
PARTICIPANTS' PAPERS

THE ROLE OF POLICE, PROSECUTION AND THE JUDICIARY IN THE CHANGING SOCIETY

*Rebeka Sultana**

I. INTRODUCTION

Crime prevention means the elimination of criminal activity before it occurs. Prevention of crime is being effected/enforced with the help of preventive prosecution, arrest, surveillance of bad characters etc by the law enforcing agencies of the country concerned. Crime, and the control of crime throughout the world, has been changing its features rapidly. Critical conditions are taking place when there is change. Nowadays, causes of crime are more complex and criminals are becoming more sophisticated. With the increase of social sensitivity to crime, more and more a changing social attitude, particularly towards the responsibility of the citizenry to law enforcement, arises. Existing legal systems and preventative measures for controlling crime have to be changed correspondingly. There should be an attempt to devise the ways and means to equip the older system of crime prevention and criminal justice to face these new challenges.

II. GENERAL FEATURES OF CRIME IN BANGLADESH

Crime throughout the world has been changing its feature rapidly. The causes of crime in Bangladesh may be generally attributed to some of the inherent socio-economic features of the country. Sociologists and criminologists consider the high level of social deprivation; increase of population at a rate incompatible with basic human needs; socio-economic

resentment due to uneven economic prosperity; unstable public order intensified by feud, illiteracy, unemployment etc, as the fundamental causes of the high escalation of crime in Bangladesh.

Due to radical changes taking place in the livelihood of people in the recent past, criminals have also brought remarkable changes in their style of operation in committing crimes. The crime preventive/prosecution systems are not equipped accordingly. As the existing prosecution cannot render appropriate support to the law enforcing agencies in controlling crimes, the criminals are indulged and consequently, crime trends increase in society. Besides, due to insufficient preventive intelligence, crime prevention, particularly preventive prosecution, does not achieve much.

It has been noticed that the younger generation in this part of the world is being influenced at an alarming rate by crime-movies, films showing the commission of crimes, and magazines and other literature containing such material. 67.54% of the arrests made by the police in connection with different crimes during the last five years fall within the age group of 18 to 30 years.

Unemployment, particularly of the young people, provides ample opportunity for an idle mind to think about ways and means not only of getting something legally or illegally, but of doing something exciting. The commission of a crime may provide satisfaction to the youth who find in it a

* Senior Assistant Secretary, Ministry of Home Affairs, Bangladesh.

means of expressing their personality. However, national catastrophes, family feuds and the relatively easy availability of firearms are also a factor responsible for many crimes. Acts of terrorism, arms-dacoity, extortion, rape, murder, illegal export of manpower, smuggling, trafficking of drugs, economic crimes etc are occurring very frequently, raising alarm in the public mind. The crimes are planned and executed by experts, and ordinary preventive systems are increasingly found inadequate to halt the trend.

III. CRIME TREND OF BANGLADESH

The crime trend in Bangladesh may be seen from a review of the last quinquennial criminal statistics (1993-97) and for the period from January to November, 1998 of the country, is shown in the table below. This reveals that major crimes in connection with property and the human body have shown an upward trend. This upward trend is attributed to understandable socio-economic factors, and is in the line with world crime scenario.

Year	Dacoity	Robbery	Murder (including riot with murder)	Rioting	Rape	Cruelty to Women
1993	889	1125	2596	8651	501	1234
1994	834	1118	2567	5044	499	1206
1995	907	1399	2991	4827	556	1688
1996	924	1660	3131	5988	525	3121
1997	933	1765	3084	4967	1336	4507
Jan-Nov 1998	949	1603	3240	3858	2728	4072

Year	Cruelty to children	Kidnapping /abducting	Burglary	Theft	Arms Act	Explosive Act
1993	4	1503	5169	9123	1229	304
1994	18	1629	4938	8652	1200	443
1995	79	1705	5110	9807	1635	832
1996	202	1050	5177	10273	2519	748
1997	453	1025	5425	10041	1969	550
Jan-Nov 1998	635	1112	5044	9871	1972	667

Year	Drugs Act	Smuggling	Other	Total
1993	1824	2433	37284	72069
1994	2784	2198	42179	75306
1995	3024	2430	45941	82931
1996	3586	3146	51262	93310
1997	4431	2763	58912	102161
Jan-Nov 1998	4818	2770	60932	104271

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It would appear that there is a considerable decrease in crimes, relating to rioting during the last five years, whereas for other crimes, the trends display an increase. The number of cases regarding cruelty to women and children has increased, which indicate a conscious community grappling with a social problem. The increase in the number of cases relating to abuse of drugs has two aspects. On the one hand, it indicates increased abuse of drugs. On the other hand, greater number of cases indicate more efforts directed towards arresting the trend. As compared to 1993, the percentage of increase in crime was 4.5% in 1994, 15.07% in 1995, 29.47% in 1996 and 41.75% in 1997. In 1997 the crime rate per 1,00,000 population was 81.04%.

