



# Corruption at Different Stages of a Criminal Case: A Key Obstacle for Getting Justice in Bangladesh

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ARTICLE	INFO	ABSTRACT
Received date: Oct. 12, 2018 Accepted date: Jan. 15, 2019		Criminal justice system is the most important part of the judiciary of any state because it is directly related with the social security and the law and order situation of a state. But getting justice through criminal justice system of Bangladesh has become a matter of sufferings because of corruption at every stage of a criminal case which includes the payment or acceptance of bribes, extortion, embezzlement, threats and abuse of the procedural rules or other improper pressure which affects the merit of the judgment of a case. As justice is inherent and inalienable right, it needs to be easily accessible for all the citizens of a state to whom the state owes its legitimacy. One of the vital parts of the judiciary i.e. criminal justice system has always been ignored and manipulated by the successive government of Bangladesh. This article has identified and illustrated the corruptions in the pathway of seeking justice through criminal justice system of Bangladesh, which depicted the impact of the denial of getting justice and recommended some solutions to overcome the obstacles in getting justice. The nation needs soul-searching and an acknowledgement of the fault lines in this field. This is an endeavor to that direction and of course not an attempt to tarnish the image of any particular institution or person.

**Key words:** Bribery, Corruption, Criminal case, Judicial corruption, Justice

## CORRESPONDENCE

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## 1. INTRODUCTION

Equal treatment before the law is a pillar of democratic societies. When courts are corrupted by greed or political expediency, the scales of justice are tipped and ordinary people suffer. Judicial corruption means the voice of the innocent goes unheard, while the guilty act with impunity (TI, 2007).

In a democratic country, it is a prerequisite that all citizens shall be entitled economic and social justice. It is the right of people to get justice and fair trial through an effective, efficient and corruption free judicial system. It is not a charity but a fundamental civil rights of the citizen. It ensures protection of law (Siddiqui, 2010). The effective

enforcement of law, including human rights regulations, depends in large part on the independence and impartiality of the judiciary. If the judiciary is corrupted, then many other rights lose their significance; a corrupt judiciary leads to individual rights becoming just rights on paper. The judiciary is the ultimate upholder of individual rights and it is therefore supposed to fight corruption, not be a part of it (UN, 2003). A majority of states worldwide saw their score declines in the area of human rights, checks on government powers and civil and criminal justice (WJP, 2018). In Bangladesh, judicial system is still no way victim friendly. Corruption in the judiciary is one of the biggest threats against effective protection of law and rights. So for

ensuring public confidence on the judiciary, it is badly needed to eradicate corruption in the judiciary as early as possible by identifying the area of such corruption. The present study highlights corruptions at different stages of a criminal case, which will be beneficial for the law related practitioners.

### 1.1 Judicial Corruption

Judicial corruption can be defined as corruption pertaining to judicial affairs and committed by direct or indirect stake holders. It may be government executives or officials having direct or indirect influence on the judicial sector. Corruption presents itself in two incarnations: either direct monetary transactions or enjoying special privileges of various kinds (Islam, 2010). Judicial corruption can be understood as an act or omission that make profit to the judge, court staff or other persons involved in the judiciary and the behaviour leads to inappropriate or unjust court decisions. Such conduct can be the payment or acceptance of bribes, extortion, embezzlement, threats and abuse of the procedural rules or other improper pressure which affect the independence and impartiality of the judicial outcome by anyone that is involved in the decision-making process (TI, 2007). The definition encompasses both public officials (like magistrates) and private officials (like lawyers or notaries public). There are two types of such negative influence upon justice- The first regards improper influences affecting the independence of justice as a system i.e. pressure factors acting on justice. Here we may include political intervention in the recruitment and appointment of judges, negative influences on judges' salaries and influencing the allocation of cases or of judges to the various cases. The second type of inappropriate influences on the fairness of legal proceedings refers to the violation of ethical conduct by officials of the justice system or to 'buying' their benevolence-lack of integrity (Cristi, 2009).

### 1.2 Cases of Criminal Nature

Cases which are filed against the commission of any offences as defined in the Penal Code 1860 and other special laws are called criminal case. Broadly, they are of 3 types. Here is a brief account of them:

#### i. Complaint register cases

Whenever a case is filed directly before the concerned cognizance-taking magistrate court (CrPC, 1898), the summary of the petition of complaint are entered into a register called a Complaint Register. As such, they are called C.R. cases.

#### ii. General register cases

Whenever a case is directly lodged at the Police station or when any complaint of C.R. case is sent to the police station by the cognizance-taking magistrate court for treating as First Information Report (FIR), the brief contents of the FIR are entered into a register in the police station. Thereafter, it is sent to the General Register Section of the court. The GR

section then enters the case record in a register called the General Register. Cases entered in the General Register are called the G.R. Cases.

#### iii. Non General Register Cases

These are the cases of non-cognizable offences lodged in a police station. A similar type of register like the General Register is maintained in the courts for the Non G.R. Cases and the register is called the Non G.R. Cases.

### 1.3. Meaning of Justice

Justice means the right of getting appropriate remedy against any offence or wrongs through free, fair and impartial trial. Justice means the process or result of using laws to fairly judge and punish crimes and criminals. In Oxford Dictionary of Law, justice is defined as a moral ideal that the law seeks to uphold in the protection of rights and punishments of wrongs. Justice is not synonymous with law—it is possible for a law to be called unjust (Jonathan & Martin, 2012). In general, "Justice" is a concept of rightness morally based on ethics, rationality, law, natural law, religion, equity and fairness which takes into account the inalienable and inborn rights of all human beings and individuals to equal protection before the law, without discrimination on the basis of race, gender, national origin, color, ethnicity, religion, disability, age, wealth, or other characteristics (Akram, 2017).

