Reserach Article
Archaic Quandary of Criminal Justice System in Bangladesh: On the Road to Alternatives

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Abstract: The clients of justice desire uncorrupted, inexpensive and speedy justice. However, it will be not exaggerated to say that the present criminal justice system in Bangladesh is eroding justice seekers’ confidence. The reason for people’s lack of confidence in criminal justice mechanism is due to its faulty, non-scientific and disoriented state in present context. The criminal justice system of Bangladesh emerged from an ancestry of British legacy that originated in the early 17th Century as traders of the East India Company beginning to this sub-continent. Considering the religion based criminal law as disproportionate from their western democratic view, the Company brought about several reforms through a series of regulations which modified or expanded the definitions of some offences, introduced new offences and altered penalties to make them more logical and reasonable. In a related vein, the Penal Code (PC) defining crime and prescribing appropriate punishments was adopted in 1860, following the painstaking work of the First Law Commission of British India, particularly its Chairman Lord Macaulay. The PC has stood the test of time. As a sequel to the PC, a Code of Criminal Procedure (Cr.P.C.) was enacted in 1898 and established the rules to be followed in all stages of investigation, trial and sentencing. These two codes, along with parts of the Indian Evidence Act, 1872, form the essence of India’s criminal law and subsequently the criminal law of Bangladesh after its independence in 1971. Since the present criminal justice mechanism suffers with numerous flaws and consequently makes the system vitiated, it is the high time to rethink whether the existing principles and philosophy of our criminal justice system are efficacious anymore. The research will attempt to devise some possible alternatives so that justice can be more efficiently served to its seekers.

Keywords: Archaic, Criminal Justice, System, Quandary, 17th Century, Searching, Alternatives, Bangladesh

INTRODUCTIONS
The basic principle which is followed in criminal justice system under these Codes is that the accused should be presumed as innocent and the prosecution, by adducing cogent and reliable evidence, shall have to prove that the accused is guilty of the offence alleged. In other words, there is onus upon the prosecution. Further, the courts also follow the principle that the prosecution must prove its case beyond “reasonable doubt” and whenever the courts find any flaw in the evidence of the prosecution, for the sake of “fair trial” give acquittal to the alleged accused by resorting to “benefit of doubt”. However, neither the expression “reasonable doubt” nor the expression “benefit of doubt” are defined or explained in any law (4 MLR (AD) 201; 2 Para 12). The benefit of doubt can be given only when there is any cogent reason which may be gathered from the whole evidence. See 7 BLD (AD) 265, 11 BLD (AD) 2 para 135, 15 BLT (AD) 101, 12 BLT 481. If the defence case gets any support from the evidence led by the prosecution then it can be said that a reasonable doubt has been created. See 16 BLT (AD) 135, 57 DLR 289. On the point, detailed discussion may be found in the case reported in 13 MLR (AD) 186. If it is found from the whole evidence that the defence version of the case might be true, the accused should be given benefit of doubt, 5 BLD (AD) 294. It is often said that one of the well-known maxims of criminal trials is that it is better that ten guilty persons be acquitted rather than one innocent person be convicted. This maxim is often misunderstood. It means nothing more than this that the greatest possible care should be taken by the court in convicting an accused. The presumption is that he is innocent till the contrary is clearly established. The burden of proof of proving that the accused is guilty is always on the prosecution. If there is an element of reasonable doubt as to the guilt of the accused, the benefit of doubt must go to him. The maxim merely emphasizes these principles in a striking fashion. It does not mean that even an imaginary or unreal and improbable doubt is enough for holding the accused not guilty if the evidence on the whole, points to the only conclusion, on which a prudent man can act, that the accused is guilty. Learned author did not state any criterion for coming to the conclusion of benefit of doubt. Suspicion must not be substituted of evidence. These practices are not good in all cases. Unfortunately, due to flaws in the investigation, prosecution finds it difficult to prove its case and ultimately these flaws are responsible to a large extent for acquittal of alleged accused. Some Judges give emphasis on the old precedents but some take into consideration the changes which have taken place in the society especially in the law and order field.
LITERATURE REVIEW

Presently, criminal trial precedes upon the basis some principles some of which breed questions as to the fairness of justice. Following are the major characteristics of the Criminal trial System in Bangladesh:

- **Adversarial Process as opposed to inquisitorial system:** Criminal Justice System is accusatorial or adversarial in nature meaning that the whole process is a contest between two parties one of whom is State and the other is accused of crime. Court plays no significant role in preparation of a case; it takes only a non-partisan role. Cases are tried on evidence adduced by parties. The Judges acts as an umpire between parties.

