

Politics – Corruption Nexus in Bangladesh

AN EMPIRICAL STUDY OF THE IMPACTS ON JUDICIAL GOVERNANCE



Md. Shariful Islam



ASIAN LEGAL RESOURCE CENTRE

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PREFACE

A common question I frequently came across while conducting this research was that why being a teacher/student of Political Science I got involved in an area entailing legal expertise. As such, the point of departure is the unimaginable degree of corruption in politics, from the top to bottom of the pyramid. In a move to comprehend its deadly impacts on the State institutions, I chose to search into the Subordinate Judiciary, an institution of fundamental importance but always ignored and manipulated by the successive governments. This is one of the areas where a student of Politics can see how a State behaves to its 'ordinary' citizens, to whom State owes its legitimacy.

The idea was first conceived in 2002 when I visited, inter alia, the Supreme Court of the United States and other judicial institutions, as part of a State Department-sponsored fellowship on Democracy and American Political Process. I was equipped with some practical knowledge on law and judiciary when I had an opportunity to work with the Asian Human Rights Commission (AHRC) as a Research Fellow in 2008.

This book is an outcome of an Asian Legal Resource Center (ALRC) project on "Judicial Corruption in Bangladesh: Causes, Consequences, Remedies" that I conducted mostly between April – December 2009. Despite the fact that the research was carried out in 2009, its findings reflect no particular government's tenure. Rather, the research casts light on the prolonged politics-corruption interface that has severely jeopardized the judicial system of Bangladesh.

I would like to express my gratitude to Mr. Basil Fernando, the Executive Director of the ALRC without whose generous support the work would not have been possible. I must be thankful to the ALRC staff, especially Sister Marya Zaborowski and Mr. Ashrafuzzaman who greatly facilitated my work from their respective capacities. My grateful thanks are due to the judicial officers, police officers, counsels, and other persons who have been interviewed, and have spent their valuable times.

It was indeed an ambitious plan to undertake this rather large-scale research, and produce the manuscript of this volume for publication within a very short time-span. Hence, there may be some shortcomings, and I alone am responsible for these. I would appreciate any criticisms, suggestions or comments regarding this work.

The nation needs soul-searching and an acknowledgement of the fault lines. This is an endeavor to that direction, and of course not an attempt to tarnish the image of any particular institution or person.

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GLOSSARY, ACRONYMS AND LOCAL TERMS

A.C.R	Annual Confidential Reports
A.D.R	Alternative Dispute Resolution
<i>Amader Shomoy</i>	A daily Bengali newspaper
Awami League	A major political party in Bangladesh and presently in power with absolute majority in the parliament.
A.P.P	Assistant Public Prosecutor
Arguments	The final stage of a case when the parties try to present their respective cases to the court by making elaborate submissions.
A.S.I	Assistant Sub-Inspector of Police
A.S.P	Assistant Superintendent of Police
Bailable Cases	Cases in which the accused person is entitled to be bailed out if prayed for.
Bench Assistant	A clerk to help the judge in calling the cases and producing the case record before the court.
BNP	Bangladesh Nationalist Party, a major political party in Bangladesh and presently the opposition party in the Parliament.

B.C.S	Bangladesh Civil Services
B.P.A.T.C	Bangladesh Public Administration Training Center
Case Docket	Written day to day record of investigations prepared by the IO. It is also called case diary (CD).
Case Diary	See “case docket”.
Cause Lists	List of the cases fixed for hearing on a day.
Certified Copy	True copy of any official document which has been certified to be true by an empowered officer.
Chittagong	A port city of Bangladesh
Civil Case	Cases relating to rights and remedies of the citizen in respect of property other than political and criminal matters.
Courts of Sessions	Criminal Courts where cases are tried on sessions without any long interval. However, presently the Courts of Sessions in Bangladesh are not accurately following this system because of some practical reasons.
Cognizance	The primary decision of the court that an act or omission is an offence under any section of law.
Cognizance Magistrate	The Magistrate who have cognizance power.
Cognizable Offences	Offences for which the police can arrest a suspected person without the warrant of arrest from the court.

C.R. Cases	Complaint Registrar Cases that are filed by submitting petition/s of complaint before the Cognizance Magistrate Court.
Cross-Examination	Examination of the witness by the opponent party to shake the credibility of the witness.
Cross-Fire	Exchange of firing from fire arms between the police and the miscreants, often a form of masked extra-judicial killing by the law-enforcing agencies.
C.I.	Court Inspector of Police
C.S.I	Court Sub Inspector of Police
Copying Department	A section office of the court from where the certified copies of the orders or judgments or documents from the case record is prepared and supplied on payment of prescribed fees.
Dacoity	Commission of robbery by five or more persons.
D.D.	Deputy Director.
Decree	Formal proclamation of the final order in a Civil Case.
Defendants	Opponent party of the plaintiff
Dhaka	The Capital of Bangladesh
<i>Druto Bichar Adalat</i>	A special court for speedy trial
<i>Eid</i>	Two religious festivals of the Muslims

Examination-in-Chief	A statement by the witness in responding the questions by the party who calls him as his witness.
Execution Suit	A sort of civil case to implement the decree of the civil court.
<i>Ex-Parte</i>	Without contest
F.I.R	First Information Report
Folio	A special prescribed paper sold by the government to earn revenue and used for printing certified copies of court documents.
Framing of Issues	Determining the points of controversy in a civil case.
G.R. Cases	General Registrar Cases lodged in the Police station for cognizable offences.
G.R.O	General Registering Officer
Hossain, Mazdar	A member of the Bangladesh Judicial Service and presently an officer of the rank of District and Sessions Judge.
Imprisonment for Life	Rigorous imprisonment for thirty two years
Injunction Suit	A sort of civil case where order or direction of the court is sought in respect of doing or not doing any act or omission.
I.O.	Investigation Officer
Jessore	A southern district of Bangladesh.
J.M.B	Jamiatul Mujahidin Bangladesh, an Islamic terrorist outfit.
Judges Complex	Government-built residence provided officially for the judges.

Judicial Officer	A judge or a magistrate serving in the Subordinate Judiciary of Bangladesh
Khulna	A southern district of Bangladesh.
Lac	Numerical figure equivalent to one hundred thousand.
Local Inspection	Report prepared on the basis of physical verification/inspection of any land, property etc. that has been the subject matters of a dispute before the Civil Court. This report is prepared following the court's order, by any person appointed by the court.
Local Investigation	Inspection or measurement of the suit land by a survey-knowing pleader.
Lower judiciary	Subordinate judiciary of the Supreme Court of Bangladesh is popularly known as lower judiciary.
L.T.I	Left Thumb Impression.
Malkhana	A special place in the court premises where the seized articles of different cases are preserved under police custody.
Munshifs	A Persian word meaning he who does justice. Formerly the Assistant Judges were designated as Munshifs.
Narail	A south-eastern district of Bangladesh.
Naraji petition	A petition of protest by the informant or the complainant petitioner against the investigation or inquiry report submitted
Najir	The clerk who is in charge of the nejarat and controls the process servers.

<i>Nejarat</i>	A section of the Civil Court dealing with the service of summons or notices.
Non-Bailable Offences	Offences for the commission of which the bail can be granted/rejected on the court's discretion.
Non-Party Caretaker Government	Interim government, non-political in nature, formed to conduct the general election and the routine jobs of the government.
Non-Cognizable Offences	Offences for the commission of which the police cannot arrest any person without the permission of the court.
Non-G.R. Cases	Cases for the commission of non-cognizable offences maintained by the court in a separate registrar other than General Registrar.
N.S.I	National Security Intelligence.
O.C.	Officer in charge of a police station.
Penal Code	An enactment providing the definition of offences and the punishments thereto.
Peremptory Hearing	The stage where oral and documentary evidence is recorded by the civil courts.
<i>Peshkar</i>	A Persian word meaning Bench Assistant.
Plaint	A formal application in a prescribed form to institute a civil case.
Plaintiff	The person who files the plaint and seeks relief from the Civil Courts.

Police Remand	Remanding the accused in police custody for a specific period of time fixed by the court during investigation.
Post-Mortem Report	A report on the causes of death prepared by doctors, on dissection of the dead body.
P.P.	Public Prosecutor
Pre-Trial	Immediate before the trial
Prima Facie	First assumption
Process Servers	The court's messengers who personally carry court notices/ letters/summons and serve these upon the recipients.
Prthom Alo	A daily Bengali newspaper.
Pre-Emption Miscellaneous Case	A sort of civil case where the priority of right in purchasing landed property is sought and determined.
P.R.B	Police Regulations, Bengal
RAB	Rapid Action Battalion
Ramna	A metropolitan police station area of Dhaka
Rangpur	A northern district of Bangladesh
Shariatpur	A district not very away from the capital Dhaka
Sheristadar	A clerk working at Civil Courts
S.C.	Supreme Court or Sessions Case
S.I.	Sub-Inspector of Police
S.T.C	Special Tribunal Case

<i>Suo Moto</i>	On one's own initiative
T.I.P	Test Identification Parade. It is a method to identify the accused person by the eye witness of the occurrence, from amongst a number of like persons.
Udichi	A popular cultural group of Bangladesh
<i>Umedars</i>	Non-employed private persons working in the court with the hope of future employment.
Union Parishad	The lowest administrative unit of the local government system in Bangladesh.
Upazilla	Immediate next administrative unit of district.
Village Court	A court constituted by the elected chairman of a union parishad and two other members to adjudicate some specified simple cases.
Viscera Reports	A chemical examination report of the sample of stomach or liver of a deceased person mainly to identify the existence of poisonous substances.
<i>Vokalatnama</i>	A prescribed form of the respective District Bar Association used to appoint a lawyer for any accused persons.
W/A	Warrant of Arrest
Written Statements	Formal written reply of the defendants responding to the claims of the plaintiffs disclosed in the plaint.

CHAPTER: I

INTRODUCTION

A. BACKGROUND

As per the Constitution of Bangladesh the judiciary constitutes one of the three vital organs of the State¹. Since its genesis in 1971, the country has experienced different systems of government including socialist democracy, parliamentary and presidential forms of democracy, military rule, non-party caretaker government, etc. The judiciary has been dealt with differently by these different forms of government despite the almost symmetrical behavioral patterns of manipulation. Even though the Constitution provides an independent judiciary², there have been wide ranging criticisms about the nature and extent of *de facto* independence. The system of appointment of the judges of the Supreme Court has all along been a controversial issue.

The constitution, *inter alia*, did not provide complete independence for the courts of lower judiciary and it was left on the lawmakers to enact laws in this regard³. Long after thirty five years since the adoption of the constitution, ironically the immediate past military-controlled caretaker government (2007 – 2008) accomplished this task

-
1. Part VI of the Constitution of the Peoples Republic of Bangladesh
 2. Article 116A of the Constitution of the Peoples Republic of Bangladesh
 3. Article 22 of the Constitution of the Peoples Republic of Bangladesh

through promulgation of three ordinances in response to a judicial direction of the Supreme Court of Bangladesh. Presently the lowest tier of the lower judiciary, that is, the Magistracy is being run by the judicial officers, leaving positive impacts on the poor people in need of litigation.

The research, involving investigation of corruption and its prevailing by-products, were attempted only in the subordinate judiciary. This is the area where most of the original cases/suits are filed and adjudicated, and the litigants get directly involved in court business. A litigant enjoys/suffers the immediate effects of the good or bad functioning of these institutions. The research is an outcome of an ALRC project, major part of which was conducted between April – December 2009.

B. METHODOLOGY

The research work has been carried out based predominantly on qualitative evaluation approach. The majority of the primary data has been collected from courts in the capital Dhaka (Dhaka District Judicial Magistracy, District and Sessions Judge Court of Dhaka and its subordinate courts, Dhaka Chief Metropolitan Magistrate Courts and Dhaka Metropolitan Sessions Judge Court), while a significant amount originated from other district courts of Bangladesh. A wide range of secondary data has been used to substantiate analysis of primary data. Few quantitative data have been used from primary sources.

The selection of Dhaka courts and other district courts was ‘purposive’. The former were selected due to their high degree of perceived political manipulation and because they were in the capital while the latter were selected with a view to getting some pictures of the peripheries. In selecting the peripheral district courts, convenient communication of the researcher and representative character of the courts were considered as well.

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 observations/experiences described. Questions were open-ended but subject-specific, and different responses have been accommodated to form a reasonable observation in each stage of investigation. When different responses have been found convergent, their summary or a representative response has been incorporated in the text. To understand corruptions during different political regimes, no specific time-frame were maintained in terms of the questionnaire. Instead, the questionnaire stressed “recent” experiences of the respondents. Personal visits were both formal and informal as per the demand of the varying contexts. At times, some of the complex legal matters have been difficult to understand. To elucidate things, consultations with appropriate person/s were made to further comprehend the situation.

The goal of this research paper was two-fold: to identify diversified corruptions in the Subordinate Judiciary in Bangladesh with special reference to their political connections, and to formulate policy prescriptions towards the stakeholders. Because of the nature and high degree of sensitivity of the issues, the judges, magistrates, advocates (counsels) and police officers referred to, in this paper, spoke on the condition of anonymity.

C. DEFINING JUDICIAL CORRUPTION

Judicial corruption can be defined as corruption pertaining to judicial affairs and committed by direct or indirect stake holders. It may be corruption committed by the judicial officers themselves or by their staff. It may be corruption of the advocates on either the defense or the prosecution’s side. It may be government executives or officials having direct or indirect influence on the judicial sectors. Corruption presents itself in two incarnations: either direct monetary transactions or enjoying special privileges of various kinds.

CHAPTER: II

JUDICIARY OF BANGLADESH: A BRIEF OVERVIEW

A. DIVISION

Bangladesh maintains an integrated judicial⁴ system, and the judiciary has been divided broadly into two divisions: the higher judiciary, that is, the Supreme Court of Bangladesh and the Subordinate Judiciary⁵, widely known as “lower judiciary.” The term “lower judiciary” has not been acceptable to the judicial officers working in this area. To look at the situation from another point of view, the Constitution of the People’s Republic of Bangladesh divides the judiciary into three divisions⁶: 1.The Supreme Court, 2.Subordinate Courts, and 3.Administrative Tribunals.

1. THE SUPREME COURT OF BANGLADESH

The Supreme Court of Bangladesh comprises the Appellate Division and the High Court Division. The Chief Justice and five other most senior judges sit in the Appellate Division, the highest court of the country. Other judges of the Supreme Court sit in the High Court Division

4. For details please see, Md. Abdul Halim: *Constitution, Constitutional law and politics: Bangladesh perspective*, Dhaka, 2006, chapter XXI.

5. Article 114 of the Constitution of the People’s Republic of Bangladesh

6. Part VI of the Constitution of the Peoples Republic of Bangladesh

either in single or Division Benches. At present total number of judges in the High Court Division is seventy three⁷. The Supreme Court is considered the guardian of the Constitution playing the role of watchdog to protect fundamental human rights⁸. The preamble, Articles 7, 26, and 102 of the Constitution reinforce the Supreme Court's position as the watchdog which upholds the Constitution and rights of all strata of society⁹.

The Appellate Division hears and determines appeals on judgments, decrees, orders or sentences of the High Court Division¹⁰. Authority, to supervise and control the subordinate courts and tribunals belongs to the Supreme Court¹¹. The Supreme Court's judgments and orders have a binding effect upon the subordinate judiciary¹².

2. THE SUBORDINATE COURTS

(i) Civil Courts

The courts established under the Civil¹³ Courts Act 1887¹⁴ for adjudication of cases of civil nature are known

7. Office of the Registrar, Supreme Court of Bangladesh

8. Article 7 of the Constitution declares that any law inconsistent with any provision of the Constitution is void to the extent of inconsistency, and the Supreme Court has the writ jurisdiction under Article 102.

9. Please see, K.M. Mukta, "Renaissance of the judiciary: challenges and recommendations", in *The Daily Star*, November 1, 2008.

10. Article 103 of the Constitution of the People's Republic of Bangladesh

11. Article 109 of the Constitution of the People's Republic of Bangladesh

12. Article 111 of the Constitution of the People's Republic of Bangladesh

13. Siddiqur Rahaman Mia observes "The word 'civil' pertains to rights and remedies of a citizen as distinguished from criminal, political, etc." in *Commentary on Civil Rules and Orders*, Dhaka: New Warsi Book Corporation, 2001, p.10.

14. Act No. XII of 1887

as the Civil Courts. The powers, functions and activities of the Civil Courts are guided by the Civil Courts Act, the Code of Civil Procedure 1908¹⁵, the Manual of Practical Instructions for the Conduct of Civil Suits (published in 1935), the Civil Rules and Orders (C.R.O), the Limitation Act 1913, and the Evidence Act 1875.

The hierarchy of the Civil Courts as per Section 3 of the Civil Courts Act 1887:

1. Courts of District Judge
2. Courts of Additional District Judge
3. Courts of Joint District Judge (formerly Subordinate District Judge)
4. Courts of Senior Assistant Judge, and
5. Courts of Assistant Judge (formerly *Munshifs*¹⁶)

Original jurisdiction belongs to the Courts of Assistant Judge, Senior Assistant Judge and the Joint District Judge, with regards to filing cases of a civil nature with a fixed pecuniary jurisdiction in their respective areas. The exception is The Court of Joint District Judge which has unlimited pecuniary jurisdiction¹⁷. Alternatively, the jurisdiction of a Senior Assistant Judge and an Assistant Judge shall extend to all suits of which the value does not exceed four lac Taka and two lac Taka respectively¹⁸. The Courts of District Judge hear appeal from on a decree or order of the subordinate Civil Courts except those of the Joint District Judges where the valuation of the property exceeds five lac taka¹⁹. The Courts of Additional District

15. Act No. v of 1908

16. Assistant Judges were formerly called *Munshifs* which has a Persian origin meaning who does *insaaf* (justice).

17. Section 18 of the Civil Courts Act, 1887

18. Section 19 of the Civil Courts Act, 1887

19. Section 21 of the Civil Courts Act, 1887

Judge disposes of cases or hears and disposes of appeals and revisions only when they are transferred to them by the District Judge²⁰. A District Judge is the administrative head of district judicial matters irrespective of civil or criminal. In trials and adjudication of civil-nature-cases and judicial administration he is designated as District Judge and whenever he tries and adjudicates cases of a criminal nature he is designated as Sessions Judge.

(ii) Courts of Sessions

A Court of Sessions means the courts where the adjudication of criminal cases is held in sessions. Powers, functions and procedures of the Courts of Sessions have been described in the Code of Criminal Procedure 1898²¹. Very recently the formation and classification of the Criminal Courts in the lowest tier has been changed because of the separation of the judiciary from the executive organ of the State²².

20. Section 24 of the Code of Civil Procedure, 1908

21. Act No. V of 1898

22. The 2007 – 2008 military-controlled caretaker government implemented the Supreme Court's order in the case of Mazdar Hossain Vs State and promulgated three ordinances namely the Criminal Procedure Amendment Ordinance 2007, Bangladesh Judicial Service (pay commission) Rules 2007, and Bangladesh Judicial Service (determination of posting, promotion, grant of leave, regulation, discipline and other conditions of service) Rules 2007. Through such ordinances the initial management of the criminal cases such as supervision, investigation/ inquiry and cognizance of the offences as well as trial of the magistrate-tried-cases have been taken away from the hands of the B.C.S. (administration) officers. At present the members of the Bangladesh Judicial Service are in charge of the magisterial duties and as such the executive organ of the State has now very limited scope to interfere with the judicial matters. The post-military democratically elected government has ratified those ordinances, however, with few modifications allowing the government to confer the cognizance-taking-power on the executive magistrates if necessity arises.

The classification of the Courts of Sessions as per the amended Code of Criminal Procedure²³ stands at present as follows:

1. Courts of Sessions Judge
2. Courts of Additional Sessions Judge
3. Courts of Joint Sessions Judge

In metropolitan areas Courts of Sessions are known as the Metropolitan Courts of Sessions, Additional Metropolitan Courts of Sessions and the Joint Metropolitan Courts of Sessions²⁴.

