

An Overview of the Business Law and the Legal System of Bangladesh

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Abstract: The application of legal system varies from country to country and is largely shaped by the unique history of a particular country. Generally, the most widespread legal systems in the world are the Civil Law, Common Law and Religious Law. In the Civil Law Systems, statutes enacted by the legislature forms the primary source of law and The Common Law System that emphasizes judicial precedent or *stare decisis* which is derived from the decisions of the courts. The doctrine of *stare decisis* or the rule of judicial precedent dictates that in the hierarchical system of courts, it is necessary for each lower tier to accept loyally the decisions of the higher tiers. The Law of Bangladesh is primarily in accordance with the English legal system although since 1947, the legal scenario and the laws of Bangladesh have drafted far from the West owing to differences in socio cultural values and religious guidelines. Through a historic liberation being independent in 1971 and on the way to the journey in 2007, she has successfully separated the Judiciary from the Executive and still it is doing its functions independently for making real the dreams of the martyrs. The main object of this article is to show the overall scenario of business legal environment of Bangladesh at a glance.

Keywords: Bangladesh, Legal System, Common Law, Statutes, Tribunals, Remedies, Law Enforcement, Commerce

INTRODUCTION

‘Business’ is an organization or economic system where goods and services are exchanged for one another or for money and Business Law is a combination of regulatory principles for regulating the concern parties taking part in the exchange of goods or services. Parties have to perform a lot of tasks in their own part in exchanging of such goods and services and consequently question of rights violation arises whenever concern parties fail to accomplish their own part. Every legal system all over the world recognizes business law in legal system with special care since the proper progress and development of a country immensely depends on smooth legal environment of a country. As a developing country Bangladesh is on prime concern in introducing easy accessible legal atmosphere in the legal system. For this purpose Bangladesh adopted all around forty legislations and established more than twenty numbers of Courts and Tribunals under different legislations in this regard. In this qualitative research it is tried to focus on the legal system of Bangladesh vice versa concept of laws, legislation making procedure, how does it work in case of rights violation in commerce, remedial measures how provided under the concern legislations by the specific Courts and Tribunals established thereby and the problems where lie and ways to come out.

The Nature of Law in Bangladesh

Laws can be made by legislatures through legislation (resulting in statutes), the executive through decrees and regulations, or judges through binding precedent (normally in common law jurisdictions). Private individuals can create legally binding contracts, including (in some jurisdictions) arbitration agreements that may elect to accept alternative arbitration to the normal court process. The formation of laws themselves may be influenced by a constitution (written or unwritten) and the rights encoded therein. The law shapes politics, economics, history and society in various ways and serves as a mediator of relations between people. A general distinction can be made between (a) civil law jurisdictions (including canon and socialist law), in which the legislature or other central body codifies and consolidates their laws, and (b) common law systems, where judge-made precedent is accepted as binding law. Historically, religious laws played a significant role even in settling of secular matters, which is still the case in some religious communities, particularly Jewish, and some countries, particularly Islamic. Islamic Sharia law is the world’s most widely used religious law.

Definition of Law

Law is an obligatory rule of conduct imposed and enforced by the sovereign or government.¹ Law is defined as ‘any Act, ordinance, order, rule, regulation,

by-law, notification or other legal instrument, any custom or usage, having the force of law in Bangladesh.ⁱⁱ Act means a law which is passed by the parliament.ⁱⁱⁱ Ordinance means the law which is promulgated by the President when the parliament stands dissolved or not in possession.^{iv} Order means a law which is promulgated by the President when there is no Constitution or the Constitution is in process. i.e., Law continuance enforcement order, 10th April, 1971. Dhaka University Order, 1973 was an order issued by the President under the power given to him by the 4th Schedule. Rule is a law which shall mean a rule made in exercise of a power conferred by any enactment, shall include a regulation made as a rule under any enactment.^v Regulation is a law which shall mean a regulation made by any person or authority empowered under any constitutional instrument and in force in Bangladesh.^{vi} Custom is a rule of conduct which the government observes spontaneously and not in pursuance of law settled by a political superior.^{vii} In another way Custom is a generally observed Course of Conduct.^{viii} A Custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the country.^{ix} Usage means the behavior of a particular society in respect of a particular matter which they observe for long time spontaneously. An ancient and popular usage becomes custom. Precedent means the judicial decision which is passed by the superior Court and is binding upon the subordinate Court.^x The theory of binding force of precedent is firmly established in England.

Sources of Law in Bangladesh

'Sources of law' generally denotes from where laws derive. Firstly, it indicates the historical sources of law which are the acts and events in past time which have given rise to particular principles and rules of law. Secondly, it means theoretical and philosophical principles which have influenced law, motivated legislation and prompted change. Thirdly, this term is used for formal sources i.e., recognized law creating and law declaring agencies. Fourthly, the term is used for the documentary sources e.g., volumes of statutes, statutory instruments, case law reports and writing of jurists. Fifthly, it refers literary sources, legal literature, encyclopedias, treaties, text-books and works etc.^{xi} The two main sources of law are formal and material. A formal source of law is that from which a rule of law derives its force and validity i.e., legislation or judicial decisions etc. The material sources of law are those from which law derives the matter, though not the validity, of the law i.e., Custom.^{xii} From the above discussion the sources of law in Bangladesh may be describe on the following headings:

Legislation

It is the biggest sources of law in Bangladesh. Actually Jatiyo Shangshad or the national Parliament enacts the law. Legislation is of two kinds: Supreme

Legislation and Subordinated or delegated legislation. Constitution is the ultimate source of supreme law. A subordinate legislation may be contingent or conditional legislation.

Custom

Custom is described as the twilight of law which resides in habitual practice and usages. To acquire force of law a custom must have to contain some ingredients, such as antiquity, reasonableness, conformity with statutory law, observation as a right and consistency with morality and public policy.

Religion

Religion plays an important role in Bangladesh as an important source of law. From the view point of some prominent jurists 'every law is the gift of god and the decision of the sages. In Bangladesh the Hindus and Muslims personal affairs are regulated by their religion, i.e., marriage, divorce, dower, gift, will etc.

Equity

Equity means natural justice. If anybody fails to get justice through the due course of existing laws of the land there was an opportunity for the aggrieved one to get proper remedy from the Judges given by exercising discretion of the judges. The concept of equity originated and developed in the legal system of England. Being a colony of England in the phase of history Bangladesh inherited this view in her legal system.

Precedent

Precedent means the judge made law. It is an important source of law.^{xiii} A precedent may be authoritative and persuasive or declaratory and original. Precedent is discussed as a doctrine of stare decisis. The binding portion of precedent is known as ration decidendi and the reasoning behind the judgement is known as obiter dicta/ dictum. According to the Constitution of Bangladesh^{xiv}, a judgement passed by the Appellate Division is binding upon the High Court Division and a judgement passed by both the divisions is binding upon all the sub-ordinate Courts of Bangladesh.

