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Laws relating to Prosecution Service in Bangladesh: A Critical Analysis

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The Laws relating to Muslim Women-Initiated Divorce in Bangladesh: An Overview from Right-Based-Approach



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Manuscripts submitted for publication must be in three copies, double-spaced typescript or electronic print-out on A4 size (8.5"×11") white sheets with margins of 1" on all sides and pages consecutively numbered. The manuscript should have a title-page with the title of the article and the author's name, designation and contact address. The author's name or anything that may identify the author should not appear anywhere in the text paper. An abstract in English must be provided within 200-300 words at the beginning of the article. Submissions should be addressed to the Editor in Chief, Rajshahi University Law Journal, Faculty of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

Laws relating to Prosecution Service in Bangladesh: A Critical Analysis

Md. Abdur Rahim Mia*

Abstract: *The prosecution service plays an important role in establishing the rule of law and securing justice. A clear and comprehensive legislation or regulation is essential to govern the prosecutors of the courts. In Bangladesh, there is no exclusive legal framework to manage, oversee, and govern the prosecution service. There are also no current terms of reference for their services, and there are no set guidelines for appointing prosecutors here. The Code of Criminal Procedure, 1898, as a main legal instrument provides the roles and responsibilities of prosecutors. But its provisions relating to prosecution service suffer from various loopholes or shortcomings, which hamper the smooth functioning of the service. Another obstacle to the swift disposal of cases in Bangladesh is the lack of laws protecting victims and witnesses. Much more can be achieved from the prosecution service if certain changes are brought into the legal framework. The article aims to highlight the flaws and limitations of the laws relating to prosecution service in Bangladesh and suggest reform for overcoming loopholes of the laws.*

Keywords: Prosecution Service, Prosecutor, Investigating Officer, Witnesses

1. Introduction

The title 'Prosecutor' refers to the group of lawyers appointed by the state to handle its criminal cases. It is the state's obligation to prosecute criminals when they commit crimes. The prosecution service plays a significant role in ensuring justice for both accused parties and victims of crime. Therefore, having an effective, capable, and reputable public prosecutorial service is essential for any criminal justice system (CJS). The Code of Criminal Procedure, 1898 (Cr.PC) is only law in Bangladesh which prescribes necessity and scope of the appointment of prosecutors, but this law raises many questions rather than solutions. There is no exclusive legal framework in Bangladesh to manage, oversee, and govern the prosecution service. There are no current terms of reference for their services, and there are no set guidelines for selecting prosecutors by examining their educational

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background, professional abilities, and credentials. In the district courts of Bangladesh, there are no predetermined rules for how public prosecutors' offices should operate. Bangladesh's laws, unlike many other countries throughout the world, do not provide any fair and independent public prosecution service. To handle the prosecutors in the lower courts, there should have specific and inclusive statutes or regulations. The existing laws create the roles and responsibilities of prosecutors. But there are numerous flaws in these laws. This article attempts to examine current laws in Bangladesh pertaining to the prosecution system as well as to pinpoint any legislative loopholes in the prosecuting system. Additionally, this article concludes suggesting legal reform. The article is analytical in nature. Both primary and secondary sources have been used here. Only the legal flaws attached with the prosecution service of Bangladesh have been discussed in this article.

2. Public Prosecution Service in Bangladesh

In Bangladesh, public prosecution service falls essentially into two categories: (a) the attorney service for the Supreme Court and (b) the prosecution service for all lower courts. 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 ability to represent the State in any court within the state, his presence and authority are only available at the Supreme Court of Bangladesh. The posts of Public Prosecutor (PP), Additional Public Prosecutor (Ad.PP), and Special Public Prosecutor (SPP) constitute the prosecution wing in each district as it relates to criminal justice. All of these prosecutors are supported by Assistant Public Prosecutors (APP), whose numbers vary depending on the number of courts they are responsible for covering as well as the size and population of the

district.¹ There were 3377 prosecutors in Bangladesh's subordinate criminal courts as of 31 December 2022 to handle 3388610 criminal cases.² The prosecutors are charged with bringing criminal allegations before the court. They cannot be transferred since they are allocated a certain territorial jurisdiction. Retainer fees are not charged depending on the number and nature of cases they handle. As long as they do not have any conflict of interest, they can handle both civil and criminal private cases.³ On the other hand, police officers are chosen to serve as prosecuting sub-inspectors, prosecuting inspectors, and deputy superintendents of police prosecution in order to bring small offences before subordinate courts. They are regular police officers working for the Home Department and are not permitted to serve as prosecutors unless they investigate into a case personally.⁴

3. Provisions under the Code of Criminal Procedure, 1898

The Cr.PC is the main law which stipulates a short guidelines about the appointment, powers and duties of the prosecutors. According to Section 493 of the Code, the PP may show up and enter a plea before any court where a case of which he has charge is being investigated, tried, or appealed. If an individual instructs a pleader to prosecute a person in such a case in any court, the PP will oversee the prosecution and the pleader so directed will act in accordance with his instructions. Before the verdict is delivered, a prosecutor is empowered to withdrawal the cases.⁵ The main provisions of Cr.PC regarding prosecution and prosecutors are given below:

¹ Md. Ashrafuzzaman, 'The Disposable Prosecutors of Bangladesh', *The Daily Star*, 16 March 2008, available at <http://alrc.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 lawyersclubbangladesh.com, 18 October 2022

² 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

³ Maruf Alam and Tajul Islam, 'Quest for an Independent, Permanent and Efficient Prosecution in the Criminal Justice System of Bangladesh', *The ASA University Review*, Vol.11, No.1, ASA University, Dhaka, 2017, p.105

⁴ *Ibid*

⁵ Section 494, *The Code of Criminal Procedure*, 1898.

