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## VISITING EXPERTS' PAPERS

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### THE ROLE OF POLICE, PROSECUTION & JUDICIARY IN THE CHANGING SOCIETY

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#### I. INTRODUCTION

Half a century ago, there was no systematic, objective information available on crime and criminal justice policies. Over the years, the relevant institutes of social defence in various countries have sponsored research that spurred an evolution of understanding of crime and its impact. Today, we recognise that the cost of crime is far greater, its effects on victims more traumatic and its corrosion more widely spread throughout our society than we realised, even three decades ago. Insights provided by research have set in motion a rethinking of how we view crime and criminal offenders.

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders is a recently forged link in a chain of inter-governmental agencies concerned with the prevention of crime and the treatment of offenders:

“Setting aside the great need for more knowledge of the human causes of crime, and their treatment outside the penal system, one must perhaps place foremost the need to cut off persistent criminality at the source, first by the perfection of methods (already advanced in many countries) for the rational and human treatment of young offenders, then by the development of methods of treatment for early offenders which will avoid the necessity of imprisonment”.

In the above context, the present theme is not only quite appropriate but also time worthy. To quote UN Secretary General Thant “a social defense research policy must necessarily be shaped by continual research if it is to be dynamic and attuned to changing needs. There is, for example, a particular need for evaluatory research on crime prevention and treatment programmes, and for devising accurate indices of the extent and trends of crime and delinquency.”

The concept of law changes from time to time and consequently, the concept of crime also undergoes a transformation due to the passage of time. With the induction of the concept of social and economic equality in the realm of human thought, sociological ideas have undergone a sea change, and the concept of law and crime have been victim of this transformation. At the close of this century, and before the dawn of the next, the world is becoming more and more interdependent - so too is crime.

As Aldous Huxley said “never before have conditions been so appropriate for human beings achievement of happiness as our present times, due to the advancement of science, technology and other areas. But at the same time, to achieve this desideratum we have to overcome many obstacles, the main being crime.” Increasing development appears to create new opportunities for new forms of crime too. Today it is a truism to state that there is a relationship between crime and development. For many, crime and development are so closely interrelated that there is nothing more logical or

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natural than to look at them in a causative or at least highly associative manner.

One of the most important factors that needs to be emphasised is the moral issue. Economic growth should go hand-in-hand with stability of the moral standards of people. Thus the issue should be integrated in the national and economic plan; the root causes of criminal justice are from crime causation. The essential factors responsible for humanity's false views, eventually leading people to commit crime, as studied in Bangladesh, are mainly due to the following:

- i) Poverty, Greed, Hatred, Delusion, Frustration.
- ii) Bad Companions, Crime Victim, Inefficient Institutions.
- iii) Vulnerable Places, Drugs, Weapons or Arms Trafficking.
- iv) Polluted Environment, Migrant Forces, Jobless Educated Vagrants.
- v) Triads, Recidivist, Illegal Immigrants, Underground Cadres.
- vi) Political Patronage, Armed Goons, Violence and Terrorism.
- vii) Blackmoney, Bootlegging, Economic Crime Syndicates and Scams.
- viii) Political Victimization, Abuse of Power, Corruption, Nepotism.
- ix) External Interference, Smuggling, Illegal Trafficking of Women and Children.

## **II. CURRENT SITUATION, REASONS AND BACKGROUND OF CRIME**

In the backdrop of the position stated above, there has been research in social defence. Some developing countries have set apart quite a portion of their budgets for assessing the impact of technological development vis-a-vis moral degradation and the degeneration of the family structure. Unfortunately in developing

countries, especially in this region, not much importance has been attached to this aspect. Fortunately of late, United Nations agencies, the Asia Crime Prevention Foundation, UNAFEI Alumni Association and various NGOs and voluntary agencies have come forward to give serious thought and due consideration to sensitize this issue. To be specific, Bangladesh stands as a unique example where the unusual population boom within comparatively lesser habitable areas on the one hand, and dire poverty and innumerable jobless vagrants coupled with routine natural disasters on the other, have posed a serious threat to moral life. This has not drawn as much attention as it deserves from those who are concerned in perspective planning, objective law enforcement, desirable judicial process and welfare oriented rehabilitation of the incumbents. The result is that today we do not have the authority of the old guard and their moral values, who used to lead the family with age old norms and practices. Rather, abject poverty and avenues for abundance have made them forgetful of these values, making them prone to adventure, comforts and quick riches, irrespective of ethics and humane feelings.

