

---

## PARTICIPANTS' PAPERS

---

### ETHICS AND CODES OF CONDUCT FOR JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS: BANGLADESH PERSPECTIVE

*Md. Shah Abid Hossain\**

#### I. INTRODUCTION

Good governance based on accountability, participation, transparency and responsiveness is a pre-requisite for development and ensuring the provision of services to the people. Human rights and human security are central to the concept of sustainable human development and therefore an important aspect of any governance programme. Rule of law and access to justice are key elements of governance and are essential for ensuring human rights. Without good governance, corruption flourishes and the benefits of public programmes do not reach to their target recipients, especially the poor.

One of the most important duties of a criminal justice system is to detect corruption and impose appropriate punishment on corrupt politicians and public officials. But, if the criminal justice system itself is corrupt, it is a grave danger to democracy. In particular, corruption in the judiciary, prosecutorial authorities and law enforcement authorities, which have the important role of maintaining the rule of law, not only decreases the capacity of a country to curb corruption, but also deteriorates the morale of the people and their trust in the justice system. The Bangladesh chapter of the international anti-corruption watchdog, Transparency International (TI) blamed three factors for the poor score of the country: absence of administrative reforms; influence on the judiciary; and insecurity and uncertainty in business and investment.

On 26 September 2007, TI released its annual Corruption Perception Index (CPI) for 2007. On a scale of 0-10, the index ranked countries in terms of the perceived degree of prevalence of political and administrative corruption. The results showed that Bangladesh scored 2.0 points and ranked 162nd of the 180 countries included in the Index in 2007. It may be recalled that Bangladesh was placed at the bottom of the list for five successive years, from 2001-2005. In 2006 Bangladesh was ranked third from the bottom. While many high-ranking countries received lower scores in 2007, Bangladesh remained steady at score of 2.0. Pointing to an apparent failure in maintaining the integrity of the legal process, TIB Executive Director Iftekharuzzaman said: "If the oversight institutions could work properly, for example, if the judiciary and police were not influenced, the position of Bangladesh could have been better in the index."

Despite impressive achievements in a variety of fields, with fledging democracy Bangladesh suffers from weak governance, poverty and limited government capacity to deliver basic services. Corruption is widespread in Bangladesh, with various forms and manifold impact on all aspects of social and economic life. Systemic corruption continues to prevail and to permeate the economy of the country in every sector and weakens its governance structures at all levels. Pervasive corruption and the need for better governance are fundamental constraints on the development of Bangladesh. That's why access to justice, including judicial and security sector reform, has emerged as a critical area of concern. In Bangladesh, an accountable, transparent and efficient judiciary and police service, based on ethical moral values, is essential for the safety and wellbeing of all citizens, national stability and longer-term growth and development.

The judiciary and law enforcement services have experienced both organizational and operational changes during the last several years in Bangladesh. These changes, coupled with a formidable and entrenched organizational culture, call for fresh approaches to managing ethics in the judiciary and police work. Unfortunately, little has been written concerning the impact of these changes on the ethical framework of the judiciary and law enforcement agencies. One of the greatest challenges facing the criminal justice system and law enforcement administrators today is the creation and maintenance of a values-based agency consisting of an ethical cadre of officers and supervisors that represent the values of society. Many

---

\* Additional Superintendent of Police, Bangladesh Police, Police Headquarters, Dhaka, Bangladesh.

issues arise that make the maintenance of ethical employees a difficult task.

For effective control of corruption, prevention is the best solution. That is why an entire chapter of the United Nations Convention against Corruption is dedicated to prevention of corruption, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and formulation of and strict adherence to a standard set of codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, particularly in the critical areas of the public sector, such as the judiciary, law enforcement and public procurement.

## II. SITUATION ANALYSIS

### A. Socio-Economic and Political Environment

Bangladesh was born in 1971 after a short, but regionally destabilizing, war of independence with Pakistan. Following independence, Bangladesh saw political assassinations, military interventions, a polarized political system, and a series of coups during the late 1970s and early 1980s. Bangladesh is a constitutional republic with a multi-party parliamentary democratic system of government. The Head of State is the President; however executive power rests with the Prime Minister. Following a period of military rule, democracy was restored in 1991. Since then three elections have been held, in 1996, 2001 and 2008. The media, civil society, students, community, labourers' unions, lawyers and other groups were enthusiastic and advocated their support for democracy.

Among hundreds of political parties, the Bangladesh Awami League (AL), the ruling party, and the Bangladesh Nationalist Party (BNP), the main opposition party, are significant. The current government is a coalition headed by AL which returned to power through the national election in December 2008. With approximately 150 million people inhabiting some of the most productive land in the world, the country is as poor as it is luxuriously fertile. Bangladesh has a total area of 143,998 sq. km. With the exception of several city states (Singapore and Malta) Bangladesh is the most densely populated country in the world. It is three times more densely populated than India and seven times more densely populated than China. Most of the population, however, lives in rural areas, impacting on the delivery of many public services, including police services and access to justice. This is particularly difficult in more remote and inaccessible areas because of poor road infrastructure and lack of communications. The people are predominantly Muslim (Sunni) with a small percentage of Hindus and a very small percentage of Christians. Buddhists are also a tiny minority of the population. There are some ethnic groups, mostly living in Chittagong Hill Tracts.

Bangladesh is a poor nation, with the average per capita income of around US\$520. It is ranked 139th in the UN Human Development Index (HDI<sup>1</sup>) out of 175 countries (2003 Human Development Report). More than 250,000 Bangladeshis are working abroad and about \$US1.9 billion is received as remittances from their income each year.

In some other areas of human development, Bangladesh has made positive gains. Significant reduction has been achieved in infant and child mortality rates. Population growth has been sharply reduced to 1.5% and primary school enrolment has increased to 90%. Micro credit institutions, from both the public and private sectors, have not only created employment and earning opportunities for the poor and unemployed, but also social awareness and empowerment of women.

The country continues to attract foreign aid from a large number of countries and development partners such as the World Bank (WB), ADB, UNDP, UNICEF, UNESCO, WHO, USAID, the European Community (EC), the Department for International Development (DFID), the Danish International Development Agency (DANIDA), the Japan International Cooperation Agency (JICA) and the Canadian International Development Agency (CIDA). For many years foreign aid covered over 50% of the development budget of the government but has shrunk to less than 30% and is declining rapidly.

---

<sup>1</sup> The HDI captures average levels of a nation's human development, by reflecting achievements in longevity, knowledge and standard of living.

Crime and corruption are serious problems in Bangladesh and in the view of many, quite rampant. According to a World Bank report, the country's GDP growth (which increased to 4.8% in the 1990s) would have gone up by 2 to 3% and its per capita income would be doubled, if corruption had not been so widespread. Extortion and toll collection are quite common. This adds significantly to the cost of doing business and creates hardship and insecurity for many honest and hard-working people. The offices identified as the most corrupt are police stations (thana), lower Judicial Courts, public hospitals, Sub-registrars Office, Land Record Office, Thehsil Office and scheduled banks.

The perception of corruption indicates the absence of accountability and misuse of position and power as the most important manifestation of corruption mainly because of the willingness of the people to pay to reduce harassment and waste of time. It is also interesting to note that the second most frequent perception of corruption is negligence of duty. This is directly related to non-accountability and absence of monitoring system. The third most frequent perception of corruption is the engagement in outside activities avoiding the parameter laid down by rules of business or service rules.

The latest amendment of the Criminal Procedure Code Ordinance, in February 2007, separated the judiciary from the executive branch of the government, securing the framework for an independent judiciary. Undue political and executive interference is widespread in the criminal justice system in Bangladesh, especially in the lower courts. It is also characterized by prolonged judicial process and delayed delivery of justice to the all types of service recipients.

