

The disposable prosecutors of Bangladesh

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Bangladesh does not have permanent prosecution service. Rather, the nation has so far lived with a disposable prosecution system, although there is no question that it needs a permanent one. Whenever a new party has taken over government, all prosecutors have been removed from their offices, and new group has replaced them.

Appointments

The prosecution wing in every district consists of the posts of Public Prosecutor (PP), Government Pleader (GP) and Special Public Prosecutor (SPP). All these law officers are accompanied by assistants, whose numbers vary depending on the number of courts they must cover, and the size and population of the district.

There are no particular rules to appoint prosecutors in Bangladesh. The recruitment process is based on the political choice of the ruling political party of the day. The local parliamentarian, influential political leader associated with the ruling party or bar association leader with political affiliations, or perhaps all of these, make lists of lawyers to serve as prosecutors. They send these lists to the Ministry of Law, Justice and Parliamentary Affairs through the office of the local deputy commissioner, who is the ex-officio district magistrate, or directly to the ministry by 'selectors', depending on the extent of their power and influence. The government appoints prosecutors from among those recommended.

Younger and less-experienced lawyers seek appointment as prosecutors through personal and political channels. Those persons with the right connections can get one for free, but otherwise a down payment is needed, or guarantee of suitable repayments later. Thus, prosecutors often have inadequate knowledge of law and experience in legal practice but are pronounced in their political biases. By contrast, On the other hand, senior lawyers are reluctant to serve as prosecutors because of the lack of facilities and remuneration.

However, under the present military-backed interim government a slightly different type of procedure has been followed. In some cases, interested lawyers have sent applications to the offices of deputy commissioners to seek positions and the government has made its choices after inquiries conducted through intelligence agencies as well as in view of the relationships between the applicants and officials in related agencies. Thus the political affiliations of some prosecutors are less pronounced than before, although they are still screened in order that they are proven reliable for the government's purposes.

The president appoints the attorney general under article 64 of the Constitution and sections 492 to 495 of the Code of Criminal Procedure. The appointee must have the same qualifications as a judge of the Supreme Court, and serves the president. However, in reality the president has no power to select the appointee but merely formally approves the government nominee, who is selected for the

same sorts of political reasons as ordinary prosecutors.

The additional attorney general, assistant attorney general and a number of deputies serve the attorney general. As in other cases, there are few criteria for their selection and little screening. The only real condition is that they be lawyers capable of pleading cases individually. Nor is there any specific recruitment process, like the holding of an examination for interested applicants.

The case of Khodad Khan Pitu

The absence of special procedures to screen and appoint prosecutors became all too evident in the case of Khodad Khan Pitu, a lawyer of the Naogaon District Bar Association who was appointed as Public Prosecutor of Naogaon on 13 June 2007. The District Magistrate of Naogaon appointed him without any official permission from the Ministry of Law, Justice and Parliamentary Affairs.

It subsequently came to light that Khan was an accused in a criminal case relating to the assassination of a leader of a pro-Islamic student organization, Azgor Ali, at the Rajshahi University, under trial in the Rajshahi Session Judge's Court. Khan claimed that he was not aware of the murder case against him, although he admitted that he had been discharged from another murder case. Moreover, at the time of appointment Khan was also an accused in another criminal case regarding violation of electoral rules, under trial in the Magistrate's Cognizance Court of Naogaon.

In defence of his boss Sajal Samaddar, Additional District Magistrate of Naogaon, claimed that the district magistrate is able to appoint temporary public prosecutors according to his ex-officio power under section 17 of the Law Report Manual. He maintained that they had been unaware of the cases against Khan at the time of his appointment and only learned about them through the news reports. A probe committee later found the reports to be true.

Private versus public practice

Public prosecutors use their positions to advance their private practices, which results in unseemly events in court such as the appearance of a group of witnesses without any prosecutor on hand to examine them or prosecutors who have not prepared for a hearing who confuse and intimidate their own witnesses. Unsurprisingly, such cases result in acquittals. There are also frequent complaints of prosecutors (especially SPPs) who having won a hearing in the lower court where they have pleaded for the state reappearing in the appellate court representing the other party as a private lawyer.

Ironically, one cause of public prosecutors' ill discipline and tendency to engage in private practice when they are supposed to be working for the state is that they are independent. They cannot be sanctioned or punished if they fail to appear at their offices or in court. Only assistant and additional prosecutors are liable to their immediate superiors.

Criminal investigation procedure

The most common preliminary step in seeking criminal justice in Bangladesh is to lodge a complaint with a police station in the jurisdiction where the offence

allegedly occurred. Thereafter, police must investigate, collect evidence, obtain warrants, arrest the alleged criminals and produce them before the relevant court. Such cases are referred to as GR cases: those on the Government Register.

However, lodging complaints with police stations is oftentimes difficult for the poor and politically weak, especially if the complaints relate to wealthy and politically connected persons. The offenders or persons in league with them will invariably make arrangements with the police, even before a complaint is made, to block the victim.

