

**LAW, LEGAL CONSCIOUSNESS, AND THE POSTCOLONIAL STATE: REFORMING
BRITISH SECURITY, PENAL, AND PROCEDURAL FRAMEWORKS IN
BANGLADESH**

by

Nazia Rahman

Asst. Professor and Former Chairperson

Department of Law

State University of Bangladesh (SUB)

&

Mohammad Minhazur Rahman

Lecturer, Dept. of Law, State University of Bangladesh

Adjunct Lecturer, School of Law, Bangladesh Open University

Former Adjunct Lecturer, Department of Law and Justice, Jahangirnagar University

Abstract

Bangladesh's postcolonial legal landscape does not have organic living law, which the British colonial legal order systematically pushed aside, reducing public legal awareness. This research examines four interrelated structural areas—philosophy of law culture, repressive colonial security laws, antiquated Victorian criminal statutes, and litigation bottlenecks—using a dual approach: theory and legal sociology on the one hand, and black-letter doctrinal analysis on the other. This article argues that the historical legislation such as the Police Act 1861, Criminal Tribes Act 1871, Penal Code 1860, and the Civil Procedure Code 1908 were deliberately designed to give the executive power, control over the population, and subjugate society. As a result, today's citizens view state institutions as being foreign, intrusive, and coercive and feel high levels of alienation from state institutions, high levels of backlog, and high levels of substantive gender discrimination. The results show that these distortions are deeply embedded

in the text because of its postcolonial nature, and minor textual changes cannot correct them. Full decolonization will require an independent Legal Reform Commission, the incorporation of indigenous customs, harmonization of statutory provisions with international human rights standards, and the modernization of judicial administration to deliver constitutional justice.

Keywords: Living Law, Decolonization of Law, Postcolonial Legal Continuity, Legal Consciousness, and Substantive Gender Justice.

Introduction

After gaining independence in 1971, Bangladesh proposed enacting the Laws Continuance Enforcement Order to prevent an administrative vacuum. But it was an overall legal adaptation that institutionalized a massive body of legislation from British colonialism that was specifically directed towards imperial subjugation, administration, and police coercion.¹ The postcolonial legal system is not an expression of the moral sense, social habits, and organic legal sensibility of the sovereign population; rather, it continues Victorian moralism, executive tyranny, and extreme deference to procedure. As a result, statutory definitions in the Penal Code 1860 perpetuate gender discrimination, security-related laws curtail civil freedoms, and the Civil Procedure Code 1908 makes for too many litigations to be cleared in a timely fashion.² This research aims to critically examine these statutory distortions to show how formal law continues to suppress the prevailing living law among indigenous people. Finally, it provides concrete institutional pathways to move toward decolonizing Bangladesh's legal system and align law and legal culture in the modern postcolonial judicial system with democratic human rights principles, constitutional protections, and a true legal culture of the people.

Research Methodology

This research uses a qualitative, interdisciplinary approach, combining a legal sociology approach with a black-letter legal approach. Theoretically, it reflects the use of legal culture and legal consciousness concepts to consider living law displacement.³ It is doctrinally rigorous and

¹ SN Balagangadhara, *Reconceptualizing India Studies* (New Delhi Oxford University Press 2012).

² Punsara Amarasinghe, *Ghosts of the Empire. A Retrospection of the Colonial Legacy of Legal Systems in South Asia and Its Competence to Bring Justice* (GRIN Publishing 2017).

³ Dr Sanjay J Ambekar, *A Socio-Legal Research & Citation Methods* (EDUCATIONAL PUBLISHERS & DISTRIBUTORS 2020).

has done a statutory textual analysis of colonial legislation such as the Police Act, Criminal Tribes Act, Penal Code, and Civil Procedure Code, assessing postcolonial continuity.

Problem Statement

In postcolonial Bangladesh, a significant disconnect exists between the formal law of the state and the living law of society, due to the uncritical continuation of British colonial laws.⁴ This continuity results in a rehashing of executive overreach, statutory discrimination against women, and civil litigation paralysis, which ultimately hinders constitutional access to justice.

Research Objectives

1. To discuss the transformation of indigenous 'living' law into British colonial law, its result—the alienation of public consciousness of law—and critical engagement with such law in postcolonial Bangladesh.
2. To measure the shortcomings, gender prejudices, and executive overreach in the history of colonial security laws (Police Act 1861, Rowlatt Act 1919), the Penal Code 1860 (Sections 375 and 497), and the Civil Procedure Code 1908.
3. To develop an action plan and comparative policy approach for the legal system decolonization via an independent Legal Reform Commission, statutory modernization, and administrative digitalization in the country.

Jurisprudence and Sociology of Law: Legal Consciousness and the Displacement of "Living Law"

One of the basic problems of legal theory is the relationship between formal law as promulgated by the state and the spontaneous normative organization of human society. The legal positivist view of law is that it is a system of certain rules imposed by the state, while the sociological jurisprudence view contends that law is a moving social institution that will need to respond to the lived experiences, moral beliefs, and social consciousness of the society.⁵ This sociological harmony was completely upset, in the Indian subcontinent, and in particular in postcolonial Bangladesh, by the introduction of British imperial legislation. History's "living law" was replaced by colonial laws and the wholesale replacement of classical indigenous jurisprudence

⁴ Antony Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities" (2006) 27 Third World Quarterly 739 <<https://doi.org/10.1080/01436590600780011>> accessed September 30, 2026.

⁵ Lauren Benton, *Law and Colonial Cultures* (Cambridge University Press 2002).

with colonial statutes resulted in a centralised administration designed for executive control, and for imperial subjugation rather than for social justice.⁶ This has therefore led to a deep disconnection between the laws enacted by the state and the legal consciousness of citizens, whereby citizens come to observe the formal state law as something foreign, and oppressive, and not a result of their shared moral values.