### **B. The Criminal Justice Sector in Bangladesh**

The criminal justice sector in Bangladesh comprises the police, judiciary (including courts, prosecutors and defence counsel), traditional and non-formal conflict resolution mechanism and the prisons. In addition, a number of civil society organizations also carry out activities such as legal aid in the sector. The police and prisons are under the administrative control of the Ministry of Home Affairs (MoHA). The administration of the courts is complex and involves a number of Ministries and the Supreme Court. The formal justice system, largely inherited from the colonial era giving long passage of time now needs reform in many areas.

In the view of many individuals and groups, the criminal justice system in Bangladesh is essentially impoverished: crime is underreported and poorly investigated by the police, the trial system is slow and inadequate and the prisons are dilapidated and overcrowded. Almost 70% of detainees are awaiting trial. Some have been in pre-trial detention for years because of backlogs in the courts. It is not uncommon to have views expressed that the criminal justice system is a burden and part of the "problem" rather than the solution. Inefficiency and corruption throughout the sector are a major concern and a significant inhibitor to access. There is a growing desire from the civil society, media, ministries and international agencies to establish a more co-ordinated vision for the justice sector.

The structure, organization and primary focus of the justice system is based on a colonial "law and order maintenance" model. This concentrates on public order, control and protection of the wealthy and powerful rather than the detection, investigation and prevention of crime with the consent and cooperation of the law abiding public. Key laws pertaining to human security include *The Penal Code (1860)*, *The Police Act 1861*, *The Evidence Act (1872)*, *The Code of Criminal Procedure (CrPC 1898)*, *The Anti-Corruption Act (1947)* and *the Special Powers Act (1974)*. There are a number of other Acts and Ordinances in addition to new legislation which include *The Women and Children Repression Prevention (Special Provision) Act (2000)*, *Speedy Trial Tribunal Act (2002)* and *The Law and Order Disruption Crimes (Speedy Trial) Act (2002)*.

The application of these laws and ordinances is the primary responsibility of Police, who are the first point of contact with the formal justice system for most of the people. In case of violation, the offence is reported to the Officer-in-Charge of the police station in the form of a First Information Report (FIR). The police officer in charge of investigating the case is known as the Investigating Officer (IO). If a *prima facie* case is made against the accused during the investigation, the IO either submits a Charge Sheet (CS) or a final report. The Police have wide discretionary powers which can lead to serious miscarriages of justice, particularly by the application of Section 54 of the CrPC which allows police to arrest anybody without warrant of arrest and the Special Powers Act (SPA).

The administration of justice is the responsibility of the judiciary, which comprises the Supreme Court at the higher level, followed by a hierarchy of civil and criminal courts at the district level; and finally, village courts in rural areas and conciliatory courts in municipal areas. Bribery, corruption, inefficiency, lack of resources, large case backlog and abuse of the system are widely reported and appear to be endemic.

The law provides accused persons with the right to be represented by counsel, to review accusatory material, to call or question witnesses, and to appeal verdicts. Cases are decided by judges rather than juries, and trials are public. In practice a public defender is rarely provided to defendants. Defendants are presumed innocent, have the right to appeal, the right to be present and to see the government's evidence.

### **C. Composition of Judiciary**

The court system has two levels: the lower courts and the Supreme Court. Both try civil and criminal cases. The Supreme Court is divided into two divisions, the High Court and the Appellate Division and is headed by the Chief Justice. The High Court Division hears original cases mostly dealing with constitutional issues, and reviews cases from the lower courts. The Appellate Division hears appeals of judgments, decrees, orders, or sentences of the High Court.

After the separation of the judiciary from the executive in November 2007, the government appointed judicial magistrates to replace the executive magistrates who were presiding over the lower courts. The Subordinate judiciary may broadly be categorized as Civil Courts and Criminal Courts. With some exceptions civil courts have jurisdiction to try all suits of a civil nature. There are two classes of Criminal Courts in Bangladesh, namely Courts of Sessions; and Courts of Magistrates. There are two classes of Magistrate, namely: Judicial Magistrate and Executive Magistrate. The Civil Courts Act 1887 and the Criminal Procedure Code 1898 elaborate the structure and powers of the civil and criminal courts respectively. The Metropolitan Magistracy functioning in six divisional metropolitan cities of the country also deals with criminal cases.

The attorney general is the principal law officer of the government. He is also the leader of the bar and *ex-officio* chairman of the Bangladesh Bar Council. He is assisted by the additional attorney general, deputy attorney generals and assistant attorney generals. They represent the state in the Supreme Court and conduct cases in the courts on behalf of the state. The government pleader is the principal law officer of the government in the district and he is assisted by the additional and assistant government pleaders. They represent the state in the subordinate civil courts of the districts and conduct cases on behalf of the state. Similarly, the public prosecutor is another principal law officer of the government in the district on criminal issues.. He is assisted by the assistant public prosecutors. They conduct prosecution on behalf of the state in the courts of sessions; sessions level courts or tribunals in the district. The police sub-inspectors conduct prosecution on behalf of the state in the courts of the magistrates.

The report of the *Police Commission of Bangladesh (1989)*, recommended that the present system involving political appointments need to be abolished and replaced by a permanent prosecution service. Steps are being taken; however any permanent appointments will need to be transparent and objective to avoid exacerbating the existing problem.

### **D. Ministry of Law, Justice and Parliamentary Affairs**

The responsibilities of the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) include, among others, the drafting of laws and the appointment of public prosecutors and assistant public prosecutors. MoLJPA is a key stakeholder in justice sector reform and has been active in the area.

A number of other reforms have been introduced by the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) to streamline the judicial system and reduce backlog in the courts. These include the Speedy Trial Tribunal for major cases, strengthening of alternative dispute resolution mechanisms and consideration of introducing cost penalties for unnecessary adjournments and delays. In addition, a Monitoring Cell has been established in the MoHA to oversight the investigation process and co-ordinates with MoLJPA.

### **E. Bangladesh Police**

The Bangladesh Police is a national organization with Police Headquarters (PHQ) based in Dhaka. It

comprises nearly 125,000 personnel of which 85,000 are constables. In addition to PHQ, it has a number of branches and units including the Special Branch, Criminal Investigation Department (CID), Armed Police Battalion, Training Institutions, Metropolitan Police and Range (including Railway Police). The Range and Metropolitan Police are structured into Districts, Circles, Police Stations (Thanas) and Outposts. To curb the serious crime and terrorist activities within the country, Rapid Action Battalions are working all over the country under operational control of an Additional Inspector General of police.

Bangladesh police is entrusted to prevent crime and maintain peace and order in the society. It inherits century old tradition and heritage. The current police organization emerged, along with the new state, from the Pakistani era in 1971. The first officers of the Bangladesh Police were Bengali members of the recently disbanded East Pakistan Police. The Police-Population ratio for Bangladesh is near 1: 1200. With a vision “*To provide service to all citizens and make Bangladesh a better and safer place to live and work*” Bangladesh Police has been working relentlessly. The vision is to be achieved through a five point missions:

- To uphold the rule of law;
- To ensure safety and security of citizens;
- To prevent and detect crime;
- To bring offenders to justice; and
- To maintain peace and public order.