Scientific discussion of the jurists

This is also an important source of law which influences and moulds of law. Influence of great writers is unavoidable. In Bangladesh and in Indian sub continent, DF Molla, Sir Syeed Ameer Ali, Mukerjee, PK Tripathi, VN Shukla, Gazi Shasur Rahman and so on produced works of great value.

Legislation under the Constitution of the Peoples Republic of Bangladesh

The Constitution of the People's Republic of Bangladesh is the Supreme law of the land.^{xv} Part-V of the Constitution of the People's Republic of Bangladesh

deals with the legislature. The Constitution provides that there shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic. Provided that nothing in this clause shall prevent Parliament from delegating to any person or authority, by Act of Parliament, power to make orders, rules, regulations, by-laws or other instruments having legislative effect.^{xvi} This also states that, at any time when (Parliament stands dissolved or is not in session), if the President is satisfied that circumstances exist which render immediate action necessary, he may make an promulgate such Ordinance (as the circumstances) appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament.^{xvii} It also provides that no Ordinance under this clause shall make any provision-

- That could not lawfully be made under this Constitution by Act of Parliament; or
- For altering or repealing any provision of this Constitution; or
- Continuing in force any provision of an Ordinance previously made.

An Ordinance made herein above mentioned must be passed within thirty days at the first meeting of the parliament, when it resumes its functions. It is important to note that counter signature of the Prime Minister is not necessary for issuing an Ordinance but the President shall act in accordance with the advice of the Prime Minister and no court may raise any question about such advice.^{xviii} There mentions that the President shall make rules or orders until positive law are made by the parliament.^{xix} It states that the President shall make order or rule subject to the provisions of any law made by Parliament.^{xx} In some cases the President has been given an unfettered power of rule making. The appointment of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rule made by him in that behalf.^{xxi} Here the President's rule making power is almost unconditional. In another places^{xxii} the Constitution directly empowers the President to make secondary law such as order, rule, regulation etc.

Statutes relating to Commerce in Bangladesh

Commercial law, also known as business law, is the body of law that applies to the rights, relations, and conduct of persons and businesses engaged in commerce, merchandising, trade, and sales. It is often considered to be a branch of civil law and deals with issues of both private law and public law. Commercial law includes within its compass such titles as principal and agent; carriage by land and sea; merchant shipping; guarantee; marine, fire, life, and accident insurance; bills of exchange and partnership. It can also be understood to regulate corporate contracts, hiring practices, and the manufacture and sales of consumer

goods. Many countries have adopted civil codes that contain comprehensive statements of their commercial law. There are a lot of laws in Bangladesh concern with commerce in Bangladesh. Some of them may be mentioned such as follows:

- (I) The Constitution of The Peoples Republic of Bangladesh
- (II) The Contract Act, 1872 (Act No. IX of 1930)
- (III) The Sale of Goods Act, 1930 (Act No. III of 1930)
- (IV) The Companies Act, 1994 (Act of XVIII of 1994)
- (V) The Partnership Act, 1932 (Act No. IX of 1932)
- (VI) The Negotiable Instruments Act, 1881 (Act No. XXVI of 1881)
- (VII) The Bankruptcy Act, 1997 (Act No. X of 1997)
- (VIII) The Arbitration Act, 2001 (Act No. I of 2001)
- (IX) Banking Companies Act, 1991 (Act No. XIV of 199)
- (X) Banking Companies (Amendment) Act, 1993
- (XI) Banking Companies (Amendment) Act, 1995
- (XII) Financial Institutions Act, 1993 (Act No. XXVII of 1993)
- (XIII) The Labour Act, 2006 (Act No. XLII of 2006)
- (IVX) Value Added Tax Act, 1991 (Act No. XXII of 1991)
- (XV) Specific Relief Act, 1877 (Act No. I of 1877)
- (XVI) The Registration Act, 1908 (Act No. XVI of 1908)
- (XVII) The Transfer of Property Act, 1882 (Act No. IV of 1882)
- (XVIII) The Special Powers Act, 1974 (Act No. Act No. XIV of 1974)
- (IXX) The Customs Act, 1969 (Act No. IV of 1969)
- (XX) The Income Tax Ordinance, 1984 (Act No. XXXVI of 1984)
- (XXI) The Securities Exchange Commission Act, 1993 (Act No. XV of 1993)
- (XXII) The Artharin Adalat Ain, 2003 (Act No. VIII of 2003)
- (XXIII) The Common Carriers Act, 1865 (Act No. III of 1865)
- (XXIV) The Pure Food Ordinance, 1959 (Ordinance No. LXVIII of 1959)
- (XXV) The Anti-corruption Commission Act, 2004 (Act No. V of 2004)
- (XXVI) The Drugs (Control) Ordinance, 1982 (Ordinance No. VIII of 1982)
- (XXVII) The Trademark Act, 1940 (Act of V of 1940)
- (XXVIII) The Patents and Designs Act, 1911 (Act No. II of 1911)
- (IXXX) The Copyright Act, 2004 (Act No. XXVIII of 2000)
- (XXX) Money Laundering Prevention Act, 2012 (Act No. V of 2012)
- (XXXI) The Court of Wards Act, 1879 (Act No. IX of 1879)
- (XXXII) The Bangladesh Bank Order, 1972 (P.O. No. XXVI of 1972)

(XXXIII) The Acquisition and Requisition of Immoveable Property Ordinance, 1982 (Act No.II of 1982)
 (XXXIV) Amusements Tax Act, 1922 (Act No. V of 1922)
 (XXXV) The Bangladesh (Administration of Banks) Order, 1971 (P. Order No. III of 1971)
 (XXXVI) The Bangladesh (Administration of Financial Institution) Order, 1972 (P.O. No. III of 1972)
 (XXXVII) The Bangladesh Industrial Development Corporation Order, 1972 (P.O. No. XXXIX of 1972)
 (XXXVIII) The Insurance Act, 2010 (Act No. XIII of 2010)
 (IXL) The Merchant Shipping Ordinance, 1983 (Ordinance No. XXVI of 1983)
 (XL) The Carriage o Goods by Sea Act, 1925 (Act No. XXVI of 1925)
 (XIL) The Carriage by Air Act, 1934 (Act No. XX of 1934)
 (XIII) The Public Demand Recovery Act, 1913 (Act No.III of 1913)
 (XIII) The Carrier Act, 1865 (Act No. III of 1865)
 (XIV) The Electricity Act, 1910 (Act No. IX of 1910)
 (XV) The Arbitration Act, 2001 (Act No. I of 2001)

