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THE
LEGAL SYSTEM OF BANGLADESH

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FOREWORD

I have sometimes felt the need of a book, small and handy, for a layman or a foreigner to understand the Legal System of Bangladesh. The commendable endeavour of Azizul Hoque, I hope, will remove this desideratum. He was instructed to prepare a manuscript of the book, which he did, and I found, that it answered the thing I was looking for. I think this book will be a useful guide both to a layman as well as a student.

Though sketchy-in-treatment, the book surveys the basic aspects of the Law and Judicial System of Bangladesh, apparently intended for those who are willing to be informed of it. To make the book informative, the author has tried to incorporate the latest amendments of laws. The nature of the topics dealt with are such, that more matters can yet be usefully added to the book, if future edition is intended to be taken up.

It is encouraging to note that the Bangladesh Institute of Law and International Affairs has undertaken publication of the book. In fine, I thank the author on this work for the labour undertaken, which, I hope, will prove to be a rewarding one.

K. Hossain.

(Kemaluddin Hossain)
Chief Justice of Bangladesh.

November 13, 1980.

PREFACE

This book embodies in a handy and readable manner, the principles and institutions which make up the Legal System of Bangladesh. Thus, most of the theoretical aspects of purely academic interest, have been left out.

The arrangement of the book is simple. In the introductory Chapter, relevant legal history has been stated and its usefulness will be apparent especially with reference to the topics discussed in the next three Chapters. Standard works and reports on the subject were consulted and their materials have been used. To help facility of reading and to avoid load of foot-notes, sources of materials at places have not been referred to.

The book is intended for those who, if not directly interested in the study of law, wish to understand the system of law prevailing in our country. If I have failed in my efforts in any direction, any suggestion for its improvement will be gratefully received.

In conclusion, I wish to express my indebtedness to his lordship Mr. Justice Kemaluddin Hossain, the Chief Justice of Bangladesh, who was kind enough to spare his valuable time to read the manuscript of the book and on whose valuable instruction many of the issues of the subject were simplified. I owe my gratitude to Mr. Justice Fazle Munim and Prof. K. A. A. Quamruddin who appreciated its publication through Bangladesh Institute of Law and International Affairs, Dacca. Thanks are also due to Mr. M. A. Alam of the Institute, who toiled hard for publication of the book. Finally, I express my thanks to those whose works I have consulted.

Dacca,
December 4, 1980.

Azizul Hoque

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CHAPTER 1

INTRODUCTION

Like most of her close neighbours, Bangladesh had interrupted political independence and territorial integrity and, was a part of the British Indian Empire until 1947. It was created as a separate province on August 14, 1947, when the Subcontinent was partitioned into two independent and sovereign dominions, India and Pakistan. Again it achieved independence through a War of Liberation on March 26, 1971. Thus, this part of the world was under foreign rule for over two hundred years. Naturally, on independence, Bangladesh inherited old institutions and legacies. The interrupted independence has resulted in her legal system following a path similar to that of the neighbouring States. The present People's Republic of Bangladesh is a unitary State having a unitary Government. The existence of a single Parliament elected on universal suffrage and of common final court of appeal, the Supreme Court of Bangladesh, has resulted in a single body of law universally applicable within its limits.

The statement that 'the roots of the present lie deep in the past' is nowhere more true than it is in the case of the development of the legal system of Bangladesh. Its roots go back to the Mughal times. It passed through various stages and has gradually developed as a continuous historical process. *The process of evolution has been partly indigenous and partly foreign and the legal system of the present day emanates from a 'mixed' system which have structure, legal principles and concepts modelled on both Indo-Mughal and English law.*[1] In order to

1. Emphasis in italics is mine.

appreciate this position it is necessary to refer to some salient features of the legal history touching and concerning the development and evolution of the legal system of the country.

From ancient times in Bangladesh, there existed local assemblies in villages known as *Panchayets*. They settled disputes and the decisions were in the nature of compromise between the parties. But at times, they pronounced regular judgments. The laws in force was tribal customary laws. In course of time, there was transition to centralised rule by the king who at the apex was recognised as the ultimate judicial authority. He held courts in person to decide cases assisted by *Brahmins*. In the latter pariod, a gradation of courts were set up in towns and cities. Appeals lay from these local courts to the Chief Court at the capital from whose decisions appeals lay to the Royal Court presided over by the king. The laws applied by these courts were principally the customary laws, and shastric or canon laws the sanctity of which was well recognized both by the courts as well as the people. Besides, dicta emanating from religion was regarded as a major source of law. This system prevailed until the end of Twelveth century. When the foundation of Muslim dominion was laid towards the beginning of the Thirteenth century, the earlier system remained operative in the country with some modifications here and there until the advent of the Mughals. They set up courts throughout their empire with *Qazi* at the head. *Qazi* used to dispense both civil and criminal laws.

The Mughals established their rule in this part of the Subcontinent in the Sixteenth century. The main objects of their administration were to assess and collect revenue. Nonetheless, administration of justice was regarded throughout the Mughal period as a subject of great importance and they had introduced a well-organized system of law. For the purpose of overall administration, the areas now constituting Bangladesh, like

other provinces[2] of the Mughal empire, was divided into districts, and districts into sub-divisions.

At base level was the village where the Mughals retained the ancient system of getting petty disputes settled by the local *Panchayets*. In every town, there was a regular Town Court presided over by a *Qazi* known as *Qazi-e-Parganah*. This court generally dealt with both civil and criminal matters. There was *Fauzdar*, who as the name indicates, was a commander of an unit of armed force. He also discharged some general executive functions and was placed in charge of suitable sub-division. In the early period of the Mughal rule, the *Fauzdars* tried petty criminal matters, but as the system underwent some changes during the period between 1750 and 1857, in the latter period, *Fauzdars* maintained '*Fauzdari Court*' for administration of criminal justice at the district level and dealt with most of the criminal cases except capital sentences. The trace of its name still survive. Today's Criminal Courts or '*Fauzdari Adalat*' as it is called in Bengali, are the improved image of *Fauzdari Courts* of those days. There was existence of *Kotwal* who functioned as chief of town police, censor of morals and local chief of the intelligence system. He performed the functions of Police Magistrate and tried petty criminal cases. The office of *Kotwal* was known as *Kotwali*, which was the principal police station of a town. Traces of it survive even today. In almost all important towns and cities in Bangladesh, there exist at least one police station called '*Kotwali*' police. Kotwal system remained in force until the East India Company took up the administration of justice in the country through acquisition of *Diwani*. There were two other judicial functionaries, known as *Amin* and *Qanungo*. *Amin*, as it literally means, was an Umpire between the State demanding revenue and the individual *rayots* paying it. He was basically an officer of the town and his jurisdiction extended

2. The Province was comparable to a modern division.

to the disposal of revenue cases. The *Qanungo*, as the name implies, was the Registrar of Public Records. He preserved all '*Qanuns*' that is to say, all rules and practices and furnished information as to procedure, precedents and land history of the past. He used to dispose of petty cases connected with land and land-revenue.

The principal judicial authorities in the district level were, the District Judge, called *District Qazi*. He exercised appellate power to hear civil and criminal appeals against the decisions of the *Qazi's* Court in towns, called *Qazi-e-Parganah*. He also exercised criminal appellate power against the decisions of Police Magistrates at base level called *Kotwals*. Another noteworthy judicial authority in the district level was *District Amalguzar*. He heard appeals in revenue cases taken from the jurisdiction of *Amin*, the Revenue-Umpire and *Qanungo*, the Registrar of Public Records. In province-level judiciary, there existed Provincial Governor's Court called *Adalat-e-Nizam-e-Subah* presided over by the Governor or *Subadar*. This Court had original, appellate and revisional jurisdiction. The original jurisdiction was for dealing with murder cases while in appellate jurisdiction, it decided appeals preferred from the decisions passed by the court of *District Qazi* and that of *Fauzdar*. Appeals from and against the decision by this court lay to the Emperor's Court as well as to the Court of the Chief Justice at the imperial capital. There was another Court in this level known as the Governor's own court and this court possessed only an original jurisdiction. The *Provincial Qazi* held a court which was called the *Court of Qazi-e-Subah*. This court had original as well as appellate jurisdiction. Besides, *Provincial Diwan* presided over Provincial Revenue Court and dealt with revenue appeals against the decision of *District Amalguzar*.

In the administration of justice within the structure depicted above, *Qazis* were the judges of the canon law while

Adils were the judges of the comon law. *Mir-i-Adil*, was the Lord Justice. *Qazi* conducted in the trial and stated the law. *Mir-i-Adil* or Lord Justice passed the judgment whose opinion could override that of his collegue. But as a rule, they conducted the affairs of the court quite harmoniously.

The law which was applied in the administration of justice during the Mughal times was primarily the Holy law as given in the *Quran* being regarded as fountain-head and first authority of all laws, civil and criminal, and the traditions handed down from the prophet Muhammad called *Sunna* which was and is at present day held to be only second to the *Quran* itself in sanctity. The judges further depended upon the Codes prepared on analogical deduction by the school of *Imam Abu Hanifa*[3] as well as upon the literature of precedent of eminent jurists called *Fatwas*. Besides these sources, there were secular elements which were drawn upon by the judges to guide their opinions. The Ordinances known as "*Qanuns*" of various emperors were freely applied by the judges in deciding cases. Ancient customs also played an important part in the legal systems of the Mughals who always accepted the sanctity of the customs under which the people of the country had been used to living. Apart from this, the judges had scope to make use of equity. Matters on which no written authorities could be traced were decided by the judges in accordance with their own good conscience and discretion. They had to adjust application of the Holy law, which was of general character, to the individual cases which

3. Abu Hanifa an Nu'man ibn Thabit, popularly known as Imam Abu Hanifa (A.D. 701 to 795) was the founder of Hanifi School of law. 'He was the first to give prominence to the doctrine of Qiyas or analogical deduction' and 'assigned a distinctive name and prominent position to the principle by which, in Muhammadan jurisprudence, the theory of Law is modified in its application to actual facts, calling it istihsan' 'which bears in many points remarkable resemblance to the doctrines of equity'. He instituted a committee consisting of forty men from among his desciples for the codification of the laws and it 'took thirty years for the Code to be completed, (c.f. Abdur Rahim, *Muhammadan Jurisprudence* (1958 Edn) P.L.D. Lahore, pp. 25-26.) Most of the Muslims living in Bangladesh belong to Hanifi School.

came up before them from time to time. This adjustment was generally the result of the decision of one man. Judges, therefore, exercised vast discretionary powers in their own spheres.[4]

The Mughal Emperor at the imperial capital was the Legislator on those occasions when the nature of the case necessitated the creation of new law or the modification of the old. Royal pronouncements overrode everything else, provided they did not go counter to any express injunction of the Holy law. These pronouncements were based on the Emperor's good sense and power of judgment rather than on any treatise of law. All ordinary rules and regulations depended upon the Royal will for their existence.

The judicial procedure under the Mughals was not a long drawn-out matter as it is at present. The decisions of cases were speedy. Besically, it was an adversary procedure with provision for pleadings, calling of evidence, followed by judgment. The court was assisted by *Mufti* who was well-versed in canon and lay law to assist the court. He was in many respect a fore-runner of the present day Attorney General. Civil and Criminal laws were partly Muslim laws and partly customs and the royal decrees. Personal laws of Hindus and Muslims were applied in their own field.

The system of law under the Mughals was effective and worked well for a long time. Its disintegration started when the Emperor's control over the provinces became less effective. The local *Zamindars*[5] in course of time became powerful and gradually usurped to themselves the function of administration of justice. This was the state of affairs around the last quarter

4. Rum Proshad Khosla, *Mughal Kingship and Nobility*, Reprint (1976).
5. Zamindars were estate-holders with powers to collect revenues. They were appointed for specific tracts, and required to remit specified sums to the Imperial treasury.

of the Eighteenth century when in the province of Bengal justice was administered by *Nawab*, in his absence by the Chancellor of the Exchequer called *Diwan*, and in the absence of both, by a Deputy.