In such cases, the other option is to lodge a complaint directly to a magistrate's court. The court can then order the officer-in-charge of the relevant police station to "take necessary steps" or "take legal steps followed by inquiry" or "register as a complaint following inquiry". Such cases are identified as CR cases: those on the Complainant Register.

CR cases are fraught with difficulties, as the police will usually thwart the investigation unless they have no personal interests in the outcome and the victim is now prepared to pay more than the other party to succeed. They may issue a final report, closing the inquiry without trial, or issue a report that will not stand up in court.

The case of Shafikul Islam

The conviction rate in all courts of Bangladesh is only around 10 per cent. The reasons for this include the political and transitory nature of the prosecutors' work and postings, their predisposition towards private practice, and the obstacles posed by the police.

The case of Shafikul Islam is informative. Shafikul was a schoolboy who on 25 August 2000 was allegedly murdered by his stepbrothers and sisters and their relatives in Bhagalpur village in Narayanganj district. According to Shafikul's relatives, his paternal aunt had left her ancestral lands to him since she did not have any children of her own. The murder had thus been motivated by jealousy and spite.

Shafikul's mother, Sakerun Nesa, lodged a murder case against the alleged perpetrators with the Sonargaon police station. Sub Inspector Nazrul Islam was assigned to investigate. However, according to Sakerun, the investigating officer was bribed and did not record the witness statements correctly, instead preparing a report that would allow the suspects to walk free. The magistrate of the Cognizance Court of Narayanganj also allegedly framed the charge in a faulty manner, thereby weakening the case.

During the trial, the public prosecutors of the Narayanganj Session Judge's Court changed several times. They were absent from the court when evidence was taken from witnesses and were indifferent to the trial process. Judges also took leave and showed no interest in speeding the case.

Meanwhile, the accused had been released on bail and had threatened Sakerun that they would kill her too, coming to her house on many occasions. At last she

became extremely disappointed and lost hope of getting justice. '

At this point, someone suggested to her to apply to the Ministry of Home Affairs for the case to be transferred from the Narayanganj Session Judge's Court to the Speedy Tribunal of Dhaka, which has been appointed to try 'sensational criminal cases' in a speedy manner.

The ministry approved her application and the case was transferred to Speedy Tribunal-4. On 16 April 2007, the tribunal refused bail for one of the accused while the others remained free and again went to threaten the victim's mother.

According to a prosecutor handling the case at the tribunal, the investigating police and prosecutor in Narayanganj had clearly collaborated to fix the case and get the accused off the hook. He concurred with the assertion of the victim's mother that the police had not recorded witness statements correctly and had framed the charges in a defective manner, recording them under both section 302 and 364 of the Penal Code (murder and kidnapping), when as the dead body had been recovered the charge should have been under section 302 alone. However, he noted that already the court had recorded the depositions of 12 witnesses for the prosecution without either judges or prosecutors pointing to the defects of the charges.

The prosecutor in Narayanganj also caused undue delays to the processing of the case before the Speedy Tribunal, not sending the case diary to the SPP's office for more than a month. As the tribunal must complete its work within 135 working days, the tribunal prosecutor had to call the prosecutor of the Narayanganj Session Judge's Court to receive the case diary, and was told that the prosecutor had not received a copy of the gazette notification for transfer of the case to the Speedy Tribunal-4 of Dhaka. The tribunal prosecutor had to make a photocopy of the notification, which he had received, and send it by courier to Narayanganj.

As regards to the role of the police, persons who should have been included in the investigation report as accused were in fact made witnesses for the prosecution, while many persons who should have been listed as witnesses were ignored completely. The police investigation report did not properly record the full sequence of events, and the information given in the report below the standards set by the Evidence Act.

After more than seven years, Sakerun's struggle for justice ended on 4 November 2007 with the acquittal of all the alleged perpetrators except her stepson, who was given life imprisonment: i.e. 14 years in jail. However, her lawyers are afraid that he may also be acquitted by the High Court Division as soon as the appeal is adjudicated, due to the inconsistencies in the investigation reports and prosecution process.

When Sakerun heard the verdict in court, she cried for more than an hour. The elderly lady was counting her total losses: her only son, who was her most affectionate and dearest child and would have been her support in her old age; more than seven years of her life; the sale of her assets and properties to support the case; and, faith in the judicial system. According to her, "I had to pay bribes to

the court staff, including the bench clerks, to get photocopies of the proceedings of the court, including the depositions given by the witnesses before the court, for the information of the SPP and the private lawyers. I had to pay 200 Taka (USD 3) to get two pieces of paper from the bench clerks; they are blood suckers! (Crying) Allah (the Almighty) shall try these people for squeezing my blood and depriving me from justice."

Police as prosecutors in magistrate's courts

Under sections 492(2) and 495 of the Code of Criminal Procedure, the government assigns police to conduct the prosecution in the magistrate's courts, which deal with around 70 per cent of all cases in the country:

Section 492 (2). The Chief Metropolitan Magistrate or the District Magistrate, or subject to the control of the District Magistrate, the Sub divisional Magistrate, may, in the absence of the Public Prosecutors, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Government may prescribe in this behalf to be Public Prosecutor for the purpose of any case.

