

COUNTRY REPORT: BANGLADESH

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I. HISTORICAL BACKGROUND

A. Corruption and Early Measures

1. Formation of Enforcement Branch

Corruption is not a new problem for Bangladesh as it was officially recognized many years before the country's independence in 1971. During the British rule, corrupt practices were detected in the Food Department and as such, in 1944, the *Enforcement Branch* was formed in the Police Department to fight such corruption.

2. The First Act against Corruption

Enactment of the first Act against corruption was made in 1947 under the title the *Prevention of Corruption Act*. As there was no investigating agency other than the police, under the Act, certain offences were declared as offences of corruption and those were made cognizable for the police to investigate. The Police Department was entrusted to investigate such corruption cases until the establishment of the *Bureau of Anti-Corruption*.

3. Establishment of the Bureau of Anti-Corruption

As the Police Department failed to handle corruption properly, the then Government felt the need to establish a separate agency to fight corruption. For that purpose the *Anti-Corruption Act* was passed in 1957 and the Bureau of Anti-Corruption was established under the Act. The Bureau continued to function even after 32 years of independence of Bangladesh. Despite the continuous existence of the Bureau, corrupt practices were never under control, rather, widespread corruption turned into the single biggest roadblock towards economic development. The failure of the Bureau is the ultimate result of a lack of commitment to fight corruption. In addition to that, the Bureau used to follow a primitive approach in its fight against corruption. The Agency did not have modern facilities. Practically, there was no facility for the training of investigators. There was very little scope for their promotion. To start an enquiry or a case they had to get prior approval from the authority. Thus the authority had total control over the functioning of the Bureau. The investigators could investigate only those cases that the authority desired.

B. Rampant Corruption and Establishment of Anti-Corruption Commission

Rampant corruption had a very adverse effect on the economy and badly affected the general people and therefore, they wanted to get rid of the evil of corruption. As such they raised their voice against it.

In such a situation, the major political parties were compelled to make political pledges before the general election of 2001 to establish an independent anti-corruption commission/council. The Bangladesh Nationalist Party won the general election and formed the government.

According to its election pledge the government established the independent Anti-Corruption Commission under the Anti-Corruption Act of 2004. The Commission consists of three Commissioners. One of them has been made Chairman who acts as the Chief Executive. The Commission is independent in executing its duties and responsibilities. But the Government is to provide the organogram (organizational structure) and the budget. As the Government has not yet provided the organogram, the Commission is yet to get a good start.

II. THE OFFENCES OF CORRUPTION

A. Offences under the Anti-Corruption Commission Act, 2004

Section 19 of the Anti-Corruption Commission Act, 2004

Special powers of the Commission in respect of inquiry or investigation

- (i) In respect of any inquiry or investigation into allegations of corruption the Commission shall

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have the following powers, namely: -

- a) Summons witnesses, ensure their appearance and interrogate them under oath.
 - b) Discover and present any document.
 - c) Take evidence under oath.
 - d) Call for public records or its certified copies from any court office.
 - e) Issue warrants for the interrogation of witnesses and the examination of documents.
 - f) Any other matter required for realizing and fulfilling the aims and objectives of this law.
- (ii) The commission may require any person to furnish information in matters relating to any inquiry or investigation and any person so directed is obliged to furnish information available to him.
- (iii) Any person obstructing an official legally empowered by the commission or a commissioner in the exercise of his powers under this sub-section (1) or any person deliberately violating any order given under that sub-section commits a punishable offence is liable to a term of imprisonment of not more than three (3) years or a fine or both.

Section 26 of the Anti-Corruption Act, 2004

Declaration of Properties

- (i) If the Commission is satisfied on the basis of its own information and after necessary investigation that any person or any other person on his behalf is in possession or has obtained ownership of property not consistent with his legal sources of income then the commission through an order in writing shall ask that person to submit a statement of assets and liabilities in the manner determined by the commission and to furnish any other information mentioned in that order.
- (ii) If any person -
- a) after having received an order mentioned in sub-section (1) fails to submit the written statement or furnish the information accordingly or submits any written statement or provides any information that is false or baseless or there are sufficient grounds to doubt their veracity or
 - b) submits any book, account, record, declaration, return or any document under sub-section (1) or gives any statement that is false or baseless or there are sufficient grounds to doubt its veracity, then that person will be sentenced to a prison term of up to three (3) years or a fine or both.