Law making and Enforcement Machinery

In modern days, it is also exercised enormous power especially in democratic system as a symbol of people's sovereignty. As a democratic state, parliament of Bangladesh exercises immense power exclusively to formulate and pass all kinds of legislation by dint of its various constitutional provisions. The law making process in Bangladesh is primarily initiated by the Members of Parliament (MPs) submitting a notice to parliament secretary for seeking permission to raise a Bill. Legislation is the basic function of Bangladesh Jatiyo Shangshad. The Constitution of the People's Republic of Bangladesh has vested exclusively all the legislative powers of the Republic to Parliament. The Constitution of the Peoples Republic of Bangladesh encompasses of law making process.^{xxiii} Besides the Constitution added that all existing law inconsistent with the provision of the fundamental rights guaranteed by the constitution, to the extent of such inconsistency, become void on the commencement of this constitution.^{xxiv} Moreover the state will not make any law inconsistent with any provision of the constitution concerning fundamental rights. If any law is made which is inconsistent with the constitution shall be void. The constitution pronounces the supremacy of the constitution clearly stating that the constitution is ,as the solemn expression of the will of the people, the supreme law of the republic, and if any other law inconstant with the constitution, that law shall, to the extent of the inconsistency, be void.^{xxv} The law making process of Bangladesh parliament is initiated primarily by the Member of Parliaments (MPs) submitting a notice to parliament secretary for seeking permission to raise a bill. Subsequently, crossing various stages, it

passes by the parliament as a law and ends with the ascent of the President. After following various stages and long procedure, the bill turn into law and publishes officially as a Gazette.

About Bill

Every proposal introducing in the house for making legislation shall be in a form of Bill, and when a Bill is passed by the parliament it shall be presented to the president for his/her assent. When the president has assented, or is deemed to have assented to a Bill passed by the parliament it shall become law and shall be called an act of parliament.^{xxvi} The procedure for passing a Bill depends on its classification. It can be Public Bills and Private Bills. If notice for introduction of the Bill has been given by a minister, it is known as government Bill, and if a non- minister MP the prior recommendation of the president for introduction into Parliament. But both the 'Money Bills' and 'Financial Bills' require the prior recommendation of President before placing in the house.

Law Making Process

Among various functions of legislature, law making is a lengthy and to some extend complex process. Ceremoniously it is initiated as a form of Bill by the executive or individual member (for Private Bill) in the house as it mentioned earlier. Before submitting a Bill in the parliament, it follows some pre legislative procedure like; drafting, policy development and cabinet approval .These all pre legislative activities are involved in Pre Legislative Phase. In the house, a Bill passes through three distinct stages which are known as Legislative Phase. In parliamentary parlance these three stages usually known as first reading (the title of the bill is announced), second reading (discussion on the principles of the bills takes place) and third reading (motion is moved to pass the bill) respectively.^{xxvii} A new stage in the legislative phase, called the committee stage, is also now frequently referred to in many parliaments. This stage came into existence in Bangladesh when the seventh parliament set up a special committee, composed of members belonging to both ruling and opposition parties, to review all bills referred to the Jatiyo Shangshad.^{xxviii} There is a phase named Post Legislative Phase which involves the ascent of President and the publication of gazette notification. Considering the above mentioned procedures it is seen that the law making process of Bangladesh devised into three broad phases: Pre Legislative Phase, Legislative Phase and Post Legislative Phase.

Delegated or Subsidiary Legislations

Delegated legislation (also referred to as secondary legislation or subordinate legislation or subsidiary legislation) is law made by an executive authority under powers delegated from a legislature by enactment of primary legislation; the primary legislation grants the executive agency power to

implement and administer the requirements of that primary legislation. It is law made by a person or body other than the legislature but with the legislature's authority. The power to create delegated legislation is limited to making regulation that is incidental to administering the primary legislation. Otherwise it will be considered as invalid or *ultra vires*. Often, a legislature passes statutes that set out broad outlines and principles, and delegates authority to an executive branch official to issue delegated legislation that flesh out the details (substantive regulations) and provide procedures for implementing the substantive provisions of the statute and substantive regulations (procedural regulations). Delegated legislation can also be changed faster than primary legislation so legislatures can delegate issues that may need to be fine tuned through experience.

Judiciary for Enforcement of Law

The real condition of justice in a society is reflected through the judiciary. It is the utmost reliable state mechanism where law is made enforceable for establishing justice in a society. In this concern in the era of modern welfare state concept, always the state wants to enforce law properly through its judiciary. In this regard the legal system of a country is grown up passing the long phase of history on its own way. Bangladesh is primarily in accordance with English Common Law system in its own way as being an independent country of the world. On the following discussion the enforcement of law in Bangladesh through judiciary is described briefly:

Constitution and Hierarchy of Courts in Bangladesh

At the top of the hierarchy is the Supreme Court of Bangladesh. The Constitution of Bangladesh provides the structure and functioning of the Supreme Court comprising the High Court Division and the Appellate Division which are also called the constitutional courts. It is the highest judicial body. The general Hierarchy includes both civil and criminal courts. There are some other special laws providing for the basis of some special courts like Labour Court, Family Courts, Juvenile Court, VAT Appellate Tribunal, Administrative Tribunal etc. For better understanding on following heads these are discussed:

- The Supreme Court of Bangladesh (Constitutional Court);
- Civil and Criminal Courts of law under subordinate hierarchy (Court of Sessions and District Judge Courts);
- Tribunal and Special Courts of Law under various special legislations.

The Supreme Court

The Supreme Court of Bangladesh is the highest court of law in Bangladesh. It comprises the Appellate Division and the High Court Division. The Constitution provides that 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.^{xxx} It is the apex Court of the country and other Courts and Tribunals are subordinate to it. This is also the office of the Chief Justice, Appellate Division Justices, and High Court Division Justices of Bangladesh. 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.

The High Court Division

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. The chief justice reshuffles the benches of the High Court Division regularly.

The High Court Division which at any time before the commencement of our Constitution exercised jurisdiction as a High Court in the Territory of Bangladesh.^{xxx} The High Court Division shall have Superintendence and control over all Courts and tribunals subordinate to it.^{xxx} The High Court Division, though a Division of the Supreme Court, is for all practical purposes, an independent court with its powers, functions and jurisdictions well defined and determined under the Constitution and different laws. Jurisdiction of the High Court Division: It has both appellate as well as original jurisdiction.

Original Jurisdiction

The power to file any case is called the original jurisdiction. It has original jurisdiction to hear Writ Applications under article 102 of the Constitution, which is known as extra ordinary constitutional jurisdiction. It has further original jurisdiction, inter alia, in respect of company and admiralty matters under statutes. The High Court Division, in special circumstances, has also powers and jurisdiction to hear and dispose of cases as the court of first instance.^{xxxii}

Appellate Jurisdiction

The High Court Division hears appeals from orders, decrees and judgments of subordinate courts and tribunals as per the concern statute confer. One can appeal to the High Court Division if-

- (i) More than 14 years imprisonment by Session Judge, or
- (ii) Related to the question of interpretation of the Constitution.

The Appellate Division

The Appellate Division he normally constitutes the Bench with three Appellate Division Justices or with five Justices including himself.

The Appellate Division has jurisdiction to hear appeals from the High Court Division in the following grounds:^{xxxiii}

- The issue relates to interpretation of Constitution of Bangladesh,
- Contempt of that Division, and
- Death or life imprisonment confirmed or declared by the Division.