### 1.4. Obstacles for Getting Justice in Bangladesh

Following are some practical issues that are the Obstacles for getting justice:

#### i. Inappropriate laws

To ensure justice laws must be appropriate and adaptable to the changing society. The country yet enforces death penalty as capital punishment whilst developed country keeps them away from such severe punishment. Fine under different laws for any offence is very small in amount e.g. 500tk, 1000tk, etc.

#### ii. Corruption at different stages of a case

Corruption at different stages of a case is the main obstacle in getting justice. So for ensuring efficient criminal administration of justice, the immediate development is needed to come to the door definitely (UNECA, 2007). Many justice seekers pay between Tk 200 and Tk 10 lakh bribe to different people during legal proceedings at lower courts, a Transparency International Bangladesh study has found (Daily Star, 2017).

#### iii. Absence of rule of law

Rule of law means the absence of arbitrariness of the ruler, equality before law and constitutional guaranty of citizens rights. Rule of law is of paramount importance to deliver the cherished justice to the people. The United Nations Commission on legal empowerment of the poor estimated in

2008 that worldwide four billion people were excluded from the rule of law in that year (CLEP, 2008).

#### iv. Lengthy process of trial

In adjudicating a criminal case in the present time it takes almost 5 to 10 years. Presently more than 3.3 million cases pending before the higher and the lower court in Bangladesh (Dhaka Tribune, 2018b). It is said that justice delayed is justice denied.

#### v. Incapacity and incapability of the judges

Judges are subjected to certain limitation either imposed by law or by the local and political pressure. Presently there are 12/13 judges for 1 million people (Assignmentpoint, 2018). It is held in many cases that the judges try themselves to use good conscience but failed to ensure justice. The root cause of this failure is lake of training as well as shortage of judges.

#### vi. Incapacity and incapability of the lawyers

The enrolment process of the earlier time had allowed various numbers of incapable or unqualified people to be enrolled as an advocate. It is often told that justice depends largely on the role of lawyers.

#### vii. Incapacity and incapability of the police

This is the main body which investigates the offences, enforce the laws and as well as who brings the offender within judicial process. They are suffering from lake of weapons and high qualified training on crime. Their process of appointment is also not fair enough.

#### viii. Political ill will

Withdrawal of cases in political thinking is also a vital cause to the failure of ensuring justice.

### 1.5. Objectives

The goals of this paper are (i) to identify diversified corruptions in the criminal justice system in Bangladesh and (ii) to formulate policy prescriptions towards the stakeholders.

## 2. METHODOLOGY

The work has been carried out based largely on qualitative evaluation approach. The majority of the primary data has been collected during the year 2017 and 2018 from different magistrate and session courts in the Dhaka, Rajshahi and Khulna of Bangladesh. A wide range of secondary data has been used to substantiate analysis of primary data. A wide range of personal visits were made to judges, stake holders, different functioning courts and related section offices, with inspection of case records and the experiences described. Because of the nature and high degree of sensitivity of the issues, the judges, magistrates, advocates and police officers referred to this paper spoke on the condition of secrecy.

## 3. CORRUPTION AT DIFFERENT STAGES OF A CRIMINAL CASE

For the betterment of understanding, the topic has been discussed under the key headings namely- 3.1. Corruption during Filing/Lodging of a Case, 3.2. Corruption at Investigation/Inquiry Stage, 3.3. Corruption at the Cognizance Stage, 3.4. Corruption at the Pre-Trial Management of Cases and 3.5. Corruption at the Trial Stage. The flowchart is as follows.

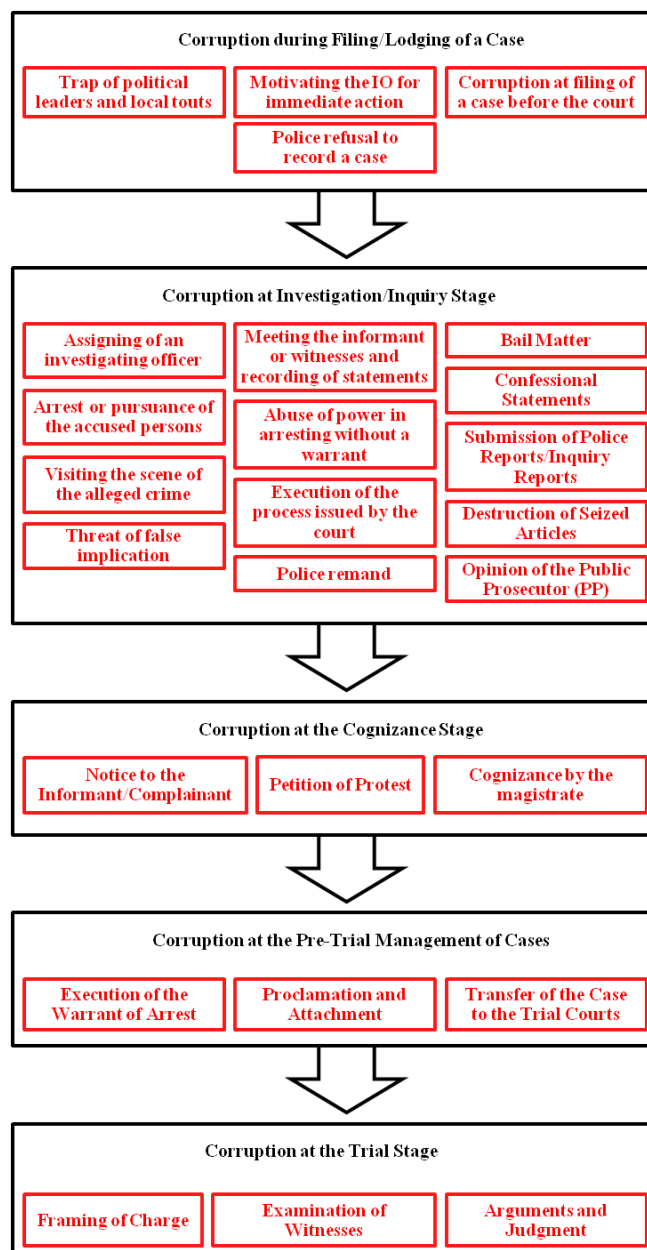


Fig. 1. A pathway of corruptions in a criminal case.