Earlier, on the last day of the year 1600, Queen Elizabeth I of England gave the East India Company, by the First Charter, a monopoly of eastern trade and the Charter contained the power and authority to makes, ordain and constitute such and so many laws, constitutions, orders and ordinances as may be necessary for the good Government of the Company and for better administration of their trade and furthermore to impose "such pains, punishments and penalties, by imprisonment of body, or by fines and americaments, or by all or any of them" as might seem requisite and convenient for the observation of such laws, constitutions, orders and ordinances.[6] All these powers were placed on perpetual foundation by a fresh Charter granted by James I, in 1609.[7] After a few years, in 1613, the Company got permission from the Mughal Emperor to establish its first factory at Surat. The Charter of 1609 was followed by the British Crown's another grant made on the 14th December, 1615, authorising the Company to issue commissions to their captains provided that in capital cases a verdict must be given by a jury. The purpose behind this was maintenance of discipline on board ships. By a Charter granted in 1623,[8] James I, extented the Company's power by authorizing it to punish its servants for offences committed by them on land. This Charter together with the earlier grant placed the Company to the advantage of governing all its servants both on land and high sea.[9] Its power to exercise judicial authority was enlarged a step further by a Charter of Charles II, in 1661.[10] The Charter, a landmark in

6. *Constitutional Documents, Vol I*, Government of Pakistan, Ministry of Law & Parliamentary Affairs (Law Div), at p 9.
7. The Charter was granted on May 31, 1609.
8. Granted on February 19, 1623.
9. Arthur Berriedale Keith, *A Constitutional History of India*, 1600-1935 (Methuen's 2nd Edn) at pp 6-7.
10. The Charter was granted on April. 3, 1661.

the history of the legal system, granted the Governor-in-Council of the Company the authority to administer English Law in all civil and criminal cases on Company's servants as well as on others who lived in the British settlement in India. A further Charter granted by Charles II, in 1683[11] provided for a court of judicature to be established at such places as the Company might appoint to decide cases according to equity and good conscience or by such means as the Judges should think fit.

In 1698, the Company by the purchase of villages in Bengal,[12] acquired the status of *Zamindar* which carried with it the scope for exercise of civil and criminal jurisdiction. Consequently, a Member of Council regularly held *Zamindari Court* to try civil and criminal cases. Earlier, the Company had constructed a fortified factory at Calcutta and towards the close of 1699, the settlement in Bengal was declared Presidency. Their fort at Calcutta was named *Fort William* in honour of King William of England and it became the seat of the Presidency.

By a Charter granted by King George I, on 24th September, 1726, a Court of Record in the name of *Mayor's Court* and a Court of Record in the nature of a *Court of Oyer and Terminer and Gaol Delivery* was established in Calcutta. The *Mayor's Court* was to try all civil cases with authority to frame rules of practice. The *Court of Oyer and Terminer* was constituted for trying all criminal cases (high treason only excepted). Both civil and criminal justice was required to be administered according to English Law. This was how the King's Courts were introduced in India though the King of England had no claim to sovereignty over Indian soil. Establishment of these courts raised the question of jurisdiction over Indians.

11. Granted on August 9, 1683.

12. Sir George Claus Rankin, *Background to Indian Law*, Cambridge University Press. (1946 Edn) at p 1.

Accordingly, by a new Charter of George II, issued in 1753,[13] the *Mayor's Court* was forbidden to try action between Indians who did not submit to its jurisdiction. Yet, the Charter established a *Court of Request* in each presidency for prompt decisions in litigations of small monetary value.

In the year 1756, as the Company refused to move the fortifications it had erected in Calcutta (Fort William), the *Nawab* of Bengal, Bihar and Orrisa *Serajuddaula* captured the town, but in 1757, the Company under the command of Clive defeated Nawab in the battle of *Palassy* and recaptured it. Thus the Britishers grasped the rein of power. *De jure* recognition followed with the Mughal Emperor's grant to the Company of the *Diwani* of Bengal, Bihar and Orrisa. The grant of *Diwani* included not only the right to administer revenue and civil justice, but virtually the *Nizamat* also i.e., the right to administer criminal justice.[14] Now as the Britishers were required to govern the new land they naturally took over the *Mughal system* then prevailing, made in it only the most necessary changes and while retaining its old framework, they very slowly added new elements.

The Company exercised within the villages it had acquired, judicial power appurtenant to its status of *Zamindar*, on the usual pattern then prevailing in the country. After the acquisition of Diwani in 1756, the Company introduced *Adalat* or Court-System in 1772[15] for administration of justice in *mufassil* beyond the presidency town of Calcutta and set up two types of Courts in each revenue district. For civil justice, Provincial Civil Court styled *Mufassil Diwani Adalat* was established in each

13. The Charter was dated January 8, 1753.

14. Minutes of Sir Charles Grey C.J,, October 2, 1829, *Parliamentary Papers*, 1831, Vol VI, p 54.

15. Introduced under Bengal Regulation II of 1772 by Warren Hastings after his appointment as Governor in Bengal. The Office of the Governor was styled 'Governor-General in Bengal from 1774 to 1833. The system is known as *Adalat System*.

Collectorate with a Chief Civil Court with appellate power at Calcutta called *Sadar Diwani Adalat*. The Collector of the district presided over the Provincial Civil Court or *Mufassil Diwani Adalat* whose jurisdiction extended to disputes concerning property, inheritence, claims of debts, contract, partnership and marriage. The Collector was assisted by two Law Officers, a *Moulvi* and a *Pandit*, who expounded respectively the rules of Muslim or Hindu law applicable to the cases. The Chief Civil Court or *Sadar Diwani Adalat* at the seat of the Government was presided over by the President with at least. two other Members of the Council. For criminal justice, Provincial Criminal Court styled *Mufassil Fauzdari Adalat* was also established in each district with a Chief Criminal Court with supervisory power called *Sadar Nizamat Adalat*. In the Provincial Criminal Courts sat the *Qazi* and *Mufti* of the district with two *Moulvis* to expound the law. These Provincial Criminal Courts were not permitted to pass death sentences and had to transmit the evidence with their opinion to the *Sadar Nizamat Adalat* for decision. Besides, the proceedings of these criminal courts were supervised by the *Sadar Nizamat Adalat*, presided over by the *Daroga Adalat* representing *Nawab* in his capacity as supreme Criminal Judge, with the aid of *Chief Qazi*, *Chief Mufti* and three *Moulvis*.

The criminal courts at first administered Muhammedan Law with some variations which had developed in Bengal, but innovations borrowed from English Law were also introduced. In civil courts, Hindus and Muslims were governed by their personal laws in cases dealing with marriage, succession and religious institution; in other matters in default of a statutory rule governing the case, the court applied 'justice, equity and good conscience'.

On the other hand, a Supreme Court of Judicature replacing the *Mayor's Court* was established at Fort William in Bengal by a Charter dated March 26, 1774, pursuant to the

Regulating Act of 1773[16] passed by the British Parliament. For the course of next eighty years, this Court at Calcutta carried on works of administration of justice. It had jurisdiction of a Common Law Court as also the powers of the Court of Equity analogous to those exercised at one time by the Court of Chancery in Britain. The Supreme Court was a Court of Record and consisted of a Chief Justice and three Judges who had a minimum five years standing as a Barrister in England. The Court exercised both civil and criminal jurisdiction. It also acted as a Court of appeal in certain circumstances. Its jurisdiction in civil matter extended, in the first instance, against British subjects, servants of the company and corporation of Calcutta and under certain conditions, agsinst the inhabitants of Bengal, Bihar and Orrisa. In criminal matters, the Court was given jurisdiction to try all offences committed in the above three provinces by any of the British subjects and any person employed by, or being directly or indirectly in the service of, the Company, or any of the British subjects. It also had the powers to exercise Admiralty and Ecclesiastical jurisdiction. Since the Court of Request and some other courts (except Mayor's Court established under the Charter of 1726) established under different Charters continued to function, Article 21 of the Charter empowered the Supreme Court to exercise superintendence and control over these Courts and for this purpose, under the same Article, the Supreme Court was 'empowered and authorised to award and issue a writ or writs of *mandamus*, *certiorarai*, *procendo* or *error*' and to 'punish any contempt of wilful disobedience thereto, by fine or imprisonment'. In civil matters, an appeal lay from its decision to the Privy Council. In criminal matters, the Court had discretion to grant or refuse permission to prefer an appeal to the King-in-Council. As the Supreme Court was to follow English Law in deciding cases, under Art 11 of the Charter, it was empowered to admit Advocates and Attornies to appear and plead before it. Since the

16. The Act was entitled 'The East India Company Act, 1773', (13 Geo, III, C. 63)

Judges of the Supreme Court consisted of professional lawyers, the quality of justice showed a marked improvement.[17]

The Regulating Act of 1773[18] brought into existence two distinct legal systems in Bengal—one the Company's own *Adalat System* which was self sufficient in itself having a hierarchy of courts culminating in *Sadar Diwani Adalat* and *Sadar Nizamat Adalat*, and the other—the British Crown's having the Supreme Court of Judicature at Fort William in Bengal. But the Regulating Act did not define its jurisdiction. Supreme Court refused to recognize the Company's Courts, and did not recognize the Regulations of the Company's Council as well. *Sadar Diwani Adalats* did not function from 1774 until 1780. As such, serious conflicts and dissensions arose between the Judges of the Supreme Court and the Governor-General and Council in Bengal. Eventually, the conflicts and dissensions were composed by the Act of Settlement, 1781.[19] The Act took away from the Supreme Court all jurisdiction "in any matter concerning the revenue or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor-General and Council".[20] The Court was directed to apply to matters like succession, inheritance of lands and goods and all matters of contract the laws and usages of Mohamedans in the case of Mohamedan litigants and in the case of Hindus by the laws and usages applicable to Hindus. In cases where there was only one party as Mohamedan or Hindus, the laws and usages governing the defendant were directed to be applicable.[21] Another important feature of the Act was its

17. *The Report of the Law Reform Commission of Pakistan*, 1967-70, Government of Pakistan, Ministry of Law & Parliamentary Affairs, (Law Division) at p 63.
18. (13 Geo. II, C. 63) ; See foot note at 16.
19. (21 Geo III, C. 70.) Act of Settlement of 1781.
20. Sec. 8 of the Act.
21. Sec. 17 of the Act.

recognition to the civil and criminal courts which were existing independently of the Supreme Court, and of the Governor-General and Council or some Committee thereof as the Chief Appellate Court of the country.[22]

After establishment of the Supreme Court in Bengal when conflicts between that Court and Governor-General and Council of Bengal was going on some important reforms took place in the *Adalat-system* prevailing in the areas outside the Presidency of Calcutta. In 1774, six Provincial Councils were set up in six divisions including one at Dacca and by Bengal Judicial Regulation of 1780, six *Diwani Adalat* or Civil Courts, one in each of the six divisions were established. In 1781, a new department was established to supervise the administration of criminal justice. In 1790, the composition of *Sadar Nizamat Adalat* was changed ; it now consisted of the Governor-General and his Council, assisted by *Chief Qazi* and two *Muftis*.[23] Besides, in the same year, *Mufassil Fauzdari Adalats* were replaced by four Provincial Courts of Circuits, each having two judges and a Registrar appointed from the Company's service, with a *Qazi* and a *Mufti*. This Court went on circuit to each district twice a year. In 1793, four Provincial Courts of Civil Appeal were established, each with three judges[24] who were also the judges of the Courts of Circuits.. Below these Courts were the District or *Zillah* and City Courts[25] with judges unconnected with the revenue administration, and below them courts with limited pecuniary jurisdiction, which were the Courts of Native Commissioners.[26] It may be recalled that *Sadar Diwani Adalats*[27] continued to function even after introduction of these reforms

22. Act of Settlement of 1781 (21 Geo. III, C. 70), Ss. 21-23.
23. Judicial Regulation XXVI of 1790
24. Regulation V of 1793, ss 2 & 3. Territorial jurisdiction of the Provincial Court of Appeal at Dacca was-Dacca City, the districts of Sylhet, Mymensing, Dacca, Jalalpore, Tipperah and Chittagong.
25. Regulation III of 1793
26. Regulation XI of 1793
27. Regulation VI of 1793

but its jurisdiction was restricted to hearing of appeals from Provincial Court of Appeal where the value of the subject-matter exceeded one thousand rupees.

