

## STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH: THE SUPREME COURT

### CHAPTER THREE

## STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH: THE SUPREME COURT

The Supreme Court of Bangladesh is the highest court of the land. It is the final court of appeal in all civil and criminal cases. It is also the court of record. The court consists of a Chief Justice and eight other judges. The Chief Justice is appointed by the President of Bangladesh. The other judges are appointed by the President on the advice of the Prime Minister. The term of office of a judge is 10 years. A judge can be removed from office only by a resolution of the Parliament.

The Supreme Court has the power to interpret the Constitution of Bangladesh. It also has the power to declare laws unconstitutional if they conflict with the Constitution.

The Supreme Court is divided into three benches. The largest bench consists of the Chief Justice and four other judges. The second largest bench consists of the Chief Justice and three other judges. The smallest bench consists of the Chief Justice and two other judges. The Supreme Court also has a registrar and a legal advisor. The registrar is responsible for the administration of the court. The legal advisor is responsible for giving legal advice to the judges.

### CHAPTER III

## STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH: THE SUPREME COURT

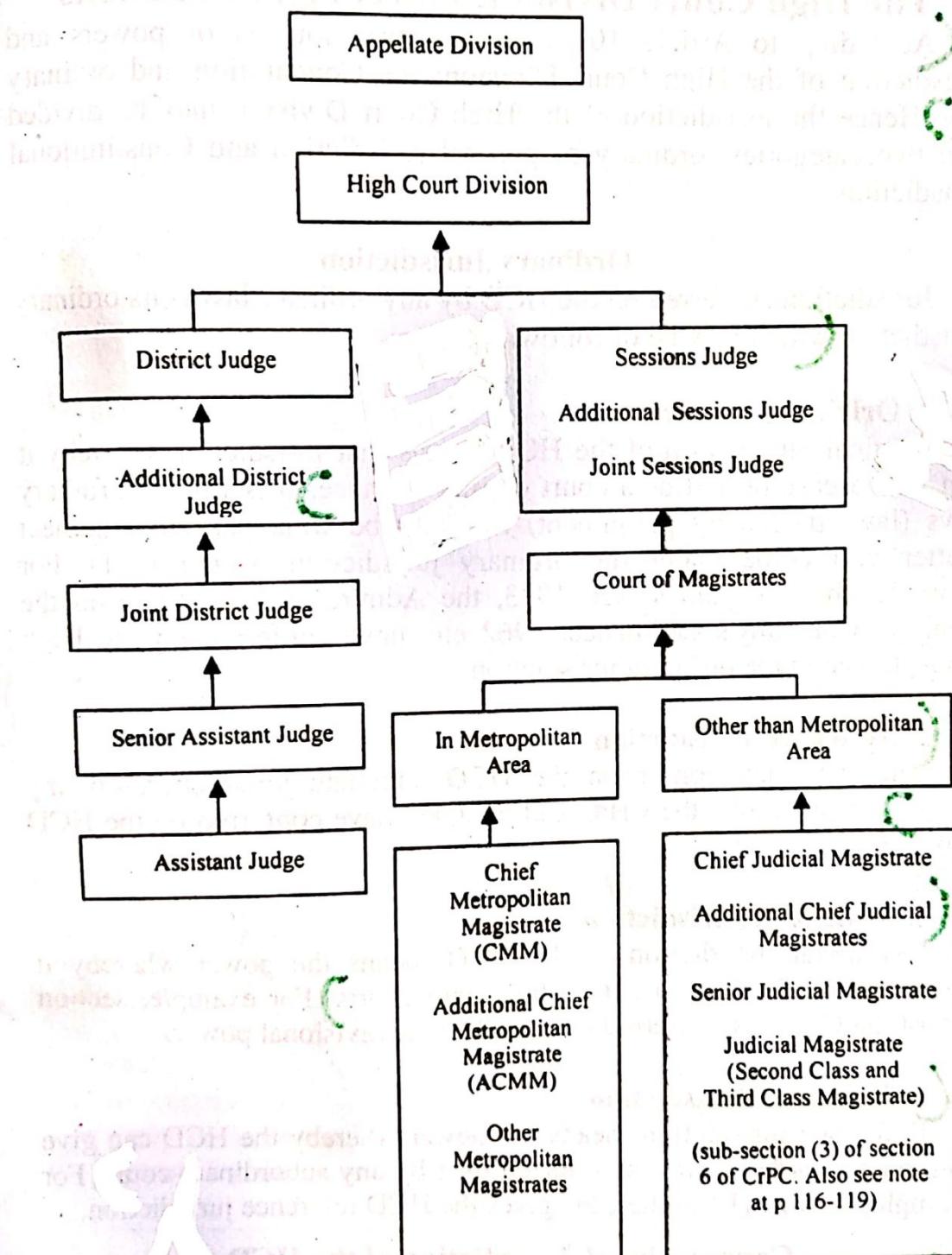
As mentioned in the previous chapter the present legal system of Bangladesh owes its origin mainly to 200-year British rule in Indian Sub-Continent. The present court structure particularly the subordinate judiciary in both civil and criminal side has their legal basis in the Civil Courts Act, 1887 and the Criminal Procedure Code, 1898 as amended up to 2009. Apart from these two pieces of legislation, 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. There are some other special laws providing for the basis of some special courts like Juvenile court, Labour Court, Family Courts, Special Courts, VAT Appeal Tribunal, Administrative Tribunal etc. For better understanding of students courts of law in Bangladesh will be discussed in the following three heads of which the first head is the subject matter of this chapter and the second head is the subject matter of the next chapter (chapter IV) and the third head will be discussed in Chapter V:

- a. The Supreme Court of Bangladesh (Constitutional Courts);
- b. Civil and Criminal Courts of law under subordinate hierarchy; (Courts of Sessions and District Judges Courts); and
- c. Tribunals and Special Courts of law under various special legislation.