From experience as a law enforcement officer over a period of four decades, it has been noticed generally that crimes have been committed comparatively more by rich and poor; whereas the middle class are rather more law abiding and respectful of conventions and customs. To elucidate through example, addiction to drugs is a new phenomenon which was not that prevalent a decade back. Statistics show that wards of the very well-to-do families, accompanied by their friends who are extremely poor, generally use and develop addiction unhesitatingly. This indicates that the "Haves" are associated with the "Have-Nots", in other words wealth and frustration, are mingled together to commit

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undesirable things without pricking of their conscience. Probably in both cases, guardians have not done much to control their dependents. Curiously enough, these offenders who often show muscle power and brandish illegal weapons, know that through undue influence they will mostly be immune of their misdeeds.

Confluence of legal justice and people's justice is the highway to a social justice state. Where the legislature, executive and the judiciary are well aware of their respective domain's rights and obligations to make the rule of law a reality of life and society. To keep society from falling apart, the first thing needed is law. And for law to be operational effectively, in the interest of cohesion of society, we have to have a sound system of criminal justice administration. Generally the members of police force are supposed to be the protectors of law. How they enforce it is the concern of the relevant authorities of the government. The police are one of the main functionaries for the entire criminal justice system - which is primarily composed of code (law), police (constabulary), courts (judiciary) and jail (corrections). The problems of criminal justice administration demand national action, where all the component partners are to duly play their role. Indeed they are supplementary and complementary to each other.

There is a feeling amongst a section of people that controlling crime is the sole responsibility of the police. This impression stems from the fact that the police occupy the front line in the efforts of a society to protect the life and property of its citizens. They are the people who directly confront the criminals and to whom the public look for personal safety. But it should be borne in mind that crime is a social problem and without the help and support of the community, the police can

not effectively check crime single handedly. It must be understood that the police do not keep public peace alone. Rather, an unconscious network of voluntary controls and standards among the people keeps it. This convention is more effective than the codes and law, as it is obeyed, not enforced.

Needless to say, we are in the midst of very trying times. Growing disrespect for law and order is reaching intolerable proportions. With new tension and conflict of power politics, greater responsibility has been thrust upon the police by this ever-increasing menace. We find increasing public concern over the decline of law and order, and defiance of rules and regulations. We also notice the declining public attitude towards the police and the reluctance of citizens to become involved in preserving law and order, especially to give evidence in court.

The police administration faces a dilemma when they are increasingly saddled with innumerable non-police jobs, which tell upon the efficacy of the enforcer. They are overworked, underpaid, undermined and underestimated. However, a certain group of people claim that the police always seem to be around when they are not wanted, and are often untraceable when desperately needed. However, police are found almost everywhere in the world. Even though most parties in power support the police on their behalf, generally the Opposition becomes very uncharitable towards them. The fact remains that because of some black sheep, excess and polarization, the whole department is often castigated and their image suffers a setback; reverting the good police to moral harassment and psychological disappointment, which is anything but desirable.

