

THE LEGAL SYSTEM OF BANGLADESH

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BARRISTER-AT-LAW

CCB FOUNDATION : LIGHTING THE DARK

THE LEGAL SYSTEM OF BANGLADESH

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To

Md. Siddiqur Rahman

*of Mathbaria, Pirojpur
who had all his care,
attention, love, sacrifice
and blessing for me in
my High School life; but
for all these I would not
have been what I am today*

On the arduous road to get education in my life the people who made a lot of sacrifices for me are many and their contribution is irreparable. At the advent of this small work, which could not be possible, but for their help I cannot but remember some of their names with respect and gratefulness;

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PREFACE TO THE SIXTH EDITION

This book on legal system was first published in 2004. The second, third and fourth editions were published respectively in July 2006, March, 2008, and July, 2009. The third edition contains the most of the fundamental changes introduced by the amendments of the Criminal Procedure Code, 1898 enacted in 2007. After the implementation of the long awaited separation of judiciary from the organs of the executive in November, 2007 in accordance with the landmark judgment of the Supreme Court in *Masder Hossain* case back in 1999, there have been some fundamental changes to the judicial system of the country. After November 1, 2007 and with the enactment of the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. 25 of 2009) the basic laws with regard to the separation of judiciary and newly constituted Judicial Service Commission are: the Code of Criminal Procedure (Amendment) Act, 2009 (Act No. 25 of 2009); Bangladesh Judicial Service Commission Rules, 2007; Bangladesh Judicial Service (Constitution of Service, Appointment to the Service, Suspension, Dismissal and Removal) Rules, 2007; Bangladesh Judicial Service Commission (Posting, Promotion, Grant of Leave, Control, Discipline and other Conditions of Service) Rules, 2007; and Bangladesh Judicial Service (Pay Commission) Rules, 2007. In line with these new laws and rules most of the chapters of this book have been updated.

Apart from necessary amendments and edition in most of the chapters in view of the above changes, five new chapters have been added: Chapter 15: Court Reforms and Development Activities in the Judiciary; Chapter 16: Law Reform and Law Commission; Chapter 17: Judicial Administration Training Institute; Chapter 18: Law Officers and Officers of the Court; and Chapter 19: Statistics on Institution, Disposal and Pending case in the Judiciary. Chapters IV, V, VI, VII, VIII, IX, XIII and XIV have been updated with recent data, statistics, information and case laws. My special thanks to my wife Marzia Rahman Prama and computer assistant Md. Fourkan who assisted me by updating all case lists and indexes.

. Any comment or suggestion regarding this edition will be cordially accepted and acknowledged in the next edition.

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PREFACE TO THE FIRST EDITION

In taking an initiative to write *The Legal System of Bangladesh* it is not my intention to provide a comprehensive and empirical survey of the legal system of Bangladesh. My aim is rather to produce a topical account of some of the major important institutions, their historical trace-up and practices which form part of our legal process and legal reasoning. Though the whole work has grown out of my personal interest, the force behind is the demand of the first year students of law in most of the universities which have recently introduced *The Legal System of Bangladesh* in their curriculum. Apart from the students of law, the book will certainly be of immense importance for those interested in learning the system of law and legal institutions in the country and also for those studying the Bar Vocational Course in Bangladesh and other advocacy or legal clinical courses. It is hoped that they will find it a comprehensible treatment of the subjects with which it deals and that the material contained in it will be rendered more accessible and digestible to them by the use of frequent sub-headings.

The administration of justice in a legal system is run and administered by the interaction of some essential organs: courts both civil, criminal and special; the judiciary, i.e. the judges; the legal profession, i.e. advocates; law officers, e.g. the Attorney-General, public prosecutors, public pleader, registrars of the court etc; and the jail and police. The main idea behind this work is basically to provide socio-legal and functional understanding of these organs at first hand.