Significant problems exist in human security sector and access to justice in Bangladesh and these issues adversely impact on the poor and vulnerable especially women and young people. The 2007 Transparency International Household survey found law enforcement to be one of the most corrupt parts of government. Many citizens remain hesitant to report crime or visit a thana. The importance of an efficient and effective police service as an integral part of broader justice system has been recognized by all quarters. With that spirit Police Reform Programme (PRP) has been working to create a new and modern police. The programme was launched in 2005, and is being implemented by the Ministry of Home Affairs and the Bangladesh Police in partnership with UNDP, DFID and the EC. The first phase of the programme was due to end by June 2009 but due to technical reason the mandate of the programme has been extended till September 2009. PRP aimed at improving the efficiency and effectiveness of the Bangladesh Police by supporting key areas of access to justice; including crime prevention, investigations, police operations and prosecutions; human resource management and training; and future directions, strategic capacity and oversight.

The key achievements include Strategic Planning and Police internal oversight. A Strategic Plan for 2008-2010 and a range of supporting documentation have been developed; including the National Strategy for Community Policing and Crime Prevention, Information Management Strategy and National Training and Human Resource Management Plan. An internal oversight unit with more than 400 officers has been established. Since 2007, the Unit has investigated more than 17,000 cases which have contributed to the reduction in corruption through stronger internal oversight and accountability. Substantial achievements during the first phase of PRP have encouraged development partners to come forward with adequate funds for the extension of the programme for a further period of five years, 2009 to 2014.

Without providing a comprehensive analysis of corruption in Bangladesh, it is appropriate to provide some analysis of corruption in Bangladesh Police and the nexus between poor salary, formal discretionary powers, lack of accountability and police corruption. Police officers in Bangladesh however have wider formal and informal power than the average citizen and by the nature of their work they are often exposed to environments conducive to corrupt activities. These include a lack of personal and corporate accountability, poor role modelling and regular opportunity. This is compounded because there are few disincentives such as strong and ethical supervision, effective detection and clear punishment systems.

When combined with a particularly low salary and poor conditions, these additional elements of power and opportunity create a breeding ground for corruption by police officers. Earlier analysis focused on low community confidence in the police. This lack of confidence applies equally to the reporting of complaints against police themselves.

No country is free from corruption. However, countries that did enforce accountability through an all-purpose anti-corruption agency to undertake investigations anywhere in the public sector and which

increased transparency by allowing watchdog bodies to look at their activities did experience sustainable changes. The same could be applied for police. Bangladesh police is now in process of designing an effective anti-corruption strategy focusing on four main dimensions: Human Resources Management (salaries, recruitment, promotion and selection), command and control (supervision), training (professionalization) and finally detection/repression (Internal Investigation Unit, Internal Audit Unit).

#### **F. Anti-Corruption Commission**

The Anti-Corruption Commission (ACC) was established in accordance with the Anti-Corruption Commission Act 2004 and replaced the defunct Bureau of Anti-Corruption, which had suffered from ineffectiveness and lack of independence. Although the commission failed to file a single case in its first few years of existence, it was restructured to perform more effectively in February 2007. The ACC operates under the schedule of the Prevention of Corruption Act 1947, the Penal Code 1860, and the Money Laundering Prevention Act 2002. The ACC is scrutinizing more than 70,000 corruption allegations that were alleged in 2007. Public service institutions in government and private sectors have been the main targets of investigation. In association with Transparency International Bangladesh, the ACC started a year-long awareness campaign against corruption in December 2007 including seminars, symposiums and workshops related to anti-corruption.

#### **G. The Media**

The print and electronic media are significant players in highlighting and reporting law and order issues in Bangladesh. They also play a key role in monitoring trends and articulating public opinion.

The media in Bangladesh plays a vital role in maintaining accountability and transparency of public officials and agencies, and in creating awareness and reflecting public opinion. However, the challenge is to do this with responsibility with objective, factual and balanced reporting.

### **III. CODES OF CONDUCT AND OTHER MEASURES FOR CORRUPTION CONTROL IN BANGLADESH**

The President promulgated Government Servants (Conduct) Rules, 1979 to regulate official conduct of government servant. The rules are made applicable to all government servants whether on duty or on leave within or outside Bangladesh serving in a civil capacity in respect of the government of Bangladesh. However, rules are not applicable to certain category of government servants of specific department for whom separate rules exist governing the terms and conditions of their services.

The rules designed to provide a framework for code of conduct for government servants intended to ensure safeguards against corruption, external influence on decision-making, nepotism, favoritism, victimization, etc.

The rules are very elaborate, thirty-two in number, imposing restrictions and prohibition upon the government servant in specific areas of activity. Broadly, the rules fall under three categories. First, some of the rules impose total prohibition which applies to speculative investment, approach to members of Jatiya Sangsad or other non-official person to intervene on behalf of the government servant, taking part in politics and elections, propagation of sectarian creeds, indulging in parochialism, favouritism, victimization and willful abuse of office. Similar prohibitions are there debarring a government servant from using political or other influence. A government servant is further prohibited from approaching foreign mission or aid-giving agency to secure invitation for him or herself to visit a foreign country or to elicit training facilities abroad.

The second category relates to rules requiring a government servant not to do certain things without prior permission of the government. These relate to acceptance of gifts beyond a certain limit, raising of funds, lending and borrowing, purchasing and selling of valuable property and construction of buildings. Other areas include promotion and management of companies, private trade and employment, insolvency and habitual indebtedness, communication of official documents or information to others etc. In all such cases, prior permission of the government is necessary.

The third category of rules requires declaration from the government servant through usual channel, at the time of entry into government service, the value of properties held by him or her exceeding Tk. 10,000. The rules further require submission of annual statement of assets by a government servant in the month

of December showing increase or decrease of the value of property submitted at the time of entry into service. Finally, a government servant is required to disclose his or her liquid assets when asked so by the government.

#### **A. Codes of Conduct for Judges and Prosecutors**

For Supreme Court and High Court judges:

In exercise of power under article 96(4) (a) of the constitution of the people's republic of Bangladesh, the supreme judicial council prescribes the 14 point code of conduct for all of the judges of the Appellate Division and the High Court Division of the Supreme Court of Bangladesh. The 14 point Code stipulates that any act of a judge of the Supreme Court of Bangladesh whether in official or personal capacity, which erodes the credibility and independence has to be avoided. The code of Conduct is only restatement of values of judicial life and is not meant to be exhaustive, but illustrative of what is expected of a judge. This Codes of Conducts has been in effective from the 7 May 2000 and are as following:

A judge:

- should uphold the integrity and independence of the judiciary;
- should avoid impropriety and the appearance of impropriety in all activities;
- should perform the duties of the office impartially and diligently;
- may engage in extra-judicial activities to improve the law, the legal system, and the administration of justice;
- should practice a degree of aloofness consistent with the dignity of his or her office;
- must not enter into public debate or express his or her views in public on political matters or on matters that are pending or are likely to arise for judicial determination before him or her;
- is expected to let his or her judgments speak for themselves. He or she will not give interviews to the media;
- will not accept gifts or hospitality except from his or her family, close relatives and friends;
- should not engage directly or indirectly in trade or business, either by him or herself or in association with any other person. (Publication of legal treatises or any activity in the nature of a hobby will not be construed as trade or business.);
- should not ask for, accept contributions or otherwise actively associate him or herself with the raising of any fund;
- must at all times be conscious that he or she is under the public gaze and there should be no act or omission by him or her which is unbecoming of his or her office;
- shall inform the chief justice of any embarrassment during the period of hearing a case so that the chief justice can take appropriate steps;
- should not engage in any political activities, whatsoever, in the country or abroad;
- shall disclose his or her assets and liabilities if, asked for, by the chief justice.