### III. RESPONSE OF THE CRIMINAL JUSTICE SYSTEM AND PROBLEMS THEREOF

Police, being the main organ of investigation, require not only special skills for their challenging job, but also public co-operation without which they cannot unearth clues to progress further bringing the real culprits to justice. For that, s/he needs to be a person of integrity and any sort of corruption is sure to mar the respect and confidence of citizens (which is gradually waning, even in the western countries). Unless the police force recovers the ground they have lost already, and do their best to establish their credibility, they will become less effective in their role as investigators. This is a matter of grave concern, especially in the crime control system, as certain civil liberties are sacrificed in order to secure the successful prosecution and conviction of the guilty persons - the investigator is allowed certain latitude to go astray to collect proof. This needs to be closely reviewed in the light of Article 31 of the Bangladesh Constitution "To enjoy the protection of law and to be treated in accordance with law"- the inalienable right of every citizen and every other person within Bangladesh. In particular, no action detrimental to the life, liberty, body, reputation or property of any person shall be taken, except in accordance with the law.

The modern criminal justice system has evolved over the centuries to secure the rights of criminals, victims and society in general. Let us not forget that criminals are also human beings and deserve some rights, unless proved guilty of the offence charged.

As a crime is reported or suspected, it sets in motion the wheels of the system. Investigation is started, evidence is

collected; charge-sheets are framed for prosecution or final reports are given for not having the grounds to prosecute. The case may be sent to court either for trial or accepting the final report to close the issue. Here the police are both the investigator and also the decision-maker for prosecution. At the time of prosecution (generally for cases in lower court), court police, i.e. prosecuting sub-Inspectors, are authorized. Depending on the gravity of the case, the Government appoints an Assistant Public Prosecutor or Public Prosecutor, in collaboration with the Assistant Superintendent of Police (Prosecution), to work on behalf of the police cases, i.e. cases registered at the police station, either by the complainant or by the police themselves. In some exceptional cases, the Government hires a public lawyer/advocate of repute to conduct the case on behalf of the State. Similarly, in the absence of the accused or in case of pecuniary difficulties, the Government arranges a lawyer for the defendant so that no one goes unheard during trial, failing which may lead to a miscarriage of justice for not providing constitutional benefits to the aggrieved.

Presently, the picture of the criminal justice system and its administration does not give a very optimistic impression. The net result after all the stages are far from satisfactory. Here, among many other counts, there is a growing tendency to go for separate cadres of prosecutors, instead of engaging police officers for both investigation and prosecution. Many speakers, on different occasions, have remarked that the time has come to do away with the present system and that trained prosecutors should be utilized to serve the public interest better, to ensure that public money and judicial time are not wasted, and that police efforts should not go in vain. Hence prosecutors should weigh the evidence against the accused, the

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credibility, motive, character, antecedent, substance of evidence, reliability of witnesses and other relevant issues taken into consideration from a practical point of view. The Ministry of Law, Justice and Parliamentary Affairs is reportedly aware of the situation and some serious thinking is afoot on this issue.

Under the Code of Criminal Procedure, it is worth while to mention that cases are broadly categorized into cognizable and non-cognizable; with their classification effecting arrest, bail, compoundability, courts for trial, procedure of trial in complaint cases on First Information Reports or through cases registered directly at court. Foundation of the case is built during investigation, while the prosecution nurtures it thereafter; how the trial is to be conducted is the jurisdiction of the court. To get a fair and speedy trial is a fundamental right guaranteed in the Constitution, Article 35, protection in respect of trial and punishment; Article 33, safeguard's as to arrest and detention; and Article 31. The question of fair trial presupposes fair investigation and fair prosecution, and providing scope for the defense of the accused under legal dispensation.

In our criminal jurisprudence, a person accused of an offence shall be presumed to be innocent so long as he or she is not proved guilty by legal evidence beyond all reasonable doubt. The doctrine of reasonable doubt plays a vital role in our legal system as a safeguard against conviction of the innocent. Here though, it is expected that no crime should go unpunished - the law zealously guards the civil liberties of its citizenry. It insists that the prosecution, in order to secure conviction of an accused, must present acceptable evidence. A judge will exclude from consideration a piece of evidence which has been improperly obtained or

received. In this context, it is worth mentioning that statements made before the police under section 161 Cr.PC are not acceptable, while those made before a magistrate under section 164 Cr.PC are admissible in trial. This of course questions the efficacy of the investigative agencies performance, which deserves thorough reconsideration.

