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Dissertation
on
"Criminal Justice System in Bangladesh"

(***This Dissertation is submitted for the partial fulfillment of the degree of LL.M***)

Submitted To

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Letter of Submission

Date: 05/09/2022
To
The Head
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Subject: Submission of the Dissertation

Dear Sir,

It is a great pleasure for me that I have the opportunity to submit the Dissertation titled on **"Criminal Justice System in Bangladesh"**

According to your guidelines I have been able to prepare the dissertation effectively and enthusiastically. This dissertation attempts to describe my observations, learning and recommendations based on general reasoning evidence. I made sincere efforts to conduct this study in reviewing related laws, documents, and interview and examine relevant records for preparation of this report. While preparing the report, I had gained lot of experience contrary to the limited theoretical knowledge on various aspects.

I will wholeheartedly welcome any clarification and suggestion for any review and conception disseminated through this dissertation.

I humbly request you to accept this dissertation for your kind perusal.

Thanking you,
Sincerely yours

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Student's Declaration

I solemnly affirm and hereby declare that the dissertation titled on **"Criminal Justice System in Bangladesh"** is my original work and has not been submitted to any other university/institution for obtaining any other degree or for publication.

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Supervisor's Declaration

This is to certify that the Dissertation titled on **"Criminal Justice System in Bangladesh" .** submitted by **Latifa Akter,** Student ID. LLMP2003021001**,** Program: LL.M (2 Years)**,** Department of LAW**,** Sonargaon University under my active supervision and guidance and no part of this dissertation has been submitted for obtaining of any degree/diploma/fellowship or other similar purpose in any other university or institutions. The dissertation Comply with the policy and rules of research of Sonargaon University.

_____

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First of all I would like to express my gratitude to almighty Allah, for completing this dissertation. While doing my research I have received help from a number of people. Although the assigned time was very limited for the accomplishment of the research, I tried my best to include almost every issues relating to my topic. I take the opportunity to express my deep sense of gratitude of my supervisor for his invaluable suggestions and guidance during the study period that has greatly inspired me for preparing this Dissertation successfully.

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Chapter 1
Introduction

1.1 Introduction:

Criminal Justice System refers to judicial process or procedure of adjudicating criminal issues of which depends on vast knowledge in the Criminal matter and its practice. Easily it may be said Criminal Justice in concerned with the punishment of the wrong other than civil wrong which in Criminal Proceeding is known as crime. The main objective of the Criminal Proceeding is to punish wrongdoer. Criminal Justice brought only for rendering punishment of the accused for the allegation alleged against him subject to the proof that the offence or crime has been committed by him or not. 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.[1] 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. 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, [2]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).

[1] Ameen, N. (2005), *Dispensing Justice to the Poor: The Village Court, Arbitration Council vis-à-vis NGO Mediation,* The Dhaka University Studies (Journal of the Faculty of Law), Part – F, 16 (2), Access date on 12th January'2018.

[2] Braswell. M. (2014), *Restorative Justice and Peacemaking,* Journal of Theoretical and Philosophical Criminology, Access date on 5th Janumary'2018.

1.2 Objective of the study

The main objective of the Criminal Justice is to punish the wrong door with penalty which intent to deter peoples to not engaged in crime and suppress crime. 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.

1.3 Methodology of the study

This study is generally based on a non-empirical analysis. The main sources of this study include secondary sources like textbooks, reports, relevant national and international legislations, case studies, some important daily newspapers, online documents and some publications.

Data collection:

Primary data:

Primary data for the research are collected from:

1. Legislations.
2. International instruments.

Secondary data:

The research is outcome of both primary and secondary data. Secondary data is collected from various sources that may be divided into the following categories:

1. Relevant study books, records, journals other research papers, etc.
2. Articles of Journals.
3. Articles of Newspaper.
4. From various survey and statistics report.

1.4 Limitations of the research:

- Limitation of time was one of the most important factors for collecting data. A longer time period would have ensured to collect more information in details.
- Information secrecy is one of the most critical problems. Disclosing of information in highly restricted. This hinders to describe the divisional the activities in details.
- The dissertation is limited only to draw a framework and analyze the theoretical aspects of an effective
- Due to lack of experience, there is a chance of having some mistake in the dissertation but best effort has been applied to avoid any kind of mistake.

