

Role of the Public Prosecutors in Criminal Proceedings in Bangladesh: A Socio-legal Analysis

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Abstract

Public prosecutors bring criminal charges against people who have been apprehended by the police. The accused is deemed innocent in criminal law until his guilt is established. It is the burden of the prosecutors to establish the guilt of an accused beyond a shadow of a doubt. The Prosecutors are responsible for ensuring justice under the criminal justice system (CJS). Prosecutors are expected to carry out their duties in a fair, honest, and impartial manner. To play a remarkable role in criminal proceedings, prosecutors must be knowledgeable, well-paid, non-corrupt and dedicated to their service. In Bangladesh, many prosecutors lack these essential virtues and therefore justice has been in jeopardy yielding very little positive outcome in favor of victims. The trial phase of the process is made longer by cases that are unresolved for years. Although there are many causes for this ongoing problem with the judiciary, the prosecutor is also held accountable for this. Prosecutors struggle to handle a large number of criminal cases. Withdrawal of a criminal case by the prosecutors is a matter of public concern particularly if it is done without lawful or reasonable grounds. In Bangladesh, prosecutors are here powerless to influence investigation. The majority of prosecutors are chosen based on political considerations. Low conviction rates are also a result of the prosecutors' dishonesty and misconduct. Insincere attitude of the prosecutors, poor service conditions, absence of training program, shortage of manpower and lack of proper monitoring system have all led to prosecution being branded as the 'weakest link of the CJS of Bangladesh'. Such obstacles to the prosecution system should be removed in order to establish justice under criminal proceedings. If a country's prosecution system is not effective, capable, and reliable, then justice cannot be ensured. The article is an attempt to reviews the role of the public prosecutors in criminal proceedings and identifies some difficulties associated with their activities that need to be solved.

Keywords: Public Prosecutors, Criminal Proceedings, Court, Prosecution Service, Justice.

1. Introduction

Public prosecutors play a significant role in ensuring justice under the criminal proceedings. A successful prosecution system is characterized by high conviction rates, and it can contribute significantly to the emergence of the rule of law in the country. Protecting the innocent and pursuing conviction of the accused are the goals of the prosecution service. In Bangladesh, only 20 to 30 percent of criminal cases result in a conviction due to incompetency, insincerity and lack of accountability of the prosecutors.¹ In the district level of Bangladesh, there are no predetermined rules for how public prosecutors' offices should operate. Bangladesh, unlike many other countries throughout the world, does not have an independent public prosecution service. Prosecutors are appointed here based on

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political considerations. In addition, they receive simple "retainer fees" according to the volume of cases and different types of responsibilities they take on. Public prosecutors engage in private practice; their attitudes toward government cases seem to be secondary. Additionally, there are no metrics available to regularly evaluate how well the public prosecutors are performing. Although some police officers don't have law degrees or prosecution training, they are simply transferred from a police station to the court as prosecution police. To date, there has been no successful attempt to professionalize the prosecution service. Furthermore, under the current system, there are no clear rules developed for recruiting prosecuting officials. To ensure justice under the criminal proceedings, such kinds of difficulties attached with prosecutor's function should be removed. Prosecutors should be knowledgeable, well-paid, moral, and sincere to their work, because the efficiency of the public prosecutors is crucial to the judicial process. This article is an attempt to focus on the prosecutor's position, responsibilities, and obligations based on court practices and explore the problems connected with their service. The second part of this article explores organizational structure of the prosecution service and third part critically examines the role of the prosecutors. At the end, this article suggests some measures to strengthen the prosecution service in Bangladesh. This article is empirical in nature and at the same time it is analytical. It is based on primary² and secondary³ sources. During the research's interview period, which lasted from September 12 to September 30 of 2022, a total of 10 prosecutors and 10 judicial officers from the Rajshahi, Bogura, and Natore Judge Court participated. This article uses, at random, the general impressions acquired from face-to-face interviews and court visits.

2. Prosecution Service in Bangladesh

The prosecution service operates under two heads: (a) the attorney service at the Supreme Court and (b) the public prosecution service at all subordinate courts.