During the period from 1781 to 1793, there were certain other noteworthy reforms. Judges of the *Mufassil Diwani Adalats* were empowered to arrest the offenders and to bring them to the courts for trial and as such they were also designated as Magistrates. It was not for them to try the accused in their own Court, rather as Magistrates, they were required to produce the offender for trial in the *Mufassil Fauzdari Adalat*. For supervision of works of the Magistrates and Provincial Criminal Courts called *Mufassil Fauzdari Adalats*, a criminal department was set up in Calcutta controlled by an Officer of the Company called *Rememberancer of Criminal Courts*. For providing relief to the District Civil Courts or *Zillah Diwani Adalats* judicial powers were given to some persons called *Munsifs* to try civil suits with subject-matter valued upto rupees fifty. In 1793, court fees leviable on civil suits were abolished, but was reimposed in 1795.[28] During the period between 1794 and 1859, some other reforms took place in the legal system of the country. There were substantive changes in the criminal law dealing with Homicide,[29] Infanticide,[30] Decoity,[31] Adultery,[32] as well rape or incest. In 1801, the *Sadar Nizamat Adalat* and the *Sadar Diwani Adalat* were united and in 1807, Magistrates' power to award sentence was raised to six months and a fine of two hundred rupees and in 1818, by enlarging these powers the Magistrates were empowered to pass sentence of imprisonment. By Regulation I of 1819, the Judges of the Provincial Courts of Appeal and Provincial Courts of

28. Regulation No. XXXVII of 1798
29. Regulation XIV of 1797
30. Regulation IV of 1797 & Regulation VI of 1802, Reg III of 1804.
31. Regulation LIII of 1803
32. Regulation XVII of 1817

Circuit were divested of their power to try criminal cases and in their place Commissioners of Revenue and Circuit were appointed in each division. Superintendence and control of Police, Magistrates were placed under these officers with the responsibility of conducting sessions. They heard appeals against the orders passed by the Magistrates.

On the Civil side, around 1814, Assistant Judges were appointed to assist the Judges of the civil courts or *Diwani Adalats*. *Sadar Amins* were appointed to give relief to the ordinary civil courts. He tried cases upto the value of one hundred rupees. Provincial Courts of Appeal were given original jurisdiction to try civil cases of the value of rupees five thousand and above. By two Regulations[33] the territorial jurisdiction of the *Munsifs* was fixed, the pecuniary jurisdiction of *Sadar Amins* were enlarged, the office of the Assistant Judge was abolished, and only one appeal was provided in each case irrespective of the value of the subject-matter. Furthermore, original jurisdiction of the Provincial Courts of Appeal remained the same but provision was made for transfer of civil cases by *Sadar Diwani Adalat* from civil courts or *Diwani Adalats* to Provincial Courts of Appeal where the subject-matter was valued upto rupees one thousand.

In 1831,[34] the procedural law underwent so many changes. The pecuniary jurisdiction of *Munsifs* was raised upto the value of three hundred rupees, the office of *Principal Sadar Amin* was created, the Provincial Courts of Appeal were abolishded and their functions were transferred to Civil Courts or *Diwani Adalats* in district or a city which existed since 1790. The duties of conducting sessions case was shifted from Commissioners of Revenue and Circuit to the Civil or *Diwani* Judges of the district. This is how around 1793 the present day Munsifs came into existence and around 1831 the office of the District and Sessions Judge saw the light of the day.

33. Regulation XXIII & XXIV of 1814.
34. Regulation VII of 1831.

Though a single system of courts and a single system of law was recognised as desirable, amalgamation of the dual system of courts and a dual system of law could not be effected until a piece of central legislation had been enacted to cover some of the areas formerly occupied by the laws in the two systems, and to create uniform rules of procedure. The process of creating uniformity commenced in 1833. The law of civil procedure of all *Mufassil Courts* was sought to be simplified and consolidated by the Code of Civil Procedure of 1859[35] and as such the Code did not apply to the Supreme Court of Judicature at Fort William.

By 1861, it had proceeded far enough to justify the enactment of the Indian High Courts' Act, 1861[36] by the British Parliament authorising creation by Letters Patent of High Courts in the several Presidencies in place of respective Supreme Courts and the *Sadar Dawani Adalat* and *Sadar Nizamat Adalat* were to be abolished on establishment of the High Courts. Under Letters Patent dated December 28, 1865, issued pursuant to the Indian High Courts Act, 1861, the High Court of Judicature at Fort William (Calcutta) in Bengal was established replacing the Supreme Court and Chief Courts or *Sadar Adalats*.[37] The High Court thus established at Calcutta became the successor of the Supreme Court as well as of the Chief Courts or *Sadar Adalats* and combined in itself the jurisdiction of both set of old courts. All the jurisdictions of the Supreme Court, civil, criminal, admiralty, testamentary, intestate and matrimonial, original and appellate, and the appellate jurisdiction of *Sadar Diwani Adalat* and *Sadar Nizamat Adalat* became vested in the High Court at Calcutta, the original jurisdiction being exercisable by the original side of the High Court and the appellate jurisdiction being exercisable by the appellate side

35. Act VIII of 1859.
36. The Act was entitled East India (High Courts of Judicature) Act, 1861. (24 & 25 Vic. C 104)
37. Sec. 8 of the Act ; The *Adalat System* was abolished.

thereof.[38] The Calcutta High Court continued till partition of 1947. After establishment of the High Court in 1865, a regular hierarchy of civil courts were established by Civil Courts Act, 1887.[39] The Criminal Procedure Code of 1898[40] re-organised the criminal courts and the High Court exercised a general power of superintendence over all civil and criminal courts.

On the establishment of Pakistan in 1947, a High Court was created at Dacca under the High Courts (Bengal) Order, 1947.[41] This Court's jurisdiction extended to the areas comprised in the former province of East Bengal and it had exercised the same power and authority in the administration of justice as the Calcutta High Court exercised. The High Court at Dacca was at the apex of the judiciary of the province, and below it, on the civil side, District Courts each having territorial jurisdiction throughout the district with unlimited pecuniary jurisdiction and a few restrictions in regard to subject-matter, functioned. On the criminal side, below the High Court, there were Courts of Sessions, to which magistrates committed for trial persons accused of more serious offences. The Sessions Courts could pass any legal sentence, but a sentence of death required confirmation by the High Court. Appeals from Court of Sessions lay to the High Court; appeals from Magistrates Courts lay to the Court of Sessions. The High Court at Dacca possessed the writ jurisdiction as successor of the Calcutta High Court, under section 5 of the Governor-General's High Court (Bengal) Order, 1947. Besides, all substantive and procedural laws subject to their applicability, were inherited by this part of the province on partition.

38. Sec. 9 of the Act.
39. The Act was entitled 'Bengal, Agra and Assam Civil Courts Act, 1877. (Act XII of 1877).
40. Act V of 1898
41. (G.G.O. No 4 of 1947) ; The High Court of Judicature in East Bengal came into existence on August 15, 1947.

By trial and error the Britishers had built up a legal system, preserving much of what the Mughals had established, and when new problem arose, looking for solution in the institutions of their homeland. In about two hundred years they built up a system of law which, when the country became independent, was taken over and kept in motion with little change.

Immediately before liberation in 1971, the territories now constituting the People's Republic of Bangladesh, were governed by a number of Constitutional Instruments, namely, the Government of India Act, 1935,[42] The Indian Independence Act, 1947,[43] Constitutions of Pakistan of 1956 and 1962 as well as other laws of the land. These Constitutional Instruments, Constitutions and other laws had offered a lot to the foundation of the legal system of the present Republic.

42. (26 Geo. V, C. 2).
43. (10 & 11 Geo. VI, C. 30).

CHAPTER II

THE SOURCES OF LAWS IN BANGLADESH

BASIC LAW

The Constitution of the People's Republic of Bangladesh which came into force on December 16, 1972, is the Supreme Law of the Republic,[1] the fundamental law from which all public authorities derive their powers, all laws their validity and all subjects their rights. This Constitution, like most other Constitutions of the world, contains a list of *fundamental human rights*. These rights are given to all citizen of the Republic, and as they are given by the Constitution, the same cannot be taken away by ordinary legislation. It is in accordance with this Constitution that all private rights have to be determined and all public authority administered. It has two general purposes, namely, to establish different organs of the Government and to assign them their respective functions, and to make provision for general welfare of the people. The *essence* of the Constitution of the Republic is that it defines the powers of the Government by imposing limitations on the exercise of executive authority. Furthermore, by the incorporation in the Constitution of such *fundamental rights* as personal liberty, equality before the law, freedom of speech and expression, freedom of assembly and association, freedom of movement and residence, freedom to hold and deal with property, and freedom of religion, the framers of the Constitution attemp-

1. The Constitution of the People's Republic of Bangladesh, Article 7(2) runs-"This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the exent of the inconsistency, be void."

ted to impose restrictions of the uncontrolled power of the Executive in the field where individual liberty seemed most desirable, and to prohibit variations of these rights except by the comparatively difficult process of amending the Constitution.[2] While the Constitution of the Republic by and large seeks to introduce a system of government of laws with a power to superior court to judicially review all administrative actions, yet it also contains provisions empowering the Executive to suspend the *fundamental rights* or the remedies available for the enforcement of such rights during the period of emergency[3] of which the Executive is the sole-judge.

The Constitution of the Republic is supplemented by laws enacted and adopted by the Legislature for regulating the exercise of powers through organs established by the Constitution. These laws are *organic laws* of the country.

LEGISLATION

Beside the Constitution, the principal source of the laws in Bangladesh is legislation. Legislation consists of laws made by or under the authority of Parliament and may comprise statute law or 'statutory instruments', which are orders rules and regulations made by a Government ministry under the authority of a statute or bye-laws made by local government or other authorities exercising powers conferred upon them by the legislature.

Enactment of law by the legislature did not begin till Nineteenth century during the British regime. In Nineteenth

2. Justice F.K.M.A. Munim, '*Rights of the Citizen under the Constitution and Law*', p. 2 ; the author Dr F.K.M.A. Munim Judge, Supreme Court of Bangladesh, was 'associated with, the drafting of the present Constitution of Bangladesh', at the relevant time as Secretary to the Ministry of Law and Parliamentary Affairs, Government of the People's Republic of Bangladesh.

3. Constitution of Bangladesh, Art 141 C.

century the legislative Acts took the form in which they are cast and presented today. Until the Twentieth century, the amount of legislation was comparatively small. The position began to change after the passing of the Government of India Act, 1935,[4] and particularly after partition of the British Indian Empire into two sovereign Dominions, i,e., India and Pakistan in 1947. Since then there has been a great increase both in the volume of legislation and its scope and now there is hardly any aspect of life that is not, in some measure affected by legislation.

As Parliament is the supreme law-making body in Bangladesh, Acts of Parliament, subject to the Constitutional restrictions, are binding on all courts, taking precedence over all other sources of law. Under the Constitution, the responsibility of deciding whether the legislature has power to make a law is that of the Legislature itself and, unless a constitutional question is involved, the validity of law cannot be called in question on the ground that the legislature by which it was made had no power to make it. Under Article 26 of the Constitution, the courts have been empowered to declare laws inconsistent with or made in derogation of the *fundamental rights* or against a provision of the Constitution to be void.

The Codification of the laws prevailing in Bangladesh is under process. At present there is a Code of the laws prevailing in the Republic known as 'Bangladesh Code' which seeks to present the amended, adapted and authentic version of all enacted laws in force in the country. These laws include all operative enactments which have been inherited from the past enacted by various authorities according to competence under the Constitution in force at the relevant time. These inherited laws are existing laws within the meaning of Article 152(1) of the Constitution of Bangladesh. Further-more, emergence of Bangladesh as an independent sovereign State calls for extensive amendments, adaptations and repeal of the existing laws as

4. (26 Geo. V. C. 2)

well as enactment of new laws designed to meet the changed and changing political, social and economic needs of the people. The law today is contained in about two thousand Acts of Parliament, some thousands of statutory instruments and statutory rules and orders. The Ministry of law and Parliamentary Affairs has been working to ascertain the current position of existing laws which have undergone extensive changes and to keep track of the flow of new laws which are being continuously enacted.

DELEGATED LEGISLATION

Delegated legislation refers to a situation in which the Legislature lays down the policy in more or less wide terms and gives to some external authority the power to carry out, by framing rules and regulations, the legislative policy so specified in the Act. There is always a section technically called 'Rule-making Power Provision' in the Act passed by the Legislature that says generally that some extraneous authority, charged with the duty of administering the Act, should frame rules and regulations not inconsistent with the provisions of the Act for the purpose of carrying out the objects of the Act. The only requirement of law in such situations is to insist that the authority or body charged with the duty of making rules and regulations must strictly confine itself within the sphere of its authority for the exercise of the delegated legislative power.