1.5 Research Problems

- What are main policy and procedures of Criminal Justice System Bangladesh?
- What are the main obstacles of justice system in Bangladesh?
- How to improve the criminal justice system in Bangladesh?

Chapter-2
Conceptual Issues of Criminal Justice System

2.1 Introduction

Criminal justice is the delivery of justice to those who have committed crimes. The criminal justice system is a series of government agencies and institutions whose goals are to identify and catch unlawful individuals to inflict a form of punishment on them. Other goals include the rehabilitation of offenders, preventing other crimes, and moral support for victims. The primary institutions of the criminal justice system are the police, prosecution and defense lawyers, the courts and prisons.

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 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.[1] The main systems are:

- **State:** State criminal justice systems handle crimes committed within their state boundaries.
- **Federal:** The federal criminal justice system handles crimes committed on federal property or in more than one state. [3]

2.2 Crime, Criminal Justice System in Bangladesh

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. The idea that acts like murder, rape and theft are prohibited exists all around the world, and probably has universal moral basis. What precisely is a criminal offence is defined by criminal law of each

[3] Akkas, S.A. (2004), Independence and Accountability of Judiciary – A Critical Review, Center for Rights and Governance (CriG), Dhaka, Access date on 5th January'2018.

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 follow it. An act or omission is a crime if it is capable of being followed by what are called criminal proceedings.[4]

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.

Criminal:

The word **criminal** was used first in the 15th century and derived from Late Latin word *criminalis .T*he 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.

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

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

[4] Ashrafuzzaman, Md. (2006), Laws Without Order & Courts of No Relief in Bangladesh, Asian Human Rights Commission, Hong Kong, Access date on 12th January'2018.

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 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]

2.2.1 System Components of Criminal Justice

Most criminal justice systems have five components-law enforcement, prosecution, defense attorneys, courts, and corrections, each playing a key role in the criminal justice process. 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.

Law Enforcement: Law enforcement officers take reports for crimes that happen in their areas. Officers investigate crimes and gather and protect evidence. Law enforcement officers may arrest offenders, give testimony during the court process, and conduct follow-up investigations if needed.

Prosecution: Prosecutors are lawyers who represent the state or federal government (not the victim) throughout the court process-from the first appearance of the accused in court until the accused is acquitted or sentenced. Prosecutors review the evidence brought to them by law enforcement to decide whether to file charges or drop the case. Prosecutors present evidence in court, question witnesses, and decide (at any point after charges have been filed) whether to negotiate plea bargains with defendants. They have great discretion, or freedom, to make choices about how to prosecute the case. Victims may contact the prosecutor's office to find out which prosecutor is in charge of their case, to inform the prosecutor if the defense attorney has contacted the victim[2], and to seek other information about the case.

Defense Attorneys: Defense attorneys defend the accused against the government's case. They are ether hired by the defendant or (for defendants who cannot afford an attorney) they are assigned by the court.[6]

[5] The) Daily Star (2007), "Politicisation major reason for judicial graft in Bangladesh in TI Global Corruption Report", The Daily Star, Vol. 05 No. 1059, available at: www.thedailystar.net/ 2007/05/25/d70525011912.htm

[6] Halim, M.A. (1998), Constitution, Constitutional Law and Politics: Bangladesh Perspective, Rico Printers, Dhaka.

Chapter-03

Provision of the Law concerning criminal justice system in Bangladesh

3.1 Provision of the Law concerning criminal justice system in Bangladesh

a) 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.

b) 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 proceeded the British period, and each of these early periods had a distinctive legal system of its own.

c) 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 with in the territory of the country.

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[7]

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] http://bdlaws.minlaw.gov.bd , Access date on 15th January'2018

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

1. Supreme Court
    1. Appellate Division
    2. High Court Division
    3. Court of Sessions
        1. Court of Sessions
        2. Additional Court of Session
        3. Joint Session Court
        4. 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

1. Executive Magistrates

- District Magistrate
- Additional District Magistrate
- Other Executive Magistrate

1. Special Magistrates[8]

3.2 The Supreme Court

Article–**94: Establishment of Supreme Court:**

(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.