Theoretical Discussion on Legal Consciousness and "Living Law"

The sociological theories of legal culture and legal consciousness must be studied in order to analyze this jurisprudential break. For *Lawrence Friedman* legal culture consists of 'those parts of general culture, customs, opinions, ways of doing and thinking that bend social forces towards or away from the law'.⁷ While *Susan Silbey* conceives of legal culture as a micro-level "type of social practice" that tracks the subjective experience, interpretation, and use of law by individual actors.⁸ These are "the habits of action, speech and common sense understandings" by which people imagine the "normal" ways of "doing" their social world, explains *Sally Engle Merry*.⁹ Legal consciousness consists of three essential components: legal literature, collective emotions and attitudes toward authority, and the spontaneous promptness for lawful behaviour. The sociologically healthy legal environment produces "living law", unwritten but still binding social norms, customs and ethical commitments that are followed by the people.¹⁰ On the other hand, state run legal systems produce formal laws. When a state's formal legal order aligns with the prevailing legal culture, public compliance occurs naturally through shared moral legitimacy. When external rules and regulations are imposed by the state, and the cognitive framework and historical context of a people are in conflict, however, a gap opens up between the "rules of law" and "practices of law," and spontaneous lawfulness becomes endangered and democracy's culture undermined.

⁶ Tatiana de AFR Cardoso Squeff and Gabriel Pedro Dassoler Damasceno, "Decolonizing International Law: Between Demystifications and Resignifications" (2024) 16 *Revista Brasileira de História & Ciências Sociais* 182 <<https://doi.org/10.14295/rbhcs.v16i32.16555>>.

⁷ Dorval Brunelle, "Lawrence M. Friedman Et Rogelio Pérez-Perdomo (Eds.), *Legal Culture in the Age of Globalization. Latin America and Latin Europe*, Stanford, California, Stanford University Press, 2003, 528 Pages." (2004) 19 *Canadian journal of law and society* 176 <<https://doi.org/10.1017/s0829320100008206>>.

⁸ Susan S Silbey, "Studying Legal Consciousness: Building Institutional Theory From Micro Data" (2018) No 100 *Droit et société* 733 <<https://doi.org/10.3917/e.drs1.100.0733>>.

⁹ Sally Engle Merry, "From Law and Colonialism to Law and Globalization" (2003) 28 *Law and Social Inquiry* 569 <<https://doi.org/10.1086/378832>>.

¹⁰ Uday Chandra, "Liberalism and Its Other: The Politics of Primitivism in Colonial and Postcolonial Indian Law" (2013) 47 *Law & Society Review* 135 <<https://doi.org/10.1111/lasr.12004>>.

Colonial Hegemony and Systematic Erasure of Indigenous Norms

Before the advent of British imperialism, the Indian subcontinent had developed a diverse, morality-based and duty-driven legal system evolved through Hindu and Muslim regimes. Those pre-colonial classical systems were organic and responsive to community needs and were decentralised systems of social harmony.¹¹ From the late 18th century onwards, European colonial officials purposefully marginalized and ousted these classical sources, favouring the use of standardized statutes issued by imperial institutions. This codification was not a good thing for the modernisation of indigenous systems. As historian *Jon E. Wilson* observes, legal codification in Bengal was a "by-product of practical processes of British administration rather than utilitarianism".¹² Colonial statutes were used by European legal actors and imperial officials as tools to psychologically control the population of the colonies, thus reinforcing European domination and indoctrinating a subservient "colonial consciousness". This imperial mentality indoctrinated natives to believe that Western legal forms are superior and at the same time claimed that there is no native moral and legal system.¹³ Paradoxically, British jurists themselves held a derogatory view of these codified statutes; English lawyers routinely dismissed codes such as the Indian Penal Code 1860 as crude instruments suitable only for "backward overseas colonies" and magistrates with limited legal capability, refusing to adopt such rigid enactments within England's own common law system.¹⁴ Therefore, under imperial rule, there was a system of law which favoured the supremacy of the state over the rights of the natives.

Postcolonial Continuity and the Alienation of Public Legal Consciousness in Bangladesh

Bangladesh's independence in 1971 was accompanied by an immediate administrative problem – how to hold the law and order. The new republic inherited almost all the colonial statutory laws and took them over as per the theory of legal continuity under The Laws Continuance Enforcement Order, 1971 and the Bangladesh (Adaptation of Existing Laws) Order, 1972. This wholesale importation though did not leave the vacuum in administration, but created a legal setup which was originally conceived for the purpose of imperial subjugation and not rights

¹¹ Uday Chandra, "Liberalism and Its Other: The Politics of Primitivism in Colonial and Postcolonial Indian Law" (2013) 47 *Law & Society Review* 135 <<https://doi.org/10.1111/lasr.12004>>.

¹² Jon E Wilson, *India Conquered : Britain's Raj and the Chaos of Empire* (Simon & Schuster Uk Ltd 2016).

¹³ MAnwar Hossen, "Decolonizing Sociology for Social Justice in Bangladesh: Delta Scholarship Matters" (2022) 49 *Critical Sociology* 545 <<https://doi.org/10.1177/08969205221085687>>.

¹⁴ B Bhansali, *Legal System of India* (University Book House, India 2005).

based governance.¹⁵ The persistent "blind imitation" of colonial legislative drafting styles in postcolonial Bangladesh has perpetuated executive control at the expense of constitutional commitments to equality, due process, and human rights. Sociologically, this continuity reinforces an alienated public legal consciousness. The inherited statutes, including antiquated penal regulations and legal procedure, have not brought about positive changes in public behaviour, since they were written without consideration of local customs or values. Citizens often see the formal justice system as tight, dishonest and unfriendly – a tool of the executive authorities to control them, not to provide a safe space for justice.¹⁶ The result is that many people do not enter the formal legal processes and thus exacerbate the disparity between state law and social practices.