### The Supreme Court and the General Hierarchy of Ordinary Courts

These courts include all the courts shown in the diagram at next page. The general hierarchy includes both civil and criminal courts. At the top of the hierarchy is the Supreme Court of Bangladesh. Article 94(1) of 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.

### General Hierarchy of Courts in Bangladesh at a glance



## The High Court Division: Powers and Functions

According to Article 101 there are two sources of powers and jurisdiction of the High Court Division: the Constitution and ordinary law. Hence the jurisdiction of the High Court Division may be divided into two categories: ordinary or general jurisdiction and Constitutional jurisdiction.

### Ordinary Jurisdiction

Jurisdiction conferred on the HCD by any ordinary law is its ordinary jurisdiction which may be of following types:

#### 1. Original Jurisdiction

Original jurisdiction of the HCD means that jurisdiction whereby it can take a case or suit as a court of first instance. It is for the ordinary laws (laws passed by parliament) to prescribe what particular subject matter will come under the ordinary jurisdiction of the HCD. For example, the Companies Act, 1913, the Admiralty Act, 1861 and the Banking Company's Ordinance, 1962 etc. have conferred on the High Court Division the ordinary jurisdiction.

#### 2. Appellate Jurisdiction

Any law may confer on the HCD appellate jurisdiction on any matter. For example, the CrPC and the CPC have conferred on the HCD appellate jurisdiction.

#### 3. Revisional Jurisdiction

Revisional jurisdiction of the HCD means the power whereby it examines the decisions of its subordinate courts. For example, section 115 of the CPC has conferred on the HCD the revisional power.

#### 4. Reference Jurisdiction

Reference jurisdiction means the power whereby the HCD can give opinion and order on a case referred to it by any subordinate court. For example, section 113 of the CPC gives the HCD reference jurisdiction.

### Constitutional Jurisdiction of the HCD

The Constitution itself has conferred on the HCD the following three types of jurisdictions:

### A. Writ Jurisdiction;

B. Jurisdiction as to Superintendence and Control over courts; and

C. Jurisdiction as to Transfer of Cases.

#### **A. Writ Jurisdiction**

The Constitution has conferred on the HCD original jurisdiction only in one case and this is the field of writ matters. The basis of writ jurisdiction is Article 102 of the Constitution. Writ jurisdiction means the power and jurisdiction of the HCD under the provisions of the Constitution whereby it can enforce fundamental rights as guaranteed in part III of the Constitution and can also exercise its power of judicial review. Detailed discussion on writs is available in this author's another book titled "Constitution, Constitutional Law and Politics: Bangladesh Perspective" though a brief discussion is given here.

**Writ:** Writ means a written document by which one is summoned or required to do or refrain from doing something. Historically writ originated and developed in British legal system. As defined by Blackstone, 'writ is a mandatory letter from the king-in-parliament, sealed with his great seal, and directed to the Sheriff of the country wherein the injury is committed or supposed so to be, requiring him to command the wrongdoer or party caused either to do justice to the complainant, or else to appear in court and answer the accusation against him.'<sup>1</sup> Initially writs were royal prerogatives. Since only the King or Queen as the fountain of justice could issue writs, they were called prerogative writs. "They were called prerogative writs because they were conceived as being intimately connected with the rights of the crown."<sup>2</sup>

The king issued writs through the court of Kings' Bench or the Court of Chancery. The prerogative writs were five in number—Habeas Corpus, Certiorari, Prohibition, Mandamus, and Quo-Warranto. The King issued them against his officers to compel them to exercise their functions properly or to prevent them from abusing their powers. Subjects being aggrieved by the actions of the king's officials came to the King and

<sup>1</sup> Quoted by, Pirzada, Sharifuddin, *Fundamental Rights and Constitutional Remedies in Pakistan*, (Lahore: All Pakistan Legal Decisions, 1966), P.417

<sup>2</sup> Smith's Judicial Review of Administrative Action, P. 167, Quoted by, Amin Ahmed, J. *Judicial Review of Administrative Action in Pakistan*, (Dhaka University : 1969), P. 33

This italic part of the section contains the true idea of prohibition. Here "which he is not permitted by law" means that he may be about to misuse or abuse his power or to act in excess of his jurisdiction prescribed by law. In such a case the High Court Division, on application, may issue the writ of prohibition with a view to prohibiting or refraining the person concerned from doing that act.

The same sub-Article continues—

"..... to do that which he is required by law to do."—This part of the Article contains the true concept of mandamus. "to do that which he is required by law to do" means that the person concerned is under statutory obligation to do something but he has refused or failed to perform his obligations. In such a case the HCD by issuing the writ of mandamus, can compel the person or authority to perform his statutory obligation.

Now the sub-Article 102(2) (a)(ii) proceeds—

"declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect." Here lies the concept of certiorari.

Now the sub-Article 102(2) (b)(i) proceeds—

"On the application of any person, make an order—

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner". Here the very concept of the writ of *habeas corpus* is hidden.

Lastly sub-Article 102(2) (b)(ii) states—

"requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office"—this part contains the concept of quo-warranto.

### B. Jurisdiction as to Superintendence and Control

Article 109 of the Constitution states that the HCD shall have superintendence and control over all courts and tribunals subordinate to it. This power is also called the supervisory power of the HCD. So the condition for supervisory power is that the court or tribunal must be subordinate to the HCD. Now a question necessarily arises—when is a

court or tribunal said to be subordinate to the HCD? To be subordinate to the HCD the court or tribunal must be subject to its either appellate or revisional jurisdiction. In other words, the courts and tribunals against whose decision either appeal or revision lie before the HCD are called subordinate courts and tribunals to the High Court Division.

