



Sonargaon University
Department of Law

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“Criminal Justice System in Bangladesh: A Critical Analysis”

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Declaration

I do hereby declare that the Research Monograph and titled, “*Criminal Justice System in Bangladesh: A Critical Analysis*” has been carried out by me. This is an original research work to the best of my knowledge and further I hereby declare that I have written this Research myself, and that it has not been submitted to any other university or elsewhere for any other degree or anything else.

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Abstract

Bangladesh got her independence on 16th December, 1971 and after 43 years of its independence it has not achieved reasonable success or development which the other country achieved after having independence next to Bangladesh. The main reason behind the development is corruption and criminal act with in the territory. And for the protection of those crimes enforcement of criminal justice system is mandatory. The main object of the criminal justice system of the country is to protect crime, deter offender, punishing wrong doer etc. but after having the unitary best law and body of its enforcement the criminal justice system of the country yet not been ensured. Finding the reason behind the non administration of criminal justice system is the abstract of this research.

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Chapter- One

Introduction

1.1 Definition:

In this research the following words and expressions have the following meanings:

- a. **Bangladesh** is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh.
- b. **Advocate** used with reference to any proceeding in any Court means an advocate or a mukhtar authorized under any law for the time being in force to practice in any such Court and includes any other person appointed with the permission of the Court to act in such proceeding.
- c. **bailable offence** means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "**non-bailable offence**" means any other offence.
- d. **charge** includes any head of charge when the charge contains more heads than one.
- e. **Clerk** or **Staffs** of the State includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the State.
- f. **Complaint** means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer.
- g. **High Court Division**" means the High Court Division for criminal appeal or revision.
- h. **Inquiry** includes every inquiry other than a trial conducted under this Code by a Magistrate or Court.
- i. **Investigation** includes all the proceedings under this Code for the Collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by Magistrate in this behalf.
- j. **Judicial proceeding** includes any proceeding in the course of which evidence is or may be legally taken on oath.

- k. **Offence** means any act or omission made punishable by any law for the time being in force.
- l. **officer in charge of a police-station** includes, when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the Government so directs, any other police-officer so present.
- m. **Place** includes also a house, building, tent and vessel.
- n. **Police-station** means any post or place declared, generally or specially, by the Government to be a police-station, and includes any local area specified by the Government in this behalf.
- o. **Public Prosecutor** means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor.
- p. **Special law** is a law applicable to a particular subject.
- q. **Section** denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.
- r. **act** denotes as well a series of acts as a single act: the word
- s. **Omission**” denotes as well a series of omissions as a single omission.
- t. **Dishonestly** -whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".
- u. **Moveable properties are** intended to include corporeal property of every description, except land and thing attached to the earth or permanently fastened to any thing which is attached to the earth.
- v. **Court of Justice** denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.
- w. **Judge**” denotes not only every person who is officially designed as a Judge, but also every person,- who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

- x. **Government**” denotes the person or persons authorized by law to administer executive Government in Bangladesh, or in any part thereof.
- y. **Public** includes any class of the public or any community.
- z. **Person** includes any Company or Association, or body of persons, whether incorporated or not.
- aa. **Man** denotes a male human being of any age: the word “**woman**” denotes a female human being of any age.¹

1.2 Rational of the study:

Everyman has a criminal mentality. Whenever he gets chance or needs to take benefit he just use that and as a result crime committed and which tends criminal justice to be adjudicated.

Bangladesh is a development country which because of its economic, political and geographical position is full of crime but does not seek justice properly.

Criminal Justice System of the country is only showing uniformed theoretically but practically it suffers much disability. Criminal violation to a person is much painful and non-bearable. The rational of the study is to bring out reason behinds failure to seek justice and the steps which may reasonably be able to suppress its disabilities.

1.3 Objectives of the study:

The main objective of the study is to find out the reason why Criminal Justice is not ensured yet after having all the body of enforcing and almost uniformed judicial system.

We have the law, administrative body, legislative body, Executive Authorities and Judiciary everything to suppress crime and to ensure justice if it committed but hence there are lots of cases where no justice is ensured and moreover crime is increasing day by day .So the study objects to find out reason of such incapability and to find out some practical doings which may reasonably reduce crime.

Following are the main objective of the study:

1. Find out the problems behind failure to justice, and
2. Point out suggestions to reform the failure.

¹ <https://study.com/academy/lesson/what-is-the-criminal-justice-system-definition-components-problems.html>

1.4 Scope of the study:

In order to gain a broad perspective on and nuanced understanding of the criminal justice system my original aim was to find out the present condition of the criminal justice system of the country by considering the origin of the laws of the country. And on that's reason I spend about 5 months on gathering information from the cases pending or adjudicated in various criminal court within the territory and from the communication with jurists, lawyers, staffs, police, plaintiff and accused also.

1.5 Methodology of the study:

The methodology of the present research work include- Review of related literature and examination of important principle document, law Book and Based, Journals, law ripcord DLR, ILR, Periodicals and Judicial precedence concern with Criminal Justice System.

The work also includes- Case study, data collection, concerning cases instituted in and disposed of every year and interviewing of litigant, Lawyers, Law officers and Judges. Where necessary and expending data would be collected from primary sources litigants, Lawyers and Judges would be selected for interview. On the basic of convenience and expedience, in cases of need other related work such as using web side, on visiting library could also be carried out. Basically the work would be a combination of description and anilities. Further the work also is a work of theoretical or operational research.²

In final, as regards approach the work would be blend of to approaches-

- Historical Approaches
- Analytical Approaches

² <https://www.sciencedirect.com/topics/psychology/criminal-justice-system>

Chapter- Two

Crime, Criminal Justice System and Cause of Crime: Bangladesh Perspective

2.1 Crime:

Literally crime means an act or omission that constitutes an offense that may be prosecuted by the state and is punishable by law.

Crime is “an action or an instance of negligence that is deemed injurious to the public welfare or morals or to the interests of the state and that is legally prohibited”

The term crime does not, in modern times, have any simple and universally accepted definition, but one definition is that a crime, also called an offence or a criminal offence, is an act harmful not only to some individual, but also to the community or the state (a public wrong). Such acts are forbidden and punishable by law.³

The idea that acts like murder, rape and theft are prohibited exists all around the world, and probably has universal moral basis.^[4] What precisely is a criminal offence is defined by criminal law of each country. While many have a catalogue of crimes called the criminal code, in some common law countries no such a comprehensive statute exists.

The state (government) has the power to severely restrict one's liberty for committing a crime. Therefore, in modern societies, a criminal procedure must be adhered to during the investigation and trial. Only if found guilty, the offender may be sentenced to punishment such as community sentence, imprisonment, life imprisonment or, in some jurisdictions, even death.