Section 495. Permission to conduct prosecution: (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Government in this behalf but no person, other the Attorney General, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing the prosecution as is provided by section 494 and the provision of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

A police officer at the rank of sub inspector normally deals with the prosecution of cases before the court, although these officers do not have law degrees or training in prosecution; they are just transferred from a police station to the job, sometimes as punishment.

In cases that are tried with police as prosecutors, the battle is imbalanced because the prosecution either fails to prove the charges or the accused are convicted on faulty evidence and reasoning and are acquitted on appeal.

The case of Abul Kalam Azad

The acute problems associated with having police serve the dual role of prosecutors can be seen clearly in the case of Md. Abul Kalam Azad.

Azad, a 33-years-old small businessman having two shops selling household aluminium goods in Khalishpur, Khulna city, was tempted by the field officers of an NGO-based bank, BRAC Bank, to take a loan to improve his business. Following frequent offers by the officials of the BRAC Bank, Azad agreed to mortgage the

deed of his home, which had an approximate value of 600,000 Taka (USD 8500), for which he received a 300,000 Taka loan on 10 April 2005 under a 'Medium-Term Loan' programme. Before granting the loan the bank insisted that Azad put his signature on two blank checks, despite having the deed of his house as security.

After receiving the loan, Azad was asked to repay it by monthly installments of 17,700 Taka. He calculated that the money to be repaid to the bank would be at an interest rate of nearly 38 per cent and insisted that the bank limit the interest rate to the agreed rate of 15 per cent.

In response, the BRAC Bank lodged charges of deception and breach of trust against him under sections 406 and 420 of the Penal Code on 13 December 2005, at the Gulshan police station in Dhaka, although the loan dealings were under the jurisdiction of Khulna city, more than 300 kilometers away. In the complaint, Md. Mizanur Rahman, an officer of the bank, alleged that Azad received money from the Head Branch of the BRAC Bank situated under the Gulshan police station in Dhaka and was refusing to repay. Sub Inspector Anisur Rahman submitted an investigation report with the Chief Metropolitan Magistrate's (CMM) Court (now Chief Metropolitan Judicial Magistrate's Court) on 28 January 2006, bringing the charges against Azad, who had meanwhile been paying money to the bank without knowing about the case against him and in 19 installments had repaid 336,300 Taka.

On 25 September 2006, the Khalishpur police arrested Azad at his shop, following an arrest warrant issued by the CMM Court of Dhaka. He was detained in the Khulna District Jail for 23 days and then transferred to the Dhaka Central Jail where he was detained for five days. During the period of 28 days in detention he submitted a petition for bail; however, the court did not grant it: only on October 23 did the CMM Court of Dhaka grant bail.

Having been released from jail, Azad paid a further 85,736 Taka to the bank. According to his lawyer, this should have discharged him from the charge; however, the police who were serving as the prosecution did not understand the legal points. The magistrate also was ignorant about the application. The court has lingered on the case by using the excuse that the complainant, who had by then switched his job from the BRAC Bank to a governmental department, has to appear. Azad was meanwhile has been forced to commute from Khulna to Dhaka for the ongoing hearings.

Neither the police investigation report nor prosecution police has at any point suggested that it may not have been Azad who had lied but rather that it may have been the BRAC Bank, nor have they raised any questions about the fact that the incident occurred far outside the jurisdiction of the Gulshan police station.

Azad has had to sell one of his shops in order to pay the expenses associated with the trial. The case is still pending with the court. Although the case could be closed at any time, the lack of legal knowledge among both the prosecuting police and the lack of interest and ability of the magistrate have caused it to be prolonged indefinitely.

Conclusion

The authorities of Bangladesh must ensure reforms to the prosecution system as well as the institutions related to the criminal justice system in compliance with the international standards and norms. To this end they should:

1. Establish an independent and permanent prosecution service rather than a disposable one under executive control and train all persons recruited to it.
2. Make specific rules on recruiting of prosecutors to the service through an independent and transparent process.
3. Design a system to monitor and assess the performance of prosecutors and make further improvements to the service.
4. Ensure that prosecutors and the service receive adequate remuneration, equipment and support.
5. Use an Internet network and public information database with access to documents relevant to ongoing trials for the parties to those cases and with general information on events and issues of public importance.
6. Set up an audio-visual documentation system for prosecutions and the proceedings of trials.
7. Install close circuit cameras (CCTV) to monitor activities of court staff and record malpractices and corrupt dealings.
8. Remove the authority of police to act as prosecutors.
9. Inaugurate an independent criminal investigation department comprising of police, lawyers and forensic experts with ample facilities and regular trainings.
10. Introduce a 'One Stop Service Centre' to the courts where parties can receive quality legal support, especially in the drafting of complaints, making of primary inquiries, arranging of medical examinations and recording of testimonies.

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