Chapter- One

Introduction

1.1. Definition

Criminal Justice System 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. **Bangladesh** is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh.[1] 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. **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. **charge** includes any head of charge when the charge contains more heads than one. **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. **Inquiry** includes every inquiry other than a trial conducted under this Code by a Magistrate or Court. [2]**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. **Offence** means any act or omission made punishable by any law for the time being in force. **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. **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.[3]

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

[2] https://www.sciencedirect.com/topics/psychology/criminal-justice-system

[3] https://www.lexico.com/definition/criminal_justice_system

1.2 Rational of the study

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

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

1.3 Objectives of the study

The main objective of the study is to find out the reason why Criminal Justice is not ensured yet after having all the body of enforcing and almost uniformed judicial system. So the study objects to find out reason of such incapability and to find out some practical doings which may reasonably reduce crime.

1.4 Scope of the study

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

1.5 Methodology of the study

The methodology of the present research work 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. 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-

1.6 Limitation of the study

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.

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

- 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,
- Finally, due to time constraint many of the aspects could not be discussed and presented in the assigned report.

Chapter- Two
Criminal Justice System and Cause of Crime
Bangladesh Perspective

2.1 Criminal Justice System

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

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

The criminal justice system consists of three main parts: (1) Legislative (create laws); (2) adjudication (courts); and (3) corrections (jails, prisons, probation and parole). In the criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society.[4]

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 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.

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.

[4] https://www.tandfonline.com/doi/abs/10.1080/03050718.2019.1681285

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. [5]

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.

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

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

[5]https://www.academia.edu/39110462/Role_of_Police_in_the_Criminal_Justice_System_of_Bangladesh_Need_for_Reformation

oversee the release processes for inmates and sometimes notify victims of changes in the offender's status. [6]

vi. **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 care. Lack of love being raised in a dysfunctional family, or coming from a disadvantaged background, or feeling discriminated; none of it alone can cause crime. There are so many others in the world with such conditions, but nevertheless don't turn to crime. However, they cause the lack of love and respect for others. That, endorsed with some other factors, can be a major issue related to crime.

vii. **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 care cure; - find the best powerbroker (presented also here in the top of the right column) to help you out of poverty into wealth[7]

viii. **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. [8]

[6] https://www.academia.edu/8084579/Bangladeshs_criminal_justice_system_is_useless

[7] https://www.academia.edu/32898876/Chapter_1_INTRODUCTORY_1_1Introduction

[8] Patwary, ABM Mofijul Islam, Legal System of Bangladesh, Dhaka, 1991

Chapter—Three

Origin & Development of Criminal Justice System under Hindu Period, Muslim Period, British Period & Pakistan Period

3.1 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.

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. The essential features of judicial system of this period were as follows:

3.1A Organization of Court Structure:

Following courts were exist during the ancient Hindu period:

A. The King's Court:

The King's 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.

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.

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.

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.

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.[9]

3.1B 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.

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.

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 appointed from Brahmins. A sutra 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.

[9] https://www.lawyersnjurists.com/article/criminal-judicial-system-under-hindu-period/#:~:text=Appointments%20were%20made%20from%20among,when%20deciding%20disputes%20between%20citizens.

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.

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.[10]

3.1C 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.

A. 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.

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.

[10] https://www.coursehero.com/file/36069589/Hindu-Perioddocx/

B. 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.

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.

3.2 Criminal Judicial system Under Muslim Period:

3.2.A 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. 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. [11]

[11] http://www.judiciary.org.bd/en/judiciary/history-of-judiciary#:~:text=During%20Muslim%20period%20the%20civil,and%20Fatwa%2Di%2DAlamgiri.

3.2.B 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.

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.