To be classified as a crime, the act of doing something bad (actus reus) must be usually accompanied by the intention to do something bad (mens rea), with certain exceptions (strict liability).

While every crime violates the law, not every violation of the law counts as a crime. Breaches of private law (torts and breaches of contract) are not automatically punished by the state, but can be enforced through civil procedure.

Whether a given act or omission constitutes a crime does not depend on the nature of that act or omission. It depends on the nature of the legal consequences that may

³ Ibid

follow it. An act or omission is a crime if it is capable of being followed by what are called criminal proceedings.

Thus crime is an unlawful act or omission from doing an act which he is bound to do or under the obligation to do so but acted or omitted.

2.2 Criminal:

The word **criminal** was used first in the 15th century and derived from Late Latin word *criminalis*. The word literally means A person who has committed a crime.

A criminal is a person who has acted or omitted himself from doing an act for which he was bound to do or omit him from doing under obligation imposed by any law or whose duty it was to do or omit himself from doing.⁴

Thus criminal means a person who committed a crime is the criminal himself for such act.

2.3 Criminal Justice System:

Criminal justice system is a generic term for the procedure by which criminal conduct is investigated, arrests made, evidence gathered, charges brought, defenses raised, trials conducted, sentences rendered, and punishment carried out.

It also means the system of law enforcement, the bar, the judiciary, corrections, and probation that is directly involved in the apprehension, prosecution, defense, sentencing, incarceration, and supervision of those suspected of or charged with criminal offenses.

The criminal justice system consists of three main parts: (1) **Legislative** (create laws); (2) adjudication (courts); and (3) corrections (jails, prisons, probation and parole). In the criminal justice system, these distinct agencies operate together both under the **rule of law** and as the principal means of maintaining the **rule of law** within **society**.

The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. There is no single criminal justice system in the United States but rather many similar, individual systems. How the criminal justice system works in each area depends on

⁴ *ibid*

the jurisdiction that is in charge: city, county, state, federal or tribal government or military installation. Different jurisdictions have different laws, agencies, and ways of managing criminal justice processes.⁵

⁵ Dr. Islam, Md Oliul

Chapter—Three

Provision of the Law concerning criminal justice system in Bangladesh

3.1 General:

Legal system of Bangladesh is a mixer or collection of the rules and laws followed in the other country of the world. Bangladesh got its independence on 16th December 1971. Before the independence it passed through different period of administration process e.g. Hindu, Muslim, British, Pakistan etc. So it enacts its law in considering the history and enacting law which it thought necessary for its administration. As a result in every laws even in the constitution of Bangladesh reflects taste of the ancient period.⁶

3.2 Origin and nature of Laws of Bangladesh:

The present legal and judicial system of Bangladesh owes its origin mainly to two hundred years British rule in the Indian Sub-Continent although some elements of it are remnants of Pre-British period tracing back to Hindu and Muslim administration. It passed through various stages and has been 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 has structure, legal principles and concepts modeled on both Indo-Mughal and English law. The Indian sub-continent has a known history of over five hundred years with Hindu and Muslim periods which preceded the British period, and each of these early periods had a distinctive legal system of its own.

3.3 Some criminal Laws enforceable in Bangladesh:

Administration of justice is necessary and essential for a country to be run. Every country has enacted law or regulation for administration of justice. Bangladesh has also enacted several Acts for its own self. For the proper management of criminal justice system it enacted different laws. For example penal code, 1860 for the determination or affixing the punishment of criminal offences committed within the territory of the country.

⁶ Ibid

Thus following are some of the criminal laws enforceable in Bangladesh which is supervising criminal justice system of the country:

1. Code of criminal Procedure, 1898
2. Penal Code, 1860
3. Nari O Shishu Nirjaton Domon Ain,2000
4. Special Powers Act, 1974
5. Police Act, 1864
6. The Evidence Act, 1882
7. The Arms Act,1878
8. The Drugs Act, 1940
9. The Explosive Substances Act 1908

3.4 Classification of criminal courts:

The ordinary criminal courts have their legal basis in the Code of Criminal Procedure, 1898. The classes of courts, power and function as to the courts, and appointment of the judges are found in this very code.

Section- 6 of the code of criminal procedure deals with the court which will exist in the whole territory. Section-6 of the code of criminal procedure, 1898 is as follows:

Section-6: Classes of Criminal Courts

(1) Besides the Supreme Court and the Courts constituted under any law for the time being in force, other than this Code, there shall be two classes of Criminal Courts in Bangladesh, namely:-

- (a) Courts of Sessions; and
- (b) Courts of Magistrates.

(2) There shall be two classes of Magistrate, namely: -

- (a) Judicial Magistrate; and
- (b) Executive Magistrate.

(3) There shall be four classes of judicial Magistrate, namely: -

- (a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas;
- (b) Magistrate of the first class, who shall in

Metropolitan area, be known as Metropolitan Magistrate;

(c) Magistrate of the second class; and

(d) Magistrate of the third class.

Explanation: For the purpose of this sub-section, the word "Chief Metropolitan Magistrate" and "Chief judicial Magistrate" shall include "Additional Chief Metropolitan Magistrate" and "Additional Chief judicial Magistrate" respectively.⁷

Following are the courts in criminal justice system in Bangladesh in the modern contemporary period to administer justice:

A. Supreme Court

1. Appellate Division
2. High Court Division

B. Court of Sessions

1. Court of Sessions
2. Additional Court of Session
3. Joint Session Court

C. Court of Magistrates

1. Judicial Magistrates

- Chief Metropolitan Magistrate or Chief Judicial Magistrate
- Additional Chief Metropolitan Magistrate or Additional Chief Judicial Magistrate
- Metropolitan Magistrate or Magistrate of 1st class

2. Executive Magistrates

- District Magistrate
- Additional District Magistrate
- Other Executive Magistrate

3. Special Magistrates

3.4. A The Supreme Court:

Article-94: Establishment of Supreme Court:

⁷ Ibid

- (1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division.
- (2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.
- (3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that division, and the other Judges shall sit only in the High Court Division.
- (4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.

