

CHAPTER VIII

CRIMINAL PROCEDURE AND LAW

1. LAW OF CRIMINAL PROCEDURE

Laws relating to criminal procedure has been contained in the Code of Criminal Procedure, 1898(Act V of 1898). The Code specifies the classes of the courts and their jurisdictions in which offenders may be prosecuted and prescribes the procedure which is to be followed by the various criminal courts in an enquiry, trial or any other proceeding.

Under the Code besides the Supreme Court, there are five classes of criminal courts in Bangladesh, namely, Courts of Session; Metropolitan Magistrates; Magistrates of the first class; Magistrates of the second class; Magistrates of the third class.¹ The government shall establish a Court of Session for every sessions division, and appoint a judge of such Court; and the Court of Session for a Metropolitan area shall be called the Metropolitan Court of Session.² In every district outside a Metropolitan area the government shall appoint a Magistrate of the first class who shall be called the District Magistrate.³ The government may place any Magistrate of the first class or second class in a *upazilla* and such Magistrate shall be called the *Upazilla Magistrate*.⁴

Cases may be started before the criminal courts either on reports made by the police or on complaints lodged by private

persons. The Code not only gives the rights to make complaints to private persons but it makes it incumbent on the public to give information to the police of the commission or the intended commission of certain offences.⁵ The duty of aiding Magistrate and police officer in making arrest and in preventing certain offences is also laid on the public.⁶ The Code also entitles private persons to arrest persons in certain cases and make over persons so arrested without unnecessary delay to a police officer.⁷ The law enjoins all persons to attend before Magistrates and police officers to give evidence about the commission of offences within their cognizance whenever called upon to do so.⁸

Offences in Bangladesh are either non-cognizable in which case a complaint to a Magistrate is normally the only way in which an inquiry into them can be started, or cognizable, in which case it is possible to set the machinery of law in motion by reporting the matter to a police station for the police have a duty to investigate cognizable cases, and power to arrest without warrant any person reasonably suspected of having concerned in a cognizable offence.⁹ In such cases the investigation results in a police report upon which proceedings in respect of the offence are initiated before a Magistrate.

The manner of trial of offences varies according to the seriousness of the offence. The more serious the offence the greater the elaborateness of the procedure. No sentence of imprisonment exceeding three months can be passed in cases tried in a summary manner.¹⁰ Offence which merit a severer punishment are tried as warrant cases¹¹ with a more detailed procedure. Offences of a still graver nature can only be tried by a Court of session or the High Court Division of the Supreme Court and a special procedure is provided.¹²

The Code of Criminal procedure, 1898, provides for appeal to the higher criminal court from the judgment or order of a lower criminal court.¹³ The higher criminal court has the power to call for records of inferior courts in some specified cases.¹⁴ The High Court Division of the Supreme Court has the power of revision in some specified cases.¹⁵ The said Division has the inherent power to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.¹⁶

Before closing the discussion a few words as regards granting of bail may be pointed out. The Code provides that when any person other than a person accused of a non-bailable offence or the person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a court may be released on bail; but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life.¹⁷ The court is empowered to direct that any person under the age of sixteen years or any women or any sick or infirm person accused of such an offence be released on bail.¹⁸ The court has also the discretion to give bail to the accused at any stage of the investigation, inquiry or trial of the case.¹⁹

2. SUBSTANTIVE CRIMINAL LAW

The Penal Code, 1860(Act XLV of 1860), is universally acknowledged to be a monument of codification and everlasting memorial to the high juristic attainments of its distinguished author,²⁰ Lord Macaulay. The Code deals with substantive crimes and their punishments. It provides that all persons

irrespective of rank, nationality, caste or creed, are equally liable for offence committed within Bangladesh.²¹

Under the Code the punishments to which the offenders are liable are: death; transportation; imprisonment -- rigorous and simple; forfeiture of property; and fine.²²

The Code provides that when a criminal act done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.²³ All members of an unlawful assembly are liable for a crime committed by one of them in prosecution of the common object.²⁴

The general exceptions in this Code by and large include most of the familiar exemptions from liability known to common law²⁵ such as mistake, ignorance, accident and consent and also the heads of want of criminal capacity like infancy, insanity, drunkenness and coercion.²⁶ The right of private defence may be exercised to forestall offences against the body, theft, robbery, mischief and criminal trespass, even when directed against the person or property of another.²⁷

Homicide is murder, punishable with death or transportation for life, on proof of an intention to cause death or an injury sufficient in the ordinary course of nature to cause the death of an average man, or if the victim is subject to a physical infirmity known to the offender, an injury likely to cause the death of that person.²⁸ If the fatal injury is caused on grave and sudden provocation or in a sudden fight on equal terms, the crime is culpable homicide, punishable with transportation for life, or imprisonment for not more than ten years.²⁹

Wrongful restraint is abstracting a person from proceeding in a direction in which he has a right to go³⁰; if the restriction covers all directions, it is a wrongful confinement.³¹ Taking a

male under fourteen or a female under sixteen out of the keeping of any person lawfully entrusted with the child's custody is kidnapping³² Whoever by force compels, or by deceitful means induces, any person to go from any place, is said to abduct that person.³³

The best Chapter in the Code deals with offences against property.³⁴ Theft is moving property with intent to dishonestly to take it out of the possession of another without his consent.³⁵ Extortion is inducing a person to part with property by threat of any harm, not necessarily to the victims, in mind, body, reputation or property.³⁶ Theft becomes robbery if in order to take or carry away the property, the theft causes hurt or wrongful restraint or threatens instant hurt or wrongful restraint.³⁷ Extortion is robbery if the offender is in the immediate presence of his victim, and threatens instant hurt or wrongful restraint.³⁸ If the persons, present and aiding when robbery is done or attempted, are five or more in number, the offence is dacoity.³⁹

Criminal misappropriation is committed whenever a person dishonestly converts to his own use any movable property.⁴⁰ Criminal breach of trust is dishonestly misappropriating or converting to one's own use property entrusted to one or dishonestly disposing of it in violation of the terms on which it was received or any provision of law.⁴¹ Cheating is fraudulently or dishonestly inducing a person to deliver property or consent that another shall retain property.⁴² Criminal Trespass is entering on another's property with intent to commit an offence or intimidate, insult or annoy the person in possession.⁴³ If the property is a building, tent or vessel, used as a human dwelling or for worship or the custody of property, the offence is house-trespass.⁴⁴

Offences against the State include waging war, attempting to wage war, abetting waging of war against the State, all of which are punishable with death or transportation for life.⁴⁵ Conspiracy to do any of these things and collecting men, arms or ammunition in preparation are punishable with transportation for life or imprisonment which may extend to ten years.⁴⁶