- The King's court was presided over by the Sultan himself. This court exercised both original and appellate jurisdiction in all kinds of cases. It was the highest court of appeal in the realm. In discharging judicial functions, the Sultan was assisted by two reputed Muftis highly educated and expert in law.
- The court of Diwan-e-Mazalim and court of Diwan-e-Risalat were the highest courts of criminal and civil appeals respectively. Though the Sultan nominally presided over these courts, in the absence of the Sultan the Chief Justice (Qazi-ul Quzat) presided over these courts. Quazi-ul Quzat was the actual head of the judiciary and he tried all types of cases. Qazi-ul Quzat was appointed by the Sultan from amongst the most virtuous of the learned men in his kingdom. In 1248, Sadre Jahan was appointed by Sultan Nasiruddin. This post was superior to post of Qazi-ul Quzat. Now he became defacto head of the judiciary. The offices of Sadre Jahan and Chief Justice remained separate for a long period, but these were amalgamated by emperor Ala Uddin. However, these were again separated by Sultan Firoz Tuughlaq.
- The court of Diwan-e-Siyat was constituted to decide the cases of rebels and high treason etc. Its main purpose was to deal with criminal prosecutions.

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.

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.

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 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.

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.[12]

[12] https://adalyajournal.com/gallery/60-jan-2578.pdf

3.2.C 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:

(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.

(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.

(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.

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.

(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.

(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.

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.[13]

3.2.C(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. During the Muslim period trial by ordeal as existed in Hindu period was prohibited. Instead, three forms of punishments were executed by the courts under Muslim law for above three types of crimes.

(a) **Hadd (fixed penalties):** This is the form of punishment which was prescribed by the cannon law and could not be reduced or modified by human agency. 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 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'.

(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.

[13] https://blog.ipleaders.in/judicial-system-time-mughals-india/

(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.

3.2.C(2) Defects of Muslim Administration of Justice

The Muslim administration of justice particularly the criminal justice in medieval India suffered from many defects. The British people who gradually took over to administer justice here always had an owl-look over the Muslim criminal law. Warren Hastings declared it to be a more barbarous law than anything. The inherent defects of Muslim administration of justice were as follows:

(i) The judicial administration was defective in the sense that there was no separation between the executive and judiciary. The emperor who was the head of the government was also the fountain of justice and administered justice directly.

(ii) In many cases Muslim criminal law was not certain and uniform. In practice it was discovered that the law laid down in Hidaya and Fatwa-e-Alamgiri was mostly conflicting. There were differences of opinions among Muslim jurists which gave the Qazis a good deal of leeway to interpret the law and apply it to a specific fact before him. Thus in each case the interpretation of law depended on the Qazi.

(iii) The Muslim criminal law did not draw any distinction between public law and private law. Criminal law was regarded as a branch of private law. It had not developed the idea that crime was an offence not only against the injured individual but also against the society as well.

(iv) Muslim criminal law suffered from much illogicality. This is because crimes against God were regarded crimes of an atrocious character. Crimes against men were regarded as crimes of a private nature and punishment was regarded as private right of the aggrieved party.

(v) The most defective provision in Muslim criminal law was the provision of Diya. In many cases the murderer escaped simply by paying money to the dependants of the murdered person. Many evil practices developed out of it.

(vi) In cases where murdered person left no heirs to punish the murderer or to demand blood-money no specific provisions was available in Muslim law. A minor heir was to wait till he attained majority for punishing the murderer or demanding the blood-money.

(vii) Though Muslim law tried to distinguish between murder and culpable homicide, it did not rest on the intention or want of intention of the culprit. It rested on the method of weapons employed in committing the crime. This was peculiar and generated grave injustice.

(viii)The law of tazir which provided for discretionary punishment was also very vague which gave too much power to the judges. On the one hand, even innocent persons were punished by the courts while on the other hand, it led to corruption and injustice. Punishment could be unduly severe or ridiculously light as there was no standard or measure for them.

(ix) The law of evidence under Muslim law was very defective unsatisfactory, and of primitive nature which made conviction of offenders quite difficult. For example, no Muslim could be given capital punishment on the evidence of an infidel. In other cases evidence of one Muslim was regarded as being equivalent to those of two Hindus. Evidence of two women was regarded as being equal to that of one man. Again, evidence was to be direct; no circumstantial evidence was allowed. To convict a man for rape, for example, it was necessary to have four witnesses who would swear that they had actually seen the accused in the very act of committing the offence. A thief would be convicted only on the evidence of two men, or of one man and two women. It was an invariable case rule to exclude the evidence of women in all cases under haddor qisas.

