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## Establishment of an exclusive and effective maritime tribunal in Bangladesh under the “Territorial Waters And Maritime Zones (Amendment) Act, 2021 (Act No. XXIX Of 2021)”: what is the necessity?

Mohammad Rayhan Uddin

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**ESTABLISHMENT OF AN  
EXCLUSIVE AND EFFECTIVE  
MARITIME TRIBUNAL IN  
BANGLADESH UNDER THE  
“TERRITORIAL WATERS AND  
MARITIME ZONES  
(AMENDMENT) ACT, 2021 (ACT  
NO. XXIX OF 2021)”: WHAT IS THE  
NECESSITY?**

**MOHAMMAD RAYHAN UDDIN**

A dissertation submitted to the World Maritime University in partial fulfillment of the requirements for the award of the degree of Master of Science in Maritime Affairs

2023

## Declaration

I certify that all the material in this dissertation that is not my own work has been identified and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my personal views and are not necessarily endorsed by the University.

A handwritten signature in black ink, appearing to read "Raphael Dini", written over a horizontal dotted line.

(Signature):

(Date): **26 September 2023**

Supervised by:

**Dr. George Theocharidis**

Supervisor's Affiliation:

**Professor  
Maritime Law & Policy Specialization  
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## Acknowledgments

At the outset, I would like to express gratitude to the Almighty Allah. Next, I would like to thank the International Maritime Organization (IMO)-Netherlands Fund London for granting me a fellowship to do an MSc. in Maritime Affairs (Specialization in Maritime Law and Policy) at the renowned World Maritime University (WMU), Malmö, Sweden. This MSc Course was a life-changing experience for me where I have learned so many new things and gained a new experience. This can't be possible without the proper guidance, support, and class of the WMU.

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## Abstract

Title of Dissertation:           **ESTABLISHMENT OF AN EXCLUSIVE AND EFFECTIVE MARITIME TRIBUNAL IN BANGLADESH UNDER “THE TERRITORIAL WATERS AND MARITIME ZONES (AMENDMENT) ACT, 2021 (Act No. XXIX of 2021)”**: WHAT IS THE NECESSITY?

Degree:                           **Master of Science**

After the maritime border issues with India and Myanmar were resolved, Bangladesh now controls 2,07,000 square kilometers (km) of sea, an area that is 1.4 times greater than our whole landmass. Additionally, this line spans 166,000 kilometers. Bangladesh's Exclusive Economic Zone (EEZ) allows for unrestricted usage of natural resources.

Bangladesh needs robust laws and the reform of the current legislation to maintain ultimate control over the maritime boundary. A recent revision to the law known as the ‘Territorial Waters & Maritime Zones Act, 1974 (Act No. XXVI of 1974)’ was introduced by the Bangladeshi government. ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021 (Act No. XXIX of 2021)’ is the new name for the New Amendment.

In accordance with Section 27 of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, the major focus of this dissertation is an analysis of the significance of the formation of an exclusive and efficient maritime tribunal in Bangladesh. In addition to outlining its primary goal, the dissertation discusses the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ and how it will affect maritime security, safety, and the long-term viability of the blue economy. The majority of the territorial waters and maritime zone provisions in the ‘Territorial Waters and Maritime Zones Act, 1974’ did not comply with the ‘United Nations

Convention on the Law of the Sea (UNCLOS) 1982'. Due to this, a proposal to modify the 'Territorial Waters and Maritime Zones Act, 1974' was made.

The study also aims to clarify the parallels and differences between the 'Territorial Waters and Maritime Zones Act, 1974' and the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'. In addition, this study attempts to identify the shortcomings in the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'.

Last but not least, given that Bangladesh's maritime boundary is expanding, this study aims to determine whether it is necessary to establish an exclusive and effective maritime tribunal in Bangladesh to hold offenders accountable for any crimes committed within the maritime boundary limit and to offer some recommendations for a successful maritime tribunal.

**KEYWORDS:** Exclusive Maritime Tribunal, Territorial Sea, Territorial Water, Exclusive Economic Zone (EEZ), Contiguous Zone, Maritime Zone, Jurisdiction, Sovereign Power, Bangladesh, Marine Diversity, Blue Economy.

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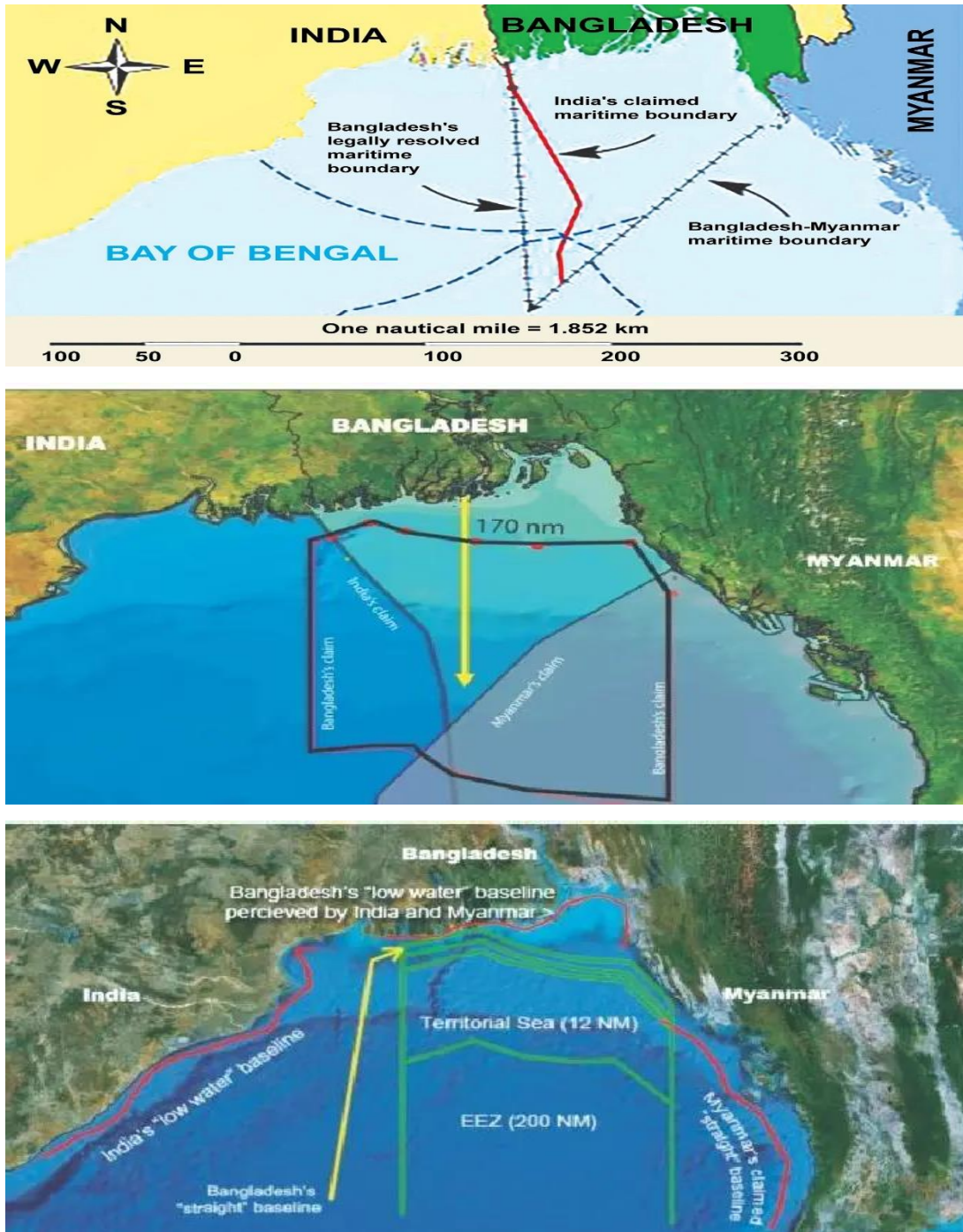
<b>EEZ</b>	<b>Exclusive Economic Zone</b>
<b>CS</b>	Continental Shelf
<b>CM</b>	Continental Margin
<b>SCB</b>	Supreme Court of Bangladesh
<b>AD</b>	Appellate Division
<b>HCD</b>	High Court Division
<b>DJ</b>	District and Session Judge
<b>ADJ</b>	Additional District and Session Judge
<b>JDJ</b>	Joint District and Session Judge
<b>MSJ</b>	Metropolitan Session Judge
<b>AMSJ</b>	Additional Metropolitan Session Judge
<b>JMSJ</b>	Joint Metropolitan Session Judge
<b>CMM</b>	Chief Metropolitan Magistrate
<b>ACMM</b>	Additional Chief Metropolitan Magistrate
<b>MM</b>	Metropolitan Magistrate
<b>CJM</b>	Chief Judicial Magistrate
<b>ACJM</b>	Additional Chief Judicial Magistrate
<b>JM</b>	Judicial Magistrate
<b>BDT</b>	Bangladeshi Taka
<b>ADR</b>	Alternative Dispute Resolution
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>ITLOS</b>	International Tribunal for the Law of the Sea

## Chapter 1

### **Introduction**

Bangladesh is located on the eastern shore of the Bay of Bengal, which has a maritime area of 118,813 square kilometers (km) and a lengthy coastline of 710 km. The Indian Ocean includes the Bay of Bengal. India and Myanmar are adjacent to Bangladesh. Bangladesh has the longest sea beach in the world which area is approximately 580 square kilometers. Bangladesh is a seafaring country that has a long maritime historical background. Bangladesh is fortunate to have a 720 km long stretch of the Bay of Bengal coastline and 2.30 million hectares of coastal land. In Bangladesh, over one-fourth of the total population lives along the coast and is reliant on the sea for both food and water. Bangladesh and Myanmar have had ongoing boundary conflicts for many years in a part of the Bay of Bengal where there are considerable hydrocarbon reserves. The fleets of the two nations engaged in several confrontations in the region during the 2008–2009 period, but things calmed down after the neighbours decided to take their disagreement to ITLOS. The agreement between India and Bangladesh to submit their maritime border dispute in the Bay of Bengal to international arbitration was also a constructive move (Bateman, 2012). Around 1,093 distinct marine species, including fish, shellfish, seaweed, and shrimp, can be found in the Bay of Bengal. In our EEZ alone, there are around 457 different fish species. When compared to the 250 freshwater fish species that can be found in our nation, the Bay of Bengal can provide us with a vastly more diversified and plentiful selection of fish.

Figure 1: Maritime Boundary of Bangladesh, Source: Daily Prothom Alo



In a developing country like ours, wise use of this resource may both meet our needs for protein and boost the economy. Additionally, these resources' by-products can be employed as industrial raw materials and for research and development.

A combination of laws, ordinances, and conventions known as maritime law controls all activities that take place in seas and other bodies of water. Maritime jurisdiction is the authority that, following both domestic and international law, may be used over people and objects on or beneath the water. Maritime jurisdiction differs from state to state, and country to country. Because the legal system of each country is different.

To exercise maritime jurisdiction, there should be a maritime court/tribunal. It is a matter of great concern that there is no designated maritime tribunal/court for punishing the offender for the offense committed under the '**Territorial Waters and Maritime Zones (Amendment) Act, 2021**'. This study tries to draw a picture what is the necessity of the establishment of an exclusive and effective maritime tribunal in Bangladesh.