### Nature of the Supervisory Power of the HCD

1. The supervisory power of the HCD as conferred by Article 109 is a Constitutional power. And this power of superintendence is in addition to the power conferred upon the HCD to control inferior courts or tribunals through writs under Article 102. This supervisory power and the revisional power of the HCD under section 115 of the CPC and section 439 of the CrPC are of the same nature. But the revisional powers under the CPC and CrPC are only statutory supervisory powers whereas power under Article 109 of the Constitution is a Constitutional supervisory power. Statutory supervisory power extends to judicial, but not to administrative matters, while the Constitutional supervisory power extends to both judicial and administrative matters.<sup>1</sup> The statutory supervisory power covers only courts but Article 109 covers courts as well as tribunals subordinate to the HCD. The statutory supervisory power can be curtailed by legislation but Constitutional supervisory power under Article 109 cannot be curtailed except by an amendment to the Constitution.

2. The supervisory power under Article 109 is a discretionary power and so no litigant can invoke this power as of right.<sup>2</sup>

3. Being a supervisory power the HCD can apply it *suo motu*; again it can be exercised on application by a party.

4. Under this supervisory power the HCD can interfere in the functioning of subordinate courts or tribunals in the following circumstances :

- i) want or excess of jurisdiction.<sup>3</sup>
- ii) failure to exercise jurisdiction.<sup>4</sup>

<sup>1</sup> A.T. Mridha V. State 25 DLR 335

<sup>2</sup> A.B. Sarin V. B.C. Patel. AIR 1951 Bom 423

<sup>3</sup> Gulab Singh V. Collector of Farrukhabad AIR 1953 All 585.

<sup>4</sup> Waryam Singh V. Amarnath AIR 1954 SC 215

- iii) violation of procedure or disregard of principles of natural justice.<sup>5</sup>
- iv) findings based on no materials,<sup>6</sup> or order resulting in manifest injustice.<sup>7</sup>

### **Distinction between Writ Power under Article 102 and the Supervisory Power under Article 109**

1. The writ power under Article 102 can be exercised only on application by a party, while the supervisory power under Article 109 can be exercised *suo motu* by the HCD without any application by any party.
2. The supervisory power under Article 109 can be exercised only in respect of courts and tribunals subordinate to it. But the writ power under Article 102 can be exercised irrespective of the question whether the court or tribunal is subordinate to HCD. Of course, this writ power is not applicable to those tribunals which comes under the preview of Article 102(5).
3. The supervisory power is purely a discretionary power with the HCD and no litigant can invoke this jurisdiction as of right. But the writ power under Article 102 is not a discretionary power. A person whose fundamental rights have been infringed can file, as of right which is guaranteed in Article 44, an application for enforcement of his rights and if the HCD finds that his fundamental rights have been violated, then it is obligatory on the HCD to give remedy. And if the applicant is not satisfied with the HCDs remedy, he may appeal to the Appellate Division under Article 103 of the Constitution.

### **C. Jurisdiction as to Transfer of Cases**

Under article 110 of the Constitution the HCD may transfer a case from subordinate court to itself. But the condition is that the HCD is to be satisfied that—

- i) a substantial question of law as to interpretation of the constitution is involved in the case ; or
- ii) a point of general public importance is involved in the case.

<sup>5</sup> *Narayandeu V. Labour Appellate Tribunal AIR 1957 Bom 142*

<sup>6</sup> *Orissa V. Muralidhar AIR 1963 SC 404*

<sup>7</sup> *Trimbak Gangadhar V. Ramchandra AIR 1977 SC 1222*

If the HCD, on being so satisfied, withdraws a case from a subordinate court, it will take following three alternatives:

- i) It may dispose of the case itself; or
- ii) It may determine the question of law and return the case to the court from which it has been so withdrawn together with a copy of the judgment of the division on such question, and the court to which the case is so returned, on receipt thereof, proceed to dispose of the case in conformity with such judgment; or
- iii) It may determine the question of law and transfer it to another subordinate court together with a copy of the judgment of the division on such question and the court to which the case is so transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.

### **Nature of the Power of Transfer of Cases under Article 110**

The power of transfer under Article 110 is a discretionary power and so no litigant can invoke this power as of right. This power can be exercised *suo motu* by the HCD or on an application by any party to a suit. Again, the subordinate court before whom the case is pending may also refer the case to the HCD. It is to be mentioned here that the HCD has been given power of transfer of civil suits and criminal cases by the CPC and CrPC under certain circumstances. But this latter power of transfer is a statutory power whereas the power under Article 110 is a Constitutional power.

### **The Appellate Division: Power and Functions**

The Appellate Division of the Supreme Court has no original jurisdiction. As like as the High Court Division the source of jurisdiction of the Appellate Division is also two —the Constitution and ordinary law. But an ordinary law can give the Appellate Division only appellate jurisdiction as stated in Article 103 (4) of the Constitution. For example, section 6A of the Administrative Tribunals Act, 1980 provides that appeal may be preferred to the Appellate Division against the decision of the Administrative Appeal Tribunal by way leave petition.

## ✓ Constitutional Jurisdiction of the Appellate Division

The Constitution itself has conferred on the Appellate Division the following four types of jurisdictions:

- Appellate Jurisdiction;
- Jurisdiction as to issue and execution of process;
- Jurisdiction as to review; and
- Advisory Jurisdiction.

### A. Appellate Jurisdiction

The constitutional appellate jurisdiction of the Appellate Division applies only against the judgment, decree, order or sentence of the HCD as stated in Article 103 of the Constitution. This constitutional appellate jurisdiction has two dimensions:

- Cases where appeal lies as of right; and
- Cases where appeal can be made if the Appellate Division grants leave to appeal.