For subordinate judges and prosecutors:

For judges and judicial magistrates in the subordinate court and for the prosecutors though there are no such written codes of conducts and codes of ethics but judicial officers have to follow the guidelines prescribed by the Ministry of Law, Justice and Parliamentary Affairs. Both the judges and judicial magistrates should render ceaseless and unremitting efforts to dispense quality justice to the justice-seekers maintaining highest ethical conducts.

Every judge will take the initiative in maintaining proper atmosphere in the Court at the time of dispensation of justice between the parties. He or she will also see that no unethical act or no act which derogates from the dignity of the Court is committed within its precincts.

In his or her personal life, a judge will have to be truthful and ideal as well. He or she should not resort to

abuse of power in personal interest. Impartiality must be maintained by him or her in all circumstances. He or she will, maintain decency in his dealings with others. His or her wearing apparel should be decent too.

A judge will take disciplinary steps against his or her delinquent employees. He or she should keep an eye on all his employees so that the litigant people are not unnecessarily harassed at their hands.

As far as practicable, a Judge will desist from attending social functions and, in particular, he or she will refrain from those social functions through which he or she may come in contact with litigants. His or her lifestyle should be separate from those of the ordinary people of the society.

A Judge will remain above all parties and ideologies and he or she ought not to strive for eulogy and popularity. No Judge should try a cause in which either he or she or his or her relations or his or her friends are personally interested.

On no account will a judge accept gifts, presents, etc. either directly or indirectly, from the parties, or for that matter, from the lawyers to a proceeding in his or her Court.

A judge will not accept any job which runs counter to his or her dignity, honour, duty and responsibility. He or she should be on his or her guard to see that his or her personal or social relationships do not affect his or her impartiality in the administration of justice.

A judge will remain above all political parties in public. He or she will never participate in any political meetings, activities or campaigns. He or she will not write any articles either on politics or on any controversial issues in newspapers. A Judge will never grant personal interviews or express his or her views or give any hearing to anybody or resort to any correspondence about the matters which are being examined in his or her Court.

For prosecutors and lawyers:

The Bangladesh Bar Council approved and adopted the *Canons of Professional Conduct and Etiquette* and urges all advocates to conform to these Canons in their conduct with regard to the members of the profession, their clients, the courts and the public generally. To maintain the ethical standard the law officers and prosecutor have to abide by those canons of professional conducts.

**Role of prosecutor in criminal proceedings:** The office of prosecutors shall be strictly separated from judicial functions. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest. He or she shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

In the performance of their duties, prosecutors shall: i) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; ii) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of benefits or loss of the suspect; iii) Keep professional dealings confidentially, unless the performance of duty or the needs of justice require otherwise; iv) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.



When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or inhuman treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that the responsible ones for using such methods are brought to justice.

## **B. Codes of Conduct for Law Enforcement Officials**

According to the regulation 106 of The Police Regulation of Bengal, 1943 the Government Servants (Conduct) Rules are also applicable for police and other law enforcement officials in Bangladesh.

Presently though there is no specific codes of conduct for Bangladesh Police but PRB (Police regulation of Bengal) provides police procedural and behavioral guidelines for police personnel. Bangladesh Police is now in the process of designing of an Anti Corruption Strategy for Bangladesh Police which includes Code of Conduct and Ethics also. Police officers are required, at all times, to carry out their duties in accordance with the provisions of this draft Code. They should remember that a breach of its standards could lead to a criminal or disciplinary investigation, either by the Internal Affairs Unit or the Anti-Corruption Commission or the Bangladesh Court of Justice.

### 1. Primary Responsibilities for a Police Officer

The Constitution of the People's Republic of Bangladesh states that "to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is an inalienable right of every citizen and no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law." Other rights pertaining to human security are enshrined in articles 32, 33, 35 and 42 of the Constitution. Ensuring the respect for the laws and ordinances of the country is the primary responsibility of the police. Police are expected to be the primary protectors of human rights as well as human security. Regulation 33 of the Bangladesh Police Regulations (PRB-Police Regulations Bengal 1943), enjoins all ranks, while being firm in the execution of duty, to show forbearance, civility and courtesy towards all classes.

- (i) Police officers shall at all times fulfil the duty imposed upon them by law. The main purposes of the police in a democratic society governed by the Rule of Law are:
  - (a) to protect and respect the individual's fundamental rights and freedoms;
  - (b) to maintain public tranquillity, and Law and order in society;
  - (c) to combat crime;
  - (d) to provide assistance and service functions to the public.

With the duties police officers shall protect human dignity and uphold the human rights.

- (ii) Police officers shall not subject any person to torture or to inhuman or degrading treatment or punishment.
- (iii) Police officers shall not knowingly or through negligently make any false, misleading or inaccurate oral or written statement or entry in any record or document used for official purpose.

### 2. Relations with the Public

A police officer must act in such a manner as to preserve the confidence and consideration as the duties require.

- (i) General Conduct
  - (a) Police officers shall not take any active part in politics;
  - (b) Police officers shall not behave in a manner which brings, or likely to bring, discredit on the police service or that undermines or likely to undermine public confidence in the police, whether on or off duty.
- (ii) Equality
  - (a) Police officers shall act with fairness, self-control, tolerance and impartiality when carrying

143RD INTERNATIONAL TRAINING COURSE  
PARTICIPANTS' PAPERS

out their duties regardless of age, nationality, gender or religion. They shall use appropriate language and behaviour in their dealings with members of the public, groups from within the public and their colleagues.

- (b) They shall respect all individuals and their traditions, beliefs and lifestyles compatible with the rule of law.

(iii) Integrity

- (a) Police officers shall not commit any act of corruption or dishonesty.
- (b) Police officers shall, at all times, respect and obey the law and maintain the standards stated in this Code.

(iv) Propriety

- (a) Officers shall be clean and respect the uniform when on duty whilst in uniform or in plain clothes;
- (b) Police officers shall be fit to carry out their responsibilities;
- (c) Police officers shall ensure that property and equipment entrusted to them as police officers are handled and maintained as required by law and the instructions of the Inspector General;

(v) Confidentiality

- (a) Confidential things, in possession or control of police officers, shall be kept confidential, unless performance of duty or the needs of justice strictly require otherwise.

(vi) Use of Force

- (a) Police officers, in carrying out their duties, shall as far as possible, apply non-violent methods before resorting to the use of force or firearms;
- (b) A police officer shall discharge a firearm only when the officer in good faith realizes the necessity to do so in order to save life or prevent serious injury.
- (c) Whenever police officers resort to the use of firearms, they shall identify themselves as such and shall give a clear warning of their intent to use firearms, with sufficient time for the warnings to be observed, unless to do so:
  - (d) Would unduly place any person at a risk of death or – serious injury;
  - (e) Would be clearly inappropriate or pointless in the circumstances of the incident.

3. Duty of Supervisors

- (i) Supervisors shall ensure that their staff carries out their professional duties;
- (ii) Supervisors have a particular responsibility to secure, promote and maintain professional standards and integrity by advice, remedial or other relevant and appropriate action;

4. Police Investigations

- (i) Police officers shall treat all victims of crime and disorder with sensitivity and dignity. Police officers shall consider any special needs, vulnerabilities and concerns of the victims..
- (ii) Police investigations shall be objective and fair, and thorough manner in accordance with the law;
- (iii) Police officers shall take account of the special needs of witnesses and be guided by the Witness Protection Program for their protection and support, in particular, where the intimidation of witnesses is at risk.