- **Presumption of Innocence:** A person accused of a crime is presumed to be innocent until the prosecution proves his guilt.

- **Criminal Standard of Proof:** Guilt of the accused must be proved beyond any reasonable doubt. If there is a little doubt in proving the elements of the offence concerned, the accused will be set free.

- **Onus (Burden) of Proof:** In criminal proceeding, the basic rule is that the prosecution bears the legal burden of proving every fact in issue. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. The rule is that ‘he who asserts must prove’. But if the accused wishes to bring the case within any exception (general exception or private defense or special exception made under any penal statute), the burden of proof lies upon him.

- **Punishment of wrong, but not enforcement of rights:** Criminal Justice System consists in the punishment of wrongs. Normally in a criminal justice, the injured person claims no right, but accuses the defendant of wrong.

- **No Retrospective Operation of Criminal Law:** Retrospective means looking backwards having reference to a state of things existing before the Act in question. It is a settled principle that criminal laws have no retrospective operation in the eye of law. Constitution of Bangladesh also ensures that no person shall be convicted to any offence which is not in force at the time of the commission of the act. Article 11(2) of the Universal Declaration of Human Rights 1948; Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950; Article 9 of the American Convention on Human Rights 1969; Article 7(2) of African Charter on Human and People’s Right 1981 etc. also confirms that criminal law must not have any retrospective operation.

- **Interpretation of Criminal law:** It is a general rule that penal enactments are to be interpreted strictly and not extended beyond their clear meaning. A penal statute must be construed according to its plain, natural and grammatical meaning. Benefit of doubts goes to the accused in this justice system. An accused must be presumed to be innocent. There is no retrospective operation of criminal law. Special criminal law prevails over the general criminal law. No one shall be convicted twice for the same offence.

- **One Party will be the State:** Generally it is presumed that the party injured by a crime is not only the victim but also the State. Crime is regarded as the invasion of public rights and duties. It affects the whole society. That is why the State takes the responsibilities to bring an action against the offender.

Very few earlier studies made real attempts to find out the causes of delay in courts so far it relates to criminal justice. For example, Zahir (1988, p.8), in his empirical research on the causes of delay in courts, indicated ‘adjouments [are] responsible for about 50 per cent of delay’ (Zahir 1988, pp. 8-9). In his research, ‘judges uniformly held [that] the lawyers of both parties and absence of witnesses [are] responsible for causing adjouments and consequent delay in disposal of cases. In most of the cases judges blamed lawyers for delaying disposal of cases (Zahir 1988). Though Zahir (1988) identified some causes of delay in courts, he did not indicate the loopholes during investigation and trial stages. After going through a number of books and journal I have observed some major and minor flaws both in investigation and trial stages.

**Loopholes at the stage of investigation:**

Unfortunately, due to flaws in the investigation, prosecution finds it difficult to prove its case and ultimately these flaws are responsible to a large extent for acquittal of a large number of accused. It has been noticed that:

- The investigating officers, in many cases, are found to be not discharging his duty properly due to inefficiency or negligence: it is highly unfortunate that the investigating staff has not been able to win the confidence of the public.

- The investigating officer deliberately, being influenced by the accused, makes unnecessary delay in starting the investigation and recording statements of the witnesses.

- Sometimes they do not record the statements while examining the witnesses, but make a synopsis of what the witnesses said to him at the time of examinations. Then at his leisure, he prepares a record of those statements. Naturally, many vital
points or facts then do not find place in the statements of those witnesses;

- Sometimes the witnesses, at that early stage of investigation (when most of the accused are at large) are afraid of divulging the truth before the Investigating officers. They feel a bit more secure in the court where they may not hesitate to tell the truth

Loopholes at the stage of trial:

- The Code of Criminal Procedure, the Evidence Act also provides that the entire onus is upon the prosecution except in few cases such as, where the accused pleads alibi, the accused shall be required to prove the same. There is no onus upon the accused. It is not good in all cases.