Till 2023, Bangladesh has ratified different types of international treaties. The '**United Nations Convention on the Law of the Sea (UNCLOS), 1982**' is the most renowned of these accords. Bangladesh ratified the UNCLOS in 2001. This UNCLOS lays down principles as well as rules for governing the whole spectrum of sea/ocean-related issues. Additionally, this UNCLOS offers instructions on how to use the sea and a thorough understanding of coastal state sovereignty, international navigation territorial zones, contiguous zones, exclusive economic zones, high seas, etc. Member States of this Convention can regulate activities outside of their borders with the aid of 'UNCLOS, 1982'. Bangladesh must therefore add to or modify its national law to reflect the 'UNCLOS, 1982's provisions.

## Chapter 1.1

### **Reasons behind the enactment of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’**

Bangladesh is extremely aware of the ocean's marine resources. Because the ocean-based economy is now the main focus of the global economy. Because of this, Bangladesh is focusing on the exploration and exploitation of mineral resources (both living and non-living), by the global trend.

For each state, the maritime boundary is extremely important. It can be separated from a jurisdictional coastline at a specific distance. However, it must be remembered that occasionally it is impossible to identify maritime limits. At that time, uninvited threats had to be dealt with by the sovereign state. According to the 1982 UNCLOS regulations, the edges of international waterways are designated by maritime boundaries, which serve as a maritime nation's frontiers (Hasan, 2019).

Although it received less attention in the past, maritime safety is now seen as a major concern and an important matter. Territorial sovereignty and maritime safety are intertwined. The Proposed Maritime Tribunal is thought to be extremely concerned with maritime crime. The seas and open waters (including territorial waters, contiguous zones, exclusive economic zones, and high seas) are the scene of numerous maritime offenses. These maritime offenses comprised piracy, armed robbery, terrorism, infringement of innocent passage rights, trafficking, throwing nuclear and hazardous wastes in the waters, breaking submarine cables and injuring telephonic communications, marine pollution, serious injury/damage, and so on.

Bangladesh ratified the ‘UNCLOS, 1982’ on July 27, 2001. Conventions are explicit expressions of the legal pledges that a state can make in its national legislation. After

2012, and particularly following Bangladesh's resounding victory in the disputes between Myanmar and India, its sea area has grown. The territorial sea, exclusive economic zone, and contiguous zone are now all under increased supervision and command. As a result, Bangladesh believes it is time to reconsider and concentrate more on the sea and ocean. On December 7, 2021, the Bangladeshi parliament approved the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021,' which amends the 'Territorial Waters and Maritime Zones, 1974' to maintain this control and command over the various zones as well as to protect and preserve the marine living and non-living resources.

Because, Bangladesh thinks that Old Legislation (i.e., 'Territorial Waters and Maritime Zones Act, 1974') is not sufficient to control and command over the maritime boundary limit properly. There is no separate and distinct definition of Baseline in the 'Territorial Waters and Maritime Zones, 1974'. Rather, it has been mingled with the Territorial Sea Proposition. That means, the 'Territorial Waters and Maritime Zones, 1974' has no concrete explanation of the baseline. The Contiguous Zone was discussed in Section 4(1) of the 'Territorial Waters and Maritime Zones, 1974' document. The Contiguous Zone has reportedly been defined as extending 6 nautical miles from the territorial sea's outer edges. However, the UNCLOS 1982 allowed for a 12 NM claim. The phrase 'Any zones of the High Seas' used in Section 5(1) of the 'Territorial Waters and Maritime Zones, 1974' was also ambiguous. It has a murky connotation. In addition, it conflicts with where the 'Conservative Zones' described in Section 6 of the 'Territorial Waters and Maritime Zones, 1974' are located. Additionally, the definition of 'Continental Shelf' mentioned in section 7(1) of the 'Territorial Waters and Maritime Zones, 1974' was ambiguous and lacked a clear interpretation. The 'Territorial Waters and Maritime Zones, 1974' didn't mention anything about 'High Seas'. That's why it failed to meet the standards of the UNCLOS 1982.



To retain control of and command over maritime sovereignty, Bangladesh needs to enact new legislation. That's why the Bangladesh Government passed a new enactment under the name of 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'. The Hon'ble Foreign Minister for Bangladesh A K Abdul Monem took the initiative for this amendment before the Parliament. After a fruitful discussion, this amendment was accepted in the Parliament and it came into force as law on 7<sup>th</sup> December 2021. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' Draft was passed by the Cabinet on November 20, 2019, with the Hon'ble Prime Minister Sheikh Hasina serving as its chair.

The People's Republic of Bangladesh's Parliament, often known as 'The House of Nations', has the power to occasionally pass legislation that establishes the limits of Bangladesh's territorial waters and continental shelf, as stated in Article 143 (2) of the constitution. The People's Republic of Bangladesh Constitution allows the legislature the power to enact legislation in Article 65(1). This modification was made to establish and declare the maritime limits by Article 143(2) of the Constitution of the People's Republic of Bangladesh and customary international law.

The vast majority of this antiquated statute's provisions, referred to as the 'Territorial Waters and Maritime Zones Act, 1974', conflict with the UNCLOS, which was adopted in 1982. Because this above-mentioned Act was passed before the creation of the 'UNCLOS 1982'. The Old Act lacked numerous pertinent clauses. The old Act had to be amended immediately for this reason. The New 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' was enacted before the Parliament by making several amendments and adjustments to guarantee Bangladesh's maritime sovereignty in all areas. This Newly Amended Act was passed by the 'UNCLOS 1982' rules. This Newly Amended Act is also essential for enhancing Bangladesh's control over its maritime areas. This Newly Amended Act will also make it simpler to discover and utilize the marine resources in the Bay of Bengal. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' brought about a great deal of incredibly noteworthy alterations.

- 1) This Newly Amended Act guarantees Bangladesh's marine territories' sovereignty.
- 2) The Newly Amended Act also makes it easier to explore and take advantage of marine resources in the sea, both living and non-living.
- 3) The recently Amended Act also guarantees the protection of marine resources from any threats.
- 4) The Newly Amended Act made video, photo, and electronic record evidence acceptable in Bangladeshi courts and tribunals for legal purposes. The "Territorial Waters and Maritime Zones (Amendment) Act, 2021" makes video, photo, and electronic record evidence for the first time acceptable in court to prove maritime violations.
- 5) Freedom of navigation is further protected by the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' within the EEZ.
- 6) The Newly Amended Act safeguards the right of innocent passage in the territorial sea.
- 7) This Newly Amended Act grants civil and criminal authority over foreign vessels entering the sea, including boats and submarines.
- 8) The creation of the marine tribunal was not covered by the Old Act. As opposed to this, Section 27(1) of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' explicitly specifies that the Bangladeshi government may set up one or more Maritime Tribunals to carry out the specified objectives of the above-mentioned Act.
- 9) Most frequently, many kinds of events take place in the sea. There should be a punishment plan for the criminals to defend Bangladesh's sovereignty from them. The punishment for the offender violating Bangladesh's sovereign rights was not specified in the Earlier Law. However, the Newly Amended Act has sections 15 to 25 that outline several punishments.
- 10) Furthermore, the Bangladeshi government, particularly the Maritime Tribunal, is empowered to prosecute offenders for violating the various provisions of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' under both civil and criminal law.

11) To gauge the state's jurisdiction, a baseline is employed. This baseline primarily serves to distinguish inland seas from seaward waterways. Bangladesh enacted this Newly Amended Act to effectively preserve the jurisdiction.

The Newly Amended Act has enhanced Bangladesh's maritime laws. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' complies with the 'UNCLOS, 1982' in the majority of its provisions. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' grants the government a wide range of jurisdictional authority. Now, Bangladesh has the right to enjoy the Maritime Boundary Limit. With the enjoyment, Bangladesh can control marine pollution and take steps for Maritime Safety, Security, and Diversity. If anyone infringes any right or commits any offense under the said 'Territorial Waters and Maritime Zones (Amendment) Act, 2021', then s/he can be tried by the Maritime Tribunal. That means the powers are vested with the Hon'ble Presiding Officer of the Maritime Tribunal under the provisions of the Newly Amended Act.

## Chapter 1.2

### **Purpose:**

Maritime Crime is considered to be a major concern of the maritime tribunal. The amount of maritime crime is rising daily. The oceans and open waters (including territorial waters and the high seas) are the scene of numerous maritime violations. Piracy, armed robbery, terrorism, interference with innocent travelers' rights, trafficking, discharging nuclear and hazardous waste into the sea, cutting submarine cables and interfering with telephone connections, marine pollution, major injury/damage, and other maritime offenses were included in this list.

Even though the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ explicitly mentions the establishment of a maritime tribunal in section 27(1), Bangladesh has not yet taken any action to set up any Maritime Tribunal in order to implement the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ in its entirety. As Bangladesh's maritime area has grown, it is essential to establish one or more functional maritime tribunals to maintain control and sovereignty over the maritime boundary, as well as to protect the offender and stop them from committing an offense.

The main goal of this study is to clarify the need for the creation of an exclusive and efficient maritime tribunal in Bangladesh, the qualifications of the judge of this maritime tribunal, its authority and functions, the list of offenses that can be tried by this maritime tribunal, and other issues in light of Bangladeshi law.

The ‘Territorial Waters and Maritime Zones Act, 1974’ (i.e., the Old Act) and the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ (i.e., the Newly Amended Act) are compared and contrasted in this dissertation to consider their advantages and disadvantages and ultimately suggest improvements.

The main goals of this dissertation are to provide an overview of the Newly Amended Act, a comparison of the key elements of this Amended Act, and an analysis of the differences between the two Acts (i.e., the Old Act, and the Newly Amended Act). The main goal of this dissertation's chapter is to concentrate on the creation of a dedicated, strong, and effective maritime tribunal. Additionally, it looks at the legal authority over a foreign ship in the territorial sea, both criminally and civilly. The ultimate goal of this study is to describe the need for the development of an exclusive, strong, and effective Maritime Tribunal in Bangladesh to uphold and defend Bangladesh's sea sovereignty and ensure that those who violate the law will be punished.

The Newly Amended Act defines the various forms of penalties (including sentences and penalties) that a maritime tribunal can impose for abusing any rights.

## Chapter 1.3

### **Research Aims, Objectives, and Expected Result:**

This dissertation mainly analyses the necessity of the establishment of an exclusive, strong, and effective maritime tribunal in Bangladesh. Moreover, the research depicts the comparison between the ‘Territorial Waters and Maritime Zones Act, 1974’ (i.e., the Old Act), and the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021 (i.e., the Newly Amended Act)’. The ultimate objective of this study is to describe the necessity of the designated and effective Maritime Tribunal establishment in Bangladesh to maintain as well as protect the sea sovereignty of Bangladesh and to ensure punishment if anyone commits any offense in the Maritime Boundary.

The Newly Amended Act will be thoroughly discussed as well as reviewed in this dissertation. This study tries to focus on the definition clause enshrined in section 2 of the Newly Amended Act.

Moreover, this study will elucidate the salient features, shortcomings/loopholes of the Newly Amended Act. It also draws a comparison between the Old Act and the Newly Amended Act. On top of that, this study tries to straighten out the implications of the Newly Amended Act to control Marine Pollution by the establishment of a strong, dedicated, and effective Maritime Tribunal in Bangladesh.

