

DAFFODIL INTERNATIONAL UNIVERSITY



A RESEARCH MONOGRAPH ON

Strengthening the Role of Public Prosecutors in Bangladesh's
Criminal Justice System: An In-depth Examination of
Professional Competence and the Pursuit of Justice

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ACKNOWLEDGMENT

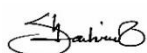
Alhamdulillah, for the blessings of almighty Allah.

My days at Law at Daffodil International University are memorable, among many, for at least one reason. Thanks to Daffodil International University the Department of law, here I got my first experience with how to do sociocultural research and knew about research. In this regard, I would like to express my thanks and gratitude to my supervisor, Mr. Mohammad Badruzzaman sir, for his guidance and great support. His suggestions and affection showed me the way.

Then thanks to our head Kudrat-E-Khuda Babu sir for showing me how to think out of the box and helping us to know about research in a short time. Heartfelt thanks to My Father for his critical appreciation of my study and thanks to my mother who always gave me confidence.

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Finally, the views and any errors in the study remain my own.



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LETTER OF TRANSMITTAL

To
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Subject: Submission on “Strengthening the Role of Public Prosecutors in Bangladesh's Criminal Justice System: An In-depth Examination of Professional Competence and the Pursuit of Justice.”

Honorable Sir,

It is a great pleasure for me to submit the dissertation on the topic of “***Strengthening the Role of Public Prosecutors in Bangladesh's Criminal Justice System: An In-depth Examination of Professional Competence and the Pursuit of Justice.***”

To prepare the dissertation, I tried to maintain the required standard. I hope this dissertation will fulfill your expectation.

I, therefore, pray and Hope that you would be kind enough to grant this dissertation for evolution. I am available for any further clarification of this paper at your convenience.

Thanking you.



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LETTER OF APPROVAL

This is to certify that the work is done “Strengthening the Role of Public Prosecutors in Bangladesh's Criminal Justice System: An In-depth Examination of Professional Competence and the Pursuit of Justice.” is a real work done by Jiaul Shahriar, ID: 0242310008133021; Department of Law, Daffodil International University, done under my supervision in the partial fulfilment for the research work for.



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CERTIFICATION

This is to certify that the dissertation report on “Strengthening the Role of Public Prosecutors in Bangladesh's Criminal Justice System: An In-depth Examination of Professional Competence and the Pursuit of Justice”. An Appraisal is done by Jiaul Shahriar in partial fulfillment of the requirements for the Degree of LL.M. from Daffodil International University. This dissertation report has been carried out by my guidance and as a record of the bona fide work carried out successfully.

Thank You



.....
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DECLARATION

I hereby do solemnly declare that the work presented in this dissertation report has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breaches any copyright.

I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.

Thank You.



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DEDICATION
Dedicated to My parents.

LIST OF ABBREVIATION

PP - Public Prosecutor

GP - Government Pleader

SPP - Special Public Prosecutor

CMM - Chief Metropolitan Magistrates

CR - Complainant Register

LR - Legal Remembrancers

HCD - High Court Division

BLD - Bangladesh Legal Decisions

AD - Appellate Division

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ABSTRACT

This paper provides a thorough analysis of the crucial role of public prosecutors in Bangladesh's criminal justice system, with a particular focus on enhancing their professional competencies and facilitating the pursuit of justice. By drawing upon legal frameworks, empirical studies, and case analyses, it examines the challenges faced by public prosecutors, including resource constraints, institutional barriers, and procedural complexities. Additionally, the paper proposes a set of suggestions aimed at strengthening the capacity of public prosecutors, encouraging ethical conduct, and promoting accountability. By addressing these problems, the criminal justice system can better uphold the rule of law, protect human rights, and ensure fair access to justice for all citizens.

Keywords:

Public prosecutors, Criminal justice system, Professional competence, Pursuit of justice, Legal frameworks, Institutional barriers, Ethical conduct, Accountability, Rule of law etc.

Chapter: I

Introductory Chapter

1.1 Introduction:

In Bangladesh, the effectiveness of the criminal justice system depends heavily on the competence and integrity of prosecutors. These legal professionals are tasked with representing the state in criminal matters and play a key role in ensuring justice and accountability for perpetrators. Despite their central position, challenges such as inadequate training, resources, and organizational issues such as corruption often hinder their ability to effectively perform their mission.

The proposed study aims to explore the complexities of strengthening the role of prosecutors in the criminal justice system of Bangladesh. With a primary focus on professional competence and the pursuit of impartiality, the study aims to thoroughly explore the current situation, identify key challenges, and propose actionable recommendations for improvement.

The study attempts to shed light on key areas requiring attention and reform by analyzing the functioning, structure and performance of the public prosecutor in Bangladesh. The study seeks to provide a comprehensive understanding of factors influencing prosecutorial effectiveness and accountability based on comparative research findings and international best practices.

The study employs empirical research methods including questionnaires, interviews and case studies to assess the impact of prosecutorial decisions on prosecutors' professional competence, adherence to ethical standards and case outcomes.

Ultimately, the findings of this study aim to provide a basis for evidence-based policy interventions and institutional reforms aimed at strengthening the role of public prosecutors in Bangladesh and improving the effectiveness and integrity of the overall criminal justice system.

1.2 Statement of the Problem

No particular rules or guidelines are followed to appoint public prosecutors in Bangladesh. There is a manual titled Legal Remembrancers Manual, 1960 which is supposed to have legal effect till now and be followed by the executive organ of the state in making requirement in these vital positions. Clause 17 of the aforementioned manual prescribes the procedures for appointment of public prosecutor. It is suggested the procedure of inviting application from prospective candidates for the post and giving formal to the most competent applicants for a

period of 3 years. The procedure as laid down in this manual much better than that being followed today.¹

Chapter XII of the L.R. Manual, 1960 states that if a person is charged with a crime carrying a death penalty and is unable to hire an advocate on his own, the State will designate a defense attorney to represent him in court at the State's expense. If this necessary legal requirement is broken, the trial and the ensuing conviction are invalid.²

Currently, the recruitment process is based on the political selection of the ruling party. Local members of parliament, influential political leaders connected to the ruling party, or leaders of bar associations with political affiliations, or perhaps all of these individuals, draw up lists of lawyers to serve as prosecutors. Depending on their sphere of influence and authority, the selection officials may submit these lists directly to the Ministry of Law, Justice and Legislation, or send them ex officio through officials of district judges, deputy district commissioners, etc. The government appoints prosecutors from among the recommended prosecutors.

1.3 Objectives

- i. To evaluate the activities of the public prosecutors;
- ii. To examine the role of public prosecutors in protecting human rights in the society;
- iii. To investigate challenges faced by public prosecutors in Bangladesh;
- iv. To explore international best practices for public prosecution;
- v. To suggest recommendations for effective public prosecution in Bangladesh;

1.4 Research Questions

1. Whether the activities of public prosecutors are efficient to ensure accessibility to justice?
2. Whether the role of Public prosecutors is adequate enough to preserve human rights?
3. Whether modifications are necessary in appointment of public prosecutors?

1.5 Research Methodology

This study involves qualitative approach with analytical intent. This research examines legal provisions first, followed by real-world scenarios drawn from a variety of reliable sources. In this study, secondary data of various surveys has been used to focus the circumstances of public prosecutors at every workplace. It is a doctrine type of research. So, analytical methods have

¹ Legal Remembrancers Manual, 1960, Clause 17

² *Sentu Vs. The Govt. of Bangladesh and others*, 18 BLD (HCD) 39 Available at: <https://www.lawyersnjurists.com/article/legal-remembrancers-manual-1960/> (Accessed 20 May, 2024)

been followed here. The primary methods for conducting the study will be a survey of the literature and secondary data.