Reclaiming "Living Law": Pathways toward a Decolonized Jurisprudence

Bangladesh, to overcome the gap between state rules and social reality, needs to decolonise itself structurally in the legal order. Decolonization in this context involves more than just making textual changes to the law; it also means re-aligning the law with the legal consciousness, constitutional values and cultural realities of local communities.¹⁷ As evidenced in the experiences of regionally adopted legal reform models in Nepal, Malaysia and South Africa, re-legitimizing the law needs to integrate customary norms, community consultation and restorative justice principles in the statutory system. An independent Legal Reform Commission, with specialized committees, can be useful for a comprehensive examination of colonial laws. Bangladesh should use participatory public consultation and consider local socio-cultural realities to redefine its inherited imperial legal framework into a 'locally sensitive' legal order.¹⁸ To establish an inclusive, accessible and legitimate rule of law it is crucial to align formal jurisprudence with authentic "living law" of the community.

¹⁵ Bhatia, H.S, *Origin and Development of Legal and Political Systems in India* (Deep & Deep Publications 2002).

¹⁶ Conrad Black, *A Matter of Principle* (Perseus Books 2013).

¹⁷ Faijul Islam, "Legal Pluralism in South Asia: The Sustainable Role of Customary Law in Modern Legal Systems" (2025) 2 Journal of Legal Research and Polity 67 <<https://doi.org/10.64322/jlrp.2025.2206>>.

¹⁸ Marcus B Mallett and Jerome Hall, "Living Law of Democratic Society" (1950) 36 Virginia Law Review 987 <<https://doi.org/10.2307/1069730>>.

Historical State Coercion & Civil Liberties: Colonial Security Statutes as Instruments of Imperial Control

The urge to preserve the empire and force people to comply with executive authority was the primary determinant of the colonial legislation the British adopted in the Indian subcontinent. The British colonial rule took the attitude of a permanent state of emergency after the Indian rebellion of 1857, which was pejoratively called the "fanatic savages" revolt with "insane and bloodthirsty fanaticism" by British imperial officials.¹⁹ The empire-state did not establish a legal framework based on protecting individual rights, but rather a complex statutory regime designed to crush political opposition, curb public criticism, declare entire groups criminals and entrust unlimited power to the executive and police. The security laws introduced a framework of 'privileges' and limited civil liberties and rights that the State could restrict or withdraw at near-unlimited discretion.²⁰ These statutory systems continue to be unquestioningly maintained in the postcolonial State of Bangladesh and constantly haunt present constitutional guarantees of personal liberty and democratic expression.

Censorship on freedom of the press and other media

Colonial repression focused heavily on strangling independent political commentary and journalism through the legal system. Firstly, an early antecedent of statutory press censorship was the Press Ordinance of 1823, issued by John Adam. The ordinance was dubbed the 'Areopagitica of Indian History' and provided the legislative basis for the State to regulate public opinion. It directly led to the enactment of the Vernacular Press Act of 1878.²¹ The Act rested on two principles of institutionalized inequality: strict state subjugation and licensing requirements for "native-language" newspapers, and the granting of statutory privileges to English-language newspapers. Importantly, the law said nothing about judicial tribunals where vernacular publishers could appeal, and they were left completely at the discretion of the executive. The history of colonial press control in India shows the real-life consequences of colonial press regulation: Hickey's Bengal Gazette, India's first newspaper, was shut down. It was a commercial and political newspaper that criticized imperial corruption, administrative bribery, abuse of

¹⁹ HV Bowen, Elizabeth Mancke and John G Reid, *Britain's Oceanic Empire* (Cambridge University Press 2012).

²⁰ Charles Clark, *A Summary of Colonial Law, the Practice of the Court of Appeals From the Plantations, and of the Laws and Their Administration in All the Colonies: Wi* (Sweet, A Maxwell 2017).

²¹ Sherally Munshi, "Comparative Law and Decolonizing Critique" (2018) 2 *Teoria Jurídica Contemporânea* 203 <<https://doi.org/10.21875/tjc.v2i2.12991>>.

power, and human rights violations and represented the local people—who were marginalized by the Europeans—by contrasting their situation with that of Europeans.²² The colonial government was extremely hostile to the publication within 10 months. The government attempted to defuse its impact by paying for a competing newspaper (The India Gazette), branding Hickey's authors as "Crooks" and "Arrogant," and even bringing it to trial after it wrote an article declaring that "the people are no longer bound to comply". The Supreme Court's response to the newspaper's publication—closing the printing press and imprisoning the founder—illustrated how colonial power challenged press freedom.

Criminalization of Marginalized Communities

Beyond controlling speech, colonial security policy also included the institutionalization of entire social groups and groups of people as criminals, according to their tribal affiliation. The Criminal Tribes Act (1871) was a remarkable example of statutory coercion that consisted of the literal incorporation of anthropogenic and racialized prejudices into the statute book. This Act marked the first time the colonial State identified more than 60 tribal communities as "culprits" and statutorily presumed them to be "addicted" to non-bailable offenses.²³ The law required compulsory registration of adult male tribal members with local police authorities, with stringent restrictions on their movements and bodily rights. The Act was a jurisprudential legislative measure that eschewed the usual evidentiary standard and granted absolute discretion to local officials and the British administration to decide whether a particular tribe had a criminal tendency to test the waters of the seabed. An executive order of an administrative officer provided "conclusive proof" of criminality, meaning there were no judicial scrutiny, no evidentiary standards, and no presumption of innocence.²⁴ The executive order of an administrative officer was the "conclusive proof" of criminality, with there being no judicial process, evidentiary standards, or presumption of innocence. In this way, the Criminal Tribes Act made the entire law system one of collective profiling and social exclusion.

²² Bernard Rudden, "Comparing the Priorities of Different Legal Systems" (1994) 3 Asia Pacific Law Review 143 <<https://doi.org/10.1080/18758444.1994.11788015>>.

²³ Arpeeta Shams, "Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights" [2024] International Journal of Legislative Drafting and Law Reform <<https://doi.org/10.61955/yzzqwe>>.

²⁴ Ronald M Dworkin, *A Matter of Principle* (Harvard University Press 1985) 181.