3.1 Concept of Public Prosecutors

A public prosecutor (PP) is a prosecution officer appointed by the state. A PP is in charge of putting up the state's case, questioning the witnesses, and arguing for conviction of the accused. PPs perform their duties to district courts and sessions courts. The prosecutor is not allowed to represent himself against the government in any civil or criminal proceedings while he is serving on the function of prosecutors.⁶ According to the Cr.PC, a PP is defined as any individual appointed according to section 492 of the code, as well as any individual operating at the PP's direction. The way the CrPC defines the word "Public Prosecutor" is confusing. According to section 4(l)(t), "Public Prosecutor" refers to any individual appointed pursuant to Section 492 as well as any individual working at the Public Prosecutor's direction. By virtue of this definition, any public prosecutor may employ any individual to work under his supervision, and the individual so employed afterwards satisfies the definition of a public prosecutor in section 4(l)(t). There must be some confusion if a government-appointed PP employs someone as his subordinate and that person gains the title of the prosecutor.

3.2 Appointment of the Prosecutors

The appointment of prosecutor is a compelling constitutional necessity.⁷ Section 492 of the Cr.PC states that the government of Bangladesh has the authority to designate prosecutors in any locality for any case or collection of cases.⁸ It further provides that the District Magistrate (DM) may name any other person, who is not an official of the police below the level of sub-inspector, as PP for the purposes of any case when no PP has been nominated.⁹ Regarding the appointment of SPPs and the situations in which such a special power should be employed, the Cr.PC offers no direction to the executive. In the absence of such instructions, governments have frequently utilized this clause

⁶ 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

⁷ Taqbir Huda, 'Where is Our Independent Prosecution Service?' *The Daily Star*, 4 April 2022

⁸ Section 492, *The Code of Criminal Procedure*, 1898

⁹ *Ibid*

in high-profile cases to remove ordinary prosecutors and affect the outcome of the trial through the actions of the prosecutors. The CJS suffers from such executive intervention in criminal proceedings. The employment of this executive discretionary power must be governed by the relevant laws and regulations in order to prevent such interference.

Section 495 of the Cr.PC states that any magistrate conducting an investigation or trying a case may allow any individual other than a police officer of a rank below that which would be prescribed by the Government in this regard to handle the prosecution. According to this section, a police officer cannot lead the prosecution if he was involved in any way in the investigation into the crime for which the accused is being charged. A Court in India ruled that the District Magistrate could legally name a sub-inspector of Police as a PP.¹⁰ To designate prosecutors in Bangladesh, there is no specific regulations or instructions. Any magistrate conducting an investigation or trying a case has the authority to allow any individual to carry out the prosecution mandated by section 495 of the Code. 'Any person' here includes those who are not certified pleaders. No one may make a claim for it as a matter of right, according to a decision made in an Indian case.¹¹ The rules in this section, however, only apply to how a matter is handled in a trial court; they do not apply to appeals. One who is a police officer below the rank that will be mandated by the government in this regard is not eligible for the permission to conduct prosecution. The conditions of section 494 shall apply to any withdrawal by any such police officer who has the magistrate's approval to undertake a prosecution. Such police officers shall have the same authority to discontinue a prosecution as provided by that section. If a police officer participated in any way in the investigation into the offense for which the accused is being prosecuted, he or she is not eligible to lead the prosecution.¹² These officers are simply shifted from a police station to the court, frequently as a punishment task, despite the fact that these officers lack appropriate training or degrees

¹⁰ AIR 1930 Sind 156

¹¹ 1983 UP Cr. LJ 401

¹² Md. Ashrafuzzaman, 'Op.cit'

in law.¹³ Sub-inspectors in the police force are typically responsible for prosecuting cases before courts. The prosecution either fails to establish the accusations or the accused is found guilty based on flawed evidence and reasoning only to be exonerated on appeal in circumstances when police are the prosecutors.¹⁴

3.3 Co-ordination between Investigating Officer (IO) and Prosecutors before Submitting Investigation Report

To secure justice and punishment of the perpetrators, and to increase higher conviction rate, a strong collaboration between the prosecution and the investigators is required. At present, there is no statutory authority or discretionary power of the prosecutor to play any role in the investigation process. The Police Rules, 1934 states that,

“When it becomes necessary during an investigation to do so for the sake of evidence or for a court demonstration, investigating officers are obligated to take the necessary steps to seek expert technical assistance and guidance.”¹⁵