Article 65(1) of the Constitution of Bangladesh empowers the Parliament to delegate to any person or Authority, by Act of Parliament, power to make orders, rules, regulations, bye-laws or other instruments having legislative effect. This system of delegated legislation empowers ministers and other authority to regulate administrative details under the authority of a particular Act of the Parliament. The powers conferred in this way are normally delegated to the authorities directly

responsible to the Parliament, that is, Government Ministers, Government Departments for which ministers are responsible or to organizations whose regulations are subject to confirmation or approval by ministers who thereby become responsible to the Parliament for them, and in Bangladesh in each case it is the duty of the courts, in appropriate proceedings, to be satisfied that the rules and regulations so made are by the authority mentioned in the parent Act, and that they are within the scope of the power delegated therein. It is for the courts to give effect to the general intention of the Parliament by ensuring that the particular rules and regulations conform to that intent, of course, such rules and regulations lapse when the laws that empower their creation come to an end, either by eflux of time or by repeal, or if their life is declared terminable upon the happening of a contingency, upon the happening of that contingency. The functions of the courts here before which such legislation may come, is to examine and ensure that the authority exercised has not been broader than the terms of delegation. The judicial power in this field is based upon the doctrine of *ultra vires*[5]. The reviewing court is mainly concerned with the question of whether or not the legislation was within the power conferred. In determining the question the courts in Bangladesh, exercising constitutional competence, can invalidate administrative rules, regulations, orders and bye-laws not only because they are *ultra-vires* the enabling Act in the strict sense, but also they are unreasonable. The reviewing court in such cases examine the facts in order to determine the reasonableness of a challanged rule or regulation or bye-law. This may be compared with the authority of courts in Britain over the subordinate or ancilliary legislation of local authorities.

5. *Ultra-vires* (Latin) ; '*Ultra*' means excess, beyond or outside and '*Vires*' denotes competence or power ; Hence, the term *Ultra Vires* means 'outside the Competence of' or beyond the power of. The term is used in relation to Corporations, local bodies, and to other Government authorities and even to inferior judical bodies, when exceeding the authority or power imported to them by the law.

CUSTOMARY LAW

The Customary law of Bangladesh evolved from spontaneously observed rules and practices by different communities in relation to particular matters from very ancient times. In the Budhist-Hindu period, that is, roughly from the Eighth century to the end of Twelveth century, all disputes were settled by the head of the family or of the tribe. In case of inter-tribal disputes recourse was had to the *Panchayets* and assemblies comprising the village elders and chiefs of the tribes. The King exercised the function of administering justice to his subjects who gererally administered justice in person assisted by *Brahmins* and his counsellors, and sometimes could also delegate his authority to administer justice, to some other person. During this period, ancient customs were observed and followed in the administration of criminal justice. Generally, the criminals were tried through ordeals. The accused was sometimes required to take a caustic drink or to hold in his hand a red hot iron wrapped in a leaf in order to establish his innocence. Similarly, the accused was often thrown into water as it was believed that if he was innocent he would not drown. The punishment awarded to the accused was sometimes very severe. The criminals were beheaded, mutilated, outcasted or banished from the country or imprisoned for life. The principles applied in the dispensation of criminal justice broadly reflected the customs of local communities.

In the Thirteenth century, the Muslims established their rule in Bengal. During Thirteenth to Eighteeth century, the criminal courts tried offences according to Muslim Law of Crimes. In civil matters like marriage, divorce, succession etc, the dictum of religion was followed and in other cases, equity and good conscience was applied and though the importance of custom was not so well recognised during Muslim rule still in many cases, custom was allowed to override the analogical law. Now-a-days, custom has been relegated to a secondary

position as a source of law, and a narrow margin has been left in the Codes for accommodation of customary rules.

JUDICIAL PRECEDENTS

Judicial Precedents constitute an important source of law and is invariably of considerable assistance in the determination of controversies that arise in courts of Bangladesh. It is based on the English doctrine of judicial precedent.

When a court of law decides a case presented to it, it disposes of the conflicting claims advanced before it by the parties to the cause and renders what is called 'Judgment'. The The judgment rendered by the court concludes the controversies between parties to the cause and is binding on them subject to the decision being upset by a higher court. But, in the process of reaching a conclusion upon a controversy, the court itself evolves a rule which it follows in the decision of the case, and it is this rule or what may be called as "reason for deciding case", which is also known as *ratio decidendi*, to which some measure of authority gets attached, and it in its turn, acquires within limits a binding value as a creative source of law for the purpose of settling cognate controversies that may arise during the course of subsequent litigation. Thus it is that law is made in the process of reaching a judicial decision. The binding value of a principle of law enunciated in a judgment is the authority of judicial precedent and in order to achieve consistency, the Judges place great reliance on previous judgments given in similiar cases. In the theory of jurisprudence in this country the general rule regarding the authority of judicial precedent is that every court binds the co-ordinate courts and the subordinate or lower courts. When a higher court upsets or reverses a case decided by a lower court, the case that is reversed loses all authority as a precedent. Over-ruling takes place when a case decided in a lower court considered either

in that case or in a different case taken to the appeal court and held to be wrongly decided.

In Bangladesh, the position of the binding force of judgments of superior court is comparatively simple, the two rules governing it being, that the decisions of the Appellate Division of the Supreme Court on a question of law or when it enunciates a principle of law, are binding on all courts in Bangladesh, with the exception of the Appellate Division of the Supreme Court itself; and that similiar decisions of the High Court Division of the Supreme Court are binding on the courts subordinate to the High Court Division. This has been constitutionally provided for in Article 111 which is in the following terms: "The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it". However, the Appellate Division of the Supreme Court of Bangladesh has declared that the judgment passed by the erstwhile Supreme Court of Pakistan after the proclamation of independence and before liberation of Bangladesh will be binding upon the courts of Bangladesh.[6] In all other casses, a judge, however high or low, is to decide a question of law for himself. The Appellate Division of the Supreme Court itself may change its own view of an earlier decision. The High Court Division is bound by the exposition of the law contained in the judgments of the Appellate Division; but it can depart from its own earlier declaration of law.

The decision of the Appellate Division of the Supreme Court being an institutional decision, it is the decision of the majority that is binding. Where the majority judgment is written by one Judge with the concurrence of the other Judges, the principle of law enunciated is to be gathered from the

6. The law has been enunciated in the case M/s *Jamal Jute Baling & Co.*, Vs. M/s *Sarkis & Sons*, (1978) Bangladesh Supreme Court Reports, at p. 27—(1978) 30 Dacca Law Reports (Supreme Court) 23

ratio decidendi ; even *obiter dicta*[7] is also regarded as the law declared.

The legal history of Bangladesh presents an evergrowing stream of case law, a stream, which keeps up moving with a steadily increasing momentum with the passage of time. This stream has been fed, by a current of legal decisions in-so-far as they have evolved legal principles and made them applicable to the problems that have been presented to the Courts during the course of day-to-day litigation, the task of reporting case law being performed by the Law Reports which in Bangladesh, publish the judicial decisions of the superior courts as well as those of other tribunals. Law reporting in the Sub-continent is more than a century old. Legal journalism gained field towords the end of the Nineteenth century and an Act called 'The Law Reports Act, 1875'[8] was passed for the improvement of the law reports.

In Bangladesh, presently, there exists three Law Reports which publish the case-law determined by the superior court and includes one which is published under the authority of the Statute.[9] Besides, cases of statutory tribunals are also published locally in local law journals. Decisions of statutory tribunals are also published in the Gazette, which is, of course, not a law journal. At present case law is contained in about ten thousand reported cases of different courts.

7. the statements of law made by the Judges by the way which are not necessarily called for by the case before them.
8. Act XXVIII of 1975. The statute lays down that no court shall be bound to follow a decision in an unofficial report, but in practice it will normally do so unless it conflicts with a binding decision in an official report.
9. Reports published under the authority of the statute are called *Official Reports*, the editor being an advocate, guided by a committee selected from the bench and bar. The selection of cases for publication depends upon their judgment.

CHAPTER III

BRANCHES OF THE LAW

According to the theory of jurisprudence of this country, the two main branches of the law are, Substantive law and Adjective law. Adjective law is also called Procedural law. Substantive law deals with rights and obligations, Adjective law with practice and procedure in courts to enforce such rights and obligations. Substantive law defines rights, Adjective law determines remedies. Adjective law governs the process of action. Substantive law is concerned with ends which the administration of justice seeks; Adjective or Procedural law deals with the means and instruments by which those ends are to be regulated. There are certain laws in Bangladesh which can be exclusively grouped under the heading of Substantive law, for instance, law relating to the transfer of property, law relating to contracts and sale of goods, law of crimes etc. They deal with the rights and liabilities between parties enumerated therein. The Civil Procedure Code, the Criminal Procedure Code are the instance of Adjective or Procedural law. They lay down procedures to be followed with a view to enforce rights and liabilities.

The two main branches of the law stated above can be shown in another way, for example, Civil and Criminal Law. The distinction lies in the nature of the acts and omissions covered by the two categories as well as in the subsequent legal proceedings. Civil Law is concerned with rights, duties and obligation of individual themselves. Law dealing with crimes is the Criminal Law. Criminal law deals with wrongs affecting the society at large, that is, acts contrary to the order, peace and well-being of society which render the offender liable to punishment by the State.

Prior to the Muslim rule, i.e., Thirteenth century, the division of law sketched above was not so prominent. Under the Mughal rule, the Mohamedan Law was used in the administration of criminal justice. The *Quran* was the repository of both civil and criminal law. In interpreting the words of *Quran*, the judges known as *Qazis* turned to the decisions of pious Muslim Kings and eminent Muslim Jurists of the past. During the Nineteenth century in British regime, there had been some important enactments concerning the above two branches of the law when the Law of Civil Procedure, Law of Crimes, Law of Criminal Procedure and Law of Evidence etc, were enacted. Since then, those enactments with necessary amendments are in force in Bangladesh.

Other branches of the law are: Administrative Law, Service Law, Labour and Industrial Law, and Admiralty Law. Apart from the above branches of the law, there are certain special laws dealing with specific matters, for example, Law of Evidence and Fiscal Law. They operate in the spheres of both civil and criminal matters.

Post-liberation years have seen some temporary and transitional laws. They dealt mainly with the Constitutional and criminal matters. Most of these transitional laws were short lived. They were enacted to arrest the crisis which engulfed the nation at the relevant times.

CIVIL LAW

The principal sub-divisions of Civil Law are: Family Laws which include the laws govering marriage, maintenance of wife, divorce, dower, legal status, inheritance and succession, wills, gifts and the custody of children; The Law of Property, which governs ownership, rights or enjoyment, partition, transfer, acquisition, tenancy, rents, the creation and administration of trusts; The Law of Contract, which ragulates, the sale of goods,

carriage, loans, partnerships, insurance, guarantees, master and servant relationship; The Law of Limitation which by fixing a period to litigation enables men to reckon upon security from harassments at a long distance of time at the sweet will of party, for example, if a man sleeps over his own right and does not come to enforce his right within the period of limitation fixed by law, his remedy is barred. It not only brings public peace and repose but at the same time ensures private justice.

Other groupings of Law are also possible: Frequently a number of categories are treated under the head of "Commercial Law", for example, Contracts, Sale of goods, Bills of Exchange, Companies and Bankruptcy etc. Private International Law regulates the jurisdiction of the Courts in Bangladesh in cases where foreigners are involved; it determines whether Municipal law or Foreign law is applicable to a legal question and it provides for the recognition and enforcement in Bangladesh of the judgments of other legal systems on reciprocal arrangements. Principles of English Rules are followed in applying Private International Law.

Lastly, the Civil Procedural Law. Justice in courts of law has to be administered according to a certain standard which is neither the notion of natural justice nor what is called substantial justice. That standard has been designed in a Code called the 'Code of Civil Procedure' enacted in 1908,[1] which is one of the most important enactment in the Statute Book, and covers a vast field governing almost all kinds of suits or proceedings that come up before the civil courts. It embodies all the salient principles of adversary procedure.

CRIMINAL LAW

The Criminal Law of Bangladesh has been codified mainly in the Penal Code[2] and the Code of Criminal Procedure[3]; the

1. Act V of 1908 : The Code came into force on January 1,1909.
2. Act XLV of 1860
3. Act V of 1898; the law has undergone much subsequent amendments.

former Code deals specifically with offences and states what matters will afford an excuse or a defence to a charge of any offence. The Penal Code is the main body of substantive law and the Criminal Procedure Code, the adjective law.

Prior to 1860, the English Criminal Law, as modified by several Acts, was administered in the presidency-towns of undivided India. In the mufassil, the courts were principally guided by the Mohamedan Criminal Law. The Penal Code was drafted by the first Indian Law Commission of which Lord Macaulay was the President and Macleod, Anderson and Millett were the Commissioners. They drew not only upon English and Indian laws and regulations but also upon Livingstone's Lousiana Code and the Code Napoleon. It underwent further revision. On being completed in 1850, it was passed on October 6, 1860.

The Penal Code, however, does not exhaust the substantive Criminal Law of Bangladesh. As such, there are special statutes dealing with specific topics, like the Arms Act[4], which penalises the manufacture possession and sale of fire arms save and except under licence; the Explosives Act[5], the Explosive Substances Act[6], contain comparable provisions in respect of the substances indicted by their titles. The Opium Act[7] and the Dangerous Drugs Act[8], punish unauthorized possession and dealing in narcotics.

