

Echoes of Empire: Analyzing British Colonial Legal Remnants in the Indian Subcontinent and Pathways to Progressive Reform

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Abstract

This paper critically assesses the survival of British colonial laws in the Indian subcontinent, focusing on Bangladesh, and their ongoing impact on criminal justice, civil procedure, gender justice, victim protection and administrative law. Through doctrinal and comparative legal analysis, the paper examines the role of core statutes like the Penal Code 1860, the Police Act 1861, the Criminal Procedure Code 1898, the Civil Procedure Code 1908 and the Evidence Act 1872 in shaping postcolonial legal systems in a manner that often runs counter to constitutional and contemporary human rights standards. The paper contends that these legacies were crafted to perpetuate colonial governance rather than ensure justice, and that its unquestioned persistence has resulted in structural inefficiencies, police and executive over-sight, slow procedural processes and inequitable justice outcomes, especially in relation to gender justice and victim-sensitive justice. Through comparative insights from India, South Africa, Malaysia, Nepal and the Philippines, the article demonstrates that decolonization demands not only refocusing legislation, but also reforming institutions, repealing or revising laws, digitizing procedures, and establishing a legal reform commission. This study concludes by suggesting a reform agenda for Bangladesh, to include a Legal Reform Commission, subject-matter expert committees, enhanced victim compensation and witness protection mechanisms, and a more “locally sensitive” legal order rooted in the local constitutional and social context.

Keywords: Colonial Jurisprudence, Bangladesh Legal Reform, Decolonization of Law, Comparative Constitutionalism, Human Rights and Legal Culture

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1. Introduction

The Word “Law” took its origin from the Teutonic term *lag* (definite rule of conduct and human relations). The Persian equivalent thereof defines law as “specific rules or norms”. Someone may confuse the literal meaning of law with its pragmatic definition, as law is responsive to the demands of time. Because, “A definite rule of conduct and human relations” does not refer the static nature of law, rather that everybody is equal before the law without regard of birthplace, belief, religion and race etc. “laws are like metals in the crucible of time and circumstances; they melt, they gradually solidify into different shapes they remelt and assume diverse forms. This process of evolution is coterminous with human society. Nothing is static except that which is dead and lifeless. Laws can never be static”¹. Hence, it is therefore often argued that whoever claims of knowing the precise answer to the question “what is law?” is one of the greatest philosopher livings. Here a question may arise “what is the legal system?” or “Is it of the same nature like law?” Many crucial questions of law cannot be answered by using the mechanisms of legal reasoning if those are not sturdy as elements of construction, except for mere condemnation. Where it gets frustrated, the judges must appeal satisfactorily to policies, preferences, values, morals, and public opinion. But very often, the outcome is vague.² Ronald Dworkin argued that, irrespective of controversy and difficulty, legal queries can be blessed with the right answers. Constant controversy does not suffice that there is no entity of a concrete and precise response to the legal questions.³ He paralleled that notwithstanding controversy continues, Richard III ordered the little princes killed; there remains the right answer, and so it is with the law. Knowing more about the facts would enable us to arrive at that answer.⁴ Surprisingly, it seems the adage “Scholars have offered divergent views “overwhelmingly influenced the defining approaches of the jurists in this particular field since the introduction of divergent philosophical thoughts has shaped legal thought in this field. Nonetheless, in this respect, the best-known definition derived from Professor Hart, who entered five factors in the list as the fundamental essentials, is as follows:

1. Rules that either forbid or compel certain conduct at the pain of sanctions.
2. Rules that require individuals to compensate for damage they caused.
3. Rules setting the doings as to the respective “mechanical” spectrum of law.
4. The court system for determining allegiance to the rules and the appropriate sanction.

1 A Ahmad, ‘Review of *A Modern Approach to Islam* by Asaf A A Fyzee’ (1964) 27 Bulletin of the School of Oriental and African Studies 626.

2 Richard A Posner, *The Problems of Jurisprudence* (Harvard University Press 1993).

3 Ronald Dworkin, *A Matter of Principle* (Harvard University Press 1986).

4 A Posner (n 2).

5. The legislative body is liable to make rules, amend, and repeal if necessary.⁵

But then, today's existing legal system did not derive overnight. The constitution of the legal system is a blending of indigenous and alien elements, which originated from the 200-year British Indian Empire and the erstwhile Hindu and Muslim regimes.

2. The Introduction of English Law and the Hybridization of the Legal System

2.1. Colonial Legal Culture and Its Effect on Legal Consciousness

Democratic and sustainable evolution of the society and state requires an efficiently functioning legal system that seeks a qualified legal culture. Alongside, attitudes and expectations as a system derive from the legal culture of which legal consciousness is a constituent element.⁶ **L. Friedman** verbalized legal culture, "Those parts of general culture, customs, opinions, ways of doing and thinking that bend social forces towards or away from the law."⁷ Besides, **Professor Susan Silbey** construed the legal culture as "*groups' understanding of the legal system*", an entity at the macro level.⁸ Meanwhile, a "*type of social practice*" is legal consciousness.⁹ Usually denotes micro-level social action, whereby legal meanings and signs individuals interpreted and mobilized.¹⁰ As for legal consciousness, which involves specific people, it is "*..... the study of legal consciousness traces how law is experienced and interpreted by specific individuals*". **S. E. Merry** propounds in "***Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans***":

"[t]he ways people understand and use law I term their legal consciousness is the way people conceive of the natural and normal way of doing things, their habitual patterns of talk and action, and their commonsense understanding of the world".¹¹ Generally speaking, legal consciousness incorporates people's values, attitudes, and beliefs. The skeleton of legal consciousness consists of the following elements-

- a) Legal literature, b) Emotions and attitudes, c) Promptness for lawful behavior.¹²

The positive development ratio of these systems detects the productivity of the law. Lawfulness is a

5 Md Abdul Halim, *The Legal System of Bangladesh* (CCB Foundation 2006).

6 Vakhtang Nadareishvili and Tinatin Chkheidze, 'Legal Culture and Legal Consciousness in Terms of Set and Attitude' (2016) 11 European Scientific Journal 123.