There are other specialized courts having the status of District and Sessions Judge and these courts are established under respective special laws such as *Druto Bichar Tribunal* (Speedy Tribunal) under *Druto Bichar Tribunal Ain*,²⁵ the *Nari-O-Shishu Nirjatan Daman Bishes Tribunal* (Special Tribunal for Suppression of Torture to Women and Children) under the *Nari-O-Shishu Nirjatan Daman Ain* 2000,²⁶ Special Tribunals under Special Powers Act 1974.

(iii) Courts of Magistracy

The judicial officers, discharging magisterial powers, are designated as judicial magistrates²⁷ and work in the District Judicial Magistracies in all the districts other than

23. Sections 6 and 9 of the Code of Criminal Procedure, 1898 (as amended up to October, 2007).

24. Presently there are six metropolitan cities, however, only in four old metropolitan cities the Courts of Metropolitan Sessions have been established.

25. *Druto Bichar Tribunal Ain*, 2002.

26. Under *Nari-O-Shishu Nirjatan Daman Ain*, 2000 (Amendment 2003).

27. Now there are two classes of magistrates: judicial magistrates and executive magistrates as per section 6(2) of the Code of Criminal Procedure, 1898 (as amended up to October, 2007).

metropolitan cities. In hierarchical order the courts are as follows:

1. Chief Judicial Magistrate Courts (presided over by the officers having the equivalent status²⁸ of the Additional District and Sessions Judge).
2. Additional Chief Judicial Magistrate Courts (presided over by the officers having the equivalent status of the Joint Sessions Judge or Joint District Judge).
3. Senior Judicial Magistrate Courts (presided over by the officers having the equivalent status of Senior Assistant Judge or Magistrate First Class)
4. Judicial Magistrate Courts (presided over by the officers having the equivalent status of Assistant Judge or Magistrate Second/Third Class).

The judicial officers discharging magisterial powers in the metropolitan areas are designated as Metropolitan Magistrates and the magistracy is called as Metropolitan Magistracy. In hierarchical order the Courts in Metropolitan Magistracy are as follows:

1. Chief Metropolitan Magistrate Courts (presided over by the officers having the equivalent status of the Additional District and Sessions Judge).
2. Additional Chief Metropolitan Magistrate Courts (presided over by the officers having the equivalent status of the Joint Sessions Judge or Joint District Judge).

28. An Additional District and Sessions Judge is appointed as Chief Judicial Magistrate or Chief Metropolitan Magistrate, and any time s/he can be withdrawn from magistracy by way of transfer. As an Additional Sessions Judge s/he is subordinate to the District Judge and the District Judge has the authority to write his Annual Confidential Reports (ACR), and thereby the District Judge supervises the magistracy part of his/her territorial district.

3. Metropolitan Magistrate Courts (presided over by the officers having the equivalent status of Senior Assistant Judge or Magistrate First Class).

Express provision regarding the length of sentences to be passed by the different courts is provided by The Code of Criminal Procedure.²⁹

Power to pass any sentence authorized by law, is held by The High Court Division. Sessions Judge and the Additional Sessions Judge can also pass any sentence authorized by law. However, in the case of death sentences it is to be referred to the High Court Division for confirmation. A Joint Sessions Judge can pass any sentence authorized by law except a sentence of death or of imprisonment for life or a sentence for a term exceeding ten years.

The Courts of Metropolitan Magistrates and of Senior Judicial Magistrates may pass sentence of imprisonment not exceeding five years and fine not exceeding ten thousand Taka. The Courts of Judicial Magistrate can pass sentence of imprisonment not exceeding three years and fine not exceeding five thousand taka.

There are different types of courts based on their nature and function. Take for example: (a) Courts of original jurisdiction where cases can be filed directly by the parties such as the cognizance magistrate courts, Assistant Judge Courts, Family Courts, *Nari-O-Shishu Nirjatan Daman Tribunals*, and Special Judge Court. The High Court Divisions of the Supreme Court have original jurisdiction in respect of writ, admiralty and company matters. (b) Courts of trial where cases are tried by collecting evidence and hearing parties, resulting in the discharge, conviction or acquittal of cases. All courts of the Judicial Magistrates/ Metropolitan Magistrates, Courts of Sessions, all Civil

29. Sections 31 and 32 of the Code of Criminal Procedure, 1898

Courts with competent jurisdiction, all special tribunals, are regarded as trial courts whenever they try any case within their jurisdiction. (c) Courts of appeal and revision (revision or appellate courts) which hear and dispose of the appeals and revisions from the judgments, decrees and orders of the courts subordinate to it. The Supreme Courts, the District and Sessions Judge Courts, the Chief Metropolitan Magistrates Courts and the Chief Judicial Magistrate Courts have appellate and revision authority depending on the nature of the case.

The constitution also provides for the establishment of Administrative Tribunals which dispose of cases relating to service and government housing disputes. This court has absolute jurisdiction over the matters brought before it³⁰.

B. TYPES OF CASES³¹

Broadly there are three types of cases: 1. Cases of a criminal nature, 2. Cases of a civil nature, and 3. Cases of company/admiralty nature. Here is a brief account of them:

1. CASES OF CRIMINAL NATURE

(i) Complaint Register Cases (C.R. Cases)

Whenever a case is filed directly before the concerned cognizance-taking magistrate court³², the petitioner or the complainant is examined under oath by the court. The summary of the petition of complaint, the names and addresses of the parties and the results of the case,

30. Article 117 of the Constitution of the People's Republic of Bangladesh

31. Types of cases as have been discussed in this part reflect very recent court practices.

32. Sections 190 and 200 of Code of Criminal Procedure, 1898

are entered into a register called a Complaint Register. As such, they are called complaint register cases or C.R. cases and the case number is actually the respective entry serial number in the complaint register.

(ii) General Register Cases (G.R. 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, the names and addresses of the accused person/s (if any) and the name and address of the informant, are entered into a register in the police station. Thereafter, the original case record is sent to the concerned cognizance magistrate court through the General Register Section of the court.

Whenever the General Register Section receives the case record from the police station, the summary of the allegation, the concerned sections of the penal offence, the names and addresses of the accused persons, the name and address of the informant, are entered in a register called the General Register. Cases entered in the General Register are called the General Register Cases or G.R. Cases.

(iii) Non General Register Cases (Non G.R. 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-General Register.

Cases can again be categorized following the names of the respective trial courts. For example, whenever a case is tried by the Court of Sessions it is termed as Sessions Case (S.C.). Similarly, it is a Special Tribunal Case (S.T.C) if it is tried by the Special Tribunal, and it is a Special

Case if it is tried by the Special Judge Court.³³

2. CASES OF CIVIL NATURE

This can be classified into different categories such as Title Suit/ Other Classes Suit, Money Suit, Injunction Suit, Pre-emption Miscellaneous Case, Execution Suit, Family Suit, Small Causes Cases, Suit for Partition.

3. CASES OF COMPANY OR ADMIRALTY NATURE

These are suits in which the High Court Division has original jurisdiction in respect of cognizance and adjudication. Disputes arising out of business transactions between companies and under the provisions of the Company Act 1956 and the cases which are filed in respect of carriage of goods by sea are admiralty cases.

C. PUNISHMENTS

The Penal Code, 1860³⁴ is the principal penal law in Bangladesh. Besides the Penal Code, there are other special laws containing special penal provisions for the offences defined therein. Punishments for the offences under Penal Code are classified into five categories³⁵: (i) Death Sentence (ii) Imprisonment for life (iii) Imprisonment (iv) Forfeiture of property, and (v) Fine.

33. The offences pertaining to the corruption of the public officials are tried in Special Courts under Criminal Law Amendment Act, 1958 (Act No. XL of 1958).

34. Act No. XLV of 1860

35. Section 53 of the Penal Code

CHAPTER: III

CORRUPTION AT DIFFERENT STAGES OF A CRIMINAL CASE

A. CORRUPTION DURING FILING/LODGING OF A CASE

1. POLITICAL LEADERS AND LOCAL TOUTS

At the initial stage of filing or lodging of a criminal case, the wheels of corruption are set in motion. Whenever a cause of action arises or, there occurs any offence, a number of vested interests try to take advantage of the situation. Most of the laymen in rural Bangladesh are illiterate. They are not familiar with the actions of the court process. Consequently, they tend to depend on local persons or relatives who are conversant with court procedures. Within the court, there also exists a group of touts which maintains regular court connections. Victims in a case or their family members rush to them for preliminary legal consults. These touts then take advantage of the victims' ignorance and channel the case in a course of their own choosing. They also make claims for substantial amounts of money under the heading of expenditure.

They frequently act as local agents of dishonest advocates bringing the informant or complainant to the chambers of these advocates. 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.

It also happens that for previous enmity or property disputes, cases are filed against innocent persons. Lawyers, in a common submission before the courts, find their clients have been falsely implicated with a counter case. In some instances, 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 was recovered, however, police recorded the case against the informant Sekendar Ali instead of Mohiuddin³⁶.

2. 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 have been verified and found that the petitions of complaint, containing explanations, are submitted to the courts after police refused to receive the cases. Recently, on refusal of the police to record case, Abdur Rahman of village Sariakandi under Shariatpur Sadar Upaziala filed a petition of complaint before the Court of the Chief Judicial Magistrate, Shariatpur on May 25, 2009 against sixteen persons including six members of the Rapid Action Battalion.³⁷ He alleged that members of the law-enforcing body 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. They were afraid because the accused were persons of influence.

36. Special Tribunal Case No. 485, 2006 at the Additional District and Sessions Judge 4th Court, Jessore.

37. The Daily Prothom Alo, May 26, 2009.

At times, a case is recorded under a lesser degree section, rather than the correct section dealing with the commission of the alleged offence³⁸. The police are not favorably disposed to the informant unless they are satisfied that their illegal demands for bribes will be met. They show reluctance in recording the case. At times they reduce the oral complaint in the written form or refrain from recording the case, asking the informant to come back at a later time. In the meantime, the police secretly communicate with the accused. They try to make a deal on whether or not to record the case. Very frequently the police record the case under bailable offences even though the content of the FIR is of a purely non-bail-able offence.

Recently a Metropolitan Magistrate of Dhaka, Dilara Alo Chandana served a show-cause notice to the officer-in-charge of Khilgaon Police Station to explain the allegation regarding the change of incriminating portion of the F.I.R. at the time of recording of the case by police.³⁹ An informant, Jhanu Begum, told the journalist that without her consent and knowledge, the police had stricken out two lines from the complaint. Moreover, they recorded the case under the bailable section instead of the non-bailable section. As a result, the accused could easily manage to secure bail from the court. The informant lodged an FIR against Abu Taleb and seven others. She alleged that they forcibly entered her home, indecently assaulted her, and humiliated her, before setting fire to her house. In recording the case, the police excluded the relevant sections of law for setting fire and indecent assault.

38. The police often refuse to record a case under Section 395 of the Penal Code (cases of robbery) because the officer of the police station concerned is to explain to his/her higher authority the higher number of incidents of robbery. Thereby many of the offences of robbery are suppressed and cases are recorded under section 379/380 of the Penal Code (offence of theft).

39. Prothom Alo, May 21, 2009

It has been alleged that the police completely changed a page of the FIR thereby helping the primary offender to escape trial. In a murder case,⁴⁰ 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. This was discovered during proceedings at the Court of the Chief Judicial Magistracy in Dhaka. Alleging these facts, the informant filed an application before the court. The court ordered the concerned police station to bring a case against the police officers who were liable for this offence. Separate charges⁴¹ were lodged against the officer-in-charge and the recording officer.

At times, the police force the informant to change the content of the First Information Report or to exclude the names of certain person/s. The officer-in-charge of the Mohammadpur police station, in the Metropolitan Dhaka area, compelled an informant to leave out vital information.⁴² He excluded from the FIR in a murder case, the name of a local political leader of the ruling party. The local political bosses control the local police station in accepting or rejecting cases to be recorded.

Police generally are reluctant to accept cases against political leaders or activists of the party in power. They fear a premature or punishment transfer even when accepting bona fide cases against offenders in political parties. For an aggrieved person to register a case against influential political bosses, in a police station, is quite difficult. Paradoxically, on instructions from political bosses, the police have been forced to record false cases against innocent, opponent, political activists or leaders.

40. Keranigonj Police station Case No. 2 dated February 3, 2006 under Sections 302/34 of the Penal Code.

41. Keranigonj Police station Case No. 27 dated August 23, 2008 under Sections 420/201/204/217/218/34 of the Penal Code.

42. Prothom Alo, June 2, 2009.

3. IMMEDIATE ACTION ON RECEIPT OF A CASE

If, despite obstacles, a case is lodged and recorded, there is no guarantee that the police will rush 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. Conversely, the same police drag their feet over cases lodged against the same powerful persons.

In recording sensational cases, like rape and murder, the police are not aggressive enough. In fact, some rape victims are not immediately examined by a doctor or produced before a magistrate of the court in order to record their statement. One victim, of an attempted rape, was not produced before the court and not brought to the medical center for examination and treatment⁴³. 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. An original FIR, with its formal title page, is required to be sent to the cognizance magistrate's court to be registered as a GR case and to be supervised by the court. However, it takes a long time for these case records to be sent to the court if they are not properly initiated by the officer responsible. Although the case record had been sent from the police station, the office of the Court Inspector did not receive it on the same day. This makes for a late presentation before the court.

4. FILING OF A CASE BEFORE THE COURT

Harassment and corruption come into operation, simultaneously, when filing a case before the court. It

43. Dhamrai police station Case No. 5 dated April 5, 2009 under Section 9(4)Kha/30 of the *Nari-O-Shishu Nirjatan Daman Ain*, 2000.

begins in the lawyers' chambers. The advocate is not always completely honest in disclosing the merits or demerits of the case to be filed. Generally, the clients are given high hopes and assurances regarding the success of the case. This occurs despite the fact that the lawyer himself is very aware that there is little chance of success. Besides the fees of the lawyer and the chamber, huge amounts of money are received in the name of expenses of the court.

In many cases the local police station is intentionally by-passed in filing a false case before the court. The reason is that the court has limited scope to physically verify the commission of the alleged offence at the time of filing the case. Time constraints and the courts' incapacity cause procedural loopholes whenever any false or forged document is submitted before the court. If a strong submission is made, in the commission of an offence in relation to the document, there is a fair chance that the case may be registered and the process begun. If a case is successfully instituted before the court, it takes a long time before its ultimate disposal as a false case. In the meantime, the innocent, accused person suffers considerable mental anguish and financial deprivation.

There are many opportunities for the cognizance magistrate to abuse his power. Political affiliation, as well as personal enmity and connections, might have undue influence on the arbitrary attitude of a cognizance-taking-magistrate. Recovery of money, such as breach of business contract for non-payment of monies owed, is the main reason for filing complaint cases. The clients in these cases are given high hopes of recovering their money. Ultimately, whenever a case ends in an acquittal, on the grounds of not finding a criminal offence, the clients suffer decisive losses.

At the time of filing a case, corruption by the court staff begins. Bench assistants (*peshkars*) 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. Peshkars 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 writing⁴⁴. The deponent is to put his/her signature or left-thumb-impression 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. If process is issued after taking cognizance of the offence, the court staff treats this order as one of great import. They show their reluctance in complying with the court's order by keeping the summons or warrants in their desk drawer, unless paid handsomely.

The *peshkar* might keep the warrant of arrest locked in his drawer. He then enters into secret communications with the accused via his agents, using the address on the petition of complaint. If the accused person communicates back, the *peshkar* demands money from them in exchange for a late issuance of the warrant of arrest. He provides an opportunity for the accused to prepare and surrender to the court and thus avoid arrest by the police. The money collected this way is shared among the court staff and *umedars*⁴⁵ at the end of the day.

Corruption by judicial officers during the filing of a case also exists. Some cases are not heard. They are deferred for a hearing at a later date. The effect of the immediate filing of the case is frustrated. At times, cognizance is taken directly without investigation or inquiry. Process is

44. Section 200 of the Code of Criminal Procedure, 1898

45. *Umedars* are the non-employed persons working in the court and assisting the court staffs. Generally the bench officers pay them on daily basis and they are to work as per the wishes of the bench officers.

hurriedly issued to catch the alleged offenders unprepared. In many cases a warrant is issued though the merit of the case deserves a summons⁴⁶.

False and concocted medical certificates are commonly used by lawyers and litigants alike to file false cases. It is quite easy for a litigant to manage false medical certificates after payment to some doctors⁴⁷. At the very outset of the proceedings of a case, 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.

Higher government authorities make attempts to influence the preliminary filing procedure of a case. Recently, when the Bangladesh Civil Service. (Administration) officers used to act as Cognizance Magistrates, Deputy Commissioners of the respective districts strongly influenced the filing of a case having to do with government interests. Presently, this tendency has withered away to a great extent.⁴⁸ Nevertheless, the government machinery does try to influence the higher level judicial officers as well as the police personnel working within the court premises. As judicial officers are still under the direct control of the law ministry in terms of their promotion and posting, the judicial officers will not take a strong stand against the will of the government. They fear premature transfer and bad posting⁴⁹.

46. Interviewed a Judicial Magistrate working at Dhaka

47. Disclosed by a senior lawyer of Jessore District Court

48. This is one of the positive impacts of the separation of judiciary from the executive.

49. The recruitment, promotion, posting, transfer, etc. of the judicial officers are initiated and implemented by the Ministry of Law, Justice and Parliamentary Affairs in consultation with the Supreme Court. However, it is often observed that the ministry tries to bypass the Supreme Court or ignore the advice of the Supreme Court in these aspects. It is also noted that most of the officers posted at the law ministry are not from the Judicial Service.

Whenever a case is brought against an influential political leader of the party in power, the officers become hesitant in accepting the case. They consult their superior officers on how to handle the matter without displeasing the political authorities. On the other hand, if a false case with a political bias is filed against the leaders or activists of the opposition party, the officers have to be circumspect in rejecting the case.

B. CORRUPTION AT INVESTIGATION/INQUIRY STAGE

1. ASSIGNMENT

Investigation starts immediately after lodging a case at the police station. It is the responsibility of the officer-in-charge (O.C.) of a police station to assign an investigating officer (I.O.)⁵⁰ to begin investigation of a case. Thus, corruption starts in the choosing of the I.O. by the O.C. 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. Cases, which are not important in terms of the amount of money involved, are distributed among certain officers. These are the officers who are not under much obligation to the O.C., who refuse to share bribe money or who try to be honest in their investigations.

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.

50. Police Regulations, Bengal, 1943 Regulation 205.

2. INITIATION BY THE I.O.

It is not guaranteed that an I.O. will take up active investigation as soon as he is assigned a case. If the informant or his supporters fail to make contact with the responsible I.O., he generally does not proceed. It is common practice that the informant, only after much effort, is successful in getting the I.O. to visit the scene of the crime. On the contrary, in cases where leaders of the political party in power are interested and involved, the I.O. is active and prompt in taking action.

3. ARREST OR PURSUANCE OF THE ACCUSED PERSONS

If no effective communication is received from the informant, the I.O. waits before he notifies the accused person or their agents. Within the police station, there exists an unofficial group of people who work on maintaining good communications with police personnel and keeping up-to-date information on any case being lodged. These persons act as the middlemen between the I.O. and the accused/the informant. On another tack, local political leaders, especially student leaders of the party in power, exert strong influence on the police stations. Local touts or influential political persons play a vital role in controlling the investigation officer on who to arrest or not to arrest.