An appeal to the Appellate Division from a judgment, decree or sentence of the High Court Division in a case to which clause 2 (102) does not apply shall lie only if the Appellate Division grants leave to appeal.

Rule-making Jurisdiction

The Supreme Court is independent of the executive branch, and is able to rule against the government in politically controversial cases.

Advisory Jurisdiction

In the question of any law or anything required for public interest, the President may ask for opinion from the Appellate Division.^{xxxiv}

Jurisdiction to ensure justice

The Appellate Division shall have the power to issue such orders or directions as may be necessary for doing anything required for the complete ends of justice.^{xxxv} The Appellate Division may use this power suo motu or on the application of any party.

Jurisdiction as to Review

The Appellate Division to review its own judgments or order but this power is to be exercised: (i) Subject to the provisions of an Act of parliament; and (ii) Subject to the rules made by the Appellate Division.^{xxxvi}

Other Jurisdictions

The Appellate Division shall have others jurisdiction by Act of Parliament.

Lower Judiciary

There are a wide variety of subordinate courts and tribunals in Bangladesh. Such courts and tribunals are created by some relevant statutes. All their powers, functions and jurisdictions are well determined by the respective statutes. These are the basic courts in the system of the judiciary of Bangladesh. The major bulk of the cases, both civil and criminal, are tried and heard in such courts and tribunals. Certain tribunals are termed as administrative tribunals, Nari-o-Shishu Nirjaton Daman Tribunals, Special Tribunals etc. Such

courts and tribunals spread all over the country at district levels. The subordinate courts in Bangladesh can be divided in two broad classes, namely (i) Civil courts, and (ii) Criminal courts. The Subordinate Courts and Tribunals, the Subordinate Courts are the basic courts of the Legal system in Bangladesh. For adjudicating of civil matters Code of Civil Procedure is followed^{xxxvii} in Bangladesh.

Civil Courts

The civil courts are created under the Civil Courts Act of 1887. The Act provides for five tiers of civil courts in a district^{xxxviii}, which bottom-up are:

- **Court of Assistant Judge:** Having Original jurisdiction of suit valuation less than Tk.2,00,000/-
- **(Court of Senior Assistant Judge:** Having Original jurisdiction of suit valuation more than Tk.2,00,000/- and less than Tk. 4,00,000/-
- **(Court of Joint District Judge:** Having Original jurisdiction of suit having valuation more than Tk. 4,00,000/-
- **Court of Additional District Judge:** Same as to the District Judge but can exercise his power only if the District Judge refers any matter to him, without having any original jurisdiction.
- **Court of District Judge:** Having Original, Appellate, Revisional, Transfer, Reference and suit having valuation is more than Tk.5,00,000/- appeal lies to the High Court Division.

The jurisdiction is of mainly three kinds, i.e., pecuniary, territorial and jurisdiction as to subject matter. The first three are courts of first instances with powers, functions and jurisdictions in respect of subject matter, territory and pecuniary value determined by or under statutes. The rest two are generally courts of appeal in civil matters.

Crime and Punishment and Criminal Courts

Criminal law, also known as penal law, pertains to crimes and punishment. The paradigm case of a crime lies in the proof, beyond reasonable doubt, that a person is guilty of two things. Firstly, the accused must commit an act which is deemed by society to be criminal, or actus reus (guilty act). Secondly, the accused must have the requisite malicious intent to do a criminal act, or mens rea (guilty mind). However, for so called “strict liability” crimes, an actus reus is enough. Criminal systems of the civil law tradition distinguish between intention in the broad sense (dolus directus and dolus eventualis), and negligence. Negligence does not carry criminal responsibility unless a particular crime provides for its punishment. Criminal courts deal with serious criminal offenses, some of which may even lead to a death sentence.

The subordinate Criminal Courts of Bangladesh can be divided into two categories namely (i) Sessions Court that are located at District level and Metropolitan level; and (ii) Magistrates Court that are located at District level including Thana and Metropolitan level. The Session Courts have three layers of Judges: namely (i) Sessions Judges (ii) Additional Session Judges and (iii) Joint Session Judges. The Session Judge and the Additional Session Judge have more powers than the Joint Session Judge. The Session Court Judges also hear civil matters. The Metropolitan Session Court Judges only deliver judgments over criminal matters. Such courts also have a system for providing justice in lesser time as compared to the regular system, which may take ten or more years for resolving such criminal matters. The Metropolitan Session Courts of Bangladesh are located at Dhaka and Chittagong.

Magistrates are of two kinds: (i) Executive and (ii) Judicial. Executive Magistrates are of five kinds, i.e., (a) District Magistrate, (b) Additional District Magistrate, (c) 1st Class Magistrate, (d) 2nd Class Magistrate and (e) 3rd Class Magistrate. There will be executive Magistrate in the Metropolitan City also. In District level judicial Magistrates are: (i) Chief Judicial Magistracy, (ii) Additional Chief Judicial Magistrate, only try cases as referred to him by the Chief Judicial Magistrate. There are also 1st Class, 2nd Class and 3rd Class Magistrate having different jurisdiction. In Metropolitan level there are Chief Metropolitan Magistrate Court (CMM), Additional Chief Metropolitan Magistrate (ACMM) and Metropolitan Magistrate having different jurisdiction through empowered by Cr.PC.^{xxxix}

Special Courts and Tribunals

There are different types of tribunal courts in Bangladesh. Apart from the aforesaid mainstream civil and criminal courts within the structure of the subordinate judiciary, there are a good number of special courts and tribunals, both civil and criminal, to deal with specific matters or offences. For example, in the civil area there are Labour Courts to deal with disputes under different labour related laws, Family Courts to deal with matrimonial matters, Money Loan Courts, Bankruptcy Courts, Income Tax Tribunals, Administrative Tribunals, Election Tribunals, etc. to deal with relevant matters. Similarly in the criminal area, there are Special Tribunals, Public Safety Tribunals, Courts Against Repression of Women and Children, etc. to deal with certain specified offences. All such courts and tribunals are also under the general superintendence and control of the Supreme Court. Special courts and tribunals of Bangladesh may be listed as follows:

- (I) Administrative Tribunal
- (II) Administrative Appellate Tribunal
- (III) Customs Appellate Tribunal

- (IV) Tax Appellate Tribunal
- (V) Labour Appellate Tribunals
- (VI) Labour Courts
- (VII) EPZ Labour Court
- (VIII) Special Tribunal
- (IX) Village Court
- (X) Family Court
- (XI) Small Causes Courts
- (XII) The Conciliation Board
- (XIII) The Artha Rin Adalat
- (XIV) The Bankruptcy Court (Daowlia Adalat)
- (XV) The Acid Violation Prevention Tribunal
- (XVI) The Women and Child Repression Prevention Tribunal
- (XVII) Money Laundering Court
- (XVIII) The Juvenile Court
- (XIX) The Speedy Trial Tribunal
- (XX) The Settlement Court
- (XXI) The Environment Court
- (XXII) The Environmental Appellate Court
- (XXIII) Court of Special District Judge
- (XXIV) The Bangladesh Bar Council Tribunal
- (XXV) The Arbitration Tribunal
- (XXVI) Electricity Court
- (XXVII) Election Tribunal
- (XXVIII) Special Judge Court
- (XXIX) Mobile Court and so forth.

