

The Application of Article 111 of the Constitution of Bangladesh in the Criminal Justice System as a Sentencing Guideline

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Abstract : Generally, the decision of the higher court is binding on its subordinate courts. As provided in Article 111 of the Constitution, 'the law declared by the Appellate Division (AD) shall be binding on the High Court Division (HCD) and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.' This means the judicial discipline requires the HCD to follow the decision of the AD and that it is necessary for the lower tiers of courts to accept the decision of the higher tiers as a binding precedent. Analyzing the application of Article 111 of the Constitution in the criminal justice system as a sentencing guideline, the paper, by examining whether there is any consistency in decision between one HC Bench and another HC Bench, explores whether HCD can per incuriam its previous decision. In doing so, the Death Reference (DR) Cases are contemplated. Furthermore, the paper shall examine whether the Court of Session follows the decision of the HCD while using their discretion to make the choice between death and imprisonment for life under section 302 of PC. The paper argues due to the absence of any specific direction for sentencing and inconsistency in jurisprudence among the HCD; the subordinate courts are in a dilemma.

Keywords : death reference, sentencing factor, sentencing guideline, criminal justice system and constitution

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