In cases where the I.O. does not make an arrest, he offers the excuse that there is no specific name and address for the accused. This occurs even though their name and address was clearly written in the FIR or in the petition of complaint⁵¹. Local touts and persons with vested interests help the accused to pay large amounts of money to the I.O. so he will refrain from arresting them. Similarly,

51. Physical verification of case records in the General Registrar Sections of the Dhaka District Judicial Magistracy and also that of the Dhaka Chief Metropolitan Magistracy.

the I.O. might take action in arresting accused persons or suspected accused persons if effective communication is made by the informants⁵². In fact, the police are afraid of arresting political activists of the party in power even though they are accused of committing grave offences⁵³.

Political party activists and leaders strongly believe that the police will not dare to arrest them without a go-ahead signal from the high command. In addition, they are often in open communication with police personnel. This happens despite the fact that there are warrants for their arrest pending execution, at the hands of the same police.

4. VISITING THE SCENE OF THE ALLEGED CRIME

The investigating officer is required, in the course of the investigation, to visit the scene of the alleged crime and to prepare a sketch map and an index. In reality, the I.O. does not carry out such a visit. Rather, the sketch of the scene of the alleged crime and its index are prepared in two ways: by guesswork on the part of the I.O. or by telephone instructions from the local union members/ chairmen. It ultimately affects the establishing of the prosecution's case during trial because the I.O. cannot give a satisfactory answer during his cross-examination.

During the visit to the crime scene, the I.O. records statements from the informant or other witnesses⁵⁴. These statements are used by the I.O. to report to the police either in favor of or against the accused. If these are reports against the accused person, ultimately a trial is held. 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 I.O. does not properly prepare these statements, it may adversely affect the case for the prosecution.

52. Interviewed a senior advocate of Dhaka Court

53. Interviewed a police officer in Dhaka

54. Under Section 161 of the Code of Criminal Procedure 1898

It is required by law that the I.O. himself records these statements. Of the inspected case records, almost all were written by someone other than the I.O. 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 I.O. put only his signature, albeit with a different pen and ink⁵⁵.

5. 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 I.O. 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 to 4 years imprisonment.⁵⁶ 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.

6. MEETING THE INFORMANT OR WITNESSES AND RECORDING OF STATEMENTS

The I.O. serves notice to the informant that he must present himself before the I.O. at the police station with witnesses on specific dates⁵⁷. The I.O. 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

55. Physical verification of the case records in the General Register Section of the Courts of Judicial Magistracy at Dhaka.

56. The Daily Prothom Alo, May 26, 2009.

57. Section 160 of the Code of Criminal Procedure 1898

in a distorted way and significant points are purposely omitted⁵⁸.

7. ABUSE OF POWER IN ARRESTING WITHOUT A WARRANT

In any cognizable offence under investigation, the I.O. can arrest the accused person/s or suspected accused person/s without a warrant of arrest issued by the court⁵⁹. This power is widely abused by police authorities, especially during investigation of cases lodged against unknown accused persons. 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. They then start the bargaining process with their relatives on the amount of bribes to be paid. If an effective deal is not made, the arrested persons are produced before the court on false charges of involvement in a pending investigation.

At times, the arrested persons are brought to the court on fabricated charges in compliance with directions from political leaders. In a random scrutiny of case records it was found that police charges, when producing arrested persons in court, contain certain prototypical language. Four such examples are: “there is strong suspicion of involvement of the arrested in the alleged offence”, or “the arrested person is ill-reputed for criminality” 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. And the final report, proposed by the I.O. himself, states that no evidence had been found against this accused person in connection

58. If the statements of the witnesses or victims as recorded by the I.O. contradict with those of the statements of the same persons in the court, the accused person gets the benefit of contradiction as per section 145 of the Evidence Act 1872 and Section 162 of the Code of Criminal Procedure 1898.

59. Section 54 of the Code of Criminal Procedure 1898

with the commission of the offence alleged in the First Information Report.

8. EXECUTION OF THE PROCESS ISSUED BY THE COURT

Harassment and corruption exist together at the stage of execution of the process, issued to compel the accused person to appear or to be brought before 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 that the bench officers do not make a prompt or timely dispatch of the warrant of arrest. Rather, they wait for the accused person to communicate, all the while keeping the signed processes locked in their desk drawer. At times, they themselves even try to communicate with the accused person through their paid agents and convey the news of the court's order. If they become successful in establishing a connection, or the accused persons themselves approach them, the bargaining begins.

The result of successful bargaining is the issued warrant is kept at a standstill until the accused person appears before the court being properly prepared, or having hope of making bail. 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.

9. POLICE REMAND

Police can receive an accused person into their custody by an order of the court for the purpose of starting an investigation. After submission of a police remand

application and hearing, the court passes on the police remand order. This allows the investigation officer to hold the accused person for the period of time mentioned in the police remand order⁶⁰. Police remand has become a profitable business for the police agencies simply because the accused fear inhuman torture in the name of interrogation.

This is in 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. Moreover, they are in clear violation of the provisions while the accused persons remain in police custody. 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 in court. Mr. Nasiruddin Ahmmed Pintu, an ex-BNP lawmaker, informed the court after being produced from remand that he had been threatened with cross-fire by the police.⁶¹ Wide-ranging torture has been inflicted on accused persons while on remand.

During a submission, as an objection to the police remand practice, the lawyer invariably makes a request of the court. He requests that they give a direction to the responsible police officer to take care and use caution

60. Section 167 of the Code of Criminal Procedure, 1898

61. The Daily Amader Shomoy, June 9, 2009.

as to the physical condition of the accused. In many police remand orders, the court informs the responsible police officer as to the physical condition of the accused persons⁶². Some of the accused, coming out of remand, are not physically stable.

The police adopt different modes of torture during remand to force the accused person to admit or confess to the alleged crime. One can easily avoid torture by making a substantial payment to the officer concerned. In cases of non-payment, torture rises to a peak and the officer becomes more desperate and cruel in his behavior. The police remand business also widens the scope of the lawyers to obtain huge fees from their clients.

Sometimes, the lawyer demands money from the client, as bribe money for the magistrate who has no knowledge of the transaction going on. Because of their experience and capacity to interpret a magistrate's attitude towards specific cases, the lawyers can often foresee that remand will not be allowed. They, therefore, try to make a cash deal with the client in the form of a bribe to the magistrate. It is also common practice that there might be a prior understanding with the magistrate concerned as to the order of allowing or disallowing police remand.

As soon as the police remand order is passed, the middlemen or the agents of the police authority become active. They collect/demand money to put restraints on the I.O. to refrain from inflicting torture. It has been noted that while the accused are in police custody in the police station, they are not provided with food or medicine. Relatives or friends of the accused try to supply food and necessities, and obviously they are compelled to pay money to the police⁶³.

62. Physical verification of records of different cases

63. Interviewed a remand-backed accused person in the court custody

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.”⁶⁴

In very rare cases, do the remand-back forwarding documents of the I.O., contain specific accusations. It is a requirement of the law that a copy of the case diary⁶⁵ be submitted to the court along with the application for police remand⁶⁶. If not, the lawyer can raise strong objections and as a result, the court might not be interested in hearing the application. A belated hearing of the police remand application, because of non-submission of the case docket, can sometimes frustrate the purpose of police remand. It affords the actual offenders, outside the control of the police, time and opportunity to hide. It also allows them to clear out incriminating materials which could have been recovered if police remand was allowed on the first date of hearing.

Police remand is also a strong method of dealing with political opponents by the party in power. At the whim of political bosses, police submit remand requests, when there is the least requirement of law to do so. The sole purpose appears to be the torture of accused opponents.

64. Physical verification of at least 20 case records at the General Register Section of the Dhaka Judicial Magistracy.

65. A diary maintained by the investigating officer where he has to record all the activities of investigation chronologically and date-wise. The case diary is sometimes called case docket. The advocate or their clients cannot read out the case diary but the court can call for it for the purpose of supervision of the investigation.

66. Section 167 of the Code of Criminal Procedure 1898

10. TEST IDENTIFICATION PARADE (T.I.P)

Test Investigation Parade (T.I.P) is a method through which the investigation officer tries to identify a suspected person. He tries to show that the accused is, in fact, the person the informant or eye witness claimed to have seen during the commission of an alleged offence. This method of identifying criminals can be effectively applied in cases where the crime is committed by unknown/unfamiliar persons especially, in cases of robbery and extortion. Police forward remand applications in almost all cases of robbery.

This is done even though the first information report clearly states that the informant will be able to identify the accused if s/he sees them again. The FIR contains descriptions of the appearance, complexion, height, weight, clothing and language of the accused person. But, surprisingly enough, the police do not usually set up an identification parade of suspects. Lawyers and relatives of the accused have come to the following opinion. They think that if the police make a bid for an identification parade and it is not successful, the accused has a better footing when it comes to the situation of bail. The court, in this type of case, becomes very willing to release the accused persons on bail⁶⁷. This puts the investigation officers in an uncomfortable position in which to demand money or to harass the accused.

The matter is also similar in murder cases where identification by an eye witness is essential. There are numerable cases where a test identification parade has not been utilized by an I.O. during the entire course of the investigation. Take for example, the case⁶⁸ of a young man murdered by persons unknown, in broad daylight, on the

67. Interviewed the lawyers and litigants at the Dhaka court premises

68. Savar Police Station Case Number 15(01)05 under Section 302/34 of the Penal Code

grounds of the national monument in Savar, in the Dhaka district. At the time of the murder, the deceased had been accompanied by his girlfriend, Ranjuma Akter Shathi, who witnessed the killing as the only eye witness at the scene. Subsequently, the first information report contained the fact that the victim's girlfriend saw the assailants and could have identified them if produced before her at a T.I.P.

During the course of the investigation, the police arrested a number of suspects. None were produced to be identified by the eye witness in a test identification parade. Rather, all of the accused were taken from the court and remanded in police custody. Ultimately, the proposed final report was made in favor of all the suspects. The cognizance magistrate court, in considering the police report, scrutinized the case record and the case diary. But, not being satisfied with the method of investigation, it refused to accept the police report. Further investigation was ordered, pointing out that no suspects were presented before the eye witness. The subsequent investigation officer petitioned for a test identification parade and it was allowed. Unfortunately, because so much time had elapsed, the female eye witness could not identify the perpetrators from among the suspects in the lineup.

The inability to recollect the faces and appearance of the accused persons is attributed to the fact that the offence happened such a long time in the past. Thus, a genuine case of murder suffers its own death for want of evidence. Certainly the I.O. is the key participant who played the most vital role in this matter.

11. CHANGE MADE TO INCRIMINATING ARTICLES AND CHEMICAL, LABORATORY EXAMINATION REPORTS

Change of the seized incriminating articles is also a matter to be noticed in the course of investigation. A handsome payment to the I.O. can easily change the incriminating seized article before it is sent to the court for

exhibit as evidence. In one of the cases pending before the Court no.2 of the senior judicial magistrate, Dhaka it has been found that the seized cannabis seemed to be changed as the seizure list witness could not identify the same while making material exhibit before the court⁶⁹.

Again this researcher has come to know that one Masud Parvez Rana was acquitted by the Special Tribunal Number 4 of Jessore from an Arms case on the ground that the recovered trouser was found different in measurement and shape from the seized one⁷⁰. It has been claimed that the seized trouser was changed by the accused person in connivance with connected officials. The witness claimed that he saw the police to recover some cannabis but the size of the packet and the recovered amount was different from the articles which have been produced before the court.

There is also allegation that the chemical examination report can also be purchased from the concerned chemical examination center. In a pending case before one of the courts of the Chief Metropolitan Magistracy at Dhaka the subsequent change of the article sent for chemical examination has caused the customs officials, who allegedly recovered the incriminating articles the risk of losing job and facing criminal proceedings. In this case a packet containing one kilogram of heroin was recovered from a passenger of an international flight by the customs officials on duty at the Dhaka International Airport and that passenger was forwarded to the court with charge of drug trafficking. During the course of investigation, portion of seized alleged heroin was sent for chemical examination report by the investigation officer in compliance with a court order.

69. Dhaka General Rail Police (GRP) Case No. 11(10)07 corresponding to G.R. Case No.115, 2007

70. Special Tribunal Case No. 283 of 1999 arising out of Jessore Kotwali Police station Case No. 35 dated August 19, 1992 under Sections 19(a)(f) of the Arms Act, 1875.

A report with remark that sample contains the ingredients of heroin was forwarded. Subsequently on the application of the accused person, a re-examination order was passed by the court, and this time the chemical examination report contained remark that the sample did not have any ingredients of heroin. Thereafter the investigation officer submitted police report in favor of the accused person and proposed prosecution for false case against the informant customs officials⁷¹.

Similarly wide range of corruption is reported in the chemical examination of the sample liver or stomach of a victim deceased sent for analyzing whether it contains any poisonous substance or not. In the cases of genuine homicide where the suspected accused takes the plea that the victim committed suicide by taking poison, the interested quarters are very active to save these offenders by changing the sample originally sent for examination and thereby obtain a favorable report for the accused suspect. Certainly it requires transaction of huge sum of money.

12. FORGED MEDICAL PAPERS AND MANIPULATION OF POST MORTEM REPORTS

Large scale corruption has been uncovered in connection with medical reports, certificates and other related papers. Certificates of injury or medical papers, in the case of an alleged victim, are either falsified or concocted. If paid handsomely, a group of doctors and related medical professionals will supply all sorts of false injury certificates⁷². These types of medical papers lack a full and complete description of the alleged injury and are not supported by proper medication receipts. Courts put reliance on these types of papers, either negligently or mistakenly. In the final stage of a case, these falsehoods

71. Conversation with a District Judge

72. Interviewed an advocate of Dhaka Court

are for the most part detected. However, by this time they have caused grievous suffering and unwarranted expense for the innocent but accused persons.

Immediately after a murder has taken place, vested interests try to control the post-mortem report which will serve their purposes. It is true that doctors have been directly involved in manipulating post-mortem findings/reports. In a number of murder cases the records show that the post-mortem contains the statement, "opinion is pending till submission of viscera report". Surprisingly enough, murder due to physical injury is clearly manifested in the victim's body as attested to in the FIR. It can also be ascertained from the statements of witnesses⁷³. Ultimately, the viscera report might be submitted with the remark "No poison is found in the stomach or poison could not be detected." Based on this medical report the I.O. submits his final report. He then proposes that the accused persons be released.

Although no administration of poison is alleged in a case, doctors preparing the post-mortem report divert the course of the investigation and help genuine offenders escape trial⁷⁴. Often the post-mortem report is kept pending for a long period of time giving the I.O. the opportunity to make a late submission of the investigation report⁷⁵. Most of the manipulation happens at this stage with the involvement of different offices, including the civil surgeon's office.

Sometimes the I.O. becomes biased in favor of the interested party and he tries to convince the doctor to

73. Section 161 of the Code of Criminal Procedure 1898

74. Physical verification of many case records is made in the G.R. Section of the Chief Judicial Magistracy, Dhaka and it is found that the court could not but accept the final report of murder cases in case of manipulation of this sort, because after long lapse of time nothing could be recovered even after disinterring the corpse.

75. Interviewed a Judicial Magistrate at Dhaka

submit a post-mortem in accord with the wishes of the interested party. A doctor informed me⁷⁶ that he was seriously threatened by a sub-inspector of police who was investigating a murder case. He was directed to prepare a post-mortem report which included a negative opinion as to the cause of death. All medical signs and symptoms clearly suggested a homicide which was ante-mortem in nature. The doctor was first offered money. He refused and was threatened with professional difficulties by the police. His colleagues and superior officers also advised him to act according to the investigating officer's wish.

However, the doctor claimed he ultimately submitted a report with the positive opinion of murder. The doctor also knew that the I.O. was trying to make application for a second postmortem which involved digging up the corpse. The doctor also informed me that the sub-inspector was so arrogant because of his 'special connection' with a big political figure of the constituency.

There are also allegations that viscera reports of one case are purposely attached to records of another case, with a view to saving the murderers. Recently, forgery in relation to the viscera reports was detected in a murder case at Rangpur⁷⁷. The viscera report of Siddika Khatun, deceased, was replaced by the viscera report of Siddika Khatun, deceased. On the basis of the altered report, the investigation officer submitted a final report proposing release of the accused persons. It is supposed that doctors of government hospitals and health clinics issue false medical documents because of political pressures put on them.

76. A doctor, presently working at Jessore 250 Bedded Hospital

77. Prothom Alo, March 15, 2009.

13. DELAYED PRODUCTION OF ARRESTED PERSONS BEFORE THE COURT

There is provision in the law for an arrested person to be produced before the nearest court of cognizance magistrate within twenty four hours⁷⁸. The police often violate this provision and keep those arrested in their custody without any written record. Subsequently, production of the accused before the court is made, pretending it is a recent arrest within the prescribed period of time allowed by law.

14. EXTRA JUDICIAL KILLINGS

Police use extra-judicial killings as a method to combat the illegal activities of serious criminal offenders. But, this is a serious violation of human rights, particularly the right to life and liberty. When the military-controlled, caretaker government was in power, the incidents of death by cross-fire were very high. The present elected government vowed to stop the extra-judicial killings, however, these are still going on. During investigations, accused persons are arrested and killed in the name of “cross-fire” without any opportunity for self- defense.

A national daily claimed, “At least 32 people, including two students, have been killed so far in alleged crossfire by police and the Rapid Action Battalion (RAB) during the five months of the Awami League-led administration.”⁷⁹ This report further quoted a student of Jahagirnagar University saying, “I do not believe that the police or RAB has killed anyone recently in an encounter of self-defense. These people, some of whom may be thugs, have been killed in custody in violation of human rights.”

78. Section 61 of the Code of Criminal Procedure 1898

79. New Age, June 9, 2009.

15. BAIL MATTER

The most corrupt and highly controversial area of the judicial system in Bangladesh is the matter of bail for an accused person. Bail shall be granted as a right, and the court cannot refuse bail if it is requested by any arrested person or an accused person who has surrendered himself.⁸⁰ Unfortunately, as a group, lawyers have 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 clients⁸¹.

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. 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.

Whenever a warrant of arrest is issued in a complaint case, some of the touts, advocates or their agents get in communication with the accused. If the accused remains ignorant of the facts, then the touts offer their services to obtain bail and persuade them to sign the *vokalatnama*⁸². If they are successful in obtaining a signature, the harassment begins. The arrested persons are caught

80. Section 496 of the Code of Criminal Procedure 1898

81. Interviewed advocates and the judicial officers at Dhaka

82. A prescribed form of concerned District Bar Association, and advocates are engaged by the accused persons through signing this paper

in their web. Similarly, whenever accused persons are brought to the court compound waiting to be produced before the court, some of the lawyers manage to obtain their signature on the *vokalatnama*. After the person signs, they try to control all the legal formalities, especially in the matter of bail. When there is a bail petition hearing before the court, contesting claims of representation are made by several lawyers. As a result, hearings are postponed causing extra suffering for the persons under arrest⁸³.

Another general complaint by the litigants is false assurance of bail for the accused or their relatives. Knowing full well that the court will rarely allow bail in some specific types of offences, these lawyers or their local agents convince their respective clients to the contrary. To justify their claims they bring books/references, relevant or irrelevant, making unnecessary lengthy submissions before the court. They stage a drama. And in the end, when they fail, they blame the judge/ magistrate for lack of knowledge and integrity⁸⁴.

It has been observed that to secure an order for bail, the lawyers and the litigants sometimes file false or forged documents. Use of false medical certificates is a very commonly used method. Bail is sought on medical grounds and illness is claimed either by the accused petitioner himself or his parents or close relatives.

It has been noted that the engaged lawyer does not furnish bail bonds immediately after the passing of the bail order. Rather, they demand unreasonable and excessive amounts of money from their clients. Should their demands not be met, the arrested person remains in jail for an indefinite period of time. In a number of cases, newly hired lawyers seek the court's permission to submit bail bonds for those detained who have enlarged orders

83. Opinion of a senior judicial magistrate of Dhaka

84. Interview of both lawyer and judicial officers at Dhaka

of bail, issued previously. The courts remand the newly arrested person in jail custody for non-submission of bail bonds even after passing an order to furnish bail bonds. It is a mandatory provision of the law to furnish bail bond after passing of the order. If the court's order is not followed, the accused person must be put in jail custody⁸⁵.