### 3.1. Corruption during Filing/Lodging of a Case

At the initial stage of filing or lodging of a criminal case, the wheels of corruption are set in motion in the following way-

### **i. Trap of political leaders and local touts**

Within the court, a group of touts maintains regular court connections. Victims in a case or their family members rush to them for preliminary legal consults. They make claims for substantial amounts of money under the heading of expenditure. They engage in fee-splitting with their chosen advocates. In most cases of genuine, serious offences, the local political leaders attempt to influence the victim's family to include names of innocent members of the opponent group, with a view to victimizing them. By such influences sometimes, the police record cases against the informant in lieu of the accused person. Mr. Sekendar Ali of Jessore, informed the police by mobile phone about the existence of phensydle, a contraband cough syrup, in Mohiuddin's cow-shed. After the phensydle recovered, police recorded the case against the informant Sekendar Ali instead of Mohiuddin, described at special tribunal case no. 485 in 2006 at additional district and sessions judge 4th court in Jessore.

### **ii. Police refusal to record a case**

People generally try to avoid the police station to lodge cases. At least twenty case records from the Chief Judicial Magistracy (CJM) have been verified and found that the petitions of complaint, containing explanations are submitted to the courts after police refused to receive the cases. One Abdur Rahman of village Sariakandi under Shariatpur Sadar Upazilla, on refusal of the police to record case, filed a petition of complaint before the court of CJM, Shariatpur on May 25, 2009 against sixteen persons including six members of the RAB (Daily Prothom Alo, 2009). He alleged that members of the RAB had mercilessly beaten and physically tortured his son Afjal, who died as a result. Most of the advocates of the local Bar Association refused to become involved in the case. The police are not favorable to the informant unless they are satisfied that their illegal demands for bribes will be met. In a murder case that described in Keranigonj police station case no. 2 in 2006; the police completely altered the first page of the written complaint. They replaced it with another page, to save the accused, an influential person in the community. The CJM court ordered the concerned police station to bring a case against the police officers who were liable for this offence described in Keranigonj police station case no. 27 in 2008. On instructions from political bosses, the police have been forced to record false cases against innocent, opponent, political activists or leaders.

### **iii. Motivating the IO for immediate action**

If a case is lodged and recorded there is no guarantee that the police will run into an investigation. It requires strong arguments to motivate the investigation officer (IO) to take action. The police are prompt and active in political cases instituted by the activists or leaders of the party in power. In recording sensational cases, like rape and murder, the police are not aggressive enough. In fact, sometimes rape victims are not immediately examined by the doctor or are not produced before the magistrate for recording their statement.

One victim of an attempted rape was not produced before the court and not brought to the medical center for examination and treatment which is described in Dhamrai PS case no. 5 in 2009 u/s 9(4) Kha/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. Because of delayed examinations of rape victims by medical experts, the physical signs may become less apparent, partially healed or altered altogether by the passage of time. The offenders can then very easily avoid trial.

### **iv. Corruption at filing of a case before the court**

It begins at the lawyer's chamber. Some advocate is not always completely honest in disclosing the merits or demerits of the case to be filed. Besides the fees of the lawyer and the chamber, a huge amount of money is received in the name of expenses of the court. Frequently false and concocted medical certificates are used by lawyers and litigants to file false cases. It is quite easy for a litigant to manage false medical certificates after payment to some doctors (author's personal observation). As the court has very little scope to determine the falsehood of these certificates, yet they have to make preliminary decisions relying on these false Certificates. At the time of filing a case, corruption by the court staff begins. Bench assistants (peshkar) demand money to receive and register the case. If their demand is not met, the case may not be registered or the file of the case may be 'lost' in the course of time. In most courts, the amount of money to be given to the peshkar for filing a case is fixed. However, if anybody expects extra advantages, he has to pay extra money. Peshkar also demand money to have the case called earlier for a hearing. While filing a complaint case, the petitioner may be examined under oath and the deposition put in writing (CrPC, 1898). The deponent is to put his signature on the deposition sheet. It is common practice that the complainant is kept waiting and the signature is not made in the presence of the court officer. There are many opportunities for the cognizance magistrate to abuse his power.

## **3.2. Corruption at Investigation/Inquiry Stage**

### **i. Assigning of an investigating officer**

It is the responsibility of the officer-in charge (O.C.) of a police station to assign an investigating officer (IO) (PRB, 1943) to begin investigation of a case. In most of the cases, substantial and sensitive cases are assigned to officers of his choice irrespective of their experience or efficiency. The basis of choice has to do with a prior agreement on bribe distribution. The O.C. of a police station is required to make monthly payments to his superior officers. In turn, he tries to collect this money from the investigating officers on cases lodged in his station. If an officer fails to make his monthly payment, he may be transferred at any time to a less desirable location. Assignments, of investigating officers to high ranking political cases, are determined by superior authorities with instructions from the heads of the political party in power.

## **ii. Arrest or pursuance of the accused persons**

Local touts or influential political persons play a vital role in controlling the investigation officer on whom to arrest or not to arrest. In cases where the IO does not make an arrest, he excuses that there is no specific name and address for the accused even though their name and address was clearly written in the FIR or in the petition of complaint (author's personal observation). Similarly, the IO might take action in arresting accused persons or suspected accused persons if effective communication is made by the informants (author's personal observation). In fact, the police are afraid of arresting political activists of the party in power without signal from the high command even though they are accused of committing grave offences (author's personal observation). This happens despite the fact that there are warrants for their arrest pending execution, at the hands of the same police.