7 *ibid.*

8 Susan S Silbey, 'Legal Culture and Legal Consciousness' in Neil J Smelser and Paul B Baltes (eds), *International Encyclopedia of the Social & Behavioral Sciences* (vol 13, Elsevier 2001) 8623.

9 *ibid.*

10 *ibid.*

11 Nancy Reichman and Sally Engle Merry, 'Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans' (1991) 20 Contemporary Sociology 434.

12 Vakhtang Nadareishvili and Tinatin Chkheidze (n 6).

significant element constituting democracy. Compared to social regulation, with dominating social blending within the scheme of the social control system attests whether a legal culture is highly developed or not. Minutely speaking, legal consciousness implies the awareness that ideological and structural factors of society give rise to the gap existing between practices of law and rules of law. Procedures and the substance of law comprise a basic awareness in some groups among ordinary people or legal specialists.¹³ In this paper's usage, legal culture and legal consciousness are inalienably interlinked, whereof the former accelerates the dynamic nature of the latter and thus, as an eventual impact, the law-making process gets affected positively or negatively. Therefore, every nation fosters a peculiar perspective of legal consciousness to comprehend the rule of law.¹⁴ Legal culture generates 'living law', and meanwhile domestic legal system generates the rule of law, which may not conform to the earlier one. Because the historical backdrop, cognitive constructs, legal process, and respective institutions influence legal consciousness. Colonial laws failed to meet the ends of time, being prone to externally imposed legal norms, whereas the Indian subcontinent developed its legal culture through the colonial period, erstwhile Hindu and Muslim regimes. Eventually, colonial laws failed to give rise to any effective change in public behavior. That's why several colonial-era statutes continue to create tensions with contemporary constitutional commitments to equality, due process, and access to justice. English laws' incongruent approach attempted to ostracize the classical legal system and bothered people's typical mindset and legal practices, which concern subcontinental law. Despite social, historical, and cultural dichotomies between Bangladesh and the colonial subcontinent, constant blind imitation of the sketching style of the colonial laws promoted the executive ends and undermined rights-based legal objectives, as happened in the colonial era.¹⁵ Global history exhibits a spectacle of the subjugation of the local legal system to uphold that of colonizers, ejecting the erstwhile system of law since the late 18th century.¹⁶ Mostly, European colonial powers replaced the classical sources with colonial laws promulgated by colonial authorities.¹⁷ The European legal experts deemed the instrumental use of colonial laws as a device to manipulate the colonized psychologically in the way of the European Hegemony and the colonial consciousness-raising process.¹⁸ Colonial sentiment, which Colonial consciousness fosters, indoctrinates the natives to espouse Western culture as superior to their native culture, denying "the presence of morality".¹⁹ According to **Jon E. Wilson**,

13 Donald R Davis Jr and Jaroslav Nemec, 'Legal Consciousness in Medieval Indian Narratives' (2012) 12 *Law, Culture and the Humanities* 106.

14 *ibid.*

15 Arpeeta Shams Mizan, 'Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights' (2017) 6 *International Journal of Legislative Drafting and Law Reform* 3.

16 Lauren Benton, *Law and Colonial Cultures* (CUP 2001).

17 *ibid.*

18 Luigi Nuzzo, 'Colonial Law' (*European History Online*, 16 April 2012) <<http://www.ieg-ego.eu/nuzzol-2011-en>> accessed 15 June 2026.

19 S N Balagangadhara, *Reconceptualizing India Studies* (OUP 2012) ch 4.

in India, the codification of laws was a “by-product of practical processes of British administration rather than utilitarianism.”²⁰

2.2. Colonial Security Laws and Human Rights

The incongruent, sudden changes by the neocolonial authority in the classical legal system triggered the Sepoy Mutiny of 1857,²¹ Circulating a grievance against colonial dominance. For this reason, concurrent officials characterized the Sepoy Mutiny, 1857 as an approach of “fanatic savages” who were “animated by an insane and bloodthirsty fanaticism.”²² The author tries exhibiting the pattern of British legislations and colonial emergency and security laws, which brushed aside the human rights of native Indians and to this effect the focal point shall be on the Vernacular Press Act 1878, Criminal Tribes Act 1871, Rowlett Act 1919, Police Act 1861 and some contemporary domestic legislations lest the article gets prolonged. Press Ordinance, 1823 was enacted by John Adam, whose obnoxious gag is historically elucidated as “Areopagitica of Indian History.”²³ Several historians termed the aforementioned act to be the ancestor of the Vernacular Press Act 1878.²⁴ The act was dubbed “the gagging Act.” The act was condemned for two major peculiarities-

(i) subjugation of vernacular press and upliftment for English press, (ii) abeyance of the appeal section.²⁵

The Hickey’s Bengal Gazette, a weekly political and commercial paper, the pioneer of Indian journalism, played the role of deliverer against human rights violations, lapse of freedom of expression, abuse of power, corruption, bribery, which occurred as a matter of constant occurrence by the British Rulers. Within ten months of its publication, the government reacted with hostility towards it and banned it.²⁶

Hickey’s Bengal Gazette portrayed a comparative landscape of the European citizens and the Indian poor people and raised an antagonistic and timely voice against the illegal dictatorship in India as a mouthpiece of democracy. When strictures went to a climax stage the government no longer tolerated and began financing rival paper “The India Gazette” and referred Hickey’s paper as “Arrogant” and the authors as “Crooks” Eventually an article by an anonymous author having title “*The people*

20 Wilson JE, *Anxieties of Distance: Codification in Early Colonial Bengal* (Foundation Books 2010).

21 David Cook, *Understanding Jihad* (University of California Press 2005).

22 Elizabeth Kolsky, ‘The Colonial Rule of Law and the Legal Regime of Exception: Frontier “Fanaticism” and State Violence in British India’ (2015) 120 *American Historical Review* 1218.

23 Sangita De and Priyam Basu Thakur, ‘Press Freedom in India: Virtuous or Vulnerable?’ (2022) 2(3) *Society Language and Culture: A Multidisciplinary Peer-Reviewed Journal* 25.

