Chapter- One
Introduction

1.1. General:

Criminal Justice System refers to judicial process or procedure of adjudicating criminal issues of which depends on vast knowledge in the Criminal matter and its practice. Easily it may be said Criminal Justice in concerned with the punishment of the wrong other than civil wrong which in Criminal Proceeding is known as crime.[1]

The main objective of the Criminal Proceeding is to punish wrongdoer. Criminal Justice brought only for rendering punishment of the accused for the allegation alleged against him subject to the proof that the offence or crime has been committed by him or not.[2]

1.2 Definition:

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

a. **Bangladesh** is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh.
b. A**dvocate** used with reference to any proceeding in any Court means an advocate or a mukhtar authorized under any law for the time being in force to practice in any such Court and includes any other person appointed with the permission of the Court to act in such proceeding.
c. **Bailable offence** means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "**non-bailable offence**" means any other offence.[3]
d. **Charge** includes any head of charge when the charge contains more heads than one.[4]
e. **Clerk** or **Staffs** of the State includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the State.[5]

[1] Halim A, the Legal System of Bangladesh (7thedn, CCB Foundation, Dhaka 2014).
[2] Ibid.
[3] The Code of Criminal Procedure, 1898 (Act V of 1898), s. 4(1) (b).
[4] Ibid, s. 4(1) (c).

f. **Complaint** means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer.[6]

g. **High Court Division**" means the High Court Division for criminal appeal or revision.[7]

h. **Inquiry** includes every inquiry other than a trial conducted under this Code by a Magistrate or Court.[8]

i. **Investigation** includes all the proceedings under this Code for the Collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by Magistrate in this behalf.[9]

j. **Judicial proceeding** includes any proceeding in the course of which evidence is or may be legally taken on oath.[10]

k. **Offence** means any act or omission made punishable by any law for the time being in force.[11]

l. **officer in charge of a police-station** includes, when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the Government so directs, any other police-officer so present.[12]

m. **Place** includes also a house, building, tent and vessel.[13]

n. **Police-station** means any post or place declared, generally or specially, by the Government to be a police-station, and includes any local area specified by the Government in this behalf.[14]

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[5] Ibid, s. 4(1) (e).
[6] Ibid, s. 4(1) (h).
[7] Ibid, s. 4(1) (j).
[8] Ibid, s. 4(1) (k).
[9] Ibid, s. 4(1) (l).
[10] Ibid, s. 4(1) (m).
[11] Ibid, s. 4(1) (o).
[12] Ibid, s. 4(1) (p).
[13] Ibid, s. 4(1) (q).
[14] Ibid, s. 4(1) (s).

o. **Public Prosecutor** means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor.[15]

p. **Special law** is a law applicable to a particular subject.[16]

q. **Section** denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.[17]

r. **act** denotes as well a series of acts as a single act: the word.[18]

s. **Omission**" denotes as well a series of omissions as a single omission.[19]

t. **Dishonestly** -whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".[20]

u. **Moveable properties are** intended to include corporeal property of every description, except land and thing attached to the earth or permanently fastened to any thing which is attached to the earth.[21]

v. **Court of Justice** denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.[22]

w. **Judge"** denotes not only every person who is officially designed as a Judge, but also every person, -
who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.[23]

x. **Government"** denotes the person or persons authorized by law to administer executive Government in Bangladesh, or in any part thereof.[24]

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[15] Ibid, s. 4(1) (t).
[16] The Penal Code 1860 (Act XLV of 1860), s 41.
[17] Ibid, s. 50.
[18] Ibid, s. 33.
[19] Ibid.
[20] Ibid, s. 24.
[21] Ibid, s .22.
[22] Ibid, s. 20.
[23] Ibid, s. 19.
[24] Ibid, s. 17.

y. **Public** includes any class of the public or any community.[25]

z. **Person** includes any Company or Association, or body of persons, whether incorporated or not.[26]

aa. **Man** denotes a male human being of any age: the word "**woman**" denotes a female human being of any age.[27]

1.3 Rational of the study:

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

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

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

1.4 Objectives of the study:

The main objective of the Criminal Justice is to punish the wrong door with penalty which intent to deter peoples to not engaged in crime and suppress crime. The main objective of the study is to find out the reason why Criminal Justice is not ensured yet after having all the body of enforcing and almost uniformed judicial system.

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

Following are the main objective of the study:

[25] Ibid, s. 12.
[26] Ibid, s. 11.
[27] Ibid, s. 10.

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

1.5 Scope of the study:

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

1.6 Methodology of the study:

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

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

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

- Historical Approaches
- Analytical Approaches

1.7 Limitation of the study:

Every good work is restricted by certain restriction. Research on criminal justice system is also a good work because the criminal justice system of the country is suffering from much disabilities and through this research problem behind the criminal justice system shall be definitely specify as well as reasonable remedial measures may be drawn from critical analysis on such disabilities and from the suggestion proposed by the jurists, lawyer, judges etc.

Besides the research was subjected to some others technical limitation also. For example, while working on this research I had to go through various limitations those are termed in this research as limitation of the study.

As a researcher I had to go through following limitations namely,

- Analysis or research on criminal justice system is a vast and wide doing. It is hard to complete the research within this short period of time granted by the 6 months.
- The research is subjected to the vast knowledge in the criminal justice system and as a researcher I had to suffer from the reference of book,
- It was hard to communicate or have the appointment of the jurists on criminal justice system,
- The criminal justice system of Bangladesh is a vast matter which can not be exactly or completely analyzed with in 200 pages,
- Finally, due to time constraint many of the aspects could not be discussed and presented in the assigned report.

1.8 Structure & brief contents:

The research has included 6 chapters in its body. Following are the structure and heading contents of chapters: -

Chapter- One: Introduction

Chapter- Two: Origin & Development of Criminal Justice System in Bangladesh

Chapter – Three: Crime, Criminal Justice System and Cause of Crime: Bangladesh Perspective

Chapter-Four: Laws and bodies concerning criminal justice system in Bangladesh

Chapter- Five: Some criminal cases & Experts Opinion regarding criminal justice system in Bangladesh.

Chapter Six- Recommendation and Concluding Remark

Chapter- Two

Origin & Development of Criminal Justice System in Bangladesh

2.1 Criminal Judicial system Under Hindu Period:

The subject of Legal History comprises the growth, evolution and development of the legal system of a country; it sets forth the historical process where by a legal system has come to be what it is over. [28]

Hindu Period: these period extents for nearly 1500 years before and after the beginning of the Christian era. The ancient India was divided into several independent states and the King was the supreme authority of each state. As far as the administration of justice is concerned the King was considered the fountain of justice. He was entrusted with the supreme authority of the administration of justice in his kingdom.[29] The essential features of judicial system of this period were as follows:

2.1.1 Organization of Court Structure:

Following courts were exist during the ancient Hindu period:

A. **The King's Court**:

The Kings court was the highest court of appeal in the state. It was also a court of original jurisdiction for cases of vital importance to the state. In Kings Court the King was advised by learned Brahmins, The Chief Justice and other judges, ministers, elders and representatives of the trading community.[30]

B. **The Chief Justice's Court**:

The Chief Justices Court which consisted of the Chief Justice and a board of judges to assist the Chief Justice. All the judges in the board belonged to three upper castes preferable Brahmins.[31]

[28] Supra note 1.
[29] Ibid.
[30] Ibid.
[31] Ibid.

C. **Special Tribunal**:

Sometimes separate tribunals with specified territorial jurisdiction used to be formed from among judges who were members of the board of the Chief Justice's court.[32]

D. Town or District Court:

In towns and districts courts were run by the government officials to administer justice under the authority of the king.[33]

E. Village Council:

The local village councils or Kulani was constituted at village level. This councils consisted of a board of five or more members for administration of justice to villagers. The councils dealt with civil and criminal matters.[34]

2.1.2 Judicial Procedure:

A. Stages of a Suit: -

A suit or trial consisted of four stages the plaint, the reply and investigation and finally the verdict or decision of the court.[35]

B. Bench of more than one Judges: -

The courts were functioning on the principle that justice should not be administered by a single judge. Generally, a bench of two or more judges would administer justice. Even the King decided cases in his council.[36]

C. Appointment of Judges and Judicial Standard: -

In the appointment of the Chief Justice and other judges the question of caste consideration played vital role. The Chief Justice was mandatory

[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Ali Khan A, Legal System of Bangladesh (2ndedn, National Law Book House, Dhaka, 2013).
[36] Ibid.

appointed from Brahmins. A sudra was forbidden to be appointed as a judge. Appointments were made from among the persons who were highly qualified and learned in law. Women were not allowed to hold the office of a judge. Judges were required to take the office of a judge. Judges were required to take the oath of impartiality when deciding disputes between citizens.[37]

D. Doctrine of Precedent: --

The decisions of the King's court were binding on all lower courts. The principles of law declared by higher courts were taken into consideration by the lower courts while deciding cases.[38]

E. Evidence: -

During the course of proceeding both the parties were required to prove their case by producing evidence. Ordinarily, evidence was based on any or all the three sources, namely, documents, witnesses, and the possession of incriminating objects. In criminal cases, sometimes circumstantial evidence was sufficient to punish the criminal or acquit him.[39]

2.1.3 Trial by Ordeal:

Ordeal which was a kind of custom based on religion and faith in God was a means of proof to determine the guilt of the person. The application of trial by ordeal was limited only to the cases where any concrete evidence on either side was not available. This system ordeal was very painful and dangerous to the accused, and sometimes the person giving ordeal died during the ordeal. Some common ordeals are described below:

A. Ordeal by Fire: According to the Hindu myth fire is considered to be God and it has purifying qualities. According to the ordeal of fire, the accused

[37] Ibid.
[38] Ibid.
[39] Ibid.

was directed to walk through or stand or sit in fire for some specified time. If the accused comes out from the fire without any harm, he was considered to innocent.