2.1 The Attorney Service

The 'Team of Attorneys'⁴ offers legal assistance for prosecution as well as other legal matters in the higher judiciary. The Chief legal representative of the government is the attorney general. He solely speaks on behalf of the State at Supreme Court. Even though he has the authority to represent the state at any court within the state, his presence and powers are only available at the Supreme Court of Bangladesh.⁵ According to the Constitution of Bangladesh, a person who meets the requirements to be appointed as a judge of the Supreme Court of Bangladesh is also eligible to be appointed as the Attorney General (AG).⁶ Apart from the AG, the government appoints two Additional AGs and numerous Deputy AGs and Assistant AGs to form a 'Team of Attorneys' responsible for overseeing the prosecution and other legal services linked to the government.

2.2 The Public Prosecution Service

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.⁷ Till 31 December 2022, there were 3377 prosecutors in different subordinate criminal courts of Bangladesh to deal

3388610 criminal cases.⁸ According to the most recent data, there are 67 PPs, 477 additional PPs, 180 SPPs, and 2653 APPs in the public prosecution service of Bangladesh.⁹ There are 497 criminal courts that demand that prosecutors be present. Each prosecutor has a caseload of about 1004 cases. In accordance with the Supreme Court's Annual Report of 2019, there were 3,309,799 criminal cases pending in 457 courts, and 1440 prosecutors, including APPs, SPPs, and Additional PPs were employed in Bangladesh.¹⁰ Prosecutors cannot be transferred since they are allocated to a certain territorial jurisdiction. As long as they don't have any conflicts of interest, they can handle both civil and criminal private cases.¹¹ On the other hand, police officers are chosen to serve as prosecuting police in order to bring small offenses 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.¹² There are four different identities in the criminal process who are working as prosecutors.

2.2.1 Public Prosecutors (PP) and Additional Public Prosecutor

Criminal proceedings are handled by public prosecutors in the justice system. A public prosecutor (PP) is a prosecution officer appointed by the state. According to the Code of Criminal Procedure, 1898 (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.¹³ Additional PPs manage cases allocated to them and assist the PPs in their duties. They are appointed at district level and are essential to the PP's operations.

2.2.2 Special Public Prosecutors (SPP)

In accordance with special laws of Bangladesh, the government appoints SPPs to handle specific cases that call for specialized knowledge or skill. These cases could involve complicated or well-known issues like terrorism, corruption, financial crimes, or situations involving public officials. SPPs handle particular cases reported in accordance with the Special Laws. The SPPs can handle specific crimes punishable by the Penal Code, 1860 or the specific criminal laws enacted by Bangladesh Government.

2.2.3 Assistant Public Prosecutors (APP)

The prosecutors who handle cases in magistrate courts are known as APPs. The First Class Judicial Magistrate, Second Class Judicial Magistrate, Metropolitan Magistrates Court, and Chief Judicial Magistrate Courts are the only courts under their purview. The government appoints these APPs. The APP's job is to support the PPs, and it will take over if the PPs are not functioning.

2.2.4 Prosecution Police

The Government may appoint some police officers known as court inspector (CI) and Court sub-inspector (CSI) to represent the State in the Magistrate Courts or Subordinate Criminal Courts; however, they are not attorneys. Any person who is of Inspector rank or higher and who is not an investigating officer (IO) in a particular case may be appointed as a CSI by the District Magistrate.¹⁴ These prosecutors are appointed by the Home Ministry of the respective Government to serve as regular, full-time prosecutors. They have a right to enjoy government benefits like salaries, perks, retention as well as monthly pay. This appointment may be given regardless of the appointee's legal training and ability to defend the State's interests. The law enforcement officer who looks into the case is ineligible for the position of a CSI. The police personnel lower the sub inspector position are not eligible for CSI.

3. Appointment of Prosecutors in Bangladesh and Malpractices

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. This section also 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 prosecutor for the purposes of any case when no prosecutor has been nominated. 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 in high-profile cases to remove ordinary prosecutors and affect the outcome of the trial through the actions of the prosecutors. 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.¹⁵ Any such police officer who has the magistrate's consent to conduct a prosecution shall have the same authority to halt the prosecution as provided by section 494 of the Cr. PC, and the requirements of that section shall apply to any withdrawal by this officer.