Any act which causes or must necessarily cause common injury, danger or annoyance to the people living or occupying property in the vicinity, or people who may have occasion to exercise a public right is a public nuisance and punishable with fine or imprisonment.⁴⁷ Adulterating food, drink or drugs and knowingly selling such articles are crimes.⁴⁸ Negligently driving a vehicle on a public way, negligently navigating a vessel and conveying passengers in an unsafe or over-loaded vessel, whether knowingly or negligently are offences.⁴⁹

Defamation is the publication of any imputation concerning another having reason to believe that it will harm his reputation by lowering, in the estimate of others, his moral or intellectual character or his character in respect of his caste or calling or by lowering his credit or by suggesting that his body is in a loathsome or disgraceful state.⁵⁰

Among the offences relating to marriage, bigamy is only an offence if a person goes through the necessary ceremony for a marriage, when it is void by that person's personal law, because he or she has a spouse living.⁵¹ Another offence in the same Chapter is inducing a woman to cohabit by falsely representing that she is married to the offender.⁵² Fraudulently going through ceremony, knowing that it does not create a valid marriage, and sexual intercourse with a woman who is and whom the offender has reason to believe to be, the wife of another, are crimes under

the Code.⁵³ So also in the taking a married woman from the person in lawful charge of her with intent that she *may have* illicit intercourse.⁵⁴

3. LAW OF EVIDENCE

The Evidence Act, 1872 (Act I of 1872), which is applicable in civil and criminal cases, was passed in order to consolidate, define and amend the law of evidence. This Act is "a unique piece of legislation the like of which is not to be found anywhere else in the world. In the symmetry of its structure, in the clearness and fullness of its outline, in the terseness of its expressions, and in the compactness of its subject matter, the work stands out unrivalled and unparalleled."⁵⁵

Part I of the Evidence Act, 1872, deals with what facts may and what facts may not be proved in civil suits or criminal cases. Evidence may be given of facts in issue and relevant facts.⁵⁶ Admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact.⁵⁷ A confession made by an accused person is irrelevant in an original proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise.⁵⁸ A confession made to a police officer shall not be proved against a person accused of any offence.⁵⁹ Statements or relevant facts made by a person who is dead, or who cannot be found, etc. are themselves relevant facts in some stated circumstances.⁶⁰ Opinions of experts in foreign law, science, or art are admissible when the court has to form an opinion on the matters in which they are experts.⁶¹ The existence of a judgment, decree or order of any court is a relevant fact.⁶² Character is relevant in some stated circumstances.⁶³

Part II deals with proof, some facts need not be proved at all, because the court will take judicial notice of them, if they are relevant to the issue.⁶⁴ But where a fact requires proof, the rule is that it must be proved either by oral evidence or by documentary evidence. All facts, except the contents of documents, may be proved by oral evidence.⁶⁵ Oral evidence must in every case be direct.⁶⁶ Documentary evidence is either primary or secondary.⁶⁷ Primary evidence means the document itself produced for the inspection of the court.⁶⁸ Secondary evidence is admissible when the original is in the possession of the party against whom it is to be proved or of a person not obliged to produce it or who does not produce it after being given notice; it may be given when the original is lost or destroyed or when the original is a public document.⁶⁹

part III deals with production and effect of evidence. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.⁷⁰ The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.⁷¹ But the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.⁷² The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.⁷³

Estoppel prevents a party who has intentionally cause another to believe a thing to be true and to act on it, from denying the truth of that thing in civil proceedings between them.⁷⁴

A witness shall be first examined-in-chief, then if the adverse party so desires cross-examined.⁷⁵ Leading question, a

question suggesting the answer expected, may be asked in cross examination.⁷⁶ Witnesses to character may be cross examined and re-examined.⁷⁷ The credit of a witness may be impeached in some specific ways by the adverse party, or with the consent of the court by the party who calls him.⁷⁸ The Judge may in order to discover or to obtain proper proof of relevant facts, ask any question he pleases to any witness and may order the production of any document or thing; but he must base his statement on facts declared by this Act to be relevant.⁷⁹

The Evidence Act, 1872, concludes with the following words: "the improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if . . . there was sufficient evidence to justify the decision or . . . if the rejected evidence had been received, it ought not to have varied the decision."⁸⁰ This implies that an objection to the improper admission of evidence is material only if it can be shown that the exclusion of evidence improperly admitted is fatal to the decision.

NOTES AND REFERENCES

1. Section 6 of the Code of Criminal Procedure, 1898.
2. Section 9(1), *ibid.*
3. Section 10(1), *ibid.*
4. Section 13A(1), *ibid.*
5. Section 44., *ibid.*
6. Section 42, *ibid.*
7. Section 59, *ibid.*
8. Sections 90 and 160, *ibid.*

9. Sections 149-153. *ibid.*
10. Sections 260-164. *ibid.*
11. 'Warrant case' means a case relating to an offence punishable with death, transportation or imprisonment for a term of not less than two years." Section 4(w) of the Code of Criminal Procedure. 1898.
12. Section 265A-265L, *ibid.*
13. Sections 404-431, *ibid.*
14. Section 435, *ibid.*
15. Section 439, *ibid.*
16. Section 561A, *ibid.*
17. Sections 496 and 497(1), *ibid.*
18. proviso to section 497(1), *ibid.*
19. Section 497(2), *ibid.*
20. L. Kabir, *Lectures on the Pakistan Penal Code with Leading Cases*, (Dhaka : Law House Publication, 1970) pp. 5-6.
21. *Ibid.*, at p. 23; section 2 of the Penal Code, 1860.
22. Section 53, *ibid.*
23. Section 34, *ibid.*; *Barendra Kumar Ghose v. King Emperor*, 52 I.A. 40; *Mahbub Shah v. King Emperor*, 72 I.A. 148.
24. Section 149 of the Penal Code, 1860; *Rahman Sardar v. Crown*, 7 D.L.R. (1955)572; *Janab Ali v. State*, 12 D.L.R. (1960) 808.
25. M.C. Setalvad, *supra.*, at p. 142.
26. Sections 76-95 of the Penal Code, 1860.