1.6. Literature Review

a) Philip L. Reichel, *Comparative Criminal Justice Systems- Topical Approach*, 1994

Reichel's book "Comparative Criminal Justice Systems: A Topical Approach" was first published in 1994. This structure allows readers to compare and contrast different aspects of criminal justice systems across diverse cultural, political, and legal contexts.

Reichel's work provides readers with an understanding of the similarities and differences in how countries address crime, administer justice, and protect individual rights. By examining the challenges and innovations in criminal justice systems globally, the book offers insights into the complexities of maintaining law and order in diverse societies.³

b) Dr. G.P. Tripathi, *The Comparative Law (Jurisprudence)*, Second Edition, 1980, Law publication

A comprehensive discussion of comparative law and jurisprudence is found in Dr. G.P. Tripathi's "The Comparative Law (Jurisprudence)," Second Edition, which was released by Law Publication in 1980. The book explores the fundamental ideas of several legal systems, emphasizing similarities as well as differences between them. It explores important legal theories including positivism, realism, and natural law and employs a ton of case studies from many jurisdictions to show these ideas in action. The book additionally looks at the growth of legal systems over time, focusing on common law, civil law, socialist law, and religious law, among other key legal traditions. Methodologies for performing comparative legal research are also covered. For researchers, practitioners, and law students interested in comprehending and contrasting international legal systems, this work is a vital resource.

c) *The Law of Criminal Procedure*, S C. Sarkar, Wadhwa and Company.

The extensive legal study "The Law of Criminal Procedure" by S.C. Sarkar, published by Wadhwa and Company, focuses on the procedures involved in Indian criminal law. The whole criminal process—investigation, arrest, bail, trial, and appeal—is covered in the book. With citations to noteworthy case law that explains different provisions of the Code of Criminal Procedure (CrPC), it offers in-depth commentary on the CrPC. Legal practitioners, judges, and students use this work extensively because of its reliable analysis and useful insights into the procedural features of Indian criminal law.

³ <https://www.amazon.com/Comparative-Criminal-Justice-Systems-Approach/dp/0134558987> (Accessed 20 May, 2024)

d) French Legal system, Justice Devid Annoussamy, Institute of Comparative Law and Jurisprudence, First edition, 1995

Justice Devid Annoussamy's book "French Legal System," which was first published in 1995 by the Institute of Comparative Law and Jurisprudence, offers a thorough analysis of the French legal system. The organization of courts, the functions of different legal professions, and the procedural elements of French law are all covered in detail as the book delves into the composition and operation of the French judiciary. It looks at the criminal and civil legal systems, emphasizing the unique aspects of the French legal system. The work is an invaluable tool for comprehending the subtle differences between the French and other legal systems because it also offers comparative observations.⁴

e) Dr.N.R. Madhav Menon, Criminal Justice India Series, Allied Publication, Kolkatta

The complete series "Criminal Justice India Series" by Dr. N.R. Madhav Menon, published in Kolkata by Allied Publication, looks at the criminal justice system in India. The show offers a thorough examination of all the elements that make up the criminal justice system, such as the courts, police, and prisons. It covers both the substantive and procedural aspects of criminal law, placing a focus on efficiency, justice, and fairness. Case studies, statistical data, and critical assessments of law reforms are all included in the work to give readers a complete picture of the difficulties and advancements facing the Indian criminal justice system.⁵

f) Criminology and Criminal Justice: Comparing, Contrasting, and Intertwining Disciplines

The book explores the development of criminology criminal justice, both as areas of societal interest and academic study, while also offering explanations for key terms within each domain. In addition to reviewing schools of thought, sociological criminology, radical and contemporary criminology, and criminology from a teaching viewpoint, it delves into the field of criminal justice.⁶

g) K Duntzker, Butterworth Publication

The Butterworth textbook by K. Duntzker offers a thorough analysis of the criminal justice delivery system. It looks at the goals of the criminal justice system, such as upholding law and order, safeguarding individual rights, discouraging crime, and administering justice. In contrasting the criminal and civil justice systems, the book highlights important distinctions between both, including the types of offenses, the processes, and the roles of the parties involved. It also points out commonalities between the two systems, like the underlying ideas of justice and due process. The book is an extensive resource for comprehending the

⁴ <https://trove.nla.gov.au/work/7204524?q&versionId=17332269> (Accessed 20 May, 2024)

⁵ https://www.researchgate.net/publication/328729108_Public_Prosecution_in_Criminal_Procedure_Modern_Goals_and_Tasks (Accessed 21 May, 2024)

⁶ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/criminology-and-criminal-justice-comparing-contrasting-and>

composition and operation of these legal frameworks since it provides thorough classifications within the criminal and civil justice systems.⁷

1.7 Scope of the Study

The objective of this research is exclusively academic. It shall be conducted to know public prosecutor by law and how much rights ensure in Bangladesh in details as per as possible based upon both fields works. This study may be helpful to the all people about their rights which is conducted by law.

1.8. Limitation of the Study

At the initial stage, it is really difficult to get access in the yard and also to collect sample from air, water etc. from these yards within this shortage time. In the similar moment, not adequate research materials and not adequate books concerning this subject are not accessible in our library.

This exploration shall not be acted upon only primary sources, but also from secondary. This examination shall not be employed in any business objective. This exploration shall not be employed to ridicule the current status of the setup. The purpose of this study is not to undermine any authority or government activities. The current laws and guidelines will not be questioned in light of this study.⁸

1.9. Nature and Sources of Data

Here in this study, secondary survey results are using to be complete. This study preliminary has been completing by assisting of secondary data from variety sources. The sources of secondary data are like news, journals, a daily newspaper such as Daily Star. Data has been from. Different international organizations.

Additionally, in this study, available published research reports surveys and articles take also in consideration while developing reasoning and analysis of various issues related with public prosecutors. Finally, researchers' own observations while making analysis of the nature and causes of the problem and develop arguments.

⁷ https://www.researchgate.net/publication/307773079_Public_Prosecution (Accessed 21 May, 2024)

⁸ <http://journals.sagepub.com/doi/abs/10.1350/ijps.2011.13.4.230> (Accessed 24 May, 2024)

1.10 Analysis of Data:

The qualitative data gathered has been examined and interpreted through statistical methods. The relevance of general findings obtained through the qualitative method has been explained and described using qualitative findings. The principles of objectivity and authenticity are upheld in content analysis. This research shall consist of seven chapters. Chapter first shall be the introductory chapter about the public prosecutors; Chapter second shall be highlight by public prosecutors in Bangladesh. Chapter third will try to explain different kinds of public prosecutors. Chapter Four describes on relevant case laws, Chapter five shall contain the perils of public prosecutors in Bangladesh, chapter six shall contain comparison between prosecution systems in different countries, and chapter seven shall contain the findings, recommendations and conclusion.