This rule places even more emphasis on the investigating officers' obligation to consult prosecutors for specific legal advice. In the *R. Sarala vs TS Velu case*,¹⁶ the Supreme Court of India ruled that legal requirement is not necessary for the police to contact with prosecutor during an investigation. In Bangladesh, when the IO submits the charge sheet to the court, the prosecutor's role officially begins. To determine whether to pursue charges or dismiss the case, prosecutors examine the evidence that has been presented to them by the court. To enable the court to reach a decision, prosecutors present all relevant information and examine the witnesses. The prosecutors are state-appointed, gazetted officials who help the court to prosecute the offenders.¹⁷ In this regard, the PP's objectivity and honesty play a crucial and fundamental role for ensuring justice in the CJS.¹⁸

¹³ Maruf Alam and Tajul Islam, 'Op.cit', p.107

¹⁴ Md. Ashrafuzzaman, 'Op.cit'

¹⁵ *Ibid*

¹⁶ AIR 2000 SC 1731

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

¹⁸ N R M Menon, 'Public Prosecution Service in India: An Institution in Need of Reform, Strengthening the Criminal Justice System', *ADB Regional Workshop in Dhaka, Bangladesh*, Dhaka, 30-31 May 2006, Asian Development Bank, available at <https://think-asia.org>, last accessed on 22 February 2021

In the absence of any specific guidance to the laws about the prosecutor's role at an investigation stage, before filing a charge sheet, IO may consider the prosecutor's opinion. It might increase the investigation's transparency. In this case, the prosecutors will only be allowed to express their opinions. The IO can accept or reject such advice. If there are disagreements regarding it, the Superintendent of police, who heads the investigating agency, will make the final decision. Additionally, the IO may consult with the assigned prosecutor at any time during the initial stages of an investigation; however, when the IO requests advice from the prosecution office, the Prosecutor must receive all case materials from the IO. If this process is not followed, it could have serious problems that would be difficult to resolve later.

When inaccurate legal elements are included in the report, the case eventually suffers. During a trial, charges may be amended, but the options are relatively restricted. Therefore, before the matter goes to trial, these weaknesses must be resolved. The police then move to delete the fatalities or mistakes from these reports where the prosecutor's office does raise concerns. Additionally, the prosecutor may indicate that a case is unsuitable for trial and ask that it be dismissed; however, the Court must concur. So, while the Court considers the fatalities in the investigation or case, the accused effectively remains in detention. The Cr.PC should contain a section allowing the IO to give his opinion pursuant to section 173 of the Cr.PC to the Prosecutor, who subsequently submits it to the Magistrate. Upon receiving this report, the prosecutor is required to carefully review it before deciding whether to submit it to the appropriate court or return it to the IO with written instructions to submit it again after correcting the deficiencies and defects he found within seven days. The prosecutors should have the authority to give general directives to the Police regarding the type of investigation required for a successful prosecution. In addition, the IO is always permitted to confer with the prosecutor on duty during the earliest phases of an investigation. However, when the IO requests guidance from the prosecution office, it should be made mandatory that it also send all evidence which the IO gathers.

3.4 Conducting the Prosecution

The prosecutor is authorized under the Cr.PC to address the court with an opening statement before the trial begins and aids the court in

formulating precise accusations.¹⁹ His responsibility when he appears in court for criminal charges is to present the complete case to the judge. He is not permitted to alter the facts when providing testimony. He must provide a complete list of all the witnesses he intends to call as witnesses during the trial. He looks over the witnesses. The prosecutor is regarded as the master of the witness roster because he may pick which witnesses should be called up for questioning and which witnesses can simply be ignored in the case.²⁰

As stated in section 173 of the Cr.PC, the duty of the prosecutor is not unqualified. The current analysis of sub-chapter 3.6 has discovered that prosecutors in Bangladesh do not have the authority to drop their case before trial if there is insufficient evidence and little possibility of success. Even if there is a remote possibility of conviction, prosecutors are required to send *challan* presented to them to the courts for the start of criminal proceedings. When passing the *challan*, they merely state whether they believe it is suitable for trial or not. The majority of the time, courts conduct criminal trials for years before coming to the same conclusion that the case was unfit for trial as determined by the prosecutors when the *challan* was passed. When they determine that the charge is unfounded or that there is no chance of conviction, magistrates and session judges respectively acquit the accused throughout the period of the trial in accordance with sections 245 (1) and 265 (H) of the Cr.PC. In this way, courts not only feel overworked but also lose a large amount of their valuable time handling cases of this nature. During the time of interview, one prosecutor²¹ said to the researcher,

‘In Bangladesh, no authority or power has been given by the laws to the prosecutors to drop *challan* even if prosecutors think the acquittal is likely, while in developed countries prosecutors only pass *challan* when conviction chances are high. As a result, courts are also overburdened.’

¹⁹ Section 493, *The Code of Criminal Procedure*, 1898

²⁰ Maruf Alam and Tajul Islam, ‘Op.cit’, p.106; 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

²¹ Advocate Rebeka Sultana, Assistant Public Prosecutor, Rajshahi Court.