Section 27 of Anti-Corruption Commission Act, 2004

Possession of Property in Excess of Known Sources of Income

- (i) If there are sufficient and reasonable grounds to believe that a person in his/her own name or any other person on his/her behalf is in possession and has obtained ownership of moveable or immovable property through dishonest means and the property is not consistent with the known sources of his/her income and if he/she fails to submit to the court during trial a satisfactory explanation for possessing that property, then that person shall be sentenced to a prison term ranging from a minimum of three years to a maximum of ten years imprisonment, and these properties shall be confiscated.

B. Offences under the Prevention of Corruption Act, 1947

Section 5, Subsection (2)

Any public servant who commits or attempts to commit *criminal misconduct** shall be punishable with imprisonment for a term which may extend to seven years, or with a fine or with both.

*Criminal Misconduct (Section 5, subsection (1) of the Prevention of Corruption Act)

A public servant is said to commit the offence of criminal misconduct:

- a) if he (habitually) accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Penal Code, or
- b) if he (habitually) accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

- c) if he dishonestly or fraudulently misappropriate or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or
- d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains or attempts to obtain for himself or for any other person any valuable thing or pecuniary advantage, or
- e) if he, or any of his dependents, is in possession, for which the public servant cannot reasonably account, of pecuniary resources or of property disproportionate to his known sources of income.

C. Offences Under Sections 161-169, 217, 218, 408, 409, 477A and Sections 109, 120(B) and 511 of the Penal Code, 1860 (Act XLV of 1860)

Section 161

Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the government or legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with a fine, or with both.

Section 162

Whoever, accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with a fine, or with both.

Section 163

Whoever, accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Government or Legislature, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with a fine, or with both.

Section 164

Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with a fine, or with both.

Section 165

Whoever being a public servant, accepts or obtains, or agrees to accept, or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official function, for himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment of either description for a term which may extend to three years, or with a fine, or with both.

Section 165A

Whoever abets any offence punishable under section 161 or section 165 shall, whether the offence abetted is or is not committed in consequence of the abetment, be punished with the punishment provided with the offence.

Section 165B

A person shall be deemed not to abet an offence punishable under section 161 or section 165 if he is induced, compelled, coerced, or intimidated to offer or give any such gratification as is referred to in

section 161 for any of the purposes mentioned therein, or any valuable thing without consideration, or for an inadequate consideration, to any such public servant as is referred to in section 165.

Section 166

Whoever being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with a fine, or with both.

Section 167

Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with a fine, or with both.

Section 168

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year or with a fine, or with both.

Section 169

Whoever, being a public servant, and being legally bound as such public servant not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years or with a fine, or with both; and the property if purchased shall be confiscated.

Section 217

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with a fine, or with both.

Section 218

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with a fine, or with both.

Section 408

Whoever, being a clerk or servant or employed as a clerk or as a servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to a fine.

Section 409

Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to a fine.

Section 477A

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intend to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or have been received by him for or on behalf of his employer, or wilfully, and with intend to defraud, makes or abets, the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with a fine, or with both.

Section 109

Whoever, abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Section 120B

- (i) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- (ii) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with a fine or with both.

Section 511

Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made in this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both.