Special Courts and Tribunals Dealing Commercial Matters in Bangladesh

A tribunal, generally is any person or institution with authority to judge, adjudicate on, or determine claims or disputes whether or not it is called a tribunal in its title.^{xl} It should be kept in mind that special courts and tribunals are established as a supportive of the general civil and criminal courts and these are not final or conclusive courts at all. It should also be remembered that these special courts and tribunals are established only for some specific purposes under a specific Act or Law of the land. On the following heads the tribunals dealing commercial matters in Bangladesh may be discussed:

The Artha Rin Adalat

The Artha Rin Adalat is established under Section-4 of the Artha Rin Adalat Ain Act, 2003. Listed every financial institution^{xli} is eligible to file suit for recovery of money against a loan defaulter under this Act and every suit is filed through affidavit. A Joint District Judge is the judge of this Court, specially assigned for fulfilling purpose of this Act. It follows its own proceedings as well as the proceedings of the CPC.^{xlii} There are provisions of ADR^{xliii} and it also provides a peculiar provision that a financial institution before the proceedings starts can freeze the security amount or sale the mortgaged property.^{xliv} A suit must be disposed of by 180 days.

The Bankruptcy Court (Daowlia Adalat)

This Court is established under section-4 of the Bankruptcy Act, 1997. The Court constitutes Dist. Judge or Addl. Dist. Judge. All questions relating to insolvency are decided by this court. Creditors may apply to declare a person insolvent under section.10 of the Bankruptcy Act. When a person is declared as an insolvent he lost capacity to hold some posts as well as some rights infringed.^{xlv} This Act also provides some works as insolvent works.^{xlvi} A bankrupt will be punished for 2 years with fine.^{xlvii} Appeal from this court lie to the High Court Division. Supreme Court constitutes a special bench for hearing.

Money Laundering Court

This Court is established under section.6 of the Money Laundering Prevention Act, 2002. According to this Act all the Session Courts will be known as "Money Laundering Court" as per assigned to fulfil the objects of this Act. The concerning Session Judges/Addl. Session Judges act as the judges of this court. The Court follows the proceedings of the CPC and Cr.PC to impose penalty or to confiscate, attachment, fine, seizure etc. Highest punishment is 7(seven) years and fine of twice the amount laundered. An Appeal lies to the High Court Division within 30 (Thirty) days from passing judgement of the Court. The present law on Money Laundering was enacted in 2009.

The Arbitration Tribunal

This Tribunal is established under the Arbitration Act, 2001. This tribunal consists of 3(three) members or the parties will determine the number of arbitrators. An arbitral award is final pursuant to an arbitration agreement and will be binding on both the parties. Arbitration can be done either in Bangladesh or outside. An appeal lies to the High Court Division of the Supreme Court.

The Environment Court

This Court is established under section-4 of the Environment Court Act, 2000. The Court is situated in every Head Quarters of the Divisions. One Judge holds post as Joint District Judge is eligible to act a judge of this Court. The offences are mentioned under section.15 of the Environment Conservation Act, 1995 where the highest punishment is up to 10 (ten) years imprisonment and Tk.10 (ten) Lac fine or both. The offences are mainly related to hazardous waste management, toxic Gas, environment pollution, polythene etc. committed by any industry/factory every owner must collect environment friendly/fitness certificate from the Department of Environment. The Government may appoint Special Magistrate for this purpose. Special Magistrate can imposes 2(two) years imprisonment and 10,000(ten thousand) Taka fine. This Court cannot take cognizance in any matter without written report of an inspector of Environment Department (Department of Environment).

The Environment Appellate Tribunal

This Tribunal is established under section.12 of the Environment Court Act, 2000. Judge holds post of District Judge. Government may empower a District or Session Judge as an extra charge. This Tribunal follows the proceedings of the Cr.PC in criminal matters and CPC in civil matters. Whether an appeal against the decision of the Environment Appellate Court lies to the High Court Division or that decision is final is not specifically mentioned anywhere in the Act.

Special Judge Court

This Court is formed under Criminal Law Amendment Act, 1958 Among the District Session Judge, Additional District Session Judge or Assistant Session Judge Seat in the Court. This Court tries offences under the Anti Corruption Commission Act, 2004. Appeal from this Court lies to the High Court Division of the Supreme Court.

Mobile Court

Generally Mobile Courts are constituted under section.353 of the Cr.PC. Some special laws such as Section.41B of the Pure Food Ordinance, 1959 (Bangladesh Pure Food (Amendment) Act, 2005). Generally Magistrates are assigned for this purpose. For the purpose of inquiring into or trying any matter within local jurisdiction. Mobile Court may impose punishment up to 3(three) years and up to 3(Three) Lac Taka for adulteration of food or production of below standard food. The existing Mobile Court is working under the Mobile Court Ordinance, 2009. The schedule of the Ordinance contains a list of 80(eighty) laws for which the Mobile Court can exercise its power. According to this Ordinance^{xlviii} the Executive Magistrates shall act as the presiding Magistrate of the Mobile Court in any District or Metropolitan area.

Labour Court

Labour Court was constitutes under section.35 of the Industrial Relation Ordinance, 1969. This Court consists of a Chairman (Judge or Additional Judge of the High Court Division or District Judge or Additional District Judge) and 2 members (one represents the workers and one the employer.) This Court has the power to give award^{xlix} or decision and impose sentence.¹ The Court decides both Civil and Criminal matters. There are provisions of negotiation, conciliation and arbitration. Appeal against an award (not decision) to the Labour Appellate Tribunal within 30 days.

Labour Appellate Tribunal

The Labour Appellate Tribunal is established under section.218 of the Bangladesh Labour Act, 2006. This Tribunal consists of a chairman and such other members as the Government decides. The chairman shall be a judge of the Supreme Court or Retired Judge

of the Supreme Court. Other members may be from the servicing or Retired Judge of the Supreme Court or District Judge. This Tribunal can alter, change, repeal, amend any sentence or order or award or penalty of the Labour Court and transfer a case from one Labour Court to another.

Special Tribunal

Special Tribunal is established under section.26 of The Special Powers Act, 1974. This Tribunal deals with the offences as mentioned in Special Powers Act, 1974; The Arms Act,1878; The Explosive Substances Act,1908; Rule made under the Emergency Powers Act,1975; The Cruelty to women Ordinance,1983; The Penal Code, 1860 under section.376 etc. Appeal from this Tribunal lies to the High Court Division.^{li} The Special Powers Act deals with the preventive detention, adulteration of food, smuggling, black marketing, hoarding etc.