24 *ibid.*

25 Vernacular Press Act 1878 (Act IX of 1878) (India).

26 Bhagwat Prasad Singh, ‘Censorship of the Indian Press between 1857 and 1945’ (MA thesis, State University of Iowa 1949) <<https://doi.org/10.17077/etd.cnrc-85ye>> accessed 15 June 2026.

are no longer bound to comply” led the Supreme Court to decree for the closure of printing Bengal Gazette. Hickey was imprisoned but continued his paper for another nine months in a row. Hickey’s Bengal Gazette called for Indian soldiers to mutiny.²⁷

The Criminal Tribes Act 1871 was another instrument of oppression based on anthropogenic identity. This law promulgated certain Indians as innate culprits merely for their tribal origin. The Act entitled more than 60 tribal groups to require the registration of their adult males as inherent criminals with the police. The Act attributed the tribes as “addicted” to commit non-bailable offenses consecutively. The most horrifying issue is that the tribe in question whether convey criminal propensities; the authority of this decision was vested in the local Government officers appointed by the British government. Furthermore, the officer’s decree was regarded a conclusive proof.²⁸

The Rowlett Act, 1919, made all anti-government propaganda a punishable offence. Besides, it legalized apprehending suspensive individuals irrespective of the warrant to detain or exile indefinitely without trial. It provided the allowance for a house search without a warrant to the government. The judges were permitted to prosecute a trial that lacked a jury or even testimony. No appeal was permitted to be made to the higher court against a judgment. During the force of this act, freedom of the press was banned.²⁹

During the wake of the Indian uprising, the 1857 Police Act 1861 was enacted to establish and perpetuate British Control at the grassroots level. The Act of 1861 Incorporated feudal values. The polices were groomed as an instrument of coercive imperial power since the empire was threatened. They played a role in suppressing the nationalist movement, which broke out during the 1920s and 1930s. A sizable police force augmented approximately 215,000 in 1932 to over 300,000 in 1943, and magnified the force strength of the armed forces, constituting 45% of all forces in 1943. The number overwhelmingly continued to grow and stood at 60% by the late 1960s. However, discussion of history is not my intention, but to share the British Colonial atrocity intended to meet colonial ends. Laws authorizing the executive to exercise unperturbed power during an emergency, even a normal period, existed from the earliest days of British rule. Winston Churchill remarked on the unbridled emergency power of the Governor General under the 1937 Act as “likely to rouse Mussolini’s envy.”³⁰

3. Adoption of Colonial Laws and Administrative Expediency

27 Andrew Otis, ‘Viewpoint: What India’s First Newspaper Says about Democracy’ (BBC News, 22 September 2018) <<https://www.bbc.com/news/world-asia-india-45546585>> accessed 15 June 2026.

28 Arpeeta Shams Mizan (n 15).

29 ibid; Arpit Nayak, ‘Rowlatt Act’ (Encyclopaedia Britannica) <<https://www.britannica.com/event/Rowlatt-Act>> accessed 15 June 2026.

30 David Lucander, “‘It Is a New Kind of Militancy’: March on Washington Movement, 1941–1946’ (PhD thesis, University of Massachusetts Amherst 2010).

The People's Republic of Bangladesh exclusively vests in the legislative power in the parliament, and in this connection, articles 80 and 82 of Bangladesh's constitution encompass the law-making process of the parliament.³¹ Nonetheless, Bangladesh adopted a vast number of colonial laws without regard for "pick and choose." In this regard, there is also theoretical assistance, though Bangladesh did this to avoid inconveniences. "The theory of legal continuity" or continuity of legal systems belonging to the philosophical traditions of Rousseau, Burke, and Macintyre, endeavored to find out and conclude the question, "Do the different legal systems of particular times and contexts be regarded as a single system?" This theory depicts how the laws are enforceable with identical binding force, as they were in their bona fide times, irrespective of creation, extinction, ups and downs of a state. It is to be noted that the constitution of Bangladesh wasn't quarterbacked out of legal necessity of the newly born country, too rather was a consequence of rage against West Pakistani rulers and zeal of the Liberation War of 1971. Consequently, being free and returned to the homeland, Bangabandhu took material initiatives in this respect. On 10 April 1971, the Laws Continuance Enforcement Order 1971 proclaimed that all existing laws of erstwhile East Pakistan would continue in the territory of newly born Bangladesh. After the war, the Bangladesh (Adaptation of Existing Laws) Order 1972 continued those laws. This wholesale importing of colonial laws ensured administrative convenience but proved problematic in the local context." Colonial laws were originally meant for subjugation, more than good governance. There are so many incidents of laws caused by the British rulers, and Bangladesh retained a large proportion of these laws without any amendment or modification. Some of those colonial laws and their orthodox, selfish provisions that are not befitting are illustrated in the following passages.³²

3.1 Dysfunctional Provisions of Penal Code: A Glimpse of Defective Criminal Justice System

The provision, concerning rape, of the penal code is defective. Section 375, describes five circumstances for an incident to be called as a rape. Further, the explanation of this section says that "Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape". Again, as exception this provision mentioned that, "Sexual intercourse by a man with his wife, the wife not being under thirteen years of age, is not rape". Foremost, The Penal Code's definition of rape is narrow and gender-specific because it recognizes only women as victims and focuses primarily on penile-vaginal penetration. Because this provision considers women only as victims and it kept men, trans men, trans women, and third-gender persons, including *hijras* (a South Asian third-gender community). exempted from the list of victims. Besides, emphasizing on the vaginal penetration and excluding

31 Anil Kalhan and others, 'Colonial Continuities: Human Rights, Terrorism, and Security Laws in India' (2006) 20 Columbia Journal of Asian Law 93.

32 Graham Murphy, 'How Legislation Is Drafted and Enacted in Bangladesh' (2006) 27 Statute Law Review 133.

others modes of penetration as these don't require the use of penis are the notable imperfections of this provision.³³

The marital rape exception is a significant legal gap of this provision as it is neither defined nor recognized. In cases only where the wife is of age less than 13 years law considers it as defined in the exception of this provision. Therefore, matter is to be clearly understood that this provision denotes marriage creates a perpetual consent for intercourse between husband and wife. As mentioned earlier vaginal penetration has been prioritized more than consent victims of marital rape and Sex workers are impliedly victimized in this regard.

