



RAJSHAHI UNIVERSITY LAW JOURNAL

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Reforming the Prosecution Service in the Subordinate Courts of Bangladesh

Shaping the Modern Police in Indian Sub-Continent with Special Reference to Police Commission 1902-1903

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ইসলামী আইনে রোমান আইনের প্রভাব : একটি তুলনামূলক পর্যালোচনা



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Reforming the Prosecution Service in the Subordinate Courts of Bangladesh

Md. Abdur Rahim Mia*

Abstract: *The prosecution service is essential for delivering justice in criminal cases. During trial, the prosecution presents criminal cases and develops justifications for convicting the defendant. Without the institution of prosecution having individuals who are deserving and committed as well as have a base of a well-structured professional training, no prosecution would be successful. In Bangladesh, this crucial issue of the justice system has been underdeveloped and mostly ignored. Its employment, training, and professionalism require special consideration in order to make it work in harmony with other institutions and be successful in producing positive outcomes. There are no set guidelines for appointing prosecutors and running their offices in the districts of Bangladesh. Although the prosecution service in Bangladesh is not well-organized or integrated, it is supposed to be independent. A successful prosecution system is characterized by high conviction rates, and it can contribute significantly to the emergence of the rule of law in the country. In order to establish an effective, efficient, and independent public prosecutorial service in Bangladesh, this article suggests some reforms.*

Keywords: Prosecution, Prosecutor, Justice System, Courts, Trial, Investigation.

1. Introduction

Delivering justice under criminal proceedings depends on the prosecution service. From the time the accused first appears in court until the verdict, the prosecutors help the court uncover the truth. The prosecution presents evidence to the court and argues to support the defendant's conviction. High conviction rates are indicative of an effective prosecution system, which contributes to establish rule of law. The appointment of prosecutors and the operation of their offices in Bangladesh are not governed by any specific rules. The prosecution service of Bangladesh, which is supposed to be autonomous, is neither well-organized nor integrated. There are no established procedures for appointing prosecutors after verifying their degree of education, level of competence, and qualifications, nor are there any existing terms of references

* Professor, Department of Law, University of Rajshahi, Rajshahi-6205. This article is a modified chapter of a research project submitted at the University of Rajshahi in 2022. The author wishes to thank the University of Rajshahi for the assistance received during work on this project.

for their services. In Bangladesh, there is no efficient coordination between the prosecutors' office and the investigation authorities. Bangladesh lacks an independent public prosecution service, in contrast to many other nations throughout the world. In relation to the number of cases now pending before the subordinate courts, the number of prosecutors are insufficient. Prosecutors in Bangladesh are paid a very little amount of money, which forces them to engage in private practices. There is no organized effort to professionalize the prosecution service in Bangladesh. At the district level, there is no formal committee to oversee and manage prosecution. The District Judge Court's operational oversight of the prosecutors is deficient. In the present situation, political factors heavily influence the selection of prosecutors. It is challenging to oversee or ensure the responsibility of prosecutors due to the politicization of the institution. The low incidence of convictions in criminal trials is primarily caused by prosecutor's misconduct and inexperience. Since the prosecutors play a crucial role in the criminal justice system (CJS)¹, they should be qualified, well-paid, moral, and committed to their work. Justice cannot be guaranteed if a CJS of a country is ineffective, incompetent, or unreliable. This article makes an effort to study and assess the current prosecution service as well as identify the institutional limitations and problems associated with the system. It also suggests some measures to strengthen the prosecution system of Bangladesh. This article is analytical in nature and at the same time it is empirical. It is based on primary and secondary sources. A total number of 10 prosecutors of Rajshahi, Bogura and Natore Judge Courts are interviewed for the study from 12/09/22 to 30/09/22. The over-all perceptions gathered from face to face interview and court visit have been randomly used in this article.

2. Prosecution Service in the Subordinate Court of Bangladesh

The Attorney Service for the Supreme Court and the prosecution service for all subordinate courts are the two main branches of the prosecutorial service in Bangladesh. In the higher judiciary, the 'Team of Attorneys' offers legal services for prosecution as well as other legal matters. The Chief legal representative of the government is the Attorney General. Despite having

¹ The words 'Criminal Justice System' is referred hereinafter as CJS

ability to represent the State in any court within the state, his presence and authority are only available at the Supreme Court of Bangladesh. In each district, the positions of Public Prosecutor (PP)² and Special Public Prosecutor (SPP)³ make up the prosecution branch in the context of criminal justice. All of these law officials are supported by Additional/Assistants Public Prosecutor (APP)⁴, whose numbers vary according to the number of courts they are responsible for covering as well as the district's size and population.⁵ To prosecute minor offenses before the magistrate court, police officers are also designated as prosecuting sub-inspectors, prosecuting inspectors, and deputy superintendents of police prosecution. They are permanent police officers employed by the Home Department, and they are only permitted to serve as prosecutors in cases they have not personally investigated.⁶ The prosecutorial function is handled by the solicitor division of the Ministry of Law, Justice, and Parliamentary Affairs. The Ministry names prosecutors from among current legal professionals or from the police for a short period of time, typically for the duration of a single case, until the appointing government is in power.