## Chapter 1.4

### **Research Questions**

- Why is it necessary to establish the exclusive, independent, strong, and effective Maritime Tribunal under Section 27(1) of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’?
- Whether the perpetrator should be punishable by the Proposed Maritime Tribunal under Sections 16 to 25 of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ or not?
- What kind of authority does the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ grant the proposed maritime tribunal over the foreign ship in the territorial sea?

## Chapter 1.5

### **Methodology**

To accomplish this dissertation, a dogmatic approach is used. This indicates that the analysis of pertinent statutes, precedents, rules, and regulations is the main subject of this dissertation. Additionally, this dissertation uses the historical approach to paint a picture of Bangladesh's legal system. In the case of this dissertation, the analytical approach is used to compare two Acts namely the ‘Territorial Waters and Maritime Zones Act, 1974’ (i.e., the Old Act) and the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ (i.e., the Newly Amended Act).

The dissertation includes a review of the literature on qualitative findings deploying approaches like a review of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ on the demand for the creation of a unique, strong, and

efficient Maritime Tribunal in Bangladesh. Additionally, this paper tries to explain the Maritime Tribunal's criminal and civil jurisdiction over a foreign ship in the Territorial Sea. The dissertation also conducts a critical analysis of the Maritime Tribunal's authority to defend Bangladesh's sovereignty. Articles, official websites, books, the internet, journals, and other pertinent papers will be the main sources of information.

The dogmatic approach is highly common in legal research because it can create a connection between the theory and philosophy of the law and the justification for implementing legislation.

The descriptive essay is supported by some quick research. The article has been subjected to an analytical procedure. It is completely based on the Act and Bangladesh Code, as well as secondary sources gathered from textbooks on international law, journal articles, newspaper articles, decided cases, websites, and other sources. To make the study more insightful, analytical, and helpful for the readers, the sources have been properly assembled and presented.

## Chapter 1.6

### **Structure of Study**

This study is divided into 5 (Five) chapters:

Chapter One includes the introduction, reasons behind the enactment of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, purpose and methodology, research aims, objectives and expected result, research questions, methodology, the structure of the study, and Methodology.

Chapter Two includes the literature review, the key features of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, a comparison between the ‘Territorial Waters and Maritime Zones Act, 1974’ and the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, and loopholes of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’.

Chapter Three deals with the Legal Systems of Bangladesh.

Chapter Four deals with the Existing Marine Court and its powers, the Problems of the Existing Marine Court in Bangladesh, The Unification of the Existing Marine Court and the Proposed Maritime Tribunal in Bangladesh, and the Necessities of the Proposed Maritime Tribunal in Bangladesh.

Chapter Five is the Concluding Remarks and Recommendations for the Proposed Maritime Tribunal in Bangladesh.



## Chapter 1.7

### **Research Limitation**

Because there aren't enough peer-reviewed articles written by Bangladeshi intellectuals on the subject, this research falls short of current knowledge about Bangladesh. Furthermore, the important Bangladeshi authors of this work must contribute. However, there hasn't been much research done on this subject from Bangladesh's standpoint.

## Chapter 2

### **Literature Review**

Bangladesh is a country with a common law system. The law about the sea and private maritime conflicts is known as maritime or admiralty law. The concept of judicial sovereignty calls on the court to effectively exercise its maritime jurisdiction, which is a key element of national judicial sovereignty (Fu, 2022).

Maritime law is considered very significant for any type of occurrence on the seas. Further research on the establishment of a designated and effective maritime tribunal is very rare in Bangladesh. However, from the standpoint of Bangladesh, there has not been much research done on the significance of creating a recognized and functional maritime tribunal. And this is where this study's significance resides.

To boost the nation's economic potential, the Bangladeshi government seeks to establish a 'Blue Economy'. Aquaculture and marine fishing will play a significant role in this aspect. Bangladesh is lucky to have a sizable amount of maritime biodiversity. Sadly, there isn't a solid enough legal framework in place to protect these resources. Agricultural runoff, domestic waste, industrial effluents, sewage, and unregulated vessels are just a few of the factors that contribute to the ocean's continual pollution. Port operations and shipbreaking are two major contributors to maritime pollution. States are required to safeguard and maintain the marine environment under Article 192 of the UNCLOS. However, Bangladesh has not fulfilled its requirements as of yet. A foundation for reducing pollution and protecting the environment was provided by the 'Environmental Conservation Act, 1995 (as revised in 2010)'.

However, there are no provisions in the statute that address marine contamination. Additionally, it lacks any means of putting into practice the international treaties and legislation that Bangladesh has ratified. Even though there are many sectoral legislations, they nonetheless have gaps and loopholes. For instance, the 'Territorial Water and Maritime Zones (Amendment) Act, 2021' enables the government to combat marine pollution (Faiyaz & Arif, 2022).

To take action against the offenders, the definition of marine pollution should be broad enough. The legal system also has issues with the fishing industry. As it is well known, an efficient monitoring and assessment process is essential to the execution of fishery policy. However, there are no suitable provisions for adequate monitoring and impact evaluation in the current fishery policies. The Bangladeshi government's 'Coast Guard Act 2016' is its most laudable effort. However, there is no emphasis on increasing the Coast Guard's capability or modernizing its apparatus. Because of this, the nation's expansive and creative marine border has not yet been fully utilized.

Unsurprisingly, despite Bangladesh's extensive maritime border, no exclusive maritime court has been established. The laws governing foreign investments in this industry are rudimentary and out-of-date. Even though this sector has a lot of promise, little has been done to promote investment.

Action in rem or action in personam are the two ways that maritime jurisdiction might be applied. Action in personam may be used to enforce any marine claim covered under maritime litigation. 'This maritime tribunal should create the maritime action in rem, establishing a system of special jurisdiction in the field of maritime litigation, to compete with the ordinary court for jurisdiction (Fu, 2022)'.

Sorry to say that, though there is a marine court in Bangladesh, it can't perform its duties and responsibilities properly. As a result, so many important cases are pending there. The Existing Marine Court was established under the 'Inland Shipping

Ordinance, 1976'. But sorry to say that this Existing Marine Court has no power to remand the offenders on bail under the provisions of the 'Inland Shipping Ordinance 1976'. That's why the offender goes to regular courts for bail.

As of March 2020, a report was submitted to the Chief Judicial Magistrate, Dhaka. In that report, it was mentioned that 1517 cases are pending before the marine court, Dhaka till March 2020. Out of these 1517 cases, 18 cases are pending before the marine court which are major incident-related. Some cases are not adjudicated for a long time. One of the important reasons for not disposing of cases timely is the dual justice system (e.g., Marine Courts and Regular Judicial Court). There is a conflict between the Marine Court and the Regular Judicial Court. The existing Marine court is a part of the DG Shipping, which is a part of the Ministry of Shipping. The Ministry of Shipping is the executive organ. The Judge of the Existing Marine Court should be a Judicial Officer. It should perform its duties under the guidance, direction, and control of the SCB.

But sorry to say, that at present Existing Marine Court performs its duties under the guidance, direction, and control of the Ministry of Shipping, a part of the Executive Organ. In this aspect, the Executive Organ i.e., the Ministry of Shipping can easily influence the Existing Marine Court. As a result, the judgment of the Existing Marine Court can easily be vitiated. That's why, there is an overlapping between the Existing Marine Court and the Regular Judicial Court.

Numerous cases cannot be handled by this only Existing Marine Court. To expedite case resolution and reduce the backlog of marine-related matters, one or more exclusive and effective maritime tribunals should be formed under section 27 (1) of the 'Territorial Water and Marine Zones (Amendment) Act, 2021'.

Therefore, by section 27 of the 'Territorial Water and Marine Zones (Amendment) Act, 2021', the Government shall establish one or more exclusive and efficient

Maritime Tribunals. The District Judge or the Additional District Judge is described as the Tribunal's Judge in that Act. Being a judge, s/he has experience in the legal field. He or she handles maritime cases. She/he is capable of acting on her/his own, and the Honourable Supreme Court of Bangladesh is in charge of her/him. (Hosen, 2023). That Maritime Tribunal can do justice effectively.

The import and export sectors' dependency on seaborne trade is growing day by day. Bangladesh is a maritime country. Its trade is transported by sea more than 90%. The lack of a distinct maritime tribunal or court in Bangladesh is quite concerning. It is impossible to sum up the need for a special maritime court in Bangladesh in a single sentence. A Special Maritime Tribunal or court is crucial for both protecting the shipping sector and punishing offenders who commit crimes on the high seas. This study demonstrates the necessity for Bangladesh to establish a dedicated and efficient Maritime tribunal.

## Chapter 2.1

### **The key features of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021: An Outline’.**

The ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ consists of 36 (thirty-six) provisions in total. There are several important portions among these 36 sections.

- 1) Section 27 is incredibly crucial. Section 27 provides for the establishment of one or more than one maritime tribunal in Bangladesh, the qualification of the Judge of this Maritime Tribunal, and where this maritime tribunal sits. The Said Amendment Act's several clauses give the Maritime Tribunal the authority to act independently and successfully on behalf of the Bangladeshi government.
- 2) Section 2 is significant. Many new definitions that weren't in the previous Act are contained in Section 2, which is a definitions clause. It's crucial to include a defining clause. Because the tribunal cannot exercise its civil and criminal jurisdiction over the territorial sea, EEZ, and the high seas without a sufficient definition and explanation. The Maritime Tribunal, marine pollution, waste dumping, internal water, installations, continental margin, historic water, geodesic, artificial islands, blue economy, seabed, nautical miles, maritime zones, straight lines, superjacent waters, transportations, waste, water column, serious injury or damage, and warship are all clearly explained in Section 2 of this Newly Amended Act.
- 3) This ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ has expanded Bangladesh’s sphere of influence. Now, Bangladesh can exercise its sovereign power over the internal waters (including the water column, the seabed, its subsoil, and the air space), as well as the extraterritorial application under the provisions of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. Under section 2 of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, Bangladesh has jurisdiction to try any offender or any vessel for the

commission of any offense inside or outside of the Maritime Zones. Moreover, under section 2B of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, it is confirmed that if any offense is committed by a Bangladeshi Citizen in the Bangladeshi Vessel even outside of the maritime zones, the provisions of this Newly Amended Act will be equally applicable for him. This is a fantastic section. Because by this section, the extraterritorial application is ensured.

- 4) This Recently Modified Law acknowledges Bangladesh's sovereignty over its territorial waterways. Section 2D (1) of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ ensures the sovereignty over the water column, the seabed and its subsoil, and the air space over the internal waters (Ministry of Law, Justice and Parliamentary Affairs, 2019). The ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ has this as one of its key components.
- 5) The definition of the territorial sea is another noteworthy aspect of this ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. Additionally, this legislation discusses the clarification of legal practice within the territorial jurisdiction (Hosen, 2023). The Territorial Sea comprises areas of the sea covering the water column, seabed, subsoil, and the airspace over the Territorial Sea, not exceeding 12 Nautical Miles (NM) from the nearest base points of the Territorial Sea Baseline (TSB) and measured seaward from the TSB, according to section 3(1) of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ (Ministry of Law, Justice and Parliamentary Affairs, 2019). There are two different sorts of baselines, such as the Normal Baseline and Straight Baseline, according to Article 7 of the ‘UNCLOS, 1982’. State control over its internal waters, including the water.
- 6) The Government has given the Maritime Tribunal authority to exercise civil and criminal jurisdiction over any foreign ships as well as innocent passage rights in the Territorial Sea under Sections 3A to 3C of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. Additionally, the Bangladesh Government now has the authority to deal with Remotely Operated Underwater Vehicles (ROV), Autonomous Underwater Vehicles (AUV), and Unmanned

Underwater Vehicles (UUV) under this Newly Modified Act (Mishra & Bashar, 2022).