5. Detained Persons

- (i) Police officers shall ensure that all detainees are treated humanly;
- (ii) Police officers shall fill and keep a custody record for each detainee;
- (iii) Police officers shall take every reasonable steps to protect the health and safety of individuals who are arrested or detained and shall take immediate action to secure medical aid for such person;

### **C. Monitoring of Implementation**

#### **1. Monitoring, Supervision and Control over the Subordinate Judiciary by the Supreme Court**

According to Article 109 of the Constitution the High Court Division has superintendence and control over all courts and tribunals sub-ordinate to it. To ensure accountability and transparency of the Judicial Officers of sub-ordinate judiciary, it is essential to keep their performance under constant supervision and monitoring. With that view; the Judges of the Supreme Court regularly makes meticulous inspection to observe the subordinate courts throughout the country as per the directives made by the Chief Justice on that behalf. In addition to that the Judges may also go for surprise visit of any court throughout the country as and when it seems necessary. The inspection reports contain not only appreciation of the performance of judicial officers, but also faults, irregularities and even misconduct in respect of administrative and judicial function suggesting appropriate actions against concern judicial officers. The office of Registry of Supreme Court has submitted these reports to Chief Justice for suitable directives and orders.

#### **2. Submission of Annual Wealth Statement of the Judicial Officers**

As a part of monitoring mechanism, assets and wealth statements of the Judicial Officers are required to be collected regularly. Although there is provision in the *Civil Rules and Orders (CRO)* for submission of assets and wealth statements by the Judicial Officers every year, it has not been in practice for years.

District Judges shall submit to the Supreme Court (High Court Division), along with the annual returns and statements, a report for the year to which these refer upon the administration of civil justice. The failure to explain discrepancies between figures given in two successive reports, which, in the absence of special reason, ought to be identical, is also a matter which leads to much unnecessary correspondence, and should be avoided.

Recently Supreme Court has decided to activate the provision of CRO in respect of assets and wealth statements of the Judicial Officers with a view to collecting and preserving assets and wealth statements of Judicial Officers in the Supreme Court for reference as and when necessary.

Conducts of the judicial officers are also overseen by the local authority which includes District judge and Chief Judicial Magistrate. Process of judging judge is also in practice in this regards. Bar council and media also played important role in this regards.

#### **3. Supervision/Inspection of Police Activities**

In the police department officers from Inspector to Inspector General are considered as supervising officers. All the units except Police Headquarters and office of the DIGs are subject to periodical and short inspections for ensuring the quality of the professional standard. By the process of supervision and inspection, the accountability of the officers is fixed. But in general, the supervision and inspections are guiding and advisory in nature. Laws guiding the police operation and powers are enumerated mainly in:

- Police Act, 1861
- Police Regulation of Bengal, 1943
- Criminal procedure Code, 1898
- Evidence Act, 1861
- Dhaka Metropolitan Police ordinance, 1976
- Chittagong Metropolitan Police ordinance, 1978
- Khulna Metropolitan Police ordinance, 1985
- Rajshahi Metropolitan Police ordinance, 1992
- The Police (Incitement of Disaffection) Act, 1922

#### **4. Annual Confidential Report**

Monitoring of ethical conduct and behaviors is done also through reflection in the Annual confidential reports. Comments and views of District Judge and in appropriate cases the High Court Division of the Supreme Court regarding the quality, honesty, integrity and performance in the ACR creates a deterrent effect in indulging bad practice and corruption. Bad comments in the ACR also play very important role for the effective monitoring and implementation of ethical conduct of police officials.

5. Parliamentary Standing Committees are also constantly Monitoring the Activities of Respective Organizations

#### **D. Effective Measures against Corruption in the Judiciary, Prosecutorial Authorities and Law Enforcement Authorities**

The violation of any of the Government Servants (Conduct) Rules are considered as misconduct. For such violation, an employee is accused of breach of discipline and subjected to punishment under “The Government Servants (Discipline and Appeal) Rules 1985”. The Government Servants (Conduct) Rules are equally applicable for lower judiciary subordinate judges, prosecutors, police and other law enforcement agencies in Bangladesh. The Government Servants (Discipline and Appeal) Rules prescribe the procedure for inquiry and types of punishment to be imposed depending upon the severity of offence or offences, and also define the procedure for appeal, review and revision.

##### 1. For Judges and Prosecutors

Reports regarding unwanted activities are taken into consideration. In the appropriate cases actions have been taken against judicial officers locally by the District Judge or Session Judge and centrally by the Supreme Court and Ministry of Law Justice and Parliament Affairs.

Usually any deviation of a judicial officer or prosecutor is reported to the local authority first. The authority then initiates internal inquiry. If the person is found guilty of misconduct or Corruption or is considered corrupt. He or she may be asked to explain about it or it may be communicated to the government. Government in consultation with the High Court Division of the Supreme Court may start departmental proceeding against the accused person. If the allegations against him or her are proved, he or she may be dismissed or forced to retire.

##### 2. For Police Officers

In receipt of complaint against a police-officer the authority conducts internal inquiry. In appropriate cases the authority concerned frames a charge and specifies therein the penalty proposed to be imposed and communicates it to the police-officer, requiring him or her to show cause within specified time. Then he or she is asked to explain why the penalty proposed to be imposed on him or her should not be imposed. Measures are taken to punish the accused through stringent departmental proceedings and criminal cases are also initiated against the officer in appropriate cases.

##### 3. Anti Corruption Commission (ACC)

The ACC can try any government official (judges, prosecutors and police etc.) for offences regarding corruption. Since 2007 the ACC has had a remarkable record of investigations leading to trials and convictions. The conviction on charges of corruption in high-profile cases might have a deterrent effect on lower-ranking officials.

### **IV. EDUCATION AND TRAINING OF CRIMINAL JUSTICE PERSONNEL IN BANGLADESH**

All the government service officers are recruited through transparent competitive national level examination by the Public Service Commission and by the Judicial Service Commission for judges. The recruitment examination comprises of multiple choice questions, written examination, viva-voice and psychological testing. After the appointment as a public servant newly entrant officers are provided training in Public Administrative Training Centre on various subjects regarding office administration and management, leadership, financial management, governmental policy, codes of conducts, procedural regulations etc.

#### **A. Legal Education for Judges and Prosecutors regarding Legal Ethics**

The Judicial Administration Training Institute (JATI) in Bangladesh was established by Act No. XV of 1995 for imparting training to the members of the judicial service, the law officers of the Government, the court support staff and the advocates enlisted with the Bangladesh Bar Council in order to increase their professional efficiency and potentials.

Judicial education is a new discipline of professional education whose targets are the functionaries involved in the justice delivery system to improve their knowledge and skills and for better court administration and

case management. The curriculum of training course has been designed to enable the persons involved in administration of justice to achieve those objectives and to equip them properly to discharge their responsibility in exercising judicial powers. Besides training on important procedural and substantive civil, criminal, administrative laws and computer literacy, some cross-cutting issues like good governance, anti-corruption issues, ADR mechanisms, codes of conduct and ethics are being imparted through the training programme. The other functions of the Institute are to impart training in drafting legislative and other legal documents to trainees from abroad in co-operation with international donor agencies.

Legal ethics as a separate course is almost non-existent in our legal education curriculum. The very purpose of legal education and the legal profession could be frustrated due to the lack of ethical values. Ethical values are not divorced from social values. Whether it is to protect clients' interests, or to protect general societal interests and human welfare, or whether it is to safeguard the rights and interests of the marginalized sections of society or to protect the victims of violations of human rights, legal professionals need to be imbued with high spirits and standards of personal morality and ethics as well as compassionate understanding of social and human needs. Lawyers must rise above self-interest to uphold the interests of their clients and society; judges ought to dispense justice with caution and care; all other legal activists need to devote themselves to their work with a spirit of sacrifice and service to suffering humanity. Unfortunately, even the Bangladesh Bar Council canons of professional conduct and etiquette are not taught in our law schools. A specific course on legal ethics and morals needs to be developed and incorporated into our curriculum.