Sometime the accused was asked to carry a red hot iron ball in his hand and walk a few paces. If he had no signs of burns after the ordeal, he was considered to be innocent.[40]

B. Ordeal by water: Water seen as a sign of purity under the Hindu mythology was used to test the guilt of the accused. The accused was required to stand in waist- deep water and then to sit down in the water, as an archer shot to an arrow. If the accused remained in the water during the time limit, he was held to be innocent. Alternatively, the accused was required to drink water used in bathing the idol. If he had no harmful effects within next fourteen days, he was declared to be innocent.[41]

C. Ordeal by Poison: -

This method was also based on the view that God protects innocent people. The accused was required to drink poison without vomiting it. If he survived, he was declared to be innocent.

D. Ordeal by Rice- grains: -

The accused was required to chew un- husked rice and then asked to spit out. If blood appeared in his mouth, he was considered to be guilty, otherwise not.

E. Ordeal by Lot: -

Two lots of the same type representing Right (Dharma) and Wrong (Adharma) were placed in a jar. The accused was asked to draw a lot, if the accused drew Dharma, he was declared innocent.

[40] Ibid.
[41] Supra note 1.

2.1.4 Trial by Jury:

The jury system existed in ancient India but not in the same from as understood in today's world. There is evidence that the community members used to assist the administration of justice. They were merely examiners of the case of conflict and placed true facts before the judge though the verdict was declared by the presiding judge and by the jury.[42]

2.1.5 Crimes and punishments:

The philosophy of crime and punishment was based on the idea that the punishment removed impurities from the accused person and his character is reformed. Before punishment was to be awarded the judge had to consider the motive and nature of the offence, time and place, strength, age, conduct, learning and monetary position of the offender.[43]

There were four methods of punishment- by gentle admonition, by severe reproof, by fine and by corporal punishment. These punishments could be inflicted separately or together depending upon the nature of the offence.

Judges always considered the relevant circumstances before deciding actual punishment. The severity of punishment depended on caste as well. [44]

Certain classes of persons were exempted from punishment: -

- Old people over eighty
- Boys below sixteen
- Women and persons suffering from diseases were to be given half of the normal punishment.
- A child below five was considered to be immune from committing any crime and therefore was not liable to be punished.
- In adultery and rape, punishment was awarded on the basis of the caste consideration of the offender and of the woman.
- In abuse or contempt case every care was taken to see that each higher caste got due respect from persons of lower caste.

[42] Ibid.
[43] Ibid.
[44] Ibid.

For example: - If a person of a lower caste set with a person of higher cast, the man of the lower caste was to be branded on the breech. For committing murder, the murder was to pay 1000 cows for killing a Kshatriya, 100 for a Vaisyo and 10 for a Sudra. These cows were given to the King to be delivered to the relatives of the murdered person. A bull was given to the King as a fine for murder.

If a Brahmin was killed a person of lower caste, the murderer would be put to death and his property confiscated.

If a Brahmin was killed by another Brahmin he was to be branded and banished. If a Brahmin killed a person from lower caste, he was to compound for the harem of the King, adding the King's enemy, creating revolt in the army, murdering one's father or mother or committing serious arson, capital punishment was given in varied forms, namely, roasting alive, drowning, trampling by elephants, devouring by dogs, cutting into pieces, impalement etc.

The above discussion on crime and punishment gives a necessary idea that infliction of punishment was not based on any broad principle rather on whim and caste consideration which was completely devoid of humanity and ethics.[45]

2.2 Criminal Judicial system Under Muslim Period:

2.2.1 Judicial System in Medieval India

This period starts with the invasion by Turkish Muslims in the Indian Sub-continent in 1100 A.D. The Hindu kingdoms began to disintegrate gradually with the invasion of Turkish race in the end of eleventh and the beginning of the twelfth century. When Muslim conquered the states, they brought with them the. Turkish idea of administration. The theory of Muslims was based on Quran, their religious book. According to the Quran, sovereignty lies in Allah (God) and the King is His humble servant to carry out His will on the earth. The ruler was regarded as trustee, being the Almighty's chosen agent.[46]

[45] Ibid.
[46] Supra note 35.

The whole Muslim period in India may be divided into two sub-periods- the Sultanate of Delhi and the Mughal Empire. By the end of twelfth century Muslim Sultanate was established at Delhi by

Muhammad Ghor. This period existed for thirty, years beginning from 1206 till 1526. On the other hand, in 1526 Delhi Sultanate came to an end when Delhi was captured by Zahiruddin Babar. Babar founded the Mughal Empire in India which existed until 1857.[47]

2.2.2 Legal System under the Sultanate

The Sultan or the King was the supreme authority to administer justice in his kingdom. The judicial system under the Sultanate was organized on the basis of administrative divisions. A systemic classification and gradation of the courts existed at the seat of the capital, in Provinces, Districts, Parganahs, and villages. The powers and jurisdiction of each court were clearly defined.[48]

Courts at Centre: The courts established at the capital of the Sultanate were as follows: The King's Court, Diwan-e-Mazalim, Diwan-e-Risalat, Sadre Jehan's court, Chief Justice's court and Diwan-e-Siyasat.[49]

Some of the other officers attached to the court of Chief Justice were as under:

- **Mufti:** He was selected by the Chief Justice and appointed by the Sultan. He acted as legal expert and in case of difference of opinion between the mufti and judge, the difference was referred to the Sultan for decision.
- **Pandit:** He was a Brahmin learned in law of Hindu and he acted as expert of law in civil cases of non-Muslims and his position was similar to the Mufti.
- **Mohtasib:** He was entrusted with the prosecution for the violation of cannon law.
- **Dadbak:** He was the registrar or the clerk of the court and his duty was to ensure attendance of persons summoned by the court. Sometimes he was also entrusted with the task of trying of petty civil cases.

[47] Huq Z, Law and Practice of Criminal Procedure (11thedn, Bangladesh Law Book Company, Dhaka 2010).
[48] Ibid.
[49] Ibid.

Provincial Courts: In each Province (Subah) at the Provincial Headquarters four courts were established, namely Adalat Nazim-e-Subah, Adalat Qazi-e-Subah, Governor's Bench (Diwan-e-Subah) and Sadre-e- Subah.[50]

Adalat Nazim Subah: This court was presided over by the Nazim. In the Province the Sultan was represented by him and like the Sultan he exercised both original and appellate jurisdiction. In original cases he usually sat as single judge. From his judgment an appeal lay to the Central Appeal Court at Delhi. While exercising appellate jurisdiction, the Nazim sat with the Qazi-e-Subah constituting a Bench to hear appeals. From the decision of this Bench, a final second appeal lay before the Central Court at Delhi.[51]

Adalat Qazi-e-Subah: This court was presided over by the Chief Qazi of the Province. This court tried all cases of civil and criminal matters. It also heard appeals from the courts of District Qazis. Appeals from this court lay to the Adalat Nazim-e-Subah. This court also had the supervisory jurisdiction over the administration of justice in his province and to see that the Qazis in districts were properly functioning. Qazi-e-Subah was appointed by the Sultan, but selected by the Chief Justice amongst persons who had established reputation for learning and scholarship of law and possessed a high character and was a man of unimpeachable integrity. Four officers namely Mufti, Pandit, Mohtasib and Dadbak were attached with this court too.[52]

Diwan-e-Subah: This court had both original and appellate jurisdiction in all revenue matters. It had the final authority in the province over all cases concerning revenue.

Sadre-e-Subah: This was the Chief Ecclesiastical court in the province. This court dealt with the matters relating to grant of stipend, lands etc.