In addition, section 312 of the same code penalized causing voluntary miscarriage not with any good faith, of defending the life of a conceived Woman. In a case when a woman is to give birth to a child in the ensuing period, offenders shall be punished. The explanation of this provision also penalizes a Woman who himself causes a miscarriage. Everything is perfect up to now, but over time, a new and novel issue has arisen. The anti-abortion provision didn't explicitly penalize culprits and abettors of miscarriage; rather, it focuses only on individuals who directly cause the miscarriage.

The adultery provision raises equality concerns because it punishes only men while treating the married woman as lacking independent legal agency. Again, it is also a blow to women's dignity. This doesn't matter; how bizarre the phrase "Anti-Man" is.

Foremost, the woman must be married to fall under section 497. Because having a Sexual relationship with a prostitute, widow, or an unmarried woman shouldn't be deemed as adultery, provided that it occurred through the means of mutual consent. Again, going to have a sexual fusion with a woman who earlier lived together, not in wedlock, even though she has already given birth to a child from that bonding, doesn't amount to the occurrence of adultery, since he is not the wife of anybody yet. Secondly, the accused must know the marital status of the woman, a party to the adultery.

Thirdly, the adultery must be committed in the absence of the husband's connivance, which is called *volenti non fit injuria* ("to a willing person, no injury is done"). Such consent may be of whatever nature. "Whether the husband was fully discreet on the fact that his wife was committing adultery but did not take any prompt action to stop the same, then the adulterous relationship may be considered to have been committed with acquiescence, and therefore no offence can be said to have been committed. The absence or presence of consent or connivance can be inferred from the circumstances of the case. Strict proof of the same is not necessary". Lastly, although the husband's dissent is one of the prerequisites, the wife's assent is a stringent requirement too in the way of adultery. Hence, the wife

³³ Mizanur Rahman, Arpeeta Shams Mizan and Muhammad Rezaur Rahman, 'Development of Legal Framework in Bangladesh' in *Bangladesh: Transformation since Liberation* (Asiatic Society of Bangladesh 2021) 279.

must be a willing party to adultery with the man; otherwise, it shall harm the man in a harmful way and shall make him be arrested and punished.

Thereby, the remarkable defective statutory findings concerning adultery are as follows:

- i. Punishing only the man as a perpetrator and the woman going unpunished as an abettor.
- ii. Adultery's legal validity is provided that it occurred with the husband's acquiescence.
- iii. Treating a woman as her husband's property and him as her master. In other words, the legal sovereignty of one sex over the other sex.
- iv. Penal Code's deeming adultery an offence against the husband in respect of his wife by a third person.
- v. There is no way to prove which relationship was consensual and which was fraudulently obtained or intimidated.
- vi. Suppose two men and women engage in sexual intercourse with mutual consent, and then a dispute arises between them over some issue. Then if the woman files a case alleging that she was forced to have sexual intercourse by intimidating or fraudulently obtaining her consent, that too will be considered rape. If such an incident happens, the man will not get justice. Will the court only consider the complaint of the complainant? Where is the scope for the accused to defend himself or protect himself here?
- vii. Some commentators and judicial actors have expressed concern about misuse of certain gender-based violence provisions; however, any reform must be based on reliable empirical data and must not weaken protection for survivors.
- viii. The current law states that the trial should be completed within 180 days. But in most cases, the trial is not completed even within 180 days. But now the law is being amended to bring this time limit to 90 days.
- ix. Why is the rape law relaxed for the police? How can a woman or girl be raped while in police custody? Being in police custody means that she is completely safe. How or why would she be raped? And if she is raped due to the negligence of someone responsible for her safety or by one of them while in custody, then she should be punished more than the punishment given to ordinary people.
- x. Rape is defined in Bangladeshi law in Section 375 of the Criminal Code. According to this

law, a woman can be raped only by a man.

Bangladesh lacks adequate victim and witness protection provisions in its criminal justice system. Although the provisions provide safeguards and rights to accused individuals, they don't equally concern victims of crime.³⁴

The Supreme Court of Bangladesh is concerned about the victims' rights and safety, as recent cases, like *Tayazubuddin & another vs. The state*, show. In that case, the High Court Division stressed that the state's job is to safeguard the rights, right to life, personal freedom, and equal treatment under the law of all citizens, victims, and witnesses. Also, the government is told to ensure their safety.³⁵ As crimes often break social norms, the criminal justice system is enjoined to protect and compensate the victims.³⁶ Giving victims compensation helps them feel better, keeps criminals away, and pushes victims to report crimes.³⁷ However, many serious crimes are not recorded because the person is afraid, there are social differences, or the community steps in. As an essential part of restorative justice, compensation is pivotal in ensuring justice in the legal system. The government must be fair to victims by creating complete safety and compensation plans.³⁸ Section 545 of the CrPC 1898 (Bangladesh), says that trial and appellate judges can compensate victims of crimes. This part of the law allows courts to order compensation for any loss or harm to be paid out of fines.³⁹ However, it has limitations: it can only be given after a severe sentence, and the amount of money given as compensation is limited to the fine.⁴⁰ On the contrary, Section 357 of the CrPC 1973 (India) says that judges in India can order victims to pay a certain amount of compensation even if the fine is not part of the sentence.⁴¹ However, Bangladeshi courts have rarely used section 545 to compensate the victim because it is entirely up to the courts to decide whether to pay crime victims and cover the case costs.⁴² The law doesn't give victims formal rights or require courts to explain why they don't provide compensatory orders. The higher judiciary acted proactively in the *Dilruba Aktar v. AHM Mohsin* case, providing compensation to victims of violations of anti-polygamy laws. In addition to imposing the maximum fine and jail sentence for the breach, the court mandated that the victim-wife receive her money back from

34 *ibid.*

35 Abdullah Al Faruque, 'Goals and Purposes of Criminal Justice System in Bangladesh: An Evaluation' (2007) Special Issue Bangladesh Journal of Law 1.