3.4.1 Appointment of Private Pleader

In line with section 493 of the Cr.PC, a complainant of a criminal case who lacks sufficient faith in the service of the PP may appoint a private pleader. Here, the private pleader must act within the limits established by the PP, and if the PP objects, the private pleader must either cease acting or resign. This clause contains significant errors. A Research study stated that,²²

‘This very provision may be abused by corrupt PPs to take advantage from the victim. They are neither appropriately handling the matter with due care and attention nor permitting the victim or victim's family to appoint a professional private pleader without engaging in an illegal financial transaction.’

Therefore, the Final Draft report on the Code of Criminal Procedure (Amendment) Bill, 2013 prepared by the Bangladesh Law Commission proposed that the provisions of the Code be changed to permit the relevant private parties to appoint their own attorneys to submit and participate in the proceedings without the permission of the PP.²³ However, the government has not yet taken this suggestion into account.

3.5 Producing Witnesses before the Court and Absence of Protective Laws

It is the prosecutor's responsibility to establish the case, so they must take the required procedures to call the witnesses into court. In Bangladesh, crucial witnesses who testify in court are frequently uninterested, terrified of, or under the control of criminals, leading them to become hostile or withhold their testimony.²⁴ Victims are entitled to testify in court as prosecution witnesses. However, criminals frequently target victims and harass them, prevents them from giving open and honest testimony. Thus, the prosecuting system is generally weaker when there are no victim protection laws. Lack of evidence results in the majority of cases being dismissed. It is the responsibility of every State citizen to support the legal system and law enforcement in upholding the right to a fair trial guaranteed by the Constitution.

²² Maruf Alam and Tajul Islam, ‘*Op.cit*’, p.110

²³ See, Law Commissions Website of Bangladesh

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

Many people do not consider it wise to perform their fundamental commitment because they fear retaliation. The absence of proper legal protections for victims and witnesses in Bangladesh is a significant roadblock to effective criminal prosecution.²⁵ One APP said,²⁶

'We are sometimes unable to defend witnesses because witnesses are unwilling to testify in court due to the lack of a witness protection system and government facilities for witnesses. We are all aware that the fundamental tenet of the CJS is that an accused person is assumed innocent until proven guilty. It is the responsibility of the prosecution to call witnesses and offer solid proof of the defendant's guilt. Additionally, the evidence must be conclusive. For the sake of a fair trial, the courts may award acquittal or bail to the alleged accused, giving them the benefit of the doubt, whenever they discover any weaknesses in the prosecution's evidence.'

The protection of victims and witnesses is a crucial component of criminal proceedings that may help the State convict offenders and the judicial system handle cases more efficiently. Victims are entitled to testify in court as prosecution witnesses. 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.²⁷ When there is no protection system, victims who are women and children of organized crime are coerced into suppressing information.²⁸ It is widely recognized that in order for justice to be carried out properly and without delay, the rights of victims and witnesses must be respected. It often happens that the witnesses and victims are too

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

²⁶ Found from Interview, said by Md Zahurul Islam, Special PP, Rajshahi Court

²⁷ Ashabur Turan, 'Need for Witness Protection Law', *The Daily Star*, 2 February 2016, p.7

²⁸ Dr. Abdullah Al Faruque and Md. Sazzatur Rahaman, 'Victim Protection in Bangladesh: A Critical Appraisal of Legal and Institutional Framework', available at www.biliabd.org, last accessed on 15 July 2017

afraid to testify during the trial.²⁹ The CJS of Bangladesh occasionally causes "secondary victimization" to crime victims.³⁰ As a result, witnesses and victims occasionally decline to provide a testimony in court, which slows down the process. It is disappointing that Bangladesh hasn't enacted any specific legislation to protect witnesses and victims. Section 506 of the Penal Code, 1860 stipulates a penalty for criminal intimidation, however it is insufficient to shield the victims and witnesses. In accordance with sections 151 and 152 of the Evidence Act, 1872, there are some limitations placed on the use of disrespectful questions when questioning witnesses. The High Court Division (HCD) stated in the *Tayazuddin and Others vs the State case*,

'—It is the responsibility of the state to safeguard and uphold the rights of its citizens, including witnesses and victims, to equality before the law, equal protection under the law, and the right to life and personal liberty, which is accompanied by a duty to protect individuals involved.'³¹

The Law Commission of Bangladesh published a draft Witness Protection Bill 2011 after having long ago recommended a law for victim and witness protection under the administration of Justice Mustafa Kamal (6 December 2004–5 December 2007). A High Court Division bench ordered the government to act in this regard in December 2015.³² Concerning the protection of victims and witnesses, law and human rights-related NGOs are persistently vociferous in Bangladesh.³³ The Law Commission's suggestion and draft have received no attention to date, and the government has not yet taken

²⁹ Dr. Md. Abdur Rahim Mia (2020), *Op.cit*, p.18

³⁰ Police apathy to the victim, covert, humiliating, and negative questions from police and attorneys, and hostile or unsafe environments in courts and thanas are all examples of "secondary victimization" that can occur. See also, Arafat Ameen, 'Victims and Witness Protection: In Search of a Legal Regime in Bangladesh', *The Daily Star*, 1 October 2005

³¹ 21 (2001) BLD (HCD) 503; Dr. Abdullah Al Faruque and Md. Sazzatur Rahaman, *Op.cit*, p 27

³² Ashabur Turan, 'Need for Witness Protection Law', *The Daily Star*, 2 February 2016, p.7

³³ 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

any action to implement the order of the Judiciary. The government has not made it clear why it is reluctant to send it to Parliament for enactment as law.