(x) The nature of punishment of stoning, mutilation etc were so cruel and inhuman that no flesh and blood could even think of it in a civilized society. The punishment of mutilation meant slow, cruel and lingering death to the unfortunate person who had to undergo it, for he could not adopt any means of livelihood. The manner was one to give gooseflesh in ones body. The culprit was tied down. The executioner took a blunt hatchet and hacked off the hand by the joint of a wrist and the foot by the joint of an ankle. The bleeding stump was immediately immerged into a pot of boiling butter (ghee) in order to stop bleeding.[14]

3.3 Criminal Judicial system Under British Period:

3.3.A Modernization of Ancient Indian Law

The modernisation 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 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.

3.3.B First Period: Early Administration of Justice until the Charter of 1726

This period marks the beginning of the British involvement into the administration of justice in India. In another sense, this period deals with the intervention of the Company into the- administration of justice in India as opposed to intervention by the British Queen. The East India Company gradually took possession of three factories and settlements at Bombay, Madras and Calcutta. Starting as trading stations, these settlements became known as the Presidency Towns and the territories around these

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

towns came to be known as Mufassil. Till'1726 the administration of justice in three Presidency Towns was haphazard. The Company participated in administration of justice in cooperation with the local Mughal authorities.

3.3.C 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. The first part of this period marks the beginning of the intervention by the British Crown in the 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:[15]

3.3.C(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.

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 were to be held with the help of grand jury and petty jury. All technical forms and procedures of the English criminal justice were introduced in the Presidency Towns as it was explicitly laid down in the Charter.

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

15 https://www.researchgate.net/publication/The_judicial_system_of_Bangladesh_An_overview_from_historical_viewpoint

original and appellate jurisdiction in some specified criminal matters, e.g., high treason and serious crimes like murder etc.

3.3.C(2) Defects of the Judicial System under the Charter of 1726

(i) The criminal justice was fully executive dominated as it was at the hand of the Governor-in-Council.

(ii) The mayor's courts were not free from the executive influence. The aldermen were either Company's servants or other English traders who depended upon the Company's permission to stay in India and were at the mercy of the local government. In other words, the Governor and Council were the maker and unmaker of the judges.

(iii) Judges were non-professionals. The Company had a policy of confining administration of justice to its servants and hence it avoided appointing lawyers.

(iv) The mayor's court was constituted to work independently. But its relationship with the executive was not stated clearly and there emerged an unhappy clash between the executive and the judiciary. This clash is evident from some important cases like Shrimpy's case, Arab Merchant's case, Pagoda Oath case etc.

(v) The Charter did not mention anything about the jurisdiction of the mayor's court. When the Mayor's court decided that it was empowered to decide cases where both the parties were native Indians, it created great dissatisfaction and unrest among native

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

Though the Charter of 1753 was issued with a view to removing the defects of the Charter of 1726, the Mayor's Court suffered from certain drawbacks having far-reaching consequences. In 1772 the House of Commons appointed a secret committee to prove into the affairs of the Company. The committee reported, inter alia, that the mayor's court had degenerated into an engine of oppression rather than acting as a court

of justice. Subsequently Supreme Courts were established in Madras in 1801 and in Bombay in 1824 abolishing the Mayor's Court. After the establishment of 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.

(vii) A second appeal from the decision of the Supreme Court where the cause of action exceeded 1000 pagodas lay with the King-in-Council within six months from the decision of the Supreme Court. In criminal cases the Supreme Court had full and absolute discretion to allow or deny permission to make an appeal to the King-in-Council.

(viii) In 1850 the Courts of Requests were abolished and, in their place, Small Causes Courts were established in three Presidency towns.

3.3.D(1) Defects with the Working the Supreme Court

(i) In actual functioning both the judiciary and the executive came into serious conflicts and dissatisfaction arose between them under the following points:

(ii) There appeared huge debate over the point of jurisdiction. In Patna and Cossijurah's cases the Supreme Court came into an open conflict with the Company on the issue whether the Indian Zaminder and farmers of revenue came under the jurisdiction of the Supreme Court or not.

(iii) There emerged conflict between the Supreme Court and the Company's court. This was because neither the Regulating Act nor the Charter of 1774 clarified the question of relationship between the Supreme Court and the Company's Courts.

