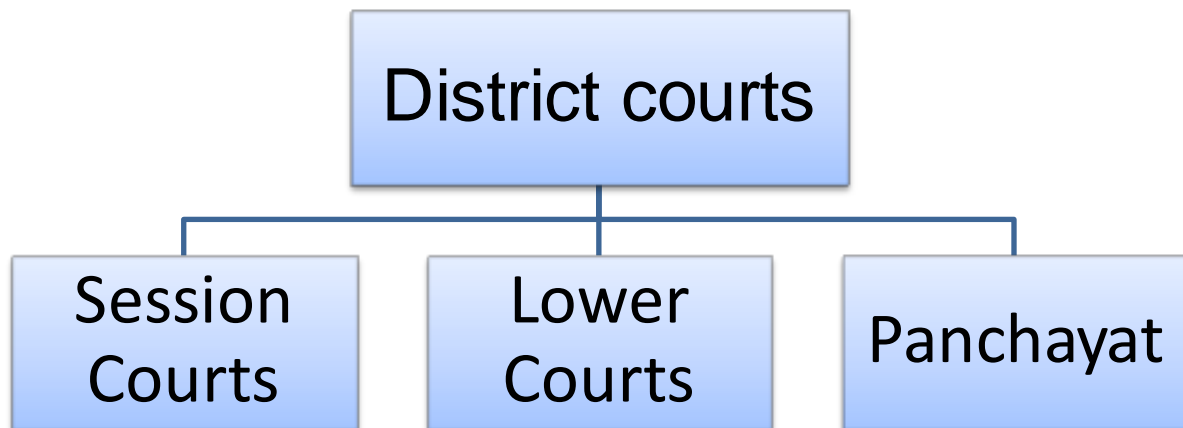


Figure (6), District's Courts Divisions

INDIAN HIGH COURTS (HCS)

On 2nd Jan. 2014 a new State born in Indian Territory, Telangana is the 29th State which has got its bifurcation from Andhra Pradesh. The reason why I have started with this brief information is that Chapter V (THE HIGH COURTS IN THE STATES) Article 214 of the Constitutional law provides that “There shall be a High Court for each State”.²⁰ The constitution of India, however, empowers the State to establish its own High Court. Thereof, in this assumption, we can assume that there are 29 High Courts in India. Nevertheless, in reality there are 24 High Courts at the union and state territory level in India. On the contrary, Article 231 of the same Chapter provides that “Establishment of a common High Court for two or more States. (1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.”²¹ Thereby of this article which gives the authority to the Parliament to establish a common High Court for more than one State to operate within its territorial jurisdiction. To paraphrase that Haryana and Punjab States have a common High Court. Likewise Assam, Nagaland, Meghalaya, Manipur and Tripura have a common High Court too. In this study I will not go in depth into the other details about High Courts of India.

²⁰ Constitution of India, Art. 214, Clause 80

²¹ *Ibid* at Art. 231(1), Clause 84.

SUPREME COURT OF INDIA (SCI)

The Post three years of Indian independence 1947 from British, the Indian Territory witnessed crucial change in the Judiciary system which was the announcement of Indian Supreme Court. The top court of India established on 26th January, 1950, and it is located in the capital State of India (New Delhi). Nowadays, Supreme Court is a combination of 31 Judges appointed by the president of India. Under certain criteria, the Supreme Court's Judges are hired; to paraphrase that to be appointed as Judge in the top court, one must be an Indian citizen, with five years' work experience as a Judge or an Advocate in a High Court. Or of two or more such courts in succession for at least 10 years or he must be in the opinion of the President of India. The constitutional provisions, however, adapt the independence of Supreme Court's Judges by all means. Therefore, a judge of the Supreme Court is a permanent judge and cannot be fired except in case of misbehavior or incapacity. The removal sentence has to be by an order of the president of India after an address in each House of Parliament supported by a majority of the total members of the House of Parliament. In addition to what said, Judges of Supreme Court are extremely forbidden to appear in front of any court of law or any authority in India. Moreover, the Supreme Court Language is only English for all kinds of litigations.²² Article 145 (1) of Indian Constitution provides the rules of Court, etc., "Subject to the provisions of any law made by Parliament the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including a) to j) of the article."²³ This article empowered the Supreme Court to regulate the rules of practice and procedures of all courts in India.

FINDINGS AND CONCLUSIONS

In a few words, the Indian Criminal Justice System is a reflection of unique system globally. Starting from the top of the hierarchy, Indian Supreme Court is considered as the highest criminal body; all lower courts have to follow the Supreme Court's decisions. Additionally, there are no independent courts for hearing the criminal cases in the middle division of Indian courts (High Courts). The High Courts can hear any kind of cases whether criminal or civil. Differ from the middle division of Indian courts; the lowest division of courts has

²² Supreme Court of India, *History*, Supreme Court of India, Available at: <https://www.supremecourtindia.nic.in/history> (Accessed on: Feb. 22, 2019, 07:12 pm)

²³ Constitution of India, Art. 145, 61

independent courts to hear the criminal cases arise in front of them. Besides to the Criminal Courts, the Judicial Magistrates are concerned to hear the criminal cases which are punishable of more than five years imprisonment (Felonies).

In regard of the Indian courts lowest division, District Courts are located on this division. In the districts of State, there are three levels in accordance to the level of the development. For example, for the rural areas, the Panachayat (Village Council) is the judicial authority to settle all kinds of dispute. In contrast, the Semi Urban areas have the Lower Courts to hear the cases that rose before them. Further, Urban Areas, the Session Courts are the only entity that can look into the matter of litigations.

As a small country (comparing with India), Yemeni Courts System is a quite few different from India. Yemen does not have High Courts, but it has Appellate Courts which are as equal as High Courts in India. They are the second degree of litigations in the trial. In Yemeni Courts of Crimes, there are separated Courts for juveniles, even there are independent rehabilitation institutions for the Juvenile Criminals. A specialized criminal judge hears the criminal cases that have come before him. In Supreme Court of Yemen, senior specialized five judges are concerned to look in the criminal cases.