Apart from the structural side of a legal system as mentioned above, the legal system of a country also encompasses the historical development, the present working procedure of legal institutions and also the conceptual components which include, inter alia, the rules of judicial precedent, statutory interpretation, legislation. All these aspects of conceptual components have also been covered in this book. As a part of historical development of law courts I have ventured to sketch periodic stages commencing from the ancient Indian legal systems down to the present system in Bangladesh which I hope will be able to meet the need of a short, co-ordinated integrated and coherent account of the important phases of the development of legal institutions in Bangladesh.

Arranged in fourteen chapters the book starts with introduction of law and legal system as understood in general in the first chapter. The second chapter deals with the historical development of court system; chapters third, fourth, and fifth deals with the present court structure and their functioning in three heads: the Supreme Court, the subordinate courts and special courts and tribunals; chapters six and seven deal with the procedure of civil and criminal cases; chapter eight deals with police power of arrest, detention and bail; chapter nine deals with appeal, review, revision and reference which are post-trial steps of a litigation; chapters ten, eleven and twelve deal with respectively legislation, precedent and statutory interpretation which are the essential conceptual components of a legal system; chapter thirteen deals with legal aid and the last chapter fourteen deals with legal profession. I had intention to add some more chapters particularly one on the Law Commissions and its activities so far; and one on the problems on the court procedure and court management in Bangladesh which, however, I have been unable to do at this stage. I hope to add these in next edition.

I acknowledge with gratitude my indebtedness to Advocate Md. Abdul Aziz who has always been very sincere and helpful in making me understand different court procedure and conceptual problems in Bangladesh as I myself is still a learner on the subject. My indebtedness to Mr. Lutfar Rahman, Additional SP, Bholā, Mr. Ikteder Ahmed, Secretary, the Law Commission, my friend Dr. Faustina Pereira, Deputy Director, Ain O Shalish Kendra, Jafrul Hasan Sharif, staff lawyer of BLAST, Azizur Rahman (Dulu) who assisted me either by providing information or documents on different parts of this book.

I am grateful to Mr. Kazi Tauhid Hasan, Director of the Bangladesh Parliament Library and particularly to Md. Abu Dawood, Librarian and their staff for the sincere help I received from them.

My special thanks go for my friend Dr. Faustina Pereira, Deputy Director, Ain O Shalish Kendra, Advocate Sukesh Majumder, Azizur Rahman (Dulu), student of Department of Law, Dhaka University who not only provided information but also have been a source of inspiration all along this work.

The preparation of this book was facilitated by my younger brother A.M Jamal Hossain, student of MBA, Dhaka University who employed most of his spare time in composing, preparing indexes and arranging footnotes with charm and great ability. I am deeply in his debt. I express my heartfelt gratitude to my publisher Yousuf Ali Khan, for his co-operation in processing this edition.

The views and opinions expressed in this book are absolutely mine except those which I have quoted. I do not claim that my views are correct from every point of view. There may be shortcomings, factual errors, mistaken opinion and stylistic lapses which all are mine and I alone am responsible for those. If there are mistakes in facts or otherwise I shall appreciate if readers come forward to have corrected by me so that the second edition may be a better volume.