A special mention needs be made here that for the purpose of protecting social order and peace, by preventing prejudicial activities against the State, the Special Powers Act 1974 was enacted. There are many arguments for and against this Act, which curtails the fundamental rights of the citizen. Instances are not rare when the Government has sometimes used the provision of the law arbitrarily - though subsequently certain modifications have been made. Meanwhile, the Supreme Court took a commendable stand in checkmating arbitrary arrest and detention by granting anticipatory bail and directing the release of some detainees forthwith. However people's demand for repeal of the law remains as before.

'Justice delayed is justice denied' is an often repeated proverb. Again during martial law, another phrase was commonly used, 'Justice hurried is justice buried'. The whole drama of criminal proceedings ends with the verdict of the court, in which the police/investigator, the witness, the prosecutor and the judge/magistrate play their respective role. The judge is the keeper of the conscience of society, and prosecutors and defence lawyers are there to help them to come to the correct decision through an intricate battle of wits to thrash out the evidence and establish the truth (which may not necessarily be the whole truth). However in passing sentence, the court must have regard to the nature of the offence(s), status of accused and overall ends of justice. The crux of fair justice lies

in fair investigation, fair conduct of trial by prosecution and defence, proper application of law and impartial decision in the delivery of judgement.

But certain basic difficulties are real hindrances, like inadequate manpower for investigation. Police who are mostly busy with protocol duties, lack the modern equipment to help solve crimes. Public apathy to law enforcement, parochial appointment of public prosecutors, backlogs of cases (both in lower and higher courts), non-supervision of court proceedings, unnecessary adjournment, willful absence of the witnesses are significant impediments. Similarly, the unusual delay in getting reports from the lone chemical laboratory for the whole country, magistrate's other commitments, court logistics, inherent deficiencies in law and rules made during colonial regimes, fraudulent practice in the arena of judicial process, insufficient budget provisions and above all, the vested interests of the party in power and the opposition too need to be overcome.

#### **IV. COUNTERMEASURES TO IMPROVE AND ENHANCE REMEDIAL ASPECTS OF THE PROBLEMS IDENTIFIED**

These days, economic crimes like bribery and corruption are increasing at a fast rate, being organized, deep-rooted and systematized. In some cases, the practices go far beyond national geographic limits. With the expansion of foreign aid and investment, these groups are intent on reaping the harvest themselves. It is needless to say that instead of sustainable growth and development for the vulnerable segments, the rich are becoming richer and the vast majority are often deprived of the benefits of the so-called 'Pro-poor Agenda'. A disproportionate burden of the misery of poverty falls upon women and children. As

a corollary, there have been innumerable instances of illegal trafficking of women and children across the border.

The Constitution has an explicit "social equity" clause under Article 19 (2). Practically, one of the difficult problems is the very real gap between formal legal equality between citizens, and the real inequality in their actual conditions. Thus UNDP in their report states that "absence of an accountable system of democracy and good governance" is a "major cause of poverty". They also identified law and order as one of the priorities under good governance. Equal protection of law needs reasonable opportunities to access the course of law. Otherwise justice remains a myth. "justice is always advantageous to the rich" is equally applicable here. Major imbalances in progress often causes conflict among people and thereby increase unhappiness in the environment.

The study also noted that one of the fundamental problems was the dissonance between laws and their implementation. Good laws remain rarely implemented. Fundamental rights guaranteed by the Constitution and internationally adopted human rights legislation are also hardly translated into reality. All such covenants to which the country is a signatory must be implemented so that society does not fall into the grip of terrorists and political goons who commit violence anywhere they like.

There has been growing awareness amongst the public for improvement of the judicial process and prevention of the cycle of crime. A good many steps are in hand by government authorities for this purpose. To highlight some of these, the following are worth mentioning. The Ministry of Home Affairs has given serious thought to induct women police officers more actively in investigations for better detection of cases, especially in handling women

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accused of crimes.

