

Strengthening the Criminal Justice System

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Contents

Foreword: <i>Arthur Mitchell</i> <i>General Counsel, Asian Development Bank</i>	iv
Opening Remarks: <i>Honorable Moudud Ahmed</i> <i>Minister for Law, Justice and Parliamentary Affairs, Government of Bangladesh</i>	v
Welcome Remarks: <i>Hua Du</i> <i>Country Director, Bangladesh Resident Mission, Asian Development Bank</i>	vii
Keynote Address: <i>Eveline Fischer, Deputy General Counsel</i> <i>Asian Development Bank</i>	viii
Chapter 1: Strengthening the Judiciary	1
Bangladesh	2
India	7
Pakistan	14
Chapter 2: Strengthening the Public Prosecutorial Service	19
Bangladesh	20
India	24
Pakistan	34
Chapter 3: Strengthening Police Reform	38
Police Reforms in Bangladesh	39
Reforming the Police Forces of South Asia	51
Chapter 4: Enhancing Access to Law and Information	62
Access to Law: The Bangladesh Perspective	63
Chapter 5: Strengthening Legal Education and Training in Bangladesh	74
Legal Education and Training in Bangladesh	75
Closing Remarks: <i>Hua Du</i> <i>Country Director, Bangladesh Resident Mission, Asian Development Bank</i>	88
Appendices	90
The Workshop Participants	91
Program Agenda	92
Summary of Day 1	93
Summary of Day 2	96
Workshop Planning Outputs	98
About the Authors	101

Foreword

Arthur Mitchell

General Counsel, Asian Development Bank



Good governance has been identified as one of the key pillars in achieving the Asian Development Bank (ADB)'s overarching goal of poverty reduction as mandated by its Poverty Reduction Strategy. For good governance to prevail, the presence of a credible law and policy environment is essential. ADB has therefore been actively supporting law and policy reforms in its developing member countries (DMCs). This commitment has resulted in the implementation of over 400 law and policy reform interventions in the span of over a decade.

These interventions are varied and wide-ranging. They include legal empowerment of the poor where ADB examined the effectiveness of legal literacy—that is, acquiring critical awareness of one's rights as well as the law—and legal aid for disadvantaged groups such as women, minorities, and low-income groups. These are seen as important tools toward the institutionalization of good governance. Another area of intervention is facilitating private sector development in DMCs through assistance in the promulgation of laws related to insolvency, land registration, secured transactions, and asset securitization. ADB is also becoming increasingly involved in interventions that aim to improve the administration of justice in our DMCs, specifically targeting the enhancement of effectiveness of legal and judicial institutions, such as the judiciary, public prosecution service, and the police force.

The regional technical assistance which conducted the study and regional workshop on strengthening the criminal justice system (RETA 6221) is one example of our efforts to facilitate better administration of justice in our DMCs.

The RETA assessed and evaluated the criminal justice system in selected countries in South Asia (i.e. Bangladesh, India, and Pakistan) and recommended possible avenues for strengthening the system. In doing so, ADB engaged several top-caliber legal professionals in the region to carry out studies examining the judiciary, public prosecutorial service, and the police force in these countries. The group included a head and a former head of the police force, a former Justice of the Supreme Court, as well as two highly respected legal academicians. The RETA also examined the ability of the public, including the judiciary, to access laws in Bangladesh and provided recommendations on how to further enhance such access. The findings and recommendations of these studies were then presented, deliberated, and validated at the regional workshop in Bangladesh, which was attended by senior-level officials from the judiciary, public prosecution agencies, and the police forces in Bangladesh, India, and Pakistan. The workshop also discussed a study on legal education and training in Bangladesh. This publication documents the studies as well as the deliberations conducted in connection with the workshop.

We hope that this publication will further increase awareness of the importance of strengthening the criminal justice system, and contribute to the emerging consensus that an effective criminal justice system is fundamental to equitable economic development. ADB is fully committed to this area of reform and is keen to continue its work as a critical development partner for our DMCs with a view toward creating a better environment for the further development of human potential in the region.

Opening Remarks

Honorable Moudud Ahmed

Minister of Law, Justice and Parliamentary Affairs, Government of Bangladesh

This regional workshop for strengthening the criminal justice system is very important for the countries of South Asia, especially for Bangladesh, India, and Pakistan. A sound and effective judicial system will ensure rule of law and good governance in a country. Admittedly, the present criminal justice delivery system of Bangladesh is so far not satisfactory and, as such, is undergoing a series of reformative measures. It is in the context of these efforts that this regional conference can be of great benefit to us, as well as to India and Pakistan, in providing a forum for the exchange of experiences and views in improving the judicial and criminal prosecuting systems in our respective countries.

As far as Bangladesh is concerned, our criminal justice system suffers from two major weaknesses. The first weakness pertains to investigation—the process, rules of procedure, and the investigator. A well-carried out investigation is crucial to the success of a prosecution. The rate of conviction in Bangladesh is currently below 15% largely because our investigation system is very poor. Investigation is conducted by the police, who lack the appropriate training for making a good investigation, which requires specialized skills as well as a large amount of time to complete. As it is, the police are already saddled with their regular functions of maintaining law and order in their respective areas. Assigning them criminal cases to investigate in addition to their regular functions will result in neglect of either the case investigation or their regular functions. Thus, the Ministry of Home Affairs is now looking at initially developing an independent investigation cell and eventually an independent investi-

gation department to deal with investigations exclusively. This experiment has begun in 40 (out of 370) pilot police stations where a number of police officers have been assigned solely to do investigation work. Needless to say, this effort on the part of the Ministry of Home Affairs is only the beginning of a reform process. A continuous and meaningful cooperation between the Ministry of Home Affairs and the Ministry of Law, which has control and supervision over the public prosecution system, is required. It bears emphasizing that investigation and prosecution should be an integrated arrangement where the investigation officer and the public prosecutor cooperate to build a strong case. This is not to say, however, that these two agencies must be merged. On the contrary, they should remain independent of each other so that there is a system of check and balance between them.

In other countries, an independent investigation department or a strong public prosecution system would screen cases prior to filing in court. In Bangladesh, there is no screening system as such. Almost every case is filed in court, whether evidence is sufficient or not. Nobody has been given the power to determine which cases should be pursued to trial, which is probably one of the reasons the rate of conviction is low. An agency authorized to decide which cases should be pursued and which cases should be dismissed is therefore necessary. The agency should be in-



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dependent, credible, impartial, and competent to exercise this authority judiciously, objectively, and fairly. Obviously, it should be separate from the agency that conducts the investigation. In this sense, the independence of the investigating agency and the public prosecutorial agency is essential.

The other weakness of our criminal justice system pertains to our disintegrated public prosecution system. Bangladesh has no permanent public prosecutors. Every political government appoints its own political allies in the public prosecutorial service to serve at its pleasure and only while its term lasts. As the appointment of public prosecutors is political, criteria and qualifications are not specified. Further, the ad hoc nature of their appointment prevents continuity in service and accountability. Therefore, there is no motivation and commitment on their part because the only consideration of their appointment is membership in the same party as the ruling administration. In the same vein, the ruling admin-

istration has little motivation to provide training and facilities to the temporarily appointed public prosecutors. Clearly, this arrangement has deleterious effects on the entire prosecution system. As an initial step to address these problems, we have prepared a law to introduce a permanent attorney service in Bangladesh. The public prosecutors will be recruited purely on merit basis after passing a national examination like that taken by other civil servants. They will be distributed to the various courts and act as legal advisers in the different ministries. As permanent appointees, they will be made accountable in the performance of their duties. To improve their skills and competence, public prosecutors will be required to undergo training to build expertise in emerging specialized areas such as maritime law, environment law, and terrorism, among others, and be effective legal advisers to courts and executive departments. These are only some of the efforts that Bangladesh is currently undertaking to improve its prosecution system. Certainly, more is left to be done and the experiences of India and Pakistan in this regard would be of enormous value to Bangladesh in the same way that we hope you would also benefit from the experiences of Bangladesh in this area.

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Welcome Remarks

Hua Du

Country Director, Bangladesh Resident Mission, Asian Development Bank

It is indeed a pleasure for me to join my colleagues in welcoming you to the Asian Development Bank (ADB)'s Regional Workshop on Strengthening the Criminal Justice System. I would like to particularly welcome the delegates from India and Pakistan. ADB Bangladesh Resident Mission is pleased to be involved in and has supported holding this regional workshop.

Over the next 2 days, you will have opportunities to share information and best practices on judicial, criminal law, prosecutorial service, legal education, and police reforms. We are quite privileged to have distinguished speakers from the region—Bangladesh, India, and Pakistan—and hope that the workshop will be a useful forum for you to exchange ideas and experiences in the areas of the criminal justice system.

I understand the key objectives of the workshop are to share and discuss the progress and experiences of the three countries in separating

the judiciary from the executive and criminal justice system, identify the challenges, and agree on the next steps. I hope the similarities in the legal tradition and cultural background of the three countries will facilitate the culmination of relevant and applicable lessons to all participants. I thank the honorable Minister, Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh, for the generous support and cooperation in holding this regional workshop.

Finally, I wish for the success of the regional workshop and look forward to productive and fruitful discussions.

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Keynote Address

Eveline Fischer

Deputy General Counsel, Asian Development Bank



It is with great honor and deep gratitude that I welcome you all to this Regional Workshop for Strengthening the Criminal Justice System. Thank you for taking the time to participate in this workshop despite the demands of your official functions. I would especially like to express the appreciation of the Asian Development Bank (ADB) for the support extended by the Ministry of Law, Justice and Parliamentary Affairs of Bangladesh to this workshop. I also thank the governments of India and Pakistan for their generous cooperation in this endeavor.

For the next 2 days, we will have in-depth deliberations on various topics aimed toward strengthening the judiciary, the prosecutorial service, and the police, as well as improving access to law and legal education. Some of you participated in a symposium that ADB organized in January 2005 on Challenges to Implementing Access to Justice Reforms. That symposium covered a wide range of issues that affect the delivery of true justice to citizens. Besides judicial reform, police reform was tabled as a subject at that occasion. That was important because often it is the judiciary that tends to be in the limelight while less attention is given to other aspects that are as essential to making the overall system work. We hope that this workshop will take the discussions that started at last year's symposium a step further. Thus, a number of studies have been prepared upfront, which we hope will be refined and validated through deliberations at this workshop. Rather than trying to cover the breadth of the judicial system, we will focus on one aspect, which is strengthening the criminal justice system. We will look at the judiciary, the prosecutorial service, and the police as major interdependent play-

ers in the criminal justice system. Likewise, we will also examine access to law and legal education, since these are crucial elements to strengthening the criminal justice system. Besides narrowing the subject matter, we will also narrow the geographical area. Thus, the focus of the discussions will be on how the system works—or does not work—in Bangladesh, India, and Pakistan, three countries whose legal systems share the same roots.

Let us take a step back and look at the emergence of legal systems. As society became more complex and a web of interests, needs, relationships, systems, cultures, and beliefs evolved, people started to claim rights and impose obligations on other people and society as a whole. The concept of the State took form. Citizens began to demand protection and state responsibility. The State began to assert its primacy while people sought participation in state affairs. The intersecting perspectives on these matters inevitably led to conflicts which became more and more difficult to settle. Obviously, the parties including the State, involved as they were, could not be expected to resolve their own conflict. The need for a standard means of conflict resolution became clear and a system had to be devised to respond to this need. The system must be one that would provide standard procedures for settling conflicts and a set of rules that would guide the acts of all parties concerned—from the conflicting parties to the persons assigned to investigate, prosecute, and decide the conflicts. Further, the system must establish the relationship between the State and its citizens as well as the relationship among citizens. This gave birth to a justice system that covered two major areas: civil and criminal. Although

these two areas are part of the same justice system, there are peculiarities that require a specific approach and separate treatment of each. As mentioned earlier, this workshop will only focus on the criminal justice system.

The criminal justice system refers to the system used by the government to maintain social control, enforce laws, and administer justice. It has become a basic necessity in every society as an ally of the State in the maintenance of law and order, occupying the forefront of the enforcement of the rule of law. At the same time, however, it also serves as protector of any person in conflict with the State and the law. In the Western context, it has been held that the criminal trial “overshadows all other ceremonies as a dramatization of the values of our spiritual government, representing the dignity of the State as an enforcer of law and at the same time the dignity of the individual when he is an avowed opponent of the State, a dissenter, a radical, or even a criminal.”¹ In other words, the criminal justice system performs the dual role of protecting both the State and the offender.

With this idiosyncratic duality, theories regarding the purposes of a criminal justice system abound. It is viewed simultaneously as a means of punishment, rehabilitation, deterrence, incapacitation, and reintegration. As a means of punishing the guilty, the criminal justice system is expected to be stringent and exacting, ensuring the conviction of the guilty and the meting out of a commensurate penalty. As a mechanism of rehabilitation, the system is expected to reform offenders and make them law-abiding. As a strategy of deterrence, the system is looked upon as a foreboding presence that would discourage crimi-

nal intentions. As a manner of incapacitation, it is relied upon for protection of society from convicted criminals. As a facilitator of reintegration, it is expected to provide ways for criminals to return to society and become productive citizens.² These theories may multiply depending on a people’s view of criminal justice.

Nevertheless, whatever the stated purpose or the dominant theory is, there appears to be a consensus on the essential attributes of a criminal justice system. These are efficiency, effectiveness, and fairness.³ Efficiency refers to the utilization of resources in a cost-effective manner to accomplish statutory goals and improve public safety. Effectiveness refers to the observance of equity, proportionality, constitutional protections to defendants and convicted offenders, and public safety in the administration of justice. Fairness entails objectivity, impartiality, and equal treatment of like offenders.⁴

How these ideals are to be achieved, however, will depend on the main players in the criminal justice system: the police, the prosecution service, and the courts. Each of them has a particular role to play. The police is assigned the tasks of

The criminal justice system refers to the system used by the government to maintain social control, enforce laws, and administer justice. It has become a basic necessity in every society as an ally of the State in the maintenance of law and order.

¹ T. Arnold. 1962. The Symbols of Government. New York: Harcourt, Brace and World, pp. 128–130. In G. Cole. 1993. Performance Measures for the Trial Courts, Prosecution, and Public Defense. *Performance Measures for the Criminal Justice System*, p. 86.

² J. Dilulio Jr. 1993. Rethinking the Criminal Justice System: Toward a New Paradigm. *Performance Measures for the Criminal Justice System*, p. 6.

³ *Performance Measures for the Criminal Justice System* v. 1993

⁴ See footnote no. 3.

enforcing the law and investigating violations thereof. They serve as the gatekeeper of the criminal justice system in that they trigger the initial stage that brings into play the entire criminal justice system. The prosecution service acts on behalf of the State and pursues the case against a violator. The court conducts trial of the case and, based on the facts and legal issues presented, makes a ruling. Thereafter, the police once again enters the picture to enforce the court's judgment. Thus, the respective performances of and interaction among the police, prosecutors, and judges determine the kind of criminal justice system a particular jurisdiction will have.

The relationship between the police, the prosecution service, and the courts can either be that of cooperation or conflict depending upon the nuances in each jurisdiction: national history and culture, political and legal system, economic development, and social structure, among others. During the workshop, it would be worth exploring as to what would be the general principles to determine the appropriate relationship model, especially in the context of the jurisdictions in Bangladesh, India, and Pakistan. We also hope that this workshop could elicit insights on how to enhance the existing relationship among these three to strengthen the criminal justice system.

Aside from the interrelationship between these actors in the process, their respective performances are also crucial in making the criminal justice system efficient, effective, and fair. The pressing question, therefore, is how to measure the performance of these institutions. What are the standards by which we could evaluate the police, the prosecution service, and the judiciary?

For measuring police performance, the traditional yardsticks have been the following: (i) reported crime rates; (ii) overall arrests, (iii) clearance rates, which reflect the ability to solve crimes; and (iv) response times, which measure the ability to arrive at the crime scene at the shortest possible time. These yardsticks were formulated based on the perceived main functions of the police, namely, to reduce crime and to apprehend offenders.⁵ With the evolution of the role of the police in the criminal justice system as well as in society as a whole, these performance measures

have to be reformed. Performance measures "must not only reflect but also shape community expectations of the police."⁶ As such, other measures have been suggested. First, there should be barometers to measure professionalism such as audited clearance and arrest rates, statistical evidence on use of force, brutality, discourtesy, and corruption. Second, there should be measures of the quality of service provided by the police. These should reveal both departmental and individual performances. Third, trust and confidence of the citizens in the police should also be measured. This could be seen in the community's reliance on the police as revealed by reports and calls to the police for service.⁷ Fourth, measures to ensure accountability to the public should also be in place. Given these measures of performance, how can the police gain a high rating in each of these barometers? We hope to answer these questions in the course of this workshop.

For measuring the performance of the judiciary, specific areas have been identified: (i) independence and accountability; (ii) competence; (iii) efficiency, expeditiousness, and timeliness; (iv) equality, fairness, and integrity; (v) access to justice; and (vi) public trust and confidence.⁸ Independence is measured in terms of the judiciary's separation from the other branches of government and its freedom to decide on cases devoid of any external pressure, political or otherwise. Actual and perceived independence of the judiciary must both exist.⁹ Accountability is measured by the existence of checks and balances on the judiciary's performance and utilization of public funds.¹⁰ There must be transparency in the court's activities. To measure competence, we can look at the qualifications of incumbents as well as the promotion, rewards, and compensation systems in place. To measure efficiency, expeditiousness, and timeliness, we answer the following questions: Who benefits from the existence of courts? Are criminal courts able to perform their functions, including promulgation of judgments, in a timely manner? Are courts able to implement changes in the law immediately?¹¹ The yardsticks of equality, fairness, and integrity would be the court's observance of due process and equal protection in its procedures and decisions. Access to

⁵ G. Alpert and M. Moore. 1993. Measuring Police Performance in the New Paradigm of Policing. *Performance Measures for the Criminal Justice System*, p. 120.

⁶ See footnote no. 5, p. 119.

⁷ See footnote no. 5, p. 122.

⁸ See footnote no. 1, pp. 93–103; R. Messick. *Key Functions of Legal Systems with Suggested Performance Measures* pp. 3–6.

⁹ R. Messick. *Key Functions of Legal Systems with Suggested Performance Measures*, p. 3.

¹⁰ See footnote no. 8, p. 4.

¹¹ See footnote no. 8, p. 5.

justice is revealed by the openness, inclusiveness, and ready accessibility of the system in that it is not unnecessarily intimidating and burdensome so as to deter anyone desiring to utilize it. Public trust and confidence are most desirable judicial virtues that are measured by the public's respect for the justice system and the law. Again, the foregoing are ideals that every judicial reform initiative should aspire for. There must, however, be a process to identify and prioritize the reforms to be undertaken to achieve these ideals.

For the prosecution service, the measures of performance are competence, efficiency, accountability, and independence. Competence and efficiency are manifested in the turnaround time of the caseload and percentage of convictions in cases brought to trial. Accountability and independence are two sides of the same coin. Independence of the prosecutor relates to the level of discretion in deciding whether or not to prosecute a case and in the manner in which a case is prosecuted. The prosecutor should be able to decide based on professional considerations, rather than political expediency. On the other hand, with independence comes accountability, which means in this context that the prosecutor should be able to explain and defend a decision to prosecute a case or not.¹² Among the three major players in the criminal justice system, the prosecution service is probably given the least attention. However, its improvement is just as important as the enhancement of the police and the judiciary. To have a competent, efficient, independent, and accountable prosecution service is important, and reforms toward the attainment of such a prosecution service must be taken in the same aggressive manner as police and judicial reforms.

I present the foregoing indicators of performance as probable guides in our discussion of the various reform initiatives in the police, prosecution service, and the judiciary. I will not pretend to know what kind of reforms are needed or would be best for any jurisdiction. In the end, each society should decide for itself what systems are most fitting at a given point in time. Societies are not static and what is a widely accepted system today may be found wanting tomorrow. However, I do wish to stress that as these three institutions are equally important in

strengthening the criminal justice system, reforms in any one institution must be done in coordination with the two others. This is because the failure of one of the institutions would affect the performance of the others, which can cause the entire system to break down. Thus, the lesson has been that absence of parallel institutional reforms will tend to negate any progress of reforms in one area alone. It has been observed that "reform of the police and the offices of public prosecutors are key complementary reforms, which, if left unattended, will constrain efforts to improve the judiciary."¹³

At this point, I would like to give a brief overview of the work done by ADB in the area of law and policy reform, in particular, as it relates to the topics of this workshop. Over a period of more than a decade, ADB has initiated over 400 technical assistance and loan projects in the broad areas of law reform, legal and judicial policy reform, legal and judicial institutional reform, as well as legal empowerment initiatives.

I should mention here the largest legal and judicial reform program that ADB has undertaken to date, which is the Pakistan Access to Justice Program. This program was specifically designed to empower the poor and other vulnerable groups. The program has five interrelated governance objectives: (i) providing a legal basis for judicial, policy, and administrative reforms; (ii) improving the efficiency, timeliness, and effectiveness in judicial and police services; (iii) supporting greater equity and accessibility in justice services for the vulnerable poor; (iv) improving predictability and consistency between fiscal and human resource allocation and the mandates of reformed judicial and police institutions at the federal, provincial, and local government levels;

In the end, each society should decide for itself what systems are most fitting at a given point in time. Societies are not static and what is a widely accepted system today may be found wanting tomorrow.

¹² See footnote no. 9, p. 6.

¹³ Economic Commission for Africa. *Striving for Good Governance in Africa. Synopsis of the 2005 African Governance Report* 27.

and (v) ensuring greater transparency and accountability in the performance of the judiciary, the police, and administrative justice institutions.

In Bangladesh, ADB is rendering technical assistance to support good governance initiatives and establish legal and policy frameworks to support anticorruption initiatives. The assistance includes the review of the current curricula of legal education institutions and a proposed road map for improvement. In India, ADB is currently administering technical assistance aimed at reducing Delhi court congestion and developing sustainable improvements in the delivery of and access to speedy justice. ADB has also provided assistance to Indonesia to improve the administration of the Supreme Court as well as commissioned a diagnostic study on the Indonesian public prosecution service. In the Philippines, ADB provided assistance to the Project Management Office of the Supreme Court of the Philippines to strengthen the independence, accountability, impartiality, and competence of the Philippine judiciary. In this connection, ADB also provided support to the Philippine Judicial Academy to deliver judicial training.

ADB has also initiated projects aimed at making legal information transparent and accessible. An example of this is the Development of the Internet for Asian Law (DIAL), a catalog and search facility of legal materials on the internet worldwide which is now merged with the World Legal Information project, the largest internet-based provider of free legal information in the world. In the People's Republic of China, Nepal, and Tajikistan, ADB provided assistance for the collection and publication of, as well as provision of online access to, their legal instruments.

A number of other projects are also aimed specifically at strengthening the knowledge and practical legal skills of government officials, lawyers, and judges. These include assisting our developing member countries (DMCs) in establishing legal training institutions and developing training curricula for national training institutions. In this connection, ADB projects have trained staff and developed teaching materials for continuing legal education institutions for judges, public prosecutors, lawyers, and government officials. This occurred in Maldives, Mongolia, Nepal, Pakistan, and Viet Nam.

We hope to continue to have similar interventions to strengthen the criminal justice system in our DMCs. However, we can only do this with your active collaboration. Experience has taught us that any successful legal and judicial reform process will require strong political will from the government. Once the political will is present, then it will be easier for the government to allocate the necessary resources for the reform process to proceed, whether it is human or financial resources.

Another lesson that we have learned is that the reform agenda must come from within. This will increase the chance of continuity since most reform process is done in a gradual and phased manner. The role of institutions, such as ADB and other donors, in this process is to provide the necessary support either as financiers, technical experts, or policy dialogue partners.

In conclusion, I hope this workshop will be able to contribute to the improvement of the criminal justice system in the region which, in turn, will support the journey toward achieving the multi-tiered goal of development.

CHAPTER 1



Strengthening the Judiciary

Strengthening the Judiciary of Bangladesh

Justice Shafiur Rahman

Ensuring Independence of the Judiciary

The Bangladesh Constitution clearly lays down the foundations of a judiciary that is separate and independent from the other branches of government. It was introduced in recognition of the fact that the efficiency of the judiciary and the entire justice system depends to a great extent on the independence of the judiciary.

The Constitution establishes the judiciary as a separate branch of government composed of a Supreme Court and subordinate courts. The Supreme Court consists of an Appellate Division and a High Court Division, which are separate in their composition and functions. The Supreme Court is headed by the Chief Justice, with judges¹ appointed by the President as members.² They are independent in the exercise of their judicial functions. Tenure of office, procedure for removal from office,³ independence in the performance of judicial functions, and compensation are all guaranteed and assured by the Constitution.

The Appellate Division has:

- (i) advisory jurisdiction (Art. 106, Constitution), which provides opinion on a question of law of public importance upon the request of the President;
- (ii) appellate jurisdiction, which decides on appeals made as a matter of right, on a certificate of fitness of the High Court Division, against a sentence of death or imprisonment for life and against punishment for contempt of the High Court Division (Art. 103, Constitution);

- (iii) jurisdiction to grant leave to appeal in any other case (Art 103 [3], Constitution); and
- (iv) jurisdiction to review any of its judgments or orders (Art. 105, Constitution).

On the other hand, the High Court Division enjoys such original, appellate and other jurisdictions, powers and functions conferred on it by the Constitution or any other law (Art. 101, Constitution). Its original jurisdiction pertains to issuance of writs (Art. 102, Constitution) enforcing fundamental rights, compelling performance of public duties, and declaring the invalidity of official acts. The High Court Division has been conferred exclusive power of control and superintendence over all courts and tribunals subordinate to it, including special courts established under special statutes.

The Supreme Court also has rule-making power, subject to the approval of the President. These rules may relate to appointment of personnel (Art. 113, Constitution) and to regulation of

The Supreme Court has rule-making power, subject to the approval of the President. These rules may relate to appointment of personnel and to regulation of practice and procedure of each division of the Supreme Court and of subordinate courts.

¹ A judge must: (i) be a citizen of Bangladesh; and (ii) be an advocate of the Supreme Court for not less than 10 years; or have held judicial office in the territory of Bangladesh for not less than 10 years; or have such other qualifications as may be prescribed by law for appointment as a judge of the Supreme Court.

² The President appoints the Chief Justice independently (Art. 48 [3], Constitution) but relies on the advice of the Prime Minister in appointing judges (Art. 95, Constitution).

³ Removal from office is possible only on the recommendation of the Supreme Judicial Council consisting of the Chief Justice and the next two senior judges.



The Constitution of Bangladesh establishes the judiciary as a separate branch of government. It is composed of a Supreme Court and subordinate courts. The Supreme Court of Bangladesh (shown above) consists of an Appellate Division and a High Court Division, which are separate in their composition and functions.

practice and procedure of each division of the Supreme Court and of subordinate courts. Further, the Supreme Court has the authority to call on all executive and judicial agencies to act in its aid.

Unfortunately, the Government has not been able to give life to these provisions even decades after the framing of the Constitution. Thus, the Supreme Court Appellate Division gave specific directions for its implementation when it had the occasion to interpret the constitutional provisions in *Secretary of Finance v. Masdar Hossain* (20BLD [2000] [AD] 141) (“*Hossain*”). In the form of 12 directions, the Supreme Court provided a road map for implementation.

In *Hossain*, the Supreme Court held that: (i) the judicial service, including the magistrates performing judicial functions, has a constitutional identity of its own which has to be kept as such (Art. 115, Constitution); (ii) the President alone, to the exclusion of every other authority or organ of the state, is competent to make rules for appointment to the judicial service (Art. 115, Constitution); (iii) the constitutional requirement of separate and independent judicial service (Part VI of

the Constitution) is the “very fundamental and basic structure of the [C]onstitution” which can be advanced, but cannot be interfered with even by Parliament; and (iv) Article 115 of the Constitution vests in the President a direct, primary, plenary power to make rules in consultation with the Supreme Court alone.

In terms of organization, the Supreme Court outlined the future steps:

- (i) creation and establishment by the President of a distinct, altogether separate, judicial service including a magistracy exercising judicial functions;
- (ii) establishment either by legislation or by framing rules under Article 115 of the Constitution or by executive order having the force of rules, a Judicial Services Commission composed of members from the senior judiciary and the subordinate courts, for recruitment to the judicial service based on merit, with the objective of obtaining equality between men and women;
- (iii) promulgation of law or rules or executive orders having the force of rules relating to

- posting, promotion, grant of leave, discipline (except suspension and removal), pay, allowances, pension (as a matter of right), and other terms and conditions of service consistent with Articles 116 and 116A of the Constitution;
- (iv) establishment of a separate Judicial Pay Commission as part of the rules to be framed under Article 115 of the Constitution to review the pay, allowances, and other privileges of the judicial service which shall convene at stated intervals to keep the review process continuous;
 - (v) promulgation of laws or rules or executive orders having the force of rules to secure the essential conditions of judicial independence, namely, security of tenure, security of salary and other benefits, and institutional independence from the Parliament and the executive branch; and
 - (vi) securing financial independence.

Given these pronouncements of the Supreme Court, the political, social, and institutional considerations should ideally not stand in the way of separation. Instead, these considerations should be harnessed by all available means to help advance that goal. Admittedly, however, the existing financial and infrastructure considerations do pose a serious problem. The judiciary has, at present, very little control over its budgetary allocations. It gains control over its finances only upon receipt of the approved, often insufficient, budget. Tables 1 and 2 show the budgetary allocation for the entire judiciary and for the district judicial and ancillary institutions.

The figures for 2004–2005 show that approximately \$20 million is spent on the district judiciary annually for development and nondevelopment activities. The sanctioned caseload of civil judges is 380 while that of magistrates is 600 cases.⁴ The total number of civil and criminal cases, however, is 836,483. This means that a judge will have to handle an average of 850 cases, which is twice the normal workload. Obviously, the number of judges will have to be doubled. This requires the recruitment of additional 1,000 judges in the next 5 years or 200 judges every year for the next 5 years. The process will require an additional annual budget of around \$4 million. Further, courthouses are currently short by roughly 20%. With the onset of separation, infrastructure requirements will certainly double. The High Court Division budget will necessarily have to be increased by 20% every year to cope with the con-

sequences of separation. To ensure success of the separation process, the prosecutor service will require a similar investment.

Considering the foregoing resource requirements and the interplay of numerous factors, separation of the judiciary from the executive will have to be implemented in phases. Fortunately for Bangladesh, the Supreme Court's 12 directions provide concrete guidance on how to proceed with the separation process.

The initial phase entails the completion of the needs assessment of the subordinate courts by the High Court Division. This assessment has to be comprehensive and in conformity with the standards of performance and pendency of the courts as set by the High Court Division itself. Currently, the High Court Division prescribes a monthly performance or disposal standard for each class of courts. The same standard is used for determining the normal pendency level of a court, usually 6 months for disposing criminal cases and a year for disposing civil cases. The assessment should also consider the existing

Table 1. Allocation for the Entire Judiciary

Fiscal Year	Budget Allocation	
	Tk	\$
2005–06	102 crore 2 lakh	14,574,285
2004–05	91 crore 92 lakh	13,131,428
2003–04	77 crore 35 lakh	11,050,000

Table 2. Allocation for District Judicial and Ancillary Institutions

Fiscal Year	Budget Allocation	Utilization	% of Utilization
2005–06	Tk56.17 crore (\$8,024,286)	Tk20.00 crore (\$2,857,143)	35.6
2004–05	Tk63.08 crore (\$9,011,429)	Tk55.86 crore (\$7,980,000)	88.5
2003–04	Tk39.07 crore (\$5,581,429)	Tk36.14 crore (\$5,162,857)	92.0
2002–03	Tk35.24 crore (\$50,342,857)	Tk30.39 crore (\$4,351,429)	88.0
2001–02	Tk33.60 crore (\$4,800,000)	Tk21.30 crore (\$3,042,857)	63.0

Tk = taka, \$ = US dollars.

1 crore = Tk10 million; 1 lakh = Tk100,000.

Source: Government of Bangladesh. 2000. Report on Strategy for Legal and Judicial Reform, 14 September.

⁴ Ministry of Law, Justice and Parliamentary Affairs. Statistics as of April–May 2006.

Inasmuch as government goals are influenced by dominant political parties, civil society can exert pressure on political parties and candidates to prioritize full implementation of the separation of the judiciary and the enforcement of the final judgments of the Supreme Court.

capacity of the judiciary at every tier. For the assessment exercise to be truly useful, needs should be quantified in monetary terms vis-à-vis the period required to commence the process of separation. As part of the initial phase, the draft of the rules of service, training, continuing education and promotion, and system of recognition and rewards of the officers of the various grades, should also be prepared. This must be done simultaneously with the needs assessment exercise as the rules will still have to be submitted to the President after court approval.

Reform efforts should commence at the second phase, after the needs assessment has been completed. During this period, the progress of the reform efforts should be closely monitored and the impediments to the goals should be identified. Quarterly administration reports containing declassified material on civil and criminal justice should be published for transparency and accountability.

The third phase would be to sustain the reform efforts through institutional support from the Bar, the Law Commission, academics, and nongovernment organizations.

The fourth phase relates to the inevitable role of politics in any governance-related reform. Inasmuch as government goals are influenced by dominant political parties, civil society can exert pressure on political parties and candidates to prioritize full implementation of the separation of the judiciary and the enforcement of the final judgments of the Supreme Court. Ultimately, it is the political will of the entire Government that would engineer the separation process to its completion.

It must be noted, however, that these phases do not have strict boundaries and some activities could be advanced or delayed depending on the situation and the progress of implementation. What is essential is that the process is done in a realistic and practical manner that takes into consideration relevant factors affecting the process.

Other Mechanisms to Strengthen the Judiciary

During and after the separation process, various mechanisms of strengthening the judiciary could be adopted and put in place. Whereas independence is crucial in strengthening the judiciary, it is insufficient by itself to carry the entire weight of the process. As such, various aspects of the judiciary must also be enhanced.

There are always positive features in any system and it is always beneficial to capitalize on these strengths. In the case of Bangladesh, its unitary form of government, the supremacy of the Supreme Court, its executive magistracy, and its monolingualism are advantages that could contribute to the strengthening of the judiciary.

Unitary Form of Government

A unitary system is advantageous in that it is easier to identify and project national goals, distinguish between issues and non-issues, determine priorities, frame and execute policies, set standards, evaluate performance, and achieve targets.

Supremacy of the Supreme Court

The Supreme Court's authority over other government instrumentalities as enshrined in the Constitution commands utmost loyalty. In addition, the Supreme Court is the final authority in declaring and interpreting the Constitution and the laws. This gives it every power to thwart all efforts to modify or defer the implementation of the separation of the judiciary or any constitutional provision or law aimed at strengthening the judiciary.

Executive Magistracy

In the system of separation under consideration, the office of the district magistrate and the executive magistrates have been kept intact. Historically, the district magistrate is the "crisis manager," the focal point of responsibility for everything that has happened, is happening, and is likely to happen in the district. After separation, however, the district magistrate would be relieved of the duty of overseeing the criminal justice system in the district. Thus, refocusing the district magistrate's responsibilities could improve the law and order situation and accelerate the pace of development activities. This may take time but it is a definite advantage that could be built upon.

Monolingualism

The country has only one language, making it easier to spread legal literacy. The public and the

litigant would be able to understand laws and court decisions readily. The language of the court is a great asset in involving civil society in spreading the rule of law, establishing credibility and confidence in courts, and generating more orderly behavior in society.

No system is expected to be perfect but flaws can always be remedied. In Bangladesh, the two main areas that need attention are unifying the judiciary and improving information gathering.

Unifying the Currently Disjointed Judiciary

For the judiciary to function well, it must be monolithic. It should always consider itself an integrated institution. Any flaw or fault in the subordinate judiciary is as much a flaw or fault of the superior judiciary. It is important to inculcate this mindset in the members of the judiciary so that they can act accordingly.

Mutual respect as well as a sense of institutional responsibility must be practiced at all times. An effective strategy would be to hold annual conferences of judges. This would provide a venue for interaction among judges and a forum for clarification of any issues and controversies in the judiciary. This would also avoid accusations of incompetence, corruption, or court mismanagement among judges.

Improving Information Gathering

There is lack of credible judicial statistics. Surprisingly, not even the country's *Statistical Book* published annually contains these data. The need for credible statistics widely available to every section of the public cannot be overemphasized in this age of advanced technology. Lack of information has reverberating effects. One of the elementary and basic requirements of administration of justice is that justice should not only be done but should also appear to be done. If the newspapers of the country publish figures of case backlog, personnel shortage, and unsatisfactory performance, there should be a forum or means to verify them. Unrebutted negative information may cause despondency and lack of faith in the judiciary.

Conclusion

In sum, strengthening the judiciary of Bangladesh entails a dynamic gamut of tasks and challenges that must be taken head on. There are no shortcuts but strategies can be conceived to facilitate the reform process and overcome obstacles. Needless to say, the judiciary cannot do this alone. The other branches of government and the people in general must all support and cooperate to hasten the accomplishment of this long-cherished goal.