Some lawyers purposely submit a Time Petition for a hearing, although they are sure that for the alleged offence, bail is available or very easy to obtain. The purpose of submitting a Time Petition is to play for more time to bargain with the clients in respect of fees and payments. Often they mislead their client to understand that it is the court who is not willing to hear the bail petition.

Public Prosecutors or Court Inspectors have the duty to oppose bail petitions submitted by accused petitioners. However, there are allegations that if they are handsomely paid in advance, the responsible Public Prosecutor or the Assistant Public Prosecutor or the Court Inspector is not very aggressive in opposing the bail petitions. "In criminal cases now it is very easy for a serious offender to obtain bail by manipulating the PP concerned and it is alleged that they remain silent when the criminals petition for bail."⁸⁶

Sometimes the Judge/Magistrate pronounces the order in open court but the written order is not made simultaneously to accommodate the large number of hearings. In these circumstances court officials are frequently asked by the lawyers or their clients to place the case record before the concerned court officer and to have the order in a written form. In many cases it happens that the order is actually written as soon as the record is

85. Interviewed the police officials working at General Register Section of Dhaka Magistracy

86. Aminul Hoque Mithu, "Low Conviction Rate in Bangladesh: Some Relevant Thoughts" in *The Daily Star*, May 13, 2006.

placed before the officer. The problem lies with the court officer who does not take the record back from his table. Furthermore, he informs the lawyers or the clients that the order is not yet written simply because he has insufficient time to carry out the work. As the lawyers or their clients have no free access to the officer's room, they depend on bench assistants to pursue the officer to write the order.

Miscellaneous criminal cases can be filed in the court of the District and Sessions Judge from the order of rejection of bail by the magistrate. The same can be filed before the High Court Division of the Supreme Court whenever bail is rejected by the District and Sessions Judge. The initial requirement for filing this miscellaneous case is the necessary certified copies of the impugned orders from the concerned court and its copying department, which then becomes a contributory factor. It is almost impossible to get the certified copies without making cash payments to the staff working there. Very recently, a complaint was made to the office of the Chief Justice of Bangladesh regarding the staff working at the copying section of the Dhaka Chief Judicial Magistracy. It appears that they were supplying certified copies by having them processed outside their office. In addition, the records were illegally carried outside the court premises.

The picture is the same in other busy courts. Moreover, serial numbers of the certified copies are not maintained properly. Whenever an application for a certified copy is submitted to the copy section the following process ensues: the head clerk asks for the assessment of folios (government papers to be collected from the treasury) from the bench clerk of the concerned court. These bench clerks are very reluctant to send the assessment report if not paid by the parties. It is obvious that it causes a delay in the submission of folios by the applicant. Ultimately it becomes difficult for the typist and copyist to maintain the serial numbers or to make timely delivery of the certified copies. The speed and time of receiving certified copies depends upon the rate of payment made.

Whenever a miscellaneous case is filed before the concerned court, an admission hearing of the petition is held and thereafter the date of the final hearing of that bail petition is fixed by the court. It is alleged that in miscellaneous cases, at the time of filing of the bail petition, the initial negotiation with the bench clerk for fixing the date of hearing is done. And if the bench clerk is not sufficiently rewarded, a date long in the future is fixed for the hearing. On the contrary, a short date for hearing is fixed according to the rate of payment made. It is also a fact, that if the presiding judge fixes the date of hearing, at the time of admission hearing, the scope of date fixation bargaining withers away⁸⁷.

Actual harassment starts as soon as the accused petitioner's positive bail order is passed by the concerned court. The relatives of the successful accused petitioner as well as the accused himself become restless and do not want to wait a single moment in custody. This is the weak point in the situation where malevolently interested parties up their chances. The lawyer might become reluctant in submitting the bail bond, the sureties might refuse to sign the bond, the court officials especially the bench clerks might not be available to receive the bail bonds, the workers might become very slow in producing the case record for the presiding Judge/Magistrate to sign, the officers might be unaware of signing the record and to issue the release orders, the carrier or the messenger carrying the release order to the jail authority might cross the longest hundred meters in reaching the jail gate, the jail authority might take a turtle's pace in verifying the orders with related papers, and on and on and on.... It means that at every point one has to make cash payments to have early, effective service and immediate settlement of bail with the release of the detained person from custody.

87. Interviewed the lawyers and the physical observation of the court proceedings

In pending cases concerning bail, a change of hands of bribe money is a frequent phenomenon. Some judicial officers at the Dhaka courts strongly made these observations⁸⁸. Whenever a judicial officer is newly transferred or appointed, vested interests, especially lawyers, keep him under observation for a few days. They study his methods of case management and court administration. The intentions/motivation of the particular officer can easily be predicted by experienced, expert eyes judging from his comments in open court together with his style of questioning. If these observations match the results of any order or judgment, the concerned group starts negotiations with the parties in the name of the officer concerned. In this way, the bench officer or the court staff makes money by keeping the judicial officer in the dark.

There are judicial officers that have experience with lawyers who received money as fake middlemen. Generally, they come to the officer's chamber with some irrelevant plea or excuse. The technique used is almost similar in all cases. Clients are kept standing or waiting just outside the office or chamber of the concerned judicial officer. After the lawyer enters into the chamber and makes small talk, moments pass by, as they ask about the officer's health or family matters or his workload. They then come out smiling with their mission accomplished. His clients believe that their lawyers have really handed over the bribe money to the officer. Thus, big amounts are exchanged.

Whenever the result comes down in favor of the party making the payment, they become convinced that their advocates have rightly handed over the cash, although in fact, they have got the genuine order⁸⁹. These vested interest groups even take chances with the orders

88. Interviewed some judicial officers working at a Dhaka Courts

89. Disclosed by a Judge working at Khulna

or judgments of officers whom they cannot read or understand.

However, their business dealings generally are not long-lived because of the frequent reverse results of their cases. In criminal cases, there are contesting parties who are very serious about the results of their case and will use any means to win. Some of the bench officers or other court staff use this opportunity to their monetary advantage. They get in communication with both parties and deal with them secretly, trying to convince them to make payment to the judicial officer through them.

Ultimately the case is decided in favor of one party or the other. At this point the bench officer returns the money to the losing party. The explanation given is that the concerned officer has not been satisfied. Either the amount of money is insufficient or there is no scope in law for a favorable order.

A number of the judicial officers are also engaged directly or indirectly in bribery relating to bail matters. Some officers receive bribes indiscriminately. If they do not receive any money, even though their demands are not very high in all cases, they usually do not pass an order for bail favorable to the accused persons. Some officers are selective in receiving bribes. They would receive huge amounts of money, occasionally, in very complicated and big cases. Some officers share the bribe money with other friendly officers who control the dealings on behalf of the officer actually passing the order for bail. Some of these transactions are mutual in nature where one officer passes favorable orders for another and is reciprocated.⁹⁰

In most cases, the bribe money is transferred through the paid and unaffected agents of the officer concerned.

90. Interviewed the judicial officers at the courts of Dhaka

These agents may be particular lawyers, innermost office clerks, bench officers, close relatives or any third person not appearing in the court premises. It is also the case that corrupt judicial officers, after finishing days of work, go directly to some prearranged place. Here they meet their agents and at times the clients themselves, and a transaction is made directly by the parties concerned. In some cases money is not directly exchanged, but rather it is deposited in some secret account.

The most frequent bail irregularities, attested to by judicial officers, are made in the form of requests by senior judicial officers by phone or through personal meetings. One judicial officer working in Dhaka said that he generally does not receive any unknown calls on his cell phone. Even, in many cases he himself does not take calls. He asks his clerk to field the calls and ascertain who the person is making the call. If it turns out that it is a call from a superior officer with the strong possibility of a request in connection with the case, he instructs his clerk to inform the caller that he is either outside the office or in the lavatory.

The officer further complained that a senior officer, in a very powerful post, asked him to alter the rejection order for bail and to rewrite it according to his directions. He believes that a huge sum of money had been transferred for bail immediately before the Eid holidays. He managed to refuse to comply with the order in the form of a question and was threatened with future difficulties. A superior officer, with the authority to prepare the Annual Confidential Report on his subordinate officers, can be a very dangerous person when dealing with bail matters. If he is not honest, there is every possibility that he will make use of his authority and try to compel the subordinate officers to deal with the bail matters according to his wishes and commands.

There are reports that because of a refusal to comply with the illegal instructions, the superior officer produced

a negative ACR. He caused serious complications in the promotion and posting of that subordinate officer. On the other hand, by cooperating with the corrupt superior officer, complying with all his illegal instructions and helping him to accumulate huge sums of money, many subordinate officers are successful in receiving a clean and high scoring ACR. Needless to say, they easily traverse the path of advancement.

High handedness by the executive organ of the State is also rampant in bail matters. Especially in political cases the court might be seriously controlled by the wish of the government. On many occasions, security officials are in the court just before it convenes as well as during the hearings. They try to meet the officer and convey a message to him as to the wishes of the government. If the officer concerned is not willing to pay heed to that wish or direction, his boss is advised to compel him to do so. Accordingly, he is threatened with an unfavorable posting or harassment at work. It has been reported in a national daily⁹¹ that a State Minister is trying to influence judicial officers working in Dhaka. He wants them to pass the order for bail or judgment of acquittal. Should his order/request not be complied with, threats of premature transfer are made.

16. CONFSSIONAL STATEMENTS

Bengal Police Regulations discourage attempts at obtaining confessions from accused persons. However, the police are keenly 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

91. Amader Shomoy, June 11, 2009.

name of extracting a confession. Usually, persons in police remand are the target group for confessions.

During the period of remand, physical and mental torture is inflicted or threatened if a confession is not forthcoming. A general complaint is that the courts indiscriminately allow police remand, irrespective of the merit of the case or the degree of necessity. A number of case records show that those arrested, when taken before a Magistrate, refuse to confess and are put in remand. Take, for example, the following two cases. In the on-going, sensational ten trucks arms recovery case, ex-DD of NSI Major (retired) Liakat Hossain refused to confess before a Metropolitan Magistrate of Chittagong.⁹² In a murder case⁹³ under investigation, the accused, Md. Mahbubur Rahman had been put in police remand and subsequently produced before the court to record his confession. Although there were clear marks of torture and injury visible on his body, he refused to confess when he was brought before the Judicial Magistrate. Many of those arrested complained of inhuman physical torture by the police.

Whether all the legal formalities, as embodied in the Code of Criminal Procedure,⁹⁴ are followed or not is also a typical question raised by lawyers. Strong doubts were expressed by a Dhaka court lawyer, about the procedural management in the recording of confessions by the Magistrate.⁹⁵ Clients often complain that the Magistrate straightaway started recording their statements, finally asking them to sign, with the police having to show them where to sign. The Magistrate did not provide time for deliberation as required by law. Rather, he started recording procedures as soon as the accused is placed before him.

92. Amader Shomoy, June 10, 2009.

93. Dhamrai Police station Case No. 42 dated April 28, 2009 under Section: 302/201/34 of the Penal Code.

94. Section: 164 and 364 of the Code of Criminal Procedure

95. Interviewed on May 10, 2009

17. CASE DIARY

In a police case, the investigation officer is required to keep a case diary/case docket⁹⁶, in which he must write in minute detail, the steps, methods and measures of his investigation. As soon as the case record is received by the I.O, he must open the case diary and continue it until the end of the investigation. It can be inspected at any time by his supervisor to ensure a proper investigation.

The court can also ask the I.O. to submit the diary to check if anything is missing in the investigation. But one Senior Judicial Magistrate working in Dhaka⁹⁷ informed me that the police generally do not start the case record from the very beginning or in a systematic way. Rather, case dockets are found written in one sitting, in the handwriting of a person other than the I.O. Though an investigation takes a long period of time to complete, papers of the case docket appear to be new and written recently. In the entire gamut of the case docket, nothing but the signature of the investigating officer can be found. This omission occurs despite the law which stipulates that only the I.O. should write up the record in his own hand.

18. SUBMISSION OF POLICE REPORTS/INQUIRY REPORTS

In a complaint case, the Magistrate can postpone the attendance in court of the person against whom the complaint is lodged. He can direct an inquiry or investigation to be made by any Magistrate subordinate to him or by a police officer or by such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint⁹⁸. However, the inquiring authorities do not submit the report within the stipulated time.

96. Police Regulations, Bengal, 1943, Regulation: 263.

97. Interviewed on May 10, 2009

98. Section: 202 of the Code of Criminal Procedure

All scheduled dates pass away, but no report is submitted, if not asked for by the court. Even after the court sends a reminder, another long period of time elapses before the report is sent. Lawyers and clients alike, have complained that if the Chairman of any *union parishad* or *upazilla* is selected as the inquiry officer by the court, they are guided by political interests and partisan attitudes. On the other hand, if a police officer is making the inquiry, the chance of harassment increases.

Usually the police submit a one-page report with no minute details and no accompanying documents. If the complainant desires an earlier, favorable report, the inquiry officer takes this opportunity to demand financial or other benefits. It is common knowledge that even though the report is submitted to the court before the fixed date, the bench assistant does not keep the report and the record together or does not bring it to the attention of the officer. The court also finds difficulty in assessing these inquiry reports as they are found to contain vague and unfounded statements of fact. On scrutiny of case records of complaint in the Chief Judicial Magistracy of Dhaka, two facts stood out. Either the court changed the inquiry officer or after having itself taken cognizance of the case, put no reliance on the report of the investigative officer.

A general phenomenon has now become the norm in criminal cases as I.O.'s delay their submissions. As soon as a case is registered in the General Register of the cognizance court, the court fixes the next date for submission of the investigation report. A time frame is set up for submission of the police report in some special cases of law. It is a rare occurrence in which the I.O. submits his report on time. Some I.O.'s preferred requesting a time petition so they could submit their police reports beyond the time limit set. This was verified in a number of case records in the G.R. Section of the Chief Metropolitan Magistracy and the Chief Judicial Magistracy. A point of fact is that investigations by the Anti-Corruption Department take a much longer time than

those investigations by any other police agency. On looking into these cases, it was found that a number of them were pending for a long time, waiting for submission of the police reports.

The most delayed police reports are found to be submitted in cases which are being investigated by the Anti-Corruption Department. Verification of case records in the Court of the Chief Judicial Magistracy, Savar police station cases no. 73(09)03, 74(09)03, 78(09)03 and 79(09)03 all instituted on September 25, 2003 are under investigation by the D.A.B. All the cases involved the alleged misappropriation of huge amounts of public money. The I.O.'s have yet to submit a single police report. These cases have been pending investigation for almost six years. None of the accused persons, mentioned in the F.I.R., has yet been arrested or surrendered before the courts.

Jagannath Bairagi, an old man, has been coming to the court cognizance for the last 15(fifteen) years in two cases against him⁹⁹. He disclosed that both cases were charge-sheeted and he was facing a court trial. But then, the investigating officer submitted applications for further investigation which was allowed on September 23, 1996. Since that time, thirteen years have passed with no further investigation report submitted. Even after the cognizance court, on May 13, 2009, sent a reminder order listing all the delays, nothing has happened. The old man is still presenting himself in attendance at the court on the fixed dates.

In a case pending before the Court of Chief Metropolitan Magistrate in Dhaka, an informant has made the following observations. Cases which are very weak in nature and have a minimum chance of resulting in charge-sheets being produced, experience long delays before police submit their reports to the courts. The reason behind

99. Interviewed on May 13, 2009

this is again that the I.O. waits for the parties to pay him money. People generally want to complete the legal formalities as soon as possible and not drag the case on for years.

It was found in almost 90% of robbery cases that the I.O. failed to submit any charge-sheet as the offenders could not be located. But many persons were accused and arrested on suspicion of committing a robbery. The I.O. was well aware that he would have to submit a final report. But, before this happens, he tries to extract as much money as possible from the accused. These types of cases are very grave in nature and it is very hard to get an early bail.

The courts are interested in allowing police remand. The I.O. remains quiet for a long time. He neither contributes to any further developments in the case nor submits any report to the police. In this way, he forces those in remand to settle with him on the amount of money he wants. If proper communications with the I.O. are not made, there is the risk that those in remand will be brought before the courts again. They will be arrested in another case of a similar nature. A number of cases have been found where the I.O. has applied “shown arrest” petition for the suspect accused of one case to another similar type of case¹⁰⁰.

At times, the F.I.R. contains in its formal column, the names and addresses of accused persons with the statement that there are other persons unknown, or the F.I.R. may be lodged against unknown persons. This citation of unknown persons, as accused, opens the door to harassment by the I.O. as he starts arresting and threatening innocent people with presentation before the courts as suspects in these kinds of cases.

100. Physical observation of court proceedings and cases at Dhaka C.M.M. Court

Before submission of the police report, the law requires that the informant be notified about the results of the investigation, and it is the duty of the investigating police officer to do so. On scrutinizing numerous police reports, it was found that the I.O. had written at the end section of the police report regarding the notification of the informant. But in real fact, it is a standardized statement written to maintain legal formalities. An informant is notified only in rare, exceptional circumstances.¹⁰¹

It was found that if the courts serve notice on an informant on their own (*suo moto*), before considering the police reports, the informant appears before the court with a petition of protest against the police reports. One of the common grounds in these petitions of protest is non-notification of the results of the investigation¹⁰². In cases of re-investigation or further investigation by court order, the I.O. frequently goes beyond the time limit fixed by the court. Most of the charge-sheets contain unfounded allegations. Moreover, there are not specific allegations made against each single, accused person.

When there is more than one accused person sent up for trial, it becomes difficult for the court to take cognizance of a particular offence against a particular person. Again, charge-sheets are found in case records with no actual description of the evidence or material found against the accused person during the course of the investigation. In political cases, police reports are kept dormant with little chance of coming to light, unless desired and allowed to surface by the political authorities.

19. CUSTODY FOR SEIZED ARTICLES

During the course of an investigation, the I.O. may seize articles of different types and keep them in his own

101. Interviewed a police officer working at Dhaka

102. Interviewed a cognizance-taking Judicial Magistrate at Dhaka

custody until ordered otherwise by the court. It is claimed that during the period of police custody the seized articles are not properly cared for. If it is something like a motor vehicle, many valuable parts are reported lost. It is bad practice for an I.O. to maintain custody of goods for as long as possible, especially if it is profitable for him. On the other hand, if the owner tries to get his property back through the courts, the I. O. puts up barriers and demands money.

In accident cases, where a vehicle was physically involved in an accident and had been seized by the police, harassment by them to get back the vehicle is very high. The owners in these cases submit an application before the court to retain custody. And the court generally gives an order directing the I.O. to submit a report as to the ownership of the vehicle. An open license for harassment and bribes are then unleashed in favor of the I.O. Should the I.O.'s demands not be met in full, the report will not be submitted to the court. The court in essence becomes neutered, if the report is not submitted to determine ownership, in the provision of custody. A Judicial Magistrate provided information that when a fraudulent person claiming ownership has submitted a custodial application, the outcomes are not promising. For example, if the seized article, a large bus, in good running order, is in a road accident, then it is possible that the owner will incur heavy financial losses. Each day of delay in retaining custody is a two-edged sword. He might have to pay the bank interest from the income of the bus/vehicle, where delay doubles the loss.

On visiting the police compound where seized articles were kept, one could see many articles lying about without proper care. Owners of seized cars/vehicles frequently complain, after retrieving their vehicles by court order, that most of the valuable parts are either lost or altered.

20. SUPERVISION OF INVESTIGATION BY SUPERIOR POLICE OFFICERS

A superior police officer supervises an investigation carried out by an I.O. to ensure a speedy, unbiased and proper investigation¹⁰³. The investigation is checked and supervised by superior officers with different ranks and status and not only by the immediate senior police officer. The circle, of Assistant Superintendents of Police, is the most active field level and closely supervising authority of the I.O. 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.