Small Causes Courts

The Small Causes Court is constituted under section.25 of the Civil Courts Act, 1887. This Court seated by Joint District Judge, Senior Assistant Judge, Assistant. Judge. Joint District Judge can adjudicate the matter, disputed matter valued up to 25,000 Taka; Senior Assistant Judge up to 10,000 Taka and Assistant Judge up to 6,000 Taka. This Court cannot execute decrees, attach immovable property, appoint a receiver nor issue an injunction. Appeal from this Court lies to the District Judge Court and Revision lies to the High Court Division.

Customs Appellate Tribunal

Customs Appellate Tribunal is constituted under Section.196 of the Customs Act, 1969 provides for an Appellate Tribunal to be called the Customs, Excise and VAT Appellate Tribunal, Consists of as many technical (member of board or commissioners of Customs and Excise or any equivalent post holding for more than 2 years) and judicial members (District Judge or 10-year practicing advocate or Bangladesh Cadre Service member holding a judicial post for 3 years). This Tribunal shall have the same power as vested in a court under Code of Civil Procedure when trying a suit. Appeal from this Tribunal lies to the High Court Division within 3(three) months, further to the Appellate Division of the Supreme Court.

Tax Appellate Tribunal

Tax Appellate Tribunal is a quasi judicial body. It is constituted under section.11 of the Income Tax Ordinance, 1984. This Tribunal Consists of a President and such other judicial and accountant officers as the government decides. The lowest three dispute settlement bodies' are-(i) The Commissioner of Taxes (Inspector Joint Commissioner of taxes) (ii) Deputy Commissioner of Taxes and (iii) The Appellate Joint Commissioner of Taxes. Appeal from Tax

Recovery Office to Inspector Joint Commissioner within 30 days.^{lii} Appeal from Inspector of Joint Commissioner to Appellate Joint Commissioner of Taxes (in case of an individual person) and Appeal from Inspector of Joint Commissioner to Commissioner of Appeals (in case of company). Appeal from Additional Joint Commissioner and Commissioner of Appeals to the Appellate Tribunal.^{liii} Reference is allowed to the High Court Division^{liv}, Decision of the High Court Division is further appealable to the Appellate Division of the Supreme Court.^{lv}

The Settlement Court

The Settlement Court is established for the purpose of adjudicating regarding disputes of abandoned property under Presidential Order No. LIV of 1985. This Court is composed of 3(three) members; One being Chairman (qualified to be a Judge or Additional Judge of the Supreme Court) and 2 members. It has jurisdiction to decide abandoned properties. In adjudication it follows the proceedings of the Code of Civil Procedure.^{lvi}

Other Machinery for Law Enforcement in Bangladesh

The Bangladesh Police is the main law enforcement agency of Bangladesh. It is administered under the Ministry of Home Affairs of the Government of Bangladesh. It plays a crucial role in maintaining peace, and enforcement of law and order within Bangladesh. Though the police are primarily concerned with the maintenance of law and order and security of persons and property of individuals, they also play a big role in the criminal justice system as well.

After the emergence of Bangladesh as an independent country on 16 December 1971, the police force was recognized and assumed the role of a national police force. At present, Bangladesh Police is primarily responsible for the preservation of peace and order, protection of life and property of the people and prevention and detection of crime. The traditional role of police in Bangladesh has undergone change after the liberation: the role of police is no longer confined to maintenance of law and order and prevention and detection of crime, and to meet the need of an independent and developing country, the police are now required to assist in developing the state and such kinds of activities by providing the basic security required for sustained economic growth of the country. It is further playing a vital role in dealing with insurgency in some areas of the country which impedes development activities and threatens the security of the state.

ADR and Arbitration in Bangladesh for Commerce

The Arbitration Act, 2001 governs domestic and international commercial arbitration in Bangladesh. The Arbitration Act, 2001 provides for enforcement of foreign arbitral awards in accordance with the New

York Convention. Bangladesh is also a party to the ICSID Convention 1965 (Conventions on the Settlement of Investment Dispute between States and Nationals of Other States). Bangladesh has entered into over 20 bilateral investment treaties (BITs) with other states, most of which contain specific dispute resolution provisions for the settlement of disputes between investors and Bangladesh. The Arbitration Act, 2001 is based on the UNCITRAL Model Law. However, there are some differences between the provisions of the 2001 Act and the Model Law. Chapter X of the Act relates to the recognition and enforcement of foreign awards. The scope of application of the Act is generally limited to arbitration taking place in the territory of Bangladesh.^{lvii}

Arbitration agreement

In the Act it is stated that for getting arbitral opportunities regarding any dispute, previous agreement between the parties are compulsory. An arbitration agreement that would be recognized by the court includes written documents signed by the parties, exchange of letters, telex, telegrams, fax, e-mails or other means of telecommunication providing a record of the agreement or an exchange of statement of claim and defence in which existence of the agreement is alleged by one party and not denied by the other.^{lviii}

The arbitration agreement should contain all the ingredients of a usual agreement that would make it enforceable inter alia the wording of the agreement should be free from ambiguity and state the disputes to which the arbitration agreement would be applicable. A party may lose its right to arbitrate if it submits to the jurisdiction of the court. Termination of the underlying contract generally does not affect the validity of the arbitration agreement which is considered severable. The court, when determining whether the entire contract, including the arbitration clause, has been rescinded, will take into account the facts of the particular case. Only in limited circumstances the court may hold that the arbitration agreement is invalid as for example where fraud has been committed.^{lix} There is no express provision in the Act relating to multiparty arbitrations. A multiparty arbitration agreement is valid so long as the drafting is clear, the intention of all the parties to be bound by the arbitration agreement is evident and it satisfies the requirements of an arbitration agreement.^{lx}

Constitution of arbitral tribunal

There are no restrictions on who may be appointed as an arbitrator. A person of any nationality may be an arbitrator, unless otherwise agreed by the parties^{lxi}. The Act provides that in the event of default, the courts can appoint an arbitrator, but must give due regard to any agreement of the parties as to the qualifications required of the arbitrator and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.^{lxii} In the case of

appointment of a sole arbitrator or third arbitrator in an international commercial arbitration, the chief justice or the judge of the Supreme Court designated by the chief justice, may appoint an arbitrator of a nationality other than the nationalities of the parties, where the parties belong to different nationalities.^{lxiii}

A court intervenes in the selection of arbitrators if the parties fail to select arbitrators or if the arbitrators selected by the parties fail to select the chairman of the tribunal. In appointing arbitrators, the court would have to give due regard to: (i) any qualifications required of the arbitrator under the agreement between the parties, and (ii) such considerations as are likely to secure an independent and impartial arbitrator. The court's decision in respect of the appointment is final. This power in the case of the domestic arbitration is vested with the district judge and in case of international commercial arbitration is given to the chief justice or any judge of the Supreme Court designated by him.