IV. CRIMINAL JUSTICE SYSTEM

The criminal justice system comprises of the police, prosecution and the judiciary, who are vested with crime control of the society. The role of the criminal justice system is twofold: control and prevention. It is needless to say that issues of crime control include identifying the commission of crimes; clearing of cases; conducting prompt and appropriate investigations; collection of sufficient evidence; ensuring fair and efficient judicial proceedings; and punishing offenders.

The criminal justice system of Bangladesh is also exerting effort to counter crime. But the statistics reveal a low clearance rate of offenders. There are difficulties in the collection of evidence, and thereby preventing exhaustive investigations and trial delays; which contribute to low conviction rates. Over the past few years, crime such as violence against women, rape, trafficking of women, acid throwing, cruelty to children, trafficking of children and abuse of drugs is very alarming. Another matter that is

international co-operation regarding mutual assistance, such as the transfer of offenders, is not implemented in a timely manner. So it could be said that the criminal justice system of Bangladesh is not fully meeting its expected functions.

V. ROLE OF THE POLICE

The general function performed by the police can be divided into three main categories; law enforcement, order maintenance, and service. Law enforcement is the police mission of seeing that there is compliance with the provisions of the law, detecting breaches of the laws, and apprehending alleged violators. Order maintenance, on the other hand, is the task of preserving peace and security. Service functions consist of the services for the public. Bangladesh police perform a variety of roles; the role ascribed by law; the role desired by their superiors, including the government, the role expected by the people, particularly the victim; and the role which they think they ought to perform. These roles may be categorised as

- (i) Maintenance of law and order; and
- (ii) Non police jobs (which change with social attitudes and moral values).

The police population ratio does not compare favourably with other countries of Asia. In 1997 the total population of Bangladesh was 120.49 million and police strength was 98033. The police population ratio is 1:1274. So with this limited strength, the prime function of prevention and detection of crime is difficult. The police personnel are unevenly distributed with the need and priority of the task. Nearly 65% of the total police power is committed to maintenance of law and order, only 19% to investigation, 3.47% to traffic management, 0.85% to prosecution, and 0.8% to training. There are only

around 929 officers at supervising level for a force of about one hundred thousand, which seems to be disproportionate (see Table 3).

The police have a professional responsibility to maintain the highest standard of conduct, particularly honesty, impartiality and integrity. It is unfortunate that the police in modern society are looked upon with fear, suspicion and distrust by the people. Public apathy towards the police demoralises them and ultimately they lose self-confidence, making them hesitant to take firm steps to prevent violations of the law. Political interference is another cause which makes them corrupt, dishonest and inefficient. So the presence of these impediments in a society can not create fearless administration of law and justice. It is not an exaggeration that the present deterioration in law and order is due to these forces which have demoralised the police force. Serious violation of law occur right under the nose of the police and they (police) take the role of silent spectator.

The development of modern techniques has created new challenges. Modern scientific devices have made law-breakers more successful. The police should have a thorough knowledge and should be conversant with the new techniques of crime control. Use of computer systems and augmentation of the existing communication system would be useful for boosting police efficiency.

Public apathy towards the police is also due to the fact that quite a large number of cases prosecuted by the police result in acquittal of the accused, due to procedural or technical flaws, defects, or omission by the police officials. The efficiency of police function is generally measured on the basis of legal functions, i.e. either on the basis of the number of arrests or on the rate of

conviction for cases brought to trial by the courts. The decision to arrest a person may not always be on the *bonafide* belief of suspicion and many arrests may be made to shield inefficiency. Conviction may not always be based solely upon the merit of the prosecution, since appreciation of evidence by the presiding judge is based on other factors also, such as the changing of statements by witnesses or witnesses turning hostile and so on.