Prosecutors are appointed by the solicitor branch of the Law and Justice Division under the Ministry of Law, Justice, and Parliamentary Affairs in Bangladesh.¹⁶ The selection procedure is actually influenced by the political stance of the current ruling political party. The local Parliamentarian, an influential politician with ties to the present administration, the head of the local Bar Association with political connections, or all of these individuals create a list of attorneys who will serve as prosecutors. Selectors can either send these lists directly to the relevant Ministry or via the Deputy Commissioner's office. The Ministry selects prosecutors from the list.¹⁷ Political affiliation is a key consideration in Bangladeshi prosecutor appointments, according to this appointment process. The ruling party's appointment procedures regularly lead to the selection of inexperienced and unskilled attorneys as prosecutors despite their failure to achieve justice. Due to their propensity for making quick money, many lawyers engage in corruption using this type of political support. In countries with autonomous public prosecution agencies, lawyers who aspire to be prosecutors must pass competitive examinations to prove their expertise.¹⁸ However, in Bangladesh, prosecutors are chosen without regard to any set standards or guidelines. Effectiveness and professionalism are not crucial in this circumstance. Some studies stated that,

'Due to their incompetence, prosecutors are unable to appropriately represent the government in cases that are brought by or against the government. The partisan reasons of the government for prosecutor appointments have become a persistent issue in Bangladesh throughout time. The ineffectiveness of the state-appointed prosecutors and the poor quality of the investigation frequently result in low conviction rates. Although they lack legal expertise or law degrees, police officers with the rank of sub inspector typically prosecute cases before the court. They are merely transferred to the job from a police station, frequently as a punishment task.¹⁹

To yet, there hasn't been a successful attempt to professionalize the prosecution service for police in Bangladesh.

4. Role of the Prosecutors under the Criminal Proceedings of Bangladesh

From the time the accused appears in court for the first time until the accused is declared guilty or innocent, prosecutors represent the state. The prosecutor's only responsibility is to provide the court with all relevant evidences, regardless of whether it supports or contradicts the accused. Before the verdict is delivered, a prosecutor may, with the court's approval, cease prosecuting any individual, either generally or with relation to any one or more of the offenses for which he is being prosecuted.²⁰ According to the Cr. PC, prosecutors are entrusted with several key duties and responsibilities. These are as follows:

4.1 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.²¹ His responsibility when he appears in court for criminal charges is to present the complete case to the Judge. At the moment, the prosecutor is supposed to help the court formulate precise charges. To enable the court to reach a decision, prosecutors present all relevant information and examine the witnesses.²² 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.²³ His responsibility is to make sure that the penalty goes as far as possible toward the wrongdoer.²⁴ In this regard, the prosecutor's objectivity and honesty play a crucial and fundamental role for ensuring justice in the CJS.²⁵ The prosecutor has the authority to appeal against an original or appellate order of acquittal issued by any Court of Session or an Order of Acquittal issued by any Magistrate to the HCD or to the Court of Session, as per the Cr. PC.²⁶ The Government may also instruct the prosecutors to appeal against the punishment if it is deemed insufficient.²⁷

There are many problems in the prosecution service of Bangladesh for which prosecutors cannot perform their duties properly. During interview, it is found that all judicial officers are much aware of lack of professionalism of the prosecutors. They were asked whether the performances of the prosecutors were satisfactory or not. Judicial officers replied accordingly:

Table 1 : Are you satisfied on the performance of the prosecutors?²⁸

Judges' Response	Percentages
Fully satisfied	20%
Partly satisfied	60%
Not at all	20%

Table 1 shows that 20% of Judges are fully satisfied on the performance of the prosecutors but 60% of Judges are not fully satisfied on the performance of the prosecutors. Prosecution service are affected by prosecutors' personal activities and by the difficulties associated with them.

4.1.1 Personal Problems of the Prosecutors

There are many personal issues of the prosecutors which affects the smooth and neutral functioning of the prosecution service. These are as follows:

4.1.1.1 Private Practice

Throughout the term of their employment, the prosecutors of Bangladesh are not permitted to contest any civil or criminal cases brought against the government except the APP. Instead, they, almost all are free to conduct their own private practices. During court visit, the research team observed that PPs and SPPs are not directly involved in the case against the government but their juniors act as private pleaders, even often it happens in the same court. This implies, however, that the prosecutors' attention is primarily focused on creating his typically more lucrative private business, which has an impact on his capacity as a prosecutor. This hurts the victim's interests as well as the interests of society as a whole and lowers the quality of case preparation and prosecution. During interview, prosecutors were asked about private practice. 60% prosecutors answered that they were involved in private practice.