Statutory control over political activity and warrantless detention

The Rowlatt Act 1919 marked the height of statutory control over political activity. Although formally enacted to stop political propaganda deemed objectionable by the State, the Act was used to stop anti-government propagandising. It gave the executive power to arrest suspects without a warrant, conduct arbitrary house searches, and detain or exile any person indefinitely without a formal trial.²⁵ Additionally, the Act set up special judicial panels that could hold trials without juries or witnesses and prohibited convicted persons from taking cases to higher courts. The Rowlatt Act implied that all basic procedural guarantees were being abandoned in favour of arbitrary executive decisions, effectively amounting to a lack of due process. At the same time, the Police Act of 1861 maintained order at the grassroots level. The Police Act was drafted when the police were first introduced immediately after the 1857 uprising and emphasized feudal and hierarchical values to create a coercive imperial force rather than a public service unit.²⁶ During the nationalist campaign of the 1920s and 1930s, the police were mainly used to break up political meetings and demonstrations of civil disobedience. To maintain this control, the colonial State expanded the police force many times over (from around 215,000 in 1932 to 300,000 plus in 1943). By the late 1960s, the proportion of forces that were armed police units increased to 60% of all forces, from 45% in 1943.²⁷ Indeed, this culture of unchecked executive power was so pervasive that Winston Churchill famously said the "emergency powers" granted to the Governor-General under the Government of India Act 1935 were "likely to rouse Mussolini's envy".

Postcolonial Continuities and Modern Implications

Bangladesh came into being through the same statutory mechanism, which was adapted wholesale through legal adaptation orders. Therefore, the coercive DNA of colonial security statutes has continued to infect modern practices and procedures in criminal and administrative contexts. Suspicion-based arrest and unrestricted pre-trial detention, as under the Rowlatt Act, were echoed in modern provisions that give executive authorities sweeping powers to detain

²⁵ William Eves and others, *Common Law, Civil Law, and Colonial Law Essays in Comparative Legal History From the Twelfth to the Twentieth Centuries* (Cambridge University Press 2023).

²⁶ Lawrence M Friedman, *Legal Culture and the Legal Profession* (Routledge 2023).

²⁷ Haruki Inagaki, *The Rule of Law and Emergency in Colonial India* (Springer Nature 2021).

anyone suspected of being a "seditious" individual.²⁸ Additionally, modern forms of administration, such as summary executive mobile courts, often conflict with constitutional rights to a fair trial, an independent court, a presumption of innocence, a right to counsel, the right to confront witnesses, and the right to remain silent. Reclaiming civil liberties in Bangladesh must entail understanding that these statutory mechanisms were never envisaged as tools of democratic governance.²⁹ For any real reform of the law to take place, the old security laws must be revoked or systematically amended to make state security functions subject to the strictures and principles of constitutional human rights.

Substantive Penal Law and Gender Justice: Archaic Statutory Definitions in the Penal Code of 1860

Victorian Moralism and the Statutification of Gender Inequality

Bangladesh's substantive criminal law, based mainly on the Penal Code of 1860, reflects the moral and social values of 19th-century Victorian Britain, not modern notions of gender equality, human dignity, and constitutional rights.³⁰ The Penal Code was enacted by imperial order to establish administrative order and had integrated these patriarchal aspects directly into statutory definitions of the criminal offenses. On gender justice, central clauses on issues of sexual violence, fidelity in marriage, and autonomy in reproduction were framed within a worldview that did not allow women any legal agency and limited married women to the property sphere of their male partners and disaffirmed non-binary gender identities.³¹ Such colonial provisions continue to function in practice and give rise to enormous tensions with today's international human rights conventions, including the CEDAW. It reinforces the substantive discrimination against women that exists in the postcolonial State. Related concepts can be observed in Section 375 of the Penal Code, namely the concept of *phallocentrism*, that is, the prioritization of men, and of rigid gender binaries, that is, the rigid division of roles between men and women. The legislation relating to sexual offenses in Bangladesh is mainly aimed at Section 375 of the Penal

²⁸ Jan-Sylvestre Bergé and Geneviève Helleringer, *Operating Law in a Global Context Comparing, Combining and Prioritising* (Cheltenham, Uk Northampton, Ma Edward Elgar Publishing 2017) <<https://www.elgaronline.com/view/9781785367328/07>> accessed September 29, 2026.

²⁹ Md. Abdul Halim, *The Legal System of Bangladesh* (CCB Foundation 2009).

³⁰ Leila Neti, *Colonial Law in India and the Victorian Imagination* (Cambridge University Press 2021).

³¹ Ratna Kapur, "Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India" (2013) 14 Melbourne journal of international law 317.

Code 1860, which contains 5 conditions for the Act of Actual intercourse to be called rape.³² Section 375 has significant conceptual and structural problems that affect its safeguarding of gender justice. This statute has a narrow, anatomical definition of sexual assault, which in its explanation makes it clear that "penetration is sufficient to constitute the sexual intercourse necessary to the offense". The law ignores and does not punish other extreme forms of sexual violence and bodily violation, which do not involve penile penetration and are not consensual. Section 375 is gender specific and only considers rape to be committed by a man against a woman.³³ This definition assumes sexual violence is only committed against women, meaning that men, trans men, trans women, and third-gender people like members of the hijra community are not legally considered as victims of sexual violence and therefore not protected under the rape laws. The most obvious statutory omission in Section 375 is that it contains a statutory exception that expressly states that sexual intercourse by a man with his wife is not rape unless the wife is under the age of 13 years. In a legal sense, this exception represents a legal fiction that marriage is an irrevocable consent to sexual access for perpetuity.³⁴ The statute legitimizes non-consensual sexual activities within the marriage and takes away the constitutional rights of women to have bodily autonomy and to have personal integrity; it also undermines the sex workers and married victims of trafficking through a tacit style of "disrespect."