3.6 Withdrawal of Charges

According to the Cr.PC, before a verdict is issued, the prosecutors are permitted to stop the proceedings or withdrawal the cases with the court's approval.³⁴ The Cr.PC makes no clear statement of how this ability should be used. If the prosecutor takes a fair and independent action to withdraw a case, the court should accept this and permit withdrawal. With regard to the factors and circumstances supporting the prosecution's withdrawal, the prosecutor must convince the court.³⁵ In the case *Sikandar Ali Sikdar vs. State & Others*,³⁶ the Appellate Division of Bangladesh ruled that, the right to withdraw cases must be used for the sake of the administration of justice. It is insufficient for the public prosecutor to merely state that the case should not be prosecuted. He must establish a number of grounds, including the dearth of evidence, the prosecution's lack of foundation, and other factors. The administration of justice is, however, of utmost importance.

Section 494 does not provide any criteria on which prosecutors can establish their request or the basis on which the court will grant permission to withdraw a case.³⁷ The politically appointed prosecutors use their statutory right to withdraw cases against members of the ruling party without regard to their merit because they feel obligated to defend those interests. In order to drop a case, the prosecutor must provide sufficient justification. A prosecutor is responsible with representing the public interest as an official of the court; as such, for the advantage of the court, he or she is expected to present evidence in the accused's favor. In the case of *Altab Hossain vs*

³⁴ Section 494, *The Code of Criminal Procedure*, 1898

³⁵ Dr. Sarkar Ali Akkas, 'Withdrawal of Cases: Where is the end?', *The Daily Star*, p.19 February 2010

³⁶ 31 DLR AD 135

³⁷ Maruf Allam and Tajul Islam, '*Op.cit*', p.109

Kobed Ali,³⁸ it was revealed that the Magistrate granted permission for withdrawal based only on the fact that the government had given order to the pertinent Deputy Commissioner to take procedures for case withdrawal. In this case, the High Court Division ruled that such a mechanical order to withdraw the case is against section 494 of the CrPC and then ordered the magistrate to handle the issue legally. Public prosecutors are chosen based on their political sympathies, which causes problems.³⁹ Because of the administrative influence that governments have over prosecutors and the general lack of independence, it is challenging for prosecutors to use their discretion and/or to object to any orders from governments to drop their case. As a result, even while the prosecutor rarely invokes the clause for withdrawal of cases on her own initiative, it mostly seems to be done so for political reasons. It is essential to have an impartial public prosecution system that can conduct cases without being influenced by unwarranted political or other factors.⁴⁰

4. Qualifications of the Prosecutors in Bangladesh

To be enrolled as an advocate, a Bangladeshi citizen must pass the enrollment examination administered under the instructions and guidance of the Enrolling Committee of the Bangladesh Bar Council and possess a law degree from any recognized university located in Bangladesh or abroad.⁴¹ Every advocate in Bangladesh has the credentials to hold the positions of PP and APP. There are no further requirements in this case to become a prosecutor. However, in India, a candidate for PP must have at least ten years of experience practicing law.⁴² The Sessions Judge must compile a list of candidates who are qualified to be appointed as the PP at the district level when the District Magistrate consults with them. Candidates who want to work as PPs in India must take the Union Public Service Commission exam

³⁸ (1997) 49 DLR 589

³⁹ Dr. Sarkar Ali Akkas, '*Op.cit*'

⁴⁰ *Ibid*

⁴¹ Shoaibur Rahman Shoaib, 'Type of Advocates and enrollment procedure', available at lawyersclubbangladesh.com, accessed on 23 July 2023

⁴² Prof. N.R. Madhava Menon, '*Op.cit*', p.24

(UPSC). After the written test, there is an interview. The relevant State Public Service Commission department conducts the written and viva examinations to meet the selection requirements.⁴³ On the other hand, no prior professional experience is necessary to become an SPP in Bangladesh. Candidates for the position of SPP in India must have at least seven years of experience.⁴⁴ Also, candidates with a law degree who have at least two years of experience at a state-level bar council are eligible to apply for the position of APP in India. When names are mentioned on a panel of names supplied by the District Magistrate, a PP is selected by the State Government for the district.⁴⁵ Bangladesh does not have such guidelines in this regard. A graduate degree is required for prosecution police in Bangladesh, however a legal degree is not required there.

5. The Government Attorney Service Ordinance, 2008

In a regional workshop on strengthening the CJS organized by the Asian Development Bank held in 2006, the then-law minister said that,⁴⁶

‘Defective prosecution service is one of the main flaws of the CJS of Bangladesh.’ Our law ministry has drafted a bill to establish a permanent prosecutor service in Bangladesh. Prosecutors will be appointed only on the basis of their qualifications after passing a national exam similar to the one required of other government employees.’