## **iii. Visiting the scene of the alleged crime**

During the visit to the crime scene, the IO records statements from the informant or other witnesses (CrPC, 1898). During the trial, these statements are used by the accused to contradict the statements of the prosecution witnesses recorded in the court. Therefore, if the IO does not properly prepare these statements, it may adversely affect the case for the prosecution. It is required by law that the IO himself records these statements. Of the inspected case records, almost all were written by someone other than the IO which makes him guilty of negligence and dereliction of duty. And every statement was similar in wording, apparently written in one sitting to which the IO put only his signature, albeit with a different pen and ink (author's personal observation).

## **iv. Threat of false implication**

During the investigative process, the investigating officers may make threats of false implication against the accused, his relatives or other persons if their undue demands are not met. During this time, the IO on several occasions demands and receives money from the accused. A Sub-Inspector of the cantonment police station, convicted of demanding bribes, was sentenced by the metropolitan session judge in Dhaka for 4 years imprisonment (Daily Prothom Alo, 2009). The allegation is that the convicted police officer, during investigation, demanded money from the accused, threatening his father with false implication. Though a cash payment was made, the matter was subsequently brought to the notice of the Anti-Corruption Department and he was caught red handed.

## **v. Meeting the informant or witnesses and recording of statements**

The IO serves notice to the informant that he must present himself before the IO at the police station with witnesses on specific dates (CrPC, 1898). The IO frequently refuses to meet with the informant or his witnesses on the day set and asks them to come on another day, causing great inconvenience. Sometimes statements are recorded in a distorted way and significant points are purposely omitted.

## **vi. Abuse of power in arresting without a warrant**

In any cognizable offence under investigation, the IO can arrest the accused person/s or suspected accused person/s without a warrant of arrest issued by the court (CrPC, 1898). This power is widely abused by police authorities, especially during investigation of cases lodged against unknown accused persons (Haque, 2008). Rich people who are innocent become the main target of indiscriminate arrest by the police. After their arrest, the police usually keep them in the station for a considerable period of time without informing the reason of arrest (Daily Star, 2018). They then start the bargaining process with their relatives on the amount of bribes to be paid. At times, the arrested persons are brought to the court on fabricated charges in compliance with directions from political leaders. Recently one Mr. Faruk hosen and Ashraful of Matikumra, Jhikorgacha, Jashore have been brutally tortured and damaged a leg each by shooting into their leg and also fabricated charges have been brought by police (Prothom Alo, 2018). In a police charges, when producing arrested persons in court, contain certain prototypical language, for examples "there is strong suspicion of involvement of the arrested in the alleged offence", or "the arrested person is the gang leader of miscreants involved in criminal activities", or "evidence of involvement in the alleged offence is forthcoming". Most of these allegations are finally proven to be false.

## **vii. Execution of the process issued by the court**

Whenever the court passes an order to issue an arrest warrant against an accused person, it is the responsibility of the bench officer to dispatch the same to the designated police station through the connecting court inspector's office. But it is found in most of the cases that the bench officers do not make a prompt or timely dispatch of the warrant of arrest. On the contrary, if the prosecution or complainant side makes an effective communication with the bench officer or the court staff, the process quickly reaches the next office. In processes against political persons, where the party in power has vested interests, the police are very active in carrying out their duties. By contrast, the processes against political activists are kept in continuing uncertainty without any explanation given to the issuing courts (Islam, 2010).

## **viii. Police remand**

After submission of a police remand application and hearing, the court passes on the police remand order. This allows the IO to hold the accused person for the period of time mentioned in the police remand order (CrPC, 1898). Police remand has become a profitable business for the police agencies simply because the accused fear inhuman torture in the name of Interrogation (Khan, 2016). This is a clear violation of constitutional provisions. Article 31 of the Constitution provides, "To enjoy the protection of the law and to be treated in accordance with law and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh". It is again enshrined in article 35 clause (5), "No person shall be subjected to torture or to

cruel, inhuman or degrading punishment or treatment”. The police manifest total disrespect for these constitutional provisions.

The courts tend to overlook the complaints of physical torture as allegedly inflicted during police remand. The lawyer for the accused tries to attract the court’s attention when the accused is produced. Mr. Nasiruddin Ahmmed Pintu, an ex-BNP law maker, informed the court after being produced from remand that he had been threatened with cross-fire by the police (Daily Amader Shomoy, 2009). During a submission, as an objection to the police remand practice, the lawyer invariably makes a request to the court to give a direction to the responsible police officer to take care and use caution as to the physical condition of the accused (author observation). Some of the accused, coming out of remand, are not physically stable. Recently on 6 August 2018 a prominent photographer Shahidul Alam was charged under section 57 of ICT Act 2006 for “provocative comments” made in an Al-Jazeera interview about a student protest over road safety and placed on seven-day remand. Friends of the photographer said he was unable to walk by himself in court and told them that the authority had assaulted him. “He said he was beaten up and had blood all over,” said ASM Rezaur Rahman, a colleague (Guardian, 2018). Relatives or friends of the accused try to supply food and necessities and obviously, they are compelled to pay money to the police (author’s personal observation).

The police are keen to receive accused persons into their custody for investigation or collection of evidence. But, after expiry of the remand period almost all the remand-back forwarding documents contain previously mentioned prototype language like “evidence is found against the accused person and the information are being checked out or scrutinized” or “the names and address of the accused persons have not yet been verified” (author’s personal observation). In very rare cases, the remand-back forwarding documents of the IO, contain specific accusations. It is a requirement of the law that a copy of the case diary to be submitted to the court along with the application for police remand described in *BLAST & others vs Bangladesh* in 2003 55 DLR HCD 363. If not, the lawyer can raise strong objections and as a result, the court might not be interested in hearing the application. It affords the actual offenders, outside the control of the police, time and opportunity to hide.