Strengthening the Judiciary in India: The Importance of Independence, Separation, and Reform

Prof. (Dr.) N.R. Madhava Menon

The judiciary has a unique and significant role in the rule of law and participatory democracy. As such, the Constitution provides for independence of judges and separation of the judiciary from the executive branch while giving the judiciary adequate powers to safeguard the basic rights of citizens and to uphold the supremacy of the Constitution. The question often asked is how the scheme of the Constitution was implemented in the course of governance; what has been the role of the judiciary in the maintenance of the constitutional balance of powers; and how far the judiciary could keep its independence and authority while adjudicating constitutional disputes and protecting the rights of citizens. There is continuing concern on the erosion of judicial independence throughout the world. The causes are many and varied, some arising from within the system (corruption, inefficiency, and mismanagement) and some from external sources such as the other branches of government and centers of corporate power. This paper will discuss the importance of separation of the judiciary from the executive and some challenges facing the judiciary in India. The paper will also propose remedial action to restore the strength of the judicial system.

The Unique Role of the Judiciary

The unique status and character of the judicial wing emerges out of its objectives, namely, the maintenance and protection of individual rights. While a society without legislative organs is conceivable, one without a judicial organ is inconceivable. In the absence of the legislature, courts might apply rules derived from other sources, such as custom or their own previous decisions. Not only is the judicial organ said to be a necessity but

also a test of the excellence of a government, “for nothing more nearly touches the welfare and security of the average citizen than the feeling that he can rely on the certain and prompt administration of justice” (Lord Bryce).¹

Judicial tribunals not only decide specific controversies brought before them; they also give declaratory judgments or advisory opinions on what the law requires or what is right under the law. They also perform a variety of miscellaneous functions, which are not all judicial in character. They appoint staff for the judiciary, appoint guardians and trustees, admit wills to probate, and administer the estate of deceased persons. They also issue injunctions to prevent the commission of a wrong and issue writs of various kinds to compel action according to the law. Another extraordinary function inherent or incidental to judicial power is the authority to decide on the constitutionality of laws enacted by the legislature and of actions of administrative authorities. In the famous words of Chief Justice Marshall of the United States Supreme Court (*Marbury vs. Madison*, 1803):

“It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the court must decide on the operation of each. So, if a law be in opposition to the Constitution, the court must determine which of these rules govern the case. This is the very essence of judicial duty. If, then, the courts are to regard the Constitution as superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must

¹ Cited in *P.H. Parmar v. State of Gujarat & Ors.* (2003) 3GLR 2516 at Para 14.

govern the case to which both the Constitution and the law apply.”²

Given these crucial societal functions, the judiciary must possess powers and attributes essential for its efficient performance of these functions. Foremost among these is judicial independence that would ensure free, impartial, and fair exercise of discretion in the administration of justice.

The Concept of Independence

Judicial independence is provided in the Universal Declaration of Human Rights. Article 10 states that, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” This is repeated in Article 14 of the International Covenant on Civil and Political Rights. This emphasizes that it is an essential ingredient of the protection of individual liberty and equality. It involves freedom from direction, control, or interference in the exercise of judicial powers by either the legislative or executive arm of the government. It includes the independence of an individual judge as well as that of the judiciary as a branch of government. Individual independence is being able to decide according to the law (decisional independence); and personal independence is by way of merit-based appointment, guarantee of tenure, and adequate compensation and security. Both types of independence are intended to allow judges to consider the facts and law of each case with an open mind and deliver unbiased judgment. When truly independent, judges are not influenced by personal interests, preferences, or relationships; identity or status of litigants; or external economic, political, or cultural pressures or considerations.

Indeed, judicial independence is the foundation of the rule of law as it manifests superiority of the law and equality before the law. The strength of a judicial system thus depends on its independence. Declared a basic feature of the Indian Constitution unalterable by Parliament, judicial independence was summed up by the Supreme Court of India in *S.P. Gupta vs. Union of India*:³

“...if there is one principle which runs through the entire fabric of the Constitution, it is the Judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and



Judicial independence is the foundation of the rule of law as it manifests superiority of the law and equality before the law. The strength of a judicial system thus depends on its independence. This was declared a basic feature of the Indian Constitution unalterable by Parliament. (Above: the High Court in Calcutta, India)

thereby making the rule of law meaningful and effective. This concept is not limited to independence from executive pressure or influence only, but includes independence from any other pressures and from prejudices acquired or nourished by the class to which the judges belong... Judges must be of stern stuff and tough fibre, unbending before power, economic or political and they must uphold the core principle of rule of law....”

As a means of achieving independence, the judiciary must be constituted as a distinct branch of government, separate from the executive branch. It must be placed above fluctuations of party politics and afforded institutional stability with proper accountability.

The Issue of Separation

Many historical and administrative causes may be advanced for separation of the judiciary from the executive. It is simply the natural process of specialization of functions, a phenomenon that occurs in every branch of human activity. The process is a convenient means of coping with the increasing business of the State. When ideas of constitutional governance and limited government emerged, this process of separation and specialization assumed the status of a theory based on liberty and rights. Montesquieu explained that when the legislative and the execu-

² 1803(1) Cranch 137.

³ AIR 1982 S.C.149.

tive powers are invested in the same person or body of persons, there can be no liberty “because of the danger that the same monarchs or senate should enact tyrannical laws and execute them in a tyrannical manner.”

In its extreme form, the doctrine of separation of powers means that each major function/process of government is to be confined exclusively to a separate institution of government. There must be no overlapping either of functions or of persons. This principle of separation thus came to demonstrate two consequences: (i) that a judge or magistrate who tries a case must not be in any manner connected with or interested in the prosecution, and (ii) that the judge must not be in direct administrative subordination to anyone connected with the prosecution or the defense.

The theory of separation also found support from the modern theory of the rule of law or the superiority of law over kings and executive authorities. As the famous English jurist Dicey declared, in England, every man, whatever be his rank or status, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.⁴ This rule of law theory then places the judiciary not only in a condition of freedom from interference on the part of the executive, but in a positive superiority to it. In states that enjoy rule of law, therefore, judges are the ultimate guardians of individual rights arising under common law, statute law, and constitutional law.

This principle of judicial separation is universally accepted and is now incorporated in the Indian Constitution as a Directive Principle (Article 50) which provides that “the State shall take steps to separate the Judiciary from the Executive in the public services of the State.” According to the Law Commission (14th Report, 1958):

“...the real purpose of separation is to ensure the independent functioning of the judiciary freed of all suspicion of executive influence or control, direct or indirect. It incidentally ensures that officers will de-

vote their time entirely to judicial duties and this fact leads to efficiency in the administration of justice.”

The importance of the freedom of the judiciary from executive control was recognized by the British as far back as 1793. Regulation II of 1793 states that “the Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers.”

Though the first steps to effect this reform in what used to be British India were taken after independence, in several former Indian States, the judiciary had been separated from the executive for a long time. So insistent was the public sentiment that when Article 50 of the present Constitution was being deliberated in the Constituent Assembly, a considerable body of opinion favored fixing a time limit of 3 years in the Article itself for carrying out the separation.

It will be revealing to study the manner in which the scheme of separation was implemented in some of the major states of Madras and Bombay. The 14th Report of the Law Commission records that the separation was effected in Madras (Tamil Nadu and Andhra Pradesh) in 1946 following the report of a committee created by executive orders. Initially, the scheme was introduced in a few districts then extended to other districts yearly. It was thus gradually brought into force in Madras State, including the separated Andhra.

The essential feature of the scheme for the separation of the judiciary from the executive branch was the transfer of purely judicial functions like trial of criminal cases from the collector and subordinate magistrates to a new set of officers who were no longer to be under the control of the collector. Other functions such as police functions (maintenance of law and order) continued to be discharged by the collector and the subordinate revenue officers. Previously, under the Criminal Procedure Code and other relevant statutes, the functions of a magistrate fell into three broad categories, namely: (i) “police” functions, e.g. the handling of unlawful assemblies; (ii) administrative functions, e.g. issuance of licenses for firearms and similar functions; and (iii) essentially judicial functions, e.g. the trial of criminal cases. When separation was effected, the judicial

In states that enjoy rule of law, judges are the ultimate guardians of individual rights arising under common law, statute law, and constitutional law.

⁴ A.V. Dicey. 1914. *Introduction to the Study of the Law of the Constitution*. Oxford: All Souls College. Available at: www.constitution.org/cmt/avd/lawcon.htm.

functions under the third category were transferred from the collector and subordinate magistrates to a new set of officers while the first and second categories of functions remained with the collector and subordinates. They were called executive magistrates and the new officers were called judicial magistrates.

Executive magistrates were not to exercise any judicial functions in the sense that they were not to try any criminal cases. Their powers were restricted to the issuance of emergency orders⁵ and powers to bind persons to keep the peace.⁶ Powers under Sections 108 to 110⁷ and powers of revision under Sections 397 and 399⁸ of the Criminal Procedure Code were given exclusively to judicial magistrates while powers under Section 144 of the Criminal Procedure Code can be exercised by both classes of magistrates. The jurisdiction in disputes regarding immovable property⁹ could be exercised by the executive magistrates. These changes were effected by Government Order No. 3106, Public (Separation) Order dated 9 September 1949, which has been amended from time to time.

In Bombay (Maharashtra and Gujarat), a similar scheme was brought into effect by the Separation of Judicial and Executive Functions Act, 1951. There are two main points of distinction between the Madras and Bombay schemes. The first relates to the head of the judicial magistrates. In Madras, the head of judicial magistrates in a district is the district magistrate (judicial), while in Bombay the head is the sessions judge. The second distinction relates to the exercise of powers. In Madras, the powers under Sections 108 to 110 of the Criminal Procedure Code are exercisable only by judicial magistrates while in Bombay

these powers are left to be exercised by executive magistrates. In both States, judicial magistrates are, like civil judges, under the administrative control of the High Courts. The essence of separation thus lies in the allocation of powers and functions under the Criminal Procedure Code. In other states where separation was introduced, the Madras method of issuing executive instructions has been followed with allocation of powers on the model of Madras or Bombay.

Still, some state governments were not supportive of separation. The Punjab Government felt that given the crime situation, complete separation would weaken the Government's capacity to deal with crimes and law and order situations. It was argued that the local magistrate should have some sort of control over the proceedings in a criminal case until its conclusion in order to exercise control over the law and order and crime situation. In defense of nonseparation, it was also claimed that the judicial magistrates required a very high standard of evidence but meted out penalties lower than what the nature and frequency of the offence deserved. In the view of the Law Commission, however, the executive was only reluctant to part with their power because,

Executive magistrates were not to exercise any judicial functions in the sense that they were not to try any criminal cases. Their powers were restricted to the issuance of emergency orders and powers to bind persons to keep the peace.

⁵ Sections 133 to 144 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).

⁶ Section 107 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) reads as follows:

“(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

⁷ Security for Good Behaviour, Sections 108–110 of the Criminal Procedure Code (CrPC), 1973. Under Section 108 of the CrPC, an Executive Magistrate may require from the person who is disseminating the peace in his jurisdiction to execute a bond with or without sureties for his good behavior; under Section 109 of the CrPC, an Executive Magistrate may require from the person who is concealing his presence in his jurisdiction for committing a cognizable offence to execute a bond with or without sureties for his good behavior; under Section 110 of the CrPC, an Executive Magistrate may require from a person who is a habitual offender in his jurisdiction to execute a bond with or without sureties for his good behavior.

⁸ Under Section 397 of the CrPC, only sessions judge and high court are given revisional powers to examine the correctness, legality, or propriety of any finding, sentence, or order, recorded or passed, and as to the regularity of any proceedings of court of any magistrate, whether executive or judicial.

⁹ Section 145 of the CrPC prescribes the procedure where dispute concerning land or water is likely to cause breach of peace. Executive Magistrates are authorized to issue orders in such situations to summon parties to his court, decide on possession of the subject of the dispute, and forbid disturbance of it until the title is decided by due process of law.

The Law Commission acknowledged certain difficulties arising from separation especially because judicial magistrates failed to appreciate the hardships that investigating officers encountered in procuring evidence. This problem could be remedied, however, by training judicial magistrates in the revenue and police departments.

in fact, separation has not had any adverse impact on the law and order situation in the states where this was effected. Nevertheless, the Law Commission acknowledged certain difficulties arising from separation especially because judicial magistrates failed to appreciate the hardships that investigating officers encountered in procuring evidence. This problem could be remedied, however, by training judicial magistrates in the revenue and police departments.

Another reason for separation was the heavy administrative workload of executive magistrates that caused them to neglect their judicial work. At the same time, the district magistrate had no time to supervise the magisterial work of subordinates. This resulted in inordinately delayed disposal of cases. Separation was therefore meant to facilitate criminal justice by delineating the various functions of the different types of magistrates. The recommendations of the Law Commission (14th Report, 1958) on the issue of separation are instructive and relevant even today. These are summarized below:

- (i) Separation has worked satisfactorily where it has been introduced and its introduction has not led to insurmountable difficulties to the executive in maintaining law and order.
- (ii) Additional expenditure involved is not great. In any case, such additional expenditure is essential for the proper administration of justice.
- (iii) The system of separation should be a real one and not merely one in form.
- (iv) Under the scheme of separation, it would be desirable to appoint a district magistrate (judicial) for the purpose of exercising effective supervision and control over the subordinate magistrates, as the district and sessions judge will not be able to find the time and is not the

suitable person for this supervisory role.

- (v) Legislation by Parliament on the model of the Bombay Separation of Judicial and Executive Functions Act (XXIII of 1951) will be the best strategy to bring uniform separation. Effecting separation through executive orders may be done like in Madras.
- (vi) Finally, these recommendations will have no application to the scheduled and tribal areas which under the Constitution are being administered under special provisions.

Consequences of Separation and Remedial Options

The separation process was not without obstacles. Among these difficulties was the failure of judicial magistrates to appreciate the difficulties encountered by investigating officers and other executive authorities. Thus, they demanded very high standards of proof in weighing evidence presented before them. This resulted in higher acquittals even in cases where conviction was proper. The remedy suggested was training of judicial officers particularly in the revenue and police departments.

Further, judicial magistrates were no longer able to deal effectively with disturbances and difficult law and order situations due to the exclusivity of their functions. The remedy suggested again was the training of judicial magistrates in law and order duties so that their services can be requisitioned in the absence of, or in addition to, available executive magistrates.

In terms of institutional implementation, the costs of separation created a heavy financial burden. However, experience has shown it to be nonexcessive. Possible retrenchment of executive personnel can to some extent absorb the cost to the State.

Nonavailability of personnel adequately trained for judicial work is another problem. The suggested remedy is implementing separation by stages in groups of districts. While this is ongoing, recruitment and training of the required personnel should also be undertaken. Also, there must be a proper supervisory system to avoid losing the gains of independence of the magistracy. This requires special attention as the district and sessions judge may find it difficult to supervise and control the judicial magistrates due to volume of work. This may be addressed by providing the district and sessions judge with the assistance of a district judicial magistrate whose principal functions would be supervision of the subordinate magistrate courts.

Additional Steps for Strengthening the Independence of the Judiciary

Appointment and Selection of Judges

The selection and initial appointment of judges is one of the crucial stages at which the executive branch of the government can exercise its power to fashion a judiciary of its choice. Under the Constitution, the judiciary can assert and take complete control of appointments particularly to the higher judiciary on the basis of the principle of independence of the judiciary. In the *All India Judges Association case* (1993[4] SCC 288), the Supreme Court drew a distinction between judges and civil servants, saying that judges, regardless of their level, represent the State and its authority. The executive or legislative branch therefore cannot dictate the appointment and determination of service conditions of the judiciary without consultation with or consent of the judiciary. To grant such power to the other branches would only provide them the opportunity “to turn and twist the tail of the judiciary,” a consequence that is against the independence of the judiciary.

The Indian Constitution envisions a scheme of consultation by the executive with people, including judges who are most qualified to render proper advice on the matter.¹⁰ Prior to 1993, there was a consensus of opinion that the term “consultation” could not be interpreted to mean “concurrence.” What this meant, in effect, was that the final power in the appointment of Supreme Court judges rested with the executive and the views of the Chief Justice were not regarded as binding on the executive (*S.P. Gupta vs. Union of India*, AIR 1982 SC 149). In 1993, a majority of nine judges of the Supreme Court, while referring to the consultative process envisaged in Article 124(2), declared that the Government does not enjoy primacy or absolute discretion in the matter of appointment of judges to the apex court (second Judges’ case, *S.C. Advocates on Record Association vs. Union of India*, AIR 1994 SC 268). Majority of the Bench were inclined to interpret “consultation” as “concurrence,” opining that concurrence of the Chief Justice of India was needed for any appointment to the Supreme Court, and in the absence of consensus, his or her opinion would hold primacy. The reason for the

“primacy of opinion” of the Chief Justice of India was that his or her opinion was formed collectively after taking into account the views of senior colleagues, signifying plurality in the Chief Justice’s formation of opinion. The objective of this interpretation was to minimize political influence in judicial appointments as well as to minimize individual discretion of the constitutional functionaries involved in the process. The Court went on to hold that even if only two of the judges forming the collegium expressed strong views, for good reasons, that were adverse to the appointment of a particular person, the Chief Justice of India should not press for such appointment. Thus, through this process of judicial interpretation, the power to make recommendations for appointment of judges has been taken away from the central executive and has now been placed on a collegium consisting of the Chief Justice of India and the four most senior puisne judges. This guarantees judicial independence in the matter of appointment of judges and puts an end to executive interference.

To bring in greater transparency and accountability in judicial appointments and transfers, the Government of India has introduced a Constitution (98th Amendment) Bill seeking to constitute the National Judicial Commission. However, there are controversies on the composition of the commission and its functions which remain pending due to the change of government at the center. Accordingly, the collegium system, flawed as it may be, still acts as a bulwark against interventionist forces and hence operates in defense of independence.

Education and Training

Judicial education and training in an organized manner is a recent phenomenon. The First National Judicial Pay Commission (2000) appointed by the Government of India recommended a year-long training for newly recruited judicial officers

The selection and initial appointment of judges is one of the crucial stages at which the executive branch of the government can exercise its power to fashion a judiciary of its choice.

¹⁰ Article 124(2) of the Constitution states: “Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose... Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.”

The quality of justice and the efficiency of the justice system are directly related to the professional competence of the presiding officers of courts and tribunals. In fact, judicial education and training have become the key strategy for judicial reform.

and a system of in-service training for senior judges at periodic intervals to improve competence and efficiency in judicial administration. The introduction of information technology and new management techniques also warranted training of personnel in the judiciary. The quality of justice and the efficiency of the justice system are directly

related to the professional competence of the presiding officers of courts and tribunals. In fact, judicial education and training have become the key strategy for judicial reform.

Conclusion

In conclusion, despite all the problems and practical difficulties, judicial independence and separation have immense advantages over the old executive-judiciary system. A system of checks and balances is inevitable in modern constitutional governance and separation of judiciary is the predominant strategy invoked everywhere. The process of transition may be difficult but the difficulty will be greater with delayed implementation. The measure can be accomplished in stages and through legislation or executive orders. Needless to say, other reforms must buttress the separation process to carry it forward and sustain its positive effects on the justice system.

Strengthening the Judiciary of Pakistan

Justice Shafiur Rahman

Independence and separation of the judiciary from the executive branch in Pakistan were mandated in the 1973 Constitution. However, it was the Criminal Procedure Amendment Ordinance of 2001 that commenced the process of separation. The separation resulted in visible improvement in various aspects of the judicial system, but as it was done with haste, it resulted in problems for the executive, the judiciary, and other stakeholders in the justice system. Thus, the current major issue in strengthening the judiciary of Pakistan is dealing with post-separation challenges that are threatening to reverse the fruits of separation.

Institutional Framework of the Judiciary

Article 175 (1) of the 1973 Constitution provides: “[t]here shall be a Supreme Court of Pakistan, a High Court for each Province and such other courts as may be established by law.” This provision sets out the court system, with the Supreme Court at the apex, a High Court in each province, and then the civil and criminal district courts. The Supreme Court of Pakistan exercises no power of supervision and oversight over the other courts of the country. It is the High Court which exercises superintendence and control over the subordinate courts in each province. The working strength of the Supreme Court and the High Court is required to be fixed by an Act of Parliament and, provisionally, by the President upon the advice of the Prime Minister and the Ministry of Justice and Parliamentary Affairs. So far, the President has issued administrative orders fixing the working strength of the Supreme Court and the High Courts, subject to amendments whenever necessary.

Upon the separation of the judiciary from the executive branch pursuant to Criminal Procedure Amendment Ordinance of 2001 (Ordinance No.

XXXVII), the office of the district magistrate and that of executive magistrates performing judicial functions were abolished completely. Judicial functions were entrusted exclusively to judicial magistrates while executive functions were distributed among the heads of local government units, the local heads of police, and the judicial magistrates. Thus, a district is now headed by district and sessions judges with both civil and criminal jurisdictions. The district judge is assisted by a number of additional district and sessions judges. For civil cases, the district judge is assisted by civil judges of various grades headed by senior civil judge. For criminal cases, the same civil judges are designated as magistrates. These judges also exercise jurisdiction under various special laws such as rent control and family court, to name a few.

As a consequence of the reallocation of judicial and executive functions pursuant to the amendments under the Criminal Procedure Amendment Ordinance of 2001, additional duties were conferred on sessions judges, some of which are not strictly judicial in nature:

- (i) supervision and control over all judicial magistrates;
- (ii) jurisdiction over attachment of properties of absconding accused;
- (iii) release of persons without security and/or on reduced security;
- (iv) cancellation of bond for keeping the peace;
- (v) conducting local inquiries in property disputes involving breach of peace;
- (vi) transfer of cases from magistrates;
- (vii) restoration of abducted females; and
- (viii) acting as chairperson of the District Selection Committee for appointment of independent members of the District Public Safety Commission.

Additional duties of executive nature were also conferred on judicial magistrates, requiring constant and close supervision of sessions judges:

- (i) taking action on breach of peace;
- (ii) taking action against those disseminating seditious material;
- (iii) taking action against vagrants;
- (iv) taking action against habitual offenders;
- (v) taking preventive action in property disputes involving breach of peace; and
- (vi) supervising inquests.

Another significant responsibility, judicial in nature, assigned to the sessions judges in the recent past is powers over *habeas corpus* complaints. Section 491 of Criminal Procedure Code has been amended to devolve powers from High Court to the session judges.

Police Order 2002 (Chief Executive's Order No. 22 of 2002) also provided for the powers and responsibilities of the district and sessions judges:

- (i) The district and sessions judges are to act as *ex officio* chairperson of a three-member Dis-

trict Selection Panel for recommending appointments to District Public Safety Commission and Complaints Authority.

- (ii) On the request of the chairperson of the District Selection Panel, the district and sessions judges are required to conduct the election of the members of the District Public Safety Commission and Complaints Authority.
- (iii) District and sessions judges are required to act *ex officio* in their respective districts as chairperson of a seven-member District Criminal Justice Coordination Committee.

On the other hand, some of the previous duties of magistrates were left neglected and unsupervised:

- (i) ensuring the prompt and timely registration of cognizable cases by the Police (Section 154 of the Criminal Procedure Code);
- (ii) ensuring the timely receipt of the copy of the First Information Report of crime (Section 157 of the Criminal Procedure Code); and
- (iii) ensuring the timely submission of *challan* (final report after investigation) or keeping a close watch on the progress of the investigation (Section 173 of the Criminal Procedure Code).

A national judicial policy-making body composed of Chief Justices of all the High Courts has been set up within the Law and Justice Commission of Pakistan to coordinate and harmonize judicial policy within the court system and ensure its implementation.

Positive Consequences of Separation

Since the separation, the historically neglected district judiciary became the centerpiece of the governance structure. As a basic strategy, reform initiatives began with the commercial courts, then the civil and the criminal courts, in preparation for the overhaul of the entire judiciary. The success of this strategy has motivated political executives to follow suit, benefiting not just the district court but litigants as well.

Establishment of New Institutions

Furthermore, new institutions were established and old ones were strengthened. A national judicial policy-making body composed of Chief Justices of all the High Courts has been set up within the Law and Justice Commission of Pakistan, to coordinate and harmonize judicial policy within the court system and ensure its implementation. The Commission is headed by the Chief Justice of Pakistan and also tasked to perform the following functions: (i) improve the capacity and performance of the administration of justice; (ii) set performance standards for judicial officers and relevant personnel; (iii) improve the terms and conditions of service of judicial officers and court staff; and (iv) publish the annual or periodic



Muhamman Bilal

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reports of the Supreme Court, Federal Sharia Court, High Courts, and courts subordinate to High Courts and administrative courts and tribunals.

To strengthen judicial accountability, a citizen's liaison committee has been set up at the district level while the Supreme Court, the Law Commission, and the High Courts have all started publishing annual reports. The inspection and oversight wing of the High Courts has been further strengthened by laying down rules for the inspection team and training judicial officers as court administrators in preparation for the appointment of a judicial ombudsman and a court administrator.

Legislations Introduced

New progressive laws have been passed and old ones amended to address the needs of the new system. In the federation, the Freedom of Information Act and the Rules thereunder have been enacted to grant the right to seek declassified information from executive departments. Delay or refusal entitles the aggrieved to seek relief from the federal ombudsman. The General Clauses Act has been amended to provide for, among others, regulation of discretionary powers. In addition, other laws and amendments aimed at improving the judicial system are in the pipeline:

- (i) Procedural laws will be amended to separate the trial of civil and criminal cases, with judges exclusively assigned to one or the other, instead of assigning both types of cases to civil judges-cum-judicial magistrates. This will facilitate litigation and encourage specialization with greater and better attention to cases. Similarly, the pre-trial proceedings will be clearly delineated from the trial proceedings and entrusted to different judges.
- (ii) A law on court management, supplemented by rules under Article 202 of the Constitution and Section 122 of the Civil Procedure Code, is under consideration.
- (iii) Sections 35, 35A, and 95 (dealing with actual and special costs) of the Civil Procedure Code will be amended to limit recovery to actual and compensatory costs.
- (iv) Family law and rent cases will be separated from general civil business to simplify proceedings. Special classes of judicial officers who are specialists in these areas may be recruited to perform these functions.
- (v) A bill dealing with domestic arbitration and another bill on foreign awards are awaiting enactment. The United Nations Commission on International Trade Law model has been kept in view in preparing the law.

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- (vi) The High Court (Practice and Procedure) Bill 2005 proposes the establishment of specialized benches in the High Courts, civil, criminal, commercial, and other courts, with the objective of securing efficient, prompt, and inexpensive justice.

Post-separation Problems

Despite the visible good brought about by separation, the process has not been spared from problems. Due to oversight of some factors, complications arose after the initial, albeit sudden, sweep of separation. Unprepared for consequences it failed to anticipate, Pakistan is currently faced with institutional and administrative bottlenecks.

Inadequacy of Judges and Court Staff

There have been various studies on the judiciary but almost none of the studies reviewed the logistical and infrastructural shortages within the judiciary. The 1978 Committee alone examined this issue but it also confined its evaluation to the civil works. Currently, the High Courts and the district courts suffer a substantial shortage, which is likely to increase with the promulgation of new laws separating criminal and civil cases, dividing civil procedure into pre-trial and trial, and providing better monitoring, inspection, and supervision mechanisms of the subordinate courts.

Lack of Adequate Compensation of Judges at Lower Courts

It is fortunate that the compensation and pension benefits in the superior courts are reasonable and free from interference. A retiring Supreme Court justice gets a minimum of 70% of the current prevailing salary of a serving justice. For every year of



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The need for proper training courses is now greater because of the change of system. There should be compulsory pre-service, in-service and advanced courses for judicial officers. The existing training system has not so far been made a part of the system and attendance is purely voluntary and discretionary upon the High Courts.

service rendered, an incremental increase of 5% is given with a maximum of 85% for rendering 3 years service. Other benefits include free medical treatment and reimbursement of monthly expenses including petrol, telephone, electricity, and gas.

Unfortunately, district court judges suffer a different fate. Their emoluments are based on grade pay, which is common to other services of the federation or the province. Efforts to provide a separate pay scale have not succeeded and only a provisional judicial allowance has been given. This matter has to be addressed.

Lack of Experience of Judges in Criminal Trials

Judges have a long tradition of playing the role of an impartial adjudicator in an adversarial system

of litigation. They are trained to be proactive in conducting cases, managing the court, and facilitating litigation. On the other hand, criminal work requires continuing interaction with the police over the proper registration of cases, the progress of investigation, and the rights of the accused in custody. To bridge the gap in training, the chief judicial magistrate should closely and effectively supervise magistrates and police in their administration of the criminal justice system. The other option is to establish a very sound system of training, continuing education, and exposure to best practices all over the world. The third option is to start a system of recognition and reward for outstanding performers.

Inadequate Regular Training Courses

The need for proper training courses is now greater because of the change of system. Currently, training is not compulsory for any class of judges. At the federal level there is a well-established Federal Judicial Academy capable of accommodating and training about 50 trainees at a time. The provinces of Sindh and Balochistan are also establishing regular training institutions of their own. Sindh has a training facility for judges.

These training courses, however, need to be strengthened. There should be compulsory pre-service, in-service, and advanced courses for judicial officers. The existing training system has not so far been made a part of the system and attendance is purely voluntary and discretionary upon the High Courts. Monetary rewards for satisfactory completion of optional courses can be added as an incentive to participate in these training courses.

Inadequate Infrastructure

In terms of infrastructure, although the court-houses of superior courts are dignified and well-maintained, physical working conditions in the districts are deplorable. Secure court houses and residences are much needed. Training facilities are available in the country but can only accommodate 50 persons at a time. While efforts to address these inadequacies are underway, construction of necessary structures must be completed as soon as possible.

Insufficient Budgetary Appropriation

The problem underlying the foregoing problems is the insufficient budgetary allocation for the Supreme Court. The Supreme Court of Pakistan has been consistently receiving a very small percentage of the national budget: 0.01% from 1993 to 2001, 0.02% from 2001 to 2004, and 0.017%

in fiscal year 2004–2005. The Supreme Court of Pakistan received Rs140,736,000 (approximately \$2,345,600) in fiscal year 2004–2005 and Rs109,497,997 (approximately \$1,824,967) in fiscal year 2003–2004.¹ If the separation process is to be completed, sufficient appropriation should be given to the Supreme Court to answer for the expenses entailed by separation.

Demands of the Executive Branch on Judicial Officers

It is injudicious to depute judicial officers to executive posts. There are basic inconsistencies in their functions and situations that make this practice extremely undesirable. Judicial officers have independence and security of tenure while executive officers have limited discretion and no security of tenure. Moreover, for purposes of stability, oversight and implementation of the rule of law should rest on permanent judicial officers rather than temporary or contractual personnel.

Strengthening of All Support and Ancillary Institutions

The criminal justice system requires competent and sufficiently independent investigation and state prosecution agencies. It appears that steps have been taken to separate investigation from other duties of the police and to establish an independent prosecutorial service. The remaining task is to ensure that new institutions and procedures are firmly established to avoid retrogression to previous practices.

Consequential and Progressive Legislative Changes

Since the colonial period, special magistrates have been assigned to various departments such as the forest magistrate (for the forest department), the railway magistrate (for the railway department), the municipal magistrate (for the local govern-

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ment), to name a few. Such courts of magistrates were usually mobile, and therefore seen as being effective. Logistical problems were eliminated and case backlog decreased tremendously. Under the current system, however, civil judges, who are now the magistrates, are hesitant to perform judicial or quasi-judicial duties outside the confines of the court room. The result is an impasse in enforcing local and special laws.

These problems are proving to be formidable, threatening to reverse the separation that has been done half a century ago. Immediate but well-thought out solutions to these problems must be implemented without delay. Otherwise, the Pakistan experience will degenerate into a source of negative lessons instead of being a model worthy of emulation.

Conclusion

The separation of the judiciary from the executive has been accomplished in Pakistan. However, such a radical change is naturally accompanied by teething problems that cannot be ignored. Concerted action is therefore required—the Government to provide the funds, the judiciary to lead, and the people to support—for the process to succeed.

¹ These figures do not include what the Ministry of Law, Justice and Parliamentary Affairs spends on other federal courts and tribunals.

CHAPTER 2



Strengthening the Public Prosecutorial Service

Strengthening the Public Prosecutorial Service in Bangladesh

Justice Shafiur Rahman

Fairness and justice are concepts that remain undefined, unpredictable, and highly relative. What is fair to one may be unjust to another. Thus, the law has to be certain, predictable, uniformly applicable, and properly understood. Law, however, is very dynamic and very much influenced by the tide of times. Consequently, it is not easy to talk of, much less enforce, the rule of law. It is against this volatile backdrop that the prosecutorial service plays a significant role in upholding the rule of law in the criminal justice system.

At the initial stage, the public prosecutor is empowered to decide whether to prosecute a case in court or not. During trial, the public prosecutor controls the direction of the prosecution. In each stage, the prosecutor has specific functions and deals with different law enforcement agencies, namely, the police and the courts. As a major player in the criminal justice system, the prosecution service maintains a relationship with both agencies and even serves as a buffer between them. It is therefore crucial to have an efficient, competent, and credible public prosecutorial service in any criminal justice system. This paper looks into the current state of the public prosecutorial service in Bangladesh and its problems, and makes recommendations to improve the service.

The Current State of the Public Prosecutorial Service

At present, no organized and integrated prosecutorial service exists in Bangladesh. Administratively, the solicitor wing of the Ministry of Law, Justice and Parliamentary Affairs handles the prosecutorial function. The Ministry appoints prosecutors from among practicing lawyers or from the police for a short term, usually for the duration of one case, sometimes until the appointing government is in power.

Lawyers are appointed as public prosecutors, additional public prosecutors, and assistant public prosecutors to prosecute serious offences before the court. They are assigned to a specific territorial jurisdiction and are not transferable. They are paid retainer fees depending on the number and nature of cases they handle. They handle private cases, civil and criminal, provided they have no conflict of interest.

On the other hand, police officers are appointed prosecuting sub-inspectors, prosecuting inspectors, and deputy superintendents of police prosecution to prosecute minor offences before the lower magistrates. They are permanent members of the police service under the Home Department who are allowed to act as prosecutor except in cases investigated by them.

Public prosecutors in Bangladesh have no control over the investigation; such control lies with the magistrates (Sections 157 and 159, Criminal Procedure Code). There is no separate corresponding wing in the executive police. The duties of the public prosecutor commence with the appearance of the accused before the courts. There are three types of duties. The first type refers to duties performed independently, without taking

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Anamul Haque Anam

Based on the latest available data, the public prosecutorial service includes 63 public prosecutors, 40 additional public prosecutors, 88 special prosecutors, and 1,249 assistant public prosecutors. There are 497 courts which require the presence of prosecutors. The case load of each prosecutor is approximately 1,054 cases.

No indicators are available to assess the performance of the public prosecutors on a regular basis.

instructions from another authority. Examples are the duties to conduct the prosecution, present the case, and lead the presentation of evidence. In performing these duties, the prosecutor exercises independent discretion. The second type refers to those duties performed with the permission or under the direction of the court. An example is the power of the prosecutor, with the permission of the court, to withdraw other charges against an accused who has been convicted of one or more charges. The third type refers to those duties performed with the permission or under the direction of the executive government. An example is the filing of appeals against judgments which can only be done upon direction from the executive branch.

Based on the latest available data,¹ the strength of the public prosecutorial service includes 63 public prosecutors, 40 additional public prosecutors, 88 special prosecutors, and 1,249 assistant public prosecutors. There are 497 courts which require presence of prosecutors.² The case load of each prosecutor is approximately 1,054

cases. No indicators are available to assess the performance of the public prosecutors on a regular basis. The only informal measures of their performance are adverse remarks recorded by the court in judgments and the prosecutor's continued political value to the administration in power.

The budgeted amount for the public prosecutorial service for 2005–2006 is reportedly Tk15 *crores* and 88 *lakhs* (approximately \$2,268,571). In the immediately preceding year, 2004–2005, it was Tk15 *crores* and 85 *lakhs* (approximately \$2,264,286) of which Tk15 *crores* (approximately \$2,142,857) was paid as retainer fee to the prosecutorial service and the remainder spent on its management. In 2003–2004, the expenditure was Tk12 *crores* (approximately \$1,714,286) on retainer fee and 75 *lakhs* (approximately \$107,143) on management.³ The retainer fee is actually about one fourth of the prevailing market rate or even less, and is never promptly paid. The approximate average retainer paid to a prosecutor is Tk83,070 (approximately \$1,186) per annum.⁴

Strengthening the Prosecutorial Service: Models

Upon independence, Bangladesh, India, and Pakistan inherited the colonial model of the prosecutorial service which had two distinguish-

¹ Statistics as of April–May 2006, Ministry of Law, Justice and Parliamentary Affairs.

² The number of prosecutors engaged and the number required is not locally available.

³ See footnote no. 1.

⁴ See footnote no. 1.

ing features. First, the service was usually headed by a professional called the legal remembrancer who prosecuted important cases. Second, the district magistrate had great influence in the appointments relating to the district of which he or she was in charge. However, the three jurisdictions eventually developed their respective prosecutorial services differently. India and Pakistan have established separate services while Bangladesh still lacks a permanent cadre of prosecutors under an organized prosecutorial service. In case Bangladesh decides to pursue a permanent cadre of prosecutors, it may look at various models for guidance.