27. Sections 96-106, *ibid.* *State v. Manzoor*, 18 D.L.R. (S.C.) (1966) 444; *Sultan Muhammad v. Crown*, P.L.D. 1955, Lahore 575.
28. Section 300 of the Penal Code, 1860; *Reg. v. Govinda*, (1876) 1 I.L.R. Bombay 342.
29. Section 299 of the Penal Code, 1860; *Reg. v. Govinda*, (1876) 1 I.L.R. Bombay 342.
30. Section 339 of the Penal Code, 1960.
31. Section 342, *ibid.*
32. Section 361, *ibid.*
33. Section 362m, *ibid.*
34. Alan Gledhill, *supra.* at p. 268.
35. Section 378 of the Penal Code, 1860.
36. Section 383, *ibid.*
37. Section 390, *ibid.*
38. *Ibid.*
39. Section 391, *ibid.*
40. Section 403, *ibid.*
41. Section 405, *ibid.*
42. Section 415, *ibid.*
43. Section 441, *ibid.*
44. Section 442, *ibid.*
45. Section 221, *ibid.*
46. Sections 221A and 222, *ibid.*
47. Section 268, *ibid.*
48. Sections 272-276, *ibid.*
49. Sections 279-282, *ibid.*

50. Section 499, *ibid.*
51. Sections 494-495, *ibid.*
52. Section 493, *ibid.*
53. Sections 496-497, *ibid.*
54. Section 498, *ibid.*
55. M. Monir, *Principles and Digest of the Law of Evidence* (Allahabad : University Book Agency, 1986) Vol. I, p. XXIII
56. Section 3 of the Evidence Act, 1872.
57. Section 17, *ibid.*
58. Section 25, *ibid.*
59. Section 25, *ibid.*
60. Section 32, *ibid.*; *Khushal Rao v. State of Bombay*, 1958 S.C.R. 552.
61. Section 45 of the Evidence Act, 1872.
63. Sections 53-55, *ibid.*
64. Section 56, *ibid.*
65. Section 59, *ibid.*
66. Section 60, *ibid.*
67. Section 61, *ibid.*
68. Section 62, *ibid.*
69. Section 65, *ibid.*
70. Section 101, *ibid.*
71. Section 102, *ibid.*
72. Section 103, *ibid.*; *Muhammad Zaker v. Mastanser*, P.L.D. 1961 Dhaka 1.

73. Section 114, *ibid.*; *Haridas Chatterjee v. Manmatha Nath Mullick*, 160 I.C. 332.
74. Section 115 of the Evidence Act, 1872; *Lal Khan v. Allah Ditta*, P.L.D. 1950 Lahore 196.
75. Section 138 of the Evidence Act, 1872.
76. Sections 141 and 143, *ibid.*
77. Section 140, *ibid.*
78. Section 155, *ibid.*
79. Section 165, *ibid.*
80. Section 167, *ibid.*

CHAPTER IX

LEGAL EDUCATION, PROFESSION AND INSTITUTION

1. EDUCATIONAL INSTITUTIONS AND DEGREES

In Bangladesh legal education is imparted to the students/scholars in the Faculty of Law, University of Dhaka, in the Faculty of Law, University of Rajshahi, in the Institute of Bangladesh Studies, University of Rajshahi, and in the Faculty of *Sharia*, Islamic University. Besides these institutions, legal education is imparted in the different law colleges which are affiliated to the University of Dhaka, University of Rajshahi and University of Chittagong. In all these institutions the following degrees are awarded to the students/scholars after successfully completing the courses:

(a) **Bachelor of Law (Honours)**:- 4 years undergraduate Bachelor of Law (Honours) course has been introduced in the Department of Law which is under the Faculty of Law, University of Dhaka, and in the Department of Law which is under the Faculty of Law, University of Rajshahi and in the Department of *Sharia* which is under the Faculty of *Sharia*. In this Honours course as per recommendation of the Legal Education Committee of the Bangladesh Bar Council the major laws are taught such as Jurisprudence, Roman Law, Personal Law (Muslim Law and Hindu Law), Equity, Tort,

Constitutional Law, Criminology, Civil Laws, Labour Law, Criminal Law, Law of Evidence, Land Law, International Law etc. Annual Course system has been introduced in which at the end of each academic year course final examination is held. Gradation of the merits of the students are evaluated and divided into three classes: first class who obtain 60% marks in average; second class who obtain 45% marks in average; third class who obtain 36% marks in average.

(b) **Bachelor of Law** :- two years post-graduate Bachelor of law course has been introduced in the different law colleges which are affiliated to the University of Dhaka, University of Rajshahi or University of Chittagong on the territorial basis. The *curriculum*, the examination and all the academic matters are conducted by the Faculty concerned. The syllabus of the course is more or less same as prevalent in the Bachelor of Law (Honours) course; but the technical difference is that, in the case of Bachelor of Law, course has to be completed within two years. Annual written examination is held at the end of each academic session. Gradation of the merits of the students are evaluated in the same manner as the merits of the students of the Honours course are evaluated.

(c) **Master of Law** :- Master of Law course is taught in the Departments of law, Universities of Dhaka and Rajshahi. In the Department of law, University of Dhaka, two LL.M. courses have been introduced: Course-A and Course-B. The duration of Course-A is one year which is meant for the students who have successfully completed Bachelor of Law (Honours) course. Annual written examination is held at the end of academic session. The duration of Course-B is two years which is meant for the students who have successfully completed Bachelor of Law course with at least 45% marks in average. The students of Course-B need not attend the classes—only registration is

sufficient to appear at the examination and preparation of the dissertation for the award of the degree. Gradation of the merits of the students of **Course-A and Course-B** are evaluated in the same manner as the merits of the students of the Honours course are evaluated.

In the Department of Law, University of Rajshahi, two Master of Law courses have been prevalent: Master of Law, Part I and master of Law Final. One year Master of Law Part I is meant for the students who successfully completed Bachelor of Law course; and one year Master of Law Final course is meant for the students who have successfully completed Bachelor of Law (Honours) course or master of Law Part I course. The final position is that those students who have completed Bachelor of Law course are to require two years and those students who have completed Bachelor of Law (Honours) course are to require one year for obtaining Master of Law degree.

(d) **Master of Philosophy** : Two years Master of Philosophy in Law course has been in existence in the Faculty of Law, University of Dhaka, in the Faculty of Law, University of Rajshahi, and in the Institute of Bangladesh Studies, University of Rajshahi. In the case of Faculty of Law, University of Dhaka, the research scholar has to complete in the first year course work and to pass written examination; and in the second year he has to write dissertation duly approved by the authority of the University. In the case of the Institute of Bangladesh Studies the research scholar has to complete in the first year inter-disciplinary course work and in the second year he has to write independent thesis duly approved by the authority of the University. In the case of Faculty of Law, Rajshahi University, the research scholar has only to write a thesis duly approved by the authority of the University.

(e) **Doctor of Philosophy** : Two years Doctor of Philosophy in law course is prevalent in the Faculty of Law, University of Dhaka, in the Faculty of Law, University of Rajshahi, and in the Institute of Bangladesh Studies, University of Rajshahi. The degree is awarded to a scholar who has earned his distinction by writing a thesis duly approved by the authority of the University concerned.

