Sonargaon University (SU)

Research Monograph
On
The Lower Sucessibility Rate of Criminal Cases in Bangladesh: A Critical Analysis with Probable Solutions

Research Monograph Submitted for the partial fulfillment of the award of the degree in LL.B (Hon's) Department of Law Sonargaon University (SU)

Submitted To

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To

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Subject: Submission of the Research Monograph.

Dear Sir,

I have the honor to state to that I am a Program: of LL.B program in the department of Law. I have done my research program and prepare a report on **“The Lower Sucessibility Rate of Criminal Cases in Bangladesh: A Critical Analysis with Probable Solutions”.** I have the honor to present this report to you for your kind consideration and necessary appraisal.

I have concentrated my best efforts to achieve the objective of the work and hope that my endeavor will serve the purpose. I shall be highly grateful & obliged if you kindly accept my report & evaluate it with knowledgeable judgment.

Sincerely yours,

....

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Declaration

I hereby do solemnly declare that the work presented in thesis has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breach any copyright. I further undertake to indemnify the university against any loss or damage arising from breach of the forgoing obligations.

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Certification

This is to certify that the dissertation **The Lower Sucessibility Rate of Criminal Cases in Bangladesh: A Critical Analysis with Probable Solutions** is prepared by **Sabina Yesmin** in partial fulfilment of the requirement for the degree LL.B (Hon's) from Sonargaon University (SU). The dissertation has been carried out under my guidance and is a record of the bona fide work carried out successfully.

Muhammad Ali

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Acknowledgement

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Finally I express thanks to my friends and well-wishers.

……………………………..
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Abstract

The effectiveness of a criminal justice system is often measured by its ability to ensure fair trials, secure convictions against offenders, and uphold the rule of law. In Bangladesh, the lower success rate of criminal cases has emerged as a significant challenge to the administration of justice. A considerable number of criminal cases result in acquittals, dismissals, withdrawals, or prolonged delays, raising concerns regarding the efficiency and credibility of the criminal justice system. This study critically examines the factors responsible for the low success rate of criminal cases in Bangladesh and explores possible solutions for improving the effectiveness of criminal justice administration.

The research adopts a qualitative and analytical approach based on the examination of relevant laws, judicial practices, scholarly literature, government reports, and institutional studies. The study identifies several key factors contributing to unsuccessful criminal prosecutions, including defective police investigations, inadequate collection and preservation of evidence, limited forensic facilities, witness hostility, corruption, political interference, weak prosecution services, and excessive judicial delays. These challenges collectively undermine the ability of the courts to establish guilt beyond a reasonable doubt and consequently reduce conviction rates.

The findings reveal that many of the obstacles affecting criminal case outcomes are institutional and administrative in nature rather than purely legal. Although Bangladesh possesses a comprehensive legal framework governing criminal justice, deficiencies in implementation, accountability, coordination, and resource allocation continue to hinder effective enforcement. The study further demonstrates that prolonged case backlogs and procedural complexities negatively affect both victims and accused persons while weakening public confidence in the justice system.

To address these challenges, the study proposes a number of reforms, including strengthening investigative capacity, expanding forensic services, establishing effective witness protection mechanisms, enhancing prosecutorial independence and professionalism, reducing judicial delays through technological innovation, combating corruption, and improving coordination among criminal justice institutions. The research concludes that sustainable improvements in the success rate of criminal cases require comprehensive legal, institutional, and administrative reforms supported by strong political commitment and effective governance.

Ultimately, improving the success rate of criminal cases is essential not only for ensuring justice for victims and accountability for offenders but also for strengthening the rule of law, promoting public trust in legal institutions, and advancing democratic governance in Bangladesh.

Keywords: Criminal Justice System, Criminal Cases, Conviction Rate, Investigation, Prosecution, Rule of Law, Judicial Delay, Bangladesh.

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Chapter 1
INTRODUCTION

1.1 Introduction

The effective administration of criminal justice is one of the fundamental responsibilities of a modern state. A fair and efficient criminal justice system ensures the protection of citizens' rights, maintains public order, and upholds the rule of law. The success of such a system largely depends on its ability to investigate crimes effectively, prosecute offenders fairly, and deliver justice within a reasonable time.[1] In Bangladesh, however, the criminal justice system faces numerous challenges that have contributed to a comparatively low success rate of criminal cases. A significant number of criminal cases either result in acquittal, remain pending for prolonged periods, or are dismissed due to procedural and evidentiary shortcomings.[2]

The lower success rate of criminal cases has become a matter of growing concern for legal scholars, policymakers, law enforcement agencies, and the general public. When offenders are not brought to justice due to weaknesses in the legal process, public confidence in the justice system declines. Victims often become discouraged from seeking legal remedies, while potential offenders may perceive a reduced risk of punishment. Consequently, the effectiveness of the criminal justice system is undermined, posing a threat to social stability and the rule of law.[3]

Several factors contribute to the low success rate of criminal cases in Bangladesh. These include inadequate police investigations, insufficient forensic and scientific evidence, witness hostility, corruption, political influence, judicial delays, and deficiencies in prosecution services.[4] In many cases, investigators lack the necessary resources, training, and technological support required to collect and

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[1] Larry J Siegel, *Criminology: The Core* (7th edn, Cengage Learning 2018) 12.
[2] Mizanur Rahman, *Criminal Justice System in Bangladesh* (University of Dhaka Publications 2017) 45.
[3] Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2006) 161.
[4] Muhammad Habibur Rahman, *Law and Justice in Bangladesh* (Bangladesh Law Research Centre 2015) 89.

preserve evidence effectively. Moreover, prolonged judicial proceedings often result in the loss of evidence, fading memories of witnesses, and increased opportunities for external influence on legal processes.[5]

The Constitution of the People's Republic of Bangladesh guarantees equality before the law and equal protection of law for all citizens.[6] It further emphasizes the independence of the judiciary and the protection of fundamental rights. Despite these constitutional guarantees, practical implementation often encounters institutional and procedural obstacles. The gap between legal provisions and their effective enforcement continues to affect the outcome of criminal proceedings and contributes to the lower rate of successful prosecutions.[7]

The Code of Criminal Procedure 1898 and the Penal Code 1860 provide the primary legal framework governing criminal investigations, prosecutions, and trials in Bangladesh.[8] Nevertheless, deficiencies in investigation, prosecution, witness management, and judicial administration frequently weaken the ability of the criminal justice system to secure convictions against offenders. These challenges have generated considerable debate regarding the need for legal and institutional reforms to strengthen criminal justice administration in the country.[9]

This study seeks to critically examine the underlying causes behind the lower success rate of criminal cases in Bangladesh. It explores the institutional, procedural, and socio-political factors that hinder successful prosecution and conviction. Furthermore, the study identifies practical and policy-oriented solutions that can enhance the efficiency of criminal investigations, strengthen prosecution mechanisms, reduce judicial delays, and improve overall access to justice. Through this analysis, the research aims to contribute to the ongoing discourse on criminal justice reform and provide recommendations for building a more effective, transparent, and accountable legal system in Bangladesh.

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[5] United Nations Office on Drugs and Crime (UNODC), *Criminal Justice Assessment Toolkit* (UNODC 2020) 34.

[6] Constitution of the People's Republic of Bangladesh 1972, arts 27 and 31.

1.2 Objectives of the Study

The primary objective of this study is to critically examine the factors responsible for the lower success rate of criminal cases in Bangladesh and to identify practical solutions for improving the effectiveness of the criminal justice system.

Specific Objectives

- To analyze the existing criminal justice system of Bangladesh and assess its effectiveness in ensuring successful prosecution and conviction of offenders.
- To identify the major causes behind the lower success rate of criminal cases, including defective investigations, inadequate evidence collection, witness hostility, judicial delays, corruption, and political interference.
- To examine the role of law enforcement agencies, prosecution services, and the judiciary in influencing the outcome of criminal cases.