The Indian Model

In one of its reports, the Law Commission of India pointed out the inadequacy of public prosecutors and recommended measures to ensure that there are as many prosecutors as there are criminal courts. In the case of *P. Ramachandra Rao* (2002, 4 SCC 578 pr. 20), the Supreme Court of India had occasion to comment that the absence of, or delay in appointment of, public prosecutors caused trial delay. Accordingly, India established its federal legal services under the executive branch and framed Cadre and Recruitment Rules of the Department of Prosecution and Government Litigation. The rules provide for direct recruitment of assistant public prosecutors (APPs) through a qualifying written examination followed by viva voce voting conducted by the Public Service Commission. An APP is required to have a law degree and 2 or 3 years of practice. All other appointments in the service are by promotion. Promotion as senior APP requires a minimum of 5 years of service as APP. Another 5 years of service as senior APP is required for promotion as public prosecutor. The public prosecutor can be promoted to joint director of prosecution after satisfying 3 years of service as public prosecutor. Another 3 years of service as joint director is required to be eligible for promotion to the post of Director of Prosecution.

The Pakistan Model

Pursuant to the Access to Justice Program funded by the Asian Development Bank, reform in a larger but coordinated sector is being undertaken in Pakistan. A good part of it is the separation of the investigative functions of the police from their other duties. This allows the investigation to become more focused, professional, and effective in contributing to the criminal justice system. After examining various models, a model draft ac-



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ceptable to all four provinces was prepared and presented in their respective provincial assemblies. The objective of the draft Criminal Prosecution Service Law is to establish a Criminal Prosecution Service to ensure prosecutorial independence, effective and efficient prosecution of criminal cases, and better coordination in the criminal justice system. The service is to be headed by a prosecutor general, with additional deputy and assistant prosecutors general as subordinates.

In the districts, there would be district, deputy, and assistant district public prosecutors, and other public prosecutors as the prosecutor general may appoint. Recruitment up to the level of additional prosecutor general would have to be made through the public service commission based on a competitive examination. The police registering the criminal case, the police investigating the case, and the police filing the interim or final report are all placed under the supervision and control of the district public prosecutor. The prosecutor general is required to submit annual reports which are to be laid before the Assembly.

US Model

In the United States, criminal justice is primarily a state subject. The prosecutorial service is completely independent of the police or the executive. Prosecution is conducted by a district attorney assisted by attorneys known as prosecutors. Every county has one district attorney, a lawyer,

elected by the people for 4 years. The district attorney has absolute discretion on whether to prosecute an offender and this decision cannot be contested. The consent of a jury is sought before filing the case in court only when the district attorney is of the opinion that the offender must be prosecuted. Even then, the jury rarely withholds consent.

Selecting the Appropriate Model

As Warren Burger, former chief justice of the US, explained, “[t]he function of the judicial system is to produce justice at the lowest possible cost, the shortest possible time, with the least possible strain on the participants.” Thus, the most suitable model would be one that is: (i) a step forward to achieve this goal; (ii) capable of being harmoniously integrated in the existing system; and (iii) affordable for the existing and foreseeable future resources, financial and human, of the country.

Regardless of which model is adopted, however, the greatest challenge is to get the support of the government to implement it. Political will is crucial because there is usually a strong inclination to simply maintain the status quo. The next huge challenge is sustaining and monitoring the implementation of the model, as well as taking timely remedial action where necessary.

Challenges to Strengthening the Prosecutorial Service of Bangladesh

In addition to the two major challenges mentioned above, which are general in nature, three other challenges are specific to Bangladesh context. First, no suitable model has emerged. As such, an examination of the Pakistan model is recommended, as it may be suitable for adoption and modification. Second, adequate funding for implementing such a program of reform is needed. The amount of funds required will depend on the

model selected. The Pakistan model entails expenses amounting to at least three times more than the present allocation for the prosecutorial service of Bangladesh. Third is the issue of which—between the Law Department and the Home Department—should administer this agency. However, the answer to this issue can be gleaned from an examination of the current functions, training, and experience of the two departments.

The functions of the two departments have been delineated, one being largely judicial and the other primarily executive. The law department is managed by judicial officers who primarily discharge quasi-judicial functions of legal drafting and giving legal opinion. On the other hand, the constitutional separation of the judiciary requires judges to avoid executive responsibility except and only to the extent necessary for managing their own courts and supervising their subordinates. Moreover, judges are not sufficiently prepared to discharge executive duties. While some judges can perform executive functions very well, most judges are not equipped with managerial skills because their training is legal and judicial.

Further, the Law Department has limited experience in coordinating police investigation and prosecution of a case. Its administrative experience is confined to selecting lawyers as government pleaders or as public prosecutors under a retainer fee system. On the other hand, the Home Department has a long experience of administering uniformed services and of protecting their independence. This department has already been exercising supervision over the police prosecutorial service at the lowest tier. It is therefore best suited to address all the reasonable demands of the prosecutorial service on the investigation wing of the police promptly and effectively, if both are under its administrative control.

Conclusion

The basic precondition for reform of the prosecutorial service in Bangladesh would necessarily be the separation of investigation work of the police from its other work, as has been done in Pakistan. Without such a separation, any reform of the prosecutorial service will have limited contribution to the improvement of the administration of criminal justice in the country. To be effective, the reform process must change both the institutional and organizational attributes of the prosecutorial service to make it independent, competent, and efficient.

The constitutional separation of the judiciary requires judges to avoid executive responsibility except and only to the extent necessary for managing their own courts and supervising their subordinates.

Public Prosecution Service in India: An Institution in Need of Reform

Prof. (Dr.) N.R. Madhava Menon

The prosecution agency is that segment of the criminal justice system responsible for prosecuting people who have been charged by the police with a criminal offense. Under the federal scheme of the Indian Constitution, criminal procedure including prosecution system is an item in List III of the Seventh Schedule to the Constitution, under which both the Federal Parliament and the State Assemblies are entitled to legislate. Article 254 provides for resolution of inconsistency, if any, between laws made by Parliament and laws made by legislatures of states of the Republic.

This paper examines the weaknesses identified in the prosecution system and suggests certain strategies for strengthening the institution.

The Prosecution Service and its Role in Criminal Proceedings

The objective of the prosecution stage of the criminal proceeding is to protect the innocent and seek conviction of the guilty—apparently two conflicting objectives. Given this dual purpose and the adversary nature of criminal proceedings, the role of the prosecutor is value-laden with notions of fairness and justice. The prosecutor is neither motivated by any sense of revenge or desire to get a conviction. Rather, the prosecutor is an officer of the court who should be personally indifferent to the outcome of a case. The duty of the prosecutor is to place all the available evidence before the court, irrespective of whether it goes against or is likely to help the accused. In this sense, the impartiality of the public prosecutor (PP) is as vital and significant as the impartiality of the judge.

The investigation and prosecution are two separate and distinct aspects of administration of criminal justice. Formation of an opinion as to

whether a case can be made out to place the accused for trial is the exclusive function of the police. Under Section 173 of the Code of Criminal Procedure (hereinafter called the “Code”), the “police report” (result of investigation under Chapter XII of the Code) is the finding that an investigating officer draws on the basis of materials collected during investigation. Such conclusion can only form the basis of a competent court to take cognizance and to proceed with the case for trial (“police report” is sometimes in popular parlance referred to as a charge sheet). Normally the role of a PP commences after the investigation agency presents the case in the court on culmination of investigation. Of course, it is open to the police to get the best legal opinion, but it is not obligatory for the police to take the opinion of the PP for filing the charge sheet (2000[4] SCC 461).¹ After the Code was promulgated in 1973, the prosecution agency was expected to be completely separated from the police department. The objective of such separation is obviously to ensure that police officers who investigated a case shall have no manner of control or influence over the prosecutors who will prosecute the case. Under the

The duty of the prosecutor is to place all the available evidence before the court, irrespective of whether it goes against or is likely to help the accused. In this sense, the impartiality of the public prosecutor (PP) is as vital and significant as the impartiality of the judge.

¹ SCC here refers to Supreme Court Cases.

scheme of Sections 24 and 25 of the Code, a police prosecutor (of former times) cannot even become eligible to be appointed as assistant public prosecutor (APP)² on regular basis (1995 Supp.[3] SCC 37).

The Organizational Structure of the Prosecution Service

Though varying in details, the existing prosecution machineries in the 29 States of the Indian Union are quite similar in organization and function. They are governed by the same provisions of the Code, except for a few states in the northeast region where the separation of the executive from the judiciary is still to be completed. The states in the tribal areas of the North-East region have their customary laws protected under the Constitution

until such time that the Parliamentary enactments are extended to such tribal areas. To understand the functioning of the prosecution system, it is necessary to examine the status and structure of the existing system in representative States in the country.

The Prosecution Service of the State of Haryana

Until 1973, all superintendents, assistant and deputy superintendents of police in the State of Haryana were deemed ex-officio PPs (Punjab Police, Rule 27.4) and selected prosecuting inspectors and prosecuting sub-inspectors were also appointed as PPs. The prosecuting agency consisted of a number of gazetted officers, upper and lower subordinates as sanctioned by the Government and the Inspector General of Police (Punjab Police, Rule 27.14). Rule 12.3 of Punjab Police Rules permitted direct recruitment of legal practitioners, not more than 30 years old, as prosecuting sub-inspectors. The Police Rules contained detailed provisions with regard to duties and functions of the prosecuting agency and prosecutors. It consisted mainly of conducting the case in the criminal courts, deciding on appeals in case of acquittals, advising and supervising investigation,

The Law Commission of India (1958) recommended the constitution of a separate department of prosecution under the director of public prosecution, who shall have control over all types of prosecutors in the State.



It is recommended that the district prosecution agency handle all criminal prosecutions in the district. Personnel constituting this agency should be full-time employees and recruited on merit by the Public Service Commission. The assistant public prosecutors who appear before the courts of magistrates should be given intensive training to develop their professional skills.

² APP here refers to Assistant Public Prosecutor unless otherwise indicated.

and preparing the charge sheet upon submission of the police report. Under this scheme, investigators and prosecutors for magisterial courts operated under the unified command of the superintendent of police in the district, eliminating any problem in coordination between the investigating officer and the prosecutor.

Prior to 1 April 1974 (i.e., before the adoption of the Code of Criminal Procedure [Amendment] Act of 1973), the State of Haryana followed the Punjab Police Rules under which the prosecution agency had two wings. The first was in the magisterial courts managed by prosecuting inspectors and prosecuting sub-inspectors. These police officers in turn were under the administrative control of the superintendent of police of the district and the inspector general of police at the state level. The second wing was under the control of the legal remembrancer³ and consisted of district attorneys and assistant district attorneys selected from among senior practitioners conducting prosecution in the court of session.

The Law Commission of India (1958) recommended the constitution of a separate department of prosecution under the director of public prosecution, who shall have control over all types of prosecutors in the State. Further to this, the Code sought to separate the prosecution service from the police and to create a cadre of APPs, PPs, and special public prosecutors. Section 24 (4) provides that the district magistrate shall, in consultation with the sessions judge, prepare a panel of names, who are, in their opinion, fit to be appointed PPs or additional public prosecutors for the district. Similarly, the Central/State Government, after consultation with the High Court, appointed a PP and one or more additional public prosecutors for conducting any prosecution, appeal, or other proceeding on behalf of the Central/State Government. An advocate with at least 7 years of practice is eligible for appointment as PP. Section 25 of the Criminal Procedure Code provided for APPs to conduct cases in the courts of magistrates. While only an advocate with at least 7 years of practice can be appointed PP, there is no such stipulation for appointment of an APP. In exceptional cases, a police officer may also function as an APP but no police officer can be appointed as PP. As no qualifications have been laid down for appointment to APP, technically speaking an APP need not even be a law graduate. Prosecution by private individuals is also possible under the Code (Section 301 [1]) though such pleaders are to act

Table 1. Directorate of Prosecution of the State of Haryana

Position	Number of Staff	Compensation
Director of Prosecution	1	Rs.15,100–18,300
Joint Directors	5	Rs.13,500–17,250
District Attorney	50 (20 in courts and 30 in other departments)	Rs.10,000–15,000 + special pay
Deputy District Attorney	131	Rs.8,000–13,500
Assistant District Attorney	344	Rs.6,500–10,500 + special pay

Source: Syndicate Paper of National Police Academy, Hyderabad.

The salary offered to public prosecutors is comparable to that offered to judicial officers (civil judge junior division) when they are inducted into the State judicial service.

under the direction of the PP or APP, as the case may be.

Pursuant to the 1973 amendment to the Code of Criminal Procedure, the State of Haryana set up the Directorate of Prosecution under the Department of Justice and all prosecutors were brought under the Directorate's control. Thus, the Directorate brought about the unification of the two wings of prosecution and rationalized the cadres of PPs and APPs. Besides conducting prosecution in the courts, the Directorate renders legal advice to various government departments. At the headquarters, the Director of Prosecution is assisted by a number of law officers including two joint directors and several administrative personnel.

The district prosecution machinery in Haryana now consists of the assistant district attorneys/APPs and the district attorneys/deputy district attorneys. Assistant district attorney/APPs conduct cases in the courts of judicial as well as executive magistrates while district attorneys/deputy district attorneys conduct cases before sessions judges and additional sessions judges. The district attorneys guide, supervise, and control the deputy attorneys and assistant attorneys posted in their respective districts. For important cases, senior practitioners from the Bar may be engaged, with the sanction of the State Government, as special pros-

³ An officer of the rank of a Secretary to Government to advise on legal matters.

ecutors. The key auxiliary staff such as the “Naib Court” and “Malkhana” staff are provided by the police department. The Directorate, in turn, sends some legal professionals on temporary deputation to the police department to give legal advice and handle legal work. With the experience gained in the legal department of police, these officers on re-deployment in the Directorate prove to be more effective prosecutors. The Directorate also sends law instructors to the Haryana Police Academy to train police personnel.

The Director of Prosecution used to come from the police until the High Court invalidated the appointment of police officers as Director of Prosecution and directed the State to fill the post only by appointing a senior officer belonging to the prosecution agency, having sufficient experience of actual working as a PP. The Supreme Court concurred with the opinion of the High Court quoting an earlier judgment (1995 Supp[3] SCC 37). As regards compensation, the salary structure of government employees is not uniform throughout India. The salary offered to PPs is comparable to that offered to judicial officers (civil judge junior division) when they are inducted into the State judicial service.

The Prosecution Service of the State of Andhra Pradesh

To get a complete picture of the prosecutorial service in India, one might look into the prosecution scenario in a southern State as well. The State of Andhra Pradesh had a similar prosecution machinery like the one in Haryana before 1974. The Directorate of Prosecution, created on May 1986, serves under the Law Department and performs the following functions:

- (i) acts as legal advisor to the Director General of Police and Inspector General of Police;
- (ii) tenders advice to other departments like Excise, Commercial Taxes, etc.;
- (iii) supervises the work and exercises control over all the PPs in the State except the PP of the High Court;
- (iv) advises the Government where necessary with regard to filing of appeals in criminal cases; and

- (v) scrutinizes charge sheets in cases where innocent persons are believed to have falsely been implicated and renders advice to the concerned PPs.

Nearly 400 officers in different ranks form the prosecuting machinery in the State. The prosecuting agency consists of seven categories of ranks: (i) Director of Prosecution; (ii) Additional Director of Prosecution; (iii) PPs/Joint Directors; (iv) Additional Public Prosecutor-Grade I/Deputy Director; (v) Additional Public Prosecutor-Grade II; (vi) Senior APP; and (vii) APP.

The duties of the APPs include:

- (i) prosecuting cases filed not only by the police but also by other departments such as Excise, Commercial Taxes, Forest, Food and Drug Administration, etc.;
- (ii) providing opinion when sought by the police or other departments on matters pending before the court or are under investigation;
- (iii) prosecuting criminal cases pending before collectors/assistant collectors;
- (iv) ensuring that the charge sheet is legally sound and rendering advice on whether more information or further probe is necessary on any matter;
- (v) ensuring that the witnesses attend the court and non-bailable warrants are executed in time by approaching the special prosecutor if the SHO is not prompt in the assignment;
- (vi) expediting resolution of pending cases in consultation with SHO and other officials;
- (vii) maintaining cordial relations with the police, the courts, department officials, and members of the Bar;
- (viii) assisting the court in a fair and impartial manner by giving considered views;
- (ix) submitting periodic statements of work, attending meetings held by the directorate for review of work, furnishing required information, and appraising problems encountered; and
- (x) rendering advice to officials to determine whether a case is fit for appeal, giving detailed reasons.

It is interesting to note some of the deficiencies of the prosecution machinery in Andhra Pradesh:

- (i) 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.
- (ii) The library facilities available to prosecutors are inadequate.

The amendment to the Criminal Procedure Code in 1973 changed the situation and weakened the effectiveness of the system of coordination between the police and the prosecution.

- (iii) There is no proper accommodation or support service in the court complex.
- (iv) Lack of separate courts for criminal cases leads to prosecutors remaining idle when the courts conduct civil cases. There is a need for more exclusive criminal courts.
- (v) As PPs cannot be involved in advising investigation, there is a need to appoint legal advisors to guide special prosecutors in the investigation of serious criminal cases.
- (vi) Service of summons on witnesses by police personnel leads to considerable delay.
- (vii) There is no training given to the prosecutors.

What Ails the Prosecution?

Given the current organizational setup of the prosecution and its sensitive dynamic with the police, the prosecution machinery suffers from multiple disabilities, some systemic and some incidental. The Committee on Reforms of Criminal Justice System appointed by the Government of India in its report (March 2003) identified, *inter alia*, some weaknesses in the prosecution machinery and its functioning.

Insufficient Coordination between the Prosecutor and the Investigating Officer

Prior to the Criminal Procedure Code (Amendment) Act, 1973, prosecutors appearing in the courts of magistrates functioned under the control of the police department. Prosecutors used to scrutinize police papers and advise the police on legal issues before filing them in court. The prosecutor used to keep a close watch on the proceedings in the case, inform the jurisdictional police to bring the witnesses on dates of trial, refresh the memory of witnesses where necessary with reference to their police statements and examine them lengthily. As a result of close monitoring and careful preparation, very few witnesses would dare turn hostile. In case they did, the prosecutor expertly exposed them through effective cross-examination.

The amendment to the Criminal Procedure Code in 1973 changed the situation and weakened the effectiveness of the system of coordination between the police and the prosecution. The 14th Report of the Law Commission observed that it was not possible for PPs to exhibit that degree of detachment necessary for fair prosecution if they were part of the police organization. Consequently the prosecution wing was separated from the police department and placed under a Direc-

torate of Prosecution (Sections 24 and 25, CrPC). The Supreme Court also reiterated this position and directed the States to place the prosecution wing administratively and functionally under the direct control of the State Government (AIR 1995 SC 1628). Thus, the police and the prosecution were made totally independent of each other. Whereas there used to be unity of control and cooperation between them in prosecuting cases, with separation, this cooperation disappeared substantially and accountability got diluted. While in some states the Directorate of Prosecution functions under the administrative control of the Home Ministry, in others it is under the Law Department. The decision was left to the discretion of the Council of Ministers of the State Government. Similarly, while in some states the Director of Prosecution is an officer of the higher judicial service (district and sessions judge), in others it is a police officer of the rank of Inspector General or Additional Director General. The impartiality of the PPs is largely dependent upon who controls the agency.

Most police officers as well as some administrators and judges believe that the lack of coordination caused by the separation has resulted in falling conviction rate, falling disposal rate, poorly investigated cases being filed, indifferent management of trial proceedings including bail, and lack of effective review particularly at the district level. There is no doubt that the police-prosecution interface is in need of immediate remedial action, but giving the prosecution back to the police is neither desirable nor practical.

Inadequate Professional Competence and Commitment

The professional competence and commitment of PPs and APPs is another factor contributing to the weakness of the system. PPs and APPs are appointed under the provisions of Sections 24 and 25 of the Criminal Procedure Code which envisages a regular cadre of prosecuting officers in every State. Unfortunately, such a cadre does not exist in many States. Since no specific guidelines for appointment of APPs are set in Section 25 of the Criminal Procedure Code, it has become a matter of political patronage rather than merit.

There is no attempt to professionalize the prosecution service systematically. The selection is neither merit-based nor competitive. Remuneration and conditions of service are not attractive to the talented members of the profession. There is

⁴ The deputy commissioner simultaneously acts as the district and sessions judge.

no system of education and training for prosecutors and assistant prosecutors. Because of this, the morale of the service is very low and prosecutors become easy victims of temptation to bribery and corruption.

Strategies to Strengthen the Prosecution System

Elements of Good Governance

Good governance in an organization, including the prosecution agency, depends primarily on three essential elements working in perfect coordination in pursuit of common objectives.

First, norms and standards, as well as duties and functions, should be carefully laid out for governing the conduct and management of the agency. This is the function of the substantive and procedural law on the subject. In seeking strategies for reform, one should therefore analyze the existing law and the principles sustaining it and find out whether the law itself is the problem rather than its solution.

The second element in efficient functioning of an organization is the set of institutions envisaged under the law and the structures and procedures provided to manage them. In the present instance, it is the Directorate of Prosecution and the offices associated with it and their management that require scrutiny.

The third and most important element in efficient and effective implementation is the set of personnel who will manage the institutions according to the laws. Who are they and what are their qualifications, competence, and motivation? How are they selected and what are their service conditions? What training should they receive and how is their work monitored and supervised? What are the accountability mechanisms which regulate their behavior? These and related aspects are so critical that even if the laws are inadequate and the institutions are improper, the system can still work if the personnel are competent and committed.

An improved prosecution system would mean better quality of work and increased productivity in terms of case disposal. It would further mean a higher degree of fairness and impartiality in decision-making, upholding the rule of

law in all circumstances, untouched by external or internal influences. Finally, it means better accountability in the management of prosecution on behalf of the State in order to give greater security to citizens by guaranteeing freedom from crime. If this is what is meant by strengthening the prosecution machinery, the strategy lies largely in selecting the right personnel, providing them the best training, and giving the leadership and motivation through correct policies and service conditions.

Strategies for Strengthening Personnel

Under Section 26 (6) of the Criminal Procedure Code, if a regular cadre of prosecuting officers exists in the State, the appointment of PPs and APPs can be made from persons constituting that cadre. However, where the State Government believes there is no suitable person available in such a cadre, the Government may appoint someone as a PP or APP from the panel of names recommended by the district magistrate (in consultation with the district judge).

To build a cadre of prosecutors, open and competitive selection of young advocates is required. Option may be given to candidates to choose either service (judicial or prosecution) on the basis of their ranks. This will raise the status of the prosecutorial service and attract more competent people to the post of APPs. All prosecutors should be “gazetted officers” who shall not be allowed to engage in private practice. Eligibility to take the prosecutor’s selection test should be a degree in law, preferably with some years of practice in criminal courts. Opportunities for promotion to higher positions in the prosecution service/judiciary should be available to cadre officers. Therefore, Sections 24 and 25 of the Criminal Procedure Code need to be amended accordingly. APPs on selection must be given intensive training at the judicial academies/police academies on both theory and practice to improve their professional skills. There should also be periodical in-service training to upgrade their professional skills continuously.

The Need for a Unified Prosecution Agency

If the prosecution at the district level is to function efficiently and impartially, it is not only es-

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essential to have a proper system of selection and training but also a closer supervision and monitoring mechanism particularly at the junior levels. This would require a unified integrated structure which may be functionally separate in terms of the tasks of investigation and prosecution. While the prosecutor should not be dependent on the police, he or she should be able to seek closer cooperation with the investigating officer. The investigating officer's intimate knowledge of facts can certainly help the prosecutor in countering the defense. At the same time, the investigator will gain immensely from the expert legal knowledge of the prosecutor. Since the functions are integral and complementary to one another and the personnel employed in the two agencies cannot meaningfully work in isolation, a total divorce is undesirable. Some degree of unification of control is necessary for effectiveness in prosecution. To achieve this mutual cooperation without subordination of one to the other and without impinging upon the independence of either, an arrangement should be worked out to have a common center of control and accountability.

To sum up, the unified structure contemplated here involves an effective prosecution organizationally separate from the police but functionally complementary to it. To achieve this, the Committee on Criminal Justice Reforms (2003) recommended that a senior police officer with the requisite qualification of the rank of Director General may be appointed as the Director of Prosecution in the State in consultation with the Advocate General. This should become a cadre post. He or she should be able to bring about proper coordination without affecting the independence of the prosecutors. The Criminal Justice Reforms Committee also recommended that the Director function under the guidance of the Advocate General of the State. The duties of the Director of Prosecution, *inter alia*, shall be to facilitate effective coordination among the investigating and prosecuting officers, and review the working of the PPs, additional public prosecutors and APPs, and investigators.

Re-organized District Prosecution Agency

The district prosecution agency should handle all criminal prosecutions in the district. Personnel constituting this agency should be full-time employees and recruited on merit by the Public Service Commission. The APPs who appear before the courts of magistrates should be given intensive training to develop their professional

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skills. Section 24 (6) contemplates a cadre of prosecuting officers in the State. The system of preparing panels by the district magistrate in consultation with the district judge is a poor and inadequate substitute to a cadre-based system. When any cadre is constituted, opportunities for promotion to some higher positions should be provided to give proper incentive.

At the State level will be the Directorate of Prosecution constituted under Section 25A of the Code of Criminal Procedure to whom the District Prosecution Agency will be subordinate. The Committee on Criminal Justice Reforms was also of the view that the Director may call for reports in any case which ends in acquittal, from the prosecutor who conducted the case and the Superintendent of Police of the district to review the work of the prosecutor and of the investigation. This would bring greater accountability to the system.

The recommendations of the Committee regarding the district prosecution agency may be summed up as follows:

- (i) All appointments to APPs shall be through competitive examination held by the Public Service Commission.
- (ii) Half of the vacancies in the posts of PPs and APPs at the district level in each State shall be filled up by selection and promotion on seniority-cum-merit basis. The remaining half shall be filled by selection from a panel prepared in consultation with district magistrates and district judges.
- (iii) No person appointed APP or promoted to PP shall be posted in the home district to which he or she belongs, or where he or she was practicing.
- (iv) PPs appointed directly from the Bar shall hold office for a period of 3 years. However, the State may appoint as special public prosecu-

tor any member of the Bar for any class of cases for a specified period.

- (v) In appointing PPs and APPs to various offices, sufficient representation shall be given to women.
- (vi) Intensive, continuous training is to be given to all APPs.
- (vii) Promotional avenues should be given to prosecutors in institutions of the police and judiciary.
- (viii) The Director of Prosecution must ensure accountability by calling reports on all acquittal cases from both the prosecutor and the Superintendent of Police.
- (ix) All prosecutors should work in close cooperation with the police department and render advice and assistance from time to time for efficient performance of their respective duties.
- (x) Provision may be made for posting PPs and senior APPs at the offices of the police commissioner and district superintendent of police for rendering legal advice.
- (xi) The Commissioner of Police and the special prosecutor may be empowered to hold monthly review meetings of PPs and APPs for ensuring proper coordination and efficient functioning of the prosecution system.

Enlisting Cooperation of Witnesses

It is unfortunate that witnesses who constitute an important element of the administration of justice are usually either indifferent, afraid of or so influenced by criminals that they either turn hostile or do not come forward with the truth. Inordinate delay in trials adds to the problem. During interrogation, the witness is bound to answer all

the questions of the police, but he or she is not bound to answer them truthfully. Despite being criminalized, perjury is not taken seriously because the rules provide that no court shall take cognizance of the offense of perjury except on the complaint in writing of that court or of the court to which that court is subordinate. Before such a complaint can be made, a preliminary inquiry must be conducted. Although the Indian Parliament has introduced amendments to allow the court to try such cases summarily, increase the punishment for perjury, and administer the oath and caution witnesses to speak the truth at the pain of penal sanctions, witnesses can still take the plea that the statement recorded is not the same as he or she gave. Thus, the inspection officer is never sure if witness related the true facts of the case. This situation tends to weaken the prosecution. Furthermore, an influential accused can easily win over witnesses during the period between their examination by the police and their actual appearance in court.

On the other hand, by giving evidence relating to the commission of the offense, a witness performs a duty of assisting the court to discover the truth. Witnesses have no private stake in the decision of the court when they are neither the accused nor the victim. They perform an important public duty and devote their time to assist the court. They might incur the displeasure of the persons against whom they give evidence. They submit themselves to cross-examination and cannot refuse to answer questions. They take all this trouble and risk not for any personal benefit but to advance the cause of justice. Therefore, witnesses should be treated with respect and protected. Unfortunately, what is happening is just the reverse. Witnesses are not even adequately compensated for travel and other incidental expenses. Worse, their safety and that of their families' are not secured. The court should be made duty-bound to give necessary protection to witnesses.

Recognition of Victim's Rights

Of all the parties in a criminal proceeding, it is the victim who has the greatest interest in the truth and the punishment of the guilty. However, under existing criminal law and procedure, only the prosecutor appointed by the State is considered the proper authority to plead on behalf of the victim. At best, a private counsel is given a limited role to assist the prosecutor with the permission of the court and may also submit written arguments after the closure of evidence in the trial.

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Victims have a right to testify as prosecution witness. However, victims often fall prey to threats and harassment by criminals, dissuading them from testifying freely and truthfully. Absence of a victim protection law thus tends to weaken the prosecution system. The Committee on Criminal Justice Reforms has recommended changes in the law recognizing rights of victims in the conduct of criminal trials to accord them their rightful place in proceedings pertaining to their injury and ensure that the prosecution does not fail to perform its role due to neglect, incompetence, and corruption. The recommendations, *inter alia*, include:

- (i) The victim—and a legal representative, if the victim is deceased—shall have the right to be impleaded as a party in every criminal proceeding where the offense is punishable with 7 years imprisonment or more;
- (ii) In select cases notified by the appropriate government, an approved voluntary organization shall also have the right to intervene in court proceedings with the permission of the court;
- (iii) The victim has a right to be represented by an advocate of his or her choice, provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer;
- (iv) The victim's right to participate in criminal trial shall, *inter alia*, include the right to: (a) produce oral or documentary evidence with leave of the court, and/or to seek directions for production of such evidence; (b) ask the witnesses questions or suggest to the court questions which may be put to witnesses; (c) know the status of investigation and move the court to issue directions for further investigation on certain matters; (d) be heard in respect of the grant or cancellation of bail; (e) be heard whenever the prosecution seeks to withdraw and to offer to continue the prosecution; (f) advance arguments after the prosecutor has submitted arguments; and (g) participate in negotiations leading to settlement of compoundable offenses.
- (v) The victim shall have the right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offense or imposing inadequate sentence.

Lessening the Burden of Proof

Under the adversarial system of criminal justice, the accused is presumed to be innocent and the

burden is on the prosecution to prove guilt beyond reasonable doubt. The accused also enjoys the right to silence and cannot be compelled to reply to questions. The judge under the system acts like an umpire letting the parties advocate their respective positions. The parties effectively determine the scope of the dispute and the evidence to be presented to the court. To appear neutral, the judge seldom takes any initiative to discover the truth. The system is heavily loaded in favor of the accused and can sometimes be insensitive to the legitimate rights of the victim.

Unless the system operates fairly for both sides, it is unlikely to serve the objective of punishing the guilty. The weaknesses of the prosecution, technicalities of procedure, and sheer manipulation of the rules of evidence can result in the acquittal of a guilty accused. The Committee on Reforms in the Criminal Justice System (2003) revisited the standard of proof required in criminal proceedings, opining that the burden of proof has to be shared in appropriate circumstances. As such, the committee made several recommendations for the reform of the law of evidence and procedure in order to be fair to the prosecution under the adversarial proceeding and to enable the judge to take an active role in discovering the truth. First, the committee desired to redefine the standard of proof in criminal cases which ought to be higher than "preponderance of probabilities" but lower than "proof beyond reasonable doubt." What is required is "clear and convincing" proof to convince the judge. Defining it in terms of "doubt" and "reasonableness" is inviting confusion, whereas leaving it to the conviction of the judge is in tune with the existing provisions of evidence law the world over. Thus, the standard of proof now is "the court being convinced that it is true" instead of "proof beyond reasonable doubt."

The committee also recommended the active involvement of the judge in the search for truth irrespective of the prosecution's failure to

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perform its assigned duties. Thus, the judge can now give directions to the investigating officers and prosecution agencies in the collection and submission of evidence. Section 311 of the Criminal Procedure Code was sought to be amended to let any court at any stage summon any person as a witness and reexamine any person already examined as it appears necessary for discovering the truth in the case. Section 482 was sought to be revised to clarify that every court shall have inherent power to make such orders as may be necessary to discover the truth or to prevent abuse of the process of the court or otherwise to secure the ends of justice.

Conclusion

The failure of prosecution is not always of its own making. While it is important to select prosecutors properly, give them adequate training, and constitute an independent directorate for professionalizing the system, it is equally necessary to study the systemic and structural weaknesses in the law and criminal law practice. After all, effective investigation and successful prosecution are the basic guarantees that the State has promised to victims of crime. Strengthening the system consistent with the rights of the accused is a condition *sine qua non* for fair and impartial justice.

Strengthening the Public Prosecutorial Service in Pakistan

Justice Shafiur Rahman

In Pakistan, public prosecution is a provincial subject. Thus, matters pertaining to administration and financial control of the prosecution service are within the purview of the provincial government. On the other hand, matters pertaining to rules of procedure and duties of prosecutors at criminal trials are governed by the Criminal Procedure Code of 1898.

The prosecutorial service had two kinds of prosecutors. The first category included prosecutors appointed by the Government. These were public prosecutors for the district, for special cases, and public prosecutors *ex officio*. The other category included public prosecutors appointed by the district magistrate. In the district, there were four types of prosecutors: (i) district public prosecutor, (ii) deputy public prosecutor, (iii) deputy superintendent of police (legal), and (iv) inspector of police (legal). Due to having two categories of prosecutors, administrative control over and funding of the prosecutorial service were fragmented. While the Home Department had sole authority to confer powers on all categories of prosecutors, administrative control belonged to different departments. Police prosecutors were under the administrative control of the Home Department, whereas all other prosecutors were under the Solicitor wing of the Law Department. Consequently, funding for the prosecutorial service also came from these two departments. The conflict did not end here. Having police prosecutors also gave rise to other issues.

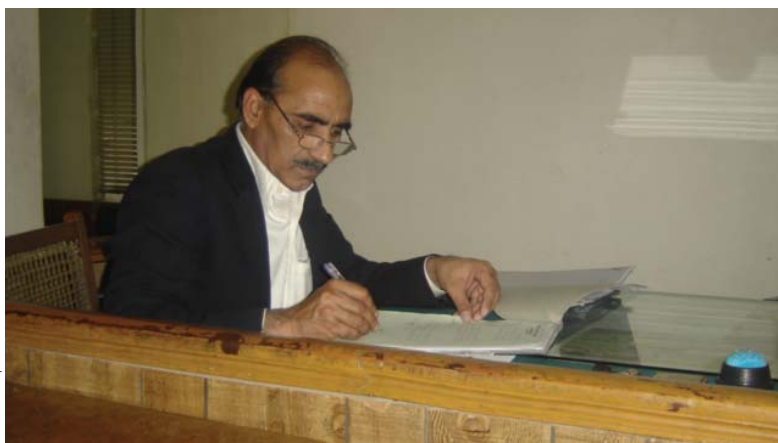
The main function of the police is to prevent the commission of crime by (i) collecting relevant information, (ii) providing security to localities, (iii) registering crimes, (iv) preserving evidence,

and (v) identifying and protecting the witnesses of crime. On the other hand, investigation of a crime should be performed by a more professional and specialized agency. In the case of police prosecutors, delineation of police and prosecutorial duties are blurred and police prosecutors are burdened with a daunting combination of functions. This situation led to a prosecutorial service beset with institutional, organizational, human resource, and budgetary problems which hampered its efficiency, competence, and professionalism.

The gravity of the prosecutorial service problems in Pakistan can be perceived from the situation in Punjab, where greater statistical data are available. There are 45 district attorneys, 34 sessions courts, 175 deputy district attorneys, 145 assistant attorneys (doing only civil work as government pleader), 251 additional sessions judges, 46 deputy superintendents of police (legal), and 529 inspectors for 688 magistrate courts.¹ Thus, there are 575 police prosecutors under the administrative control of the Home Department and only 336 non-police prosecutors under the administrative control of the Solicitor wing of the Law Department. Of the total number of district attorneys, 75% are recruited from deputy district attorneys and 25% from deputy superintendents of police. Among the deputy district attorneys, 75% are recruited from assistant district attorneys and 25% by initial recruitment. The posts of deputy superintendent-legal are gained only by promotion, with no additional qualifications required, while the post of legal inspector is occupied only by initial recruitment. A legal inspector must have a law degree.

No standard is provided for regular assess-

¹ High-Powered Committee Report (1978); Report of Supreme Court of Pakistan (2000); 2001 Statistics of the Ministry of Justice; and Annual Report of High Court (2005).