(a) Under Article 103 an appeal to the Appellate Division from the judgment, decrees, order or sentence of the High Court Division lies as of right in the following three cases:

- Where the High Court Division certifies that the case involves a substantial question of law as to the interpretation of the Constitution; or
- Where the HCD sentences a person to death or imprisonment for life; or
- Where the High Court Division punishes a person for its contempt.

It is stated in the last line of Article 103(2) of the Constitution that parliament may by law add to this list other cases in which appeal as of right may be filed.

(b) In all other cases except the abovementioned three cases appeal shall lie from the judgment, decree, order or sentence of the HCD only if the Appellate Division grants leave to appeal.

### B. Jurisdiction as to Issue and Execution of Process

This power of the Appellate Division is also called power to do complete justice. Article 104 of the Constitution provides that the Appellate Division shall have power to issue such orders or directions as may be necessary for doing complete justice in any case or matter

pending before it. This power is discretionary and extra-ordinary in nature. The Appellate Division may use this power *suo motu* or on the application of any party. This power has not been circumscribed by any limiting words and no attempt has been made to define or describe 'complete justice.' This is because any such attempt would certainly defeat the very purpose of the conferment of such power.

### C. Jurisdiction as to Review

Article 105 of the Constitution empowers the Appellate Division to review its own judgment 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.

Accordingly, the Supreme Court of Bangladesh (Appellate Division) Rules were framed by the Appellate Division in 1988. According to this Rules, the Appellate Division may either of its own motion or on the application of a party to a proceeding, review its own judgment or order in a civil proceeding on grounds similar to those mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a criminal proceeding on the ground of error apparent on the face of the record (Rule 1 of Order XXVI) of the above Rules.

### D. Advisory Jurisdiction

Article 106 provides that the President may seek the opinion of the Appellate Division on a question of law which has arisen or is likely to arise and which is of such nature and of such public importance that it is expedient to obtain the opinions. There are some important features of this advisory jurisdiction:

- (i) For its advisory opinion only a question of law may be referred to the Appellate Division and not a question of fact.<sup>1</sup>
- (ii) It is not obligatory on the part of the Appellate Division to express its opinion in the reference made to it. Because it has a discretion in the matter and may, in a proper case, for good reasons, decline to express any opinion on the question.

<sup>1</sup> The Indian Constitution, of course, permits the President to seek opinion on questions of both law and fact. [Art. 143(2)]

## **STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH: SUBORDINATE COURTS UNDER GENERAL HIERARCHY**

প.১. কোর্ট পরিষদ এটি সেই সংস্থা যাতে কোর্ট পরিষদ অন্তর্ভুক্ত হওয়া নথি দাবী করা হতে পারে। কোর্ট পরিষদ এটি সংস্থা যাতে কোর্ট পরিষদ অন্তর্ভুক্ত হওয়া নথি দাবী করা হতে পারে। কোর্ট পরিষদ এটি সংস্থা যাতে কোর্ট পরিষদ অন্তর্ভুক্ত হওয়া নথি দাবী করা হতে পারে।

**CHAPTER FOUR**

### **STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH:**

#### **SUBORDINATE COURTS UNDER GENERAL HIERARCHY**

কোর্ট পরিষদ এটি সংস্থা যাতে কোর্ট পরিষদ অন্তর্ভুক্ত হওয়া নথি দাবী করা হতে পারে। কোর্ট পরিষদ এটি সংস্থা যাতে কোর্ট পরিষদ অন্তর্ভুক্ত হওয়া নথি দাবী করা হতে পারে।

কোর্ট পরিষদ এটি সংস্থা যাতে কোর্ট পরিষদ অন্তর্ভুক্ত হওয়া নথি দাবী করা হতে পারে।

কোর্ট পরিষদ এটি সংস্থা যাতে কোর্ট পরিষদ অন্তর্ভুক্ত হওয়া নথি দাবী করা হতে পারে।

## CHAPTER IV

# STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH: SUBORDINATE COURTS UNDER GENERAL HIERARCHY

### **Lower Judiciary separate from the Executive Organs:**

In line with the land mark judicial decision by the Appellate Division in *Masder Hossain* case back in 1999 the Caretaker Government headed by Dr. Fakhruddin Ahmed amended the Criminal Procedure Code, 1898 in November, 2007 and along with these changes the lower judiciary was separated from the organs of the executive. Although the term ‘executive magistrate’ still exists in the Code of Criminal Procedure, 1898, ‘executive magistrates’ are no longer vested with any judicial functions; their functions are administrative in nature. However, it is to be noted that by the Mobile Court Ordinance, 2007 (Ordinance No. 31 of 2007) some judicial powers have been given to the executive magistrates. After November 1, 2007 the basic laws with regard to the separation of judiciary and newly constituted Judicial Service Commission are as follows:

- (1) Bangladesh Judicial Service Commission Rules, 2007.
- (2) Bangladesh Judicial Service Commission (Pay-Commission) Rules, 2007.
- (3) Bangladesh Judicial Service (Constitution of Service, Appointment to the Service, Suspension, Dismissal, and Removal) Rules, 2007.
- (4) Bangladesh Judicial Service Commission (Posting, Promotion, Grant of Leave, Control, Discipline and other Conditions of Service) Rules, 2007.
- (5) Code of Criminal Procedure, 1898 (Amendment) Act, 2009.

(6) Mobile Court Ordinance, 2007 (This Ordinance has lapsed as the same has not been passed by the parliament in its first session; however, the pending bill is likely to be passed in the next session).