3. Institutional Difficulties on Prosecution Service

In Bangladesh, the prosecution system faces various challenges in dispensing justice. Despite the contributions of the PPs and APPs, the prosecution service are being dined by some numerous problems such as legal flaws,⁷ lack of proper training, logistic supports, proper monitoring system, shortage of qualified manpower, appointment of prosecutors, biasness of prosecutors, politicization of prosecutors, corruption, etc. These problems increase the risk

² The words 'Public Prosecutor' is referred hereinafter as PP

³ The words 'Special Public Prosecutor' is referred hereinafter as SPP

⁴ The words 'Additional/Assistants Public Prosecutor' is referred hereinafter as APP

⁵ Md. Ashrafuzzaman, 'The Disposable Prosecutors of Bangladesh', *The Daily Star*, 16 March 2008, available at: <http://alre.asia/article2/2008/03>, last accessed on 22 February 2017; Sudip Chandra Halder, 'Role of Prosecution and Defense Lawyer in Criminal Justice System', available at <http://lawyersclubbangladesh.com>, 18 October 2022

⁶ *Ibid*; Justice Shafiur Rahman, 'Strengthening the Public Prosecutorial Service in Bangladesh', in ADB, *Strengthening the Criminal Justice System*, the ADB Regional Workshop in Dhaka, Bangladesh, 30-31 May 2006, p.20

⁷ Dr. Md Abdur Rahim Mia, 'Legal Response to Activate the Village Courts in Bangladesh: Prospects and Challenges', *Rajshahi University Law Review*, Department of Law, Rajshahi, 2020, pp 29-49

of losing confidence and earning the smallest amount of faith from the public who want justice from the judicial system.⁸ Strengthening prosecution system can bring favorable results, such as making it more humane, gaining the public's trust upon this system and reducing the workloads of the formal courts.⁹ Therefore, it is very much necessary to strengthen the prosecution system in Bangladesh, which will bring confidence as well as faith in the statehood of Bangladesh.

3.1 Appointment of the Prosecutors

In Bangladesh, the Public Service Commission (PSC)¹⁰ and the Judicial Service Commission (JSC) are accountable for recruiting police officers and judges, respectively. But, there is no such recruitment process in place for prosecutors. There is no formal recognized selection process that is based on qualifications and merit, and there is no institutional service regulation to ensure the effectiveness and responsibility of PPs. The government has the authority to appoint PPs under section 492 of the Cr.PC. Administratively, prosecution duties are handled by the solicitor branch of the Law and Justice Division under the Ministry of Law, Justice, and Parliamentary Affairs. The Ministry appoints prosecutors from among lawyers in active practice.¹¹ In reality, the selection process is dependent on the political viewpoint of the ruling political party. A list of lawyers who will act as prosecutors is created by the local parliamentarian, a powerful politician connected to the current administration, a Bar Organization Head with political ties, or possibly all of these.

These lists are sent either directly to the Ministry of Law, Justice, and Parliamentary Affairs by 'selectors' or through the office of the Deputy Commissioner. Prosecutors are chosen by the Ministry from the list of

⁸ Rassel Rafi, 'Village Court: Need Reformation to Ensure Justice', *The Daily Sun*, 13 January 2019

⁹ Md. Tajul Islam, 'Causes of Delay in Disposing Criminal Cases in the Criminal Justice System of Bangladesh: An Analytical Study', available at www.lawjournalbd.com, last accessed on 17 August 2017

¹⁰ The words 'Public Service Commission' is referred hereinafter as PSC

¹¹ Justice Shafiur Rahman, *Ibid*; Taqbir Huda, 'Where is Our Independent Prosecution Service?' *The Daily Star*, 4 April 2022

recommendations.¹² According to this appointment procedure, political affiliation is a major factor in the appointment of prosecutors in Bangladesh. Due to the appointment practices of the ruling party, inexperienced and unskilled lawyers frequently get appointment as prosecutors despite their inability to secure justice. Many lawyers engage in corruption using such kind of political support because they have a tendency to make quick money.¹³

Lawyers who want to work as prosecutors must pass hard tests to demonstrate their competency in nations with independent public prosecution services.¹⁴ But, in Bangladesh, prosecutors are appointed without following any specific criteria or principles. Professionalism and effectiveness are not very important in this situation. When a case is brought by or against the government, they are unable to adequately represent it due to their ineptitude.¹⁵ Police personnel with the rank of sub inspector in magistrate court usually prosecute matters before the court, despite the fact that these officers lack legal education or training; rather, they are simply shifted from one police station to another, sometimes as a punishment deployment.¹⁶ To yet, there hasn't been a successful attempt to professionalize the prosecution service for police in Bangladesh. Over the years, Bangladesh has developed a systemic problem with the government's partisan motivations for PP appointments.¹⁷

According to the Cr.PC, 'Public Prosecutor' refers to anyone appointed under section 492 as well as anyone acting on a PP's directions.¹⁸ The way the Cr.PC defines 'public prosecutor' could result in misunderstanding and mayhem. Because of this definition, any PP can tell any individual to do something, and that person will be regarded as a PP as well. There must be

¹² Maruf Alam and Tajul Islam, 'Quest for an Independent, Permanent and Efficient Prosecution in Criminal Justice System of Bangladesh', *ASA University Review*, Vol.11, No.1, ASA University, Dhaka, 2017, p.105

¹³ Md Sanaul Islam Tipu and Asif Islam Shaon, 'Why we need an independent public prosecution service', *The Dhaka Tribune*, 18 September 2022

¹⁴ *Ibid*

¹⁵ S. Liton, 'The perils of prosecution', *The Daily Star, Dhaka*, 07 July 2015; Maruf Alam and Tajul Islam, *Op.cit*, p.112

¹⁶ Maruf Alam and Tajul Islam, *Op.cit*, p.107

¹⁷ Editor, 'Appointment of public prosecutors: Party loyalty should not be the criteria', *The Daily Star*, 20 July 2016, Editorial Page

¹⁸ Section 4(1), *The Code of Criminal Procedure*, 1898

some confusion if a PP, assigned by the government, hires someone as his junior and that junior gains the position of PP. The PP is given a great deal of discretionary authority, which he is required to employ honestly, impartially, and carefully. As PPs are directly nominated and appointed by the government, the administration may continue to place a high degree of confidence and trust in them. The juniors of the PPs cannot be given the same amount of trust because they have never undergone any kind of screening.¹⁹ Government cannot even hold a PP responsible if a criminal case is unsuccessful due to the incapacity or incompetence of a junior of that PP.