(iv) There occurred conflicts on point of superiority between the Council and the Supreme Court. There was a great deal of vagueness in the crucial area of relationship between the Company and the Supreme Court.

(v) The two distinct and parallel judicial systems- the Supreme Court in the Presidency Towns and Adalat in the Mufassil area soon gave rise to conflict over the question of jurisdiction. For example, the Supreme Court cliamed jurisdiction over the whole native population which was opposed by the Council of the Company.

Judicial System after the Unification

a. Two parallel judicial systems, namely, the Company's courts in Mufassil areas and three Supreme Courts (King's Courts) in three Presidency Towns were merged into a unified system under three High Courts of Judicature at three Presidency Towns.

b. The Supreme Courts and the Courts of Sadar Diwani Adalat and Sadar Nizamat Adalat were abolished.

c. The ordinary original jurisdiction of the High Court was limited to the local limits of the Presidency Towns. Its predecessor the erstwhile Supreme Court d! in fact, exercise a broader jurisdiction in the sense that in certain circumstances persons and property beyond the local limits of the presidency towns fell within its jurisdiction.

d. In its ordinary civil jurisdiction, the High Court was empowered to try and determine suits of every description except those falling within the jurisdiction of the Small Causes Courts.

e. The High Court had original criminal jurisdiction within the local limits of its civil jurisdiction.[16]

3.4 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. After the adoption of the Constitution of 1962 the'whole judicial structure was the same as under the Constitution of 1956.

[16] https://www.legalserviceindia.com/legal/article-7176-ancient-judicial-system.html

Chapter- Four

The Law concerning criminal justice system in Bangladesh

4.1 General

Legal system of Bangladesh is a mixer or collection of the rules and laws followed in the other country of the world. Bangladesh got its independence on 16th December 1971. Before the independence it passed through different period of administration process e.g. Hindu, Muslim, British, Pakistan etc. So, it enacts 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 enforceable in Bangladesh

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

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

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

4.3 Classification of criminal courts

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

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

Section-6: **Classes of Criminal Courts**

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

(a) Courts of Sessions; and

(b) Courts of Magistrates.

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

(a) Judicial Magistrate; and

(b) Executive Magistrate.

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

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

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

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

A. Supreme Court
    1. Appellate Division
    2. High Court Division

B. Court of Sessions
    1. Court of Sessions
    2. Additional Court of Session
    3. Joint Session Court
C. Court of Magistrates
    1. Judicial Magistrates

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

    2. Executive Magistrates
        - District Magistrate
        - Additional District Magistrate
        - Other Executive Magistrate
    3. Special Magistrates

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

4.4 Courts of Magistrates

Section-6 of the code of criminal procedure, 1898 has classified the criminal courts which will conduct its judicial power with in the territory Bangladesh. It has established Court of Magistrate as the one of the branches 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[17]

4.5 Power and Functions of the courts

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

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

A. Powers of the Magistrate Court and

B. Powers of the court of Sessions and High Court Division

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.[18]

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 [ten] years or of imprisonment for a term exceeding 2 [19][ten] years

4.6. Appointment of Magistrates and judges

[17] https://www.jstor.org/stable/4407068

[18] https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1303&context=jcl

[19] https://www.historyforexam.com/2018/12/law-and-justice-during-mughal-period.html

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.

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

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

1. Nature:

CrPC is a branch of procedural law. Adjective of procedural criminal law provides machinery for the punishment of offenders against substantive criminal laws, e.g. the

penal code and other statutes. However, CrPC is not the only procedural law for punishing offenders; it is the main general law of procedure for criminal proceedings but any other statute or special law may determine aspects of procedural law.

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.

4.8. Fundamental Procedures

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

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

Section-32.Sentences which Magistrates may pass:

The Courts of Magistrates may pass the following sentences namely:-

(a) Courts of Metropolitan Magistrates and] of Magistrates of the first class: Imprisonment for a term not exceeding five years], including such solitary confinement as is authorized by law; Fine not exceeding ten thousand taka]; Whipping.

(b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding three years], including such solitary confinement as is authorized by law; Fine not exceeding five thousand taka];

(c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding two year];

Fine not exceeding two thousand taka].