[8] http://bdlaws.minlaw.gov.bd , Access date on 15th January'2018

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.

(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

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.[9]

(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.[10]

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[9] Dina M. Siddiqi*"New Trends in Violence: Sexual Harassment and Obstacles to Mobility in Bangladesh."* Position paper prepared
for the NGO Coalition onBeijing Plus Five, Bangladesh. Dhaka 2003.

[10] Dina M. Siddiqi, *The Shalish and Gender Justice Programs in Bangladesh: A Review,* prepared for Ain-o-Salish Kendro and Research Initiatives,Bangladesh

(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

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

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.[11]

(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.[12]

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.]

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.

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[11] MahjabeenQuader and MdMazedul Islam, *Institutionalising Adr For Commercial And Tax Disputes: Changing face of dispute resolution regime in Bangladesh,* New Age, The Outspoken Daily; 27 June,2012.

[12] *Judiciary burdened with huge backlog,* Editorial, The Daily Sun, Dhaka. 29 January, 2013.

(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 years

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.[13]

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

[13] Md. Abdul Alim& Tariq Omar Ali, *NGO-shalish and Justice-seeking Behaviour in Rural Bangladesh,*BRAC Research Report, Dhaka: 2007, p. 17.

judicial functions shall vest in the [President] [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 followes:

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.[14]

(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.

[14] *Study Circle Discussion Guide on Alternative Dispute Resolution,*Study Circle Bangladesh, Dhaka: 2003, p. 13.

(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.[15]

(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.[16]

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:

[15] United Nations Development Program, *Human Security in Bangladesh: In Search of Justice and Dignity,*Dhaka, UNDP, 2002, p.23.

[16] Dina M. Siddiqi, *Paving the Way to Justice, The Experience of NagorikUddyog*, Bangladesh, One World Action, London, p. 9.

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.[17]

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.

[17] FaustinaPereira,The Fractured Scales: The Search for a Uniform Personal Code. UPL: Dhaka, 2002.

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.

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.[18]

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:

1. Supreme Court
    1. Appellate Division
    2. High Court Division
    3. Court of Sessions
        1. Court of Sessions
        2. Additional Court of Session
        3. Joint Session Court
        4. 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[19]

1. Executive Magistrates

- District Magistrate
- Additional District Magistrate

[18] Jonathan Law and Elizabeth A. Martin, A Dictionary of Law, Seventh Edition, Oxford University Press, 2012, p. 310.

[19] Magdalena Sepúlveda Carmona and Kate Donald, *Access to justice for persons living in poverty: a human rights approach*, Ministry for ForeignAffairs of Finland, 2014, pp. 11 - 12.

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

Power Of the Magistrates Court

Section-32.Sentences which Magistrates may pass:

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.[20]

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

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.

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[20] Mahajan, V. D., *Jurisprudence & Legal Theory*, Eastern Book Company, Lucknow, 2008, p. 126.

[20] NilaMatin, *Women"s Rights: Freedom of Participation and Freedom from Violence,*HameedaHossain

Powers Of the High Court Division or Session CourtSection-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 years or of imprisonment for a term exceeding 2 years.

Power of the Special MagistratesSection-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.][21]

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:

[21] Ameen, N. (2005), Dispensing Justice to the Poor: The Village Court, Arbitration Council vis-à-vis NGO Mediation, The Dhaka University Studies (Journal of the Faculty of Law), Part – F, 16 (2).

(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 transportation for life.[22]

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.[23]

[22] Braswell. M. (2014), *Restorative Justice and Peacemaking,* Journal of Theoretical and Philosophical Criminology.

[23] Bazemore, G and Umbreit, M S (1995), *Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime, Crime & Delinquency*, 41 (3).

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.[24]

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.

[24] Crisostomo, R. (2008), *The Effectiveness of Restorative Justice Practices: How to Restore Justice for At-Risk Youth*, California.

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[25]

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 peach:

(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.