(f) **Doctor of Law** :- Two years Doctor of Law course is in existence in the Faculty of Law, University of Dhaka. The research scholar must have general knowledge in every branch of laws of Bangladesh. He is to write a thesis which distinctively contributes to the existing literature of law.

2. LEGAL PROFESSION

The procedure for practising the profession of law has been contained in the Bangladesh Legal Practitioners and Bar Council Order, 1972 (Order XLVI of 1972). The said Order provides that no person shall be entitled to practise the profession of law unless he is an advocate.¹ A person shall be qualified to be admitted as advocate if he fulfils the following conditions, namely, (a) he is a citizen of Bangladesh; (b) he has completed the age of twenty-one years; (c) he has obtained a degree in law from any University of Bangladesh or a Bachelor degree in law from any University outside Bangladesh recognised by the Bar Council or he is a Barrister; (d) he has passed such examinations as may be prescribed by the Bar Council; and (e) he has paid such enrolment fee and fulfils such other conditions as may be specified.²

Before a person is admitted as an advocate, the Bar Council may require him to undergo regular training for a continuous

period of six months as a pupil in the chamber of an advocate of 7 years' experience.³ Every applicant for admission as an advocate shall have to pass a written examination and *viva voce* examination held under the direction and supervision of the Bar Council.⁴ A person who has obtained LL.M. degree shall not be required to appear in the written examination but shall be required to appear in the *viva voce* examination.⁵ No person shall practise as an advocate unless he is a member of a local Bar Association which is recognised by the Bar Council.

No advocate shall be permitted to practise before the High Court Division of the Supreme Court unless -- (a) he has practised as an advocate before the subordinate courts in Bangladesh for a period of two years; (b) he is a law graduate and has practised as an advocate before any High Court outside Bangladesh; (c) he has, for reason of his legal training or experience, been exempted by the Bar Council from the foregoing requirements; and (d) he has paid prescribed fees.⁶

Besides practising in the different courts, the advocates are entitled to be legal advisers, legal consultants in different organisations. Some of them become public prosecutors to act on behalf of the Government when the Government is a party to suit. Some of the advocates become notary public for certifying deeds or other documents on behalf of the Government.

3. BANGLADESH BAR COUNCIL

In accordance with the provisions of the Bangladesh Legal Practitioners and Bar Council Order, 1972, the Bangladesh Bar Council, the term of which is three years, consists of fifteen members of whom -- one is the Attorney General for Bangladesh, *ex officio*; seven are elected by the advocates on the

roll from amongst their members; and seven are elected by the advocates on the roll from seven groups of Bar Associations.⁷ The Attorney-General for Bangladesh shall be the Chairman *ex officio* of the Bar Council.⁸ The Vice Chairman of the Bar Council shall be elected by the members of the Council from amongst themselves.⁹

The functions of the Bar Council *inter alia* are—to admit persons as advocates on its roll, to hold examinations for purposes of admission, and to remove advocates from such roll; to prepare and maintain such roll; to lay down standard of professional conduct and etiquette for advocates; to entertain and determine cases of misconduct against advocates on its roll and to order punishment in such cases; to promote legal education and to lay down the standards of such education in consultation with the Universities in Bangladesh imparting education.¹⁰ The Bar Council constitutes the following standing committees: the executive committee; the enrolment committee; the finance committee; and the legal education committee.¹¹

4. BAR ASSOCIATIONS

In Bangladesh there are several Bar Associations, some of them are recognised by the Bangladesh Bar Council and some of them are not recognised. At the apex remains the Federation of the Bar Associations. The Supreme Court Bar Association is the most important Bar Association in Bangladesh which has a historic role to play in maintaining and upholding independence of judiciary and the practising lawyers. This Bar Association consists of the advocates who practise law in the High Court Division, as well as well as in the Appellate Division of the Supreme Court of Bangladesh.

Next to the Supreme Court Bar Association the District Bar Association, situated at the headquarters of each district consisting of the local practitioners, is an important Bar Association which is recognised by the Bangladesh Bar Council. Recently a *Upazilla* Bar Association has been formed by the local practitioners at the headquarters of each *upazilla*.

In this connection it should be noted that any Association of advocates ordinarily practising at a place may apply to the Bar Council for recognition as a Bar Association.¹² The application shall be filed by the President or Secretary of the Association and the Bar Council shall decide the application for recognition of a Bar Association within four months of the submission of the application in this behalf.¹³

5. LAW FIRMS

In Bangladesh there are some law firms most of which are located in Dhaka. In most cases they are not registered, so they are not partnership firms within the meaning of the partnership Act, 1932. They are not to be used in the western sense. In these law firms some junior or less prominent lawyers are associated with a prominent lawyer to give a collaborative advice to their clients or to plead the cases of their clients jointly.

Among the famous law firms the following may be mentioned : (a) Kamal Hossain and Associates led by Dr. Kamal Hossain, a former Foreign Minister of Bangladesh; (b) Huq and Company led by Barrister Rifique-ul Huq; (c) Chancery Chambers led by Barrister Nazmul Huda; (d) House of Law led by Barrister Mozammel Huq Bhuiya and Barrister Rabeya Bhuiya; (e) Law Center led by Barrister Molnur Reza Chowdhury; (f) Law Associates led by Barrister Aminul Islam;

(g) B. Ahmed and Company led by Mr. B. Ahmed; (h) Orr Dignam and Company led by Mr. Hafizullah; (i) T. Rahman and Company led by Barrister Tufailur Rahman; (j) Chamber of Law led by Khondker Mahbub Hossain; (k) Shafique and Company led by Barrister Shafique Ahmed.

It should be noted in this connection that most of the prominent lawyers of the Supreme Court of Bangladesh were educated in London where they completed the course of Barrister-at-law and become well-versed in the common law system which has a profound influence in the legal system of Bangladesh.

6. LEGAL ORGANISATIONS

In Bangladesh there are many legal organisations, almost all of which are situated in Dhaka, Capital of Bangladesh. Some of these legal organisations do not bear any significance. Only a few number of organisations are active in implementing the aims and objectives for which they were established. Bangladesh Institute of Law and International Affairs, Institute of Human Rights and Legal Affairs, Society for the Enforcement of Human Rights, Institute of Democratic Rights, Humanist and Ethical Association of Bangladesh which have more or less the common aims and objects: (a) to undertake, study and research of the existing laws of Bangladesh; (b) to uphold the rule of law and the sanctity and inviolability of the Constitution of the country; (c) to uphold and protect the independence of judiciary and the independence of judges; (d) to uphold human rights and fundamental freedoms and to create awareness and make people conscience of their basic legal and human rights by holding seminars, symposiums and through write-up in the newspapers

and magazines; (e) to render legal aid and assistance to person or persons in his or their struggle against all forms of oppression, discrimination and unjust laws.