3.2 Permanent Cadre System

In Bangladesh, there is still no structured prosecuting service with a permanent cadre of prosecutors. India already formed its federal legal services under the executive branch and passed the Cadre and Recruitment Rules under the Department of Prosecution and Government Litigation.²⁰ The rules call for the PSC to conduct a viva voce after a qualifying written exam for the direct recruitment of APPs. An APP must possess a law degree and two or three years of professional experience. A minimum of five years of APP service is necessary for promotion to senior APP. For promotion to PP, another five years of senior APP service is necessary. After three years as a PP, the PP might be promoted to Joint Director of Prosecution. To be promoted to the position of Director of Prosecution, one must serve as Joint Director for an additional three years.²¹ In Pakistan, a separate police sub cadre has been established for the purpose of prosecution, and law graduates are being appointed to it under the direction and supervision of the judiciary.²² A criminal prosecution service has been established in Pakistan under the Criminal Prosecution Service Law in order to guarantee prosecutorial autonomy, timely and effective prosecution of criminal issues, and improved collaboration within the CJS. A prosecutor general is the head of the organization; all additional PPs and APPs are responsible to him. The

¹⁹ Maruf Alam and Tajul Islam, *Op.cit*, p.104

²⁰ Justice Shafiur Rahman, *Op.cit*, p.23

²¹ *Ibid*

²² Tofail Ahmed, 'Britto O Brithantho: Bikendrikaran, Sayottoshasan, Rajnithi O Unnayan Bhabna' (in Bangla), Agamee Prokashani, Dhaka, 2011, p.184

prosecutor general is empowered to appoint additional PPs and APPs in the districts. A competitive exam is required for recruitment up to the position of prosecutors through the PSC.²³

If such a cadre system is formed in Bangladesh, a quick justice delivery system is expected to be ensured. Whichever model is chosen, getting the government of Bangladesh to endorse it and put it into action would be the biggest problem. Political will is essential since there is frequently a strong desire to keep things as usual. The quantity of PPs, Special PPs, Additional PPs, and APPs is inadequate in comparison to the amount of cases currently existing in the lower court.²⁴ As there is an urgent need to appoint many prosecutors in Bangladesh, it is important to completely reorganize Bangladesh's prosecution system much like other countries of the world. The PSC of Bangladesh can play a crucial role in appointing prosecutors in order to establish a structured and integrated prosecution service. Examinations to recruit prosecutors may be administered by the PSC. On July 5, 2015, Mr. Surendra Kumar Sinha, the former Chief Justice of Bangladesh, criticized both the flawed police investigation and the current practice of choosing members of the ruling party as prosecutors.²⁵ Nothing has altered so far. The current government still assembles partisan individuals for its prosecution teams in each district. Former Law Minister Barrister Shafique Ahmed remarked to a Dhaka Tribune news reporter,

'Due to a funding shortage, the government is unable to establish a distinct public prosecutors service. They will need to receive all the benefits that come with the job if we grant them the status of public employees.'²⁶

He further said:

'The government is well aware that temporary employment makes prosecutors' work subpar, which interferes with court proceedings and occasionally disrupts the course of trials when they are replaced. A new recruitment system cannot be implemented overnight, nor can the entire setup. At the political level, it will lead to chaos.'²⁷

²³ Justice Shafiur Rahman, *Op.cit.*, p.23

²⁴ Shuvadeep Paul, 'To strengthen government litigation service', Law and Our Rights in *The Daily Star*, 2 April 2019

²⁵ S. Liton (2022), *Op.cit.*

²⁶ Md Sanaul Islam Tipu and Asif Islam Shaon, *Op.cit.*

²⁷ *Ibid*

On the other side, the present communities of prosecutors have no interest in a reform process that allows for employment mobility.²⁸ Because of their local involvement in many side businesses, political campaigns, and other social activities, it is actually hard for the current crop of prosecutors to adapt to a transferable job. It may be implemented, nevertheless, in the event of new employees with a clear mission.

3.3 Honorarium and Allowance

Prosecutors in Bangladesh are paid a very small honorarium. According to the Justice Audit of 2018, PPs and additional PPs in metro regions are paid a daily allowance of 500 *taka* and a monthly honorarium of 2,000 *taka*. In non-metro areas, they are paid a daily rate of 250 *taka* and receive a monthly honorarium of 1,500 *taka*. APPs are given a daily allowance of 200 *taka* in both locations, but not a monthly honorarium.²⁹ The amounts have been increased in recent time.

Allowances for the Prosecutors of the Sessions Court of Metropolitan City³⁰

Response	Daily Fee	Monthly Retainer Fee
Public Prosecutors	600/	15000/
Special Public Prosecutors	600/	15000/
Additional Public Prosecutors	500/	12000/
Assistant Public Prosecutors	250/	9000/

Daily Fee and Retainer Fee for the Prosecutors of the District Sessions Court³¹

Response	Daily Fee	Monthly Retainer Fee
Public Prosecutors	500/	12000/
Special Public Prosecutors	500/	12000/
Additional Public Prosecutors	400/	9000/
Assistant Public Prosecutors	200/	4000/

²⁸ Found in Interview with Prosecutors

²⁹ Taqbir Huda, *Op.cit.*

³⁰ Found in Interview with Prosecutors, named Md Zahurul Islam, Special PP, Rajshahi Court

³¹ A Letter sent by the Law Ministry to the Deputy Commissioner, dated 11/5/21, no: Soli: GP-PP (Retai. Fee)-01/13 (part-1)-41

The prescribed amount of allowance and honorarium mentioned at the two tables are very minimal as against the salary and other facilities of the administrative and other cadre of Bangladesh. No prosecutor enjoys other facilities provided by the government for its service holders. Due to their low allowance and honorarium, prosecutors frequently involve with their own private practices except PP, which interfere with their ability to perform their official tasks, or look for alternative sources of money.³² During the time of interview, one defense lawyer³³ said to the researcher that though PP and SPP are not directly involved in private practices but their juniors carry on their cases in favor of them.