Grounds of challenged and replacement of Arbitrators:

The grounds for challenging appointment of an arbitrator are provided for in section-13 of the Act, which states that such appointment can be set aside if circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality, or if he or she does not possess the qualifications agreed to by the parties. Section-14 sets out the challenge procedure. A party is duty bound to put the objection on record. Parties are free to agree on a challenge procedure. In absence of an agreement, the arbitral tribunal can itself decide on the challenge to its independence and impartiality. Any party aggrieved by the decision of the arbitral tribunal can appeal to the High Court Division. The Act requires the arbitral tribunal to wait until the challenge procedure is finally disposed of and sets a stringent time limit of three months within which the High Court must decide the appeal.^{lxiv} If a challenge to the arbitral proceedings fails, the tribunal continues the proceedings and renders an award. Section-15 sets out the circumstances which result in the termination of the mandate of the arbitrator. These are: (i) withdrawal from the office by an arbitrator; (ii) death of arbitrator; (iii) agreement of all the parties on the termination of the mandate of the arbitrator; and (iv) inability of the arbitrator to perform his functions. Section 16 provides the procedure for substitution of an arbitrator whose mandate has been terminated. If an arbitrator has incurred disqualifications referred to above and fails to withdraw himself from his office and all the parties fail to agree on his termination, then on the application by any party, the chief justice or a judge of the Supreme Court (in case of international commercial arbitration) or district judge (for all other arbitration) may terminate the said arbitrator. Arbitrators, including party-

appointed arbitrators, are to act independently and impartially.^{lxv}

Arbitral Proceedings

Failing prior agreement of the parties, the tribunal has the discretion to decide the place of arbitration and the language of the proceedings under section -25 of the Act. Usually arbitral proceedings are initiated by a notice of arbitration or a notice for the appointment of arbitrators.^{lxvi}

Unless otherwise agreed between the parties, the tribunal decides whether to hold oral hearings for the presentation of evidence or argument or whether the proceedings should be conducted on the basis of documents and other materials.^{lxvii} The tribunal is required to hold oral hearings, at an appropriate stage of the proceedings, either on a request by a party, or of its own motion, unless the parties have agreed that no oral hearing shall be held. Section 30(2) requires sufficient advance notice of any hearing and of any meeting of the tribunal for the purposes of inspection of documents, goods or other property.

According to section -24 of the Act an arbitral tribunal is not bound to follow the principles of the Evidence Act, 1872. However, any disputed question of fact should nonetheless be decided on the basis of evidence.

Courts assistance and intervention of Courts

Under the Act, the involvement of courts has been kept to a minimum level essential for effective operation of the tribunal's work. The court's power to intervene is restricted as follows; it can:

- (i) refer parties to arbitration where there is an arbitration agreement (Under section-10(2));
- (ii) appoint arbitrators on parties' failure to approve arbitrators or on failure of the two appointed arbitrators to appoint the third arbitrator (Under section-12);
- (iii) hear an appeal against the decision of the arbitral tribunal challenging arbitrator (Under section-14(4));
- (iv) decide on termination of mandate of the arbitrator in the event of his inability to perform his functions or failing to act without undue delay (Under section-15(2));
- (v) (in the case of the HCD) decide jurisdiction of the arbitral tribunal (Under section -20);
- (vi) enforce interim measures taken by the arbitral tribunal (Under section-21(4));
- (vii) issue summons upon the application of the arbitral tribunal (Under section-33);
- (viii) set aside awards (Under section-42);
- (ix) enforce a foreign arbitral award (Under section-45);
- (x) (in the case of the High Court Division) hear appeals against an order of a district judge and additional district judge (Under section-48).

At the same time the court may make interim orders in respect of the following matters:

- (xi) to appoint a guardian for minors or the insane to conduct arbitral proceedings on their behalf;
- (xii) to take interim custody of or sell or take other protective measures in respect of goods or property, which are subject matter of the arbitration agreement;
- (xiii) to restrain any party from transferring property which is subject to arbitration and to pass an order of injunction on transfer of such property;
- (xiv) to empower any person to seize, preserve, inspect, take photograph, collect specimen, examine, take evidence of any goods or property included in the arbitration agreement and for that purpose to enter into land or building in possession of any party;
- (xv) to issue ad interim injunction;
- (xvi) to appoint receiver; and
- (xvii) to take any other interim protective measures that may appear reasonable or appropriate to the court.

Arbitral Award

Section-38 sets out the form and content of arbitral award and requires, inter alia, the award to be written, signed by the majority of the members of the arbitral tribunal, contain a valid reason for any omitted signature and state the date and place of arbitration. Signed copies of the arbitral award must be delivered to each party. An arbitral award need not state any reasons if the parties agree that reasons are not to be given.^{lxviii} The arbitral award shall state its date and the place of arbitration and the award shall be deemed to have been made at that place (under section 38(3)). Unless otherwise agreed by the parties, if the arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made, interest at such rate as it deems reasonable, on the whole or any part of money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. Under the Act each arbitration award must contain the date of the award and the date so stated in the award is the relevant date. An arbitral tribunal can issue interim award, final award and award on agreed terms. An arbitral tribunal can grant such relief as it deems appropriate, including pecuniary and declaratory relief, specific performance and award of costs.

The arbitral tribunal may encourage settlement of the dispute otherwise than by arbitration and by agreement of all the parties; the arbitral tribunal may use mediation, conciliation or any other procedures at anytime during the arbitral proceedings.^{lxix} If, during the arbitral proceedings, parties settle the dispute, the arbitral tribunal shall, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms in accordance with section 38 of the Act.

The arbitral tribunal shall also terminate the arbitral proceedings where:

(i) the claimant withdraws his claim, unless the respondent objects and the arbitral tribunal recognises a legitimate interest on its part in obtaining a final settlement of the dispute; or
(ii) the parties agree on the termination of the proceedings; or
(iii) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.^{lxx}

Challenging and setting aside of Arbitral Award:

Section 43 of the Act provides the grounds for setting aside arbitral awards. Fraud, corruption or conflict with public policy of Bangladesh, violation of principles of natural justice, acting beyond the terms of the submission and deciding on matters which are legally not arbitrable are the grounds on which an award can be set aside. A party may also apply to set aside an arbitral award if it furnishes proof that (i) a party to the arbitration agreement was under some incapacity; (ii) the arbitration agreement is not valid under the law to which the parties have subjected it; (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable due to some reasonable cause to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decision on matters beyond the scope of the submission to the arbitrators.

Enforcement of Arbitral Award

An arbitral award is taken to be final and binding on both parties and on any persons claiming through or under them. It is enforceable under the Code of Civil Procedure in the same manner as if it were a decree of the court. Bangladesh is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Chapter X of the Act sets out provisions dealing with recognition and enforcement of foreign arbitral awards. Section-45 of the Act provides that, notwithstanding anything contained in any other law for the time being in force, subject to section-46, a foreign arbitral award shall be treated as binding for all purposes on the persons between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Bangladesh. Section-45(1)(b) also provides that, on an application made by a party to the award, a foreign arbitral award is enforceable by execution by the court under the Code of Civil Procedure, in the same manner as if it were a decree of the court. Application for the execution has to be accompanied by original arbitral award or an authenticated copy of the award, original or authenticated agreement for arbitration and evidence proving that the award is a foreign award. Grounds for refusing recognition or execution of foreign arbitral

awards are set out in section-46 of the Act and include, among others, incapacity of any party, invalidity of the arbitration agreement, inadequate notice of arbitration to the party against whom award is invoked, subject matter of the dispute not capable of being settled by arbitration and award being in conflict with public policy of Bangladesh. These are exactly the same as those provided for in article V of the New York Convention. Finally, section-47 of the Act provides that to fulfill the objects of chapter 9, the government may make notifications in the Official Gazette declaring a state as a specified state. Enforcement costs include cost of legal proceedings for enforcement.