Same applications can be observed in the Indian Legal system too. It is not uncommon for Section 497 of the IPC to be invoked in cases where the woman is accused of adultery, especially when her husband is a rich man. One of the most blatantly patriarchal aspects of colonial criminal law was the statutory definition of adultery in terms of Section 497 of the Penal Code 1860.³⁵ Adultery is not a civil basis for marriage dissolution or a moral crime but rather is a crime under Section 497 that treats adultery as a violation of the female's right to be owned by a male. Section 497 treats the married woman as an unpunished abettor rather than a criminal perpetrator; however, she is not recognized as an independent legal agent. On the surface, it appears to be a system for women. Still, actually, it infantilizes women in law by diminishing women's dignity and moral decision-making ability in law according to their marital status. Section 497 is technically a crime involving an injury to the husband in respect of his right over

³² Richard A Posner, *The Problems of Jurisprudence* (Harvard University Press 1993).

³³ Sharafi M, *Law and Identity in Colonial South Asia* (Cambridge University Press 2014)

³⁴ Ahmed Siddiky, *The Rule of Law in Developing Countries* (Routledge 2018).

³⁵ Harbans Singh Bhatia, *Vedic and Aryan India Evolution of Political, Legal and Military Systems* (Deep & Deep Publications 2001).

his wife's property.³⁶ The legislation assumes husbands have legal control over their wives' bodies and chastity. Hence, any sexual intercourse with a widow, a woman who is unmarried, a prostitute, or a man or woman not legally wed to each other is not covered under Section 497 because there has been no violation of any other man's "property" right. The acts of adultery are not considered to be crimes under Section 497 if they are done with the consent/connivance of the woman's husband. According to the application of '*volenti non fit injuria* (to a willing person, no injury is done),' it is recognized that the main concern of the statute is with the exclusive possession of the husband.³⁷ Sexual consent is supposed to be licensed by the man in charge, and if the husband doesn't object, no legal harm is perceived, thus reinforcing the idea that the wife is a chattel, a property to be used, and that the man has the right to license its use.

Coercive Abettors and Section 312: Reproductive Control

The freedom of reproduction, along with bodily autonomy, is also curtailed by the existing legislation in Section 312 of the Penal Code 1860 that promotes criminalization of voluntary miscarriage. Any person who willingly causes a woman to miscarry, except one performed in "good faith" to save the woman's life, is penalized.³⁸ Any person who wilfully causes a woman to miscarry is penalized except if that is performed in "good faith" for the purpose of saving the woman's life. The woman herself is declared liable for a crime for causing her own miscarriage. Section 312 is a major defect because it does not account for gendered power dynamics and social coercion. No specific mention is made of third-party perpetrators, family members, or coercive individuals, who encourage, coerce, intimidate, or threaten women to have illegal abortions.³⁹ It blames the pregnant woman and the direct provider for primary criminal wrongdoing. It omits to consider systemic factors, such as social and structural pressures and the lack of reproductive health care options that contribute to such choices.

³⁶ Stephen N Wade, *Reading Legal Writing 101: The Essential Guide to Clearly and Accessibly Understanding the Fundamentals of Law Language and Navigating the Legal System With Confidence and Security* (Stephen N Wade 2024).

³⁷ Svati P Shah, "Sedition, Sexuality, Gender, and Gender Identity in South Asia" (2019) 20 South Asia Multidisciplinary Academic Journal <<https://doi.org/10.4000/samaj.5163>>.

³⁸ Moazzem Hossain, "Building Responsible Social Protection in South Asia" (2014) 34 South Asia Research 133 <<https://doi.org/10.1177/0262728014533851>>.

³⁹ Rebecca Holmes and others, "Addressing Gendered Risks and Vulnerabilities Through Social Protection: Examples of Good Practice From Bangladesh, Ethiopia, and Peru" (2011) 19 Gender & Development 255 <<https://doi.org/10.1080/13552074.2011.592637>>.

Child Protection and Suspicion in Court

The lack of clear and adequate colonial definitions is compounded by obstacles and delays at the administrative and evidentiary levels of the criminal justice system. Where custodial rape occurs—involving assault of women while in law enforcement custody—there are no legal provisions for stricter responsibility in the police force; the police have an absolute responsibility to protect. In addition, the statutory definitions of consent, fraud, and intimidation are not specifically defined, which creates evidentiary difficulties in prosecution and raises questions about survivor protection and the accused's due process rights.⁴⁰ One immediate remedy to these old-fashioned anomalies in its laws and statutes is for Bangladesh and India to pursue structural modernization of its legislation. A Gender Justice Committee must audit the Penal Code, under a national Legal Reform Commission, to align it with international human rights standards, such as CEDAW. Section 375 needs to be expanded and redefined in a gender-neutral (statutory) definition to incorporate all acts of non-consensual sexual penetration, safeguard victims across gender categories, and make marital rape an explicit offense. IPC's Section 497 should be repealed or transformed to remove proprietary notions of women, grant equal legal status to men and women, and remove state criminal sanctions for a woman's right to fidelity in private marriage.⁴¹ These statutory definitions, from 1860, need to be abolished to remove colonial patriarchies and adopt a gender-just approach to re-establish a constitutional, equality-based penal system.

Judicial Administration and Procedural Law: Civil Litigation Backlogs and the Civil Procedure Code of 1908

About the human right to a speedy trial in Indian Sub-continent, we need to examine the role of introduction in shaping access to justice and its procedural rigidity. Access to justice is a cornerstone of the rule of law and democracy. Substantive justice is what a legal order seeks to achieve; access to justice is how it is realized. Procedural access is the means to substantive justice.⁴² The classical saying 'justice delayed is justice denied' illustrates one of the most

⁴⁰ Abida Yasin and Sajid Ali, "Universal Right to a Safe and Healthy Environment and Use of Child Right Strategic Litigation in Climate Justice" (2023) 1 International Journal of Human Rights and Constitutional Studies <<https://doi.org/10.1504/ijhrcs.2023.10060645>>.

