

ASIA REPORT 2015



BANGLADESH

Institutions Cultivate Authoritarianism



INTRODUCTION

The deteriorating human rights conditions in Bangladesh remained a global concern in 2015. Each year, the Bangladesh State establishes a new normal in terms of rights violations. The main reason behind the deterioration of human rights is the absence of competent institutions. The country has justice institutions that are not primed to administer justice to its people. Administering justice through these institutions is not a priority of the State.

The State of Bangladesh is under the grip of its civil and military bureaucracy, which orients itself towards its chosen political or non-political masters. The concept of fulfilling aspirations of the people does not exist in this power structure. The British colonial rulers left, and independence was wrenched from Pakistan, but colonial mind-sets are entrenched in the workings of the bureaucratic machinery.

Since the inception of Bangladesh, the political culture has never been democratic in nature. Furthermore, a dictatorial political culture has been nourished for decades by the bureaucracy and the civil society. The constitutional framework, the legislations, the parliamentary behaviour, the political deliberations and actions, the policy making process, the institutional infrastructure developments, and the appointment of professionals in public institutions, are all done excluding the normative standards of democracy and the rule of law. Politicians and bureaucrats enjoy a common ground in the process of sharing undeserved wealth and authority.

The State machinery creaks along at the cost of curtailing people's freedoms, as much as is permissible, in each successive regime. The institutions, which were never created for the purpose of serving the ordinary people, bend over backward to maintain the power structure status quo.

The Election Commission is an example. The political power-mongers are ever-ready grab public office at any cost while a spineless Election Commission paves the way, in collaboration with the bureaucracy and their preferred agents. The people are bluffed and cheated repeatedly by the exploiters, by rotation. The police, the intelligence agencies, the armed forces, the prosecution, and the Judiciary collaborate together to enrich and strengthen the authoritarian powers at the cost of people's lives, liberty, and future.

A polarised, visionless, civil society fails to concentrate on the actual needs of the people. They hardly see that the justice institutions are incapable of addressing the problems that the people are forced to face in their daily life. The human rights community needs to give up the old-fashioned preaching style of human rights activism. The people need competent institutions that are able to protect their life, human dignity, and safety, by guaranteeing their freedoms. Any public institution that fails to safeguard the rights and remedies of victims is not a competent institution. The human rights movement will itself fail if it cannot push for the rebuilding and redesigning of institutions to protect the rights of the people.

PART I

Policing System Torturous, Enslaved to Ruling Elites, & Mired in Corruption

The Bangladesh police is the main institution for law-enforcement in the State. The British colonial rulers created the Police under the Police Act, 1861¹ in then British India, from which today's force has emerged. Theoretically, the police are obliged to abide by the Police Regulations of Bengal, 1943², in discharging their duties and exercising their lawful authorities as per the Code of Criminal Procedures, 1898³. They are expected to follow the laws strictly for the purpose of law-enforcement, and perform their prescribed duties to assist the Judiciary to uphold justice.

The Bangladesh police has a number of branches such as: the Special Branch (SB), for protocol oriented intelligence; the Detective Branch (DB), for criminal offence preventing intelligence; the Criminal Investigation Department (CID), for specialised criminal investigation; and around 624 police stations in the country for the purpose of day-to-day law-enforcement, including facilitating the complaint mechanism, conducting criminal investigations, and various other relevant matters. There are also separate branches like Industrial Police, Highway Police, Armed Police, Unarmed Police, Traffic Police, Immigration Police, Tourist Police, and Railway Police for performing their prescribed duties, under various administrative and jurisdictional hierarchies. The Bangladesh Police has around 155,000 personnel, and the recruiting of 50,000 more personnel is in progress⁴ for policing the country's 160 million population.

The Bangladeshis do not trust the country's police as far as the protection of people's property, dignity, or rights are concerned. The reputation of the police, as the main institution for law-enforcement, remains at rock bottom due to several realities.

The police have failed to prove their competence in the functions of complaint registration, investigation of ordinary criminal cases, and human rights violation cases. The citizens of the country observe that their police are not involved in providing protection to the people in general. Instead, the police have institutionally enslaved themselves to maintain the status quo of the existing power structure; they protect the political and financial elites of the society at the costs of people's lives, liberties, sweat, and assets.

The Bangladesh police – as an institution, throughout the decades – has trained its personnel to become a lethal force to serve the ruling party of the day. The police do not have any overall goal or intention of providing or assisting the process of justice for the citizens at large. For example,

¹ The Laws of Bangladesh, The Police Act of 1861 is available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=12.

² The Police Regulations of Bengal, 1943, is widely called PRB in Bangladesh. It contains 1,290 Regulations with detailed guidelines on police functioning, procedures, accountability, and the consequences of failing to uphold the law. The PRB is available at: <http://www.police.gov.bd/userfiles/Police%20Regulations1.pdf>.