- 7) Because of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, Bangladesh can exercise its jurisdictions and sovereign powers over the Contiguous Zone, EEZ. Moreover, the Maritime Tribunal on behalf of the Bangladesh Government can impose prohibitions on the exploration or exploitation of the EEZ (Mishra & Bashar, 2022). Sections 3A to 3C of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ give the Maritime Tribunal civil and criminal jurisdiction over all foreign ships as well as innocent passage rights in the Territorial Sea, according to the government.
- 8) We are aware that the ‘UNCLOS, 1982’ grants all coastal nations the sovereign right to a region of the sea that extends 200 nautical miles beyond their coastline. This area is known as an EEZ.
- 9) The EEZ (including the exploration, exploitation, protection, and management of natural resources) is under the sole control of the Bangladeshi government, as stated in section 5 of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. The creation, maintenance, and management of artificial islands, offshore ports, installations, and other structures, as well as the oversight of maritime scientific research, are all solely under Bangladesh's control and jurisdiction. Bangladesh can protect the marine environment and lessen marine pollution.
- 10) By the said ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, the boundary of the Contiguous Zone has been extended. Now, this amended provision relating to the Contiguous Zone can contemplate the relevant provision of the UNCLOS, 1982. Section 4 (1) of the above-mentioned Act can be summed up as follows: An area of seaward that is not more than 24 NM from the Territorial Sea Baseline (TSB) is referred to as a contiguous zone. It is also said in Section 4 (2) of the same Act that the Bangladesh Government may prevent or penalize the offender if



s/he violates any law which is related to Security, Immigration and Sanitary Matters, Customs, and other fiscal issues. To prevent and penalize the offender under Section 4(2), the Bangladesh Government may make the rules in this regard under Section 4 (3) of the Same Act.

- 11) The EEZ is described in general terms in Section 5 of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. According to Section 5(1), an EEZ is a territory that extends to a line, with each point being 200 nautical miles from the TSB’s nearest base. The Bangladeshi Government reserves the right to occasionally adjust the 200 NM limit.
- 12) The Authority that Bangladesh may exercise in the EEZ is outlined in Section 5 (2) of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. According to that clause, Bangladesh has sole sovereign authority over the exploration, exploitation, conservation, and management of all natural resources, both living and non-living. Additionally, Bangladesh has the exclusive right to build, maintain, and run offshore ports, installations, and artificial islands. In addition, Bangladesh has exclusive jurisdiction over offshore ports, installations, and structures, and over customs, fiscal, sanitary, and immigration rules (Ministry of Law, Justice and Parliamentary Affairs, 2019). Last but not least, Bangladesh is entitled to exercise all of its legal rights under international law.
- 13) The Bangladesh government is given the authority to establish rules for the protection of its rights and interests in the EEZ under Section 5(4) of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021 (e.g., to control and prevent pollution, catch fish, regulate usage, exploration, and exploitation, etc.). Section 5 is essential for Bangladesh to efficiently exercise its power and protect its rights and interests in the EEZ.
- 14) Bangladesh can prohibit the exploration and exploitation of marine resources under section 5A of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ (Alam & Chowdhury, 2019). No one is authorized to explore, use maritime

resources, drill, or excavate in the EEZ without the government of Bangladesh's consent under this section. Exploration or exploitation of maritime resources, conducting marine research, drilling or digging, and maintaining or running artificial islands, offshore terminals, installations, and constructions are only permitted in the EEZ if permission or a license is granted by the Bangladeshi government.

15) The Continental Shelf (CS) of Bangladesh is elaborately discussed in section 7 of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'. This section claims that the CS is made up of seabed and subsoil of underwater areas that can be expanded past the territorial sea limits (12 NM) along the natural extension of its land territory to the Continental Margin's outermost point. The Bangladeshi Government may set the outer limit and proclaim the designated areas and safety zones by issuing regulations if this outer edge extends beyond 200 nautical miles from the TSB.

16) Section 7A of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' broadly discussed the rights and jurisdictions of Bangladesh in the CS. This clause guarantees Bangladesh's right to explore or utilize its natural resources, both living and non-living. Section 7A gives Bangladesh the Authority to approve and control the creation of specified areas and safety zones, offshore terminals, installations, and other structures and devices, as well as their usage, maintenance, and operation. Bangladesh has the right to approve and control drilling operations, to manage marine scientific research and pollution, to safeguard and preserve the marine environment, and to enforce immigration, fiscal, sanitary, and customs laws of artificial islands, installations, and structures.

17) Section 7B thwarts any person from exploiting the natural resources on the continental shelf without the Government's authorization.

18) Section 7C of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' guarantees high seas issues. The rights of Bangladesh on the high seas in water columns outside of the EEZ are broadly outlined in Section 7C and include the freedoms of navigation, overflight, laying submarine cables and pipelines, building artificial islands and other installations allowed by international law, fishing, and conducting marine scientific research. Additionally, section 7C of the Same Act guarantees the right to sail vessels flying Bangladeshi flags on the high seas of Bangladesh (Hosen, 2023).

By Section 7C, Bangladesh is also given the Authority to specify the requirements for granting ships its nationality, registering them on its territory, and granting them the right to fly its flag, provided that they have no actual connections to the state in question. Keep in mind that on the high seas, ships flying the Bangladeshi flag are solely within Bangladesh's jurisdiction.

Additionally, it should be noted that Section 7C does not restrict the freedom of navigation enjoyed by ships flying the flags of, or working for, the United Nations (UN), its Specialized Organizations, the International Atomic Energy Agency (IAEA), or other government agencies.

In the High Seas, the Protection of the Bangladeshi warships and military aircraft is ensured under Section 7C (8) of the Same Act.

Bangladesh is empowered to take punitive and disciplinary actions against the master or any other person on board for any collision with the other vessels on the high seas under section 7C (9) of the same Act.

The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' grants Bangladesh the Authority to take action to aid, rescue, and arrange other necessary measures for shipwrecked sailors and sinking ships without endangering the lives of the passengers. This authority is provided by Section 7C (10).

The ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021 grants Bangladesh the Authority to take the required actions by domestic and international legislation for the preservation and conservation of fish and marine mammal stocks in the High Seas and in the EEZ under section 7C (11).

19) The Area and its resources are discussed in Section 7D of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. The seabed, ocean floor, and subsoil that lie outside of national jurisdictions make up this area. Bangladesh shall decide the Area in the Bay of Bengal taking into consideration the UN's suggestions. With some exclusions, the term ‘resources of the area’ refers to all solid, liquid, or gaseous mineral resources that are present in the area at or beneath the seafloor. These local natural resources will be seen as part of humankind's collective legacy. For the benefit of humanity, any archaeological or historical materials or artifacts discovered here must be preserved.

20) The ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ is the first law in Bangladesh that, for the first time in the country's legal system, tackles the Blue Economy, its significance, as well as the sustainable use of the blue economy. The above-mentioned Amended Act grants Bangladesh the authority to develop policies, and work schedules, and carry out economic operations that take place in the Maritime Zones directly or indirectly and are related to the blue economy. Bangladesh has the right to implement all practical measures to create a blue economy, including mariculture, maritime tourism, marine biotechnologies, marine transportation, port and harbor projects, ship building and recycling, renewable energy, and so on (Ministry of Law, Justice and Parliamentary Affairs, 2019).

21) Maritime Cooperation is covered in Section 7G of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. This provision gives Bangladesh the authority to take the required actions for the design of cooperative systems for the promotion of navigational safety, weather forecasting (including cyclone and tsunami danger), and marine environment protection.

- 22) Furthermore, section 7H of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ deals with the research and different kinds of surveys in the Territorial Sea, EEZ, and Continental Shelf. The above-mentioned Amended Act grants Bangladesh the authority to control, permit, and carry out maritime scientific research, hydrographic surveys, and military surveys inside the territorial sea, EEZ, and continental shelf. In Bangladesh's maritime zones, no one is permitted to carry out marine scientific research, hydrographic surveys, or military surveys without first getting authorization from the Bangladeshi government. The above-mentioned Amended Act provides precise definitions for marine scientific study, hydrographic survey, and military survey. The Bangladesh Government is allowed to make the rules in this regard.
- 23) The Bangladesh Government may enact regulations for the management of marine pollution under Section 8 of the aforementioned Newly Amended Act. Unfortunately, no rule has yet been set as of today. Additionally, the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ increases the penalties for marine pollution. This Act has several clauses that expand the Maritime Tribunal's authority. The Maritime Tribunal can now impose a term of not less than 3 (three) years in prison and a monetary fine of 2 (two) crores Bangladeshi Taka (BDT) or more. This fine's previous amount was only 5000/- (five thousand) BDT. In addition, the Maritime Tribunal has the authority to punish violators with at least 10 (ten) crore BDT in fines and 5 (five) years in prison for failing to prevent pollution.
- 24) Under section 20 of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, the Maritime Tribunal has the power to penalize the offender for offenses committed in the Continental Shelf. The Maritime Tribunal has the authority to sentence violators of Section 7B of the aforementioned Amended Act to a minimum of 3 (Three) years in prison and a fine ranging from 10 (Ten) crore BDT to a maximum of 28 (Twenty-Eight) crore BDT. Additionally, the Maritime Tribunal has the authority to seize the connected equipment and

vessel. The Proposed Maritime Tribunal has broad authority under Section 20 to punish offenders and provide restitution. This addition is remarkable.

25) The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' stated in section 27 (1) that the government may create one or more Maritime Tribunals in the nation. 'May' is utilized in this instance. That implies that the Government is not bound to set up. It is not obligatory. Rather it is a directory. However, the Government should set up at least one or two Maritime Tribunals in Dhaka (the capital city) and Chattogram (the port city) of Bangladesh to ensure a smooth trial of maritime offenses under the stated modified statute. If more than one Maritime Tribunal is established, the territorial jurisdiction of each maritime tribunal will be determined by the government and published in an official gazette by Section 27(2) of the aforementioned Amended Act. According to Section 27(4) of the aforementioned Amended Act, the District Judge (DJ) or Additional District Judge (ADJ) will make up the Maritime Tribunal. According to Section 27(3) of the Said Amended Act, the Government may designate DJ or ADJ to carry out the Maritime Tribunal's tasks in addition to other duties and obligations until the tribunal is established. The Government imposes an additional charge on the DJ or ADJ. DJ or ADJ are frequently overburdened with a variety of civil cases, criminal proceedings, arbitration matters, other cases, appeals, reviews, revisions, case transfer motions, etc. (Hosen, 2023). Moreover, a DJ is the head judge of a district. S/he has to perform administrative activities also. If a new additional charge is given to him/her, how can s/he perform his/her duties smoothly??

26) Section 30 of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' explains about the cognizance. According to Section 30, the complaining party cannot approach the Maritime Tribunal without the Government's approval.

27) Section 31 of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' deals with the Maritime Tribunal's bail provisions. The provision states that the accused is frequently ineligible for bail. In contrast, the Maritime Tribunal will only grant bail and release the accused if it is persuaded during the hearing that there is

cause to believe that the accused may not be found guilty because of the crime, they are charged with is not so serious and their punishment is not severe.