- The courts mainly follow the principle that the prosecution must prove its case beyond "reasonable doubt" and whenever the courts find any flaw in the evidence of the prosecution, for the sake of "fair trial" give acquittal to the accused persons by resorting to "benefit of doubt". Neither the expression "reasonable doubt" nor the expression "benefit of doubt" are defined or explained in any law.

- Sometimes while delivering a judgment in a criminal case, the Judges are confused due to conflicting decisions of the superior courts. Some Judges give emphasis on the old precedents but some take into consideration the changes which have taken place in the society especially in the law and order field.

- There is little co-ordination between the Investigating officer and the Public Prosecutor not even after a case is fixed for trial. I have noticed that most of the investigating officers and other police officers who appear before the court as witnesses have little idea about the rules of evidence, about how evidence is taken in a criminal case, what are the defects and loopholes in the evidence which leads to acquittal, on what grounds normally acquittal is given, how defence conducts the case, what evidence are to be led in the particular case, on what points prosecution evidence is likely to be attacked by the defence etc.

- During investigation stage and in cases pending for trial before Magistrates records are called for, disposal of applications for bail in the Sessions Courts and then undue delay occurs in returning these records back to the Magistrate’s Courts.

- After submission of charge-sheet in sessions triable cases the Magistrates do not dispatch the records to the Sessions Judges expeditiously.

- After submission of charge-sheet incomplete records are sometimes sent to the sessions courts by the Magistrates.

- non-attendance of witnesses, particularly, of Government officials, such as, the medical witnesses, the investigating officer, or other police officers connected with investigation, the handwriting or the finger-print expert, etc., on the date of trial.

- Huge number of backlog of cases in comparison to number of Judges and courts.

- Failure of police in ensuring the attendance of prosecution witness during trial under section 171 (2) of Cr.P.C. in spite of repeated issuance of processes.

- Lack of proper knowledge of magistrates, judges and conducting lawyers about connected substantive and procedural laws.

- Lack of initiative of judges and magistrates to try cases in a speedy manner.

- Non execution of writ of proclamation and attachment under section 87 and section 88 of Cr.P.C. for appearance of the absconding accused and thereby causing delay in getting a case ready for hearing.

- Absence of efficient, knowledgeable public prosecutors and defence lawyers.

- Absence of full and sincere co-operation of conducting lawyers towards the end of speedy trial.

- Frequent adjournments of cases at trial stage on less important pleas.

- Outdated and time consuming mode of recording evidence of witness.

- Paucity of accommodation, trained manpower, machinery and other paraphernalia of courts.

- Lack of sense of responsibility and accountability of judges, magistrates, conducting lawyers and connected staffs.

- Absence of proper control, supervision and monitoring by the superior courts and authority over respective subordinate courts.

In the aforesaid backdrop, I would face all the lacking and loopholes through different method of data analysis and finally I will put forward my recommendations for doing away with those loopholes and a new model so far it is practicable for speedy and expeditious justice.

Therefore, the present work will identify the loopholes at the investigation and trial stage of the criminal justice system in Bangladesh based on critical analysis of relevant statutes, newspaper reports, and interviews with public prosecutors, defence lawyers, trial-judges/magistrates, and some key persons whose role is very crucial during pre-trial stages, e.g. police, magistrates and investigation officers. Peshker, Nazir, Pion to the judicial officers, victim of criminal cases, accused and experts on the subjects will also be interviewed.

Rationale of the study

While the purpose of justice system broadly is to protect and ensure the rights of the citizens, more precisely the purpose is to deliver justice for all by convicting and punishing the guilty and helping them to
stop offending and protecting the innocent. However, for an unseen reason presently the criminal justice system is not serving its purpose. It is exaggerated by many unseen menaces. Ideas in many cases remain in surface. It is already mentioned that there is yet no substantial work on the proposed topic in Bangladesh. Therefore, an in-depth research is required to explore the roots of such problems. This instant endeavour intends to address some of the menaces. By identifying these flaws in pre-trial and trial stages, the study will also provide some possible alternatives that will enhance the capacity of our courts to dispose criminal cases within reasonable time and will improve the possibility of further case management. Furthermore, the attempt to conduct this research may be rationalized on the following grounds:

- The study will help policy makers in reformulating policies and the lawmakers to introduce appropriate methods of intervention. It, in turn, will help to ensure speedy disposal of criminal trial and accordingly, in maintaining up to date principles for disposing criminal cases.
- It is essential to create awareness among the law related people and mass in general by providing information and educating them regarding the nature of criminal policy.

