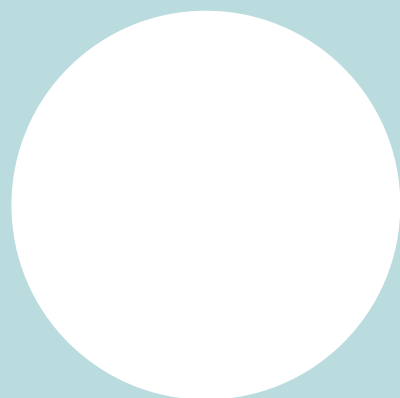


Legal Representation in Death Penalty Cases in Bangladesh: An Empirical and Conceptual Analysis

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**The
Death
Penalty
Project**



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Muhammad Mahbubur Rahman and Rafid Azad Saumik

Director's message

It is with a profound sense of institutional pride and personal delight that I present this report – *Legal Representation in Death Penalty Cases in Bangladesh: An Empirical and Conceptual Analysis*. The study leading to this report has powerfully demonstrated how the quality of legal representation in death penalty cases is frequently undermined by policy failures and practical constraints.

I hope this report will serve as a foundation for informed debates and discussions on the future of the death penalty in Bangladesh.

I congratulate each and every one involved with this study.

Professor Dr Shahnaz Huda

Director, Centre for Advanced Legal Studies (CALS)

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Foreword

In Bangladesh, more than 2,600 people are currently facing the prolonged uncertainty and cruel torment of a death sentence. Successive governments have widened the scope of capital punishment such that, now, 33 offences, of which 25 are non-fatal, attract the death penalty. As most of the world is moving away from capital punishment, Bangladesh continues to impose hundreds of death sentences year on year, with an increase in the death row population of a staggering 800 people in just the past five years. If Bangladesh continues to impose death sentences at this rate, it will have one of the largest known death row populations in the world within the next few years.

Of the thousands of people facing the constant uncertainty and anticipation of execution in Bangladesh, only a very small proportion are executed – 47 people in the past 15 years. The selection of those to be killed by the state raises concerns as to the inherent arbitrary nature of the death penalty. Arbitrariness is not confined to the lethal lottery of who ultimately lives or dies; it also has bearing on whether the right to equality before the courts and to a fair trial – a key component of human rights protections and the rule of law – is uniformly available to all people who come into contact with the criminal justice system. The available evidence indicates that equality and fair trials are far from the norm in Bangladesh.

International law requires that, where the death penalty is available, justice systems must be capable of consistently and fairly determining guilt beyond reasonable doubt and ensuring the highest standards of due process to all people who are charged with and tried for capital crimes, irrespective of their socio-economic background, class or status within society. But all research that has focused on capital punishment has demonstrated that those on death row around the world are not the affluent or well connected, but the poor, marginalised and socially vulnerable. The vast majority cannot afford to pay for legal representation or navigate complex legal systems through protracted processes that often take years, sometimes decades, to resolve. Bangladesh is no exception. Delays are common and an appeal can take eight years on average to be heard.

The right to due process is guaranteed under the Constitution, and the state is required to take extensive, positive measures to safeguard these rights. Article 33 of the Constitution explicitly provides for the right to legal representation.

The constitutional right to a fair trial must be interpreted in light of the international treaties that Bangladesh has ratified. Bangladesh is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the comprehensive provisions of Article 14 of the ICCPR set out, in detail, the minimum guarantees for a fair trial. These provisions must be respected in a capital case without exception. The United Nations Human Rights Committee (UNHRC) has consistently held that if Article 14 (fair trial) of the ICCPR is violated during a capital case, then Article 6 (right to life) of the Covenant is also breached.

In *Carlton Reid v Jamaica*, the UNHRC held that:

[T]he imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes [...] a violation of Article 6 of the Covenant. As the Committee noted in its General Comment 6(16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the present Covenant implies that 'the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal', the presumption of innocence, the minimum guarantees for the defence and the right to review by a higher tribunal.'¹

The Committee went on to add that, in death penalty cases, *'the duty to observe rigorously all the guarantees for a fair trial set out in Article 14 of the Covenant is even more imperative'*.

In General Comment 36 on the right to life, the UNHRC recently reinforced the point:

Violations of the fair trial guarantees provided for in Article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence of death arbitrary in nature, and in violation of Article 6 of the Covenant. Such violations might involve [...] lack of effective representation... during all stages of the criminal proceedings [...] including appeal.'²

The right of all accused to defend themselves in person or through legal counsel of their choosing is set out in Article 14(3)(d) of the ICCPR. This is integral to the right to a fair trial and applies equally at the appellate stage. In death penalty cases, the UNHRC has held that *'the right to a defence is inalienable and should be adhered to at every instance and without exception'*.³ The mere provision of legal assistance in a capital case doesn't satisfy the right, as it *'must be provided in ways that adequately and effectively secure justice'*.⁴

In cases involving capital punishment, it is axiomatic that the accused must be assisted effectively by a lawyer at all stages of the proceedings, including preliminary hearings, the trial and subsequent appeals. Where state-funded counsel is assigned to a case, they must be sufficiently competent to represent the accused effectively. The experience of the lawyer should be commensurate with the

¹ Communication No 250.1987, UN Doc CCPR/C/39/D/250//1987 (1990) para 11.5.