At present, there is no organized and integrated prosecutorial service in Bangladesh. The solicitor wing of the Ministry of Law, Justice and Parliamentary Affairs handles the prosecutorial function. The Ministry appoints prosecutors from among practicing lawyers or from the police for a short term, usually for the duration of one case.

ment of the performance of the public prosecutors. The closest form of assessment is an adverse remark in court judgments or opinions of the district magistrate. The statistics of Faisalabad (previously known as Layalpur), a district in Punjab, shows that, in 2002, 17,588 criminal cases were registered, of which (i) 15,960 were filed in court, (ii) 588 cancelled, (iii) 1,040 remained untraced, (iv) 4,073 resulted in conviction, and (v) 1,083 ended in acquittal. There are no available data on the average time required to take a case to the court for trial after its registration. Such data would reflect the quality of investigation.

In 2003, pursuant to the Access to Justice Reform Project, the provinces decided, after examining all the available models, to have an independent prosecution service operating under a statute functioning independently subject to policies of transparency and accountability. A draft law, the Criminal Prosecution Service (Constitution, Functions and Powers) Act, was proposed

with the objective of establishing a criminal prosecution service to ensure prosecutorial independence, effective and efficient prosecution of criminal cases, and better coordination in the criminal justice system. The draft law, which would be more appropriately referred to as a model law, provides for (i) independence of the prosecutorial service; (ii) exclusive exercise of investigative functions by a separate wing of the police; (iii) effective mechanism of supervision, monitoring, and evaluation; and (iv) transparency in recruitment and accountability to civil society.

As an independent statutory body, the prosecutorial service will not be subject to the control or direction of the executive department in which it is under. The department's role will be confined to that of a coordinator, facilitator, and resource provider. By placing the entire prosecutorial service under the Home Department, the draft law resolves the issue of duality of administrative control. Separation of investigative functions of the police would improve efficiency, competence, and professionalism. In addition, the draft law provides for effective consultation and supervision within the proposed prosecutorial service and by an independent outside agency called the Inspectorate of the Prosecution Service.² The recruitment to the service is to be done through an open competitive examination conducted by the Public Service Commission, a credible recruitment body for all the services of the province. As a means of evaluating and monitoring performance, the prosecutor general will be required to submit annual reports which are to be laid before the Assembly and made available to the public.

The prosecutorial service is to be headed by a prosecutor general, with additional deputy and assistant prosecutors general. In the districts, there would be district public prosecutors, assistant district public prosecutors, and such other public prosecutors as may be appointed by the Government or prosecutor general from time to time. Their duties would extend beyond conducting cases in courts to supervising and guiding their colleagues and subordinates and the officers investigating the cases. Recruitment up to the level of additional prosecutor general will have to be made through the Public Service Commission on the basis of competitive examination. The police registering the criminal case, the police investigating the case, and the police filing the interim or final report will all be placed under effective

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² Section 13 of the draft law.

supervisory control of the district public prosecutor. The district public prosecutor is to act as member of the Criminal Justice Coordination Committee constituted under Article 110 of Police Order 2002. This would enable the representative of the agency to effectively participate in the collegiate functioning of the district administration.

The draft law was intended to override all other laws related to the same matter. Its outstanding features are (i) primacy of its provisions over all related laws (Section 21); (ii) non-extendable secure tenure of 4 years to the director general of prosecution, with protection of emoluments, etc. (Section 7); (iii) initial recruitment at the lowest tier through a transparent and established procedure (Section 6); (iv) reporting to the Assembly within 2 months of the submission of annual report to the Government which makes the report a public document, to reflect accountability to the Parliament and to the people (Sections 12 and 18); (v) provision for periodical independent monitoring and evaluation of the service (Section 13); (vi) collegiate cooperative functioning for achieving common goals (Section 12 [9]); (vii) reactivation of the magisterial functions under Sections 156 and 157 of the Criminal Procedure Code; and (viii) effective oversight over investigation (Sections 8 and 9).

This draft law has now been enacted into law in the provinces: (i) Punjab enacted the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 (Act III Of 2006) on 8 April 2006; (ii) Sindh promulgated the Sindh Criminal Prosecution Service (Constitution, Functions, and Powers) Ordinance 2006 on 26 July 2006; (iii) Balochistan promulgated the Balochistan Prosecutorial Service (Constitution, Functions, Powers) Act VI of 2003 on 17 October 2003; and (iv) North-West Frontier Province (NWFP) promulgated the North-West Frontier Province Prosecution Service (Constitution Functions And Powers) Act of 2005 on 29 January 2005. The laws enacted by Balochistan, NWFP, and Punjab incorporated most of the provisions of the draft law except for Section 13 of the draft law.

Clearly, Pakistan is on its way to reform in the right direction. However, as with any reform effort, bottlenecks are to be expected. It is, therefore, necessary to prepare for potential issues and obstacles so that the reform can proceed. As such, several recommendations are made here.

First, it is crucial to have strong-willed leaders who would really implement the reform agenda and a vigilant society who would exert sufficient pressure on their leaders. In theory, sepa-

ration of the investigation from the executive and protocol duties of the police has taken place but, in practice, this has yet to be fully implemented. It is, therefore, essential that all the authorities, the Solicitor wing of the Law Department, the prosecution service, the Home Department, the police, the courts administering criminal justice, and civil society cooperate to carry this reform through.

Second, there is a need to build capacity. Inasmuch as the separation of the prosecutorial service and the police is both a cause and an outcome of specialization of functions, both agencies must increase their respective capacities to perform their functions ably. Crime is becoming so sophisticated and technical that training and education should be made a part of the new system.

Third, the reform process should be monitored closely for at least 2 or 3 years. In this way, not only the individuals involved get guidance,

It is crucial to have strong-willed leaders who would really implement the reform agenda and a vigilant society who would exert sufficient pressure on their leaders. In theory, separation of the investigation from the executive and protocol duties of the police has taken place but, in practice, this has yet to be fully implemented.



Muhamman Bilal

Pakistan has police prosecutors, which gives rise to various issues. The delineation of police and prosecutorial duties is blurred, and police prosecutors are burdened with a daunting combination of functions. This situation led to a prosecutorial service beset with institutional, organizational, human resource, and budgetary problems.

but the whole system is also improved. Sufficient provision has been made for reporting and oversight within the department but this has to be intensified as a departmental practice during the first 2 or 3 years.

Fourth, all the provisions of the draft law and procedure directed toward securing transparency and accountability should be strictly enforced and new methods of achieving it should be devised. Such transparency and accountability should not be limited to superiors within the department but should extend to civil society. One way of doing this would be through the issuance of semian-

nual press releases on its performance without, of course, encroaching on privacy or court processes.

Fifth, the system should encourage performance beyond the call of duty and instill the willingness to improve skills. This can be done through a system of recognition and reward.

Apart from the foregoing, other issues are likely to surface in the course of implementing the reform agenda. While not all issues can be anticipated, addressing issues that can already be foreseen beforehand would serve as safety nets when new issues arise.

CHAPTER 3



Strengthening Police Reform

Police Reforms in Bangladesh

Abu Syed M. Shahjahan

The police have a vital role to play in maintaining internal law and order and establishing the rule of law in the country. For controlling the law and order situation, tackling the ever-increasing sophisticated crimes, arresting the spread of drugs and narcotics, and punishing heinous crimes like murder, rape, mugging, hijacking, abduction, smuggling, acid-throwing, and violence on women and children, the need for the police force is indeed very great.

Yet, society at large has a negative conception of the police. In the case of Bangladesh, this unfavorable impression dates back to 1813 with the birth of the police force in British India. The police system established during this period was governed more by considerations of maintaining control or dictatorial rule rather than providing sensitive and people-friendly policing. As instruments of colonization, the police were viewed to be as ruthless as the dacoits from whom they were supposed to protect the villagers.¹ After Bangladesh attained its independence in 1971, a good number of committees were formed but their recommendations were hardly implemented, further eroding the image of the police. As the public's repulsion toward the police intensified, the police also found itself in a misshapen colonial mold beset with institutional problems. On the other hand, Bangladesh today is weighed down by a significant level of human

insecurity and is in urgent need of an accountable, transparent, and efficient policing service that could ensure the safety and well-being of the citizens. In this context, this paper evaluates the current state of the Bangladesh Police and identifies key reform issues, drawing from previous studies as well as field interviews of police personnel and civil society, focus group discussions, and site inspections.

The Bangladesh Police Organization

The Bangladesh Police is a national organization with headquarters based in Dhaka and a number of branches and units, including a special branch, a criminal investigation department (CID), an armed police battalion, training institutions, and range and metropolitan police (including railway police). The range and metropolitan police are structured into districts, circles, police stations (*thanas*) and outposts. The Inspector General of Police (IGP) is the highest ranking officer. The IGP is not independent and can be transferred and removed by the Government any time. At the district level, the police superintendents oversee the field operations of the police force and liaise with the deputy commissioner. The Ministry of Home Affairs (MoHA) controls police administration, and appointments and transfers of all police officers above the rank of superintendent. In charge of each *thana* is an inspector who coordinates all kinds of work in the *thana* area.

The Bangladesh Police is mainly governed by the Police Act (1861), the Code of Criminal Procedure (1898), the Police Regulation, Bengal (1943), the Armed Police Battalions Ordinance (1979), and relevant Metropolitan Police Acts.

The police have a vital role to play in maintaining internal law and order and establishing the rule of law in the country.

¹ Janakantha Pakhikh, 7–21 July 2000.

Human Resources

As of 31 August 2005, there were 116,962 approved positions in the Bangladesh Police, 103,902 of which have been filled. This results in a ratio of 1 police officer to more than 1,200 people, an obvious deficiency in manpower that causes inefficient service. On the other hand, over 80,000 constables are not fully utilized due to lack of power to investigate or hold inquiry.

There are three entry points in the recruitment process of the police department: (i) assistant superintendent of police (ASP), (ii) sub-inspector (SI)/sergeant and (iii) constable. Direct recruitment is made at the above levels. An ASP is recruited through the Bangladesh Civil Service Examination by the Public Service Commission and must have graduated from a 4-year course. An SI, on the other hand, must have graduated from a 2–3-year course and is required to take a written examination. A constable must pass a physical test and a written examination. A continuation of the system during the colonial era, this three-tier recruitment system may no longer be efficient in the context of an independent Bangladesh.

There are specific guidelines for promotion. Under the Police Regulation, Bengal, the supervising officer is responsible for submitting the nominees for promotion to the higher authority for consideration. For promotion of senior officers of the Bangladesh Police, the Bangladesh Civil Service Cadre Services are applied. In practice, lateral entry at the ASP level blocks the promotion of all but 33% of the officers, from inspectors to SIs.² The average period of time spent by the SIs in the same post has been calculated to be 11, 9, and 8 years in the metropolitan, *zilla sadar*,³ and *upazilla*⁴ level *thanas*, respectively. In the case of the assistant sub-inspectors (ASIs), the average time is 10, 9, and 7 years, respectively; and in the case of the constables, 9, 8, and 7 years, respectively. This lengthy delay in promotion causes frustration in the rank and impacts on the efficacy of the organization.

Women in the Force

Women first joined the police in 1973, when the MoHA created 14 posts of female SIs and constables for a special branch to ensure the security of the wives of the president and the prime min-



Anamul Haque Anam

The Bangladesh Police is mainly governed by the Police Act (1861), the Code of Criminal Procedure (1898), the Police Regulation, Bengal (1943), the Armed Police Battalions Ordinance (1979), and relevant Metropolitan Police Acts.

ister.⁵ In 1976, four more posts of female SIs were created⁶ and when the Dhaka Metropolitan Police was formed, 90 posts of female SIs and ASIs were created. In the same year, 60 women constables were recruited against the vacancy of constables, which were meant to be filled by male constables only. This increased the number of policewomen by 1,100% since 1973. From 1979 to the 1980s, a total of 195 posts were created for other metropolitan cities, increasing the women police contingent by 190.3%. In 1990, 182 more posts for women police were created in the newly established districts, registering an increase of 162.2%. Again in 1997, 43 SI, 43 ASI, and 215 constable positions were created for the districts, increasing their number by 163.4%. In 2005, the number of policewomen increased by 163.9%. This also improved considerably the ratio between

² United Nations Development Programme. 2003. *Toward Police Reform in Bangladesh: Needs Assessment Report 2003*.

³ District headquarters.

⁴ Subdistrict.

⁵ Home Ministry Circular Number 440/2-MIM/H A-PL(4), dated 20 November 1973.

⁶ Home Ministry Circular Number 141/1/Pu-Sha(2), dated 10 March 1976.

The Thanas*

The lowest but most visible stratum of the police system is the police station or the *thana*. In police-related matters, people first come to the *thana*. Thus, the best way to measure the effectiveness of the police in the performance of their functions is by evaluating the efficiency of the *thana*. In the same vein, as the *thana* is the smallest unit of the police organization, its state is representative of the situation of the entire police organization.

There are three types of *thanas*: metropolitan, district, and *upazilla*. The metropolitan *thana* is guided by the Metropolitan Police Act, while the other *thanas* are guided by the Police Regulation of Bengal and the Police Act. Nevertheless, their activities are all the same. Some *thanas* have their own premises, others do not. In some places, *thanas* operate from rented premises and in others they are temporarily lodged in improvised government/private accommodation. Often, the party in power declares the establishment of a *thana* in an area as a way of catering to public demands and gaining political advantage.

The duties of the *thana* police provided in Police Regulation, Bengal of 1943 can be divided into four: (a) lawsuit-related, such as receiving lawsuits, investigating and reporting crimes, acting as witness in criminal proceedings, and producing witnesses in court; (b) law and order, such as providing security to various offices and institutions and ensuring security during public events; (c) providing security to high-ranking government officials; and (d) other duties such as election duties. These numerous duties leave the *thana* unable to respond to all the needs of the people within their jurisdiction. A metropolitan *thana* has 91 police personnel whereas the community has a population of 14,055,758. This means that 1 police officer serves nearly 16,000 people. Similarly, in the *zilla sadar thana*, there is one police officer for every 10,457 people, and in the *upazilla level thana*, one police officer for every 8,839 people. Of these duties, maintaining law and order requires the most time, while considerable time is spent on providing security to important persons. Less than 20% of their work hours is spent on crime-related investigation work. It is noteworthy that only a fraction of the police personnel is eligible to investigate cases. Due to their limited number, such officers have to investigate an average of 5–8 cases in a month. The officer-in-charge of the metropolitan *thana* works 18 hours daily on an average while those in charge of *zilla* and the *upazilla level thanas* work 15 hours. In all the *thanas*, sub-inspectors, assistant sub-inspectors and constables work about 13–16 hours a day on an average. Given their numerous duties, their area of responsibility, and their work hours, it is easy to see how the police can fall short of the community's expectations.

Despite the operational requirements of the *thana*, the budgetary allocation for each *thana* is insufficient to cover the expenditures. Expenditures of *thanas* include salaries and allowances, utilities, office equipment, allocations for food of detainees, transportation costs, and maintenance costs.

Clearly, there is much to be desired in the current state of the *thanas*, and reform efforts should trickle down to their level in order to have a truly holistic police reform.

* Transparency International Bangladesh. 2004. Diagnostic Study on Police Stations.

men and women police, from 3,404.9:1 in 1973 to 91.9:1 in 2005. The remaining problem now is how to improve the ratio of policewomen to the female population, which at present is 1 police-woman for 47,484 female constituents.

Training and Facilities

Probationary ASPs and SIs are given 1-year basic training at Sardah Police Academy while temporary constables are given a 6-month compulsory basic training. The training curriculum of Sardah Police Academy focuses on law, with little attention to liberal subjects such as management, police history, human rights, sociology, criminology, and other allied subjects required in making good police officers. The training for ASPs and ASIs gives highest priority to academic subjects while training modules for constables emphasize physical, parade, and weapon training. The basic training modules do not contain courses on law enforcement and human rights, professional standard and responsibility, financial management and economic crime, command and management, criminal justice, supervision and investigation, crime management, and counterterrorism.

In-service training is provided by Police Staff College (for senior officers) and Detective Training School (DTS) (for junior officers), both located in Dhaka. The Police Staff College gives very short trainings on various issues for the directing officers. On the other hand, DTS emphasizes law enforcement, basic human rights, criminal justice, supervision and investigation, but does not provide any training for trainers, financial management, economic crime, and such other matters related to the modern investigation process. Both provide no physical, parade, and weapons training.

In all ranks, there is a miserable lack of forensic training. Forensic sections have been suffering for want of logistic support, modern facilities, transport, and inadequate budgetary allotment. Equipment used to support fingerprints analysis, although not necessarily expensive, either do not exist or are antiquated and in need of either repair or replacement. No Automated Fingerprint Identification System (AFIS) is in use. The Bangladesh Police has no DNA collection capability and no access to DNA testing.

Budget and Funding Process

The budget for the Bangladesh Police is only a portion of the total budget allocated to MoHA in the annual budget of the country. Although the Bangladesh Police and MoHA generally argue for a bigger budget, this cannot be accommodated

as it entails decreasing the budget of other sectors. Thus, for fiscal year 2005–2006, the total budget for the Bangladesh Police was taka (Tk) 17,020,980,000 (\$259.8 million). The expenditure for each police officer was Tk145,525 (\$2,215). The per capita expenditure on police services in this year was approximately Tk115 (\$1.75). Expenditures include salaries, allowances, office supplies, maintenance, subsidy, procurement, land purchase, construction and reconstruction, and miscellaneous expenses. Although the annual budget has been increasing in the last 5 fiscal years,⁷ the funds remain inadequate as revealed by the poor state of police buildings and barracks, the antiquated weapons carried by the police, insufficient funds for training, and shortfalls in daily operating costs for consumables, communications, vehicles, and fuel that are normally needed to deliver services at an acceptable standard.

Another budgetary problem faced by the Bangladesh Police is the need to seek approval from MoHA and the Finance Ministry before actually expending funds. For maintaining the daily expenditure in the police stations such as travel expenses, food arrangement for the detainees and other daily expenses, the invoice is forwarded to the Office of the Deputy Commissioner and it takes several months, even years, to dispatch the money to the police stations. In effect, two parallel processes operate: first, the process of requesting, setting, and approving the agency budget; and second, seeking permission for actual expenditure of each item that is already included in the approved budget. This two-level process hampers daily operations and considerably restrains the police in providing services to the public.

Independence

As the MoHA exercises complete control over appointment in the senior positions in the Bangladesh Police, including the Inspector General, the operational activities of the Bangladesh Police can hardly be expected to be independent. About 80% of police personnel believe that the Bangladesh Police cannot operate independently, citing both external political interference in day-to-day operations and improper interference by the superiors as obstacles. Additionally, corruption affects the independence of the police as it tempts the police to operate outside the limits of the law.



As of 31 August 2005, there were 116,962 approved positions in the Bangladesh Police, 103,902 of which have been filled. This results in a ratio of 1 police officer to more than 1,200 people.

Historically attributed to the meager salaries paid to the police, corruption in the police force dates back to 1720, when the chief of the Calcutta Police was removed from office on the charge of earning money through illegal means and embezzlement.

Corruption and Transparency

Historically attributed to the meager salaries paid to the police, corruption in the police force dates back to 1720, when the chief of the Calcutta Police was removed from office on the charge of earning money through illegal means and embezzlement. Since then, the police has been unable to recover from the vice. The Transparency International Bangladesh (TIB) household surveys of 1997 and 2002 found the police as the most corrupt sector of the government, while the household survey of 2005 found it the second most corrupt national institution (Table 1), with the police taking money from the accused and their families in more than 98% of the cases (Tables 2, 3, 4, and 5).

A diagnostic study on police stations shows that 91% of those who came to the metropolitan

⁷ About 4.04% in fiscal year 2002–2003, 26.87% in 2003–2004, 41.09% in 2004–2005, and 1.86% in 2005–2006.

Table 1. Findings on Corruption in the Police Force

Report	% of Total Incidents
Household Corruption Survey 1997	–
Corruption Database January–June 2000	20.7
Corruption Database July–December 2000	16.4
Corruption Database 2001	15.0
Corruption Database 2002	18.4
Household Corruption Survey 2002	83.6
Corruption Database January–June 2003	22.4
Corruption Database July–December 2003	15.8
Household Corruption Survey 2005	92.0

Source: Transparency International Bangladesh (TIB).

Table 2. Bribe for Making General Diary Entries

Area	% of Persons Paying Bribe for Making GD Entries	Average Bribe Paid for Making GD Entries (Tk)
Rural	94.0	1,121
Urban	88.0	778
Total	91.0	939

Source: Transparency International Bangladesh (TIB) Household Corruption Survey 2005.

Table 3. Bribe for Making First Information Reports

Area	% of Persons Paying Bribe for Making FIR	Average Bribe Paid for Making FIR (Tk)
Rural	93.0	2,521
Urban	91.0	2,222
Total	92.0	2,430

Source: TIB Household Corruption Survey 2005.

Table 4. Bribe for Taking Clearance Certificate from Police

Area	% of Persons Paying Bribe for Taking Police Clearance Certificate	Average Bribe Paid for Taking Police Clearance Certificate (Tk)
Rural	78.0	1,288
Urban	82.5	550
Total	80.0	881

Source: TIB Household Corruption Survey 2005.

Table 5. Bribe from Accused in Police Cases

Area	% of Accused Paying Bribe in Police Cases	Average Bribe Paid by Accused in Police Cases (Tk)
Rural	68.0	6,415
Urban	76.0	4,565
Total	71.0	5,718

Source: TIB Household Corruption Survey 2005.

thana to lodge complaints could not do so without paying money, while 3.3% had to seek political assistance. Only 2.1% could lodge their complaints without money or any mediator. At the zilla level *thana*, 85.7% of the complainants had to lodge their complaints in exchange for money. At the upazilla level *thana*, this number was 81.6%. The number of persons who had to enlist the help of political leaders for lodging complaints is higher in the zilla sadar *thana* than in the metropolitan *thana*, but the number is even higher in the upazilla level *thana*. Substantial amounts of money are earned from cases, forming 24.5% of the metropolitan *thana*'s illegal income, 25.6% of the zilla sadar's, and 33% of the upazilla level *thana*'s. The police collect this amount from plaintiffs, accused, and other interested persons. Among the pretexts for the money demanded are filing fees and litigation costs. In some cases, the police collect amounts for instituting false cases.

Even visiting detainees has become a source of corruption. In the *thana*, 97% of the civilians had to pay money to see the detainees; in the *zilla sadar*, 96.1%; and the *upazilla level thanas*, 94.3%. On the other hand, politicians, army personnel, village police, etc. are able to meet detainees without paying anything.⁸ Besides these sources, the police are also able to collect money from both legal and illegal traders as well as transport utilities (see footnote 13).

The pervasiveness of corruption has been traced to several sources. More than half of the respondents from the police pointed to poor facilities as the main cause, while 13.9% believe that lack of effective transparency and accountability procedures coupled with monopoly of power is the main cause of corruption. Political use of the police (13.9%) and lack of punishment (9.4%) were also identified as causes of corruption. On the other hand, civil society believes that the lack of a transparency and accountability mechanism and monopoly of power are the main causes of corruption in the police. They also emphasized political use (20.0%) and lack of punishment (16.0%), but do not think that poor facilities are a factor.

In the *thanas*, insufficient budgetary allocation for the police is a significant cause of corruption. For instance, various office equipment is needed to conduct the affairs of a *thana* but because of inadequate funds, 90% of these articles are procured from those who avail of police services. The same is true for the situation of the

⁸ TIB. 2004. *Diagnostic Study on Police Stations*.

Difference between Community Policing and Traditional Policing

	Traditional Police	Community Police
Who are the police?	A government agency responsible for law enforcement	Police are the public and the public are the police
How is police efficiency measured?	By detection and arrest rate	By the absence of crime and disorder
What do police deal with?	Incidents	Citizen's problems and concerns
What are the highest priorities?	Crimes that are heinous and create violence	The problems that disturb the community most
What is police professionalism?	Swift and effective response to serious crime	Keeping close to the community
What determines the effectiveness of police?	Response time	Public cooperation
What is the essential nature of police accountability?	Highly centralized; governed by rules, regulations and policy directives; accountable to law	Emphasis on local accountability to community needs
How do police regard prosecution?	As an important goal	As one tool among many

detainees. With the official allocation of only Tk5 for each detainee, it is difficult to provide breakfast, lunch, and supper. As a result, police take money from detainees or their relatives to augment the food budget.

Recruitment and posting are also sources of corruption. Appointments have been known to be tainted by corruption and political intervention. Police officers desiring to be transferred to a particular station pay the officer-in-charge Tk5–10 lakh. SIs, ASIs, and constables also spend money to get suitable postings. There is also a perception that no police can pass the basic training courses without giving bribes. In the survey conducted, 75% of the police personnel said that they had to pay bribes to the training authority to pass the course.

To curb corruption, the Police Regulation, Bengal provides for filing suits against corrupt police officers. However, it is difficult to establish a case. The Armed Police Battalions Ordinance as well as the Metropolitan Police Acts penalize corrupt acts with dismissal; removal; compulsory retirement; reduction in rank or grade; abortion of promotion; forfeiture of seniority, payment, and allowance and increment; confinement to quarter-guard

and police lines; and censure. A commission tasked to investigate complaints for corruption has been established but is still at a development stage.

Community Policing

Community policing is a multidimensional model that focuses on the values, attitudes, and behavior of the organization, both internally and externally. It is a philosophy that recognizes and accepts the active role of the community in influencing the philosophy, management, and delivery of police services. The community is not simply viewed as a passive recipient of police services, but as an active element in the decision-making process which affects priorities, allocations, and implementation of police services. It promotes community, government, and police partnership; proactive problem solving; and community engagement to address the causes of crime, fear of crime, and other community issues. In community policing, a law enforcement agency and law abiding citizens work together to prevent crime, arrest offenders, solve ongoing problems, and improve the overall quality of life.⁹ Thus, the objectives of community policing are to (i) minimize the gap



The ratio between men and women police has improved considerably, from 3,404.9:1 in 1973 to 91.9:1 in 2005. The current challenge is improving the ratio of policewomen to the female population, which stands at 1 policewoman for 47,484 female constituents.

between the citizens and the police, (ii) raise public awareness, (iii) keep the people away from committing crime, (iv) build citizens' trust on the police, (v) rehabilitate criminals, and (vi) strengthen the rule of law and establish good governance.

The features of community policing are as follows:

- Community policing is a modern concept of crime control. It is not a program.
- It ensures community participation in policing.
- It is a type of proactive policing which operates through the community.
- Police accountability is ensured to the community.
- Citizens can categorize problems and play a role in the decision-making process of the police agenda.
- It forms the basis of police public cooperation, recognizing that the police are the public and the public are the police.
- In this system priorities are set on the basis of community needs.
- It is solution-oriented policing.
- Strategies are adopted based on social norms, community needs, and expectations.
- It reduces fear of crime and improves quality of life.

Although Bangladesh has had a long history of community policing, this system has not yet been introduced in an organized form and by specific directions from the Government. The

Government has not formulated policy or allotted financial and other resources for launching community policing. Nevertheless, some officers have initiated public cooperation for crime control and prevention and maintenance of law and order. In 1993, a Town Defense Party similar to community policing was introduced in Mymensingh by then Superintendent of Police (of Mymensingh) A.T. Ahmedul Hoque Chowdhury.¹⁰ It brought tremendous success in crime control. The number of crimes decreased and fear of crime among the people was lessened. An advisory committee and an executive committee of local elites from various professionals were formed within the jurisdiction of a command area and they were vested with the responsibility of community policing. The committee appointed patrolmen in their locality and collected tolls from the inhabitants of the area to meet the costs of the defense party. More than 50 committees were formed in Mymensingh town until 1995. Following the example of Mymensingh, community policing was introduced in Chandpur, Habiganj, Moulvibazar, Jamalpur, Thakurgaon, Sirajganj, and some parts of Dhaka Metropolitan Police.

Women-friendly Policing

The increased awareness of women's rights has brought to fore the need for women-friendly policing to protect women against indecent police behavior. Women come in contact with the police as complainants, counter complainants, respondents, suspects/accused, informers, or visitors and their rights as such need to be safeguarded. In Bangladesh, laws and regulations have been put in place to protect women in conflict or in contact with the law.

For instance, Section 48 of the Penal Code provides that when breaking open *zanana*, a place occupied by a woman other than the accused, who according to custom does not appear in public, the police officer shall give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing before entering such apartment. The law also provides that whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency. Section 382 of the Penal Code protects pregnant women sentenced to death by providing for the postponement of the execution or in some cases, commutation of the sentence to imprisonment

⁹ *Detective*. December 2004.

¹⁰ *Detective*. 2005. Special issue published on the occasion of Bangladesh Police Week 2005.

for life. Regulation 330 of the Police Regulation, Bengal prohibits handcuffing of women and use of any restraint on women who by age or infirmity are easily and securely kept in custody. Regulation 328 provides for examination of female prisoners before admission to lock-ups and prohibits removal of glass, conch, or iron bangles from the person of female prisoners.

Despite these legal measures, however, female offenders still suffer from mistreatment and abuse of authority by the police. The cases of Yasmeen,¹¹ Seema Choudhury (footnote 17), and Tanore¹² are examples. Gender bias among police personnel is reflected in their services to women complainants. Women who bring their complaints against their family or relatives are often dissuaded by the police from filing in a first information report (FIR)¹³ or even a general diary¹⁴ (GD).¹⁵ Where the perpetrator of violence is an agent of a law enforcement agency, the police generally do not take necessary care to prepare the charge sheet, tend to treat the agent favorably, or try to appease the complainant by filing a GD instead of an FIR.¹⁶ In the service, 80% of policewomen themselves do not think that the Bangladesh police is women-friendly while some believe that it depends on the status of the women who come to police stations. It may well be that some do practice women-friendly policing, but this should be institutionalized rather than left to individual discretion.

Reform Agenda

The Bangladesh Police has gone through phases of growth and development. However, the demand for police services has increased at a rate faster than the growth and expansion of the service delivery capacity of the police. Crime is increasing; the criminal justice system is cracking under heavy workload; society's expectations from the police are high but the police's status and resources are poor; forensic science facilities are outdated and inadequate; laws are stacked against the police; public cooperation is invariably missing; and working and living conditions leave a lot to be desired. Corruption, incompetence, and failure to control the law and order situation plague the police force. Above all, there is a culture of political patronage that perpetu-

The Bangladesh Police has gone through phases of growth and development. However, the demand for police services has increased at a rate faster than the growth and expansion of the service delivery capacity of the police.

ates impunity and absence of accountability. Clearly, it is time to transform the Bangladesh Police into a true public servant and elevate the sense of security of the people that is essential for the socioeconomic development of the country.

The Poverty Reduction Strategy Paper formulated and approved by the Government has identified key issues that require attention. These include lack of (i) a special police force to deal with special crimes, such as heinous crimes, economic crimes, and cyber crimes; (ii) coordination among law enforcement agencies; and (iii) a research cell to investigate the nature of changing crime and the appropriate methods for handling them. Community policing is also weak. *Chowkidars* (village police) and *dafadars* (higher ranked village police) are not adequately linked to the *thana*. Investigation, law and order, and prosecution duties are combined in the same official, which tends to make officials unaccountable and inefficient. A colonial mindset continues to prevail, often resulting in maltreatment of women and children. Routine inspection and supervision have decayed. Prisons are overcrowded, prisoners under trial are not treated separately from convicts, women face great insecurity even in "safe custody," and a large number of children are in prison. Problems also pervade the judiciary, particularly, the lower judiciary. A critical problem is the slow disposal of cases. Weaknesses in procedural law, prevalence of vested groups, poor training and physical facilities, lack of inspection and supervision, and intrusion of political considerations, all contribute to such undesirable outcomes.¹⁷

In addition, the police and civil society identified the following key reform areas :

- Increase the number of police, especially women police.

¹¹ Ain o Salish Kendra. 1997. *Human Rights Report*.

¹² *The Daily Star*, 22 December 2004.

¹³ A formal complaint filed with the police to commence a criminal case.

¹⁴ A logbook of incidents reported to the police station. A general diary entry precedes a first information report.

¹⁵ UNDP Bangladesh. 2005. *Towards Pro-women Policing in Bangladesh*.

¹⁶ Naripokkho. *Monitoring State Interventions to Combat Violence against Women*, October 1998–November 2004.

Laws Governing the Bangladesh Police

Police Act, 1861: This Act describes the constitution of the police force; superintendence of the force; appointment, dismissal, and other conditions of service of inferior officers; power of inspector-general to make rules; special police and their powers; and duties of police officers.

Code of Criminal Procedure, 1898: This basic criminal law contains provisions on the constitution of criminal courts and offences; power of courts; aid and information to the magistrates, police, and persons making arrests; arrest, escape, and retaking; prevention of offenses such as security for keeping the peace and for good behavior, unlawful assemblies, public nuisances, temporary orders in urgent cases of nuisance, and preventive action of the police; information to the police and their powers to investigate; and proceedings and prosecutions.

Police Regulation of Bengal, 1943: It is regarded as the bible of all levels of police staff, with 1,290 regulations. It incorporated changes in the rules necessitated by the Government of India Act, 1935 and describes the police organization; relations with other departments; direction and control mechanisms of the police; privileges and general instructions; duties of all ranks of police officers; detailed description of police stations, court police, railway police, criminal investigation department, and special armed force; appointment, recruitment, and promotions; compensation and allowances; training and examination; uniform and clothing; punishment and appeals; and housing facilities.

Metropolitan Police Acts: There are four acts for administering the Metropolitan Police of Dhaka, Chittagong, Khulna, and Rajshahi. These acts were formulated in 1976, 1978, 1984, and 1992, respectively. All the acts describe the organizational structure, responsibilities, rank structures, appointment, transfer, power to formulate regulations, administration of the force, power and duties of the officers, and action taken for security and maintaining law and order in the respective metropolitan cities.

Armed Police Battalions Ordinance, 1979: In accordance with the provisions of this Ordinance, a force called Armed Police Battalions was formed to perform internal security duties; recover unauthorized arms, ammunitions, and explosives; apprehend armed gangs of criminals; and assist other law enforcing agencies.

- Improve human resources management and development.
- Improve investigative and operational capability.
- Remove the barriers of resource-constraint.
- Develop infrastructure.

Reform Initiatives

In response to some of these reform needs, international organizations have embarked on reform projects that focus on different aspects of the police.

The United Nations Development Programme (UNDP) in Bangladesh initiated a 5-year project called Strengthening Bangladesh Police jointly with the Department for International Development (DFID) and the Government of Bangladesh. The project aims to improve the efficiency and effectiveness of the Bangladesh Police by supporting key areas of access to justice such as investigations, police operations, and prosecutions; human resources management and training; crime prevention; and future directions, strategic capacity, and oversight. Model *thanas* will also be established as a pilot entity. The Japan Bank for International Cooperation provided about Tk105 crores in the current fiscal year (2005–2006) to develop and modernize the Bangladesh Police. They will initially finance the creation of 25 model police stations and help police provide transport and information and communications technology facilities. Another 3-year DFID project, Public Access to Justice Project, in 20 *thanas* aims to demonstrate the potential for changing police practice and bringing together police and communities to develop a joint approach to reform. It also provides support for civil society organizations working with the police and legal processes.

Assistance has also been provided on substantive legal issues. In 2002, the International Organization for Migration carried out studies identifying the crucial role of the police in preventing human trafficking. On the other hand, the European Commission is planning to support the justice system through legal empowerment, legal aid service, enhancing access to justice at the village level, and accelerating penal reform, among others. It recently organized a seminar on Support to the Justice System to assess this sector in Bangladesh. The World Bank is also funding a 5-year commercial justice system project that

- Minimize political use of police and external influence on police operations.
- Amend obsolete and outdated laws.
- Amend laws to make policing people-friendly.
- Curb corruption, enhance transparency and accountability.
- Increase community involvement to step up crime prevention.

¹⁷ Government of the People's Republic of Bangladesh. 2005. *Unlocking the Potential: National Strategy for Accelerated Poverty Reduction*.

contains small legal aid and alternative dispute resolution components.

Nongovernmental organizations (NGOs) have also provided legal aid to the poor, providing programs on human security awareness, advocating with the government for changing laws in relation to human security, etc. Among these are Bangladesh Legal Aid Services Trust, Ain O Salish Kendra, Bangladesh National Women Lawyers Association, Madaripur Legal Aid Association, Odhikar, and *Manbadhikar Bastabayan Sangstha*.

Undoubtedly, these reform programs have contributed to the improvement of the Bangladesh Police. However, other areas remain in want of reform. As such, recommendations on the following areas are made:

- Amendment of laws and regulations
- Institutional administration
- Capacity building
- Infrastructure development
- Improvement of service delivery
- Anticorruption mechanism
- Development of a police website
- Establishment of community policing

The ultimate objective of police reform in Bangladesh is to shift from a colonial policing system to a democratic structure where the police works primarily for public interest and not the interest of the ruling party or any influential group. The police should uphold a democratic system based on the observance of human rights, facilitate access to justice to all without discrimination, and secure the rule of law based on the norms of accountability, transparency, equality, and community participation. To do this, neutrality and autonomy of the police must be guaranteed. Any reform agenda should therefore protect the police from external undue interventions and give operational autonomy to the officers while ensuring meaningful and strong oversight, accountability, and transparency with its policy directives and strategic goals.