## **B. Education and Training for Law Enforcement Officials regarding Professional Responsibility**

### **1. National Police Training**

Police training and education facilities are scattered throughout Bangladesh. The oldest one is the Police Academy, Sardah, established by the British military in 1912. The Principal of the Police Academy is responsible for a raft of basic, refresher and specialist training for constable officers from the rank of Assistant Superintendent of Police. The four Police Training Centers (PTCs), referred to as zonal police training schools until 1992, are responsible for a narrower spectrum of training and typically concentrate on trainee recruit Constables. The remaining schools and centres, such as the Traffic Training School (TTS) and MDTS, are relatively specialized. TTS conducts training on Traffic Control and MDTS conducts training on Driving. The Detective Training School houses the Police Peacekeepers' Training School, and offers courses on human rights, prosecution and investigation. The duration of some of the courses currently offered by the various training schools and centres appear long compared to international standards. The basic training courses for Constables and Sub-Inspectors have excessive emphasis on physique, weapons and drills (more than 50% of the course) and too little on preparing the recruits for the reality of the role they will face as police officers in contemporary Bangladesh.

### **2. National Police Training Board (NPTB)**

There was no holistic training strategy for Bangladesh Police till 2007. A regular forum named the National Police Training Board (NPTB) has been formed to bring all training specialists together to analyse and develop new responses to training needs or delivery techniques. There is little observable training curriculum design, development and evaluation capacity and virtually no expertise and resources to support widespread training material production. There are no external partnerships with training service providers, such as formal links to tertiary institutions.

The Bangladesh Police is now in the process of responding to the needs of the changed paradigm. They are now trying to modernize the police training institutes to produce people-friendly police. The Training Directorate of Police HQ has recently developed some training materials, like a Constable Handbook and In-service Training Manual, for the ranks of constables to sub-inspectors. The Training Directorate also reviewed the syllabus and methodology of basic training for ASP probationers to make the training programme comprehensive, well-designed, empirical and effective. A wide range of issues related to finer human values, social and economical trends, psychological change in human beings, social behaviour and attitudes, scientific techniques of policing, management concepts, analytical and innovative skills, loyalty to the constitution, commitment to the national goal, discipline, ethical and professional conduct, empathy for victims of crime, etc. have been incorporated.

### 3. Police Staff College

The Police Staff College, the apex training institution for senior police officers, emerged as a statutory organization in 2002 under the Police Staff College Act, 2002. The primary goal of the College is to enhance professionalism in policing through need-based training and to develop human resources with sound capability and integrity to modernize policing within the framework of the national development policy. The College endeavours to provide wisdom to trainees to improve managerial capability, operational and commanding skills and identification of problems and solutions in national and international scenarios.

### 4. Training Strategy

Capacity building through training within the Bangladesh Police is one of the major focuses of PRP activities. Based on needs assessment, the training strategy for the Bangladesh Police, "From Training Needs to Learning Approaches", has been developed and published. The strategy was shared with the Heads of Police Training Institutes in a conference. Within the training reform agenda, the Sub-Inspectors and Constables Qualification Programme review is underway.

## V. PROCEDURAL REGULATIONS IN BANGLADESH

The provisions of the disciplinary rules and regulations to be applied to the government servants are:

- The Govt. Servants (Discipline and Appeal) Rules 1985;
- The Govt. Servants (Conduct) Rules 1973;
- The Public Servants (Dismissal on Conviction) Ordinance 1985; and
- The Prevention of Corruption Act 1947.

### A. **The Government Servants (Discipline and Appeal) Rules 1985**

These rules will be applicable for all government servants (judges, prosecutors and police) except subordinate officers of the Metropolitan police; members of any other police-force below the rank of Inspector of police; subordinate officers, Riflemen and Signalmen of the Bangladesh Rifles, subordinate jail officers below the rank of Jailer of Bangladesh jails in the context of this paper.

The rules provide a broad definition of misconduct which includes conduct prejudicial to good order or service discipline or any contravention of the provisions of the conduct rules or any conduct unbecoming of an officer or gentleman. The definition of misconduct further includes (i) disobedience to lawful orders of superior officers; (ii) gross negligence of duty; (iii) flouting of government orders, circulars and directives without lawful excuse and (iv) submission of petitions before any authority containing wild, vexatious, false or frivolous accusations against a government servant.

The grounds for penalty include inefficiency, misconduct, desertion, corruption and subversion. According to this rules a government servant will be be corrupt or may reasonably be considered as corrupt if

- (a) he or she is, or any of his or her dependents or any other person through him or her or on his or her behalf is in possession (for which he or she cannot reasonably account) of pecuniary resources or of property disproportionate to his or her known sources of income; or
- (b) he or she has assumed a style of living beyond his or her ostensible means; or
- (c) he or she has a persistent reputation of being corrupt; or
- (d) he or she is engaged, or is reasonably suspected of being engaged in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities and whose retention in service is considered prejudicial to national security.

For the purpose of explanation, a person shall be presumed to have a persistent reputation of being corrupt if allegations of corruption are made against him or her during his or her tenure of service in more than two stations of posting.

Two kinds of penalties which may be imposed under these rules, namely, minor penalties and major penalties.

1. Minor Penalties

- (i) Censure;
- (ii) Withholding for a specified period, of promotion or of increment otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post;
- (iii) Stoppage for a specified period, at an efficiency bar in the time scale, otherwise than for unfitness to cross such bar. (Recovery from pay or gratuity of the whole or any part of any pecuniary loss caused to Government by negligence or breach of orders;
- (iv) Reduction to a lower stage in the time scale.

2. Major Penalties

- (i) Reduction to a lower post or time scale.
- (ii) Compulsory retirement.
- (iii) Removal from service.
- (iv) Dismissal from service.

Under the rules, removal from service does not, but dismissal from service does, disqualify from future employment under the government or under any body corporate established by or under any law. The types of penalties, which may be imposed for specific offences, are also laid down in the rules. For inefficiency, any penalty may be imposed except censure and dismissal or any penalty except dismissal depending on types of inefficiency. Any penalty, major or minor, may be imposed for misconduct and for corruption or subversion, any major penalty except reduction to a lower post or pay. The requirement for imposition of major penalty is that no authority subordinate to that by which a government servant was appointed is competent to impose on him or her any major penalty. This requirement is based on Article 135(1) of the constitution.

The inquiry procedures prescribed under the rules are of three types: (i) the inquiry procedure in cases of subversion; (ii) the inquiry procedure calling for minor penalties; and (iii) the inquiry procedure that may lead to imposition of major penalties. Article 135(2) of the Constitution requires that no person who holds a civil post in the service of the republic shall be dismissed, or removed or reduced in rank until he or she has been given a reasonable opportunity to show cause why that action should not be taken.

Exceptions to the above constitutional requirement include imposition of a major penalty following conviction for a criminal offence or where the authority competent to impose the major penalty is satisfied that it is not reasonably practicable to give the accused government servant an opportunity to show cause or where the President is satisfied that in the interest of the security of the State it is not expedient to give the accused such an opportunity. The last mentioned exception applies under the rules for inquiry procedure in cases of subversion.