³ The Laws of Bangladesh, The Code of Criminal Procedures, 1898, is applicable in the enforcement of laws by the police, prosecutors, and the Judiciary in discharging their respective duties and their definitions. It is available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75.

⁴ The *Daily Manab Zamin*, a national vernacular tabloid, published a report citing the sources of the Ministry of Home Affairs on 7 February 2015 at <http://www.mzamin.com/details.php?mzamin=NjI3MTI=>. The *Bhorer Kagoj*, a national vernacular daily, published a report on 7 November 2015 available at <http://www.bhorerkagoj.net/print-edition/2015/11/07/59849.php>. Both reports were last accessed on 5 December 2015.

the police fabricate and facilitate the process of fabrication of enormous number of criminal cases against the political opposition and the critics of the government to satisfy the ruling party of the day.

Always, the ruling politicians and their powerful allies control the police from centralised and decentralised hierarchies. They control and influence the process of recruitment, posting, promotion, and rewarding of the police, preferring nepotism and corruption against merits and professional competence.

The political and financial elites intervene in the process of complaint registration, criminal investigation, forensic examination, arrest and detention of persons, release from detention, fabrication of cases, and dropping of all charges, on a daily basis, across the country. This practice has contributed to embed a culture of impunity so deep that the judicial institutions act subjectively when the crimes of the law-enforcement agencies come to the courts for adjudication.

The police, ultimately, enjoy impunity as long as they serve the ruling elites. The police are sure of their job-security if they keep their political masters satisfied. As a result, the entire institution has lost its “chain of command” and has instead a “chain of corruption”. They explore the extension of this “empire” of abuse of power, wherever possible. Policing in Bangladesh to the police is: more case, more arrests, more torture, and more money through bribery. Unsatisfactory payment or failure to pay demanded amount of money brings extended detention, fabricated cases, permanent disability, or extrajudicial death, without the personnel who commit these crimes suffering any repercussions. The police is an institution, that knows how to earn money by protecting the real criminals and bullying innocents for crimes being committed everyday. It is especially severe on those ambitious enough to try and hold the police accountable. Policemen ferret away ill-gotten assets and no other State institutions dare question them.

The disciplinary process of the police does not have the clarity and transparency it deserves. The original police law has a clear and strong provision to deal with the misconduct, negligence, and non-cognizable and cognizable offences committed by police personnel⁵. Apart from the police law, there are procedures are laid down in Police Regulation of Bengal, 1943, to deal with disciplinary matters⁶. These legal provisions uphold prosecuting policemen for their offences or any breach of laws.

Law Unto Itself

The police authorities, however, did not like these provisions and waited for the appropriate chance to disable them. In 1976, military rule was in place in Bangladesh, and the police

⁵ The Police Act, 1861, Section 29, asserts the penalties for neglect of duty, etc. It reads: "Every Police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of this office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both.

⁶ The Police Regulations of Bengal, 1943, in Regulation 434 and 467 (6) (b)

authorities seized their opportunity. Two special ordinances, namely the Police Officers (Special Provisions) Ordinance, 1976, and Dhaka Metropolitan Police Ordinance, 1976, were promulgated. The Police Officers (Special Provisions) Ordinance, 1976, in Section 3, undercut Section 29 of the Police Act, 1861, and of the Regulations of the Police Regulation of Bengal⁷. Furthermore, Section 4 of this Ordinance sets aside the authority of the Court, and empowers police officials to control disciplinary matters⁸. Such a provision removed police accountability from the purview of the Judiciary and opened up an enormous window of corruption for the police officers themselves. The same law, in Section 8, goes further to reject the Judiciary in the following provision: "Court's jurisdiction barred: No order passed under any of the provisions of this Ordinance shall be called in question in any Court." Furthermore, in Section 7, the superior officials of the Police have been given the authority to decide the "appeal" of the policemen who are handed penalties through departmental proceedings⁹.

As a result, the police themselves, in the internal disciplinary process within the department, normally deal with the offences committed by policemen; and they are not addressed in criminal cases in public trials in courts. Moreover, the government, which means the Ministry of Home Affairs, which is in control of the police, has been given the power to decide "revision and review", an application made by the "aggrieved police-officer" or by "its own motion"¹⁰. This provision has been used by the ruling political elites to decide the fate of the police officers. There are numerous instances where police officers that committed serious cognizable offences, including torture in public, have been rewarded gallantries and undeserved promotions and lucrative postings.

Likewise, the Metropolitan Police Ordinance, 1976, has been replicated in eight metropolitan cities – Dhaka, Chittagong, Rajshahi, Khulna, Sylhet, Barisal, Rangpur, and Gazipur, where separate a metropolitan policing system has been introduced. One of the main features of this

⁷ The Police Officers (Special Provisions) Ordinance, 1976, Section 3, Ordinance to override all other laws, etc. state the following: "This Ordinance shall have effect notwithstanding anything contained in any law, rules and regulations relating to police-force nor shall prejudice the operation of any other law, rules and regulations including the service conditions of the said police-force."