28) Section 32 of the above-mentioned Act discusses the time limit for the disposal of cases. It is said in section 32 that the Maritime Tribunal shall conclude the trial within 180 (One Hundred Eighty) Days (Ministry of Law, Justice and Parliamentary Affairs, 2019). 'An additional 90 days may be added on if the Maritime Tribunal does not finish the trial in the allotted 180 (One Hundred Eighty) days. The Maritime Tribunal will therefore have a total of  $(180+90) = 270$  (Two Hundred Seventy) Days to complete the trial. The Hon'ble High Court Division (HCD) of the Supreme Court of Bangladesh must receive a report from the Maritime Tribunal within 10 days of the conclusion of 270 days if the trial is not concluded within 270 (Two Hundred Seventy) Days (Hosen, 2023)'. In that report, the Maritime Tribunal shall state the reasons for failure for not complete the trial within 270 days.

29) The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' contains an appeals provision. That is yet another appealing feature of the recently amended Act. Now, the aggrieved party or person has the right to appeal the decision, judgment, or conviction handed down by the Maritime Tribunal under Section 34 of the above-mentioned Newly Amended Act to the Hon'ble High Court Division (HCD) of the Supreme Court of Bangladesh (SCB) within 30 (Thirty) days.

## Chapter 2.2

### **Comparison between the ‘Territorial Waters and Maritime Zones Act, 1974’, and the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’**

There are some similarities and dissimilarities between the Old Enactment and the New Amended Enactment which are summed up as follows: -

#### **Dissimilarities:**

- 1) ‘Territorial Waters and Maritime Zones Act, 1974’ (hereinafter called ‘Old Act’) was promulgated before the ratification of the ‘United Nations Convention on the Law of the Sea (UNCLOS), 1982’ Whereas ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ (hereinafter called ‘Newly Amended Act’) was promulgated after the ratification of the ‘UNCLOS, 1982’.
- 2) The purpose of the UNCLOS was not implemented in the Old Act, while the purpose of the UNCLOS was implemented in the Newly Amended Act.
- 3) The definition clauses of the Old Act were not exhaustive. But, the definition clauses of the Newly Amended Act are almost exhaustive.
- 4) In the Old Act; only conservative zone, contiguous zone, continental shelf, economic zone, and territorial zone were defined. But, in the Newly Amended Act, artificial islands, continental margin, convention, CrPC, dumping of wastes, geodesic, historic waters, installations, internal waters, marine pollution, maritime tribunal, maritime zones, master, nautical miles, seabed, serious injury or damages, straight line, superjacent waters, transportation, warships, waste, water columns are elucidated.
- 5) The Old Act contains only 9 sections. On the other hand, the Newly Amended Act contains 36 sections.



- 6) The Old Act didn't say anything about the establishment of a maritime tribunal and the power of the tribunal. On the other hand, the Newly Amended Act clearly describes the establishment of a maritime tribunal and the power of the tribunal under sections 27 and 33 respectively.
- 7) Nothing was mentioned about the power to investigate offenses, the evidentiary value of pictures, electronic records, etc.; cognizance of offenses, provision as to bail, the time limit for disposal of cases, and appeal in the Old Act. Whereas, the Newly Amended Act specifically said about the power to investigate offenses, the evidentiary value of pictures, electronic records, etc.; cognizance of offenses, provision as to bail, the time limit for disposal of cases, and appeal under sections 28 to 32 and 34 respectively.
- 8) Except for section 9(3) of the Old Act, there was no mention of the penalties for infractions. Section 9(3) of the previous law stated that when creating a regulation under section 9, the Government could specify that violating the rule would result in a maximum of one year in prison or a maximum of 5000/- (five thousand) BDT as fines. However, the Newly Amended Act's sections 15 to 25 list the offenses. Punishment for obstructing an innocent person's passage, for breaking the law using a submarine or another underwater vehicle Punishment for the discharge of nuclear or hazardous wastes; Punishment for violations in contiguous zones; Punishment for violations in exclusive economic zones; Punishment for violations in the continental shelf; Punishment for damage to or destruction of submarine cables; Punishment for failure to take action to prevent pollution; Punishment for piracy; Punishment for armed robbery; Punishment for maritime terrorism at sea (Ministry of Law, Justice and Parliamentary Affairs, 2019). This is the Newly Amended Act's beauty. Because the protection of Bangladesh's maritime sovereignty is greatly enhanced by these laws.
- 9) One of the most important differences between these two Acts is relating to the punishment for offenses. The old act did not say anything about the punishment for offenses that are committed in the continental shelf and contiguous zone. On

the other hand, the Newly Amended Act clearly said the punishment for offenses that are committed in the continental shelf and contiguous zone.

- 10) Another important difference between these two Acts is related to the definition of piracy. In the Old Act, piracy was described as a simple crime. Whereas, in the Newly Amended Act, piracy was described according to the classification. The recently updated law defines piracy under the heading of "robbery," "maritime terrorism," "theft," and "illegal acts against the safety of marine investigation."
- 11) In the Old Act, only a few criminal violations were included. But, in the Newly Amended Act, different types of crime and its punishment are inserted. Under the Newly Amended Act, the Maritime Tribunal can impose a maximum of 10 (ten) years imprisonment as well as 110 Crore BDT as a fine along with vessels or submarine confiscation for any offense.
- 12) Nothing was mentioned about Marine scientific research, hydrographic surveys, and military surveys in the Old Act. However, section 7H of the Newly Amended Act mentioned Marine scientific research, hydrographic surveys, and military surveys.
- 13) Ocean governance, Blue Economy, and Maritime Cooperation were untouched in the Old Act. While, ocean governance, Blue Economy, and Maritime Cooperation are clearly defined and mentioned in sections 7E, 7F, and 7G of the Newly Amended Act.
- 14) For the first time in the history of Bangladesh's Legal System, the term Blue Economy and the importance of the Blue Economy along with the sustainable use of the blue economy are discussed in the said Newly Amended Act. On the other hand, nothing was said about the Blue Economy in the Old Act.
- 15) The Old Act has no mention of the most crucial topics, notably the suppression of piracy, armed robbery, theft, and maritime terrorism at sea. Whereas, Section 9 of the Newly Amended Act highlights the most crucial issues, including the suppression of piracy, armed robbery, theft, and maritime terrorism at sea. Because it jeopardizes a sovereign state's marine security, the elimination of piracy is extremely important. Additionally, it puts seafarers' lives in jeopardy.

"In many of the world's waters, pirates and armed robbers prey upon merchant ships with impunity." (Mejia et al., 2013).

- 16) To protect the sovereignty at sea, the right to visit a ship is a must. Without visiting the ship, a country can't check the offense properly. Sorry to say that this right to visit a ship provision was absent in the Old Act. But, under section 11 of the Newly Amended Act, Bangladesh has a right to visit a ship. By this Newly Amended Legislation, Bangladesh may send a boat or board to the suspicious ship under the leadership of an officer from the Bangladesh Navy or Bangladesh Coast Guard and, if necessary, continue to a more thorough inspection on board the ship.
- 17) If any piracy is committed in the ships, what will be the fate? Normally, in this case, the ships should be arrested and seized. But there is no provision for the Arrest and seizure of pirate ships or aircraft, etc. in the Old Act. Whereas, under section 12 of the Newly Amended Act, Bangladesh has been given the power to arrest the pirates' ships. Now, Bangladesh has the authority to seize a ship or aircraft that is being used by pirates, or that has been commandeered by pirates, and to arrest anyone on board while seizing any valuables. Article 100 to 107 and 110 of the UNCLOS deals with the current anti-piracy regime. Article 100 of the UNCLOS creates a universal duty to cooperate in the repression of piracy.
- 18) Jurisdiction over a ship was not inserted in the Old Act. But, Jurisdiction over a ship is inserted under section 13 in the Newly Amended Act. Now, Bangladesh shall have jurisdiction over a ship entering, passing through, or leaving waters that are outside of its territorial sea's outer border or the lateral limits of Bangladesh's territorial sea and internal waters with other States.
- 19) Nothing is said about the most notable issue of extradition in the Old Act. Whereas, section 14 of the Newly Amended Act stipulates extradition.
- 20) The Innocent Passage Right is a very vulnerable issue for the protection of sovereignty at sea. The innocent passage was not defined in the Old Act. Whereas, section 15 of the Newly Amended Act mentioned the rights of the innocent passage as well as punishment for the violation of innocent passage.

- 21) Nothing was mentioned about historic waters in the Old Act. Whereas, section 2E of the Newly Amended Act clearly said about historic waters.
- 22) Nothing was mentioned about territorial sea baseline in the Old Act. But that is mentioned in the Newly Amended Act.
- 23) Sovereignty over internal water is very much crucial for any state. But this was not inserted in the Old Act. Whereas, sovereignty over internal water is ensured in the Newly Amended Act by inserting a provision named Section 2D.
- 24) The way that piracy is defined differs significantly between these two Acts. The Old Act referred to piracy as a straightforward offense. Whereas piracy was classified in the Newly Amended Act i.e., the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ and described as such. The recently updated law defines piracy under the heading of "robbery," "maritime terrorism," "theft," and "illegal acts against the safety of marine investigation."
- 25) Only a few criminal offenses were covered by the Old Act. However, the Newly Amended Act includes additional offense kinds and their associated penalties. According to the Newly Amended Act, the Maritime Tribunal on behalf of Bangladesh may sentence a person to a maximum of 10 (ten) years in prison, 110 Crore BDT in fines, and the confiscation of a vessel or submarine for any infraction.
- 26) Piracy, armed robbery, marine terrorism, theft, and unlawful acts against the safety of maritime navigation are defined newly and independently under the various clauses of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ to classify different offenses. For maritime safety and security, each phrase is crucial. However, everything is referred to as "Piracy" in the outdated law known as the ‘Territorial Waters and Maritime Zones Act, 1974’. That indicates that the offense is not classified.
- 27) The severity of the penalties for infractions is one of the most significant distinctions between these two Acts. The Prior Act made no mention of the penalties for crimes committed on the continental shelf and in the contiguous zone.

On the other hand, the Newly Amended Act was quite clear on the penalties for crimes committed in the contiguous zone and on the continental shelf.

### **Similarities**

- a) Both the Old and Newly Amended Acts discussed the power to make rules.
- b) Both the Old and Newly Amended Acts depict the Territorial Sea, EEZ, and Continental Shelf.
- c) Both the Old and Newly Amended Acts do not say anything about the Arbitration. But Arbitration is a popular method for solving a dispute amicably.

## Chapter 2.3

### **Loopholes of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’: -**

The ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ introduces several reforms that will elevate several issues for the first time in Bangladeshi law's history. The Maritime Tribunal, Blue Economy, the exploration or exploitation of marine resources (both living and non-living), Maritime Cooperation, Marine Scientific Research, various types of surveys, and Bangladesh's rights and authority in the Territorial Sea, Continental Shelf, Contiguous Zone, and the High Seas are some of the issues covered by this list. Additionally, this Newly Amended Enactment gives the Government of Bangladesh the authority to establish regulations as appropriate on a variety of topics (Hosen, 2023). Most importantly, this New Legislation is about the establishment of a maritime tribunal and the punishment of offenses committed by any person in the sea. To implement the provisions of this new legislation with the other issues, the establishment of an exclusive and effective tribunal is a must. Although this ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ will be able to protect the sovereignty of Bangladesh and the preservation of marine resources, control pollution, and penalize the offender, there are some shortcomings/loopholes of the Newly Amended Act which are mentioned below: -

- 1) In the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’; nothing is said about the aircraft, chart datum, continental margin, continental slope, due publicity, geodetic datum, harbour works, historic wars, installations, low water line, the mouth of a river, radioactive materials, sedimentary rock, straight line, submarine, submarine cable, superjacent water, thalweg, tide, warship, water column. These issues are very much related to the territorial sovereignty. But these issues are untouched in the Newly Amended Act.