Concluding Remarks

Judiciary of a country is considered as the mirror of that country where actual face of a country is reflected. Social justice, social security, culture, trade and commerce, socio economic condition, legislation, administration, law enforcement, education each and everything either directly or indirectly are influenced by the proper administration of justice of a state. No development of a nation is possible unless or until administration of justice is appropriately established and ensured for the member of the society. Bangladesh is a potential developing country, dreams for being a developed country in near future. Trade and commerce of a country plays a very vital role in the economic development of a country. In case of contemporary Bangladesh it is very much relevant. The economy of Bangladesh is agriculture based. At present various kinds of industries are growing up rapidly based on agriculture. Shipping and garments industries of Bangladesh are also on focus of the world. Being a good pool of cheap labour there has a good potentiality to do well in all aspects in trade and commerce. Development and conflicts between/among the various classes of the society is a common scenario. Protection and prevention of conflicts in various stages is a challenge for a developing country like Bangladesh. It is the high time for Bangladesh to be concentrate more in developing administration of justice system for ensuring sustainable development, since that is considered (administration of justice) a key to development of a country. Historically Bangladesh has a very rich and a constructive administration of justice system of following both statutory and divine laws. There is an independent judiciary. Separation of power is also maintained and practiced here. Only the good will of the concern parties (The government and its organs) of the administration of justice can make it more reliable for doing better trade and commerce friendly environment in Bangladesh.

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 - ii. ² . Article. 152 of the Peoples Republic of Bangladesh.

- iii. ³ . Article. 65 of the Constitution of the Peoples Republic of Bangladesh.
- iv. ⁴ . Article. 93, *ibid*
- v. ⁵ . Section. 3(47) of the General Clauses Act, 1897.
- vi. ⁶ . Section. 3(46), *ibid*
- vii. ⁷ . Austin: Lectures on Jurisprudence; John Murray; (London) Retrieved, (3rd ed.), 2012-12-14.
- viii. ⁸ . Holland, Thomas Erskine: The elements of jurisprudence; Oxford university press, New York, 1900.
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- x. ¹⁰ . Under Article. 111 of the Peoples Republic of Bangladesh, judgement passed by the Appellate Division and High Court Division is precedent.
- xi. ¹¹ . Ahmuduzzaman: Legal History and Legal System of Bangladesh; Shams Publication, Dhaka, 2012, pp.-26-27
- xii. ¹² . John William Salmond: Salmond on Jurisprudence, Stevens and Haynes, Sparkford, England, 1957.
- xiii. ¹³ . Supra, note-14
- xiv. ¹⁴ . As mentioned under Article.111 of the Constitution of the Peoples Republic of Bangladesh.
- xv. ¹⁵ . Article.7, *ibid*.
- xvi. ¹⁶ . Article.65(1), *ibid*.
- xvii. ¹⁷ . Article.93(1), *ibid*
- xviii. ¹⁸ . As mentioned in Article.48(3), *ibid*
- xix. ¹⁹ . Condition mentioned under Articles. 62(2), 68, 79(3), 85 and 133, *ibid*; The Government Servant's (Conduct) Rule, 1989 was made in pursuance of Article. 133 of the constitution but no positive law has yet been made.
- xx. ²⁰ . As per Articles. 79(3), 118(5), 127(2), 138(2) and 140(2), *ibid*
- xxi. ²¹ . As mentioned under Articles. 55(6) & 115, *ibid*
- xxii. ²² . Under Articles. 55(6), 62(2), 68, 75(1) (a), 79(3), 85, 115, 118(5), 127(2),, 128(3), 133, 138(2), 147(2)(b) and 140(2), *ibid*.
- xxiii. ²³ . As per contained under article.80 and 82 of the Constitution of the Peoples Republic of Bangladesh.
- xxiv. ²⁴ . As per article.26, *ibid*
- xxv. ²⁵ . As per Article.7, *ibid*
- xxvi. ²⁶ . As per the article. 80, *ibid*
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- xxxi. ³¹ . Under Article. 109, *ibid*
- xxxii. ³² . Under Article.101, *ibid*
- xxxiii. ³³ . Under Article. 103, *ibid*
- xxxiv. ³⁴ . Under Article. 106, *ibid*
- xxxv. ³⁵ . Under Article.104, *ibid*
- xxxvi. ³⁶ . Under Article. 105, *ibid*
- xxxvii. ³⁷ . Code of Civil Procedure, 1908
- xxxviii. ³⁸ . Under Section.3 of the Civil Courts Act, 1887 as amended in 2001.
- xxxix. ³⁹ . Code of Crimina Procedure, 1898
- xl. ⁴⁰ . Wikipedia.... link.....
- xli. ⁴¹ . As per listed under section. 2 of the Artha Rin Adalat Ain, 2003.
- xlii. ⁴² . Code of Civil Procedure, 1898 (Act ofof 1898)
- xliii. ⁴³ . Under Section. 89A, 89B & 89C of the CPC.....

- xliv. ⁴⁴ . Under section.12 of the Artha Rin Adalat Ain,2003
- xlv. ⁴⁵ . Under section. 94, The Bankruptcy Act, 1997
- xlvi. ⁴⁶ . Under section.9, *ibid*
- xlvii. ⁴⁷ . Under Section. 84 of the Bankruptcy Act, 1997
- xlviii. ⁴⁸ . Under section. 5 of the Mobile Court Ordinance, 2009.
- xlix. ⁴⁹ . Under section.32 of the Industrial Relation Ordinance, 1969
- l. ⁵⁰ . Under Section.37 , *ibid*
- li. ⁵¹ . Under Section.30 of the Special Powers Act, 1974.
- lii. ⁵² . Under section.139 of the Income Tax Ordinance, 1984.
- liii. ⁵³ . Under Section. section.158, *ibid*
- liv. ⁵⁴ . Under section. 160 of the Income Tax Ordinance, 1984.
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- lx. ⁶⁰ . Under Section. 13, *ibid*
- lxi. ⁶¹ . Under Section 12(2), *ibid*
- lxii. ⁶² . Under Section 12(9)), *ibid*.
- lxiii. ⁶³ . Under Section 12(10), *ibid*
- lxiv. ⁶⁴ . Under Section 14(6), *ibid*
- lxv. ⁶⁵ . Under Section. 13, *ibid*
- lxvi. ⁶⁶ . Under section.27, *ibid*
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