⁴¹ Saranya Sreekandan, "GENDER JUSTICE in INDIA: CHALLENGES and PERSPECTIVE" (2025) 7 International Journal For Multidisciplinary Research <<https://doi.org/10.36948/ijfmr.2025.v07i06.62577>>.

⁴² Md. Ala Uddin, "Backlog of Civil Suits: A Comparative Study of Bangladesh and India" (2026) 37 Dhaka University Law Journal 157 <<https://doi.org/10.3329/dulj.v37i1.92902>>.

important weaknesses of postcolonial judicial administration: the constant and recurring delays in resolving legal issues. I.e., in modern jurisprudence, prompt settlement of civil litigation is an emerging human right, and the colossal failure to see this right fulfilled in Bangladesh is severely constrained by legacy procedural frameworks. The backlog of pending cases in civil courts across the country is substantial, and few are settled each year.⁴³ These civil proceedings still rest on the colonial Code of Civil Procedure (CPC) of 1908. The CPC of 1908 was introduced during British imperial rule to manage civil administration, although it has undergone a few minor incremental amendments over time. However, these statutory changes have not eliminated the procedural hurdles; consequently, judicial momentum remains lacking.

Problems of the Structure of the Code of Civil Procedure

The main reason for the prolonged pendency of civil suits in Bangladesh can be traced directly to the Civil Procedure Code of 1908, which has a very rigid procedure. The statutory structure was designed in an era of a highly bureaucratic administration under the Imperial State. Thus, emphasis is put on strict adherence to the procedure rather than on the efficiency of the courts. The mechanism for executing judgments under the statute is overly complicated and is a major cause of delays in civil litigation.⁴⁴ Often, winning a civil decree in the trial court marks the start of a second, time-consuming, and often fruitless legal fight at the execution stage, when judgment debtors can find more technicalities to avoid complying with the decree. Civil procedure laws require slow and often abused evidence-gathering and interlocutory inquiry mechanisms. Pretrial discovery, local inspections, and commissioner reports are frequently not completed until many years after the preliminary steps of civil litigation have been taken; formal trial proceedings are often not even begun until several years into the litigation process.⁴⁵ Statutory provisions on similar matters may conflict or overlap, creating statutory ambiguity. In numerous cases, however, courts must invest substantial judicial effort in interpreting complex procedural collisions, which negatively affects case resolution at every level of court. While civil courts have management rules, judicial actors do not always follow the prescribed timeframes.

⁴³ Douglas Castro, “Decolonizing International Environmental Law: A Race-Conscious Interpretive Framework” (2025) 17 *Ukrainian Policymaker* <<https://doi.org/10.29202/up/17/2>>.

⁴⁴ Sandra Den Otter, “Rewriting the Utilitarian Market: Colonial Law and Custom in Mid-Nineteenth-Century British India” (2001) 6 *The European Legacy* 177 <<https://doi.org/10.1080/10848770120031369>>.

⁴⁵ Rina Verma Williams, *Postcolonial Politics and Personal Laws: Colonial Legal Legacies and the Indian State* (Oxford University Press 2006).

Inefficiencies, Infrastructure Deficiencies and Practices

Beyond the law, administrative shortcomings in the judiciary also contribute to civil litigation backlogs. Many of the tools and processes that underpin the organizational machinery of civil courts are outmoded and inefficient. Civil court registries lack the use of modern record-keeping technology, and consequently the cases are mismanaged, case files are lost, and the records are kept on physical paper.⁴⁶ Even with advances in technology, it remains underused in daily court operations. The civil justice sector is seriously underfunded in judges and court staff relative to the volume of litigation. In subordinate courts, a shortage of courtrooms, technology, and administration limits the ability to handle heavy dockets effectively. There have been allegations of corruption and irregular administrative practices at court offices, which are ongoing concerns for timely justice.⁴⁷ Delays often occur during the initial stages of filing suits, registering affidavits, obtaining certified copies, and processing case records. Institutional behaviors in the legal system also contribute to the civil court delays crisis. The dynamics and interplay of the legal practitioners, litigants, and witnesses keep the trial agendas in constant turmoil.⁴⁸ A major source of delays is the unprofessional conduct of some legal practitioners, who make adjournments for reasons not warranted to extract more monetary benefits for themselves. The litigation system, dominated by lawyers, encourages lengthy litigation rather than quick conflict resolution. There is a general lack of competent litigation attorneys with specialties in civil procedure and modern case-management methods. Witnesses frequently fail to appear in civil trials. Weak enforcement powers for witness summons, along with a lack of victim and witness protection provisions, also result in trials being adjourned repeatedly, leaving civil cases lingering for decades.⁴⁹ These factors have led to a huge backlog of more than 250,000 cases that clog the court system in Bangladesh. This is similar to the sub-continental patterns in which civil and criminal cases can be pending for several years, much longer than the cases could be disposed of if a case were to be tried in one of the more effective international jurisdictions.

⁴⁶ Subin Mulmi, “Colonial Borders and the Production of Statelessness in Myanmar, India, Bangladesh & Sri Lanka” (2026) 26 *Melbourne Asia Review* <<https://doi.org/10.37839/mar2652-550x26.6>>.

⁴⁷ Matthew K Lange, “British Colonial Legacies and Political Development” (2004) 32 *World Development* 905 <<https://doi.org/10.1016/j.worlddev.2003.12.001>> accessed September 30, 2026.

⁴⁸ Zehra Jafri, “One Sari, Three Different Ways to Drape It: Trademarks, Religion, Language, and Morality in Post-Colonial India, Pakistan, and Bangladesh” (2023) 40 *UCLA Pacific Basin Law Journal* <<https://doi.org/10.5070/p840162771>>.

⁴⁹ Bobby Hajjaj, “Nationalism and National Identity Formation in Bangladesh: A Colonial Legacy Behind the Clash of Language and Religion” (2020) 7 *Asian Journal of Comparative Politics* 205789112093814 <<https://doi.org/10.1177/2057891120938145>>.