² CCPR/C//GC/36 (2019) para 41.

³ *Domukovsky et al. v Georgia*, Nos.623/1995 at 18.9.

⁴ *Pinto v Trinidad and Tobago*, No 232/1987, at 12.5.

gravity and complexity of the individual case. Both the Constitution and Bangladesh's international treaty obligations are unequivocal that there is an absolute right to state-funded legal representation in capital cases.

This important empirical study by Professor Muhammad Mahbubur Rahman and Rafid Azad Saumik comes at a propitious time, with a new government and a dynamic political landscape. It sheds light on the effectiveness of legal representation provided to those facing the death penalty in Bangladesh, and reveals that its quality is substantially compromised and ineffective for the vast majority of those who are least able to defend themselves. This inevitably leads to unfair and unsafe outcomes. Indeed, its careful analysis of the effectiveness of legal representation in capital cases, whether private or state-funded, provides irrefutable evidence that fair-trial guarantees are not being respected in all capital proceedings.

This study provides critical empirical data on other systemic flaws, which need to be addressed in the context of increasing recognition that irreversible errors, fragile justice, unconscionable delays and inequality plague the system and undermine the rule of law.

The problems and issues identified by this report are structural and require the careful consideration of reforms to policies, some of which are identified in the authors' conclusions. Moreover, the inherent arbitrariness of the death penalty in a criminal justice system susceptible to error is inescapably at odds with Bangladesh's constitutional pledges of dignity and the rule of law. Without being able to guarantee access to competent legal representation, Bangladesh is failing to adhere to its constitutional requirements, as well as its international obligations. This provides a further basis to urgently reassess the realities and risks of capital punishment in Bangladesh.

Those countries that have rejected the death penalty (124 countries in 2026) have confronted the realities of capital punishment and accepted that it is inherently arbitrary; wrongful convictions and undeserving death sentences are largely unavoidable even in the most sophisticated and well-resourced systems. Put simply, there is recognition that there is no perfect justice system and the human costs of the death penalty can never be justified. Bangladesh is at a critical juncture. The findings of this timely report have clear legal and policy implications.

We are delighted to support the publication of this study, and commend the Centre for Advanced Legal Studies, Professor Muhammad Mahbubur Rahman and Rafid Azad Saumik for their substantial contribution to the field of death penalty research and to their pursuit of better justice.

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Abbreviations and acronyms

ABA	American Bar Association
AD	Appellate Division (of the Supreme Court of Bangladesh)
BILIA	Bangladesh Institute of Law and International Affairs
BLAST	Bangladesh Legal Aid and Services Trust
BLD	Bangladesh Legal Decisions
CrPC	Code of Criminal Procedure, 1898
DLR	Dhaka Law Reports
HCD	High Court Division (of the Supreme Court of Bangladesh)
KII	Key informant interview
LR Manual	Legal Remembrancer's Manual, 1960
MLR	Mainstream Law Reports
NGO	Non-governmental organisation
SCOB	Supreme Court Online Bulletin
SDL	State defence lawyer
TK	Bangladeshi Taka
USA	United States of America
USD	United States Dollar
WP	West Pakistan

Part one

Introduction

BACKGROUND AND OBJECTIVES

A cornerstone of a fair criminal justice system is the guaranteed right to effective legal representation for both the prosecution and the defence (Steyn 2018; Harris 1967). Given the gravity of the possible sentence, the protection and practical realisation of this right is all the more crucial in death penalty cases: inadequate representation can lead to irreversible miscarriages of justice, through the execution of the innocent. Even if a wrongful death sentence is eventually overturned before an execution takes place, years of lost liberty, psychological and emotional turmoil, and the enduring social stigma of a capital conviction can permanently shatter any prospect of a normal life.

The present study focuses on the death penalty regime in Bangladesh, an active death penalty state. Evidence from Bangladesh demonstrates that ‘executions have increased significantly since the start of this century’ (Rahman, 2020: 25) and ‘contemporary lawmakers are increasingly relying on the death penalty in penal policy’ (Rahman, 2020: 22).

Absolute procedural integrity, evidently a non-negotiable requirement of death penalty cases, is routinely compromised in Bangladesh because of ‘a rampant culture of torture and abuse of power by various criminal justice agencies’ (Rahman and Wadud, 2023: 122). The imperative need for effective legal representation of a death penalty defendant (hereinafter, ‘defendant’) can therefore not be overstated.⁵

On the other hand, populist sentiment often demands that lawyers should not represent those who are accused of a heinous crime such as rape or murder (Raisa 2020; Bhuiyan 2019). In some instances, this negative and politicised posturing affects even the bar, to such an extent that bar association leaders decide that ‘no lawyer will represent a specific person, and when any lawyer attempts to do so, they are harassed by their peers in court’ (Goni 2024).

Against this backdrop, the present study seeks to address two primary objectives:

1. To interrogate the current legal and policy frameworks governing legal representation in death penalty cases.
2. To investigate the perspectives of defendants and lawyers on the quality of legal representation in death penalty cases.

An empirical and analytical exploration of these issues will develop a more critical understanding of the death penalty regime in Bangladesh.

⁵ The term ‘defendant’ is rarely used in Bangladesh. The present study uses the term ‘accused’ interchangeably with defendant, as this is the commonly used term in criminal cases in Bangladesh.

