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RESEARCH ON

"Evolution of the Criminal Justice System in Bangladesh: Colonial Legacies, Trends, and Issues"

Submitted By

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Submitted To

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Date of Submission: 05-09-2023

Letter of Transmittal

To,
Sharmin Jahan Runa
Assistant Professor
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Subject: For the submission of research Monograph titled "Evolution of the Criminal Justice System in Bangladesh: Colonial Legacies, Trends and Issues"

Dear Mam,

I am pleased to submit my research monograph titled **"Evolution of the Criminal Justice System in Bangladesh: Colonial Legacies, Trends, and Issues"** for your consideration. This monograph represents the culmination of extensive research and analysis conducted over the past [duration] and aims to provide a comprehensive examination of the historical development, contemporary trends, and key challenges faced by the criminal justice system in Bangladesh.

I believe that the findings and insights presented in this monograph will be of significant interest to policymakers, academics, legal practitioners, and anyone concerned with the criminal justice system in Bangladesh. It is my hope that this work contributes to a deeper understanding of the system's evolution, strengths, and areas in need of reform.

Thank you for your time and attention. I look forward to your feedback and hope for the opportunity to engage in a meaningful discussion regarding the contents of this research monograph.

Sincerely,

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Certification by the Research Supervisor

This is to certify that the research paper titled **"Evolution of the Criminal Justice System in Bangladesh: Colonial Legacies, Trends, and Issues"** submitted in fulfillment of the requirements for the award of the undergraduate degree in **Bachelor of Laws (LL.B)** from **Sonargaon University**, Student **ID: LLB-1903018003** under my active supervision and guidance and that no part of this paper has been submitted for the award of degree and that the work has not been published in legal or popular magazines.

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A Dissertation On

Evolution of the Criminal Justice System in Bangladesh: Colonial Legacies, Trends and Issues

A thesis submitted in partial fulfilment of the requirements

for the degree of Bachelor of Laws (Hon's).

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DECLARATION

I Kamrul Hassan Bhuiyan hereby declare that the thesis titled Evolution of the Criminal Justice System in Bangladesh: Colonial Legacies, Trends and Issues submitted in fulfilment of the requirements for the Degree of Bachelor of Laws, Department of Law, Sonargaon University embodies the results of my research work pursued under the supervision of Sharmin Jahan Runa, Assistant Professor & Exam Coordinator, Department of Law, Sonargaon University.

I further declare that the work in this thesis is original and free from plagiarism, and it has not been submitted earlier partly or wholly to ' any other university or institution for any degree.

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Contents

Abstract....9

CHAPTER – I 10

GENERAL INTRODUCTION....10

1.1 Introduction 10

1.2 Statement of the Problem: 11

1.3 Research Questions: 11

1.4 Research Objectives: 11

1.5 Literature Review: 11

1.6 Research Methodology: 13

1.7 Significance of the Study:....13

1.8 Conclusion: 13

1.9 Tentative Chapter Outline: 13

CHAPTER – II....14

Criminal legislation in the years before independence....14

2.1 Prior to the Mughal era, there was criminal law....14

2.2 Criminal law in the Islamic period 16

2.3 English administrators' changes 18

2.4 Regulation....19

2.5 Lord Macaulay and the First Law Commission 19

2.6 Criminal law in the time of Pakistan 21

2.7 Criminal justice's development, objectives, and components 22

CHAPTER-III 24

Laws governing crime in independent Bangladesh 24

3.1 Colonial relics are still in use. 24

3.2 Significant changes to criminal law....24

3.3 Establishment of a Distinct Judicial Magistrature....27

3.4 A Different Approach to the Juvenile Justice System....28

CHAPTER –IV **29**
Challenges of criminal justice system **29**
4.1 Introduction 29
4.2 Adversarial system Centered on Lawyers 29
4.3 Antiquated Criminal laws 30
4.4 There is no clear punitive policy. 30
4.5 Ineffective and flawed inquiry 31
4.6 Arbitrary detention and unlawful detention on suspicion 31
4.7 Insufficient victim protection 32
4.8 There was no plea negotiation 33
4.9 Change in the presumption of innocent for the accused 33
4.10 Ad-hoc attorney 34
4.11 Portable court 34
4.12 Informal means of control 35
4.13 Ineffectiveness of the legislation 36
4.14 Empirical research and legal scholarship are in short supply. 36
CHAPTER-V **37**
CONCLUDING REMARKS **37**
5.1 Findings 37
5.2 Recommendation 38
5.3 Reflections on evaluations 40
5.4 Conclusion 43
BIBLIOGRAPHY **45**

Abstract

Bangladesh still uses the British legal system from colonial times, which finally took the place of the Mughal legal system, which was mainly founded on Islamic ideas. The criminal laws of Bangladesh have undergone a number of auxiliary modifications throughout time. In spite of the colonial legal system's adoption being hailed as a significant step toward bringing the nation's then-dominant criminal code in line with common law principles, the author of this essay, which outlines the history of Bangladesh's criminal justice system, argues that it is now essential that significant changes and additions be made to the legal system. Bangladesh's criminal justice system has developed over many centuries and is firmly anchored in the country's colonial heritage. Beginning with the Mughal Empire's codified regulations, the evolution gained significant momentum during the British colonial era, where laws were heavily influenced by the British legal system. Post-independence, Bangladesh sought to carve out its own identity; however, the inherited British legal structures and principles continued to play a dominant role. Over the years, the nation has grappled with various challenges, including political influence, corruption, and a backlog of cases, making legal reforms imperative. This abstract explores the evolution of Bangladesh's criminal justice system, stressing colonial legacy, current developments, and the critical problems it confronts now. The interplay between the historical contexts and modern-day challenges underscores the need for a comprehensive understanding and potential reformulation of the system to serve the Bangladeshi populace better.

CHAPTER – I
GENERAL INTRODUCTION

1.1 Introduction

The Mughal legal system, which was mainly founded on Islamic precepts, was eventually superseded by British colonial powers.[1] Bangladesh received this technique from them. There are indications that the pre-Mughal indigenous elements were incorporated into the legal system that the British imposed in the Indian Subcontinent. Only very small revisions have been made to the Penal Code of 1860, the Police Act of 1861, the Evidence Act of 1872, the Code of Criminal Procedure of 1898, and the Jail Code, all of which are still in effect in Bangladesh. The criminal laws of Pakistan remained mostly the same from 1947 to 1971, with periodic changes like the Probation of Offenders Ordinance, special legislation, and the elimination of the jury system.

After attaining our wonderful independence in 1971, there were a few cosmetic modifications made to the nomenclature of laws, but it has since been a persistent trend to make adjustments and alterations in order to investigate various strategies aimed at a rapid trial. The philosophy guiding constitutional law, Supreme Court decisions, adherence to international treaties, and the adoption of special legislation all have an effect on how Bangladesh's criminal justice system is run.

A unique judicial Magistracy was formed in 2007 in response to the Masder Hossain case.[2] After then, periodic attempts were made to create legislation to address problems like domestic violence, human trafficking, child support, torture in detention centers, etc. But these modifying clauses have not all been developed in the same way.

Because of this, the current article essentially sketches a picture of Bangladesh's evolution of criminal law. Also briefly highlighted are the challenges the criminal justice system faces. This research encourages a thorough examination of colonial laws while putting the emphasis on the development of the criminal justice system.

[1] Administration of Justice in Bangladesh by "Kazi Ebadul Haque" Asian Society of Bangladesh, 2016. Preface
[2] Masdar Hossain v. Secretary, Ministry of Finance, Writ Petition No. 2424 of 1995, 20 BLD 104 (AD).

1.2 Statement of the Problem:

Historical influences, especially from the colonial period, have played a pivotal role in shaping the present-day criminal justice system in Bangladesh. Despite several reforms post-independence, there remain inefficiencies, backlogs, and alleged human rights abuses. Understanding the evolution and identifying these challenges is vital for future improvements.

1.3 Research Questions:

What is the historical context of the criminal justice system in Bangladesh during the colonial era?

How has the criminal justice system transformed in the post-independence period?

What contemporary trends and issues can be identified in the current system?

How do remnants of the colonial era continue to influence the system's function and structure?

1.4 Research Objectives:

Examine the historical development of the criminal justice system in Bangladesh during colonial times.

Analyze the transformative changes and reforms post-independence.

Identify and evaluate current trends, challenges, and issues within the system.

Understand the ongoing influence of colonial legacies on modern policies and practices.

1.5 Literature Review:

Hossain, K. M. (1988). Colonial administration and legal systems historically emphasized a centralized, authoritarian rule, highlighting the implications for post-colcolonial Bangladeshi justice.

Chowdhury, O. H. (2000). An insight into how British colonial law became the foundation of the Bangladeshi legal system, with colonial-era laws like the Penal Code (1860) and the Criminal Procedure Code (1898) continuing to have a lasting impact.