Table 2: Are you involved in private practice?

Nature	Percentages
Yes	60%
No	40%

The prosecutors abuse their positions to advance their personal agenda, which lead to egregious instances in court.²⁹ As a result, acquittals are the outcome in these cases. Prosecutors (particularly SPPs) who have successfully argued for the state in a lower court hearing frequently complain about the other side being represented by a private attorney in the appellate court by the other party after winning the lower court hearing.³⁰ Ironically, the lack of accountability for prosecutors' activities is one reason for their poor discipline and propensity to work for private clients while they should be representing the state. If they do not show up in court, they cannot be penalized or punished. Only APPs are answerable to their immediate superiors.³¹ Presently, the prosecutors get daily fee and retainer fee accordingly.

Daily Fee and Retainer Fee of the Prosecutors under the Sessions Court of Metropolitan City³²

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

Daily Fee and Retainer Fee of the Prosecutors under the District Sessions Court³³

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

Due to their low allowance and honorarium, prosecutors frequently involve with their own private practices except PP, which interfere with their ability to perform their official tasks, or look for alternative sources of money.³⁴ During the time of interview, one defense lawyer³⁵ said to the researcher that though PPs and SPPs are not directly involved in private practices but their juniors carry on their cases in favour of them. Another prosecutor³⁶ said to the researcher:

'As private practices are banned for PPs and SPPs, their allowances should be increased. With the allocated money as prescribed, how is he going to support his family? A day of 250 Taka is given to an APP. He is able to practice privately though. Due to low payment and absence of other incentives from the government, often judges neglect them and treat them inhumanly in court proceedings. It is also unexpected that prosecutors do not get this money in time; they get this money even after 6 or 7 months. Furthermore, this payment process is controlled by the office of the Deputy Commissioner.'

The majority of interviewees emphasized that the prosecutor's primary challenge is insufficient pay, which affects not only their families but also leads them to involve in private practices. One of the prosecutors brought forward the fact that,

"While both judges and prosecutors are selected on the basis of similar educational backgrounds, the difference in their salaries is approximately double that generates a feeling of professional inequality among prosecutors."³⁷

4.1.1.2 Involvement in Politics

According to the views of the Judges, the supporters of the political parties are directly recruited as prosecutors without verifying their professional and legal efficiency.³⁸ Prosecutors are involved more in political activities rather than prosecution battles. A report shows that in many cases the working prosecutors are in various positions in political organizations.³⁹ During interview, 100% respondents' prosecutors confirmed that they were involved in politics before their appointment. Prosecutors appear to be appointed more frequently based on political affiliations than on qualifications. The political attitude of the ruling political party influences the recruitment procedure. As a result, whenever a new political party has seized power, all prosecutors have been removed from their positions and replaced by the new party. Prosecutors were asked about the pressure of the Government. 60% of them replied that they faced different kind of pressure from the government officials or politicians. If prosecutors disagree with the whims of government, they may also be dismissed during the term of a government. Their nomination and job recruit are determined by how well they have served the financial and political interests of the appointing party, its leaders, and employees, not by their competence or professionalism.⁴⁰ Due to their political appointment, PPs and APPs are always found interested with their own party's agenda, even during working hours.

4.1.1.3 Unethical Activities of the Prosecutors

It is also alleged that some prosecutors receive unauthorized money from the litigants for different tasks and at different stages of litigation.⁴¹ A research study suggests that in some cases, unauthorized money is asked from the litigants in the name of judges and there are strong chances that the judges do not know about the transactions or collusions.⁴² A research article demonstrates that legal professionals in Bangladesh, including prosecutors, engage in the following unethical legal activities:⁴³

- (i) obtaining gratification from the other side;
- (ii) purposefully distorting the truth;
- (iii) using affiliation with the ruling party to gain leverage in judicial proceedings;
- (iv) informing clients about having a personal relationship with and access to specific judges, and on that basis, providing incomplete, incorrect and negligent advice;
- (v) representing witnesses in court without adequate preparation;
- (vi) suggesting a bribe to court staff;
- (vii) intimidating and treating witnesses in a way that discourages them from appearing in court to give their testimony, which may result in a miscarriage of justice;
- (viii) take inducements from the accused and play a quiet role in bail hearing;
- (ix) falsifying evidence;
- (x) purposefully delaying the course of a case in order to obtain financial gain; etc.