METHODOLOGY

In addition to a desk-based analytical review of the relevant laws and policies, interviews were conducted with 20 respondents with lived experience of the criminal justice system in capital cases, comprising two former defendants (who had been acquitted) and family members of 18 defendants.⁶ Key informant interviews (KIIs) were conducted with 17 respondents, including experts, legal practitioners and policymakers.

In pursuit of the first objective stated above, the study reviews the existing laws and policies governing the question of legal representation in death penalty cases. For the second objective, the study relies on data extracted through interviews and KIIs.

It is important to note that it was not possible to interview 18 of the 20 defendants themselves. Alternatively, their family members were interviewed to understand the defendants' perspectives on the quality of their legal representation. The interviewed family members had close relationships with the defendants and thus possessed first-hand insights into the quality of legal representation received.

Among the 20 defendants or family members who were interviewed:

- Five were represented by privately engaged lawyers in trial courts;
- Five were represented by state defence lawyers or legal aid lawyers in trial courts;
- Five were represented by privately engaged lawyers in appeal proceedings of the Supreme Court; and
- Five were represented by state defence lawyers or legal aid lawyers in appeal proceedings of the Supreme Court.

Key informants included in the study were from diverse backgrounds:

- Ten were practising lawyers directly concerned with death penalty litigation;
- Two were academics;
- Two were legal aid officers; and
- Three were representatives of NGOs and/or activists.

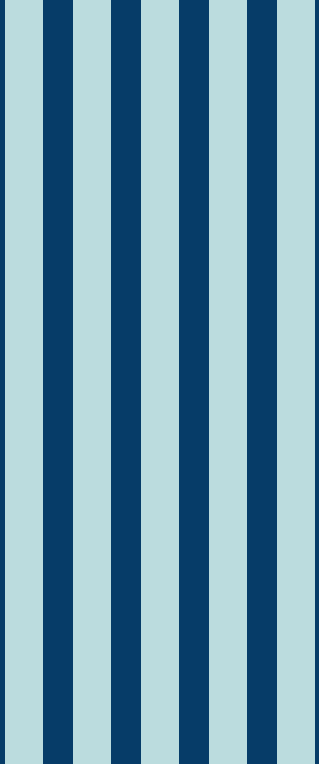
The ten practising lawyers directly concerned with death penalty litigation provided us with the perspectives of lawyers on the quality of legal representation in death penalty cases. The remaining experts provided us with a range of relevant perspectives based on their professional experience interacting with lawyers and defendants.

The questions asked of all interviewees were largely consistent, enabling the identification of common patterns and issues for comparative analysis. The interviews were conducted in a semi-structured manner, which allowed respondents to express themselves fully and provide detailed information. As the KII respondents were from diverse backgrounds, and had knowledge and experience in a range of different professional sectors, a semi-structured method of interview was essential to grasp their varying perspectives and expertise.

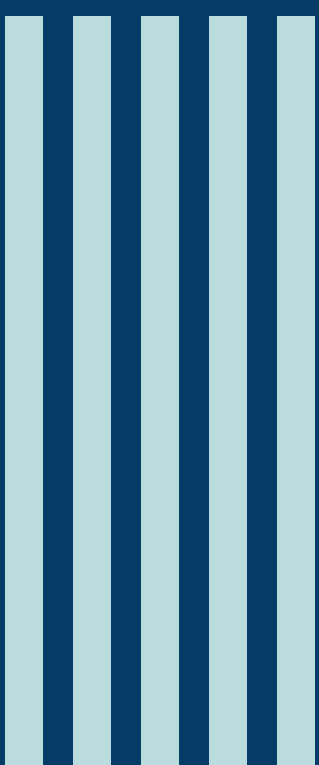
⁶ The defendants whose experiences are reflected in this study were all men. As of July 2025, men make up 98% of Bangladesh's death row population; there are 2,561 men and 57 women. Data published by the *Daily Desh Rupantor* (27 July 2025).

A signed consent form was taken from each interviewee, who was well informed about the purpose of the study. The interviewees were assured about anonymity and told of their rights to decline participation in the study, withdraw from the study at any time, or request that we delete the data they provided. While most interviews were taken in person, some were taken over the phone or online because of practical constraints.

The study, as it involved a small sample size, was not intended to produce a statistical analysis of variables. Rather, it was conceived as an in-depth exploration, using thematic analysis to determine whether the quality of legal representation in death penalty cases is compromised in practice and, if so, why and how. This comprehensive and detailed examination exposes numerous critical flaws in the systems and practices governing legal representation in death penalty cases. ●



***"Due to the low fees,
many experienced
lawyers do not feel the
desire to practise as a
state defence or a legal
aid lawyer. The existing
lawyers also feel
demotivated to work."***



Part two

Legal and policy frameworks

To interrogate the current legal and policy frameworks regarding legal representation in death penalty cases in Bangladesh, this section explores and analyses relevant laws and policies. Legal representation for defendants in death penalty cases is available through private lawyers, as well as state-funded lawyers. A state-funded lawyer in a death penalty case may be either a state defence lawyer or a legal aid lawyer. Therefore, the discussions to follow are presented under three headings: Right to engage a private lawyer; Right to a state defence lawyer; and Right to a legal aid lawyer.

