

Ethics in Banking & Legal Environment

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MUHAMMAD NURUL HOQ
EVP & HEAD OF ZONE
SYLHET

Syllabus

- ❑ **Introduction**
- ❑ **Ethics in Banking**
- ❑ **Financial Institution Related Laws**
- ❑ **Financial Instrument Related Laws**
- ❑ **Business Related Laws**

1ST Session (9.00 AM-10.30 AM)

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❑ **Concepts of Law**

✓ **Order**

✓ **Ordinance**

✓ **Act**

✓ **Rules**

✓ **Practice**

❑ **Legal Framework & Laws for Islamic Banking in Bangladesh & different countries**

Concepts of Law

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□ LAW

Law are rules that bind all people living in a country. Laws protect our general safety and ensure our rights as citizens against abuse by other people, organization and by the government itself.

Concepts of LAW

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- ❑ **Order:** A decision issued by a court or authoritative body. It can be written or verbal. Orders are issued at Hearings, Trials, Appeals and other court proceedings.
- ❑ **Ordinance:** The ordinance is a legislative power of the President and have the same force and effect of that a law passed by the parliament. Ordinance is temporary law that is circulated by the president on the recommendation of Government. It only be delivered/passed when the parliament is not in session and there is a need to make an act in emergency.
- ❑ **Act:** Act is a law, that is made by the legislature such as parliament.

Concepts of LAW

- ❑ **Rules:** When any act is introduced and passed it is not mandatory that it is complete code in itself. So there is a requirement for the enactment of rules or defining the procedure of performing and implementation of act. In short rules provide procedural laws.
- ❑ **Practice:** The word “Practice“ in law is the application of legal principles and judgments with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law. Practice is a ongoing pursuit of a profession and is a repetition of an activity to improvement of skills while law is a body of rules and standards issued by the government or to be applied by the court.

Legal Framework & Laws for Islamic Banking

□ Legal Framework & Laws for Islamic Banking in Bangladesh:

Shariah-based banking was introduced in Bangladesh in 1983. And Bangladesh Bank prepared a guideline mainly for Islamic Banking in November 2009 on the basis of Banking Companies Act 1991, Companies Act 1994 and Prudential Regulations of Bangladesh Bank.

<https://www.bb.org.bd/aboutus/regulationguideline/islamicbanking/islamicguide.php>

Legal Framework & Laws for Islamic Banking

□ Legal Framework & Laws for Islamic Banking in different countries:

The **Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)**, has been publishing standards and norms for Islamic financial institutions since 1993. By 2017 it had issued 94 standards in the "areas of Shari'ah, accounting, auditing, ethics and governance". Its standards are mandatory for Islamic financial institutions in Bahrain, Sudan, Jordan and Saudi Arabia, and recommended for other Muslim countries.

Legal Framework & Laws for Islamic Banking

❑ Supporting institutions:

- The **Islamic Interbank Money Market** was established by Bank Negara Malaysia on 3 January 1994.
- The **Islamic Financial Services Board** was founded on 3 November 2002 at Kuala Lumpur by central banks of Bahrain, Iran, Kuwait, Malaysia, Pakistan, Saudi Arabia, Sudan along with the Islamic Development Bank, AAOIFI, and IMF.

Legal Framework & Laws for Islamic Banking

- ❑ **The Islamic International Rating Agency** started operations in July 2005 in Bahrain. It is sponsored by 17 multilateral development institutions, banks and other rating agencies.
- ❑ **The Dow Jones Islamic Market Index (DJIMI)** was established in 1996. The Index has been approved by Fiqh Academy of the OIC.

Self Study

- Differentiate among “ Law, Ordinance”, “Order” and “Act”.*
- Do you find any distinction between “Law and Act”?*
- Discuss about the legal framework and laws for Islamic Banking in Bangladesh and other countries.*

Contents of Ethics in Banking

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- ❑ **Concepts & Nature**
- ❑ **Ethics, Religion & law**
- ❑ **Principles of Trade**
- ❑ **Commerce & Finance**
- ❑ **Business Ethics & Corporate Culture**

Concepts & Nature

□ Ethics:

The moral values, principles or philosophy that control or influence a person's behavior and activities. Ethics are the moral values and principles that are socially adopted by the society & environment while laws are the rules and regulations established by the authorities.