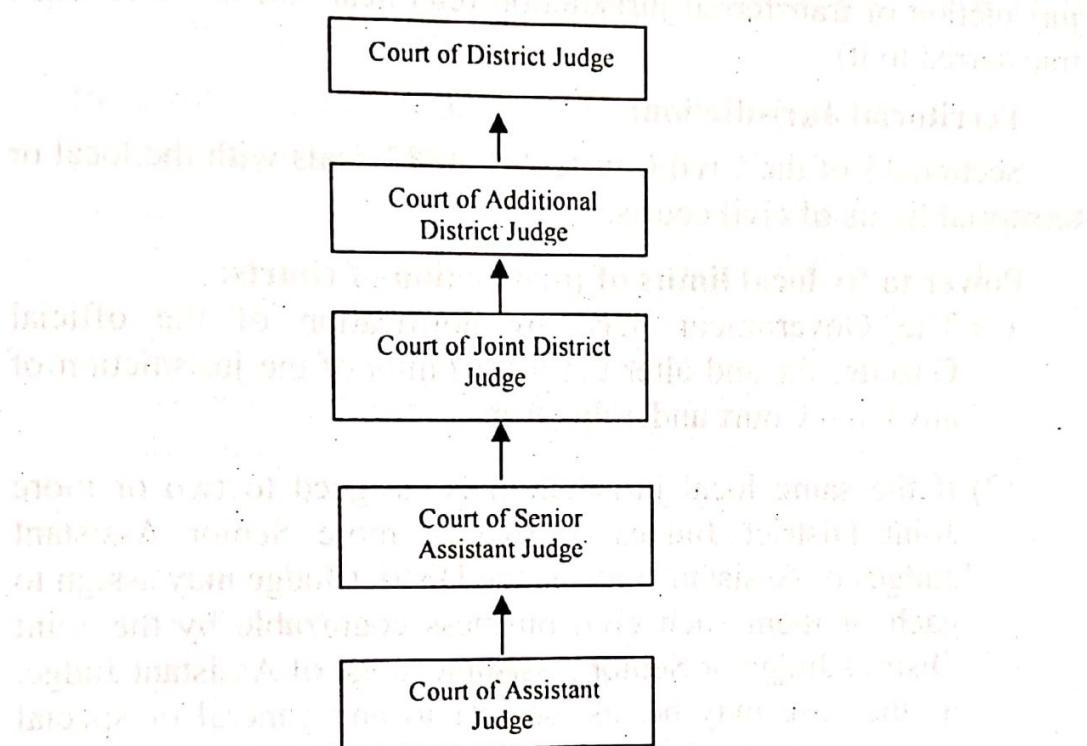
#### **The Code of Criminal Procedure Amendment Act, 2009 and Cognizance Power of Executive Magistrates:**

The 9<sup>th</sup> parliament adopted and passed the contents of the both the Code of Criminal Procedure Amendment Ordinances passed by the Caretaker Government headed by Dr. Fakhruddin Ahmed with one major exception. This exception is the addition of sub-section (4) of section 190 of CRPC which states as follows:

“(4) Notwithstanding anything contained to the contrary in this section or elsewhere in this Code, the Government may, by an order specifying the reasons and the period stated therein, empower any Executive Magistrate to take cognizance under clause (a), (b) or (c) of sub-section (1) of offences and the Executive Magistrates shall send it for trial to the court of competent jurisdiction.”

This new sub-section containing a *non-obstante* clause has left the law inconsistent with the directives in *Masder Hossain* case. Judicial Service Association as well as the lawyers community in general expected that the two ordinances would be passed as laws by the parliament without any amendment as this would be in line with the directives in *Masder Hossain* case. On the other hand, the parliamentary standing committee on law, in line with the mounting pressure from the admin cadre, decided to recommend that the parliament vest authority in the government to empower executive magistrates to take cognizance in ‘extra-ordinary circumstances’ or ‘in all circumstances’ and then to send the same for trial to judicial magistrates. The Committee has also suggested that this power of cognizance will be given to executive magistrates for maintaining law and order situation and this has nothing to do with the trial and giving punishment. This easy logic sounds easy but the

## Subordinate Civil Courts under General Hierarchy



## Subordinate Civil Courts under General Hierarchy

Section 3 of the Civil Courts Act 1887 as amended by the Civil Courts (Amendment) Act 2001<sup>2</sup> provides for following five classes of civil courts, namely:

- (1) The Court of the District Judge;
- (2) The Court of Additional District Judge;
- (3) The Court of the Joint District Judge;
- (4) The Court of the Senior Assistant Judge; and
- (5) The Court of the Assistant Judge.

Every court mentioned above is a separate court and has jurisdiction assigned to it by the Civil Courts Act or any other law

---

<sup>2</sup> The contents of the Civil Courts Act 1887 have been given in Appendix 1 of this book.

which may be either territorial, original jurisdiction, appellate jurisdiction or transferred jurisdiction (can hear suit or cases when transferred to it).

### Territorial Jurisdiction:

Section 13 of the Civil Courts Act, 1887 deals with the local or territorial limits of civil courts.

### Power to fix local limits of jurisdiction of courts:

- (1) The Government may, by notification of the official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.
- (2) If the same local jurisdiction is assigned to two or more Joint District Judges or two or more Senior Assistant Judges or Assistant Judges, the District Judge may assign to each of them such civil business cognizable by the Joint District Judge or Senior Assistant Judge or Assistant Judge, as the case may be, as, subject to any general or special orders of the High Court Division, he thinks fit.
- (3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more Joint District Judges or to one or two or more Senior Assistant Judge or Assistant Judge, a decree or order passed by the Joint District Judge or Senior Assistant Judge or Assistant Judge shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the Bangladesh Government under sub-section (1).
- (4) A Judge of a Court of Small Causes appointed to be also a Joint District Judge or Senior Assistant Judge or Assistant Judge is a Joint District Judge or Senior Assistant Judge or Assistant Judge, as the case may be, within the meaning of this section.