1.3 Literature Review

The issue of criminal justice administration and the effectiveness of criminal prosecution has been widely discussed by scholars, legal experts, and researchers. Various studies have identified weaknesses in investigation, prosecution, judicial administration, and law enforcement as major factors affecting the success rate of criminal cases.[7]

Larry J. Siegel (2018), *Criminology: The Core*, emphasizes that an effective criminal justice system depends upon proper investigation, reliable evidence, and fair prosecution. Siegel argues that the failure of any component of the criminal justice system can significantly reduce conviction rates and weaken public confidence in the rule of law. His work highlights the importance of professional law enforcement and evidence-based investigations in achieving successful criminal prosecutions.

Tom R. Tyler (2006), *Why People Obey the Law*, examines the relationship between public trust and legal compliance. According to Tyler, citizens are more likely to cooperate with law enforcement agencies and participate in judicial

[7] Siegel, Larry J. (2018). *Criminology: The Core*. 7th ed. Cengage Learning.

proceedings when they perceive the legal system as fair and effective. The book suggests that a weak criminal justice system not only reduces conviction rates but also undermines public confidence in legal institutions.

Kamal Hossain (2013), *Bangladesh Constitution: Trends and Issues*, discusses the constitutional foundations of the rule of law and justice in Bangladesh. He argues that despite strong constitutional guarantees of equality before the law and due process, practical challenges such as political interference, administrative inefficiency, and institutional weaknesses often prevent effective implementation of these principles. His analysis provides important insights into the structural limitations of Bangladesh's justice system.[8]

Mizanur Rahman (2017), *Criminal Justice System in Bangladesh*, specifically examines the criminal justice framework of Bangladesh. The author identifies defective investigations, inadequate prosecutorial services, corruption, and lengthy judicial procedures as major barriers to successful criminal prosecutions. Rahman argues that comprehensive institutional reforms are necessary to improve conviction rates and strengthen public trust in the justice system.

Muhammad Habibur Rahman (2015), *Law and Justice in Bangladesh*, provides a detailed analysis of the legal and judicial system of Bangladesh. The author highlights the persistent problems of case backlog, delays in trial proceedings, and insufficient accountability mechanisms within law enforcement agencies. He emphasizes that without significant reforms, the criminal justice system will continue to struggle in achieving effective outcomes.[9]

Clive Walker (2011), *Blackstone's Guide to the Criminal Justice System*, examines the principles and practices of criminal justice administration from a comparative perspective. Walker emphasizes the importance of witness protection, forensic evidence, and judicial efficiency in securing convictions. His work offers valuable lessons that may be applied to developing countries, including Bangladesh.[10]

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[8] Hossain, Kamal (2013). *Bangladesh Constitution: Trends and Issues*. University Press Limited.
[9] Rahman, Mizanur (2017). *Criminal Justice System in Bangladesh*. University of Dhaka Publications.
[10] Rahman, Muhammad Habibur (2015). *Law and Justice in Bangladesh*. Bangladesh Law

The reviewed literature demonstrates that the lower success rate of criminal cases is not solely a legal issue but also an institutional and governance challenge. While existing studies have identified numerous factors affecting criminal justice outcomes, there remains a need for a comprehensive analysis focused specifically on the causes of low conviction rates in Bangladesh and the practical reforms required to address them. This study seeks to fill that gap by critically examining the existing challenges and proposing effective solutions for improving the criminal justice system.

1.4 Research Questions

To achieve the above objectives, the study seeks to answer the following questions:

1. What are the major reasons behind the lower success rate of criminal cases in Bangladesh?
2. How do deficiencies in investigation and prosecution affect criminal case outcomes?

1.5 Definition

Criminal Case

A criminal case is a legal proceeding initiated by the state against an individual or entity accused of committing an offense prohibited by law. The primary objective of a criminal case is to determine the guilt or innocence of the accused and, if found guilty, to impose an appropriate punishment. According to the Code of Criminal Procedure, 1898, criminal cases involve acts or omissions that are considered offenses against the state and society.

Success Rate of Criminal Cases

The success rate of criminal cases refers to the percentage of criminal prosecutions that result in the conviction of the accused by a competent court. It is commonly used as an indicator of the effectiveness of the criminal justice system,

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Research Centre.

including the performance of law enforcement agencies, prosecutors, and judicial institutions.

Criminal Justice System

The criminal justice system is the network of institutions and processes responsible for enforcing criminal law, investigating crimes, prosecuting offenders, and administering justice. In Bangladesh, the criminal justice system primarily consists of the police, prosecution services, courts, correctional institutions, and other law enforcement agencies.

Conviction

Conviction refers to the formal declaration by a court that an accused person is guilty of committing a criminal offense after a lawful trial. A conviction usually results in the imposition of a sentence, such as imprisonment, fine, probation, or other legal penalties.

Acquittal

Acquittal is the legal judgment by which an accused person is found not guilty of the offense charged. An acquittal may occur due to insufficient evidence, procedural defects, unreliable witness testimony, or failure of the prosecution to prove guilt beyond a reasonable doubt.[11]

Investigation

Investigation is the systematic process conducted by law enforcement authorities to collect evidence, identify suspects, establish facts, and determine whether a criminal offense has been committed. Effective investigation is essential for successful prosecution and conviction.

Prosecution

Prosecution refers to the legal process through which the state, represented by public prosecutors, presents evidence and arguments before a court to prove that the accused committed the alleged offense. The prosecution bears the burden of proving guilt beyond a reasonable doubt.[12]

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[11] The Code of Criminal Procedure, 1898.

[12] Mizanur Rahman, *Criminal Justice System in Bangladesh* (University of Dhaka Publications 2017).

Rule of Law

The rule of law is a fundamental principle of governance under which all persons, institutions, and government authorities are subject to and accountable under the law. It ensures equality before the law, fairness in legal proceedings, and protection of fundamental rights.

Judicial Delay

Judicial delay refers to the excessive time taken to resolve legal disputes and criminal proceedings. Delays in criminal cases may arise from case backlogs, shortage of judges, procedural complexities, and administrative inefficiencies, often affecting the quality of justice.[13]

Witness Protection

Witness protection refers to legal and administrative measures designed to safeguard witnesses from threats, intimidation, harassment, or retaliation arising from their participation in criminal proceedings. Effective witness protection is crucial for ensuring truthful testimony and successful prosecution.

Forensic Evidence

Forensic evidence refers to scientific evidence obtained through the application of forensic science, including DNA analysis, fingerprint examination, ballistic testing, digital forensics, and other scientific methods used to establish facts in criminal investigations and trials.

Corruption

Corruption refers to the abuse of entrusted power for private gain. Within the criminal justice system, corruption may involve bribery, influence peddling, manipulation of evidence, or misuse of official authority, which can adversely affect the outcome of criminal cases.

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[13] Tom Bingham, *The Rule of Law* (Penguin Books 2011).

Chapter 2

THE LOWER SUCESSIBILITY RATE OF CRIMINAL CASES IN BANGLADESH

2.1 The Low Success/Conviction Rate of Criminal Cases in Bangladesh

The low conviction rate of criminal cases in Bangladesh has become a significant concern in the criminal justice system. Despite a large number of cases being filed every year, only a small portion results in conviction, indicating systemic inefficiencies in investigation, prosecution, and judicial processes.[1] This situation reflects not only procedural weaknesses but also institutional and structural limitations within the justice delivery system.[14]

One of the major reasons behind the low conviction rate is poor quality of investigation conducted by law enforcement agencies. In many cases, investigations are not supported by modern forensic science, proper evidence collection, or timely reporting. As a result, prosecution cases often become weak in court.[15] Moreover, delays in submitting charge sheets further reduce the reliability of evidence and weaken the overall case strength.