#### **ix. Bail Matter**

Bail shall be granted as a right in bailable offence and the court cannot refuse bail if it is requested by any arrested person or by an accused person who has surrendered himself (CrPC, 1898). Unfortunately, a group of lawyers has the tendency to demand huge sums of money from their clients who are arrested in cases where bail is allowed. They paint a negative picture of the court’s attitude towards the alleged offence. In some instances, they take money in the name of the responsible judge or magistrate. To lend credibility to their dealings they make lengthy and unnecessary

submissions before the court in front of their clients (author’s personal observation). The question of bail arises as soon as a person is arrested by the police or detained in custody or a warrant of arrest is issued against an accused person by the court (Akkas, 2009). In most cases, the accused or their relatives try to obtain bail at any cost, even when bail is available. This is the area where local touts, political leaders, lawyers and judicial officers take the opportunity to amass huge sums of money. If the accused remains ignorant of the facts, then the touts offer their services to obtain bail and persuade them to sign the *Okalatnama*. If they are successful in obtaining a signature, the harassment begins.

#### **x. Confessional Statements**

Bengal Police Regulations discourage attempts at obtaining confessions from accused persons. However, the police are mostly interested in getting these confessions because it makes their investigation process easier. They can avoid long-term complicated, field-level investigations. During the entire course of an investigation, the investigating officer keeps on trying to extract a confession from the accused arrested person. There exists a wide range of corruption and cruel practices by the police in the name of extracting a confession. Usually, persons in police remand are the target group for confessions (Malik, 2007).

#### **xi. Submission of Police Reports/Inquiry Reports**

A superior police officer supervises an investigation carried out by an IO to ensure a speedy, unbiased and proper investigation (PRB, 1943). The circle, of Assistant Superintendents of Police, is the most active field level and closely supervising authority of the IO. He has the responsibility to supervise all the cases in his circle which may be composed of more than one police station. The investigating officer is required to have every application endorsed by the circle A.S.P., especially police remand forwarding cases. It has found that the Judicial Magistrates are refusing police remand on many occasions. The findings show that no endorsement in the police remand application is made by the supervising police authority. Often the supervising police officers ask for money before making any sort of endorsement in the forwarding of police reports.

#### **xii. Destruction of Seized Articles**

The IO seeks the court’s permission to destroy part or all of the seized articles mentioning any specific necessity. If permission is granted, the seized articles are destroyed as per direction of the court. However, the police destroy some and keep some of the seized articles, thus, disregarding the court’s order (author observation). As in the cases of contra banned Phensydlle or local alcohol or drugs, there is a strong possibility that only a portion will be destroyed. The rest will be sold or used in victimizing other innocent persons. In 2018 peoples have alleged the same during the Government’s operations against drugs (Dhaka Tribune, 2018a).

### **xiii. Opinion of the Public Prosecutor**

In case of big and sensitive cases the IO has to seek the opinion of the Public Prosecutor (PP) regarding the legal aspects of the involvement of any suspected accused person. A senior lawyer of the Jashore Bar Association disclosed that the office of the PP is occupied with earning huge amounts of money from accused persons. This is especially true when they provide guided opinion in cases involving corrupt government officials, government/money/interests. The PP overlooks involvement in serious crimes by an accused person in whose favor the IO is going to submit a non-remand proposal to the court.

### **3.3. Corruption at the Cognizance Stage**

Whenever an inquiry report in a complaint case or an investigation report in a police case is submitted, the court can take cognizance of the offence after hearing of the parties, if any (CrPC, 1898).

#### **i. Notice to the Informant/Complainant**

The court can issue a notice to the informant/complainant to appear before the court for a hearing. In complaint cases, bench officers do not issue the notice even after the officer has signed it. They keep the documents in their drawers under lock and key. This delaying mechanism is carried out to afford time to make monetary demands on the complainant or for active persuasion by the side of the accused. On the other hand, in police cases, it is the responsibility of the office of the Court Inspector to dispatch the notice, but date after date, no report is submitted to the court as to the execution of the notice upon the informant.

#### **ii. Petition of Protest**

If informants in police cases or complainants in complaint cases come to know the results of the investigation and if they feel aggrieved or dissatisfied with the results they have recourse to two solutions. They can file a petition of protest (Naraji Petition), claiming direct cognizance of the offence or further investigation/inquiry by any other competent authority. If it is a strong case and there is the chance of allowing the application, it is submitted at the earliest opportunity and a hearing is insisted upon by the parties. But where the investigation is authentic and there is less chance of allowing the application, the informant adopts the technique of wasting as much time as possible (author observation). Finally, when the matter is heard and disposed of by the court and the final report is accepted, there is a chance of filing a criminal revision application against the order before the Court of the Sessions Judge.

#### **iii. Cognizance by the magistrate**

When the magistrates have taken cognizance against all the accused persons under all the sections of law mentioned in the charge-sheet, the common notation on the cognizance order is "Seen". The charge-sheet is "accepted". Upon reading the F.I.R. and the charge-sheet, it appears that there are allegations of different offences against different accused persons. As such, the cognizance orders are mostly found to be rushed and abrupt. In accepting the police report, it is

possible that if details in the order of taking cognizance were written, many innocent persons would have avoided subsequent harassment and an unnecessary trial.

### **3.4. Corruption at the Pre-Trial Management of Cases**

If any of the accused persons are not present in the court from the very inception of the case, then the question of securing their presence arises. It involves a long and complicated process which is commonly known as pre-trial case management.