3.4.B Courts of Sessions:

Section-6 of the Code of Criminal Procedure, 1898 has classified the criminal courts in two heads session and magistrate court; it has categorized Session courts in section-9 of the code. Section-9 of the code of criminal procedure is as follows:

Section-9: Court of Sessions

- (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) The Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.
- (3) The Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.
- (3A) The members of the Bangladesh Judicial Service shall be appointed as Sessions Judge, Additional Sessions Judge and Joint Sessions Judge in accordance with the rules framed by the President under the proviso to Article 133 of the constitution to exercise jurisdiction in one or more of such areas.]
- (4) A Sessions Judge of one sessions division may be appointed by the Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Government may direct.⁸

⁸ https://www.lexico.com/definition/criminal_justice_system

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

As Section-9 stated, the session courts will include the following:

- Court of Session
- Additional Sessions Judge
- Joint Sessions Judge

3.4.C Courts of Magistrates:

Section-6 of the code of criminal procedure, 1898 has classified the criminal courts which will conduct its judicial power with in the territory Bangladesh. It has established Court of Magistrate as the one of the branch of adjudicating judicial dispute.

Section-6 of the code introduces following classification as to Magistrate courts:

There shall be two classes of Magistrate, namely:

- (a) Judicial Magistrate; and
- (b) Executive Magistrate

Section-6(2) of code of criminal procedure, 1898

(a) Judicial Magistrate:

There shall be four classes of judicial Magistrate, namely: -

- (a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas;
- (b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate;
- (c) Magistrate of the second class; and
- (d) Magistrate of the third class

.....Section-6(3) of Code of criminal procedure, 1898

(b) Executive Magistrate:

Section-10 of the code of criminal procedure, 1898 dealt with the provision regarding executive magistrate. Section-10 of the code says as:

Section-10: Executive Magistrates:

(1) In every district and in every Metropolitan Area, the Government shall appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The Government may also appoint any Executive Magistrate to be an Additional District Magistrate, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the Government may direct.

(3) Whenever in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive in the administration of the district, such officer shall, pending the orders of the Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The Government may, or subject to the control of the Government, the District Magistrate may, from time to time, by order define local areas within which the Executive Magistrate may exercise all or any of the powers with which they may be invested under this Code and, except as otherwise provided by such definition, the jurisdiction and powers of every such Executive Magistrate shall extend throughout the district.

(5) The Government may, if it thinks expedient or necessary, appoint any persons employed in the Bangladesh Civil Service (Administration) to be an Executive Magistrate and confer the powers of an Executive Magistrate on any such member.

(6) Subject to the definition of the local areas under sub-section (4) all persons appointed as Assistant Commissioners, Additional Deputy Commissioners or Upazila Nirbahi Officer in any District or Upazila shall be Executive Magistrates and may exercise the power of Executive Magistrate within their existing respective local areas.

(7) Nothing in this section shall preclude the Government from conferring, under any law for the time in force, on a Commissioner of Police, all or any of the powers of an executive Magistrate in relation to a Metropolitan area.]

Thus section-10 declares following as executive magistrates:

1. District Magistrate
2. Additional District Magistrate
3. Executive Magistrate

3.5 Power and Functions of the courts:

Powers of the court here refers the sentence or punishment which may the court grant to the victim or complainant for the criminal offences or violation committed against him.

The powers of the court in commencing sentence may be discussed in two heads:

- A. Powers of the Magistrate Court and
- B. Powers of the court of Sessions and High Court Division

3.5.A Powers of the Magistrate Court:

The sentence or punishment which a magistrate court may pronounce in adjudicating any criminal dispute place before his learned court is specified in section-32, section-33 and section-33A of the code of criminal procedure, 1898.

They are as follows:

Section-32.Sentences which Magistrates may pass:

- (1) The Courts of Magistrates may pass the following sentences namely:-
 - (a) Courts of Metropolitan Magistrates and] of Magistrates of the first class: Imprisonment for a term not exceeding five years], including such solitary confinement as is authorized by law; Fine not exceeding ten thousand taka]; Whipping.
 - (b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding three years], including such solitary confinement as is authorized by law; Fine not exceeding five thousand taka];
 - (c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding two year]; Fine not exceeding two thousand taka].
- (2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

Section-33: Power of Magistrates to sentence to imprisonment in default of fine:

(1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default:

Provided that-

(a) the term is not in excess of the Magistrate's powers under this Code;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Section-33A: Higher powers of certain Magistrates:

The Court of a Magistrate, specially empowered under section 29C, may pass any sentence authorized by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years.]

3.5.B Powers of the Court Of Sessions and High Court Division:

Sentencing power of the Sessions court and High Court Division has been settled by section-31 of the code of criminal procedure, 1898.

Section-31 states as follows:

Section-31: Sentences which High Court Division and Sessions Judges may pass:

(1) The High Court Division] may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division.

(3) A (Joint) Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding ⁵⁰[ten] years or of imprisonment for a term exceeding 2 ⁵¹[ten] years

3.6. Appointment of Magistrates and judges:

Procedure of Appointment of the Magistrates, judges is specified in section- of the code of criminal procedure, 1898 and the appointment of chief justice and other

judges of Supreme Court are specified in or followed by Article 95 of the constitution of Bangladesh.

Appointment of Judges of the Supreme Court:

Article-95: Appointment of Judges:

(1) The Chief Justice shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.

(2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and –

(a) has, for not less than ten years, been an advocate of the Supreme Court ; or

(b) has, for not less than ten years, held judicial office in the territory of Bangladesh ;
or

(c) has such qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court.

(3) In this article, “Supreme Court” includes a court which at any time before the commencement of this Constitution exercised jurisdiction as a High Court in the territory of Bangladesh.

Appointment of the magistrates and judges in session divisions:

Appointment of magistrate or subordinate courts is established through Article 115 & 116 of the constitution of Bangladesh and section 9, 11 & 18 of the code of criminal procedure, 1898.

[115. Appointments to subordinate courts

Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf.]

116. Control and discipline of subordinate courts

The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the ⁶⁷[President] ⁶⁸[and shall be exercised by him in consultation with the Supreme Court].

Section 9, 11 & 18 of the code of criminal procedure, 1898 are as follows:

Section-9: Court of Sessions:

(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) The Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.

(3) The Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(3A) The members of the Bangladesh Judicial Service shall be appointed as Sessions Judge, Additional Sessions Judge and Joint Sessions Judge in accordance with the rules framed by the President under the proviso to Article 133 of the constitution to exercise jurisdiction in one or more of such areas.]

(4) A Sessions Judge of one sessions division may be appointed by the Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

Section-11: Judicial Magistrates:

(1) In every district outside a Metropolitan Area, the Chief Judicial Magistrates, Additional Chief Judicial Magistrates and other Judicial Magistrates shall be appointed from the persons employed in the Bangladesh Judicial service in accordance with the rules framed by the President under the proviso to Article 133 of the constitution.

(2) An Additional Chief Judicial Magistrate shall have all or any of the powers of the Chief Judicial Magistrate under this Code or any other law for the time being in force, as the Government may direct.