Senior lawyers are hesitant to work as prosecutors due to a lack of resources and incentive. Additionally, the dignity of this post is degraded by the low pay. The remuneration difference between PPs and government service cadres is heaven and earth. Some prosecutors are compelled to utilize dishonest means of earning, which occasionally causes unfairness to the righteous party, as a result of such low payments.³⁴

One prosecutor said to the researcher:

'Recruitment of qualified professionals is hampered by the inadequate pay. Private practices are banned for PPs. Prosecutor's allowance should be increased. With this allocated money, how is he going to support his family? A day of 250 Taka is given to an APP. He is able to practice privately though.'³⁵

Another prosecutor³⁶ said during the time of interview,

'Due to low payment and absence of other incentives from the government, often judges neglect them and treat them inhumanly in court proceedings. It is also unexpected that prosecutors do not get this money in time; they get this money even after 6 or 7 months. Furthermore, this payment process is controlled by the office of the Deputy Commissioner.'

³² *Ibid*

³³ Mir Shafiqul Islam Milon, Advocate, Rajshahi Judge Court.

³⁴ Maruf Alam and Tajul Islam, *Op.cit*, p.110; F Ahmed, 'What a disgrace to public attorneys?', *The Dhaka Times, Dhaka*, 2 January 2015

³⁵ Advocate Rebeka Sultana, Assistant Public Prosecutor, Rajshahi Court.

³⁶ Advocate Lutfur Rahman Babu, Assistant Public Prosecutor, Natore Judge Court.

When PPs are recruited into the State judicial service in India, their pay is on par with that of judicial officers.³⁷ In addition, they receive simple 'retainer fees' according to the volume and type of cases they take on. The pay for a PP differs in India depending on the state or territory they are employed in. These government-employed personnel are eligible for pay according to government guidelines, as well as for incentives and allowances.³⁸

3.4 Permanent Job System

The job of the prosecutor is not a permanent job because Bangladesh lacks a permanent prosecution system. Prosecutors are recruited by the Ministry of Law after a new government is formed, and the group of prosecutors is replaced when a new government is elected. All prosecutors are dismissed and a fresh team is brought in whenever a party takes power. On the other side, if prosecutors disagree with the whims of a local member of parliament, a minister, or other political figures, may also be dismissed during the tenure of a government.³⁹ The benefits that come with a government job, such as a salary scale like other government employees, other financial benefits, housing, automobiles, police escorts, etc., are not available to public prosecutors because they do not have a permanent job. If a permanent, organized prosecution system is in place, prosecutors would be held responsible. They would also be responsible for maintaining the case files and be free to work without interference from politics.⁴⁰ In 2006, the Asian Development Bank (ADB) organized a regional workshop on strengthening the CJS. At that time, the former law minister, Moudud Ahmed, emphasized that,

'The public prosecution system in Bangladesh is flawed, and there are no permanent prosecutors. Every political government selects its own political supporters to the position of public prosecutor to work as it pleases and only for the duration of the term in which it is appointed. Their ad hoc appointment prevents accountability and continuity in service.'⁴¹

³⁷ Prof. N.R Madhava Menon, 'The Prosecution Service and its Role in Criminal Proceedings', in ADB, *Strengthening the Criminal Justice System*, the ADB Regional Workshop in Dhaka, Bangladesh, 30-31 May 2006, p.24

³⁸ Kishan Dutt, 'Eligibility to become Public Prosecutor in India', available at, www.soolegal.com, last accessed on 22 Jun 2022

³⁹ Maruf Alam and Tajul Islam, *Op.cit*, p.109

⁴⁰ Md Sanaul Islam Tipu and Asif Islam Shaon, *Op.cit*.

⁴¹ Justice Shafiur Rahman, *Op.cit*, p.21

If prosecutors disagree with the whims of a local member of parliament, a minister, or another radical political figure in Bangladesh, they may also be dismissed during the term of a government. Their nomination and job stability are determined by how well they have served the financial and political interests of the appointing party, its leaders, and employees, not by their competence or professionalism.⁴² Prosecutors also merely make the most of the time they have available to them in order to assist both themselves and their clients. The prosecutor believes that his party's leaders are the only ones to whom he must answer.⁴³

3.5 Organized and Independent Public Prosecution Service

To ensure prosecutorial neutrality in the actual exercise of the investigation and prosecution functions, institutional independence is essential. In fact, impartiality ultimately depends on independence. Therefore, all states have a general responsibility to make sure that prosecutors can carry out their professional duties free from intimidation, obstruction, harassment, unlawful interference, or unwarranted exposure to civil, criminal, or other liability. Bangladesh lacks of independent prosecution system. As there is no independent public prosecution service, the government is also shielded from accountability for its activities, especially when extrajudicial murders are involved.⁴⁴ This is because public prosecutors who are selected politically will only try to uphold the government's reputation. If prosecutors miss hearings, don't show up in court, or can't establish their case, they won't be penalized or sanctioned.

One APP said to the researcher,

'There are various ways to gain extra money under criminal proceedings; therefore, PP and APP may turn out to be lucrative positions for those lawyers who have bad money-making habits. A prosecutor has the power to alter the outcome of a trial by failing to call crucial witnesses or file the necessary paperwork. Because there is no impartial public prosecution system, they are not responsible for their conduct.'⁴⁵

⁴² Md. Ashraffuzaman, 'Laws Without Order & Courts of No Relief in Bangladesh', Asian Human Rights Commission, Hong Kong, 2006, available at: www.article2.org, last accessed on 5 April 2023

⁴³ *Ibid*

⁴⁴ Md Sanaul Islam Tipu and Asif Islam Shaon, *Op.cit*,

⁴⁵ A public prosecutor of Rajshahi Judge Court said during interview.