(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

[25] Hassan, M. (2006), Access to Formal and Informal Justice System and Legal Empowerment Strategies in Bangladesh, background paper for the Bangladesh Gender Assessment, World Bank, Dhaka.

shall be published by being affixed to some conspicuous place at or near the subject of dispute. Inquiry as to possession

(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.

(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[26]

[26] Hossain, M. B. (2012), *Dispensing Justice Locally: A Study of Two Village Courts in Bangladesh*, North South University.

(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.[27]

(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.

[27] Khan, B. U. and Rahman, M. M. (2009), *Local Government Level Restorative Adjudication: An Alternative Model of Justice for Children in Bangladesh*, Commonwealth Journal of Local Governance Issue 4.

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 complaint 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)[28]

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.[29]

(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,

[28] Kamruzzaman M. (2015), Child Victimization at Working Places in Bangladesh. *American Journal of Applied Psychology*, 4(6): 146-159.

[29] Lambson, H. S. (2015), *Evaluating a Native American Restorative Justice Practice in a State Criminal Court Setting*, Brooklyn.

the accused may plead for his acquittal or for the reduction of the sentence. 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.

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 five 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.[30]

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.[31]

[30] Kamruzzaman M. (2017), Prisoners' Posture on Prison: A Criminological Study. *American Journal of Information Science and Computer Engineering*, 3(1): 7-13.

[31] Meadows, etal. (2012), *Evaluation of the South Yorkshire Restorative Justice* Programme Morris, A. and Maxwell, G. (2004), *Reforming criminal justice: the potential of restorative justice*, Spiger publication.

(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.[32]

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 CRPC.

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[33]

[32] Mc Cold, P. (2001), *Primary Restorative Justice Practices*, Hart Publishing, Oxford. McLaughlin, E *et al* (eds.) (2003), *Restorative Justice: Critical Issues*, Sage Publications Ltd, London.

[33] Kamruzzaman M and Hakim M A. (2016), Prevalence of Acid Crime Victimization in South Asia: A Review. *Journal of Biological and Environmental Engineering*, 1(2): 17-22.

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.][34]

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).[35]

[34] Mentle, *et al*. (2005), *Restorative Justice and Three Individual Theories of Crime,* Internet Journal of Criminology.

[35] Ness, V. and Strong. (2015), *Restoring justice: An introduction to restorative justice,* 5th edition, London and New York: Rutledge.

Chapter- Four

Problems or Obstacle to the criminal justice system of Bangladesh

4.1 Problems or Obstacle to the criminal justice system of Bangladesh

Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh has enacted various criminal laws procedural and penal laws for administration of criminal justice. After the independence of the country it is hard working to reach to the top stage of success. It is bounded by Corruption, bribery, poverty etc. so that the country has not yet got reasonable development it should have. The main reason behind stepping back is the criminality of the citizens and non punishment for the commission offence. Whenever criminal justice system is secured and absolute the development become mandatory and it should be because criminal justice system enter fear in the mind that's why everyone participate equally on the development and no one can escape himself from harming the public property or tranquility. But the dishonesty, corruption, bribery, omission from giving tax etc. are the main cause for the present situation of the country which are criminal in there nature. So if criminal administration of justice be ensured the development will come to the door definitely. [36]But it is very matter of sad that we have the laws and all other body require for administration of justice but yet it has not reasonably face to light.

Following are some practical issues behind non administration of criminal justice:

1. Laws:

Laws of the people's republic of Bangladesh especially Criminal laws are well but its enforcement cause the criminal system failure. The country yet enforces death penalty as capital punishment whilst other developed country keeps them away from such severer punishment.[37]

There exist some laws which should be reconsidered for the present time being. For example where any offence punishable with imprisonment or fine, if fine is awarded for that offence by the court the fine is so small in amount e.g. 500tk, 1000tk.

2. Lengthy process of trial:

The second main cause of failure to the administration of criminal justice in Bangladesh is its lengthy process of trial. Though the country itself full of crimes the adjudication should be

[36] Kader, M. (2005), Plea Bargaining: An Overview of the practices of alternative criminal trial and its prospects in the Criminal Justice Administration of Bangladesh. *Dhaka University Law Journal*, vol.18, pp.131-140.