Chapter: II

Public Prosecutors in Bangladesh

2.1 Introduction

According to former US Chief Justice Warren Burger, the purpose of the legal system is to place strain on its participants. Therefore, on criminal justice system a number of offences as considers in Bangladesh, those lawyers are basically known to be "public prosecutors". The provision of appointing lawyers in states expense is a pretty good idea, for the sometimes victims don't have enough courage and capacity to proceed with a criminal case especially when the accused is from some influential backgrounds, that devised the provision of appointing public sponsored prosecutors so that no crime can go unpunished because if culture of impunity grows up in a society, it conveys a message to the perpetrators of crime to the effect that law is only a paper tiger having no power of bringing the offenders to back. since prosecutors play the remarkable role in criminal justice system, they should be knowledgeable, well paid, non -corrupt and dedicated to their service in Bangladesh, prosecutors lack these very essential virtues and therefore justice has been in jeopardy yielding very little positive outcome in favor of victims.

2.2 Who are the Public Prosecutors?

Public prosecutors (PPs) are legal experts designated by the government in Bangladesh to represent the state in criminal prosecutions. As the primary prosecutors' legal representatives in court, they are integral to the criminal justice system. They have a tremendous deal of latitude in deciding how to pursue the case.

The definition of "public prosecutor" in section 4(1)(t) of the Code of Criminal Procedure 1898, which is the flagrant law of criminal procedure in Bangladesh, is any person appointed under section 492 and includes any person acting on the public prosecutor's directions. The importance of public prosecutors lies in their ability to ensure justice.

When someone commits a crime of murder, he is considered to have committed crime against the state, and it is the state's duty to ensure that the perpetrator receives the appropriate punishment. The effectiveness of the public prosecutor, who represents the state throughout the criminal case, will determine a great deal in how well the state can carry out its obligation.

2.3 Functions of Public Prosecutor in Bangladesh

Public prosecutors (PPs) are crucial parts of the criminal justice system in Bangladesh. Their main responsibility is to prosecute criminal cases on behalf of the state, making sure that justice

is done and that the legal system operates fairly and effectively. The primary duties of public prosecutors in Bangladesh are as follows:

1. *Representing the State in Court:*

- Public Prosecutors are responsible for presenting the case against the accused in criminal trials. They argue on behalf of the state and ensure that the accused is prosecuted in accordance with the law.

2. *Conducting Prosecutions:*

- They gather and prepare the evidence, examine and cross-examine witnesses, and present their case in court in an effort to prove the accused's guilt beyond a reasonable doubt.

3. *Advising Law Enforcement Agencies:*

- During the process of inquiry into criminal cases, public prosecutors advise the police and other investigating agencies on legal matters. By doing this, it is ensured that the evidence is gathered legally and appropriately, allowing it to be admitted in court.

4. *Ensuring Fair Trials:*

- They play a vital role in ensuring that trials are conducted fairly and that the rights of the accused are respected. Public prosecutors have a duty to behave impartially and pursue justice rather than just convictions.

5. *Preparation of Legal Documents:*

- Public Prosecutors are responsible for drafting indictments, charge sheets, and other legal documents necessary for the prosecution of criminal cases.

6. *Reviewing Case Files:*

- They examine the police-submitted case files to determine whether there is enough evidence to pursue prosecution. Should the evidence be judged insufficient, they might suggest conducting additional research or perhaps withdrawing the charges.

7. *Appearing in Appeals:*

- Public Prosecutors represent the state in appellate courts, arguing against appeals filed by the convicted persons or, in some cases, appealing against acquittals or lenient sentences.

8. *Special Assignments:*

- Special Public Prosecutors (SPPs) are sometimes assigned to take on high-profile or exceptionally difficult cases, like those involving cybercrime, terrorism, or corruption.

9. *Ensuring Compliance with Legal Standards:*

- They ensure that the prosecution's actions comply with legal and ethical standards, contributing to the integrity of the criminal justice system.

10. *Public Interest Litigation:*

- In some instances, Public Prosecutors may be involved in public interest litigation to address broader issues affecting public welfare and justice.

Coordination and Interaction

- ***With the Judiciary:*** In close collaboration with courts, public prosecutors make sure that the law is obeyed and skillfully convey the state's case.
- ***With Defense Counsel:*** They engage with defense attorneys, ensuring that trials are conducted in an adversarial yet fair manner.
- ***With Victims and Witnesses:*** Working with witnesses and victims, public prosecutors make sure they are cooperative and safe throughout court processes.

Organizational Structure

- ***District Level:*** A District Public Prosecutor leads a team of Public Prosecutors in each district, with the assistance of Additional Public Prosecutors.
- ***Special Courts:*** Public prosecutors are assigned to courts that handle particular kinds of cases, guaranteeing that these matters are handled and prosecuted in a specialized manner.

In Bangladesh, public prosecutors are crucial to preserving the rule of law, making sure that justice is carried out efficiently, and preserving public trust in the criminal justice system. The prosecution of criminal cases and the smooth operation of the judicial system depend heavily on their efforts.

2.4 Structure of Public Prosecution in Bangladesh

The prosecution wing in every district so far it is related with criminal justice consists of the posts of-

- **Public Prosecutors (PPs):** Appointed to represent the state in district and session courts.
- **Additional Public Prosecutors (APPs):** Assist PPs in handling cases in district and session courts.
- **Special Public Prosecutors (SPPs):** Appointed for specific cases or special courts, such as anti-corruption tribunals or tribunals dealing with specific offenses.

According to law ministry sources, there are roughly 4,000 public prosecutors, supplementary prosecutors, assistant prosecutors, and government pleaders nationwide.⁹ They are entrusted to prosecute serious offences before the court. They are not transferable and are attributed to a particular territorial jurisdiction. They are paid retainer fees depending on the number and nature of case they deal with. If there is no conflict of interest, they can handle private civil and criminal cases.¹⁰

Conversely, police officers who are permanent members of the domestic department and are permitted to act as prosecutors, with the exception of cases under investigation, are appointed

⁹ <https://www.thedailystar.net/frontpage/the-perils-prosecution-108724>

¹⁰ <https://journals.sagepub.com/doi/abs/10.1350/ijps.2011.13.4.230> (Accessed 19 May 2024).

as prosecuting sub-inspectors, prosecuting inspectors, and deputy superintendents of police prosecution to prosecute minor offenses before the lower court of magistrates.

2.5 Rate of Conviction in Prosecution Case:

Day by day the crimes of corruption, sexual harassment, rape and abduction have been on the increase, violence against women-children on the rise nevertheless the success rate of the prosecution in making sure the conviction of the criminals is very low for many reasons inter alia the lack of knowledge and sincerity from Public Prosecutors side. Because of the poor performance of prosecution, only 25 to 30 percent cases see conviction. In 2005, the then law minister said inefficiency of the prosecution led to the quashing of some 70 percent cases. Acknowledging the low success rate, the commission secretary, Abu M Mustafa Kamal, said that they pinpointed some faults of the commission investigators and prosecutors by scrutinizing the verdicts some recent cases.

For representing the government in a single case, a prosecutor, additional prosecutor, or special prosecutor only receives Tk 500. Prosecutors in Dhaka metropolitan courts noted that even if he represents ten cases in a single day, this is all he receives for his hard work. For a case, an assistant public prosecutor is paid Tk 200. However, he can practice in private.¹¹ Prosecutors are not permitted to file bills for more than one case per day. They are also prohibited from engaging in private practices," a prosecutor stated, requesting anonymity. The prosecutor raised a concern about how they can support their family with only Tk 10,000 if the court operates for 20 days a month.