Strategic pathways for modernizing civil judicial administration

To remove the colonial restrictions from CPC 1908 and guarantee the right to a speedy trial, Bangladesh needs a thorough reform of the civil justice system. The Law Reform Commission should require a special committee—the Judicial Efficiency Committee—to conduct a comprehensive audit of the Civil Procedure Code of 1908.⁵⁰ Civil procedure should mandate Alternative Dispute Resolution (ADR) procedures and drives, especially mediation and conciliation, before the main trial, to shift minor property disputes and commercial matters off court dockets and reduce the load on the court system. Courts need AI-driven case management (CM) systems, digital dockets, online filing systems, and electronic delivery of summons to prevent delays caused by paper-based administration and corruption in court offices. Like some models of procedural reform in regions, which require cases to be disposed of within 90 to 180 days, civil procedure should establish statutory limits on cases to be disposed of and create strict accountability and visibility for the administration of the process in the event of unwarranted delay.⁵¹ The State needs to invest in expanding judicial appointments, develop permanent prosecution and court-management mechanisms, and build judicial officers' capacity to implement strict court control of proceedings. It is crucial to reform the 1908 Civil Procedure Code, which is a relic of colonial administration, and make it more streamlined, digitized, and readily available so that timely justice can be ensured and citizens' constitutional rights protected.

Conclusion

An alternative approach to reforming Bangladesh's legal system would be structural decolonization of the legal architecture, rather than the usual focus on a series of legislative amendments. Colonial security laws, outdated crime definitions, and strict procedural rules continue to be in effect, leading to administrative coercive measures, gender-based inequality, and a prolonged systemic failure of the justice system. This historical institutional outlook distances citizens from the formal justice system and undermines constitutional protections for

⁵⁰ MdAbdul Mannan Bhuyean, "Civil Proceedings Under Legal System in Bangladesh: An Explanatory Appraisal" (2025) 5 International Journal of Civil Law and Legal Research 49 <<https://doi.org/10.22271/civillaw.2025.v5.i1a.120>>.

⁵¹ Abdul Awal, "Standard and Non-Standard English in Bangladesh: A Sociolinguistic Exploration of Linguistic Identity, Post-Colonial Legacy, and the Quest for Global Englishes" (2023) 2 Creative Saplings 1 <<https://doi.org/10.56062/gtrs.2023.2.05.358>> accessed September 30, 2026.

human rights and due process. The state must establish an autonomous Law Reform Commission to bridge the disparity between formal state regulations and the practical application of law. Specialized committees on gender justice, civil procedural efficiency and civil liberties will help conduct a comprehensive statutory audit. Additionally, incorporating community engagement, gender-inclusive sexual violence laws, alternative justice options, and 21st-century case management will ensure that these laws are alive and effective instead of antiquated and irresponsible. To create a legitimate, equal, and accessible constitutional rule of law in Bangladesh, it is necessary to reconcile the rule of law in the statutes with the people's sense of justice.

Bibliography

Amarasinghe P, *Ghosts of the Empire. A Retrospection of the Colonial Legacy of Legal Systems in South Asia and Its Competence to Bring Justice* (GRIN Publishing 2017)

Ambekar DSJ, *A Socio-Legal Research & Citation Methods* (EDUCATIONAL PUBLISHERS & DISTRIBUTORS 2020)

Anghie A, “The Evolution of International Law: Colonial and Postcolonial Realities” (2006) 27 Third World Quarterly 739 <<https://doi.org/10.1080/01436590600780011>> accessed September 30, 2026

Awal A, “Standard and Non-Standard English in Bangladesh: A Sociolinguistic Exploration of Linguistic Identity, Post-Colonial Legacy, and the Quest for Global Englishes” (2023) 2 Creative Saplings 1 <<https://doi.org/10.56062/gtrs.2023.2.05.358>> accessed September 30, 2026

Balagangadhara SN, *Reconceptualizing India Studies* (New Delhi Oxford University Press 2012)

Benton L, *Law and Colonial Cultures* (Cambridge University Press 2002)

Bhansali B, *Legal System of India* (University Book House, India 2005)

Bhatia, H.S, *Origin and Development of Legal and Political Systems in India* (Deep & Deep Publications 2002)

Bhuyean MdAM, “Civil Proceedings Under Legal System in Bangladesh: An Explanatory Appraisal” (2025) 5 International Journal of Civil Law and Legal Research 49 <<https://doi.org/10.22271/civillaw.2025.v5.i1a.120>>

Black C, *A Matter of Principle* (Perseus Books 2013)

- Bowen HV, Mancke E and Reid JG, *Britain's Oceanic Empire* (Cambridge University Press 2012)
- Brunelle D, “Lawrence M. Friedman Et Rogelio Pérez-Perdomo (Eds.), *Legal Culture in the Age of Globalization. Latin America and Latin Europe*, Stanford, California, Stanford University Press, 2003, 528 Pages.” (2004) 19 *Canadian journal of law and society* 176 <<https://doi.org/10.1017/s0829320100008206>>
- Cardoso Squeff T de AFR and Dassoler Damasceno GP, “Decolonizing International Law: Between Demystifications and Resignifications” (2024) 16 *Revista Brasileira de História & Ciências Sociais* 182 <<https://doi.org/10.14295/rbhcs.v16i32.16555>>
- Castro D, “Decolonizing International Environmental Law: A Race-Conscious Interpretive Framework” (2025) 17 *Ukrainian Policymaker* <<https://doi.org/10.29202/up/17/2>>
- Chandra U, “Liberalism and Its Other: The Politics of Primitivism in Colonial and Postcolonial Indian Law” (2013) 47 *Law & Society Review* 135 <<https://doi.org/10.1111/lasr.12004>>
- Clark C, *A Summary of Colonial Law, the Practice of the Court of Appeals From the Plantations, and of the Laws and Their Administration in All the Colonies: Wi* (Sweet, A Maxwell 2017)
- Dworkin RM, *A Matter of Principle* (Harvard University Press 1985) 181
- Engle Merry S, “From Law and Colonialism to Law and Globalization” (2003) 28 *Law and Social Inquiry* 569 <<https://doi.org/10.1086/378832>>
- Eves W and others, *Common Law, Civil Law, and Colonial Law Essays in Comparative Legal History From the Twelfth to the Twentieth Centuries* (Cambridge University Press 2023)
- Friedman LM, *Legal Culture and the Legal Profession* (Routledge 2023)
- Hajjaj B, “Nationalism and National Identity Formation in Bangladesh: A Colonial Legacy Behind the Clash of Language and Religion” (2020) 7 *Asian Journal of Comparative Politics* 205789112093814 <<https://doi.org/10.1177/2057891120938145>>
- Holmes R and others, “Addressing Gendered Risks and Vulnerabilities Through Social Protection: Examples of Good Practice From Bangladesh, Ethiopia, and Peru” (2011) 19 *Gender & Development* 255 <<https://doi.org/10.1080/13552074.2011.592637>>
- Hossain M, “Building Responsible Social Protection in South Asia” (2014) 34 *South Asia Research* 133 <<https://doi.org/10.1177/0262728014533851>>