The preventive function of the police is to arrest law-breakers and suspected criminals, and take them into custody in order to prevent crime. The legal limits of arrest and detention of suspects are clearly defined in the Criminal Procedure Code. Statistical analysis reveals that preventive measures can not create the desired impact on offences. The punishment of preventive prosecution is only limited to the executing of a security bond, which could not successfully prevent the crime. In the changing society and with the advancement of humanity, it could be said that society is approaching another dimension where to arrest anyone, it may be reasonably required by the law that the basis of arrest should be intimated, so that necessary arrangements for release on bail may be made by the person concerned. For investigation, police may seek an order for remand of the accused or arrest of the person. Here again, the law prevents the function of the police, and an order of remand is conditional upon satisfaction of a judicial magistrate.

The police may arrest a person on a warrant issued by the court, and also on observation of the commission of a crime, or where there is reason to believe that a crime has been committed by the suspected person. Here, the direction of the law is that the arrested person must be taken promptly before a magistrate without any loss of time.

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Interrogation of criminals or suspects is an important legal process for collecting evidence against the offender. But there is a question on the limitation of interrogation. The police must observe certain civilities while interrogating a suspect. The questioning must not be 'coercive' or too intimidating. They should not extract admission or confession by coercive or "third degree" methods, so that no sad incidents happen in the custody of police, and so that the real offenders can be prosecuted.

Besides making arrests, the police must also actively assist the prosecutor to conduct prosecution of cases in law courts. The success of prosecution largely depends on the promptness and ability with which the investigation is conducted by the police. It is therefore, necessary that the police and the prosecutor should have a thorough knowledge of substantive and procedural criminal law. The legal requirement for trial of an accused is that the prosecution must come forward with all material evidence, complete in all respects, to prove the charge against the accused. The witnesses should be appraised of the points on which the prosecutor desires to examine them, before they are actually brought into the witness stand.

To meet the needs of developing society, the role of the police is no longer confined to the maintenance of law and order, and the prevention and detection of crime. It is required to play a significant role in development activities by providing basic security and control of economic crimes for sustained economic growth of the country. The police have a vital role in dealing with insurgency, women and child trafficking and smuggling, which impedes development activities and threatens the security of society.

VI. PROSECUTION

Under the criminal administration of justice, offences are broadly categorised into cognizable and non-cognizable with their classification as to arrest, bail, compoundability, courts by which to be tried, procedure of trial etc. Criminal proceedings are usually initiated either by complaint of the complainant or by the First Information report by the police. In cognizable cases, police can arrest the alleged offenders without warrant from the court. Prosecution in cognizable cases is the State's responsibility, and in the complaint case, responsibility lies with the complainant. A criminal proceeding comprises of investigation and trial ending either in conviction or acquittal of the offenders. In cases of cognizable offences, the police are entrusted with the investigation of the offence and detection of offenders, collection of evidence, and then the case will be ready for trial. The foundation of the case is built during investigation. Success of the prosecution depends up on the efficient handling of the case by the investigators. Detection of the real criminals and collection of proper evidence is the foundation of the prosecution. Ensuring fair and efficient judicial proceedings and punishing real offenders enables the criminal justice system to strongly counter crime.

The success of prosecution largely depends on prompt and correct investigation, and speedy trial. So time limits for investigation and trial play a vital role here. Another point is the relationship between the police and magistracy, and between the bench and the bar. Lack of these relationships is noticed in developing countries. Needless to say, there is a need for these groups/agencies of the criminal justice system to work in close harmony and to trust each other. Lack of accountability towards the people of these

agencies, creates concern about the criminal justice system of the society, which will ultimately reflect on the clearing of cases, fair and speedy trial, and the punishing real offenders.

VII. THE JUDICIARY

The present day civilization is largely founded on law and justice. To seek and to get justice is the birth right of every human being, without discrimination, like other fundamental rights. For administering justice, the system of judiciary has developed in various forms in different countries; the standard of perfection being at varying degrees, depending on various factors such as socio-economic and religious-political conditions etc. Nevertheless, a sound and independent judiciary is the *sine-qua-non* of a healthy society. The more the judiciary is independent and sound, the more the people of the nation will reap the benefits of safety, liberty and prosperity. The judiciary is the guardian of law, protector of individual rights and medium for social equilibrium. So remarks could be drawn that the judiciary is the barometer of civilization. With the march of civilization and more improved technology and ideas, closer co-operation between various nations and their legal systems may also be enriched, thereby benefitting by providing justice for all.