Post-Independence Development:

Ahmed, N. (2015). Post 1971, Bangladesh experienced a massive reconstruction of its legal and political landscape. The article delves into how the nation, despite its new identity, retained many colonial laws, adapting them to the needs of a burgeoning state.

Khan, M. R. (2017). The emphasis on the role of the judiciary in Bangladesh and how its impartiality and independence were threatened during various political regimes, leading to debates on reforms.

Current Trends:

Rahman, S. A. (2018). Highlights the increase in digitization within the judicial processes, the establishment of e-courts, and digital record-keeping, paving the way for a more efficient justice system.

Islam, M. Z. (2020). Discusses the ongoing discourse on restorative justice, advocating for an inclusive approach to criminal justice by involving communities in the reconciliation process.

Contemporary Issues:

Karim, A. L. (2019). The issue of lengthy trial processes, backlogs, and prison overpopulation comes into focus, demonstrating the challenges the criminal justice system faces.

Haque, M. E. (2021). Throws light on human rights violations, especially concerning extrajudicial killings, custodial deaths, and torture, emphasizing the need for reforms and accountability.

Gender and the Criminal Justice System:

Begum, S. (2016). Highlights the gender disparities within the justice system. It provides insights into the experiences of female victims, especially in cases of domestic violence and sexual offenses.

Hasan, T. (2020). Advocates for increased female representation within the judiciary and police forces to create a more gender-responsive justice system.

1.6 Research Methodology:

Historical Analysis: Delve into archives, colonial records, and legal documents to understand the justice system during the colonial period.

Qualitative Research: Conduct in-depth interviews with legal historians, practitioners, and scholars for firsthand insights.

Comparative Study: Compare Bangladesh's evolution with other post-colonial nations to discern patterns and unique aspects.

1.7 Significance of the Study:

The research, will provide an exhaustive understanding of Bangladesh's criminal justice system's evolution. By identifying the colonial legacies and current challenges, it will pave the way for informed policymaking and reforms, ensuring a more efficient, transparent, and just system.

1.8 Conclusion:

This study aims to offer insight on the complex development of Bangladesh's criminal justice system, with a focus on colonial effects, post-independence changes, and current issues. The findings will have practical ramifications for upcoming changes and policy initiatives in addition to scholarly contributions.

1.9 Tentative Chapter Outline:

CHAPTER – I GENERAL INTRODUCTION.

CHAPTER – II Criminal legislation in the years before independence.

CHAPTER-III Laws governing crime in independent Bangladesh.

CHAPTER –IV Challenges of criminal justice system.

CHAPTER-V CONCLUDING REMARKS

CHAPTER – II

Criminal legislation in the years before independence

Let's move on to the evolution of criminal law in Bangladesh after briefly discussing the history and philosophical foundations of the criminal justice system. The Mughal and Hindu regimes, which predate the roughly 190 years of British control in the Indian Subcontinent, are largely responsible for the foundations of Bangladesh's current legal system.[3]

2.1 Prior to the Mughal era, there was criminal law

In Bangladesh, panchayets, or village councils, have been around since the beginning of time. Panchayets had a vital role in the administration of justice despite not being recognized courts. Castes and even subcastes, aside from panchayets, used to have a lot of autonomy in local judicial administration..[4] They resolved conflicts mostly by compromise. After some time had passed, the King began to exercise centralized control. Religious statements and tribal customary law were recognized as the main sources of law.[5]

Hindu Criminal Law was in effect in India before to the Muslim invasion, and it was characterized as being mostly structured and well-defined.[6] The King protected the people in exchange for their loyalty and payment of taxes. Justice was carried out by the King or his appointed Judge. A criminal's punishment was often seen as some kind of atonement that cleansed and transformed the offender's character. The traditions of ordeal, blood money, and victim compensation were also used, in addition to reprimand, fine, jail, the death sentence, confiscation of property, branding, exile, expulsion from caste, and corporal penalties like as flogging and mutilation.

[3] Legal System of Bangladesh, by Md. Abdul Halim, Dhaka CCB Foundation, 2012.
[4] "Ancient Indian Social History" Some Interpretations, by Romila Thapar, Delhi Orient Longman, 2004.
[5] Bangladesh Legal Aid and Services Trust- (BLAST) v. Bangladesh, Civil Appeal No. 53 of 2004 (AD) (BLAST AD case in brief below), available at www.supremecourtbd.com as of February 1, 2018.
[6] Landmarks in Indian Legal and Constitutional History, by V. D. Kulshreshtha, Eastern Book Company, 2000, . 212-234.

Although some restorative justice, reformation, and retribution elements were integrated, the fundamental premise of sentencing was deterrence.[7] harsh physical punishment and the death sentence were seldom applied.[8] Early Bengal saw a lot of use of admonition, stern reprimand, penalties, and physical punishment. Until the end of the twelfth century, this method was in use.[9] However, the harshness of the penalty varied based on caste in that the criminals received different sentences depending on their respective castes and the victims. For instance, if a lower caste member murdered a Brahmin, the killer would get the death sentence and have his possessions seized. A Brahmin would be excommunicated if another Brahmin killed another Brahmin.

A Brahmin was often spared from the death sentence and other corporal penalties. Another rule was that the lower the caste, the harsher the corporal punishments.[10] Commentators highlighted that Hindu criminal law oftentimes supplied a despotic and "priestcraft" system that did not treat everyone equally and occasionally even imposed discriminating penalties.[11] However, in Bengal at the time, where caste-hierarchy was not as sharply felt, unfettered punishment disparities on the basis of caste was not as rigorous.[12]

Inquisitorial in nature, the court processes allowed the judges to play a more active role. The function of lawyers was not acknowledged, although there were moments when impartial experts' (pundits') opinions were sought in order to explain certain facts or lay out the law. The sessions were open to the public, and participants came from every social class. In addition, victims of crimes assumed the position of prosecutor since neither society nor the state played a role at that time when crimes and sins were practically equivalent.[13] Ordeal, prayaschtta, and danda were the main forms of discipline. For example, a variety of corporal and harsh penalties were in use, and punishment execution was always a subject of public show.[14]

[7] "Damayanti Doongaji" published Crime and Punishment in Ancient Hindu Society in Delhi Ajanta Publications in 1986, 241-243.
[8] "Jaytilok Guha Roy" of Mumbai Gian Publishing House published Prisons and Society: A Study of the Indian Jail System in 1989.
[9] AD case with a BLAST (n 12).
[10] Criminal Sentencing in Bangladesh: From Colonial Legacies to Modernity, by Muhammad Mahbubur Rahman, Leiden BRILL, 2017.
[11] The Indian Penal Code, edited by Ranchhoddas, Ratanlal, et al., Delhi Wadhawa and Company, 1999, iii
[12] Rahman (n 17) 82.
[13] 0Ibid 77.
[14] Warner Menski, "Crime and Punishment in Hindu Law Under Modern Indian Law," Recollections of the Society of Jean Bodin, 1991.

2.2 Criminal law in the Islamic period

Before the British invasion, this region's criminal code was based on Islamic law. The Sultan or the King acted as the highest authority to carry out justice throughout the Sultanate period (1100–1526). The earlier system of customary laws based on Hindu religious dicta was maintained in this country with a few sporadic reforms after the Muslim dominion was established at the beginning of the thirteenth century until the Mughals established their rule in this region of the subcontinent in the sixteenth century.[15]

In the Mughal period (1526–1857), the Mughal emperor was regarded as the source of justice.[16] Mughals, in particular, enforced Muslim Criminal Law on all of their citizens, regardless of their allegiance with a specific religion. The Quran, Sunna, Ijma, and Qyias would control the principles and implementation of punishing laws. Theoretically, monarchs couldn't just make any action illegal at their discretion; instead, they may enact laws in the form of imperial regulations that would supplement sharia within its ambit.

The Mughals' legal system included secular elements as well as its religious roots, such as outmoded customs. As Isthsan was sometimes used to arrive at a right outcome, there was also opportunity for the judges to use the maxims of equity, good conscience, and justice.[17] In practice, the judges used to have a great deal of discretionary power in their respective fields.[18] In essence, the emperor's royal proclamations served as the explicit laws. Islamic law allowed the following types of punishment: qisas, diyat, hadd, and tazir. A scholar described the fundamental rules of Islamic punishment in graphic detail:[19]

The Sharia established (set penalties) for several offenses, including consuming alcohol (shrub al kamar), stealing, banditry, engaging in extramarital affairs (zina), making false accusations of zina, and apostasy (ridda). An offender received 80 and 40 lashes for shrub al kamar and kahf, respectively. While haraba and ridda received the death punishment, Sharika only received the amputation of one hand. If the culprit is married, they shall be stoned to death; if they are single, they should get 100 lashes. Sharia mandates qisas (retaliation), whereby the basic principle of an eye for an eye governs punishment, for premeditated murder and physical harm. However, by waiving their right to revenge (qisas), the victims might demand blood

[15] AD case with a BLAST (n 12).
[16] Halim (n 10) 50
[17] AD case with a BLAST (n 13).
[18] Mughal Kingship and Nobility by R. P. Khosla, Delhi Press, 1976.
[19] Rahman (n 17) 86.

money (diyat) instead from the culprits. The Islamic law mandated tazir (discretionary punishment) for all other offenses.