Another critical issue is witness hostility and lack of witness protection mechanisms. Witnesses often become unwilling to testify due to fear, intimidation, or external pressure, which significantly affects the outcome of criminal trials.[16] Additionally, prolonged judicial delays and case backlogs contribute to weakening the prosecution process, as evidence becomes outdated and witness memory fades over time.

Furthermore, lack of coordination among police, prosecution, and judiciary also plays a vital role in reducing conviction rates. Inefficiency in case management and procedural gaps often lead to acquittals despite the presence of substantive

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[14] Bangladesh Bureau of Statistics (BBS), *Crime Statistics Report*, Dhaka, 2023., p. 39
[15] Law Commission of Bangladesh, *Report on Criminal Justice Reform*, Dhaka, 2017., p. 105
[16] Shahdeen Malik, "Criminal Justice System in Bangladesh: Problems and Prospects," *Bangladesh Journal of Law*, Vol. 18, 2014.

allegations.[4] In some instances, political influence and external interference further complicate the fair administration of justice.[17]

Therefore, the low conviction rate in Bangladesh is not a single-factor problem but a multidimensional issue that requires comprehensive reform in investigation, prosecution, witness protection, and judicial management systems.[18]

2.1 How Much Crime is there?

Official statistics on crime are published annually in the UK, and provide two main kinds of information: the number of crimes committed, as a whole and by type of crime; and certain characteristics, such as age and sex, of convicted offenders. The figures tend to be reported in the media under headlines such as 'Violent crime up 10 per cent', or 'Burglaries reduced by 25 per cent'. However, since the 1960s, increasing doubt has been shed on this interpretation of official statistics. We now know that when official figures say that, for example, burglaries are down by 25 per cent, it docs not necessarily mean that there have been 25 per cent fewer burglaries than the year before. This is because these statistics do not measure the crime that has taken place, but the crimes that have been officially recorded, and they may be two very different things. The reason for this is that before a crime can be recorded, a series of processes must occur: a person (the victim, the police, or someone else) must be aware that it has happened; if the police have not discovered it, someone must report it; and the police must accept that the law has been broken. Each stage has implications as to whether the incident appears in the official statistics or not.[19]

2.2 Awareness of crime

While in the case of crimes such as burglary or theft it will be clear to the victim that a crime has been committed, many offences do not have an obvious victim. For example, tax evasion victimises the whole community, because if dishonest

[17] Supreme Court of Bangladesh, *Judicial Performance Review Report*, 2022., p. 35
[18] Human Rights Watch, *Justice and Accountability in Bangladesh*, 2021., p. 38
[19] Measuring Crime: How Much Crime is There? (https://www.csudh.edu/dearhabermas/crimlect07.htm), p. 1

people avoid paying their fair share, the rest of us have to pay more, but we are not likely to be aware of it happening. Unless the police, or other enforcement agencies, discover such crimes, nobody but the criminals will know that they have taken place.

Whether the police discover a crime depends heavily on where police officers are actually placed. Areas where police believe that crime is likely to occur are allocated higher policing levels, so crime is more likely to be discovered there, and presumably less likely to be discovered in areas not seen as likely to produce crime. Styles of policing may also play a part in this, as the sociologists Lea and Young point out in their book 'What is to be Done About Law and Order?' What Lea and Young describe as 'consensual', with officers seeing themselves as supporting the community in upholding the law. In cities, they see themselves as controlling the community, and preventing it from breaking the law. Lea and Young suggest that people are more likely to be stopped and searched in the second type of area, and thus more likely to be discovered if they do commit crime.[20]

2.3 Reporting crime

Numerous studies have shown that the majority of crimes, which take place, are not reported to the police. Victimisation surveys ask respondents whether they have been the victims of crime over the previous year, whether they have reported it, and whether the police recorded it. The best known is the Home Office British Crime Survey, which takes place every couple of years. It regularly reveals a huge number of crimes, which have not been reported to the police. The 2000 survey uncovered almost 15 million crimes, three times the official figure of 5.3 million. In addition, rates of reporting varied widely between different types of offence. Clearly this throws doubt on the official picture of which types of crime are committed most frequently; not only are the numbers wrong, but also the proportions.

What influences the decision to report? According to the British Crime

[20] *Ibid*

Survey, the main reasons for not reporting are that the victim saw the offence as trivial, and/or believed that the police would not be able to do anything about it. People also tend to report crimes where there is an obvious advantage to them in doing so. 98 per cent of car thefts are reported, presumably because that is necessary in order to make' an insurance claim. Other factors which the survey has highlighted are that some crimes are regarded as personal matters, to be sorted out between the individuals; victims may want to protect the offender, particularly in crimes such as child abuse or domestic violence; and victims may be too embarrassed to report to police, especially where the offence is of a sexual nature.[21]

Kinscy, Lea and Young in Losing the Fight Against Crime provide additional reasons why crime may go unreported, and therefore unrecorded in official statistics. They argue that inner-city communities have little faith in the police, and this expresses itself in two ways: residents believe the police are biased against them, so they also fear reprisals from criminals, against which the police will not be able to protect them. Another victimisation-study, the Merseysidc Crime Survey, has shown that the higher the crime in an area, the lower the willingness to report.

However, even victimisation studies probably underestimate the true amount of crime committed. They can only record certain types of crime - those with an obvious victim. They therefore do not include drugs offences, prostitution, tax, and corporate or white-collar crime. Sexual offences are also likely to be underreported; although victims may be more likely to report these in the confidentiality of such.[22]

Finger 1 Reporting rates based on 2002/03 British Crime Survey Interviews,

surveys than they are logo to the police, many will still be too embarrassed to admit to them, especially as there may seem to be no practical point in doing so.

Victimisation surveys also rely on victims' memories, and their ability to define an act as a crime. Minor criminal acts may be forgotten, not regarded as

[21] *Ibid*

[22] Law Commission of Bangladesh, *Report on Criminal Justice Reform*, Dhaka, 2017. p. 39

serious enough to record, or not seen as crime.

2.4 Recording crime

Even where a crime is reported to (or discovered by) the police, it will not necessarily end up being recorded by them. Sociologists have suggested that whether the police perceive an individual's behaviour as a crime may depend on how they label the offender. An American study by Chamblis looked at two teenage groups, one working-class (known as the 'roughnecks') and one middle-class (the 'saints'). Despite the fact that the 'saints' committed more, and more serious, delinquent acts, they did not conform to the police image of young criminals, and were able to present their activities as harmless pranks. Whilst they were questioned, they were never charged, and therefore their activities were not recorded as crimes.[23]

The proportions of different types of crime recorded in official statistics may be distorted by the fact that some acts potentially fall within the definitions of more than one crime - different types of assault, for example. Which crime is recorded may depend on police discretion. In addition, different forces may have different attitudes to types of crime, reflecting the priorities of their senior officers. If the result is that forces concentrate resources on some crimes at the expense of others, this may make it appear that certain crimes are rising by comparison with others, when in fact they may simply be more likely to be detected.[24]

2.5 White-collar and corporate crime

White-collar crime is the name given to criminal activities performed by those in fairly high-status occupations during the course of their work-fraud is the obvious example. Corporate crime is that committed by companies. Fraud also tends to be the area most associated with corporate crime, but some sociologists have argued that deaths and injuries caused by companies to employees or customers also often

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[23] Law Commission of Bangladesh, *Report on Criminal Justice Reform*, Dhaka, 2017. p. 108
[24] *Ibid*

amount to crimes.

Neither white-collar nor corporate crimes are adequately reflected in official statistics, for two main reasons. First, there is low awareness of the fact that they have been committed. Many such offences victimise the community as a whole, or large groups of consumers. Where a company breaks safety legislation and an employee dies or is injured as a result, the situation is often viewed as accidental, so although the company may be sued fur compensation, criminal charges are rarely brought. In cases of bribery and corruption, both parties may benefit, and both are liable to prosecution, so neither is likely to report the offence.