VIII. LEGAL SYSTEM OF BANGLADESH

The Constitution of the Peoples Republic of Bangladesh, adopted in 1972, contains a separate part (part VI articles 94-117) dealing with the judiciary. The hierarchy of the judiciary comprises of the Supreme Court of Bangladesh and the subordinate courts below. The Supreme Court is the highest court of the country and comprises of the Appellate Division and the High Court Division headed by a Chief Justice.

Besides appellate and revisional jurisdiction on civil and criminal matters, the High Court Division has extraordinary jurisdiction commonly known as "writ jurisdiction" under article 102 of the Constitution for enforcement of fundamental rights. The Appellate Division of the Supreme Court is the apex court which, besides having jurisdiction of appeals arising out of the decisions of the High Court Division under article 103, has been vested with the jurisdiction of overseeing complete justice under article 104 of the Constitution, to prevent miscarriages or failures of justice. The Appellate Division also has advisory jurisdiction on legal matters of public importance, under article 106 of the Constitution, whenever sought by the President. The Supreme Court has the jurisdiction to decide the constitutionality of any law and also can strike down any law which is *ultra vires* or inconsistent with any provision of the Constitution. The decisions of the Appellate Division are binding upon the High Court Division, as well as on the subordinate courts, and the decisions of the High Court Division on all courts, subordinate to it.

The subordinate judiciary consists of the courts of the District Judges, Additional Judges, Subordinate Judges, Assistant Judges and Magistrates. The District, Additional and Subordinate judges, apart from their civil jurisdiction, are also vested with criminal jurisdiction for trying cases and are classified as Courts of Session Judges, Additional Session Judges and Assistant Sessions Judges. Magistrates have exclusive and original criminal jurisdiction classified as Magistrate class-I, class-II and class-III, having power to try cases which are not triable by the Courts of Sessions. In the metropolitan area, the Magistrates Courts are classified as Courts of Metropolitan Magistrates, headed by the Chief Metropolitan Magistrate who is

appointed by the Government. Besides the metropolitan area, the District Magistrate is the Chief of the Magistracy under which trial magistrates work. District Magistrates and other magistrates, besides their judicial jurisdiction, also have executive functions. The Chief Metropolitan Magistrate, and the magistrates below, have exclusive judicial function. Against the judgements of conviction and sentence passed by magistrates there lies appeal to the Court of Sessions and to the High Court Division against the judgement by the session judges.

Under the criminal administration of justice, offences are broadly categorised into cognizable and non-cognizable with their classification as to arrest, bail, compoundability, courts by which to be tried, procedure of trial etc. Criminal proceedings are usually initiated either by complaint or First Information Report. In cognizable cases, police can arrest the alleged offenders without warrant from the court. Prosecution in cognizable cases is the State responsibility. A criminal proceeding comprises of investigation and trial, ending either in conviction or acquittal of the offenders. Mainly the police are entrusted with the investigation during which offenders are detected and apprehended, evidence is collected and the case is made ready for trial. The foundation of the case is built during investigation. Detection of the real criminals and collection of proper evidence lay the foundation of a criminal case, because the success of the prosecution depends on the efficient handling of the case by the investigators. How investigations are to be conducted, statements of witnesses, confessional statements of accused, dying declarations are to be recorded, are all regulated by specific provisions of law.

A. Independence and Separation of the Judiciary

According to the provision of article 94(4) of the Constitution, the Chief Justice and other judges of the Supreme Court are independent in the exercise of their judicial functions. Similarly, all persons employed in the judicial service and all magistrates are independent in the exercise of their judicial functions, as provided under article 116A of the Constitution. The independence of the judiciary is the pre-condition of fair trial and justice. Another pre-requisite of a sound and independent judiciary is the separation of the judiciary from the executive organs of the State. Article 22 of the Constitution contains fundamental principles of State policy to the effect that “the State shall ensure the separation of the judiciary from the executives organs”.

At present, the judges of the subordinate courts are under the administrative control of the Ministry of Law, Justice and Parliamentary Affairs which, according to article 116 of the Constitution, exercises this control in consultation with the Supreme Court. However, the magistrates are under the administrative control of the Ministry of Establishment. The magistrates perform both executive and judicial functions. The dual administrative control over the judges and magistrates have some adverse effects on the independence of the judiciary, sometimes affecting fair trial.