36 *Tayazuddin v The State* (2001) 21 BLD (HCD) 503.

37 *ibid.*

38 Abdullah Al Faruque (n 35).

39 Code of Criminal Procedure 1898 (Bangladesh), s 545; T Chakraborty, 'Compensation to Victims of Crime: A General Approach' (2006) 27 Indian Journal of Criminology and Criminalistics 29.

40 Abdullah Al Faruque (n 35).

41 Code of Criminal Procedure 1973 (India), s 357.

42 Fhameda Qudder, 'Crime Victims' Right to Compensation in Bangladesh: A Comparative Approach' (2015) 11 European Scientific Journal 305.

the fine.⁴³ Nevertheless, the court did not cite Cr. P.C. section 545 to support the verdict.⁴⁴ A national victim compensation fund should be established based on the gathered penalties, as there is currently no comprehensive method for recovering the ordered compensation from fines. If it happens, then the state might be able to make a sizable profit. Most recently, special crime laws have added ways for victims to get compensation instead of a fine as a sentence. One of these is the Environment Court Act of 2000.⁴⁵ Others are the Suppression of Acid-Related Offenses Act of 2002 and the Prevention of Repression of Women and Children Act of 2000. However, these parts of the law haven't been used much because courts aren't sensitive to victims' needs. Even with these changes, the rules for giving compensation have not yet been set by the law or a court order.⁴⁶ Apart from these, criminal investigation, which is a vital part of the criminal justice system, is beset with a sizable number of challenges, which are:

- i. Inconsistent timelines for completing investigations.
- ii. Late initiation of investigative processes.
- iii. Failure to register reports for legally actionable crimes.
- iv. Careless documentation of witness testimonies.
- v. Unclear or inaccurate crime scene sketches/maps.
- vi. Improper execution of search/seizure operations.
- vii. Slow retrieval of specialized expert analyses.
- viii. Underutilization of forensic science tools.
- ix. Procedural errors in custody extensions and confession handling.
- x. Overuse of alibi defenses by accused parties.
- xi. Over-reliance on informants, leading to compromised probes.
- xii. Poor legal understanding of criminal charges.
- xiii. Coercive interrogation tactics and overemphasis on confessions.
- xiv. Public exposure of suspects through media ("trial by media").

43 *Dilruba Aktar v AHM Mohsin* (2003) 55 DLR (HCD) 568.

44 *ibid.*

45 Environment Court Act 2000 (Bangladesh) (Act No 11 of 2000), s 9.

46 Abdullah Al Faruque (n 35).

- xv. Inadequate coordination between prosecutors and witnesses.
- xvi. Neglect of crime victims' rights and needs.
- xvii. Outdated tools/technology hindering investigations.
- xviii. Poorly documented records (e.g., messy handwriting).
- xix. Inaccurate citations/application of laws.
- xx. Traditional criminal justice system
- xxi. Lawyer-dominated litigation framework
- xxii. Obsolete criminal statutes
- xxiii. Absence of defined criminal justice guidelines
- xxiv. Unchecked pretrial detention and unmonitored suspicion-based apprehensions
- xxv. Insufficient safeguards for complainants or aggrieved parties
- xxvi. No formalized negotiated settlement mechanisms (e.g., plea bargains)
- xxvii. Lack of permanent prosecution systems
- xxviii. Informal justice mechanisms
- xxix. Mobile court, which disregards the principles of fair trials:
 - a) Independent, impartial, and competent tribunal
 - b) Presumption of innocence and burden of proof
 - c) Right to have any legal representation
 - d) Protection against self-incrimination
 - e) Cross-examination of witnesses
 - f) Rule against double jeopardy
 - g) The general rule as to bail
 - h) Right to protection against inhuman punishment
- xxx. Ineffective implementation of legal provisions

- xxxi. Deficiency in evidence-based research and jurisprudential analysis
- xxxii. Politicization of criminal justice agencies
- xxxiii. Shortage of skilled investigators and insufficient oversight of investigative work

3.2 Backlogs of Civil Suits: Impediment to the Right to Speedy Trial

Effective access to justice is a cornerstone of the rule of law. While “justice” represents the ultimate objective, “access to justice” serves as the pathway to achieving it. The adage “justice delayed is justice denied” underscores a critical challenge facing judicial systems: prolonged delays in resolving disputes. This issue remains a persistent and urgent concern in the administration of justice, with the public increasingly demanding timely legal remedies. The need for expedited judicial processes is now widely acknowledged as an emerging human right, yet its realization is often hindered by systemic inefficiencies and resistance from some within the justice sector. A lot of civil cases are getting piled up in the civil courts, of which only a small number of cases undergo the concluding process.

The following are some major factors responsible for the ongoing conditions of the civil suits:

- i. Shortage of competent legal professionals in the judicial system.
- ii. Unprofessional conduct by certain lawyers who prolong cases for personal gain.
- iii. Backlog of unresolved cases overwhelming court capacities.
- iv. Inadequate judicial staffing and infrastructure to handle caseloads efficiently.
- v. Failure to adhere to procedural regulations outlined in legal codes.
- vi. Complex legal interpretations required in high-profile cases (e.g., Supreme Court matters), slowing down resolutions.
- vii. Inefficient evidence-gathering processes during investigations or inquiries.
- viii. Conflicting or overlapping legislation on similar issues creates legal ambiguity.
- ix. Outdated administrative tools and technology in court offices.
- x. Frequent non-appearance of key witnesses disrupts trial schedules.
- xi. Overly complicated judgment enforcement systems in civil rulings.
- xii. Underutilization of digital record-keeping solutions, resulting in disorganized case manage-

ment.

Allegations of corruption and irregular administrative practices in court offices may also contribute to delay, particularly in filing, affidavits, certified copies, and case-record management. The Civil Procedure Code 1908, which was introduced during the British colonial reign, is the regulatory authority of our civil courts. In the passage of time, though some changes have been made to meet the evolving demands, these changes seem to have had little impact. The problem is still acute and prevailing in the field of civil justice. So, it is a vital issue to change the present scheme of our legal procedure.