2.6 Conclusion

In analyzing the role and performance of public prosecutors within Bangladesh's criminal justice framework, it is clear that these legal professionals serve as the linchpin in the pursuit of justice. As highlighted by former US Chief Justice Warren Burger, the judiciary is intended to exert pressure on its participants, with public prosecutors tasked with upholding the rule of law and ensuring that criminals are held accountable.

After closely examining the situation, it is clear that the effectiveness of Bangladesh's criminal justice system is closely tied to the skills, integrity, and dedication of its public prosecutors. Despite the importance of their role, there are significant challenges they face, including inadequate training, lack of resources, corruption, and inefficiencies.

Furthermore, public prosecutors in Bangladesh struggle with financial constraints, receiving meager pay and being prohibited from engaging in private practice, adding to the difficulties

¹¹ <https://www.thedailystar.net/frontpage/prosecution-ailing-1255972>

they encounter. These conditions not only lower morale but also raise concerns about the sustainability of a justice system that relies on overworked and underpaid professionals.

In summary, addressing the shortcomings within Bangladesh's public prosecution system is crucial to upholding justice, accountability, and the rule of law. It is essential to implement comprehensive reforms to improve the training, professionalism, and support for public prosecutors. In addition, steps should be taken to strengthen institutional capacity, reduce the risk of corruption, and ensure equal access to justice.

Ultimately, the effectiveness of the criminal justice system in Bangladesh depends on the performance of its public prosecutors. By investing in their development and empowerment, Bangladesh can work towards a fairer and more efficient legal system, fulfilling its promise of ensuring justice for all its citizens.

Chapter: III

Different Kinds of Prosecutor

3.1 Introduction

To maintain law and order, the criminal justice system in Bangladesh depends on different kinds of prosecutors. These prosecutors are essential to maintaining the rule of law, leading investigations, and defending the state in criminal proceedings. The many types of prosecutors in Bangladesh, their appointment procedures, the differences between private and public practice, their duties in criminal investigations, and the unusual situation of police serving as prosecutors in magistrate's courts are all covered in this chapter.

3.2 Appointments

The roles of Public Prosecutor (PP), Government Pleader (GP), and Special Public Prosecutor (SPP) constitute the prosecution arm in each district.¹² These legal officers are supported by assistants, whose numbers vary based on the number of courts they cover and the size and population of the district.

In Bangladesh, the appointment of prosecutors lacks specific regulations and is largely influenced by the political preferences of the ruling party. Recommendations for prosecutor positions typically come from local parliamentarians, influential political figures aligned with the ruling party, or leaders of the bar association with political ties. These recommendations are forwarded to the Ministry of Law, Justice, and Parliamentary Affairs either through the local deputy commissioner, who also serves as the district magistrate, or directly to the ministry, depending on the influencer's level of authority. Prosecutors are then appointed by the government from the recommended pool.

Younger and less-experienced lawyers often pursue prosecutor appointments through personal and political connections. Those with influential connections may secure appointments without cost, while others may need to provide upfront payments or assurances of future favors. Consequently, many prosecutors lack sufficient legal knowledge and practical experience, often exhibiting pronounced political biases. In contrast, senior lawyers are generally disinclined to become prosecutors due to inadequate facilities and remuneration.

The appointment of the Attorney General by the President, as outlined in Article 64 of the Constitution¹³ and Sections 492 to 495 of the Code of Criminal Procedure, nominally requires the appointee to possess qualifications equivalent to a Supreme Court judge.¹⁴ However, in practice, the President merely formalizes the government's nominee, who is selected based on political considerations similar to those for ordinary prosecutors.

¹² <https://alrc.asia/article2/the-disposable-prosecutors-of-bangladesh/>

¹³ The Constitution of the People's Republic of Bangladesh, Article 64

¹⁴ The Code of Criminal Procedure, 1898 sections 492 to 495.

The Attorney General is supported by an Additional Attorney General, Assistant Attorney General, and several deputies. Similar to the process for prosecutors, there are limited selection criteria in place for these positions. The primary requirement is that they possess the capability to independently plead cases. There is no specific recruitment process, such as examinations for interested candidates.¹⁵

3.3 Private vs Public Practice

Public prosecutors often misuse their positions to bolster their private practices, leading to unsettling occurrences in courtrooms. These may include instances where a group of witnesses appears without a prosecutor present to question them, or prosecutors who, unprepared for hearings, confuse and intimidate their own witnesses. Predictably, such cases often result in acquittals. Additionally, there are frequent complaints about prosecutors, particularly Special Public Prosecutors (SPPs), who, after securing a favorable outcome in a lower court representing the state, reappear in appellate courts representing the opposing party as private advocates.¹⁶

One notable reason for the lack of discipline among public prosecutors and their tendency to prioritize private practice over their state duties is their independence. Unlike assistant and additional prosecutors, public prosecutors themselves are not subject to penalties or punishments if they fail to appear in court or at their offices. This lack of accountability contributes to their laxity and undermines the effectiveness of the prosecution system.

3.4 Criminal Investigation Procedure

In Bangladesh, the typical initial step in pursuing criminal justice involves filing a complaint with a police station situated in the jurisdiction where the alleged offense occurred. Following this, the police are tasked with conducting investigations, gathering evidence, obtaining warrants, apprehending the accused individuals, and presenting them before the relevant court. These cases are commonly referred to as "GR cases," signifying their registration in the Government Register.

However, for the impoverished and politically marginalized, lodging complaints with police stations can prove to be challenging, particularly when the allegations involve affluent and politically influential individuals. In such instances, the perpetrators or their associates often preemptively collude with the police to obstruct justice, even before a complaint is officially lodged, thereby impeding the victim's pursuit of legal recourse.¹⁷

¹⁵ Islam, M.Z (2000) The Code of Criminal procedure, Dhaka, Mrs. Enayet Mursheda Islam Khan, M H (2003).

¹⁶ Independent public prose service The Daily Star Available at: <https://www.thedailystar.net/opinion/justice-practice/news/where-our-independent-prosecution-service-2997216> (Accessed 29 April 2024)

¹⁷ Liton, S. (2015), "The perils of prosecution The Daily Star Dhaka, 07 July Available at: <https://www.thedailystar.net/frontpage/the-perils-prosecution-108724> (Accessed: 29 April, 2024)

In such scenarios, an alternative course of action is to file a complaint directly with a magistrate's court. Subsequently, the officer in charge of the pertinent police station may be instructed by the court to undertake various actions, such as "take necessary steps," "take legal steps followed by inquiry," or "register as a complaint following inquiry." Cases of this nature, recorded on the Complainant Register, are termed CR cases.

CR cases pose significant challenges, particularly because the party seeking justice may need to offer higher incentives than the opposing party to achieve a favorable outcome. Moreover, the police often impede the investigative process, unless their personal interests are not aligned with the case. They might issue a final report, effectively closing the inquiry without trial, or produce a report that lacks credibility in court proceedings.¹⁸

3.5 Police as Prosecutors in Magistrate's Courts

As per sections 492(2) and 495 of the Code of Criminal Procedure, the government entrusts the police with handling prosecutions in magistrate's courts, which oversee about 70% of all cases in the country:

Section 492(2): When no public prosecutors are available or appointed, the Chief Metropolitan Magistrate, District Magistrate, or Sub-divisional Magistrate, under the District Magistrate's direction, may designate any individual—regardless of police rank—to serve as a public prosecutor for a particular case.