Our research 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.

In significant and sensitive cases the I.O. himself might be obliged to pay large amounts of money to various superiors at different stages of scrutiny by the supervising police authorities. Vested political interest groups may not communicate directly with the I.O. but may negotiate with the supervising police authority to put pressure on the I.O. to submit a report favoring their choice.

21. DESTRUCTION OF SEIZED ARTICLES

The I.O. 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

103. Police Regulations, Bengal, 1943 Regulations: 54, 56.

as per direction of the court. However, the police may destroy some and keep some of the seized articles, thus, disregarding the court's order.¹⁰⁴ As in the cases of contrabanned Phensydle 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.

22. GOVERNMENTAL AND POLITICAL PERSUASION

In Bangladesh, the biggest impediment in a police investigation is political persuasion or pressure exerted by political leaders and activists. A Senior Assistant Superintendent of Police has expressed his dissatisfaction regarding police investigations. He holds the opinion that the local political leaders in power feel the Police count for little. They think of the Police as their loyal servants whose job it is to carry out their whims and fancies. Should the police try to avoid local political leaders, invariably, some sort of pressure will be initiated by the central leadership, requiring obedience to the politicians.

The investigation of the murder of a maid in the house of former Water Transport Minister Late Akbar Hossain is at a standstill.¹⁰⁵ The maid, Bilkis Begum, was brutally killed beside the kitchen of the minister's residence. Only the victim's son was arrested by the police. It is alleged that the police tried to obtain a confession from her son by torture while he was in police remand. They failed with no further substantial development in the case.

Withdrawal of cases by the prosecution, on the grounds that they are politically motivated, is a controversial issue. Most of the elected Bangladesh governments,

104. Interviewed a police officer on May 11, 2009. This officer told this researcher with a sigh that despite his honest and *ipso facto* financially painful lifestyle, he felt embarrassed about his profession.

105. The Daily Prothom Alo, May 25, 2009

after assuming power, took decisions to withdraw those cases which they considered to be politically motivated and organized by the immediate past government. Furthermore, self-interested quarters try to withdraw non-political, criminal cases in the name of political cases. The present Awami League regime is going to withdraw 62 cases including the 12 cases against the present Prime Minister Sheikh Hasina.¹⁰⁶

23. VERIFICATION OF THE NAMES AND ADDRESSES

As soon as any accused person is arrested by the police and presented before the court, the police require verification of his/her names and addresses. The police are usually quite slow in verification. The I.O. in his report, takes the opportunity of verification to recommend the accused not be remanded. He offers the explanation that names and addresses of particular accused persons could not be identified without closer inspection. He argues that in future if any information of that sort can be collected, the court will be informed. In such circumstances the chance of receiving further information regarding subsequent development is almost zero. Therefore, there is wide scope for real offenders to avoid trial. All they have to do is convince the I.O. to propose their names not be sent up for remand, showing their address as non-traceable.

24. OPINION OF THE PUBLIC PROSECUTOR

In big, sensitive cases the investigation officer has to seek the opinion of the public prosecutor regarding the legal aspects of the involvement of any suspected accused person. A senior lawyer of the Jessore Bar Association disclosed that the office of the Public Prosecutor 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

106. The Daily Prothom Alo June 11, 2009.

officials, government/money/interests. The Public Prosecutor overlooks involvement in serious crimes by an accused person in whose favor the I.O. is going to submit a non-remand proposal to the court.

There is no stable, organized method of prosecution in the Bangladesh judicial system. Hence, new sets of public prosecutors are changed or appointed by every new government. These appointment procedures favor lawyers who are loyal to political obligations or active politicians of the party in power. Therefore, the public prosecutors are found, by default, party to obligations to certain behavior. Opinions from a public prosecutor that go against the interests of his own party are rare and hard to obtain.

C. CORRUPTION AT THE COGNIZANCE STAGE

1. NOTICE TO THE INFORMANT/COMPLAINANT:

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 any¹⁰⁷. 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 through the concerned section of the office of Superintendent of Police.

Case records in the General Registering (G.R.) Section of the Court of the Chief Judicial Magistracy in Dhaka and

107. Section 190 of the Code of Criminal Procedure

the Court of the Chief Metropolitan Magistracy in Dhaka, showed that although the notice of the court was served in a timely fashion from these sections, there was no guarantee that the service report will be returned within the next fixed date.

In fact, repeatedly, date after date, no report is submitted to the court as to the execution of the notice upon the informant. And in grave and sensitive cases, the court needs to issue duplicate notes or reminder orders to the police station concerned. In a collusion of accused persons and assigned police officers, a delaying technique is adopted which manipulates the court, to accept the police report, beneficial to the accused.

2. SUBMISSION OF CASE DOCKET

Another important gap is found at this stage. It is the lacuna in the case docket or case diary of the investigating officers. They are not submitted to the court along with the police report even though it is necessary for the court to go through the Case Diary. The steps and the processes of the investigation, as carried out by the I.O., need to be scrutinized. The case docket also reveals whether or not witnesses have been examined and the scene of the crime visited by the I.O. If these two responsibilities have not been carried out, the I.O. then tries to have his police report accepted without showing the case docket to the court. The usual complaint is that due to a heavy workload it is not always possible for the court to verify whether the case docket is prepared properly or not.

3. PETITION OF PROTEST

During a cognizance hearing, one very important legal issue is filing a petition of protest, commonly known as *naraji* petition¹⁰⁸ If informants in police cases or

108. The word *naraji* is a Persian-origin Bengali word and it means 'not agreed to'.

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, 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.

On physical verification of weak cases, the complainant appears at a later stage with an application for allowing some time so that a petition of protest can be submitted. Then a goodly number of subsequent fixed dates elapse, with no petition of protest submitted. If, at this juncture, the court decides to be harsh in the matter, a petition of protest appears in the record as submitted by the informant/complainant¹⁰⁹. Finally, when the matter is heard and disposed of by the court and the police report is accepted without taking cognizance of the offences alleged against the accused, there is a chance of filing a criminal revision application against the order before the Court of the Sessions Judge. Then, the case record is called for by the superior court.

It is here where the applicant takes a long time to request a hearing before the court even after the court's repeated efforts. In many cases the lawyers submit false time petitions in the name of the informant/ complainant. Although the real complainant/informant is not interested in dragging out the legal battle, false applications are submitted in connivance with lawyers of the accused to extract more money from them.

109. Commented by a Senior Judicial Magistrate at Dhaka

4. COGNIZANCE

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. Magistrates make the excuse that they are over-burdened with cases and an excessive work load. It is not possible for them to write a time-consuming, detailed cognizance taking order.

D. CORRUPTION AT THE PRE-TRIAL MANAGEMENT OF CASES

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. 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. Corruption and harassment exists in this stage in different ways.

1. ISSUANCE OF 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 against the accused persons who have fled from

the law.¹¹⁰ The warrant of arrest, although signed by the presiding Magistrate, is not issued and there is no indication of date and memo number on the side column of the order. The bench assistants or the G.R.Os are often late with the warrant of arrest needing his signature. The signed WA's are kept under lock and key which provides an undue advantage for the accused. On the contrary, if effective communication is made with the concerned bench assistant or G.R.O., they are found to be very prompt and active in obtaining the officer's signature and dispatching the document on time.

2. EXECUTION OF THE WARRANT OF ARREST

Execution of the Warrant of Arrest (W.A.) 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 W.A.'s. They are given to respective Police Sub-Inspectors or Assistant Sub-Inspectors to execute and to report back to the court. Unless supervised strongly, the assigned S.I. or A.S.I. is reluctant to visit the accused persons noted in the W.A. 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 W.A. by the Dhaka Metropolitan Police.¹¹¹ A great number were brought to a conclusion with many accused persons brought before the court. Similarly, on the last special drive by the Dhaka 110 District Police¹¹², huge numbers of arrested persons were forwarded before the court of the Chief Judicial Magistrate in Dhaka.

110. Section: 90 of the Code of Criminal Procedure

111. Commenced since May 14, 2009

112. Held on May 12, 2009.

On scrutiny of pending case records in the Chief Metropolitan Magistrate Court and the Chief Judicial Magistrate Court in Dhaka, it had been found that dates elapsed repeatedly. Furthermore, these cases were without receipt of the execution report of the W.A. issued against accused persons who absconded from the law. Even after sending a reminder order with a duplicate W.A., the rate for receiving an execution report is not high. As a result, other accused persons face financial difficulties and loss of time from work because of the prolonged period of pre-trial case management.

3. 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. They would require him/her to appear at a specified place and time, in not more than thirty days from the date of publishing such a proclamation. The law requires that this written proclamation be read publicly in a conspicuous place of the town or village in which such a person ordinarily resides. Otherwise, it shall be affixed in some conspicuous part of the house or homestead in which such person ordinarily resides¹¹³. 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, Jessore 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.

113. Section: 87 of the Code of Criminal Procedure

The court issuing the proclamation can also order a lien on the property or possessions of the proclaimed person¹¹⁴. In reality, except for some few V.I.P. 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.

4. NOTIFICATION IN THE DAILY NEWSPAPERS

If, after compliance with the requirements of proclamation and attachment of properties, the court has reason to believe that an accused person has absconded or is in hiding to avoid immediate arrest and trial, the following takes place. The cognizance taking court orders a notification published in at least two daily National Bengali newspapers with a wide circulation. And, they further direct that the accused appear before the court within a specific date¹¹⁵. The usual complaint made by many advocates is that there is considerable corruption among the officials responsible for selecting and processing the newspaper publications. A case can be listed and published within a very short span of time if the amount of the bribe is satisfactory and can be delayed if it is not.

Although it is a mandatory provision of the law that a national daily with a wide circulation is preferred, investigation shows that unknown and low-circulating newspapers are chosen. These types of newspapers are regularly supplied to the courts free of charge. It ensures that they will attract advertisements and notice publications. Therefore, the purpose of notification becomes frustrated because the notice remains unknown to the targeted persons. Lawyers allege that the notices take time to be published and affixed to the case record. To minimize expenses, the notification in a goodly number of cases is frequently published at the same time.

114. Section: 88 of the Code of Criminal Procedure

115. Section: 339B of the Code of Criminal Procedure.

5. 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. Whenever the transfer order is passed, the next date is noted in the order sheet. On that date, the accused, if on bail, is required to appear before that trial court. In some cases the sending cognizance court does not note down the next date.

An example is in cases under *Nari-O-Shishu Nirjatan Daman Ain, 2000* (Suppression of Cruelty to Women and Children Act, 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. In such cases, the bench officers working in the tribunal seize this opportunity to demand money from the concerned parties. 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.

Case records that are received without any fixed date also create problems for the persons 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. Lawyers sometimes misguide their clients as to the risk of cancellation of bail although this is simply a formal order, and the courts are reluctant to cancel a bail order.

Generally, the different courts of one district are situated within the same premises in different buildings or on different floors/rooms of the same building. Transfer of a case record from one court to another is slow and can be complicated. Small case records sometimes traverse the longest one hundred meters from one court to another. The reason for this is two-fold: the bench officer

of the sending court, not fully satisfied, does not prepare the case records; and the messenger not fully satisfied with communications between the interested parties for payment, does not deliver the records to the receiving court.

Some bench officers and staff of the Court Inspector's Office charged that they do carry the case records to the office of the District and Sessions Judge. However, the receiving clerk does not want to receive them and refuses to sign the receipt register. As such, the records are left without a receipt, involving the risk of losing valuable/important documents from the case record.

It was explained that if the receiving clerk receives the case record on the day of transfer, he has the responsibility to fix the next dates of appearance and hearing and is answerable for them. Before transferring a record from the cognizance court to the trial court, the bench assistants are required to prepare a record of the list of documents to minimize the chance of losing any part of the record. The receiving court frequently complained that some of the important documents in the case record are found missing which significantly affects the disposal of the case.

E. CORRUPTION AT TRIAL STAGE

1. FRAMING OF CHARGE

Generally, the first date fixed in the trial court is for the framing of the charge. And 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.

Verification of case records in the metropolitan/judicial magistracy and the session courts in Dhaka found this to be true. At this stage, the court can dismiss the case against the accused on the basis of the following: the acts complained of, appears on the face of it, not to constitute any offence under the proposed section of the law; or the alleged place or date of the offense is non-existent; or the framing of the charge appears to be groundless. If the proposed charges against the accused are dropped, it saves them from subsequent harassment and the expense of a prolonged trial. Needless to say, it will also help ease the pressure on the backlog of cases.

Charges are often mechanically framed without delving 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. Ultimately, whenever the petition is rejected by the court, the clients are given the impression that the judicial officer dealing with the matter is at fault. He is either corrupt or incapable of understanding the subject matter.

2. EXAMINATION OF WITNESSES

At the trial stage, a substantial degree of corruption can be traced to the period of examination of witnesses. Whenever the court passes the order to issue a summons for the witness to come before the court, it is the responsibility of the prosecution to manage this. The law is that the officer in charge of a police station is accountable for producing the witnesses before the court¹¹⁶.

116. Section:171(2) of the Code of Criminal Procedure, 1898

The possibility of producing witnesses on the next fixed date is almost zero because, generally, on that date, no witnesses turn up. After receipt of the process order, the officer in charge 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 Sub-Inspector or the Public Prosecutor or the Assistant Public Prosecutors 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.

In these cases, there exist three possibilities. One, the defense lawyer is not fully prepared to cross-examine the witness, two, the main defense lawyer is not available or is busy elsewhere, three, the defense attempts to delay the trial procedure. Within this situation, the accused try to convince the prosecution to release the witnesses. And the informant, to convince their witnesses to appear before the court, needs to engage in long term efforts, pay high costs and engage in extensive bargaining.

This occurs as witnesses have to spend almost the entire day within the court premises, laying aside their daily business routines. So, whenever witnesses are returned without being examined it causes untold mental/physical suffering together with additional, substantial expenses for poor litigants in this country. Litigants commonly allege that their lawyers are not sufficiently prepared to cross-examine the witnesses due to excessive workloads and multiple cases carried on at the same time.

Furthermore, a Dhaka court judicial officer found fault in two areas where not only the prosecution is negligent

in producing witnesses but also judicial officers return witnesses for trifling causes. When the regular officer is on leave, the officer in charge might remit the witnesses showing that the court is responsible in carrying out the work in its jurisdiction. Lawyers are cited who submit time petitions requesting adjournment of witness examination. And if the petition is rejected, they submit a pre-written application to adjourn the proceedings. The opportunity is seized to seek recourse to a higher court against the order of earlier rejection.

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 proceedings¹¹⁷. There is no government witness protection system in criminal cases. Witnesses are not provided any protection by the government. 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 against the party in power do not appear, fearing torture or police manipulations. In cases against political activists of opposition parties, witnesses also fear torture. It happened that a murder case has been pending for the last thirteen years.¹¹⁸ All this time the accused attended court, without any further developments, because the witnesses would not turn up.

One witness disclosed to the journalist that the witnesses did not turn up because they felt insecure in the situation. Witnesses on the seizure list, especially in narcotic control cases, are found to have made statements under oath before the court that they were asked by the police or arresting authority to put their signatures on

117. Keranigonj Police station Case No. 02 dated February 2, 2009 under Sections 447/332/353/506 of the Penal Code, 1860

118. The Daily Prothom Alo June 11, 2009.

blank white papers. The Public Prosecutors or the Court Sub-Inspectors remonstrated that these types of witnesses admit the recovery of incriminating articles while testing before actual deposition in court. But they reverse their direction during examination and make contrary statements.

Most of the witnesses on the seizure list are biased or won over in favor of the accused persons. The reason behind this is the long lapse of time. Matters lose importance to the witnesses and they can be easily manipulated by the accused. Seized articles are required by law to be produced before the court during the examination of witnesses and these articles are publicly exhibited by the relevant witnesses.

There is a common allegation by advocates and litigants alike that the prosecution does not usually produce the relevant articles before the court. Furthermore, it is claimed that the articles kept in the *malkhana*¹¹⁹ are not amalgamated with other articles.

Again, important documents which ought to have been submitted in the case record may not be submitted on time and difficulties then arise in taking evidence. Mr. Md. Azizul Hoque, former District and Sessions Judge and presently an honorable Judge of the Supreme Court of Bangladesh observed that because of the non-availability of relevant papers in the record, harassment occurs in many respects¹²⁰. After evidence is recorded by the court, the witness who is to give evidence is required to sign his deposition sheet.

119. A secured place within the Court premises, under the disposal and control of the office of the Court Inspector, where all the seized articles are kept till disposal of cases

120. Md. Azizul Hoque, *Aparadh Tadantey Tadantakari Karmakartar ebang Bicharey Magistrater Ashu Karanio* (The Immediate Duties of the Investigating Officer in Investigation and that of the Magistrates in Trial), Dhaka: Universal Books, 2007, p. 93.

At this juncture, lawyers allege that bench assistants and others purposely keep witnesses waiting until the court is adjourned. In the absence of the presiding officer, money is demanded from the witnesses before their signature is taken or a left thumb impression is made. During the course of a trial investigation, officers are mostly absent on all the fixed dates of their examination. This situation has been verified in records in the trial and subordinate courts of District and Sessions Judge Court in Dhaka. A good number of cases are pending only the examination of investigation officers who did not turn up before the courts on the designated dates despite repeated reminders.

3. EXAMINATION OF ACCUSED PERSONS

After closing of the prosecution's evidence, a date is fixed for the examination of the accused persons by the courts¹²¹. The law requires that during examination of the accused, all incriminating evidence against them is recounted to them by the judge/magistrate. In this way, accused persons are provided with an opportunity to explain their position or to put forth their defense in writing or in oral form. More often than not, the signature of the accused is collected by the bench officer on blank forms and no incriminating evidence is told or explained to them.

Lawyers also tutor their clients to answer using the stereotype language, "we are innocent and we will not bring forward any evidence." If they are asked anything by the court, they merely repeat the words they have been coached to say. Some accused persons were queried on whether or not they understood the matter of their examination. The common response was that they could not understand what actually happened in the court

121. Section 342 of the Code of Criminal Procedure, 1898

and they replied to the court's questions by simply regurgitating the pat instructions framed by their lawyers.

4. 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." In highly important cases, if the prosecution is managed properly, they make the set argument, as above, and virtually do not cooperate with the court in taking a decision. A newspaper commentator has made this observation in his article on the government's philosophy in combating corruption. He writes that the court is independent but if the prosecution does not strive hard enough, the court can do nothing in punishing the offenders¹²².

In criticizing the role of Public Prosecutors in criminal cases, an advocate of the Dhaka District Court put forward some relevant thoughts, "These days, it allegedly becomes a profitable portfolio to be awarded to party-men. The forceful allegation against politicians-turned-public-prosecutors is that in many cases they are not honest, eligible or efficient up to the required level¹²³. Often, the Court Sub-Inspectors are not prepared, put forth arguments on the spot and do not delve deeply enough into the case records. Police officers, who are deputed here as Court Sub-Inspectors, are sub-standard in their skills and performance abilities. Moreover, during court hours, they are busily engaged in other official jobs.

122. Abdul Kayum, *The Daily Prothom Alo* April 20, 2009

123. Md. Aminul Hauque Mithu, "Low Conviction Rate in Bangladesh" in *The Daily Star*, May 13, 2006.

After a hearing of arguments, a date is fixed for the pronouncement of a judgment which should occur within a short period of time. However, the date of judgment turns out to occur after a relatively long period of time. On the date of judgment there is no assurance that judgment will be pronounced. A standardized order is often found on the date of judgment, "Judgment is not ready, to...For Judgment." 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 Case¹²⁴ in the court of the Special Judge of Jessore, it was observed that it took almost one month for pronouncement of judgment.

Official records show that the court took one month to pronounce judgment, but in actuality, it took almost three months to pronounce judgment. The argument was completed long before the pronouncement of judgment but the dates were dragged out in the court diary which showed fixed dates for argument. These were all complaints from a lawyer engaged in the case. It is also true that the court, because of time constraints and excessive workloads, fails to prepare a judgment within the scheduled dates.