4. Decolonizing Legal Systems: Efforts to Reform Colonial Legacies in the Asia-Pacific Region

Numerous nations in the world have made efforts to change their legal systems and abandon the tradition of British colonial rule.⁴⁷ As an example, the legal system of South Africa has been changed greatly since the collapse of apartheid in 1994.⁴⁸ The new Constitution of 1996 aimed to create a more inclusive and just legal system, which was inspired by international human rights law and was no longer based on the legislation in the country during the apartheid era.⁴⁹ In the same way, Malaysia has been in a slow process of legal reform, where its aim is to diminish the impact of the British common law and encourage the integration of Islamic legal principles into the national legal system.⁵⁰

Some of the countries in the Asia-Pacific region have also attempted to recover their legal sovereignty of the colonial period. An example is Nepal, which has embarked on a thorough review of its legal framework with the aim of making it more compatible with the cultural, social, and political realities of the country.⁵¹ This process involves the acknowledgment of the customary laws and the integration of the traditional dispute resolution systems in the formal system of law.⁵² Similarly, the Philippines has also achieved a lot in decolonizing its legal system, and its progress is evident through the use of the 1987 Constitution, which has given priority to the role played by Filipino culture and values in shaping the laws and institutions in the country.⁵³

The need for such legal reforms is also evident in the context of Bangladesh. As a former British colony, Bangladesh has inherited a legal system that was heavily influenced by the common law traditions of the United Kingdom.⁵⁴ However, in recent years, the country has made concerted efforts to adapt its legal

47 Upendra Baxi, 'The Colonialist Heritage' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (CUP 2003) 46.

48 Ruti G Teitel, *Globalizing Transitional Justice: Contemporary Essays* (online edn, OUP 2014) <<https://doi.org/10.1093/acprof:oso/9780195394948.001.0001>> accessed 19 June 2026.

49 *ibid.*

50 Andrew Harding, 'The Keris, the Crescent and the Blind Goddess: The State, Islam and the Legal System in Malaysia' (1996) 1 *Australian Journal of Asian Law* 204, 205.

51 Bishnu Prasad Upreti, 'Customary Law and Statutory Law: A Study of Legal Pluralism in Nepal' (2006) 6 *Dhaulagiri Journal of Sociology and Anthropology* 255, 256.

52 *ibid.*

53 Werner F Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, CUP 2006) 357.

54 Md Saiful Karim, 'Decolonizing the Legal System of Bangladesh: Prospects and Challenges' (2013) 15 *Asian Journal of Comparative Law* 83, 84.

framework to better reflect its own cultural, religious, and social realities.⁵⁵ This includes the incorporation of Islamic legal principles into certain areas of the law, as well as the recognition of customary laws and alternative dispute resolution mechanisms.⁵⁶ Such changes are crucial in addressing the lingering colonial legacy and ensuring that the legal system is responsive to the needs and aspirations of the Bangladeshi people.⁵⁷

5. India's Criminal Law Reforms and Lessons for Bangladesh

The Indian government has taken some groundbreaking initiatives to amend the Code of Criminal Procedure, 1973 (CrPC), 1898; IPC, 1860; and the Evidence Act, 1872. The Chief Justice of India, the Chief Justices of the High Courts, Governors, and Chief Ministers were requested by the Ministry of Home Affairs to provide. Recommendations.⁵⁸ It is to be noted that the 111th, 128th, and 146th Parliamentary Standing Committees comprehensively recommended revisiting the Criminal Justice System of India. The Madhav Menon Committee in 2007 and the Malimath Committee in 2003 suggested reforming the criminal justice system. The Malimath Committee remarked that the existing system “*weighed in favour of the accused and did not adequately focus on Justice to the victims of Crime*”.⁵⁹ In this regard, the Criminal Law Amendment Act 2013, 2018, and the Criminal Law Reform Committee 2020 have made the most recent attempts.⁶⁰

5.1. The Reasons that Necessitated the Taking of Timely Initiatives.

Indian Prison Statistics, 2015, reported that 67.2% of the under-trial prisoners contributed to the total prison population.⁶¹ According to the Economic Survey of India, about 3.57 Crore Cases are pending in district and subordinate Courts. 64% of cases are pending for more than 1 Year. In case of civil and criminal cases, Gujarat, Odisha, West Bengal, Bihar, and Uttar Pradesh constituted the higher pendency in comparison to the national average. In 2018, the district and subordinate courts disposed of the civil and criminal cases, taking 4.4 times, the time compared to the average of Council of Europe Members in 2016. In 2017, the disposal rate of the cases rose to 90.5% from 86.1% in 2015. But in 2018, it declined to 88.7%. 94.761. and 87.41% were case clearance rate (CCR) for Civil and criminal cases respectively in 2018, whereas in 2016, Council of Europe (CoE) Members had already achieved

55 *ibid* 86.

56 *ibid* 89.

57 *ibid* 92.

58 The Hindu, ‘Government Starts Process to Amend IPC, CrPC’ (The Hindu, 24 March 2022) <<https://www.thehindu.com/news/national/government-starts-process-to-amend-ipc-crpc/article65252845.ece>> accessed 19 June 2026.

59 Drishti IAS, ‘Reforming Criminal Laws’ (Drishti IAS, 26 March 2022) <<https://www.drishtiias.com/daily-updates/daily-news-analysis/reforming-criminal-laws>> accessed 19 June 2026.

60 Prashanti Upadhyay, ‘Transforming the System: Criminal Law Reforms in Contemporary Times’ (Legal Service India) <<https://www.legalserviceindia.com/legal/article-10473-transforming-the-system-criminal-law-reforms-in-contemporary-times.html>> accessed 19 June 2026.

61 *ibid*.

CCR above 100%. Gujarat and Chhattisgarh obtained CCR above 100% in 2018.