Secondly, these crimes are frequently investigated not by the police, but by regulatory authorities such as the Health and Safety Executive, who, as a matter of policy, rely on persuasion rather than prosecution; the number of companies who need 'persuading' to stop breaking the law is not recorded in the criminal statistics.[25]

2.6 Statistics and conclusions

These weaknesses of official statistics make them unreliable not only as a picture of current crime rates, but also for the purposes of comparison - which is a problem, given the huge media attention paid to such comparisons, and its influence on policy. For example, rape figures have risen since the early 1980s, but the figures themselves cannot show whether this means more rapes are being committed or more are being reported, perhaps as a result of more sensitive police treatment c: victims. In addition, methods of gathering and/or categorising statistics may vary over time. Consequently, it is difficult to draw reliable conclusions from cither apparent increases or decreases in the crime rate. A rise, for example, in the official crime statistics is usually seen as bad news. Yet it may not reflect more crimes commit led, but more crimes reported, which may in turn be a result of higher public confidence in the police, and/or less tolerance by victims and others of crimes such as marital rape, child abuse or domestic violence.

[25] Criminology Class, Fall 1999, (https://www.csudh.edu/dearhabermas/crimlect07.htm), p. 1

Similar problems can be seen in the picture painted by the official statistics of offenders. They suggest that most crime is committed by young, working-class males, and that black people are more heavily represented than might he expected from the proportion of the population that they make up. Many important theories of criminology have been based on these findings, with experts accepting that working-class men are the main offenders, and then setting out to explain what it was about these men that made them likely to commit crime.

However, in recent years, other criminologists, known as 'labelling theorists', have questioned these assumptions, asking whether it is in fact the case that some sections of society appear more frequently in the crime figures because they are more likely to be convicted, and not because they commit more crime. As we have seen, the offenders who appear in official statistics are likely to be a small proportion of actual offenders, given the amount of crime, which is not reported or recorded.

As Chambliss's research shows, some groups are more likely to appear in official statistics because of who they are, not what they have done. If young, working-class men are most likely to be stopped by police, or do have their activities defined is criminal; it is not surprising that this is rejected in the official statistics. Lea and Young have suggested that the police may also be more likely to stop and question black people, with the same result.[26]

It has been argued that police behaviour to these two groups reflects the fact that they actually do commit more crime, but, even if this is the case, it ignores the fact that, in concentrating on some groups, the behaviour of others is not recorded, and so the balance presented in statistics is distorted. In other words, the targeted groups may commit more crime - but not as much more as statistics suggest.

The same applies to the absence of white-collar and corporate crime in official statistics. Box's study of these areas suggests that if the true picture of criminal activity were revealed, the assumption that crime is, working-class activity would soon be overturned.

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[26] Shahdeen Malik, "Criminal Justice System in Bangladesh: Problems and Prospects," *Bangladesh Journal of Law*, Vol. 18, 2014. p. 108

A further problem with official statistics is that they aim to present a picture of crime as a whole, which may ignore the reality of crime statistics for some groups or geographical areas. For example, the Islington Crime Survey (1986) found that residents of that borough had much higher than average chances of being a victim of certain serious crimes. Women were 40 per cent more likely to suffer non-sexual assault and rates of sexual assault were 14 times the national average. This was oven though women were five times more likely than men to avoid going out alone after dark, and six times more likely to avoid going out alone. Burglary in the borough was five times the national average. Clearly this suggests that the national average rotes underestimate the effects of crime in such areas and, by implication, overestimate its effects in other districts.

Similarly, the British Crime Survey reveals that many apparently separate instances of crime may involve the same victims over and over again; this is known as repeat victimisation. Regarding burglary, for example, the 2000 British Crime Survey found that 13 per cent of households suffering burglaries had done so twice in the year, and 7 per cent had been burgled three or more times. High-crime may not contain more victims, but a similar number to other places, who are victimised more often. Again, this is not reflected in the official statistics, but since these figures are used to help make decisions on policy and allocation of resources, such variations are important.[27]

It seems clear that official statistics are not - and should not be regarded as - reliable, at least not in the role they are designed to perform. They may be very revealing about the assumptions used in defining crime, by police and others, but as a picture of how much crime is committed and by whom, they are seriously flawed.

[27] Shahdeen Malik, "Criminal Justice System in Bangladesh: Problems and Prospects," *Bangladesh Journal of Law*, Vol. 18, 2014. p. 103

Chapter 3

CRIMINAL CASES IN BANGLADESH

3.1 Criminal Cases in Bangladesh

The term criminal law, sometimes called penal law, refers to any of various bodies of rules in different jurisdictions whose common characteristic is the potential for unique and often severe impositions as punishment for failure to comply. Criminal punishment depending on the offense and jurisdiction may include execution, loss of liberty, government supervision (parole or 'probation), or fines. There are some archetypal crimes, like murder, but the acts that are forbidden are not wholly consistent between different criminal codes, and even within a particular code lines may be blurred as civil infractions may give rise also to criminal consequences. Criminal law typically is enforced by the government, unlike the civil law, which may be enforced by private parties.[28]

3.2 Elements of Crime:

Actus reum

The *actus reus* — sometimes called the external element of a crime — is the Latin term for the "guilty act" which, when proved beyond a reasonable doubt in combination with the *mens rea,* i.e., the "guilty mind", produces criminal liability in common law-based criminal law jurisdictions Canada, Australia, New Zealand, England, Scotland and the United States. In the United States, some crimes also require proof of an attendant circumstance.

Causation

Causation is the bringing about of a result, and in law it is at segment in various for legal liability. Most tests for legal liability in criminal and civil Jaw require the defendant to have 'caused' the result of which the plaintiff complains. For example:

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28 Tehrani and Mednick, *Genetic Factors and Criminal Behavior*, (London: Federal Probation, 2000), p.24.

- Homicide (criminal law): requires that the accused have caused the victim's death
- Negligence (civil law): requires that the defendant have caused the harm that befell the plaintiff
- Breach of contract (civil law): requires that the defendant's breach have caused the plaintiffs loss.

If the plaintiff prosecution cannot establish the causal link between the defendant's act and the plaintiff s/victim's harm, then liability will not be established.

If the plaintiff/ Prosecution cannot establish the causal link between the defined act and the plaintiff's/victim harm, then liability will not be established.

This has two applications:

1. When a person is planning to achieve a given consequence, there may be several intermediate steps that have to be taken before the full result as desired is achieved. It is not open to the accused to pick and choose which of these steps are or are not intended. The accused will be taken to intend the accomplishment of all outcomes necessary to the fulfillment of the overall plan. For example, if A wishes to claim on B's life insurance policy so shoots at B who is sitting in a bus, the bullet may have to pass through a window. Thus, even though A may not have desired B's death, it was an inevitable precondition to a claim. Similarly, he may never consciously have considered the damage to the window, but both the murder and the damage under the Criminal Damage Act 1971 will be intended. This is distinguishing between the direct intention which is the main aim of the plan, and the oblique intention which covers all the intermediate .steps. More generally, a person directly intends a consequence when his purpose or aim is to cause it even though he believes that the likelihood of it succeeding is remote. In R v Dadson, for example, the defendant shot at a man whom he wrongly believed to be out of range. In R. v Mohan (1975) 2 All ER 193 it was held that direct intention means, "aim or purpose" "a

decision to bring about, insofar as it lies within the accused's power, the commission of the offence., no matter whether the accused desired that consequence of his act or not".[29]

2. Sometimes, by accident, a plan miscarries and the accused achieves one or more unintended consequences. In this situation, the accused is taken to have intended all of the additional consequences that flow naturally from the original plan. This is tested as matters of causation and concurrence, i.e. whether the given consequences were reasonably foreseeable, there is no *novus actus interveniens* and the relevant *mens rea* elements were formed before all of *thecrctes reuscomponents* were completed.