He also added that, they will be held responsible for the fulfillment of their duties.⁴⁷ However, unexpectedly, this bill has not yet been passed. The Government Attorney Services Ordinance, 2008 was adopted by

⁴³ Section 25, *The Indian Criminal Procedure Code*, 1973; Kishan Dutt Retd Judge, ‘Eligibility to become Public Prosecutor in India’, available at www.soolegal.com, last accessed on 30 Jun 2022

⁴⁴ Prof. N.R. Madhava Menon, ‘Op.cit’, p.24

⁴⁵ Kishan Dutt Retd Judge, ‘Eligibility to become Public Prosecutor in India’, available at www.soolegal.com, last accessed on 30 Jun 2022

⁴⁶ J S Rahman, ‘Strengthening the Public Prosecutorial Service in Bangladesh’, *ADB Regional Workshop in Dhaka*, Bangladesh, 30-31 May 2006, Asian Development Bank, available at <https://think-asia.org>, last accessed on 22 February 2017

⁴⁷ Shakhawat Liton, ‘Prosecution is ailing’, *The Daily Star*, 19 July 2016, Front Page; Taqbir Huda, ‘Where is Our Independent Prosecution Service?’ *The Daily Star*, 4 April 2022

the previous caretaker Government, creating a distinct and permanent Government Attorney Services Department. The aim of this department was to recruit, develop, maintain, and manage government lawyers in order to ensure that the state was effectively represented in district courts and the Supreme Court. The Government Attorney Service Ordinance, 2008 (GASO), paving the path for the appointment of government lawyers through the Public Service Commission, was approved in principle by the cabinet in March 2009.⁴⁸ The Ordinance stipulated that a person had to meet specific requirements to be appointed as a PP. This Ordinance has not yet been approved by the Parliament. District section and Supreme Court section are both covered by this Ordinance. Additional attorney general, deputy attorney general, and assistant attorney general posts will be available in the Supreme Court area. District attorney, additional district attorney, joint district attorney, and assistant district attorney will all be located in the district section. The GASO has some shortcomings, such as, (i) the Ordinance failed to select Supreme Court attorneys as the appropriate agency or directorate to conduct and control of all districts and (ii) prosecution was unrelated to investigation.

The GASO offered to establish a department or directorate to manage and oversee all districts and Supreme Court attorneys. Unfortunately, a more effective model of oversight and accountability was not included in the GASO. The GASO received harsh criticism from professionals and was ultimately not put into effect. There is no Director of Prosecution (DP) office or position established in Bangladesh. A State's chief prosecutor is referred to as the DP by the GASO. According to the Indian Prosecution System, a person can only be appointed as DP or Deputy DP if he has been practicing law for at least ten years, and the Chief Justice of the High Court must approve this appointment.⁴⁹ He will work under the administrative supervision of the State Secretariat's Head of the Home Department.⁵⁰ The DP and the Deputy

⁴⁸ 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

⁴⁹ Section 25 A (2), *The Code of Criminal Procedure*, 1973

⁵⁰ Section 25 A (3), *Ibid*

DP will each have the authority, responsibilities, and powers that the government deems appropriate.⁵¹ The DP's main responsibility is to coordinate the efforts of the district prosecuting authorities. Additionally, the DP oversees the effectiveness, moral character, and discipline of all PPs, SPPs, and APPs.

6. The Legal Remembrancer's (LR) Manual, 1960

The executive organ of the State is required to follow a manual known as the LR Manual when it recruits prosecutors. This manual is expected to have legal force as of right now. The processes for the appointment of PPs are outlined in clause 17 of this manual. It recommends a process that involves requesting applications from potential candidates for the position and formally appointing the strongest candidates for a term of three years. The approach outlined in this Manual is far superior than the one currently in use.⁵² Currently, the selection procedure is determined by the political preferences of the current ruling political party in Bangladesh. The steps for appointing a PP are outlined in Clause 17 of the LR Manual.⁵³ Although the procedures

⁵¹ Section 25 A (7), *Ibid*; Prof. N.R. Madhava Menon, '*Op.cit*', p.80

⁵² Maruf Alam and Tajul Islam, '*Op.cit*', p.105

⁵³ The clause 17 states that: (i) The District Magistrate (DM), in consultation with the Session Judge, shall inform the LR whenever the position of PP becomes permanently vacant as to whether there are sufficient qualified local candidates or whether applications from candidates outside the district should also be requested. (ii) If the LR determines that there are no qualified candidates in the area, he may, after consulting with the DM, recommend to the Governor that any other PP who is prepared to accept the position be transferred to fill the position. If the vacancy is not filled by transfer, the DM shall be asked to advertise the vacancy, either generally or locally as the case may be. (iii) Whenever a position is advertised, all applications must be submitted to the DM of the district where the applicant typically practices, who will then forward them along with his recommendations to the DM of the district where the vacancy occurs after consulting with the District Judge regarding the applicant's suitability for the position. The Deputy Superintendent and LR of the Legal Affairs, must receive applications from candidates practicing on the High Court's appellate side. When a vacancy arises, all such applications must be submitted with the recommendations of the relevant officers to the DM. (iv) The DM is responsible for receiving all applications which has been submitted through proper channel. (v) After carefully evaluating each application, the LR will provide a list to the Government in the Judicial Department, who will make the appointment, listing the names of the four most qualified applicants in order of preference. All appointments made after the appointed day shall be for a period of three years and may be renewed for further period if the incumbents are found fit and efficient. (vi) The LR will send the letters of appointment to the incumbents. (vii) No one will be judged eligible for appointment as a