Indian Economy Survey, 2018-19, prescribed some recommendations for making Indian courts more productive-

- i. Increasing the number of working days:
- ii. Establishment of Indian Courts and Tribunal Services:
- iii. Deployment of technology
- iv. National Judicial Data Grid.⁶²

5.2. What Is New in India's Criminal Justice System?

The Bharatiya Janata Party (BJP) Government overdid the colonial terms “Code” and “Act” by replacing some Sanskrit terms. Thus, the Indian Penal Code, 1860; the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 have been repealed by “Bharatiya Nyaya Sanhita”, “Bharatiya Nagarik Suraksha Sanhita”, and “Bharatiya Sakshya Adhiniyam” respectively.

The striking features of *Bharatiya Nyaya Sanhita* (Indian Justice Code) (BNS):

- i. Only 358 provisions, while Indian Penal Code, 1860 (IPC) consists of more than 500
- ii. Removal of the offence of sedition.
- iii. A dedicated chapter “Offences Against Women and Children”
- iv. Section 63 criminalizes rape against woman (not gender neutral).
- v. Section 72 criminalizes the divulgence of the victim's identity.
- vi. Sections 75, 77, 78 criminalize sexual harassment, Voyeurism, Stalking, and criminal intimidation (including technology as a means) respectively.
- vii. Sections 96, 98, and 99 encompass the offences concerning child procurement and prostitution.
- viii. Section 111 comprises a widening definition of organized crimes and meanwhile, while section 112 of petty organized crimes.
- ix. The other provisions, Section 113 (terrorism), Section 143-141 (offences of trafficking)

⁶² Drishti IAS, ‘Gist of Economic Survey 2018-19’ (Drishti IAS, 3 September 2019) <<https://www.drishtias.com/gist-of-economic-survey/gist-of-economic-survey-2018-19/gist-of-economic-survey2018-19>> accessed 19 June 2026.

The Striking features of *Bharatiya Nagarik Suraksha Sanhita* (Indian Citizen Security Code) (BNSS):

- x. Section 20, Directorate of Prosecution for every state government
- xi. Sections 14,15 confer the power of an executive magistrate to the police commissioner or the police superintendent
- xii. Section 35, police's power to arrest without a warrant
- xiii. Section 187, detention for remand up to 90 days for the heinous offence
- xiv. Section-193, obligation of report submission by Magistrate within 2 Months
- xv. Section 2 (1) (a) and (i)- definitions of "audio-video electronic" and electronic Communication"
- xvi. Section 63, Summons through digitally encrypted electronic communication.
- xvii. Section 105, Search of a place through audio-video electronic means.
- xviii. Sections 118-121, Strengthening the forfeiture law regarding property and proceeds of crimes
- xix. Section 398- Obligation of medical officers to treat victims free of cost.
- xx. Section 172- Mercy petition in death Sentences.
- xxi. The other provisions section.168-172 (preventive power of the police) section 38 right to appoint a plea bargaining.

The Striking features of *Bharatiya Sakshya Adhiniyam* (Indian Evidence Act) (BSA):

- xxii. BSA expanded the terms "document" and "evidence" to include digital documents, electronic evidence records, and statements.
- xxiii. Inclusion of both oral and written submissions of secondary evidence, with the evidence of an expert.
- xxiv. Section-39, defines the term expert coupled with peculiarities.
- xxv. Section-63, prescribes the process of submitting electronic evidence, chain of custody, and the type of algorithm.⁶³

⁶³ Prashanti Upadhyay, 'Transforming the System: Criminal Law Reforms in Contemporary Times' (Legal Service India) <<https://www.legalserviceindia.com/legal/article-10473-transforming-the-system-criminal-law-reforms-in-contemporary-times.html>>

5.3 Old vs New: A pathway for Bangladesh

Minutely speaking, old criminal laws provided punitive and retributive justice, whereas the new one is supposed to serve restorative justice, focused on rehabilitation and victim-centric. The old were featured with stereotypical rules for testimonies and witnesses, and relied upon circumstantial evidence. Electronic evidence was lacking in admissibility. In turn, the new endorsed digital evidence and records for investigations. The instinctive characteristics of the old criminal system were tiring, inconvenient, and time-consuming procedures, owing to the people facing delays and cases getting piled up in the court. Conversely, the new system aimed to facilitate the trial process by setting a time limit and leveraging technology to extend proficiency.⁶⁴ However, experts remarked that the new bills enshrined more than 80 percent of the IPC, and they kept resembling provisions only with a new title. They suggested that India could slightly reform the existing laws in place of facing administrative challenges of repealing and enforcing laws. **Analyst Naved Mahmood Ahmed** said, ‘The bills should have also revised the offenses related to religion and blasphemy. These crimes are still largely obscure. Several proposals still seem very vague. According to **Professor Surendranath**, ‘There are many institutional challenges in this new bill. For example, according to the bills, forensic investigation is mandatory for every crime. But the existing forensic system of India is not ready to encounter this, and everybody is convinced of its likelihood.⁶⁵ Bangladesh faces comparable problems and therefore may draw limited lessons from India’s reform process. But it seems Bangladesh has not yet undertaken comparable reform with sufficient urgency. Though the Evidence Act (Amendment), 2022 has brought some changes, we retained the integral colonial Criminal Justice System. As David Skuy says:

“The Indian Penal Code did not represent Britain’s attempt to modernize India’s primitive criminal justice system, but rather reflected Britain’s attempt to modernize its *own* primitive criminal justice system.”⁶⁶

The legal system of Bangladesh was a legacy of the British colonial rule, and the legacy continues to present severe barriers to fair justice in the modern times.⁶⁷ When the interim government of the country comes into power following the 2024 elections, it will get an unparalleled op-

⁶⁴ Drishti IAS, ‘Reforming Criminal Laws’ (Drishti IAS, 26 March 2022) <<https://www.drishtias.com/daily-updates/daily-news-analysis/reforming-criminal-laws>> accessed 8 June 2026.

⁶⁵ BBC News, ‘New IPC, CrPC bill: Is India’s planned criminal law reform a game-changer?’ (BBC News, 16 August 2023) <<https://www.bbc.com/news/world-asia-india-66495428>> accessed 8 June 2026.