There are some technical differences between these organisations. Bangladesh Institute of Law and International Affairs is a semi-governmental organisation engaged mainly in publishing law books and journals, sponsoring research projects and organising seminars and symposiums. Institute of Human Rights and Legal Affairs is an independent self-financed non-governmental organisation which is affiliated to the International Commission of Jurists, Geneva, Switzerland. In the recent years this Institute has earned international reputation in upholding the rule of law, independence of judiciary and fundamental human rights. Society for the Enforcement of Human Rights has earned its reputation by giving legal aids to the poor people in upholding their legal and human rights. Institute of Democratic Rights is engaged in translating statutes and organising training programmes for the apprentice-lawyers. The Humanist and Ethical Association of Bangladesh is affiliated to the International Humanist and Ethical Union, Utrecht, the Netherlands. It has been working for the establishment of rule of law, independence of judiciary and enforcement of human rights and fundamental freedoms.

7. REPORTING COURT DECISIONS

Under the Muhammadan system of law there was no doctrine of judicial precedent; the texts of the jurists remained the abiding source of the rule of law. Since the enactment of the Law Reports Act, 1875 (Act XVIII of 1875), official reports of the decisions of the superior courts have been regularly being

published with the result that the rule governing a case is now deduced less from the text of a joint or a section of a statute than from the interpretation put upon it in a binding reported decision. The Law Reports Act, 1875, did not apply to the decisions of the Privy Council and the Federal Court. But the Privy Council Reports published by the Incorporated Society of Law Reporting of England and Wales, and the Federal Court Reports and the Supreme Court Reports published under the authority of those Courts have been made available to the subordinate courts. Reports of High Court decisions were published under the authority of the statute, the editor being a practising lawyer, assisted by a committee selected from the Bench and Bar; of necessity the selection of cases for publication depends upon their judgment.

There are also unofficial reports which include judgments not printed in the authorised reports. The Law Reports Act, 1875, 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 reports.¹⁴

During the British regime, there were a number of unofficial reports which earned reputation. Among these Indian Appeal (I.A.) popularly known as Moore's Indian Appeal (M.I.A.); the Indian Law Reports (I.L.R.); the All Indian Reporters (A.I.R.); the Bengal Law Reports (B.L.R.); the Indian Cases (I.C.); the Calcutta Law Journal (C.L.J.); the Calcutta Law Reports (C.L.R.); the Calcutta Weekly Notes (C.W.N.) were important. Some of them are still being published. After the creation of Pakistan some new law journals began to be published, such as the All Pakistan Legal Decisions (P.L.D.); the Pakistan Law Reports (P.L.R.); the Dhaka Law Reports (D.L.R.), the All Pakistan Legal Decisions and the Dhaka Law Reports are still

being published from Lahore and Dhaka respectively. After the emergence of Bangladesh some new journals have began to be published such as the Bangladesh legal Decisions (B.L.D.); the Bangladesh Supreme Court Reports (B.S.C.R.); the Bangladesh Case Reports (B.C.R.). But there is a gradual degradation of the standards of these journals which is remarkably evidenced.

NOTES AND REFERENCES

1. Article 19(1) of the Legal Practitioners and Bar Council Order, 1972.
2. Article 27(1), *ibid*
3. Article 27(2), *ibid*.
3. Article 27(2), and rule 60(1) of the Bangladesh legal Practitioners and Bar Council Rules, 1972.
4. Rule 60A, *ibid*.
5. Rule. 60C, *ibid*.
6. Articles (1), 21(2) and 22(1) of the Bangladesh Legal Practitioners and Bar Council Order, 1972.
7. Section 3(2), *ibid*.
8. Section 6(2), *ibid*.
9. Section 6(3), *ibid*.
10. Section 10, *ibid*.
11. Section 11, *ibid*.
12. Article 67(1), *ibid*.
13. Article 67(3), *ibid*.
14. Section 4 of the Law Reports Act, 1875.

CHAPTER X

RECENT LEGAL DEVELOPMENTS

1. LAW RELATING TO OMBUDSMAN

In the recent years some developments take place in the legal system of Bangladesh. One of these developments is the establishment of the office of the Ombudsman under the Ombudsman Act, 1980 (Act XV of 1980), which was promulgated in conformity with the provision of Article 77 of the Constitution of Bangladesh, 1972. The Ombudsman Act, 1980, provides that there shall be an Ombudsman who shall be appointed by the President on the recommendation of Parliament.¹ Parliament shall recommend for appointment as Ombudsman a person of known legal and administrative ability and conspicuous integrity.²

The Ombudsman may investigate any action taken by a Ministry, a statutory public authority, or a public officer in any case where -- (1) a complaint in respect of such action is made to him by a person— (a) who claims to have sustained injustice in consequence of such action; or (b) who affirms that such action has resulted in favour being unduly shown to any person or in accrual of undue personal benefit or gain to any person; (2) information has been received by him from any person or source, otherwise than on a complaint, that such action is of the nature mentioned above.³

If, after investigation of an action under this Act, it appears to the Ombudsman that injustice has been caused to the complainant or to any other persons in consequence of maladministration in connection with such action, the Ombudsman shall, by a report in writing, recommend to the competent authority concerned that such injustice should be remedied in such manner and within such time as may be specified in the report.⁴

2. LAW RELATING TO ADMINISTRATIVE TRIBUNAL

The Law relating to Administrative Tribunal has been contained in the Administrative Tribunals Act, 1980 (Act VII of 1981), which was promulgated in conformity with Article 117 of the Constitution of Bangladesh, 1972. An Administrative Tribunal, established by the Government, consists of one member who shall be appointed by the Government from among persons who are or have been District Judges.⁵ An Administrative Tribunal shall have exclusive jurisdiction to hear and determine applications made by a person in the service of the Republic in respect of the terms and conditions of his service including pension rights, or in respect of any action taken in relation to him as a person in the service of the Republic.⁶

An Administrative Appellate Tribunal, established by the Government, consists of one member who shall be appointed by the Government from amongst persons who are or have been or are qualified to be Judges of the Supreme Court of Bangladesh.⁷ The Administrative Appellate Tribunal shall have jurisdiction to hear and determine appeals from any order or decision of an

Administrative Tribunal and the decision of the Administrative Appellate Tribunal in an appeal shall be final.⁸