(3) The Government may, or subject to the general or special orders issued by the Government in consultation with the High Court Division, the Chief Judicial Magistrate may, from time to time, define local areas within which the Judicial

Magistrates may exercise all or any of the powers with which they may be invested under this Code, and except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

(4) Notwithstanding anything contained in this section, the Government may require any Executive Magistrate to perform the functions of a Judicial Magistrate for a period to be determined in consultation with the High Court Division and during such period, the Magistrate shall not perform the functions of an Executive Magistrate.]

Section-18: Appointment of Metropolitan Magistrates:

(1) In every Metropolitan Area, the Chief Metropolitan Magistrate, Additional Chief Metropolitan Magistrate and other Metropolitan Magistrates shall be appointed from among the persons employed in the Bangladesh judicial Service.]

(2) The Government may appoint one or more Additional Chief Metropolitan Magistrates, and such Additional Chief Metropolitan Magistrates shall have all or any of the powers of the Chief Metropolitan Magistrate under this Code or under any other law for the time being in force, as the Government may direct.

3.7 Illustration, Nature and Salient features of some criminal laws of Bangladesh:

The chapter intends to illustrate some criminal laws of the territory to have knowledge of their nature and salient features. The country has adopted and chosen laws for her administration of justice. Most of the law of the country is adopted from the sub continent of India and somehow the laws and their nature are connected with Laws exist in the ancient period e.g. Hindu, Muslim, British and Pakistan Period. The knowledge of criminal laws of the territory is so much essential to justify or evaluate criminal justice system of the country.

Here elaboration of some law considering their nature, objects and features are described bellow:

A Code Of criminal Procedure, 1898:

Code of criminal procedure, 1898 is one of the essential code of the country in dealing with the criminal administration of justice. The only law of the country dealt with the procedure for determining power and function of the country and other procedural matter which is connected with criminal judicial system of the country.

1. Nature:
2. Objects:
3. Fundamental procedures
4. Evaluation

1. Nature:

CrPC is a branch of procedural law. Adjective of procedural criminal law provides machinery for the punishment of offenders against substantive criminal laws, e.g. the penal code and other statutes. However, CrPC is not the only procedural law for punishing offenders; it is the main general law of procedure for criminal proceedings but any other statute or special law may determine aspects of procedural law.

The CrPC though mainly an adjective or procedural law deals with many other aspects: it deals with the constitution of criminal courts, classifies them, defines their powers etc. there are provisions in the CrPC which provide for substantive law by creating offences.

For instance, section 250 creates a separate offence in case of false, frivolous and vexatious accusations in cases tried by magistrates. In addition to offences created by section 203 and 211 in the penal code, section 250 of the CrPC creates another offence of false accusation and punishment has been prescribed in that very section also. Likewise, section 485A of the CrPC creates another offence with punishment for non-attendance by a witness in obedience to summons. If any witness fails, without just excuses, to appear before a court in response to a summon, the court before which the witness is to appear may try him summarily and sentence him to fine not exceeding two hundred taka and fifty.

2. Objects:

The main objects of the code are to determine and specify the machinery for the punishment of offenders against substantive criminal laws enforceable in the country. The law itself the main general law of the country supervise the formation, function and other procedure requires for administration of criminal justice.

Thus CrPC is the main law of procedure but not the only.

3. Fundamental Procedures:

The Code of Criminal Procedure, 1898 is the main general law of procedure of the country in criminal justice system. The very code does not preclude anything which is needed for the determining of machinery of ensuring criminal justice. It is in considering of law is most uniform and clear. The code successfully elaborate

structure of the courts to functions of the court, pre trial stage to commencing of sentences and their execution, other procedures related with the administration of criminal justice.⁹

The knowledge of the code is essential for the criminal justice system because this is the main procedural law of the country to deal with the criminal justice system.

Following are some fundamental features of the code:

A. Classification of the courts:(Section-6 of CrPC)

The code of criminal procedure itself clearly defines the court which will regulate its jurisdiction over the people of the country. Section-6 of the code has clearly classified the courts which will exist in adjudication of criminal disputes within the country.

According to section-6 of the code following are the courts in criminal justice system of Bangladesh in the modern contemporary period to administer justice:

A. Supreme Court

3. Appellate Division

1. High Court Division

B. Court of Sessions

1. Court of Sessions

2. Additional Court of Session

3. Joint Session Court

C. Court of Magistrates

1. Judicial Magistrates

- Chief Metropolitan Magistrate or Chief Judicial Magistrate

- Additional Chief Metropolitan Magistrate or Additional Chief Judicial Magistrate

- Metropolitan Magistrate or Magistrate of 1st class

2. Executive Magistrates

- District Magistrate

- Additional District Magistrate

- Other Executive Magistrate

3. Special Magistrates

⁹ https://www.academia.edu/8084579/Bangladeshs_criminal_justice_system_is_useless

B. Determining Power and Functions of the Courts:(Section-31 to Section-33A of the Cr.PC):

The maximum Power of sentencing In adjudicating a criminal matter before the courts exist in the territory have been specified in section-31,32,33 and 33A of the code of criminal procedure. The maximum power of sentencing court is drawn in the table bellow:

Power of the Criminal courts: Section-31, 32, 33,33A

	<p>Section-32.Sentences which Magistrates may pass:</p> <p>The Courts of Magistrates may pass the following sentences namely:-</p> <p>(a) Courts of Metropolitan Magistrates and] of Magistrates of the first class: Imprisonment for a term not exceeding five years], including such solitary confinement as is authorized by law; Fine not exceeding ten thousand taka]; Whipping.</p> <p>(b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding three years], including such solitary confinement as is authorized by law; Fine not exceeding five thousand taka];</p> <p>(c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding two year]; Fine not exceeding two thousand taka].</p> <p>(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.</p>
<p>Power Of the Magistrates Court</p>	<p>Section-33: Power of Magistrates to sentence to imprisonment in default of fine:</p> <p>The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default:</p> <p>Provided that-</p> <p>(a) the term is not in excess of the Magistrate's powers under this Code;</p> <p>(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not</p>

	<p>exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.</p> <p>(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.</p>
<p>Powers Of the High Court Division or Session Court</p>	<p>Section-31: Sentences which High Court Division and Sessions Judges may pass:</p> <p>(1) The High Court Division] may pass any sentence authorized by law.</p> <p>(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division.</p> <p>(3) A (Joint) Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding ⁵⁰[ten] years or of imprisonment for a term exceeding 2 ⁵¹[ten] years.</p>
<p>Power of the Special Magistrates</p>	<p>Section-33A: Higher powers of certain Magistrates:</p> <p>The Court of a Magistrate, specially empowered under section 29C, may pass any sentence authorized by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years.]</p>

C. Provision as to Arrest:(Section-46 to section-67 and Section-75 to Section-86)

Arrest is the beginning of imprisonment. Its purposes may be classified as preventive, punitive, and protective. There is no necessary assumption that arrest will be followed by a charge. A constable who reasonably suspects a person of involvement in an offence may arrest that person with a view to interrogating him in the more formal atmosphere of a police station.