- 2) The Definition of Marine Pollution is not enough in the Newly Amended Act. A broad discussion relating to environmental protection and marine pollution should be included in the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'. Population factors play a significant role in environmental issues. Now the number of living within 200 kilometres of a coastal zone is around 3 billion.
- 3) The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' makes no mention of the grey region. The Grey Area is essential for defining Bangladesh's maritime border. Beyond Bangladesh's 200-mile border is the Grey Area. We must keep in mind that only the seabed and subsoil of the continental shelf are subject to Bangladesh's rights. However, Bangladesh has no right to be in the EEZ's adjacent waters.
- 4) The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' makes no mention of the high seas' autonomy. We must keep in mind that one of the cornerstones of international law is the freedom of the high seas.
- 5) The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' makes no mention of hot pursuits or authorized police for them. The exclusive right of a flag state to exert jurisdiction over its ships on the high seas is not applicable in cases of hot pursuit. If there is any suspicion that a foreign ship has broken the laws of the nation that uses hot pursuit, the state may use it to pursue the ship beyond the coastal waters. It has a strong connection to a state's sovereignty. It must be noted that only the warships, authorized government boats, or aircraft of coastal states are permitted to exercise the right of hot pursuit. The foreign ship is entitled to compensation if any loss results from this hot chase if the use of hot pursuit is not warranted.
- 6) Nothing is said about the particular sensitive sea area that should be included in the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'.
- 7) There is no mention of resolving the conflict or the offense amicably. This indicates that a provision relating to the arbitration should exist.

- 8) The recently modified statute does not have any annexed armed warfare at sea. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' should include an annexure addressing maritime armed conflict.
- 9) Nothing in the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' was said concerning the shipbreaking industry and its detrimental effects on the environment. It contributes to environmental and marine contamination. For the Bangladesh Government, industrial marine pollution is a major concern. The shipbreaking industry is growing more rapidly each day. However, the shipbreaking business also contributes to marine pollution and has a significant negative impact on the maritime ecosystem. Furthermore, nothing is addressed regarding the punishment of those guilty of the shipbreaking industry's contribution to maritime pollution. Although the Bangladesh Government has launched several attempts to reduce pollution, the goal has not yet been fully attained.
- 10) The term 'Ocean Governance' is not defined in the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'. A system called 'Ocean Governance' ensures that the ocean and its resources are utilized responsibly.



## Chapter 3

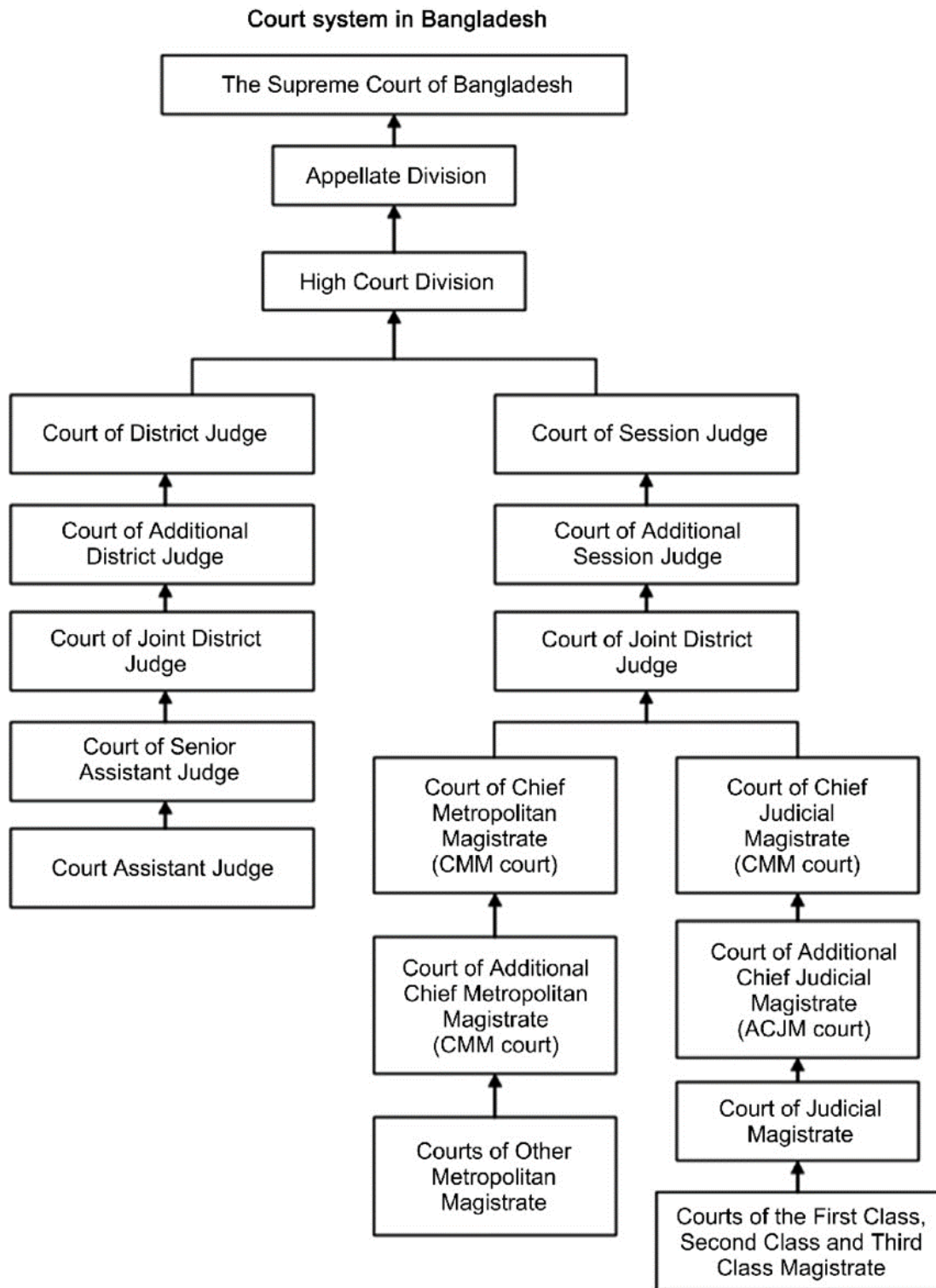
### **The Legal System of Bangladesh**

As Bangladesh is a common law country, that's why follows common law-based jurisdiction which was developed by the British rulers during colonial rule. Bangladesh has a fantastic and written constitution. The Supreme Court of Bangladesh acts as a Guardian of the Court. It interprets when necessary.

### **Special Courts/Tribunals:**

- (i) **Labour Courts:** Labour Court deals with labour cases that arise from labour issues including wages, termination, forced labour, unfair labour practice and any labour disputes.
- (ii) **Administrative Tribunals:** Administrative Tribunals hear and decide all sorts of service matters of the public servants/government employees.
- (iii) **Income Tax Appellate Tribunals:** Income Tax Appellate Tribunals hear and decide income tax-related issues.
- (iv) **Vat Appellate Tribunal:** Vat Appellate Tribunal hears and decides vat, custom, and excise duty-related issues.
- (v) **Money Loan Recovery Courts/Artha Rin Adalat:** Money Loan Recovery Courts/Artha Rin Adalats hear and decide all sorts of money claims/loan claims of the different banks and financial institutions.
- (vi) **Insolvency Courts:** Insolvency Courts try and declare a defaulter as insolvent. If any borrower is unable to pay the loan due to lack of money, this court must declare a borrower insolvent. The Court System of Bangladesh is given below:

Table 1: Court System in Bangladesh



## Chapter 4

### **Existing Marine Court and its powers: -**

The structure of one or more marine courts is described in Section 47 of the 'Inland Shipping Ordinance 1976'. The offenses that are punished under the Inland Shipping Ordinance 1976' may be tried in this existing Marine Court. The trial of offenders is covered in Section 46 of the 'Inland Shipping Ordinance 1976'. The language of section 46 of the 'Inland Shipping Ordinance 1976' makes it clear that the Government of Bangladesh may order the District Magistrate, the Upazilla Nirbahi Officer, or the officer conducting an inquiry under subsection (1) or subsection (3) of section 45 to submit a statement of the case in favour of a First-Class Magistrate Court with jurisdiction at the scene of the accident or a Marine Court established under subsection (b) of section 47. Then this First-Class Magistrate or the Marine Court tries the offense by completing the trial of the offense mentioned in the 'Inland Shipping Ordinance 1976'. According to the 'Inland Shipping Ordinance 1976', this existing Marine Court has the authority to look into maritime fatalities and convene a mobile court there. Additionally, the Director General of Bangladesh's Department of Shipping may delegate any other tasks to this Marine Court.

The Marine Court is given the same authority by Section 48 of the 'Inland Shipping Ordinance, 1976' as the First-Class Magistrate under the 'Code of Criminal Procedure, 1898'. Section 49 of the 'Inland Shipping Ordinance 1976' covers the trial process. To

conclude the trial of the offenses listed in the ‘Inland Shipping Ordinance, 1976’, it is stated in section 49 that the First-Class Magistrate or the Marine Court shall follow the summary trial procedure described in the ‘Code of Criminal Procedure, 1898’.

There is now only one Marine Court in Bangladesh that may handle cases involving shipping casualties. Any crime committed in the exclusive economic zone cannot be tried in this Marine Court. Instead, this existing Marine Court only has the authority to hear cases involving crimes that were committed within the 12-mile territorial limit. The ‘Inland Shipping Ordinance 1976’ contains all of the Marine Court's authority and responsibilities.

The Government intends to establish four additional marine tribunals to supervise the detection of infractions by marine vessels and shipyards that would assist in preventing accidents, according to the then-shipping minister from 2015, who made the announcement. Although there is only one marine court, and it is also located in Dhaka, this can be seen as another issue impeding the role of the court as it is frequently challenging to bring the alleged wrongdoers to the court due to time constraints or distance issues. Nevertheless, even after the aforementioned eight years have passed, no such steps have been taken by the authorities.

## Chapter 4.1

### **Problems of the Existing Marine Court in Bangladesh: -**

Though there is a One and Only Marine Court in Dhaka, Bangladesh under Section 47 of the ‘**Inland Shipping Ordinance 1976**’, it has a lot of shortcomings. That’s why this existing Marine Court can’t perform its duties properly. Due to the Maritime Policies and role of the maritime administration of the country, the existing Marine Court has to face a lot of problems at the time of performing its functions and duties. The problems of the existing Marine Court are pointed out below: -

- A) Problems relating to jurisdiction. As per the provisions of the ‘Inland Shipping Ordinance 1976’, the Existing Marine Court has the power to try the offenses committed in the inland waterways of the country (i.e., in Bangladesh). The Magistrate of the existing Marine Court is a Special Magistrate. But sorry to say that this Special Magistrate can’t exercise its jurisdiction properly due to the jurisdiction exercised by the local magistrate of the district. This overlapping should be removed. Otherwise, it impairs the activities of the existing Marine Court. Because of this overlapping, many cases are tried by both the Special Magistrate Court as well as Local Magistrate simultaneously. So there arose some contradictions and confusion. As a result, the cases are not solved timely. The backlog of cases is increasing day by day.
- B) Contradictory and Impractical Structural as well as Functional Problems of the existing Marine Court.
- C) Lack of judicial independence due to the interference of the Executive Body (i.e., Ministry of Shipping.) Because it is a part of the Department of Shipping. That’s why administrative control is in the hands of the Department of Shipping. Because of the interference by the Department of Shipping, the existing Marine Court can’t perform its functions properly and independently. Moreover, the existing Marine

Court and the Special Magistrate of this existing Marine Court are considered to be subordinate to the Director General of Shipping. Moreover, this Special Magistrate is dependent for many reasons on the Department of Shipping.