⁸ The Police Officers (Special Provisions) Ordinance, 1976, Section 4, Offences states the following: "Where a police-officer is guilty of- (i) misconduct; (ii) dereliction of duty; (iii) act of cowardice and moral turpitude; (iv) corruption or having persistent reputation of being corrupt; (v) subversive activity or association with persons or organisations engaged in subversive activities; (vi) desertion from service or unauthorised absence from duty without reasonable excuse; or (vii) inefficiency, the authority concerned may impose on such police-officer any of the penalties mentioned in Section 5."

⁹ The Police Officers (Special Provisions) Ordinance, 1976, Section 7, Appeal states: "A police-officer on whom a penalty has been imposed under Section 6 may, within seven days of the receipt of the order of punishment, appeal against the order to the appellate authority concerned specified in column 3 of the Schedule, who shall, within forty-five days of the date of receipt of the appeal, communicate to the appellants his decision which shall be final."

¹⁰ The Police Officers (Special Provisions) Ordinance, 1976, Section 7A, as inserted in 1982 by military dictatorial President states the following: "Revision and review: Notwithstanding anything contained in Section 7, the Government may, upon an application made to it by an aggrieved police-officer or on its own motion, within one month from the date of making of a decision by an appellate authority under that section, - (a) revise such decision, if made by an appellate authority other than the Government; (b) review such decision, if made by it as an appellate authority."

particular Ordinance is that it keeps the police officers above the courts of the country¹¹. There is no law in effect in Bangladesh that bars a public servant's prosecution without permission of his or her superior authorities of the same institution. For example: if a Supreme Court Judge commits a cognizable offence while in service he or she can be prosecuted without any written intervention by the Chief Justice or can be impeached by the Parliament¹², according to the 16th Amendment of the Constitution of Bangladesh. This is not so for a police officer. The officer cannot be prosecuted without permission from the superior authority within the police department.

The legal and practical realities have ultimately established a corrupted policing system, from the top cops to the constables at the bottom, and from the police department to the bureaucrats and politicians that have access to the Ministry of Home Affairs. The system has paved the way for political cadres to interfere with policing. Every decision about the policing system is politicised by nature – either by instruction or by customary practice.

Torture

Policing has developed into a torturous and brutal system in the country. Torture is the norm of policing not for extracting “confession” from a crime suspect. Rather, torture is systematically used for extorting bribes from detainees. As long as the police keep rendering “service” to ruling political masters of the day, they are confident of immunity for any and all crimes.

As a result, Bangladesh is a land where the government can dare to prevent a fair election from happening. The police, on the ruling party’s behest, can silence the entire population by disappearing, extrajudicially murdering, permanently disabling, and detaining in fabricated cases. Most persons arrested by the police are tortured before or after arrest and detention, save those who belong to the ruling political parties or financial elites, or those that maintain close alliances with either or both.

Mr. Mahmudur Rahman, Acting Editor of *Daily Amardesh*, a vernacular national newspaper, has been detained for nearly three years in 68 fabricated criminal cases. The police tortured him in detention. In August 2015, he has been imprisoned in a case for “not submitting wealth statement” in response to the Anti-Corruption Commission. The police are one of the most instrumental agencies that facilitated the fabricated cases against Mr. Rahman, who published reports on corruption involving the son of the Prime Minister.

Bangladesh's political culture is authoritarian and dictatorial by nature. It does not accommodate democratic culture or principles. So, the command responsibility of the police cannot, and does not, exist in such a culture. In other words, if a system runs on the basis of corruption and impunity, the system of “chain of command” and “command responsibility” cannot coexist with it.

¹¹ Dhaka Metropolitan Police Ordinance, 1976, Section 99, Cognizance of offences reads: “No Court shall take cognizance or any offence punishable under this Ordinance except upon a report in writing made by a police-officer.”

¹² The Constitution of the People's Republic of Bangladesh, Article 96, *Tenure of office of Judges* empowers the Parliament to remove Judges for “misbehaviour or incapacity” with two-thirds majority's decision.

Bangladeshis are fed up with the policing system, as the police have failed to enforce law in the country. As a result of the criticism of the civil society, regarding this police failure, and the rise of crimes in the country in late 1990s and early 2000s, the people started demanding reforms of the police.

However, instead of reforming the policing system, the government institutionally militarised the law-enforcement system, making a system parallel to the regular police. They created a paramilitary force named Rapid Action Battalion (RAB) to do the job of the police.

The RAB comprises Military officers and soldiers as well as personnel of the police and Border Guards. It is in operation across the country since 2004. There are 14 battalions of soldiers deployed across the country for RAB style “law-enforcement”.