4.1.1.4 Negligence of the Prosecutors

Due to the heavy workload, prosecutors often fail to give proper attention to any case resulting in poor presentation and adverse effects on the quality of prosecution.⁴⁴ The prosecutors more often are unprepared for the trial and do not properly cross-examine the witnesses. Time spent in court is squandered as a result. Judicial Officers were asked about the personal problems of the prosecutors. They replied accordingly:

‘The prosecutors often do not carefully follow all the legal matters related to the preparation of witness before producing them to the court. They are reluctant to do their duties. They are not serious to manage the government cases.

During any regime change or a government change, all the case files of previous prosecutors are not transferred to the next successors immediately due to lack of professionalism. One prosecutor during interview said:

‘The case records continue in the custody of police even after filing the charge sheet. These are brought to court on the day of hearing. This denies the prosecutor the opportunity to go through statements or to brief the witnesses. Service of summons on witnesses by police personnel leads to considerable delay.’⁴⁵

It is also found in the same court that one APP has conducted a case on behalf of the prosecution and is currently appearing on behalf of the accused in another case.⁴⁶ In response of the question ‘Have you seen the prosecutor in every date of hearing?’, respondent Judges replied accordingly:

Table 3: Prosecutor’s presence in every date of hearing

Category	Percentages
Yes	50%
No	50%

According to the table 3, 50% Judges did not find prosecutor in every date of hearing. During interview, a Judicial Officer said that,⁴⁷

‘There are some APP in my court whom I did not even see their faces once within six months. All the time they pray excuse before the court. Sometimes they said that they were busy in other courts, therefore they did not available in this court. It hampers to take the decision.’

4.1.2 Difficulties associated with the Prosecutors

There are some problems in the prosecution service attached with the prosecutors for which insincere role of the prosecutors cannot be controlled. These are discussed below:

4.1.2.1 Lack of Training and Work Facilities

During interview, prosecutors were asked about the number of training program they attended. Their responses are given below:

Table 4: Have you attended any training program?

Nature	Percentage
Yes	00%
No	90%
Not Mentioned	10%

In Bangladesh, there is no mechanism in place for prosecutors to receive professional education and training. Due to this, the service's morale is extremely poor, and prosecutors are more easily persuaded to engage in malpractices.⁴⁸ To increase their income in private practices, they take use of their position and title. In order to consistently improve their professional skills, there should also be regular in-service training.⁴⁹ During the time of interview, one PP said,

'After being recruited, PPs and APPs should receive extensive training at the police/judicial academies in both theory and practice to advance their professional abilities. But there is no regular in-service training program for prosecutors to consistently improve their professional skills.⁵⁰

Aiming to train all judges and public prosecutors, the Judicial Administration Training Institute (JATI) was founded by the Judicial Administration Training Institute Act, 1995. One of the biggest drawbacks is that the JATIs' current training capacity is insufficient to serve the country's 1800 judges and 3377 prosecutors. JATI's institutional capability needs to be expanded in order to guarantee proper training for all judges and prosecutors throughout the nation. The prosecutors noted that their department did not set up its own training program for the prosecutors while talking about their initial trainings and other workshop-related difficulties. One of the main factors contributing to the prosecutors' professional inefficiency in the CJS is uncertain policy about the training. One prosecutor said that,

'At initial level, when we are inducted and placed in field, we are like a soldier in a battlefield without a weapon. More training should be imparted to prosecutors before sending them in field.'

There is a serious shortage of stenographers, clerks, assistants, and other support services such as working libraries, stationeries, etc. Prosecutors claim that the lack of amenities has a negative impact on their morale. They contend with defense attorneys who have a sufficient personal infrastructure to work with, which has an impact on their effectiveness. Except for a small space used by the Chief PP and provided by the District Judge, the author discovered that there was no distinct office room for the prosecutors. The courthouse is additionally devoid of a personal chamber, proper quarters, or

support services. 100% prosecutors answered 'No' to the question of whether they have a dedicated space for prosecution at the courthouse. It is evident that the prosecutor cannot do their everyday business from a fixed or designated office.