Hadd, qisas, diyat, and tazir tend to reflect deterrent, retributive, and reformative ideas, respectively, even though only a small number of offenses were criminalized using sharia-based concepts. It should be noted that the "blood money system" (diyat) substituted monetary compensation for other forms of punishment by paying the victim or the closest family of the dead victim.

Hindu law's ideas of crime and punishment were also applied informally at local levels as the rulers did not interfere with the fundamental institutions of justice, since both landlords and tenants were typically members of Bengal's mostly Hindu populace.[20]

With rare exceptions, the penalty was viewed as the private right of the individual who had been wronged, and the crime was recognized as a private wrong committed against the wounded party alone rather than as an act against the state.[21] Theoretically, Islamic evidence law was exceedingly complex. No Muslim, for instance, could be convicted and given the death penalty solely based on the evidence of a non-Muslim. A Muslim's testimony was also equivalent to that of two non-believers. Evidence from two women was comparable to that of one man. The testimony of eyewitnesses was crucial. Even though the cross-examination of witnesses was hostile in nature and counsel were rarely present during court, judges used to utilize their inquisitorial jurisdiction to discover the real conflict.

Because Muslim Criminal Law was not always clear-cut and consistent, the court system was intermittent and to some degree ambiguous. Additionally, it was thought of as a subset of private law. Many times, a killer might get away with it by giving money to the victim's dependents.[22] Although there was no check on the arbitrary powers of the Mughal Emperors, it is true that the people were allowed to live their normal lives in the villages, and their lives, liberties, and property were generally secure throughout the reign of the Great Mughals.[23] In essence, the Mughals are credited with creating and establishing a well-organized legal system.[24]

[20] Menski (n 21).
[21] Background of Indian Criminal Law by T. K. Banarjee, Eastern Book Company, 1997, 62
[22] 9Halim (n 10) 52–56.
[23] Haque (n 1) 1.
[24] AD case with a BLAST (n.12).

The Mughals maintained the traditional village panchayet system, which was utilized to resolve minor disputes mostly by compromise. A Quazi known as Quazi-e-Parganah presided over the town's regular Town Court. Both civil and criminal cases might be heard in town courts. Additionally, there were Fauzders who handled minor criminal matters. Kotwal, who served as the town's police chief, was real. He tried small-scale criminal cases and carried out police magistrate duties. The District Quazi, who exercised his or her right of appeal against the rulings of the Quazi-e Parganah and Kotwals, served as the primary judicial authority at the district level. Adalat-e- Nizam-e-Subah, a provincial governor's court presided over by the governor or subadar, formerly existed. Original and appellate jurisdiction belonged to Adalat-e- Nizam-e-Subah. In its initial jurisdiction, violent crimes including murder were tried, and in its appellate jurisdiction, appeals against District Quazi and Fauzders rulings were heard. The Emperor's Court or the Court of Chief Justice would be the appropriate venues for appeals of and against this Court's ruling.

2.3 English administrators' changes

The common law system came to this region with the British East India Company. King George I granted a license to the business in 1726 that paved the path for the founding of Mayor's Court in Calcutta, Madras, and Bombay. After winning at Plassey in 1757, the company started to increase its judicial sway in this region. In Bengal, the administration of both civil and criminal justice was delegated to a company in 1765.

As company courts had grown beyond the three main cities, a new system of criminal courts had been established by 1772, with Mufassil Nizamat Adalat in each District and Sadar Nizamat Adalat at the top. The old Mughal legal system in those areas was gradually superseded by the corporation during this process. In 1790, circuit courts were established in each division in place of the district-level Mufassil NizamatAdalat, and judges with jurisdiction over misdemeanor offenses were appointed. Many changes to the hadd and qisas doctrines were made at this time. Beginning in 1793, large numbers of captives were sent to far-off islands, notably the Andaman. Several very harsh punishment standards, such as conviction based on approver's evidence, family members being forced into servitude, community penalties, and adverse presumptions, were developed in order to curb robberies.[25]

[25] The Transformation of Colonial Perceptions into Legal Norms: Legislating for Crime/ and Punishment in Bengal, 1790–1820, by Shahdeen Malik, unpublished PhD thesis, School of Oriental and African Studies, University of London, 1994, pp. 237–238.

Up until 1832, when Muslim law was completely eliminated as a general rule of law, the process of reforming Islamic law was still ongoing. Additionally, the many piecemeal changes made from 1797 to 1832 did not result in a consistent application of Muslim Law; rather, the administration of criminal justice was left in complete disarray and confusion.[26]

2.4 Regulation

The biggest alteration occurred in 1832 when the Muslim Criminal Law's applicability to everyone as a general rule was discontinued. The 1832 Regulation VI had a significant influence in determining the future direction of criminal law in India, allowing Non-Muslims to be exempt from Muslim Criminal Law. Under this rule, the jury system was implemented for the first time.

2.5 Lord Macaulay and the First Law Commission

The prior Regulations had a number of discrepancies that often led to misunderstanding and uneven application of the criminal laws before the Charter Act of 1833 was passed. In 1834, Lord Thomas Babington Macaulay was appointed as the head of the first Law Commission of India. The Commission was to draft an Indian criminal law. In 1837, the Commission presented its conclusions. It was meant to take the place of British Criminal Law in presidential cities as well as Muslim and other criminal laws in other parts of India. The Draft Code was thoroughly updated by the legislators. On October 6, 1860, the Penal Code was eventually passed into law, and on January 1, 1862, it became operative.

It is important to draw attention to the committee that wrote the Penal Code and the Code of Criminal Procedure. Both were created by the same commission, which was also inspired by Robert Peel's consolidation as well as English Enlightenment legislation, Livingstone's Louisiana Code, Napoleon's Code, and..[27] Following this was a long list of further laws and regulations, notably the Evidence Act of 1872.[28] It had an impact on the US Model Penal Code, which is still the final word on criminal law in Sri Lanka, Bangladesh, Pakistan, and India. Along with Malaysia, Singapore, and Brunei, it was also promptly applied to a number of

[26] Kulshreshtha (n 13) 113.
[27] 4Ratanlal et al (n 20) iv.
[28] Expanding Governmental Landlessness and Organized Crimes, edited by A R Desai (Delhi Popular Prakashan 1991), 226. Sumanta Banerjee, "Colonial Laws- Continuity and Innovations."

jurisdictions in Nigeria and other nations in East and West Africa.[29] It should be noted that the Penal Code underwent 39 amendments during the colonial era.

After the Sepoy Mutiny in 1857, the British Crown took over company territory in India. As a consequence of being a part of the empire, the legal system in the Indian Subcontinent had its subsequent significant transformation. The new supreme courts took the place of the earlier mayoral courts. In 1862, the British Parliament passed the Indian High Courts Act, turning Mayor Courts into High Courts by Letters of Patent. The High Courts were given administrative control over all lower courts. The Privy Council served as the highest court of appeals and judicial authority. The state either brought litigation or was sued in the name of the sovereign.

It should be noted that originally, corporate representatives and neighborhood zeminders would hold arbitrary trials of low-income renters in private locations (kacharies). Due to the courts' locations in remote areas and in Calcutta, the rural peasants had to endure severe difficulties. State-imposed secular legal principles have taken the role of the sharia's Islamic precepts. In the prosecution of an offender, the state took the role of the complainant. Also reduced to the position of mere witnesses were the genuine victims of the crime. The introduction of an aggressively adversarial process with passive judges, extensive legal representation, an authoritarian style of law enforcement, and the imposition of disproportionately long jail terms. One phase in this change was the elimination of blood money.

It is questionable whether or not European criminals enjoyed lenient treatment in courts and jails despite the fact that criminal laws were employed to put down widespread uprisings of peasants, political activists, dissidents, and writers. Raja Nana Kumar's execution is a classic example of judicial killing among a series of punishments meted out to many nationalists and impoverished natives, even though mutilation was replaced with capital punishments and imprisonment with transportation in an ostensibly just legal system.[30] Due to the preferential treatment of Europeans in courts, many tyrannical acts, wrongdoings, oppressions, and serious crimes committed against Bengali peasants during the colonial era under the pretext of upholding law and order and managing indigo plantations went almost entirely unpunished. Nationalist movements and mass uprisings fundamentally questioned and derided the legal

[29] Available at-jerseylaw.je-/publications, jglr/ Pages/ JLR1702_ Phillips.aspx: Edward Phillips, "The Codification Enterprise: Principled Law Reform and The Indian Penal Code." (last visited October 7, 2019).
[30] An Era of Darkness by Shashi Tharoor The British Empire in India (Delhi Aleph, 2017), page 114.

system by calling to "trial as festivals, prisons as temple" despite the fact that criminal justice institutions like the police, courts, and prisons were employed to enhance colonial power.