In most cases, the Criminal Law recognises a particular intention or state of mind *mens rea* as a necessary ingredient of a criminal offence. Ignorance of law on the part of an accused person is not accepted as an excuse. The law punishes

4. Act XI of 1878.
5. Act IV of 1814.
6. Act VI of 1908.
7. Act I of 1878.
8. Act II of 1930.

not only criminal acts but also attempts or conspiracies—steps towards the commission of a crime which may never take place.

The classification of crimes may be based on the type of harm done. There are crimes, for example, against the person of an individual, such as assault, hurt, rape, kidnapping or murder; against his or her property, such as cheating, extortion, theft, robbery and mischief; against the State, such as sedition; and against public rights which belong in common to all citizen, such as offences against public justice. Classification can also be based on the method of trial. Serious crimes are generally tried before a Court of Magistrate carrying a maximum sentence of three years. Certain cases carrying sentences exceeding three years are triable by the Magistrate of the of the First Class. Foreign diplomats in Bangladesh may be entitled to immunity from criminal proceeding, but are expected to respect the law of the land according to the norms of International Law.

ADMINISTRATIVE LAW

Administrative law is the Law relating to the powers and procedures of administrative organs. This branch of law is particularly concerned with the executive and judicial powers conferred by the Legislature on the Administration or the Executive and with the effect of the exercise of those powers on the individuals.

The administrative process was brought in the Sub-continent by a rapid expansion of governmental activities in various fields during the British rule. In the post-partition era, i.e., after 1947, the inevitability of the process was accepted by the constitution-makers in Pakistan. The post-partition years have seen the emergence of administrative-tribunals, boards and agencies, widely differing from one another in constitution, powers and procedure. This process did not escape the notice of the Constitution-makers in Bangladesh. In Part-II of the Constitution of Bangladesh, the Chapter on '*Fundamental*

Principles of State Policy[9], enjoins the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the disparity in the standard of living between the urban and the rural areas. These Constitutional provisions have sanctioned the operation of administrative adjudicatory authorities.

Bangladesh has introduced economic planning in order to achieve economic growth—a process in which the State is directly taking part through the public and semi-public sectors. This necessitated re-organization of and expansion of administrative machinery to meet the requirements of its expanding role. Thus, in response to the needs for economic development, changes in the administrative organization of the Government of Bangladesh have taken place from time to time. New ministries have been created to deal specifically with urgent problems. The net result of the development has been a State-intervention in economic activities. In other spheres, the intervention has taken more direct role either in the form of nationalization as in the case of banking, insurance, and some industries, or through the creation of public corporation. There are statutory bodies like the Power Development Board, Road Transport Corporation and Dacca Improvement Trust etc. enjoying varying degrees of autonomy and independence. There are also departmental authorities like the Income-tax authorities, the Customs authorities, the Controller of Import and Export, the Film Censor Board. These are of common local authorities or local governments like Municipalities and Union Parishad. The direct result of all these have been the growth of administrative adjudication of claims or rights of private individuals which is in some way a technique of adjudication better fitted to respond to the requirements of

9. Constitution of Bangladesh, Arts. 13-17, may been looked into for further detail.

the time than the lengthy and costly system of decision provided by litigation in the ordinary courts of law.

SERVICE LAW

Service Law has been codified in statutes for the Army, the Air Force and the Navy and in the delegated legislation under them. It is administered by court martial and applicable to all serving members of the Armed Forces of Bangladesh. The civil servants are governed by rules framed under the Constitution and by laws of the Parliament. The purpose of Service Law is the preservation of essential discipline, and no change of substantive law can be made except by the Parliament.

LABOUR AND INDUSTRIAL LAW

Labour and Industrial Law is contained in a number of statutes. This branch of the law is concerned with conditions of employment in shops, establishments, factories and industries, relation between employer and employees and the legal position of trade unions and other organisations.

Under the British rule, the legislation prior to 1881 was mainly intended to help employers. Early labour legislations were enacted in the middle of the last Century to meet the special branches of organised industry like Plantations, Mills, Mines, etc.

After the First World War, the principle of State intervention to regulate industrial workers was recognised in the Subcontinent. The working classes realized the need of organized and collective action for improvement in their conditions of employment. Some employers began to appreciate the idea of an organised and satisfied labour force for more efficiency and industrial progress. In 1923, an Act known as Workmen's

Compensation Act[10] was brought on the statute book for payment of compensation to workers for accidents sustained during work or diseases contracted due to industrial occupations. To encourage formation of workers' organizations, the Trade Unions Act[11] was passed in 1926 to provide for representation of workers by their Trade Unions, and to accord to such unions certain rights, privileges, immuties and obligations. This Act formed the basis of foundation of labour legislation. In 1929, A Royal Commission on Labour was set up whose report formed a landmark in the history of labour welfare. Consequently, the Payment of Wages Act, 1936,[12] was enacted. The next phase of advancement in legislation started during 1939-54 when there was expansion of industry and corresponding increase in employment, which gave rise to increase in the industrial problems. At the end of the Second World War, the Sub-continent was confronted with enormous increase in the industrial disputes. An Act called, The Industrial Disputes Act,[13] was enacted in 1947 to prevent industrial unrest and to bring about harmonious relations between the employers and the employees. Consequent on the partition of India in 1947, Pakistan got its heritage of Labour Laws from India. By 1950, industrialization of the country started and especially, there was progress in the Jute and Textile industries. This resulted in proportionate growth of Industrial labour and sense of security in the working class. In 1969, Industrial Relations Ordinance[14] was promulgated to consolidate the matters relating to Industrial disputes and Trade Union activities.

After liberation in 1971, Bangladesh got its heritage of this branch of the law from Pakistan. At present the Labour

10. Act VIII of 1923.
11. Act XVI of 1926.
12. Act IV of 1936.
13. Act XIV of 1947.
14. Ordinance No. XXIII of 1969.

and Industrial law of Bangladesh is contained in a number of Statutes and in the delegated legislations under them.

ADMIRALTY LAW

Admiralty Law relates to maritime causes, properties affairs, and transaction whether civil or criminal, for instance, an action against a Pilot of a ship for collision, is an admiralty action. In a relatively limited sense, it is the court exercising jurisdiction over maritime and administering the maritime law by a procedure peculiar to itself and to some extent, and in respects, distinct from that followed by other courts of law. In Bangladesh, the High Court Division of the Supreme Court exercises jurisdiction in admiralty causes or actions, under the provisions of The Courts of Admiralty Act, 1891,[15] and governed by English rules.

LAW OF EVIDENCE

The Law of Evidence determines among other things, what evidence is admissible to prove facts alleged in every cases, civil or criminal, whether particular evidence is sufficient to prove those facts or requires corroboration by other evidence, how a witness's credibility is to be assessed, and which party must discharge the onus of proof. Law of Evidence is applicable in almost every matters that come before the Courts and its effectiveness in civil and criminal matters is the same. The whole of the Law of Evidence is contained in the Evidence Act, 1872[16] which among others has made elaborate provisions regarding confessional statements of accused persons in that confessions obtained by torture, coercion or inducement are inadmissible as evidence.

15. Act XVI of 1891.
16. Act I of 1872.

FISCAL LAW

Fiscal Law belongs to that branch of the law which deals with imposition and collection of revenue, taxes, duties and rates etc. The main purpose of Fiscal Law is raising of revenue to augment the fund of the Government to meet its various expenses. Fiscal Law of this country is contained in a number of tax statutes[17] and statutory rules relating to Income, Argicultural Income, Sales, Excise, Custom, etc. All tax statutes were adapted by the Republic of Bangladesh after liberation of the country under Bangladesh Taxation Laws Adaptation Order, 1972.[18]

Besides, there are certain other statutes in the field of Fiscal Law which have, behind them, some nobler objects which may be termed as social and ethical. These tax statutes relate to Capital gains, Wealth, Estate Duty, Gifts[19] Amusement etc. Though these statutes have the effect of getting revenue to the Government yet the other objective behind the legislations are more social and ethical and have in view rationalising the social order by reducing the inequalities in the distribution of wealth and creating a social order more acceptable to the nation. Sometime, to check inflation in the country, some other taxes statute operate as temporary, measures. They relate to excess profit, business profit, grains and the like.

17. Examples of principal tax statues are, Income Tax Act, (Act XI of 1922), Agricultural Income Tax Act, (Act IV of 1944), Sales Tax Act, (Act III of 1951), The Excise Act (Beng Act V of 1909), Customs Act, (Act IV of 1969), Business Profit Tax Act, (Act XXI of 1947) etc.
18. President's Order No. 62 of 1972.
19. Examples of such statutes are, Gift Tax Act, (Act XIV of 1963), Wealth Tax Act, (Act XV of 1963), The Estate Duty Act, (Act X of 1950) and the like.

CHAPTER IV

COURTS OF LAW

The Law-Courts of Bangladesh can be described as constituting the principal forum in which the activity of administering justice is carried on. They are entrusted with the duty of administering justice according to the Constitution and law.

The entire realm of law requires for its recognition and enforcement a set-up of courts, a hierarchy of courts. Different component parts of the legal system of Bangladesh have reference to the establishment of different courts in the country and the definition of their jurisdiction. The theory of law in this country is that every judicial authority has itself to have a foundation in law and it is the right of any party to the proceeding before it, on being advised that such a foundation is lacking, to challange its authority to administer justice according to law.

The courts in Bangladesh may be classified in a number of ways. The most usual feature is the distinction made between courts with criminal and those with civil jurisdiction. A distinction is made between courts of record and courts not of record, those of record having the authority to fine and imprison for contempt of their authority. The power to punish in respect of contempt of itself flows from the status of a court as a court of record, and this power has been mentioned in Article 108 of the Constitution which says that the Supreme Court of Bangladesh in this country is the court-of-record and have all the powers of such a court including the power to make any order for the investigation or punishment of any contempt of itself. A distinction is also drawn between superior and subordinate or inferior courts which helps to resolve the question of jurisdiction with particular reference to the onus cast

upon the party denying it. Subordinate or inferior courts are established to carry justice to every man's door. The superior courts are courts of general and appellate jurisdiction. A superior court is not subject to the control of any other court, except by way of appeal, and in which no matter is deemed to be beyond jurisdiction unless it is expressly shown to be so.

At the top of the hierarchy of courts is the Supreme Court of Bangladesh comp.ising the Appellate Division and the High Court Division which have both civil and criminal jurisdiction. The High Court Division also enjoys a Constitutional jurisdiction commonly known as *writ jurisdiction*. The Appellate Division and the High Court Division together form the Supreme Court of Bangladesh. The hierarchy of civil courts consists of the Court of District and Additional District Judge, the Court of Subordinate Judge and the Court of Munsif. There is no separate Court of the Small Causes. At some places, Subordinate Judges and Munsifs have been invested with powers of the Small Causes Court.[1]

In most of the civil matters, the courts with original jurisdiction are Subordinate Judges' Courts and Munsifs' Courts. These are civil courts at the base of the structure of civil courts. The Subordinate Judges have unlimited pecuniary jurisdiction, ranging from taka six thousand to ten thousand. On the recommendation of the Law Committee reported in 1976, the limit of the pecuniary jurisdiction of the Courts of Small Causes has been fixed at taka six thousand by the Law Reforms Ordinance, 1978[2] by amending the relevant statute. Hence, the Subordinate Judges and Munsifs exercising jurisdiction

1. The Report of the Law Committee, 1976, Government of the People's Republic of Bangladesh, p. 120.
2. Ordinance XLIX of 1978, made on December 2, 1978 and came into force from June 1, 1979, Schedule to Sec. 2.

as Small Causes Courts enjoy enlarged pecuniary jurisdiction from June 1, 1979, in relevant matters.

The hierarchy of criminal courts consists of the Court of Sessions and Additional Sessions Judge, and the Court of Assistant Sessions Judge, as well as the Court of Metropolitan Magistrates, the Court of the Magistrate of the First Class, the Court of the Magistrate of the Second Class and the Court of the Magistrate of the Third Class. The Courts of District and Additional District Judges also function as Sessions and Additional Sessions Courts respectively when trying criminal cases. As a rule, Subordinate Judges are also given sessions power. A Subordinate Judge when trying criminal cases acts as Assistant Sessions Judge. In criminal matters, the courts with original Jurisdiction are the Magistrates Courts and the Sessions Courts. The Magistrates' Courts deal with less serious offences while the Sessions Courts with more serious and of sentence up to capital one. Sessions Courts also exercise some revisional and appellate powers. A diagram showing the hierarchy of courts in Bangladesh has been given at the end of this Chapter.