Research Questions/Hypothesis
This research attempts to answer the following unresolved questions:
Firstly, what are the fundamental problems of criminal investigation and criminal trial in Bangladesh? Secondly, how can we get rid of these menaces to make sure the early disposal of criminal cases?

Objective of the study:
The study will be done for satisfying the following objectives:
- Broad Objective: The study is to analyze the major barriers in criminal justice delivery system during investigation and trial stages in Bangladesh. In doing so, priority will be given to trace out the crucial loopholes of existing system in comparison with a standard philosophy.
- Specific Objectives: The specific objectives of the study are as follows:
  - To argue why the system of investigation of criminal cases by the police alone may lose any chance of retrieving the system of criminal justice from the malaise it has been suffering from.
  - To examine whether existing philosophy and trends at the policy level are worthy anymore and what would be the future trends in criminal justice system in Bangladesh.

**Methodology**

Nature of Study: This is an applied research which aims at solving specific practical problems. It is concerned with generating new information to serve current needs, solve problems or develop alternatives. To attain the objectives of the study the following research methods will be applied:

- Survey method: This method is selected to get inputs from face-to-face interview through a semi-structured questionnaire survey with a large number of stakeholders of criminal justice system in Bangladesh (i.e. public prosecutors, defence lawyers, trial-judges/magistrates, and some key persons whose role is very crucial during pre-trial stages, e.g. polices, magistrates and investigation officers) and to record their understanding on the realities of the problem. Peshker, Nazir, Pion to the judicial officers, victim of criminal cases, accused and experts on the subjects will also be interviewed. The entire experimental method to observe cases from beginning to end is not adopted in this research due to the uncertainty involved in the disposal of cases and time constraint of the research. Therefore, survey method is adopted as it will be the most suitable scientific method for collecting cross-section data for this research.
- Observation and consultation: Since many qualitative aspects of the problem may not be clearly addressed through semi-structured questionnaire survey mentioned earlier, few observation of criminal cases will be made to get firsthand knowledge on how client and service providers are struggling with this system. Further, consultations will be conducted at a later stage of the research to collect relevant details on different important issues surfaced through questionnaire survey and observations made earlier.

Area of Study: Some potential sites are purposively selected for this research. These are:
- Dhaka/Kushtia Judge Court
- Metropolitan Sessions Judge Court, Dhaka/Khulna
- Kushtia District Judge Court and Judicial Magistrates Court
- Kushtia District Jail
- House of Nation (Bangladesh Parliament)
- Anti-Corruption Commission, Dhaka
- Dhaka Metropolitan police headquarters
- Police stations at different locations of Dhaka district
- Judicial Administration Training Institute (JATI)
- Dhaka Central Jail
- High Court Division of the Supreme Court of Bangladesh
- Ministry of law and parliamentary affairs to the people’s Republic of Bangladesh
These areas are chosen as these are the representative parts of the criminal justice delivery system in the country. Moreover, these areas are related with dealing with criminal trials, training on the agent of criminal trials and most importantly developing policy thereon.

Methods of Data Collection
The three modes of data mentioned earlier will be collected by following the steps stated below:

- **Empirical data**: The following data collection methods will apply for collecting primary data for this research. As indicated earlier, a method of triangulation will be used to increase the reliability of the conclusion drawn through data collected for this research.

- **Interview survey**: This method is selected for the collection of information directly from respondents with the help of a semi-structured survey questionnaire. This is also helpful for the collection of information from illiterate service recipients.

- **Observation**: Observation can fairly be called the classic methods of scientific enquiry. The process of both pre-trial investigation and execution of trial cases will be observed for this purpose.

- **Consultation**: This method of data collection will be employed for gathering information from researchers, policy makers and experts of the relevant field. The policy makers, judges, and high officials of police and court administration will be chosen to conduct such consultation.

- **Documentary data**: The documentary sources of data include the survey of documents, outcome of recent research works on relevant field, critical analysis of relevant statutes.

Sample Design

- **Types of sampling**: Purposive sampling procedure will be followed for collecting empirical survey data. Nevertheless, a proper balance will be maintained on the selection of respondents from different groups so that the sampling frame will be a representative one.