As police personnel are mostly busy with non-police jobs, the question of investigating police, who will concentrate on criminal cases only is being considered.

The Ministry of Local Government has passed a bill for setting up Village Courts in rural areas and an Arbitration Council in municipal areas to dispose of petty cases, outside the formal courts. Besides this, the Family Court has also been set up to settle disparities between husband and wife, which also reduces the workload in police stations and courts.

The Local Government Institute building has been geared up to strengthen law and judicial aspects too. The Ministry of Law, Justice and Parliamentary Affairs has set up a Law Commission and Judicial Training Institute to update laws and to enlighten judicial officers with new laws and conventions. Steps are being taken to increase the number of chemical laboratories, juvenile remand homes, Courts for Violence Against Women and separate courts for metropolitan areas.

The Criminal Law Amendment Bill has been authorising District Judges to hear appeals for civil cases, which may lessen the burden of the High Court Division. Besides, new courts are being set up for metropolitan cities to dispose of cases only within the metropolitan jurisdiction.

The Ministry of Foreign Affairs has recently been more active in persuading regional neighbours to exchange delinquents, and information thereof, for facilitating the dispensation of justice. Moreover, the border conflicts and issues relating to illegal trafficking of women and children, especially unauthorized entry of susceptible citizens and arms dealers, are being taken care of.

The Government appreciates the endeavors of NGOs working in the relevant fields to make the concerned agencies more sensitized to vulnerable issues. Consequently, awareness creation and capacity building is progressing more than before to work hand-in-hand for a crime free society.

**V. EFFECTIVE GENERAL  
PREVENTIVE MEASURES TO BE  
IMPLEMENTED THROUGH BOTH  
THE CRIMINAL JUSTICE SYSTEM  
AND MORAL ENLIGHTENMENT**

There are many value systems in the changing world. Sometimes we think of our obligation to care for the old and provide them with social security as useful work. As senior citizens, they do deserve special consideration and hence care for the aging, elderly, infirm and handicapped needs to be ensured. All possible modes of co-operation between government and non-government organisations are explored to provide timely services in these fields. These days, we cannot ignore women (48% of total population). Gender mainstreaming for national growth is a must, and more so when we have the unique position of women at the top of both the party in power and the main opposition. Simple slogans will not do, there must be mental change in attitudes, to treat them well. To cite an example, the incidents of rape and immoral trafficking is very much on the increase. Law is there, but perhaps a special task force is needed to ensure that these laws are implemented well and the civil society, i.e. community as a whole and the media in particular, can do a lot to attain the goal of 'security and freedom'. This will help ensure the function of the legal frameworks, sound institutional arrangements, and capacity building for implementation of desirable aspirations for vulnerable groups.

The increasing mobility of the population, the growing communications and financial links among different countries of the developing and developed world, and internationalization, have caused significant change in criminality. For such transnational criminal activities, all concerned agencies could put their heads together. Lack of extradition treaties amongst various countries have posed serious problems. If it is not possible to go for formal treaties, at least some sort of mutual understanding among the international, regional and sub-regional areas, and cooperation through bilateral and multilateral schemes, could lead to this ultimate goal. To cite an example, Bangladesh and Thailand have already implemented an extradition treaty, and there is already some sort of agreement with Myanmar and Iran, particularly for drug-related offenders. Questions of repatriation of the accused in heinous cases is being studied and pursued vigorously with other countries, which may auger well in due course.

In the light of the above, volunteer organizations can come forward to help each other in containing the increased phenomenon of multi-national criminal incidence, through motivating their respective governments and representatives of parliament, besides the persons actually responsible at the policy level.

In the context of present day law enforcement and judicial process, the majority of taxpayers do want change. Familiar practices are disappearing and in their place unprecedented, productive and efficient client-oriented services have become the need of the hour. Today, the security industry is growing tremendously fast. Many of them are actively engaged in law enforcement responsibilities as an alternate force, especially in the private

sector (e.g. industrial projects, multinational organizations even in the protection of the VIP/CIP of these domains). Naturally, they need to be conversant with procedure and training to enlist the co-operation of public law enforcement services, and their relationship should be aimed at novel social conditions to provide maximum support to benefactors.