Another PP stated that some of his colleagues act like political goons and seem less interested in carrying out their prosecutorial responsibilities.⁴⁶ He added that some prosecutors fail to show up for court appearances or call witnesses to testify in their favor. In reality, the courts frequently criticize the dishonesty and incompetence of public prosecutors in their rulings. Due to a lack of accountability mechanisms in the system, nothing was done to hold them accountable. Due to this pattern, Bangladesh has very few people who are found guilty in court cases. Following the release of the Eighth Five Year Plan (2020–2025), the Bangladesh Planning Commission made it clear that the country's government would progressively set up an autonomous prosecutorial service.⁴⁷ Additionally, the Commission states that mainly 70% of the appointment will be from registered advocates. PSC will make appointment recommendations for the remaining 30%. It will create posting and promotion standards, disciplinary rules, service rules, in-service training processes, etc before adhering to the recruiting process.⁴⁸ But Bangladesh has not yet formed an independent prosecution service. Notably, the three main goals of a prosecution system are justice, effectiveness, and accountability, and only an independent system of prosecution can accomplish these goals.⁴⁹

3.6 Education and Training

Section 492 of the Cr.PC does not specify any rules for APP appointments; hence political favoritism has taken precedence over qualifications. There is no concerted effort to professionalize the prosecution service. The process of selection is neither competitive nor based on merit. The brilliant professionals in the field are not drawn to the pay or the working circumstances. There is no mechanism in place for prosecutors to receive additional professional education and training. Due to this, the service's morale is extremely poor, and prosecutors are more easily persuaded to engage in malpractices.⁵⁰ In addition to their private practices, prosecutors also work on government matters, but their perspectives are less important. To increase their income in private practices, they make use of their position and title. In order to consistently improve their professional skills, there should also be regular in-service training.⁵¹

⁴⁶ Advocate Chandan Kumar Sarker, Assistant Public Prosecutor, Rajshahi Judge Court

⁴⁷ Taqbir Huda, *Op.cit.*

⁴⁸ *Ibid*

⁴⁹ Dr. Sarkar Ali Akkas, 'Withdrawal of Cases: Where is the end?' *The Daily Star*, 19 February 2010

⁵⁰ Prof. N.R. Madhava Menon, *Op.cit.*, p.25

⁵¹ *Ibid*, p.24

During the time of interview, one PP said,

‘The prosecution service and the judiciary do not offer cadre officials the chance to advance to more senior posts. Section 492 of the Cr.PC must be revised in this regard. After being chosen, PPs and APPs must receive extensive training at the police/judicial academies in both theory and practice to advance their professional abilities. But there is no regular in-service training program for prosecutors to consistently improve their professional skills.’⁵²

Aiming to train all judges and public prosecutors, the Judicial Administration Training Institute (JATI) was founded by the Judicial Administration Training Institute Act, 1995. One of the biggest drawbacks is that the JATIs' current training capacity is insufficient to serve the country's 1800 judges and 3377 prosecutors. JATI's institutional capability needs to be expanded in order to guarantee proper training for all judges and prosecutors throughout the nation.

As early said, prosecutors are appointed from the practicing lawyers. In many cases, people who are not properly qualified are also permitted to practice in the court. There are complaints of illegal financial transaction in some cases for obtaining license from the Bar Council. On the other hand, in some aspects, some private universities and law colleges provide law degrees widely by exchanging money; but not by providing proper education on law. It lowers the quality of the lawyers getting certificates through such processes. In some cases, such degree holders involved in law practices do not have proper skills on the one hand and dishonesty on the other. Bangladesh Bar Council is the licensing and regulating body of lawyers as per Bangladesh Legal Practitioners and Bar Council Order, 1972. It is a statutory and self-governing body with 15 members. It is found that, in some cases, persons who are not properly qualified are also allowed to practice law.⁵³ There are also allegations regarding obtaining the license of the lawyers that in some cases there have been illegal transactions in the Bar Council in obtaining the license.⁵⁴ A research report also shows that some private universities have provided degree of law certificates which in many cases are of substandard quality.⁵⁵ In some

⁵² Advocate Babul Hossain, Assistant Public Prosecutor, Rajshahi Judge Court

⁵³ Annual Report, 2017, *Transparency International Bangladesh*, p.32

⁵⁴ *Ibid*

⁵⁵ Annual Report, 2014, *Ibid*, p.14

cases, such degree holders are joining to the legal profession by getting license, which poses a risk to the integrity of legal practice.⁵⁶

3.7 Monitoring and Supervising Authority

The GP/PP branch of the Solicitors Division under the Ministry of Law, Justice and Parliamentary Affairs is responsible for all activities related to PP appointment control, complaint investigation and payment of allowances. In some cases, there is a shortfall in the operational supervision of prosecutors from the District Judge Court of the respective district regarding the quality of work of the Prosecutor in each district. Besides, there are various allegations of harassment and corruption against the lawyers of the state side. The politicization of the institution makes it difficult to monitor or ensure accountability of prosecutors.⁵⁷ The Home Ministry of Bangladesh lacks sufficient experience in coordinating investigation and prosecution. The police prosecuting service at the lowest tier of the judiciary is under the control of the Home Ministry. Thus, it is best suited to rapidly and effectively satisfy all of the reasonable needs of the police of prosecution service.⁵⁸ A closer oversight and monitoring system, especially at the district levels, must be established in order to develop an effective and impartial prosecution system. In collaboration with the Attorney General, a retired District Judge may be appointed as the Director of Prosecution in the district. This ought to be a cadre position. The Attorney General can provide direction to the Director as they carry out their duties. The responsibilities of the Director of Prosecution will include overseeing the performance of the PPs, SPPs, Additional PPs and APPs, investigators, and facilitating efficient collaboration between the investigating and prosecuting officers.⁵⁹ In Bangladesh, there is no such office and post of the Director of Prosecution (DP)⁶⁰.

