

JUDICIARY



Functions of Judiciary

Functions of Judiciary

1. Interprets the law:

A number of cases are brought before the judge, where law is not clear, or laws are silent – in these matters judges give their decisions. Later, these decisions are quoted in similar cases.

In this way court expands in indirect manner.

2. Protecting Civil Rights: People are given away many rights by the state through the laws of the parliament. The court protects these rights.

3. Custodian of Fundamental Rights: Constitution grants many fundamental rights to citizens. The supreme court acts as the custodian of these rights.

4. Guardian of the Constitution:

Resolve conflicts of jurisdiction between the Centre and State Government in Federations. (see example in next slide)

5. Miscellaneous: Advisory, civil marriage.



Types of Law

law That which must be obeyed under penalties.

positive law That which is written by humans and accepted over time—the opposite of natural law.

plaintiff The person who complains in a law case.

common law “Judge-made law,” old decisions built up over the centuries.

civil law Noncriminal disputes among individuals.

higher law That which comes from God.

natural law That which comes from nature, understood by reasoning.

Types of Law

- We focus on **positive law**, that which is written and compiled by humans over the centuries.
- Unlike natural law, positive law uses law books to discover right and wrong.
- Our complex society requires many types of law, of which there are five major branches.

I. Criminal Law

II. Civil Law

III. Constitutional Law

IV. Administrative Law

V. International Law

I. Criminal Law

- Modern criminal law is largely statutory and covers a specific category of wrongs that are considered social evils and threats to the community.
- Offenses are usually divided into three categories.
 - **Petty offenses** , such as traffic violations, are normally punished by a fine.
 - **Serious but not major offenses** such as gambling and prostitution are misdemeanors, punishable by larger fines or short jail sentences.
 - **Major crimes, felonies**, such as rape, murder, robbery, and extortion, are punished by imprisonment

II. Civil Law

- **Civil law** defines the **rights** and **responsibilities** of individuals, government entities and private or non-government organisations in their interactions with each other
- **Marriage and divorce, inheritance, contracts, and bankruptcy are civil concerns.**
- In most English-speaking countries, **common law** supplements **statutory law** in civil cases.
- A breach of a civil law right or obligation does not usually lead to criminal processes and sanctions.
- Some cases can be pursued as both criminal and civil cases, as when the federal government accuses investment houses of wrongdoing and investors who lost money sue them.

III. Constitutional Law

- The body of law that evolves from a constitution, setting out the fundamental principles according to which a state is governed and defining the relationship between the various branches of government within the state.

(Dictionary.com)

- Written constitutions are usually general documents. Subsequent legislation and court interpretation must fill in the details.

Constitutional Law

- An important role of U.S. courts, under the system of **judicial review**, is to make sure that statutory laws and administrative usages do not violate the Constitution.
- In the United States the ultimate responsibility of interpreting the Constitution rests with the U.S. Supreme Court, and this means that laws change over time: The Constitution is what the Supreme Court says it is.
 - In 1896, for example, the Court ruled in *Plessy v. Ferguson* that state laws requiring racial segregation in public transportation did not necessarily violate the Fourteenth Amendment, which provides for equal protection under the laws, as long as the transportation facilities for whites and blacks were physically equal. In *Brown v. Board of Education of Topeka* (1954), the court reversed itself and ruled that separate public schools for whites and blacks are inherently unequal, even if physically alike.
- The Constitution had not changed, but society's conception of individual rights did. **Constitutional law** (indeed, law itself) is not static but a living, growing institution.

IV. Administrative Law

- Administrative law is the body of law created by the agencies and departments of the government, which carry out the laws passed by Congress or a state legislature.
- It develops when agencies interpret statutes, as they must.
- For example, federal statute prohibits “**unfair or deceptive acts**” in commerce. But what business practices are “**unfair**”? The Federal Trade Commission must decide.
- When Congress passes a law on a complicated issue, Congress often needs help determining all of the details of how the law will be enforced and implemented. Administrative agencies and government departments fill in those gaps for Congress and pass additional rules and regulations to achieve Congress's goals.

V. International Law

- International law (IL) consists of treaties and established customs recognized by most nations.
- It is different because it cannot be enforced in the same way as national law. It has some judges and courts, but compliance is largely voluntary.
- IL's key mechanisms are **reciprocity** and **consistency**. Countries like being treated nicely, so they must extend the courtesy to others.
- Much of international law is consent-based governance. This means that a state member is not obliged to abide by this type of international law, unless it has expressly consented to a particular course of conduct.

[Reciprocity Mutual application of legal standards.

Consistency Applying the same standards to all.]

