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# Understanding how the Bangladeshi Legal System Works

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## Table of Contents

- **Introduction**
- **Chapter 1** Historical Foundations of the Bangladeshi Legal System
- **Chapter 2** The Constitution of Bangladesh: Supremacy and Structure
- **Chapter 3** Sources of Law in Bangladesh
- **Chapter 4** Common Law and its Legacy
- **Chapter 5** The Influence of Religious Laws: Islamic and Hindu Law
- **Chapter 6** The Structure of the Courts
- **Chapter 7** The Supreme Court: Appellate and High Court Divisions
- **Chapter 8** Subordinate Judiciary: Civil and Criminal Courts
- **Chapter 9** Specialized Courts and Tribunals
- **Chapter 10** The Criminal Justice System
- **Chapter 11** Civil Justice: Procedures and Processes
- **Chapter 12** Family Law in Bangladesh
- **Chapter 13** Constitutional Law and Fundamental Rights
- **Chapter 14** The Law-Making Process: Parliament and Legislation
- **Chapter 15** Judicial Precedent and Interpretation
- **Chapter 16** Role and Regulation of the Legal Profession
- **Chapter 17** Access to Justice and Legal Aid
- **Chapter 18** Alternative Dispute Resolution: Mediation and Arbitration
- **Chapter 19** Administrative Law and Service Matters
- **Chapter 20** Labor and Employment Law
- **Chapter 21** Environmental and Public Interest Law
- **Chapter 22** International Law and Bangladesh
- **Chapter 23** Challenges Facing the Legal System
- **Chapter 24** Judicial Independence and Reforms
- **Chapter 25** The Future of Law and Justice in Bangladesh

## Introduction

Understanding the Bangladeshi legal system requires moving beyond statutes, codes, and courts to grasp the dynamic interplay of history, society, politics, and legal philosophy that has shaped the administration of justice in Bangladesh. Legal systems are not static; they grow from the soil of their societies, traditions, and the experiences of the people they are meant to serve. This book is designed to demystify how the legal system of Bangladesh works, exploring its roots, structure, functions, and the contemporary realities it faces.

Bangladesh's legal system is an intricate tapestry woven from various historical periods and influences. Ancient Hindu and Islamic periods left deep imprints on family and personal law, while the legacy of British colonial rule underpins its common law foundations. The Constitution, adopted in the wake of the nation's hard-won independence in 1971, enshrines the supremacy of law and establishes a robust framework for a modern judiciary, aiming for justice, equality, and the rule of law. These historical influences continue to shape the legal landscape, ensuring that both tradition and reform are permanent features of legal development in Bangladesh.

At its core, the Bangladeshi legal system blends statutory frameworks, judicial decisions, and customary practices. The court structure is hierarchical, headed by the Supreme Court with its Appellate and High Court Divisions, and supported by a varied network of subordinate civil, criminal, and specialized courts. Each layer of the judiciary plays a significant role in the delivery of justice, resolving everything from constitutional disputes to the everyday matters affecting the lives of ordinary citizens. At the same time, specialized tribunals and alternative dispute resolution mechanisms have grown in prominence, addressing the evolving legal needs of society.

This book elucidates not just the 'what' but the 'how' and 'why' of the system. What laws govern different aspects of life in Bangladesh? How are judges appointed, and what is the path for someone seeking justice? Why do certain challenges, such as backlog and procedural delays, persist, and what reforms are being implemented to address them? By traversing the topics of constitutional law, criminal justice, civil procedure, the role of legal professionals, family law, and beyond, this volume provides readers with a comprehensive understanding of both the machinery and spirit of Bangladeshi law.

Beyond structural and procedural details, no examination of the legal system is complete without consideration of access to justice—how the system serves those it is intended to protect. Legal aid, the promotion of alternative dispute resolution, the ongoing modernization of case management, and persistent calls for a more

independent and efficient judiciary all feature as pressing concerns in Bangladesh's legal discourse. Ensuring meaningful access to justice for all citizens remains a central and ongoing challenge for the system.

In sum, this book aims to serve as a practical guide for students, legal professionals, researchers, and any reader seeking clarity on the Bangladeshi legal system. Through twenty-five carefully sequenced chapters, we will explore the legal system's historical foundations, principal actors, systemic strengths and weaknesses, day-to-day realities, and the shifting frontiers of justice in Bangladesh. Whether you are new to the subject or seeking to deepen your understanding, this guide will illuminate the complexities and promise of law in Bangladesh.

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## CHAPTER ONE: Historical Foundations of the Bangladeshi Legal System

The legal system of Bangladesh, as it exists today, is not a creation of a single moment or a solitary legal philosophy. Instead, it's a rich tapestry woven from the threads of diverse historical periods, each leaving its indelible mark on the fabric of justice and governance. To truly understand how law operates in this land, one must journey through its past, exploring the layers of legal traditions that have accumulated over centuries. This journey takes us from ancient indigenous practices and the influence of religious doctrines to the structured imposition of a colonial legal framework and the subsequent adaptations in the post-colonial era.

Before the advent of extensive external influences, the region that is now Bangladesh had its own forms of social organization and dispute resolution. These were often deeply intertwined with local customs, traditions, and religious beliefs. During the Hindu period, roughly spanning from 1500 BC to 1206 AD, the administration of justice was often closely linked to the monarchy. Kings were considered the fount of justice, and their courts were central to the legal system. Legal guidance was drawn from ancient religious and philosophical texts such as the Arthashastra and Manusmriti, alongside other scriptures like Shrutis, Smritis, Puranas, and Dharmashastra. This era saw a hierarchical society, and while there were ideals of impartiality, the system was influenced by caste distinctions, and royal interference in judicial matters was not uncommon, impacting the equal application of justice.