#### **i. Execution of the Warrant of Arrest**

As soon as the charge sheet is accepted in a police case, the court issues either a summons or a warrant of arrest (WA) against the accused persons who have fled from the law (CrPC, 1898). Execution of the WA depends on the will of the officers in each police station. It is the duty of the officer-in-charge of a police station to assign the WA's. They are given to respective Police Sub-Inspectors or Assistant Sub-Inspectors to execute and to report to the court. Unless supervised strongly, the assigned S.I. or A.S.I. is reluctant to visit the accused persons noted in the WA. If the accused appear and report to the assigned police officer, visiting starts, but only after an effective agreement on the amount of bribe to be paid is made. In cases of strong supervision and during special drives, the rate of execution of pending warrants increases. Take for example, the last special drive on WA by the Dhaka Metropolitan Police, which commenced since May 14, 2009.

#### **ii. Proclamation and Attachment**

If a court has reason to believe that a person, against whom a warrant has been issued, has absconded or is in hiding so that the warrant cannot be executed, it may publish a written proclamation (CrPC, 1898). These legal formalities are rarely observed when issuing a proclamation. The police do not even send the execution report within the next fixed date. Verification of case records in Dhaka, Khulna, Jashore Judicial Magistracy and the respective G.R. sections found that a majority of the case records are kept pending for long periods in order to get the execution report of the proclamation order. Lawyers and litigants on court premises replied when questioned, that they had not been aware of any police officer/constable affixing a copy of the proclamation or making any public announcement. The court issuing the proclamation can also order a lien on the property or possessions of the proclaimed person (CrPC, 1898). In reality, except for some few VIP political cases, the police do not go and see the residence of the absconded persons to make an attachment, as claimed by an advocate of the Chief Metropolitan Magistrate Court.

#### **iii. Transfer of the Case to the Trial Courts**

As soon as a case is ready for trial, the cognizance court dispatches the case record to the concerned trial court for trial and management. In some cases the sending cognizance court does not note down the next date for example- cases under Nari-O-Shishu Nirjatan Daman Ain, 2000. The

cognizance Magistrate Court, immediately after receiving the police report, sent it together with the case record, to the tribunal without fixing the next date. The bench assistants hide the case records and do not enter them into the register. Meanwhile, they maintain communication with the accused and provide them with an opportunity to appear before the Tribunal without the presence of the informant's side. It also creates problems for the accused. As they do not know the next date upon which to appear before the trial court and if they fail to appear on the correct date, there might be the risk of cancellation of bail.

### 3.5. Corruption at the Trial Stage

If all the accused persons are present in the court and cognizance of the offence has been taken, the cognizance court forwards the case record to the trial court, as being ready for trial.

#### i. Framing of Charge

Generally, the first date fixed in the trial court is for the framing of the charge. On that very first date the lawyers tend to avoid a framing and only ask for bail. In addition, the judicial officer himself may not be interested to hear the framing of the charge on the initial dates, as he has to go through the record thoroughly and scrutinize the facts and points of law. As a result, many dates elapse without the framing of a charge which leads to a prolongation of the actual starting date of the trial. Charges are often mechanically framed without looking deeper into the case. Reversely, it is likely that corrupt judicial officers use the method of dropping charges against accused persons to their advantage, even though there is a definite and specific allegation in the record. Lawyers know there is a minimal chance of dismissing charges against accused persons at the stage of charge hearing. Some lawyers misguide their clients. They submit a discharge petition while receiving high fees for doing so.

#### ii. Examination of Witnesses

The OC of a police station is accountable for producing the witnesses before the court (CrPC, 1898). After receipt of the process order, the OC assigns his subordinates to execute the order. The assigned officers keep all the summons/ warrants in their pockets or drawers, unexecuted. Again, if the witnesses appear on the fixed date according to their summons/warrants, the court SI or the PP or the APP of the respective courts do not test them properly. Accused persons are kept waiting for payment negotiation before submitting the presentation note before the court. If the accused manage to manipulate the prosecution to their side, the witnesses are remitted without examination, obviously beyond the court's knowledge. A proceeding was observed before the Court of a Senior Judicial Magistrate, Court No.1 in Dhaka, in which the lawyer after hammering on and repeating his petition compelled the court to adjourn proceedings described in Keranigonj Police station Case No. 02 in 2009. There is no government witness protection system in criminal cases. And for that reason, the witnesses do not turn up before the court, causing long delays in the disposal of the case. In

political cases, witnesses do not appear, fearing torture or police manipulations. It has been happened in the trial of war crimes Tribunal. It happened that a murder case has been pending for the last thirteen years (Daily Prothom Alo, 2009).

#### iii. Arguments and Judgment

After the court examines an accused person and if they do not bring forth any defense witnesses, the court fixes a date of argument. On this date, they hear arguments from both sides of the case. It is the responsibility of both the defense and the prosecution to present clear cases before the court. The prosecution usually puts forth a patterned argument by saying only "As per record." The court is independent but if the prosecution does not strive hard enough, the court can do nothing in punishing the offenders (Kayum, 2009). The forceful allegation against politicians-turned-public prosecutors is that in many cases they are not honest, eligible or efficient up to the required level (Mithu, 2006). Police officers, who are deputed as Court SI, are sub-standard in their skills and performance abilities. After a hearing of arguments, a date is fixed for the pronouncement of the judgment that should occur within a short period. However, the date of judgment turns out to occur after a long period. Judgment is delayed in expectation of communication from the interested side. When communication is established and an effective bargain is made, only then is the judgment pronounced. In the sensational Udichi Murder Case described in Session Case Number 105 in 2000 at Session Court of Jessore, it was observed that it took almost one month for pronouncement of judgment. There are allegations that even though the judgment is pronounced on the fixed date, the writing of the whole judgment sometimes takes a long time to complete. And in that case, if the aggrieved party wants to appeal, he will have to wait an unlimited period of time to procure the certified copies of the judgment and order (Dhaka Tribune, 2018c).

