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Evolution of Court System in Bangladesh: An Insight

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ABSTRACT: This paper is an insight to the history of court system in Bangladesh. It actually partly covers the judicial history of the South Asia. The journey of the evolution of the present court system of Bangladesh is about 2500 years long. It was started from the ancient Hindu period and still it is developing. The journey also crossed the Muslim, British and Pakistan regime. During the Hindu and Muslim period judiciary was based on custom and religious principles. In the Hindu period, some excellent judicial systems such as Jury system, Precedent, bench of the judges was followed. But cast consideration was the stigma of that time. Muslim judiciary was also based on Quran and Hadith but it has completely abolished the painful ordeal system. Later, in the British regime, more acceptable procedural systems such as representation to the court, category of evidence, court procedure, unified judiciary all over the India was developed. Separate Supreme Court, High Court, Civil and Criminal courts were formed and mass people were given access to these courts for having justice.

KEYWORDS: Evolution, Hindu Period, Muslim Period, British Period, Judiciary

I. INTRODUCTION

Judiciary is one of the basic pillars of a modern democratic country. It is the indispensable part of the legal system and state mechanism for solving disputes on various legal issues among the mass people and other lawful parties. The success of a modern state depends on the ratio that how far its judiciary ensures justice. In each corner of the world, from the ancient time different systems were active to resolve disputes in the societies. Court system was among of them and it was the most accepted among all. In Bangladesh, a well organised Judiciary is functioning at present among which the apex one is the Supreme Court and lowest one is the Village Court. The Supreme Court is a constitutional court by nature and others are statutory courts. The Apex Court is formed with two distinct divisions, The Appellate Division and The High Court Division. The next courts are known as Subordinate courts and they are of diversified nature such as Civil Court, Criminal Court, Special Courts and Tribunals etc. But this organised judiciary was not formed and settled in a day or in a short span of time. It's a result of more than two thousand and five hundred year's evolution. The present judiciary is blended combination of The British Common Law and various customary and religious principles and rules. It's really impossible to mention or point out specifically every turn or each single development of the present Bangladesh Judiciary because Bangladesh has evolved through various transformations. From the ancient Hindu period to Muslim period, Muslim to British period, from British India to Pakistan and finally from Pakistan to Bangladesh. Each and every of those regimes has influenced and enriched the judiciary of Bangladesh by providing various principles, concept of new procedures, appointing lot of court officers, developing new ideas of justice etc. For the sake of a better understanding, those regimes are divided into Ancient Period, Medieval Period, Modern Period, Pakistan Period and lastly Bangladesh Period.

Ancient Period:

In other word, Ancient Period is called as Hindu Period. This period extended more than 1500 years before and after the birth of Christ. The civilization of South Asia was started by the Aryans who are treated as the predecessors of the Hindus. During this time most of the people were uneducated and poor. The King used to take this opportunity to establish himself as the representative of the Gods and entrusted to execute the rules of Veda, Geeta, Puranas and other codes such as Monu Samhita, Bhriugu Samhita, Garga Samhita, Yagyavalka Samhita etc. King was the pillar of justice at that time. In that time, entire subcontinent was not a single state; rather it was divided into many Hindu states. In most of the state's similar types of courts were disseminating justices. The specialty was that in each administrative center there were separate courts. The names of those courts were The Kings Court, The Chief Justices Court, Special Tribunal, Town or District Court and the Village Council. The Kings Court was the highest Appellate Court of the realm and King himself presided over this court. His court also adjudicated the Original Cases of highest importance of the state. Chief Justices Court was the second highest court of which was presided over by the Chief Justice himself and a Board of Judges. It was also an Appellate court. The Special Tribunal had a special territorial jurisdiction and was presided over by the judges recruited from the Board of Judges of Chief Justices Court. The Town or District Court was

a local court of any large city. Except the judges, it was governed by the administrative officers on behalf of the King. It dealt with the local civil and criminal cases. The Village Council or Village Court was consisted of five members for adjudicate justice in the village areas concerning local civil and criminal matters.