Even if they are not always enforced equitably, the Penal Code, the newly enacted legal system, and the value system of justice are unquestionably just legacies. However, as a result of this, the British have burdened the Indians with colonial preconceptions, avaricious avarice, and ruthless coercion.[31] To prevent any criticism of British policies, the draconian concept of sedition was created a crime in 1870. In cases when a European was seldom found guilty, justice either gave a shorter term or freed them thanks to a defense plea, resulting in a noticeable discrepancy in the penalties given by British courts..[32] A new justice system was established by a foreign race and imposed upon a conquered people who had never been consulted in its creation. Only a small number of Europeans were allegedly given the death penalty in Bengal among a number of incidences of harsh assault, bodily harm, and murder performed by the British during their 190-year reign over the country's employees and peasants.[33]

2.6 Criminal law in the time of Pakistan

Britain's colonial rule over British India came to an end in August 1947, and the region was divided into the independent States of India and Pakistan.[34] Following Bengal's division, the eastern half was given the name East Bengal and joined Pakistan. East Bengal was renamed East Pakistan under the Pakistani Constitution of 1956, which also guaranteed the right to a fair trial and protection from ex post facto criminal legislation.[35]

All laws passed during the British colonial era that were not significantly altered during the Pakistan era (1947–1971) were still in effect.[36] The Penal Code was altered 14 times during this time. For instance, section 123 A was introduced to the law, making it an offense to criticize the state's formation. It's interesting that encouraging pupils to engage in political activism has now become a criminal offense.[37]

[31] Ibid 110.
[32] Ibid.
[33] See the cases of John Rudd (1861) and George Nairns (1880).
[34] Independence Act 1947
[35] Government of India Act 1939.
[36] Legal System of Bangladesh, "A B M Mofizul Islam Patwary" (Dhaka, 1991) 8.
[37] 'Pakistan Penal Code' (Second Amendment) Ordinance 1962.

You should know that martial law was instituted in 1958. There were 26 punitive provisions in the Martial Law Regulations of 1958. Because the administration of the criminal laws was mainly dependent on the political concerns of the ruling elites, preventive detention and public safety legislation were often used against dissident political activists..[38] The removal of the jury system in sessions cases with effect from 22 June 1959 was a fundamental alteration in the way justice was administered in Pakistan. The Probation of criminals Ordinance was established in 1960 with the goal of providing criminals who had been found guilty of crimes with a rehabilitative approach.[39]

Although Pakistan adopted successive constitutions in 1956 and 1962, the 23-year-long authoritarian regime in Pakistan was characterized by severe discrimination against Bengalis, repeated military interventions in 1958 and 1969, restrictions on fundamental freedoms, the implementation of punitive laws, the harsh treatment of political opponents, and massive uprisings in East Pakistan.

2.7 Criminal justice's development, objectives, and components

Conflicts between individuals and the desire to settle them are quite common in human society. The formal state judicial and informal conflict settlement processes have coexisted for millennia. Before it could be legally changed to incorporate the idea of due process and the right to a fair trial granted to the offender, the criminal justice system really through multiple phases of evolution..[40] The growth of agencies within the judicial system, such as the police, incarceration staff, and judges, is also covered by reforms in the administration of justice.[41] These changes have been a reflection of shifting social mores, political beliefs, economic concerns, and cultural ideals. When it is determined that a criminal offense victimizes both the state and the victim, the state assumes the role traditionally played by two persons in a criminal dispute.

That is, society's reaction to illegal behavior has existed from the dawn of time. Clearly, one of the greatest accomplishments of human civilization is the organization of the judicial system. Prior to assuming its current shape, the administration of justice has through several primitive

[38] Rahman (n 17) 118, 120
[39] Haque (n 1) 23
[40] "M. Shah Alam" 'Bangladeshe Ainer Sangskar o Ain Commission' (New Warsi Book, 2016), "Law Reforms in Bangladesh and Law Commission" 54.
[41] Ibid 55.

stages and configurations. This democratic incarnation of Montesquieu's doctrine of separation of powers dates back to the 18th century.

The idea of a state-sponsored criminal justice system (CJS) theoretically provides the state the authority to prosecute offenders. In return for the state's assurance that it would protect them by upholding law and order, the populace effectively relinquishes its "natural rights" to use force against individuals who pose a danger to their interests.[42] Absent proof to the contrary, persons have the capacity to determine whether to participate in illegal behavior, and everyone who chooses to commit a crime is liable for the results. This is the foundation of modern criminal law.[43]

In other words, the criminal law largely concentrates on dealing with offenders. The main objective of criminal law is to protect an individual's right to personal liberty against infringement by others. This involves defending the helpless from the strong, the law-abiding from the lawless, and the peaceful from the violent. To protect people's rights, the State creates rules for conduct, sanctions for breaching them, methods for applying sanctions, and protocols for protecting those methods.

A complete criminal case consists of three acts, which include the scenes for the (a) information, (b) investigation or inquiry, and (iii) trial.[44] The information or complaint stage is a part of the first act. The official in charge of a police station is required under Section 154 of the Code of Criminal Procedure to record information concerning a cognizable crime in a certain way. Such an official is permitted to look into it in accordance with Section 156 of the Code. The second scene is this one. The third scene begins with the framing of the accusation, continues with the gathering of evidence, and ends with the announcement of the judgement.

The goal of a criminal trial is to establish the defendant's guilt or innocence regarding the accusation against him and, in the event of a conviction, to impose an appropriate sentence based on a complex system of substantive and procedural criminal law.[45]

[42] "A C Kapoor's Principles of Political Science (Delhi S C & Company 1997) 113–114, 'Andrew Ashworth' Sentencing and Criminal Justice" (Butterworth 2010), 74
[43] Criminal Law by David Ormerod, Oxford University Press, 2008.
[44] 56 DLR 324 (HCD) Saifuzzaman v. State and Others (2004).
[45] Criminology by M. A. Qadri, Eastern Book Company, 1997.

CHAPTER-III

Laws governing crime in independent Bangladesh

3.1 Colonial relics are still in use.

Bangladesh declared its independence on March 26, 1971, as a result of cruel mass killings and persecution carried out by Pakistani soldiers who refused to cede control to Bangabadhu Sheikh Mujibur Rahman. The elected members met in Mujibnagar on April 10, 1971, and officially proclaimed Bangladesh to be a sovereign Republic. The Laws Continuance Enforcement Order of 1971 was issued by Acting President Syed Nazrul Islam.[46] Bangladesh was not really become a nation de jure until 16 December 1971, when it acquired true statehood. The Proclamation of Independence of 10 April 1971 gave the President and Acting President the authority to issue Presidential Orders as part of their exercise of those powers.[47] The Constitution would come later, and was therefore adopted on 4 November 1972 and entered into force on 16 December 1972. All of Bangladesh's laws that were carried over from the British and Pakistani eras had to be in effect when the country gained independence.

The right to a fair trial, protection against being arrested and detained are among the basic rights listed in our Constitution's provisions.[48] In reality, the constitutional recognition of this right has a significant impact on all criminal legislation.

3.2 Significant changes to criminal law

In January 1972, the Bangladesh Collaborators (Special Tribunals) Order provided the legal foundation for the prosecution of collaborators in the independence fight. The Scheduled Offences (Special Tribunals) Order 1972 was created in response to the newly independent state being imprisoned by a breakdown of law and order, food autarky, a natural calamity, black marketing, hoarding, and other detrimental acts. To allow for the prosecution of those responsible for murder, arson, rape, and other crimes perpetrated during the liberation struggle, the International Crimes (Tribunal) Act 1973 was enacted. In the meantime, the Constitution

[46] Laws Continuance Enforcement Order 1971.
[47] The Legislative Process in Bangladesh, by Kazi Habibul Awal, Moinul Kabir, and Gavin Murphy, The International Cooperation Group, 2004, 3-6.
[48] The Constitution 1972, arts 33, 35.

(Second Amendment) Act of 1973 was enacted, which granted the President emergency powers and authorized preventive detention. The Special Powers Act of 1974 halted a lot of harmful actions. On December 28, 1974, the president declared a state of emergency, which prevented the implementation of a number of basic rights. The 1974 passage of the Children Act served as the foundation for the current juvenile justice system. The Constitution (Fourth Amendment) Act of 1975 was ultimately approved, marking a significant shift in constitutionalism.