[37] Haque, H. (2007), Some Loopholes and Deficiencies in the Existing Laws Relating to Trial of Criminal Cases, *Journal of Judicial Administration & Training Institute*, vol.6, no. 6, pp.7-35.

hurry. In adjudicating a criminal case in the present time it takes almost 5 to 10 years, depended on nature of the case, which impliedly allow the criminal that he can find any way to get rid of the charges alleged against him.[38]

3. Incapacity and incapability of the judges:

Incapacity or incapability of the judges here means limitation to the judges in functioning their work. They are subjected to certain limitation either imposed by law or by the local and political pressure. Besides they are deprived of training on judicial system and deprived from using good conscience as they always kept in pressure. It is held in many case that the judges try themselves to use good conscience but failed to ensure justice. The root cause of this failure is lake of training as well as international training on judicial system.

4. Appointment of judges:

Power of appointment of the judges is provided by the constitution of the country and the process of appointment is directed and selected by the examination hold by the **Bangladesh Judicial Service Commission**. The appointment and selection of judges must have to be fair. It is often claim appointment made out of money and political thinking which allow less qualified person to a judge where the more qualified person are deprived so the qualification of the brilliance become waste which may reasonably develop the criminal justice system and in large development of the country. It is hard to believe "a judge appointed in a way other than the fair way can adjudicate fair."

5. Bribery or biasness of the judges:

Bribery and biasness of judges is also liable for the failure to administration of criminal justice. It's often claimed that the magistrates or judges of the judicial system are engaged in bribery. They take pecuniary benefit and give judgment towards them or by taking money for granting bail or not granting bail also.[39]

6. Incapacity of the lawyers:

Incapacity of lawyers means role of some unqualified lawyers. The enrolment process of the earlier time had allowed various numbers of incapable or unqualified people to be enrolled as an advocate. It is often told that whoever have unsuccessful professional carrier has just ensured a degree in law and in any way get enrolled it means they consider law profession as the last choice.

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[38] Haider, T. (2009), Delay in Judicial Proceedings-Problems and suggestions towards solution- a judge view" *Journal of Judicial Administration & Training Institute*, vol-8, pp-9-10.

[39] Hasle, L.(2004), Too Poor for Rights? Access to Justice for Poor Women in Bangladesh: A Case Study, *MSC Human Rights*, pp-7-9.

8. Enrolment as an advocate:

It is also claim that enrolment can be got by political linking, giving money and many other way though the enrolment is followed by the procedure of Bar Council Order, 1972.

7. Dishonesty of the lawyers:

Dishonesty of the lawyers is also a vital cause of failure of justice. In many case it is observed the lawyers are dealing dishonestly. In that case they are also violating Canons of Professional Conduct and Etiquette as enacted for fixing duty of the advocates by The Bangladesh Legal Practitioners and Bar Council Rules, 1972.

8. Granting bail in non bailable offence:

Granting bail in case of non bailable offence is another root cause of failure to administration of criminal justice. The offender gets bail after commission of an offence from the court and habitually engaged themselves in other offence and as well as intimidation to the plaintiff who is seeking remedy. [40]

9. Incapacity and incapability of the police:

Police is the most important part of criminal justice system. This is the main body which enforce the laws and as well as who brings the offender within judicial capacity.

10. Appointment of the police:

Appointment of the police is largely connected with the administration of criminal justice. It is often seen that the appointment is made out of money or political thinking. In every term of the government it becomes visible that the persons of the government side is appointed and as well as promotion is also given by breaking all the rules. Thus it can not be desired that a police man appointed in a corrupt or illegal way can work legally.[41]

[40] Jahan, F. (1990), From Rule of Law to Legal Empowerment of the poor in Bangladesh: towards an agenda for change, *United Nations Development Program*, pp. 9-11.

[41] Hoque, K.E. (2003), Plea Bargaining and Criminal Worklod, *Bangladesh Journal of Law*, vol.7, no.1, pp. 71-72.