III. INVESTIGATIVE METHOD

A. Relevant Laws

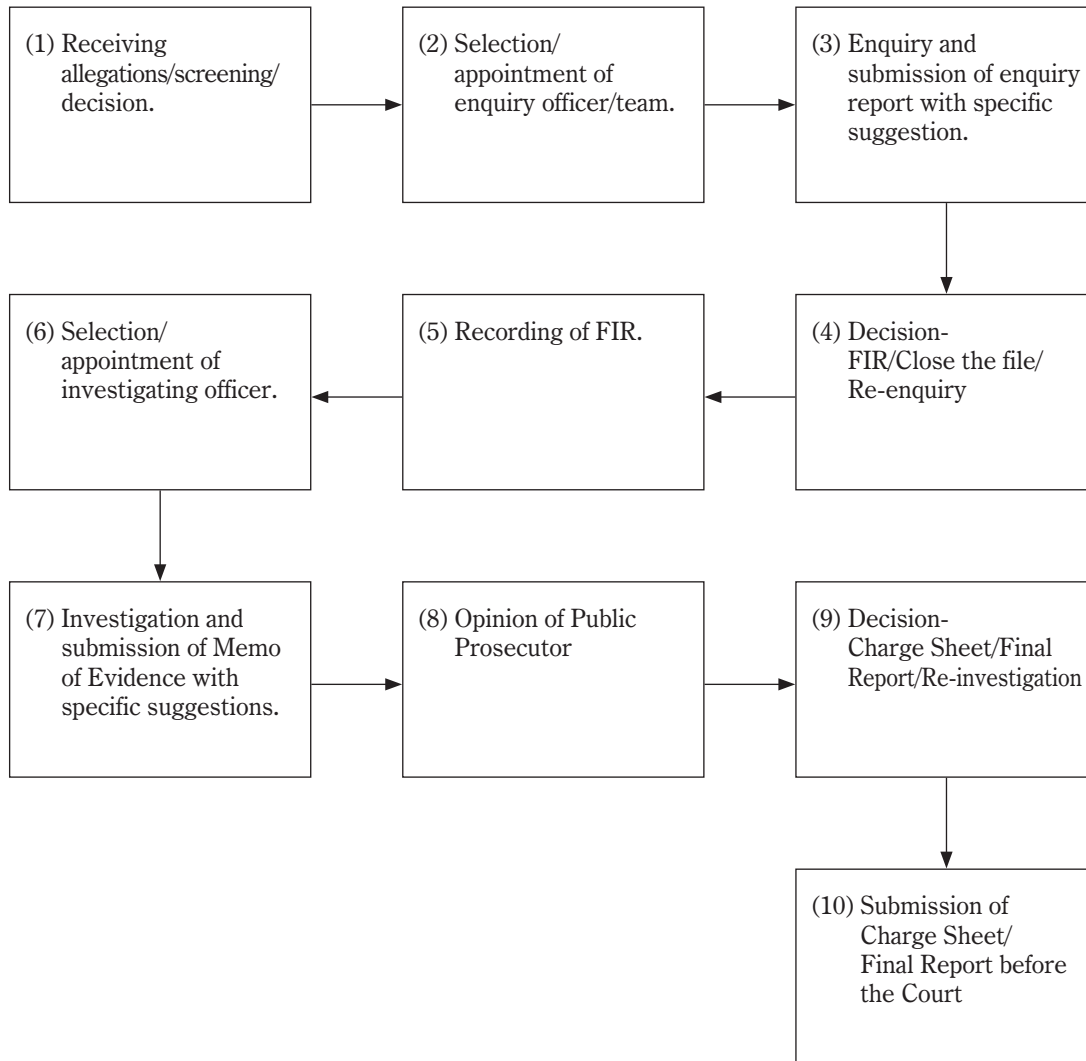
The relevant laws for investigation of corruption cases are the Criminal Procedure Code (Cr PC), 1898 and the Anti-Corruption Commission Act (ACC Act), 2004. The former one is the general procedural law for investigation and trial of criminal cases. The latter one is the special law against corruption. As far as investigations of corruption cases are concerned, if any conflict between the provisions of the aforesaid Acts is found, the provision of the latter Act will prevail. The Cr PC describes under sections 154 to 173 how offences are registered with police stations, investigations are made and the reports of investigations are submitted before the court for trial. The Anti-Corruption Commission Act dictates an investigator to conduct an enquiry before lodging/registering a First Information Report (FIR) stating the offence(s) committed. If prima facie evidence is established in enquiry, an FIR is lodged with the police station and thereafter the formal investigation starts under the provisions of the Cr PC. An investigation ends with submission of an Investigation Report before the court.