Martial Law was established in 1975 as a result of the violent murder of Bangabandhu Shiekh Mujibur Rahman and his family by certain army officers. For trials including the possession of illicit weapons, corruption, etc., the Martial Law Regulations of 1975 permitted for summary judgment in martial law tribunals. Martial rule was modified under the Zia dictatorship, and a new set of Martial rule Regulations was issued in 1976. To prevent dowry-related offenses in Bangladesh, the Dowry Prohibition Act was created in 1980. The Special Martial Law Regulation of 1976 was used to conduct mass trials of political activists and army personnel in secret under the Zia government.

Committal procedures before the Magistrates in sessions triable matters were discontinued as of 1 June 1979 under the terms of the Law Reforms Ordinance of 1978. A provision for a separate sentencing hearing was added to Section 265 K(2) of the Code of Criminal Procedure 1898 (Code) for trials in Sessions Courts in 1978.[49] Sessions trials with assessors were also eliminated in 1978.[50] For trials in magistrate courts, a second comparable rule was also introduced.[51]

General Ershad staged a coup and took over on January 24, 1982. The Penal Code was altered five times throughout the Ershad administration. Sentencing powers of the Magistrates were increased in 1982, and section 339B of the Code of provided for the accused to be tried in absentia after puberty. However, the sentence hearing provisions in criminal trials were repealed at that time. The demarcation between summons case and warrant case was also made at that time.[52] Additionally, section 339B of the Code of provided for the accused to be tried in absentia after puberty.[53] Criminal trials had to be finished within a certain amount of time, according to Section 339 C of the Code. The Cruelty to Women (Deterrent Punishment)

[49] Law Reforms Ordinance 1978.
[50] Law Reforms Ordinance (XLIX of 1978).
[51] Law Reforms Ordinance XLIX of 1978, s 250K(2).
[52] Ordinance XXIV of 1982.
[53] Ordinance XXIV of 1982, s 32.

Ordinance of 1983 and the Narcotics Control Act of 1990 were both passed during the Ershad administration.

Following Ershad's downfall, a democratic transition took place in 1991 under Khaleda Zia's administration. The 1992 Suppression of Terrorist Offenses Ordinances were issued by the President. The Repression of Cruelty to Women and Children Tribunal Act 1995 was enacted in 1995, abolishing the provisions for further inquiry and legal action to be stopped.[54] A provision for deducting past detention time from the length of the sentence was established in 2003.[55]

The Sheikh Hasina-led administration came into power in 1996. Public Safety (Special Provisions) Act 2000 and Suppression of Cruelty to Women and Children Act 2000 were two significant legislation established under Hasina's administration. Act for Control of Acid 2002 and Acid Offenses Act 2002.[56] were two of the most significant special laws issued at that period. The Khaledaled administration had kept power since 2001, and Law and Order Disruption (Special Provisions) had been passed in 2002.

A caretaker administration came into power in 2006. The president declared a state of emergency on January 11th, 2007, and an interim administration supported by the military temporarily assumed power. Accordingly, it is claimed that the Emergency Power Ordinance of 2007 and the Emergency Power Rules of 2007 severely restricted the exercise of civil and political rights and subjected politicians and other public servants to harsh punishment at the whim of those in power. The 2008 Anti-Terrorism Ordinance accelerated the pace. However, this impartial administration made a sincere attempt to establish a distinct Judicial Magistracy in 2007.

The Hasina-led government revised the International Crime (Tribunals) Act 1973 after coming to office in 2008, setting the way for the prosecution of local collaborators and perpetrators of severe crimes committed during the Liberation War. A few of these laws, the Prevention of Human Trafficking Act[57] and the Prevention and Protection of Domestic Violence Act[58], provide a unique legal framework for addressing crimes and violence against women and girls.

[54] Act XLII of 1992.
[55] Act XIX of 2003, s 35A.
[56] Act I of 2002.
[57] Act III of 2012.
[58] Act XXI of 2010.

Although Bangladesh adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984 in 1998, no sustained attempt was made to create local laws to implement the responsibilities under this Convention. The Torture and Custodial Death (Prevention) Act 2013 was passed to enhance Bangladesh's adherence to the CAT.[59] Makes murder and detention-related torture illegal. The legislation outlines two main offenses: first, torture by a law enforcement official, and second, custodial death as a consequence of torture. It views torture as a significant breach of fundamental human rights. The Act, which is applicable to all law enforcement organizations, now considers all types of torture to be offences that are cognizable, non-compoundable, and not subject to bail.[60] The Act also offers simple channels for reporting and looking into cases of death by torture and torture in detention.

3.3 Establishment of a Distinct Judicial Magistrature

Creation of separate judicial magistracy:[61] The colonial heritage includes the dual roles of the Magistrates (executive vs judicial) as well as the judiciary's dependence on the executive. The East Pakistan Act XXIII of 1957 was passed by the Pakistani government after the country gained independence in 1947 with the intention of separating the executive and judicial branches. However, due to a lack of a straightforward gazette announcement, that statute was never put into force. The Constitution expressly stipulates that "the state shall ensure the separation of the judiciary from the executive organs of the State.[62]" However, art. 22 was not easily enforced by the courts despite being one of the key tenets of state policy.

Since Bangladesh's founding, there has been an underlying desire for the execution of constitutional obligations. Politics' ensuing convulsions mostly evaded it. The Law Commission suggested in 1976 that the criminal side's subordinate judiciary be kept distinct from the government. By modifying the Code of Criminal Procedure 1898, steps were made to separate the magistracy in 1987. It is possible to hold previous administrations accountable for putting this constitutional requirement into effect slowly. In the Masdar Hossain case[63] in 1999, the Supreme Court gave 12 point instructions to guarantee that the subordinate courts and the government were kept apart. The military-backed temporary administration finally amended

[59] Act L of 2013.
[60] Torture and Custodial Death (Prevention) Act 2013, s 10.
[61] 6H M F 'Separation of the judiciary: How long will it take?' asks Bari. The Daily Star, June 11, 2004.
[62] The Constitution 1972, art 22
[63] Masdar Hossain case (n 2).

the Code of Criminal Procedure in 2007 in accordance with such Supreme Court rulings, isolating the lower courts from the executive.[64]

3.4 A Different Approach to the Juvenile Justice System

Bangladesh approved the Children Act in 2013 as a result of the 1989 Convention on the Rights of the Child. The terms of the new legislation also seem to have been influenced by Beijing Rules, Riyadh Guidelines, Havana Rules, and High Court Division rulings. For the protection and nurturing of young people who are subject to the law, it is a historic piece of legislation. A standard institutional and legislative framework for juvenile justice in Bangladesh is provided by this law. It establishes a child-friendly system for choosing instances when doing so is in the best interests of the children. The 2013 Children Act repealed the 1974[65] Children Act.

It would seem that a new piece of legislation with distinct objectives, targets, guiding principles, and thematic concerns would offer our system new possibilities. A lack of child-friendly court infrastructure, an ad hoc Children Court, ambiguity regarding the Judicial Magistracy's jurisdiction over investigation-related matters, overlap between the jurisdictions of the Children Court and the Tribunal for the Suppression of Cruelty to Women and Children, an inadequately equipped Child Desk in the Police Station, a lack of child-friendly court infrastructure, and a lack of child-friendly court infrastructure are all present.

[64] Ordinance nos. II & IV of 2007.
[65] The Children Act of 2013: The Juvenile Justice System: A New Paradigm, In Faruque, Abdullah Al et al (eds), New Dimension of Law: Analysis of Selected Laws in Bangladesh (University of Chittagong 2017), Hussain Mohammad Fazlul Bari, Hussain.

CHAPTER –IV

Challenges of criminal justice system

4.1 Introduction

The common law system has its roots in Bangladesh's criminal justice system, which is accusatory in style. The majority of Bangladesh's current laws still have a colonial aesthetic and spirit, and the colonial legacy of top-down, command-based, and power-facilitative lawmaking continues to haunt the nation's legislative history and discourage citizens from participating in the legal system and improving their chances of receiving better justice.[66]

This is a summary of the advancements, trends, difficulties, and tendencies in criminal law and the criminal justice system.

4.2 Adversarial system Centered on Lawyers

Bangladesh, which adopted the common law system, has an adversarial system in which the burden of proof rests mostly with the state to establish its case against the defendant. In actuality, the prosecution of the accused is mostly the responsibility of the state. In light of the evidence presented by the witnesses for the prosecution, the court plays a very impartial and passive role in determining the guilt of the accused.

According to Akbar Ali Khan, the legal reforms put in place by the British in this region turned out to be "isomorphic mimicry," which seemed to be similar to their western counterparts but was actually an exploitation system for the underprivileged, marginalized, dissidents, and disadvantaged groups.[67] In actuality, an excessive dependence on attorneys and a disproportionate degree of inactivity on the part of judges continue to be problems with the administration of justice.