Amendment of Laws and Regulations

The Police Regulation, Bengal 1943 was written with a view to fulfill the demands and needs of the British Government. Now that Bangladesh is an independent country, this regulation is no longer relevant nor productive. Moreover, as there was no constitution yet at the time these regulations were formulated, many provisions are not consistent with the spirit of the present Constitution. The immediate modification of these laws and regulations is therefore necessary.

Likewise, Police Act 1861 should be repealed and a new police act drafted consistent with the spirit of the Constitution and needs of a modern community. The new law should be aimed at facilitating access to justice, observance of human rights, and establishment of the rule of law. The new law should emphasize accountability, human rights, service delivery, transparency, gender equality, pro-poor policing, eradication of the colonial system and procedure, bridging the gap between the police and the community, enhancement of community policing, partnership with the community, and respect for democratic norms and practices.

Further, the Special Power Act of 1974 should be repealed as most offenses thereunder are already covered by the Penal Code and other laws. What needs to be done is a comprehensive review of the Penal Code, the Criminal Code of Procedure, and the Evidence Act to determine their appropriateness, effectiveness, and practicality. Parameters for the exercise of police discretion in effecting arrests and other legal processes should be set to prevent abuse. Particular attention should also be given to the situation of female victims and accused. For women and minor girls who are witnesses/victims of abduction, appropriate shelter should be provided pending trial, preferably with their legal guardian, or in a protected shelter maintained by NGOs or through special government arrangements. The practice of putting females in prison on the pretext of “safe custody” should be discontinued. A strategic law cell/commission composed of former judges, lawyers with relevant expertise, former inspector generals of police, attorney generals, and other experts should be established to review these laws and regulations and propose new or amendatory legislation where necessary.

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Institutional Administration

Use of the police for political, economic, and personal interests is a practice that must cease altogether. To do this, attitudes of both those in power and the police should be changed. Those in power should realize that the police are not to be used for political and personal ends. Similarly, the police themselves should also realize that they are servants of the state and the people, not of any ruling party or privileged segment of society. In this regard, grant of full operational independence to the police is crucial. The police must be given sufficient independence in the performance of its duties and functions, free from external pressure or influence. To safeguard its independence, the police need to be given a lump-sum budget in each fiscal year and accorded enough discretion to utilize this budget according to its needs, provided there is accountability and transparency.

In terms of human resources, the police leadership must build a foundation for quality police services. The recruitment procedures should be reviewed to allow two entry points (i.e., ASP and constable) and provide for the participation of an independent third party in making appointments to ensure transparency and integrity. Educational qualifications should also be reviewed and revised to meet high standards of policing. In addition, the promotion system should be standardized based on merit and competence. There should also be security of tenure to shield police officers from politically motivated transfers and removal from service.

Capacity Building

Both long- and short-term measures should be undertaken to increase the number of police personnel. Taking into consideration the poor ratio between the population and the police as well as the economic situation of Bangladesh, a mechanism should be devised to appoint police officers from the community. The number of women police should also be increased to deal with women-related issues.

In terms of increasing competence, a new curriculum for police education and training should be developed with a view to making the Bangladesh Police more capable, service-oriented, people-friendly, and efficient. Technical training must be intensified to build expertise and keep abreast with modern technology. Training on forensic toxicology, forensic serology, DNA analysis and data bank, drug analysis, food analysis, and analysis of explosive substances should be administered to members of the forensic division.

All training institutions should have sufficient infrastructure including classrooms, accommodation, training materials, and logistic support. The wings/departments of the Bangladesh Police should be provided the necessary logistical support such as modern technologies (e.g., fingerprint database), vehicles, arms, etc.

Infrastructure Development

The *thana* building should be situated on government land. The practice of housing a police station in an improvised or rented accommodation should be avoided. All police stations should have sufficient toilet facilities for the staff, detainees, and visitors. Necessary furniture and fittings, as well as equipment, including land telephone, mobile telephone, wireless sets, computer, printer, fax, internet, and CCTV camera, should be regularly supplied to every police station. There should also be a library containing a collection of relevant reference materials. Vehicles such as jeep, police van, motorcycle, bicycle, and boat should be at the disposal of the police when needed. Adequate funds should be made available to meet the operational and other expenses of the police station. In consideration of the families of police officers, residential accommodation should also be available within the *thana* campus for police officers and their families.

Improvement of Service Delivery

To facilitate dissemination of information, there should be an information board beside the main gate of the police station stating the procedure for filing GDs and FIRs, meeting the arrested persons and others, making complaints against police harassment, and all other services delivered by the police station. Inside the station, a receptionist should be stationed to assist complainants and visitors. The reception should keep a database of relevant and frequently requested information. Duty officers should always properly record allegations, GDs, and FIRs in a computer database designed for filing complaints. Services should also be available for filing by electronic mail or telephone.

It is recommended that police stations have three main sections: (i) administration section, responsible for transport, information technology, accounts, housing, custody, reception, arranging meetings with the arrested persons and the people in safe custody, receiving GDs, FIRs, etc., issuing certificates, maintaining arms, warehouse, etc.; (ii) investigation section, responsible for investigating all types of cases and lawsuits

in the prescribed time and submitting investigation reports; and (iii) law and order section, responsible for community policing, patrol duty, security of important persons, external duty in religious, educational, and social functions, and political gatherings.

Anticorruption Mechanism

An independent police ombudsman should be appointed to control the widespread corruption in the police force. The office should be given strong authority to deal with all kinds of irregularities. It should have regional units through which the public can file complaints for non-registration of cases, delay in investigation, corruption, rudeness, abuse of power, and the like against erring police officers.

Development of a Police Website

The Bangladesh Police should have a website containing information about the police, its branches, sections, human resources, information about *thanas*, procedures of service delivery, anticorruption mechanism, performance, crime statistics, etc. This would not only educate and inform the public but also indicate transparency in police

At present, the Bangladesh Police is a “force,” not a “service” delivery organization. A radical paradigm shift is imperative to transform the “Bangladesh Police Force” into the “Bangladesh Police Service.”

operations, thereby increasing public confidence in the police.

Establishment of Community Policing

Necessary laws should be enacted to institutionalize the community policing system. Budgetary allocation should be made available to facilitate community policing all over the country. At present, the Bangladesh Police is a “force,” not a “service” delivery organization. A radical paradigm shift is imperative to transform the “Bangladesh Police Force” into the “Bangladesh Police Service.” Although an enormous challenge, this is not impossible to achieve if all parties cooperate to undergo and sustain a long-term police reform agenda.

Reforming the Police Forces of South Asia

Muhammad Shoaib Suddle

The police organization in the Indo-Pakistan sub-continent evolved principally in response to the political realities of the times. During the colonial period, the basic objective of the system designed by the British was to create an instrument in the hands of the government to control the colony. Thus, policing was by and large a one-sided affair where service to the people was rather irrelevant. This system, however, began to falter with the subcontinent's attainment of independence as it was no longer appropriate for an independent society. With the establishment of India and Pakistan as independent countries, the purpose of governance changed and emphasis shifted to economic and social justice. Democracy needed the police to be a provider of service to the community, not a force to subdue and subjugate people. The need to redesign the police organization became unmistakably clear.

Police Reforms in Pakistan

At the time of independence, the police administration inherited by Pakistan was based on the

Police Act of 1861. The first reform attempt was Bill XXV of 1948 (The City of Karachi Police Act, 1948), establishing a modern police force for Karachi, the capital of Sindh. It proposed the appointment of a commissioner of police who would have the power to (i) enforce curfews, (ii) ensure order in processions and public meetings, (iii) issue permits, and (iv) regulate arms and licenses. Unfortunately, the powerful vested interests did not let the bill become law, even though it was duly passed by the Sindh Legislative Assembly.

Subsequently, several police committees and commissions tasked to evaluate the police force were formed. However, their recommended changes in the police organization were either unaccepted or left unimplemented. The prevailing sentiment remained with the preservation of the status quo. Successive studies conducted by various experts from other jurisdictions likewise recommended fundamental changes in the whole policing philosophy and policy. It was pointed out that an effective, viable, independent but publicly accountable police was crucial to the development of stable democratic government institutions. There was also a consensus on the need to depoliticize and professionalize the police. Experts observed that the police should be (i) operationally neutral, (ii) organizationally autonomous, (iii) functionally specialized, (iv) institutionally accountable, and (v) service-oriented.

In 1999, the National Reconstruction Bureau was established to bring fundamental reforms in political and administrative structures of the country, including reinventing the police. The Think Tank on Law Enforcement and Criminal Justice¹ tasked to propose a comprehensive police reform strategy drafted a police law which was later

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¹ The author was also a member of the Think Tank.

promulgated as Police Order 2002. The 141-year-old anachronistic Police Act of 1861 was finally replaced with a modern police law on 14 August 2002.

No less than the preamble of Police Order 2002 enunciated the goals of reconstructing the police force and redefining its role—reflecting a fundamental change in policing philosophy. It also identified professionalism, being service-oriented, and accountability as essential attributes that the police force should strive to possess. The principal features of the new law are as follows:

- (i) It redefines in clear terms the role and responsibilities of the police.
- (ii) It seeks to improve human security and access to justice within the ambit of rule of law.
- (iii) It phases out obsolete police management practices.
- (iv) It provides for enhancing police professionalism.
- (v) It introduces new powers to improve police discipline.
- (vi) It strengthens external police accountability through institutionalized civil society oversight.
- (vii) It aims to transform the police into a public-friendly, service-delivery organization.
- (viii) It makes it obligatory for the government to establish police–public consultative committees.

A critically important feature of the new law is that, whereas the Police Act of 1861 vested the undefined “superintendence” of police in the hands of the political executive, Police Order 2002

restricts the power of superintendence to ensuring that the police perform their duties efficiently and strictly in accordance with law. Not only was the organizational structure substantially strengthened, the new law also gave enhanced administrative, financial, and disciplinary powers to the inspector general of police. Police Order 2002 further replaced the ruler-driven police with a community-based police through the establishment of Public Safety Commissions at the national, provincial, and district levels. These statutory bodies allowed, for the first time, representation from opposition parties and members of civil society, including one third reserved seats for women. Indeed, this arrangement is a major step toward (i) fostering credible police accountability, (ii) gender-sensitive policing, and (iii) operational neutrality of police.

Police Order 2002 also tries to deal with political interference in the internal administration of the police. The threat of transfer is often used by the political executive as a tool to pressure officers to cater to their interests even at the risk of subverting the law. This adversely affects the morale and discipline of police officers. Thus, Police Order 2002 not only lays down a fixed tenure of 3 years for key police appointments but also requires that premature transfers be made on the recommendations of the relevant public safety commission.

To effectively control police misbehavior, Police Order 2002 provides for an independent Police Complaint Authority at the national level, and merges the Police Complaint Authority at the



In India, the Government has taken many a step to provide gender-sensitive policing. Gender-sensitive training for law enforcement officials at the state and central levels is given at the police training schools, as well as during the 2-year initial training for officers of the Indian Police Service. With regard to recruitment of women into the force, recent years have seen a substantial increase in the number of women officers although there is no formal reservation policy in this regard.

Recognizing the importance of community policing, Police Order 2002 encourages the Government to establish citizen police liaison committees.

provincial level with the provincial and district public safety commissions. Police Order 2002 significantly strengthens internal police accountability by criminalizing a range of police malpractices such as nonregistration of crime reports (first information reports [FIRs]), vexatious entry, search, arrest, seizure of property, use of torture and third degree, and delay in bringing to court any arrested person or in notifying the court of the grounds of arrest.

Recognizing the importance of community policing, Police Order 2002 encourages the Government to establish citizen police liaison committees. The purposes are to help (i) establish and maintain police–public partnership, (ii) promote communication and cooperation between citizens and police, (iii) enhance transparency in police functioning, and (iv) strengthen police responsiveness to the community.

As the foregoing illustrate, Police Order 2002, if properly and sincerely implemented, provides the basis for a modern and progressive 21st century system of policing.

Reform Efforts in India

Like Pakistan, the issue of police reform has been the subject of intense debate in independent India. In January 1959, the State of Kerala appointed the Kerala Police Reorganization Committee to study critical issues such as (i) the role of police in a welfare state, (ii) the adequacy of the existing law to fulfil public aspirations, and (iii) duties of the police in the context of civil liberties and political rights of freedom of speech and association in a democracy. Following suit, several other states also appointed police inquiry commissions: (i) West Bengal in 1960, (ii) Punjab in 1961–1962, (iii) Maharashtra in 1962, (iv) Assam in 1969, (v) Tamil Nadu in 1969, and (vi) Uttar Pradesh in 1970, to name a few, based on the Police Act of 1861. The reports of these commissions, however, were confined to reviewing the police system. None of them was tasked to examine fundamental issues such as (i) how to police a free society, (ii) how the police should respond to mounting demands of emerging human rights concerns, (iii) how law

enforcement should cope with rapidly altering psycho-social environment, and (iv) how the police should orientate itself in the age of free and independent media.

The most meaningful effort to reform the more-than-century-old Indian police system, however, was undertaken in 1977 when the National Police Commission (NPC) was set up. The NPC was tasked to make a comprehensive review of the police system at the national level after taking into account the changes after the enactment of the Indian Police Act of 1861. More importantly, the NPC was asked to recommend measures and institutional arrangements to prevent misuse of powers by the police, as well as misuse of the police by its administrative and political chiefs.

The NPC found that the symbiotic relationship and nexus between police and politicians were a major cause of serious police misconduct. It recommended measures to address the core problem of insulating the police from illegitimate political, bureaucratic, or other extraneous interference. The NPC likewise emphasized the need to secure professional independence for the police to function truly and efficiently as an impartial agent of the law of the land.

The NPC had various major recommendations to change the structure of the police and ensure the demise of the ancient kinship between bureaucracy and politicians. First, the investigative tasks of the police had to be placed beyond any kind of intervention by other branches and agencies of the Government. The role of the Government should be limited to laying down broad policies, with actual operations being left to the police. Second, a state security commission needed to be established statutorily in each state to (i) lay down broad policy guidelines for the performance of preventive and service-oriented functions by the police, (ii) evaluate the performance of the state police every year, (iii) function as a forum of appeal for grievances against illegal orders and promotion matters, and (iv) generally review the functioning of the state police force. Third, the chief of police had to be assured of a fixed tenure of office, with removal to be subject to the approval of the state security commission. Fourth, urban policing had to be promptly restructured by extending existing metropolitan police systems to all cities and towns with population exceeding 500,000. Fifth, the Police Act of 1861 had to be replaced by a new police act and the role of the police as an agency which promotes the rule of law in the country

and renders impartial service to the community enlarged.

Although NPC's work served as a template of nascent police reform initiatives (e.g., Andhra Pradesh Police Bill 1996, Rajasthan Police Bill 2000, Madhya Pradesh Police Vidheyak 2001, and Punjab Police Bill 2003, all of which did not crystallize into actual laws),² the central Government of India did not adopt the model police act on the ground that policing was a state subject and, therefore, not its responsibility.

The police reform process in India gained momentum when the Supreme Court of India on 18 December 1997 declared the Single Directive as null and void.³ This directive required the Central Bureau of Investigation (CBI) to seek permission from the Government before undertaking any inquiry or investigation against senior government servants of the rank of joint secretary and above. Unfortunately, the Central Vigilance Ordinance 1998 diluted the intended insulation of the CBI from extraneous influence.

The latest police reform initiative in India is the newly formed committee to draft a new police act to replace the Police Act of 1861. The new act would include measures for attitudinal changes of police and working methodology to elicit cooperation and assistance of the community. In addition, concern for human rights, weaker sections, women, and scheduled castes and/or tribes would be addressed.

Police Reforms in Bangladesh

Although the Police Act of 1861 is still the basic police law of the land, a serious effort to change the old policing arrangements was made soon after the old Police Act was replaced with the Metropolitan Police Act of 1976 in Dhaka. In Chittagong, Khulna, and Rajshahi, the remaining urban centers of Bangladesh, the metropolitan police laws were promulgated in 1978, 1987, and 1991, respectively. The metropolitan police laws in Bangladesh were largely based on the long-established system of policing prevalent in the Indian cities of Bombay, Calcutta, and Madras. The salient features of the metropolitan model included the abolition of the duality of control—the hallmark of the 1861 system—and adequate regulatory and licensing powers of the commissioner of police.

A solid effort to address the police reform



Police in South Asia has historically suffered from a bad image so that there is very little voluntary sharing of vital information from the public. Adopting measures which portray the police in a positive light and proactively address the causes of negative public attitudes is, therefore, integral to a comprehensive police reform strategy.

problem was initiated in January 2005, with a \$13 million program, "Strengthening Bangladesh Police Project." The project was launched under the Ministry of Home Affairs in collaboration with the United Nations Development Programme and funded by the United Kingdom's Department for International Development in recognition of "the importance of an efficient and effective police force as an integral part of the broader justice sector and as a key contributor to a safer and more secure environment based on respect for human rights, equitable access to justice, and observance of the rule of law."

The program supported key areas of access to justice including (i) crime prevention, investigations, police operations and prosecutions; (ii) human resources management and training; and (iii) future directions, strategic capacity and oversight. It also assisted the Bangladesh Police in improving performance and professionalism, in accordance with broader government objectives and community expectations, including the disadvantaged and vulnerable groups and women. The program also sought to (i) introduce merit-based recruitment, (ii) institutionalize training and evaluation, and (iii) address gender imbalance in the Bangladesh Police. Additionally, the project focused on making anticorruption and complaints against police procedures more robust and accessible.

² Daruwala, Maja, G.P. Joshi, and Mandeep Tiwana. 2005. Police Act, 1861: Why we need to replace it? *Commonwealth Human Rights Initiative (CHRI)*. Newsletter, New Delhi, India. July.

³ *Hawala Writ Petitions (Criminal)* Nos. 340-343 of 1996.

Impediments to Police Reform in South Asia

Political Will and Stakeholder Commitment

A fundamental prerequisite for success of a reform strategy is publicly demonstrated political will and continuing commitment of all stakeholders to support and sustain the expected outcomes of that strategy. When the reform further involves a challenge to foster democratic governance, rule of law, and human security, a broad agreement across the political landscape on the future role and responsibilities of the police is essential. Otherwise, obstacles from all fronts can frustrate the objectives. For instance, even feeble moves to bring about standardization of policing practices, including introduction of any best practices in relation to core areas of manpower and equipment, have been vehemently opposed because of a lack of a common vision. Although the merits of such efforts can be easily seen, these were viewed as both inappropriate and contrary to the constitutional arrangements in that the federal government is effectively imposing its will on the otherwise autonomous provincial governments.

The lack of agreement also results in resistance from different sections of society. The fate of scores of police commissions and committees demonstrates this. Although financial constraints have been a perennial obstacle, it is primarily the governing elite who have historically proved to be a major stumbling block to police reform. Since the elite did not agree with the paradigm shift, the recommended reforms, including those without much financial implication, have not been implemented.

Within the police force, the top officials feel incapable of resisting extraneous pressures and

bringing about the required attitudinal change in the rank and file. They are unable to command their subordinates effectively. These impediments have prevented complete police reform notwithstanding policies and strategies aimed at (i) reducing corruption in the police, (ii) enhancing police efficiency through true professionalism, and (iii) transforming the police into a public-friendly service.

Corruption in the Police

Although many police forces are infested with corruption, the problem appears to be more acute in South Asia where the coercive power of the state rests in the shape of the police. The situation is peculiar to South Asia because of the extortion-based relationship maintained by the colonial government between the police and the community to ensure political control and obedience. Unfortunately, this well-cultivated adversarial relationship has survived colonization and continues to plague the police. Today, the common incidents of police corruption include (i) taking money for registering or declining to register a first information report (FIR); (ii) falsely involving innocent persons in an FIR; (iii) letting the accused free; (iv) conducting baseless investigations; and (v) dealing in contrabands, narcotics, illegal arms, and prostitution.

Corruption voraciously devours the vitals of the police organization, eroding professionalism and depleting the capacity to fight against crimes. The incentive and reward system gets skewed as the legitimate expectations of policemen become clouded by considerations extraneous to the profession. Corruption feeds on several interrelated factors which include (i) wide discretionary powers; (ii) low pay; (iii) outdated performance appraisal systems; (iv) poor working conditions; (v) ineffective internal accountability; and (vi) abysmally weak external accountability mechanisms (i.e., through judiciary, media, and the Parliament).

The effect of low pay is twofold. First, the incentive to corruption becomes too overwhelming to resist if the salaries of policemen are not sufficient to take them beyond temptation. This is especially so in work environments marred by oppressive working conditions and absence of a positive work ecology. Second, the opportunity cost of being corrupt is very low to the extent of being negligible. If policemen were afraid of losing their jobs, there would be less incentive to be corrupt. If the cost of losing one's job was very low compared with losing corruption money, then the rational choice would be to accept bribes.

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Internal and external politics coupled with a culture that attaches no stigma to corruption are ingredients for inefficiency and corruption. An efficient and credible performance appraisal system linked with an adequate and transparent reward and punishment mechanism is also wanting. Indeed, a punishment- and rewards-based system is critical to minimizing corruption. In short, strong accountability mechanisms and attractive compensation policies are essential elements of a corruption-free system.

Lack of Professionalism

Police in South Asia does not function efficiently because it does not have the resources to carry out its mandate. Nor is it as yet ready to enforce established best practices in relation to professional standards. Police training in Pakistan, in particular, is archaic both in content and methodology. The emphasis is more on physical than on mental training. Human resource development aspects which require urgent attention include: (i) enhancing critical capabilities of investigators, (ii) introducing and assimilating modern technology into the police organization, (iii) changing the culture of the organization, (iv) promoting sensitive and responsive policing, (v) preventing human rights violations by the police, (vi) enhancing crowd management and riot control, (vii) effectively responding to incidents of violence against women, (viii) countering terrorism, and (ix) fighting cyber crime.

Police Behavior

Improving police behavior is one of the biggest challenges, as mistrust of police is so deeply embedded in society. Most of the time, citizens do not want to seek assistance from the police, even in times of crises. The following are common complaints against the police:

- (i) Police are the principal violators of the law, but being above law they get away with impunity.
- (ii) Sections of the police are in league with anti-social elements and consequently indulge in selective enforcement of the law.
- (iii) Police exhibit rude behaviour, use abusive language, and routinely show disregard of internationally accepted police practices on search and seizure.
- (iv) Police not infrequently indulge in serious corruption.

- (v) Police deliberately disregard human rights legislation in matters of interrogation, detention, and preventive policing.
- (vi) While crimes are getting sophisticated, the police are becoming less professional. There is no evidence of a collective desire within the organization to redeem its public image.
- (vii) The police are insensitive towards victims of violent crimes. They behave rudely with victims, especially female victims of crime.
- (viii) Police are there to rule, not serve the people.

Autonomy versus Need for Oversight

Historical abuse of political authority coupled with widely held perceptions of police inefficiency, corruption, highhandedness, and a culture of patronage are part of a deepening crisis in the police forces of South Asia. Ironically, calls for more accountability were used to gain greater operational control over the police, thereby debilitating the internal command and control structures. The solution lay in doing away with dual control under the Police Act of 1861, allowing necessary operational autonomy, and establishing credible accountability mechanisms. The reform effort reflected in Pakistan's Police Order 2002 was a step in this direction but its amendment in November 2004 diluted the autonomy of the inspector general of police.⁴

Conceptualizing Police Reforms

Considering the foregoing problems, police reform cannot but be about creating a police force that works better. It is about closing the trust deficit: proving to the people that the new police will be there principally to serve. For this, governments need to listen to senior police administrators who know the police best—who know what works, what does not, and how things ought to be changed. They also need to hear from experts as well as the stakeholders—the police, the judiciary, and the people—and seek their ideas, inputs, and inspiration. They need to hold discussions with business leaders who have successfully introduced innovative management practices to turn their organizations around. They need to consult public administration experts who know how best to apply the principles of reinventing public sector organizations to improving police services. Governments need to have meaningful dialogue with the best minds from the private sector and civil society. On the basis of these consultations, a

⁴ Initially, the IGP was given the status of ex officio secretary to the Government, with full administrative and financial powers. However, this was opposed by the bureaucratic elite, resulting in an amendment of Police Order 2002 which defined "ex officio" to mean policy conveyed by the chief minister to the IGP not directly but through the chief secretary and the home secretary.

blueprint can be drawn. This blueprint should identify the focus areas and map out the corresponding strategies to carry out the reform agenda in various levels.

Focus Areas

Some of the areas requiring significant improvement are as follows:

Streamlining the Organizational Structure

Improving archaic police organizational structures is urgently needed. Not only should South Asian police forces have a clear chain of command, but they should also address their chronic shortfall in supervisory competence levels. Essential qualitative and quantitative improvements in the existing abysmally poor officer-to-men ratio must be implemented. This will involve increased recruitment of adequately trained professional officers at the managerial levels. The sphere of control must be defined and specialist departments must be created to meet the emerging challenges of law and order.

Increasing Recruitment of Women into the Force

Representing only 1% of the police force, women are terribly under-represented in the police forces of Bangladesh and Pakistan. There are hardly any women officers in meaningful command and operational roles, except in India where the situation is relatively better. Enhancing the present-day marginal representation of women police officers across the region is not only a critical developmental goal but also an urgent organizational necessity.

Improving the Standards of Policing, Internal Management, and Discipline

Policing standards in South Asia are far from satisfactory due to poor internal management and accountability practices. Police Order 2002 mandates an annual policing plan that sets standards of police performance and puts in place effective performance monitoring and evaluation mechanisms based on internationally established best practices. What is also needed is that all high-level positions are filled up through open selection, and not by routine promotions.

Improving Police Education and Training in Various Areas, including Human Rights

Human rights violations by police forces of South Asia range from unlawful arrest and detention to physical assault often associated with forced

confessions. The curricula of education and training institutions inadequately cover critical issues of human rights in the context of contemporary management, supervision, and law enforcement practices. The whole training paradigm requires a fundamental shift to equip policemen with the necessary knowledge and skills to meet new challenges.

Improving Police Transparency and Accountability

A well-administered police organization entails a fair, efficient, and responsive grievance system for handling citizens' complaints against the police. It involves establishing institutional mechanisms within and outside the police to make it accountable to its leadership, the public, and the law. In Pakistan, Police Order 2002 has introduced transparent merit-based police recruitment at the level of assistant sub-inspector through the public service commissions and the establishment of an independent police complaints authority. The system of postings, transfers, and promotions must be independent and insulated from undue external influence.

Improving Police Behavior and Adopting a Code of Ethics

Police attitude towards citizens must be reshaped to show respect for human rights. In this regard, a code of ethics that would set standards of conduct must be promulgated. In Pakistan, a code of conduct based on the UN Code of Conduct for Law Enforcement Officials has already been adopted, and its violation is a serious criminal offence under Article 155 of Police Order 2002.

Improving Image and Public Perception of the Police

The police in South Asia have historically suffered from a bad image, so that there is very little voluntary sharing of vital information from the public. Adopting measures that portray the police in a positive light and proactively address the causes of negative public attitudes is, therefore, integral to a comprehensive police reform strategy.

Community Policing

What the countries of South Asia require today is turning the anachronistic public order policing model upside down and allowing concepts like community policing and policing by objectives to take a lead role in the governing philosophy of their police forces. Let police serve the community, not rule it.

Eliminating Discrimination Against Religious, Ethnic and Other Minorities

No police force can hope to be accepted by the public as a true professional organization upholding the rule of law unless its officers are genuinely free from political, religious, ethnic, linguistic, or racial biases and have a reputation for enforcing the law fairly and justly, especially when faced with challenging situations. There is urgent need to develop and implement specific strategies aimed at ensuring that religious, ethnic, and other minorities are afforded equal access to policing services.

Strategies

What is the best strategy to ensure that the much-debated reform measures, recommended by scores of police commissions and committees across the region, start seeing the light of the day insofar as their implementation in letter and spirit is concerned?

Reforms that the Government has to Undertake

No government can plead paucity of funds as the reason for its inability to protect the life and property of citizens. The principal reason for governmental neglect of police reforms in South Asia is not lack of funds but the misuse of the police force for narrow partisan ends. If the rhetoric of good governance and rule of law is to turn into reality, the most important prerequisite is strong political will on the part of governments to transform their outmoded police outfits into modern service-delivery organizations.

In practical terms, government leaders should proactively yield their powers of superintendence over the police to apolitical public safety commissions to ensure political neutrality of police operations. In Pakistan, Police Order 2002 (Article 9) has restricted the Government to exercising the power of superintendence only to the extent of ensuring that the police perform their duties efficiently and strictly in accordance with law.

Reforms that the Police Themselves have to Undertake

For any meaningful police reform strategy to succeed, strong commitment of the leaders of the police organization is indispensable. In Pakistan, for instance, the measure of separating investigation from routine law-and-order operations has not been an unqualified success because of inadequate support from the senior police. Regional

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commands have suffered more or less the same fate as they remain powerless due to some resistance from the IGPs.

Observing internationally accepted organizational practices in relation to administration of the police force is also a key requirement. The onus of ensuring proper management of the force, including recruitment, promotions, postings, and transfers, squarely rests with the police hierarchy. Quality human resource management, efficient use of financial resources, and adoption of modern technologies are other areas which need initiatives from the police chief officers.

The adoption of credible methods of redress against the police is also a priority item. Senior police officers should publicly demonstrate their commitment to weed out incompetent and undesirable members from the force. Closing of ranks should not be tolerated. Officers of impeccable integrity, good repute, and proven competence should be deputed to probe public complaints against police. For complaints against non-registration of FIRs, special reporting centers under the district police officer and independent civil society committees (similar to the well-regarded Citizen Police Liaison Committee in Karachi) need to be established. Appropriate policies for dealing with critical issues such as gender crime and human rights, and police practices surrounding arrest, search, custody, and seizure of property must likewise be adopted. To avoid illegal detentions and maltreatment of arrested suspects, detention cells at police stations should be replaced by charging units, which are organizationally separate from police station set up.

Reforms that the Citizens can Initiate

Policemen come from society and reflect to a certain extent the attitudes and behaviors that are found in society. Citizens can, therefore, play a vital role in changing police attitudes in a number of ways. In this sense, their advocacy in making honest and fearless statements before the police during the course of an investigation is crucial. Civil society's role in initiating an informed debate on contemporary police-related issues, including

political interference in police matters, and in arriving at the right reform package cannot be overemphasised. Citizen groups can also contribute toward education and awareness programs on critical aspects of police reforms. Their role in making the members of parliament act in support of necessary statutory changes is also not to be discounted.

Proactive Gender-sensitive Reform

Ensuring gender-sensitive policing is a critical element of police reform. Programs and strategies aimed at changing police attitudes towards women involve proactive induction of more women into police forces of the region. A gender-sensitive training strategy on how to handle cases of domestic violence, harassment at workplaces, and sexual assault is also integral to the police reform agenda.

Governments in South Asia have over time professed strong support for empowering women when it comes to seeking access to justice as victims of crime. As such, they have been taking steps to advance various gender-sensitive reforms in their respective police forces.

Gender-sensitive Reform in Pakistan

In 1993, the Government of Pakistan took the rare initiative of establishing an all-women police station in Rawalpindi. This was followed by more such stations at the major cities of Islamabad, Lahore, Karachi, Peshawar, and Quetta. Not only did this initiative provide policing and legal services to women victims of crime under one roof, but also considerably reduced incidents of custodial rape in these cities. More recently, the Women Development Division opened up a large number of crisis centers to provide shelter to the victims of gender-based violence.

A national strategy to address issues relating to gender-sensitive policing was recently an-

nounced by the Government of Pakistan. It includes recruitment of more female police officers and revision of curricula of police training schools, colleges, as well as the National Police Academy. To provide effective and prompt response to cases of violence against women, the Government of Pakistan established in April 2006 the Gender Crime Cell in the National Police Bureau, Ministry of Interior. Its principal purpose is to foster women empowerment and enhance their access to justice. The cell will act as a central depository of data on cases of violence against women and assist policymakers in developing holistic and effective countermeasures to control this menace. The Government has also appointed the director general of the National Police Bureau as national focal person on cases of violence against women. The National Committee on Violence against Women headed by the minister for the interior has also been established to monitor and coordinate efforts of relevant authorities.

Gender-sensitive Reform in Bangladesh

In Bangladesh, the Government has taken a number of steps to enhance the role of women in the Bangladesh Police. The Strengthening Bangladesh Police Project aims not merely to improve the overall response of the police to women victims of crime but also to increase substantially the representation of women in the Bangladesh Police. It seeks to raise the percentage of women police from 1.2% to 30% over a 3-year period. Currently, out of the 116,000 members of the Bangladesh Police, only 1,392 are women. As part of the project, the new women officers will get special training to investigate cases of violence against women, including dowry harassment, acid-throwing, domestic violence, and sexual assaults.

Gender-sensitive Reform in India

In India, the Government has taken many steps to provide gender-sensitive policing. Gender-sensitive training for law enforcement officials at the state and central levels is given at the police training schools, as well as during the 2-year initial training for officers of the Indian Police Service. With regard to recruitment of women into the force, recent years have seen a substantial increase in the number of women officers although there is no formal reservation policy in this regard.

Gender-sensitive Programs:

An Assessment

While the existing gender-sensitive programs are steps in the right direction, these are not enough

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to bring about a qualitative change in the male-dominated police culture of South Asian countries. Women are still marginally represented in their respective police forces. What is needed is a well thought-out proactive strategy to attract and retain policewomen while, at the same time, exploring part-time or job-sharing opportunities to enable them to balance official and family responsibilities.

Police Reform: The Way Forward

What is necessary to make the police public-friendly is the central issue of any police reform effort. Thus, police reform is more than just a facelift; it requires in-depth examination of the police organization, its mandate, and its functional dynamics. It also underpins the need to put in place effective structures both to oversee police performance and ensure realization of the organizational mission. The reform process has to touch all ranks and has to be all-inclusive. It entails commitment from the political executive as it involves a re-examination of the whole governance paradigm.

Every organization, whether public or private, can only perform well if founded on valid organizational principles. The police forces of South Asia need to be urgently transformed from their colonial mold and organized on the basis of principles that govern standard, modern, contemporary police forces meant to police free societies, not natives. The key questions are: what kind of organization is needed to meet the 21st century law and order challenges? Which model can most efficiently bring about a radical change in the existing unhealthy level of police-public estrangement? How can the police be effectively brought under democratic control, yet ensure its political neutrality?

Operational Neutrality

As a first step, the responsibility of maintenance of law and order will need to rest unambiguously with the police. The police hierarchy will have to be made responsible not merely for the organization and the internal administration of the force, but also exclusively for all matters connected with maintenance of law and order. In short, policing operations will no longer have to be subjected to general control and direction from outside the police department.

Steps will also be required to render the police professionally competent, operationally neutral, functionally cohesive, and organizationally responsible for all its actions. This will in turn

lead to efficient police operations, better decision-making, improved discipline of the force, and revamp of police accountability mechanisms. The role, duties, and responsibilities of the police will have to be oriented in a manner where the service function takes precedence and crime prevention is viewed with a social purpose. The reform strategy will also solicit voluntary support and co-operation of the peoples of South Asia.

Political Neutrality

Parallel to operational neutrality is political neutrality. Without enabling the police to function freely, fairly, justly, and independently, there can be neither justice nor order. Since the purpose of the police is to enforce the laws of the land, without fear or favor to anybody, it is crucial to render it politically neutral. Such neutrality has been achieved in other countries by placing the police under apolitical control, creating a cushion between political expediency and law enforcement. In the absence of such a cushion, persons of influence will continue to prevent the police from doing its mandated duty.

Accountability

Simultaneously, it is crucial to bring the police under a system of accountability that enjoys public confidence. Once the police are enjoined upon to perform a just and constructive role in the community, their work ethics would change radically. Being subject to law, they would strive to uphold and promote the cause of public interest and safeguard democratic norms based on rule of law and due process. Moreover, the increasingly sophisticated range of coercive, scientific, and technical apparatus at the command of the police requires stricter accountability controls. Ineffective accountability mechanisms should be replaced with statutory institutions like the Independent Police

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Human rights violations by police forces of South Asia range from unlawful arrest and detention to physical assault often associated with forced confessions. The whole training paradigm requires a fundamental shift to equip policemen with necessary knowledge and skills to meet new challenges.

Complaints Commission in the United Kingdom or the Public Safety Commission System in Japan.

Meeting the Community's Expectations

The process of reinvention also requires greater emphasis on fulfillment of public expectations. Historically, there has been reluctance on the part of senior police to recognize the necessity of seeing police forces as organizations that are fundamentally no different from any other enterprise or business. The police organization has to evolve a shared vision and understanding of a common mission which will increasingly be focused on meeting the community's expectations.