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Md. Abdul Halim

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LIST OF ABBREVIATION

ACMM	: Additional Chief Metropolitan Magistrate
AD	: Appellate Division
ADM	: Additional District Magistrate
ADR	: Alternative Dispute Resolution
ASK	: Ain O Salish Kendro
BADC	: Bangladesh Agricultural Development Corporation
BCR	: Bangladesh Case Reports
BILIA	: Bangladesh Institute of Law and International Affairs.
BLAST	: Bangladesh Legal Aid and Service Trust
BLC	: Bangladesh Law Chronicles
BLD	: Bangladesh Legal Decisions
BLT	: Bangladesh Law Times
BSAF	: Bangladesh Shishu Adhikar Forum
BVC	: Bar Vocational Course
CBA	: Collective Bargaining Agents
CD	: Case Diary
CIDA	: Canadian International Development Agency
CMLA	: Chief Martial Law Administrator.
CMLR	: Common Market Law Reports
CMM	: Chief Metropolitan Magistrate
CPC	: Civil Procedure Code.
C.R. Case	: Complaint Registered Case
CrAppR	: Criminal Appeal Reports
CrPC	: Criminal Procedure Code.
CRP	: Complaint Registered Petition
CRO	: Civil Rules and Orders
CSP	: Civil Service of Pakistan.
CWN	: Calcutta Weekly Notes
DM	: District Magistrate
DLR	: Dhaka Law Reports
EC	: European Community/ European Commission
EEC	: European Economic Community
FH	: Further Hearing
GD	: General Diary
G.R. Case	: General Registered Case
HCD	: High Court Division
HL	: House of Lords
IO	: Investigating Officer
ICR	: Industrial Case Reports
MLR	: Mainstream Law Reports

Abbreviation and Case List

MM	: Metropolitan Magistrate
NBR	: National Board of Revenue
QBD	: Queens Bench Division
P.S. Case	: Police Station Case
RPC	: Reports of Patent, Design and Trade Mark Cases
SRO	: Statutory Rules and Orders
SC	: Supreme Court
SD	: Settling Date
SDM	: Sub-Divisional Magistrate
TC	: Tax Cases
TRO	: Tax Recovery Officer
WLR	: The Weekly Law Reports

TABLE OF ABBREVIATIONS OF LAW REPORTS & JOURNALS (UK)

Citation	Full Title
A.C.	Appeal Cases
Anglo.Am. L.R.	Anglo-American Law Review
A.L.J.	Australian Law Journal
A.R.J.R.	Australian Law Journal Reports
All E.R.	All England Law Reports
All E.R. (E.C.)	All England law Reports (European Cases)
B.C.C.	British Company Cases
B.C.L.C.	Butterworths Company Law Cases
Bracton L.J.	Bracton Law Journal
B.L.R.	Business Law Report
Bus. L.R.	Business Law Review
C.F.L.Q.	Child and Family Law quarterly
C.L.B.	Commonwealth Law Bulletin
C.L.J.	Cambridge Law Journal
Char. L. Pract. Rev.	Charity Law Practice Review
C.F.L.Q.	Child and Family Law Review
C.J.Q.	Civil Justice Quarterly
C.M.L.R.	Common Market Law Reports
C.M.L.Rev.	Common Market Law Review
C.L.B.	Commonwealth Law Bulletin
Co. Law.	Company Lawyer
C.O.D.	Crown Office Digest
C.T.L.R.	Computer and Telecommunications Law

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	Review
Comp. & Law	Computers and Law
Const. L.J.	Construction law Journal
Consum. L.J.	Consumer Law Journal
Conv.	Conveyancer and Property Lawyer
Crim. L.R.	Criminal Law Review
C.L.W.	Current Law Week
C.L.P.	Current Legal Problems
D.L.R.	Dominion Law Review
E.G.	Estates Gazette
E.G.L.R.	Estate Gazette Law Reports
E.C.L.R.	European Competition Law Review
E.C.R.	European Competition Law Review
E.H.R.L.R.	European Human Rights Law review
E.H.R.R.	European Human Rights Reports
E.I.P.R.	European Intellectual Property Review
E.L. Rev.	European Law Review
Env. L.R.	Environmental law Reports
F.L.R.	Family Law Reports
F.S.R.	Fleet Street Reports
Fam	Family Division
Fam. Law	Family Law
H.L.R.	Housing Law Reports
Harv. L. Rev.	Harvard Law Review
I.D.S. Brief	IDS Brief
I.H.L.	In-House Lawyer
I.C.R.	Industrial Cases Reports
I.L.J.	Industrial Law Journal
I.L.& P.	Insolvency Law and Practice
Imm. A.R.	Immigration Appeal Reports
I.R.L.R.	Industrial Relations Law Reports
I.C.L.Q.	International and Comparative Law Quarterly
Int. J. Soc. L.	International Journal of the Sociology of Law
I.T.L.J.	International Travel Law Journal
I.R.S. Emp. Rev.	I.R.S. Employment Review
J.B.L.	Journal of Business Law
J. Civ. Lib.	Journal of Civil Liberties
J. Crim. L.	Journal of Criminal Law
J. Env. L.	Journal of Environmental Law
J.L. & Soc.	Journal of Law and Society
J.P.I.L.	Journal of Personal Injury Litigation