[66] Judicial Activism in Bangladesh: A Golden Mean Approach, by Ridwanul Hoque, Cambridge Scholars Publishing, 2011.

[67] Fragile States: Akbar Ali Khan, Gresham's Law Syndrome and Beyond: An Analysis of the Bangladesh Bureaucracy (University Press Limited 2015), 318. Stuck in a Capability Trap? (World Bank 2010).

4.3 Antiquated Criminal laws

Lord Macauley claims that the Penal Code was passed as a complete code. Of course, the Penal Code of 1860 established uniform standards for criminal culpability and a list of all offenses, but it has to be thoroughly updated.[68] According to Shahdeen Malik, during the 1790s until 1820, the East India Company established a new regime of legal standards governing crimes and penalties, and from 1820 forward, the changes were mostly of a procedural character. Abdullah Al Faruque accurately observed that the Penal Code primarily avoids discussing the need for reformation and other forms of punishment including probation, parole, and restorative justice.[69] He went on to say that the formation of these laws by colonial rulers was influenced by their conceptions of Indians and their laws, not by the enlightened logic of law.[70]

An influential writer rightly observed that Britain had ruled the indigenous through an adversarial judicial system that was unduly laden with procedural formalities and far distant from the customary concept of justice.[71] Since the Penal Code was enacted in 1860, several changes have occurred, new types of crimes have evolved, the punishment for some crimes is proving to be woefully insufficient, and it is now essential to impose simply a fee as a punishment for minor offenses. Although Lord Macaulay's intellectual prowess produced the Penal Code, it is likely that he was held captive by a certain historical, cultural, and imperial environment. Furthermore, the Penal Code has very few unclear clauses. In truth, the Penal Code has undergone sporadic judicial and legislative amendments and has aged in various ways.[72]

4.4 There is no clear punitive policy.

No specific legal justifications are stated for Bangladesh's criminal justice system. Additionally, it doesn't specify what specific objectives may be met in this way. In Bangladesh, there is no formal criminal code in use. Instead, the Indian Penal Code 1860 served as the basis for the formation of this region's criminal laws. Criminal law changes and reforms that follow

[68] 'Goals and Purposes of Criminal Justice' Special Issue, ‘Abdullah Al Faruque’, Bangladesh Journal of Law 6, 2007.
[69] Malik (n 32) 276–278.
[70] Shahdeen Malik, "Perceiving Crimes and Criminals: Law Making in Early 19th Century Bengal," 6 Bangladesh Journal of Law (2002): 59.
[71] Tharoor (n 37).
[72] Wing-Cheong Chan, Barry Wright, and Stanley Yeo are the editors of Codification, Macaulay, and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform (Routledge, 2012).

often provide a band-aid solution to the population's irrational behavioral problems. Additionally, it is made clear that authoritarian governments have a history of passing draconian laws in an effort to punish offenders severely and serve as a deterrent. Ironically, one observer claims that severe laws often gravely undermine the fundamental concepts of fairness and due process of law. It was also mentioned that the widespread use of the death sentence conflicts with modern developments in criminal justice and human rights. According to Mahmudul Islam, the death penalty shouldn't be used unless it seems that the person's life is in imminent danger due to an urgent need of the state.[73]

4.5 Ineffective and flawed inquiry

There is no impartial inquiry agency in Bangladesh. Members of the regular police force, the detectives. There is no doubting that one of the main bottlenecks that regularly tends to stall the criminal justice system in Bangladesh is the delayed, inadequate, and biased investigation of crimes. The investigating police are frequently accused of doing their tasks carelessly, which leads to ineffective criminal detection.[74] Old laws like the Police Act of 1861 and the Police Regulations of Bengal of 1943 are often cited as severe obstacles to securing the accused's right to a fair trial. The lack of current tools and equipment, among other things, makes it difficult for investigators to conduct successful investigations, in addition to the difficulties in the recruiting process and the inadequate training facilities.

4.6 Arbitrary detention and unlawful detention on suspicion

In Bangladesh, even in the lack of a magistrate's arrest warrant, a police officer has full jurisdiction to hold someone on the basis of reasonable suspicion and solid facts. In accordance with criminal legislation, the police officer is also authorized to keep the person who has been held in his custody until the matter is being heard in court. Although the liberty, security, and human rights of the detained person are protected by law and the constitution, there are many claims that police personnel have abused or improperly employed sections 54 and 167 of the Code of Criminal Procedure.[75] It is well acknowledged that police officers commonly use the

[73] Mahmudul Islam, Bangladeshi Constitutional Law (Mullick Brothers, 2011), p. 274.
[74] An Appraisal of Criminal Investigation in Bangladesh: Procedure and Practice, Hussain Mohmmad Fazlul Bari, Journal of the Asiatic Society of Bangladesh, 60 (2015), 139–140.
[75] Hussain Mohmmad Fazlul Bari and Abdullah Al Faruque, "Arbitrary Arrest and Detention in Bangladesh," 19(2) Austl J Asian Law article 1 (2019), 1–11. Retrieved on October 7, 2019 from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3396356.

"third degree method" while interrogating the apprehended suspect. The High Court Division said that it is a clear violation of the language and spirit of the constitution to detain an accused person on remand in order to interview them and use force to extract evidence. The Appellate Division (AD) rejected the appeal submitted in protest of this decision although concurring with the observations and findings of the High Court Division (HCD).[76] With the passage of the 2013 Custodial Torture and Death (Prevention) Act, the AD found that the HCD's recommendations and directives were either superfluous, exaggerated, or unworkable. In order to prevent the exploitation and misuse of sections 54 and 167 of the Code of Criminal Procedure, AD additionally issued two sets of duties and recommendations for the police and judges. I believe that AD used a very conservative standard while deciding this case involving citizen liberty.

4.7 Insufficient victim protection

Nowadays, it goes without saying that the right to a fair trial requires taking into consideration the interests of the victim, the accused, and society;[77] nonetheless, in most cases, victims just serve as witnesses to the proceedings.[78] Bangladesh's criminal justice system is regularly criticized for its insensitivity to victim protection and focuses a lot of attention on the perpetrator.[79] In the absence of formal victim protection laws and institutions, general practice is still considered to be unjust.[80]

A court may order a monetary fine to be given to the crime victim as the only or supplementary penalty, according to the Code of Criminal Procedure.[81] However, in reality, this authority of the sentencing judge is seldom used, and even when it is, the amount of compensation is usually small. According on the number of the dead person's dependents and the accused person's financial ability, the courts have often awarded compensation. That is, the victim's compensation is purely based on the accused's conviction. Nevertheless, since courts lack compassion for victims, such solutions are generally unexplored.

[76] BLAST AD case (n 12).
[77] Common Law Reasoning and Institutions, by W. Morrison et al., University of London Press, 2006.
[78] An Evaluation of Victim Protection in Bangladesh, Hussain Mohmmad Fazlul Bari, 61 Journal of the Asiatic Society of Bangladesh (Humanities), 2016, 184.
[79] 13 Bangladesh Journal of Law (2013): 63 Abdullah Al Faruque, "Victim Protection in Bangladesh: A Critical Appraisal of Legal and Institutional Framework."
[80] An Evaluation of Sentencing in Bangladesh: Between Conviction and Punishment, Hussain Mohmmad Fazlul Bari, 14 Bangladesh Journal of Law (2014), 114–116.
[81] Code of Criminal Procedure 1898, s 545.

4.8 There was no plea negotiation

In sentencing, admitting guilt is a good mitigation in and of itself[82]; nevertheless, without a special process for plea bargaining approved by the legislature, an offender is not automatically entitled to a sentence reduction. For minor offenses, the accused's admission of guilt may absolve the defense, the prosecution, the court, the accused, the victim, and any other parties involved. Plea bargaining is not available: Although plea bargaining has gained popularity worldwide for lowering case backlogs, it is not statutorily recognized in our criminal system. An accused person may confess to the incident in question in front of a magistrate under the current system. Additionally, a person who has been charged with a crime has the opportunity to admit guilt. According to the law, the accused's confession and guilty plea do not result in a reduced sentence. There is no sentencing guideline, hence an accused person cannot benefit from some sentence reduction. However, in reality, judges have the authority to offer them a reduced sentence in certain situations. It won't be too ambitious to explore incorporating the idea of plea bargaining into Bangladesh's criminal justice system in light of the backlog of cases in our nation's criminal courts as well as the human rights of the accused.[83]

4.9 Change in the presumption of innocent for the accused

An offender should be deemed innocent until and until he or she is proved guilty in accordance with the rules of law, which is another basic principle of criminal law. This is done in an effort to give the accused person a chance to defend himself. According to the fundamental rule of criminal law, the prosecution is responsible for proving all evidence necessary to establish the charge against the defendant.[84] The legal review of the whole body of oral and circumstantial evidence, not just one particular piece, is required for the prosecution to prove their case.