Judiciary System in Bangladesh



Judicial Branch

Supreme Court

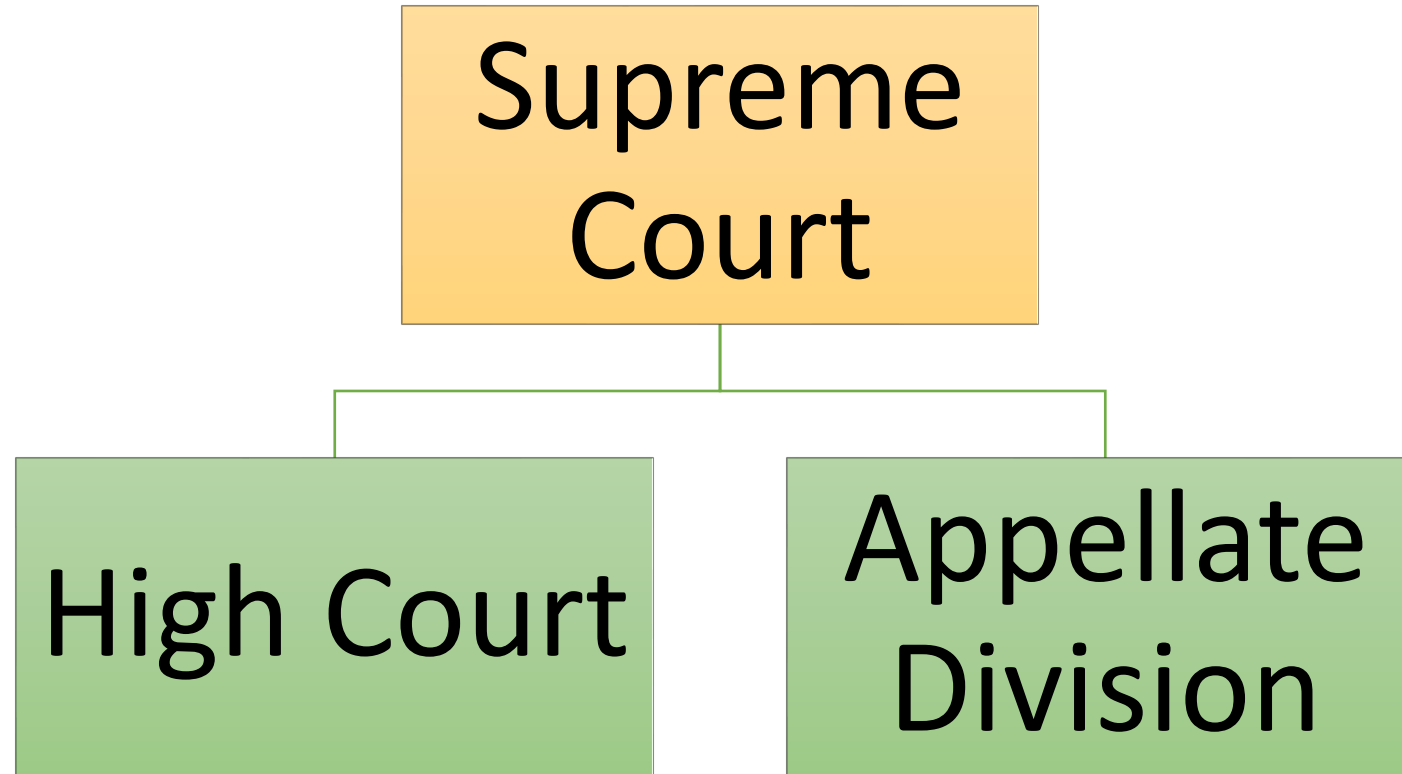
Subordinate Judiciary

Supreme Court of Bangladesh



Judicial Branch

Supreme Court



General Hierarchy of Courts in Bangladesh

Supreme Court → {

**High Court
Appellate Division**

Civil Court	Criminal Court	
<ul style="list-style-type: none">⇒ District Judge⇒ Additional District Judge⇒ Joint District Judge⇒ Senior Assistant Judge⇒ Assistant Judge	<ul style="list-style-type: none">⇒ Session Judge⇒ Additional Session Judge⇒ Joint Session Judge⇒ Court of Magistrate	
	In Metropolitan Area	Other than Metropolitan Area
	<ul style="list-style-type: none">- Chief Metropolitan Magistrate (CMM)- Add. Chief Metropolitan Magistrate (ACMM)- Other Metropolitan Magistrate	<ul style="list-style-type: none">- Chief Judicial Magistrate- Add. Chief Judicial Magistrate- Judicial Magistrate (2nd and 3rd Class Magistrate)

Special Court

- Family court (by Ass. Judge, deals maintenance, dissolution of marriage, dower)
- Small causes Court
- Village Court (Village chairman, avoid going to court)

Special Tribunal

Administrative tribunal

Labour Court

Labour appellate tribunal

The Artha Rin-Adalat

Land survey tribunal