B. Constitutional Provisions for Fair Trial

To get a fair and speedy trial is a fundamental right guaranteed in the Constitution. Article 35 reads as follows:

“35. Protection in respect of trial and punishment

(1) No person shall be convicted of any offence except for violation of a law

in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.
- (4) No person accused of any offence shall be compelled to be a witness against himself.
- (5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.
- (6) Nothing in clause (3) or clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.”

The question of fair trial presupposes fair investigation, fair prosecution and fairly providing scope for the defence of the accused under legal dispensation. In our criminal jurisprudence, a person accused of an offence shall be presumed innocent so long 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 innocent persons, meaning thereby that even ten accused may be acquitted but not a single innocent person should be convicted. That a person shall have the protection of law is an inalienable right guaranteed in the Constitution, articles 31 and 33 which read as follows:

“Article 31, Right to Protection of Law- To enjoy the protection of 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, and in particular no action detrimental to the life, liberty body, reputation or property of any person shall be taken except in accordance with law.”

“Article 33, Safeguards as to Arrest and Detention

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

For the purpose of protecting social order and peace by preventing prejudicial activities against the State, the Special Powers Act 1974 was enacted. Meanwhile, this law has been largely modified. There are a lot of argument and criticism for and against this law, which curtails the fundamental rights of the citizen. Instances are not rare where concerned agencies of the government sometimes use the provision of this law arbitrarily. However, continuing demand persists for the repeal of the Special Powers Act 1974, from the conscious section of the people.

C. Provisions for Bail

Bail of the accused in a criminal proceeding, either during investigation or trial, occupies an important chapter. In the case of a bailable offence, bail may be granted as of right. In the case of non-bailable offences, grant of bail is at the discretion of the court. In the traditional concept of our jurisprudence, grant of bail is a rule, and refusal is an exception. As the question of bail involves curtailment of freedom of movement, this should be dealt with judiciously and in accordance with consistent norms and standards. In the case of grave offences such as murder; dacoity with murder; rape with murder; high treason; grievous hurt causing permanent disfiguration of face and vital parts of body of corrosive substance; drug trafficking and the like involving capital punishment; the accused are refused the privilege of bail. Even in such cases, bail may be granted to an accused who is a woman, or a sick or infirm person, or a minor below 16 years of age, under section 497 of the Code of Criminal Procedure. Unless there is anything which may cause prejudice to the prosecution, the accused may be granted bail in usual practice.

D. Exclusion of Evidence made in Police Custody

Exclusionary provisions in the evidence law is of great significance. In criminal trials, statements made to the police are not admissible in evidence. Similarly, confessional statements of the accused, made in police custody or under threat, duress or coercion, are not evidence and cannot be used against the accused for the purpose of conviction. Only the statements made to the magistrate, in pursuance of which incriminating materials are recovered, are admissible in evidence under section 27 of the Evidence Act 1872. In order to prove the charge in a criminal trial, there must be direct and reliable evidence. Hearsay evidence of reliable and impartial

witnesses carries weight towards proving the guilt of accused. Circumstantial evidence of a strong nature, leading unerringly to the irresistible exclusion of any other hypothesis as to the guilt of the accused, may well form the basis of conviction.

E. Public Prosecutor and Legal Aid

Prosecution on behalf of the State is conducted by the public prosecutor before the Court of Session and by the Court Police Inspector before the magistrate. The police are entrusted with the task of investigation and are responsible to produce witnesses before the court during trial. The accused may plead guilty or not guilty of the charge. In the event of pleading guilty, the accused may be convicted accordingly. The prosecution is fully liable to prove the charge with cogent and reliable evidence beyond all reasonable doubt. Only in the case of criminal breach of trust and misappropriation, can an accused offer themselves as a witness, to give an account of the money or things given to them in trust.

The accused is entitled under law to freely consult and be defended by a lawyer of their choice. Where the accused cannot provide for their defence by engaging a lawyer due to poverty, s/he can have legal aid at the expense of the State. In every district a Legal Aid Committee, constituted at the behest of the Government, has been providing legal aid to the poor and distressed.

F. Forensic Department

The Forensic Department have an important role in relation to criminal justice involving murder, rape, grievous hurt, kidnapping and abduction. As birth registration of children is not made in most cases, the determination of the age of victim frequently becomes a subject of controversy. In the face of growing socio-

economic complexities, crime of the above nature has increased manifold. The lack of adequate forensic facilities results in the delay of forensic examination in many cases, which adversely reflects on fair and speedy trial.