Section 495. Permission to conduct prosecution:

- Subsection (1): During investigation or trial, a magistrate may permit someone other than a police officer below a specified rank—such as the Attorney General, Government Solicitor, Public Prosecutor, or government-authorized officer—to handle the prosecution.
- Subsection (2): The authorized officer has the authority to withdraw the prosecution, subject to the conditions outlined in section 494.
- Subsection (3): The prosecution can be conducted directly by the authorized individual or through a legal representative.
- Subsection (4): A police officer involved in the investigation of the offense being prosecuted is barred from conducting the prosecution.

Typically, prosecutions in court are handled by police officers holding the rank of sub-inspector. However, these officers lack formal legal education or training in prosecution; their appointment often stems from reassignment from a police station, sometimes as disciplinary action.

¹⁸ Liton, S. (2016). Prosecution is ailing The Daily Star Dhaka 19 July Available at: <https://www.thedailystar.net/frontpage/prosecution-ailing-1255972> (Accessed: 29 May, 2024)

When police serve as prosecutors, the legal battle is often uneven. Prosecutions frequently falter due to failure in substantiating charges, while convictions based on flawed evidence and reasoning often result in acquittals upon appeal.

3.6 Conclusion

In conclusion, the criminal justice system in Bangladesh faces significant challenges, especially within its field of prosecution. While the law empowers police officers to handle prosecutions in magistrate's courts when public prosecutors are unavailable, this process often leads to imbalances and inadequacies. Many police officers appointed with prosecution lack formal legal training, relying instead on their law enforcement background. As a result, the legal system frequently has improper prosecutions, where allegations are not established or convictions are founded on erroneous information and logic. It is also more challenging for justice to be administered impartially because of the impact of political ties and resource inequalities. Reforms that strive to ensure that all individuals, regardless of their socioeconomic level or political connections, have fair and equitable access to justice, improve accountability procedures, and improve the credentials and training of prosecutors are necessary to address these difficulties.

Chapter: IV

Relevant Case Laws

4.1 The Case of Khodad Khan Pitu

The appointment of Khodad Khan Pitu as the Public Prosecutor of Naogaon on June 13, 2007, highlighted the absence of formal procedures for selecting and appointing prosecutors. Contrary to established protocol, the District Magistrate of Naogaon appointed him without official permission from the Ministry of Law, Justice, and Parliamentary Affairs.¹⁹

Subsequent revelations exposed Khan's involvement in criminal cases, including one related to the assassination of a leader of a pro-Islamic student organization at Rajshahi University, currently under trial at the Rajshahi Session Judge's Court. Khan claimed ignorance of this murder case against him, although he admitted to being discharged from another murder case. Additionally, at the time of his appointment, Khan faced accusations in another criminal case concerning electoral rule violations, being tried in the Magistrate's Cognizance Court of Naogaon.

In defense of his superior, Sajal Samaddar, the Additional District Magistrate of Naogaon, argued that the district magistrate possessed the authority to appoint temporary public prosecutors under his ex-officio powers outlined in section 17 of the Law Report Manual. Samaddar asserted that they were unaware of Khan's legal troubles at the time of his appointment, learning about them only through subsequent news reports. An inquiry committee later confirmed the accuracy of these reports.

4.2 The Case of Shafikul Islam

In Bangladesh, the conviction rates across all courts hover around a mere 10%, reflecting systemic issues within the criminal justice system. Factors contributing to this low rate include the transient nature of prosecutors' roles, their inclination towards private practice, and the challenges posed by law enforcement agencies.

The case of Shafikul Islam exemplifies these systemic shortcomings. Shafikul, a schoolboy, was allegedly murdered by his stepbrothers, sisters, and their relatives in Bhagalpur village, Narayanganj district, on August 25, 2000. Motivated by jealousy and spite over an inheritance dispute, Shafikul's killing prompted his mother, Sakerun Nesa, to file a murder case at the Sonargaon police station.²⁰

¹⁹ http://www.humanrights.asia/wp-content/uploads/2018/09/AHRC-SPR-008-2008-Bangladesh_AHRR2008.pdf

²⁰ http://www.humanrights.asia/wp-content/uploads/2018/09/AHRC-SPR-008-2008-Bangladesh_AHRR2008.pdf

However, corruption tainted the investigation, with allegations that the investigating officer accepted bribes and mishandled witness statements, resulting in a flawed inquiry report that favored the suspects. Furthermore, the charge framing by the Cognizance Court magistrate weakened the case.

Throughout the trial at the Narayanganj Session Judge's Court, the turnover of public prosecutors and their apathy towards proceedings exacerbated the situation. Judicial delays, compounded by the accused's release on bail and subsequent threats to Sakerun, further eroded confidence in the justice system.

Sakerun's plea to transfer the case to the Speedy Tribunal in Dhaka was granted by the Ministry of Home Affairs, offering a glimmer of hope. Yet, even at the tribunal, bureaucratic hurdles persisted, with delays in processing the case diary and discrepancies in the prosecution process.

The police's role also came under scrutiny, with witnesses disregarded and crucial information inadequately documented in the investigation report, falling short of legal standards.

Ultimately, after over seven years of legal battles, the verdict pronounced most of the accused not guilty, delivering a devastating blow to Sakerun's pursuit of justice. Despite a solitary conviction, concerns loom over the possibility of the conviction being overturned on appeal, underscoring the pervasive flaws in investigation reports and prosecution procedures.

Shafikul's case underscores the urgent need for comprehensive reforms to address systemic deficiencies, restore public trust, and ensure equitable access to justice for all citizens in Bangladesh.

4.3 The Case of Abul Kalam Azad

The case of Md. Abul Kalam Azad sheds light on the detrimental consequences of police officers assuming the role of prosecutors, particularly evident in his ordeal with BRAC Bank.

Azad, a 33-year-old small businessman in Khalishpur, Khulna city, was enticed by BRAC Bank officials to obtain a loan to bolster his business. Despite mortgaging his home deed valued at 600,000 Taka for a 300,000 Taka loan under a Medium-Term Loan program, the bank demanded he sign two blank checks as additional collateral.

Following the loan approval, Azad was confronted with exorbitant monthly installments, leading him to dispute the interest rate discrepancy with the bank. In response, BRAC Bank filed charges of deception and breach of trust against him under sections 406 and 420 of the Penal Code at the Gulshan police station in Dhaka, despite the loan transaction occurring in Khulna city, over 300 kilometers away.

Subsequently, Azad was arrested on September 25, 2006, after an arrest warrant was issued by the CMM Court of Dhaka. Despite paying substantial amounts towards the loan and securing bail, the legal proceedings continued, compounded by the prosecuting police's lack of understanding of legal nuances.

Throughout the ordeal, neither the police investigation report nor the prosecuting police entertained the possibility of Azad's innocence or considered jurisdictional discrepancies. Azad, compelled to attend court sessions in Dhaka from Khulna, was forced to liquidate one of his shops to cover trial-related expenses.

Despite Azad's attorney's assertions and the apparent lack of substantial evidence against him, the case remains pending, prolonging Azad's suffering due to the prosecuting police's ignorance of the law and the magistrate's indifference.