All decisions and orders of the Administrative Appellate Tribunal shall be binding upon the Administrative Tribunals and the parties concerned.⁹ All decisions and orders of the Administrative Tribunal shall, subject to the Administrative Appellate Tribunal, be binding on the parties concerned.¹⁰ No proceedings, order, decision of a Tribunal shall be liable to be challenged, reviewed, quashed or called in question in any court.¹¹

3. LAW RELATING TO REORGANISATION OF ADMINISTRATION AND JUDICIARY

The Government that was established after the Proclamation of Martial Law on the 24th March, 1982, decided to reorganise the administration at the *upazilla* level. Under this reorganised set-up each *upazilla* will be the focal point of all administrative activities. With these ends in view the Local Government (*Upazilla Parishad* and *Upazilla Administration Reorganisation*) Ordinance, 1982 (Ordinance LIX of 1982), was promulgated. Under the Ordinance there shall be constituted a Parishad at every *upazilla* to be called *Upazilla Parishad*.¹² A *Upazilla Parishad* consists of Chairman, representative members, three women members, official members, Chairman of the *Upazilla Central Co-operative Association*, and one nominated member.¹³

The Chairman shall be elected for five years by direct election on the basis of adult franchise.¹⁴ The executive power of a *Parishad* vests in, and is exercised by, the Chairman either

directly or through the *Upazilla Nirbahi Officer* (U.N.O.) or any other officer or person authorised by him.¹⁵ The Chariman has the supervision and control over the functions of all the officers of the *Upazilla Parishad* save the trying Magistrate and the Assistant Judge formerly known as *Munsif*.

Besides this sort of reorganisation of the administration and judiciary, the Government had established outside Dhaka more Benches of the High Court Division of the Supreme Court under the provisions of Article 100 of the Constitution of Bangladesh, 1972. This has created resentment among the lawyers and jurists who led movement against the Government for the withdrawal of these Benches. Ultimately in pursuance of the decision of the Appellate Division of the Supreme Court of Bangladesh all these Benches have been again abolished.¹⁶

4. INCOME TAX LAW

In 1984 the Income Tax Ordinance, 1984 (Ordinance XXXV of 1984), has been promulgated which in effect repealed the Income Tax Act, 1922 (Act XI of 1922). The main object of the Income Tax Ordinance, 1984, is to tax income of an assessee for a given year. Special procedure is followed for the calculation and assessment of incometax. Where an Act of Parliament provides that incometax shall be charged for any assessment year at any rate or rates, incometax at that rate or those rates shall, subject to the provisions of that Act, be charged, levied, paid and collected in accordance with the provisions of this Ordinance in respect of the total income of the income year or income years, as the case may be, of every person.¹⁷

For the calculation, assessment and recovery of the income tax from the assessee there shall be the following classes of income tax authorities: (a) the National Board of Revenue; (b) Directors of Inspection and Training (Taxes); (c) Commissions of Taxes; (d) Joint Commissioners of Taxes or Inspecting Joint Commissioners of Taxes; (e) Deputy Commissioners of Taxes; (f) Tax Recovery Officers; (g) Assistant Commissioners of Taxes; (h) Extra Assistant Commissioners of Taxes; and (i) Inspectors of Taxes.¹⁸

For the purpose of exercising the functions of the Appellate Tribunal under this Ordinance, the Government shall establish a Taxes Appellate Tribunal consisting of a President and such other judicial and accountant members as the Government may, from time to time appoint.¹⁹ An assessee may appeal to the Appellate Tribunal if he is aggrieved by an order of -- (a) an Appellate Joint Commissioner; (b) an Inspecting Joint Commissioner; (c) an Inspecting Joint Commissioner.²⁰ The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders on the appeal as it thinks fit.²¹ The assessee or the Commissioner may within sixty days from the date of receipt of the order of the Appellate Tribunal refer to the High Court Division any question of law arising out of such order.²² The High Court Division shall, upon hearing the case, decide the question of law and shall deliver judgment thereon.²³ From the judgment of the High Court Division an appeal shall lie to the Appellate Division whose decision shall be final.²⁴

5. LAND REFORMS LAW

In 1984 a remarkable change has been brought in the land system of Bangladesh. In that year land Reforms Ordinance, 1984 (Ordinance X of 1984) has been promulgated which *inter*

alia has imposed reduction in the ceiling of ownership of land. Those who own more than 60 *bighas* of land are debarred from acquiring new agricultural land by transfer, inheritance, gift or any other means.²⁵ Those owning less than 60 *bighas* of land may acquire new agricultural land by any means provided that the total area owned shall not exceed 60 *bighas* of land.²⁶ Acquisition of ownership of land by *benami* transaction is prohibited.²⁷ In the rural area eviction of the owner from his homestead is prohibited.²⁸ Rights of the sharecroppers (*bargadars*) are protected and they are entitled to get half of the produce and they are entitled to get one—third of the produce of the land if no capital is invested, if they invest capital they are entitled to another one—third of the produce. They should not be evicted from the land without showing reasonable ground.²⁹

In this way, the Land Reforms Ordinance, 1984, has brought some changes in the land system of Bangladesh -- the remarkable one being the protection of the sharecroppers which had not been done before in the history of land reforms of Bangladesh.

6. LAW RELATING TO FAMILY COURT

In 1985 Family Courts Ordinance, (Ordinance XVIII of 1985), has been promulgated with a view to establishing Family Courts. The Court of the Assistant Judge generally situated at *upazilla* will act as the Family Court and the Assistant Judge will be Judge of the said Court.³⁰ Subject to the provisions of the Muslim Family Laws Ordinance, 1961, the Family Court shall have the jurisdiction to try and dispose of cases relating to -

-- (a) dissolution of marriage; (b) restitution of conjugal right; (c) dower; (d) maintenance; and (e) guardianship and custody of the children.³¹ Subject to the exceptions, against the judgment, decree or order of the Family Court appeal may lie to the Court of the District Judge.³²

These are the legal developments that have taken place in the recent years. These developments do not make any radical change in the country, but they supplement to it some new elements or courts which would be very helpful in running the rule of law as contemplated by the Constitution of the country and as expected by the people of the country.

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1. Section 3(1) of the Ombudsman Act, 1980.
2. Section 3(2), *ibid.*
3. Section 6(1), *ibid.*
4. Section 6(1), *ibid.*
5. Sections 3(1), and 3(3) of the Administrative Tribunal Act, 1980.
6. Section 4(1), *ibid.*
7. Section 5(2), *ibid.*
8. Section 6(1) and 6(3), *ibid.*
9. Section 8(1), *ibid.*
10. Section 8(2), *ibid.*
11. Section 10, *ibid.*
12. Section 3(1) of the Local Government (*Upazilla Parishad* and *Upazilla Administration Reorganisation*) Ordinance, 1982.