⁵⁶ Annual Report, 2017, *Ibid*, p.32

⁵⁷ Annual Report, 2017, Transparency International Bangladesh, p.35

⁵⁸ Justice Shafiur Rahman, *Op.cit*, p.25

⁵⁹ Prof. N.R. Madhava Menon, *Op.cit*, p.24

⁶⁰ The words 'Director of Prosecution' is referred hereinafter as DP

3.8 Coordination between Investigation and Prosecution

An essential component of the prosecution system is the investigation. Prosecutors in Bangladesh are not given any authority to advise or supervise police investigations. Before filing a charge sheet, the investigation agency may seek the public prosecutor's advice. Transparency in the investigation can be increased in this way. However, public prosecutors can only be permitted to offer their opinions. A police department or other investigating body will decide whether to accept that opinion or not. If there are disagreements regarding it, the Superintendent of Police, who heads the investigating agency, will decide. Virtually there is no collaboration or professional sharing between investigators and prosecutors in Bangladesh.⁶¹ The prosecuting and investigative divisions are totally separated here. It is the duty of the Prosecutors to prove case during a trial. As a result, they are required to carefully review police records, keep a close eye on the case's developments, and notify the police to bring witnesses on trial dates. They are also required to thoroughly question witnesses and, as needed, refresh their memories by referring to their police statements. After investigation, if the police submit faulty or defective report, it is very hard for the prosecution to prove the case. PPs who were interviewed universally agreed that the lack of coordination is a factor for decreasing conviction rate and disposal rate.⁶² There is no question that immediate remedial action is required to enhance the working relationship between the police and the prosecution, but it is neither desirable nor practicable to return the prosecution to the police. Although an effective prosecution is operationally independent from the police, it is true that they are organizationally separate.

Without undermining the prosecutors' independence, he or she should be capable of bringing about proper coordination. There is currently no statutory authority or discretion given to a PP in Bangladesh to play any role during the investigation stage. But, in *R. Sarala vs TS Velu*, the Supreme Court of India stated that there is no legal requirement for the police to consult a prosecutor during an investigation.⁶³ The police department in India performs this

⁶¹ Sections 157 and 159, *The Code of Criminal Procedure, 1898*

⁶² Found from Interview with Prosecutors

⁶³ AIR 2000 SC 1731

function by submitting the investigation report. While some states in India have made provisions in recent years to allow prosecutors to review the police investigation report, this is not applicable for all states.⁶⁴ The prosecution of small crimes before magistrate court is handled by police officers who are appointed as prosecuting sub-inspectors, prosecuting inspectors, and deputy superintendents of police prosecution. They are regular police officers working for the Home Department and are not permitted to serve as prosecutors if they are looking into a case themselves. In Bangladesh, magistrates, not public prosecutors, have authority over the investigation.⁶⁵ The executive police of Bangladesh do not have a separate equivalent wing.

3.9 Shortage of Prosecutors and Their Capability

Till 31 December 2022, there were 3377 prosecutors in different subordinate criminal courts of Bangladesh to deal 3388610 criminal cases.⁶⁶ According to the most recent data, there are 67 PPs, 477 additional PPs, 180 SPPs, and 2653 APPs in the public prosecution service of Bangladesh.⁶⁷ There are 497 criminal courts that demand that prosecutors be present. Each prosecutor has a caseload of about 1004 cases. In accordance with the Supreme Court's Annual Report of 2019, there are 3,309,799 criminal cases pending in 457 courts, and 1440 prosecutors, including APPs, SPPs, and Additional PPs were employed in Bangladesh.⁶⁸ Trials in Bangladeshi courts are known for moving slowly. Cases drag on for years during the actual trial stage and are delayed even more during the appeals phase. Although there are many causes for this persistent problem with the judiciary, the prosecution system is also held accountable for some fault of their own. The number of vacancies in the judiciary at all levels is well-documented in reports and statistics, but the required number of prosecutors in the country is not so well-documented or prescribed in any

⁶⁴ Muhammad Shahid Mozahar Hossan, 'Role of Prosecutor in the Criminal Justice System of Bangladesh', *Journal of Emerging Technologies and Innovative Research (JETIR)*, Volume 8, Issue 11, Dhaka, 2021, available at www.jetir.org, last accessed on 22 September 2022

⁶⁵ Sections 157 and 159, *The Code of Criminal Procedure*, 1898

⁶⁶ Data have been collected by the researcher from ministry of Laws and Legal Affairs of Bangladesh; Ashutosh Sarkar, 'Cases pile up in courts', *The Daily Star*, 27 April 2023

⁶⁷ *Ibid*

⁶⁸ Taqbir Huda, Zarfisha Alam and Nakiba Bari, Strengthening the Public Prosecution System to ensure Justice for Sexual and gender-based Violence: Policy Recommendations and Best Practices, Roundtable Report, Dhaka, May 2022

report. Some of the district courts of Bangladesh are handled by only a single prosecutor which is against the norm. Many public prosecutors lack proper training. They fail to question important witnesses or present critical evidence, which is the main reason why defendants are exonerated or granted bail in criminal cases. Even though the offenses are less serious, APPs handle cases in magistrates' courts, which account for the majority of criminal proceedings in Bangladesh. A young prosecutor is unlikely to have sufficient experience to manage her docket effectively. In addition, a young prosecutor frequently needs clarification on difficult problems of fact and law and frequently needs assistance from more experienced prosecutors. As a result, there are frequently pointless adjournments that could be prevented. Senior prosecutors also face difficult challenges, such as dealing with flawed investigations conducted by ineffective investigators and determining whether or not to pursue prosecution in a given case. They have to manage the APPs in addition to attending appeal and pre-trial sessions. A prosecutor has little time left over after all of this to effectively address the cases assigned to him. Due to the aforementioned factors, the post of prosecutor is less lucrative and does not thus draw the greatest talent from the Bar. In the end, the CJS as a whole suffers.