Azad's case serves as a stark reminder of the urgent need to address the shortcomings in the criminal justice system, particularly the practice of police officers doubling as prosecutors, to ensure fairness and efficiency in legal proceedings.²¹

²¹ Rahman, J S. (2006) Strengthening the Public Prosecutorial Service in Bangladesh, Strengthening the Criminal Justice System, Available at: https://www.brac.net/program/wp-content/uploads/2022/06/Roundtable-Report_05_06_2022.pdf (Accessed: 30 April, 2024)

Chapter: V

Perils of Public Prosecution Service

5.1 Why We Need an Independent Public Prosecution Service?

The absence of an impartial public prosecution service in Bangladesh serves as a shield for the government, allowing it to evade accountability for its actions. In the absence of a clear conflict between the police and political authorities, the government tends to refrain from challenging law enforcement. Typically, lawyers aligned with the ruling party are appointed to prosecute cases, ensuring steadfast support for the government's stance.

Ideally, a public prosecution service should operate autonomously. In nations with independent prosecution systems, aspiring public prosecutors must pass rigorous qualification exams. However, in Bangladesh, lacking such independence, there exists no proper recruitment mechanism. This void is exploited by inexperienced and inept lawyers who secure positions through political connections.²²

Most of these lawyers engage in corruption, aided by political patronage, seeking rapid wealth accumulation. The absence of accountability mechanisms enables prosecutorial negligence, leading to miscarriages of justice. Former public prosecutors and legal experts alike view the lack of an impartial prosecution service as a grave detriment to the country's legal system.²³

Although courts often criticize prosecutorial inefficiency and misconduct, the absence of mechanisms to hold prosecutors' accountable renders such criticisms toothless. Consequently, Bangladesh witnesses a disproportionately low rate of convictions in court proceedings.

For example, in November of the previous year, five officials of Rid Pharmaceuticals Ltd. were acquitted of charges related to manufacturing deadly paracetamol syrup that resulted in the deaths of 28 children in 2009. The court attributed the acquittal to the prosecution's failure to furnish adequate evidence.

Politically appointed public prosecutors prioritize preserving the government's image, thereby perpetuating the cycle of impunity. The absence of an independent prosecution agency allows the government to evade responsibility, particularly in cases involving extrajudicial deaths.

²² <https://www.dhakatribune.com/bangladesh/court/23898/why-we-need-an-independent-public-prosecution>(Accessed: 19 May, 2024)

²³ <https://www.thedailystar.net/withdrawal-of-political-cases-rule-of-law-stripped-away-14759> (Accessed: 04 May, 2024)

5.2 Duty of the Public Prosecutor in the Criminal Justice System:

An ideal prosecutor should perceive themselves as stewards of the law. In Bangladesh, the public prosecutor typically adheres to the directives of the presiding judge during legal proceedings, with the trial judge overseeing the entirety of the trial process. While the investigation falls within the purview of the police, there exists a traditional notion akin to the right of null prosequi, allowing prosecutors discretion in pursuing convictions.

Unlike in India, where public prosecutors may seem more aligned with state advocacy, in Bangladesh, they are expected to embody impartiality, fairness, and truthfulness in their role as public servants within the esteemed legal profession.

The Role of a Public Prosecutor: The primary responsibility of the public prosecutor is to present all available evidence before the court, regardless of whether it favors or challenges the accused. The impartiality of the public prosecutor is deemed as crucial as that of the judge. The duties of a public prosecutor can be categorized into three types.

The first type encompasses duties performed independently, where the prosecutor exercises discretion without external influence. This includes leading evidence, presenting the case, and managing the prosecution.

The second type entails duties performed with the court's permission or under its direction. For instance, prosecutors may seek court approval to withdraw certain charges against an accused who has already been convicted of other charges.

The third type involves duties carried out with the permission or direction of the executive government. This includes filing appeals against judgments, a process initiated only upon directive from the executive branch.

5.3 Why They Can't Work Properly:

Prosecutors in Bangladesh often struggle with inadequate knowledge and experience due to the flawed appointment process. Younger and less-experienced lawyers secure prosecutor positions through personal and political connections, sometimes requiring payments or promises of repayment later. Consequently, prosecutors may lack proficiency in legal matters while exhibiting pronounced political biases, impacting their performance and case outcomes negatively.

Moreover, there's often a lack of coordination between prosecutors and investigating agencies. Prosecutors typically approve charge sheets submitted by police personnel without thorough scrutiny, avoiding confrontation unless there's a direct threat to political interests. Section 157 and 159 of the Code of Criminal Procedure 1898 stipulate that prosecutors have no authority over investigations, which fall under the jurisdiction of magistrates. This disjointed approach

contributes to poor conviction rates in criminal cases, a longstanding issue in Bangladesh's legal system.²⁴

Additionally, prosecutors receive meager remuneration, further hampering recruitment of skilled professionals. They earn as little as Tk. 500 per day for representing the government in a single case, with restrictions on submitting bills for multiple cases or engaging in private practice.²⁵ Prosecutors in Bangladesh face significant financial constraints due to the inadequacy of their remuneration. Despite representing multiple cases in a day, they are restricted from submitting bills for more than one case, and private practice is also prohibited. With courts open for only 20 days a month, prosecutors can earn a maximum of Tk. 13,000, which is further reduced by 15% tax deductions, resulting in a net amount between Tk. 10,000-11,000. Assistant Public Prosecutors receive even less, earning a maximum of Tk. 4000 per month, although they are allowed to engage in private practice.

This meager compensation poses a significant obstacle to recruiting skilled professionals for the role. Senior lawyers are reluctant to serve as prosecutors due to the lack of adequate facilities and remuneration. In the current socio-economic conditions of Bangladesh, such low-income levels make it challenging for prosecutors to support their families. Moreover, this poor remuneration undermines the dignity associated with the position, further exacerbating recruitment difficulties and hindering the effectiveness of the legal system. Addressing these issues is crucial to attract competent professionals and ensure the proper functioning of the prosecution service in Bangladesh.

5.4 Suggestion to Make Things Better Independent and Permanent

Prosecution System:

To enhance the prosecution system, it is imperative to establish an independent and permanent framework for appointing public prosecutors. Currently, appointments based on political affiliations contribute to various challenges within the system. This practice should be discontinued, as the distribution of vital offices among political sympathizers undermines the impartiality and integrity of the prosecution process.

Public prosecutors must be selected solely based on merit and competence, without any consideration for political preferences. Introducing an independent and permanent prosecution system is crucial to address this issue effectively. Such a system would help mitigate several problems plaguing the judiciary, including the filing of cases for political harassment.

²⁴ Sikandar Ali Sikdar vs State & Others (31 DLR (AD) 135) The Code of Criminal procedure (Act No. V of 1898) (Accessed: 30 May, 2024)

²⁵ <https://www.thedailystar.net/frontpage/prosecution-ailing-1255972>

By implementing reforms that prioritize meritocracy and independence in the appointment of public prosecutors, the legal system can promote fairness, transparency, and accountability. This, in turn, will contribute to bolstering public trust in the judiciary and upholding the rule of law.

5.5 Not a Permanent Job

Several senior lawyers have identified a key issue within the legal system: the lack of a permanent structure for the role of public prosecution. Currently, public prosecutors are appointed by the Ministry of Law following each government formation, leading to frequent turnover with changes in administration.

Due to their non-permanent status, public prosecutors do not receive the same benefits as other government employees, such as housing, transportation, and financial incentives. Their daily remuneration is notably low, ranging from Tk. 200 to Tk. 500, with an additional burden of a 15% VAT on their earnings. This meager compensation makes it challenging to attract experienced lawyers to the position.²⁶

Chief Justice Surendra Kumar Sinha has raised concerns about the impact of political appointments on the justice system, highlighting a lack of accountability and the resultant injustice faced by victims.