13. Section 4(1), *ibid.*
14. Section 4(2), *ibid.*
15. Section 27(2), *ibid.*
16. Constitution 8th Amendment Case Judgment 1989 B.L.D. (Spt) 1.
17. Section 16 of the Income Tax Ordinance, 1984.
18. Section 3, *ibid.*
19. Section 11(1), *ibid.*
20. Section 158(1), *ibid.*
21. Section 159(1), *ibid.*
22. Section 160(1), *ibid.*
23. Section 161(1) and 161(2), *ibid.*
24. Section 162, *ibid.*
25. Section 4(1) of the Land Reforms Ordinance, 1984.
26. Section 4(2), *ibid.*
27. Section 5, *ibid.*
28. Sections 6 and 7, *ibid.*
29. Section 8-17, *ibid.*
30. Section 4 of the Family Courts Ordinance, 1985.
31. Section 5, *ibid.*
32. Section 17, *ibid.*

APPENDIX-I

THE PROCLAMATION OF INDEPENDENCE 1971

Mujibnagar, Bangladesh

Dated 10th day of April, 1971.

Whereas free elections were held in Bangladesh from 7th December, 1970 to 17th January, 1971, to elect representatives for the purpose of framing a Constitution,

AND

Whereas at these elections the people of Bangladesh elected 167 out of 169 representatives belonging to the Awami League,

AND

Whereas General Yahya Khan summoned the elected representatives of the people to meet on the 3rd March, 1971, for the purpose of framing a Constitution.

AND

Whereas the Assembly so summoned was arbitrarily and illegally postponed for an indefinite period,

AND

Whereas instead of fulfilling their promise and while still conferring with the representatives of the people of Bangladesh, Pakistan authorities declared an unjust and treacherous war.

AND

Whereas in the facts and circumstances of such treacherous conduct Banga Bandhu Sheikh Mujibur Rahman, the undisputed leader of 75 million people of Bangladesh, in due fulfilment of the legitimate right of self-determination of the people of Bangladesh, duly made a declaration of independence at Dacca on March 26, 1971, and urged the people of Bangladesh to defend the honour and integrity of Bangladesh,

AND

Whereas in the conduct of a ruthless and savage war the Pakistani authorities committed and are still continuously committing numerous acts of genocide and unprecedented tortures, amongst others on the civilian and unarmed people of Bangladesh,

AND

Whereas the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a Constitution, and give to themselves a Government,

AND

Whereas the people of Bangladesh by their heroism, bravery and revolutionary fervour have established effective control over the territories of Bangladesh,

We the elected representatives of the people of Bangladesh, as honour bound by the mandate given to us by the people of Bangladesh whose will is supreme duly constituted ourselves into a Constituent Assembly, and

having held mutual consultations, and

in order to ensure for the people of Bangladesh equality, human dignity and social justice,

declare and constitute Bangladesh to be a sovereign People's

Republic and thereby confirm the declaration of independence already made by Banga Bandhu Sheikh Mujibur Rahman and

do hereby affirm and resolve that till such time as a Constitution is framed, Banga Bandhu Sheikh Mujibur Rahman shall be the President of the Republic and that Syed Nazrul Islam shall be the Vice-President of the Republic, and

that the President shall be the Supreme Commander of all the Armed Forces of the Republic,

shall exercise all the Executive and Legislative powers of the Republic including the power to grant pardon,

shall have the power to appoint a Prime Minister and such other Ministers as he considers necessary,

shall have the power to levy taxes and expend monies,

shall have the power to summon and adjourn the Constituent Assembly, and do all other things that may be necessary to give to the people of Bangladesh orderly and just Government.

We the elected representatives of the people of Bangladesh do further resolve that in the event of there being no President or the President being unable to enter upon his office or being unable to exercise his powers due to any reason whatsoever, the Vice-President shall have and exercise all the powers, duties and responsibilities herein conferred on the President.

We further resolve that we undertake to observe and give effect to all duties and obligations that devolve upon us as a member of the family of nations and to abide by the Charter of the United Nations.

We further resolve that this Proclamation of Independence shall be deemed to have come into effect from 26th day of March, 1971.

We further resolve that in order to give effect to this

instrument we appoint Prof. Yusuf Ali our duly constituted potentiary and to give to the President and the Vice-President oaths of office.

Sd/PFROF. YUSUF ALI

Duly Constituted Potentiary

By and under the authority of the Constituent Asembly of Bangladesh.

APPENDIX II

LAWS CONTINUANCE ENFORCEMENT ORDER 1971

Mujibnagar, Bangladesh

Dated 10th day of April, 1971.

I, Syed Nazrul Islam, the Vice-President and, Acting President of Bangladesh, in exercise of the powers conferred on me by the Proclamation of Independence dated tenth day of April, 1971 do hereby order that all laws that were in force in Bangladesh on 25th March, 1971, shall subject to the Proclamation aforesaid continue to be so in force with such consequential changes as may be necessary on account of the creation of the sovereign independent State of Bangladesh formed by the will of the people of Bangladesh and that all Government officials—civil, Military, judicial and diplomatic who take the oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service solong enjoyed by them and that all District Judges and District Magistrates, in the territory of Bangladesh and all diplomatic representatives elsewhere shall arrange to administer the oath of allegiance to all government officials within their jurisdiction.

This order shall be deemed to have come into effect from 26th day of March, 1971.

Signed:- SYED NAZRUL ISLAM

Acting President.

APPENDIX III

PROVISIONAL CONSTITUTION OF BANGLADESH ORDER, 1972

[Published in the Bangladesh Gazette, Extra, dated the 11th January, 1972.]

Whereas by the Proclamation of Independence Order, dated the 10th April, 1971 provisional arrangements were made for the governance of the People's Republic of Bangladesh;

And Whereas by the said Proclamation the President is invested with all executive and legislative authority and the power to appoint a Prime Minister;

And Whereas the unjust and treacherous war as referred to in the said Proclamation has now ended;

And Whereas it is the manifest aspiration of the people of Bangladesh that a parliamentary democracy shall function in Bangladesh;

And Whereas in pursuance of the said objective it is necessary immediately to make certain provisions in that behalf.

Now Therefore in pursuance of the Proclamation of Independence Order, dated the 10th April, 1971 and all other powers enabling him in that behalf the President is pleased to make and promulgate the following Order:

(1) This Order may be called the Provisional Constitution of Bangladesh Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

(4) Definition:

"Constituent Assembly" referred to in this Order means the body comprising of the elected representatives of the people of Bangladesh returned to the N. E. and P. E. seats in the elections held in December, 1970, January, 1971 and March, 1971 not otherwise disqualified by or under any law.