RIGHT TO ENGAGE A PRIVATE LAWYER

The Constitution of the People's Republic of Bangladesh, the supreme law of the land, pledges that:

It shall be a fundamental aim of the state to realise through the democratic process a socialist society, free from exploitation; a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.⁷

Arguably, this pledge cannot be realised without ensuring the right to effective legal representation of an accused person. Moreover, the Constitution recognises several fundamental rights that, together, establish a right akin to the due process principle.⁸ They are: equality before the law,⁹ the right to protection of law,¹⁰ protection of the right to life and personal liberty,¹¹ and protection in respect of trial and punishment.¹² Jurisprudentially, it is significant because the principle of due process encompasses the right to legal representation for the accused (Hoque, 2007: 47; Chenwi, 2006: 610).

7 Paragraph 3 of the Preamble, The Constitution of the People's Republic of Bangladesh.

8 Bangladesh Legal Aid and Services Trust (BLAST) vs. Bangladesh, (2015) 1 SCOB (AD) 1 [49].

9 Article 27.

10 Article 31.

11 Article 32.

12 Article 35.

The most explicit constitutional provision, however, is article 33, which unequivocally provides:

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrests, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.¹³

Likewise, the Code of Criminal Procedure, 1898 (hereinafter, ‘the CrPC’), the principal criminal procedural law of Bangladesh, recognises a criminal defendant’s right to engage private lawyers. It provides that ‘any person accused of an offence before a Criminal Court . . . may of right be defended by a pleader’.¹⁴

It is relevant to mention that neither the Constitution nor the CrPC explicitly impose any legal obligation on the state to appoint lawyers to ensure legal representation of criminal defendants.

In practice, criminal defendants opting to consult a lawyer of their choice face their hardest challenge during the initial period of detention following their arrest (Akter 2016). To mitigate this challenge, the Appellate Division in 2016 dictated that ‘the law-enforcing officer shall allow the person arrested to consult a lawyer of his choice if he so desires’.¹⁵ Despite this clear guideline from the apex court, the ground realities have not changed substantially.

After an amendment to the CrPC made in 2025, the right of a detained person to consult lawyers has been further strengthened. A newly inserted section to the CrPC provides: ‘In making an arrest, the police officer or other person making the same shall [...] allow the person arrested, if he so desires, to consult a lawyer of his choice [...] preferably within 12 hours of such arrest’.¹⁶ However, this statutory provision is too recent to enable a review of its implications in practice.

The Prisons Act, 1894 also recognises a criminal defendant’s right to consult their privately engaged lawyer. It provides that ‘so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person’.¹⁷ The Police Regulations Bengal, 1943 have similar provisions.¹⁸

The higher judiciary has unequivocally held in several cases that the right to engage a private lawyer is an inalienable right of an accused person. In *Hossain Mohammad Ershad vs. The State*,¹⁹ it was categorically held that if an accused engages one hundred lawyers, the lawyers are entitled to defend the accused and the judge cannot pass any order limiting the number of lawyers. In *Moslemuddin Sikder vs. The Chief Secretary*,²⁰ it was held that the conviction of an accused, whose right to engage a lawyer was denied, is liable to be struck down.

¹³ Article 33.

¹⁴ Section 340(1).

¹⁵ *Bangladesh and others vs. BLAST and others*, (2016) 8 SCOB (AD) 1 [222].

¹⁶ Section 46A(f).

¹⁷ Section 40.

¹⁸ Regulations 601, 663(4), 682, and 683.

¹⁹ 48 DLR (1996) 95.

²⁰ 8 DLR (1956) 526.

In summary, the right of defendants, including those charged with death penalty offences, to engage a lawyer of their choice is well protected in law and practice. However, the practical exercise of this right remains a challenge for defendants, especially during the initial period of detention following their arrest.

RIGHT TO A STATE DEFENCE LAWYER

The Legal Remembrancer's Manual, 1960 (hereinafter, 'LR Manual') provides that the trial court will appoint a lawyer to represent a defendant who cannot afford to appoint a privately engaged lawyer.²¹ A lawyer so appointed at the cost of the state is called a 'state defence lawyer' (hereinafter, 'SDL').

The LR Manual prescribes that an SDL should be 'of sufficient standing and ability to render substantial assistance' and be 'appointed in time to be able to study the case'.²² Moreover, if there is more than one accused entitled to an SDL and they 'put forward a mutually antagonistic defence', they should be provided with different SDLs.²³

Although the LR Manual is an official set of administrative rules and guidelines governing the conduct of legal affairs by the government, its provisions regarding SDLs are interpreted by the Supreme Court as legally binding. In the case of *Abdur Rashid vs. The State*, the Appellate Division opined that 'the rules as contained in the Legal Remembrancer's Manual in aid of section 340 of the code of Criminal Procedure must be rigorously followed for the ends of justice'.²⁴ Similarly, the High Court Division in *The State vs. Abdur Rahman and Hakim* held that the instructions contained in the LR Manual are binding on courts.²⁵

The right of a defendant, who is not represented by a lawyer, to be represented by an SDL is, therefore, an enforceable legal right. If any trial takes place in refusal of this right, the trial is vitiated,²⁶ and the appellate court can send the case back for retrial.²⁷ Moreover, this right exists not just in the trial courts, but also in both divisions of the Supreme Court in the post-trial proceedings of the case.²⁸