The inception of the RAB has drastically changed the mindset of law-enforcement in Bangladesh. This paramilitary force, at the time of creation, was mostly populated and dominated by the officers of the Military. It is relevant to recall that, in Bangladesh, the Military – the Army, in particular – is treated in a way as if Military personnel are above the law¹³. Discussion on any allegations against the military officers is avoided in public platform, let alone filing cases of cognizable crimes against the soldiers of the armed forces.

The RAB, as a Military dominated paramilitary force, was introduced as an “elite force” and has been given similar impunity since inception. The force’s logistics, operational appearance and actions, as well as commendations on their actions, has transmitted the message that established public knowledge about “lawful action” and “law-enforcement” is being changed radically.

The operation of the RAB began with the extrajudicial killing of crime suspects on the pretext of “crossfire”, which was a new pattern introduced by this paramilitary force. The RAB, as an institution, and its members were given rewards for such “crime control” in the country.

Very soon the police appeared to be in competition with the RAB in terms of killing detainees on the pretext of “crossfire”, as the number of victims murdered by the police soared up in comparison to that of the RAB. The constitutional notion of “safeguarding the right to life” and “handling the detainees in accordance with the law” disappeared from Bangladesh.

This disappearance, together with the emergence of an authoritarian regime, the extreme polarisation of the society behind two major political camps, and absence of the rule of law, are the major triggering factors for the practice of enforced disappearances in Bangladesh. From January 2009 to November 2015, at least 240 people have been disappeared. Eyewitnesses and victims’ relatives accuse the law-enforcement agencies for these enforced disappearances. A few families were able to file Habeas Corpus writ cases with the High Court Division of the Supreme Court. However, in not a single case have the accused agencies of the State been held accountable. None of the victims have been rescued or returned.

¹³ The Joint Drive Indemnity Ordinance, 2003, was promulgated on 9 January 2003. It was later ratified by the National Parliament of Bangladesh as "The Joint Drive Indemnity Act, 2003" to ensure immunity to the military soldiers who were responsible for murdering 58 people, torturing thousands of people many of whom were permanently disabled, and detaining around 11,800 people from 16 October 2002 to 9 January 2003 in the name of "Operation Clean Heart".

PART II

Judicial system of Bangladesh is neither independent nor competent

Bangladesh's Judiciary is officially divided by two tiers - the Supreme Court and the Sub-ordinate Judiciary¹⁴. The Supreme Court of Bangladesh consists of the High Court Division and the Appellate Division, located in the capital city, Dhaka. The Appellate Division of the Supreme Court of Bangladesh consists at present of the Chief Justice and five other Judges. And, the High Court Division has 96 Judges, including 10 Additional Judges. The High Court Division holds authority over all the Sub-ordinate Courts. It has jurisdiction to hear all the appeals against the judgments passed by the Sub-ordinate judiciary. The Appellate Division is the last resort for all sort of judicial appeals and reviews decided by the High Court Division, except the Presidential prerogative of mercy¹⁵.

The Courts of District Judges deal with the civil suits. And, the Courts of Sessions, Metropolitan Sessions Courts, and the Courts of Chief Judicial Magistrates, as well as the Chief Metropolitan Magistrates' Courts deal with criminal matters. In 2000, Bangladesh started establishing Special Tribunals for specialised cases. The Special Tribunal for Prevention of Women and Children Repression was established in all the districts, except the three districts of the Chittagong Hill Tracts. Later, in 2002, the government created two more types of special Courts named Speedy Trial Tribunal¹⁶ to hold trials of 'specific offences', and Acid Crimes Prevention Special Tribunal¹⁷ to try the crimes of acid attacks in all district headquarters of the country. Money Loan Court, which is vernacularly known as *Artho Rin Adalat*, Administrative Tribunal, and Family Courts are also special courts to deal with relevant litigations. There is a Senior Special Judge's Court in the districts for trying cases initiated by the Anti-Corruption Commission. It can be mentioned that the District Judge's Court, Sessions Judge's Court, Speedy Trial Tribunal, Acid Crimes Prevention Special Tribunal, and Senior Special Judge's Court are all presided by the same judge in person who happens to be the Ex-officio Judge to decide the cases of all these Courts and Tribunals. And, all these Courts are considered to be the "Sub-ordinate Judiciary". There are around 2000 judicial officers of different hierarchies in the Sub-ordinate Judiciary of Bangladesh, 1700 of which are directly involved in the functions of adjudication of litigation, while the rest are in deputation for administrative duties¹⁸.

¹⁴ The Constitution of the People's Republic of Bangladesh, in PART VI, mostly describes the structure of the Higher Judiciary.

¹⁵ The President of the Republic, under Article 49, can grant pardons, reprieves and respites, and to remit, suspend or commute any sentences passed by any court, tribunal or other authority.