Thus arrest is the legal detention of a person which does not demand for necessary charge but mere reasonably suspicion of involvement of an offence is enough.

Procedure of arrest may be discussed in the following 3 heads:

1. Arrest in general
2. Arrest without Warrant
3. Warrant of Arrest

3. Arrest in general:

Section 46 to 53 provides procedure of how an arrest can be made. The whole procedure may be described in the following steps:

Effecting arrest by touching the body of the arrestee:

Section-46: Arrest how made:

(1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting Endeavour to arrest:

- 2) If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.
- (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with ⁶⁹[transportation for life].

Search of place entered by:

While making the arrest under warrant or in case of a warrantable case the police officer may ask free ingress to any residence or place where he has reason to believe that the person to be arrested is hiding or has entered into (Section-47)

If ingress to such place can not be obtained under section 47 it shall be lawful for the police officer to break into the house or residence to effect the arrest (Section-48)

If such a breaking into the house is to be done into a zanana, the police officer must to give the women inside the zanana opportunity to withdraw themselves from it (Section-48)

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape (Section-49).

4. Arrest without Warrant: (Section-54-67):

Section 54 to section 67 of the code dealt with the procedure regarding arrest without warrant. Among them section-54 of the code provides unbeaten power to the police to arrest peoples without warrant.

Section-54: When police may arrest without warrant:

Any police-officer may, without an order from a Magistrate and without a warrant, arrest- firstly , any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly , any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh.

seventhly , any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

eighthly , any released convict committing a breach of any rule made under section 565, sub-section (3);

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefore that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Besides the code includes:

Section-55: Arrest of vagabonds, habitual robbers, etc

Section-57: Pursuit of offenders into other jurisdictions

Section-59: Arrest by private persons and procedure on such arrest

Section-60: Person arrested to be taken before Magistrate or officer in charge of police-station

Section-61: Person arrested not to be detained more than twenty-four hours

Section-64: Offence committed in Magistrate's presence

Section-65: Arrest by or in presence of Magistrate

5. Warrant of Arrest:

Provision regarding arrest of a person under warrant against any person who committed an act criminal in nature or arrest of the person as require or for whose arrest an order of the court or reasonable authority are mentioned in section-75 to section-86 of the code of criminal procedure, 1898.

D. Search warrant:(Section-94 to section-106 of CrPC):

Section-96 to Section-99G of the code of criminal procedure dealt with the provision regarding issuing search warrant and procedure regarding execution of such warrant.

Section-96: When search- warrant may be issued

Section-97: Power to restrict warrant

Section-98: Search of house suspected to contain stolen property, Forged document, etc

Section-99: Disposal of things found in search beyond jurisdiction

Section-100: Search for persons wrongfully confined

Section-102: Person in charge of closed place to allow search

Section-105: Magistrate may direct search in his presence

E. Disputes as to immoveable property:(Section-145 to Section-148 of the CrPC):

Section 145 to section 148 deals with the disputes as to immovable property. **Section 145** of the code states procedure where dispute concerning land, etc. is likely to cause breach of peace and state that party in possession to retain possession until legally evicted.

Section 146 of the code deals with the provision regarding attachment of disputed property subject to exceptions.

Section-145: Procedure where dispute concerning land, etc, is likely to cause breach of peace:

(1) Whenever a District Magistrate, or an Executive Magistrate specially empowered by the Government in this behalf] is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water of the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.¹⁰

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute. Inquiry as to possession.¹¹

(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

¹⁰ Ibid

¹¹ Patwary, ABM Mofijul Islam, Legal System of Bangladesh, Dhaka, 1991

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final. Party in possession to retain possession until legally evicted

(6) If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefore in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Section-146: Power to attach subject of dispute:

(1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

Provided that such Magistrate]may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure, 1908]:

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

F. Summary Trial:(Section-260 to Section-265 of the CrPC)

Section-260 to section-265 of the code of criminal procedure, 1898 dealt with the procedure regarding summary trial by the magistrates' court and relevant procedure arise out of summary trial.

Section-260: Power to try summarily:

(1) Notwithstanding anything contained in this Code,-

(a) the Metropolitan Magistrate ,

(b) any Magistrate of the first class and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class shall try in a summary way all or any of the following offences:- offences not punishable with death, transportation or imprisonment for a term exceeding two years;

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Penal Code;

(c) Hurt, under section 323 of the same Code;

- (d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed ten thousand taka];
- (e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed ten thousand taka;
- (f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed ten thousand taka];
- (g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed ten thousand taka;
- (h) mischief, under sections 426 and 427] of the same Code;
- (i) criminal trespass, under section 447, and] house trespass, under section 448, and offences under sections 451, 453, 454, 456 and 457 or the same Code;
- (j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, and offences under sections 509 and 510] of the same Code;
- (jj) offence of bribery and personating at an election under sections 171E and 171F of the same Code;]
- (k) abetment of any of the foregoing offences;
- (l) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (m) offences under section 20 of the Cattle-trespass Act,1871: Provided that no case in which a Magistrate exercises the special powers conferred by section 33A] shall be tried in a summary way.

(1) [Omitted by section 22 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

Section-262: Procedure for summary trials:

- (1) In trials under this Chapter, the procedure prescribed in Chapter XX] shall be followed except as hereinafter mentioned.

Limit of imprisonment

- (2) No sentence of imprisonment for a term exceeding two years shall be passed in the case of any conviction under this Chapter

G. Appeal:(Section-404 to section-431 of the CrPC):

Section-404 to section-431 of the code of criminal procedure, 1898 laid down procedure regarding appeal.

The provisions of appeal are clear and specific in this code. Section-417 deals with appeal in case of acquittal and section-417A deals with appeal against conviction.

Section-417: Appeal in case of acquittal:

(1) Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal-

(a) To the High Court Division from an original or appellate Order of acquittal passed by any Court of Session;

(b) To the Court of Session from an original or appellate Order of acquittal passed by any Magistrate.]