The shifting of date of judgment is frequently observed in court cases where the officer is on leave or in training. The officer-in-charge of that court usually does not pronounce judgment after rehearing of arguments but rather shifts the date and waits for the regular officer to rejoin and pass judgment. During the stage of pronouncement of judgment the bench assistants have the opportunity of taking money on the plea/pretext of convincing the officers.

124. Sessions Case Number 105 of 2000

It was disclosed that experienced bench assistants have some unusual abilities. They can supposedly read the minds of judicial officers by listening to the officer's remarks or understand the trends of the case from reading depositions from witnesses. If the experienced bench assistant calculates correctly, establishes communication with the interested party, makes a deal with them and manipulates the desired outcome, the next step follows. He ultimately is successful in procuring huge sums of money in the name of the judge or magistrate, while the innocent judicial officer remains in the dark. 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 amount of time to procure the certified copies of the judgment and order.

CHAPTER: IV

CORRUPTION AT DIFFERENT STAGES OF A CIVIL CASE

A. PRESENTATION OF PLAINT

To institute a civil case, the first step is the filing of a complaint, before the concerned Assistant Judge/Senior Assistant Judge/Joint District Judge Court, depending on the valuation of the suit. In the present system, the complaint, along with all the relevant papers, is to be presented before the *sheristadar*¹²⁵. The *sheristadar* scrutinizes the complaint, its suit valuation, court fee attachment, copies of the complaint in relation to the number of defendants and then writes a short note for the presiding judge on the results of his scrutiny. An affidavit of correctness on the content of complaint is required to be done by the plaintiff at the time of the institution of the civil case. All these formalities are complicated and expensive for the litigant because they have to offer bribes all along the way. If the *sheristadar* is not satisfied with the amount of money given, he will have a few alternate schemes.

125. A court clerk who works in a separate place apart from the court room and who keeps and maintains all the records except the case records which are 'part-heard' (the cases in which some of the witnesses have been examined and some of the witnesses have been partly examined, and the recording of evidence is yet to be completed).

In general, he may try to find as many faults as possible with the plaint. Alternately, he may refuse to write a clear report as to the acceptability of the plaint. And of course, he might be interested to make an argument as to the suit valuation in relation to the value of the property or the amount of court fees attached. To avoid all these troublesome possibilities, the litigant has no way but to make payment after negotiation. At the filing stage of a plaint, the general tendency of the litigants is to undervalue the land in the suit. The intention is to evade payment of court fees.

The Manual of Practical Instructions for the Conduct of Civil Suits¹²⁶ published in 1935 stated, "It is a matter of common knowledge that, especially in suits relating to land, deliberate attempts are frequently made to undervalue the subject-matter of the suits with the connivance of all parties concerned, in order to reduce the costs of litigation and to evade the payment of government revenue." A senior lawyer of the Dhaka court commented that even after the passing of decades, the situation remains the same.

B. SERVICE OF NOTICE

Whenever a case is placed before the court of original jurisdiction, the judge may order two things: the registration of the case in the suit register; the issuance of a notice to the defendants to appear and file written statements about the allegation made in the plaint on the next fixed date. But there is no guarantee that these notices will be dispatched to the *nejarat*¹²⁷ for service.

126. Chapter I, Instruction No.4

127. A department of the civil court where the matters of service of notice or summons are dealt with. A clerk designated as najir supervises and controls the service of summons by the process servers who are known as Jarikaraks. A judicial officer is appointed to supervise the activities of Nejarat and he is designated as judge-in-charge of the Nejarat.

Rather, the notices are kept in the *sheristadar's* desk until effectively persuaded by the interested party to release them. If the notices are dispatched to the *nejarat* section, the corruption of the *najir* and its process servers starts up.

In the *nejarat* there are a number of process servers who are allotted the processes or notices by rotation or on the basis of territorial divisions. The process servers must maintain good personal relationships with the *najir* for a good allotment of processes. And there is also prior agreement between the *najir* and the process server to share whatever money is collected. Whenever the process server is allotted any process, he is required to submit the service return within a specific time frame. The process servers generally wait for the interested parties before making a deal. The interested parties personally convince the process server to go to the address of the defendant and serve the notice.

Again, during service of notice, the process servers usually demand money by frightening the illiterate laymen who are not well versed in matters of the court. On the other hand, the process servers may be biased towards the defendant. If this is so, he returns and submits his report that the names and addresses of the defendant are unknown to the local people. Therefore, the notice is returned unserved. The law provides that serving notice upon any male member of the defendant's family is considered as proper service. However, the process server intentionally serves the notice to persons who are not family members or to a female member of the family. As a result, an opportunity is provided to file a miscellaneous case by the willful, absentee defendant for setting aside the ex-parte decree.

It is also possible that false persons receive the notice instead of the genuine defendant. The process server may not be able to identify the proper persons even with the help of local persons. If there is collusion between the

false defendant and the process server, it is very difficult for the server to locate the proper defendant and to serve the notice. Servicing a false defendant is done to give the plaintiff time to get an *ex-parte* decree, thus keeping the defendant in the dark.

A Dhaka court process server disclosed that in many cases the defendant willfully avoids or refuses to receive the notice with a view to paving the way for filing a miscellaneous case. If a notice is returned to the *nejarat* without being served, it takes another few days or more to attach them to the case record. A Senior Judicial Magistrate of Dhaka District Judicial Magistracy told me that during his tenure as Assistant Judge, he received frequent complaints from the advocates that their notices were kept lying about either with the *nejarat* or with the *sheristadar*. One of the major causes for delays in a civil case is the non-service of summons or notices upon the defendants. Verification of case records in the Dhaka court showed that a large number of cases are pending at the stage of service return. This causes an ever-increasing backlog of cases for the judicial officers to the detriment of the litigant.

C. APPEARANCE OF DEFENDANTS

After a summons is served, the defendants are required to appear in court and submit written statements as to the allegation made against them or in respect of the property in dispute. Often a defendant absents himself for the purpose of delaying the case. Or, at other times, they come disguised as another defendant and keep watch on the proceedings and when necessary appear, to hamper or delay the case. The most corrupt practice is attributed to the government in cases where the government is a defendant or added on as a defendant.

On verification of civil case records, it transpires that the government is made a defendant in almost all the

cases either directly or on a pro-forma basis. Often in these cases, the notice has been duly served by the office of the concerned Deputy Commissioner who received the notice on time. But the government side does not put in an appearance. It is alleged that even after repeated reminders in the order sheets and personal notification by the government pleader, the government does not appear to submit any written statements. The statements would be in relation to any property claimed by the plaintiff and where government interest is admittedly present in the plaint. Vested interests, in collusion with the concerned officials of the office of the Deputy Commissioner, convince the government pleader or the Vested/Abundant Property lawyers not to appear before the court within the specified time limit.

D. FILING OF WRITTEN STATEMENTS

As soon as a defendant, after being served notice, appears before the court, the law requires a written statement to be submitted in reply to the contentions of the plaint. Beginning from the first date of appearance, the submission of time petition starts and it continues as long as possible. In the civil courts of Dhaka and Khulna, a number of cases have been found at this stage where the defendants have not submitted written statements and do not have sound reasons for doing so. The practice is rampant in cases where the government is a party in the case. Years have passed, without the government submitting any written statements, even after repeated reminders from the courts.

In fact, the government causes intentional delays. They provide undue assistance to the plaintiff to grab up government property through a judgment made without contest. And in this business transaction between government parties and interested plaintiffs, substantial amounts of money change hands. It is the common submission of government pleaders before the court that they are not receiving the statements of facts from the

concerned government offices. If the written statements are filed, they are found to be non-specific, based on unfounded facts and not supported by relevant papers/documents. Ultimately, as could be expected, this affects the results of the suit against the government.

E. *EX-PARTE* HEARING

Whenever all, or any one of the defendants do not appear before the court, even after a duly served summons; or the defendants appear but fail to submit written statements within the specific time limit, the court can fix the case for an *ex-parte* hearing against the absent defendants and allow the plaintiff to adduce evidence to establish their claim.

In this type of hearing, the court has a limited scope in which to scrutinize the papers and documents submitted along with the plaint as no one challenges the legality or propriety of those documents. Sometimes there exists a subsequent valid transfer deed but the court does nothing if that fact is not brought to the knowledge of the court. Many government properties are misappropriated through court's orders obtained in the *ex-parte* hearings beyond the knowledge of government officials.

F. INJUNCTION HEARING

The degree of corruption in the matter of injunctions can be compared with those of the bail matters in criminal cases. The injunction petition¹²⁸ can be brought in at any stage of the civil case. However, in the verification of case records, it appears that most of the filings of a civil case

128. Injunction order is the direction of the court on any person or institution either to do or not to do any certain act or omission in relation to any property or right.

are followed by an application with a request for an interim injunction. Lawyers have the ability to convince the court to pass an injunction order in absence of the defendant and without hearing the submissions of the other parties. But, the courts, instead of passing an order of injunction, issue a show-cause notice to the defendant and fix a date for a hearing on the matter. Execution of a show-cause notice involves considerable corruption as it may not be served upon the defendant because of active persuasion by the plaintiff.

After a full hearing of the injunction order, if it is allowed, the question of issuance of a writ of injunction arises. Here again, the interested parties are required to convince the court staff, especially those working at the *nejarats*, to make a proper issuance of the writ. There is the possibility of passing an injunction order over government property without hearing the government's side. It could be the result of corruption of the judge, the government prosecutor and the plaintiff. The number of injunction hearings increases just before any big holiday, because if somehow the injunction order is passed, the aggrieved defendant can do very little to protect himself from adverse effects.

G. ALTERNATIVE DISPUTE RESOLUTION

After the filing of written statements, if all contesting parties are present, the court can adjourn the case and fix a date for settlement of disputes through negotiation. Furthermore, the court can itself mediate or engage any mediator chosen by the respective parties. To decrease the backlog of cases and to bring about a permanent solution to any civil nature dispute, a new chapter "ALTERNATIVE DISPUTE RESOLUTION" has been incorporated in the Civil Procedure Code by way of amendment¹²⁹.

129. Code of Civil Procedure (Amendment) Act, 2003 (Act No. IV of 2003) incorporated Section 89A and 89B.

This new provision of law has paved the way to ease pressure on the courts in handling cases in minute detail. Unfortunately, the lawyers are not very interested in resolving disputes using this effective mechanism. On the fixed date of hearing under Sections 89A/89B of the Code, the parties or their lawyers are often absent on call even though an attendance sheet is submitted. If the parties or their pleaders are not found on call, the court has no other alternative but to proceed with the case. Opportunities for resolving disputes cannot therefore be utilized. Lay litigants do not understand what things are actually done on the date fixed under Section 89A or 89B. It appears their lawyers simply instruct them to leave the court premises without appearing before the court. This type of instruction is given with a purpose. They want the case to continue while they enjoy the monetary rewards of a prolonged trial for an unlimited period of time.

H. FRAMING OF ISSUES

If the alternative dispute resolution process fails, the next stage is the framing of issues and hearing from both parties. The issues are framed mechanically, mostly by the bench assistants, and signed by the judge without perusing them. Because of the negligence of the judicial officers in framing the issues, any defect in the proceedings cannot be fixed. It affects the final disposition of the case and causes distress for the litigants.

I. SETTING DATE OF HEARING

A maximum number of civil cases stagnate at this stage. The reason for this is: unless and until the court decides a case is to be enlisted in the peremptory hearing, years can pass without any further development in the case. It is the responsibility of the presiding judge to fix dates for peremptory hearing and the number of cases

fixed for each day of peremptory hearing and other purposes should be restricted¹³⁰.

From verification of case diaries and cause lists of different courts, it was found that not more than six cases in the contested and uncontested list are fixed for each date. If the judge himself becomes attentively active, the cases are listed considering earlier filing dates. Cases which are relatively new are not preferred to be listed in the peremptory hearing list. If the judge is negligent, the bench officers take the opportunity to set up a new case, laying aside the old cases.

This arrangement can net them large sums of money. Again, to increase the rate of disposal and to show a high number of contested cases disposed of, the judicial officers often make a choice. New and easier cases are taken on, while the old and complicated cases remain off the list for a long time causing stress for many people.

The Manual of Practical Instructions for the Conduct of Civil Suits clearly states, "On the "settling date" the presiding judge should himself fix the date for peremptory hearing with due regard to the directions in rule 144 of Chapter 7, Part I, High Court's Rules and Orders, Civil, Volume I. The practice of leaving the fixing of dates to the clerical staff leads to abuse and results frequently in a confusion of the work. Dates should be fixed, as far as possible, with reference to the state of the file, the nature of the contest, the convenience of the parties and their pleaders and after reference to the Court's Diary"¹³¹. But, in practice, this instruction is not properly followed by the judges of the Civil Courts.

130. Rule 124 Civil Rules and Orders (Volume I) cited in Siddiquir Rahman Miah, *Commentary on Civil Rules and Orders*, Dhaka: New Warsi Book Corporation, 2001, p. 82.

131. Chapter: IX, Instruction No.6.

J. PEREMPTORY HEARING

In this stage, the court records the evidence that the witnesses have produced. In ex-parte cases only the plaintiff adduces witnesses but in contested cases both the parties adduce their respective witnesses. Corruption in this stage relates to the examination of witnesses. In general, the parties are not interested to adduce their witnesses on time or on a regular basis. Therefore, various techniques are employed by the parties to avoid the dates for producing witnesses. If, however, a witness is present, after a short, chief examination, the parties submit an adjournment petition, mainly on the grounds that the witness is not prepared.

Again, after a closing of the chief examination, the opposing side tries to postpone the cross-examination of the next date. Thus, the matter of recording of witnesses by the court becomes a difficult job. The litigants ultimately undergo undue hardships because of the huge delays in obtaining justice. Lawyers in civil cases do not want a speedy end to trial proceedings. Rather, they drag out their cases in order to squeeze more money out of their clients.

Corruption can be traced back to the manner and style of the government witnesses. Witnesses deposing on behalf of the government are found unprepared and notably favorable to the cross-examining party. It is easily understood why, as they have been previously tutored/groomed by the opposing party. Government witnesses often do not have with them the relevant papers/documents necessary to establish the case. Even when the date for the next case is adjourned and there is time to obtain the proper documents, government pleaders and their witnesses fail to do so.

K. ARGUMENT

Though there is no mandatory provision of law to fix a date of arguments for the parties, it is traditionally fixed to enable the parties presenting their whole case before the court. It is expressed by a senior advocate of Dhaka court that a civil case generally takes years together to come to the stage of arguments and by this time so many judges are changed because of transfer and the officer dealing with the final stage becomes unable to understand the whole case if it is not categorically presented by the lawyers of respective parties.

It is not guaranteed that the argument will be heard on the very fixed date rather so many dates are changed because of the time petition or for any other causes and the litigant parties are to make payment to their lawyers for appearance on each date. Again, in cases involving government interest the government pleaders do not generally make categorical arguments rather arguments as per records are the common phenomena.

L. JUDGMENT AND DECREE

A judgment is required to be pronounced in open court on the exact date of argument or within seven days¹³². But, in practice, the judges do not follow it. The result of the judgment is found written in the diary and cause list without being pronounced in open court. Cases and judgments are delivered on different dates without the knowledge of the parties concerned. Some cases took one to two years before the actual publication of the judgment causing untold suffering to the parties¹³³. A regular complaint is that the result of the judgment is given in the

132. Order XX Rule 1 of the Code of Civil Procedure, 1908

133. Title Suit No. 52 of 2002 and 1 of 2002 in the Judge Court of Narail.

diary or cause list but the actual writing of the judgment is not done by the officer concerned.

If any aggrieved party wants to have a certified copy of the judgment, he has to wait until the completion of the actual writing of the judgment. When the judgment is completed, the bench officer or the court staff hides the fact in order to extract more money from the highly motivated parties. The judgment in a civil case is followed by the drawing up of a decree. The *sheristadar* is mainly responsible for preparing the decree, but it is delayed in being drawn up if money is not paid to the *sheristadar*.

M. EXECUTION OF DECREE

The winning party in a civil case cannot enjoy the results of the case until and unless the decree is executed if it is an executable one. Sometimes the execution case takes a longer time in disposal than the original suit. After the final execution order is passed by the courts, the function of the *nezarat* starts. Sometimes the *nazir* is to ensure the recovery of possessions of any disputed property following the court's order and decree. If the concerned parties do not effectively influence the *najir* in doing this, the execution process slows down.

At times, the *najir* reports to the court that the execution is not possible due to some unavoidable circumstances. In some cases the police are required to ensure the smooth execution process but if the parties do not satisfy the police financially, they do not cooperate. It is alleged that the police assist the defendant in retaining their illegal possession, in defiance of the court's order to restore the possessions according to the verdict handed down. The Chittagong Railway authority could not recover nine acres of land from illegal possessors because the police were uncooperative in implementing the order¹³⁴.

134. The Daily Jugantor, May 22, 2009.

N. LOCAL INVESTIGATION OR LOCAL INSPECTION

On the application of the parties, or on its own motion, the court can pass the order to submit a local inspection report or a local investigation report as to the nature, existence and present state of the suit land or disputed property. It is difficult for the court physically to verify the land in the suit. For that reason, the local inspector, the court's representative, is asked to make a physical verification of the land or property involved in the suit.

Generally, a relatively young lawyer is appointed as local inspector. He is required to notify the parties in dispute regarding the date and time of inspection. On the date fixed, the inspection is done in the presence of both parties. Subsequently, a report is submitted to the court. The local inspectors do succumb to biased attitudes and do not duly notify all the parties concerned. They rather prepare and submit an inspection report in favor of the party who can satisfy them monetarily.

In these cases, the court often issues an order for another inspection by a different inspector because of the strong objections by the aggrieved parties. To look at the situation objectively, the task of local investigation proves to be more complicated and technical in nature. Only pleaders who are knowledgeable in surveys are entitled to be engaged as local investigators.

Investigators are required to submit to the court detailed field books and reports, complete with sketch maps. As the matter involves highly technical knowledge, the local investigators often try to submit false and concocted reports. They anticipate the court's incapacity and lack of knowledge to understand the reports. Though the Manual of Practical Instructions for the Conduct of Civil Cases suggested disciplinary action in respect of

defaulting commissioners¹³⁵, the courts are often reluctant in adopting a hard-line.

O. OPINIONS OF HANDWRITING EXPERTS

Whenever handwriting, signature or thumb impressions are challenged by the parties concerned, the court can seek the opinions of experts, either on its own motion or on the application of the parties. It is alleged that it takes a long time to obtain the reports from the experts. Upon active persuasion by the interested parties, these opinions may be deceiving, may not depict the real picture and may actually mislead the court in making decisions based on these reports.

P. ADJOURNMENT COSTS

The law provides that if at any stage of a suit or proceeding, an application or written objection is not filed within the time fixed by the court, such application or written objection, shall not be admitted for a hearing without payment by that party of such cost to the other party not exceeding two thousand taka.

Again, if after the filing of a written statement, any party to the suit makes an application in respect of any matter which, in the opinion of the court, could and ought to have been made earlier, and is likely to delay the main proceeding of the suit, the court may admit, but shall not hear and dispose of the application, without payment by that party of such cost to the other party not exceeding three thousand taka, as it shall determine and direct, and upon failure to pay the cost, the application shall stand rejected¹³⁶. But the complaint is that the lawyers of the

135. Chapter VIII, Instruction 17(17)

136. Section: 35B of the Code of Civil Procedure.

party, in whose favor the costs are awarded, personally receive the costs money from the lawyers of the opposing party. They then, conjointly inform the court that the costs money has been duly paid and thereby deprive their clients. Another allegation is that in connivance with the bench officers, the lawyers themselves receive the costs money and put it in their pockets without informing their clients.

