

Historical Development of Bangladesh's Judicial System

The legal system of Bangladesh has evolved over centuries, shaped by diverse historical periods and influences. As a part of the Indian subcontinent, Bangladesh's legal journey reflects a blend of indigenous traditions and foreign interventions. The current judicial framework of Bangladesh is a legacy and product of five significant phases: the Hindu, Muslim, British, Pakistani, and Bangladeshi periods, each leaving distinct imprints on the legal landscape of the nation.

The Hindu period, spanning from 1500 BC to 1206 AD, witnessed a hierarchical society where the judiciary was intertwined with the monarchy. In this period, *Arthashastra* and *Manusmriti* were followed for legal guidance, along with *Shrutis*, *Smritis*, *Puranas*, *Dharmashastra*, etc. The legal system was deeply entrenched in caste distinctions, with judges predominantly drawn from privileged classes. Despite claims of impartiality, the caste system undermined the judiciary's integrity, allowing royal interference and rendering justice unequal.

The advent of the Muslim period in 1100 AD introduced new legal paradigms under the *Sultanate* and *Mughal* rule. Islamic law principles governed judicial proceedings, accompanied by a sophisticated court structure comprising *Muftis*, *Pandits*, and *Qazis*. While trials by ordeal were abolished, disparities persisted, with differential treatment based on religion and gender. *Fatwa-I-Alamgiri* and *Fiqh-e-Firoz Shahi* enriched the systemization of judicial proceedings during the Muslim reign. This era laid the groundwork for a more formalized legal system, blending Islamic jurisprudence with local customs.

King George I laid the groundwork for English law in India by *Charter of 1726*, establishing the Mayor's Court in Presidency towns (Bengal, Bombay, and Madras) and introducing a right of appeal to the Privy Council from Indian court decisions. The British period, commencing after the *Battle of Plassey* in 1757, marked a significant transformation in the British Imperial Indian legal framework. English common law supplanted indigenous systems, facilitated by the establishment of courts and the enactment of statutes. Another landmark is the *Regulation Act 1773*, which heralded the establishment of the Supreme Court in India, with the *Charter of 1774* inaugurating the Supreme Court of Judicature in Calcutta, later replicated in Madras (1801) and Bombay (1824). The then time, India operated with two parallel court systems: the Supreme Court overseeing Presidency towns and Company Courts administering native areas. Later, the *Indian High Courts Act 1861* replaced these disparate systems with High Courts in the Presidency towns. Since the 1853 British Law Commission report was published, the British Raj's legal reforms spurred saw the enactment of key British legal codes such as the *Penal Code 1860* and the *Evidence Act 1872*, reflecting a shift from Islamic to English common law. The *Civil Courts Act 1887*, the *Code of Criminal Procedure 1898* and the *Code of Civil Procedure 1908* introduced a structured hierarchy of courts. Later on, the *Government of India Act 1935* enunciated federal governance, establishing the Federal Court of India in 1937 as an appellate body superior to High Courts. The Privy Council, formerly pivotal, lost its significance post-independence in 1950, with both India and Pakistan abolishing it. Through these legislative and institutional reforms, the British period laid the foundation for India's modern legal framework, blending English legal principles with indigenous customs.

The partition of India under the *Indian Independence Act 1947* led to the Pakistan period, during which Bangladesh was known as East Pakistan. The legal system underwent modifications to align with the

new state's ethos, culminating in the establishment of a High Court in Dhaka in 1948 under the *Governor General's High Court (Bengal) Order, 1947*. Later, the *Privy Council (Abolition of Jurisdiction) Act 1950*, passed, eliminated the Federal Court of Pakistan's appeals hearing system and elevated the Federal Court to the status of the Supreme Court of Pakistan. The legal landscape was further shaped by the promulgation of a new constitution in 1962 and legislative enactments. However, the judicial structure remained the same until the independence of Bangladesh.

Bangladesh's independence in 1971 heralded a new era in its legal evolution. The *Laws Continuance Enforcement Order 1971* was promulgated for the continuation of the pre-existing laws enacted in the British and Pakistan periods. The newly adopted *Constitution of the People's Republic of Bangladesh 1972* deals with provisions relating to the structure and function of an independent judiciary. In Bangladesh, the judiciary consists of the Supreme Court and the subordinate courts. The Supreme Court consists of two parts, viz., the Appellate Division (AD) and the High Court Division (HCD) that have ordinary jurisdiction and constitutional jurisdiction concurrently. Alternately, the *Civil Courts Act*, CrPC, and CPC, among others, address the structure and function of subordinate courts, primarily dividing them into two categories: criminal courts and civil courts. There are five kinds of civil courts at the district level having specific jurisdictions, viz., courts of District Judge, Additional District Judge, Joint District Judge, Senior Assistant District Judge and Assistant District Judge. Conversely, the subordinate criminal courts are divided into Sessions and Magistrate courts of several kinds at the district and metropolitan levels having specific jurisdictions. Special Courts and tribunals are performing their duties under special laws.

The history of Bangladesh's legal system has also been shaped by some landmark judge-made laws. A few instances can be noted here.

- The decentralization of the Higher Court was refused by the Supreme Court in **Anwar Hossain Chowdhury v. Bangladesh** (1989 BLD (Spl) 1), when General HM Ershad by a Martial Law order set six permanent high court benches (in Sylhet, Rangpur, Barishal, Chattogram, Jashore and Cumilla) outside the capital, Dhaka. The apex Court held that the establishment of permanent high court benches outside the capital was inconsistent with the basic structure of the Constitution, e.g., the integrity of the higher judiciary cannot be amended by the legislature.
- Bangladesh's judicial system experienced two extra-constitutional, or Martial Law, regimes from 1975 to 1990. The fifth and seventh amendments to the Constitution validated the martial law regimes; however, in cases **Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh** (14 BLT (Spl) 1) and **Siddique Ahmed v. Bangladesh** (65 DLR (2013) AD 8), the Supreme Court of Bangladesh declared that the martial law regimes in Bangladesh were unconstitutional.
- The idea of separation of the judiciary from the executive dates back to the bygone era of the colonial period when first introduced in the subcontinent in 1793 by Lord Cornwallis. He proposed two major motions: separation of the executive from the judiciary, and subordination of the executive body to the judiciary. However, his propositions didn't work through the British and Pakistan period. Latest, article 22 of the Constitution of Bangladesh ensures the separation of the judiciary from the executive organs of the state. Nonetheless, the separation came into force with the intervention of the Supreme Court in the judgment of **Secretary, Ministry of Finance vs. Masdar Hossain and Others** (52 DLR (AD) 82). In line with the direction of the judgment, a distinct Bangladesh Judicial Service was formed in 2007 for the administration of the subordinate judiciary,

and the judges are entrusted with the magisterial duties of the state.

Thus, such landmark judicial pronouncements underscored the judiciary's role as a guardian of constitutional values and guided the development of the modern judiciary in Bangladesh.

Overall, Bangladesh's legal system has traversed a complex historical trajectory, shaped by indigenous customs, foreign interventions, and constitutional imperatives. From the hierarchical judiciary of the Hindu period to the constitutional democracy of present times, Bangladesh's legal journey reflects a quest for justice, equality, and the rule of law. While challenges persist, including a huge judicial backlog and institutional reforms, Bangladesh's legal system has made strides towards modernization. Legislative initiatives like the ***Use of Information Technology by Courts Act, 2020*** demonstrate a commitment to harnessing technology and enhancing procedural efficiency. By embracing progressive reforms and leveraging technological advancements, Bangladesh is poised to further strengthen its judicial institutions and ensure access to justice for all.

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