- (5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

### **Pecuniary Jurisdiction:**

- (1) The pecuniary jurisdiction of the Assistant Judge is taka 2 lac and of the Senior Assistant Judge is taka 4 lac (section 19 of Civil Courts Act, 1887). That means if a claim in a civil suit is up to taka 2 lac, then the suit must be filed in the Assistant Judge's court. On the other hand, if the value of a claim is above taka 2 lac but does not exceed taka 4 lac, then the claim must be filed in the Senior Assistant Judge's Court.
- (2) When the value of a claim exceeds taka 4 lac, it must be filed in the Joint District Judge's court. This is because of the combined effect of section 18 of the Civil Courts Act 1887 and section 15 of the Code of Civil Procedure. Section 15 of the Civil Procedure Code states that every suit must be instituted in the court of the lowest grade competent to try it. Now section 18 of the Civil Courts Act 1887 reads that subject to the provisions of section 15 of the CPC the jurisdiction of a District Judge or Joint District Judge extends to all original suits.
- (3) The pecuniary jurisdiction of the Joint District Judge is unlimited. No suit is filed in the Court of District Judge or Additional District Judge as a court of original jurisdiction.

It is thus also clear that the District Judge or the Additional District judge usually do not try original suits. However, under different special laws they have original jurisdiction, for example, section 73 of the Trade Marks Act, 1940 gives the District Judge original jurisdiction to deal with cases under this law.

## Subordinate Criminal Courts under General Hierarchy

As mentioned at the beginning of this Chapter, the ordinary criminal courts have their legal basis in the Code of Criminal Procedure, 1898. Section 6 of the Code of Criminal Procedure states that besides the Supreme Court and the courts constituted under any law other than this Code for the time being in force, there shall be following two classes of Criminal Courts in Bangladesh, namely: Courts of Session; and Magistrate Courts.

### Two Types of Criminal Courts:

In other words, there are two tiers of subordinate criminal courts: Court of Sessions and Courts of Magistrates (sec. 6 of CrPC). The Court of Sessions is presided over by three types of judges:

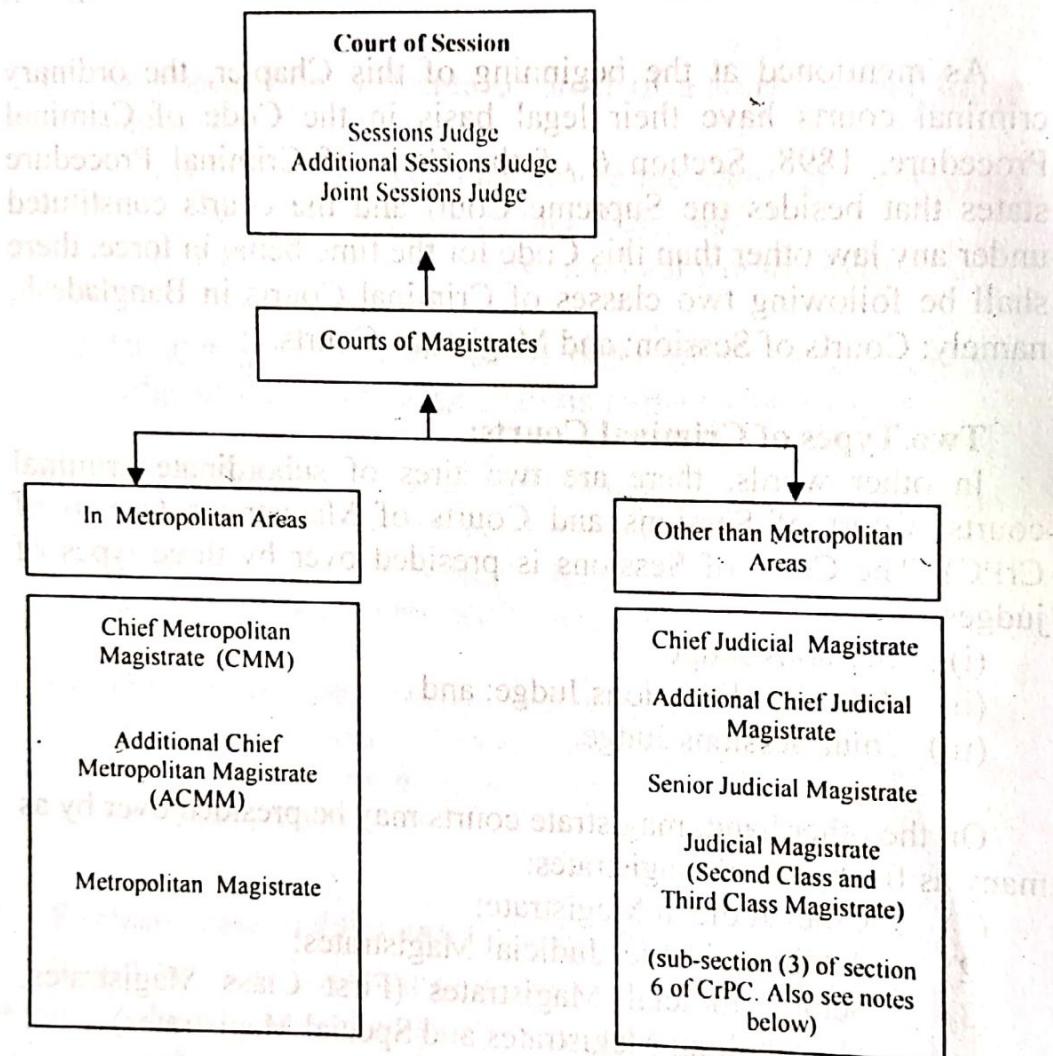
- (i) Sessions Judge
- (ii) Additional Sessions Judge; and
- (iii) Joint Sessions Judge.