- D) The Magistrate of the existing Marine Court faces security problems. The Existing Marine Court is situated on the same floor as the office of the Department of Shipping.
- E) Existing Marine Court is considered as a section of the Shipping Department like other sections. Less focus is imposed on the Marine Court.
- F) Having less knowledge about maritime law among the Magistrate as well as Lawyers is also an impediment to the speedy trial of the offense before the existing Marine Court.
- G) Arrest of Warrant issued by the Special Magistrate of the Existing Marine Court is not properly executed by the Police Officer of the concerned police station. As a result, justice is delayed in the existing Marine Court. Moreover, sometimes the police force is not deployed timely at the time of Mobile Court run by the Special Magistrate of the Existing Marine Court.
- H) Collective Bargaining Agents (CBA) often try to influence the Special Magistrate of the Existing Marine Court as well as the Head of the Department of Shipping.
- I) The existing Marine Court has no special record room for preserving the case records. However, these case records are public documents. So, the preservation of the case record is very crucial. A separate record room is very much needed in this regard.

## Chapter 4.2

### **Unification of Existing Marine Court and Proposed Maritime Tribunal in**

#### **Bangladesh: -**

The merging of the Existing Marine Court and the Proposed Maritime Tribunal is crucial since the current Marine Court is unable to carry out its obligations and functions effectively and independently.

- a) Moreover, the presiding officer of the existing Marine Court is a Special Magistrate as per the provision of the “Inland Shipping Ordinance 1976”. However, the Presiding Officer of the Proposed Maritime Tribunal is either the DJ or ADJ according to the provisions of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’. This is the Basic Difference.
- b) That means the basic difference between the Existing Marine Court and the Proposed Maritime Tribunal is the qualification of the judges. The Judge of the Marine Court is the First-Class Magistrate Whereas, the Judge of the Maritime Tribunal is either the District Judge (DJ) or the Additional District Judge (ADJ).
- c) The power of the Proposed Maritime Tribunal is huge While the Power of the Marine Court is very limited. The existing Marine Tribunal can impose up to 110 Crore BDT. as a fine (Hosen, 2023). Whereas the existing Marine Court can impose a nominal fine.
- d) Appeal from the Judgment of the Proposed Maritime Tribunal shall lie to the Hon’ble High Court Division (HCD) of the Supreme Court of Bangladesh While Appeal from the Judgment of the Marine Court shall lie to the CMM or CJM Court.

Considering these issues, the unification of the Marine Court and Maritime Tribunal is necessary. Moreover, as per the provision of the ‘Inland Shipping Ordinance 1976’, the Special Magistrate Court of the Existing Marine Court is answerable to the CMM Court. However, according to the provisions of the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’, the DJ is answerable to the Hon’ble High Court Division (HCD) of the Supreme Court of Bangladesh (SCB).

### Chapter 4.3

#### **Necessities of the Proposed Maritime Tribunal in Bangladesh**

The number of complicated offenses and human marine activities is growing daily, along with their sophistication and frequency. A strong, dedicated, and effective Maritime Tribunal is necessary to reduce the complexity and stop the criminal from committing any crimes. The Proposed Maritime Tribunal is very crucial. It cannot be summed up in a single sentence. Bangladesh needs a strong, dedicated, and effective Maritime Tribunal to hold offenders accountable for any crimes committed within the maritime boundary limit since the country's maritime boundary is expanding.

For a nation to maintain its sovereignty, the right to innocent passage is crucial. Therefore, every state is required to defend its sovereignty from any form of threat or use of force that conflicts with it. The attack of any force, the use of weapons, the loading or unloading of any item, any amount of money, or the presence of any person will impede a state's sovereignty at any time if it is not properly protected (Ministry of Law, Justice and Parliamentary Affairs, 2019).

The preservation of fishing is still another critical factor. because so many people are fishing illegally. Sustainable fisheries suffer from illegal fishing. Nearly every country is affected by illegal fishing. We must keep in mind that the fishing industry is crucial to a sovereign state's ability to meet its needs for food, employment, and security. Additionally, protecting the sea from pollution is a holy responsibility of every state. Marine contamination is a serious issue. A strong, dedicated, and effective Maritime Tribunal is essential for defending against and prohibiting those types of practices. Because of this, the creation of a powerful and exclusive maritime tribunal is suggested.



The Necessity of the Proposed Maritime Tribunal could be summed up as follows: -

- 1) One of the most important necessities of the establishment of the designated/exclusive Proposed Maritime Tribunal is to solve the cases promptly and to decrease the backlogs of cases. If a designated Maritime Tribunal is established, it can dispense justice smoothly by performing its activities smoothly. But if the designated Maritime Tribunal is not established and the DJ or the ADJ is given an additional charge to try the offense under the “Territorial Waters and Maritime Zones (Amendment) Act, 2021 (Act No. XXIX of 2021)”, it is not possible to solve the cases timely. Because the DJ or the ADJ is already overburdened with lots of cases.

In Bangladesh, judicial procedure is very time-consuming and lengthy. Moreover, nowadays, the court is becoming expensive for poor people. The lawyers’ fees, court fees, and other miscellaneous expenditures are increasing day by day. One of the reasons for the backlogs of cases is the interference of the executive organ over the judiciary. The judiciary is not independent yet though on 1<sup>st</sup> November, 2007 Judiciary was separated from the executive organ. Still, the Judiciary is not performing its duty independently absolutely. Political pressure impedes the independence of the judiciary. As a result, backlogs of cases are increasing day by day. As of 17 August 2023, 40,21,783 cases are pending before the Bangladesh Judiciary either the higher court or the lower court. Out of these pending cases, 16,851 cases are pending before the Hon’ble Appellate Division and 5,21,999 cases are pending before the Hon’ble High Court Division. This number of pending cases hampers the dispensation of justice. Every year the number of pending cases is increasing. Backlogs of cases impede justice seekers from getting justice timely. Due to the increase in cases, the work pressure on the judges is increasing day by day. These workloads have to be lessened by dispensing justice timely and solving the cases quickly.

- 2) To ensure the Rights of Innocent Passage.

- 3) To exercise civil jurisdiction as well as criminal jurisdiction over a foreign ship in the Territorial Sea. “Territorial Waters and Maritime Zones (Amendment) Act, 2021” empowers the Maritime Tribunal to exercise this criminal jurisdiction. By dint of this power, the Judges of the Proposed Maritime Tribunal can arrest a person who committed any offense, conduct any investigation, and prosecute any person under the above-mentioned Act.
- 4) To penalize the offender for the violation of the innocent of passage.
- 5) To ensure the justice in the sea.
- 6) To prevent the offenders from committing any offense in the sea.
- 7) To protect from the Marine Pollution. Pollution may be of different types including oil pollution from ships, pollution from oil exploitation, pollution of the marine environment, discharge of sewage, industrial waste throwing, dumping of wastes, and so on.
- 8) To protect the natural resources in the sea.
- 9) To prevent the wilful or negligent act of breaking or injuring a submarine cable, Telegraphic or Telephonic Communications, and submarine pipeline or high-voltage power cable under the High Seas by imposing severe punishment as well as fines to the offender.
- 10) To punish polluters and those who don't take the required precautions to prevent pollution.
- 11) To deter theft, piracy, armed robbery, and maritime terrorism at sea by punishing offenders severely and levying fines. We must remember that piracy impedes both domestic and foreign navigation. If piracy is not stopped, it will obstruct commerce growth and endanger people's lives and property. Therefore, it is obvious that piracy is a serious issue for the preservation of sovereignty, security, and safety. Therefore, in the case of piracy, proper emphasis must be provided. The Bangladeshi Navy, Coast Guard, Port Authority, and Shipping Police personnel are working round-the-clock to eradicate piracy from Bangladesh's maritime border. In this context, the planned Maritime Tribunal can have a big impact.
- 12) To put in place laws or regulations for the ocean's sustainable usage.

- 13) To improve the country's economy. The proposed Maritime Tribunal will work together to safeguard the sea from offenders and improve the country's wealth through proper sea usage.
- 14) To advance security and defense objectives. The concept of maritime security has several facets and is dependent on both domestic and foreign rules and regulations. Geopolitics must also be taken into account when discussing marine security. It is an essential component of a state's overall security. Due to its tiny size, Bangladesh must contend with serious marine security from both conventional and non-traditional sectors.
- 15) To safeguard the interests of navigation.
- 16) To stop and forbid the passage of illegal substances and weapons via the seas.
- 17) To prevent the exploitation of the sea. The harvesting activities conducted by humans, whether directly or indirectly, have a significant impact on the populations of marine animals. In this regard, a lot of consideration must be given. The proposed Maritime Tribunal will contribute to treating this matter properly.
- 18) To safeguard a sizable maritime economy. The development of Bangladesh's total national economy depends on this maritime sector. The ocean-based economy is currently a global priority.
- 19) The provision of a large amount of fine, which is indicated in Section 17 of the above-mentioned Act, is one of the most significant features of the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021'. The maximum penalty that a court can impose on someone (for example, 'The Master of a Foreign Vessel') for discharging radioactive or hazardous material in the territorial sea is 110 (One Hundred Ten) Crore Bangladeshi Taka (BDT). A powerful, exclusive, and efficient Maritime Tribunal is required to inflict this highest fine. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' gives the Maritime Tribunal almost complete authority to sentence violators a hefty sum. That is what makes this Act so lovely.
- 20) To promote maritime tourism businesses and industries.
- 21) To promote oceanic sustainable fishing.

- 22) To protect public health and immigration.
- 23) To ensure the fiscal matters and customs.
- 24) To penalize the culprits who engaged in Marine Pollution. The marine environment becomes unstable from time to time due to marine pollution.
- 25) To punish the offenders for the contravention of law by submarine or any other vehicle.
- 26) To prevent the throwing of nuclear or hazardous wastages within the territorial water limit of Bangladesh.
- 27) To punish the offenders who committed an offense within the Contiguous Zone, EEZ, or Continental Shelf.
- 28) To prevent the wilful or negligent act of breaking or injuring a submarine cable, Telegraphic or Telephonic Communications, and submarine pipeline or high-voltage power cable under the High Seas by imposing severe punishment as well as fines to the offender.
- 29) To punish pollution and for failure to take necessary steps for preventing the pollution.
- 30) To prevent theft, piracy, armed robbery, and, maritime terrorism at sea by imposing severe punishment as well as fines to the offender.
- 31) To implement policies or rules for the sustainable use of the ocean.
- 32) To strengthen the economy of the country. The proposed Maritime Tribunal will cooperate to increase the income of the country through sea usage properly and protect the sea from the culprits.
- 33) To protect the Defence and Security interests. Maritime Security is a multi-faceted concept and it hinges on both the national and international laws and regulations. Moreover, geopolitics is to be considered in the case of maritime security. It is an indispensable part of a state's comprehensive security. Bangladesh has to face severe maritime security from both traditional and non-traditional sectors due to being a small country.
- 34) To protect the navigational interest.
- 35) To prevent and prohibit illegal drugs and weapons transportation in the seas.