District Courts: In each District, at the District Headquarter, following courts were established:

- **The District Qazi's Court:** This court had the jurisdiction to try all civil and criminal matters. It also heard appeals from the decisions of the Parganah Qazis, Kotwals and village panchayats. This court was presided over by the

[50] Supra note 1.
[51] Ibid.
[52] Ibid.

Qazi who was appointed by the Sadre Jahan on the recommendation of the Qazi-e-Subah. This court was also assisted by same four officials as mentioned above.

- **Faujder Court:** This court had jurisdiction to try petty criminal cases concerning security and suspected criminals.Appeal from this court lay with the court of Nazim-e-Subah.
- **Court of Mir Adils:** This court dealt with land revenue matters. Appeal from this court lay before the Court of Diwan-e-Subah.
- **Court of Kotwals:** This court was authorised to try police and municipality cases.

Parganah's Courts: The Courts of Qazi-e-Parganah and Kotwals were constituted at each Parganah Headquarter. The Court of Kazi-e-Parganah had all powers of a District Kazi in all civil and criminal cases except hearing appeals. The Kotwal was authorised to try petty criminal cases. He was also the principal executive officer of the town.[53]

Village Courts: For each group of villages, a panchayat was functioning to look after the executive and judicial functions. The panchayat decided petty civil and criminal cases of purely local nature.[54]

2.2.3 Legal System under the Mughal Administration

During the Mughal period (1526-1857) the Mughal emperor was considered the 'fountain of justice'. The emperor created a separate department of justice (Mahakuma-e-Adalat) to regulate and see that justice was administered properly. The important courts functioning during this period were as follows:

Courts at Capital

Three important courts were functioning at the capital city of Delhi. They were as follows:

[53] Supra note 35.
[54] Ibid.

(a) The Emperor's Court: The Emperor's court presided over by the emperor himself, was the highest court of the empire. This court had jurisdiction to hear both civil and criminal cases. The emperor while hearing the cases as a court of first instance, was assisted by Daroga-e-Adalat, Mufti and Mir Adil. While hearing appeal the emperor presided over a Bench consisting of the Chief Justice (Qazi-ul-Quzat) and other Qazis of the Chief Justice's court. The Emperor referred points for - opinion regarding authoritative interpretation of law on a particular point to the Chief Justice's court.[55]

(b) The Court of Chief Justice: This was the second important court at the capital, this court presided over by the Chief Justice was assisted by two Qazies of great importance who were attached to this court as puisne judges. This court had jurisdiction to try original, civil and criminal cases and also to hear appeals from the Provincial courts. It had also supervisory power over the working of the Provincial courts.

(c) **Chief Revenue Court:** This was the third important court in Delhi. It was the highest court of appeal to decide revenue cases. This court was also assisted by the same four officials as mentioned below.

Provincial Courts

In each Province there were following three types of courts:

(a) **The Governor's Court (Adalat-e-Nazim-e-Subah):** The Governor or Nazim presided over this court and he had original jurisdiction in all cases arising in the Province. This court had also jurisdiction to hear appeals from the subordinate courts. Further appeal from this court lay to the emperor's court. This court had also supervisory power over the administration of justice in the province. One Mufti and a Daroga-e-Adalat were attached to this court.[56]

[55] Ibid.
[56] Ibid.

(b) The Provincial Chief Appeal Court (Qazi-i-Subah's Court):

This court heard appeals from the decisions of the Qazis of the districts. The powers of Qazi-i-subah were co-extensive with those of Governors. This court had original civil and criminal jurisdiction as well. The officers attached to this court were, Mufti, Mohtasib, Daroga-e-Adalat-e-Subah, Mir Adil, Pandit, Sawaneh Nawis and Waqae Nigar.[57]

(c) Provincial Chief Revenue Court **(Diwan's** Court): This court presided over by Diwan-e-Subah had original and appellate jurisdiction in all revenue matters. An appeal from this court lay to the Diwan-e-Ala at the Imperial capital. Four officers attached to this court were- Peshker, Darogha, Treasurer and Cashier.[58]

District Courts

In each district there were following four courts:

(a) District Qazi: The chief civil and criminal court of the district was presided over by the Qazi-e-Sarkar. This court had jurisdiction to try all civil and criminal matters. Appeal from this court lay to the Qazi-e-Subah. Qazi-e-Sarkar was the principal judicial officer in the district. Six officers were attached to this court- Darogha-e-Adalat, Mir Adil, Mufti, Pandit, Mohtasib and Vakil-e-Sharayat.[59]

(b) Faujdar Adalat: This court presided over by a Faujdar had jurisdiction to try cases concerning riots and state security. An appeal lay to the court of Governor from the decisions of this court.[60]

(c) Kotwali Court: This court presided over by a FCotwal-e-Shahar decided all petty criminal cases. Appeals from this court lay to the Qazi-e-Sarker.

(d) Amalguzari Kachari: This court presided over by an Amalguzar decided revenue matters. An appeal from this court lay to Diwan-e-Subah's adalat.

[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] Ibid.

Parganah's Court

In each Parganah there were three courts:

(a) Qazi-e-Parganah's Court: This court had jurisdiction over all civil and criminal cases arising within its original jurisdiction. This court had no appellate jurisdiction. Appeal from this court lay to the court of District Qazi.

(b) Court of Kotwal: This court decided all petty criminal cases. Appeals from this courts' decision lay to the Court of District Qazi.

(c) **Amin-e-Parganah:** This court presided over by an Amin decided all revenue matters. An appeal from this court lay to the District Amaguzar.

Village Courts

In each village two types of courts were working- court of village panchayat and the court of Zaminder. The village panchayat consisted of five persons headed by a headman. The panchayat had the power to decide petty local civil and criminal matters. No appeal was allowed from the decision of a panchayat. In the late Mughal period, Zaminder's courts were empowered to try petty criminal and civil matters.[61]

4.2.3. (1) Crime and Punishment in the Mughal Administration

A systematic judicial procedure was followed by the courts during the Mughal period. The judicial procedure was regulated by two Muslim Codes namely Fiqh-e-Firoz Shahi and Fatwai-i-Alamgiri. Evidence was classified into three categories- (a) full corroboration; (b) testimony of a single individual; and (c) admission including confession. The court always preferred full corroboration to other classes of evidence. The Muslim criminal law broadly classified crimes under three heads: (i) crimes against God; (ii) crimes against the King; and (iii) crimes against private individual.[62]

(a) **Hadd (fixed penalties):** Hadd meant specific punishments for specific offences. It thus provided a fixed punishment as laid down in Sharia for crimes like theft, robbery, whoredom (zinah), apostasy (ijtidad), defamation and drunkenness. It was equally

[61] Supra note 1.
[62] Ibid.

applicable to Muslims and non-Muslims. The state was under a duty to prosecute all those who were guilty under Hadd. "No compensation was granted under it. For instance, stoning to death was prescribed for adultery or drinking wine, cutting off the right hand for theft etc. All offences for which Hadd was prescribed as punishment are characterised as offences against God, in other words, against 'public justice'.[63]

(b) **Tazir (Discretionary Punishment):** This was another form of punishment which meant prohibition and it was applicable to all crimes which were not classified under Hadd. Offences. for which tazir was fixed were all offences against God. It included crimes like gambling, causing injury, minor theft etc. Under Tazir the kind and amount of punishment was left entirely with the judge's wish; courts were free to even invent new methods oi punishing the criminals e.g., cutting out the tongue, impalement etc. The object was to reform the criminal.

(c) **Qisas (retaliation) and Diya (blood money):** Qisas meant, in principle, life for life and limb for limb. Qisas was applied to cases of willful killing and certain types of grave wounding or maiming which were characterisd as offences against human body. Qisas was regarded as the personal right of the victim or his next of kin, to inflict a like injury on the wrong-doer as he had inflicted on his victim. Under Qisas the relatives or successors of the murdered person could excuse the murderer. Qisas^ became Diya when the next of kin of the victim was satisfied with money as compensation for the price of blood. This also could not be reduced or modified either by the Q*. zi or the emperor. In cases where Qisas was available, it could be exchanged with diya or blood money.[64]

2.3 Criminal Judicial system Under British Period:

2.3.1 Modernization of Ancient Indian Law

The modernization of ancient Indian law took place in the hand of the British people who came in India as a trading company under a series of Royal Charters. The pace of

[63] Ibid.
[64] Ibid.

the development of the administration of justice in British India may be divided into following five periods:

a. Early Administration of Justice until the Charter of 1726;

b. Administration of Justice from the Charter of 1726 till the Regulating Act of 1773;

c. Administration of Justice from the Regulating Act of 1773 till the era of Unification in 1861; and

d. From 1861 till the Independence in 1947.