- **Respondents**: The Judicial officers (Judges & Magistrates), Members of Bar association (Lawyers, public prosecutors), Peshker, Nazir, Pion to the judicial officer, victim of criminal cases, accused and experts on the subjects.

- **Sample size**: A total of 100 sample respondents will be interviewed for this purpose. This sample size would be able to draw a necessary inference about the research hypothesis and can be further clarified through consultation to be made with other 20 professionals/experts in this area. The process of the disposal of criminal cases will be observed for another 10 cases.

Instruments for data collection

The data will be collected by using different types of tools including the semi-structured questionnaires for interview survey, and pre-specified observation and interview schedules for conducting observations and consultations with experts. The process of data collection will be conducted into the following two phases:

- **Developing primary questionnaire**: A semi-structured survey questionnaire will be developed for collecting empirical data. Initially, the questionnaire will be developed based on literature survey and personal experience of the researcher regarding the limitations of criminal justice delivery system in Bangladesh.

- **Pre-testing & finalizing questionnaire**: The whole set of questionnaire will be pre-tested before finalizing it for the questionnaire survey. Pre-testing will be done through interviewing of some (5-10%) respondents included in the sampling frame of the original survey. Some question may be excluded/ included or modified, based on the results of such pre-test.

Data Analysis and presentation

The collected data through completed questionnaires, observations, and consultations will be arranged and scrutinized carefully. Simple analytical tools available in Microsoft XL will be used to process data through editing, coding, classification and tabulation. Furthermore, the classified data will be analyzed by applying different qualitative and quantitative tools including graphs, charts, maps and pictogram. Results will be interpreted within and among the relevant scope of the study.

Proposed outline of the research

With a view to accomplish the objectives as mentioned above, the research outcomes will be compiled in the following Chapters:

**Chapter I: Background of the problem**

**Chapter II: Criminal justice system in Bangladesh: Jurisdiction, institution and Procedure**

**CHAPTER III: Investigation and inquiry in criminal cases**

**Chapter IV: Trial of criminal cases**

**Chapter V: Ramifications of Law on Bail and Bail Bond under existing Criminal Justice System in Bangladesh.**

**Chapter VI: Delay in Criminal Case: A Multidimensional Aspect**

**Chapter VIII: Conclusion and suggestions**

Probable outcome and research implications;

The possible outcome of the study will be of great importance for tracing out the pivotal problems of criminal trials, and for the identification of responsible factors and agents causing disruption of proper criminal trials in Bangladesh. The alternatives suggested in this research also pave the way of speedy disposal of criminal cases. It would be further helpful for an appropriate policy formulation and rubbing out the
existing loopholes in the disposal of criminal cases in Bangladesh.

**CONCLUSION:**

All these will confirm the thesis argument that the existing substantive laws and procedural laws on criminal matters in Bangladesh are unable to answer the present day requirements and they need to be overhauled, reviewed and updated to make them relevant to face future challenges of a modern society. There could be a system of penal procedure which would protect Judges from being misled by false evidence or the fallibility of his own judgment. For instance, the above-mentioned objective can be achieved by reviewing the laws relating to the registration of cases, investigation of cases, and trial of criminal cases especially the method of producing and adducing evidence, and the role of prosecution in this regard. However, the proposed study is not comprehensive or conclusive; rather it has left some scope for change, alteration, addition, revision and delection through further research, if necessary. It will hopefully add to the present body of knowledge and develop insight to the relevant field. Overall, the issues dealt with and addressed in the proposed study will be of great value to improve the criminal justice delivery system of Bangladesh.

**Journal References:**

- All India Reports (AIR)
- Bangladesh Case Report (BCR)
- Bangladesh Law Chronicles (BLC)
- Bangladesh Law Times (BLT)
- Bangladesh Legal Decisions (BLD)
- Bangladesh Supreme Court Digest (BSCD)
- Bangladesh Supreme Court Report (BSCR)
- Calcutta Weekly Note (CWN)
- Common Law Cases
- Criminal Law Journal (CLJ)
- Dhaka Law Report (DLR)
- Ex Pile Plus
- Kerala Law Time (KLT)
- Law Guardian, Dhaka
- Mainstream Law Report (MLR)
- Pakistan Law Reports (PLD)
- Pakistan Law Journal (PLJ)
- Pakistan Legal Decisions (PLD)
- Police Regulation of Bengal (PRB), 1943.
- The Guardian
- The Law Time

**REFERENCES:**