The requirement of providing reasonable opportunity to show cause applies to inquiry procedure for both major and minor penalties. There is provision for personal hearing also. After the show cause notice and personal hearing of the accused government servant, the appointing authority is required to appoint an inquiry officer. The punishment or acquittal depends on the considerations of the findings of the inquiry officer. In case of minor penalties, however, the appointing authority may, if he or she is satisfied, give his or her order without appointing an inquiry officer. In cases calling for a major penalty a second show cause notice is to be issued. In such cases, the appointing authority, if he or she thinks it appropriate, may place the accused government servant under suspension or ask him or her to go on leave.

Where the President, as the appointing authority, passes an order in a disciplinary case, no appeal lies against that order. There can, however, be a review request made to him or her by the aggrieved government servant. The President may, either on his or her motion or otherwise, revise his or her order. The limitation for both appeal and revision is three months from when the affected government servant was informed.

Finally, if there is a prosecution or legal proceeding against a government servant on the same issue, there is no bar to the disposal of the disciplinary proceedings. However, if the authority has decided to

impose any penalty, imposition of such penalty shall be stayed until the disposal of the prosecution or legal proceeding.

### **B. The Public Servants (Dismissal on Conviction) Ordinance 1985**

Under the provisions of this ordinance, a Public Servant will be dismissed by the administrative authority when he or she commits a serious criminal offence and a sentence (capital punishment, imprisonment for life and imprisonment for more than six months and/or a fine of more than one thousand Taka) is imposed by a court of law.

### **C. Prevention of Corruption Act 1947**

The Prevention of Corruption Act, 1947 was made for the more effective prevention of bribery and corruption. It extends to the whole of Bangladesh and applies to all citizens of Bangladesh and persons in the service of the Republic wherever they may be. For the purposes of this Act, "public servant" means a public servant as defined in section 21 of the Penal Code and includes elected members of local body and corporation. An offence punishable under Sections 161, 162, 163, 164, 165 or 165-A of the Penal Code shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein. This law treated corruption as criminal misconduct.

### **D. Requirement Procedure for Disqualification and Recusal of Judges and Prosecutors in Criminal Cases**

#### **1. General Disqualifications**

According to the Code of Conduct for Judges regarding general disqualifications to hear a matter, a judge shall disqualify him or herself in a proceeding in which his or her impartiality might reasonably be questioned.

A judge shall be disqualified from hearing a matter/case in which:

- (i) he or she served as lawyer, or a lawyer with whom the judge previously practised law served during such association as a lawyer concerning the matter, or the judge or such lawyer was a material witness;
- (ii) the judge knows that, individually or as a fiduciary, the judge or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;
- (iii) the judge or the judge's spouse, or a person related either to the judge or the spouse:
  - is a party to the proceeding, or an officer, director, or trustee of a party;
  - is acting as a lawyer in the proceeding;
  - is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
  - is to the judge's knowledge likely to be a material witness in the proceeding; and
- (iv) the judge has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

### **E. Impeachment and Disciplinary Procedures for Judges and Prosecutors**

The Supreme Judicial Council consists of the Chief Justice of Bangladesh and the two next senior judges. The Council may inquire into the capacity or conduct of a judge upon the direction of the President and report its finding to the President. The President may make such direction where, upon any information, he or she has reason to believe that such judge may have ceased to be capable of properly performing the functions of his or her office by reason of physical or mental incapacity or may have been guilty of gross misconduct. Considering the report of the Supreme Judicial Council in which the judge is found to be incapable of performing his or her functions or guilty of gross misconduct President shall, by order remove the judge from his or her office [Article-96 (3) (4) (5) (6)].



**F. Internal Regulation for Law Enforcement Officials to avoid a Bias or Conflict of Interest**

**1. Security Cell and Police Internal Oversight**

The Security Cell is a wing of Police Headquarters. This wing collects intelligence regarding the unethical, immoral and unlawful activities of police personnel and carries out thorough investigations to punish the offenders as per provisions of the disciplinary rules applicable to government servants, in addition to regulations such as:

- The Police Act, 1861;
- PRB: Police Regulation Bengal, 1943;
- The Police Officers (Special Provisions) Ordinance 1985.

The current Police Security Cell is not sufficiently staffed, trained or resourced to provide that kind of a service to the extent that it is needed and is accordingly relegated to largely reactive response to limited complaints. It is a widely held view that the punishment system for errant police is also not working effectively. There is a perception that transfer is an all too often used ‘punishment’, however there is little analysis and treatment of the underpinning causes of disciplinary breaches. Findings of this nature must be used to inform more proactive strategies to prevent inappropriate behaviour from occurring or reoccurring.

With a vision to elevate the national police force to the best position in respect to integrity, dependability, professionalism and efficiency, the newly formed Bangladesh Police Internal Oversight (PIO) has set as its mission the removal of police corruption and inefficiency. All the units of Bangladesh Police fall under the surveillance of the PIO. Actions speak louder than words.

The objectives of Police Internal Oversight are:

Firstly

- Get rid of as many corrupt officials as possible;
- In the quickest probable time reduce police corruption;
- Restore discipline and the police chain of command;
- Increase police ability and efficiency;
- Build credibility and image.

Secondly

- Identify honest, efficient and dynamic officers to put the right person in the right place;
- Conduct a community impact assessment of police activities;
- Facilitate the criminal justice system;
- Support the rule of law and good governance.

**2. Punishments as per PRB: Regulation 857:**

Punishments are divided into major and minor types.

Major punishments include: dismissal from service; removal from service; reduction; deprivation of approved service increment; removal from any office of distinction or special emolument; and award of black marks.

Minor punishments include: warnings; censures (reprimands for misconduct); extra drills; extra fatigue duty; and confinement to quarters with or without punishment drills, extra guard, or fatigue or other duty.

**3. Punishments as per the Police Officers (Special Provisions) Ordinance 1976**

Section 4 Offences: Where a police-officer is guilty of misconduct; dereliction of duty; acts of cowardice and moral turpitude; corruption or having a persistent reputation of being corrupt; subversive activity or association with persons or organizations engaged in subversive activities; desertion from the service or unauthorized absence from duty without reasonable excuse; or inefficiency, the authority concerned may impose on such police officer any of the penalties mentioned in Section 5.

Section 5 Penalties: The following shall be the penalties which may be imposed under this Ordinance: dismissal from service; removal from service; discharge from service; compulsory retirement and demotion to lower rank.

## VI. CONCLUSION

The life of a law enforcement official, lawyer, and a judge involves making ethical choices. Most of them are governed by written rules of law. Often the rules are broadly stated. In applying the rules, a choice must frequently be made about which different minds can legitimately reach different conclusions. At the institutional core of systems based on the rule of law is not only a strong independent judiciary, but also an effective prosecution service with well trained and adequately empowered and equipped prosecutors committed to upholding the rule of law and human rights in the administration of justice.

Bangladesh became a State Party to the UN Convention against Corruption with effect from 27 February 2007. The Government of Bangladesh places significant priority on improving human security, law and order and prevention of corruption. Prevention of corruption was a key plank in the Government's pre-election manifesto also. Meeting these pledges and improving law and order and reforming police depend to a significant degree on amending the legal framework. The legal and regulatory framework for the police and judiciary is extensive and includes laws and regulations dating back more than one hundred years as well as recent amendments and new acts. Outdated laws need to be amended and existing laws more appropriately applied.

The need for an effective Code of Conduct for regulating judicial conduct on and off the bench at all levels of the judiciary is generally agreed. The code, which should apply to the Supreme Court as well as Subordinate Courts, would inform the judge of the standards he or she is expected to rise to, create peer pressure for the judge to observe those standards, and, through wide dissemination (via print, audio and visual media), inform the public of the standards they have the right to expect of the judiciary. The code should, among other things, set out the principles or judicial ethics; explanatory comments and hypothetical problems with answers drawn from actual disciplinary actions taken; and remedial and punitive sanctions for code violations. It should cover such matters as disclosure of assets, participation in trade or business ventures, seeking or acceptance of financial benefits which are not clearly available by virtue of office, involvement in conflict of interest situations and engagement in public or media controversy. A provision should be made for a judicial committee to advise judges on difficult and/or doubtful potential ethical issues, so as to enable them, if possible, to avoid future sanctions.