CHAPTER: V

CORRUPTION IN OTHER SPECIAL COURTS

Special Courts are in operation, established under special laws, for trials of specific offences. These courts have exclusive jurisdiction in respect of trial and adjudication of the cases within their authority. The practice of corruption and related problems in some of the special courts are given below:

A. ARTHORIN ADALAT (MONEY LOAN COURTS)

The government established Money Loan Courts in almost all the major districts after enactment of the Money Loan Courts Act, 1990 to prosecute loan defaulters more rigorously but performance of these courts was disappointing. The Money Loan Courts Act 2003 has been enacted to tackle the non-payment of loan culture. It is hoped that it will pave the way to restore discipline in the financial sector. Because of strict legal formalities and short time case management presently the Money Loan Courts are running very well even though there exists the scope of corruption. It is disclosed by a judge of the Money Loan court of Dhaka that attempts are still there to frustrate and delay the case proceeding through the connivance of the plaintiff's lawyers, the defendant bank defaulters and the court staffs.

He also disclosed that publication of sale notice in the newspaper attracts the owners of non-prominent newspapers and they communicate with the *sheristadars* and share the bill of the publication of advertisements. It is also disclosed by that judge that whenever the auction sale is held, the *sheristadars* communicate and negotiate with chosen bidder in respect of the bid amount. In course of negotiation the *sheristadars* communicate to the chosen bidders about the expected range of bid money and help the bidder to defeat other bidders. The *sheristadars* try to convince the judge to accept the bid amount of their chosen bidders.

B. THE VILLAGE COURTS

For settling of disputes at grass root level the Village Courts were established under the Village Court Ordinance, 1976¹³⁷ and subsequently this ordinance has been repealed by the Gram Adalat Ain, 2006 (The Village Court Act, 2006)¹³⁸. All the elected chairmen of the respective *Union Parishad* are the persons who conduct the trial of cases in Village Courts. The cases which are tried by this court cannot be tried in any other court of the country¹³⁹ but it is observed on physical verification of case records that so many cases which are exclusively triable by the Village Courts are being tried by some of the Judicial Magistrate Courts. It is complained by a senior lawyer of Dhaka court that it is very risky to send a case to the Village Court as the chairman is generally politically biased and partisan in attitude as well as incompetent to handle the complicated process of law. It is disclosed by a Judicial Magistrate that many times the concerned chairmen are not found or they remain absconded and no subsequent result of the case is reported back to the sending court to keep the statements in the case registers.

137. Ordinance No. LXI of 1976

138. Act No. XIX of 2006

139. Section: 3 of the Village Court Act, 2006

C. *NARI-O-SHISHU NIRJATAN DAMAN TRIBUNALS*

To put an end to domestic violence against women and children, the *Nari-O-Shishu Nirjatan Daman Ain*, 2000¹⁴⁰ (Act on Suppressing Torture to Women and Children, 2000) was enacted. Tribunals under this Act have been established in almost all district headquarters to recognize and adjudicate offences under this Act. It was found that these tribunals are always crowded and overloaded with cases. Most of the cases filed before the tribunals, arising out of family disputes, are found to be false. Untold sufferings emerge for the accused persons as a result. Bench assistants and other lower echelon staff of these tribunals become unruly, as their job situations are tenuous and their transfer process is non-existent or complicated.

Like the Court of Cognizance Magistrate, bribe money is a requisite in all stages from filing to disposal of a case. Public Prosecutors working in these tribunals are, for the most part, corrupt and incapable of understanding court proceedings and the law. An investigation of any offence under this Act is to be completed within a specified length of time, not exceeding 90 days¹⁴¹. But, there are instances where the investigation officers are not following the directions of the law.

D. FAMILY COURTS

To resolve the disputes relating to dissolution of marriage, restitution of conjugal rights, dowry, maintenance, guardianship and custody of children¹⁴², the Family Courts have been established throughout the

140. Act No. VIII of 2000 and amended in 2003 by Act No. XXX of 2003.

141. Section: 18 of the *Nari-O-Shishu Nirjatan Daman Ain*, 2000.

142. Section: 5 of the *Family Courts Ordinance*, 1985.

country under the Family Courts Ordinance, 1985¹⁴³. Corruption, similar to that existing in the Civil Courts, is also found in the Family Courts. False service of notice is a common practice in the Family Courts. A form of alternative dispute resolution has been introduced in Family Court suits, called pre-trial proceeding¹⁴⁴. Here, the judge in chambers, talks in person with the quarrelling husband and wife. This dialogue is carried out in the presence of selected persons where the judge tries to mitigate the problem through negotiation. But, on the date fixed for pre-trial proceedings, either one or both parties are absent on call. Subsequently, it was determined that their lawyers advised them wrongly not to present themselves before the court.

Thus, the greed of the advocate to earn regular fees can cause the suit to drag on and the hope of a permanent solution nipped in the bud. There are cases in which the decreed amount of the suit for child/spouse maintenance is placed with the court and the wife/decreed holder receives the money by monthly installments from the court. The *sheristadar* of the Family Court is in a position to exploit the needy decree holder when she tries to withdraw the money from the court.

A case has been noted in which a poor, entitled woman waited in the court veranda an entire day, only to receive a very small amount of money from the sheristadar. Some lawyers make an agreement with the plaintiff to share the decree money if the case is successful. After a mutual agreement made at the pre-trial proceedings or after winning the case, the lawyers manage to get the money in cash and then compel the plaintiff to pay a higher amount, irrespective of their previous agreement. Thus, the women are deprived of the money rightfully due them. In actual fact, they receive a far lesser amount than the decreed amount paid to the court by the defendant.

143. Ordinance No. XVIII of 1985.

144. Section: 10 of the Family Courts Ordinance, 1985

E. ADMINISTRATIVE TRIBUNALS

Administrative Tribunals have been established under The Administrative Tribunals Act, 1980¹⁴⁵ “to hear and determine applications made by any person in the service of the Republic in respect of the terms and conditions of his service including pension rights, or in respect of any action taken in relation to him as a person in the service of the Republic”¹⁴⁶. Allegations were leveled that it is difficult to get the necessary records from the concerned offices. After filing a case before this tribunal, the relevant papers are called for, and if these papers and documents do not reach the tribunal on time, it becomes difficult to bring the case to a conclusion.

At times, the orders passed by the tribunal are not completely processed. It takes a long time to get the certified copy of the orders because they are not forwarded to the proper department or office. The applicants suffer by not being able to enjoy any positive results of the proceedings. To make matters worse, staff are not always available, to perform their duties.

145. Act No.VII of 1981

146. Section: 4 of the Administrative Tribunals Act, 1980

CHAPTER: VI

PLIGHTS OF THE JUDGES

Out of three basic organs of the State, judiciary of Bangladesh is the most neglected and least developed. This researcher has tried to see and comprehend the problems of the judicial officers from close range. To that purpose everything from court chambers to bedrooms was visited, and people from all strata of life were engaged in dialogue. The following sorry picture emerged.

A. WORKLOAD

Judicial Officers, at all levels, are overloaded with cases, causing a direct, adverse effect on the quality of their work.

The numbers of the judicial officers in the subordinate judiciary as against the sanctioned posts are shown in the following table¹⁴⁷ which was calculated from office correspondence of the Supreme Court for the appointment of Assistant Judges:

147. Source: Office correspondence dated December 3, 2008 by the First Assistant Registrar of the Supreme Court of Bangladesh to the Judicial Service Commission.

Serial No.	Name of the post	Sanctioned posts	Filled up posts	Vacant posts
01	District and Sessions Judge	202	186	16
02	Additional District and Sessions Judge	218	209	09
03	Joint District and Sessions Judge	267	171	96
04	Senior Assistant Judge/ Assistant Judge	360	253	107
05	Magistrates at different levels	655	243	412
	Total	1702	1062	640

As a result of the correspondence mentioned above, some 391 Assistant Judges have been appointed who are now working in different Courts of Assistant Judges and Judicial Magistrates. Presently, appointment procedures for another 191 Assistant Judges is in process. It is clear from the above table that if all the vacant posts of the judicial service are filled up, the total number of judicial officers would be no more than 1702.

In conducting this research, an attempt was made to find out the exact number of pending cases in the subordinate judiciary. But, no officially published data could be found. The latest Annual Report on judiciary, 2007 was published in 2008 containing old data. Therefore the researcher has collected from the Office of the Registrar of the Supreme Court of Bangladesh a copy of the consolidated statement prepared on the basis of data

sent from all the Subordinate Courts. The total number of pending cases is shown in the following tables:

1. Total number of pending cases in all the Magistrate Courts (Judicial Magistrates and Metropolitan Magistrates) of Bangladesh as of January 01, 2009:

Serial Number	Divisions	Number of pending cases
01	Dhaka	269,941
02	Chittagong	121576
03	Rajshahi	138,519
04	Khulna	94,294
05	Barishal	46,105
06	Sylhet	47,752
	Total	718,187

2. Total Number of pending Civil Cases in all the Civil and equivalent courts of Bangladesh as on January 01, 2009:

Serial Number	Divisions	Number of pending cases
01	Dhaka	1,34,532
02	Chittagong	99,529
03	Rajshahi	1,21,825
04	Khulna	85,831
05	Barishal	38,404
06	Sylhet	24,965
	Total	505,086

3. Total Number of Criminal Cases in all the Sessions and equivalent courts of Bangladesh as of January 01, 2009:

Serial Number	Divisions	Number of pending cases
01	Dhaka	1,02,801
02	Chittagong	45,303
03	Rajshahi	59,707
04	Khulna	26,343
05	Barishal	6,843
06	Sylhet	12,835
	Total	253,832

4. Total Number of cases pending in all the Subordinate Courts of Bangladesh as of January 01, 2009:

Serial Number	Nature of cases	Number of cases
01	Civil case	5,05,086
02	Sessions Cases	2,53,832
03	Magistrate Court Cases	7,18,187
	Total	1,477,105

In calculating the above data, it was found that if all the vacant posts were filled up, the judge-to-case ratio would be 1: 868, provided all officers are equally distributed on the existing cases. In fact, the workloads are not equally distributed. For example, only twenty-seven Metropolitan Magistrates in the Dhaka Metropolitan Magistracy are working on 115,533 pending cases. The Joint District Judge working in the Land Survey Tribunal in Dhaka is handling 3000 cases. But every day, on an average, 15 new cases are being filed. The *Nari-O-Shishu Tribunals* all over the country are over-crowded during working hours. Moreover, the one officer working in each tribunal has to work an inhuman number of hours in order to dispose of daily petitions and other matters.

It seems impossible for the judicial officers to work under this kind of pressure while at the same time maintaining a qualitative work performance. With the separation of the magistracy from the executive, the Judicial and Metropolitan Magistrates are under severe workload. In many of the courts they can be found working together, long after normal office hours.

Judge-to-population ratio in the country is remarkably low. The present population is around 140 million¹⁴⁸, whereas the number of sanctioned posts of the judicial officers as stated earlier in the table is 1702. As such, there is only one judge per 82,256 persons. This makes a judge-to-population ratio of 12 judges per one million people, that is, if all the vacant posts of the judges are filled.

B. POOR BUDGETARY ALLOCATION

The budgetary allocation for the judiciary is limited and does not serve the purposes of this organ of the State. In the fiscal year (2007-2008), the total allocation to meet all expenses for the entire civil and criminal courts was found to be Tk.114,84,18,000 which is less than U.S.\$17 million.

C. POOR SALARY AND SERVICE BENEFITS

Judges are poorly paid, and their service benefits are not even worth mentioning. A commentator writes, "It is highly indecent for the State, and wisdom would not support that judicial officers and their family members would suffer from malnutrition."¹⁴⁹

148. <http://www.un-bd.org/bgd/index.html> (visited on June 5, 2009).

149. K. M. Mukta, "Renaissance of the judiciary, Challenges and recommendations" in *The Daily Star*, November 1, 2008.

The present starting basic salary per month of an Assistant Judge (entry level post) is Bangladeshi Taka 6,800 (six thousand and eight hundred) only which is below U.S. \$100. A newly recruited Assistant Judge made an open appeal to the Prime Minister and the Chief Justice of Bangladesh in a Bengali daily newspaper to reconsider their salary scales, saying that justice cannot be done when judges work with feelings of disappointment in their situations.¹⁵⁰ He also disclosed that he was motivated with high hopes of a commensurate salary with the separation of the judiciary. He joined the public service leaving behind lucrative, attractive jobs in the private sector. But his situation pales each month when he receives a pittance for a salary.

It is reported that because of poor salary and service benefits some newly recruited judges have already left the service. The Bangladesh Judicial Service Association is demanding an increase in their salary structure with a judicial allowance for officers with long years of service. As expected, the government is paying no heed to their demands. A separate pay commission for the judicial service has been formulated to implement the twelve point directive of the Supreme Court of Bangladesh, passed in the case of Masdar Hossain et al. vs the State. However, the recommendations of that service commission regarding salary and other benefits have been rejected by the government. In a recent move, the Cabinet sent back the finance ministry's proposal for increasing judicial remunerations and other allowances for judicial officers.¹⁵¹

D. RESTRICTIONS

Judicial officers face restrictions and complications in seeking higher education and training abroad. The causes,

150. The Daily Prothom Alo, February 1, 2009

151. The New Age, May 20, 2009.

seemingly, are better known only to the authorities. If any judicial officer wants to tackle financial crisis by adopting honest and lawful other means, he has to pass through very complicated permission procedure, and generally permission is refused at the end without assigning any cause. One example is a judicial officer working in Dhaka who applied for permission to teach part-time, on holidays, at a private university. More than six months have passed and he still has not been granted permission.

A commentator observes “There is little scope for intellectual development, as the judicial officers cannot publish any articles or research papers without pursuing complex, bureaucratic maneuvers to obtain consent from the authorities. There are only a small number of judicial officers who have PhD degrees in comparison with other trained services. The reason being that the judicial officers do not have access to various scholarships from foreign governments/agencies which have been set aside for the Bangladesh Civil Service (B.C.S.) officers. This has already created and will enlarge the intellectual vacuum in the realm of the judiciary.”¹⁵² Because of the complicated permission procedure, many potential judges are discouraged from doing research or publishing articles. The judicial officers are also kept away from enjoying different national training facilities.

E. ACCOMMODATION, TRANSPORT AND SECURITY

Judges face acute accommodation and transportation problems. Because of the nature of their jobs, judicial officers are discouraged from residing with the general populace. It is the norm for a judge to be transferred from his place of work after three years. Not every district has

152. K M Mukta, “Renaissance of the Judiciary: Challenges and Recommendations” in *The Daily Star*, November 1, 2008.

proper accommodation facilities for judges, and only a few districts have such official residences as a Judges Complex. The problem is most acute in the capital Dhaka. Hundreds of judicial officers are posted there, with housing for only 40 in the Judges Complex, the official residence at Azimpur, Dhaka.

On the other hand, many officers once posted to Dhaka do not want to leave. Rather, they connive to cancel their transfer orders. They hold on to possession of the government residence for as long as possible. No need to say how this complicates the housing problem for the new officers. Office accommodations are also acute in many districts. Court rooms and chambers are not available for all the officers.

In the many courts visited, the problem was most acute in the capital, Dhaka. It is known that the Judges of the Metropolitan Sessions Courts, the Judicial Magistrates of the Dhaka District Judicial Magistracy and the Metropolitan Magistrates of the Dhaka Chief Metropolitan Magistracy, share chambers with one another. They are returned to the same court room by turns. One court room was used by three officers at different periods of the day. It has negatively affected both the litigants and normal court proceedings. The officers fail to work to full capacity.

Official transport facilities provided for the judges are sub-standard and degrade the dignity that is due to the judiciary. The public can observe Dhaka court judges traveling to and from their offices in jam-packed old minibuses. When mechanical break-downs occur, the officers are required to go to court on their own. Moreover, transportation is not available for all the routes. For example, officers residing in the Mirpur area, where rent is comparatively inexpensive, are not provided with any official transport from the Dhaka Judge Court. A judge of the Dhaka Judge Court said that often, of necessity, he must use the town service buses along with advocates, advocate clerks and litigants. Dhaka Metropolitan

Magistrates use their minibuses always keeping in mind the inadequate, meager fuel budget allotment.

Last year, the Dhaka metropolitan Magistrates official microbus was stranded for long time. It appeared that the fuel supplier refused to give fuel on credit unless long-pending bills were cleared up. The Additional District and Sessions Judges have the awesome power to impose death sentences. They exercise this power and impose capital punishment in appropriate cases. Yet, they are not automatically provided with the requisite transportation despite their high security risks.

One of the major problems facing judicial officers of Bangladesh is insufficient security. Only a few official residences are provided with police guards, albeit minimal in number. Officers, who reside in their own private residences, are not provided with official protection. Judges often receive death threats from members of the *Jamiatul Mujahidin Bangladesh* (JMB) who had already assassinated two judges in a suicide attack. In a recent report in a national daily¹⁵³ it was stated that security, in court premises all over Bangladesh, had been tightened up, following an intelligence report of a possible extremist attack.

F. INDISCRIMINATE AND IMMATURE TRANSFER

Judicial officers often become the victims of indiscriminate and premature transfer from one station to another. The secretariat of Law, Justice and Parliamentary Affairs has the key role in the transferring of officers. To accommodate favored officers, indiscriminate and premature transfer is initiated. This type of transfer directly affects the family of the transferred officer.

153. The Daily Amader Shomoy, June 09, 2009.

G. ACR DILEMMA

The majority of judicial officers suffer from the dilemma of the Annual Confidential Reports (ACR). The District and Sessions Judge writes the ACR of his subordinate judges. This includes 60% of the ACR of the Additional District and Sessions Judges and the Chief Judicial Magistrate. It was the Chief Judicial Magistrate, alone, who used to write the ACR of his subordinate Magistrates including the Additional Chief Judicial Magistrate. Recently it was introduced that 40% of the ACR for the Additional Chief Judicial Magistrates and the Senior Judicial Magistrates would be written by the District and Sessions Judge.

Because of this ACR, it becomes difficult for the judges to act independently in the performance of their judicial work. Often the ACR authority exploits them and compels them to follow their wishes. Even though there is a clear and open allegation of corruption against a particular judicial officer, the ACR writing authority does not reflect this fact in their reports. They act out of bias or power through pure manipulation. Wives or family members of the ACR writing-authority also try to exploit the subordinate officers. When political leaders find it difficult to manipulate an ethically strong junior or mid-ranking judicial officer, they often try to make the “request” through his ACR-writing authority.

H. LIMITED SUPPLY OF PAPERS AND STATIONERIES

The supply of stationery in the courts is limited and not of sufficient quantity to meet every day needs. To perform its daily work, a court requires a large amount of paper and other materials. A judicial officer disclosed that in his court the official supply lasted for only a few months. In the rest of the time requirements are met by bench assistants and office staff. To cover these expenses, the court officer merely overlooks the *peshkar* when he demands money from the litigants.

CHAPTER: VII

PLIGHTS OF THE POLICE

In many respects the Police are akin to a supportive part of the judiciary. Most judicial work requires police involvement if it is to be completed successfully. But the Police in Bangladesh, as an institution, are in a very vulnerable position because they are immersed in immense and multifaceted problems.

A. POLITICAL INTERFERENCE

All the successive elected governments in Bangladesh have used the police force as one of their tools to maintain and control their power in the political arena. There is wide-range, frequent use of postings, promotions and transfers to adjust police force assignments to coincide with the plans of the political bosses. They are compelled to carry out illegal commands and to execute harassing orders.

B. DETACHMENT FROM FAMILY

Police have little time to look after their own family affairs properly. They are always on call, work around the clock and need to be ready at a moment's notice to rush to handle a case, anywhere, anytime. Their children are deprived of a regular fatherly/motherly presence and for

most of the family affairs they rely and depend on close relatives for help. To make matters worse, as the roster of police is at a level that is lower than what is actually required to serve the public, police authorities are rigid in granting permissions for leave applications.