Concepts & Nature

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❑ Ethics & Banking:

- ❑ Code of conduct and Ethical Principles (AAOIFI)
- ❑ Ethical Banking

Code of conduct and Ethical Principles (AAOIFI)

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❑ Code of conduct:

- ❑ Integrity
- ❑ Objectivity
- ❑ Professional competence and due care
- ❑ Confidentiality
- ❑ Professional behavior.

Code of conduct and Ethical Principles (AAOIFI)

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❑ Ethical Principles (AAOIFI)

- ❑ Trustworthiness
- ❑ Legitimacy
- ❑ Objectivity
- ❑ Professional Capability and Diligence
- ❑ Faith-driven conduct
- ❑ Professional conduct and technical standards

Ethical Banking

- ❑ Ethical banking is a fairly broad term used to describe banks that operate around a set of principles and ideals that are used to govern how they interact with their clients, their community, and the world in general.
- ❑ While each bank is left to determine what principles will sit at its core, most have a few characteristics in common, which include community involvement, client screening, and consistency of internal and external ethics.
- ❑ Ethical banking can help to build strong, financially capable communities.

Religion

Religion makes claims about cosmology, social behavior, and the “proper” treatment of others. While ethics are universal decision-making tools that may be used by a person of any religious persuasion, including atheists.

Commerce & Finance

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❑ **What are ethics in commerce & finance?**

Business ethics refers to implementing appropriate business policies and practices with regard to arguably controversial subjects. Some issues that come up in a discussion of ethics include corporate governance, insider trading, bribery, discrimination, social responsibility, and fiduciary responsibilities.

Principles of Trade

❑ What is ethical trade?

Ethical trade is about having confidence that the products and services we buy have not been made at the expense of workers in global supply chains enjoying their rights. It encompasses a breadth of international labor rights such as working hours, health and safety, freedom of association and wages.

Business Ethics

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Business Ethics



Corporate Culture

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Culture is an organization-level process that encompasses ethics and behavioral routines. It institutionalizes the type of behavior that is expected from people within a organization and with its trading partners. Its all the written and un-written rules of behaviors, what is important, what is accepted, what is celebrated, what is talked and what isn't addressed, etc.

Good Governance

Good Governance is the process of measuring how institutions conduct their affairs and manage resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption and with due regard for the rule of law. Governance is the process of decision-making and the process by which decisions are implemented. Governance in this context can apply to corporate, international, national, or local governance as well as the interactions between other sectors of society.

Principles of Good Governance

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Self Study

- What do you mean by Ethics in Banking? Why it is important in Banking/ Financial Institutions?*
- Discuss the relationship among the Ethics, Religion and Law.*
- Good Governance is the core parameter for the strength of a bank- Explain.*
- What is Code of Conduct? What are the basic codes of conduct for the banker?*
- What are the ethics in trade & Finance?*
- Discuss Corporate Culture and Good Governance.*
- What are the core principals of a Good Governance in Bank or Company?*

Contents of Financial Institution Related Laws

- ❑ **Bank Company Act 1991**
- ❑ **Bangladesh Bank Order 1972**
- ❑ **Artha Rin Adalat Ain 2003**
- ❑ **Financial Institution Act 1993**
- ❑ **Public Demand Recovery Act 1987**
- ❑ **Bankers Book Evidence Act 1891**

Bank Company Act 1991

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The Bank Company Act, 1991 deals with the provisions for regulating and bringing discipline in the banking sector of the country. This Act came into force in 24 February, 1991. The provisions of this Act are in addition to and not in derogation of the Companies Act, 1994 and any other Act for the time being in force.