(2) Notwithstanding anything contained in section 418, if such an order is passed in any case instituted upon complaint, and if the order involves an error of law occasioning failure of justice, the complainant may present an appeal-

(a) To the High Court Division from an original order of acquittal passed by any Court of Session;

(b) To the Court of Session from an original order of acquittal passed by any Magistrate.]

(3) No appeal by the complainant from an order of acquittal shall be entertained by the High Court Division or a Court of Session] after the expiry of sixty days from the date of the order of acquittal.

(4) If, in any case, the admission of an appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)

Section-417A: Appeal against inadequacy of sentence:

(1) The Government may, in any case of conviction on a trial held by any court, direct the Public Prosecutor to present an appeal to the High Court Division against the sentence on the ground of its inadequacy.

(2) A complainant may, in any case of conviction on a trial held by any Court, present an appeal to the Appellate Court against the sentence on the ground of its inadequacy: Provided that no appeal under this sub-section shall be entertained by the Appellate Court after the expiry of sixty days from the date of conviction.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Appellate Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.¹²

From the above sections it is clear that the procedure of appeal is much codified in the criminal procedure code, 1898. The code includes procedure regarding appeal against acquittal as well as appeal against conviction.

¹² <https://www.historyforexam.com/2018/12/law-and-justice-during-mughal-period.html>

H. Bail and Bond :(Section-496 to Section-502 and Section-513 to section-516 of CrPC):

The word **Bail** is derived from the old French verb *bailleier* meaning to give or deliver. Bail in English common law is the security or on surety being taken for his appearance on certain day and a place named. In other words, bail is the delivery of arrested person to his sureties upon their giving security for his appearance at a designated place and time, to the jurisdiction and judgment of the court.

Section 496 to section 502 of the Cr.PC deals with the procedure as to grant bail or bail and Section 513 to section 516 of the same Code deals with the Bond.

Following are the mother of the provisions of appeal:

Section-496: In what cases bail to be taken:

When any person other than a 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, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).

Section- 497: When bail may be taken in case of non-bailable offence:

(1) When any person accused of any 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, he 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:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released

on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) The High Court Division or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

The code of criminal procedure as well as clarified in section 500 release of the person from custody for whose release a bond has been founded in section-499 of the code.

I. Procedure regarding transfer of cases (Section-525A to section-528 of CrPC)

The objects of transfer of criminal cases are to ensure justice. Transfer of criminal case may take following three forms:

- a) Transfer for trial to an appropriate court after taking cognizance under section 191,192,205C or 205CC
- b) Transfer for sentence to an appropriate court under sections 245 and 349
- c) Transfer of a pending case by the appellate division, High Court Division or Sessions Court under chapter XLIV of the Cr.PC.

The provisions regarding transfer of cases in criminal justice system of the Country specified by section 525A to Section 528 of the code of criminal procedure, 1989

Section-525A: Power of Appellate Division to transfer cases and appeals:

(1) The Appellate Division may direct the transfer of any particular case or appeal from one permanent Bench of the High Court Division to another permanent Bench of the High Court Division, or from any Criminal Court within the jurisdiction of one permanent Bench of the High Court Division to any other Criminal Court of equal or superior jurisdiction within the jurisdiction of another permanent Bench of the High Court Division, whenever it appears to it that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The permanent Bench of the High Court Division or the Court, as the case may be, to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Bench or Court, as the case may be.]

526B- Power of Sessions Judge to transfer cases:

(1) Whenever it is made to appear to a Sessions Judge that an order under this section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the Application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (4) to (10) (both inclusive) of section 526 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court Division for an order sub-section (1) of section 526.]

Section-528: Sessions Judge may withdraw cases from Assistant Sessions Judge:

(1) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Joint] Sessions Judge subordinate to him.

(1A) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, any Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(1B) Where a Sessions Judge withdraws or recalls a case under sub-section (1) or recalls a case or appeal under sub-section (IA), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

Chief Metropolitan Magistrate, Chief Judicial Magistrate or District Magistrate may withdraw or refer cases:

(2) [The Chief Metropolitan Magistrate or ⁵⁰⁶[Chief Judicial Magistrate or District Magistrate] may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize Chief Metropolitan Magistrate or the Chief Judicial Magistrate to withdraw classes of cases:

(3) The Government [with the approval of the High Court Division] may authorize the Chief Metropolitan Magistrate or the Chief Judicial Magistrate] to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.

(5) A Magistrate making an order under this section shall record in writing his reasons for making the same.

B. Penal Code, 1860:

A penal code is a portion of a state's laws defining crimes and specifying the punishment. Other parts of the laws of a given state can define crimes and punishments, such as a traffic code or a building safety code, or laws addressing environmental resources by regulating hunting, fishing, or forestry.

In many states, the body of criminal law is published in one or more printed books for convenient reference by lawyers, other professionals of the criminal justice system, and, in principle, ordinary citizens.

Nature and categories of offences under Penal Code 1860:

The penal code 1860 the earliest and the main body of laws which deals with different kinds of offences and punishments. Offences under the code have been classified as those

- I. Against the state;
- II. Related to the Army, Navy and the Air force;
- III. Against the public tranquility;
- IV. By or related to the public servants;
- V. Related to elections;
- VI. For contempt of the lawful authority of public servants;
- VII. Affecting public health, safety, convenience , decency and morals;
- VIII. Related to religion

IX. Affecting the human body which have further been sub-divided into offence affecting life, and causing miscarriage, kidnapping, rape, dacoity, or related to marriage, criminal breach of trust and so on.¹³

¹³ Hussain M. Fazlul Bari

Chapter- Four

Comparison between Criminal Justice System of U.K and Bangladesh

Where the question is to find out the relevancy or comparison between laws or in large, criminal justice system, of the United Kingdom and Bangladesh, it is too hard to find out because the maximum laws of the sub continent has its origin from the British kingdom as the continent has dominated by the British rules and laws near about 200 years.

Following may be some major difference between the legal justice system or criminal laws of United Kingdom and Bangladesh:¹⁴

A. Jury:

Jury is one of the basic features of the United Kingdoms criminal justice system. They have adopted The Juries Act, 1974 for determining their procedure. It is observed by the country that the most acceptable and correct decision is found by the sentence passed by the jury further it is observed that most of the cases fails to seek justice and are made to question where trial done without jury.

Whereas, the legal system of United Kingdom adopt the Juries Act, 1974 but the legal system of Bangladesh has no such provision as to jury but section-15 and 19 empowers magistrates to sit together as bench subject to direction of the Government. The High Court Division of the country also operates benches consisted of several justice but it has no original jurisdiction to take cognizance of criminal case.