Legislative Reform

In order to achieve all these, the first order of business is the enactment of a new police act to replace the archaic legislation of 1861. Pakistan has already replaced the Police Act of 1861 with the Police Order 2002. In Bangladesh, there is no legal impediment to a single uniform legislation because of its unitary form of government. In India, the question is whether there should be a new central law in India on the subject or it should be left to each state to pass its own law.⁵ Clearly, it will be in the national interest to have a uniform law which would hold good for the whole country. If there is political will, state legislatures could be persuaded to pass resolutions to em-

power Parliament to enact a central law for regulation and management of police forces in the country by the respective state governments. Alternatively, the Home Ministry can draft a bill and recommend its adoption by the states. The other option is for the central Government to enact a model police law in Union Territories as well as in those states where the same party is in power to serve as model and source of inspiration for other states.

"Humanizing" the Police

The next issue to be addressed is violation of human rights by the police. Unfortunately, the police are looked upon as the exploitative arm of the government. This is particularly true in respect of the economically and socially weaker sections of society such as women, children, landless labor, bonded labor, scheduled castes, and scheduled tribes. The police must undergo a process of "humanization" and sensitization and follow a policing philosophy based on rule of law and respect for human rights.

Factoring Other Variables

Finally, policing cannot be reformed without reference to the criminal justice system and to the larger political and social order of society. Any police reform strategy will have to take into account a number of variables such as the structure of government, balance between federal and provincial governments, or between provincial and local governments, the role of the judiciary, military, and political parties in administrative affairs of the country, the role of public prosecutors and defence lawyers, professional leadership in the police, police mandate, the basis of legitimacy of the police (from an adversarial to a consensus or a community model). Equally important, if not more important, is to consider less tangible features of a society, like its social structure and cultural expectations.

Conclusion

In conclusion, law enforcement modernization is one of the greatest challenges confronting South Asia, a challenge that can and must be met. There are no shortcuts, and no easy answers. Like an old Chinese saying, a journey of a thousand miles begins with the first step. So let the first step be taken sooner rather than later. There is not a moment to lose.

⁵ Under the provisions of the Indian Constitution (Art. 246), public order and police (including railway and village police) fall under the State List.

CHAPTER 4



Enhancing Access to Law and Information

Access to Law: The Bangladesh Perspective

Dr. Tureen Afroz

Promoting the rule of law, human security, and justice is of primary concern in any developing country. No one can deny that knowledge of the law is a necessary basis for civic activity and for people's capacity to comply with the law.¹ When legal information is equally and easily known to all, the incidents of violation and abuse of law are less. In this context, "access to law" can significantly contribute to a better establishment of the rule of law.²

"Access to law," as used in this paper, pertains to access to the text of laws that govern the conduct of the people. It guarantees the people's right to know the law. By "people," we mean all sections of society including ordinary citizens, professional groups or institutions such as the judiciary, the prosecutorial service, legal professionals, legal aid providers, legal right activists, and/or media—all of whom require access to law in different degrees and for different purposes.

The Importance of Access to Law

The availability of free public access to law contributes toward equality before the law. In an environment where legislation is difficult to access, discrepancies between resources available to one party from those available to another are exacerbated.³ Also, ordinary citizens expect their government to operate openly. When law is accessible to all, there is little chance that ordinary citizens would fall victim to corrupt government officials.

Access to law also enhances economic development and legal certainty. If access to the law is very difficult in a country, such inaccessibility can be viewed by potential foreign investors as substantial legal risk. This could in turn affect the overall proper functioning of international commerce and thereby the economic development of a country. On the other hand, accessibility of the law reduces the level of legal risk by creating a transparent and consistent legal environment for business, trade, and commerce.

Access to law is also an essential component of an effective judicial and prosecutorial system. An effective judicial system has the capacity to extend the protection of the law to all citizens; an effective prosecutorial system acts as the principal catalyst for the administration of justice. It is therefore important that these two systems be equipped not only with the necessary physical facilities, resources, and staff but also with the necessary legal and relevant research materials. Ensuring better access to law by the judicial and prosecutorial systems can greatly improve the effectiveness of these systems.

Further, accessibility of the law to the judiciary ensures, to a certain degree, consistency in applying and setting judicial precedents. This is of utmost importance in common law⁴ countries where the judges, along with legislative bodies, exercise law-making power. Also, easy access to law would work as a safeguard against erroneous decisions. Judges generally refer to legal principles

¹ Sue Scott. Providing Legal Information to the Community via the Internet: Research into Users and Pathways. Paper presented at AustLII's Law via the Internet 1999 Conference.

² Daniel Poulin. 2003. *Open Access to Law in Developing Countries*. Canada: Public Law Research Centre, University of Montreal.

³ See footnote no. 2.

⁴ Common Law is understood to be "law by precedent," distinguished from statutory law, i.e., parliamentary legislation to which Common Law is complementary. For details, see Frederic William Maitland. 1901. *English Law and the Renaissance*. Cambridge: University Press; Harold Potter. 1932. *An Historical Introduction to English Law and Its Institutions*. 4th ed. London: Sweet & Maxwell; R C Van Caenegem. 1988. *The Birth of the English Common Law*. 2nd ed. Cambridge: University Press.

and judicial interpretations established in previous decisions for guidance in deciding new cases. Availability of these decisions is therefore crucial to them. In addition, a judiciary or prosecutorial system functioning under a system that allows easy access to law would be able to restore people's faith and confidence in the justice system. It would improve the public image and transparency of the judicial and prosecutorial systems.

Access to law is equally important to legal professionals, legal aid providers, legal right activists, and legal academics. Legal professionals provide professional assistance to clients and unless they are acquainted with updated laws, whether statute or case laws, their services would be useless. Legal aid providers generally have resource limitations that bar them from extending their services to a greater number of potential legal aid seekers.

Better access to law facilitates legal academic research, which may have real positive impact on society. Scholars studying law would find their work significantly easier to accomplish if law is easily accessible.⁵ Also, legal right activists involved in human rights advocacy would benefit from having easy access to law.

Similarly, media plays a vital role in enhancing free flow of information to the public. Publicity is the very soul of justice. A responsible media needs access to law so that it can disseminate the same to the wider community to create social awareness.

Access to Law as a Human Right

Internationally, access to law has been identified as a human right only in the 20th century. The

United Nations General Assembly adopted a resolution in 1946, stating freedom of information to be a fundamental human right.⁶ Article 19 of the Universal Declaration of Human Rights (UDHR)⁷ guarantees freedom of opinion and expression, which includes the right to seek, receive, and impart information.⁸ The International Covenant on Civil and Political Rights also provides a right of access to information.⁹ It essentially repeats and then expands upon the provisions of Article 19 of the UDHR.¹⁰ Similarly, provisions of the International Covenant on Economic, Social and Cultural Rights¹¹ also support the right to public access to the law.¹²

As far as state laws are concerned, right to information or right to know are often found as one of the constitutionally guaranteed human rights in many jurisdictions. For example, the constitutions of Bulgaria,¹³ Estonia,¹⁴ Hungary,¹⁵ Lithuania,¹⁶ Malawi,¹⁷ Moldova,¹⁸ Mozambique,¹⁹ Nepal,²⁰ Peru,²¹ Philippines,²² Poland,²³ Romania,²⁴ Russian Federation,²⁵ South Africa,²⁶ Sweden,²⁷ Tanzania,²⁸ and Thailand²⁹ have specific provisions to this effect. However, in many other jurisdictions where no such provision is created, it remained a judicial practice to rule that the right to access information is actually protected under the constitutional right to freedom of expression.³⁰ The Supreme Courts of Japan,³¹ India,³² and Sri Lanka³³ upheld this concept in various decisions.

Alternatively, right to information or right to know can emerge as a separate national legislation. For example, the history of freedom of information laws can be traced back to Sweden³⁴ and Colombia.³⁵ In recent times, enactment of such law has become a trend in the well-established

⁵ Steven J. Damar. 2001. The Human Right of Access to Legal Information: Using Technology to Advance Transparency and the Rule of Law. *Global Jurist Topics* 1(2) (Article 6).

⁶ Resolution 59(1) adopted on 14 December 1946.

⁷ In 1948, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights under Resolution 217 A (III), 11 December 1948.

⁸ Universal Declaration of Human Rights, UNGA Res. 217, Art. 19 (10 December 1948).

⁹ International Covenant on Civil and Political Rights, Art. 19, 999 United Nations Treaty Series 171 (opened for signature 16 December 1966; entered into force on 23 March 1976).

¹⁰ It states that: (1) everyone shall have the right to hold opinions without interference; (2) everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice; (3) the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order or of public health or morals.

¹¹ International Covenant on Economic, Social, and Cultural Rights, 993 UNTS 3 (opened for signature 16 December 1966; entered into force on 3 January 1976).

¹² Laws should be neither secret nor difficult to obtain nor available to just an elite, privileged few.

¹³ Article 41.

¹⁴ Article 44.

¹⁵ Article 61(1).

¹⁶ Article 25(5).

¹⁷ Article 37.

¹⁸ Article 34.

¹⁹ Article 74.

democracies³⁶ such as the 1967 Freedom of Information Act of the United States (US), Freedom of Information Act of Australia, Access to Information Act and Official Information Act of New Zealand, Freedom of Information Act of the United Kingdom, Freedom of Information Ordinance³⁷ and Freedom of Information Rules³⁸ of Pakistan, and Right to Information Act³⁹ of India.

In Bangladesh, however, the situation is different. The Constitution of the People's Republic of Bangladesh guarantees freedom of expression but does not explicitly recognize a separate right to information.⁴⁰ Whether or not the right to in-

formation is protected under freedom of expression remains unsettled but a draft Right to Information Act is pending for review by the Ministry of Information.⁴¹ Nevertheless, in 2005, the High Court Division directed the Election Commission to collect necessary information from the candidates of parliamentary election and to disseminate the same through mass media and the Government to provide necessary logistic support for the purpose.⁴²

Codification and Publication of Laws in Bangladesh

Statute laws in Bangladesh are published in *The Bangladesh Gazette*, the official gazette of the Government. It is a regular government publication in which public service appointments, postings, and administrative orders are announced. In addition, this gazette often contains service rules and important government decisions issued by various ministries/divisions. Each issue of *The Bangladesh Gazette* generally contains several parts, including reprints of Acts as well as the drafts of bills in Parliament. The Government also publishes occasional supplementary issues known as *The Bangladesh Gazette, Extraordinary*.⁴³ Issues of *The Bangladesh Gazette* as well as those of *The Bangladesh Gazette, Extraordinary* are considered public documents.

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²⁰ Article 16.

²¹ Article 2(4).

²² Article III, Section 7.

²³ Article 61.

²⁴ Article 31.

²⁵ Article 24(2).

²⁶ Article 32(2).

²⁷ Chapter 2.

²⁸ Article 18(2).

²⁹ Section 58.

³⁰ Article 19, *Global Trends on the Right to Information: A Survey of South Asia*, July 2001.

³¹ Lawrence Repeta. 1999. Local Government Disclosure Systems in Japan. National Bureau of Asian Research Paper, Number 16. October; Jeff Kingston. 2005. Information Disclosure in Japan. Paper presented at the Biennial Conference of the Japanese Studies Association of Australia, Adelaide, 3–6 July 2005.

³² *S P Gupta v President of India* (1982) 149 AIR (SC) 234.

³³ For example, *Hewamanne v Manik de Silva* (1983) 1 Sri L R 1; *Joseph Perera v The Attorney-General* (1992) 1 Sri L R 1999; *Visuvalingam and Others v Liyanage and Others* (1984) 2 Sri L R 123; *Fernando v Sri Lanka Broadcasting Corporation and Others* (1996) 1 Sri L R 157.

³⁴ In 1766, the Swedish Parliament passed the Freedom of Press Act, which required the disclosure of official documents upon request.

³⁵ In Colombia, the 1888 *Code of Political and Municipal Organization* allowed individuals to request documents held by government agencies or in government archives.

³⁶ Article 19, *Global Trends on the Right to Information: A Survey of South Asia*, July 2001.

³⁷ Freedom of Information Ordinance 2002, No. XCVI of 2002. F. No. 2(1)/2002-Pub. Islamabad. The 26th October 2002. Available at: www.crcp.sdnpc.org/ordinance_of_2002.htm.

³⁸ www.infopak.gov.pk/public/govt/freedom_of_information_rules_2004.htm.

³⁹ www.mit.gov.in/rti-act.pdf.

⁴⁰ However, Article 33(1) of the Constitution recognizes a limited right to information, which can be exercised by a detainee. The said Article states that "No person who is arrested shall be detained in custody without being informed ... of the grounds for such arrest."

⁴¹ ANM Nurul Haque. 2006. Right to Information in Bangladesh. *The Daily Star* (Editorial). 30 January; Shaheen Anam. 2005. Right to Information in Bangladesh: Challenges and Opportunities. *The Daily Star* (Point-Counterpoint). 18 September.

⁴² *Abdul Matin Chowdhury and others v. Bangladesh*, Writ Petition No. 2561, 24 May 2005. The Court recognized that "people have a right to know and such right is included in the right to franchise."

Once statutory laws are passed, they need to be adopted, codified, consolidated, regularly updated, and published. According to the *Bangladesh Laws (Revision and Declaration) Act 1973*, all laws in force in Bangladesh should be printed in chronological order under the name of the *Bangladesh Code*.⁴⁴ Laws in Bangladesh used to be in English, a foreign language to the Bangladeshi nationals so all laws had to be translated from English into *Bangla*, the national language of Bangladesh. The *Bangla Bhasha Procholon Ain* enacted in 1987 made it possible to enact laws in *Bangla*. However, to ensure global compliance of Bangladesh laws, it is now also necessary to translate laws in *Bangla* into English.⁴⁵

According to the Allocation of Business among Ministries and Divisions framed by the President of Bangladesh, the Ministry of Law, Justice and Parliamentary Affairs (MLJA) of the People's Republic of Bangladesh is responsible for compiling, codifying, consolidating, adapting, translating, and publishing Bangladesh laws.⁴⁶ The same ministry also enjoys the copyright in all government law publications.⁴⁷ All governmental law publications prepared by the official law publication unit of the Government, known as BG Press.

As far as the publication of case law is concerned, the *Supreme Court Monthly Review* is the official case reporter of the Supreme Court of Bangladesh. It is expected to publish major case decisions of the higher judiciary on a monthly basis.⁴⁸ At the private initiative, the most popular case reporter is the *Dhaka Law Reports*, commonly known as DLR. The oldest law journal in Bangladesh,⁴⁹ it is a monthly periodical of judgments of the superior courts and statutes that appear in the gazette notification of the Government of Bangladesh. Even though such statute publications lack official authentication, members of the bar and the bench nevertheless widely refer to and rely on these publications.



A survey conducted reveals that Bangladeshis have knowledge only about very general laws. For example, people in rural villages know property and inheritance laws but are not aware of their fundamental rights or duties.

Another case law reporter is the *Bangladesh Supreme Court Reports* published by the Bangladesh Institute of Law and International Affairs,⁵⁰ a nonprofit, independent, and nongovernment research institute in Bangladesh. *Bangladesh Supreme Court Reports* is a quarterly publication, which publishes important decisions of the Supreme Court of Bangladesh. Its first publication was in 1977. The Bangladesh Bar Council⁵¹ publishes the *Bangladesh Legal Decisions* (BLD), a monthly law journal of important Supreme Court decisions with different questions for the benefit of lawyers and legal scholars. The first publication of BLD took place in January 1981. Some other case reporters in Bangladesh are *Dhaka Law Cases*, *Bangladesh Case Reports*, and *Bangladesh Law Times*. In the current system of Bangladesh, the legal and judicial community recognize and rely on most of these private law reporters.

⁴³ The issues of the extraordinary gazettes published occasionally contain: (i) weekly statistics of reported attacks and deaths from cholera, smallpox, plague, and other infectious diseases in the districts and towns; (ii) statements showing births and deaths from principal diseases in towns with a population of 30,000 or more in various districts; (iii) monthly weather and crop reports; (iv) quarterly weather and crop reports; (v) annual estimates of *ararhar* and lentil (pulse) and other *rabi* cereals. Notifications of the same day issued in *The Bangladesh Gazette (Extraordinary)* are normally printed on both pages of each sheet of the gazette in alphabetical order of the ministries, and not on isolated sheets.

⁴⁴ Section 6, *Bangladesh Laws (Revision and Declaration) Act 1973*.

⁴⁵ Law Commission Report. 1998. *A Report by the Law Commission Recommending that Authentic Text of Authorized Translation in English of Original Bengali Texts of Laws be Made*. 14 May.

⁴⁶ Sections 30(7), 30(9)–30(12) of the Schedule I, *Rules of Business 1996*.

⁴⁷ Sections 30(8) of the Schedule I, *Rules of Business 1996*.

⁴⁸ Justice Md. Abdur Rashid, Supreme Court of Bangladesh; Barrister Shamim Khaled Ahmed, Advocate, Supreme Court of Bangladesh.

⁴⁹ *Dhaka Law Reports* had its first publication in 1949. This was soon after the Dhaka High Court was established under the Pakistan regime with jurisdiction over the territory, which now constitutes Bangladesh.

Past Efforts to Improve Access to Law in Bangladesh

Law Indexing

The first initiative was taken via a government print publication, entitled *Alphabetical List of Existing Laws* by the Ministry of Law and Justice in 1984. The second one was a private initiative entitled M.R Hasan's *Index of Bangladesh Laws* published by Basic Law Series. The third effort was entitled *Encyclopaedic Compendium of the Laws of Bangladesh* (Volume I, II, III, and IV). However, none of these law indexes provide any text of the actual laws, rules, or regulations. Similarly, the website of the Parliament of Bangladesh, which contains a special section on Bangladesh legislation from 1972 to 2005, does not include the text of the laws.

Law Text Compilation

There have been a number of private initiatives to compile legal texts according to various selected topics. However, the topic selection may not be sufficient to meet the specific legal information needs of the wider community.

Legal Information Websites

The Ministry of Law Justice and Parliamentary Affairs, Law Commission, Board of Investment, Bangladesh Bank, Registrar of Joint Stock Companies and Firms, Securities and Exchange Commission, Dhaka Stock Exchange, Chittagong Stock Exchange, etc. have their own websites containing relevant laws. These websites, however, do not serve as comprehensive sources of any particular area of law and are not regularly updated.

Codification, Publication and Translation of Laws Project

The Ministry of Law, Justice and Parliamentary Affairs has undertaken the Codification, Publication and Translation of Laws Project (CPTLP). The main objective of the project is to facilitate public access to law by codifying, publishing, and translating all laws of Bangladesh within a reasonable period. The Canadian International Development Agency is currently sponsoring the codification component of the CPTLP.

National ICT (Information and Communication Technology) Policy 2002

In accordance with the provisions of this Ordinance, a force called Armed Police Battalions was formed to perform internal security duties; recover unauthorized arms, ammunitions, and explosives; apprehend armed gangs of criminals; and assist other law enforcing agencies.

Community Legal Awareness Building Projects

A number of nongovernment organizations (NGOs) impart

legal education/information at the community level. Their aim is to build legal rights awareness in the people. Some of them also provide legal aid to the poor and needy. For the vast majority of the country's rural population who do not have easy access to law or lawyers, these NGOs fill the necessary legal information gap to a certain extent. However, NGOs also suffer from poor access to law due to unavailability of authentic legal texts and up-to-date case laws.

Media Efforts

A few law-related programs showcase debates on basic human rights law. *Ain Adalat*, a popular program in the 1980s, presented legal debate and inquiry about various legal issues such as land laws, tenancy laws, civic laws, and family laws, to name a few. However, due to people's lack of access to broadcast media, the program did not reach people outside major cities of Bangladesh. In the 1990s, a few socio-legal awareness programs in the Bangladesh Television provided legal information on women and child rights, trafficking, land rights, medical malpractice, and corruption to the viewers. These programs were ineffective, however, due to inadequate program airtime, use of off-peak time slots, prioritizing only sensational legal issues as opposed to general legal information, and adopting a presentation style (including language) not suitable for the understanding of rural people, etc. Limited access to broadcast media also played an obstructive role.

On the other hand, Bangladesh Betar, the official radio channel in Bangladesh, has a wider coverage and a few popular programs, such as *Mahanagar* and *Amar Desh*, contain discussions on law and law-related issues for common people. *Mahanagar* targets the metropolitan audience and discusses consumer rights, and metropolitan police laws while *Amar Desh* mainly targets the rural audience and imparts legal information relating to family and land law. Also, there have been radio programs which include extensive discussions on women and child rights, many of which are sponsored by the government as well as international agencies like the United Nations Educational, Scientific and Cultural Organization.

In print media, hardly any daily, monthly, or weekly publication allots space for legal issues. However, some of these may include a column where legal advice on common legal problems is provided. The only daily that contains a weekly law page is the *Daily Star* which has articles on a wide range of national and international legal issues. However, as it is an English daily, its readership is limited to the educated circle of society.

Current State of Access to Law in Bangladesh

Legal Awareness in Bangladesh Society

A survey⁵² conducted for this study reveals that citizens have knowledge only about very general laws. For example, people in rural villages know property and inheritance laws but are not aware of their fundamental rights or duties. One possible reason for this is that the former laws affect their immediate personal needs while the latter cannot be easily understood. This lack of awareness is not limited to ordinary citizens. Even practising lawyers are sometimes not aware of the updated laws.

Legal Information Facilities

Not many public library facilities exist in Bangladesh. Aside from the National Library of Bangladesh, there are 68 government and 1,043 nongovernment public libraries.⁵³ In addition to these are a number of special libraries⁵⁴ and academic libraries.⁵⁵ However, there is an acute shortage of law books in these libraries. Still, some academic libraries that possess a limited collection of legal materials are not open to the public. The bar and the court libraries are also important sources of legal materials in Bangladesh. However, neither bar association libraries nor court libraries in Bangladesh have sufficient legal resources. Also, aside from a time limitation for daily usage, most of these libraries in Bangladesh do not have internet access to carry on legal research.⁵⁶ Practising lawyers also have their private libraries but with limited collection. The Legislative Information Centre of the Government also maintains a library within its premises.⁵⁷ The library contains a good collection of legal materials. However, the library is maintained mainly for the benefit of Members of Parliament, secretariat

officers, and staff. While it is also open to researchers, it only provides limited services.

Obstacles to Citizens' Access to Law

Lack of Legal Adaptation, Codification, and Translation

Soon after the independence of Bangladesh, the MLPA started examining the existing laws for adaptation, codification, and publication.⁵⁸ Accordingly, Bangladesh Code Volumes 1–11 containing the laws enacted during 1836 to 1938 A.D. were published. The *Bangladesh Code* was last published in 1989, leaving laws enacted after 1938 scattered and uncoded. No effective steps have been taken to update the *Bangladesh Codes* already published. It is even more unfortunate that, to date, no comprehensive step has been taken to update and compile rules, by-laws, regulations, statutory orders, etc.

Unavailability and Insufficient Distribution of Authenticated Legal Publications

There is a serious lack of available authenticated legal publications in Bangladesh. Official reprints are not undertaken regularly. For example, *Government Land Recovery Ordinance*, *Haat Bazaar Ordinance 1959*, *Homeopathic Ordinance*, etc. have been out of print for decades but the Government has taken no substantial step to reprint the same. Getting an authenticated translated version of laws is also difficult at times. The government translation procedure goes through a lengthy bureaucratic process. Also, the legislative drafting wing of the MLPA is not completely equipped with the necessary modern facilities to carry on the huge backlog of translation work. On the other hand, while pri-

⁵⁰ Bangladesh Institute of Law and International Affairs was established on 30 June 1972.

⁵¹ The Bangladesh Bar Council is a corporate body constituted under the provisions of the *Bangladesh Legal Practitioners and the Bar Council Order 1972*. It admits persons as Advocates on its roll, holds examinations for purposes of such admission, and has the power to remove advocates from such roll for "professional misconduct" or failure to pay fees and contributions payable by them.

⁵² In September 2005, a survey was conducted to find out the current status of access to law in Bangladesh. A total of 117 persons was formally interviewed, including those from the judiciary; the Ministry of Law, Justice and Parliamentary Affairs; the Law Commission; the Bangladesh Bar Council; the Judicial Administration Training Institute; the Legal Education and Training Institute; the bar associations; legal personnel (both practitioners and academics); NGOs engaged in legal aid/awareness programs; BRAC; official law publishers; information technology experts; development partners involved in major law reform projects in Bangladesh such as CIDA (Legal Reform Project); and, above all, civil society.

⁵³ Md. Hanif Uddin and Md. Anisur Rahman. *Library Development in Bangladesh: An Overview*.

⁵⁴ For example, AEC Library, BIDS Library, ICDDR Library, National Science Library, Bangla Academy Library, National Health Academy, etc.

⁵⁵ For example, Dhaka University Library, Rajshahi University Library, Bangladesh University of Engineering and Technology (BUET) Library, etc.

⁵⁶ For example, 87% of New Zealand public library systems have internet access. See Pittams Grant. 1999. The Extent of Public Access to the Internet in New Zealand's Public Libraries. Research Unit, National Library of New Zealand.

⁵⁷ www.parliamentofbangladesh.org/lic.html.

⁵⁸ www.minlaw.gov.bd/cptlp.doc.

There is a serious lack of available authenticated legal publications in Bangladesh. Official reprints are not undertaken regularly.

vate initiative to law translation may be very effective as a shortcut,⁵⁹ it lacks the official stamp of authenticity.

BG Press prints only 6,100 copies each of the *Weekly Gazette Extra-Ordinary Gazette* for countrywide distribution. This is definitely not enough for the entire population. Although BG Press has a sale center for the public, it only reprints legal materials for profit. Recent gazettes are not readily available to the lawyers on time. Even the Attorney General's Office has no official copy or record of recent amendments of laws.

Lack of Access to Case Law

Citizens not only suffer from lack of easy access to statute law but also from poor access to case law. The Supreme Court is the official repository of case decisions, certified copies of which can be obtained by the public subject to a fee. In many developed countries, and even in some developing countries, court decisions as well as the day-to-day transcripts of court hearings are freely available on the internet.⁶⁰ In Bangladesh, court decisions are yet to be available on the internet.

Supreme Court Monthly Review, the official case reporter of the Supreme Court of Bangladesh, does not publish decisions monthly. Case law reporters published at private initiatives also suffer periodic interruption. For example, the *Bangladesh Supreme Court Reports* only resumed publication in 1995 since its suspension in 1983.

Thus, the only alternative source is contacting legal professionals at the cost of paying huge service fees. This makes not only the access to law but also access to justice very expensive for poor and vulnerable segments of Bangladesh society.

Policy Recommendations: Experiences from Other Jurisdictions

The following recommendations are made to improve and enhance access to law in Bangladesh.

The Government should enhance the ongoing programs on access to law.

As a starting point, the Government should enhance ongoing programs/efforts on access to law. This will avoid the duplication of efforts already undertaken and maximize valuable resources. In this regard, the ongoing Codification, Publication and Translation of Laws Project (CPTLP) should be strengthened. All laws in Bangladesh should be properly codified and translated. The Government should explore all possible sources of internal and external funds to support the successful outcome of CPTLP.

Similarly, to enhance easy access to case law, the current interactive website project for the Supreme Court of Bangladesh under the *Support to ICT Task Force* should be completed as soon as possible. Such website will not only facilitate access to law but also access to justice. In addition, the Government should encourage and facilitate the already existing community legal awareness-building projects. A comprehensive policy could guide all these efforts toward the same direction. At the same time, the Government should consider formulating a supportive media policy to disseminate legal information to the wider community in a more consistent and effective way.

The Government should support the Free Access to Law Movement.

The Free Access to Law Movement was initiated in 2002 with the Montreal Declaration of Public Access to Law.⁶¹ According to the Declaration, "public legal information" means "legal information produced by public bodies that have a duty to produce law and make it public." It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry.⁶² In many developed countries, the use of information technology has brought in an ocean of change in their status of access to law.⁶³ For example, in the US, France, Canada, and Australia, text of basic laws are now freely accessible to everybody via the internet. A similar Law Web Portal (LWP) for Bangladesh laws will definitely serve as a partial but significant remedy to access to law problems in Bangladesh.

⁵⁹ For example, *The Heidelberg Bangladesh Legal Translation Project* undertaken by the Department of Law of the South Asia Institute (SAI) of Heidelberg University. Available at: www.sai.uni-heidelberg.de/workgroups/bdlaw/.

⁶⁰ For example, US Supreme Court decisions are available at www.findlaw.com/cascode/supreme.html; UK House of Lords judgments are available at www.publications.parliament.uk/pa/ld/jdjudgmt.htm; the High Court of Australia judgments are available at www.austlii.edu.au/au/cases/cth/HCA/; the High Court of Australia transcripts are available at www.austlii.edu.au/au/other/hca/transcripts/; the Indian court decisions can be available at www.judis.nic.in/; etc.

Development of an LWP requires an efficient (if possible, permanent) legal research cell that would continuously contribute toward planning the structure and content of the web. This entails administrative costs, legal research costs for continuous updating, technical costs for system maintenance and operation, and training costs. Considering these expected expenses, the question now is how to manage the long-term costs of such LWP. One option is to consider imposing user fees. However, with a potentially varied group of users, it is very difficult to know the extent of user fees that might be collected.

In principle, to ensure the poor's access to law, nongovernment organizations (NGOs) involved in providing free legal aid to the public should not be made subject to any user fee for using the LWP. This should also be the case for law firms involved in public interest litigations. However, it is tough to monitor who is actually serving the underprivileged and who is not. On the other hand, charging user fees for disseminating legal information is against the basic principles of Open Access to Law. In many developed countries such as France, Canada, US, and Australia, copies of basic laws are now freely disseminated online. Moreover, popularizing the concept of law via internet in Bangladesh will take time. The legal community would first need to appreciate the value of possessing updated legal information and the benefit of the LWP, otherwise such fee would only discourage them from using the facility. Therefore, it is suggested that user fees should not be imposed at the beginning of the project.

Nevertheless, there are several ways to secure long-term financing for LWP. For example, the Government can allocate a portion of the annual budget for this purpose. If a project is initiated, legal, academic, judicial, and legal professional training institutes such as BRAC University (School of Law), the Legal Education and Training Institute of Bangladesh Bar Council (LETI), and the Judicial Administration Training Institute (JATI) would be interested in providing the initial support for legal research, information technology

networking, operation, maintenance, and training facilities. In the long run, BRAC University (School of Law) may also be interested in internalizing the component of legal research cost of the LWP by providing continuous research support. Similarly, LETI may be interested in internalizing the cost of training by charging training fees from the very beginning. Moreover, JATI is already under a long-term funding plan⁶⁴ to conduct its computer training programs.

Multinational companies can also be approached for sponsoring LWP on a continuous basis. Some big commercial law firms in Bangladesh have also shown keen interest in providing financial support to keep the LWP alive.⁶⁵ In addition, the Government can negotiate with its development partners to formulate a platform for joint funding of various aspects of the LWP. For example, organizations promoting and advocating human rights law or environmental law can be persuaded to finance legal research on their concerned area of law. The output of such research work can then be disseminated to all in the same web portal. In other words, the LWP can become a real "one-stop legal information source" of Bangladesh laws.

The Government should consider establishing an Independent Legal Information Institute (LII). To develop and maintain an LWP, a legal research cell has to be established, preferably at a law re-

Some big commercial law firms in Bangladesh have also shown keen interest in providing financial support to keep the Law Web Portal (LWP) alive. In addition, the Government can negotiate with its development partners to formulate a platform for joint funding of various aspects of the LWP.

⁶¹ "Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximizing access to this information promotes justice and the rule of law; "Public legal information is digital common property and should be accessible to all on a non-profit basis and, where possible, free of charge; "Independent non-profit organizations have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published."

⁶² www.worldlii.org/worldlii/declaration/montreal_en.html.

⁶³ In 1990, Hermes Project at Case Western Reserve University, in collaboration with the US Supreme Court, was the first pioneering project to make use of the internet for redistributing legal information.

⁶⁴ With a possibility of extension of the same up until 2010.

⁶⁵ For example, Lee, Khan and Partners; The Law Counsel; The Law Associates; Bhuiyan Islam & Zaidi; Huq & Company; the law firms of Barrister Rokon Uddin Mahmud; Advocate Ozair Faruque; and a few others.

The clear-cut advantages of linking Legal Information Institute (LII) with academic legal institutions are: legal research environment and facility; legal research staff; law student support for longer period of time; and less bureaucracy. All these are necessary for the sustainability of the LII.

search center already in operation with proper infrastructural arrangement. Alternatively, this cell may take the shape of an independent institutional structure such as Legal Information Institute as is the case in many developed countries. For dissemination of law in developing countries today, the most relevant model is associated with the acronym “LII,” or the Legal Information Institute, a project that began at the Cornell University. This innovative use of the internet soon inspired similar projects in Canada (CanLII/LEXUM) and Australia (AustLII, WorldLII). Therefore, it is suggested that by creating a permanent institutional body, namely the Bangladesh Legal Information Institute (BanLII), the open access to law via internet can be ensured in Bangladesh.

As regards the administration of BanLII, the example of developed jurisdictions such as in the US, Canada, and Australia may be followed. LIIs can be connected to one or more host universities instead of linking them with a government institution. The clear-cut advantages of linking LII with academic legal institutions are: (i) legal research environment and facility; (ii) legal research staff; (iii) law student support for longer period of time; and (iv) less bureaucracy. All these are necessary for the sustainability of the LII. It is recommended that there be two parts of institutional arrangement for LII: one as an advisory committee and another as a working committee. The advisory committee’s role should be more as a facilitator that would oversee the development of LWP and suggest policy directions.

The Government should consider establishing public (legal) information kiosks.

Much of the success of LII and LWP will depend on how far it can reach out to the ordinary citizens. In the first place, to access law via the internet, ordinary citizens need access to computer, telephone, and internet services. A vast majority of the Bangladesh population does not have any computer access or knowledge. Telephone access is quite limited. Also, internet facilities are available only at some major district towns of Bangladesh. Except for large cities such as Dhaka, Chittagong, or Sylhet, public access to internet facilities is very limited. Many rural areas of Bangladesh still have no electricity.

To address these problems, the help of legal professionals, legal aid providers, legal right activists, and legal academics could be enlisted. By enhancing their own access, citizens can ensure access to law and justice. As a solution to the logistical problems, the Government could utilize wireless internet connection. Also, a number of NGOs are currently working toward providing wireless internet connection even in rural areas. For example, BRAC is currently working to create a national wireless broadband system⁶⁶ and establish 70 wireless towers by 2007.⁶⁷ The *Grameen Digital Centre Mirzapur* is also aimed at providing internet service through dial-up and broadband connectivity by telephone line and ADSL modem. Based on the *Mirzapur project*, Grameen Communications will provide internet facilities to the remote rural areas through wireless technology by establishing internet village kiosks for Grameen Bank members. Yet another NGO, UnnayanNet, works to give the ownership of modern information and technology to the majority, especially the rural poor by solving the digital divide and poverty alleviation.

It is recommended that the Government set up public information kiosks (PIKs) at strategic points where electricity connection is available, internet connection can be installed, computers can be provided without much risk, and where getting suitable support staff is a possibility. Also, it is important that PIKs be set up at locations where the legal and judicial fraternity have easy

⁶⁶ This system will provide an internet backbone, allowing internet access in all parts of Bangladesh. The plan is to build towers across the country that will provide mobile access to the broadband network. BRAC envisions that someday its primary and secondary schools spread all over the 64 districts of Bangladesh will be connected with an educational website that could potentially lead to vast improvements in the quality of education that could benefit both teachers and students. For more details, see Khadija Rehman and Tariq Omar Ali. 2005. Connecting people through a single network: the BRAC initiative. Holiday, 29 April.

⁶⁷ It may be mentioned that BRAC has already provided computers to many of its “gonokendros” (rural community centers). A unique aspect of BRAC’s information technology initiative has been to provide extensive residential training to local librarians (93% of whom are women).

access. It is strongly recommended that various district bar libraries be made target points for establishing PIKs for the following reasons: (i) district bar libraries already have electrical connections; (ii) PIKs will not require separate office space; (iii) there is no need to provide for extra security system; (iv) PIKs will be best utilized by lawyers who are generally treated as legal information intermediaries; and finally (v) the existing bar librarians can become PIK operators.

The Government should plan/implement necessary training programs.

Along with creating an LWP and setting up BanLII, the Government should also initiate necessary training programs for the professional users and PIK operators. At the initial stage, the major target trainees would be new lawyers, bar association representatives, NGO activists involved in legal aid/advocacy programs, judicial members, legal academics, and PIK operators. In addition to face-to-face training programs, the LWP should contain basic online tutorials for LWP users. Every PIK should also have printed technical instructions on how to operate the LWP. Also, similar print instruction notices should be distributed in all legal educational institutes. In this way, the LWP will be popularized among various sections of society.

The Government should consider introducing a compulsory legal education curriculum for primary, secondary, and higher secondary schools.

It is recommended that the Government of Bangladesh initiate a nationwide legal education campaign for all. It can consider including a compulsory legal education component into the country's primary, secondary, and higher second-

It is recommended that the Government set up public information kiosks (PIK) at strategic points where electricity connection is available, internet connection can be installed, computers can be provided without much risk, and where getting suitable support staff is a possibility.

ary school curriculum as a long-term measure to enhance access to law for all. A good model is the People's Republic of China, which constitutionally⁶⁸ and statutorily⁶⁹ provides for legal and human rights education to its citizens.