### 4. RECOMMENDATIONS

A strong foundation for the rule of law, a key pillar of democracy, rests on a court system that is independent, transparent, and effective. Bangladesh has a strong and competent judiciary but backlogs and outdated administrative systems impede justice delivery system and more work is needed to making justice services more accessible, acceptable and affordable (SCB & UNDP, 2015). For this purpose the following steps is badly needed:

- i. In every fiscal year government should ensure submission of mandatory wealth statement for the judicial officers, police personnel, lawyers, court staff and their family members. By amending Sarkari Chakori Ain 2018, the Anti-Corruption Commission of Bangladesh should be given power to arrest corrupted officers at red handed as like general public.
- ii. Setting up a visionary action-plan to equip the judiciary and the police with up-to-date technologies such as closed circuit television and DNA laboratories. This

- would enhance the traditional methods of identifying criminals based only on hearings/arguments.
- iii. Appointments, promotions, postings of judges should be controlled by the Supreme Court in consultation with the President, without interference from the government secretariat as per article 22 of Bangladesh constitution (Bangladesh Constitution, 1972).
  - iv. Senior Judges should not exploit the subordinate officers with the power entailed in preparing the Annual Confidential Report and encourage them to make comments on corruption in appropriate cases.
  - v. It is badly needed to establish additional courts with additional posts and appoint sufficient number of judges on a regular basis.
  - vi. Providing adequate government housing for judges and arrange strict, continuous security in their courts and residences.
  - vii. The presiding judge should not return during trial of unexamined witnesses except in extreme or unavoidable circumstances.
  - viii. Lawyers should decrease the number of cases handled at the same time and train junior staff to share in the responsibilities.
  - ix. Government should appoint Public Prosecutors and government Pleaders to a permanent prosecution system considering their integrity, education and experience, not their political affiliations.
  - x. Supervising and taking action in respect of government interests in pending cases by establishing case-monitoring entities in each district with adequate powers.
  - xi. Establishing a separate investigative wing of the police to ensure effective and quality investigations. For this purpose the post of Sub-Inspector should be recruited from the law graduates only.
  - xii. Allocating additional funds for the expenses required for proper investigations to encourage the investigation officers to do their jobs whole-heartedly and raise morale.
  - xiii. Minimizing governmental interference in investigation and trial processes. Introducing a witness protection system to ensure that witnesses appear before the courts without fear of subsequent attacks.
  - xiv. Enhancing training standard for the judicial officers and ensure that trainers are not politically chosen persons, but persons with high morale and commitment to equity, justice and human rights.
  - xv. Increasing salary and other benefits of the police and introduce a handsome amount of risk-allowance.
  - xvi. Placing a cap on the maximum fees of a lawyer and devise sufficient transparency and accountability in this sector. Every payment to the lawyers should be made through legally acceptable documents/receipt.
  - xvii. Replacing the existing prosecution system regulated by the police with legally educated and well-trained public prosecutors. It is highly needed because the police are still the most corrupt service sector in the country (TIB, 2018).
  - xviii. Public should avoid the tendency to bribe judicial officers/staff in order to buy favorable judgments and orders. They should make efforts to attend the courts regularly on the fixed dates.
  - xix. International community should encourage the national/international nongovernmental organizations to take part in judicial reform projects, especially those that raise social awareness.
  - xx. A computerized case documentation and management system should be introduced, in order to provide public access to information through online of the formal justice system. This would include all relevant information, such as a general diary, FIR and details on the current status of individual cases.
  - xxi. Laws should be amended to make audio and video evidence permissible, which could increase the speed at which cases are disposed of. The Probation of Offenders Ordinance, 1960 should be strictly followed to reduce pressure on jail.
  - xxii. Modern communications systems, such as mobile phones and SMS, should be used to inform citizens for summons (SCB & UNDP, 2013).

## 5. CONCLUSION

“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”(UDHR, 1948).

Justice is the most significant as well as the most imperative fixation for a society. For good governance, there is no alternative of justice. Bangladesh is passing a very critical period in every sector with lawlessness, political and non-political crimes and violence, seething corruption, plunging morality, broken governance and self-serving politics. It is possible to clean up such a gigantic mess if only we, the people of Bangladesh actually have the will to do so. To ensure proper law enforcement four essential ingredients should be fulfilled which are independence, resources, motivation, and efficient administration. Once rule of law is implemented, our people shall be able to get the justice irrespective of race, sex, colour, society and locality. That is the day we dream of and for which we have devoted ourselves in our glorious War for Liberation in 1971 and the other previous movements. Failure of achieving which may lead our people into further movement as it violates their constitutional right. In upholding the rule of law, in maintaining law and order, in protecting fundamental human rights and in building up a strong check and balance amongst the State organs, the judiciary should be rescued directly and with all due speed, from its status of vulnerability. Ensuring

civic rights to justice is also part of Bangladesh's commitments under Agenda 2030 and these violations highlight that the country is failing abysmally to meet targets set under Sustainable Development Goals (SDG) no. 16, on promoting peaceful and inclusive societies, in accordance with national legislation and international agreements" (CIVICUS, ADN, AHRC, People's Watch, HRDA & Forum Asia, 2018).