An accused person charged with a death penalty offence, even if absconding, is entitled to an SDL.²⁹ Where an SDL is appointed by the court on behalf of the accused, the court should inform the accused that if representation arranged by the SDL is not acceptable to them, they can conduct the case themselves.³⁰

It needs to be emphasised that the right to an SDL is not merely a legal formality. In *State vs Hanif Gani*, it was found that the concerned SDL had not cross-examined the core witnesses and only put forward a few unimportant questions. The High Court Division, while ordering a retrial, noted, 'the state defence

21 Paragraph 1 of Chapter XII, Legal Remembrancer's Manual, 1960.

22 Paragraph 6 of Chapter XII, Legal Remembrancer's Manual, 1960.

23 Paragraph 7 of Chapter XII, Legal Remembrancer's Manual, 1960.

24 27 DLR (AD) (1975) 1.

25 27 DLR (1975) 77.

26 *Babu Khan vs. The State*, 55 DLR (2003) 547, 23 BLD (HCD) (2003) 376.

27 *Sentu vs. Government of Bangladesh and others*, 3 MLR (1998) (HC) 271; *State vs. Imdad Ali Bepary*, 36 DLR (1984) 333.

28 *Bangladesh Legal Aid and Services Trust (BLAST) vs. Bangladesh*, (2015) 1 SCOB (AD) 1 [7].

29 *State vs. Jahaur Ali*, 42 DLR (1990) 94; *Gopal Chandra Chakraborty vs. The State*, 15 BLD (HCD) (1995) 224.

30 *Iftekharuddin vs. The Crown*, 6 DLR (WP) (1954) 127.

lawyer could not and did not do full justice to the case and that the convicts very materially suffered by reason of the instant appointment of the lawyer to defend them’.³¹

The Supreme Court, in multiple cases, has clarified that the SDL needs to be appointed well before the trial and provided with the necessary papers so that they have sufficient time to prepare for the case.³²

We, as the part of the judiciary, strongly believe that the time has come to do something for the condemned prisoners. We find that the condemned prisoners are supposed to walk to the gallows but, unfortunately, they are not getting the opportunity to defend themselves properly.

Quamrul Islam Siddique, J. in *State vs. Tohurul Islam and others*, 66 DLR (2014) 386

The fees that SDLs receive are grossly inadequate. An SDL engaged in the trial court is paid Tk. 200 (approximately 1.63 USD) per day’s hearing in a case. An SDL engaged in the Supreme Court for any case is paid Tk. 300 (approximately 2.45 USD) per day’s hearing; however, the maximum amount payable in a case is Tk. 2,000 (approximately 16.31 USD).

It is self-evident that this fee structure is not conducive to attracting good quality defence lawyers to serve as SDLs. This, in turn, denies defendants their right to effective legal representation. Despite this glaring deficit in remuneration for SDLs, there remains a notable lack of interest among policymakers to revise this fee structure.

In 2014, the High Court Division in *State vs. Tohurul Islam and others*³³ found that the fee that an SDL engaged in the Supreme Court receives is ‘too meagre’ and is ‘simply denying justice to the learned state defence lawyer’. As the fee was last fixed by the government in 2006, the court expressed its expectation that the authorities promptly ‘take proper steps to enhance the fees’. Unfortunately, the government is yet to revise the fee structure.³⁴

RIGHT TO A LEGAL AID LAWYER

Legal aid is a statutory right for certain classes of litigants as per the Legal Aid Services Act, 2000, the principal legal framework on government-funded legal aid (Deb 2019). While the Preamble to this Act vaguely states that the beneficiaries of the Act are ‘the litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and for various socio-economic conditions’, various provisions of the Act and its subordinate laws clearly stipulate who is eligible to avail themselves of this statutory right.

³¹ *The State vs. Hanif Gani*, 45 DLR (1993) 400 [18].

³² *Abdur Rashid vs. The State*, 27 DLR (AD) (1975) 1; *The State vs. Syed A. Salam*, (2015) 5 SCOB (HCD) 49; *State vs. Altaf*, 32 DLR (1980) 254; *The State vs. Purna Chandra Mondol*, 22 DLR (1970) 289.

³³ 66 DLR (2014) 386.

³⁴ As of the date of publication of this report.

The Legal Aid Services Policy 2014, as amended in 2023, provides that (a) anyone whose annual income is below the taxable income,³⁵ or (b) anyone who is fully or partially incapable of working or unemployed, is eligible for government-funded legal aid.³⁶ Additionally, this Policy recognises some categories of litigants as eligible for legal aid services irrespective of their annual income. They include, among others, detained defendants who do not have the means or access to procure legal representation.³⁷

The eligibility criteria under the government-funded legal aid frameworks may validly be criticised as too narrow, encompassing ‘a negligible portion of indigent individuals’ (Tushi 2026: 117). However, as a significant number of people facing the death penalty in Bangladesh are economically vulnerable (Rahman 2020), many of them are entitled to apply for legal aid in the form of legal representation through legal aid lawyers.