B. Functions of an Investigator During Investigation

The functions performed in an enquiry and an investigation are identical. The following functions are performed during an enquiry and an investigation:

- (i) Collection and seizure of relevant records.
- (ii) Search for relevant records, if not collected through the normal process.
- (iii) Perusal/examination of the records.
- (iv) Recording deposition of the witnesses.
- (v) Recording statement of the accused.
- (vi) Obtaining the opinion of a handwriting expert, if required.
- (vii) Obtaining an assessment of the value of properties by third parties, if required.
- (viii) Arresting the accused, if required.
- (ix) Visiting the places of occurrence, if required.

C. Sequence of Investigation



D. Investigating Agencies and their Jurisdictions

Prior to the enactment of the Anti-Corruption Commission Act, apart from the Bureau of Anti-Corruption, the police could investigate certain corruption cases. But the provision of section 20 sub-section (1) of the aforesaid Act has made the Commission the only investigating authority having jurisdiction over all of Bangladesh to investigate offences of corruption.

IV. THE JUDICIARY AND THE SPECIAL ANTI-CORRUPTION COURTS

A. The Supreme Court

1. The Appellate Division

The Appellate Division has jurisdiction to hear and determine appeals from judgements of the High Court Division. The Appellate Division can make rules of procedure of each division and any subordinate court.

2. The High Court Division

This is an independent court with both appellate and original jurisdiction. It hears and determines appeals from judgements of the subordinate courts. It has original jurisdiction to hear Writ Petitions under Article 102 of the Constitution. It has further original jurisdiction in respect of company and admiralty matters under statutes.

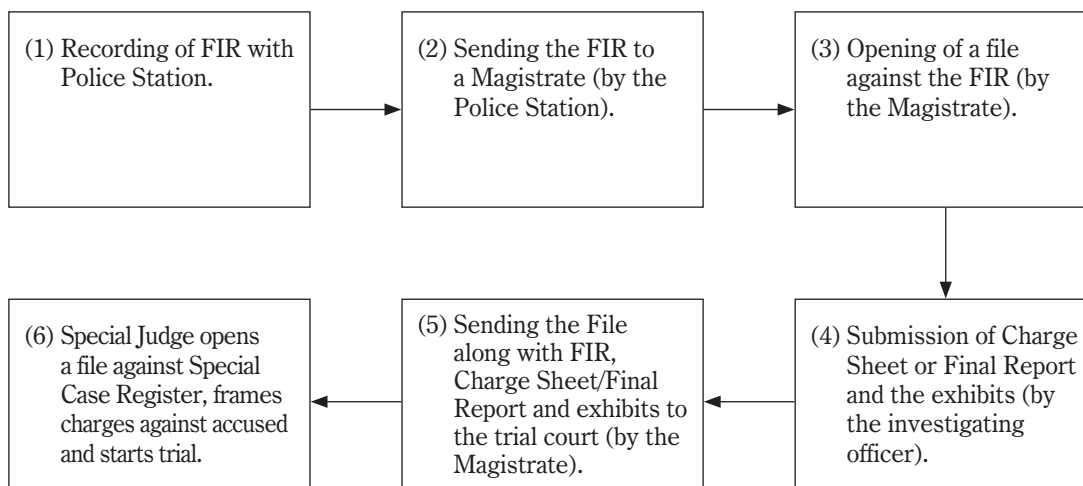
B. The Subordinate Courts and Tribunals

1. Civil Courts
2. Criminal Courts
 - (i) The Courts of Session
 - (ii) Courts of Metropolitan Session
 - (iii) Special Courts/Tribunals (Criminal)
 - (iv) Court of Metropolitan Magistrate
 - (v) Court of Magistrate

C. Special Judges/Courts to Try Corruption Cases

Under the provisions of the Criminal Law Amendment Act, 1958 corruption cases are triable by Special Judges only. A Session Judge, an Additional Session Judge and an Assistant Session Judge could be appointed as Special Judges. The Session Judges, the Additional Session Judges and the Assistant Session Judge of all districts and metropolitan areas have the authority to try corruption cases within their territorial jurisdictions in addition to their original jurisdictions as Judges of Civil Courts and Criminal Courts. Besides, there are twenty-one Special Courts established exclusively for the trial of corruption cases.

