

LEGAL SYSTEM OF BANGLADESH

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IN MEMORY OF
MARTYRS OF WAR OF INDEPENDENCE 1971

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Dr. A. B. M. Mafizul Islam Patwari
55/D Dhaka University Staff Quarters
Dhaka, Bangladesh.

Dear Dr. Patwari,

Let me ... acknowledge the receipt of your manuscript on the "Legal System of Bangladesh" for the *World Legal Encyclopedia*. I have ... read ... the manuscript and am most impressed with your conscientious and thorough treatment, perhaps the best that I have come across on Bangladesh. Let me commend you on the work which you have completed despite the many problems that you faced. It will form a most valuable chapter in the *Encyclopedia*.

... Let me thank you once again for your participation in this project.

Sincerely yours,

George Kurian
Editor

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United States Court of Appeals



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Rorothy W. Nelson, Judge

FOREWORD

Dr. A. B. M. Mafizul Islam Patwari has performed a great service for those of us who struggle to obtain well researched and accurate data on the legal systems of the world. His comprehensive and thorough treatment of the legal system of Bangladesh is an outstanding contribution to the literature of legal systems and so far as I know, the only one of its kind on Bangladesh.

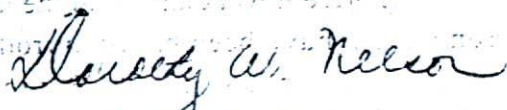
His learned discussion of the historical perspective is an excellent background for his coverage of civil, commercial, criminal, personal, and agrarian laws. He has two excellent chapters on education and the profession and recent legal developments.

Of particular interest to me and to judges from around the world is his section on the Independence of the Judiciary. This was a topic we studied together at the International Institute of Human

Rights in Strasbourg, France, in July of 1989. The relationship between the independence of judges and lawyers and the domestic protection of human rights is recognized in key United Nations human rights instruments. Where judges and lawyers are not independent, there are no effective domestic defenses against or remedies for human rights violations. Dr. Patwari indicates that in Bangladesh the independence of the judiciary is claimed to be ensured, but if the matter is looked into deeply, it is clear that the independence of the judiciary has been curtailed by the provisions of the Constitution as amended by the Fourth Amendment.

Legal System of Bangladesh is a ready guide for scholars, judges, lawyers and laypersons. With increasing awareness that we are all in this world together, we benefit greatly when a book of this kind tells us so much about a legal system unfamiliar to many. It is an indispensable addition to comparative legal literature. It is my hope that a broad audience, worldwide, will agree.

Patwari's excellent book makes a real contribution to legal scholarship.


Dorothy W. Nelson

PREFACE

As there was no authentic book on the legal system of Bangladesh, I felt it obliged to write one in which a reader, at home and abroad, will get a brief but clear idea of all the aspects of the legal system of Bangladesh. The publication of this book by the Humanist and Ethical Association of Bangladesh, is the fulfilment of my commitment to my nation as well as to the international community both of which were in need of a work of this kind for a long time. The acknowledgement sent by Mr. George Kurian, Editor, *World Legal Encyclopedia*, New York, United States of America, and the foreword written by Justice Dorothy W. Nelson, Judge, United States Court of Appeals, California, United States of America, bear the testimony of this statement. I am really grateful to Mr. George Kurian for accepting me as a co-author of the *World Legal Encyclopedia* and to Justice Dorothy W. Nelson for writing the foreword of the book which, I sincerely believe, has increased the value and credibility of the work. I am also grateful to Professor Zaharul Islam Choudhury, Dean, Faculty of Law, University of Dhaka, Bangladesh, for introducing me to George Kurian in connection with my participation in the project of writing the *World Legal Encyclopedia*.

In the present work almost all the aspects of legal system of Bangladesh have been briefly introduced. In Bangladesh at present common law prevails. But the effect of Indo-Mughal legal system is also evident. It takes this present shape after a long historical process of development. All the courses of the development have been discussed.

The major aspects of constitutional law, the fundamental law from which all laws derive authenticity, have been discussed. The basic structures and functions of the executive, legislature and judiciary—three organs of a modern State—have been discussed in pursuance of the provisions of the Constitution of Bangladesh, 1972. Besides, independence of judiciary and fundamental rights guaranteed by the Constitution have been discussed in some length.

Moreover, some basic civil laws along with civil procedure have been introduced. Hindu and Muslim personal laws relating to marriage, divorce, guardianship, paternity have been presented along with their sources and schools. Main provisions relating to land laws as contained in the State Acquisition and Tenancy Act, 1950, and Non-Agricultural Tenancy Act, 1949, have been pointed out. Major aspects of commercial law, criminal law, and law of evidence are also the subjects of discussion.

Besides these, two important topics such as legal education, legal profession and Institutions and recent legal development have been discussed in a manner and style which are commended by some eminent jurists of the world. I am really grateful to them for their appreciation.

However, before closing discussion I must mention that I owe my gratefulness to Chalantika Computers for word processing and Al-Amin Printers for printing the work. I am also thankful to Executive Committee of the Humanist and Ethical Association of Bangladesh for publishing the book.

ABBREVIATIONS

| | |
|-----------|------------------------------|
| A.C. | Appeal Cases |
| A.I.R. | All India Reporter |
| All. | Allahabad Law Reports |
| B.L.R. | Bengal Law Reports |
| Bom. | Bombay Law Reports |
| C. | Chapter |
| Cal. | Calcutta Law Reports |
| C.A. | Court of Appeals |
| Ch.D. | Chancery Division |
| Co. | Company |
| C.W.N. | Calcutta Weekly Notes |
| D.L.R. | Dhaka Law Reports |
| Geo. | George |
| I.A. | Indian Appeals |
| I.C. | Indian Cases |
| LL.R. | Indian Law Reports |
| Ind. Dec. | Indian Decisions |
| Jud. | Judge |
| Mad. | Madras Law Reports |
| M.I.A. | Moore's Indian Appeals |
| M. W. N. | Madras Weekly Notes |
| P.C. | Privy Council |
| P.L.D. | All Pakistan Legal Decisions |
| S.C. | Supreme Court |
| W.R. | Weekly Reports |
| Will. | William |

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