On the other hand, magistrate courts may be presided over by as many as five types of magistrates:

- (1) Chief Judicial Magistrate;
- (2) Additional Chief Judicial Magistrates;
- (3) Senior Judicial Magistrates (First Class Magistrates, Metropolitan Magistrates and Special Magistrates)
- (4) Second Class Magistrate;
- (5) Third Class Magistrate

To be noted that before the amendment in November 2007 section 6 of the CrPC provided for five types of criminal courts but now there are only two types of criminal courts.

### Subordinate Criminal Courts under General Hierarchy



**Note: 1**

All Metropolitan Magistrates are First Class Magistrates. All Senior Judicial Magistrates and Judicial Magistrates are first class Magistrates.

**Note: 2 (Senior Judicial Magistrate):**

According to Part 2 of Schedule of the Bangladesh Judicial Service (Constitution of Service, Appointment to the Service, Suspension, Dismissal, and Removal) Rules, 2007, First Class

Magistrates, Metropolitan Magistrates and Special Magistrates are all classed as Senior Judicial Magistrates. On the other hand, Second Class and Third Class Magistrates are all classed as Judicial Magistrates. The CrPC nowhere mentions the post of Senior Judicial Magistrate; this post is created under the aforementioned Rules.

### Note:3

It is to be emphasized that there is a distinction between a court and the person who will preside over a particular court. Section 6 of CrPC provides, apart from the Supreme Court, for two types of courts: *Courts of Session* and *Courts of Magistrates*. That means more than one court of session and more than one court of magistrates. The confusion over courts starts from here. Because **firstly**, sub-section (3) of section 6 does not speak about court; it speaks about four classes of judicial magistrates. **Second**, the Code is completely silent about the post or court of Senior Judicial Magistrate whereas Part two of Schedule of the Bangladesh Judicial Service (Constitution of Service, Appointment to the Service, Suspension, Dismissal, and Removal) Rules, 2007 provides for the post of Senior Judicial Magistrate. Question arises- Is there any court of Senior Judicial Magistrate? The Rule does not establish any court; rather it establishes a post or office only. However, the common practice or misinterpreted perception in our system is that whenever a judge holds a post we tend to associate with him the court also though there is no such court in the eye of law. **Third**, sections 9, 10, 11 and 12 of the Code, confusingly, uses the posts of different magistrates and do not speak about courts. **Fourth**, with regard to subordination of judges and magistrates the Code and Rules provide inconsistent and conflicting provisions.

### Full Bench Decision in *Nurul Huda v Bahauddin & Others*<sup>9</sup>

BLD (HCD) 271, 41 DLR 395

**Court of Session and Sessions Judge- whether they mean the same thing-** By establishing a Court of Session the Government constitutes a class of criminal court, mentioned in section 6(1), for the purpose

## THE CONSTITUTION OF BANGLADESH

### CHAPTER FIVE STRUCTURE AND FUNCTIONING OF COURTS

Article 122 of the Constitution of Bangladesh provides that the High Court of Bangladesh shall consist of a Chief Justice and such other judges as the President may by order appoint. The number of judges of the High Court may be increased or decreased by a law passed by the Parliament. The Chief Justice of the High Court shall be appointed by the President on the advice of the Prime Minister.

#### HIGH COURT

The High Court of Bangladesh is the highest court of civil jurisdiction with its jurisdiction extending over the whole of the country. It has original jurisdiction in civil cases involving the Government or any public authority, and also appellate jurisdiction in civil cases decided by the District Courts.

### **CHAPTER FIVE**

## **STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH:**

### **TRIBUNALS AND SPECIAL COURTS**

The Constitution of Bangladesh provides for the establishment of several tribunals and special courts. These tribunals and special courts have been established to deal with specific types of cases. The High Court of Bangladesh has jurisdiction over all civil cases, criminal cases, and cases involving the Government or any public authority. The District Courts have jurisdiction over minor civil cases and criminal cases. The Appellate Division of the High Court has jurisdiction over appeals from the District Courts. The Supreme Court of Bangladesh is the highest court of criminal jurisdiction, and it has original jurisdiction in criminal cases involving the Government or any public authority. The Constitutional Court of Bangladesh has jurisdiction over constitutional issues.

## CHAPTER V

# STRUCTURE AND FUNCTIONING OF COURTS IN BANGLADESH: TRIBUNALS AND SPECIAL COURTS

Alongside the ordinary civil courts already described in the preceding chapter there are many tribunals and special courts in the country dealing with a wide variety of disputes arising between the individual citizen and the state or between citizen and citizen. The first part of this chapter will deal with both special tribunal and some regular tribunals and the second part with some special courts.

### TRIBUNALS

The proliferation of tribunals in the twentieth century has been a special feature of the development of judicial administration in almost every commonwealth countries. The number of tribunals and their importance have increased so significantly that it is no longer justifiable to regard tribunals merely as an appendage to the ordinary court of law. They are an integral part of the ordinary legal process. This system of administrative justice has in the past caused some concern as Professor Dicey rejected notions of separate system of justice (*droit administratif*) for resolving disputes between citizen and the state. Such a view, however, is no longer tenable given the widespread functioning of various tribunals now-a-days. What prompted this development of administrative justice through tribunals? The reasons for this growth of a system of tribunals reflect both the perceived disadvantages of the common law courts, in terms of formality, lack of speed, lack of expertise in some specialist areas of law, cost etc and the context of social or welfare state with the rise of welfare legislation. They also reflect the perceived advantages of tribunals as bodies which follow informal procedures, can hear cases relatively quickly, are cheap, and which have expertise in the particular subject matter. In tribunals proceedings are relatively informal. The strict rules of evidence do not apply. Any person may appear before it. Awards of cost are not usually made unless a party has acted frivolously or vexatiously.

SMT 5/14  
Not in  
Serious  
consideration  
with intention &  
of annoying

### Difference between a Court and a Tribunal

The distinction between a court and a tribunal is sometimes blurred.