## REFERENCES

- Akkas, S.A. (2009). *Law of criminal procedure*, 2<sup>nd</sup> edition. Ankur Prokashani, Dhaka.
- Akram, S.M. (2017). *A critical analysis of access to justice in Bangladesh*. International Journal of Humanities and Social Science Invention, 6 (8), 50-58.
- Assignmentpoint, (2018). *Research Paper on Delay in civil cases in Bangladesh*, available at [www.assignmentpoint.com](http://www.assignmentpoint.com) >arts> law (accessed on 14 November 2018)
- Bangladesh Constitution, (1972). *The Constitution of the Peoples Republic of Bangladesh*, adopted on 4 November, 1972
- CIVICUS, ADN, AHRC, People's Watch, HRDA & Forum Asia, (2018). *Release all those arbitrarily arrested and investigate police abuse*, available at: <https://www.civicus.org/index.php/media-resources/news/3386> (accessed on November 23, 2018).
- CrLCC, (1999). *Criminal Law Convention against Corruption*, CETS No. 173, Strasbourg.
- Cristi, D.A. (2009). *Corruption and anti-corruption in the justice system*, Editura C.H. Beck Press, Bucharest, Romania.
- CrLAA, (1958). *The criminal law amendment act, 1958 of Bangladesh*, Act No. XL of 1958.
- CLEP, (2008). *Commission on Legal Empowerment of the Poor*, Volume I, p.1.
- CrPC, (1898). *The code of criminal procedure, 1898 of Bangladesh* (Act no. V of 1898).
- Daily Star, (2018). *Abuse of power abuses innocent*. The Daily Star, 23 April, P.1.
- Daily Star, (2017). *Bribery at every step*. The Daily Star, 01 December, P. 1
- Dhaka Tribune, (2018c). *Zia Orphanage graft case*. The Dhaka Tribune, 7 March, P. 1
- Dhaka Tribune, (2018a). *Police use yaba for extorting cash*. The Dhaka Tribune, 27 April, P. 1
- Dhaka Tribune, (2018b). *Case statistics of law minister before parliament in 2018*. The Dhaka Tribune, 16 January, P. 6.
- Daily Prothom Alo, (2017). *Police refusal to record case against RAB*. The Daily Prothom Alo, 26 May, P.7.
- Daily Prothom Alo, (2018). *UP member, nephew's legs amputated after torture in police custody*. The Daily Prothom Alo, 24 November, P.10.
- Daily Amader Shomoy, (2009), *Mr. Nasiruddin Ahmmed Pintu threatened with cross-fire by the police*. The Daily Amader Shomoy, 9 June, P. 5.
- Daily Prothom Alo, (2009), *Allegation against police for change of incriminating portion of the F.I.R.* The Daily Prothom Alo, 21 May, P. 4.
- Guardian, (2018). *Photographer charged as police crackdown in Bangladesh intensifies*. The Guardian, 6 August, P. 4
- Haque, Z. (2008). *Law and practice of criminal procedure*, 9th edition. Projoti publication, Dhaka.
- Khan, M.R. (2016). *Cross fire and the constitutional duty of court*. The Daily Prothom Alo, 28 June, p. 4.
- Kayum, A. (2009). *The government's philosophy in combating corruption*. The Daily Prothom Alo, 20 April p.11
- Malik, S. (2007). *Arrest and remand: judicial interpretation and police practice*. Bangladesh Journal of Law, 2, 289.
- Mithu, A.H. (2006). *Low Conviction Rate in Bangladesh*. The Daily Star, 13 May, p.4
- Martin, A.E. & Jonathan, A. (2012). *A law dictionary*, 7th Edition. Oxford University Press, UK, p. 310.
- PRB, (1943). *Police regulations, Bengal, 1943 of Bangladesh*. available at: [https:// www.latest laws.com/ bare-acts/ state -acts -rules/ west- bengal- state-laws/](https://www.latestlaws.com/bare-acts/state-acts-rules-west-bengal-state-laws/) (accessed on December 15, 2013).
- SCB & UNDP, (2015). *Timely Justice for All in Bangladesh: Court Processes, Problems and Solutions; A Challenge for Change*, available at: [http:// www.bd.undp.org/content/ dam/ bangladesh/ docs/ Projects/ JUST/.pdf](http://www.bd.undp.org/content/dam/bangladesh/docs/Projects/JUST/.pdf). (accessed on November 22, 2018).
- SCB & UNDP, (2013). *Summary Report on Court Services Situation Analysis*, available at: [http:// www.undp.org/content/ dam/ bangladesh/ docs/ Projects/ JUST/ Summary\\_Report\\_on%20Court%20Services%20Situation%20Analysis.pdf](http://www.undp.org/content/dam/bangladesh/docs/Projects/JUST/Summary_Report_on%20Court%20Services%20Situation%20Analysis.pdf). (accessed on October 19, 2018).
- Siddiqui, M.S. (2010). *Legal Aid Act, 2000 and Justice Delivery System*, available at: [http:// www.scribd.com/doc/ 56520373/ Legal- Aid- Act- 2000- and-Justice -Delivery- System](http://www.scribd.com/doc/56520373/Legal-Aid-Act-2000-and-Justice-Delivery-System) (accessed on November 20, 2018).
- TIB, (2018). *National household survey report 2017*. Transparency International Bangladesh, Dhaka.
- TI, (2007). *Global corruption report 2007*. Transparency International, Germany.
- UDHR, (1948). *Universal Declaration of Human Rights*, available at: <http://www.un.org/en/universal-declaration-human-rights/> (accessed on June 14, 2017).
- UN, (2003). *United Nations Convention against Corruption*. United Nations, Viana.
- UNECA, (2007). *Deepening the judiciary's effectiveness in combating corruption*. United Nations Economic Commission, Africa.
- WJP, (2018). *Rule of law index 2017-2018*, available at: [https:// worldjusticeproject.org/ our-work/ wjp- rule-law- index/ wjp -rule-law- index- 2017 % E2 % 80 % 93 2018](https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018) (accessed on November 19, 2018).