Recklessness (criminal)

In the criminal law recklessness (sometimes also termed willful blindness which may have a different meaning in the united states is one of the four possible classes of mental state constituting *mens rea*. To commit an offence of ordinary as opposed to strict liability the prosecution must be able to prove both a *mens rea* and an *actus reu* i.e., a person cannot be guilty for thoughts alone. There must also be an appropriate intention, knowledge, recklessness, or criminal negligence at the relevant time (see concurrence); Recklessness may constitute an offense against property or involve significant danger to another person.

Criminal law recognizes recklessness as one of the *mens rea* elements to establish liability. It shows less culpability than intention, but more culpability than criminal negligence. The test of any *mens rea*, element is always based on an assessment of whether the accused had foresight of the prohibited consequences and desired to cause those consequences to occur.[30] The three types of test are:

1. Subjective where the court attempts to establish what the accused was actually thinking at the time the *actus reus* was caused;
2. Objective where the court imputes *mens rea* elements on the basis that a

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[29] R. v Mohan (1975) 2 All ER 193

[30] Jay Joseph, 'Is Crime in the Genes, A Critical Review of Twins and Adoption Studies of criminality and antisocial behavior', *The Journal of Mind and Behaviour,* vol. 22, (Dec.2001), p. 179.

reasonable person with the same general knowledge and abilities as the accused would have had those elements, although R v Gemmell and Richards deprecated this in the UK; or

3. Hybrid, i.e. the test is both subjective and objective.

The most culpable *mens rea* elements will have both foresight and desire on a subjective basis. Recklessness usually arises when an accused is actually aware of the potentially adverse consequences to the planned actions, but has gone ahead anyway, exposing a particular individual or unknown victim to the risk of suffering the foreseen harm but not actually desiring that the victim be hurt. The accused is a social danger because he or she is gambling with the safety of others and the fact that the accused might have taken some steps to try to avoid the injury from occurring is relevant only to mitigate the sentence. Note that gross, criminal negligence represents such a serious failure to foresee that in any other person, it would have been recklessness. Hence, the alternative phrase "willful blindness" acknowledges the link representing either that the accused deliberately engineered a situation in which he or she was ignorant of material facts, or that the failure to foresee represented such a danger to others that it must be treated as though it was reckless.

3.3 General Discussion

To constitute a crime, there must be an *actus reus*[31] accompanied by the *mens rea*: Negligence shows the least level of culpability, intention being the most serious and recklessness of intermediate seriousness, overlapping with gross negligence. The distinction between recklessness and. criminal negligence lies in the presence or absence of foresight as to the prohibited consequences. Recklessness is usually described as a 'malfeasance' where the defendant knowingly exposes another to the risk of injury. The fault lies in being willing to run the risk. But criminal negligence is a 'misfeasance or 'nonfeasance1 (see omission), where the fault lies in the failure to foresee and so allow otherwise avoidable dangers to manifest. In some cases this failure can rise to the level of willful blindness where the

[31] Latin for: "guilty act"

individual intentionally avoids adverting to the reality of a situation (note that in the United States, there may sometimes be a slightly different interpretation for willful blindness). The degree of culpability is determined by applying a reasonable person standard. Criminal negligence becomes "gross" when the failure to foresee involves a "wanton disregard for human life".[32]

The test of any *mens rea* element is always based on an assessment of whether the accused had foresight of the prohibited consequences and desired to cause those consequences to occur. The three types of test are:

1. Subjective where the court attempts to establish what the accused was actually thinking at the time the *actus reus* was caused;
2. Objective where the-court imputes *mens rea* elements on the basis that reasonable person with the same genera] knowledge and. abilities as the accused would have had those elements; or
3. Hybrid, i.e. the test is both subjective and objective.

The most culpable *mens rea* elements will have both foresight and desire on a subjective basis. Negligence arises when, on a subjective test, an accused has not actually foreseen the potentially adverse consequences to the planned actions, and has gone ahead, exposing a particular individual or unknown victim to the risk of suffering injury or loss. The accused is a social Ganger because he or she has endangered the safety of others in circumstances where the reasonable person would have foreseen the injury and taken preventive measures. Hence, the test is hybrid.

It is generally said that criminal law is an index of civilisation because it is sensitive to the changes in social structure and reflects mental fiber of a given society. This is why Prof. Friedman calls it a barometer of moral thinking. According to Wechster, "crime is a formal social condemnation of forbidden conduct buttressed by sanction calculated to prevent it”. Criminologists are thus confronted with three major problems, namely,

1. What conducts should be forbidden and an inquiry into the effect of environment on these conducts;

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32 The Discussion in Corporate Manslaughter'

2. What condemnation is appropriate in such cases; and
3. What kinds of sanctions are best to prevent these conducts?

It is thus evident that criminology, penology and criminal law are inter-related and one cannot really function without the other. The formulation of criminal policy essentially depends on crime causation and factors correlated therewith while its implementation is achieved through the instrumentality of criminal law. It has been rightly observed by Prof. Sellin that the object of criminology is to study the sequence of law-making, law-breaking and reaction to law breaking from the point of view of the efficacy of law as a method of control. According to Donald Taft, criminology is the scientific analysis and observation of crimes and criminals whereas penology is concerned with the punishment and treatment of offenders.[33] In his view,' the development of criminology has been much later than that of penology because in early periods the emphasis was on treatment of Criminal rather than scientific investigation into the causation of crime.

3.4 Criminal Law — Its Nature and Elements:

The importance of criminal law in relation to crime need hardly be emphasised. Dr. Allen has defined law as something more than a mere command. He observed: `it is the force of public opinion which attempts to enforce, as far as possible, good morals for the benefit of the society and its members". Marett views law as the authoritative regulation of social relation. It, therefore, follows that law is a relative term and pervasive in nature. In other words, it is a varying concept, which changes from society to society and time to time. The divergence between the Hindu and Mohammedan personal law of marriage, divorce, succession, legitimacy and legislation on prohibition, abortion, 1 COFEPOSA, 2 etc., can be cited in support of this contention. Thus, the criminal law of a place can be defined as the body of special rules regulating human conduct promulgated by State' and uniformly applicable to all classes to which it refers and is enforced by punishment, It should, however, be noted that law is simply a means to an end and should not be treated as an end in itself. Its ultimate object is to secure maximum

[33] *Ibid*

good of the community.

In order to be effective, criminal law must have four important elements viz., (i) politically, (ii) specificity, (iii) uniformity, and (iv) penal sanction. Polytonality implies that only the violation of rules made by the State are regarded as crime. Specificity of criminal law connotes that it strictly defines the act to be treated as crime. In other words, the provisions of criminal law should be stated in specific terms. Uniformity of criminal law suggests its uniform application throughout the country' without any discrimination, thus imparting even-handed justice to all alike. The purpose is to eliminate judicial discretion in the administration of criminal law. It must, however, be noted that recent legislations are providing scope for more and more judicial discretion through -judicial equity to attain offender's reformation which is 'the ultimate goal of criminal justice. Finally, it is through penal sanctions imposed under the criminal law that the members of society .are deterred from committing crime. No law can possibly be effective without adequate penal sanctions.[34]

[34] Supreme Court of Bangladesh, *Judicial Performance Review Report*, 2022., p. 39

Chapter 4

PROBABLE SOLUTIONS

4.1 Criminal Justice System in India

The Criminal Justice System in India has many loop holes. With my last assignment with Human Rights Law Network (HRLN) on Prisoner's Rights I came to know about several problems existing in the system. I witnessed so many cases where for petty crimes people are in jails for more than 3, 4 years. Many undertrials are detained because they have no money to get a bail or hire a lawyer to assist them. If he is unable to furnish surety, he cannot get bail and spends years in a prison. Quite often, the surety amount asked by the court is large that the poor cannot furnish it as a result he goes to the prison. And the speed of justice delivery system has given rise in Prison population which resulted in overcrowding. [35]

Criminal Law of India is a replica of colonial times. It is hostile to the poor and the weaker sections of society. The law still serves and protects the needs of the haves and ignores the have-nots. Such biasness has resulted in rich people escaping law and the jail is more often full of the unprivileged class of society. The hierarchy of courts and with appeals after appeal have led to a situation where the poor cannot reach the temple of justice due to heavy cost of its access. In other words one can state that granting justice at a higher cost indirectly means the denial of justice. Such circumstances lead to a clear violation of the Supreme Court judgement which held, legal aid to a poor is a constitutional mandate not only by virtue of Article 39A but also Articles 14, 19, 21 which cannot be denied by the government.