2.3.2 First Period: Early Administration of Justice until the Charter of 1726

Some changes were brought in the administration of justice in three Presidency Towns with the intervention of some Charters issued from time to time by the Company though these changes were fringe and different in three Presidency Towns. For example, the first Mayor's court in India was established at Madras by the Company's Charter of 1687. This was a Company's court as opposed to the Crown's court and no specific rules of law and procedure was laid down for this court by the Company. On the other hand, the Company first acquired the territorial acquisition of Bengal, Bihar and Orissa in 1765 as Mufassil area as opposed to Presidency Towns. Though the Company took the full control of Diwani and military power, the administration of both civil and criminal justice.were left to the indigenous machinery at the hand of natives until 1772. The development of adalat system in Mufassil area will be discussed in a different heading.[65]

2.3.3 Second Period: The Era of the Mayor's Court: Administration of Justice from the Charter of 1726 till the Regulating Act of 1773

This period may be divided into two parts: from the Charter of 1726 till the Charter of 1753; and from the Charter of 1753 till the Regulating Act of 1773.[66] The first part of this period marks the beginning of the intervention by the British Crown in the

[65] Supra note 35.
[66] Ibid.

administration of justice in India. The Charter of 1726 issued by King George I by way of granting Letters Patent[1] to the Company was the first gateway of the introduction of English law in India. The Charter of 1726 established a corporation for each Presidency towns. Following changes in the administration of justice were made by this Charter:

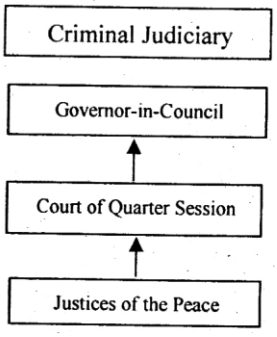
2.3.4 (1) Criminal judiciary:

a. Justices of the Peace: Under the Charter the criminal justice was fully executive dominated. In each Presidency town the criminal justice was vested in the Governor and five senior members of the Council of the Company. Each of them was to act in the same manner, and to have the same powers, as the justices of the peace in England. A justice of the peace could arrest persons accused of committing crimes, punish those who were guilty of minor crimes, and commit the rest to be tried by the Quarter Sessions.[67]

b. Court of Quarter Session: Three justices of the peace collectively were to form a court of record and they were to hold quarter sessions four times a year to try and punish each and every criminal offence, except high treason, committed in the Presidency Towns. Trial at these session courts was to be held with the help of grand jury and petty jury. [68]

c. Governor-in-Council: Under the Charter criminal justice was vested in the Governor and five senior members of the Council of the Company. They had both original and appellate jurisdiction in some specified criminal matters, e.g., high treason and serious crimes like murder etc.[69]

[67] Ibid.
[68] Ibid.
[69] Ibid.



2.3.6 Third Period: The Era of the Supreme Court: Administration of Justice from the Regulating Act of 1773 till the era of Unification in 1861

The Supreme Court under the Regulating Act of 1773 the judicial reform took the following shape:

(i) A Supreme Court was established in place of Mayor's Court in each Presidency Town of Calcutta, Bombay and Madras,

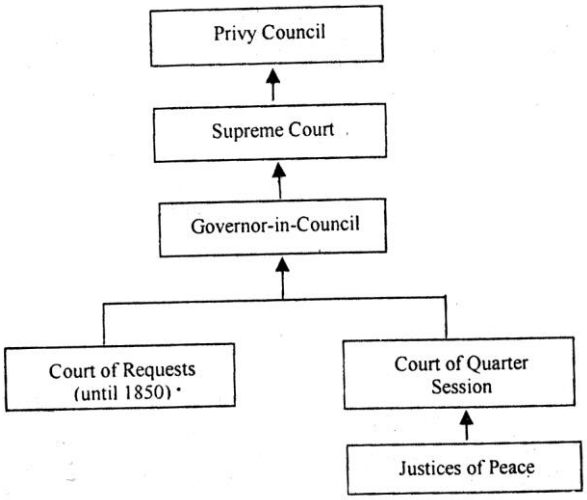
(ii) Three Courts of Requests in three cities were retained and they were made subordinate to the Supreme Court. However, in 1850 these Courts of Requests were abolished and, in their place, Small Causes Courts were established in three Presidency Towns.

(iii) The Supreme Court consisted of a Chief Justice and three other puisne judges. They were to be all professional barristers sent out to India from England. They held office during the pleasure of the King.

(iv) The Supreme Court was empowered to supervise the Court of Collector, Quarte^ession, Justice of Peace and the Court of Requests. Under this supervisory jurisdiction the Supreme Court could issue various prerogative writs.

(v) The general jurisdiction of this court was limited within the geographical limits of the Presidency Town. Beyond the Presidency Towns, the court exercised a personal jurisdiction over three categories of persons- British subjects and persons employed directly or indirectly to the service of the Company.

(vi) The Supreme Court had both original, appellate, civil, criminal, ecclesiastical and admiralty jurisdiction. It heard appeal from the decisions of the Mufassil courts and Company's courts.



2.3.7 Fourth Period: Era of Unification: From 1861 till the Independence in 1947 (Judicial Reform under the Direct British Rule).

This period may be divided into two sub-heads: from 1861 till 1935 (the era of High Court); and from 1935 till 1947 (the era of High Court and the Federal Court).

The final step was taken with the enactment of three uniform codes (Civil Procedure Code, Criminal Procedure Code and Penal Code). With the achievement of this common legal fabric, the stage was set for the union of the two judicial systems and this was finally done by the British Parliament in 1861. By enacting the Indian High Courts Act which provided for the creation of the High Courts in three Presidency Towns by merging the Supreme Court and Sadar Adalats. The Charter for the Calcutta High Court was issued in 1862 and the High Court was established on 2nd July 1862.[70]

2.4 Criminal Judicial system Under Pakistan Period

As mentioned earlier, with the adoption of the Constitution of 19 the highest court in Pakistan became the Supreme Court of Pakistan the High Courts were retained at provinces as earlier. The subordinate courts were the same as in 1947.[71]

[70] Supra note 1
[71] Ibid.

Chapter-Three
Crime, Criminal Justice System and Causes of Crime

3.1 Crime:

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

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

The term crime does not, in modern times, have any simple and universally accepted definition, but one definition is that a crime, also called an offence or a criminal offence, is an act harmful not only to some individual, but also to the community or the state (a public wrong). Such acts are forbidden and punishable by law.[72]

Whether a given act or omission constitutes a crime does not depend on the nature of that act or omission. It depends on the nature of the legal consequences that may follow it. An act or omission is a crime if it is capable of being followed by what are called criminal proceedings. [73]

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

3.2 Criminal:

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

A criminal is a person who has acted or omitted himself from doing an act for which he was bound to do or omit him from doing under obligation imposed by any law or whose duty it was to do or omit himself from doing.[74]

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[72] Bryan Garner, Black's Law Dictionary (9thedn, Thomson West, USA, 2009).

[73] Susan Ellis Wild (ed), Webster's New Judicial Dictionary, (7th edn, Webster's New World, USA, 2006).

[74] Supra note 72.

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

3.3 Criminal Justice System:

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

It also means the system of law enforcement, the bar, the judiciary, corrections, and probation that is directly involved in the apprehension, prosecution, defense, sentencing, incarceration, and supervision of those suspected of or charged with criminal offenses.[75]

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

The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. There is no single criminal justice system in the United States but rather many similar, individual systems. How the criminal justice system works in each area depends on the jurisdiction that is in charge: city, county, state, federal or tribal government or military installation. Different jurisdictions have different laws, agencies, and ways of managing criminal justice processes.[76]

System Components:

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

[75] Supra note 74.
[76] Huq Z, Law and Practice of Criminal Procedure (11thedn, Bangladesh Law Book Company, Dhaka 2010).

justice process. The system of law enforcement, the bar, the judiciary, corrections, and probation that is directly involved in the apprehension, prosecution, defense, sentencing, incarceration, and supervision of those suspected of or charged with criminal offenses.[77]

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

ii. **Prosecution:** Prosecutors are lawyers who represent the state or federal government (not the victim) throughout the court process-from the first appearance of the accused in court until the accused is acquitted or sentenced. Prosecutors review the evidence brought to them by law enforcement to decide whether to file charges or drop the case. Prosecutors present evidence in court, question witnesses, and decide (at any point after charges have been filed) whether to negotiate plea bargains with defendants. They have great discretion, or freedom, to make choices about how to prosecute the case. Victims may contact the prosecutor's office to find out which prosecutor is in charge of their case, to inform the prosecutor if the defense attorney has contacted the victim[2], and to seek other information about the case.[78]

iii. **Defense Attorneys:** Defense attorneys defend the accused against the government's case. They are ether hired by the defendant or (for defendants who cannot afford an attorney) they are assigned by the court. While the prosecutor represents the state, the defense attorney represents the defendant.[79]

iv. **Courts:** Courts are run by judges, whose role is to make sure the law is followed and oversee what happens in court. They decide whether to release

[77] Ibid.
[78] Ibid.
[79] Ibid.

offenders before the trial. Judges accept or reject plea agreements, oversee trials, and sentence convicted offenders.[80]

v. **Corrections:** Correction officers supervise convicted offenders when they are in jail, in prison, or in the community on probation or parole. In some communities, corrections officers prepare pre-sentencing reports with extensive background information about the offender to help judges decide sentences. The job of corrections officers is to make sure the facilities that hold offenders are secure and safe. They oversee the day-to-day custody of inmates. They also oversee the release processes for inmates and sometimes notify victims of changes in the offender's status.[81]

3.4 Causes of Crimes:

If we analyze the causes of crimes scientifically then we can find 10 Causes. Some of them are-

- **Weakness**

People are not bad by nature, but sometimes simply too timid to resist the vicious demons that play on their weaknesses and cut their bond with the source of their Power. Humans are good by default, but not everyone is made of steel so as to defend themselves against the demonic forces - destructive emotions and detrimental attitudes: fear, ignorance, hatred, worry. There are two core reasons why weakness prevails with some:

1) Lack of faith, not believing enough in the power of one's own internal weapons (against inner demons).