Though this era existed two thousand and five hundred years ago, there is no scope to mention the then judiciary as something old and useless. Rather it was highly qualified and systematic. To some extent, near to our modern judiciary. Though caste consideration was a common practice for appointment of judges, but the appointed judges were the best men as per education and integrity of that time. Judges were mostly form the Brahmins. Few Khatriya and Baisya were appointed as judges. But no Shudra and women were appointed as judges. Like the present time, bench of judges were formed if it was required. There were four stages of a suit or case to be completed. They were the plaint, the reply, trial and investigation and judgment. A matter of wonder is that the rule of Precedent was available at that time and the judgment of higher court was bound on the lower court. Jury system was a common practice of judiciary in Hindu period which is a part of modern judiciary now. They were merely examiners of the cause of conflicts and placed true facts before the judge though the verdict was declared by the presiding judge not by the juries. It reveals that judgments were recorded at that time and it's also proves the standard of the judiciary of that time. We know that evidence is the heart of a case. In ancient time, three types of evidences were accepted in the courts such as documents, witnesses and incriminating objects. If the incriminating object was found in any accused's possession he was treated to be the guilty and convicted by the court. Another dangerous system of trial was Ordeal. It was a customary system completely based on religious belief and faith on God. The accused had to face some life threatening activities like walking through fire or holding a red hot iron ball in hand, drinking poison or having an arrow on chest standing in west deep water. If the accused died or bloods were shaded form his chest he was treated guilty.

The concept of crime and punishment was based on philosophy. The sense behind providing punishment to an accused was that it will remove the criminal mentality from him and make him a good human being. For providing punishments four methods were followed- gentle admonition, severe reproof, by fine and corporal punishment. Before punishing an accused, the concerned judge considered the time, place and motive of the crime, age, strength, educational qualification, social status, monetary and behavioral condition of the accused. Caste plays a vital role in case of providing punishment. For the same crime, an upper cast person received less punishment while a lower caste man received higher punishment. If a lower cast man did not show proper honour to a higher cast man, the lower cast people was branded in the breech. Some strange and illogical punishments were in practice in Hindu period. Such as, if someone kills a khatriya, he will pay 1000 cows to the family of that killed Khatriya, if a Baisya is killed 100 cows are to be paid to the family of that killed Baisya and if a Sudra is killed 10 cows to be paid to the family of that Sudra. With all these, in every case an ox should be paid to the King. If a Brahmin killed another Brahmin, he was branded and banished. Some people were given half punishment. If anyone killed a Brahmin, he was definitely provided capital punishment. They are old people over eighty, women, boys below sixteen and severely ill people. Any person below five was treated as a child and exempted from any type of punishment. For aiding kings enemy, forcibly entering into the Harem, killing someone's mother or father, creating revolt in the army of the king or committing serious arson, capital punishment was given in various forms such as drowning and roasting alive, trampling by elephants, cutting into pieces, devouring by dogs etc. Fact is, the above discussion proves that infliction of punishment in Hindu period was not based on any broad principle rather on whim and caste consideration which was completely devoid of any humanity and ethical principle.

Medieval Period:

This period is also called Muslim Period. It was started with the invasion of the Turkish Sultans in India. It continued from 1206 AD to 1857 AD, a total of 651 years. The entire Muslim period was governed firstly by the Turkish Sultans and secondly by the Mughal Emperors. Like the Hindu's, Muslims also established a very well organised and fair judiciary. The judiciary was based on the principles of the Holly Quran, Hadith, Ijma and Kias. As per the Quran, all the sovereignty lies in Allah. The emperor works as a trustee. He just carries out the orders of the God as a humble servant. As religious books were the basis on Muslim Judiciary, in both the regimes structure and functions of the judiciary was almost same. Judiciary under the Sultanate and Mughal Period is discussed below:

Sultanate Period:

Sultanate period was started by a Turkish ruler Md. Ghori at the end of the 12th Century. Turkish rulers were called as Sultan. The Turkish period extended from 1206 to 1526, a three hundred and twenty (320) years. The entire realm was divided into five administrative parts. Such as the Capital, Province, District, Parganah and Village and in each of these

parts separate courts with distinct officers were established which were highly organised and capable to disseminate justice to the seekers. In the capital, six courts were established. They were the King's Court, Diwan-e-Mazalim, Diwan-e-Risalat, Sadre Jehan's Court and Diwan-e-Siyasat. King's Court was presided over by the Sultan himself. It had both Original and Appellate Jurisdiction for all types of cases in the country. While acting as the judge, the Sultan was assisted by two reputed Muftis who were highly expert in law. Diwan-e-Mazalim and Diwan-e-Risalat consecutively was the highest Criminal and Civil Courts in the realm. Both these courts were presided over by the Sultan himself. In the absence of the Sultan, the Chief Justice (Kazi-ul-Kuzat) presided over these courts. Kazi-ul-Kuzat or chief Justice was the actual head of the judiciary. The Sultan appointed the Chief Justice amongst the most virtuous and learned men of his state. Four officers namely Mufti, Pandir, Mohtasib and Dadbak were attached to Chief Justice's Court and helped him in disseminating justice. The Court of Diwan-e-Siyasat had jurisdiction to try the cases of rebels and high treason. Its main purpose was to deal with criminal prosecutions.

In the province there were four courts. Adalat Nazim-e-Subah, Adalat Qazi-e-Subah, Diwan-e-Subah and Sadre-e-Subah. Nazim presided over the Adalat Nazim-e-Subah. He was the representative of the emperor in the province. So, he possessed both executive and judicial position. This court had the jurisdiction to try all types of civil and criminal cases of both original and appeal. While trying the original cases, Nazim sat as a single judge. But during the hearing of any appeal, he formed a bench with the Chief Qazi (Qazi-e-Subah) of the province. The Adalat Qazi-e-Subah was presided by the Qazi-e-Subah of the province. All types of Civil and Criminal cases including original and appeal of the province were tried by this court. Appeal from this court lay to the Adalat Nazim-e-Subah. This court had a supervisory power over the District Qazi's Courts. The Qazi-e-Subah was appointed by the Sultan but selected by the Chief Justice amongst persons who had established reputation for learning and scholarship of law and possessed a high character and was a man of unimpeachable integrity. Four officers namely Mufti, Pandit, Mohtasib and Dadbak were attached with the Qazi-e-Subah's court. Adalat Diwan-e-Subah was the chief Revenue court of the province. It had both original and appellate in types of revenue matters of the province. Sadre-e-Subah was the chief Ecclesiastical Court in the province. It dealt with the matters relating to grant of stipend, lands etc.

In the District level four courts were available namely The District Qazi's Court, Faujder Court, Court of Mir Adil and the Court of Kotwal. The District Qazi had original jurisdiction in all civil and criminal cases of the district. It also heard appeals from the Parganah Qazi's, Kotwal's and Village Panchayet's. The District Qazi was appointed by the recommendation of the Qazi-e-Subah. Faujder Court was a local criminal court used to try petty criminal cases concerning security and suspected criminals. Appeal from this court lay to the Nazim-e-Subah. The Court of Mir Adil tried the land revenue cases and appeal from this court lay to the Diwan-e-Subah. The Court of Kotwal was authorised to try police and municipal cases. The Court of Qazi-e-Parganah and Kotwal were available in each Parganah Headquarter. The Qazi-e-Parganah had all the same jurisdictions of the District Qazi except the appellate jurisdiction. The Kotwal of Parganah was authorised to try petty criminal cases. He was also the principal executive officer of the town. For each group of villages, a Panchayat was functioning to look after the executive and judicial matters. The Panchayat decided petty civil and criminal cases of purely local nature.

Mughal Period:

The Mughal Empire was established by Jahiruddin Md. Babar. It extended from 1526 AD to 1857 AD for 331 years. The Mughal emperor was considered the 'Fountain of Justice'. The emperor created a separate department of justice Mahakuma-e-Adalat to regulate and confirm that justice was administered properly. Like the Turkish Sultans, Mughal administrators also divided their realm in five distinct administrative sections namely the Capital, Province, District, Parganah and village and each of these sections had separate courts. In the capital there were five courts- The Emperor's Court, The Chief justice's Court, Chief Revenue Court, Court of Qazi-e-Delhi and the Court of Qazi-e-Ashkar. The Emperor's Court was the apex court of the empire having both the original and appellate jurisdiction in all types of cases. While hearing an original case the Emperor was assisted by some officers such as Daroga-e-Adalat, Mufti and Mir Adil. During the hearing of an appeal, the Emperor was assisted by the then Chief Justice. In some crucial legal issues, the Emperor referred cases to the Chief Justice for his opinion. The next highest court was the Chief Justice's Court in the Capital. The Chief Qazi was assisted in his official work by two reputed Mufti's of great importance who were attached to this court as puisne judges. This court was entitled to try civil and criminal cases both original and appeal. It heard appeals from the decisions of the Provincial Courts. The third important court of the capital was The Chief Revenue Court. In the realm, it was the highest court of appeal regarding the revenue disputes. Another important court of the capital was the Court of Qazi-e-Delhi. This court worked only during the absence of the Chief Justice. It tried local civil and criminal cases of Delhi. Except all these court, a special court existed in Delhi in