Bank Company Act 1991

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- ❑ **The banks registered with the RJSC which get license to operate under Bank Company Act, 1991 are termed as Scheduled Banks.**
- ❑ **It has 123 Sections divided into 8 chapters and last amendment was done on 2021.**
- ❑ **It limits the number of Directors.**

Bank Company Act 1991

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- ❑ **The Act among others deal with the following aspects of banking companies:**
 - ❑ **Operations**
 - ❑ **Prohibited activities**
 - ❑ **Acquisition of undertakings for the sake of public interest**
 - ❑ **Suspension of business, winding up and disposal of winding up proceedings.**

Bank Company Act 1991

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ব্যাংক কোম্পানি আইন-১৯৯১ (Bank Company Act- 1991)

ব্যাংকিং প্রতিষ্ঠান সুষ্ঠুভাবে পরিচালনা ও নিয়ন্ত্রণের জন্য নীতিমালা ও বিধিবিধান হলো ব্যাংক কোম্পানি আইন ১৯৯১। এই আইনটি কার্যকর হওয়ার পূর্বে ব্যাংকিং ব্যবসায় পরিচালিত ও নিয়ন্ত্রিত হতো ব্যাংকিং কোম্পানি অধ্যাদেশ ১৯৬২ অনুসারে।
ব্যাংকিং কোম্পানি আইন-১৯৯১ অনুযায়ী ব্যাংক কোম্পানির উল্লেখযোগ্য কাজ ও বৈশিষ্ট্য নিম্নরূপ :

১. প্রমাণপত্রসহ আমানত গ্রহণ ও ঋণদান কার্যক্রম সম্পাদন করা।
২. জামানতসহ বা জামানত ব্যতিরিক্ত ঋণ প্রদান কার্যক্রম পরিচালনা করা।
৩. জামানত হিসেবে বিনিময় বিল, চেক, শেয়ার, বন্ড ইত্যাদি রেখে ঋণ প্রদান করতে পারে।
৪. লেটার অব ক্রেডিট, ট্রাভেল চেক, ক্রেডিট কার্ড, ডেবিট কার্ড, সার্কুলার নোট ইত্যাদি অনুমোদন ও ইস্যু করা।
৫. স্বর্ণ মুদ্রা, ধাতব মুদ্রা ইত্যাদি অনুমোদন ও ক্রয় করা।
৬. আইন বহির্ভূত ব্যবসায় করা যাবে না।

Bank Company Act 1991

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ব্যাংক কোম্পানি আইন-১৯৯১ (Bank Company Act- 1991)

৮. ব্যাংক ব্যবসায়ের নয় এমন কোন সম্পত্তি হস্তান্তর করা যাবে না।
৯. আইন অনুযায়ী ন্যূনতম মূলধন সংরক্ষণ করতে হবে।
১০. ব্যাংকিং কোম্পানির প্রতিশ্রুত মূলধন অনুমোদিত মূলধনের অর্ধেকের কম হতে পারবে না।
১১. একই পরিবারের মধ্যে শেয়ার ক্রয়-বিক্রয় করতে পারবে না।
১২. পরিচালকদের মেয়াদ একাধারে ৬ বছরের বেশি হতে পারবে না।
১৩. তফশিলী ব্যাংক ব্যতীত অন্যান্য ব্যাংক মোট আমানতের ৫% নগদ জমা রাখতে হবে।
১৪. ঋণ বা অগ্রিম গ্রহণের ক্ষেত্রে নিজস্ব শেয়ার জামানত হিসেবে রাখতে পারবে না।
১৫. ব্যাংক খেলাপি ঋণ গ্রহীতার তালিকা তৈরি করতে পারবে।



Bank Company Act 1991

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ব্যাংক কোম্পানি আইন-১৯৯১ (Bank Company Act- 1991)