As noted earlier, an SDL should be ‘of sufficient standing and ability to render substantial assistance’.³⁸ While this provision is, to a great extent, vague, given that it does not define the term ‘sufficient standing and ability’, the corresponding provision of the Legal Aid Services Act, 2000 is more explicit and positive. It provides that a legal aid panel lawyer must have ‘at least 5 (five) years’ experience of conducting cases’ in the concerned court.³⁹

The eligibility criteria under the government-funded legal aid frameworks have further been extended by an official notification on 25 August 2024 from the Supreme Court of Bangladesh.⁴⁰ This notification, containing the directions of the Chief Justice of Bangladesh, provides that ‘in order to ensure legal assistance to accused persons present before the court, if they are not represented by a lawyer, an advocate shall be appointed from the Legal Aid Panel to represent them’. This notification makes it easier for an unrepresented criminal defendant to avail themselves of the services of a legal aid lawyer.

The existing laws and policies on government-funded legal aid face chronic criticism for failing ‘to meet the needs of the beneficiaries’ (Akter, 2017: 257). The quality of legal representation rendered by legal aid lawyers is frequently questionable (Tahura and Alam 2025a). A key reason is the inadequate remuneration a legal aid lawyer receives as per the Legal Aid Services Regulations, 2015 (Tahura and Alam 2025b).

In 2025, the Legal Aid Services Regulations, 2015, were amended to increase the fees of legal aid panel lawyers. While the fees have increased, they are still so low that the amendment has failed to rectify the situation. For example, a legal aid lawyer is now entitled to a fee of Tk. 7,000 (USD 57.06) for a final hearing at the Appellate Division, Tk. 6,000 (USD 48.91) for a final hearing of a criminal appeal before the High Court Division, or Tk. 1,040 (USD 8.48) for examination of witnesses and Tk. 650 (USD 5.30) for an argument hearing in trial court criminal cases.⁴¹ These fees are unquestionably below the level required to attract experienced defence lawyers to join the legal aid panel lawyers, or indeed to motivate existing panel lawyers to provide the quality of representation required in their professional role, especially in death penalty cases. ●

35 Legal Aid Services Policy 2014, Paragraph 2(1)(a).

36 *Ibid.*, Paragraph 2(1)(b).

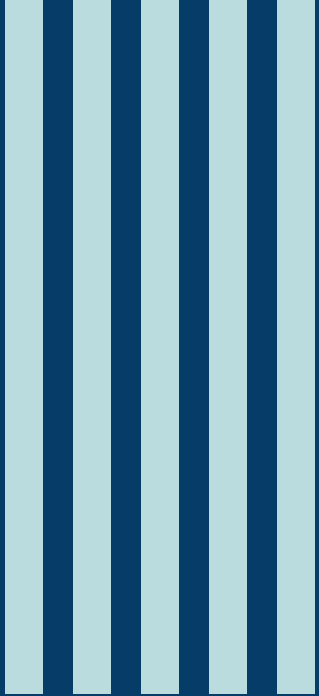
37 *Ibid.*, Paragraph 2(2).

38 Paragraph 6 of Chapter XII, Legal Remembrancer’s Manual, 1960.

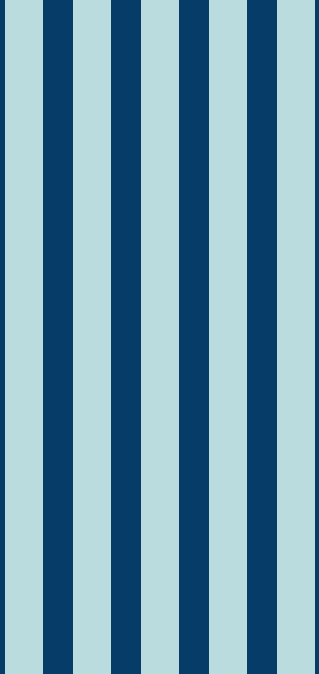
39 Section 15, the Legal Aid Services Act, 2000.

40 Notification No. 27/2024 J, dated 25 August 2024, of the High Court Division (Judicial Section) of the Supreme Court of Bangladesh.

41 See regulation 6, the Legal Aid Services Regulations, 2015.



***"Some of the lawyers who
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Part three

Quality of legal representation in practice

As detailed above, this study is an in-depth exploration, using thematic analysis to determine whether the quality of legal representation in death penalty cases is compromised in practice and, if so, why and how. To that end, we conducted interviews with 20 respondents with lived experience of the criminal justice system in death penalty cases, and KII with 17 respondents. The findings from this empirical investigation reveal numerous critical flaws in the systems and practices governing legal defence in death penalty cases.

SHORTAGE OF QUALIFIED DEFENCE LAWYERS

In death penalty cases, given the irreversible nature of the potential outcome, it is imperative that the legal representative of a defendant possesses the requisite experience and professional standing to navigate the procedural, technical and ethical demands of capital proceedings. However, 12 of the 17 experts interviewed said that the lawyers in such cases are sometimes not properly qualified and experienced, in part as a result of the systemic issue of poor remuneration. A well-practiced and renowned private criminal lawyer, one of our KII interviewees, summarised the problem:

In Bangladesh, there is a shortage of good criminal defence lawyers. Most lawyers do not have much experience, and they also do not have the curiosity to learn. I think they are too commercial from the beginning and they often do not try to comprehend the gravity of these cases. In my opinion, lawyers should take capital offence cases only after a certain level of experience.