Former law minister and senior Supreme Court attorney Barrister Shafique Ahmed has emphasized the need for a permanent and structured system for prosecutors. Such a system would enable them to work autonomously, free from political influence, and efficiently manage their case files.²⁷

5.6 Here Is a Crisis of Funds

Due to financial constraints, the government is unable to establish a separate public prosecutors service at present. Granting public prosecutors, the status of public servants would necessitate providing them with all associated benefits, which is currently unfeasible given the large number of pending cases across the nation. Previous attempts to introduce such a system during the tenure of the Awami League-led coalition government were unsuccessful due to these challenges.

Despite the economic limitations, there is recognition within the government of the shortcomings caused by the temporary nature of the prosecutors' roles. This transience can lead to inconsistencies in court proceedings and hinder the timely resolution of cases.

²⁶ <https://bangladesh.justiceaudit.org/national-data/governance/salaries-training-oversight/> (Accessed: 05 May, 2024)

²⁷ <https://www.thedailystar.net/frontpage/prosecution-ailing-1255972> (Accessed: 20 May, 2024)

Bikash Kumar Saha, Joint Secretary for the Law and Justice Division, acknowledged that the administration is exploring the concept of establishing an independent prosecution service. As an initial step, the government could consider appointing a small number of experienced attorneys as public prosecutors at divisional headquarters, with the aim of expanding this initiative nationwide over the course of ten years.²⁸

5.7 The Problems of Prosecution

The issues plaguing the prosecution system in Bangladesh are deeply entrenched and multifaceted. Political affiliations often take precedence over qualifications and professionalism when appointing public prosecutors and government pleaders. This practice, ingrained in tradition, leads to appointments based on loyalty to the ruling party rather than merit, resulting in inefficiency and a lack of effective representation for the government in legal matters. Consequently, the government suffers significant setbacks, particularly when prosecutors fail to adequately fulfill their duties, such as representing the government's interests or prosecuting cases involving party members.

Furthermore, the absence of a robust screening and appointment process for prosecutors has led to embarrassing situations, such as lawyers accused of serious crimes being appointed as public prosecutors. This highlights the urgent need for a more effective system to monitor and appoint prosecutors.

Currently, Bangladesh operates without a permanent prosecution framework. Each change in government brings about a complete overhaul of prosecutors, perpetuating a disposable prosecution system. Despite longstanding calls for reform and demands for a professional and impartial prosecution service, successive governments have failed to address these concerns.

Previous attempts to establish an independent public prosecution service have been met with limited success. While there have been promising initiatives, such as the enactment of laws to create a government attorney department, these efforts have often been undermined by political interests.

Compounding these challenges is the inadequate compensation for prosecutors, many of whom maintain private practices alongside their prosecutorial duties. This dual role not only raises concerns about conflicts of interest but also contributes to a culture of inefficiency and lackluster performance within the legal system.

To address these issues and restore faith in the criminal justice system, urgent measures are needed. Establishing an independent and permanent prosecution service, free from political

²⁸ <https://www.dhakatribune.com/bangladesh/court/23898/why-we-need-an-independent-public-prosecution> (Accessed: 21 May, 2024)

interference, and implementing a transparent process for appointing qualified prosecutors are crucial steps toward resolving the current crisis. These reforms are essential to ensure accountability, uphold the rule of law, and provide victims with the justice they deserve.

Chapter: VI

Comparison between the Prosecution System India, Pakistan and United State

6.1 Introduction

Prosecutors provide distinct services Pakistan and India have developed independent services, but Bangladesh's unorganized prosecutorial agency still lacks a stable cadre of prosecutors. Bangladesh may examine several models for advice if it chooses to seek a permanent cadre of prosecutors.

6.2 The Indian Model

In response to identified deficiencies in the public prosecution system, India has taken significant steps toward reform. Notably, the Law Commission of India highlighted the shortage of public prosecutors and recommended measures to ensure alignment between the number of prosecutors and criminal courts.

The Supreme Court of India, in the case of P Ramachandra Rao (2002, 4 5CC 578 pr. 20), underscored the detrimental impact of delayed trials attributable to the absence or delayed appointment of public prosecutors. Subsequently, India instituted the Department of Prosecution and Government Litigation's Cadre and Recruitment Rules, establishing federal legal services under the executive branch.

Under these regulations, assistant public prosecutors (APPs) are directly recruited by the Public Service Commission following a qualifying written examination and viva voce assessment. Applicants must possess a law degree and have practiced law for two to three years prior to applying for the position of APP. Subsequent appointments within the service are made through a promotion-based system.

To advance within the hierarchy, a minimum of five years of service as an APP is required to qualify for promotion to the senior APP position. Similarly, aspiring public prosecutors must serve as senior APPs for an additional five years before being eligible for promotion. Following three years of satisfactory service as a public prosecutor, individuals may be considered for promotion to the role of joint director of prosecution.

Further progression to the position of Director of Prosecution necessitates an additional three years of service as a joint director. These structured career advancement pathways aim to foster

professionalism and expertise within the prosecution system, ensuring the effective administration of justice across India.²⁹

6.3 The Pakistan Model

Pakistan is undergoing coordinated reform in a bigger sector as part of the Asian Development Bank-funded Access to Justice Program. The division of the police's investigation duties from their other responsibilities is a significant component of it. This makes it possible for the inquiry to become more efficient, professional, and focused on improving the criminal justice system. After looking at a number of models, a report that is acceptable to all four provinces was created and given to the relevant provincial assembly.

The proposed Prosecution Service Law aims to establish a Criminal Prosecution Service to uphold prosecutorial independence, streamline the prosecution of criminal cases, and enhance coordination within the criminal justice system. At its helm would be a prosecutor general, supported by additional deputy and assistant prosecutors general.

Within the districts, there would be district, deputy, and assistant district public prosecutors, along with any additional appointees designated by the prosecutor general. Recruitment up to the rank of additional prosecutor general would be conducted by the Public Service Commission through competitive examinations.

The district public prosecutor would hold responsibility for supervising and coordinating with the police during the registration of criminal cases, investigations, and the submission of interim or final reports. Furthermore, it would be mandatory for the prosecutor general to present annual reports to the Assembly, ensuring transparency and accountability within the Prosecution Service.³⁰

6.4 The United states Model

In the United States, criminal justice is primarily a state matter, with the police and executive branch having no sway over the prosecuting service. Prosecution is chiefly handled by district attorneys, aided by prosecutors, with one district attorney serving each county. These attorneys are elected every four years by the electorate.

When a district attorney deems it necessary to prosecute a criminal, they seek approval from a jury before presenting the case in court. The district attorney holds complete authority over the decision to prosecute, a decision typically unquestioned by the jury.

²⁹ <https://www.lawyersnjurists.com/article/strengthening-the-public-prosecutorial-service-in-bangladesh> (Accessed: 14 May, 2024)

³⁰ <https://www.lawyersnjurists.com/article/texta-report-comparative-law-prosecution-system-bangladesh> (Accessed: 14 April, 2024)

Choosing an appropriate model for the prosecution system involves several considerations. It should not only advance the goal of efficient prosecution but also seamlessly integrate with the existing system. Additionally, it must be financially and resource-wise sustainable for the foreseeable future.