2) Imbalance - most criminals are simply too strong physically, pumping up the body muscles, but not enough the mental and emotional muscles. [82]

[80] Ibid.
[81] Ibid.
[82] Correspondent, 'How Does the Criminal Justice System Work?' (2010), Find Law <http://criminal.findlaw.com/criminal-law-basics/how-does-the-criminal-justice-system work.html> accessed 10th April 2022.

- **Poor judgment**

Lack of proper education and great role-models causes many to fail to distinguish right from wrong. In most cases offenders don't think they are doing something wrong; it seems right from their point of view. Poor judgment is also reflected in knowing its wrong, but thinking they could get away with it, not getting caught. Art Therapy Solutions - get the free crime cure.[83]

- **Poverty**

Poverty is often blamed for leading to crime, however underneath is something more vital - society bombards us with commercial values, making us want more and more material things, to the point when some would do anything (including criminal acts) to get them. Unemployment is another factor in this category that contributes to crime through looking ways to earn money by any means possible. Art Therapy Solutions - get the free crime cure; - find the best powerbroker (presented also here in the top of the right column) to help you out of poverty into wealth.[84]

- **TV violence**

Being a victim in a chain of events sometimes individuals don't mean to cause harm, but are drawn into it by a chain of events that are beyond their control or influence. Poor parenting skills erratic or harsh discipline, lack of parental control, supervision and monitoring, parental conflict, family dysfunction/breakdown, criminal, anti-social and or alcoholic parent/s Read more about it from BBC indoor.[85]

[83] Ibid.
[84] Ibid.
[85] Ibid.

Chapter-Four

Laws and Bodies Concerning Criminal Justice System in Bangladesh

4.1 Introduction:

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

4.2 Some criminal Laws enforcing in Bangladesh:

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

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

4.3 Classification of criminal courts:

The code of criminal procedure itself clearly defines the court which will regulate its jurisdiction over the people of the country. Section-6 of the code has clearly classified the courts which will exist in adjudication of criminal disputes within the country.[86]

[86] The Code of Criminal Procedure, 1898 (Act V of 1898), s. 6.

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

A. Supreme Court
    1. Appellate Division
    1. High Court Division
B. Court of Sessions
    1. Court of Sessions
    2. Additional Court of Session
    3. Joint Session Court
C. Court of Magistrates
    1. Judicial Magistrates
        - Chief Metropolitan Magistrate or Chief Judicial Magistrate
        - Additional Chief Metropolitan Magistrate or Additional Chief Judicial Magistrate
        - Metropolitan Magistrate or Magistrate of 1st class
    2. Executive Magistrates
        - District Magistrate
        - Additional District Magistrate
        - Other Executive Magistrate
    3. Special Magistrates

4.3.1 The Supreme Court:

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

(1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division.

(2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.

(3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that division, and the other Judges shall sit only in the High Court Division.

(4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.

4.3.2 Courts of Sessions:

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

Section-9: Court of Sessions

(1) The Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court; and the Court of Session for [a] Metropolitan Area shall be called the Metropolitan Court of Session.]
(2) The Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.
(3) The Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.
(3A) The members of the Bangladesh Judicial Service shall be appointed as Sessions Judge, Additional Sessions Judge and Joint Sessions Judge in accordance with the rules framed by the President under the proviso to Article 133 of the constitution to exercise jurisdiction in one or more of such areas.]
(4) A Sessions Judge of one sessions division may be appointed by the Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Government may direct.
(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

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

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

4.3.3 Courts of Magistrates:

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

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

There shall be two classes of Magistrate, namely:

(a) Judicial Magistrate; and

(b) Executive Magistrate

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

(a) Judicial Magistrate:

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

(a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas;

(b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate;

(c) Magistrate of the second class; and

(d) Magistrate of the third class

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

(b) Executive Magistrate:

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

Section-10: Executive Magistrates:

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

(2) The Government may also appoint any Executive Magistrate to be an Additional District Magistrate, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this

Code or under any other law for the time being in force, as the Government may direct.

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

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

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

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

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

Thus section-10 declares following as executive magistrates:

1. District Magistrate
2. Additional District Magistrate

3. Executive Magistrate

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

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

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

Power Of the Magistrates Court	**Section-32. Sentences which Magistrates may pass:** The Courts of Magistrates may pass the following sentences namely:- (a) Courts of Metropolitan Magistrates and] of Magistrates of the first class: Imprisonment for a term not exceeding five years], including such solitary confinement as is authorized by law; Fine not exceeding ten thousand taka]; Whipping. (b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding three years], including such solitary confinement as is authorized by law; Fine not exceeding five thousand taka]; (c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding two years]; Fine not exceeding two thousand takas]. (2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.
	Section-33: Power of Magistrates to sentence to imprisonment in default of fine: The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default:

	Provided that- (a) the term is not in excess of the Magistrate's powers under this Code; (b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine. (2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.
Powers Of the High Court Division or Session Court	**Section-31: Sentences which High Court Division and Sessions Judges may pass:** (1) The High Court Division] may pass any sentence authorized by law. (2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division. (3) A (Joint) Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding [50][ten] years or of imprisonment for a term exceeding 2 [51][ten] years.
Power of the Special Magistrates	**Section-33A: Higher powers of certain Magistrates:** The Court of a Magistrate, specially empowered under section 29C, may pass any sentence authorized by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years.]

4.5 Appointment of Magistrates and judges:

Procedure of Appointment of the Magistrates, judges is specified in section- of the code of criminal procedure, 1898 and the appointment of chief justice and other judges of Supreme Court are specified in or followed by Article 95 of the constitution of Bangladesh.

4.6 Appointment of Judges of the Supreme Court:

Article-95: Appointment of Judges:

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

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

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

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

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

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

4.6 Appointment of the magistrates and judges in session divisions:

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

[115. Appointments to subordinate courts

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

116. Control and discipline of subordinate courts

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

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

Section-9: Court of Sessions:

(1) The Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court; and the Court of Session for a] Metropolitan Area shall be called the Metropolitan Court of Session.]

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

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

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

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

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

Section-11: Judicial Magistrates:

(1) In every district outside a Metropolitan Area, the Chief Judicial Magistrates, Additional Chief Judicial Magistrates and other Judicial Magistrates shall be

appointed from the persons employed in the Bangladesh Judicial service in accordance with the rules framed by the President under the proviso to Article 133 of the constitution.

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

(3) The Government may, or subject to the general or special orders issued by the Government in consultation with the High Court Division, the Chief Judicial Magistrate may, from time to time, define local areas within which the Judicial Magistrates may exercise all or any of the powers with which they may be invested under this Code, and except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

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

Section-18: Appointment of Metropolitan Magistrates:

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

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

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

The chapter intends to illustrate some criminal laws of the territory to have knowledge of their nature and salient features. The country has adopted and chosen laws for her administration of justice. Most of the law of the country is adopted from the sub

continent of India and somehow the laws and their nature are connected with Laws exist in the ancient period e.g., Hindu, Muslim, British and Pakistan Period. The knowledge of criminal laws of the territory is so much essential to justify or evaluate criminal justice system of the country.

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

A. Code Of criminal Procedure, 1898:

Code of criminal procedure, 1898 is one of the essential codes of the country in dealing with the criminal administration of justice. The only law of the country dealt with the procedure for determining power and function of the country and other procedural matter which is connected with criminal judicial system of the country.[87]

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

1. Nature:

CrPC is a branch of procedural law. Adjective of procedural criminal law provides machinery for the punishment of offenders against substantive criminal laws, e.g. the penal code and other statutes. However, CrPC is not the only procedural law for punishing offenders; it is the main general law of procedure for criminal proceedings but any other statute or special law may determine aspects of procedural law.[88]

2. Objects:

The main objects of the code are to determine and specify the machinery for the punishment of offenders against substantive criminal laws enforceable in the country. The law itself the main general law of the country supervise the formation, function and other procedure requires for administration of criminal justice.[89]

[87] Huq Z, Law and Practice of Criminal Procedure (11thedn, Bangladesh Law Book Company, Dhaka 2010).
[88] Ibid.
[89] Ibid.