¹⁶ Law and Order Disruption Offence (Speedy Trial) Act, 2002, was enacted for defining seven specific offences that can be adjudicated in the Speedy Trial Tribunal. The Speedy Trial Tribunal Act, 2002, was made to establish special tribunals to dispose of a case within 90 working days of the cases being transferred to them. If the case cannot be disposed of in that time, another 30 working days would be granted. Any aggrieved person would be entitled to appeal to the High Court against a judgment passed by the Speedy Trial Tribunal within 30 days of the verdict. The Speedy Tribunal was initially established for 2 years, and has been extended for fourth times by two years each, and currently under a five years' extension ending on 9 April 2019.

¹⁷ The Acid Crimes Prevention (Special Tribunal) Act, 2002, was enacted to establish Special Tribunals for conducting trials of crimes related to acid attacks, mostly on the females of different age groups.

¹⁸ Asian Human Rights Commission interviewed judicial officer of Bangladesh, who preferred not be exposed with detailed identity, in December 2015.

The appointment of the judicial officers is initially done at the Sub-ordinate Judiciary starting from Assistant Judge for the Civil Courts and Judicial Magistrate of 3rd Class and of 2nd Class for the Criminal Courts. Bangladesh Judicial Service Commission (BJSC), which was incepted in 2007 following the Supreme Court's order and directives¹⁹, started full-fledged recruiting of the judicial officers since 2008. Prior to the inception of the BJSC, the Bangladesh Civil Service Commission (BCSC) used to recruit the judicial officers as "*Munsif*", which was later renamed as "Assistant Judge" in early 1980s, for the civil judiciary. The criminal judiciary at the magisterial level was occupied by the executive officers since the inception of the judicial system by the British colonial rulers that had existed until October 2007²⁰. The separation of power, as far as the Courts of Magistrates of Bangladesh are concerned, took place, formally in black and white, from November 2007.

The appointment of Additional Judges to the High Court Division of the Supreme Court is done through elevation of judicial officers from the Sub-ordinate Judiciary, by choosing the senior most one, theoretically, and appointing lawyers from the Bar. The Judges who served the judiciary and the Lawyers who are practitioners for 10 years are eligible for the post of Additional Judge of the High Court Division. The Additional Judges need to serve two years in the High Court Division to become a permanent Judge of the same branch of the Judiciary. The age of retirement is 67 for the Supreme Court Judges,²¹ and 57 for the Sub-ordinate Court Judges. Political interests and intentions have allegedly been in the centre of controversy in the decision of increasing the retirement age of the Supreme Court Judges, and the time of making such amendments, by successive regimes.

The 'independence' of Bangladesh's Judiciary is still an illusion. The Constitution announces that ". . . the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions."²² There is no specific law for recruiting Judges to the Supreme Court other than the provisions of the Constitution. The authority of appointing Judges is bestowed upon the President of the State, who is also authorized to determine the number of Judges to be appointed or elevated from the High Court Division to the Appellate Division of the Supreme Court.²³ In order to appoint the Judges the President is, theoretically, required to 'consult with the Chief Justice'.²⁴

¹⁹ Judgment of the Appellate Division in *Civil Appeal No. 79 of 1999* gave Directives to the Executive branch of the State, including the directives of establishing a Judicial Service Commission, in Directives No. 2 and 4.

²⁰ The Courts of Magistrates were under the Ministry of Home Affairs till October 2007. The government made gazette notification to separate the Courts of Magistrates from the Executive.

²¹ The 15th Amendment of the Constitution of the People's Republic of Bangladesh, in Article 96 (1)

²² The Constitution of the People's Republic of Bangladesh, Article 94 (4) reads: Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.

²³ The Constitution of the People's Republic of Bangladesh, Article 94 (2) reads: The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.

²⁴ The Constitution of the People's Republic of Bangladesh, Article 95 (1) reads: The Chief Justice shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.

Contrary to this theory there are two other constitutional provisions. In the process of appointment of Additional Judges to the High Court Division and elevation of the Judges from the High Court Division to the Appellate Division the President is constitutionally authorized to decide the number, and tenure, of Judges in doing so, even ignoring the other provisions.²⁵ In fact, the President of Bangladesh can only appoint the Prime Minister and the Chief Justice, according to the Constitution, and cannot do anything else without the Prime Minister's advice²⁶. Likewise, the appointments of the judicial officers of the Sub-ordinate Judiciary are also under the authority of the President²⁷. The reality, as per the practice in Bangladesh, suggests that all the appointments and elevations in the Supreme Court are done according to the wish of the Prime Minister while the President, who is also chosen to dance according to the beat played by the Premier, just rubber stamps the formalities.