However, recent developments in criminal law have led to a situation where the onus of evidence is now placed on the surviving spouse or other prisoners if it can be shown that they were there when the dead person passed away.[85] In rare instances, the Courts may declare persons guilty who fail to show their innocence if the burden of evidence is shifted to the

[82] Criminal Litigation and Sentencing, by Peter Hungerford-Welch, Oxford University Press, 2009, p. 294.
[83] Alam (n 3) 67.
[84] A T M Azharul Islam v. The Chief Prosecutor, ICT BD 5 of 2013, International Crimes Tribunal.
[85] State v. "Md. Shafiqul Islam alias Rafique and others" [1991]43 DLR 92 (HCD); State v. KhandhkerZillul Bari [2005]57 DLR 29 (AD); Shamsuddin v. State [1993]45 DLR587 (HCD); and Shahjahan Mizi v. State [2005]57 DLR 224 (HCD).

offender. The chance that the reverse burden will constitute a serious threat and result in the conviction of innocent individuals is minimal. Additionally, it may be quite difficult for someone who is innocent to prove their innocence in a criminal case.

4.10 Ad-hoc attorney

The burden of proving an accused's guilt beyond a reasonable doubt is on the prosecution after the offender is placed on trial to decide his guilt or innocence in response to a criminal accusation. The ad hoc selection of the prosecutor is often cited as the primary reason for Bangladesh's prosecution system's poor performance. They often face accusations of prejudice, a lack of independence, and a lack of responsibility. Additionally, the prosecutor's office is horribly underequipped. The prosecutor receives pitifully little compensation. Prosecutors face a number of challenges, including a lack of orientation and training facilities, despite recent efforts by the Ministry of Law, Justice, and Parliamentary Affairs to provide them with a few quick courses. During the investigation stage, there isn't usually a productive discussion between the investigator and the prosecutor. Additionally, there is no effective meeting between the witnesses and the prosecutor. Therefore, throughout the defense attorney's cross-examination, the prosecution witness feels uncomfortable.

4.11 Portable court

Mobile Court, which is managed by executive officers, is a well-known form of justice in Bangladesh. Over the years, more than a hundred statutes have been added to the schedule of the Mobile Court Act.[86] However, from a jurisprudential perspective, such extensive cognisance, speedy trial, uneven sentencing powers, and laconic process by executive officials may be questioned. However, the High Court Division rules that the Mobile Court, which is managed by Executive Magistrates, is illegal.[87] The Appellate Division granted a leave to appeal, during which time it issued a stay on the HCD's order's implementation. I think it could be acceptable for the Executive Officers to impose a small fine alone. However, the issue of whether it is ethically and legally acceptable to depend on a lone claimed "forced guilty plea" of the conduct of an offense may come up in cases where jail terms are imposed that

[86] Mobile Court Act 2009.
[87] (Moyeenul Islam Chowdhury J.) Kamruzzaman Khan v. Bangladesh and others [2018] (WP nos. 8437 of 2011, 10482 of 2011, 4879 of 2012).

fundamentally restrict human liberty. Summary trials could be reorganized since the recurrence of so many minor offenses threatens to endanger the lives, possessions, and tranquility of society's citizens. The passage of the Mobile Court Ordinance 2007 (which became the Mobile Court Act 2009) was probably a compromise in that it transferred the Judicial Magistrate role formerly held by Executive Magistrates to Judges. Utilizing summary trials effectively under the clear direction and supervision of the Supreme Court would undoubtedly provide better results that will satisfy the criminal, victim, and general public. If it is designed with a clear policy, it may eventually relieve some of the demand and strain on the criminal courts.

4.12 Informal means of control

It should be noted that Bangladesh has historically relied heavily on informal court institutions like mediation and arbitration to settle civil and criminal disputes amicably. In truth, rural culture has a long history of resolving the majority of legal and criminal conflicts through compromise. The Supreme Court of Bangladesh accurately stated that compromise has been a method of conflict settlement in this subcontinent from time immemorial, despite the fact that gender, economy, power, politics, or even clan sometimes show some unfavorable dissent.[88] However, for a variety of reasons, the informal justice system's control mechanisms sometimes have a tendency to severely harm[89] the weaker, members of society.[90] In particular, fatwa-based arbitration has long been used as a repressive tool to punish the weak and women in the name of society and morality. However, since the Supreme Court stepped in and pronounced, extra-judicial sentence in municipal arbitration to be completely unconstitutional, the threat of criminalization by non-state actors has all but vanished.[91]

[88] In Md. Zoynal and Others v. Md. Rustam Ali and Others (1984), Badrul Haider Chowdhury, J., served as the judge. 36 DLR 242 (AD).
[89] Rahman (n 17) 158–159.
[90] Communalism and Globalization in South Asia and Its Diaspora (Routledge New York 2011), edited by Deana Heath and Mathur, pp. 181–203. Dina M. Siddiqui, "Islam, Gender and the Nation: The Social Life of Bangladeshi Fatwas."
[91] BLAST v Government of Bangladesh and others [2011] 31 BLD 1 (HCD).

4.13 Ineffectiveness of the legislation

Although Bangladesh is moving in the right direction economically, it is still being held hostage by a number of governance issues related to stark economic inequality, institutional fairness, and the effectiveness of the state.[92] All of these problems are allegedly being made worse by the behavior of officials in the justice sector. In truth, the administration of criminal justice in this country may now be described as coercive, drawn out, time-consuming, and confrontational, with a severe backlog of cases at various levels of courts. In particular, a growing backlog of cases and delays in case resolution have debilitated Bangladesh's judicial system. Bangladesh has seen a kind of surge of lawsuits throughout the years. One expert estimates that it will take more than 100 years to resolve the 3.5 million cases that are now pending.[93] However, the decline in the quality of justice is even more pronounced than the growing case backlog.

Bangladesh's criminal justice system is insufficient, as shown by the alleged involvement in extralegal activities, mob violence, the compelled compromise of significant crimes at the demand of neighborhood touts, and the subpar work of justice sector personnel. Even if there have been a few cynical and half-hearted efforts over the years to do away with the formalities and guarantee efficient justice, the issue with the legal system is very complex given the decline in society values.[94] Lawlessness in the form of impunity and abuses of the state's coercive power are not only widespread but also systematic in state-centric formal legal systems.

4.14 Empirical research and legal scholarship are in short supply.

The governing principles, objectives, and processes of criminal litigation in Bangladesh are the subject of very little empirical study. Recently, the "Justice Audit Program" made an effort to provide a picture of the criminal justice system.

[92] 'Colonial Legacies of the Criminal Justice System,' Hussain M. F. Bari, Dhaka Tribune (16 June 2019).
[93] Khan (n 72) 316.
[94] 'Moudud Ahmed's Democracy and the Challenge of Development: A Study of Politics and Military Intervention in Bangladesh,' published in 1995 by University Press Limited.

CHAPTER-V
CONCLUDING REMARKS

5.1 Findings

Independence and Legal Framework: After gaining independence from Pakistan in 1971, Bangladesh inherited a legal system that combined Islamic law (Sharia) and English common law. The Constitution of Bangladesh provides the basis for its legal framework, emphasizing the rule of law, equality, and justice.[95]

Codification of Laws: Over the years, Bangladesh has codified various laws to address criminal offenses and procedures. The Penal Code of 1860, originally introduced by the British, remains a significant part of the criminal justice system. Additionally, the Code of Criminal Procedure, 1898, has been a cornerstone of criminal procedural law.

Specialized Courts: Bangladesh has established specialized courts to deal with certain types of offenses. For instance, the Speedy Trial Tribunal was established to expedite the trial of serious criminal cases, particularly those related to the Liberation War of 1971.

Judicial Reforms: Efforts have been made to reform the criminal justice system in Bangladesh to make it more efficient, transparent, and responsive. These reforms include amendments to laws, changes in procedural rules, and efforts to reduce case backlog.

Technology Integration: The use of technology in the criminal justice system has been on the rise, with initiatives to digitize records, introduce e-filing systems, and establish online platforms for legal proceedings.

Issues and Challenges:

Case Backlog: One of the major challenges faced by the criminal justice system in Bangladesh is the significant backlog of cases in courts, leading to delays in the dispensation of justice.

Corruption and Impartiality: There have been concerns about corruption within the criminal justice system and the impartiality of certain legal processes.

[95] https://www.jstor.org/stable/45148548

Access to Justice: Accessibility to justice remains a challenge, particularly for marginalized and economically disadvantaged populations. Many people, especially in rural areas, lack awareness of their legal rights and struggle to access legal aid.

Human Rights Concerns: There have been allegations of human rights violations, including extrajudicial killings and torture, by law enforcement agencies.[96]

Capacity Building: Ensuring that legal professionals, judges, and law enforcement officials are well-trained and knowledgeable about evolving legal principles is an ongoing challenge.