While every court is a tribunal, every tribunal is not necessarily a court. The nomenclature used is not a sure guide. For example, in the UK the Employment Appeal Tribunal is a court while a local valuation court is only a tribunal. In *Attorney-General v BBC* [1980] 3 All ER 161 the House of Lords held that a local valuation court was not an inferior court because, although it was called a 'court', its functions were essentially administrative rather than judicial. Though it is sometimes argued that tribunals are in the nature of administrative bodies, this is invariably not the case. The House of Lords held in *Pickering v Liverpool Daily Post and Echo Newspapers* [1991] 2 WLR 513 that a Mental Health Review Tribunal was a court whose proceedings were subject to the law of contempt. The main distinction seems to be the nature of jurisdiction they exercise. Tribunals are regarded as inferior to the ordinary courts of law, even though for the most part they are independent in the exercise of their various jurisdictions. Because of this inferiority and by reason of the fact that even tribunals described as 'administrative' are exercising judicial functions, they are subject to the supervisory jurisdiction of the High Court so that complaints of unlawful conduct on the part of tribunals may lead to the granting of remedies against them by the High Court. Commentators have gone so far as to say that if the precise distinction between tribunals and courts is a matter of uncertainty, what is certain is that tribunals are inferior to the courts (Slapper, 263).

From the Bangladesh perspective the difference between a court and a tribunal is largely a matter of statutory designation and in most cases the real difference is difficult to draw since almost invariably tribunals have got all trappings of a court. The nomenclature of a tribunal bears the significance of specialisation only rather than any substance compared to the proceedings of a court. Sometimes it is argued that a tribunal is a quasi-judicial body whereas a court is a full judicial body but this is true from the viewpoint of the concerned legislative designation. If a particular law creates it in the form of a quasi-judicial body it will turn out to be a quasi-judicial body. In Bangladesh most of the tribunals, e.g. Administrative Tribunals, Special Tribunals under the Special Powers Act, VAT Tribunal etc under special laws are quasi-judicial in the sense of their formation as they are composed of both judicial and non-judicial

members but from the view point of their function and jurisdiction they are judicial in nature. This is because of the fact that full hearing with the presence of lawyers for both the sides is held; judicial review of the decisions of tribunals under the supervisory or appellate power of the Supreme Court is invariably available; also most of the appellate tribunals are given contempt power. For instance, the Advisory Board under the Special Powers Act 1974 and article 33 of the Constitution has all trappings of a tribunal in true sense of the term though it has not been termed as a tribunal. On the other hand, Administrative Tribunal<sup>1</sup>, Special Tribunal under the Special Powers Act 1974 are tribunals by name but they are all courts subordinate to the Supreme Court and they have to follow normal judicial procedure. As mentioned at the beginning of this chapter the reason behind the creation of tribunals instead of courts lies in the shortcomings of the formal courts in giving speedy and inexpensive remedy; delay in the formal court procedure; too much

formalities as to forms and procedure; cumbersome and long evidential procedure; lack of special expertise to dispense with special matters. In England most of the tribunals are free from the bonds of forms and procedure as to evidence and other matters and they have been able to discharge their functions in line with the spirit of the purpose of their creation. How far this has been successful in Bangladesh? This is largely a matter of empirical study though it is frequently evident that most of the tribunals are eventually embroiled with cumbersome and long process of usual litigation frustrating the pious purposes behind their creation. For example, rule 7 of the Administrative Tribunals Rules 1982 provides that the tribunal shall follow as far as practicable the provisions of the CPC relating to the procedure of the execution of decree or judgment. However, this is the longest chapter in the CPC which is considered 'in many respects cumbersome process costing much time and energy of a weary decree holder. There can be no logic to put the decisions or orders under a marathon process for execution and implementation after deciding the cases under a short and simplified procedure.' Not only that most of the tribunals are facing a huge backlog of pending cases.

<sup>1</sup> A detailed discussion on the nature of a tribunal and particularly the nature and jurisdiction of the Administrative Tribunals has been outlined by the Appellate Division of the Supreme Court in *Mujibur Rahman v Bangladesh*, 44 DLR (AD) 111.

## Different Types of Tribunals

Tribunals are largely classified into statutory and domestic though both the categories are creation of different statutes. This classification is based on the nature of the subject matter they adjudicate. Statutory tribunals adjudicate matters of public concern, e.g. Tax Appeal Tribunal deals with tax claim between the state and individual, Administrative Tribunals with dispute relating to employment between the government and its employees. On the other hand, there are some other tribunals which has no relevance to public concern; they mainly relate to matters of private rather than public relevance although at times the two can overlap. These second category of tribunals are sometimes classified as domestic tribunals. Examples of these domestic tribunals are the disciplinary committees of professional institutions such as the Bar Council, the Bangladesh Medical Association, trade unions, universities etc. The power that each of these tribunals has is very great and it is controlled by the ordinary courts through ensuring that the rules of natural justice are complied with and that the tribunal does not act ultra vires, i.e., beyond its powers. Domestic tribunals refer to bodies who have a right to adjudicate upon the rights of or disputes between their members. Sometimes such tribunals are also set up by statute, i.e. the Bar Council etc. When created by statute or under the authority of a statute, they should strictly be called 'statutory tribunals' rather than domestic tribunals. In the case of statutory tribunals the jurisdiction of a tribunal rests upon the statute or the rules framed by all the members, constitute the contract between the subscribers of its members, express or implied. The rules of the association, hereunder. But the jurisdiction of a 'domestic tribunal' is founded on the statute as declaration, territorial cannot lie, though other remedies, such as injunction of damages may be available in proper cases. Where a domestic tribunal is created by statute, certain would be against it in the same manner as in the case of other statutory tribunals.