With the arrival of Muslim rulers, starting around 1100 AD, a new legal paradigm was introduced, incorporating the principles of Islamic law, or Sharia. The Sultanate and later the Mughal Empire brought with them a more formalized court structure. Key judicial figures during this period included Qazis, who were appointed to administer justice according to Sharia, particularly in towns. Muftis and Pandits also played roles, providing legal opinions, especially in matters concerning personal law for the respective Muslim and Hindu populations. Islamic law primarily governed personal status issues for Muslims, such as marriage, divorce, and inheritance, a reflection of its deep influence on family matters that continues to some extent today. While trials by ordeal, which had been present in earlier times, were abolished during the Muslim period, disparities in treatment based on religion and gender could still exist. Legal systemization was further enriched by works like Fatwa-I-Alamgiri and Fiqh-e-Firoz Shahi. The Qazi held a position of honour and prestige throughout the Muslim period.

The landscape of the legal system underwent a profound transformation with the advent of British colonial rule, which effectively began after the Battle of Plassey in

1757. The British East India Company, initially a trading entity, gradually expanded its territorial control and with it, its administrative and judicial responsibilities. One of the most significant contributions of the British period was the introduction of the common law system to the subcontinent, including Bengal. This marked a departure from the predominantly religious and customary legal systems that had prevailed.

A crucial step in establishing the English legal system was the Charter of 1726, granted by King George I. This charter authorized the establishment of Mayor's Courts in the Presidency towns of Calcutta, Bombay, and Madras. These were considered Royal Courts, deriving their authority directly from the British Crown. The Mayor's Courts were empowered to hear and determine all civil suits within the Presidency towns and their subordinate factories and also had jurisdiction over testamentary succession. The Charter of 1726 also introduced a system of appeals from courts in India to the Governor and Council, with a further right of appeal to the King-in-Council, or the Privy Council, in England. This established a crucial link between the judicial systems in India and England.

Following the initial establishment of courts, the British embarked on a more comprehensive restructuring of the legal and judicial system. The Regulating Act of 1773 was another pivotal piece of legislation. It provided for the establishment of a Supreme Court in Calcutta, which was inaugurated by a charter in 1774. This Supreme Court had broad civil, criminal, admiralty, and ecclesiastical jurisdiction over British subjects and employees of the East India Company in Bengal, Bihar, and Orissa. However, the jurisdiction of the Supreme Court sometimes clashed with the existing courts, leading to its authority being largely confined to Calcutta initially.

Parallel to the Supreme Court, the British also continued and reformed the indigenous court system, albeit with significant modifications. Under the plan of Warren Hastings in 1772, a two-tier system of courts was introduced in the districts: the Mofussil Diwani Adalat for civil cases and the Mofussil Faujdari Adalat for criminal cases. The civil courts were initially presided over by European District Collectors, assisted by Indian legal experts like *maulvis* and Brahman pundits to interpret Hindu and Muslim laws. Criminal courts were presided over by Indian officers, assisted by Qazis and Muftis. Appeals from these district courts went to the Sadar Diwani Adalat (civil appellate court) and Sadar Nizamat Adalat (criminal appellate court) in Calcutta or Murshidabad.

Lord Cornwallis further reformed the system with the Cornwallis Code of 1793, which aimed to separate revenue administration from the administration of civil justice. This period saw the gradual formalization of the judicial hierarchy and procedures. The British also undertook the monumental task of codifying laws, drawing heavily from English legal principles but also incorporating elements of existing personal laws. Key legislation enacted during this era that continues to influence the legal system in Bangladesh today includes the Penal Code of 1860, the Code of Criminal Procedure of 1861, and the Code of Civil Procedure of 1859. These codes provided a structured

framework for criminal and civil justice administration. The High Courts Act of 1861 led to the establishment of High Courts in Calcutta, Madras, and Bombay, replacing the earlier Supreme Courts and the Sadar Adalats, creating a unified appellate structure.

The British period thus laid the foundational pillars of the modern legal system: the common law tradition, a hierarchical court structure, the principle of judicial precedent (whereby decisions of higher courts bind lower courts), and a body of codified laws. While the system was introduced to serve the interests of the colonial power, it also brought a degree of uniformity and procedural regularity that had not been present on such a large scale before. However, the application of law was not always equal, and the system often reflected the power dynamics of colonial rule. The separation of the judiciary from the executive was an idea that emerged during this period, notably proposed by Lord Cornwallis in 1793, though its full implementation remained a challenge.

Following the partition of British India in 1947 under the Indian Independence Act, the territory that is now Bangladesh became East Pakistan. The existing legal and judicial system, largely inherited from the British, continued to operate. The High Court of Judicature at Dhaka was established in 1948, serving as the provincial high court for East Bengal (later East Pakistan). The Federal Court of Pakistan, established in Karachi, served as the apex court, and the jurisdiction of the Privy Council as the final court of appeal was abolished in 1950, with appeals then lying to the Federal Court, which was elevated to the status of the Supreme Court of Pakistan.

During the Pakistan period, the legal framework continued to be based on the British-era laws, although some modifications and new legislative enactments were made to align with the new state's objectives. The judicial structure, with a High Court in the province and the Supreme Court at the center, remained largely consistent with the pattern established during the British Raj. However, this period was also marked by political and economic disparities between East and West Pakistan, which had implications for the administration of justice and access to legal resources in the eastern wing. Despite the political challenges, the foundational legal principles and the basic court hierarchy persisted, forming the immediate precursor to the legal system that would emerge after the independence of Bangladesh in 1971.

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