D. The Sequence of Trial System



V. CURRENT PROBLEMS

A. Problems at the Investigative Stage

1. Lack of Training Opportunities for the Investigators

Proper investigation requires knowledge and skill. The knowledge about the relevant Act, rules, regulations, procedure and other mechanics is essential. Such knowledge improves the skill. Anti-Corruption investigators have to investigate alleged corruption of officials of different offices, functions of which are different also. They should also know the technologies used by these offices. The investigators are always overburdened. As such training would develop their knowledge & skill as well as provide some time to analyze their performance compared with other participants and help them find the areas in which improvement is needed. The Bureau did not have its own training institute and the budget for training was insufficient to arrange appropriate training for its investigators.

2. Insufficient Logistical Support

Efficient investigation calls for a timely response. The Bureau could seldom provide transport facilities at the time of urgent need. The investigators had to make their own arrangements. Such arrangements would add to the expenses of the poorly paid investigators. Naturally, they could not always give their timely attention. In addition, modern equipment is needed for efficient investigation. The Bureau could not provide

such equipment to its investigators due to a paucity of funds. The Government is the provider of the budget to the Commission. If the Government fails to provide an adequate budget to the Commission, such problems will continue.

3. Lack of Promotional Opportunities for the Investigators

A good career plan encourages people to work efficiently. The Bureau had no career plan for its investigators. Most of the investigators worked in the same post for ten years or more. That was discouraging for them and made them indifferent to performing well which ultimately hampered the performance of the Bureau. If the Commission fails to devise a good career plan for its investigators, a similar situation will prevail again.

4. Non-cooperation from Different Government Offices

Most of the Offices did not provide proper cooperation to the investigators while collecting records or information related to the alleged corruption. They used to delay in providing such records or information which would hamper timely investigation.

5. Appointment of Inexperienced People as Supervising Officers to the Investigators

One of the major problems the Bureau faced was the control by the civil bureaucrats who used to be appointed in the key posts without having first-hand experience of investigation of corruption cases. To keep the key posts earmarked for them, they were never interested in formulating a career plan for the investigators.

6. Dishonesty and Compromising Attitude of some Investigators and Supervising Officials

Some investigators and their supervising officials were found to be dishonest in performing their duties. They used to compromise with the accused of different cases and distort the reports in their favour.

7. No Reward and No Punishment

The dishonest investigators and supervising officials were seldom given punishment for their alleged dishonesty and compromising attitude. On the other hand, those investigators or supervising officials who performed honestly and efficiently were hardly ever rewarded for their sincerity. As the investigators' pay was very low, such recognition would have encouraged them.

8. Problems Related with Legal Provisions

- (i) Due to the provision of the existing criminal procedural law, the anti-corruption investigators have to lodge an FIR with the police station and submit the charge sheet or the final report before a magistrate who do not have any active role as far as anti-corruption activities are concerned. Such unnecessary involvement of the police station and magistrate only delays the process.
- (ii) According to the existing provisions of the criminal procedural law, in order to collect bank related records, the investigators are compelled to get prior approval of the District Judge. Such provision delays investigation.
- (iii) The provisions of the Anti-Corruption Commission Act do not allow an investigator to arrest a bribe-taker during the enquiry period. Such provision would not help curb corruption.

B. Problems at the Trial Stage

1. Lack of Training Opportunities for Judges and Prosecutors

The special judges and the prosecutors are not properly trained in anti-corruption matters. Such lack of training sometimes creates problems in the process of trial.