C. BRIBERY BUSINESS

Almost the entire police department is infected with bribery. To the general population, the police are regarded as an institution run by bribery because of their failure to act. Promotion, posting, transfer, leave, all these are situations in which the higher authorities demand money from their subordinates. Premature transfer can occur for simply not giving in to the demands of the superior. Furthermore, it is claimed that there exists a chain of bribery within the police administration.

D. POOR SUPPLY OF MATERIALS

An adequate supply of materials and stationery is lacking in police stations and other offices. Officers must manage the problem locally and make up the short fall from their own pockets.

E. POOR NUMBERS

The total number of the police force in Bangladesh is 123,197, less than sufficient to protect and serve 140 million people¹⁵⁴. Police-population ratio is 1:1,138 in comparison to that of 1:728 in India, 1:625 in Pakistan, 1:249 in Malaysia¹⁵⁵. There is no separate investigation

154. <http://www.police.gov.bd/index5> (visited on June 09, 2009).

155. <http://www.police.gov.bd/index5> (visited on June 09, 2009).

cell in the police department. As a result, the investigation officers are involved in other works and duties. They have to lay aside their primary work of investigation and this affects the quality of their investigations.

F. FOOD

When working in the field, police are provided with their meals. However, the quality and quantity of the food is deficient, showing a lack of understanding and respect for the physical nature of police work. A Dhaka police officer said that only rice, beans, and a small quantity of fish/meat comprised the official diet supplied to those in the field. No vegetables, fruit or milk are ever served. This has a direct bearing on the general health of each police officer and their ability to perform up to standard.

G. ACCOMMODATION

Police are provided with housing and on-call sleeping accommodations that are sub-standard in four areas. First, the number of government housing for police officers is insufficient. Second, they are assigned to rented houses which present a security risk for them. Third, there are not enough beds in the barracks for the number of officers using them. Fourth, three or more staff sleep in shifts, using one bed.

H. TRANSPORTS FACILITIES

As a group, the Police have a weak transportation system coupled with poor transport facilities. Their overall, daily police work suffers as a result. The situation presents itself in this way. Officers, up to an Assistant Superintendent of Police, are provided with official transportation. Police stations, and other related posts, however, do not have even the minimum required

transportation. Needless to say, this limits their ability to hunt down criminals or to make special incursions into criminal activities. Supplies of gas and oil are limited. Any excess fuel has to be paid for from out of pocket.

I. INVESTIGATION COSTS

To conduct and complete an investigation, the investigation officers have to spend their own money. In many cases, it runs into a large amount. The newly-introduced system of providing investigation-costs is under-budgeted and not sufficient to meet the needs. The amount of money available is fixed in different cases. Additional money expended is borne by the officer concerned.

J. ARMS AND AMMUNITIONS

Arms and ammunitions used by the Police are considered out-dated by modern standards and criminal elements. Today, criminals use ultra-modern, state of the art equipment with semi-automatic, rapid-fire arms and ammunition. Therefore, the police are under-equipped and out-gunned. They face great difficulties in combating criminals using their less efficient weapons and equipment. These all negatively affects police effectiveness in maintaining law and order.

CHAPTER: VIII

CONCLUSION

No matter what form of corruption takes place in the judiciary of Bangladesh, political factors play a huge part in terms of the origin, development and practices of corruption. Government must take a holistic approach to the problems and undertake a thorough reformation of the existing systems without any further delay. The Subordinate Judiciary of Bangladesh has yet to develop as an effective institution under the *status quo*, and this is so even after its *de jure* separation from the executive branch of the State machinery. It is one of the most neglected institutions of the State having only minimum facilities. 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 system amongst the State organs, the judiciary should be rescued directly and with all due speed, from its status of vulnerability.

A. IDENTIFIED PROBLEMS

1. Local touts and persons with vested interests can exploit the man/woman on the street by using their ignorance of the judicial process, as an opportunity for their own personal gain.
2. Innocent persons are victimized by political leaders or activists through false cases and especially in counter cases.

3. People use every means to avoid lodging their cases in a police station because of the possibility of endless police harassment.
4. Police do not record genuine cases because of political considerations or because their demands for money were refused.
5. Police change the contents of the First Information Report (F.I.R.) or exclude the names of the accused persons without the informant's consent and knowledge.
6. Police record the cases under a lesser degree section of the law although the F.I.R. contains grave allegations.
7. Police show poor attitudes, are negligent and slow to respond after a case is filed. This is especially true in cases of rape where victims are not examined medically as soon as possible after the alleged offence has taken place. Also, records of police cases are not immediately sent to the concerned courts.
8. Litigants must pay court staff off during the filing of complaint cases and for any other subsequent processes.
9. Government interference by the Ministry of Law is still possible because of their control over posting and transfer of judicial officers.
10. Advocates, during the filing of any complaint case, do not disclose the real merits of the case to their clients, but rather fill them with a false hope of success.
11. False cases can easily be filed in the courts, bypassing the local police station and making use of procedural loopholes.

12. There is a range of the arbitrary exercise of cognizance powers by the cognizance taking magistrates.
13. Court staff demand money directly from litigants coming to the court to file cases.
14. False documents, especially medical certificates, are used during the filing of a court case.
15. In assigning big, important cases for investigation, preference is shown not for the integrity of the officers but for their capacity to earn money from bribes.
16. It requires active persuasion and persistence on the part of the informant to get an investigation officer to set an investigation in motion.
17. In many of the cases, the I.O. does not arrest the accused person. Sometimes he is instructed by the political authorities not to do so. At other times he is satisfied with the bribes he has received and so is assured in not seeking an arrest.
18. The investigation officers do not physically visit the sites of the crimes, or prepare the required sketch maps, or index in their own hand, the statements of the witnesses.
19. Investigation officers threaten accused persons to falsely implicate persons in other cases or falsely implicate close relatives in the case under investigation.
20. I.O. often refuses to meet with the informant or his witnesses. Statements of the witnesses might be recorded in a distorted manner, omitting points on relevant materials.
21. A wide-range of allegations exist, in cases of arrest without a court order or arrest warrant together with

bringing the accused before the courts with only vague, unspecified accusations.

22. Bench assistants and other court staff effectively keep records of court proceedings out of circulation by locking them up in their desk drawers. The police do not expedite the process unless effective communication for payment is made with the interested parties.
23. Police remand has become a profitable business for the I.O. Physical and mental torture of citizens has taken place while in police custody. Courts overlook complaints by accused persons who become victims.
24. To exploit the accused who are suspects in a case, investigation officers do not set up an identification parade to identify suspected offenders.
25. During the course of an investigation, incriminating articles which have been seized, at the beginning of a case or later in the investigative process, are altered or changed. This, effectively, gives undue advantage to the accused persons facing trial.
26. Laboratory reports on incriminating articles can also be bought for a fee.
27. Medical doctors accept bribe money in return for forged and contrived medical papers/reports. Manipulation of post-mortem reports affects the fate of a trial or cognizance of offences. Frequently, medical doctors are not independent in preparing reports, because of political pressures on them.
28. Arrested persons are not always produced before the court within the specified time limit.
29. Indiscriminate killing, of accused and non-accused persons, goes on in the name of “cross-fire”. This

constitutes a gross violation of human rights by members of the law-enforcing bodies.

30. Bail matter is a controversial area of corruption. Advocates make money by capitalizing on the litigants' sufferings. Court staff and some officers engage in collecting money. Listed here are some factors of corruption in respect of bail matters: lawyers giving false assurance to their clients; aid given to offenders when bail-bonds are not furnished by lawyers, public prosecutors and court inspectors; unofficial charges levied on clients by the court's copy departments; lawyers, or court staff observing and covertly manipulating the court's attitude on bail matters leading to further bribe possibilities; superior judicial officers' unorthodox requests or their exertion of pressure; and finally, the high-handed attitudes of government agencies/officers.
31. Confessions are reported to be obtained from an accused person by the use of force and severe torture.
32. Case diaries are not properly maintained by the investigation officers. They are not prepared on a day-to-day basis but written later on and in one sitting.
33. Police reports or inquiry reports are not submitted within the specified time limit, even after repeated reminders from the court. Inquiry or investigation officers submit their reports after long lapses of time. These reports are found to be vague and unspecific.
34. The supervising police authority demands money from the I.O. before endorsing any application he might make.
35. All incriminating articles are not destroyed. A great many are kept for the purpose of sale or to victimize innocent persons.

36. Government machinery is used to influence and misdirect sensational cases.
37. Names and addresses of the offenders are not properly verified. The I.O. submits a report favorable to the offenders by claiming their addresses are not verified.
38. The Public Prosecutor's opinions in corruption cases can be bought by the offenders.
39. The results of an investigation are not conveyed to the informant by the I.O. at the time of its submission before the courts.
40. Warrants of arrest are not signed on time or dispatched against the accused persons, but are often kept out of circulation to provide undue advantage to the offenders.
41. The police are reluctant to execute warrants of arrest. It is only during days of special drives does the execution rate increase.
42. Notifications in daily newspapers, against missing, accused persons, are often published in lesser known newspapers with limited circulation.
43. Whenever a case is ready for trial, the case record is not immediately dispatched by the responsible bench assistants. On the contrary, the staff of the receiving court refuses to sign the registration book admitting receipt of the documents.
44. Summons/warrants served on witnesses are not properly carried out by the assigned police personnel. The Public Prosecutor or the court Inspector, the complainant's advocate or even the court might return witnesses without examination.

45. There is no witness protection system or any mechanism to protect vulnerable witnesses from a possible, subsequent attack.
46. During the examination of an accused person, mere formalities are observed. The accused person is not fully informed and therefore fails to understand the essence of his/her case or its legal ramifications.
47. At the argument stage, most of the public prosecutors or court sub-inspectors show themselves to be unprepared. They are unable to answer any factual, relevant or vital questions of law. The courts are often subjected to prototype arguments found in the case records. Partisan and biased attitudes of the public prosecutors affect the case and its results. Judgments are not delivered in a short time but dragged on and on to further, consecutive dates.
48. Sheristadar and other court staff are required to be paid by the plaintiff while presenting their plaint before the court.
49. Often the plaintiff undervalues the property in dispute with a view to avoiding payment of court fees.
50. Serving of summonses or notices in a civil case is problematic. The *najir* plays a key role in this matter and the assigned process servers claim money from the parties before the document is served. Either by intention or by mistake, many of the summonses are not duly served on the proper persons. Non- service of summonses in numerous civil cases has caused a significant backlog in the entire country.
51. Many of the defendants intentionally do not make an appearance in court. But they may come secretly to monitor the proceedings, putting in an appearance at a time of their choosing. Government's appearance is ensured by the courts. The government pleader often

makes a deal with the plaintiff, which helps him to have an uncontested judgment/decree.

52. Many government properties are lost through *ex-parte* decrees in uncontested suits which remain unknown to the concerned government offices.
53. Like bail matters in criminal cases, injunction matters in civil cases involve large scale corruption. Efforts are made by the petitioning party, to have the results of their suit by way of injunction, at the very preliminary stage of the case.
54. Advocates have little interest in the Alternate Dispute Resolution (ADR) mechanism. Parties are found absent when called up by the court for using the alternative dispute resolution process.
55. Bench Assistants have wide latitude when demanding money from parties in a civil suit, to settle the peremptory hearing date. In many courts, this settling of the peremptory hearing date is controlled and directed by the bench assistants themselves.
56. Various techniques are employed to avoid presentation of witnesses before the courts on the peremptory hearing date. Government witnesses are, for the most part, unprepared and without the least bit of knowledge or idea of the subject matter. Bias and incapacity are the operative causes.
57. In most government cases, proper documents to establish the defendant's case are not submitted.
58. If any of the parties makes application for adjournment, repeated dates of arguments are fixed by the courts. Government arguments taken from their records are found to be prototypes. There is no such thing as delving deeply into the matters of the case.

59. Judgments that are not ready are not delivered on the dates fixed. Also, ante-dated judgments are published. Because of these two problems, aggrieved parties in filing an appeal are subjected to needless suffering.
60. Sometimes the execution takes longer period than the original suit and the parties become frustrated in combating unlimited legal battles. Police obstruct the natural flow of a case, being unduly influenced by the interested parties.
61. Local inspection reports or local investigation reports are defective due either to the incapacity of the inspector or the acceptance of monetary rewards.
62. Opinions of hand-writing or thumb impression experts are often claimed to be bought. To frustrate the proceedings they are often submitted late.
63. Adjournment costs allotted to the parties are reported to be swallowed up by the pleaders themselves without the knowledge or will of their clients.
64. The chairmen of the Village Courts are biased and partisan in disposing of cases.
65. Most of the cases filed in the *Nari-O-Shishu Nirjatan Daman Tribunals* are false, concocted and harassing in nature.
66. In the pre-trial stage of cases before the Family Courts, advocates are found reluctant to co-operate with the courts. The judgment holder must pay bribe money in order to receive the decreed amount awarded by the court. Advocates share the decreed money as part of their fees.
67. The Administrative Tribunals are not receiving records and documents quickly from the disputing offices to resolve matters earlier. In addition, the orders of the

- tribunals are not being dispatched on time or in a proper fashion.
68. The work load of the judicial officers is almost unbearable in some of the courts in the country. This comes as a result of the officers not being posted in proportion to the number of cases.
 69. The judge-population ratio is frustratingly low when compared with those of other neighboring countries.
 70. Judicial officers have limited opportunities to study or have training in abroad.
 71. The government is reluctant to arrange a special pay structure and benefit allowances for the judges.
 72. Judges are provided with limited, inadequate transportation facilities and fuel budgets. Once the approved budget is used up, further allocation is difficult to obtain.
 73. In the court environs, the judges have to put up with acute accommodation/scheduling problems. They share court rooms with each other, which causes difficulties in the use of space in carrying out their work.
 74. The community of judges is always subject to the risk of terrorist attacks.
 75. Residential accommodations for judges in the capital and big cities are not sufficient to meet the needs.
 76. Indiscriminate and premature transfer of judges has a deleterious effect on their judicial work as well as on their families.
 77. Superior officers often control and exploit subordinate officers using the power inherent in the sending of annual confidential reports.

78. Police-population ratio is very low in the country. It is next to impossible for police forces to serve the needs of the people.
79. Police are people who have little opportunity for family interaction. They have difficulty overseeing their children's development, be it education, healthcare or mental/emotional development.
80. The entire police department is negatively impacted due to bribery with regard to promotions, postings and departmental proceedings.
81. Police labor under a great many restrictions. The more outstanding are: an inadequate and sub-standard supply of food, housing and other materials, overcrowded/rotating sleeping facilities, insufficient transportation, out-dated, old-fashioned arms and ammunitions.

B. RECOMMENDATIONS

1. RECOMMENDATIONS TO THE GOVERNMENT

- (i) In every fiscal year ensure submission of mandatory wealth statement for the judicial officers, police personnel, lawyers, court staff, and their family members. Confiscate the illegally amassed wealth and take due legal actions immediately. Political leadership must start a screening among themselves, and then take a holistic approach involving all its different sectors.
- (ii) Set 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) Take steps immediately to ensure the *de facto* separation of the judiciary from the executive organ of the State. Appointments, promotions, postings should be controlled by the Supreme Court without interference from the government secretariat. Establish a separate secretariat under the control and leadership of the Supreme Court of Bangladesh with adequate powers and capacity to communicate directly with the President.
- (iv) Accept and implement the proposal for separate pay scales and benefits for the judges.
- (v) Establish additional courts with additional posts and appoint sufficient number of judges on a regular basis.
- (vi) Provide adequate government housing for judges and arrange strict, continuous security in their courts and residences.
- (vii) Provide personal transport with security at least up to the level of the Additional District and Sessions Judges.
- (viii) Establish separate court buildings as soon as possible for the Judicial Magistracies all over the country.
- (ix) Appoint Public Prosecutors and government pleaders to a permanent prosecution system considering their integrity, education and experience, not their political affiliations.
- (x) Supervise and take action in respect of government interests in pending civil and criminal cases. Establish case-monitoring entities in each district with adequate powers.

- (xi) Establish a separate investigative wing of the police to ensure effective and quality investigations.
- (xii) Allocate additional funds for the expenses required for proper investigations to encourage the investigation officers to do their jobs whole-heartedly and raise morale.
- (xiii) Minimize governmental interference in investigation and trial processes.
- (xiv) Introduce a witness protection system to ensure that witnesses appear before the courts without fear of subsequent attacks.
- (xv) Enhance training standard for the judicial officers, and ensure as trainers, not politically chosen persons, but persons with high morale and commitment to equity, justice and human rights. Also encourage training and education abroad for judicial officers by relaxing restrictions.
- (xvi) Increase salary and other benefits of the police, and introduce a handsome amount of risk-allowance. Ensure an effective financial security for the family members of police personnel if he comes under attack/ dies while discharging duties.
- (xvii) Place 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.
- (xviii) Replace the existing prosecution system regulated by the police with legally educated and well-trained public prosecutors.

2. RECOMMENDATIONS TO THE COMMUNITY OF JUDGES

- (i) Introduce more responsive court administration and

case management systems in the respective courts.

- (ii) Increase vigilance in supervising the work of the ministerial staffs.
- (iii) Return of unexamined witnesses is not acceptable except in extreme or unavoidable circumstances.
- (iv) Take up complex and cold cases in the process of adjudication and do not avoid them.
- (v) Do 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.
- (vi) Ensure timely and early disposal of orders in the court.
- (vii) Be fully equipped through adequate study of the latest developments of law, legal texts, codes and decisions.
- (viii) Do not entertain telephone calls from, or meet, political leaders, if not relevant.

3. RECOMMENDATIONS TO THE LAWYERS

- (i) Educate and encourage clients in the methods of alternative dispute resolution.
- (ii) Submissions for adjournment petitions in the courts should not be frequent unless extreme necessity.
- (iii) Decrease the number of cases handled at the same time and train junior staff to share in the responsibilities.
- (iv) Increase trust in your case by not meeting judges in their chambers or residences.

- (v) Provide your client with a receipt of the payment you have received from him.

4. RECOMMENDATIONS TO THE POLICE

- (i) Police must develop as an institution in the true sense of it. Ensure professionalism and commitment to uphold rule of law and justice in the society.
- (ii) Ignore political influence and pressures, thereby establishing dignity of the police force.
- (iii) Register only genuine cases, rather than politically fabricated ones, thereby upholding a clean image of the police force.
- (iv) Make sure torture, extra-judicial killings or any other inhuman or degrading treatment do not take place to the persons under police custody.

5. RECOMMENDATIONS TO THE LITIGANT PEOPLE

- (i) Be above the tendency to bribe judicial officers/staff in order to buy favorable judgments and orders.
- (ii) Disclose core problems to the lawyers thereby helping to alleviate filing false and harassing cases arising out of land disputes or personal enmities.
- (iii) Make efforts to attend the courts regularly on the fixed dates.
- (iv) Ask for a receipt from your lawyer while you pay him.

6. RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

- (i) Keep consistent pressure on the government to ensure the reality of an effective separation of the judiciary from the executive organ of the State.

- (ii) Arrange for and provide adequate funds and assistance for the structural development of the judicial sectors.
- (iii) Encourage the national/international, non-governmental organizations to take part in judicial reform projects, especially those that raise social awareness.

ABOUT THE BOOK

Today's democratic State is better understood in terms of its behavioral patterns, manifested in institutional norms and practices, and its degree of commitment towards equity and justice, not merely in terms of its elected government. A merely electoral democracy in Bangladesh, non-accountable and non-transparent, has only provided legitimacy to the corrupt leadership. In this volume, Assistant Professor Mr. Islam examines the impacts of this politics-corruption nexus on the Subordinate Judiciary, a significant part of the judicial system of Bangladesh, and portrays how justice and equity appear illusory to an 'ordinary' Bangladeshi. This is an outcome of an ALRC-supported empirical research project.

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