

Judiciary



Hasan Muhammad Baniamin

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.

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,

4. Guardian of the Constitution:

5. Miscellaneous: Advisory, Resolve conflicts of jurisdiction between the Centre and State Government in Federations.

Independence of judiciary

- Mode of appointment of judges
- Long tenure
- Security of services
- Adequate salary of the judges
- High qualification
- Separate of judiciary from the control of executive
- No practice after retirement

Types of Law

- 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

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- ❑ 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

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- **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

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- 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.

IV. Administrative Law

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- 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 concerned with the powers and functions of the executive branch of the government, its organisations, their inter-relations with each other, citizens and the non-governmental entities.
- The intention of administrative law is to provide for a legal framework for regulating the powers, procedures and acts of public administration.
- It develops when agencies interpret statutes, as they must.
- For example, **Income Tax Tribunal determining disputes of aggrieved taxpayers, Securities Exchange Commission** regulating and controlling the share markets

V. International Law

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- International law, also known as public international law and law of nations is the **set of rules, norms, and standards generally accepted in relations between nations.**
- It establishes **normative guidelines and a common conceptual framework** to guide states across a broad range of domains, including war, diplomacy, trade, and human rights.
- International law thus provides a means for states to practice more stable, consistent, and organized international relations.
- For example, the **Kyoto Protocol is an international agreement on climate change or the Convention on the Rights of the Child**



Common Law vs Civil Law

Common Law

- ❑ **Common law**, also known as case law, is a **body of unwritten laws based on legal precedents** established by the courts.
- ❑ Common law draws from **institutionalized opinions and interpretations from judicial authorities and public.**
- ❑ Common law is practiced in many parts of the world including **Australia, Canada, Hong Kong, India, New Zealand, and the United Kingdom.**
juries.

Civil Law

- **Civil law** is a comprehensive, **codified set of legal statutes** created by legislators.
- A civil system **clearly defines the cases that can be brought to court**, the procedures for handling claims and the punishment for an offense.
- The goal of standardized codes **is to create order and reduce biased systems** in which laws are applied differently from case to case.

How Common Law Can Marginalize Certain Groups

- Historically, the traditions of common law have led to **unfair marginalization or empowerment of certain groups**.
- Whether they are **outdated or biased**, past decisions continue to shape future rulings until societal changes prompt a judicial body to overturn the precedent.
- For example, in England, common law as late as the 1970s held that, when couples divorced, **fathers—rather than mothers**—were entitled to custody of the children, a bias that in effect kept women trapped in marriages.