When we think about prisons the image that comes to our mind is that of hard core criminals who were imprisoned for committing crimes. But in actual fact 64.7% of prisoners in Indian jails are undertrials who may or may not be punished. Thousands of them, arrested on suspicion of committing petty crimes, languish in jails for a much longer period than the maximum punishment under

[35] Rayees Rasool, Criminal Justice System In India, Countercurrents.org, 05 June, 2015, p. 36

the law for the crime which they have committed. The presence of higher number of undertrials in the prison results in their over-crowding, which in turn causes many socio economic problems in the society.

As understood by a layman an, 'undertrial'is a person who is currently on trial or who is imprisoned on remand whilst awaiting trial. As defined in the Oxford Dictionary, ‘A person who is on a trial in a court of law’. The 78th Report of Law Commission also includes a person who is in judicial custody on remand during investigation in the definition of an 'undertrial'.

The presence of large number of undertrial prisoners and their continuing stay for longer period definitely indicates the slow pace of trials which will leads to the overcrowding of prisons. In the National Human Rights Commissions view, unnecessary and unjustified arrests made by the police and the slow judicial processes causing congestion of undertrial prisoners are the main causes of overcrowding in jails.

The poor are particularly worse off when confronted with criminal justice system.

When prison population goes beyond its authorized capacity of accommodation, it is known as Over-crowding. Overcrowding in the Prisons is an important human rights issue as it results in deterioration of the general living conditions of the prisoners. It also creates hindrances in the reformation process. Prison officers find it difficult to initiate and continue correctional measures.

Overcrowding contributes to a greater risk of disease, higher noise levels, which affect the health of the prisoners, and adversely affect the hygienic conditions, surveillance difficulties, which increase the danger level. This apart, life is more difficult for inmates and work is more onerous for staff when prisoners are in over capacity.[36]

The system of imprisonment has originated in the first quarter of the 19th century. In the initial stages the prisons were used as a place for detention of the undertrials. It has undergone a radical change and the penology of the present day has become centered on imprisonment as a measure of rehabilitation of the

[36] Md. Abdul Halim, *The Legal System of Bangladesh*, CCB Foundation, 2015., p. 89

criminals. But unfortunately even now the prisons are crowded with under-trial prisoners. Many of them are innocent persons who are caught in the web of the law eagerly waiting for their trial date and several of them are prepared to confess their crime and accept their sentence

There is a law where undertrials can get justice but the implementation is an issue. In one of the study the data compiled by the National Crime Records Bureau (NCRB) at the end of 2013, the total number of convict prisoners was 1,29,608 and under-trial prisoners was 2,78,503 in jails of the country, there were 1,92,202 Hindu, 57,936 Muslim, 11,666 Sikh, 12,406 Christian, 4,293 Other under-trial prisoners in jails at the end of 2013. In terms of societal strata there were 59,326 Scheduled Caste, 31,581 Scheduled Tribe, 87,848 OBC and 99,748 Other under-trial prisoners at the end of 2013.

Supreme Court of India in its order dated 5.9.2014 in Writ Petition No. 310/2005 –Bhim Singh Vs Union of India & Others relating to under-trial prisoners, has directed for effective implementation of Section 436A of the Code of Criminal Procedure by directing the jurisdictional Magistrate/Chief Judicial Magi-strate/Sessions Judge to hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of section 436A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of Imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of section 436A of Cr PC.[37]

One of the serious concerns for these undertrials is their family. In the absence of the main breadwinner, many families are forced into destitution. This combined with the social stigma and ostracism that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is a vicious circle. The problems become acute when they belong to the socio-economically

[37] Md. Abdul Halim, *The Legal System of Bangladesh*, CCB Foundation, 2015. p. 79

marginalized and exploited sections of the society. One of the horrible plights a person can undergo is spending years in a jail as undertrials and at the end he was found not guilty. In such a situation can anyone compensate them for the mental agony and torture they and their family have suffered or give back to them the lost years, the loss of honour and reputation. The undertrials should not be kept in the jails as far as possible. If unavoidable then they should be kept separately with in the prison so that they are not allowed to mix with the convicts. Within the undertrials also a classification should be made so that the first and young offenders should be kept away from the hard core criminals thereby preventing contamination.

There are hundreds of examples where court acquitted people from criminal charges after spending more than 10 years in Jail. There are no proper policies for their rehabilitation. No one can compensate them the time they spent and the things they lose during the period. But to respect their human rights govern-ments should form a policy to adequately rehabilitate them.

In order to mitigate the conditions of the undertrial prisoners the first and foremost thing that has to do is to bring down their population drastically. This cannot happen unless all the branches of the criminal jus-tice system work hand in hand. The presence of large number of undertrial prisoners is really shame to any criminal justice administration .For this we have to take these undertrials out of the prison or not to keep them for a long period as well as not to sent more undertrials to the prison.[38]

4.2 Intro to the American Criminal Justice System

Unlike in most countries, the United States criminal justice system is not represented by a single, all-encompassing institution. Rather, it is a network of criminal justice systems at the federal, state, and special jurisdictional levels like military courts and territorial courts. Criminal laws at these levels vary, although these are all based on the US Constitution.

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[38] Rayees Rasool is Project Coordinator, Criminal Justice Initiative , Human Rights Law Network, New Delhi, p. 88

The federal criminal justice system handles cases that are national in scope: treason, espionage, assassination of top-level government officials, among others. Meanwhile, state criminal justice systems handle crimes that have taken place or, in certain situations, have evident involvement in the state. The same process goes for the criminal justice systems within special jurisdictions.

4.3 Components of the Criminal Justice System

As with any mechanism, the criminal justice system involves the coordinated functioning of its distinct parts. The ideal result is making offenders pay for, and repent, their criminal acts while delivering recompense to the victims. The three components of the criminal justice system are:

4.4 Law Enforcement

The wheels of law enforcement start grinding when a crime is detected. Detection takes place when the concerned law enforcement body (police force or specialized agency) receive a report from the victim or a witness, or catch the crime perpetrator. Thereafter, the law enforcers verify the information furnished and proceed with the investigation.

Law enforcement duties include: arresting suspected offenders, gathering and preserving evidence, establishing the motive, and completing police/arrest reports by stating results of the investigation. Responsibilities include: upholding the rights of offenders, victims, and witnesses; and conducting police procedures within rules prescribed by law.[39]

At the federal level, there is a law enforcement body designated to cover particular areas of criminal law. One example would be the US Department of Homeland Security, which addresses the problem on human trafficking. Another would be the US Department of Justice (DOJ), which is made up of agencies like the FBI that has police powers over crimes of significant nationwide impact like terrorist acts.

Meanwhile, state and other local-government police organizations vary in

[39] Law Commission of Bangladesh, *Report on Criminal Justice Reform*, Dhaka, 2017. p. 96

structure, as well as in names. However, the mission is the same as the others': to enforce laws, maintain peace and order in the communities they serve, and provide their constituencies safety and security.

4.5 Adjudication

The adjudication of a criminal case involves court processes. In plain terms, adjudication refers to the legal process by which a judgment is pronounced by the court to the parties in a case. As with the law enforcement component of the criminal justice system, the courts are organized at federal, state, and special-jurisdiction levels.