2. Lack of Coordination between the Investigators and the Prosecutors

The investigators and prosecutors do not have a good understanding due to a lack of coordination and as such the prosecution team does not achieve the desired success in many cases.

3. Overburden of Duty and Delayed Decisions

The same judge has to perform as a District Judge, a Sessions Judge, and Special Judge of other special

criminal courts/tribunals, including a Special Judge of corruption cases. Therefore, he is always overburdened. Despite all his sincerity he cannot ensure a timely trial of the cases. As such the decisions are normally delayed.

4. Stay Orders and Delayed Decisions

The High Court has the authority to make a stay order against the proceedings of an anti-corruption case if an accused files a writ petition or criminal miscellaneous case stating violation of his/her constitutional rights. However, the judges of the High Court are also overburdened. Hence, once the proceedings of a case are stayed, it takes a long time to get the judgment on the writ petition. Ultimately, the judgment of the case is delayed.

5. Irregular Service for Public Prosecutors

There is no regular prosecutorial service for the public prosecutors. The Attorney General (chief public prosecutor of the country) and other public prosecutors are appointed according to the desire of the party in power. Therefore, each time the opposition comes to power, the old set of public prosecutors does not generally get reappointed and a new set of public prosecutors are appointed. Such changes disturb the proceedings of anti-corruption cases.

VI. PROBABLE SOLUTIONS TO THE PROBLEMS IDENTIFIED

A. At the Investigative Stage

1. Arrangement of proper and regular training.
2. Adequate supply of logistical support.
3. Creation of promotion opportunities under a career plan for the investigators.
4. Strict application of legal provisions against the offices found to be non-cooperative.
5. Appointment of experienced officers as supervisors of the investigators.
6. Strict application of the provisions of the service rules.
7. Arrangements for the reward of excellent performance.
8. Amendment of legal provisions.

B. At the Trial Stage

1. Arrangement of proper and regular training for the Judges and the Prosecutors.
2. Arrangement for coordination between the investigators and the prosecutors.
3. Establishment of more special courts to try corruption cases and quick trial courts.
4. Amendment of legal provisions regarding acceptance and settlement of writ petitions and criminal miscellaneous cases against corruption cases.
5. Regular prosecutorial service.

VII. GLOBAL FIGHT AGAINST CORRUPTION AND BANGLADESH

Bangladesh is not a signatory to the United Nations Convention against Corruption. It should join the Convention for its own interest, particularly in order to fight money laundering offences. Money laundering has not been defined as an offence against corruption. There is a separate Act for money laundering offences titled the Anti-Money Laundering Act, 2002.

VIII. GENERAL MEASURES FOR PREVENTION OF CORRUPTION

A. Prevention through Research/Review

Under the provisions of section 17 clause (e) of the Anti-Corruption Commission Act, 2004 the Commission would review the legally accepted measures for preventing corruption and under clause (f) it would carry out research as to how corruption can be prevented.

B. Prevention through Promoting Values and Building up Mass Awareness

Under the provisions of section 17 clause (g) of the Anti-Corruption Commission Act, 2004 the Commission would promote the values of honesty and integrity in order to prevent corruption. It would also take measures to build up mass awareness against corruption.

C. Seminars, Symposiums and Workshops, etc.

Under the provisions of sections 17 clause (h) of the Anti-Corruption Commission Act, 2004 the Commission would arrange seminars, symposiums, workshops etc. that would help prevent corruption.

IX. CONCLUSION

The problems related to investigation and trial can be addressed if proper measures are taken. Nevertheless, it is almost impossible to fight corruption properly, if adequate support from the government and its agencies are not provided. Such support should go on uninterrupted. And that is why political goodwill is pivotal in order to properly address corruption. For the greater interest of the country and the people, the political parties must reach a gentlemen's agreement as to whoever the accused is/are, he/she/they must be brought to book irrespective of his/her/their political affiliation and they must provide all required support towards the fight against corruption.