3. Fundamental Procedures:

The Code of Criminal Procedure, 1898 is the main general law of procedure of the country in criminal justice system. The very code does not preclude anything which is needed for the determining of machinery of ensuring criminal justice. It is in considering of law is most uniform and clear. The code successfully elaborates structure of the courts to functions of the court, pre trial stage to commencing of sentences and their execution, other procedures related with the administration of criminal justice.[90]

B. Penal Code, 1860:

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

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

Nature and categories of offences under Penal Code 1860:

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

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

[90] Ibid.

IX. Affecting the human body which have further been sub-divided into offence affecting life, and causing miscarriage, kidnapping, rape, dacoity, or related to marriage, criminal breach of trust and so on.[91]

C. Nari O Shishu Nirjaton Domon Ain,2000 :

The object behind enactment of Nari O Shishu Nirjaton Domon Ain, 2000 is to suppress wrongdoer or offence against the backward group of peoples of the country the woman and Children.

In the constitution of Bangladesh Article-28(4) stated,

"Nothing in this article shall prevent the state from making special provision in favour of women or children or for the advancement of any backward section of citizens"

Thus the State has chosen and adopted law for their most backward section of citizens by imposing more severe punishments for the offence committed against woman and children.[92]

D. Special Powers Act, 1974:

The Special Powers Act 1947 makes hoarding or dealing in black market, counterfeiting currency-note and government stamps, smuggling, adulteration of or sale of adulterated food, drinks, drugs or cosmetics punishable offences. Attempt to commit those offences has also been made punishable offence. The Act also provides that a partner, director, manager, secretary or other officer or agent of a firm, company, or other body corporate shall be liable to be punished for committing the above offences by the firm, company or body corporate.[93]

E. The Arms Act,1878:

The Arms Act 1878 Under this Act, unlicensed manufacture, conversion and sale of arms, import and export of arms, transport of any unauthorized arms over Bangladesh and possession of unlicensed fire arms etc have been prohibited. Provisions have been

[91] Halim A, The Legal System of Bangladesh (7thedn, CCB Foundation, Dhaka 2014).
[92] Ibid.
[93] Huda M, A Handbook on Understanding Crimes And Police Investigation Processes: Criminal Trial Perspective (1stedn, Vol I-II, Mullick Brothers, Dhaka 2015).

made for granting license to use arms and ammunitions and granting license to deal in arms and ammunitions. In certain case, an arm is to be deposited at police stations or with licensed dealers. Further provisions have been made giving power to the government to make rules as to license, restriction on movements with arms, cancellation and suspension of license etc.[94]

F. The Explosive Substances Act 1908:

The Explosive Substances Act 1908 Explosive substance deems to include any material for making an explosive substance and also the apparatus, machine or any part thereof which may be used for causing or aiding in causing any explosion. Causing explosion by any explosive substance likely to endanger life, injury to person or property or with intent to commit an offence or to enable any other person to commit an offence are punishable under this act with death, imprisonment for life or imprisonment of any other term with a minimum mandatory sentence of 2 to 5 years. Attempt to cause explosion or making or keeping of explosive substance is also an offence punishable with imprisonment of various terms. Even abatement of above offences is also punishable with the same sentence as provided for the offence concerned

G. The Evidence Act,1872:

The Evidence Act, originally passed by the British parliament in 1872, contains a set of rules and allied issues governing admissibility of any evidence in the courts of law. The enactment and adoption of the Evidence Act was a path-breaking judicial measure introduced in British India, which changed the entire system of concepts pertaining to admissibility of evidences in the courts of law. Up to that point of time, the rules of evidences were based on the traditional legal systems of different social groups and communities of British India and were different for different persons depending on his or her caste, religious faith and social position. The Evidence Act removed this anomaly and differentiation, and introduced a standard set of law applicable to all citizens.[95]

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[94] Ibid.
[95] Ibid.

4.8 Body Related to Criminal Justice System in Bangladesh

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

4.8.1 Police:

The Bangladesh Police is the main law enforcement agency of Bangladesh to provide service to all citizens and make Bangladesh a better and safer place to live and work. It also upholds the rule of law, ensures safety and security of citizens, prevents and detects crime, brings offenders to justice and maintains peace and public order. It is administered by the central interior ministry of the Government of Bangladesh. Outside the Dhaka capital region and other major cities, police is organized at the district and thana levels. Raised in 1976, the Dhaka Metropolitan Police is charged with maintaining security and order in the national capital and largest city. Twelve female police officials were recruited for the Bangladesh Police Special Branch (SB) in 1974 and inducted in the Dhaka Metropolitan Police in 1978. In 2004, Rapid Action Battalion (RAB) was raised comprising of personnel of the Military of Bangladesh, Border Guard Bangladesh (BGB) and the Bangladesh Ansar and VDP. The Bangladesh Police Special Branch was established to assist in maintaining national security and also performs the functions of intelligence-gathering and counterintelligence. In 2008, Bangladesh police established the Special Women Police Contingent (SWPC) to fight prostitution, drug smuggling and human trafficking. Composing entirely of female officers, the SWPC would be used to gather intelligence on criminal activities and specifically track down female criminals.[96]

[96] Correspondent, 'Stages of Criminal Proceedings' (2016) <http://www.nsz.cz/index.php/en/course-of-criminalproceedings/stages-of-criminal-proceedings> accessed 12th April, 2016.

4.8.2 Judiciary:

Bangladesh judiciary is organized and governed according to the constitutional and legal provisions and from this section enumerate the system and about what 'judicial independence' really means. It also elaborates types of judges, including where they sit, the types of cases they hear and how they are appointed. It has been separated and recognized by the constitution as an organ of the state.[97]

4.9 How the judiciary is governed:

The Chief Justice of Bangladesh decides where Justices sit, and the type of cases they hear, while the Ministry of Law (MOL) decides the judges, magistrates and tribunals affairs. The Chief Justice of Bangladesh in the Supreme Court decides where Justices shall sit, and the type of cases they hear. His lord ship normally constitutes Benches of the Appellate and the High Court Division. In the Appellate Division he normally constitutes the Bench with three Appellate Division Justices or with five Justices including himself.[98]

In the High court Division, the chief Justice constitutes Benches with one or two justices known as Single Bench and Division Bench respectively. In a special case the Chief Justice may constitute Special Bench with Three Justices, called Full Bench or Larger Bench with Five Justices to hear and dispose off a referred case by him. The Chief Justice may withdraw any case from the bench of any Justice without ant assigned reason and transfer it to any other Bench.[99] The chief justice reshuffles the benches of the High Court Division Regularly the Ministry of Law (MOL) decides the subordinate judges, magistrates and tribunals affairs after consultation with the Supreme Court in accordance with the provision of Article 116 of the constitution which runs as follows:

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[97] Ibid.

[98] Correspondent, 'How Does the Criminal Justice System Work?' (2010), Find Law <http://criminal.findlaw.com/criminal-law-basics/how-does-the-criminal-justice-system work.html> accessed 10th April 2022.

[99] Ibid.

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

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

- ✓ Courts holidays & Vacations: The legal year traditionally begins in October and courts sit for four terms during the year.
- ✓ Judicial accountability and independence: The importance of judicial independence and the consequences of that independence on the notion of judicial accountability
- ✓ Law professional bodies: There are various Advocates Associations and a Bar Council to control the law professionals.
  Judicial Training authorities: Training of the subordinate judicial officers is imparted by authority run by the MOL.[100]

4.10 Bangladesh Public Service Commission (PSC):

The Bangladesh Public Service Commission (BPSC) is a quasi-judicial body established in 1972 under the Constitution of the People's Republic of Bangladesh. It works under the provisions of the Article 137 - 141 of the Constitution of Bangladesh and certain other rules and regulations made by the government from time to time. The Chairman and such other members as shall be prescribed constitute the commission. There is also a full-fledged Secretariat to assist the Commission. The Chief Justice of the country administers the oath for Chairman and the members of the commission. The tenure of the Chairman and members of the commission is 5 (five) years or 65 years of age whichever comes earlier. If the age permits the tenure can be renewed for one more term. The chairman and the members are appointed by the Hon'ble President of the Republic.[101]

[100] Ibid.
[101] Ibid.