B. Ensuring Rule of Law:

Rule of law has great importance in judicial system of United Kingdom and one of the very important features of the British constitution As there rule of law is ensured no one can escape and also no one is beyond the judicial capacity so possibility of ensuring criminal justice becomes light.

On the other hand, Rule of law has not yet established though Article-27 of the constitution of the country (Bangladesh)states “all citizens are equal before law and are entitled to equal protection of law” I short “Equality before law”.

¹⁴ <https://www.historyforexam.com/2018/12/law-and-justice-during-mughal-period.html>

C. Summary trial:

The process of summary trial is successful in the criminal system of United Kingdom. It has chosen summary trial for seeking the quick and easiest justice in some criminal matter. Its only followed the following process in it trial and appreciated in almost every country:

1. The plea:
2. Defense case
3. Submission of no case
4. Prosecution case:
5. Verdict

On the other hand,

Section 26 to section 265 of the Cr.PC laid down provisions for summary trial for some offences which is not yet accepted by the experts and the proper and justifiable judgment or justice has not been ensured from its judgment.

D. Appeal:

The English man who enacts laws regarding every navel matters. It chosen **criminal appeal Act, 1968** for itself to deal with the procedure regarding appeal. An application for appeal on this process must be made within 21 days after the commencement of a sentence.

On the other hand,

The code of criminal procedure,1898 itself the law regarding appeal. Section 404 to 431 of the code deals with the matter. The code in general provides 60 days to appeal against any judgment of acquittal and conviction.

E. Sentencing

On passing sentence regarding any criminal case the criminal system of the United Kingdom proves it intelligence. They usually prefer pecuniary compensation rather custodial sentences. Criminal justice system of United Kingdom avoid death penalty and In passing sentence they are more aware so that no injustice would done or no one suffer injustice.

They laid down provision various provisions so that it can surpress injustice and ensure justice to the both plaintiff and defendant. For example,

Under s.11 (3) of the Magistrates' Courts Act 1980, the magistrates may not pass a custodial sentence on an absent offender.

Courts are not allowed to disqualify the offender from driving unless he is present or the case was previously adjourned for him to attend

On the other hand,

Criminal justice system of Bangladesh yet not god rid from passing capital punishment or the death penalty though it is avoided in developed country and on passing of sentences it showed its biasness, pressure either political or any way. ¹⁵

F. Bail:

The Bail Act 1976 directs the procedure of bail and other correlated matters of the bail. It has preclude every small exception as it may be arise before setting a person free in Bail.

On the other hand,

Section-496 to Section-502 of the code of criminal procedure, 1898 operates bail. ¹⁶

¹⁵ <https://www.jstor.org/stable/4407068>

¹⁶ Md. Milan Hossain

Chapter- Five

Experts Opinion

The research is about criminal justice system of Bangladesh is depended on vast knowledge in criminal justice system. Without complete knowledge of criminal justice system it is not possible by mere saying rather its needed hard field work.

For gathering the problems and doings to ensure administration of criminal justice the research had gone through and suggested through different character who has or had the connectivity in any way with the criminal justice system.¹⁷

Remarkable default, suggestion as to solution and various definitions are founded while communication with the personnel made. The entire findings may be classified in two heads:

1. Opinion as to fault of criminal justice system
2. Opinion or suggestion as to solution or development

5.1 Opinion as to fault of criminal justice system:

1. Opinion of Judges:

For the completion of the research and to gain some knowledge as to practical problems and as well as problems arise out of law I had communicate with two Magistrates of the country and with a former Additional Session judge.

They give their speech as following on the question how far Criminal justice ensured?

Learned Magistrate Mr. Samsuddin Badal states,

“Bangladesh had conferred or enacted the best laws except some but still it could not establish natural justice because of its enforcement, dishonesty of the peoples includes court staff, police etc. and political pressure also.”

Former Additional session judge Mr. Hasnat Kobir stated much strictly in his answer, “Constitution of the country had ensured provision as to separation of judiciary but it is till now exist in the papers but the real situation is dangerous. The laws enacted by the country is enough but their execution is in question. E.g. appointment of the

¹⁷ <https://www.legalserviceindia.com/legal/article-8100-all-about-the-procedure-of-arrest-under-crpc.html>

judges, staffs of the court, executive body (police or others) and members of others organization have not been yet doing in fair way.

Eventually appointments of unqualified person and disability as to ensure qualified training are also responsible to failure to the criminal justice system.”

Though they showed that the criminal justice system is yet not been ensured but they express that they are hopeful and believe the country will surely develop and will be able to ensure criminal justice

2. Opinion of the Lawyers:

The present condition of the judicial system of the country becomes much defected in the language of some lawyers. Almost every lawyer stated that the seeking justice becomes much harder. One of them stated,

“The justice is going to hide from the country behind the money and political pressure.”

Learned advocate Md. Junayedullha Shoeb that,

“Justice is going far away from the reach of the poor people. The costs are unbearable for the person who is victimized by any act of other person. Usually poor people are suffering for commission of an offence but they can’t claim justice only because of poverty though government in papers operate suit for the poor.”

Learned Advocate P.M.Mahady Hasan expresses himself,

“Appointment of the corrupted judges, staffs, police, political unrest, dishonesty and disqualification of them and as well as some lawyers are liable for the failure to criminal justice system.”

Learned Advocate Md. Emdadul Hanif stated differently,

“The dishonesty of the citizens, Institution of false cases, to gain political benefit filing cases against opposite party have made jam to the courts and judicial system is sinking to adjudicate them and so remedy to the real victim is denied or delayed. And the corruption, bribery etc are along with them.”¹⁸

3. Opinion of the Police:

5/The code of Criminal Procedure, 1898

S.I Golam Rabbani a member of the Bangladesh police serving for 16 years state,

“Without giving money the appointment and promotion is not possible besides the facilities or remuneration given by the Govt. is not adequate for his family. So taking bribery is essential.”

Former warrant officer Jahangir Bhuiyan—

“The police man of the country can work freely. Political pressure, scarcity of weapon, man power and less remuneration is liable for non performance of police.”

4. Opinion of the Courts staff:

Monir Hossain Working in the courts for 3 months. He claimed,

“5, 00000 taka had to give for the job. I borrowed it from his relatives and will have to pay them. I am only the boy of my family so i need some benefits out of the remuneration given by the Government”

5.2 Opinion or suggestion as to solution or development:

They have suggested to the development of the following matters as following are the main problem of the criminal justice system besides ambiguity of laws:

1. Disability of the Victim to seek remedy because of poverty as well as non performance of the organization whose duty is to assist poor people.
2. Bribery or taking benefit of the post (judges, staffs, police)
3. Appointment of unqualified peoples as judge, police or staff
4. Appointment by taking money.
5. Burden of cases
6. Shorten of man power. (Police, court staff etc.)
7. Political pressure over the judiciary
8. Dishonesty of the peoples related with the justice system
9. certain limitation to train the judges and police
10. false and vogue cases filing
11. efficient working of the Body related to criminal justice system.e.g law commission, judiciary, police etc.