The solution of legal problems, as they arise in the course of litigation in courts of Bangladesh, very largely depend upon the correct interpretation of the Constitution and the statute law, the recognition and enforcement of such customary law as may be deemed binding upon courts in the light of those principles which have been evolved by the courts themselves as determining the legal validity of custom, as also upon the correct analysis and application of the judicial precedents.

A bulk of legal principles, have themselves been evolved by the courts of law, and law in Bangladesh in a significant sense, is daily being made in the very process in which courts apply the law to the new situations that are being presented to them from

time to time for their adjudication. It is the courts that interpret and apply the law, and although the theory of jurisprudence in this country is that in interpreting and applying the law they merely recognise and enforce the law such as is already in existence, nevertheless, the fact remains that, after the decision is rendered, there is in the statement of it to be discovered the "reason for the decision", the *ratio decidendi* as it called, which in its turn acquires, within limits, a binding value as a source of law for the co-ordinate or subordinate courts as judicial precedents. In professing to apply the law, the courts virtually create the law.

SUPERIOR COURT

SUPREME COURT OF BANGLADESH

The Constitution of Bangladesh has set up at the apex of the judiciary, the Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division. It is a composite court having the two separate Divisions[3]. It is alone the superior court of the country. It is a new concept introduced for the first time in the Sub-continent. The functions of the two Divisions are distinct and separate. Separate appointments are made for each Division. The Judges of each Division sit exclusively in the Division to which they are appointed. The Chief Justice of the Supreme Court, who is appointed to the Appellate Division, is constitutionally known as the *Chief Justice of Bangladesh*. The two Divisions are governed by two separate sets of rules as regards practice and procedure.[4]

Under the Constitution, the permanent Seat of the Appellate Division is to be in the Capital, but Sessions of the High Court Division may be held at place or places as the Chief Justice of Bangladesh with approval of the President from time

3. Constitution of Bangladesh, Art. 94(1).
4. The Report of the Law Committee, 1976, Government of Bangladesh, Ministry of Law & Parliamentary Affairs, Part IV, Chap XV, p. 123.

to time appoint.[5] At present both the Divisions sit in the Capital of the Republic. All executive and judicial authorities throughout Bangladesh are required to act in aid of the Supreme Court.[6]

APPELLATE DIVISION

The functions of the Appellate Division are to hear and determine appeals from the judgments and orders of the High Court Division only. The appellate powers are broadly divided into two heads, that is to say, appeals provided under Article 103 of the Constitution and appeals not specifically provided in the said Article. The first category, where an appeal lies as a matter of right, includes only three kinds of appeals. Firstly, appeal on a question relating to interpretation of Constitutional provision. Secondly, appeal in a case where a sentence of death is imposed, or where a sentence of transportation for life is imposed by the High Court Division, and lastly, appeal against punishment for contempt of court imposed by the High Court Division itself. The Second category includes all other orders of the High Court Division, if the Appellate Division grants special leave to appeal and this part is analogous to the jurisdiction previously exercised by the Privy Council. The largest number of cases for hearing are brought before the Appellate Division by special leave granted at preliminary hearing by the Appellate Division itself. Leave is not granted unless a question of law of public importance in civil cases or an error of law or procedure leading to a failure of justice in criminal cases is involved.

The Appellate Division also enjoys a Constitutional Advisory jurisdiction. There is a provision for reference to the

5. Constitution of Bangladesh, Art. 100.
6. Art. 112.

Court by the President of Bangladesh any question of law of public importance on which he desires to obtain the opinion of the Appellate Division. Under Article 105 of the Constitution, Appellate Division has been empowered to *review* any judgment pronounced or any order made by it. The Division is also empowered to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it.

HIGH COURT DIVISION

The High Court Division is the Superior forum of first instance having general jurisdiction. It has the onerous responsibility of seeing how laws throughout the country is interpreted and applied by all courts subordinate or inferior to it.

The jurisdictions of the High Court Division flows from two sources, namely the Constitution and the laws. The Constitution grants a special jurisdiction to the High Court Division under Article 102. This Constitutional jurisdiction is known as *writ jurisdiction.* Besides, it has been Constitutionally provided for under Article 109 that this Division of the Supreme Court shall have the power of superintendence and control over all courts subordinate to it. It can also transfer any suit from the subordinate court and try itself if there is any substantial question of law as to the interpretation of the Constitution or a law of general public importance, is involved. This provision confers on High Court Division an additional Constitutional jurisdiction inasmuch as it makes it the responsibility of the High Court Division to supervise and control the subordinate courts. The power conferred is a general power. It includes the power to control all subordinate courts administratively as well as judicially. It can make and issue general rules, and procedure of subordinate courts, prescribe forms in which books, entries and accounts shall be kept by any such courts, and can call for returns. However, the condition prece-

dent for the exercise of power of superintendence and control over courts is the requirement that those courts must be subject to High Court Division's appellate or revisional Jurisdiction. The General jurisdiction of the High Court Division can be divided under four major heads, namely, Civil Jurisdiction, Constitutional or Writ Jurisdiction, Special Statutory Jurisdiction and Criminal Jurisdiction.

Civil Jurisdiction

The powers of the High Court Division under Civil Jurisdiction, have three broad heads, namely, Appellate Power, Revisional Power and power in the matter of reference made to it. These powers have been conferred upon the Division by the Constitution and other laws in force amongst which procedural law is predominent.

Appellate Power : As an appellate court, the High Court Division can hear and determine appeals from decrees and order passed by the subordinate civil courts. This depends primarily upon the valuation of the suit. First appeal lies to the High Court Division in those cases where the valuation to the suits or proceedings exceeds taka twenty thousand. Besides trying first appeals, so long the High Court Division also heard appeals from appellate decrees called Second Appeals. For the purpose of achieving speedy and less expensive justice, on the recommendation of the Law Committee, 1976, the second appellate jurisdiction of the High Court Division has been eleminated by modifying its power of interference under revisional jurisdiction in a manner so as to sufficiently accomodate a second appeal under revisional jurisdiction by the Law Reforms Ordinance, 1978.

Revisional Power : The High Court Division has the power of revising orders passed by the subordinate civil courts in cases in which no appeal lies thereto. The conditions precedent to the exercise of revisional power by the High Court Division is

that there must be a case decided by a subordinate court, no appeal must lie to the High Court Division against that decision, and in deciding the case the subordinate court must have committed an error of law apparent on the face of the record. In such cases, the Division may call for the records of the subordinate court and may make any order as it thinks fit. So long, in civil matters, it was only the High Court Division which exercised revisional powers. But large member of interlocutory revisional applications were taken to the Division which was a patent cause of delay in the disposal of cases for which the litigants suffered too much.

In that view of the matter, in the Report of the Law Committee, 1976, it was suggested that the revisional power of the High Court Division along with its second appellate power should be modified in such a manner so as to accomodate the remedies of revision and second appeal under a single jurisdiction of the Division, namely, the revisional jurisdiction. Consequently, abolishing the second appellate power, and simplifying the revisional power, and, accomodating remedies of both of them, the revisional power of the High Court Division has been modified and reconstituted by the Law Reforms Ordinance, 1978. From June 1, 1979, the High Court Division exercises the power of revising any order of subordinate civil courts in which no appeal lies thereto, if the subordinate court comits any error of law apparent on the face of the record of any case. The District Judges have now been vested with revisional powers. When a revision is sought against an order of a District Judge, the matter can be determined by the High Court Division if it grants leave to consider the question of law of public importance occasioning failure of justice.

Reference to the High Court Division : If in a suit, appeal or execution case in which the decree is not appellable, a question of law arises where the court concerned entertains a

reasonable doubt, it may *suo motu* or on application of any party, refer the matter for the opinion of the High Court Division.

Constitutional or Writ Jurisdiction

Under Article 102 of the Constitution, the High Court Division has been empowered to issue certain directions and orders. The jurisdiction so granted is no other than *writ jurisdiction* authorizing the High Court Division the power to issue orders of prohibition, mandamus,[7] certiorari,[8] habeas corpus,[9] and quo warranto,[10] without using their technical names, and the jurisdiction can be exercised only when no other adequate remedy is provided by law.

The power to issue the writs is given, not to the individual Judges, but to the court, so that successive applications to different Judges of the same court would not be permitted. If a petition for a writ were dismissed by a bench of the High Court Division, there might be an appeal to the Appellate Division of the Supreme Court.

Order or Writ of Prohibition : An Order of Prohibition as its name indicates, is issued to prohibit an inferior body or tribunal from continuing to act in relation to a matter which is beyond its authority or jurisdiction. The office of an order of prohibition is primarily supervisory having for its object the confinement of courts and tribunals of peculiar, limited or inferior jurisdiction within their bounds.

Order or Writ of Mandamus : An Order of Mandamus, lies to compel the public officer or body to perform statutory duty of a ministerial nature. Ordinarily mandamus will not issue to compel a public officer to exercise his discretion in a certain

7. Constitution of Bangladesh Art, 102(2) (a) (i).
8. Art. 102(2) (a) (ii).
9. Art. 102(2) (b) (i).
10. Art. 102(2) (b) (ii).

way. Its object usually is to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers when there is no other adequate and specific legal remedy.

Order or Writ of Certiorari : By means of an Order of Certiorari the records and proceedings are called for by the High Court Division with a view to examining their legality, and if the High Court Division comes to the conclusion that the inferior tribunal has acted in excess of its jurisdiction or in a manner which is opposed to the principles of natural justice or that there is an error apparent on the face of the record, the impugned orders are quashed by it and put out of the way.

Both certiorari and prohibition are limited to the enforcement of judicial functions and are not concerned with legislative functions. Neither may be used to control jurisdiction to non-statutory private or domestic tribunals. Prohibition and certiorari may not be used to call in question the decision of an authority in the same way as a finding of a subordinate court can be attacked in appeal. The court hearing the writ petition acts in a supervisory capacity.

Order or Writ of Habeas Corpus : The Order of Habeas Corpus is issued by the High Court Division to see that no person is kept in confinement illegally or without lawful authority. It is a prerogative writ of highest Constitutional importance, being a remedy available to the meanest against the mightiest. It is 'a palladium of liberty of the common man'. The object of the writ is to secure the liberty of the subject by means of a summary adjudication of the legality of his detention. It is immaterial whether the person applying has been detained in private or public custody. The writ is available in all cases where any illegal and improper deprivation of personal liberty of the subject has taken place. Habeas Corpus application

can either be made by the person who has been deprived of his personal liberty or it can be made by some one who is interested in the detenu.[11] In this respect, the habeas corpus proceedings differ from other writs.

Order or Writ of Quo Warranto : An Order of Quo-warranto is issued upon an information which may be lodged against a person who claims or usurps office, franchise or liberty, and upon such information being laid the court will enquire by what authority the person who claims or has usurped the office, support his claim. The proceedings are commenced in appropriate cases to have the right to the office or franchise determined. It is used to try the civil right to a public office.

The office must be a public or statutory office or created under statutory powers. The restriction in other writs that the person applying should be an agrieved party does not apply to the applicant for a writ of quo-warranto. Any person may apply, as the enquiry initiated, relates to a matter in which the public are interested, but the other condition, namely, that there is no other adequate remedy, would govern the exercise of this jurisdiction also. Where the law which creates the public office also provides the manner in which the appointment to it may be questioned, proceedings under provision of Article 102(2)(b)(ii) of the Constitution will be incompetent, as the other remedy in cases within its scope would replace quo-warranto. Quo-warranto does not lie to question the claim to and office in a private association, or an institution like a private college or school, or a private corporation.

The procedure to move the High Court Division in writ is by a verified *writ petition* and is to be moved before the Division Bench consisting of two Judges by way of motion. On hearing the advocate or the petitioner, the Court may by a summary order reject the petition. When it is admitted,

11. The Code of Criminal Procedure, 1898, Sec. 491.

a *rule nisi*[12] is issued to the respondent and the matter is decided on affidavits of the parties. In disputed facts which require calling of evidence or where there is alternative remedy, the Court usually declines to interfere. Writ matters are disposed of by *declaration, Injunction* or *quashment of the proceedings* as the relief may require.

Special and Statutory Jurisdiction

The High Court Division has some special and statutory jurisdictions. Important among them are, Admiralty jurisdiction relating to proceedings exercised under the Courts of Admiralty Act, 1891,[13] Statutory Jurisdiction under the Company Law,[14] Banking Companies Ordinance,[15] and reference under the Law relating to Income-tax,[16] and other Tax-Statutes. Under Original and Statutory jurisdiction, the High Court Division deals mostly with company matters in which are now included suits and proceedings arising under the Banking Companies Ordinance, 1962. The Court's procedure in these type of cases are principally regulated by Rules of the High Court Division.