The public prosecution department has not seen much change since Bangladesh gained independence. Although it is claimed that there is no longer political pressure or selection on extraneous consideration, the appointments are still under the control of the Law Ministry and not open enough for people to know the selection process. At present we have an Attorney General to protect the interest of the public. His office is in charge of defending the State interest in all matters in the Supreme Court. However, surprisingly, the other state lawyers (the public prosecutor in criminal cases and government pleaders in civil cases) have no connection whatsoever with this office. Though a political insider, the Attorney General of the UK is generally expected to differentiate between 'politics' and 'law' so as to enable him or her exercise his or her judgment independently. Here in Bangladesh, we fail to see such an attitude among the state lawyers.

Oversight and accountability need to be strengthened. The Bangladesh Police have taken important moves to strengthen internal oversight but more needs to be done. External oversight through a Police Complaints Commission and/or a Police Commission needs to be introduced, but it would require supportive legal reforms. Enhanced oversight and accountability is important to check police behaviour which is inconsistent with the rule of law and thereby undermines the reform process. Internal accountability mechanisms will also be strengthened and supplemented by professional standards, ethics, anti-corruption efforts and training. The Police Reform Programme has been supporting the Bangladesh Police to establish structures to monitor internal compliance with Bangladeshi law and international good practice and human rights standards such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Universal Declaration of Human Rights, the UN Code of Conduct for law enforcement officers and the UN guidelines for the Prevention of Crime. Building political capital for reform and broader ownership of the reform agenda will be important to deliver results during the next five years.

Fighting corruption is not just law enforcement. Rather it is a reappraisal of the way we think and the way we act. No anti-corruption drive can succeed or survive without the active support or participation

of the people. It is an awareness of rights and remedies against violation of rights, an attitude of not participating in or tolerating corruption in any form, and the practice of standing against corruption in every way. The 3Rs for Fighting Corruption, launched by Anti Corruption Commission, are *REFRAIN* - Do not participate in corruption; *RESIST* - Resist corruption wherever and whenever detected; *REPORT* - If all fails, report to the authorities. Success depends on uniform support at the highest levels. In the years to come it will be the partnership of the judiciary, police and the community to work together in a climate of mutual respect, understanding and co-operation through which citizens will enjoy a truly enhanced quality of life, free from corruption and crime.

## REFERENCES

### I. United Nations Convention against Corruption and Related Documents

1. United Nations Convention against Corruption (UNCAC)  
[http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf)
2. Legislative Guide for the Implementation of the United Nations Convention against Corruption (November 2006) (cover1,i, xi-xii, 34-36)  
[http://www.unodc.org/pdf/corruption/CoC\\_LegislativeGuide.pdf](http://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf)

### II. Compendium of United Nations standards and norms in crime prevention and criminal justice

1. Cover: [http://www.unodc.org/pdf/compendium/compendium\\_2006\\_cover.pdf](http://www.unodc.org/pdf/compendium/compendium_2006_cover.pdf)
2. Contents: [http://www.unodc.org/pdf/compendium/compendium\\_2006\\_contents.pdf](http://www.unodc.org/pdf/compendium/compendium_2006_contents.pdf)
3. Part four: Good governance, the independence of the judiciary and the integrity of criminal justice personnel:  
[http://www.unodc.org/pdf/compendium/compendium\\_2006\\_part\\_04\\_01.pdf](http://www.unodc.org/pdf/compendium/compendium_2006_part_04_01.pdf)
  - ① Code of Conduct for Law Enforcement Officials:
  - ② Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials:
  - ③ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
  - ④ Basic Principles on the Independence of the Judiciary:
  - ⑤ Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary:
  - ⑥ Basic Principles on the Role of Lawyers:
  - ⑦ Guidelines on the Role of Prosecutors:
  - ⑧ International Code of Conduct for Public Officials:
  - ⑨ United Nations Declaration against Corruption and Bribery in International Commercial Transactions:

### III. Other Related Materials

1. The Global Programmes against Corruption: UN Anti-Corruption Tool Kit (3rd Edition, September 2004) (page 110-119, 201-207, 219-228, 345-365)  
[http://www.unodc.org/documents/corruption/publications\\_toolkit\\_sep04.pdf](http://www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf)
2. Bangalore Principles  
[http://www.unodc.org/pdf/corruption/bangalore\\_e.pdf](http://www.unodc.org/pdf/corruption/bangalore_e.pdf)
3. Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors  
[http://www.iap-association.org/ressources/Standards\\_English.pdf](http://www.iap-association.org/ressources/Standards_English.pdf)
4. Annual Report on the Judiciary: The Supreme Court of Bangladesh: Composition, Power and Function of the Judiciary; Monitoring, Supervision and Control over the Sub-ordinate Judiciary; Training of Judges and Judicial Magistrate (2008) (page 1-8, 57-62, 102-104)
5. The Constitution of the People's Republic of Bangladesh: The Judiciary-Chapter I, II, III (December 1998) (Article 94-116A)  
<http://www1.umn.edu/humanrts/research/bangladesh-constitution.pdf>
6. Towards Police Reform in Bangladesh Needs Assessment Report 2003: Situation Analysis; Crime Investigation and Prosecution; Human Resource Management and Professional Development; Oversight Future Direction and Planning (First Edition November 2004) (Page 8-69)
7. Code of Civil Procedure, 1908 (Act No. V of 1908)\_files  
[http://bdlaws.gov.bd/pdf\\_part.php?id=75](http://bdlaws.gov.bd/pdf_part.php?id=75)
8. The Penal Code, 1860  
[http://bdlaws.gov.bd/pdf\\_part.php?id=11](http://bdlaws.gov.bd/pdf_part.php?id=11)
9. THE POLICE ACT, 1861 (ACT NO. V OF 1861).  
[http://bdlaws.gov.bd/pdf\\_part.php?id=12](http://bdlaws.gov.bd/pdf_part.php?id=12)
10. The Govt. Servants (Discipline and Appeal) rules 1985.

11. The Govt. Servants (conduct) Rules 1973
12. The public Servants (Dismissal on Conviction) Ordinance 1985.
13. Prevention of Corruption Act 1947  
[http://bdlaws.gov.bd/pdf\\_part.php?id=217](http://bdlaws.gov.bd/pdf_part.php?id=217)
14. Annual Report 2007: Police Reform Programme (2008)
15. Annual Report 2008: Police Reform Programme (February, 2009)
16. THE BANGLADESH LEGAL PRACTITIONER'S AND BAR COUNCIL ORDER, 1972  
(PRESIDENT'S ORDER NO. 46 OF 1972).  
[http://bdlaws.gov.bd/print\\_sections\\_all.php?id=387](http://bdlaws.gov.bd/print_sections_all.php?id=387)
17. Bangladesh Bar Council Canons of Professional Conduct and Etiquette, Bangladesh Bar Council  
(September, 2008) (Page 105-115)
18. Police Regulations of Bengal, 1943 (1997) (Regulation 47-52, 105-120, 857-891)
19. Poor Governance Hurts Bangladesh Hard: Promises to Combat Corruption Are All But Fulfilled  
(First Edition February 2004)
20. Transparency International Bangladesh (TIB) web site  
<http://www.ti-bangladesh.org/>