- 36) To protect the sea from the exploitation. Marine animal populations are greatly affected by the harvesting activities done by humans directly or indirectly. Much attention has to be afforded in this regard. The proposed Maritime Tribunal will help to give proper attention in this regard.
- 37) To protect a huge maritime economy. This maritime sector is crucial for the overall national economic growth of Bangladesh. The whole world is now focusing on the ocean-based economy.
- 38) One of the most important aspects of the “Territorial Waters and Maritime Zones (Amendment) Act, 2021” is the provision of the high amount of fine which is mentioned in Section 17 of the above-mentioned Act. This is the highest amount of fine (i.e., One Hundred Ten Crore BDT. Fine) that a court can impose upon persons (in this case ‘The Master of a Foreign Vessel’) for throwing nuclear or hazardous wastes in the internal waters or the territorial sea. To impose this highest amount of fine; a strong, exclusive, and effective Maritime Tribunal is a must. Almost every section of the “Territorial Waters and Maritime Zones (Amendment) Act, 2021” empowers the Maritime Tribunal to impose a great amount of fine upon the offenders. That is the beauty of this newly Amended Act i.e., the “Territorial Waters and Maritime Zones (Amendment) Act, 2021”.
- 39) To encourage maritime tourism sectors/industry.
- 40) To encourage sustainable fishing in the sea.
- 41) To ensure immigration and sanitary.
- 42) To make sure the customs and other fiscal matters.
- 43) Last but not least, the Proposed Maritime Tribunal is needed for protection from any sort of threats due to the conflicts.
- 44) Last but not least, the Proposed Maritime Tribunal is required for defense against all threats resulting from the conflicts.

## Chapter 5

### **Concluding Remarks and Recommendations for the Proposed Maritime Tribunal in Bangladesh**

Bangladesh is a landlocked state from three sides by India and Myanmar. The sea is the only outlet for exercising sovereign rights. Despite having a relatively tiny land area, Bangladesh has a very sizable population. In actuality, it is the ninth most populous nation in the world. As a result, maintaining such a big population with limited natural resources and arable land has long been a problem for politicians. The effective exploitation of our country's abundant maritime resources, however, can be a key component for sustainable and ongoing development. In the past, due to uncertainty, Bangladesh had been deprived of exercising its claim over maritime resources (Alam and Faruque, 2010). Bangladesh's Government is very much concerned about the protection of the sovereignty of the maritime boundary.

We must swiftly implement a comprehensive maritime law by international maritime norms and regulations to safeguard the marine ecosystem, maintain marine biodiversity, and prevent endangering the marine environment. If not, we shall witness the waste of our valuable marine resources.

From the above discussion, it can be said that the importance of the establishment of an Exclusive and Effective Maritime Tribunal (Proposed) is needless to say to protect the sovereignty of a state, to maintain a sea free from pollution, to prevent the offender from committing any offense in the Contiguous Zone, EEZ, or Continental Shelf. For a speedy disposal of the cases; a strong, dedicated, and effective Maritime Tribunal is

a must. The Government should take immediate and necessary measures to set up a strong, dedicated, and effective one or more than one Maritime Tribunal as quickly as possible to maintain and protect the sovereignty of Bangladesh as well as to prevent unauthorized interference. To protect the marine ecosystem, preserve marine biodiversity, and avoid damaging the marine environment, we must immediately put comprehensive marine laws by international maritime norms and regulations into effect. If not, we will see our precious marine resources go.

Section 27 of the “Territorial Waters and Maritime Zones (Amendment) Act, 2021 (Act No. XXIX of 2021)” is said about the establishment of the Maritime Tribunal. Nothing is said about the success of this Maritime Tribunal. To make the Proposed Maritime Tribunal Successful, the following recommendations may be taken into consideration. The recommendations may be summed up as follows: -

- 1) Create a thorough legal framework that governs maritime law and makes clear which jurisdictions, and legal instruments are relevant, and how disputes will be resolved.
- 2) There should be a Special as well as experienced Judge of the Proposed Maritime Tribunal who has expertise in maritime law, is knowledgeable about international conventions and treaties, and is impartial. The Special Judges of the Proposed Maritime Tribunal should be trained with maritime law knowledge for the dispensation of justice. The Special Judges of the Proposed Maritime Tribunal can be sent abroad for higher degrees in Maritime Law to obtain vast knowledge in this subject. We should not forget that the incompetency of the court is liable for the partiality of the court.
- 3) Effective procedures must be used, including the use of expedited processes to speed up cases, such as the use of electronic filing, specialized maritime regulations, and alternative dispute resolution techniques like arbitration or mediation.

- 4) The Judge of the Proposed Maritime Tribunal should be answerable directly to the Admiralty Court's Judges of the Hon'ble High Court Division. As we know "as per Section 3 (1) of the Admiralty Court Act, 2000- The High Court Division of the Supreme Court of Bangladesh shall be a Court of Admiralty." There is an Admiralty Bench in the High Court Division which may be a Single Bench or the Division Bench from time to time.
- 5) The Admiralty Judge should be the Appellate Court for the Proposed Maritime Tribunal. Because both are specialized courts. As maritime issues are specialized issues, having maritime law-related knowledge is a must. Admiralty Judges are the senior Judges and Specialised ones. That's why they can easily understand the Maritime Related Appeals and other maritime-related issues quickly.
- 6) The Proposed Maritime Tribunal can be set up in the Court Arena either the Subordinate Court or the Supreme Court of Bangladesh. The Proposed Maritime Tribunal may be located in either Chittagong (port city) or Dhaka (capital city). If the Proposed Maritime Tribunal is located in Dhaka, then the crowded city makes communication difficult. The trial proceeding is delayed because the litigants are unable to appear before the court promptly. The suits can be resolved swiftly and without delay if the court is located in a port city. A separate room in the court arena makes him/her more comfortable. As a result, s/he can perform his/her function smoothly and independently. As we know the Existing Marine Court is situated in the same building as the DG Shipping Office. As a result, interference over the Existing Marine Court is notable by the High Officials of the DG Shipping which impedes performing the functions impartially.
- 7) The Proposed Maritime Tribunal shall be provided with the required logistical support, including well-equipped office buildings, residential facilities, car facilities, high-speed internet/Wi-Fi facilities, and other types of equipment. Modern technology will have to be used for case management, evidence presentations, and remote hearings.
- 8) Additionally, the court should have a specialized panel or division to handle particular maritime law-related issues.



- 9) The Proposed Maritime Tribunal should have access to a separate record room for the storage of case files. The case files' records are very important. If a separate record room is not provided, the case file will be rapidly destroyed.
- 10) The dedicated Proposed Maritime Tribunal should assign only Maritime Issues, not the other issues. For instance, only Nari-o-Shishu cases are heard by the Nari-o-Shishu Nirjatan Daman Tribunal in Bangladesh, while only tax-related cases are heard by the Income Tax Tribunal and the Cyber Tribunal, respectively. Due to this, these specialist tribunals and courts handle a significantly higher volume of cases than other regular courts.
- 11) Unification of the Existing Marine Court and Proposed Maritime Tribunal can be done for the smooth dispensation of justice. Coordination between these two is necessary in this regard.
- 12) There should be no structural or functional problem of the Proposed Maritime Tribunal like the existing Marine Court. Otherwise, the Proposed Maritime Tribunal can't perform his/her duties smoothly and independently.
- 13) The Government should make rules for the code of conduct of a person in the internal waters, territorial sea, contiguous zone, exclusive economic zone, and the continental shelf for exercising the jurisdiction by the Proposed Maritime Tribunal properly.
- 14) Assure openness in judicial proceedings, including public access to documents, rulings, and case precedents.
- 15) To prevent excessive delays in the proceedings, complex trial procedures should be eliminated. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' does not have a special procedure. It adheres to the 'Evidence Act, 1872' and the 'Code of Criminal Procedure of 1898'. The complexity would be eliminated or reduced if it had its own trial procedures or guidelines. The Government may create special rules and regulations in this regard for the swift resolution of cases.
- 16) It is necessary to broaden the Proposed Maritime Tribunal's purview of authority. To enable the Proposed Maritime Tribunal to exercise its authority and take

additional steps for the effective safeguarding of Bangladesh's sovereignty, the Government should promptly draft the rules that would govern its operation. Furthermore, the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' can be amended to strengthen the power, jurisdiction, and reach of the proposed maritime tribunal.

- 17) The Proposed Maritime Tribunal's authority should have a wider range of authority. To enable the Proposed Maritime Tribunal to effectively exercise its authority and take additional steps to safeguard Bangladesh's sovereignty, the Government should immediately draft the necessary regulations. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' may also be amended to improve the Proposed Maritime Tribunal's authority and jurisdiction.
- 18) Encourage parties to consider ADR alternatives before filing a lawsuit to lighten the court's backlog. The 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' does not contain any language referring to arbitration. There should be a clause requiring arbitration. One of the finest ways to settle a case or dispute amicably is arbitration. Alternative Dispute Resolution is regarded as one of the most popular ways in the modern world in terms of speed, cost, flexibility, and confidentiality. To resolve disagreements amicably, litigants/parties prefer arbitration. In Bangladesh, the maritime industry is growing daily. Now, its territories are significant. The amount of maritime business is therefore rapidly growing. For the interest of the populace, society, and industry, maritime disputes and offenses should be arbitrated amicably, expeditiously, and economically. Arbitration is thought to be more favourable, quicker, and less expensive. Therefore, the Government can take into consideration the provision of arbitration when creating the rules under the 'Territorial Waters and Maritime Zones (Amendment) Act, 2021' to settle the dispute peacefully. The 'Family Court Act, 2023', the 'Money Loan Court Act, 2003', and the 'Code of Civil Procedure, 1908' all have provisions for arbitration or Alternative Dispute Resolution (ADR). Under the provisions of the 'Arbitration Act, 2001', arbitration proceedings shall be followed. Additionally, it must be remembered that not all of the provisions of the

‘Arbitration Act, 2001’ are sufficient to satisfy the requirements. To get the optimum outcome, the terms of the ‘Arbitration Act, 2001’ should be modernized and updated.

- 19) Even though Bangladesh has ratified several international ocean-related treaties and legislation, our country does not have a comprehensive national legal system in place to safeguard marine environments. Therefore, this topic should receive more attention throughout the ‘Territorial Waters and Maritime Zones (Amendment) Act, 2021’ rules-making process.
- 20) Encourage international collaboration with other maritime countries to unify laws and advance consistently applying international treaties.
- 21) Ensure that all parties, especially small vessel operators, have access to justice by providing reasonable legal services and streamlined procedures for minor disputes.
- 22) Regularly evaluate and update maritime laws and judicial processes to accommodate shifting market realities and global advancements.
- 23) Inform the general public about the significance of maritime law and the maritime court's function in preserving maritime safety, security, and fairness.

The Proposed Maritime Tribunal can improve its performance, credibility, and contribution to the maritime sector and global trade by putting these ideas into practice.

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## Appendices