the Mughal period named as the court of Qazi-e-Ashkar. It was a mobile court moved from one place to another and dealt with military matter.

During the Mughal period, three separate courts were available in the Provinces. Namely, The Governor's Court, the Provincial Chief Appeal Court and Provincial Chief Revenue Court. Like the Nazim of Sultanate period, Governor presided over this court. It was the highest court of the Province. This court had both original and appellate jurisdiction. It could accept and try all types of cases arose in the province and heard appeal from its subordinate courts. It had also supervisory jurisdictions over all the courts of the province. Next to the Governor's Court was The Provincial Chief Appeal Court which was presided over by the Qazi-e-Subah. The powers of the Qazi-e-Subah were the same as the Governor. Mufti, Mohtasib, Daroga-e-Adalat-e-Subah, Mir Adil, Pandit, Sawaneh Nawis and Waqae Nigar assisted the Qazi in his office. For dealing all types of revenue cases, Provincial Chief Revenue Court was established. It had both original and appellate jurisdiction. Peshkar, Daroga, Treasurer and Cashier were attached as officers in this court. The next administrative section was the District and four courts were continuing in the Mughal Districts. They were District Qazi's Court, Faujdar Adalat, Kotwali Court and Amalguzari Kachari. Court of the District Qazi was the chief civil and criminal court of the District. Qazi-e-Sarkar was his designation. It had both original and appellate jurisdiction and appeal against the decision of this court lay before the Qazi-e-Subah. Daroga-e-Adalat, Mir Adil, Mufti, Pandit Mohtasib and Vakil-e-Shariat were attached with this court as officers. The next important in the District was the Faujdar Court. It was authorised to try the cases relating to riots and state security. An appeal against the judgment of Faujdar court lay to the Governor's court. The court of Kotwal was empowered to try petty criminal cases of the city. The Amalguzari Kachari was entrusted to deal with all the revenue matters of the district. Appeal against this court submitted to the Diwan-e-Subah's court. In the Parganahs there were three types of courts- Qazi-e-Parganah, Court of Kotwal and Amin-e-Parganah. The Qazi of Parganah was able to try all the original civil and criminal cases of the Parganah. He had no appellate jurisdiction. Against his decision appeal lay to the District Qazi's court. The Kotwal of Parganah had the Jurisdiction to try all the petty criminal cases of the Parganah and an appeal against the decision of the Kotwal's court lay also to the District Qazi. The Amin of Parganah presided over the court of Amin-e-Parganah. It dealt with all the revenue cases in the Parganah. The last administrative stage was the village. During the Mughal regime there were two types of courts. The Village Panchayet and the Court of the Zaminders. The village Panchayet was consisted of five persons headed by a Headman. The Panchayet had a power to decide petty local civil and criminal matters. No appeal was allowed from the decision of the Panchayet. In the late Mughal period, Zaminder's courts were empowered to try petty criminal and civil matters.

Modern Period:

Modern period actually refers to British period. Actually the modernization of the ancient and customary judiciary of India was started by the British rulers after they conquered the subcontinent and the modernisation procedure was started by issuing various charters. At the very beginning the East India Company took possession of three giant cities namely Bombay, Madras and Calcutta and afterwards those cities were known as Presidency Towns. East India Company administered those cities with the help of the native rulers and the administrative functions were not fully disciplined up to 1726. To overcome that situation, company promulgated some charters for those three cities. The first one was the Charter of 1726 issued by King George I. The specialty of this charter was that it opened the operation of English Legal System in India. As the first charter, it had some inherent defects. To remove those gaps, King George II issued the Charter of 1753 but the administrative and judicial anomalies were continuing. As a result, the House of Commons sent a secret committee to India and as per the report of that secret committee The Regulating Act of 1773 was passed. With the authorization of the Regulating Act 1773, a new Charter of 1774 was issued and for the first time in the history of India the Supreme Court was established in Calcutta. It was authorised to deal with admiralty, equity, civil and criminal cases of Calcutta Presidency. The Supreme was also entrusted with Writ jurisdiction and Supervisory power over its subordinate courts. Later, in 1801 and 1824 Supreme Court was consecutively established in Madras and Bombay with the same powers and functions. In 1829, a new post 'Commissioner' was created. Some people were appointed in this post as the Head of a Division comprised of some districts. These Commissioners had the jurisdiction to hear appeal from the magistrates which actually influenced the administration and judiciary negatively because both the administrative and judicial authority lay in one hand actually. As the result of that tyranny, the first Law Commission was formed in 1853. The purpose was to enact such laws which will be applicable in all the court of India. In 1857 a massive Sepoy Mutiny was held. The British authority could not rely on the East India Company more. They abolished it and took the full charge of India as its government. As per the recommendation of the Law Commission, Civil Procedure Code, Criminal Procedure Code, Evidence Act were enacted and due to this legal advancement, British Parliament enacted the Indian High Courts Act in 1861. The High Court was established in the three Presidency

Towns-Bombay, Madras and Calcutta replacing the existing Supreme Court. The judges of the newly formed High Court were taken from amongst the District Judges, Barristers and Advocates of the Supreme Court.

In 1662 two important decisions were taken. Muslim system of law was banned and replaced by Common Law. Secondly, with few modification, the Muslim and Hindu personal laws were allowed for the Muslims and Hindus to follow in their relevant personal issues. In 1864, posts of the Qazis, Pandits, Mohtasibs were abolished. The ultimate expectations were fulfilled by the enactment of the Civil Courts Act 1887 and Code of Criminal Procedure 1898. A general structure of the Subordinate Civil and Criminal Courts were established with these two Acts and still the same structure is working in Bangladesh and also in many other countries of South Asia. As per the Civil Courts Act 1887, the structure of the Civil Court was- 1. The Court of District Judge, 2. The Court of Additional District Judge, 3. The Court of Subordinate Judge, and 4. The Court of Munsif. The Code of Criminal Procedure 1898 designed structure of the Subordinate Criminal Courts as 1. Court of Session, 2. Presidency Magistrates, 3. Magistrate of the First Class, 4. Magistrate of the Second Class and 5. Magistrate of the Third Class. Law Graduates, practicing advocates and Officers from the Indian Civil Service became the judges of the new born Subordinate Civil and Criminal Judiciary. The High Court Act 1861 was later amended by the Indian High Court Act 1911. As per the amendment, judge's number were increased to 20 from 16. Post for Chief justice and Additional Judges for High Court was created and the Judge's tenure of office was fixed for 2 years. In 1935, the Government of India Act was passed. It brought the great change and turned the Unitary system of government into Federal government. This act changed in the formations and functions of the High Court. The governmental powers were distributed among the center and constituencies but the nature of the legal system was not changed. It remained unitary like the previous time. The specialty of the British Period is it has radically changed the Judiciary and the Legal System of Subcontinent. Lot of measures has been taken to change and remove the thousand years old custom and religion based legal system. Cruel and illogical systems and punishments such as Ordeal were completely stopped. Not all actions were worthy. It was a common tendency of the British administrators to control the judiciary most of the time. Sometime the rulers sought the explanations of given verdicts. Judges were under close supervision and scrutiny.