Using a similar tone, another KII interviewee, a human-rights activist and researcher, noted with concern: *‘Although we have many defence lawyers, we have a very small number of actually good lawyers.’*

The shortage of qualified defence lawyers is more acute in the trial courts. This goes a long way to explaining why a substantial number of defendants who are sentenced to death by trial courts are either acquitted or given a lesser sentence on appeal (Silvee 2018). As inordinate delays in the appellate proceedings of death penalty cases are ‘responsible for prolonged detention of inmates and their protracted isolation on death row’ (Rahman and Wadud 2022), the inefficiency of trial court lawyers in many cases results in the ‘social death’ of people facing the death penalty. One of our KII interviewees,

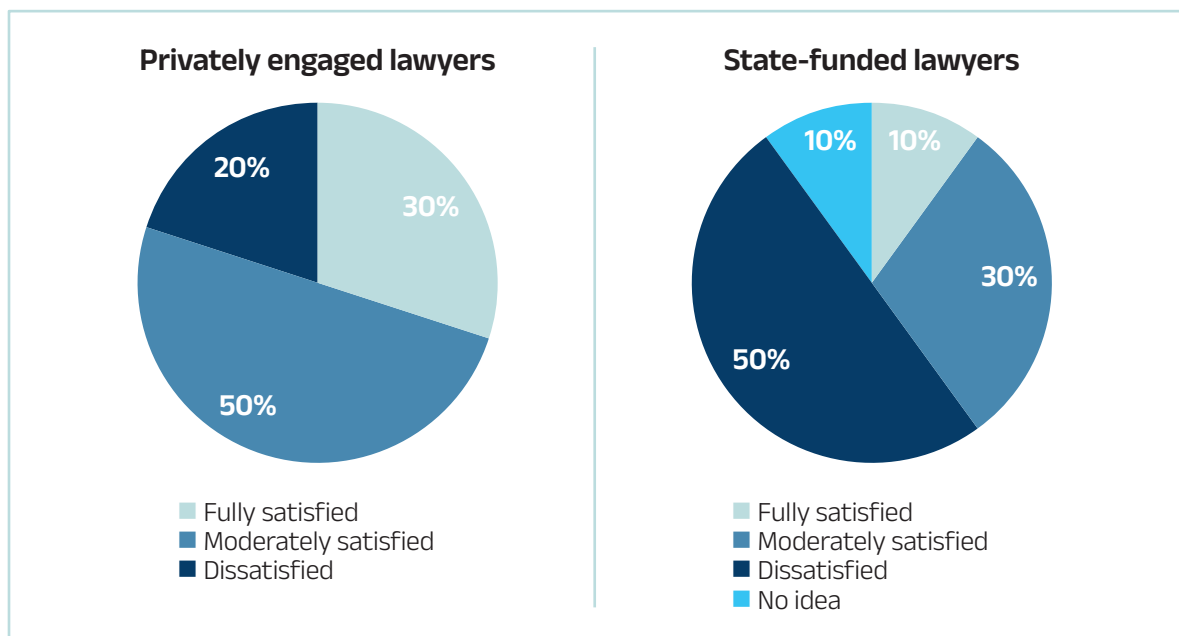
an anthropologist and documentary photographer, who had separately conducted interviews with 11 people who had been wrongly sentenced to death and subsequently acquitted, informed us:

Being wrongly convicted and sentenced to death is not so uncommon as people think, and it has a lot to do with not getting sufficient legal representation during the hearings. Even when these people eventually get acquitted in appeal or revision, the time they spend inside the jail cannot be returned to them. Moreover, they sometimes face the 'social death'. As capital offences are socially reprehensible, some of them get completely outcast from the society, even sometimes from their families. Their spouses remarry, children forget that they exist and neighbours make it difficult for them to return to a normal life.

This KII interviewee also detailed the experience of one individual they had interviewed, who had spent many years in a condemned cell⁴² before being acquitted by the appellate court: 'He still sees Azrael [the Angel of Death] in his dreams and these dreams began when he was in the condemned cell.'

The shortage of qualified defence lawyers is further evidenced through our interviews with people with lived experience as a defendant or family member of a defendant in a capital case. While only 20% of respondents were 'fully satisfied' with the performance of their lawyers, 35% were 'dissatisfied'. The satisfaction level is comparatively better among respondents represented by privately engaged lawyers, as opposed to those represented by state defence lawyers or legal aid lawyers.

Figure 1: Defendants' satisfaction with lawyers' performance



⁴² Death sentenced prisoners are placed, immediately after the trial court verdict, in solitary confinement in an isolated prison cell in which they await execution. These cells are called 'condemned cells' (Yasin 2019).

As privately engaged lawyers are perceived to be more reliable, the preference of defendants is to avoid state-funded lawyers. One interviewee, who was affected by extreme poverty, still undertook the financial burden of engaging a private lawyer, explaining their decision on the following basis: *'Of course, we knew about "government lawyers", but everybody knows that they do not really help.'*

There are exceptions: one interviewee was frustrated with the performance of a privately engaged lawyer in trial court, but 'fully satisfied' with the performance of a legal aid lawyer conducting the case in the High Court Division.