The important aspect of retribution and punishment deserves to be reconsidered. Offenders are punished because it is unavoidable, and to eradicate evils from the society. Instead of 'jail', many countries (as in Japan) call them 'correctional institutes' ; making the inmates repentant so that they can join their family and contribute as normal citizens. Perhaps the phrase "hate the sin - not the sinner" needs to be reminded, so that the social stigma is not made permanent to the inmates of prison, lest they become recidivists and make the situation worse.

With that end in view, the significance of prison administration could be a necessary and healthy adjunct of crime prevention and the treatment of offenders. The concept of prison administration as an institutional device for corrections and rehabilitation is gaining ground and deserves more serious and immediate attention from the legislature, executive and judicial policy makers, and social thinkers and experts thereof.

## VI. CLOSING WORDS

Like most social sciences, criminology uses knowledge and methods from many fields, such as law, sociology, psychology, medicine and statistics. This implies that research on criminological problems can take place at universities, as well as government or non-government

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organisations and voluntary agencies. But one thing must be kept in mind, like medical patients, prevention is better than cure; this is particularly applicable to deviants of law, juvenile delinquents, drug addicts or adventurers in the criminal arena. For that, the dissemination of knowledge through institutes like INTERPOL is preferred. The UNO, within its umbrella of functions, could look into how effectively it could cooperate with a particular country and its technical support system.

A well coordinated system of technical assistance needs to be evolved under the auspices of the UN to help detect crime and ensure follow-up action for bringing the culprits to justice, for the greater good of the nations. UNAFEI is acting as a clearing house for such methodologies and training in the Asian and Pacific regions, actively co-operating with the government of Japan and indirectly through the Asia Crime Prevention Foundation and other institutions. The community as a whole must also be acting as a responsible citizenry, to come forward with action programs against all social evils.

At this critical juncture of history, we need to get back our confidence in the essential rightness of our wisdom, to reassure ourselves that we have the capacity to bring our material and intellectual resources to bear on finding solutions in confronting crime. The organs of criminal justice administration should be left to do their job professionally, so that they are made more transparent, accountable and efficient through monitoring by the watchdog public (i.e. taxpayers).

Democracy can not work unless the rule of law is itself objectively and impartially observed. If the government does not themselves observe the rule of law, then

the whole international system collapses. This is what has been happening. In this situation the only effective protection we have is the will and determination of ordinary people to bring back sanity. In this task, each profession and each discipline, especially police, prosecution, judiciary and corrections, will have to become more involved in the process of securing a return to the rule of law and to the development of a greater sense of responsibility and political commitment on the part of the rulers and the people themselves.

Thus in the changing society of today, and in the future perspective, to break the cycle of crime, it is incumbent on the peacemakers of nations to join hands with the citizens they serve, employing their combined strength and dedication to make positive changes in the quality of life in our communities. That needs total co-operation of all concerned in general, and politician's sincere and serious commitment in particular, to enable the researchers and enforcers to meet expectations to face the challenge of the new millenium- which is only less than a year away.

RESOURCE MATERIAL SERIES No. 55

**ANNEXURE I**

**INVESTIGATION AND PROSECUTION OF CASES (TO JUNE 1998)**

Total Cases	Charge Sheet	Percentage	Final Report	Percentage	Pending	Accused	Arrested
54704	22846	73.45%	8260	26.55%	23598	150809	45692

**ANNEXURE II**

**INVESTIGATION, PROSECUTION AND TRIAL OF CASES (1997 & 1998)**

	Total	Charge Sheet	%	Final Report	%	Pending	Conviction %	Acquittal %	Pending Trial
1997	10261	67009	71.68%	26478	28.32%	8674	20.05%	79.95%	60791
1998	93310	63744	70.15%	27118	29.85%	2948	19.96%	80.04%	49472