4.1.2.2 Lack of Supervision and Monitoring System

There is a solicitor wing of the Law and Justice Division under the Ministry of Law, Justice and Parliamentary affairs which is empowered to handle the prosecutorial activities. There is a shortfall in the operational supervision of the quality of work of the prosecutors in each district by the solicitor wings under the concerned Ministry of Bangladesh. The politicization of the institution makes it difficult to monitor or ensure accountability of prosecutors.⁵¹ The Bangladesh Bar Council is another authority to supervise and monitor the prosecutors' functions. 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, the Bar Council is unable to efficiently check that prosecutors are abiding by the rules of conduct and procedure.⁵² According to the views of prosecutors, they respond to the District Magistrate (DM), who is overworked and unable to serve as a reliable check on the prosecution. Additionally, it appears from the interviews with the public prosecutors that no one in the subordinate courts has ever faced some sort of disciplinary action. During interview, one of the prosecutors said,

'In Bangladesh, there is no specific format or framework to manage, control and monitor of prosecutor. The authority for its control or monitor of their activities in the field level is not specified. There is no specific committee or authority to monitor and control the prosecutors in a place where they work.'⁵³

Unethical Practices of the lawyers as well as prosecutors are prohibited by the Bangladesh Bar Council Canons of Professional Conduct and Etiquette, 1969 (BCCPCE). The BCCPCE covers a wide range of topics, including the obligations that attorneys have to the court, how they have to behave other lawyers and clients, and their general obligation to uphold the rule of law and work toward establishing and preserving the independence and integrity of the judiciary.⁵⁴ The BCCPCE is insufficient since it does not describe the method for punishing the prosecutors for their unethical practices. During interview, one prosecutor said to the researcher,

'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 are ill-equipped to keep an eye on lawyers' unethical behavior. One factor contributing to non-compliance with the Canons is that the majority of lawyers are not familiar with their contents and absence of sufficient consequences for Canons violations.'⁵⁵

A closer oversight and monitoring system, especially at the district levels, should be established in order to develop an effective and impartial prosecution system. It would be simple to monitor the prosecution functions in the individual districts if the Prosecution Directorate were constituted under the Government Attorney Service Ordinance, 2008,⁵⁶ and all prosecutors would report to and receive advice from the PP.

4.2 Producing Witnesses before the Court

It is the prosecutor's responsibility to establish the case. It is the duty of the prosecutors to take the required procedures and to call the witnesses into court. Victims are entitled to testify in court as prosecution witnesses. But in Bangladesh, criminals frequently target victims and harass them, prevents them from providing open and honest testimony.⁵⁷ Thus, the prosecuting system is generally weaker when there are no victim protection laws. The lack of evidence results in the majority of cases being dismissed. The absence of proper legal protection for victims and witnesses in Bangladesh is a significant roadblock to effective criminal prosecution.⁵⁸ One APP of Rajshahi Court said,

'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.'

Victims are entitled to testify in court as prosecution witnesses. In order to prevent victims and witnesses from testifying during the investigation and prosecution, defendants frequently threaten, intimidate, and punish them in Bangladesh.⁵⁹ When there is no protection system, victims who are women and children of organized crime are coerced into suppressing information.⁶⁰ 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. The criminal justice system (CJS) of Bangladesh occasionally causes "secondary victimization" to crime victims.⁶¹ As a result, witnesses and victims occasionally decline to provide a testimony in court, which slows down the process. It is disappointing that Bangladesh has not enacted any specific legislation to protect witnesses and victims. Section 506 of the Penal Code 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.'⁶²

In 2011, the Law Commission of Bangladesh published a draft of Witness Protection Bill. The High Court Division of Bangladesh ordered the government to act in this regard in December 2015.⁶³ Concerning the protection of victims and witnesses, law and human rights-related NGOs are persistently vociferous in Bangladesh.⁶⁴ The only institution that hasn't noticed the crisis yet is the government. The Law Commission's suggestion and draft have received no attention to date, and the government has not yet taken any action to implement the order of the Judiciary. Due to absence of victims and witnesses' protection system, prosecutors are not able to produce and examine the witnesses in time.