- Hossen MA, “Decolonizing Sociology for Social Justice in Bangladesh: Delta Scholarship Matters” (2022) 49 *Critical Sociology* 545 <<https://doi.org/10.1177/08969205221085687>>
- Inagaki H, *The Rule of Law and Emergency in Colonial India* (Springer Nature 2021)
- Islam F, “Legal Pluralism in South Asia: The Sustainable Role of Customary Law in Modern Legal Systems” (2025) 2 *Journal of Legal Research and Polity* 67 <<https://doi.org/10.64322/jlrp.2025.2206>>
- Jafri Z, “One Sari, Three Different Ways to Drape It: Trademarks, Religion, Language, and Morality in Post-Colonial India, Pakistan, and Bangladesh” (2023) 40 *UCLA Pacific Basin Law Journal* <<https://doi.org/10.5070/p840162771>>
- Jan-Sylvestre Bergé and Geneviève Helleringer, *Operating Law in a Global Context Comparing, Combining and Prioritising* (Cheltenham, Uk Northampton, Ma Edward Elgar Publishing 2017) <<https://www.elgaronline.com/view/9781785367328/07>> accessed September 29, 2026
- Kapur R, “Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India” (2013) 14 *Melbourne journal of international law* 317
- Lange MK, “British Colonial Legacies and Political Development” (2004) 32 *World Development* 905 <<https://doi.org/10.1016/j.worlddev.2003.12.001>> accessed September 30, 2026
- Mallett MB and Hall J, “Living Law of Democratic Society” (1950) 36 *Virginia Law Review* 987 <<https://doi.org/10.2307/1069730>>
- Md. Abdul Halim, *The Legal System of Bangladesh* (CCB Foundation 2009)
- Md. Ala Uddin, “Backlog of Civil Suits: A Comparative Study of Bangladesh and India” (2026) 37 *Dhaka University Law Journal* 157 <<https://doi.org/10.3329/dulj.v37i1.92902>>
- Mulmi S, “Colonial Borders and the Production of Statelessness in Myanmar, India, Bangladesh & Sri Lanka” (2026) 26 *Melbourne Asia Review* <<https://doi.org/10.37839/mar2652-550x26.6>>
- Munshi S, “Comparative Law and Decolonizing Critique” (2018) 2 *Teoria Jurídica Contemporânea* 203 <<https://doi.org/10.21875/tjc.v2i2.12991>>
- Neti L, *Colonial Law in India and the Victorian Imagination* (Cambridge University Press 2021)
- Otter S Den, “Rewriting the Utilitarian Market: Colonial Law and Custom in Mid-Nineteenth-Century British India” (2001) 6 *The European Legacy* 177 <<https://doi.org/10.1080/10848770120031369>>
- Posner RA, *The Problems of Jurisprudence* (Harvard University Press 1993)

- Rudden B, “Comparing the Priorities of Different Legal Systems” (1994) 3 Asia Pacific Law Review 143 <<https://doi.org/10.1080/18758444.1994.11788015>>
- Shah SP, “Sedition, Sexuality, Gender, and Gender Identity in South Asia” (2019) 20 South Asia Multidisciplinary Academic Journal <<https://doi.org/10.4000/samaj.5163>>
- Shams A, “Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights” [2024] International Journal of Legislative Drafting and Law Reform <<https://doi.org/10.61955/yzzqwe>>
- Sharafi M, *Law and Identity in Colonial South Asia* (Cambridge University Press 2014)
- Siddiky A, *The Rule of Law in Developing Countries* (Routledge 2018)
- Silbey SS, “Studying Legal Consciousness: Building Institutional Theory From Micro Data” (2018) No 100 Droit et société 733 <<https://doi.org/10.3917/e.drs1.100.0733>>
- Singh Bhatia H, *Vedic and Aryan India Evolution of Political, Legal and Military Systems* (Deep & Deep Publications 2001)
- Sreekandan S, “GENDER JUSTICE in INDIA: CHALLENGES and PERSPECTIVE” (2025) 7 International Journal For Multidisciplinary Research <<https://doi.org/10.36948/ijfmr.2025.v07i06.62577>>
- Wade SN, *Reading Legal Writing 101: The Essential Guide to Clearly and Accessibly Understanding the Fundamentals of Law Language and Navigating the Legal System With Confidence and Security* (Stephen N Wade 2024)
- Williams RV, *Postcolonial Politics and Personal Laws: Colonial Legal Legacies and the Indian State* (Oxford University Press 2006)
- Wilson JE, *India Conquered : Britain's Raj and the Chaos of Empire* (Simon & Schuster Uk Ltd 2016)
- Yasin A and Ali S, “Universal Right to a Safe and Healthy Environment and Use of Child Right Strategic Litigation in Climate Justice” (2023) 1 International Journal of Human Rights and Constitutional Studies <<https://doi.org/10.1504/ijhrsc.2023.10060645>>