Public prosecutors play a vital role in society, acting as the gatekeepers of criminal justice. Without their initiative, prosecution and deterrence of crimes would be challenging. In essence, they serve as society's primary means of addressing illegal activities and interfacing with the adjudicative branch. Most countries rely solely on public prosecution, with few exceptions permitting other forms, such as private prosecution, under specific circumstances.³¹

In the realm of prosecutorial models, each - Indian, Pakistani, and American - has its own set of strengths and weaknesses. The selection of the "optimal" model hinges on the particular requirements, resources, and legal structure of Bangladesh.

Let's delve into each model in the context of Bangladesh's prosecutorial needs:

Indian Model:

Advantages: The Indian model prioritizes a structured group of prosecutors selected through a competitive process. This guarantees a steady stream of qualified legal experts focused on prosecution.

Drawbacks: The bureaucracy involved in recruitment and advancement may result in delays and inefficiencies. Furthermore, the centralized recruitment approach might not align with Bangladesh's decentralized administrative setup.

Pakistani Model:

Advantages: The Pakistani model concentrates on prosecutorial independence and efficiency by forming a Criminal Prosecution Service. This model could enhance coordination within the criminal justice system and ensure answerability.

Drawbacks: The effectiveness of this model relies on effective execution and adherence to prosecutorial independence. Obstacles might emerge in light of political meddling or limitations in resources.

³¹ <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-14/key-issues/2--general-issues--public-prosecutors-as-the-gate-keepers-of-criminal-justice.html> (Accessed: 14 April, 2024)

United States Model:

Advantages: The US model highlights prosecutorial discretion and autonomy, with district attorneys chosen by the populace. This fosters answerability to the public and allows for localized decision-making.

Drawbacks: While the US model supports independence, it may also be vulnerable to political influence, especially during election periods. Furthermore, the decentralized prosecution structure could result in disparities in quality and resources across different areas.

Considering the context of Bangladesh, a blended strategy that integrates aspects of each model could be most suitable. This strategy might encompass establishing a structured cadre of prosecutors akin to the Indian model, while also ensuring prosecutorial independence and answerability as observed in the Pakistani model. Moreover, integrating mechanisms to promote localized decision-making and responsiveness to community needs, similar to the US model, could boost the efficiency of the prosecutorial system in Bangladesh.

Ultimately, the most suitable model for Bangladesh would be one that tackles the country's distinct challenges and aligns with its legal, political, and administrative circumstances. Therefore, a comprehensive evaluation of each model's relevance and feasibility within Bangladesh's framework is crucial before determining the most appropriate approach.

Chapter: VII

Findings, Recommendation and Conclusion

7.1 Findings

7.1.1 Crisis of Funds:

Due to financial constraints, introducing a separate public prosecutors service is currently impractical for the entire country. Granting them the status of public servants would entail providing associated benefits, further straining resources. Moreover, the sheer volume of pending cases nationwide necessitates a significant number of prosecutors, which is not feasible presently.

7.1.2 Not a Permanent Job:

Public prosecutors are not employed by the government on a regular basis, hence they are not eligible for the same advantages as other government workers, such as housing, cars, police escorts, and other financial perks.

7.1.3 Prosecutors Suffer from Inadequate Knowledge:

Less experienced lawyers often pursue appointments as prosecutors through personal or political connections. In some cases, individuals with the right connections secure these positions without any cost, while others may need to make initial payments or promise future repayments. Consequently, many prosecutors lack sufficient legal knowledge and practical experience, leading to pronounced political biases.

This lack of expertise significantly affects the performance and outcomes of prosecution cases. Additionally, there is often a lack of coordination between prosecutors and investigating agencies, hindering effective crime investigation and prosecution efforts.

7.1.4 Politically appointed:

As a result, prosecutors frequently lack sufficient legal expertise and practical experience, yet their political biases are pronounced. This lack of proficiency significantly undermines their performance and the outcomes of prosecution cases. Moreover, there is often a notable absence of coordination with investigating agencies. In instances where a crime is being investigated, prosecutors may evade responsibility. Typically, public prosecutors only challenge police actions when there is a direct threat of conflict with their political superiors. They may accept charge sheets submitted by police officers solely due to bribery or external pressure.

7.2 Recommendation

A temporary solution may lie within the existing framework outlined in the Legal Remembrance's Manual of 1960, specifically in Clause 17, which delineates the procedures for appointing Public Prosecutors. While these procedures remain valid in essence, there is considerable doubt as to whether they are consistently followed in the selection and appointment of Public Prosecutors.

Clause 17 stipulates the following steps:

- i. If the office of the Public Prosecutor becomes vacant, the District Magistrate, in consultation with the Session Judge, shall notify the Legal Remembrance regarding the availability of suitable candidates locally. If no suitable candidate is found locally, the Legal Remembrance may recommend to the Governor to fill the vacancy by transferring another willing Public Prosecutor.
- ii. If the vacancy is not filled by transfer, the District Magistrate shall advertise the vacancy, either generally or locally. All applications shall be submitted to the District Magistrate, who will forward them to the district where the vacancy exists, along with recommendations after consulting the District Judge regarding the applicants' suitability.
- iii. The District Magistrate shall forward all applications to the Legal Remembrance, along with recommendations from himself and the Sessions Judge. The Legal Remembrance will consider all applications and forward a list of the four most suitable candidates, in order of preference, to the Government in the Judicial Department for appointment.
- iv. Appointments made after the designated day shall be for a period of three years, renewable based on the incumbents' performance.
- v. Incumbents will receive their letters of appointment through the Legal Remembrance.
- vi. No person shall be considered qualified for appointment as a Public Prosecutor until they have practiced for five years as a pleader advocate.

In the absence of the immediate introduction of an Independent Public Prosecution Service, adherence to the existing procedure outlined in the Legal Remembrance's Manual could mitigate political intervention to a significant extent. Ensuring compliance with this process could help ensure the appointment of suitable candidates for these positions, as disclosed by the Law Minister.

7.3 Conclusion:

The current system exacerbates the challenges within the prosecution service, posing a threat to delivering justice to victims. Establishing an independent and permanent prosecution service and recruiting competent prosecutors through a transparent process are now imperative to address the present crisis. Reforming both the institutional and organizational aspects of the prosecutorial service is essential to enhance its effectiveness and efficiency.

It is recommended to establish an independent and permanent prosecution service rather than one under executive control, which can be disposable. Specific rules should be implemented for recruiting prosecutors through an independent and transparent process. Additionally, a system to monitor and evaluate the performance of prosecutors should be devised, with ongoing improvements to the service.

Prosecutors should be provided with adequate remuneration, equipment, and support. Establishing an internal network and public information database could facilitate access to relevant trial documents and general information on public issues. An audio-visual documentation system for prosecutions and trial proceedings could also be beneficial. Installing close-circuit cameras (CCTV) to monitor court staff activities and record malpractices and corrupt dealings may be necessary for promotion as a public prosecutor.

Promotional avenues within the prosecution service should be clearly defined, with specific criteria for advancement. For example, eligibility for promotion to the post of Joint Director of Prosecution may require three years of satisfactory service as a public prosecutor, followed by service as a Joint Director for further promotion to the post of Director of Prosecution.

Taking inspiration from successful models like the Pakistan Model, which separates investigative functions of the police, can contribute to professionalizing investigations and enhancing effectiveness. The draft Prosecution Service Law aims to establish a Criminal Prosecution Service, led by a Prosecutor General, supported by additional Deputy and Assistant Prosecutors General, to ensure prosecutorial independence, efficiency, and coordination within the criminal justice system.

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