There is no Judicial Secretariat in Bangladesh although the Supreme Court had given directives to the Government for establishing such a Secretariat for managing the human resources of the entire judiciary²⁸. Rather, the Supreme Court has been part of certain administrative formalities regarding the Sub-ordinate Judiciary. Practically, the postings and promotions of the judicial officers of the Sub-ordinate Judiciary are still initiated by the Ministry of Law, Justice and Parliamentary Affairs; scrutinized by the General Administration Committee of the Supreme Court comprising the Chief Justice, as its chairperson, and three Judges of the High Court Division; and, formally, approved by the full set of Judges of the entire Supreme Court, as a routine task, to give the decision effect. The decision goes back to the Ministry of Law, Justice and Parliamentary Affairs to implement.²⁹ The practical process clearly indicates that the Judicial Secretariat, which is not yet established in its full-fledged form, does not have complete authority to deal with its own staff without interference from the Executive branch of the State.

The recruitment, elevation, promotion, and posting of Judges of all branches mostly take place from a political perspective so that the ruling political party of the day benefits from the process. The recruitment in the Supreme Court has been highly controversial for constant political preferences. There are visible impacts of such politicized appointments. The litigants, who are allegedly fabricated in politically motivated criminal cases, do not get judicial remedies from the Supreme Court. In many cases, the Division Benches (comprising two Judges) of the High Court

²⁵ The Constitution of the People's Republic of Bangladesh, Article 98 reads: Notwithstanding the provisions of Article 94, if the President is satisfied that the number of the Judges of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified persons to be the Additional Judges of the division for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge for the High Court Division to sit in the Appellate Division for any temporary period . . .

²⁶ The Constitution of the People's Republic of Bangladesh, Article 48 (3) reads: In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (3) of article 95, the President shall act in accordance with the advice of the Prime Minister . . .

²⁷ The Constitution of the People's Republic of Bangladesh, Article 115 reads: Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf.

²⁸ Judgment of *Masdar Hossain Vs. Secretary of Ministry of Finance* case gave 20 directives to the Executive branch of the State.

²⁹ Asian Human Rights Commission interviewed judicial officer of Bangladesh, who preferred not be exposed with detailed identity, in December 2015.

Division often come up with contradictory decisions. Such divided decisions, on one hand, do not provide any remedy to the victims of the original offence, whoever it may be in the case, while on the other hand, contribute to the wastage of time, resources, and energy of the litigants as well as of the judiciary itself. Besides, the Judges are contributing to strengthening the political arrogance of the powerful groups and frustrating the weaker groups that are counterproductive to the socio-political fabric of the country. It is also contributing to the increase of distrust to the justice institutions as a whole.

Delay in the process of adjudication increases day by day as the number of pending cases jump up. According to a study of the Supreme Court, as of 31 March 2015 there were 3,098,569 cases pending with all the courts of Bangladesh. Of them, 15,383 were with the Appellate Division, 369,813 with the High Court, and 2,713,373 with the lower courts³⁰. According to the statistics, 4329 cases are being registered everyday while 3278 are being disposed of, and 1051 cases are being added to the backlogs daily. On average, 384,000 cases are being added to the backlog every year. Insufficient number of judges and other supporting human resources, inefficiency on the part of the judicial officers and staffs, unprofessional intent of the judicial officers to uphold justice, unprofessional attitudes of lawyers and prosecutors, corruption in the judicial system, and the spree of fabricating cases by the police are allegedly responsible for the backlog and delay in adjudication of cases. The Judiciary either does not want to utilise, or does not know how to identify, its most efficient judicial officers to administer justice.

Case Study³¹:

A Judicial Magistrate of northern Bangladesh heard a cyber crime case involving a Facebook status on Prime Minister Sheikh Hasina in November 2015. The user of the Facebook ID was accused in the case. After hearing both parties the Magistrate granted bail to the defendant in compliance with the provisions of law. The following day the Chief Judicial Magistrate of the district seized the relevant Magistrate's power of presiding in Court that deals with cognizable offences. As a result, the Magistrate has become a judicial officer without any work in the office. There is no resort to seek remedy for such actions that take place frequently in today's Bangladesh. Human rights defenders observe that the authoritarian government and its political cadres play aggressive roles behind such actions across the country. These neither help the judiciary's independence take roots, nor add value to building public trust in the judiciary.

The remuneration of the Supreme Court Judges is settled by law, which is amended from time to time. And the remuneration of the Sub-ordinate Judiciary is settled according to the government, below that of the country's bureaucrats. The financial allocation for the judiciary is so inadequate that it is not possible for the Judiciary to function independently with integrity. The bureaucracy of the country literally stands against the increase of benefits for judicial officers.³²

Case Study:

³⁰ Ashutosh Sarkar, *Cases piling up in courts of Bangladesh*, published by *The Daily Star*, on 29 August 2015, can be accessed at <http://www.thedailystar.net/backpage/cases-piling-courts-134359>.

³¹ Asian Human Rights Commission interviewed judicial officer of Bangladesh, who preferred not be exposed with detailed identity, in December 2015.