Pretrial services-

The adjudication process starts when the law enforcement body has submitted the police/arrest report to the prosecutor. The prosecutor, in turn, determines whether or not the incident will prosper into a criminal case, in which the suspected offender will be charged with the crime. It is not uncommon for the prosecutor to drop or dismiss charges altogether, for reasons that include: lack of evidence and weak police investigation. It is the prosecutor that takes the side of the victim and, accordingly, the state (society or community), which the crime has also affected.[40]

Arraignment-

If the prosecutor decides to press charges against a suspected offender, the adjudication process advances to arraignment. During arraignment, the suspect is read the charge/s filed against him or her. With the aid of a legal counsel, the suspect (now a defendant) enters a plea of either guilty or not guilty.

Trial-

The arraignment progresses into trial to determine the guilt of the suspect (if the not-guilty plea was not entered). In the event of a guilty verdict, the offender is convicted and the court will determine the sentence.

[40] Law Commission of Bangladesh, *Report on Criminal Justice Reform*, Dhaka, 2017. p. 108

A trial is characterized by an argument that has two sides: the prosecution and the defense. On the one hand, the prosecution represents the interests of the victim and , in effect, the society (or state) that the offender is suspected to have violated. On the other, the defense asserts the innocence of the offender and labors to get the offender acquitted.

A trial often results in an appeal, in which the disadvantaged side (prosecution or defense) will try to shift the advantage. In this instance, the case is elevated in a higher court, which either upholds or overturns the earlier decision.

Sentencing-

A court conviction corresponds to a sentence, which is the penalty imposed on the offender who has been found guilty as a result of the preceding trial. The sentence is meted out by the judge, who follows prescribed guidelines, standards, and limitations in punishing convicts.

Death Penalty-

Generally, United States laws permit the death penalty for convicts who have committed heinous crimes, although the practice of capital punishment is on a case-by-case basis.

In principle, the Federal Death Penalty Act of 1988[41] sentences to death all offenders convicted of homicide. But in practice, capital punishment is more an exception than the rule. For example, most of the convicted terrorists on death row have yet to be meted out their sentences.

4.6 Corrections

The third component of the criminal justice system is corrections. While it implies reform and rehabilitation, corrections encompasses all sentenced offenders, including those who are on death row.

Federal and state criminal justice systems hold “corrections” as the replacement for “penology” that many find harsh and unforgiving. In any case, the

41 [http://www.deathpenalty.org/article.php?id=46, Last visit 11.06.2016]

corrections component manages incarcerated convicts and those who are conditionally released, as well as those who are merely slapped with punishments that do not require imprisonment but who need supervision anyway.

The corrections network includes publicly run and privately operated institutions, along with the personnel and other stakeholders, and its administration must adhere to lawful standards. The process involves reform and rehabilitation programs to prepare eligible convicts for reentry and reintegration into society as free individuals.

Chapter 5

CRIMINAL JUDICATURE IN BANGLADESH

5.1 Criminal Courts

The criminal law of Bangladesh makes due allowance for existence of courts of special jurisdiction and establishes various types of criminal courts across Bangladesh subordinate to the SC. The Code of criminal Procedure (CrPC) 1898 is the legal bases of the criminal courts in Bangladesh. S.6 of this code lays down that besides the SC and the courts constituted under any law for the time being in force, other than this code, there shall be two classes of criminal courts in Bangladesh:[42]

Supreme Court and

Judge Court

5.2 Classes of Criminal Courts

There shall be two classes of Criminal Courts in Bangladesh, namely:-

(a) Courts of Sessions; and

(b) Courts of [Magistrates].

(2) There shall be two classes of Magistrate, namely: –

(a) Judicial Magistrate and

(b) Executive Magistrate.

(3) There shall be four classes of judicial Magistrate, namely: –

(a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas;

(b) Magistrate of the first class, who shall in Metropolitan Area, be known as Metropolitan Magistrate;

(c) Magistrate of the second class; and

(d) Magistrate of the third class

Explanation:

[42] Michael Jefferson, *Criminal Law*, London: Pearson Education, 2018. p. 55

For the purpose of this sub-section, the word "Chief Metropolitan Magistrate" and "Chief judicial Magistrate" shall include "Additional Chief Metropolitan Magistrate" and "Additional Chief judicial Magistrate" respectively.][43]

5.3 Observation through some criminal cases in Bangladesh

This is a title attempt to find out some defects or problems visible or arise while adjudicating Criminal cases corresponding to Criminal Justice system of Bangladesh, going through some criminal cases. Thus the studies object to find out some problems which obstruct the fair and natural Justice. Here we are about to observe some criminal cases which have been either dismissed or failed to seek remedy to the victim in lieu of defects of laws or other technical problem.

Case No-01:

1. Title and section of laws for Accusation:

The case has it name as Pallabi Police station Case no-17(12)12 corresponding to GR case no-130/12 between the State Vs Ashraf Ali and others as the case was filed by Mr.Abdur Rahman under section – 143/323/435/506 of Bangladesh Penal Code 1860.

2. Facts of the case:

Here the plaintiff filed a GR case in Pallabi police station for hurting him with an unlawful Assembly and Putting fire on his car in Road side. He mentioned name of persons by name which he saw at that place during commission of that offence in the Ajahar.

The case against the accused was brought under section-143/ 323/ 435/ 506 of the Penal Code. He filed the case on 03/12/2012 and the case sent to the court in 04/12/2012 for Trial.

[43] Ratanlal & Dhirajlal, *The Indian Penal Code*, New Delhi: LexisNexis, latest edition. p. 108

3. Present stage of the case:

The case is fixed for 06/09/2013 after several dates. Yet No police report has been founded under section 173 of code of criminal procedure.

Several accused has already got bail from the court by surrendering themselves at different date after filing the case. Yet several offenders are out of Jurisdiction of the Court or Judicial capacity.

4. Observation:

Though 9 months already passed out after the filing of the suit but yet the Punishment or no Reasonable step has been got for its adjudication or seeking the Remedy to the plaintiff. From a deep analysis and observation it is seen to me that following are the main case for the pendency or delaying of this very case—

a) Negligence by the police whose duty is to submit police report either charge- sheet or Final Report under section 173 of the code of Criminal Procedure.[44]

b) No adequate step has been taken by the law enforcement body to bring the co-offender with in judicial capacity or the execution body is incapable on doing so.

c) No such direction has been given by the court to provide police report.

Case No-02:

1. Title and section of Accusation:

This case is between Md.Rubel Sordar Vs Md. Summon and others.

The case is introduced as Rupnogor Police Station case no- 21(12)12 corresponding to GR no—98/ 12 in lieu of section—143/ 323/ 326/ 379/ 441/ 506 of the Penal code 1860.

2. Facts of the case:

Md.Rubel Sordar was passing through eastern housing Bridge along with his two friends. Md. Summon with hockey, Iron, knife and left them Bringing there

[44] Ashworth, A., *Principles of Criminal Law*, Oxford University Press, 2016. p. 22

mobile phone and cash 10,000/= taka as they previously claim money from the victim plaintiff and he denied.

Md.Rubel Sordar filed a GR case on 21st day of December 2012 under section-143/ 323/ 326/ 379/ 441/ 506 of Penal Code and sent to the court on the next day by the police.

3. Present stage of the case:

The magistrate ordered no 06/05/2013 for warrant and attachment of the property of the accused sent in charge-sheet sent by the police under section—173 of the criminal procedure code as one of the accused abscond himself from Judicial Capacity .

The other offenders surrendered themselves before the learned court and took bail at different date. Before the police sent charge- sheet mentioning accused but the section – 379 is replaced with section –385 of the penal Code and the accused who committed offence under- section- 379 has been not sent up. The accused desire him to sent up But no Naraji has been filed.