Criminal Jurisdiction

Appellate Power : In its appellate power, the High Court Division decides appeals from the order of conviction passed on trial by Court of Sessions presided over by a Session Judge or an Additional or Assistant Sessions Judge. This appeal is know as first appeal. So long, it was only the Government who could present an appeal to the High Court Division against an original or appellate order of

12. When the Order of the Court is to show cause, it is called *rule nisi*. The *Rule* becomes imperative and final if cause is not shown against it.
13. Act XVI of 1891.
14. The Companies Act (VII of 1913).
15. Ordinance LVII of 1962.
16. The Income-tax Act (XI of 1922).

acquittal passed by any other court. The High Court Division was the only forum where such an appeal could be presented. On the report of the Law Committee, 1976, the criminal appellate jurisdiction of the High Court Division has been modified. Now the right to prefer an appeal against an order of acquittal has also been given to the complainant in a case instituted on complaint.[17]

Revisional Power : The revisional power of the High Court Division is very extensive. There is no form of judicial injustice which the High Court Division, if need be, cannot reach. The revisional power is of supervisory nature and is exercised in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment which results in some injury to public interest or undue hardship to individuals. In criminal revision, the High Court Division may call for and examine the record of any inferior court for the purpose of satisfying itself, as to the correctness, legality of the finding, sentence or order and the regularity of any proceeding before such inferior court. The revisional power is discretionery and is used to further the ends of justice.

Inherent power : In order that justice may not suffer, the High Court Division can exercise its inherent power. This extraordinary power is used to see that real and substantial justice is done, and to give effect to any order under the Law of Criminal Procedure. The inherent powers can be exercised in stopping proceedings at an interlocutory stage when there is abuse of process of the Court.

17. The new provision has been introduced by The Law Reforms Ordinance, 1978, which came into force on 1st June, 1979.

CIVIL COURTS

Civil Courts decide disputed rights between a subject and the State or between one individual and the other. It is only the suits of civil nature that can be adjudicated in civil courts. The civil courts subordinate to the High Court Division are established by or under several enactments.[15] Some of them are set up under special and others under general laws having well defined jurisdiction to administer justice in civil matters.

The district courts and courts subordinate to them shoulder the main burden of administering civil justice. The original jurisdiction of subordinate courts is invariably determined with reference to the pecuniary value involved in the suit to be tried by it and appeals for the decrees passed by them are taken to the superior court in accordance with the requirements of the provisions enacted in that behalf.

The Court of District and Additional District Judge

A District Judge exercises administrative control over all civil courts within the local limit of his jurisdiction. The local limit is determined by the Government. His administrative control is supervised by the High Court Division. A District Judge has, in respect of all suits in his district, original, appellate as well as revisional jurisdiction.

A District Judge usually does not try original suits. Under Special Acts, he is the only court competent to try certain kinds of cases such as, Insolvency cases, Guardianship cases, Probate or Administration cases etc. He can, however, delegate his function. His pecuniary jurisdiction is unlimited.

15. Constitution of Bangladesh, Art. 114 ; The Civil Courts Act (XII of 1887), Chapters II & III ; The Code of Civil Proceduce (Act V 1908), S. 3.

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Under the appellate jurisdiction, he determines appeals from the decrees or orders of subordinate Judges, where the value of the suit is taka twenty thousand or less. But he can try all the appeals from decrees or orders passed by a Munsif's Court. No second appeal lies from the decision of a District Judge given in an appeal but is reviseable by the High Court Division. This provision has been introduced by the Law Reforms Ordinance, 1978.

So long, the District Judge had no revisional power. Recently, by the Law Reform Ordinance, 1978, revisional power has been given to the District Judge and now (with effect from June 1, 1979) the District Judges have powers of revising any decision of his subordinate courts in which no appeal lies thereto, if such subordinate courts commit any error of law and in doing so, he can call for records of the same and make such order in the case as he thinks fit.

The Judicial function of an Additional District Judge is similiar to that of a District Judge. He tries those cases which are transferred to his court from the Court of the District Judge or from other Additional District Judges.

The Court of Subordinate Judge

There may be one or more Subordinate Judges in a district. The limit of his local jurisdiction is determined by the District Judge subject to any general or specific order of the High Court Division. The Government by the notification decides the place of sitting of Subordinate Judges.

Ordinarily, a Subordinate Judge exercises two types of powers, namely, Original and Appellate. His pecuniary jurisdiction in original suit is unlimited. Normally, he tries those original suits the valuation of which exceeds taka six thousand. A District Judge may transfer to a Subordinate Judge under his administrative control any pending appeal from the decree or

order of a Munsif. The appeals so transferred are disposed of by the Subordinate Judge in exercise of his appellate power as a delegate of the District Judge. At some places, Subordinate Judges have been invested with power to act as Small Causes Court. An appeal from a decree or order of a Subordinate Judge lies to the District Judge where the value of the original suit does not exceed taka twenty thousand, and to the High Court Division in any other case.

The Court of Munsif

The Court of Munsif stands at the base of hierarchy of civil courts in Bangladesh. It exercises original and revisional jurisdiction. Normally, its pecuniary jurisdiction extends to the suits of which value does not exceed taka six thousand. Some selected senior Munsifs exercise higher pecuniary jurisdiction, which in no case exceeds taka ten thousand. An appeal from a decree and order passed by a Munsif lies to the Court of District Judge. In some places, Munsifs are invested with the powers to act as a Small Causes Court. Recently the Munsif's Court has been invested with the revisional powers in petty civil matters coming from Village Courts and Conciliation Boards under two special Statutes.[19]

CRIMINAL COURTS

The Criminal Law of Bangladesh makes due allowance for existence of courts of special jurisdiction and establishes five types of criminal courts, namely, Court of Sessions, Metropolitan Magistrates, Magistrates of the First Class, Magistrates of the Second Class and Magistrates of the Third Class. These are ordinary criminal courts of the country.

19. The Village Courts Ordinance (Ordinance LXI of 1976), Sec. 4(2), and The Conciliation of Dispute (Municipal Areas) Ordinance (Ordinance V of 1979), Sec 4(2).

Sessions Courts

For the purpose of administration of criminal justice, the Republic is at present divided into as many as twenty sessions divisions and each of the sessions division constitutes a district. The local limit of each district is determined by the Government. A Court of Sessions is established in each district, a Judge is appointed for such court. A Court of Sessions may be presided over by a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge. As a rule, the District Judges of the districts concerned are appointed as Sessions Judge of the district and Additional District Judges are appointed to act as Additional Sessions Judge. When a Subordinate Judge is given the sessions powers, he acts as an Assistant Sessions Judge.

The Court of Sessions and Additional Sessions Judge

A Sessions Judge exercises three types of jurisdiction, namely, Original, Appellate and Revisional. He is the principal Judicial Officer of his district to try criminal cases.

Original Jurisdiction: In his original jurisdiction, a Sessions Judge can try any offence authorized by criminal law. But if he passes a sentence of death, the same can not be executed unless confirmed by the High Court Division. Ordinarily, an appeal lies to the High Court Division from an order of conviction and sentence passed by him in original cases.

Appellate Jurisdiction : A Sessions Judge, in his appellate power, tries appeals from the conviction and sentences of four years passed by the Assistant Sessions Judges under his jurisdiction or a District Magistrate or a Magistrate of the First Class. No second appeal lies from the judgment and order of a Sessions Judge given in an appeal but it is revisable by the High Court Division.

Revisional Jurisdiction : Under the law of criminal procedure, a Sessions Judge may call for and examine the records of any subordinate court within his jurisdiction for the purpose of satisfying himself as to the correctness, propriety or legality of the finding, sentence or order and the regularity of any proceeding before such subordinate court. When an aggrieved person wants to get an order of a court subordinate to the Court of Sessions given in a criminal proceeding revised, he has to approach the Sessions Judge in the first instance by filling a revisional petition. The bulk of bail petitions are heard under this jurisdiction.

When session power is conferred upon an Additional District Judge, he acts as an Additional Sessions Judge. His judicial functions in a sessions-court is similiar to that of a Sessions Judge. He tries those cases which are transferred or made over to him by the Sessions Judge of the district.

The Court of Assistant Sessions Judge

An Assistant Sessions Judge has only one jurisdiction, that is to say, original jurisdiction. In exercise of his original jurisdiction he can pass sentence of seven years imprisonment. Ordinarily, against his order of conviction and sentence upto four years an appeal lies to the Court of the Sessions Judge and for sentences above four years, the appeal lies to the High Court Division.

Magistrates' Courts

The Criminal Procedure Code establishes Magistrates of various classes and defines their jurisdiction to inflict sentences of various degrees. They are, Metropolitan Magistrates,

20. Code of Criminal Procedure, 1898, Ss. 6 & 32: The Code of Criminal Procedure, (Amendment) Ordinance. 1976, (Ordinance LXXXVI of 1976), S. 2 & Schedule thereto ; The Law Reform Ordinance, 1978, S. 2 & Schedule thereto.

Magistrates of the First Class, Magistrate of the Second Class and Magistrates of the Third Class. They try less serious offences. The Government appoints in every districts, a Magistrate of the First Class who is called the District Magistrate. Magistrates of the First Class are also appointed as Metropolitan Magistrates in metropolitan areas. When a Magistrate of the First Class is given the charge of the magistracy of a sub-division, he is called Sub-Divisional Magistrate. Only Magistrates of the First Class can try certain offences summarily.

Metropolitan Magistracy

The problem in Dacca metropolis having an area of about 112 square miles and a population of over two million are somewhat different from other parts of the country. Crimes like robbery, decoity, murders, kidnapping, hijacking etc. take place in the city with the criminals using more sophisticated weapons. Apart from the density problems the considerable size of the floating population poses problems for the maintenance of law and order in the city. For this, it was necessary to establish Metropolitan Police and Magistracy towards meeting the crying need for expeditious apprehensions of criminals and dispose of all criminal cases.

With this end in view, recently the Dacca Metropolitan Magistracy has started functioning with a Chief Metropolitan Magistrate and five other Magistrates with powers of the First class Magistrates. The Magistracy has to discharge judicial functions for trial of all cases under the Criminal Procedure Code excepting section 144 of the Code which is exercisable only by the Deputy Commissioner. The Magistracy has no executive function and the concerned magistrates are vested with judicial responsibilities only. Similiar Magistracy has started functioning at Chittagong. The Magistrates of the Metropolitan Magistracies are Special Magistrates and try offences under the provisions of the criminal procedural law.

First Class Magistrate

A Magistrate of the First Class can pass such sentences as are authorised by criminal law. The maximum sentence which he can pass is imprisonment not exceeding a term of three years and that he can also impose fine not exceeding taka five thousand. However, a new statute[21] makes certain cases carrying sentences exceeding three years triable by the Magistrate of the First Calss. In some cases, an appeal lies to the Court of Sessions against an order of conviction and sentence passed by him. Magistrates of this category are also empowered to make orders to provide maintenance for a wife, and child, whether legitimate or not, upto taka four hundred per month as a whole and to issue warrant to distrain upon the property of a person in arrears as though the amount unpaid were a fine.

Second Class and Third Class Magistrates

A Magistrate of the Second Class can pass sentence of imprisonment for a term not exceeding two years. He can also pass a sentence of fine not exceeding two thousand taka. A Magistrate of the Third Class has the power to pass a sentence of imprisonment for a term not exceeding one year. A Magistrate of this category can also award fine to the maximum of taka one thousand. Any person convicted on a trial held by any Magistrate of the Second Class and Third Class, may appeal to the District Magistrate and the order on appeal is revisable by the Sessions Judge.

COURTS AND TRIBUNALS OF SPECIAL JURISDICTION

In addition to the courts which exercise ordinary civil and criminal jurisdiction, there are a number of courts in Bangladesh which perform special functions of various kinds. Some of them, for instance, are Labour Courts, Labour

[21] The Code of Criminal Procedure (Second Amendment) Act, (XXX of 1980).

Appellate Tribunal, Special Tribunals, Appellate Tribunal Special Judge's Court, Village Courts and Juvenile Court. A few of them are old courts, but the greater number of them are comparatively new creations set up by the statutes to deal with the many problems arising from the States regulation of the day-to-day affairs of the citizens.

Labour Court

Labour Courts in Bangladesh, are special courts created under labour laws.[21] Each Labour Court consists of a Chairman and two Members to advise the Chairman. The Chairman is either a Judge or an Additional Judge of the High Court Division, or a District Judge or an Additional District Judge. Of the two Members, one represents the employers and the other, the workmen. They are appointed by the Government in consultation with the employers and workmen. The Government fixes the local limit of each Labour Court. A Labour Court acts both as civil and criminal court. For the purpose of adjudicating industrial disputes, it is deemed to be a civil court. In such case, civil procedural law is followed by it. For trial of offences under the labour statutes, the Labour Court enjoys the status of First-Class Magistrate and follows the summary procedure of criminal trial.