³² M Moneruzzaman, *The New Age, Judicial pay commission recommends pay hike for district, lower court judges*, published on 9 May 2015, can be accessed at: <http://newagebd.net/118245/judicial-pay-commission-recommends-pay-hike-for-district-lower-court-judges/>.

The Bangladesh Government had appointed a nine member committee in April 2014 to review the salary structures of judicial officers. The Commission was headed by Appellate Division Justice Nazmun Ara Sultana. The Comptroller and Auditor General, the Secretary of the Ministry of Finance, and the Secretary of the Ministry of Public Administration were among the nine members of the Commission. The Judicial Pay Commission made recommendations to the country's President to restructure the salaries of the judicial officers in April 2015. The Commission recommended BDT 84,000.00 as salary for a Senior District Judge and BDT 35,000.00 for an Assistant Judge, which was the highest and the lowest for the Sub-ordinate Judiciary respectively. The bureaucrats who were members of the Commission opposed the recommendations although the Ministry of Law, Justice and Parliamentary Affairs accepted the recommendations as 'in line with the proposed governmental pay hikes' for all other cadres of the government. Since the objections, the matters relating to the restructuring of the salaries of the judicial officers has been stopped.

What is more important is that the Judges of Bangladesh, in general, are not interested to protect the rights of the people. They also do not know or do not want to exercise those laws that can contribute to the protection of human rights and prevent the police and other agencies from violating these rights. The following two examples can establish this argument:

Police remand is well known in Bangladesh as synonymous to systemic torture. How is a detainee sent to police remand? The answer is in one word, illegally. How does it happen? The answer can be in two ways: either the Magistrates are ignorant about the law, or the Magistrates want to comply with the unlawful desires of the police and the ruling political elites. In practice, the police bring applications written in plain papers to the Magistrates' Courts to seek remand in violation of the directives given by the High Court Division³³, and the procedures laid down in the Police Regulation of Bengal, 1943. The Magistrates by default entertain the application, which should never be considered as an application at the first place, if the application is not submitted in the appropriate prescribed Form³⁴.

The Chief Judicial Magistrates and the Chief Metropolitan Magistrates have an authority to inspect the police stations in Criminal Rules and Orders, 2009, as laid down by the High Court Division³⁵. In practice, these judicial officers do not exercise their lawful authority, which could have contributed to reduce much of the gross human rights violations that Bangladesh is plunged into. The intent of the entire Judiciary has to be changed for the purpose of upholding justice.

³³ People's Republic of Bangladesh Vs. BLAST Judgment, reported in DLR 55, page 363, can be accessed at:

<http://www.humanrights.asia/countries/bangladesh/countries/bangladesh/cases/Judgment%20with%20Directives%20on%20Police%20Remand-55-DLR-363.pdf> .

³⁴ Bangladesh Police Form No. 90 should be used for making application for police remand as per Regulation 467 (b) of the Police Regulation of Bengal, 1943.

³⁵ Rule No. 84 (3) of the Criminal Rules and Orders, 2009, reads: The Chief Judicial Magistrate in a district or the Chief Metropolitan Magistrate in a Metropolitan area shall have the authority to inspect any Police Station within their respective jurisdiction to verify – (a) if the processes are being promptly and duly served; (b) if the Magistrate's orders directed to the Police under the Code are being properly carried out; and (c) if the Police Officers are discharging their functions satisfactorily under the Code while presenting the Police file before the Magistrate.

PART III

Prosecution system is a political tool to meddle with the judiciary and public fate

Bangladesh has a disposable prosecution system, which does not have competence to uphold justice or assist the Courts to do so³⁶. The reason it is called a 'disposable prosecution system' is that whichever political party assumes office in the country, appoints its own political cadres as 'lawyers', without receiving any official updates from their predecessors.

The prosecutorial infrastructure of Bangladesh is centred to the districts based Sub-ordinate Judiciary. The number of prosecutors depends on the structures of the judiciary, as well as the specialised jurisdictional establishments. There are 64 districts that have Courts of Sessions Judges for conducting trials of criminal cases for which the posts of "Public Prosecutor" was established since the inception of the judicial system under British colonial rule. The Courts of Magistrates did not have prosecutors under the British system; the police officers used to deal with the prosecutorial matters before the Courts of Magistrate, which was under the Ministry of Home Affairs.

After the Independence of Bangladesh the same British system remained. Since the late 1970s the successive governments started establishing metropolitan cities. As of 2015, there are six metropolises where two additional branches of the judiciary have been established as "Metropolitan Sessions Court" and "Chief Metropolitan Magistrates' Court" in all the six cities. In the metropolitan both Metropolitan and District Courts are available. In every district headquarters there are three types of separate Special Tribunals to conduct trials on cases of violence against women, acid throwing, and seven other specific offences. The Tribunals are called Women and Children Repression (Prevention) Special Tribunal, Speedy Trial Tribunal, and Acid Crimes Prevention Special Tribunal. All these Courts have their separate prosecutors as per the administrative and geographical jurisdictions.