১৬. বাংলাদেশ ব্যাংক সর্বোচ্চ সুদের হার নির্ধারণ করে দিতে পারবে।
১৭. ব্যাংক কোম্পানি মাসিক বিবরণী পত্র প্রকাশ করবে।
১৮. যে কোন সময় বাংলাদেশ ব্যাংক যে কোন ব্যাংক বা ব্যাংকের শাখাপরিদর্শন করতে পারবে।
১৯. বাংলাদেশ ব্যাংক চাইলে পরিচালনা পর্ষদ বাতিল করতে পারবে।
২০. ব্যবসায় বিলোপ করলে অগ্রাধিকার ভিত্তিতে আমানতকারির অর্থ ফেরত দিতে বাধ্য থাকবে।



Bangladesh Bank Order 1972

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(President's Order No. 127 of 1972)

Bangladesh Bank, the central bank and apex regulatory body for the country's monetary and financial system, was established in Dhaka as a body corporate vide the **Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972)** with effect from 16th December, 1971.

It has 84 Sections which are divided into 6 Chapters.

<https://www.bb.org.bd/aboutus/bankregulations/bbankorder.pdf>

Artha Rin Adalat Ain 2003

The Artha Rin Adalat Ain, 2003 (Money Loan Court Act, 2003) is the primary legal instrument dealing with bank and non-bank financial institutions (NBFI) loan defaulters.

- ❑ *The law came into force on 1st May 2003 except sections 46/47 which came into operation on 1st May 2004.*
- ❑ *The act contains 60 sections divided into 8 chapters.*

<http://bdlaws.minlaw.gov.bd/act-901.html>

Financial Institution Act 1993

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An Act made to provide for the granting of licenses to financial institutions, their control and to make other incidental provisions relating thereto.

- ❑ **It contains 51 sections divided into 9 chapters.**
- ❑ **Financial Institution Act 1993 came into force on 6th August, 1993**

<https://www.bb.org.bd/en/index.php/about/lawsnacts>

Public Demand Recovery Act 1987

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An Act to consolidate and amend the law relating to the recovery of public demands in Bangladesh.

Firstly came into force on 30 April, 1913, then amendment in 1987. It has total 64 Sections which are divided into 6 Chapters.

Bankers Book Evidence Act 1891

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The main tenets and precepts of the Act are that whenever any Bank or Banker is compelled to provide evidence to a court or judge, the original documents need not be produced and that a copy of the original documents are sufficient for legal purposes.

By cancelling “Bankers Book Evidence Act 1891” a new law was published on December 7, 2021 titled by Bankers' Books Evidence Act, 2021

It has total 7 Sections.

<https://www.bb.org.bd/en/index.php/about/lawsnacts>

Self Study

- ❑ *What are the functions of a bank as per the Bank Company Act, 1991?*
- ❑ *Describe the steps to be followed by a bank while putting a mortgaged property on auction under section 12 of Artha Rin Adalat Ain-2003.*
- ❑ *What are the procedures of filing suit for recovery of bank's dues as per the Artho Rin Adalot Ain-2003?*
- ❑ *Distinguish between a Public Limited Company and a Private Limited Company.*
- ❑ *What should be the contents of a Complaint of an Artha Rin Suit? When a complaint may be rejected or returned and what are its consequences?*
- ❑ *What is an execution case under Artha Rin Adalat 2003?*
- ❑ *What do you mean by Collateral Security, Primary Security?*

Self Study

- ❑ *Discuss about Pari-passu charge, Second Charge, Fixed Charge, Floating Charge?*
- ❑ *Mention the methods of Charging Securities- Lien, Mortgage, Hypothecation, Pledge, and assignment.*
- ❑ *What are the differences between second charge and Pari-passu charge'? Which is preferable for a banker and why?*
- ❑ *What are the procedures of filing suit for recovery of bank's dues as per the Artha Rin Adalat Ain-2003?*
- ❑ *Artha Rin Adalat Ain is a special law for safeguarding the investment of financial institutions. –Explain.*
- ❑ *What are the differences between certificates issued by Artha Rin Adalat Ain under section 33(5) and 33(7) of Artha Rin Adalat Ain-2003?*