outlined in that clause and quoted below are still in effect, it is highly dubious that these steps are followed in any way when choosing and appointing PPs. There is no barrier preventing the Government from adhering to the system as outlined in the LR Manual if the Government finds it difficult to promptly implement an independent public prosecution service. If the procedure of LR Manual is followed, it will greatly reduce the opportunity for political interference, which is currently dictating such nominations as disclosed once more by the Law Minister, and assure the appointment of qualified individuals for these positions.⁵⁴

7. Unethical Practices under the Bangladesh Bar Council Canons of Professional Conduct and Etiquette, 1969 (BCCPCE)

The court officers are all bound by a code of professional ethics. A prosecutor's proper conduct in court is expected and would substantially help the court's ability to conduct proceedings as usual. In this regard, the majority of prosecutors are familiar with the rules and norms of the court. In order to begin with a trial on a specific date, the prosecution must be prepared, and they will only ask for an adjournment under extremely exceptional circumstances. A prosecutor must not involve in private practice and cannot demand any unauthorized money from the parties. The BCCPCE, which was developed by the Bangladesh Bar Council in accordance with the authority granted to it by section 48(q) of the Legal Practitioners and Bar Council Act, 1965 (LPBC), contains legal ethical principles that apply to lawyers' professional conduct in Bangladesh. The BCCPCE addresses a variety of subjects, such as the duties that lawyers have to the court, how they ought to conduct themselves around other attorneys and clients, and their general duty to uphold the rule of law and work to establish and maintain the independence and integrity of

public prosecutor unless they have worked as a pleader, advocate, or barrister for five years.

⁵⁴ M H Khan, 'Independent public prosecution service', *The Daily Star*, Dhaka, 22 February, 2017

the judiciary.⁵⁵ A lawyer's ethical code of conduct was incorporated into the BCCPCE in 1969. However, it falls short since it is not exhaustive enough to address the current situation. With regard to the evolving conditions and demands of society, it needs to be updated and expanded. Prosecutors are required to follow certain procedures in order to carry out their duties in accordance with the BCCPCE, which includes: (i) carrying out their tasks impartially and without regard to any political, social, religious, racial, cultural, or sexual discrimination; (ii) protecting the public interest, acting objectively, taking into account the position of the suspect and the victim, and paying attention to all relevant circumstances, regardless of the benefits or losses of the suspect; (iii) maintaining professional dealing and (iv) ensuring the victims' rights when victims' personal interests are at stake.⁵⁶

When an unbiased investigation reveals that the charge is unjustified, prosecutors must not begin or continue the prosecution and must make every effort to halt the case. Where permitted by law or in accordance with local custom, such offenses should be investigated with the same vigilance as crimes committed by public officials, especially those involving corruption, abuse of authority, severe human rights violations, and other offenses that are punishable under international law. Although the BCCPCE provides the fundamentals of legal ethics, it calls for their clarification. It is insufficient since it does not describe the method for determining the honorarium of lawyers and prosecutors in a clear and precise manner. In practice, many attorneys hardly abide by the regulations in the course of their daily professional behavior. After enrolling as a lawyer in Bangladesh, the Bar Council is the only organization in charge of keeping an eye on their conduct. The District Bar Associations lack the resources to monitor unethical behavior of the prosecutors. The fact that the majority of lawyers are unfamiliar with the Canons' provisions is one reason that contributes to non-compliance. Another justification for its non-observance has been the absence of sufficient consequences for Canons violations. It

⁵⁵ Dr. Abdullah Al Faruque, 'An Empirical Study on Unethical Legal Practices in Bangladesh and Suggested Remedial Measures', *Dhaka University Law Journal*, Issue No. 32(2), Dhaka, 2021, PP.87-102

⁵⁶ *Ibid*

also depends on each lawyer's personal ethical standards whether they follow the codes for conduct and etiquette. Another explanation for the weak Bar Council Cannons observance has been attributed to the concentration of the Bangladesh Bar Council office in Dhaka. Since there are so many attorneys working at the district level, the Bar Council headquarters in Dhaka finds it extremely challenging to regulate behavior and manners. As a result, Bar Council is unable to efficiently check that lawyers are abiding by the rules of conduct and procedure.⁵⁷ It would be simple to monitor the prosecution functions in the individual districts if the Prosecution Directorate is constituted under the GASO, and all prosecutors would report to and receive advice from the PP.