The size of the prosecutorial human resources evolved and increased according to the decisions taken by different political regimes instead of any statutory laws of the country. Today, nobody knows the exact number of the prosecutorial human resources in Bangladesh, as there has been no authentic information available from the Ministry of Law, Justice and Parliamentary Affairs. In a general scenario, it can be assumed that the country may have around 200 Public Prosecutors and Special Public Prosecutors, supported by few dozen Additional Public Prosecutors, and few thousand more Assistant Public Prosecutors for dealing with the criminal cases.

The prosecutors do not belong to any specific independent institution. The Legal Remembrancer's Manual, 1960, is used as a theoretical reference to the process of recruiting prosecutors. In reality, the theories do not come to effect in the actual process of recruitment. The influential leaders of the ruling political parties, from the district level to the national level, pick and choose the candidates amongst their lawyers of the ruling party for the posts of prosecutors. The lawyers who are appointed as 'prosecutors', in fact, do not have the merit or training or mindset to uphold justice in compliance with the normative principles of 'fair trial'. The prosecutors' job, as exposed by the prosecutors themselves, is to save their political colleagues from being convicted for the crimes they all commit on a daily basis, and to earn money as quickly as possible through extortion from the litigants or using the identity of 'prosecutor'.

³⁶ Md. Ashrafuzzaman, *The Disposable Prosecutors of Bangladesh*, Article 2, Vol. 7, No. 1, published by Asian Legal Resource Centre, in March 2008. It can be accessed at: <http://alrc.asia/article2/in-print/volume-7/volume-7-number-01/>

The ruling party allegedly appoints its own affiliated lawyers to increase votes in the Bar Association and Bar Council elections so that the pro-governmental groups occupy the positions of the professional body. More importantly, the prosecutorial staffs can influence the judicial officers, who are also often appointed on the basis of political choices and high degree of loyalty to the ruling elites, in setting the offenders of the same camp free, putting the opponents behind the bar. The main purpose of politics in Bangladesh is to silence the critiques and weaken the opposition so that the ruling party of the day can strengthen its power and spread its existence all around. The prosecutors play vital roles to drop charges from their preferred offenders, and framing charges against whom they want to ruin politically and economically. In an established structure of justice system, which knows how to maintain the status quo of the power structure of the given jurisdiction, the police, civil administration, intelligence agencies, prosecutors, and judges – all play their collective role to make sure that they have done well what was expected from them.

PART IV

Prison system rigorous and inhuman

Bangladesh's prisons are a hub of rigorous punishments for convicts in inhuman forms, while globally prisons have taken the role and identity of 'correctional centres'. There are 68 prisons under the Department of Prisons, which is controlled by the Ministry of Home Affairs. Of them 13 are Central Jails and 55 are District Jails. The prisons have capacity of 33,430 while the current number of prisoners is above 75,000. This overcrowding reality puts the life of the inmates into an inhuman condition. The situation is worse in certain prisons like the Dhaka Central Jail where more than three times inmates than its capacity are detained. The inmates are forced to live in an extremely unhygienic environment. For example: there is no proper toilet available in the cells of the prison. The inmates have to urinate and defecate in tubs that often overflow. The bathing system is so worse that used water of one person's body falls on the others to cause skin diseases to almost everyone. Likewise, the meals do not contain adequate nutrients and the quantity of food per inmate is much less than the need of a person. And, the quality of food is too poor to eat.

The administration of the prisons maintains a chain of corruption, which is entrenched into the system. The plights of the inmates are increased due to corruption. Bribes to the prison guards are unavoidable for everything relating to the prison. For example: if a family member wishes to meet his or her imprisoned dear one, bribes must be paid. If anyone wishes to check the health condition of an inmate relative, bribes have to be paid to the prison guards. Without bribes there can be no access, no exchange of information, no service for the inmates. According to former detainees, cigarettes are recognised currency in prisons for bribing prison guards. The professional offenders are allegedly offered better facilities in prison than those accused of petty offences or detained in fabricated cases.

The inmates are inflicted with various forms of torture without any grounds. The number of deaths of prisoners remains significant every year. From January to September 2015, 52 inmates have died in suspicious circumstances. There has been no credible investigation about the deaths of prisoners. Practically, there is no system of holding prison authorities accountable for the corruption and crimes committed in prison by personnel and officials. However, there are legal

provisions that allow the District Magistrate, Magistrates, and other officials to visit the jails.³⁷ In fact, the officials headed by the District Magistrate, who happens to be an executive officer of the government, visits the jail as a practice of formality, which hardly contributes to change the system of abuse in prisons by the authorities.

³⁷ Bengal Jail Code, Section 55.