Pakistan Period:

Officially Pakistan regime was started in 1947 when British left the subcontinent and two separate countries- India and Pakistan took birth. Bangladesh became a part of the Pakistan as 'East Pakistan'. After three years of the independence Privy Council (Abolition of Jurisdiction) Act 1950 was passed in the Constituent Assembly of Pakistan. As a result the provision of filing appeal to the Privy Council in England against the decision of the Federal Court of Pakistan was abolished. One thing to be remembering that, in 1947, the Governor General of Pakistan issued an order to establish a new Federal Court in Karachi and it was followed in accordance to the Government of India Act 1935. In the same year, High Court was established in Dhaka following High Courts (Bengal) Order 1947. The Federal Court continued as the Highest Court of Pakistan till 1956. In 1956 a new constitution was prepared in Pakistan and as per its provision, High Courts were established in the Provinces and Supreme Court in the Central Capital of Pakistan. A new constitution was again promulgated in 1962 but no change was brought in the judiciary. In 1969, Martial Law was declared in Pakistan and the constitution of 1962 was made ineffective. In 1969, Provincial Constitution Order was declared. It confirmed that all types of courts will act as previous but no case or complain will be entertained by any court against the Martial Law Authorities. By the 16 December, 1971, the Martial Law regime was ended and in this very Bangladesh took birth as a new independent country in the world.

Bangladesh Period:

The fact is, after the liberation, Bangladesh accepted the common law legal system which existed during the British and Pakistan period. Before adoption of the constitution in Bangladesh, High Court of Bangladesh Order 1972 was issued by the then authority and as per this order the first High Court of Bangladesh was established. The order was based on the Proclamation of Independence of Bangladesh. Later, the High Court of Bangladesh (Amendment) Order 1972 was issued. An Appellate Division which was superior to the High Court Division was established. A Chief Justice and two Judges were appointed in the Appellate Division at the beginning. In 1972, Bangladesh adopted its constitution. The structure and functions of the Apex court is designed in the constitution. The constitution also stipulates for establishing sub-ordinate courts. The Apex court is formed with two divisions namely the Appellate Division and High Court Division. Appellate Division is authorised to hear appeal against the decision of the High Court Division. High Court Division has supervisory power over the subordinate courts. After the Apex Court, the next step of Bangladesh Judiciary is the Subordinate Courts. Though the constitution says for the establishment of subordinate courts, mainly the subordinate courts are formed as per various statutes. Subordinate courts of Bangladesh are divided into civil courts,

criminal courts and various special courts and tribunals. Subordinate civil courts are formed as per the Civil Courts Act 1887 which was enacted during the era of unification in British Period. Five types of civil courts are The Court of District Judge, The Court of Additional District Judge, The Court of Joint District Judge, The Court of Senior Assistant Judge and the Court of Assistant Judge. Subordinate Criminal Courts are formed in accordance with the Criminal Procedure Code 1898 which was also enacted during the unification period of British Indian Judiciary. Subordinate Criminal Courts are of two types namely the Court of Sessions and the Court of the Judicial Magistrates. Sessions courts are of three types-The Court of Session Judge, The Court of Additional Sessions Judge and the Court of the Joint Sessions Judge. The Judicial Magistrate Courts are of five types- The Court of the Chief Judicial Magistrate Court, The Court of the Additional Chief Judicial Magistrate Court, Magistrate Court of the First, Second and Third class. As per the article 117 of the constitution, Administrative Tribunal and Administrative Appellate Tribunal have been established. Other tribunals are also available in Bangladesh. Such as the Labour Tribunal; Juvenile Tribunal; Tax Tribunal; Custom, Excise and Vat Tribunal, Nari O Shishu Nirjatan Domon Tribunal, Speedy Trial Tribunal, Cyber Tribunal etc. Among all these tribunals, a good number of tribunals are originated in British and Pakistan period. Some of these are established after the independence of Bangladesh.

II. CONCLUSION

Enactment of new laws and establishment of various courts and tribunals is a continuous process. It depends on the situation of the society and country. It also evolved from the demand of the people. If we take an insight into the judicial history of Bangladesh, it will prove this truth. In the Ancient and Medieval period some judicial concept was very good and deep such as jury system, principle of precedent, appointment of judges etc. But the decision making procedure was mostly entrusted on the judges or Qazis. No professional advocates were available at that time. Mass people were not so familiar with the process of the court. The categories of producing system of evidence were not so efficient. Later, in the British period these procedural issues became more effective and justice friendly. The judiciary became unified, qualified judges were appointed and professional advocates became available in the courts. The entire country came under the judiciary due to the unification. Now in present Bangladesh, in each Union Parishad we have a court named Village Court. Mass people of the villages can access this court to resolve their petty local legal issues. Hope in future, people will receive justice from his home.

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