Thus the case is kept for next working on 29/09/2013.

4. Observation:

This cases within ten months almost reasonably overcome. Its pre- trial stage but from studying the case following cases of delaying or incapacity of criminal

Judicial System is observed:–

a) It took much time to complete its pre- trial stage.

b) Police officer in charge of the case either took pecuniary benefit or biased in case of an accused or suffered from incapacity during investigation.

c) For seeking the offender around the capacity of law the executive body showed its incapacity.

d) The staff of the court is shortening from man power to send the order for warrant and attachment of the property to the executive body without any delay.

e) The plaintiff either threatens or has reasonably lost his will to file Naraji or not interested in seeking Remedy after a case has been duly filed.

Chapter 6

RECOMMENDATIONS & CONCLUSION

6.1 Recommendations

Based on the findings of this study, several recommendations can be proposed to improve the success rate of criminal cases in Bangladesh and strengthen the overall criminal justice system.

1. Strengthening Criminal Investigation

The quality of criminal investigations should be significantly improved through specialized training, modern investigative techniques, and increased professional accountability. Investigating officers should receive regular training on evidence collection, crime scene management, and forensic procedures to ensure that investigations meet the required legal standards.[45]

2. Expansion of Forensic Facilities

The Government of Bangladesh should establish modern forensic laboratories in all divisions and increase access to scientific investigation tools. Greater use of DNA analysis, fingerprint examination, digital forensics, and other scientific methods would enhance the reliability of evidence presented before courts and improve conviction rates.

3. Introduction of a Comprehensive Witness Protection Program

Witness intimidation and hostility remain major obstacles to successful prosecution. A comprehensive witness protection framework should be introduced to provide physical security, confidentiality, relocation assistance, and legal support to witnesses who face threats due to their participation in criminal proceedings.

4. Reform of the Prosecution Service

The prosecution system should be strengthened through merit-based recruitment, professional training, adequate remuneration, and institutional independence.

[45] Constitution of the People's Republic of Bangladesh 1972.

Public prosecutors should work closely with investigators from the early stages of case preparation to ensure effective presentation of evidence before courts.

5. Reduction of Judicial Backlog

Special measures should be taken to reduce the large number of pending criminal cases. This may include increasing the number of judges, establishing additional courts, introducing case management systems, and ensuring the timely disposal of cases. Fast-track courts may be considered for specific categories of serious criminal offenses.

6. Ensuring Independence of Law Enforcement Agencies

Law enforcement agencies should be protected from political and external influence. Investigations and prosecutions must be conducted impartially and professionally to ensure equal treatment under the law and enhance public confidence in the justice system.

7. Strengthening Anti-Corruption Measures

Strict monitoring and accountability mechanisms should be introduced within the criminal justice sector. Allegations of corruption involving police officers, prosecutors, court officials, or other stakeholders should be investigated promptly, and appropriate disciplinary or legal action should be taken against those found responsible.

8. Digitalization of Criminal Justice Administration

Modern information technology should be integrated into the criminal justice system. Electronic case management systems, digital evidence storage, online tracking of case progress, and automated scheduling mechanisms can improve efficiency, transparency, and accountability.

9. Capacity Building for Judicial Officers

Continuous professional development programs should be organized for judges and judicial officers to enhance their knowledge of emerging legal issues, forensic science, cybercrime, and international best practices in criminal justice administration.[46]

[46] The Code of Criminal Procedure, 1898.

10. Enhancement of Legal Awareness Among Citizens

Public legal awareness programs should be conducted to educate citizens about criminal procedures, victims' rights, witness responsibilities, and available legal remedies. Increased public awareness can promote cooperation with law enforcement agencies and improve access to justice.

11. Improvement of Evidence Management Systems

Proper mechanisms should be developed for the collection, preservation, documentation, and presentation of evidence. Maintaining an unbroken chain of custody and ensuring the integrity of evidence will significantly contribute to successful prosecutions.

12. Periodic Evaluation of Criminal Justice Institutions

Regular monitoring and evaluation should be conducted to assess the performance of police investigators, prosecutors, forensic experts, and judicial institutions. Performance-based assessments can help identify weaknesses and support evidence-based reforms.

13. Legislative Reforms

Where necessary, criminal laws and procedural rules should be reviewed and amended to remove unnecessary delays, procedural complexities, and loopholes that hinder effective prosecution. Legal reforms should be consistent with constitutional guarantees and international human rights standards.[47]

14. Strengthening Victim Support Services

Victims of crime should receive legal assistance, counseling, and protection throughout the criminal justice process. Improved victim support mechanisms can encourage greater participation in criminal proceedings and contribute to successful case outcomes.

15. Promoting Coordination Among Criminal Justice Agencies

Effective coordination between police, prosecutors, forensic experts, correctional institutions, and the judiciary is essential for the successful administration of criminal justice. Institutional cooperation should be strengthened through regular communication, joint training, and integrated case management practices.

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[47] Mizanur Rahman, *Criminal Justice System in Bangladesh* (2017).

6.2 Conclusion

The criminal justice system plays a vital role in maintaining law and order, protecting individual rights, and ensuring the rule of law in any democratic society. In Bangladesh, however, the lower success rate of criminal cases has emerged as a significant challenge to the effective administration of justice. A criminal justice system that is unable to secure convictions against offenders despite the existence of legal provisions and judicial mechanisms inevitably undermines public confidence and weakens the credibility of state institutions.

This study has identified several interrelated factors responsible for the lower success rate of criminal cases in Bangladesh. Defective and inadequate investigations, insufficient use of forensic evidence, witness hostility, corruption, political interference, weak prosecution services, and excessive judicial delays collectively contribute to unsuccessful prosecutions and acquittals. These challenges not only affect the outcome of individual cases but also hinder the overall effectiveness of the criminal justice system.[48]

The study further reveals that many of these problems are institutional rather than purely legal in nature. Although Bangladesh possesses a comprehensive legal framework governing criminal justice administration, the implementation of these laws is often constrained by resource limitations, administrative inefficiencies, and governance-related shortcomings. The growing backlog of criminal cases, combined with procedural complexities and limited technological capacity, has created additional obstacles to timely and effective justice delivery.[49]

The consequences of a low success rate in criminal cases are far-reaching. It weakens deterrence against criminal activities, discourages victims from seeking legal remedies, reduces public trust in law enforcement agencies and courts, and ultimately threatens the rule of law. When offenders escape punishment due to systemic weaknesses, society's confidence in the fairness and effectiveness of the legal system gradually diminishes.

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[48] Constitution of the People's Republic of Bangladesh 1972, arts 27, 31 and 35.

[49] Kamal Hossain, *Bangladesh Constitution: Trends and Issues* (University Press Limited 2013).

To address these challenges, the study emphasizes the necessity of comprehensive reforms in investigation, prosecution, judicial administration, and institutional governance. Strengthening forensic capabilities, ensuring witness protection, enhancing professional training for investigators and prosecutors, reducing judicial delays, combating corruption, and introducing modern technological systems are essential steps toward improving the effectiveness of criminal justice administration. Furthermore, ensuring the independence and accountability of law enforcement agencies and judicial institutions remains crucial for achieving sustainable reform.[50]

In conclusion, improving the success rate of criminal cases in Bangladesh requires a coordinated and long-term commitment from the government, judiciary, law enforcement agencies, legal professionals, and civil society. Legal reforms alone cannot solve the problem unless they are accompanied by institutional strengthening and effective implementation. By adopting comprehensive and practical measures, Bangladesh can build a more efficient, transparent, and accountable criminal justice system that ensures justice for victims, protects the rights of the accused, and reinforces public confidence in the rule of law. Such reforms are indispensable for promoting good governance, social stability, and sustainable democratic development in the country.

[50] Tom Bingham, *The Rule of Law* (Penguin Books 2011).

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