4.11 Law Commission:

The Government felt it necessary to make the Commission a permanent one under a regular statute. Steps were taken and the Law Commission Bill of 1996 was passed by the Parliament. Upon receipt of assent of the Hon'ble President on September 9, 1996 it became an Act of Parliament (The Law Commission Act 1996 Act no. XIX of 1996). As per section 5 of the Law Commission Act, 1996, the Commission consists of a Chairman and two Members. Under the law the Government has got the power to increase the number of its members, if it deems necessary. The Chairman and Members of the Commission hold their respective offices for a term of three years from the date of their respective appointments. The Chairman or a Member may be re appointed by the Government for the prescribed term after the expiry of the said term. From the very beginning the Chairman of the Commission has been appointed from amongst the retired Chief Justices of Bangladesh and Members have been appointed from retired judges of Supreme Court of Bangladesh except on one occasion on which a member was appointed from amongst legal academics. There are also some Ministerial Staff to support administrative works of the Commission.[102]

4.12 The Anti-Corruption Commission (DUDOK):

The Anti Corruption Commission (ACC) Bangladesh was created through an act promulgated on 23 February 2004 that into force on 09 May 2004. The first set of office bearers were appointed on 21 November 2004. The following day, it commenced its journey with a mission, a vow to make a difference to the Nation's anti corruption initiatives and a fresh mandate. "Anti Corruption Commission" (ACC) in the Bangla language "DUDOK. The Commission has formulated some forms of corruption in Bangladesh, for everyone to know, understand and prepare ourselves to completely erase corruption from our lives, if not reduce it.[103]

[102] Law Commission of Bangladesh, Recommendations In Order To Ensure Speedy Trial (2014) accessed 15th April, 2022.

[103] Supra note 98.

Chapter- Five

Some Criminal Cases & Experts Opinion Regarding Criminal Justice System in Bangladesh

This is a title attempt to find out some defects or problems visible or arise while adjudicating Criminal cases corresponding to Criminal Justice system of Bangladesh, going through some criminal cases. Thus, the studies object to find out some problems which obstruct the fair and natural Justice. Here we are about to observe some criminal cases which have been either dismissed or failed to seek remedy to the victim in lieu of defects of laws or other technical problem.

Case No-01:

1. Title and section of laws for Accusation:

The case has it name as Pallabi Police station Case no-17(12)12 corresponding to GR case no-130/12 between the State Vs Ashraf Ali and others as the case was filed by Mr.Abdur Rahman under section – 143/323/435/506 of Bangladesh Penal Code 1860.

2. Facts of the case:

Here the plaintiff filed a GR case in Pallabi police station for hurting him with an unlawful Assembly and Putting fire on his car in Road side. He mentioned name of persons by name which he saw at that place during commission of that offence in the Ajahar.

The case against the accused was brought under section-143/ 323/ 435/ 506 of the Penal Code. He filed the case on 03/12/2012 and the case sent to the court in 04/12/2012 for Trial.

3. Observation:

Though 9 months already passed out after the filing of the suit but yet the Punishment or no Reasonable step has been got for its adjudication or seeking the Remedy to the

plaintiff. From a deep analysis and observation, it is seen to me that following are the main case for the pendency or delaying of this very case—

a) Negligence by the police whose duty is to submit police report either charge- sheet or Final Report under section 173 of the code of Criminal Procedure.
b) No adequate step has been taken by the law enforcement body to bring the co-offender with in judicial capacity or the execution body is incapable on doing so.
c) No such direction has been given by the court to provide police report.

Case No-02:

1. Title and section of Accusation:

This case is between Md.Rubel Sordar Vs Md. Summon and others.

The case is introduced as Rupnogor Police Station case no- 21(12)12 corresponding to GR no—98/ 12 in lieu of section—143/ 323/ 326/ 379/ 441/ 506 of the Penal code 1860.

2. Facts of the case:

Md.Rubel Sordar was passing through eastern housing Bridge along with his two friends. Md. Summon with hockey, Iron, knife and left them Bringing their mobile phone and cash 10,000/= taka as they previously claim money from the victim plaintiff and he denied.

Md.Rubel Sordar filed a GR case on 21st day of December 2012 under section-143/ 323/ 326/ 379/ 441/ 506 of Penal Code and sent to the court on the next day by the police.

3. Observation:

This cases within ten months almost reasonably overcome. Its pre- trial stage but from studying the case following cases of delaying or incapacity of criminal Judicial System is observed: --

a) It took much time to complete its pre- trial stage.

b) Police officer in charge of the case either took pecuniary benefit or biased in case of an accused or suffered from incapacity during investigation.
c) For seeking the offender around the capacity of law the executive body showed its incapacity.
d) The staff of the court is shortening from man power to send the order for warrant and attachment of the property to the executive body without any delay.
e) The plaintiff either threatens or has reasonably lost his will to file Naraji or not interested in seeking Remedy after a case has been duly filed.

Case No-03:

1. Title and Laws:

This case is between Mofizure Rahman Vs Golam Morshed and others.

Here the case Pallabi Police station case no – 32(5) 2013, arise out of GR case no—87/13 under section-379 of the **Penal Code, 1860**.

2. Facts of the case:

Here Mofizure Rahman rent a flat of the Accused Golam Morsheds house.

On 3rd May of 2013 he failed a case suspecting owner of the Flat Golam Morshed and the care-taker Ershad Ali under section- 379 for stealing Jewellary and cash 48,000/= taka claiming total 3,48, 000/= taka while they were not at home believing that the owner has the duplicate key of this Flat.

The case filed on 03/05/2013 and police sent it to the learned Magistrate Court arresting and demanding 7 days remand of the caretaker Ershad Ali on 04/05/2013.

3. Observation:

Thus the case showing a criminal case meets an end but the question that thus Justice ensured. A case just ended but Justice and more how far Criminal Justice System ensured Justice?

Tried to find out on following observation:

a) How far the police report is correct? It may be police took pecuniary benefit or biased or otherwise suffering from incapability in inquiry.
b) Why no step from plaintiff taken? Either the case was false or threatened by the accused. Thus, false case hardly obstructs judicial system and also prevent from enjoying his lawful rights and other from seeking justice as the court is normally about to sink in burden of cases.

Case No- 04:

1. Title and laws:

This case is filed by A father Mr. kaimujjaman against Abdus Satter and others on accusation of murdering his son Kamrujjaman, know as State Vs Abdus Satter and others, bearing sessions case no- 1303/ 09, arise out of GR case no- 73/07 and Sorail police station case no- 18(06) 07 in Brahmanbarian jilla under section- 302 of the penal code 1860.

2. **Facts of the case:**

Md. Kamrujjaman was a farmer and worked in the land belong to his father and there exists dispute in relation to the title of that land with Abdus Satter. They engaged themselves in fighting for the possession and afterwards at evening Abdus Satter and his man jointly committed murder Md. Kamrujjaman near the Bazaar in presence of several persons some of them were made witnesses afterwards. Md. Kaimujjaman filed case on 27th may 20007 under section- 302 of the Penal Code, 1860 and sent by the police to the court on the next day.

3. Observation:

The case is now fixed for summing up by the defence. It's almost 7years passed a case has not yet seen the Justice. It took 2years to complete its pre- trial stage and after sending to the session court it's took 4years to reach to this stage.

The case or findings by observation through this case is that the following are the main reason as to delaying or not getting remedy yet and in large sense obstructs to the criminal legal system: -

a) Taking too much time on pre- trial stage.
b) Incapacity or negligence of the execution body to bring the accused within judicial capacity without reasonable delay.
c) Burden of cases in the courts because of this a case got next working after long time.
d) Incapacity and good will of lawyers sometimes to quicker the procrdings. Sometimes taking time without reasonable cause as it may for delaying justice.
e) Failure to do necessary examine by the laboratory or other responsible institution without any reasonable delay. (e.g., Finger print, Blood).
f) Good will of the other people's authority who has duty regarding the case.
g) Getting Bail in case of non- Billable offence seek to fail the justice and remove respect and threat from the offender and common citizens of the country.

5.1 Lists of practical cause of failure to provide justice found in observation of some criminal cases:

Thus, from the observation of the above criminal cases we can marked the following issues as the problem or obstacle to the criminal legal justice system of Bangladesh in practical perspective[104]

1) Incapability, incapacity, biasness, bribery of the body e.g., police.
2) Incapability and incapacity of the lawyers in some legal issues and scarcity of good will to seek justice quickly to his client.
3) Incapability, Incapacity, Biasness and Bribery of the judges which while presiding over the court.
4) Scarcity of staffs of the court and sometimes their corruption and Biasness while sitting in the post relating to justice system.
5) Over burden of cases in the court also delay justice.
6) Illiteracy, poverty and safety of the plaintiff sometimes take far away from seeking and ensuring justice.

[104] Kazi Ebadul Haque, 'Plea Bargaining and Criminal Workload' (2003) 7, Bangladesh Journal of Law.