In Mongolia, legal education is introduced at the secondary school level where the constitutional concepts of civil rights and duties and freedom are discussed.⁷⁰ For the upper secondary level, legal education is one of the four compulsory components of social science.⁷¹

If "the main responsibility and goal of ... the education system is to create awareness among all sections of people about the requirements of life and to help develop an ability to solve various problems,"⁷² legal education in the primary, secondary, and higher secondary levels must be provided. After all, Article 17 of *The Constitution of the People's Republic of Bangladesh* mandates that: "The state shall adopt effective measures for the purpose of:

- (a) establishing a uniform, mass-oriented, and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;

⁶⁸ Constitution., Art. 24. "The State strengthens the building of socialist spiritual civilization through spreading education in high ideals and morality, general education and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas...."

⁶⁹ Education Law of the People's Republic of China (1995), Art. 6. "The State shall conduct education among education receivers in patriotism, collectivism and socialism as well as in ideals, ethics, discipline, legality, national defence and ethnic unity." Law on the Protection of Minors (1991), Art. 3. "The State, society, schools and families shall educate minors in ideals, morality, culture, discipline and legal system as well as in patriotism, collectivism, internationalism and communism, foster among them the social ethics of loving the motherland, the people, labour, science and socialism, and fight against the corrosive influences of bourgeois, feudal and other decadent ideologies."

Law on the Prevention of Juvenile Delinquency (1999), Art. 6. "We shall intensify juvenile education on ideals, morals, the legal system, patriotism, collectivism, and socialism. Juveniles who are of the age for compulsory education shall be educated on crime prevention while receiving compulsory education. The purpose of educating juveniles about crime prevention is to strengthen the concept of legal system among juveniles, so that the latter shall understand how law violation and criminal behaviour can harm individuals, families, and society; understand the legal responsibility of law violation and criminal behaviour; and thus foster an awareness of observing discipline and law and preventing law violation and crimes."

Law on the Prevention of Juvenile Delinquency (1999), Art. 9. "Schools shall employ teachers who specialize or work part time in education on the legal system. Schools may employ legal instructors from outside the schools according to requirements."

⁷⁰ Narangerel Rinchin. 2000. Mongolia: Human Rights Education in Schools. In *Human Rights Education in Asian Schools*, vol. 3. Osaka, Japan: Asia Pacific Human Rights Information Centre, p. 17.

⁷¹ Social science covers four main topics: politics, economics, the legislative process, and philosophy.

- (b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs⁷³

Conclusion

Access to law enhances the improved functioning of democratic institutions. Statutes are the result of a democratic process and as such, their publication is mandatory. Corollary to a right of effective access to law is a duty on the part of the government to publicize the law.⁷⁴ Ensuring access to law is crucial to state entities; it helps such entities gain institutional and regulatory efficiency.

Law at times does not work by exercise of force but by information transfer: “communication of what’s expected, what’s forbidden, what’s allowable, or what are the consequences of acting in certain ways.”⁷⁵ In other words, compliance with the law increases when the law is easily known. A law that is not known to exist cannot serve the useful purpose of being a guide to enhance required conduct.⁷⁶ Therefore, providing information about the law to those who are regulated by that law will enhance the efficiency of the regulatory effort and may decrease administrative and enforcement costs.

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⁷² Qudrat-E-Khuda Education Commission Report of 1974 (Bangladesh).

⁷³ Article 17, Constitution of the People's Republic of Bangladesh.

⁷⁴ Joseph E Murphy. 1982. The Duty of the Government to Make the Law Known. *Fordham Law Review* 51, p. 255.

⁷⁵ Marc Galanter. 1985. The Legal Malaise: Or Justice Observed. *Law and Society Review* 19, p. 537.

⁷⁶ Joseph E Murphy. 1983. Effective Access to the Law. *Journal of Legislation* 10, p. 313.

CHAPTER 5



Strengthening Legal Education and Training in Bangladesh

Legal Education and Training in Bangladesh

Prof. (Dr.) N.R. Madhava Menon

The role of the law has vastly changed with a variety of public interest functions directing the course of development locally, nationally, and internationally. These challenges have translated into multiple demands from actors in the legal and judicial system—civil servants, police, prosecutors, judges, legal advisors, and advocates—to be a social scientist, a policy planner, an administrator, a social reformer, and a conventional legal practitioner all at the same time. Unfortunately, the system of legal education which is supposed to prepare them for these challenges and demands lags behind and remains far removed from the development needs and democratic aspirations of the people. The legal education system is still a remnant of the system during colonial rule, resulting in a great disparity between constitutional aspirations for the legal system and the educational system's performance. Clearly, there is an imminent need to reform legal education for it to be relevant and achieve its purpose.

To formulate the agenda for reforming legal education, it is crucial to identify its objectives in the context of Bangladesh's needs and aspirations in general, and in terms of the expectations of students in particular. It is likewise important to know how educators view education and its

function in society. With these in mind, we then proceed to examine the nature and scope of the law curriculum in the major legal education centers in the country and identify its strengths, weaknesses, and areas in need of reform. In addressing the reform needs, we explore several options given the context and constraints within the academic and professional circles in the country. These and related issues are the concerns of this paper.

A Review of the Existing System of Legal Education

Formal legal education is provided by either a department of a university or an affiliated college. A university is governed by its own statutes and is authorized to determine the course content, duration, teaching and examination system, and eligibility for award of a degree. The system of legal education can thus vary from university to university, depending on their view of what legal education is. This is not to say, however, that there are no uniform requirements or standards for legal education. The Bangladesh Legal Practitioners and Bar Council Order, 1972 and the rules framed thereunder empower a body of legal practitioners to lay down the standards of legal education in consultation with law universities, and to hold examinations for admission of persons as advocates on its roll (Section 10 [a] and [i]). A degree in law from any university in Bangladesh or from any outside university recognized by the Bar Council is an essential qualification for admission as an advocate (Section 27). The Act further requires passing such examination as the Bar Council prescribes (Section 21 [i] and [d]). The Bar Council may, before admitting a person as an advocate, also require the advocate to undergo such course of training as it may prescribe (Section 27 [2]).

The legal education system is still a remnant of the system during colonial rule, resulting in a great disparity between constitutional aspirations for the legal system and the educational system's performance.



While curriculum planning and development depend on the law school, its available facilities, and the objectives of legal education the school wants to achieve, there has to be a core curriculum of essential law subjects that professional bodies, such as the Bar Council and the UGC, prescribe. (Above: the University of Dhaka, Bangladesh.)

In other words, the process of becoming a legal practitioner or advocate in Bangladesh involves a three-tier process: (i) obtaining a degree in law from a recognized university whose standards are set by the Bar Council in consultation with the universities concerned; (ii) passing the enrolment examination conducted periodically by the Bar Council after a 6-month pupillage under a senior advocate in which the candidates are tested a second time in subjects like Civil Procedure Code, Specific Relief Act, Criminal Procedure Code, Penal Code, Limitation Act, Evidence Act, Bar Council Rules and Professional Ethics; and (iii) satisfactory completion of a 7-week (sometimes it can extend to 9 months) Bar Council-conducted Bar Vocational Course followed by a *viva voce* examination. The three-stage process extends to 6–7 years after a person enters the law degree program.

Structure of University Education in Law

There are three types of universities in Bangladesh, all of which offer instruction in law. The first type is the public university which is funded by the Government and as such is the most popular among students. These include the Dhaka University which has been offering legal educa-

tion since 1921, followed by Rajshahi University (since 1950), Chittagong University (since 1992), and Kushtia Islamic University which commenced teaching law in the 1980s. Students who have completed a 2-year pre-university study in college (higher secondary course) are eligible to be admitted to the 4-year bachelor of laws (LL.B) (honors) degree program that these three leading universities offer.

Alternatively, one can seek a 2-year LL.B (pass) degree after obtaining a basic university degree. LL.B graduates can apply for a 1-year master of laws (LL.M) degree. Instruction is offered either in the department of law or in one of the university's affiliated colleges. Over 70 part-time (evening) colleges teach the LL.B (pass) course affiliated with the newly established National University. While admission to the LL.B (honors) course taught in universities is selective and competitive, the pass course program taught in colleges admits students liberally and in large numbers. Being evening colleges, course schedules, staff, and resources are limited and the quality of instruction in these colleges is extremely poor compared to Dhaka, Chittagong, and Rajshahi universities.

Another set of institutions teaching law are the private universities established under the Pri-

The number of students seeking admission to law courses offered in universities and colleges (honors and pass) keeps increasing every year.

vate Universities Act, 1992. They are regulated by the University Grants Commission (UGC) constituted under the University Grants Commission of Bangladesh Order, 1973. The Commission assesses the needs of university legal education and formulates plans for its development. At least 15 of over 50 private universities offer law honors (4 years) and pass (2 years) degrees. The system of instruction and the curricula are not always uniform or in accordance with set standards. The quality of instruction varies depending upon the type of management and the nature of resources these universities command. While private universities charge a fee of Taka (Tk) 100,000–400,000 for legal education, the fee in public universities which offer better education is as low as Tk5,000 or less.

Yet another system of legal education that prevails in Bangladesh is coaching for the external LL.B degree of London and other Commonwealth universities. The streets of Dhaka are lined with “teaching shops” promising students LL.B degrees both from reputable and lesser-known foreign universities with easy-to-study schemes.

The number of students seeking admission to law courses offered in universities and colleges (honors and pass) keeps increasing every year. According to one estimate, nearly 9,000 students take the Law Admission Test of Dhaka University every year.¹ For 100 seats in Chittagong, over 8,000 students apply.² In Rajshahi, over 10,000 people compete for 100 positions.³ On the other hand, about 4,000 law graduates take the Bar Council Examination annually, of whom on average only 1,500 candidates qualify. These figures show that the quality of legal education in universities and colleges is far too inadequate.

In response, the Bar Council mounted a legal education scheme that includes an apprenticeship, a bar enrolment examination, a bar vocational training course, a *viva voce* examination, and continuing education programs after the

candidate has obtained a university degree in law. The Legal Education and Training Institute (LETI) was established to undertake these tasks. The law departments at Dhaka, Chittagong, and Rajshahi universities have also taken initiatives to improve their instruction, as supported by the Bar Council, international funding agencies, such as the Ford Foundation, Canadian Institute of Development Association, and Asia Foundation, among others. Their curricula have been partly revised and some basic lessons in clinical teaching have been introduced.

The Objectives of Legal Education and the Law Curriculum

Globalization has called upon the law to perform multiple tasks in society and lawyers are expected to act as change agents and social engineers in governance and development. Accordingly, the goals of legal education must respond to these challenges. The goals of legal education, therefore, include the following:

- (i) provide sufficient competent lawyers, prosecutors, and judges to administer the judicial system;
- (ii) supply well-trained law personnel for providing legal services to government departments and private corporate sector with a view to organizing governance according to the rule of law and the changing requirements of society;
- (iii) generate legal researchers and academics competent to undertake legal education, legal reform, and good governance; and
- (iv) disseminate legal knowledge across society and build a legal culture conducive to constitutional governance, democracy, human rights, and rule of law.

Naturally, the above agenda can be achieved through multiple models of legal education, with different instructional designs and resource requirements. Therefore, the objectives of particular programs of legal studies could vary, although they may reflect the broad goals outlined above. This paper examines the LL.B (honors) degree and the LL.M degree program curricula,⁴ upon the assumption that the objective of the LL.B (honors) degree course is to train lawyers, prosecutors, and judges while the objective of the LL.M degree course is to train researchers and academics.

¹ Personal interview with Head of the Department of Law, Dhaka University.

² Personal interview with Head & Dean of Law, Chittagong University.

³ Views gathered from law teachers at Dhaka and Chittagong universities.

⁴ “Curriculum” refers to a course of study at a university.

Improvements in the LL.B Curriculum

Legal education involves learning: (i) the whole body of substantive and procedural laws and related aspects of social control of human behavior; (ii) fundamental skills including problem solving, legal analysis and reasoning, legal research and writing, investigation and marshalling of facts, communication, negotiation and counseling, litigation and alternative dispute resolution, and capacity to organize and manage legal work in different situations; (iii) the fundamental profession values and ethics such as integrity, fairness, and freedom from bias; and finally (iv) the right attitudes conducive to the dignity of the profession and the majesty of law and justice.

Obviously, these should be reflected in the curriculum and teaching methods of a law school. If law is a tool for social engineering and social control, it should be studied in the social context. This means integrating law subjects with social and behavioral sciences. This would enable the lawyer to solve problems in socially acceptable ways and assist in developing public policies appropriate to social needs. In short, whether it is the issue of poverty alleviation or gender justice, environmental protection or juvenile justice, human rights or development of scientific technology, modern law has to play a balancing role between stability and change, human rights and social justice. This is all the more true in developing societies like Bangladesh. The plea in curriculum development, therefore, is to expand the law curriculum to include a fair amount of sociology, political science, history, economics, philosophy, and psychology in legal education.

The method of instruction need not be the same as the social sciences but it should increase the understanding of the law in its functional context and emphasize the social relevance of legal education. This is what, for example, the Indian Bar Council conceived in its integrated 5-year LL.B degree curriculum. It is possible to further expand the scope of the law curriculum so as to include some essential aspects of physical, natural, and applied sciences which may help the future legal practitioner specialize in areas like intellectual property law, environmental law, medical law, maritime law, sports law, construction law, petroleum laws, cyber law, space law, among others. Of course, there are problems in organizing instruction in science subjects within the conventional law school but there are ways by which they can be overcome such as through off-campus placements, partnerships, and co-teaching by visiting faculty from non-law in-

Proposed Revised Curriculum for the 4-year LL.B (Honors) Program

Core Curriculum: Law Subjects (24 courses)

Contract, Tort, Crime, Civil Procedure, Criminal Procedure, Evidence, Constitutional Law, International Law, Muslim Law, Jurisprudence, Property Law, Environmental Law, Company Law, Labor Law. If found necessary, some subjects can be split into two courses while drafting the syllabus and taught over a period of two semesters. Certainly three or more clinical subjects (practical training of skills-based courses such as Drafting, Interviewing, Alternative Dispute Resolution, Professional Ethics) need to be included.

Core Curriculum: Social Science Subjects (4 courses)

Economics, Sociology, History, Political Science

Core Curriculum: Language and Communication (2 courses)

English for Legal Transactions

Bengali for Legal Transactions

Optional Curriculum: Specialization and Understanding

Law-in-Development (10 subjects)

International Trade Law (World Trade Organization [WTO] Law), Human Rights, Intellectual Property Law, Conflict of Laws, Criminology, Criminal Justice Administration, Hindu Law, Investment and Securities Law, Insurance, Banking, Comparative Law, Legal Systems of selected countries, Tax Laws, Equity and Trusts, Air and Space Law, Health Law, Maritime Law, Petroleum Law, Water Law, Energy Law, Juvenile Justice, Gender and the Law, Cyber Law, International Criminal Law, Bankruptcy Law, Law and Poverty/Development, Local Self-government Law, Election Law, Administrative Law.

If law is a tool for social engineering and social control, it should be studied in the social context. This means integrating law subjects with social and behavioral sciences. This would enable the lawyer to solve problems in socially acceptable ways and assist in developing public policies appropriate to social needs.

stitutions. There are examples of these models in the United Kingdom, the United States, Canada, Australia, India, and several other countries. In the National Law School of Jodhpur (India), LL.B (honors) is offered along with business management and biosciences courses.

Essentially, therefore, curriculum planning and development depends on the law school, its available facilities, and the objectives of legal education the school wants to achieve. However, there has to be a core curriculum of essential law subjects that professional bodies, such as the Bar Council and the UGC, prescribe. Apart from basic law subjects, a certain number of clinical courses⁵ may also form the required segment of the legal education curriculum. As integrated and interdisciplinary legal studies are necessary, the core curriculum for LL.B will have at least 5 or 6 courses of law-related social science subjects (e.g., history, philosophy, political science, economics, and sociology) and language courses (English and Bengali with emphasis on communication rather than literature). Thus conceived, the basic LL.B program would have in its core curriculum about 20–22 courses covering essential law subjects, 4–6 courses covering social science subjects, and 2 courses on language and communication so that the core component consists of not more than 30 subjects in all.

As a supplement to the core curriculum, there has to be an optional curriculum that would provide an opportunity for students to learn about the emerging areas of jurisprudence essential for national economic development. Optional subjects could be included to allow students to begin specialization in selected areas of legal practice such as petroleum laws, intellectual property laws, international trade law, water and energy laws, international commercial arbitration, conflict of laws, to name a few, which incidentally are not normally part of the standard curriculum. An optional curriculum would therefore allow multidisciplinary education and experience-based learning. If the 4-year LL.B (honors) program were taught under a semester scheme, there would be enough scope for 40 subjects over 8 semesters, with 5 subjects every semester. Reserving 30 slots for the core curriculum, the program can still accommodate 10 subjects from the optional curriculum. The total number of subjects can also be increased. A proper credit system can help manage diversified short and long courses.

Some courses can be taught through seminar or clinical methods and research papers can replace the examination. This scheme is proposed on the assumption that the Bar Council will continue with its value addition program like the bar

vocational course, preenrollment apprenticeship and examination, and continuing education program, all of which are heavily oriented to practical aspects of lawyering and professionalization.

In 1993, the Department of Law of Dhaka University undertook a “syllabus-by-syllabus review of the LL.B (honors) curriculum to serve as a model process for all the law teaching institutions in the country.” Some important changes introduced include:

- (i) the introduction of optional courses in the 2nd, 3rd, and 4th years of study;
- (ii) the creation of an introductory course on the Legal System of Bangladesh which examines the role of law in developing societies, public interest litigation, the role of alternative dispute resolution systems;
- (iii) the development of a course on the Language of the Law to provide English language skills as well as legal writing skills;
- (iv) the introduction of a course on Conveyancing, Drafting, and Advocacy skills; and
- (v) the introduction of specialized modules of contemporary interest in relevant law subjects and linking them with related modules in subsequent courses of study.⁶

The detailed syllabi⁷ for LL.B (honors) that the Department of Law of Dhaka University published contain the issues and topics being taught in each subject in the revised curriculum. It also carries a recommended reading list of books, reports, and articles on the topics included in the syllabus. As a consequence of the revision of the LL.B curriculum, the department also did a similar exercise in respect of the LL.M curriculum. The issues relating to the LL.M degree are discussed later.

The Department of Law of the University of Chittagong in 1992 was perhaps the pioneer in introducing a full paper of 100 marks on the English language in the LL.B program and another on moot courts and mock trial as another required subject. The Chittagong law curriculum is now under revision, with plans of introducing optional courses like energy and petroleum laws in the coming academic year.⁸

The Department of Law of the University of Rajshahi, one of the oldest in Bangladesh, is also involved in revising its curriculum and enlarging the scope of clinical teaching in the scheme of instruction.

⁵ Practice-oriented, skills-based courses often referred to as clinical legal education.

⁶ Jay Erstling. 1993. Reform of Legal Education in Bangladesh. In LETI Souvenir of Bar Council.

⁷ A “syllabus” is a more detailed outline of a course of study.

⁸ Interview of Dean Shah Alam.

Teaching Methodology

For the purpose of professional training, legal education has to be taught differently from liberal arts and humanities. The lecture method, which is the predominant method today, needs to be reviewed. It has to be supplemented by methods that other professional schools employ, such as the problem method, case study method, role playing, workshops and group discussions, project assignments, and other interactive techniques. Nevertheless, the lecture method has virtues if used with adequate preparation and clear objectives. A teacher should prepare in advance a teaching plan for the whole semester, which should be made available to students. The teaching plan should state clearly the objectives of the course, the knowledge and skills expected to be acquired, the content of the course in modules, the recommended list of reading materials, a list of issues for further enquiry, the distribution of hours and marks (credits) for the different modules, and the type of examination proposed. As far as possible, the teacher should follow the schedule and complete the instruction and administer the examination on time.

The individual teaching plan should be made compulsory and should indicate the level of learning in the course, whether cognitive or advanced. Cognitive learning refers to the acquisition of knowledge and application of such knowledge to different situations. On the other hand, advanced levels of learning (affective learning) should enable students evaluate various similar-looking situations and form independent opinions based on ethical judgments. In employing the methods of teaching, it is necessary to consider the level of learning intended to be imparted and adapt the techniques appropriately. For lecture classes to be interesting and effective, a plan should be prepared for every module in a given subject, materials carefully assembled, teaching aids intelligently employed, and occasional questioning and summarization attempted. Needless to say, the teacher should also have mastery of the subject and be able to communicate effectively. Use of examples and illustrations, stories, and anecdotes will make it even more instructive and interesting.

Another teaching method is the Socratic dialogue, more known as the “case method,” employed to develop capacities for analytical reasoning and persuasive argumentation in law classes. In preparing for class, students are given a reading list of laws and cases and asked to identify material facts, list the legal issues, ana-

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lyze applicable law and precedents, and give a reasoned decision. The student’s understanding of the materials read is then tested through a dialogue where the teacher asks a series of questions that not only requires the student to recount what was read but also to apply the law to similar new situations.

Preparing the students to role-play as opposite counsels, judge, government official, or parliamentarian, on contentious issues is another technique of experiential learning. A class can be divided into small groups to discuss and report on a problem, thus stimulating collaborative group learning from different points of view.

Clinical education is also another useful technique. This method espouses learning by doing. One of the popular programs is giving students actual experience through an in-campus or off-campus legal aid clinic. These clinics could have specialized centers for matrimonial cases, service/labor matters, environmental cases, and human rights cases. Legal aid in prisons, custodial institutions, and correctional homes is also a possibility. These clinics can have multiple programs to teach specific skills, ethical lessons, and litigation or law reform strategies. The teacher concerned can relate these clinics to the courses. These clinics can offer services short of actual litigation to maximize the experience of students. Matters requiring litigation can be referred to a panel of lawyers who can be assisted by the students. This can be done through close collaboration between the law faculty and the legal aid machinery of the State, as well as bar associations and even non-government organizations (NGOs) rendering paralegal services. To ensure proper supervision, the faculty should develop guidelines or manuals.

There are also well-organized teaching modules available to give simulation exercises to students for learning techniques of negotiation, mediation, conciliation, arbitration, interviewing,

and counseling. These methods are now being used in the practice-oriented teaching of substantive law subjects as well. Universities will be well-advised to identify law teachers as clinicians and provide them incentives and training to develop clinical teaching in law schools. Each faculty should also have a curriculum committee that will continuously review the content and methods of every subject with a view to update the syllabus, based on experience gained. Efforts must be concentrated on making law studies intellectually stimulating, socially relevant, and professionally significant. Law faculties must extend institutional support to teachers who are willing to innovate, experiment, and provide leadership to change.

Faculty Development

There is a felt need for some organized thinking on faculty selection, faculty tenure and service conditions, and faculty improvement schemes. Ultimately, academic excellence is the product of concerted efforts on the part of teachers and students. Today, there is a serious problem of lack of good teachers. Neither an LL.M nor a Ph.D. degree necessarily makes a good teacher. Years of experience also do not make a good law teacher unless that experience is grounded on experimentation, endeavor, and creativity. Requiring a young lecturer to teach with an experienced teacher for a couple of years or spend a semester as a visiting scholar in a reputable law school under a proper scheme is a productive method of faculty development.

Even senior teachers need continuing education and exposure to different models of instruction. Periodically attending academic con-

ferences and workshops (e.g., Academic Staff College Refresher Courses held at the instance of the UGC) periodically and having exchange programs with other institutions are relevant in this regard. Giving rewards and recognition is likewise a positive strategy. Having a core team of teachers who are motivated, enterprising, and willing to learn and improve constantly is crucial in implementing long-term improvements in legal education. Mere reform of the curriculum will not change the system.

It is worth noting that some outstanding clinical law professors in Bangladesh shepherd the system despite the lack of adequate support from universities and the Government. The Law Commission reports that the clinical programs introduced under support from Ford Foundation in the mid-1990s at the Dhaka and Chittagong universities yielded encouraging results in this direction. The fact that a large number of active NGOs are associated in using the services of law teachers and students of certain universities like Dhaka is another encouraging example of experience-based learning available to law students.

Teaching Materials and Resources

The main function of legal education is to teach how to find the law and apply it to solve problems. The objective is not so much to teach the text of the law as it is to train students in analytical thinking and application of the law when confronted with actual problems. This means that study materials should be intellectually engaging and professionally challenging. The basic materials for law study are either statutes or cases. These must be part of the reading materials used in all instructional activities. Use of commercial textbooks should be minimized; teachers should try to make their own reading list instead.

Since the case/problem method was introduced in legal education, several law schools in different countries have adopted the practice of compiling and editing selected cases with introductory notes and discussion issues for use of the students at the beginning of the term. The materials include excerpts from law reports, legal periodicals, and even from non-law materials to give social context education. Thus developed a series of study materials called “Cases and Materials” in different subjects which the teacher constantly revises and supplements. Their impact on the quality of education was indeed remarkable in countries such as India which used to follow only the traditional lecture method. Pending the development of cases and materials by law teachers them-

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selves, Bangladeshi law schools can selectively adapt the materials in other jurisdictions as regards the subjects that are common in content and are cited in Bangladeshi courts and tribunals.

It is desirable to have a series of orientation training workshops for law teachers who are not familiar with the case method. Perhaps the Bangladesh Law Teachers' Association can undertake the task with assistance from the Bar Council, the UGC, and donor agencies. Initially the case method can be used in subjects of public law and in foundation courses like Torts and Contracts. Coupled with clinical teaching in procedural subjects where students get a taste of lawyering, one can expect changes in the quality of instruction, pending curricular changes and other reform measures that require substantial resources.

Examination and Assessment Techniques

In all countries in the subcontinent, there have been problems in the method and conduct of law examinations. In fact, in some places it even raised law and order issues which led to policemen substituting teachers as invigilators. In many places, mass copying became rampant and cheating became common practice. To a large extent, these problems are traceable to the way law is taught (examination-oriented rote learning on principles), the manner in which questions are set (descriptive rather than analytical, memory-testing rather than problem-solving capacity testing), and the practice by which marks and credits are awarded. For legal education to improve, the method of assessment of student performance has to change radically.

First, a system of continuous evaluation should be put in place, according to which the student must be assessed at least twice every term. The better practice would be to divide the total marks into project work (on pre-assigned topics, which the student can prepare and present over a 2-month period, for which the teacher may give guidance), mid-term and end-term written and *viva voce* examinations. Some credit can be given to full attendance in classes and participation in co-curricular activities.

Second, the questions should be in the form of problems based on cases discussed in class, where the student is called upon to apply learning and critical thinking. The students may be allowed to consult Acts and law reports in answering the problems. This will reduce the tendency to copy during examinations. It is not necessary to have too many questions to assess the extent

of learning if these are in the form of problems. For testing textbook knowledge, another set of short-answer questions or multiple-option questions can also be included. Some of the best answers may be displayed in the library to give the students an idea of what the teacher expects in the matter of awarding marks. This will also reduce the subjectivity on the part of the teacher in marking examinations. When the system is thus institutionalized, universities may allow the teacher to formulate her own set of questions, evaluate the answers, and declare the results within a stipulated time. A grievance committee consisting of a few senior teachers can act as an appellate forum to quickly give remedies including re-evaluation in extreme cases. This would encourage objectivity and provide accountability on the part of the teachers.

In clinical subjects, the evaluation system needs to be broad-based and adaptable to the structure of the course and the way it is taught. In most places, students are informed in advance about the manner of grading their performance. Further, a committee of teachers, including teaching assistants/tutors may be entrusted to study and report the gaps and improvements needed in the system at the end of each academic term, so that the system is perfected and integrated with teaching plans, making it less dependent on the discretion of an individual teacher. When the examination system is thus revised, law schools can try to develop a question bank consisting of problems based on case law and new legislation. This would assist inexperienced teachers in preparing well-balanced problem-type questions intended to test specific abilities of the learners.

The grading system should also be revised. The modern approach is to substitute "grades" in place of numerical marks. The cumulative status is determined in a seven-point scale in which "O" will stand for Excellent or Outstanding, "A+" will

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Universities and their faculty also have social obligations to disadvantaged and underprivileged students. There is a section of students in developing countries who are first-generation learners who never had an opportunity to attend reputable schools and could not acquire English language communication abilities.

indicate "Very Good," "A" will stand for "Good," "B+" will stand for "Fair," "B" for "Average," "C+" for "Pass," and "C" for "Fail". This change will help moderate to some extent individual variations in evaluating the subject by different teachers and reduce educational wastage by limiting the "fail" category to extremely hopeless cases. The system of first class, second class, and third class does not reflect the relative merit of students and needs to be abolished. In its place, a system of distinction, pass, and fail can be established to reduce the disproportionate importance now being given to examination marks in the scheme of higher education.

To conclude, it should be pointed out that universities and their faculty also have social obligations to disadvantaged and underprivileged students. There is a section of students in developing countries who are first-generation learners who never had an opportunity to attend reputable schools and could not acquire English language communication abilities. Teaching faculty in universities should be aware of their presence in the class and take affirmative action to empower them with intellectual and communication capacities. As a large number of this type of students are present in law schools, legal education should also be able to address the problems of the weaker sections of the student community.

The law school can take several measures to meet the special needs of the weaker sections. These students should be identified during their first year and assigned mentors from among teaching assistants/research fellows/LL.M students. There must be special moot courts and similar co-curricular programs organized to motivate and encourage them get into the mainstream to eliminate fear and inferiority complex. If their

numbers are too large, they can be divided into sections. Some universities hold bridge courses before the commencement of regular classes. If individualized efforts are taken in the very first year of the LL.B program, they will be able to cope in later years with marginal support.

Faculty assessment at periodic intervals through an objective, transparent, participatory procedure is another desirable step to improve the quality of education. This can be done in several ways. First, an agreed system of self-assessment must be established in which every teacher should be asked to report the academic activities during the year, research completed, other support services rendered, innovative work undertaken, and other accomplishments. Widely respected senior teachers, including an external element preferably from the Bar Council, may subject the report to peer review, and the result given to the teacher concerned for information.

Yet another method of faculty assessment is to ask the outgoing students of a class to rate their teacher's work on a preconceived questionnaire. This may carry questions on the teacher's preparation, punctuality, helpfulness to students, use of materials, willingness to accommodate questions in class, style of teaching, and other relevant matters. The responses shall be anonymous and made available only to the teachers concerned after the semester.

Language Skills and Legal Education Reform

Unlike students in England and the United States, students in developing countries are saddled with a language handicap that the law school needs to address. An average Bangladeshi law student has to be proficient in at least two languages, Bengali and English, both of which are used in law making, legal transactions, judicial proceedings, and legal reporting. Thus, a student who studied in the vernacular is either shut out from professional law education or is put under the heavy burden of improving his/her English language competence during law school to be able to understand English law books and Supreme Court decisions. Therefore, teaching legal English in one or two compulsory courses in the first 2 years of the LL.B curriculum is prudent. Translating documents from English into Bengali and vice-versa can also be a good method of developing language skills necessary for the lawyer to work in a bilingual environment. In view of the trend toward computerization of legal and judicial work, it is also desirable to consider whether basic computer

knowledge can be prescribed as an eligibility requirement for admission to law school. Thus, a working knowledge of English and computer use should be made eligibility requirements for admission to professional education in law.

The LL.M Degree Program

The specific objectives of the 1-year LL.M program are not clear. If the program is intended to prepare law teachers and law researchers, the course structure and duration should be different. If the purpose is to provide advanced study in one or two subjects, it is insufficient. The LL.M program must be restructured in such a way that it enhances pedagogic and research skills that a good academician must possess. In other words, at least one stream of the LL.M program should be specifically directed toward preparing future teachers and researchers in law. Admission should be limited to 20 or 25 students in each department based on aptitude for advanced legal studies and interest in an academic career. Programs with a different nomenclature like master of civil law or master of business laws could be provided to LL.B degree holders who wish to pursue further studies.

The revised specialized LL.M may be for 2 years. The first year can be devoted to lecture courses and the second year to writing a thesis on a chosen topic to acquire expertise in legal pedagogy. Universities and colleges may be persuaded by the UGC to make the 2-year LL.M degree as the eligibility requirement for lecturers. The first year of the LL.M program (two semesters) can have at least eight courses of which 50% may be required courses and the rest elective. The required courses may include a paper on comparative legal theory or major legal systems, a paper on legal history including the history of legal education of Bangladesh, a paper on law and development/social change, and a paper on comparative constitutional law and/or international economic law. The other four papers may be chosen from the subject areas in which the candidate wants to specialize.

The second year is to be entirely devoted to two tasks—acquiring skills of teaching and writing a dissertation based on socio-legal research. Teaching skills can be organized by putting the student under the tutelage of a senior teacher, assisting the latter prepare the syllabus, assembling the reading materials, setting the question paper, and evaluating answers under supervision of the senior teacher. If the senior teacher finds it proper, the student can co-teach a first-year law

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subject. He or she should also organize moot courts and other co-curricular programs, prepare students for competitions, and be involved in the legal aid clinic and in the law journal. In all these activities, performance should be evaluated and given grades.

The dissertation should be on the subject in which the candidate offered specialized optional papers in the first year. The topic of research should preferably be chosen during the first year so that thesis formulation and research can be started early. The candidate should be asked to give at least two seminars on the topic in which faculty members should be present to offer suggestions for producing a publishable research thesis. An exceptional student can also administer a seminar course as part of the LL.B optional curriculum. The faculty should be able to certify candidates on successful completion of the program as LL.M with specialization on particular subjects. It is even desirable to give successful candidates an M.Phil. degree at the end of the second year, if the 1-year LL.M degree cannot be abolished.

Unless the departments of law of leading universities like Dhaka, Chittagong, and Rajshahi initiate a serious LL.M/M.Phil program directed to train competent teachers of law, improving the quality of legal education in the increasing number of law teaching institutions in the country would be difficult.

Establishing a Center of Excellence

The Need for a Center of Excellence in Legal Education

The need for a center of excellence in legal education is universally felt in the legal community. One way of answering this need is by restructuring existing institutions such as the law departments at Dhaka, Chittagong, and Rajshahi. An alternative is creating, through legislation, an autonomous

university with a mandate to act as a pacesetter on legal education reforms and produce at least a hundred globally competitive law graduates every year. Such a model national law school should have complete freedom to design its own courses, admit students, fix the fee structure, select the teachers, and decide on their service conditions. The National Law School of Bangalore is an appropriate model in this regard. This can be done in the public sector or in the private sector or as a joint venture of the two. Whereas there is no unanimity as to which option is more beneficial, majority subscribe to the double-track strategy of setting up an independent model national level law university and at the same time pursuing incremental reforms in the established centers of legal education.

Options to Restructure Legal Education in Established Universities

One option is a legislative strategy recently adopted in certain states in India (Tamil Nadu and Karnataka) wherein the entire legal education within the existing institutions (public university departments and private colleges/universities) was brought under a proposed law university that will be responsible for affiliation and accreditation, setting standards of instruction, curricular reform, examination, and recognition of degrees.

The law university will evolve norms to ensure equal access to legal education and penalize erring institutions through disaffiliation of colleges and de-recognition of degrees. It will conduct the entrance test for law school admission in both the public and private sector institutions and prescribe the minimum qualification and the number of students to be admitted to each institution based on facilities and resources. The law university will conduct the final examination (leaving internal assessment to individual colleges based on agreed norms) and declare the results promptly. The final LL.B degree can be conferred

either by the law university or the teaching university concerned.

Such a system would provide uniformity in standards, facilitate implementation of reforms at periodic intervals throughout the country, control the admission process and make it more efficient, and provide an accountability mechanism for educational institutions through an accreditation system. Needless to say, such a system may invite opposition from existing universities, but such opposition can be contained so long as these universities remain solely authorized to provide legal education and confer degrees. The new law university need not be a teaching institution; it may be an examination and accreditation body where policies are developed in response to national needs, public interests, market demands, and professional requirements.

The second option to restructure legal education in existing universities is to recognize selected law departments as advanced centers of legal learning eligible for special assistance from the Government based on performance. A committee can be created to advise, monitor, and recommend appropriate grants for achieving stipulated results over a 5-year period. A legal education committee has to plan and approve the program. Admissions would have to be selective and limited. To determine the parameters of the selection process, interested universities may be required to submit initial proposals.

Establishment of a Center of Excellence in Legal Studies

It should be emphasized that the objective is not to establish yet another law department or college but to create a unique, world-class center for experimentation and creative innovation. The proposed center will be a pioneer in reforms and influence the course of legal education in the country. In the process, the legal profession will improve, access to justice will be enriched, the judiciary will be able to attract better talents, specialized legal services will become locally available, and the quality of governance under a rule of law will get the desired momentum.

In terms of budgetary requirements, the initial requirement is 30–40 acres of land and taka (Tk)600–750 million for construction of infrastructure. For the land requirement, the Government can lease a suitable place in the city suburbs. On the other hand, the cost of education would amount to roughly Tk70,000 per student per year, based on the experiences of the National Law Schools of Bangalore and Kolkata. Assuming

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that there are 500 students (100 in every class of the 5-year program), the total cost of organizing instruction will amount to Tk35 million. The annual budget, including expenses for post-graduation, research, and extension activities, will be roughly Tk50 million. If the tuition fee charged from students every year is fixed at Tk50,000 per year (or Tk250,000 for the entire course), the annual collection by way of tuition fee will be around Tk25 million or 50% of the budgetary requirements. The balance can be addressed by seeking government grants, sponsored projects, private endowments, or foreign support. When the institution has established a reputation for providing quality education, fees can be increased as high as those in private universities (i.e., Tk400,000 for the entire course). Ultimately, the institution should become financially self-sufficient.