8. Identifying Gaps in the Prosecution Service of Bangladesh

There are no recruitment guidelines in Bangladesh for the appointment of the necessary number of PP, GP, SPP, and all of their subordinates. In addition, there is no particular legal framework in place to manage, oversee, and govern them. There are no legal requirements in this country for prosecutors; only they are chosen from among the practicing Bar. A law degree is not necessary for the prosecution police. The LR Manual, which has legal standing to this day, specifies the application process for potential applicants with three years of professional experience. But today, it is not still practiced.

The establishment of a distinct and permanent Government Attorney Services Department was made possible by the GASO. According to the Ordinance, a person must fulfill certain qualifications in order to be appointed as a prosecutor. Even though the Ordinance was authorized by the government in 2009, the Parliament has not yet adopted it. The Director of Prosecution (DP) position and office have not yet been established as required by the Ordinance.

In absence of any specific direction to the laws in this regard, the public prosecutor's duty at an investigation stage, according to Police Rules, is merely advising. The pre-trial discussion between the IO and the prosecutor is not mentioned in the law. The role of prosecutors is not

⁵⁷ *Ibid*

unqualified according to section 173 of the Cr.PC. If there is insufficient evidence and no possibility of conviction, prosecutors in Bangladesh are not allowed to withdraw the case during the pretrial phase.

Absence of victims and witnesses' protection laws is a significant impediment to a successful CJS. The Cr.PC does not specify how the authority of withdrawal of charges is to be used. Section 494 makes no mention of the reasons why public prosecutors can request to withdraw a case or the criteria on which the court will grant that request. The politically appointed prosecutors use their statutory right to withdraw cases against members of the ruling party without regard to their merit because they feel obligated to uphold those interests.

9. Suggestions

This article puts forward the following suggestions to remove the weaknesses and shortcomings of the laws:

(i) To establish a clear structural framework for the appointment, management, supervision, and oversight of the prosecution service, the Parliament may pass the Government Attorney Service Ordinance, 2008, or a new statute may be enacted by the parliament. The appointments of government pleaders and prosecutors will be rearranged. A thorough examination procedure based on objective standards of competence and fitness should be employed to evaluate the candidates in order to ensure that the most qualified advocates are selected as the prosecutors. This law needs to permit the open and competitive recruitment of young advocates.

(ii) An "Appointment Rule" is needed in order to recruit the required number of prosecutors. Cadre and Recruitment guidelines may be adopted by the Ministry of Law. The Rules could specify that all APPs and Attorney Generals will be appointed directly after passing a prerequisite written test and an oral interview conducted by the PSC⁵⁸.

(iii) The Cr.PC should contain a section allowing the IO to give his opinion pursuant to section 173 of the Cr.PC to the Prosecutor, who subsequently submits it to the Magistrate. Upon receiving this report,

⁵⁸ PSC means Public Service Commission of Bangladesh

the prosecutor is required to carefully review it before deciding whether to submit it to the appropriate court or return it to the IO with written instructions to submit it again after correcting the deficiencies and defects he found within seven days. All types of prosecutors should have the authority to give general directives to the Police regarding the type of investigation required for a successful prosecution. In addition, the IO should be permitted to confer with the prosecutor on duty during the earliest phases of an investigation. However, when the IO requests guidance from the prosecution office, it should be made mandatory that it also send all evidence which the IO gathers.

(iv) Section 494 of the Cr.PC requires a detailed explanation of the charge withdrawal's authority and scope of such withdrawal. It is necessary to have legislation that addresses the pre-trial discussion between the IO and the PP and the withdrawal of the *challan*. Section 173 must be changed as a result.

(v) Basic principles of legal ethics should be elaborated in the Bangladesh Bar Council Canons of Professional Conduct and Etiquette, 1969. This law has to include an explanation of how the honorarium for attorneys are determined. According to the Director of Prosecution's report following an investigation into the allegations, the Attorney General of Bangladesh may remove the PP, Special PP, Additional PP, and APP from their posts for misconduct or carelessness.

(vi) All prosecutors must be defined as "gazetted officers" and must not be allowed to run their own private practices. It is also advised that candidates have at least a three years of practicing experience in criminal courts. Candidates must also have an LL.B (honors) degree in law in order to be able to participate in the prosecutor's selection process. To serve for the prosecution service, a police officer must have an LL.B (pass) degree.

(vii) A "Victims and Witness Protection Law" should be passed in order to establish a victim and witness protection system. A precise witness allowance must be mentioned in this statute, along with payment options.

10. Conclusion

In the process of administering justice, prosecutors serve as court employees. The fact is that the prosecutor's primary responsibility is to assist the court in gathering the relevant facts. A fair recruitment process must be followed on prosecutor recruitment process, and the prosecutors must be neutral, fair, and honest. For the selection and appointment system of prosecutors, there is no set procedure. On the other hand, there are several flaws in the laws that are supposed to foster responsibility, openness, and professionalism throughout the entire system. The legal reform is necessary to make the prosecution system effective and efficient. Specific rules should be made for recruitment of prosecutors to the service through an independent and transparent process. For a higher percentage of conviction and punishment of the offenders, a functional collaboration between the investigators and the prosecution is required.