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

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

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

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

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

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

4.9 Arrest without Warrant:

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

Section-54: When police may arrest without warrant:

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

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

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

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

seventhly , any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of

Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

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

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefore that the person might lawfully be arrested without a warrant by the officer who issued the requisition.[20]

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

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

Section-260: Power to try summarily:

(1) Notwithstanding anything contained in this Code,-

(a) the Metropolitan Magistrate ,

(b) any Magistrate of the first class and

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

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

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

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed ten thousand taka];

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed ten thousand taka;

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed ten thousand taka.

[20] https://www.legalserviceindia.com/legal/article-8100-all-about-the-procedure-of-arrest-under-crpc.html

(g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed ten thousand taka;

Section-262: Procedure for summary trials:

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

Limit of imprisonment

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

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

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

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

Section-417: Appeal in case of acquittal:

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

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

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

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

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

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

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

(4) If, in any case, the admission of an appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)[21]

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

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

Following are the mother of the provisions of appeal:

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

When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

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

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

(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life:

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

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

[21] https://indiankanoon.org/doc/445276/

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.
(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.
(5) The High Court Division or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

The provisions regarding transfer of cases in criminal justice system of the Country specified by section 525A to Section 528 of the code of criminal procedure, 1989[22]

[22] https://districts.ecourts.gov.in/sites/default/files/6-Bail%20Anticipatory%20Bails%20-%20Sri%20M%20Sreenu.pdf

Chapter- five

Problems or Obstacle to the criminal justice system of Bangladesh

5.1. Laws

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.

5.2. Lengthy process of trial:

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

5.3. Incapacity and incapability of the judges

Incapacity or incapability of the judges here means limitation to the judges in functioning their work. They are subjected to certain limitation either imposed by law or by the local and political pressure. Besides they are deprived of training on judicial system and deprived from using good conscience as they always kept in pressure.

5.4. Appointment of judges

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

5.5. Enrolment as an advocate

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

5.6. Granting bail in non bailable offence

The offender gets bail after commission of an offence from the court and habitually engaged themselves in other offence and as well as intimidation to the plaintiff who is seeking remedy. Bail in case of non bailable offence is the discretion of the court but in most of the cases it is seen that the judges took pecuniary benefit and apply their discretion in the wrong way or in considering the part of the accused in the offence consider wrong. Granting bail in case of non bailable offence using discretion power of the judges in corrupt manner is another vital cause for the failure to criminal justice.[23]

[23] https://assignmentpoint.com/criminal-justice-system-bangladesh/#:~:text=Bangladesh%20is%20a%20development%20country,practically%20it%20suffers%20much%20disability.

Chapter-Six
Recommendation and Conclusion

6.1 Recommendation

The laws of the nation should be reconsidered as to their punishment or fine or for their enforcement. The law has given the procedure but it cannot be enforced because of the poor process of its enforcement. Besides law, the procedure of the laws how can be followed or enforced more efficiently and quickly should be considered in considering the present condition of the country. Trial process of the criminal cases are too lengthy and that why the criminal got opportunity to find way to rid him from the alleged charges. The trial process should be ensured more quickly by enactment of laws or by inspecting on it. We are known to the well familiar principle that "delay deny justice" High qualified training and international training are required to be held because of gaining knowledge of judicial system of the other developed country to ensure development of the judicial system of our judicial system. Whenever the judges of the country can work without any pressure after having a good qualified national as well as international training the criminal judicial system of the country shall get its life.

Appointment of less qualified and also corrupted, biased man as a judges can totally break judicial system of the country as he will decide everything defectively for his disqualification and his decision shall not be pleasant because of his corruption or biasness. So fair appointment of the judges must have to ensure and qualification should be valued. Strict observation and steps should have to take as the bribery and biasness of the judges may break down natural justice. Strict observation over the judges should keep always for preventing them from allowing bribery and from giving any judgment by biasness. Necessary steps or training should be given to the advocates to build up them so that they can seek remedy to the victim. 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.

6.2 Conclusion

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. 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. 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. 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. 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. Political pressure over judicial system will have to remove. As the judiciary or judicial system is a separate organ of the state it should give to work on its own way. No interference should be done in respect of judicial service. Further and reconsidering the admissibility and acceptance in case where convicted prisoners are to be pardoned.

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