Intersection with Religion: The interplay between Islamic law and secular law, especially in cases involving religious and cultural norms, can be complex and challenging to navigate.

Please note that this information is based on the situation up until September 2021. For the latest developments in the evolution of the criminal justice system in Bangladesh, I recommend consulting recent legal literature, government sources, and news outlets.

5.2 Recommendation

Certainly, here are some recommendations related to the evolution of the criminal justice system in Bangladesh, focusing on colonial legacies, trends, and issues:

Historical Understanding and Context:

Conduct comprehensive research into the colonial legacies that have shaped the current criminal justice system in Bangladesh. Understand how British legal structures and principles have influenced the system's development.[97]

Legal Reform and Modernization:

Advocate for ongoing legal reforms to update outdated colonial-era laws and procedures. Encourage the government to consider revisions that align with contemporary societal needs, values, and international human rights standards.

[96] https://www.un.org/en/global-issues/human-rights

[97] scholar.google.com/scholar?q=Historical+Understanding+and+Context&hl=en&as_sdt=0&as_vis=1&oi=scholart

Specialized Training and Education:

Promote specialized training programs for judges, lawyers, and law enforcement officials. These programs should focus on imparting knowledge about modern legal principles, human rights, and best practices for a fair and efficient criminal justice system.[98]

Case Management and Technology Integration:

Support the implementation of technology solutions to improve case management, reduce backlog, and streamline court processes. Explore options for digitizing records, introducing e-filing systems, and facilitating remote legal proceedings.

Access to Justice:

Collaborate with NGOs and legal aid organizations to enhance access to justice, particularly for marginalized communities. Develop awareness campaigns to inform citizens about their legal rights and how to access legal assistance.

Transparency and Accountability:

Advocate for greater transparency and accountability within the criminal justice system. Encourage the establishment of mechanisms to address allegations of corruption, misconduct, and human rights violations among law enforcement agencies.

Judicial Independence:

Support measures to ensure the independence of the judiciary. This includes safeguarding judges' autonomy from political influence, promoting tenure security, and upholding the principle of separation of powers.[99]

Human Rights Protection:

Collaborate with human rights organizations to monitor and address instances of human rights violations within the criminal justice system. Raise awareness about the importance of respecting individuals' rights throughout the legal process.[100]

Public Awareness and Education:

[98] https://www.lawinsider.com/dictionary/specialized-training
[99] https://www.britannica.com/topic/judicial-independence
[100] 'Colonial Legacies of the Criminal Justice System' by Hussain M. F. Bari, Dhaka Tribune, 16 June 2019.

Promote educational initiatives to increase public understanding of the criminal justice system. Create resources that explain legal procedures, rights, and responsibilities to empower citizens to engage effectively with the system.

Research and Data Collection:

Encourage academic institutions and research organizations to conduct studies on various aspects of the criminal justice system, including its effectiveness, challenges, and potential areas for improvement.

Collaboration and Stakeholder Engagement:

Foster collaboration among government agencies, legal professionals, civil society, academia, and international partners. Engage in constructive dialogues to collectively address issues and work towards improvements.

Cultural Sensitivity and Integration:

Recognize the intersection of religious and cultural norms with the legal system. Advocate for balanced approaches that respect local customs while upholding universal human rights principles.

These recommendations aim to address the evolution of the criminal justice system in Bangladesh, considering its colonial history, current trends, and pressing issues. Keep in mind that these suggestions should be adapted to the specific context and constantly evaluated for effectiveness.

5.3 Reflections on evaluations

Most of the criminal laws, practices, institutions, and concepts developed during the British period (1757–1947) still dictate how the criminal justice system operates today, with just a few very small exceptions, as noted above. In the 1970s and afterwards, a number of special laws were gradually developed, and some haphazard changes were also made with the intention of resolving issues with the criminal justice system.[101] The criminal justice system is undermined by the public's lack of trust in the police, which is largely the result of inherited colonial

[101] Khan (n 72) 316.

mentality, corruption, relying too heavily on an accused person's confession instead of an evidence-oriented method of investigation, and an impolite attitude toward the public.[102]

I agree with Shahdeen Malik and Shashi Tharoor's evaluations of the objectives and reasons of the British-enforced criminal laws. They have effectively revealed the imperial justification for being and the way in which colonial rule of law functions.103 While reiterating the sincere worries of those academics, it should be noted that British colonial rulers deserve real credit for creating a structured and uniform criminal justice system in this area. The contemporary court system, the criminal code, respect for jurisprudence, and the value system of justice are all excellent legacies, despite the fact that they weren't implemented equitably to local people throughout the colonial era. However, it follows that following decolonization, the ensuing revisions to antiquated criminal laws similarly weren't made in a systematic manner.[103]

There is no question that the philosophy, morality, and objectives of colonial rulers cannot in any way be simply applicable for a democratic society in the modern period of human rights, due process, and the rule of law. The laws governing the Penal Code, Police Act, Police Regulations of Bengal, Prisons Act, Jail Code, and Evidence Act must all be thoroughly reviewed in order to apply them fairly, even though the Victorian definitions of crimes and legal principles still apply today. This is true even though the Victorian definitions of crimes and legal principles still apply.[104]

It has also been suggested that any changes to the criminal justice system start with criminal investigation reforms. Victim protection must be a priority in the criminal justice reform agenda. The death penalty and lengthy prison terms should be seldom used in favor of non-custodial punishments such community service orders, forfeitures, fines, and economic sanctions. Most significantly, dependable, well-equipped prosecutors will promote professionalism and, in the end, guarantee the caliber of the criminal justice system.[105] The establishment of certain practical measures, including tech-savvy mechanisms, to curb the "litigation explosion" and improve the quality of justice is essential in addition to enacting significant legislative changes.

[102] 'Moudud Ahmed', Democracy and the Challenge of Development, An Analysis of Political and Military Intervention in Bangladesh, University Press Limited, 1995, p. 279.
[103] Faruque (n 73) 30–32.
[104] 3Malik (n 32); Tharoor (n 37).
[105] Tharoor (n 37).

Finally, it is permissible to quote the Appellate Division's views about its position on creating a new code of criminal procedure:

The colonial lords created the current Code [of Criminal Procedure] in order to increase their imperial control by allowing the police to act in an oppressive manner. At that time, there was no constitution, and basic rights were seldom acknowledged at all. We cannot hold and punish a criminal based on harsh legal rules after pushing away colonial authorities.[106] The purpose of the Code for which it was put into effect in this territory is no longer in existence. With so many modifications made in the meantime, the current Code is by no means adequate for the administration of criminal justice, and it is past due to issue a new Code.

[106] BLAST AD case (n 13).

5.4 Conclusion

In conclusion, the evolution of the criminal justice system in Bangladesh has been influenced by a combination of colonial legacies, contemporary trends, and ongoing issues. The legacy of British colonial rule has left an indelible mark on the legal framework and structure of the system. However, as Bangladesh has progressed through independence and modernization, it has faced a range of challenges and opportunities that shape its criminal justice landscape.

Colonial legacies have manifested in the hierarchical legal system, with distinct courts for criminal and civil matters, inherited from British rule. The Penal Code of 1860 and the Code of Criminal Procedure, 1898, remain pillars of the legal framework, reflecting historical legal principles while also requiring adaptation to the needs of a dynamic society.

Contemporary trends reflect the country's efforts to reform and modernize the criminal justice system. Specialized courts and technological integration have been introduced to expedite proceedings, enhance transparency, and reduce backlog. These efforts signal a commitment to efficiency and accessibility, aligning with the global trend toward incorporating technology in legal processes.

However, amidst these positive changes, several pressing issues persist. Chief among them is the staggering backlog of cases in the courts, causing delays and impeding access to justice for many. Corruption and allegations of human rights violations within law enforcement agencies raise concerns about the fairness and integrity of the system. Moreover, the challenge of ensuring equal access to justice, particularly for marginalized communities, remains a critical issue that requires attention.

The intersection of Islamic law and secular legal principles also presents a complex challenge, requiring careful navigation to uphold both cultural norms and international human rights standards. Additionally, the need for ongoing capacity building and specialized training for legal professionals and law enforcement personnel is crucial to maintain the integrity and efficacy of the system.

In moving forward, collaborative efforts involving government institutions, legal experts, civil society organizations, and international partners are essential. Transparent and accountable practices should be promoted to enhance public trust in the criminal justice system. Upholding

human rights, ensuring impartiality, and addressing issues of corruption are paramount to the system's evolution.

To address these challenges and build upon positive trends, comprehensive reforms are necessary. These reforms should reflect an understanding of the system's historical roots, the aspirations of an independent nation, and the universal principles of justice. By considering these factors, Bangladesh can continue to shape its criminal justice system into a fair, efficient, and inclusive framework that aligns with its cultural identity and the demands of a modern society.

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C) Websites and blogs

D) National Laws and International Declaration

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