4.3 Withdrawal of Charges

According to the section 494 of the Cr. PC, prosecutors can withdraw any accused from the case with the consent of the court before pronouncing the judgment or before being charge-sheeted. This section does not provide any criteria on which prosecutor can establish their request or the basis on which the court will grant permission to withdraw a case.⁶⁵ In the case *Sikandar Ali Sikdar vs. State & Others*,⁶⁶ the Appellate Division of the Bangladesh Supreme Court ruled that the right to withdraw cases must be used for the sake of the administration of justice. As per the section, it is insufficient for the 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 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. 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 or against. In the case of *Altab Hossain vs Kobed Ali*,⁶⁷ 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. 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.⁶⁸ 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.⁶⁹

As stated in section 173 of the CrPC, the duty of the prosecutor is not unqualified. In Bangladesh, prosecutors 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. When the prosecutor determines that the charge is unfounded or that there is no chance of conviction, magistrates and judges then respectively could 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 prosecutor⁷⁰ said that,

'We have no authority to drop *challan* even if we 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.'

He also argued,

'In Bangladesh, in criminal cases, if an accused is acquitted from his criminal charges, there is a penal provision in the Penal Code, 1860 that is implemented against the complainant for his wrong allegation against the accused.'

Therefore, under section 173, prosecutors should have the authority to withdraw *challan* or proceedings before framing of charge if there is no possibility of conviction. Otherwise the complainant will be convicted later.

5. Suggestions

The prosecutors who appear before courts need to receive intensive training in order to advance their professional skills. For the benefit of the people of Bangladesh, the current structure of the prosecution service needs to be restructured. The following suggestions may be taken into account by policy makers in order to uphold justice, the rule of law, and human rights in society:

- (i) A "Recruitment Rule" is necessary in order to appoint the required number of qualified prosecutors. To establish a precise institutional framework for the selection, direction, management, and oversight of prosecution, a separate act needs to be enacted. The performance of prosecutors should be evaluated via annual confidential reports (ACR). This system of court evaluations can hold the prosecutors accountable and responsible.
- (ii) The scope and authority of the charge withdrawal must be clearly stated in Section 494 of the Cr. PC. The pre-trial conversation between the IO and the PP and withdrawal of *challan* needs to be covered by legislation. Therefore, section 173 needs to be amended.
- (iii) Provisions should be added to the statute stating that prosecutors will only serve as 'gazetted officers' and shall not be allowed to carry out private practice. Candidates for prosecution must have at least some years' experience of practicing law in criminal courts and they must also have LL. B(honours) degree in law. Each CSI must hold an LL. B (pass) degree to work in the prosecution service.
- (iv) It is necessary to establish the office of "Director of Prosecution". Under the direction of the Attorney General, the "Director of Prosecution" at the district level will supervise and direct the prosecution and investigation. The Attorney General of Bangladesh may dismiss the PP, Special PP, Additional PP, and APP for their misconduct or negligence in accordance with the Director of Prosecution's investigation report.
- (v) 'Victims and Witness Protection Law' should be passed in order to establish a victims and witness protection system. These laws must include a precise witness allowance and outline payment options.
- (vi) A separate Prosecutor's building should be established with the required amenities in every District in order to make it a full-time occupation. The prosecutors must be given an attractive salary and office space with amenities like pensions for office personnel.

5. Conclusion

As ministers of justice, prosecutors have a responsibility to support the judge in the operation for justice. From the time the accused appears in court for the first time until the accused is declared guilty or innocent, prosecutors represent the state. The prosecution's success hinges on the prosecutors playing a proactive and sincere role. From the above discussion of the text, it is clear that malpractices and inexperience of the prosecutors are the main causes of the low conviction rate in criminal trials. Justice has been tainted in

Bangladesh as a result of the prosecutors' lack of essential traits, which has resulted in very few successful outcomes for victims. Prosecutors have a common tendency to earn money through private practice. It is also found that there are many problems in the prosecution service for which prosecutors cannot perform their duties properly. Existing laws do not specify any rules for APP appointments; hence political favoritism has taken precedence over qualifications. There is no concerted effort to professionalize the prosecution service in Bangladesh. The CJS of Bangladesh hardly has any tools for accountability or supervision. The prosecution office is not free from interference from the executive branch and all other outside agencies. The seim pediments to the prosecution system should be removed if justice is to be ensured through the criminal justice process. The Public Service Commission should conduct merit-based recruitment for all full-time employees who make up prosecution service. There is a need of strong coordination between the prosecution officials and investigation agency. Prosecutors should be knowledgeable, well-paid, moral, and sincere to their work, because the efficiency of the public prosecutors is crucial to the judicial process.

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