(5) There shall be a Cabinet of Ministers, with the Prime Minister at the head.

(6) The President shall in exercise of all his functions act in accordance with the advice of the Prime Minister.

(7) The President shall commission as prime Minister a member of the Constituent Assembly, who commands the confidence of the majority of the members of the Constituent Assembly. All other Ministers, Ministers of State and Deputy Ministers shall be appointed by the President on the advice of the Prime Minister.

(8) In the event of a vacancy occurring in the Office of the President at any time prior to the framing of the Constitution by the Constituent Assembly, the Cabinet shall appoint as President a citizen of Bangladesh who will hold the office of President until another President enters upon the office in accordance with the Constitution as framed by the Constituent Assembly.

(9) There shall be a High Court of Bangladesh, consisting of a Chief Justice and so many other Judges as may be appointed from time to time.

(10) The Chief Justice of the High Court of Bangladesh shall administer an oath of office to the President and the President shall administer an oath of office to the Prime Minister, other Ministers, Ministers of State and Deputy Ministers. The form of the oath shall be as prescribed by the Cabinet.

Dated this eleventh day of January, One thousand nine hundred and seventy-two, being the twenty-sixth day of Poush, one thousand three hundred and seventy-eight.

APPENDIX-IV

HIGH COURT OF BANLADESH ORDER, 1972

[Published in the Bangladesh Gazette Extra,
dated the 17th January, 1972]

President's Order No. 5 of 1972

Whereas it is expedient to provide for the functioning of the High Court of Bangladesh:

Now, Therefore, in pursuance of the Proclamation of Independence of Bangladesh the Provisional Constitution of Bangladesh Order, 1971 and in exercise of all powers enabling him in that behalf, the President is pleased to make the following order:

1. (I) This Order may be called the High Court of Bangladesh Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

2. The High Court which on the 25th day of March, 1971 was known as the High Court of Judicature at Dacca in East Pakistan (hereinafter referred to as "the High Court at Dacca") shall be deemed to have ceased to exist on the 26th day of March, 1971.

3. The High Court of Bangladesh shall consist of the Chief

Justice and so many other Judges as may be appointed from time to time by the President who shall hold office on such terms and conditions as the President may determine.

4. **The High Court of Bangladesh shall be a Court of Record, and shall have, in respect of the territories of Bangladesh, all such original, appellate, special, revisional, reviews, procedural and all other powers as were exercisable in respect of the said territories by the High Court at Dacca under any law in force before the 26th day of March, 1971:**

Provided that the High Court of Bangladesh shall have no power to issue any writ, order or direction in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* or *certiorari* or any order, direction or declaration, which the High court at Dacca had power to issue under any constitutional provision in force before the 26th day of March, 1971.

5. The High Court of Bangladesh Shall have a seal bearing the monogram of the Government of Bangladesh with a pair of scales superimposed thereon and in the label appearing in the monogram for the words "গণপ্রজাতন্ত্রী বাংলাদেশ সরকার" there shall be substituted the words "বাংলাদেশ হাইকোর্ট"

6. Notwithstanding anything contained in Article 2 of this Order :

(1) All proceedings which immediately before the commencement of this Order, were pending in the High Court at Dacca shall as from the commencement of this Order, be deemed to be proceedings pending before the High Court of Bangladesh and shall be continued in, heard and determined by, the High Court of Bangladesh as if they had been proceedings instituted in that High Court, and any order made by the High Court at Dacca in any such proceedings shall, for all purposes, have effect as an order made by the High Court of Bangladesh.

(2) Any judgment, decree, order or decision passed, made or

given by the High Court at Dacca before the commencement of this Order shall be enforceable in Bangladesh as if it were a judgement, decree, order, or decision passed, made or given by the High Court of Bangladesh.

7. The High Court of Bangladesh shall have the jurisdiction of review any order made by any Judge of the High Court at Dacca as if the order had been made by a Judge of the High Court of Bangladesh.

8. (1) All rules made by the High Court at Dacca immediately before the commencement of this Order shall subject to this Order continue in force, with necessary modifications, as if they had been made by the High Court of Bangladesh.

(2) All officers and employees who immediately before the commencement of this Order, were serving in the High Court at Dacca shall, as from such commencement be deemed to be persons serving under the High Court of Bangladesh and shall continue to serve the High Court of Bangladesh on such terms and conditions as may be determined by the President.

9. Subject to the provisions of any law on the subject, any person who immediately before the commencement of this Order, was an Advocate entitled to plead or act in the High Court at Dacca shall be deemed to be an Advocate of the High Court of Bangladesh and shall be entitled to plead and act in that High Court.

APPENDIX - V

GLOSARY OF LEGAL TERMS

<i>Adalat</i>	<i>Adalat</i> means court established under law.
<i>Benami</i>	<i>Benami</i> means in the name of other person.
<i>Bigha</i>	<i>Bigha</i> means 33 decimals of land.
Dayabhaga	Dayabhaga was a commentry on all the Codes of Hindu Law. It was written by Jimutavahana who flourished in about the beginning of the twelfth century.
<i>Diawn</i>	<i>Diwan</i> was the person or company authorise by the Nawabs of Bengal for the collection and administriion.of land revenue.
<i>Hanbali School</i>	<i>Hanbali School</i> was founded by Imam Ahmed ibn Hanbal, (780-795 A. D.)
<i>Maliki School</i>	<i>Maliki School</i> was founded by Malik ibn Anas (713-795 A. D.)
<i>Mitakshara</i>	<i>Mitakshara</i> is the commentary on the Code of <i>Yajnavalkya</i> written by Vijnaneswara in the latter part of the eleventh century.

Mofussil

Mofussil means town other than Presidency Towns of Calcutta, Bombay or Madras.

Nirbahi

Nirbahi means executive.

Panchaet

Panchaet means village arbitration council for the disposal of simple civil and criminal cases.

Parishad

Parishad means council.

Shafei School

Shafei School was founded by Imam Muhamma ibn Idris ash-Shafei (767-820 A.D.) who was a pupil of Malik ibn Anas.

Shastra

Shastra means Hindu religious law or principle.

Shia School

Shia School was founded by Imam Jafor as-Sadik an descendant of Hazrat Ali (R.), son-in-law of Prophet Muhammad (Sm.).

Upazilla

Upazilla is the lowest administrative unit introduced for the first time in 1982.

Zina

Zina means adultery, incest or fornication.

APPENDIX-VI

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APPENDIX - VII

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