Chapter-Six

Recommendation & Conclusion

1. Recommendation:

The laws of the nation should be reconsidered as to their punishment or fine or for their enforcement. The law has given the procedure but it can not be enforced because of the poor process of its enforcement. Besides law, the procedure of the laws how can be followed or enforced more efficiently and quickly should be considered in considering the present condition of the country.

Trial process of the criminal cases are too lengthy and that why the criminal got opportunity to find way to rid him from the alleged charges. The trial process should be ensured more quickly by enactment of laws or by inspecting on it. We are known to the well familiar principle that “delay deny justice”.

High qualified training and international training are required to be held because of gaining knowledge of judicial system of the other developed country to ensure development of the judicial system of our judicial system. Whenever the judges of the country can work without any pressure after having a good qualified national as well as international training the criminal judicial system of the country shall get its life.¹⁹

Appointment of less qualified and also corrupted, biased man as a judges can totally break judicial system of the country as he will decide everything defectively for his disqualification and his decision shall not be pleasant because of his corruption or biasness. So fair appointment of the judges must have to ensure and qualification should be valued.

Strict observation and steps should have to take as the bribery and biasness of the judges may break down natural justice. Strict observation over the judges should keep always for preventing them from allowing bribery and from giving any judgment by biasness. Necessary steps or training should be given to the advocates to build up them so that they can seek remedy to the victim. Specially international and national training should ensure for the government pleader as they are the pleaders who act on behalf of the plaintiff and in most cases plaintiffs are the sufferer. Steps should be

¹⁹ Halim A, The Legal System of Bangladesh (7th edn, CCB Foundation, Dhaka 2014).

taken to develop law profession so that the qualified people get interested in this profession.

The process for enrolment as an advocate must be completed in fair way. No political linking or pressure, money and any other unfair process should not to be allowed.

Reasonable steps should be taken to prevent use of discretionary power of the judges in corrupt way. Also High qualified investigation should be done regarding the connection of the accused, when any person is brought before the court in charge of any non bailable offence so that the court in granting bail to non bailable offender can administer justice.

High qualified training and availability of necessary weapon should be produce as require for ensuring criminal administration justice system. Police the law enforcing body should keep out of any pressure e.g. political pressure and everyone of the country should assist them in functioning their work.

Observation to the function of the corrupted police officer should be made and if found guilty for such kind of corruption strict steps should be taken for their punishment. Remuneration of the police should be fixed to a minimum standard, other facilities as required for living should ensure so that they can run their family normally and pleasant atmosphere should given for seeking their performance. Fair appointment of the police must ensure for the development of criminal justice system. Police is the main executive body which enforce laws and takes preventive measures against commission of crime so if the appointment of the members of this very important body is not made in fair way then fair criminal justice is impossible. As staffs of the court are hardly connected with judicial system the appointment of the staffs must to be done in fair way. No allowance or Biasness should be taken in case of appointment because a person come through legal process is bind by duty to work legally.

2. Conclusion:

The objective of the chapter is to determine and define the body or other institution which are working for the development of law, for ensuring justice and in any way related with the law of the country especially in the field to co-operate criminal justice system of Bangladesh. Following body or organization are the main to entrust with criminal judicial system of Bangladesh:

The Bangladesh Police is the main law enforcement agency of Bangladesh to provide service to all citizens and make Bangladesh a better and safer place to live and work. It also upholds the rule of law, ensures safety and security of citizens, prevents and detects crime, brings offenders to justice and maintains peace and public order. It is administered by the central interior ministry of the Government of Bangladesh. Outside the Dhaka capital region and other major cities, police is organized at the district and thana levels. Raised in 1976, the Dhaka Metropolitan Police is charged with maintaining security and order in the national capital and largest city. Twelve female police officials were recruited for the Bangladesh Police Special Branch (SB) in 1974 and inducted in the Dhaka Metropolitan Police in 1978. In 2004, Rapid Action Battalion (RAB) was raised comprising of personnel of the Military of Bangladesh, Border Guard Bangladesh (BGB) and the Bangladesh Ansar and VDP. The Bangladesh Police Special Branch was established to assist in maintaining national security and also performs the functions of intelligence-gathering and counterintelligence. In 2008, Bangladesh police established the Special Women Police Contingent (SWPC) to fight prostitution, drug smuggling and human trafficking. Composing entirely of female officers, the SWPC would be used to gather intelligence on criminal activities and specifically track down female criminals.

Bangladesh judiciary is organized and governed according to the constitutional and legal provisions and from this section enumerate the system and about what 'judicial independence' really means. It also elaborates types of judge, including where they sit, the types of cases they hear and how they are appointed. It has been separated and recognized by the constitution as an organ of the state.

The Chief Justice of Bangladesh decides where Justices sit, and the type of cases they hear, while the Ministry of Law (MOL) decides the judges, magistrates and tribunals affairs.

The Chief Justice of Bangladesh in the Supreme Court decides where Justices shall sit, and the type of cases they hear. His lordship normally constitutes Benches of the Appellate and the High Court Division. In the Appellate Division he normally constitutes the Bench with three Appellate Division Justices or with five Justices including himself.²⁰

In the High court Division the chief Justice constitutes Benches with one or two justices known as Single Bench and Division Bench respectively. In a special case the Chief Justice may constitute Special Bench with Three Justices, called Full Bench or Larger Bench with Five Justices to hear and dispose off a referred case by him. The Chief Justice may withdraw any case from the bench of any Justice without any assigned reason and transfer it to any other Bench. The chief justice reshuffles the benches of the High Court Division regularly The Ministry of Law (MOL) decides the subordinate judges, magistrates and tribunals affairs after consultation with the Supreme Court in accordance with the provision of Article 116 of the constitution which runs as follows :

The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.

Followings are also governed by the judiciary in judicial system by the judiciary:

- ✓ Courts holidays & Vacations: The legal year traditionally begins in October and courts sit for four terms during the year.
- ✓ Judicial accountability and independence: The importance of judicial independence and the consequences of that independence on the notion of judicial accountability
- ✓ Law professional bodies: There are various Advocates Associations and a Bar Council to control the law professionals. Judicial Training authorities: Training of the subordinate judicial officers is imparted by authority run by the MOL.

²⁰ Ibid

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