G. Juvenile Justice

Juvenile justice has, of late been a global concern. For the purpose of securing the best interest of the child, the United Nations adopted the Convention on the Rights of the Child (CRC). Children below seven years are exempted from criminal liability under section 82 of the Penal Code 1860. The age between 7 and 12 years, with regard to the criminal liability of a child, depends on the nature of understanding, to be determined by the judge. The joint trial of a child with an adult accused is prohibited. In the Children Act 1974, the upper limit age of a child has been fixed at 16 years. Juvenile offenders below the age of 16 must be tried by the Juvenile Court under the procedure laid down in the Children Act 1974. This Act mostly confirms the norms and standards set forth in the CRC. Besides the magistrates, District Judges are performing the functions of juvenile courts as additional duties. In the whole country there are only two reformatory schools - one at Tongi and the other recently established at Jessore. Although there is strict provisions for keeping the child offender in segregation, very frequently they are kept in ordinary jail custody with adult offenders. Sufficient remand homes and separate juvenile courts need be established in every district so that child offenders are humanely dealt with during trial, with focus on reform and social re-integration to lead a dignified life in the mainstream of society as worthy citizens.

H. Sentencing Process

Sentencing, being the final and concluding part of trial in a criminal case, occupies an important position in relation

to fair trial and fair justice. Generally our sentencing system is deterrent and retributive in nature. The whole drama of a criminal proceeding ends with the verdict of the court in which the police/investigators, witnesses, prosecutors and judges/magistrates play their respective roles. Apparently, a criminal charge against a person in society carries a certain stigma, and for that, people generally try to avoid criminal charges or otherwise being entangled in criminal proceedings.

Sentence of death, imprisonment for life, imprisonment rigorous or simple, forfeiture of property and fine are prescribed by section 53 of the Penal Code, which may be awarded to offenders according to the nature of the charges. By Ordinance XLI of 1985, the term "transportation for life" has been substituted by the words "imprisonment for life", equivalent to thirty years rigorous imprisonment under section 57, which the Government may commute into imprisonment not exceeding twenty years, as provided under section 55 of the Penal Code (Ordinance XLI of 1985). Sentences of death passed by the Court of Sessions have to be confirmed by the High Court Division under section 374 of the Code of Criminal Procedure. Within the prerogative of the President is the grant of pardons, reprieves, respites, remit, suspend or commute any sentence passed by any court, tribunal or other authority, under article 49 of the Constitution.

Under no circumstances can a person be awarded punishment in excess of what is prescribed by law. Except in cases involving the sentence of death and imprisonment for life, the courts are given wide discretion in passing sentences of various terms. The cardinal principle is that the sentence must not be excessive or disproportionate to the nature and gravity of the offence. In practical experience it is found that different courts pass different

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terms of sentences in similar types of cases, which prick the conscience. The judicial norms must not be at unreasonable variance, which would shake the people's confidence in the judiciary. The purpose of the law is that the real offenders must be punished according to the degree of the offence, and the law must not be instrumental or tainted with personal motive or otherwise, which may serve criminals in the proliferation of crimes at the cost of social security and peace. Accountability in such a situation must be ensured for all who are engaged in the task of administering justice, no matter whether they are investigators, prosecutors, judges or magistrates.

IX. CONTROL AND PREVENTIVE MEASURES

With the 21st century knocking at the door, and with modernization and advancement of society, social values are changing. New ideas and dimensions should be considered for administering the criminal justice system of the society concerned. "Justice delayed is justice denied" is a very well known term which speaks for speedy and prompt trial. The current situation of Bangladesh is that, due to heavy caseloads on the judges and magistrates, and the non-appearance of defendants and witness, an innumerable number of cases remain pending year after year. Criminal cases investigated and tried in the years 1996 and in 1997 (Table 1 and 2) show that 49472 cases under trial were pending at the end of 1996, and in 1997 this was raised to 60791 cases. Countermeasures may be considered as:

- Increase in the number of judges/magistrates.
- Separate investigating and prosecuting agencies.
- Simplification of the judicial trial system.
- Improvement of case management,

information systems should be simplified. Adoption of computerised systems and computerised record keeping systems.

- Modification of Evidence Act. Strict rules for taking witness evidence could be a positive step.
- Time limits for adjournment and disposal/trial of cases.
- Emphasis on co-operation and harmony between bench and bar.
- Accountability for all concerned.
- Fullfillment of extradition agreement and international co-operation towards control of crime.