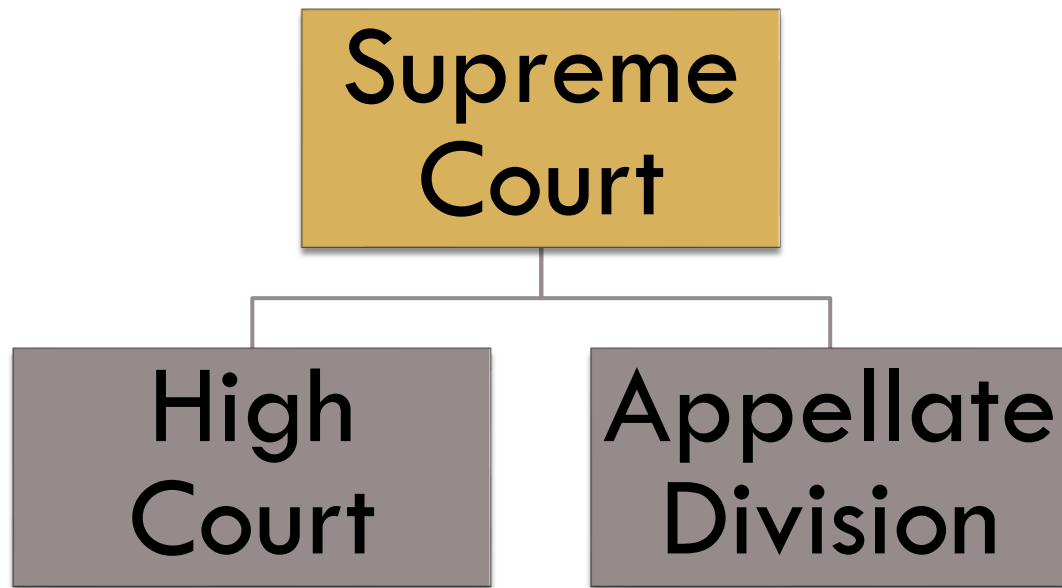
Judiciary System in Bangladesh



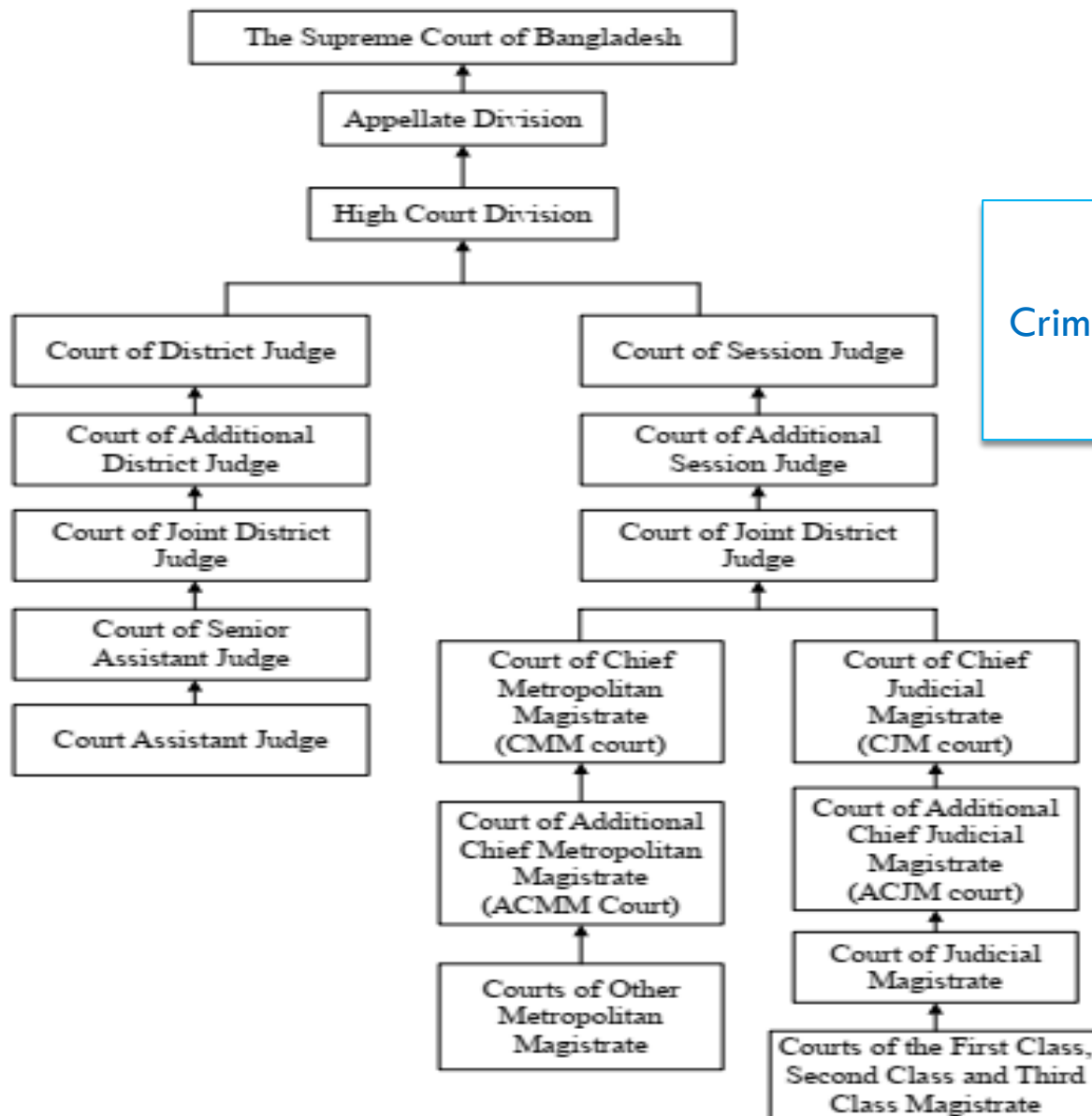
Judicial Branch

Supreme Court

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Civil court



Criminal court

Special Court

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- Family court (by Ass. Judge, deals maintenance, dissolution of marriage, dower)
- Village Court (Village chairman)

Special Tribunal

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Administrative tribunal

Labour Court

Labour appellate tribunal

The Artha Rin-Adalat

Land survey tribunal

Suggested readings

- Agarwal, R. C. (2014). Political Theory: Principles of Political Science (New Delhi: S. Chand and Company Limited). (Chapter 22).
- Panday, P. K., & Mollah, A. H. (2011). The judicial system of Bangladesh: an overview from historical viewpoint. *International Journal of Law and Management*.

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