Chapter-Five

Findings and Conclusion

5.1 Findings

- Taking bribery and working with biasness are the other obstruct to the prevention of crime and in large criminal justice system. Corruption of the police man, releasing accused on taking money, harassing common people for money, cruelty to the accused, rude behavior with the plaintiff or victim, torturing in remand for money etc are some function done by some corrupted police officer which are opposed to natural criminal justice. Though it is often claim lower standard of remuneration is the cause of corruption by the police.
- Staffs of the court have unbeaten role in judicial system. There are empowered to deal with the judicial documents and so far s every dealings with this documents is over their hand. Any conspiracy or wrong to the documents may destroy a case infact judicial system. Appointment or the staffs are subjected to question form the earlier time. It is often claim that they are appointed on his post by providing brinbary or money. They have to count a big amount for the post which renders judicial system to fail. Relation to powerful man or political support is also allowed during appointment.
- Bribery of the staff of the court may injure judicial system. Bribery of the staffs may give unlawful facilities to the offender which may cause failure to eh criminal justice system.
- The court is suffering from shorten from of man power. Where the courts of the country are about to sink on burden of cases but It is suffering from shorten of man power.
- Efficient work of the body or organization related to criminal justice system for example Law Commission, Bangladesh Judicial Service Commission etc. is largely related to the justice system of Bangladesh. Whenever they are interfered or they are used for benefit of any group the justice system gets it leg to be cut off.
- Poverty of the victim is also liable for seeking justice. This is in the way that whenever any criminal act is done against him he can not claim remedy only thinking that" the case or justice is only for the rich people".
- Low trust on the judicial system by the common people is another cause of failure to criminal justice system. People's in the mean time going to believe traditionally that nothing can be done to the offender.

- Failure to give security to the Plaintiff and Witnesses are most important cause for failure to justice. Generally offender is more powerful than the victim or plaintiff. After filing a case it often found the plaintiff or witnesses of the case are threatened to participate in judicial proceeding but security of the plaintiff or victim or witnesses can not be guaranteed.
- Institution or filing of false and vogue case are also liable to failure to ensure criminal justice in the country. False and vogues cases are often filed whereas the trial of real offence are pending for long times.
- Burden of cases in the criminal courts of the country is also liable to failure to administer criminal justice.
- Withdrawal of complaint in consideration of money or in force is made in many cases which refer no trust over the judicial system and impliedly give strength to the offender that money can withdraw complain".
- Unqualified laboratory and Forensic department or hospitals are specifically connected with the criminal judicial system. In criminal case by an authentic report of that institution may specify or give the nature of the offender. But unfortunately Bangladesh is not much advanced in this matter. Even for a simple DNA test the sample shall have to send to the foreign country which delay the judicial procedure and at large cause harm to the criminal judicial system.
- Withdrawal of cases in political thinking is also a vital cause to the failure of ensuring criminal justice. The Constitution of Bangladesh has expressed no one is over the law. But in real the cases can be withdrawn by political thinking which dis encourages the natural criminal justice.
- 24. The judiciary one of the fundamental organs of the state though in papers works independently but in real aspect the judicial proceedings are yet interfered by the political impact or pressure.
- After completion of a case passing though a lengthy process a conviction is made but he get rid from the conviction by the president in political thinking which give strength to the habitual offender(political leader).

Conclusion

It can be brought an ideal criminal justice system in Bangladesh if above mentioned recommendation are maintained properly. And that criminal justice system will help victim as well as accused person to be adjudicated by a fair trial where the due process of law will ensure such fairness of trial and proceedings of the case. And I also believe that such criminal justice system will ensure non-violence of human rights and will ensure procedural and substantive safeguard. Whereas the police force is an integral part of criminal justice system, so human rights must form an integral part of the training programme of police personnel at all levels. Regrettably, this is either lacking altogether or is given minimum importance in the syllabus. This subject must also figure prominently in the periodical refresher courses organized for the police personnel at various levels. In such programmes, persons who have been victims of human rights violations by the police and other sections of society, as also representatives of various sections of society should be invited to talk to the police. It would also be useful to familiarize them with the important judgments regarding human rights pronounced by courts from time to time. Thus, sensitization of the police to the importance of human rights has to be the cornerstone of the efforts to improve the present situation. And that should be because police are the only organizational part who can go immediately to protect the victim as well as to through the accused person in a fair trial where his human right will not be breached and he will not be convicted for non-commencement of crime or guilty.

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