7) Scarcity of the qualified doctor, laboratory, forensic laboratory or other institution required for necessary examine in criminal cases.

8) Lengthy process, of bringing the offender within judicial capacity and on completion of pre- trial stage as well as post trial stage.

9) Fail to provide safety to the plaintiff, witness and other whose performance in important.

10) Bail and free movement in non Bailable offender discourage desire to seek justice.

11) Withdrawal of complaint after getting money or other Facilities believing in that **'**No gain in Punishing but the money".

12) Withdrawal of cases in political thinking and imposing political pressure over judicial system. Even forgiving the convicted offender encourages crime in the society.

13) Pendency of a case for long time make believes that no punishment would be made as 'delay denied justice'.

14) Filing false cases may sink the court in burden of cases and may be threatened to the judicial system.

15) Old and 2nd generation laws sometimes obstruct or prevent legal justice system.

5.2. Experts Opinion

The research is about criminal justice system of Bangladesh is depended on vast knowledge in criminal justice system. Without complete knowledge of criminal justice system, it is not possible by mere saying rather its needed hard field work. The entire findings may be classified in two heads:

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

5.2.1 Opinion as to fault of criminal justice system:

1. Opinion of Judges:

For the completion of the research and to gain some knowledge as to practical problems and as well as problems arise out of law, I had communicated with two Magistrates of the country and with a former Additional Session judge.[105]

They give their speech as following on the question how far Criminal justice ensured?
Learned Magistrate Mr. Samsuddin Badal states,
"Bangladesh had conferred or enacted the best laws except some but still it could not establish natural justice because of its enforcement, dishonesty of the peoples includes court staff, police etc. and political pressure also."

Former Additional session judge Mr. Hasnat Kobir stated much strictly in his answer,

"Constitution of the country had ensured provision as to separation of judiciary but it is till now exist in the papers but the real situation is dangerous. The laws enacted by the country is enough but their execution is in question. E.g. appointment of the judges, staffs of the court, executive body (police or others) and members of others organization have not been yet doing in fair way.[106]

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

Though they showed that the criminal justice system is yet not been ensured but they express that they are hopeful and believe the country will surely develop and will be able to ensure criminal justice.[107]

2. Opinion of the Lawyers:

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

[105] Jakhongir Khaydarov, 'Forward On Timely Justice for All in Bangladesh, A Challenges for Change : Court Processes, Problems And Solutions' Supreme Court of Bangladesh And UNDP [2015].
[106] Ibid.
[107] Ibid.

"The justice is going to hide from the country behind the money and political pressure."[108]

Learned advocate Md. Junayedullha Shoeb that,

"Justice is going far away from the reach of the poor people. The costs are unbearable for the person who is victimized by any act of other person. Usually, poor people are suffering for commission of an offence but they can't claim justice only because of poverty though government in papers operate suit for the poor."[109]

Learned Advocate P.M.Mahady Hasan expresses himself,

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

Learned Advocate Md. Emdadul Hanif stated differently,

"The dishonesty of the citizens, Institution of false cases, to gain political benefit filing cases against opposite party have made jam to the courts and judicial system is sinking to adjudicate them and so remedy to the real victim is denied or delayed. And the corruption, bribery etc are along with them."[110]

3. Opinion of the Police:

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

"Without giving money the appointment and promotion is not possible besides the facilities or remuneration given by the Govt. is not adequate for his family. So taking bribery is essential."[111]

Former warrant officer Jahangir Bhuiyan—

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

[108] Kazi Ebadul Haque, 'Plea Bargaining and Criminal Workload' (2003) 7, Bangladesh Journal of Law.
[109] Ibid.
[110] Ibid.
[111] Ibid.

4. Opinion of the Courts staff:

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

"5, 00000 taka had to give for the job. I borrowed it from his relatives and will have to pay them. I am only the boy of my family so i need some benefits out of the remuneration given by the Government".[112]

5.2.2 Opinion or suggestion as to solution or development:

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

1. Disability of the Victim to seek remedy because of poverty as well as non performance of the organization whose duty is to assist poor people.
2. Bribery or taking benefit of the post (judges, staffs, police)
3. Appointment of unqualified peoples as judge, police or staff
4. Appointment by taking money.
5. Burden of cases
6. Shorten of man power. (Police, court staff etc.)
7. Political pressure over the judiciary
8. Dishonesty of the peoples related with the justice system
9. certain limitation to train the judges and police
10. false and vogue cases filing
11. efficient working of the Body related to criminal justice system.e.g law commission, judiciary, police etc.[113]

[112] Ibid.
[113] Supra note 105.

Chapter- Six

Recommendation and Concluding Remark

6.1 Concluding Remark

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

Laws of the people's republic of Bangladesh especially Criminal laws are well but its enforcement cause the criminal system failure. The country yet enforces death penalty as capital punishment whilst other developed country keeps them away from such severer punishment. There exist some laws which should be reconsidered for the present time being. For example, where any offence punishable with imprisonment or fine, if fine is awarded for that offence by the court the fine is so small in amount e.g. 500tk, 1000tk.

The second main cause of failure to the administration of criminal justice in Bangladesh is its lengthy process of trial. Though the country itself full of crimes the adjudication should be hurry. In adjudicating a criminal case in the present time, it

takes almost 5 to 10 years, depended on nature of the case, which impliedly allow the criminal that he can find any way to get rid of the charges alleged against him.

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

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

The judiciary one of the fundamental organs of the state though in papers works independently but in real aspect the judicial proceedings are yet interfered by the political impact or pressure.

After completion of a case passing though a lengthy process a conviction is made but he gets rid from the conviction by the president in political thinking which give strength to the habitual offender (political leader).

6.2 Recommendations

1. Correction or reconsideration of laws:

The laws of the nation should be reconsidered as to their punishment or fine or for their enforcement. The law has given the procedure but it can not be enforced because of the poor process of its enforcement. Besides law, the procedure of the laws how can

be followed or enforced more efficiently and quickly should be considered in considering the present condition of the country.

2. Trial process should be completed as early as possible:

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

3. Taking steps to remove incapacity and incapability of the judges:

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

4. Fair appointment of judges must be ensured:

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

5. Strict steps and observation against bribery and biasness of the judges:

Strict observation and steps should have to take as the bribery and biasness of the judges may break down natural justice. Strict observation over the judges should keep always for preventing them from allowing bribery and from giving any judgment by biasness.

6. Taking steps to remove incapacity of the lawyers:

Necessary steps or training should be given to the advocates to build up them so that they can seek remedy to the victim. Especially international and national training should ensure for the government pleader as they are the pleaders who act on behalf of the plaintiff and in most cases, plaintiffs are the sufferer. Steps should be taken to develop law profession so that the qualified people get interested in this profession.

7. Ensuring fair enrolment procedure for being advocate:

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

8. Prevent judges to use discretionary power in corrupt way:

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

9. Taking steps to reduce incapacity and incapability of the police:

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

10. Strict steps and observation against bribery and biasness of the police:

Observation to the function of the corrupted police officer should be made and if found guilty for such kind of corruption strict steps should be taken for their punishment. Remuneration of the police should be fixed to a minimum standard, other facilities as required for living should ensure so that they can run their family normally and pleasant atmosphere should give for seeking their performance.

11. Fair appointment of police should ensure:

Fair appointment of the police must ensure for the development of criminal justice system. Police is the main executive body which enforce laws and takes preventive measures against commission of crime so if the appointment of the members of this very important body is not made in fair way, then fair criminal justice is impossible

12. Fair appointment of staffs of the court

As staffs of the court are hardly connected with judicial system the appointment of the staffs must to be done in fair way. No allowance or Biasness should be taken in case of appointment because a person come through legal process is bind by duty to work legally.

13. Strict steps to prevent bribery of court staffs:

Reasonable measures should be taken to stop taking bribery by the court staffs. Observation over their work or conduct and punishment for such bribery should be ensured.

14. Efficient working of the body related to criminal justice system e.g., Law Commission must be ensured.

15. Security to the Plaintiff and Witnesses must be ensured because the part of the plaintiff or witnesses is very much important for the natural criminal justice system.

16. Necessary action should be taken against false and vogue case. In case of filing false case, the punishment procedure should be followed and precedent to be made so that no case shall be filed only for harassing others.

17. Steps should be taken to reduce burden of cases. For example, by appointing man power as much it needed, by responsible duty abeyance by the judges, police and lawyers etc.

18. Qualified laboratory and Forensic department should be established or constructed. High qualified training for the doctor or other person who may hold the post on that kind of institution.

19. Political pressure over judicial system will have to remove. As the judiciary or judicial system is a separate organ of the state it should given to work on its own way. No interference should be done in respect of judicial service.

20. Further and reconsidering the admissibility and acceptance in case where convicted prisoners are to be pardoned.

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