The most important step in establishing a center of excellence is selecting a capable director by a search committee composed of distinguished academics, lawyers, and judges chosen by the Chief Justice of Bangladesh who shall be its chancellor. The search committee may also be asked to recommend a panel of 15 to 20 outstanding teachers. Once the team composed of the director and 12 faculty members is identified (though not yet appointed), they must join a week-long residential retreat in which the project proposals would be thoroughly discussed and their individual and collective views gathered. The purpose is to make them claim ownership of the project, assess their individual commitments, reservations, and expectations for the work ahead, and understand each. None of the members shall have a permanent appointment. Their appointments should be under a contract, the terms of which may vary and for a maximum period of 5 years at a time. The contract may be renewed by mutual agreement for another 5 years. The proposed scheme has been introduced in the national law schools in India and is understood to be working reasonably well for both parties. Incidentally, this should also be the norm in selecting and appointing personnel for administrative services.

The next step is recruitment of highly competent, motivated teachers who are willing to learn and unlearn, work as a team with uncompromising zeal and dedication, and prepared to make personal sacrifices for the larger cause of building an institution of higher learning. In addition to this, the institution must maintain an efficient staffing and management system. The academic-administrative personnel ratio should be balanced to avoid unnecessary bureaucracy and simply

focus on improving the quality of education offered. With 100 new students admitted every year, it is advisable to have between 30 to 40 regular teachers and an equal number of administrative personnel.

The flagship program could be a 5-year B.A., LL.B (honors) degree. It will admit 100 students on competitive merit determined through an admission test nationally conducted in Dhaka and a few other cities. The eligibility for admission can be a passing mark in the higher secondary examination (intermediate) with English as a compulsory subject. Knowledge in the use of computers is a desirable qualification. A certain percentage of seats may be reserved for women, the disabled, and other weaker sections not adequately represented in the legal profession and in the judiciary. The selection process should be transparent, participatory, and free from external influence.

Classes should start every year on an appointed day with an orientation program for new students. The academic year should be divided into two or three teaching terms for purposes of organizing the curriculum and academic schedule. A trimester system is advisable although it makes heavy demands on teachers. The trimester system, which is followed at the National Law School of Bangalore, would keep teachers and students engaged almost 10 months in a year. During the 2 months of summer vacation, students would be on field placement with NGOs,



The legal education system in Bangladesh is still a remnant of the system during colonial rule, resulting in a great disparity between constitutional aspirations for the legal system and the educational system's performance.

Field placement with organizations or law offices for 2 months during the summer vacation every year is an excellent medium for experiential learning. It exposes students to the operation of law and its limitations. It equips them with skills to make responsible and correct moral judgments.

law offices, and corporate houses learning specific skills related to different types of legal and law-related works. This would cultivate work ethics that would adequately prepare them for the rigors of legal practice.

The B.A., LL.B (honors) degree program could be divided into 15 trimesters or 10 semesters. If five papers suitably developed into manageable modules are assigned to each term, the trimester system can take as many as 75 papers (subjects) and the two-semester system can take 50 subjects allowing enough scope for 20 to 25 optional papers in the LL.B curriculum. In this scheme, certain subjects can be divided and taught in two or more terms allowing thorough study of the topics involved. The teacher can modify the syllabus as is found necessary after every term. Visiting scholars can teach part of a course and the credits for that course can be apportioned accordingly. If part of the course is to be taught in an institution outside the law school, it can also be organized for appropriate credits and added to the rest of the courses taught in the law school. Flexibility

and variety involved in the structuring and management of the trimester/semester system will maximize learning opportunities.

Field placement with organizations or law offices for 2 months during the summer vacation every year is an excellent medium for experiential learning. It exposes students to the operation of law and its limitations. It equips them with skills to make responsible and correct moral judgments. As such, the law school should coordinate with NGOs, government departments, lawyers'/judges' chambers, prosecutorial departments, and corporate enterprises for apprenticeship of students on a rotation basis. This would afford every student 10 months of field experience that could give him/her the confidence and capacity to handle independent work upon entering the profession. They can also share their learnings in class for the benefit of other students.

Aside from academics, students should also be encouraged to engage in cocurricular and extracurricular activities. Such activities cultivate creativity, intelligence, and capacity for hard work. As such, sports and games, arts, and music should become a compulsory part of the law curriculum. Similarly, the practice of debate, moot court, mock trial, and essay writing should be part of the training. This would develop a student's full potential that would lead to excellence.

In conclusion, it is clear that existing legal education in Bangladesh does not sufficiently respond to the needs of law students, legal professionals, and the nation at large. There is no mistake that further delay in implementing the legal education reform agenda would be deleterious not only to the legal and judicial system but to national interests as well. It is therefore imperative that the reform process commence soonest.

Closing Remarks

Hua Du

Country Director, Bangladesh Resident Mission, Asian Development Bank



The Asian Development Bank (ADB) is pleased to have organized this workshop, which is now at its final stage. We are grateful to all of you for contributing to its success. We are also quite privileged to have heard during this workshop excellent presentations made by competent and distinguished speakers from the region. They are former Justice Shafi Rahman of Pakistan, the Head of the Pakistan National Police Force, Dr. Mohammed Suddle, former head of the Bangladesh National Police Force, Mr. ASM Shahjahan, Professor Menon, and Professor Tureen Afroz.

I hope the workshop was a useful forum for you to exchange ideas and experiences in the areas of the criminal justice system. We further hope that the similarities in the legal tradition and cultural background of the three countries had facilitated the culmination of relevant and applicable lessons to all the participants. In the context of Bangladesh, the topic of the workshop is quite relevant and timely. Bangladesh has undergone impressive economic and development growth. However, there are still many challenges to the governance setting in the country, including the

poor law and order situation as well as the embedded systemic corruption. This situation limits the vast potential development of the country.

As you are aware, there is greater realization today of the increasing nexus between economic growth and good governance. One of the core areas of good conveyance is the presence of the rule of law. For the rule of law to reign supreme, it would require the availability of a credible, impartial, and effective judiciary as well as other law enforcement apparatus. This means that the judiciary and other law enforcement apparatus should apply and be perceived to apply the law in an impartial and neutral manner to all concerned parties. The law enforcement agencies should also be seen as competent. It is mainly due to the weak law enforcement agencies that poor law and order situation and rampant bribe and corruption practices flourish. This, in turn will make it difficult for the country to lure potential investors, both foreign and domestic, to invest in the country for the long haul.

Therefore, governments should continue to strive for good governance, in particular through the presence of the rule of law. This is not a simple task. The Bangladesh Resident Mission (BRM) is pleased to note though the steady progress that the Movement of Bangladesh has undertaken to address some of these problems. This includes creating the Anti-Corruption Commission (ACC), strengthening law enforcement agencies, and taking the initial steps to separate the judiciary from the executive, and various other civil and criminal justice reforms. BRM is, therefore, confident that the Bangladesh Government is capable of creating good governance setting and conse-

One of the core areas of good conveyance is the presence of the rule of law. For the rule of law to reign supreme, it would require the availability of a credible, impartial, and effective judiciary.

quently reaping the rewards of further economic and development growth in the country.

For its part, ADB, as one of the major development partners, has placed good governance as one of the strategic priorities in its assistance program to Bangladesh. In this regard, ADB has indicated its commitment to the Government of Bangladesh to support, among others, (i) the operationalization of the ACC, (ii) the promotion of judicial independence, including at the lower tier of the courts responsible for trying criminal cases, and making operational the judicial service commission to complement the ACC, and (iii) the development of an independent public prosecution and related criminal justice system reforms to ensure a credible systemic deterrent for corruption and law and order concerns.

One of the concrete measures that ADB has undertaken in collaboration with the Government of Bangladesh to enhance good conveyance is through a technical assistance (TA) entitled Supporting Good Governance Initiatives. This TA supports the (i) development of an overarching National Integrity Strategy to provide a strategic policy framework for anticorruption in Bangladesh; (ii) operationalization of the Anti-Corruption Commission; (iii) promoting judicial independence and operationalization of the Judicial Service Commission to complement the ACC; (iv) development of an independent public prosecution and related criminal justice system reforms to ensure a credible systemic deterrent for corruption prosecution and law and order concerns; (v) development of governance reviews, audits,

and public expenditure tracking surveys for selected line ministries, which will complement existing support by other development partners; and (vi) governance management training and capacity building to foster and create incentives for corruption prevention in government.

The success in this intervention will allow us to plan and design further assistance in this area.

As a follow-up to the above TA, ADB has approved two more TAs—an advisory technical assistance (ADTA), Supporting Good Governance Initiatives II, and a project/program preparatory assistance (PPTA), Preparing the Good Governance Project—which will be implemented during July 2006–June 2007. Under the ADTA, ADB will provide further assistance to the ACC in training and capacity building, while the PPTA would support preparation of a comprehensive national integrity strategy to identify various measures to fight corruption in Bangladesh, including strengthening the judiciary and legal education reforms in Bangladesh. These two TAs would be followed by a \$40 million Governance Investment Project to support improvement of core and sector governance in Bangladesh.

In conclusion, I hope that the information and recommendations in this workshop will leave us better equipped for our future interventions to strengthen the criminal justice system. ADB looks forward to supporting the implementation of these recommendations in your respective jurisdictions. BRM is committed to do its part to support the agenda of the Government of Bangladesh in this area.



Appendices

The List of the Workshop Participants*

Bangladesh

Honorable Moudud Ahmed
*Minister of Law, Justice and
Parliamentary Affairs*

Mr. Syed Mohammad Harun Osmani
*Solicitor, Ministry of Law, Justice and
Parliamentary Affairs*

Mr. Fida M. Kamal
Additional Attorney General

Mr. Kazi Habibul Awal
*Additional Secretary, Ministry of Law,
Justice and Parliamentary Affairs*

Mr. Ali Ashraf Khan Lodhi
*Additional Secretary, Ministry of Law
Justice and Parliamentary Affairs*

Mr. Md. Khuda Baksh Chowdhury
*Additional Inspector General of Police
Criminal Investigation Department*

Mr. Md. Jahangir Hossain
*Special Officer (Additional District Judge)
High Court Division, Supreme Court*

Mr. Dewan Md. Shafiullah
*Additional Registrar (Additional District Judge)
High Court Division, Supreme Court*

Prof. Dr. Taslima Monsur
*Chairman, Department of Law
University of Dhaka*

India

Mr. P. K. Seth
Joint Secretary, Ministry of Home Affairs

Mr. S. K. Sharma
*Director of Prosecution (Joint Secretary and
Government Counsel), Central Bureau of
Investigation, Department of Legal Affairs*

Pakistan

Justice Sardar Raza Muhammad Khan
Justice, Supreme Court

Justice Tariq Parvez Khan
Chief Justice, Peshawar High Court

Dr. Faqir Hussain
Secretary, Law and Justice Commission

Mr. Afzal Kahut
Program Director, Access to Justice Program

Mr. Azhar Hassan Nadeem
Additional Inspector General of Police, Punjab

Mr. Shaigan Shareef Malik
*Secretary, Public Prosecution Department
Government of Punjab*

Mr. Fida Hussain Afridi
*Additional Secretary, Judicial, Home and Tribal
Affairs Department, Government of North
West Frontier Province*

Mr. Faheem Ahmed Khan
Deputy Inspector General of Police

Asian Development Bank

Ms. Eveline N. Fischer
*Deputy General Counsel
Office of the General Counsel*

Ms. Hua Du
Country Director, Bangladesh Resident Mission

Mr. Said Zaidansyah
Counsel, Office of the General Counsel

Mr. Firoz Ahmed
*Governance Officer
Bangladesh Resident Mission*

Mr. Waqas ul Hasan
Governance Officer, Pakistan Resident Mission

Ms. Amabelle C. Asuncion
Legal Consultant, Office of the General Counsel

Resource Persons

Justice (Ret'd) Shafiur Rahman
Retired Justice, Supreme Court, Pakistan

Dr. Muhammad Shoaib Suddle
*Director General, National Police Bureau
Pakistan*

Mr. Abu Syed M. Shahjahan
Former Inspector General of Police, Bangladesh

Prof. (Dr.) N.R Madhava Menon
Director, National Judicial Academy, India

Dr. Tureen Afroz
*Assistant Professor of Law, BRAC University
Bangladesh*

* The designations of the participants listed here are as at the time of the workshop.

Program Agenda

Regional Workshop for Strengthening the Criminal Justice System

30-31 May 2006, Dhaka Sheraton Hotel, Dhaka, Bangladesh

DAY 1

- 8:30–9:00 Registration
- 9:00–9:10 **Opening Remarks:** Honorable Moudud Ahmed, Minister of Law, Justice and Parliamentary Affairs, Government of Bangladesh
- Welcome Remarks:** Ms. Hua Du, Country Director, Bangladesh Resident Mission, Asian Development Bank
- 9:10–9:20 **Introduction of Participants:** Mr. Said Zaidansyah, Counsel, Asian Development Bank
- 9:20–9:30 Tea break
- 9:30–10:00 **Keynote Address:** Ms. Eveline Fischer, Deputy General Counsel, Asian Development Bank
- 10:00–12:30 **First Session: Strengthening the Judiciary and Approaches to Separation of the Judiciary from the Executive Branch**
Bangladesh Perspective—Justice Shafiur Rahman
India Perspective—Professor Madhava Menon
Pakistan Perspective—Justice Shafiur Rahman
Open Forum
- 12:30–1:30 Lunch break
- 1:30–3:30 **Second Session: Improving the Prosecutorial Service**
Bangladesh Perspective—Justice Shafiur Rahman
India Perspective—Professor Madhava Menon
Pakistan Perspective—Justice Shafiur Rahman
Open Forum
- 3:30–3:45 Tea break
- 3:45–5:30 **Third Session: Police Reform: Supporting the Administration of Justice**
History and Attempts of Police Reform in South Asia—Dr. Muhammad Suddle
Police Reform in Bangladesh—Mr. ASM Shahjahan
Open Forum

DAY 2

- 9:00–9:30 **Presentation: Justice Delayed is Justice Denied: Women and Violence in Bangladesh**
Professor Dr. Taslima Monsur
- 9:30–10:15 **Fourth Session: Improving Access to Law and Information**
Dr. Tureen Afroz
Open Forum
- 10:15–10:30 Tea break
- 10:30–12:00 **Fifth Session: Reforming Legal Education**
Professor Madhava Menon
Open Forum
- 12:00–1:00 Lunch Break
- 1:00–2:15 **Workshop Strategic Planning Session: Improving the Prosecutorial Service**
- 2:15–3:30 **Workshop Strategic Planning Session: Strengthening the Judiciary**
- 3:30–3:45 Tea break
- 3:45–4:45 **Workshop Strategic Planning Session: Implementing Police Reforms**
- 4:45–5:00 **Closing Remarks:** Ms. Hua Du, Country Director, Bangladesh Resident Mission, Asian Development Bank

Regional Workshop for Strengthening the Criminal Justice System Summary of Day 1

First Session: Strengthening the Judiciary and Approaches to Separation of the Judiciary from the Executive Branch

Justice Shafiur Rahman noted that the Constitution should be the basis by which the conduct of every institution and person is determined within a particular country. He also referred to the care that was put in collecting statistical data during the colonial period, whereas nowadays in Bangladesh, there are voluminous records but not judicial statistics. Another area that is neglected in his view is monitoring, inspection, and evaluation of courts. He recommended that a system of recognition and reward be put in place; where the investigating authority is satisfied with the outcome of inspection and evaluation, they could award some monetary benefit. The public should be made aware of the volume of cases pending in the courts. Justice should not only be done but also be seen to be done.

Regarding the *Masdar Hossain* case and the separation of the judiciary from the executive in Bangladesh, he stated that it requires careful scrutiny, with the High Court having to make a thorough assessment of the needs of all courts and tribunals subordinate to it, quantify such needs in terms of money, determine the phasing of separation, and evaluate existing resources and capacity. He recommended that an implementation cell be created in the High Court to perform this

work and to coordinate with a similar cell in Government. Further, the judicial commission should look into ways to discipline district judges in the Supreme Court and High Court. Finally, it should formulate an implementation plan phasing in the separation process in a manner affordable to the Government.

With respect to Pakistan, he noted that separation has taken place which has yielded visible improvement in the judicial system but certain problems have arisen regarding post-separation challenges, such as:

- inadequacy of judges, court personnel, and infrastructure for effective judicial administration;
- lack of needs assessment study;
- lack of training and experience in handling criminal cases by civil judges;
- heavy demand on judges to perform judicial and quasi-judicial functions; and
- absence of necessary changes in laws.

Professor Madhava Menon supported Justice Rahman's suggestions regarding the separation of judiciary in Bangladesh. He stated that the efficiency of the justice system should not only be measured by the conviction rate. Noting one of the criticisms of separation being the requirement of evidence beyond reasonable doubt, he stated that if conviction is the only goal, then it should be done by the executive. He stated that the executive does not interfere in the tenure of judges in India. The law of appointment of judges has developed gradually by three cases where the first case stated that the requirement of consultation with the Chief Justice in the Constitution meant the concurrence of the Chief Justice. Later case laws stated that the President requires to consult with the Chief Justice regarding the appointment, and the latter's decision must not be his alone but with consensus of all his colleagues.

He mentioned a few key points that are being considered in India to strengthen the judiciary: (i) judges training, (ii) computerization of judicial system (iii) plea bargaining, (iv) establishment of the All-India Judicial Service, and (v) addressing judicial corruption.

The following points were noted in the open forum:

- The question was raised on whether the public actually benefits from the separation of the judicial and executive powers. Judicial



ADB File Photo

(From left to right) Ms. Hua Du, Ms. Eveline Fischer, Mr. Said Zaidansyah, and Hon. Moudud Ahmed

relief is expensive and slow. Executive relief is inexpensive, simple, and quick. Therefore, the public may prefer executive relief. In response, a comparison was made with the advantages and disadvantages of democracy.

- The judiciary has to step in when the executive fails; judicial power is not a substitute but a complement to the executive power. In any case, the Constitution should be referred to for guidance.
- Since Bangladesh is in the process of bringing about separation, lessons should be learned from India and Pakistan. These are: (i) how judges should be recruited, (ii) training required for better performance of the judiciary, and (iii) financial independence. Financial accounts and outputs of the courts should also be regularly published in a manner that would be accessible to the general public.
- Training of Supreme Court judges is not about imparting legal knowledge but about providing approaches to their requirements and discussing ethical issues. But for trial judges, the aim is to provide knowledge and skills. Training must be on a continuing basis, not a one-shot exercise.

Second Session: Improving the Prosecutorial Service

In the second session, Justice Shafiur Rahman noted that the Bangladesh Government has not so far implemented an independent prosecutorial service. Implementing an independent prosecutorial service, following the Pakistan model, may require a three- to fourfold increase of the current allocated budget in the sector. However, he noted the importance of investigation being made independent and separate from normal police work.

Two preconditions should be satisfied in any reform program. These are (i) the ownership of the program by the appropriate authority, and (ii) the availability and sustainability of required funding.

Referring to the Pakistan model, he mentioned a number of issues which stakeholders in the law-making and law enforcement processes face. The first issue is the attitude that the law itself is capable of accomplishing its objectives and that nothing more needs to be done, including issuance of required statutory rules. The second issue is the belief that the harsher the laws, the more effective they are in achieving their objectives without realizing that harsh laws tend to corrupt



(From left to right) Mr. Waqas ul Hasan, Mr. Khuda Chowdhury, Prof. Dr. Taslima Monsur, and Mr. Fida M. Kamal

the lower tiers of the administration and society itself. The third issue is that the people required to administer the law seldom get the training on the new law that is going to come to the field.

He noted that there should not be complacency in administering justice. This will require studies, research, and the availability of technical knowledge. He indicated that these three tests/elements are important for the prosecutorial system: (i) the evidentiary test, (ii) the public interest test, and (iii) plea bargaining.

Professor Menon, while speaking on the prosecution service in India, stated that even after establishing the Directorate of Prosecution, efficiency has been the weakest side and it is the prosecution, rather than the investigation, that lets down a case. Further, there is no accountability of the prosecution. He identified three elements through which the system works: (i) laws, (ii) legal institutions, and (iii) human resources. He noted that the inefficiency of human resource is the greatest obstacle; yet the political will to develop the professionalism of the prosecutors is lacking. He emphasized the need for legal advisers in the police department, training for prosecutors, proper treatment of witnesses, and to uphold the victim's right to oppose bail and to compensation.

The judiciary has to step in when the executive fails; judicial power is not a substitute but a complement to the executive power. In any case, the Constitution should be referred to for guidance.

The following points were noted in the open forum:

- “Proper” prosecution is more important than “successful” prosecution. However, it was held that the prosecutor’s role is to secure justice and the judge’s role is to determine the objective truth.
- Judges should be trained on provisions that give them special power.
- Since the success of prosecution depends on skillful presentation of the facts and the law and the defense hires good lawyers, the choice of lawyers for prosecution should be done on the same basis as the appointment of defense lawyers. Therefore, the prosecution service may consider appointing renowned lawyers.
- Some time frame should be set for investigative works; the criminal appeal in Bangladesh, especially regarding death sentences, takes more time than the trial itself.
- Investigation and prosecution should work in coordination.

Third Session: Police Reform— Supporting the Administration of Justice

Dr. Muhammad Suddle, while speaking on the history and attempts at police reform in South Asia, elaborated on the policing system since the pre-British period until today. He discussed the Kotowal system of policing and included discussion of the London model, the Irish Constabulary model, Sir Charles Napier’s Police Organization, Police Commission of 1860, Police Act of 1861 and post-independence police reforms, including comparisons of different models. He noted the importance of a police force that is operationally

neutral and free from extraneous influences and stressed the necessity of its accountability.

In his speech on police reform in Bangladesh, Mr. ASM Shahjahan pointed to the many commonalities in the systems of Bangladesh, India, and Pakistan. He noted the move from colonial policing to democratic policing, stating that the Bangladesh Constitution guarantees human rights and equal access to justice. He noted the public frustration with the rising inefficiency in curbing crime and laws. The Government has decided to add 26,000 police officers in fighting this problem. This will result in a change from the previous ratio of 1 police for every 1,300 people to 1 police for every 1,000 people. He advocated the importance of establishing a police ombudsman having independence and adequate financial resources.

The following points were noted in the open forum:

- The introduction of a social audit mechanism should be considered.
- Colonial law was made with a colonial purpose and needs to be modified in view of the changed purpose. Checks and balances should exist in a democracy.
- Pursuant to the amendment of the Criminal Procedure Code in 2002, a complainant whose complaint the police station has refused to register should be able to go to the judge to file a case. Senior officers should frequently visit the police stations and when a senior police officer is sent abroad for training, officer should pass on the knowledge acquired to his subordinates.
- Community involvement and public safety reforms should be part of police reforms.



In his speech on police reform in Bangladesh, Mr. ASM Shahjahan pointed to the many commonalities in the systems of Bangladesh, India, and Pakistan.

Regional Workshop for Strengthening the Criminal Justice System

Summary of Day 2

The second day started with the presentation of Prof. Dr. Taslima Mansoor, Chairperson of the Law Department, Dhaka University on violence against women. Violence against women is an age-old problem that unfortunately continues to persist despite the passage of laws aimed at reducing crimes against women. Women are still subjected to inhuman torture, physical and mental cruelty and 68% of women do not report assault out of shame or fear of further violence. Victims suffer from insecurity and are often forced to compromise the case due to societal pressure. Offences like rape are at times committed even by the law enforcing agencies and the offender remains unpunished by use of money and muscle power. The dowry system, despite not being recognized by religion or the law, has been a major cause of murder of women in Bangladesh. Although the Dowry Prohibition Act of 1980 and the Repression Against Women and Children Prevention Act of 2000 prohibit dowry, the crime rate relating to the dowry system is steadily increasing. Worse, these cases are not being resolved, leaving women virtually without recourse. Clearly, there is a need to protect women against violence through the law.

Fourth Session: Improving Access to Law and Information

Dr. Tureen Afroz, Assistant Professor, BRAC University, pointed out the limitations of access to law and information by citizens, legal professionals, the judiciary and the media in Bangladesh. Referring to the United Nations Resolution of

December 14, 1946, she emphasized that freedom of information is a fundamental right of the citizens. However, in Bangladesh, this right is not explicitly provided by the Constitution; instead there appears to be unexplained secrecy in governmental affairs particularly in lawmaking. Bangladesh laws after 1989 have not been codified and some Acts of Parliament have not been printed since 1970.

The following points were noted by the participants in the Open Forum:

- The law on rape is being reviewed in India and there are suggestions to increase the age limit for statutory rape from 16 to 18. Death penalty for rape may be reconsidered.
- In Pakistan, women police stations staffed only by women police officers have been established and women cannot be held in custody overnight in other stations unless accompanied by a male relative. Further, women can only be interrogated in the presence of a male relative to avoid any complaint of harassment. Raising the level of penalty was noted not to be an effective method to curb the crime rate.
- Some participants of Bangladesh suggested that all laws in Bangladesh need to be translated in Bengali to give ordinary people access to the laws. Others argued against this proposal on the following points: (i) it is only the legal professionals who deal with the Acts and they understand English; (ii) it makes publication of laws in electronic and IT media easier as the necessary software is available in



The workshop was attended by participants from South Asia, representatives from ADB, and resource persons from the region.



(From left to right) Mr. Ali Ashraf Khan Lodhi, Mr. S.K. Sharma, and Dr. Faqir Hussain

English; (iii) judgments and laws of other countries which are consulted during litigation are in English; (iv) most law books and references consulted are also in English; (v) laws are enacted by the Parliament in English and translating of all of them will take a long time due to lack of resources at the ministry. It was noted that there is a requirement in the National ICT Policy 2002 to publish electronic database of all case laws but this is yet to be implemented.

- Write-ups on specific legal issues can be published in the local language and English in newspapers and uploaded in the internet.

Fifth Session: Reforming Legal Education

Professor Madhava Menon noted that in order for law agencies to administer justice efficiently, the citizens of a country must know their rights and be able to assert their rights. However, in Bangladesh, people talk about human rights without understanding the true extent of their rights. This problem can be addressed through education. Unfortunately, Bangladesh legal education, as it stands now, is in shambles. Law schools and universities in the country have become degree-producing factories which do not even impart the minimum competence required by students to practice law, resulting in colossal wastage of resources. He emphasized that in order to improve rule of law, Bangladesh has to improve the quality of its judges, lawyers and police officers. He further noted that no amount of legal reform will be effective unless the youth in the legal profession are properly educated.

Professor Menon recommended that in order to improve the access to, and knowledge of, legal information in Bangladesh, the existing

curriculum of law universities need to be reviewed to include new areas of specialization that are of relevance to Bangladesh. He made the following suggestions:

- including social context education of law;
- adding specialized optional subjects;
- faculty improvement, i.e., recruitment of skilled/specialized teachers from abroad every year;
- improving the examination structure and methods and incorporating problem-oriented questions where application of principles will be tested.

Regarding the creation of a Centre of Excellence for Legal Studies in Bangladesh, Professor Menon recommended the National Law School of India as a blue print. He stated that Bangladesh needs at least one such center immediately to attract bright minds to the field of law and reduce migration of talent to foreign countries. The flagship program could be a B.A., LL.B (Hons) 5-year degree program.

The following points were noted by the participants in the Open Forum:

- Participants stated that an initiative for establishing Centers of Excellence is already underway in Pakistan headed by the Higher Education Commission. In addition, legal education policy is being finalized. It was further suggested that the current syllabus of the LL.B degree program is largely theoretical and should therefore be made more practical. To address this, professional lawyers and retired judges may conduct some classes to lecture on practical applications of the law. Admission to law courses should be restricted (e.g., there should be an age limit) and entry test may be introduced. Members of the Bar Council should not be involved in the admission process as they tend to accept all students to widen their electorate base.
- In reply to a query made by a participant from Bangladesh regarding possible politicizing of legal centers, Prof. Menon stated that a model institute should be self-financing but not commercial. Government support will be in the form of legislation and infrastructure and the management of legal centres may include members of the judiciary, government, academic and ministers. The institution should neither be public nor private.

Workshop Planning Outputs

No.	Issues	Solutions	Challenges	Strategies
1.	How to enhance the professional competence of the police force?	<p>Police force recruitment at all levels should be done on merit basis.</p> <p>In-service training should be regularly provided, including on stress management training.</p> <p>The appointment, transfer and promotion system should be made transparent with minimum subjective element.</p>	<p>There may be external interference in police recruitment.</p> <p>Lack of funds for human resources development</p>	<p>There should be a properly constituted recruitment committee.</p> <p>Training should be relevant to present-day challenges, gender-sensitive and people-friendly, and facilitate career progression.</p> <p>There should be a credible grievance redressal mechanism for police personnel at all levels.</p>
2.	How to augment the resources of the police force?	<p>There should be adequate budget provided to the police, more particularly for the operations of the police station. The resources should also allow the police to have reasonable working conditions, including 8-hour work shift.</p> <p>The forensic capacity of the police reform should be substantially enhanced.</p> <p>There should be a rewards system within the police similar to the systems established in the customs and other law enforcement agencies.</p> <p>Where appropriate, police-public partnership should be encouraged to augment police resources.</p> <p>More funds should be allocated by the central/federal government for technical capacity building of the police forces.</p>	<p>Budget limitation</p> <p>Lack of political will</p>	<p>Budget allocation should be done on needs basis.</p> <p>The disbursement of the annual police budget should be based on performance audit.</p> <p>Available resources should be utilized specifically for the core police duties and not for priorities determined by extra-departmental channels.</p>

Workshop Planning Outputs

No.	Issues	Solutions	Challenges	Strategies
3.	How to minimize external interference in the operations of the police?	<p>Public safety commissions should be established to oversee police functioning at the state/provincial and district level.</p> <p>The head of the police should have a fixed tenure.</p> <p>The head of the police force should have financial and administrative autonomy.</p>	There may be undue influence from the executive branch on police operations.	<p>The members of the commission should include equal representation of ruling party and the opposition as well as civil society. There should also be adequate female representation in the commission. The other option is to have an apolitical commission of eminent persons.</p> <p>The fixed tenure of the police head as well as the financial, administrative and operational autonomy should be guaranteed in the statute.</p>
4.	How to bridge the gap between the police and the community?	<p>There should be a built-in mechanism for community involvement.</p> <p>A sense of social responsibility needs to be inculcated within the police force.</p>	<p>There is estrangement between the police and the community.</p> <p>The lack of social responsibility among the police forces</p>	<p>Community involvement could be achieved through the establishment of a statutory Citizen Police Liaison Committee.</p> <p>There could be community outreach activities on a regular basis by the police station.</p> <p>Proper training courses should be conducted to incorporate the sense of social responsibility of the police.</p> <p>The police officers should be seconded to other government departments.</p>

No.	Issues	Solutions	Challenges	Strategies
5.	How to create a separate and independent prosecutorial service?	<p>Establishment of a separate and permanent cadre for the prosecutorial service.</p> <p>The cadre could partly be constituted through permanent employees recruited by the service commission and partly through prosecutors selected on contract for a fixed period in accordance to the needs. The proportion of prosecutors that should be regular employees and the proportion that should be on contract may be decided according to local needs.</p> <p>The appointment process and the security of tenure of the Director of Prosecution should be guaranteed in the law for a minimum period of 5 years.</p>	The degree of independence that will be given to the prosecutorial service, such as (i) whether the prosecutor can withdraw the prosecution at its own discretion, and (ii) whether the decision to prosecute or not will remain with the prosecutorial service.	<p>The cadre must be selected on merit and not on political considerations. The cadre must have adequate promotional opportunities.</p> <p>The engagement of contractual prosecutors could be made by the Directorate of Prosecution, through a short-listed panel approved by the respective Public Service Commission or other competent authority.</p>
6.	How to address financial autonomy/requirements of a separate prosecutorial service?	The budget of the prosecutorial service should be separately prepared and allocated through a separate line item in the annual budget.	There may be reluctance to provide greater financial independence to the public prosecutorial service.	The level of financial autonomy should be done in gradual manner.
7.	How to manage the relationship between the investigation wing and the prosecutorial service which would serve to strengthen the prosecutorial system?	<p>The Criminal Justice Coordination Committee at the district level should be established and headed by the sessions judge to be given the statutory responsibility to coordinate between the investigation and prosecution wings.</p> <p>Appointment of the duly qualified police officers into the public prosecutorial service. The appointment should be done on a permanent basis and by the competent authority.</p>	The existing lack of coordination between the police and the prosecutors.	<p>The committee should meet at least once a month.</p> <p>There may be common training between the public prosecutors and the police.</p> <p>Intensive and periodical training of prosecutors at all levels in police/judicial academies may also help to improve coordination.</p>

About the Authors



Prof. (Dr.) N.R. Madhava Menon

N.R. Madhava Menon is a long-serving, popular legal educator in India, an institution-builder, the architect of the 5-year integrated LL.B. program, and the Founder Vice-Chancellor of two of the leading law universities in the country: the National Law School of India University in Bangalore and National University of Juridical Sciences in Kolkata. He has worked for nearly 5 decades to put Indian legal education at par with those of the developed countries. As a member of the Legal Education Committee of the Bar Council of India and later as the first Secretary of the Bar Council Trust, Mr. Menon set up the Bangalore-based National Law School, for which he was honored by the International Bar Association with the Living Legend of Law Award in 1994, followed by the Rotary Club Award for Vocational Excellence. The Bar Council of India presented a Plaque of Honour to Mr. Menon for his contribution to the legal profession and the Commonwealth Legal Education Association elected him as its President for a 4-year term. The National Law School of India University in 2001 conferred on Mr. Menon the degree of Doctor of Laws (LL.D.) (Honoris Causa), with a citation.

After retirement, Mr. Menon was invited by the West Bengal Government to set up the National University of Juridical Sciences and served as its first Vice-Chancellor. He also became the first Director of the National Judicial Academy. The President of India, recognizing Mr. Menon's contribution to public services, presented him with Padma Shree, the first such award to a law teacher in India. Mr. Menon was a Member of the Law Commission of India as well as several Expert Committees. He has served as Chairman of the Indian Statistical Institute in Kolkata and of the Centre for Development Studies in Trivandrum. He also served on the Board of Governors of the International Organization of Judicial Trainers and also Advisor to the Commonwealth Judicial Education Institute in Canada.



Justice (Ret.) Shafiur Rahman

Retired Justice Shafiur Rahman joined Civil Service of Pakistan in 1951 and served in the executive branch of the Government until 1958. He was educated at Allahabad University and started his judicial career as a civil judge, District and Sessions Judge, Registrar of the High Court, Law Secretary Government of West Pakistan and became a judge of the High court in 1969 and that of the Supreme in 1979 and retired in 1994. After retirement he served on various law commissions and worked as a consultant for judicial reforms in Pakistan.



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Muhammad Shoaib Suddle is Director General of National Police Bureau, Pakistan. He has an MSc (Econ.) in criminology and a PhD in white-collar crime from Cardiff University (Wales). He began his police career in 1973 and has held several key positions in the police service of Pakistan. For three years, he was Chief of Police of Balochistan, the largest province of Pakistan. Mr. Suddle has contributed extensively to reshaping policing policy in Pakistan. He is regarded as a leading expert in the field of criminal justice reform. He is national focal person on Violence against Women; a visiting criminal justice expert at the United Nations Asia and Far East Institute in Tokyo; and also Executive Director of Asia Crime Prevention Foundation Pakistan. In 2000, he was seconded to work as a consultant in the National Reconstruction Bureau of Pakistan where he co-authored the

Police Order 2002, which has replaced the 141-year-old police law in Pakistan. As Director General National Police Bureau, he acts as Secretary of both National Public Safety Commission (the top police oversight body in Pakistan) and National Police Management Board (the top body of police chiefs). His role also extends to overseeing a number of state-of-the-art high-tech police capacity building projects.



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Tureen Afroz is an Assistant Professor of Law at BRAC University, Bangladesh. She has recently completed her thesis for Ph.D. in Law and Development at Monash University, Australia. Her specific area of expertise is “securities market regulation and development.” Dr. Afroz received her LL.M. in International Business Law from the University of Western Sydney; LL.B. (Hons.) from the University of London; M.A. in Economics from Delhi School of Economics; and B.A. (Hons.) in Economics & Political Science from the University of Delhi. Dr. Afroz also topped the combined merit list (Humanities) of the HSC Examination under the Dhaka Board in 1988 and received the Kamla Nehru Award for being the “Best All Round Student” of Delhi University in 1992. She has several years of teaching experience in Australia and has presented a number of academic papers at major international conferences in Asia, Australia, Canada and the US. Her research work is widely published in both refereed and non-refereed journals. Dr. Afroz is an advocate of the Supreme Court of Bangladesh and has also been admitted as a barrister and solicitor in Australia.