From the perspective of the whole criminal justice system, the rate of conviction should be scrutinised to guarantee the effectiveness and efficiency of the system. A high conviction rate is indicative of successful investigation and prosecution. If we see the statistics of conviction and acquittal for the years 1996 and 1997, they reveal that the acquittal rate is 4 times greater than that of conviction. The excessively low rate of conviction reflects that there are some underlying problems in criminal justice proceedings. Reasons and countermeasures may be:

- Separate set of investigators trained in accordance with the law for quality investigation.
- Separate set of prosecutors.
- Supervision by the higher judiciary.
- Escalation from power, influence, money, for all concerned.
- Speedy trial.
- Accountability of all concerned.

The Code of Criminal Procedure provides the legal framework for running the criminal administration, including court procedures, police functioning etc. It also contains certain legal provisions for preventive actions of the police in maintaining law, order peace, and

tranquillity in society. Besides this, the following are the preventive laws:

- (a) Section 106 Criminal Procedure Code: security for keeping the peace on conviction.
- (b) Section 107 Criminal Procedure Code: security for keeping the peace in other cases and security for good behaviour.
- (c) Section 108 Criminal Procedure Code: security for good behaviour from persons disseminating seditious matters.
- (d) Section 109 Criminal Procedure Code: security for good behaviour from vagrant and suspected persons.
- (e) Section 110 Criminal Procedure Code: security for good behaviour from habitual offenders.

Section 149 of the Criminal Procedure Code reads: "Every police officer may interpose for the purpose of preventing crime and shall to the best of his ability prevent the commission of any offence". Section 54 and 151 Criminal Procedure Code has given police officers the power to arrest any person without a warrant, only to prevent cognizable offences. The Police Act 1861 also has similar provisions that emphasizes the preventive role of police. Nowadays, in preventing crime, the police enforce the authority of preventive detention as per the provisions of section 3 (2) of the Special Powers Act 1974.

It appears from the legal provisions mentioned above that the police have enough scope to deal with the prevention of crime in society. From statistical analysis however it appears that preventive prosecutions are not creating the desired impact on the mainstream of offences in the country. The punishment of preventive protection is only limited to the execution of a security bond. As such, it can not successfully prevent the commission of crime. Due to the radical

changes taking place in the livelihood of people in the recent past, criminals have developed remarkable systems, becoming absolutely impractical for police controlling the crimes. Besides this, due to insufficient preventive intelligence, crime prevention, particularly preventive prosecution, does not achieve much.

X. CONCLUSION

There is no society in the world without the problem of crime and criminals. In Bangladesh, the combating of crimes and administration of the criminal justice system is the shared responsibility of the police, the prison and the judiciary. With a view to overcoming the deficiencies of preventive measures, it is essential to frame some deterrent provisions of the law incorporating punishment of imprisonment and fine for preventive prosecutions. Prevention of crime is the collective responsibility of the society. It should not be left to the police or judiciary alone. Only the concerted effort of police and the people can combat this social crisis. Awareness and knowledge by the people of the law is necessary.

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TABLE 1
CRIMINAL CASES INVESTIGATED AND TRIED 1996

Crime	No. of Cases	CHARGE SHEETED			FINAL REPORT		INVESTIGATION NOT COMPLETED
		No. of Cases	No. of Accused	%	No. of Cases	%	
Dacoity	924	425	3532	49.88%	427	50.12%	72
Robbery	1660	796	2128	51.29%	756	48.71%	108
Murder	3131	2102	12339	----	829	----	200
Rioting	5986	4612	53678	78.08%	1295	21.92%	79
Rape	525	400	1064	76.19%	125	23.81%	0
Cruelty to Women	3121	2178	7320	----	849	----	44
Cruelty to Children	202	173	551	86.07%	28	13.93%	1
Kidnapping /Abduction	1050	626	2453	65.21%	334	34.79%	90
Burglary	5177	1728	4101	33.63%	3410	66.37%	39
Theft	10273	4112	9708	----	5677	----	484
Arms Act	2519	2276	3960	92.07%	196	7.93%	47
Explosive Act	748	493	1709	72.18%	190	27.82%	65
Drugs Act	3586	3050	4314	94.52%	177	5.48%	359
Smuggling	3146	2828	4866	90.99%	280	9.01%	38
Other	51262	37895	190015	...	12545	----	822
Total	93310	63744	301738	70.15%	27118	29.85%	2448