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J.P.L.	Journal of Planning and Environmental Law
J.S.S.L.	Journal of Social Security Law
J. Soc. Wel. & Fam. L.	Journal of Social welfare and Family Law
J.P.N.	Justice of the Peace and Local Government
K.B.	King's Bench Division
K.C.L.J.	King's College Law Journal
Law Lib.	Law Librarian
L.Q.R.	Law Quarterly Review
L.S.G.	Law Society's Gazette
Law Teach.	Law Teacher
Legal Action	Legal Action
L & C.P.	Legal and Criminological Psychology
L. Ex.	Legal Executive
L.G.R.	Knight's Local Government Reports
Leg. Issues Europ. Integr. L.I.E.I.	Legal Issues of European Integration
L.S.	Legal Studies
Lit.	Litigation
Lit. L.	Litigation Letter
Lit. Pract.	Litigation Practice
Litigator	Litigator
Liverpool L.R.	Liverpool Law review
L.M.C.L.Q.	Lloyds Maritime and Commercial Law Quarterly
Lloyd's Rep.	Lloyd's Law Reports
Mason's C.L.R.	Masons Computer Law Reports
Med. L.R.	Medical Law Reports
Med. L. Rev.	Medical Law Review
Med. Leg. J.	Medico-Legal Journal
M.L.R.	Modern Law Review
N.I.L.R.	Northan Ireland Legal Quarterly
N.L.J.	New Law Journal
N.Z.L.J.	New Zealand Law Journal
N.I.L.Q.	Northern Ireland Legal Quarterly
Nott. L.J.	Nottingham Law Journal
O.J.L.S.	Oxford journal of Legal Studies
P.	Probate Division
P.A.D.	Planning Appeal Decisions
P. & M.I.L.L.	Personal and Medical Injuries Law Letter
P.E.L.B.	Planning and Environmental Law Bulletin
P.I.Q.R.	Personal Injury and Quantum Reports

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P.N.	Professional Negligence
P.N.L.R.	Professional Negligence Law Reports
P.L.	Public Law
Q.B.	Queen's Bench Division
R.A.	Rating Appeals
R.V.R.	Rating and Valuation Reporter
R.P.C.	Reports of Planets, design and Trade Mark Cases
R.R.L.R.	Rent Review and Lease Renewal
R.T.R.	Road Traffic Reports
S.J.	Solicitor's Journal
Stat. L. R.	Statute Law Review
S.T.C.	Simons Tax Cases
S.T.C. (S.C.D.)	Simons Tax Cases (Special Commissioner's Decisions)
S.L.R.	Student Law Review
T.C.	Reports of Taxes Cases
Tr. Law	Trading Law
T.L.J.	Travel Law Journal
T.L.R.	The Times Law Reports
Tr. Law	Trading Law and Trading Law Reports
Tr. L.R.	Trading Law Reports
U.S.S.C. Rep.	United states Supreme Court Reports (Lawyer's Edition)
V.A.T.T.R.	Value Added Taxes Tribunal Reports
Vict.	Victorian Reports
W.L.R.	Weekly Law Reports
Y.L.J.	Yale Law Journal

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CHAPTER ONE

LAW AND LEGAL SYSTEM