⁶⁶ David Skuy, ‘Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India’s Legal System in the Nineteenth Century’ (1998) 32 *Modern Asian Studies* 513, 557.

⁶⁷ Pippa Norris, ‘The Politics of Electoral Reform in Britain’ (1995) 16 *International Political Science Review* 65 <<https://doi.org/10.1177/019251219501600105>> accessed 19 June 2026.

portunity to deal with these challenges. The next proposal lays out a framework, inclusiveness, efficiency, and alignment to local values, of a reform agenda that can be developed over the transition period.

Instituting a Legal Reform Commission

An adequately manned Legal Reform Commission would be the backbone of the reform program. It would consist of parliamentarians, lawyers, sociologists and civil-society activists, and would be able to carry out an in-depth audit of colonial laws like the Penal Code (1860) and the Civil Procedure Code (1908). The commission might also suggest new language or outright repeals that would enhance local equity by building on innovative models such as the 1996 Constitution of South Africa, which included the principle of inclusivity following apartheid, and the integration of Islamic law in Malaysia. Strong public consultations and stakeholder workshops would ensure that the views of the whole society inform the final recommendations and develop a legal culture that appeals to the Bangladesh values.

Specific Committees on Selective Reforms

The larger commission may assign duties to a number of expert committees to address discrete issues.

Gender Justice Committee: This committee can redesign provisions that discriminate against the survivors of gender-based violence. The re-definition of Section 375 of the Penal Code, which is now limited in scope and does not mention marital rape except with wives under 13, into a gender-neutral definition of any non-consensual sexual act would be in line with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Similarly, gender equity would be enhanced by amending Section 497 (adultery) to treat men, transgender persons, and other genders equally and dispel the notion of a woman as property.

Judicial Efficiency Committee: There is a backlog of over 250,000 cases that congest the courts and thus the right to a speedy trial. The committee may suggest such measures as employing and training more judges, introducing AI-based case-management software, and increasing Alternative Dispute Resolution (ADR) including mediation. The BNSS of India requires that cases be disposed of within 90 to 180 days with a penalty on delays; a similar time frame with visibility of the same could significantly increase efficiency.

Victim Support Committee: A victim-support system might also help to make more survivors report crimes despite inadequate witness protection. Out-of-pocket expenses could be offset with

a national victim-compensation fund funded by fines and penalties. Greater witness protection (safe housing and identity concealment) would provide safer environments to testify. Making trial courts compulsorily order compensation under Section 545 of the Criminal Procedure Code would add even more support, and a wider range of services, including legal assistance, counseling, and medical treatment, would complete the package.

Investigation Improvement Committee: Inequality in investigation procedures exposes the system to deficiencies in procedures. The quality of investigations could be improved through standard operating procedures in evidence collection, state of the art forensic infrastructure and ongoing training. Independent oversight organizations would discourage malpractices such as coercive interrogations.

Legislative Modernization

These reforms would be formalized by amending important statutes. Revision of the Evidence Act to support digital evidence and apply chain-of-custody principles may be based on the Indian Bharatiya Sakshya Adhiniyam (BSA). The administrative workload could be reduced by procedural reforms that increase online filing and issuing digital summons. A systematic repeal of outdated colonial provisions that favored executive control over judicial independence would further consolidate judicial authority, in favor of the efficiencies already proven by the fact that Bangladesh passed 66 Acts in 2023.

Engagement and Education

Open communication will be necessary in rebuilding the confidence of the people in the legal system. The campaign, social-media outreach, and community workshops on the rights and the process of reform could be used to inform citizens. The civil-society organizations would be able to check the progress and keep the authorities in check, and the community consultations could provide input to incorporate customary and religious aspects in the field of family law.

International Collaboration

The reform effort may be strengthened by outside assistance. The United Nations technical support, a potential UN Human Rights Council decision, and the experience of the decolonization initiative in Malaysia and South Africa may refine the Bangladesh strategy. Pilot projects in chosen districts, e.g., AI-based case management, gender-based violence specialized courts, or increased victim support centers, would provide feedback and improve the reforms, particularly with the help of such models as the Indian one.

Institutional Oversight

Increasing the independence and funding of the National Human Rights Commission (NHRC) would enhance accountability and instill confidence in the government, which is presently graded as a mere B by Amnesty International. The challenges of political instability, scarcity of resources and resistance by legal professionals will have to be overcome by safe funding, long-term sustainability and quick victories such as the success of pilot projects.

The process of reforming the legal system in Bangladesh will have to be multifaceted: a Legal Reform Commission to decolonize the statute book, specialized committees to address gender bias, judicial inefficiency, and victim protection, modernization of the legislative process, effective public participation, international collaboration, pilot projects, and effective institutional oversight. When done properly, this framework will provide a clear roadmap to the modernization and transformation of the colonial legal system in Bangladesh into an inclusive institution that provides justice and equity to all.

6. Conclusion

We have retained those laws, which were issued to suppress us, without any modification. Although these statutes originated under colonial rule, their continued operation in Bangladesh now reflects domestic legislative choices. Reform therefore requires not only decolonization of inherited laws but also sustained institutional commitment. The European powers launched a civilizing mission in Africa and elsewhere, and colonial laws were a part thereof.⁶⁸ “The civilizing process was a shame, for the British counterparts declined to treat the Indian codes as equal to the common law as practiced in England, the IPC 1860 was dismissed by many English lawyers’ suitable only for backward overseas colonies for magistrates with limited capabilities and objected to use those laws for themselves”.⁶⁹

We are claiming ourselves to be modern, and though practicing and absorbing new practices, cultures, beliefs, thoughts, dealing with our new and novel complications in a quite antique way and by ancient rules. If we estimate our profit, we will see that we discarded our classical, religious, and morality-based legal system and duty-based society in exchange for a centralized colonial legal system designed primarily for administrative control. Then our legal system was responsive to human needs, and now unfriendly, rigorous, and deceitful. We haven’t freed ourselves from the British colonial mentality, and therefore, imposing British culture in the camouflage of legislation resulted in continu-

68 David Skuy (n 68).

69 Pippa Norris (n 68).

ing legal and institutional tension.