CRIMINAL CASES INVESTIGATED AND TRIED 1996

PUNISHMENT			ACQUITTAL			CASE UNDER TRIAL	
No. Cases	No. of Accd.	%	No. of Cases	No. of Accd.	%	No. of Cases	No. of Accd.
7	28	25%	21	86	75%	397	2371
23	49	22.33%	80	177	77.67%	693	1846
53	136	----	147	700	----	1902	60151
62	444	5.37%	1093	10153	94.63%	3457	5766
26	45	18.57%	114	339	81.43%	260	1073
120	241	----	536	1825	----	1572	7346
8	9	----	26	86	----	139	526
12	26	9.30%	117	461	90.70%	497	2603
143	255	28.95%	351	799	71.05%	1234	3394
235	459	----	721	1807	----	3156	8723
123	201	35.76%	221	399	64.24%	1932	3703
11	21	25.00%	33	157	75.00%	449	2232
158	230	40.20%	235	374	59.80%	2657	4260
271	458	34.61%	512	852	65.39%	2045	4643
1596	5117	----	7217	35748	----	29082	169421
2848	7719	19.96%	11424	54153	80.04%	49472	278058

RESOURCE MATERIAL SERIES No. 55

TABLE 2

CRIMINAL CASES INVESTIGATED AND TRIED 1997

Crime	No. of Cases	CHARGE SHEETED			FINAL REPORT		INVESTIGATION NOT COMPLETED
	No. of Cases	No. of Accused	%	No. of Cases	%		
Dacoity	933	338	2376	57.00%	255	43.00%	341
Robbery	1765	706	1828	50.28%	698	49.72%	361
Murder	3084	1683	10213	----	581	----	820
Rioting	4967	3685	40098	83.90%	707	16.10%	575
Rape	1336	901	2500	69.90%	388	30.10%	47
Cruelty to Women	4507	2834	9244	----	1073	----	600
Cruelty to Children	453	346	858	83.17%	70	16.83%	37
Kidnapping/ Abduction	1025	494	2105	61.44%	310	38.56%	221
Burglary	5425	1656	4145	33.66%	3264	66.34%	505
Theft	10041	4133	10539	----	4978	----	930
Arms Act	1969	1709	2969	95.58%	79	4.42%	181
Explosive Act	550	280	1051	79.32%	73	20.68%	197
Drugs Act	4431	3075	4248	94.41%	182	5.59%	1174
Smuggling	2763	2274	3835	92.25%	191	7.75%	298
Other	58912	42895	193812	----	13629	----	2388
Total	102161	67009	289821	71.68%	26478	28.32%	8674

CRIMINAL CASES INVESTIGATED AND TRIED 1997

PUNISHMENT			ACQUITTAL			UNDER TRIAL CASE	
No. Cases	NO. of Accd.	%	No. of Cases	No. of Accd.	%	No. of Case	No. of Accd
1	6	33.33%	2	7	66.67%	335	2400
1	2	12.50%	7	20	87.50%	698	2197
4	5	----	12	59	----	1667	11252
12	95	4.17%	276	2453	95.83%	3397	41998
17	30	21.25%	63	157	78.75%	821	2894
43	93	----	237	1040	----	2554	6641
5	11	27.78%	13	36	72.22%	328	934
2	10	11.76%	15	58	88.24%	477	2723
42	83	27.10%	113	283	72.90%	1501	4162
88	166	----	262	706	----	3783	9508
11	18	30.56%	25	40	69.44%	1673	3568
0	0	0.00%	3	19	100.00%	277	1883
70	101	56.45%	54	94	43.55%	2951	4945
51	109	39.84%	77	118	60.16%	2146	4201
900	3255	----	3812	20007	----	38183	205446
1247	3967	20.05%	4971	25096	79.95%	60791	304752

111TH INTERNATIONAL SEMINAR
PARTICIPANTS' PAPERS

TABLE 3
TOTAL STRENGTH OF BANGLADESH POLICE

Rank	Number
I.G.P	1
Addil. I.G.P	10
DIG	21
Addil DIG	15
S.P	154
Addil. S.P	136
Sr. A.S.P	144
A.S.P	490
Inspector (Unarmed)	1131
Inspector (Armed)	459
Sub-Inspector (Unarmed)	4843
Sub-Inspector (Armed)	1502
Sergeant	963
T.S.I	70
A.S.I	3493
Head Constable (Unarmed)	1399
Head Constable (Armed)	4608
Naik	4668
Constable (Unarmed)	36136
Constable (Armed)	37992
Total	98,236