3.9.1 Shortage of Manpower in Different District

Rajshahi District Court are divided into two part, District Sessions Court and Metropolitan Sessions Court. There are 10 Special courts established in Rajshahi under the special Laws of Bangladesh. There are two branches of Magistrate Court here, named Chief Metropolitan Magistrate Court and Chief Judicial Magistrate Court. Total 94 prosecutors are working against 63 criminal courts in Rajshahi District court. At present, 2 PPs, 28 additional PPs, 9 SPPs, and 55 APPs are performing their duties in the prosecution service of Rajshahi District. Total number of police involved in prosecution service in Rajshahi Court is 62.⁶⁹ In Natore District, there are 14 criminal courts and one PP, 3 SPPs, and 15 APPs have been appointed to serve these courts. The number of police involved in prosecution service of Natore Judge Court is 11 against 7 cognizance criminal court.⁷⁰ In Bogura District Court, there are 26 criminal

⁶⁹ Found from data prescribed by respondents during interview conducted on 20 June 2023

⁷⁰ *Ibid*, conducted on 22 January 2023

courts and presently one PP, 15 additional PPs, 5 SPPs, and 96 APPs are serving. The number of police involved in prosecution service of Bogura Judge Court is 27.⁷¹ These above mentioned numbers of prosecutors and police bear a burden of huge number of cases. There are 35 criminal courts in Rashahi District and Session Judge Court. One prosecutor⁷² said that though more than one prosecutor for each court except special courts have been appointed in Rajshahi Court, but during the time of hearing they are not found. During the time of court visit of three districts, researcher found that there is no male prosecutors and male police in the Prevention of Women and Children Tribunal. Absence of female prosecutors and police personnel in this Tribunal create many difficulties for victims' access to justice.

3.9.2 Lack of Logistic Support

Interviews with public prosecutors and personal visits to the district courts (Rajshahi, Natore, and Bogura) have revealed that the office infrastructure is subpar and out of step with the demands of the prosecutors. It was discovered that the PP Office at the courthouse is often very small, has the barest necessities, and requires the entire staff to work from this cramped, uncomfortable area. For all of the prosecutors, there are not enough tables and seats. Prosecutors also claimed that they lacked storage room for case diaries and other materials, which is significant given the number of cases they are now managing. There are also few restrooms and water fountains to use, which is a problem that is made worse for female prosecutors. Additionally, prosecutors in three districts complained that their work was being hampered by a lack of adequate support staff in their respective offices, which forces them to complete all other tasks such as typing letters and applications, photocopying, entry and filing, etc. on their own in addition to preparing their cases. An official vehicle is not available to any prosecution office. Case Docket or CD is essential for every case. Due to absence of prosecution building or exclusive prosecution office or prosecutor's personal chamber, the

⁷¹ *Ibid*, conducted on 24 February 2023

⁷² He requested not to disclose his name.

CDs were handed over to the police. Thus the CD is under control of the police authority. One prosecutor⁷³ claims that they do not get the CD timely which delays the proceedings.

3.10 Government's Responsibility

The former Law Minister stated in 2006 that the major flaw of the CJS of Bangladesh was the country's fragmented public prosecution system.⁷⁴ He also mentioned at the time that the law ministry was drafting legislation to establish a permanent attorney service in Bangladesh, which would allow for the recruitment of prosecutors solely on the basis of merit following the successful completion of a national examination similar to that required for other civil servants. Additionally, he stated that they would be held accountable for carrying out their obligations as permanent appointees. Surprisingly, this bill has not yet been passed. The Government Attorney Services Ordinance, 2008 was passed by the then caretaker administration, creating a separate and comprehensive Government Attorney Services Department.⁷⁵ According to the Ordinance, the mission of the Department is to recruit, educate, maintain, and supervise prosecutors in order to assure the state's effective representation in the Supreme Court and district court's judicial system. The Attorney Service Ordinance, 2008 was adopted in principle by the cabinet in March 2009, opening the way for the appointment of prosecutors through the PSC.⁷⁶ To be appointed as a PP, a person had to meet specific requirements, according to the Ordinance. The Parliament has not yet approved this Ordinance. The Ordinance proposes to establish a directorate or department to oversee and manage all district and Supreme Court attorneys. Due to absence of witness protection in the CJS of Bangladesh, witnesses feel discouraged to appear in the Court room to testify. It is the duty of the prosecutors to prove the case and therefore to take necessary steps to produce the witnesses before the court. In Bangladesh, crucial witnesses who must testify in court are frequently

⁷³ Advocate Shamsunnahar, Assistant Public Prosecutor, Natore Judge Court.

⁷⁴ In 2006, at a Regional Workshop on Strengthening the Criminal Justice System arranged by the Asian Development Bank (ADB), the then Law Minister Moudud Ahmed said it. See: Justice Shafiur Rahman, *Op.cit*, p.22

⁷⁵ Taqbir Huda, Zarfisha Alam and Nakiba Bari, *Op.cit*.

⁷⁶ *Ibid*

disinterested, terrified of, or under the sway of, criminals which lead them to become hostile or withhold their testimony.⁷⁷ An important barrier to an efficient prosecution process in Bangladesh is the lack of adequate legal protections for victims and witnesses.⁷⁸

One APP said,

'We are sometimes unable to represent witnesses because witnesses are unwilling to testify in court due to the lack of a witness protection system and government facilities for witnesses. As per the core principle of the CJS, everyone is aware that an accused person is deemed innocent unless proven guilty. The burden of proof is on the prosecution to call witnesses, provide solid evidence, and establish the defendant's guilt. Additionally, the proof must be unquestionably accurate. For the interest of a fair trial, courts may award acquittal or bail to the alleged accused in cases when they discover any weaknesses in the prosecution's evidence, giving them the benefit of the doubt.'⁷⁹