The Labour Court adjudicates different kinds of dispute, not technically industrial disputes. It adjudicates disputes that are referred to it by the Government. Besides, it determines industrial dispute relating to matters in respect of which applications are filed before it. It also decides large number of cases arising out of employment of labour. It can perform certain other functions assigned to it under the Industrial Relations Orninance, 1969.

The decision of a Labour Court may be either an *award* or an *order*. *Award* is given in industrial dispute between em-

21. Industrial Relations Ordinance, 1969, (XXIII of 1969) s. 35; Employment of Labour (Standing Orders) Act (Act VIII of 1965), s. 2(k). The Industrial Relations Rules, 1977, Chap. V.

ployer and workers collectively. An appeal may be taken to the labour Appellate Tribunal against an *award* given by a Labour Court. But there is no provision for appeal against a decision or order which is not an *award*.

Labour Appellate Tribunal

The constitution, status, functions and procedure of the Labour Appellate Tribunal are regulated under the Industrial Relations Ordinance, 1969, and the Industrial Relations Rules, 1977. The Labour Appellate Tribunal is presided over by one Member. He is appointed by the Government. As a rule, a Judge of the High Court Division is appointed to act as the Member of the Tribunal. As its name indicates, the Tribunal exercises appellate power only.

The Tribunal decides appeals against the decision of award given by the Labour Courts. It can confirm, modify, vary or set aside the *awards*. In hearing an appeal against an award, the Labour Appellate Tribunal follows the same procedure as is followed by an Appellate Court in hearing appeals as under the Code of Civil Procedure, 1908. Under certain circumstances, it can prohibit continuance of any strike or lockout. The Tribunal enjoys the status of the High Court Division in the matter of contempt of its authority. An appeal lies to the High Court Division from an order of conviction and sentence passed by the Tribunal for contempt of its authority or that of any Labour Court.

Special Tribunal

Special Tribunals are set up under a special statute called the Special Powers Act enacted in 1974[23] after liberation of the country. These are independent tribunals and exist outside the ambit of the ordinary supervisory jurisdiction of the High Court Division though amenable under its

23. Act XIV of 1974, Sec. 29.

writ jurisdiction. Besides, The High Court Division can exercise its limited jurisdiction in proceedings before Special Tribunals[23].

Special Tribunals try offences relating to sabotage, hoarding, black-marketing, smuggling; offences punishable under the Arms Act,[24] the Explosive Substances Act,[25] for illegal use of fire-arms, explosives etc. Such tribunals also try some other serious offences. Every Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge, for the areas within their sessions-division, acts as Special Tribunal. The time and place of sitting of these tribunals are determined by the Government. It follows the summary procedure of criminal trial. From its decision, order or sentence, an appeal lies to the Appellate Tribunal.

Appellate Tribunal

There is a one-man Appellate Tribunal in Bangladesh constituted under the Special Powers Act, 1974. It enjoys the power and status equal to that of the High Court Division for the purpose of the Act. The Tribunal is presided over by only one Member who enjoys the rank of a judge of the High Court Division.

The functions of the Appellate Tribunal are to dispose of all cases from different special tribunals in the country. The cases that are presented before it are either appeals from orders, judgments or sentences passed by special tribunals or matters relating to the confirmation of death sentences

24. This jurisdiction is exercisable by the High Court Division under Section 561A of the Code of Criminal Procedure, 1898. This decision has been given by the Appellate Division of the Supreme Court of Bangladesh, in the case of *Bangladesh* v. *Shajahan Seraj*, reported in (1980) 32 Dacca Law Reports (Appellate Division) at p. 1.

25. Act XI 1878.

26. Act VI of 1908.

awarded by them. In its appellate power, the Tribunal can confirm, set aside, enhance vary or modify any judgment of or sentence passed by a special tribunal. Its decision on appeal is final. It follows the same procedure as are followed by the High Court Division. The special law, however, makes provisions for constitution and establishment of more Appellate Tribunals in the country.

The Court of Special Judge

The Court of Special Judge tries corruption cases that brought against public servants. Special Judges are appointed only from among persons who are qualified for appointment as a Judge of the High Court Division or have exercised for not less than three years, the powers of a Sessions Court or a District Magistrate or an Additional District Magistrate.

At the trial of a public servant by a Special Judge under the provisions of the Criminal Law (Amendment) Act, 1958,[27] the fact that he has property disproportionate to his known sources of income, and that, at about the time of the alleged offence, he received an accretion of property for which he cannot account, may be taken into consideration in considering his guilt. The procedure followed in trial of such cases is the summons procedure of criminal trial[28].

SMALL CLAIMS AND PETTY CRIMINAL CASES :

Of late, adjudication of a big slice of civil and criminal cases have been vested in two special type of functionaries namely,

27. Act XL of 1958; The object of the Act was to facilitate the punishment of corruption and misconduct among public servants. The Penal Code (Act XLV of 1860) defines a number of offences by or relating to public servants, but proof of them is difficult, The Act provides for many offences of the kind indicated before a Special Judge.

28. Code of Criminal Procedure, 1898, Ch. XX.

the Conciliation Boards and Village Courts.[29] Conciliation Boards adjudicate small civil and petty criminal cases in municipal areas while the Village Courts perform the same type of functions in rural areas. *Both of these functionaries are the improved image of ancient panchayet system which prevailed in the country.*[30]

Conciliation Board

A Conciliation Board is formed on an application made to that effect for settlement of cases. Each Conciliation Board consists of a Chairman and two Members nominated by each of the parties to a case totalling five Members including the Chairman. One of the two Members to be nominated by each party must be a Commissioner of the Municipality concerned.

The primary function of this constituted functionary is to settle the case before it. In its civil jurisdiction, a Conciliation Board can adjudicate suits arising from contracts, receipts etc, suits for recovery of possession of immovable property, for compensation for damages of movable property, for damages by Cattle trespass. But in no case the valuation of the subject matter of a suit triable by it should exceed taka five thousand. In exercise of its criminal jurisdiction, a Conciliation Board can try less important cases connected with specific offences like asault, affray, cheating, theft, mischief, criminal intimidation, wrongful restraint and confinement, criminal breach of trust, when the value of the property involved does not exceed five thousand taka and offences relating to Cattle trespass law. In criminal cases, a Conciliation Board cannot pass any sen-

29. The Village Courts are establised under the Village Courts Ordinance, 1976 (Ord, LXI of 1976) while the the Conciliation Boards are constituted under the Conciliation of Disputes (Municipal Areas) Ordinance, 1979 (Ord. V of 1979).

30. Emphasis is mine.

tence of fine or imprisonment but it may order the accused to pay the aggrieved person compensation of an amount not exceeding taka five thousand. The Board has power to issue summons to the opposite party to appear with his witnesses and documents. A person who refuses to appear and give evidence required by the Conciliation Board makes himself liable to punishment summarily. The decisions of the Conciliation Boards are treated as decrees and enforceable in accordance with the procedure laid down in the statute.

If the decision in such Board is unanimous or by a majority of four to one, that decision is final. But any party to dispute may prefer a revisional application to the Sub-divisional Magistrate in criminal cases and to the Munsif concerned in civil cases if the decision of the Board is by a majority of three to two. No lawyer is allowed to appear before such a Board on behalf of any party to the dispute.[31]

Village Court

Village Courts adjudicate petty civil and criminal matters in rural areas. A Village Court consists of a Chairman and two Members nominated by each of the parties to the dispute totalling five Members including its Chairman. One of the two Members nominated by each party to a dispute must be a member of the local Union Parishad. When the decision of such a court is uninimous or by a majority of four to one, that decision is final. On the other hand, if the decision of the court is by a majority of three to two, any party to the dispute may prefer a revisional application to the Sub-Divisional Magistrate in criminal cases and to the Munsif concerned if the same arises from and out of a civil matter. No lawyer is allowed to appear before such a court

31. The practice and procedure followed by a Concilation Board has been detailed in The Conciliation of Dispute (Municipal Areas) Rules, 1980.

on behalf of any party to the dispute. The matter in dispute does not exceed taka five thousand in valuation and the compensation awarded by a Village Court must not exceed taka five thousand.

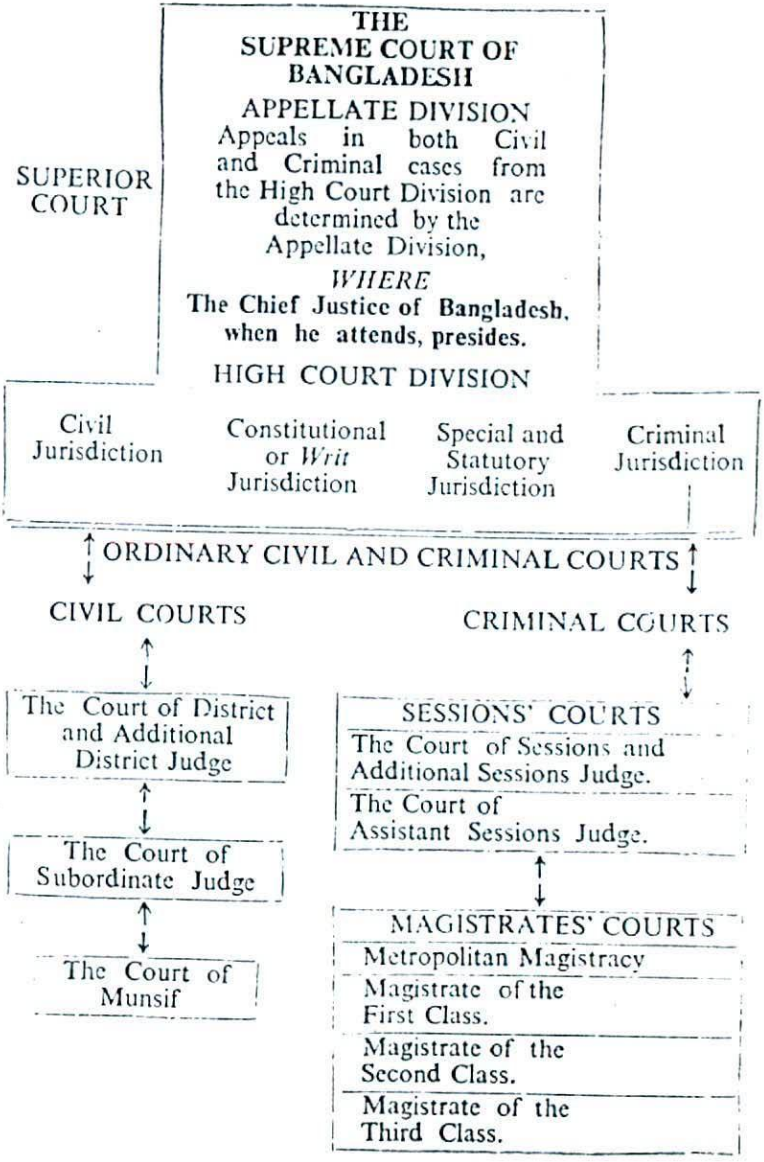
Juvenile Court

A Juvenile Court has been set up under a special statute, called the Children Act, 1974,[32] at Tongi, Dacca, to try cases connected with juvenile delinquency. The court so set up is the first court of its kind established after liberation of the country. The Act, however, provides for establishment of more Juvenile Courts for any local area. The powers and functions of the Juvenile Court has been elaborated in statute under which it is set up. The powers conferred on a Juvenile Court may also be exercised by the High Court Division of the Supreme Court of Bangladesh, a Court of Sessions, a Court of an Additional Sessions Judge and of an Assistant Sessions Judge, a Sub-Divisional Magistrate and a Magistrate of the First Class, when trying any case originally or on appeal or in revision.

The procedure of the court is regulated by the statute and the Criminal Procedure Code, 1898, but for passing any order a Juvenile Court is required to take into consideration certain factors like the character and the age of the child, the circumstances in which the child lives, etc. The law prohibits the use of the words 'conviction' and 'sentenced' in relation to children or youthful offenders dealt with under the law. An appeal from an order passed by a Juvenile Court or Magistrate functioning as a Juvenile Court, lies to the Court of Sessions. If the order is passed by a Court of Sessions or Court of an Additional Sessions Judge or of an Assistant Sessions Judge when they act as Juvenile Court, an appeal against such order may be preferred before the High Court Division.

32. Act XXXIX of 1974, Sec. 3.

HIERARCHY OF COURTS



COURTS AND TRIBUNALS OF SPECIAL JURISDICTION