The protection of victims and witnesses is a crucial subject of criminal proceedings that may help the state convict offenders and the judicial system handle cases more efficiently. Victims are entitled to testify as witnesses for the prosecution. However, victims frequently become targets of criminal threats and harassment, which discourages them from providing open and honest testimony. Thus, the prosecution system tends to be weakened by the lack of victim protection laws. In order to prevent victims and witnesses from testifying during the investigation and prosecution, defendants frequently threaten, intimidate, and punish them in Bangladesh.⁸⁰ It is a well-accepted fact that the victims and witnesses of Bangladesh are frequently scared to come forward and provide their testimony during the trial.⁸¹ It is regrettable that no special legislation has been passed in Bangladesh to safeguard witnesses and victims. The penalty for criminal intimidation is provided under

⁷⁷ Prof. N.R. Madhava Menon, *Op.cit*, p.24

⁷⁸ Dr. Md Abdur Rahim Mia, 'Delay in Disposal of Criminal Cases in Bangladesh: A Legal Analysis', *Rajshahi University Law Review*, Vol. XI, Rajshahi, Dec. 2020, p.18; Dr. M. Shah Alam, 'Problems of Delay and Backlog Cases', *The Daily Star*, 25 February 2010, p.9

⁷⁹ Advocate Md. Amzad Hossain, Public Prosecutor, Rajshahi Judge Court

⁸⁰ Ashabur Turan, 'Need for Witness Protection Law', *The Daily Star*, 2 February 2016, p.7

⁸¹ Arafat Ameen, 'Victims and Witness Protection: In Search of a Legal Regime in Bangladesh', *The Daily Star*, 1 October 2005; Dr. Md Abdur Rahim Mia (2020), *Op.cit*, p.18

section 506 of the Penal Code, although it is insufficient to protect the victims and witnesses. Limited restrictions are imposed on the use of insulting questions when asking witnesses in accordance with sections 151 and 152 of the Evidence Act, 1872. The Law Commission of Bangladesh had long back proposed a law for victim and witness protection during the tenure of Justice Mustafa Kamal (6 Dec 2004-5 Dec 2007) and thereafter prepared a draft Witness Protection Bill 2011. In December 2015 a bench of the High Court Division urged the government to take initiative in this regard.⁸² The law and human rights related NGOs are always vocal on the issue of victim and witness protection.⁸³ The government is the only authority which has remained oblivious to the situation so far. Till now, the government has neither paid any attention to the proposal or the draft of the Law Commission nor taken any initiative towards the order of the Judiciary to date to make it a reality. The government has not stated openly for its reluctance to submit it to the Parliament to enact it as law.

4. Way Forward

It is very necessary now to bring reforms to the prosecution system as well as the institutions related to the CJS of Bangladesh. Firstly, the Government should establish an independent and permanent prosecution service in Bangladesh. Other recommendations are made in this regard are as follows:

- (i) To appoint necessary number of prosecutors, a 'Recruitment Rule' is required. A special law that will give a precise structural framework for appointment, management, control, and monitoring of prosecution should be made at the same time. Government leaders and prosecutor appointments will be reorganized. Young advocates can be chosen through a transparent and competitive recruitment process. The Ministry of law may adopt Cadre and Recruitment rules. The Rules could stipulate direct appointment of APP and Assistant Attorney General after passing a qualifying written test and a PSC-conducted oral interview. This job must be

⁸² Ashabur Turan (2016), '*Op.cit*', p.7

⁸³ Barrister Mustasim Tanzir, 'Law Relating to Protection of Witnesses and Victims in Bangladesh', *The Daily New Nation*, 10 October 2015; Barrister M. Aftab Uddin, 'Protection of Victim of Crime and Witness: State Responsibility', *Bangladesh Law Journal*, Vol. 2, Dhaka, 2015

transferable. Regular training for all kinds of prosecutors should be implemented regularly. A structured salary scale has to be introduced for them like other gazetted officers. There is very limited scope of remuneration for witness allowances.

- (ii) It is necessary to create the post of 'Director of Prosecution'. Under the direction and supervision of the Attorney General, the prosecution should be managed by the district-level 'Director of Prosecution.' One of the Director's responsibilities is to make it easier for the investigators and prosecutors to work together effectively. Another is to examine their work and occasionally meet with the PPs, Special PPs, Additional PPs, and APPs to do so. The Director of Prosecution and Attorney General of Bangladesh shall have administrative and disciplinary authority over all types of prosecutors. At the district level, 50% of the open jobs for PPs, Special PPs, and Additional PPs will be filled through seniority-cum-merit selection and promotion from the APPs. The remaining 50% of the positions for PPs, Special PPs, and Additional PPs will be chosen through a panel created in conjunction with the Attorney General. The overhaul might be more effective with a 10-to-5-year shipment schedule. No one who has been promoted or appointed as an APP may be assigned in their home district, where they were previously employed or where they were practicing. There should be a three-year term requirement for all prosecutors.
- (iii) There is an urgent need to appoint more prosecutors and prosecution police in Bangladesh. There must be a suitable amount of women appointed to the various positions of prosecutors.
- (iv) The PP, Special PP, Additional PP and APP shall be removed from their office by the Attorney General of Bangladesh for misconduct or negligence on the basis of the report submitted by the Director of Prosecution after enquiry of such allegation.
- (v) A separate Prosecutor's building should be established with the required amenities in every District in order to make it a full-time occupation. The prosecutors must be given an attractive salary and office space with amenities like pensions for office personnel. In such a situation, competent and competent lawyers would be drawn to this line of work.

5. Conclusion

The discussion above makes it obvious that there has always been a call for revamping the CJS of Bangladesh to include qualified prosecutors who are responsible for administering justice. But the demand has received no attention from the succeeding governments. Prosecutorial service must be effective, competent, and credible if it is to play a significant role in building the rule of law under the CJS. In Bangladesh, there is no specific procedure for the recruitment and employment of prosecutors. The current problem in Bangladesh can only be resolved by creating an independent permanent prosecution office and recruiting capable prosecutors through an open recruitment process. The structural and organizational characteristics of the present prosecution system of Bangladesh should be reformed immediately in order to establish a successful and efficient prosecuting service.