Despite this, the overall evidence ultimately reveals that many defendants are not represented by qualified defence lawyers. This necessitates an inquiry into the qualifications required to take on the legal representation of a defendant in a capital case. A licensed lawyer in Bangladesh is entitled to conduct any case before trial courts, irrespective of their experience and expertise. There is no separate requirement or guideline for representing a defendant facing the death penalty. Therefore, a newly licensed lawyer may represent a defendant in such a case even as the first matter of their legal career. An experienced and renowned private criminal lawyer, one of our KII interviewees, opined that *'lawyers should take capital offence cases only after a certain level of experience'*. We believe that this perspective merits serious consideration as a basis for necessary policy intervention.

In the USA, the American Bar Association (ABA) has formulated *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*⁴³ in order to set 'a national standard of practice for the defense of capital cases'.⁴⁴ These Guidelines prescribe detailed qualification requirements that a defence lawyer in capital cases should possess.⁴⁵ The qualification criteria, among others, require a defence lawyer to undergo a specialised training programme at least once every two years.⁴⁶ Additionally, all states in the USA retaining the death penalty have set their own requirements specifying the qualifications required for a lawyer to represent a death penalty defendant (Payán 2026: 6ff.).⁴⁷ The evidence emerging from this study invites consideration of whether similar policy interventions should be replicated in Bangladesh to provide a clear, objective framework for assessing and regulating whether a legal representative is sufficiently qualified to take on a capital case.

FINANCIAL CONSTRAINTS OF DEFENDANTS

The financial constraints of defendants significantly limit their access to qualified defence lawyers. Most KII interviewees opined that the fees that qualified defence lawyers generally charge are not unreasonable as death penalty cases are often complex, challenging, demanding and time-consuming. However, defendants, who are typically poor, cannot afford their services (Rahman 2020).

43 The Guidelines, as revised in 2003, are available at: [sfb.org/wp-content/uploads/2019/09/aba-guidelines.pdf](https://www.sfb.org/wp-content/uploads/2019/09/aba-guidelines.pdf)

44 Guideline 1.1(A).

45 Guideline 5.1.

46 Guideline 8.1.

47 State Standards for Appointment of Counsel in Death Penalty Cases, last updated May 2021. Available at: [americanbar.org/content/dam/aba/administrative/death_penalty_representation/state-standards-memo-may-2021.pdf](https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/state-standards-memo-may-2021.pdf)

“If you do not have money, then you can’t get a good lawyer. In fact, especially in murder cases, you can’t find lawyers who will work for underprivileged people.”

A former judge with 27 years of judicial experience, who had never imposed a death sentence.⁴⁸

One of our KII interviewees, an academic, flagged this as a major concern stating that:

In our country, clearly, money is a big barrier to getting justice. If you have money, you can hire lawyers who can turn black into white and white into black. However, because most people do not have that much money, they cannot afford good lawyers.

Another KII interviewee, a human-rights activist and researcher, concurred with this view: *‘If you do not have enough money, you cannot hire good lawyers.’*

Given the severe financial constraints experienced by most individuals who are accused of a capital offence in Bangladesh, it is particularly revealing that many of them express a reluctance to accept state-funded legal representation.

“Sometimes, a poor person can be wrongly convicted just because s/he couldn’t have a skilled legal representation. Political cases and cases involving persons from two different classes of society also give birth to wrongful convictions. Evidence sometimes entraps the judges in a watertight compartment and the judges cannot come out of it.”

A former judge with 28 years of judicial experience, who had sentenced six people to death.⁴⁹

LACK OF INCENTIVE AND MOTIVATION FOR STATE-FUNDED LAWYERS

As the existing legal and policy frameworks do not ensure reasonable and adequate remuneration for state-funded lawyers, it is imperative to empirically question whether the low-paid SDLs and legal aid panel lawyers, in general, provide effective legal representation of defendants.

⁴⁸ BILIA, *The Death Penalty Regime in Bangladesh: Exploring Perspectives of Former Judges*, (BILIA, 2019), 79.

⁴⁹ *Ibid.*, 78–79.

A Supreme Court Legal Aid Officer, a KII interviewee of the study, stated that: *'In death penalty cases in the Supreme Court, we assign a senior lawyer from our panel to represent the accused.'* Likewise, a District Legal Aid Officer, another KII interviewee of the study, acknowledged that there is a wide range of lawyers – of variable quality – on the legal aid lawyers' panel, but they always seek to engage senior lawyers for death penalty cases because of the gravity of these cases. An SDL from the Supreme Court, another KII respondent, also claimed that the same practice is followed in appointing an SDL. In the words of the interviewee: *'Generally, the senior lawyers are given priority considering their years of experience in death penalty cases.'* In contrast, another SDL from the Supreme Court, a KII respondent, claimed that: *'There are inexperienced and new lawyers in SDL Panel representing death penalty defendants.'*

Even assuming that senior lawyers are routinely appointed as SDLs or legal aid lawyers in death penalty cases, this does not give us confidence that defendants are effectively represented by state-funded lawyers. The fact that clients are more satisfied with privately engaged lawyers, as opposed to state-funded lawyers, is a telling indication that seniority in the legal profession does not automatically equate to effective legal representation. The following observation from Quamrul Islam Siddique, J. in *State vs. Tohurul Islam and others*⁵⁰ endorses this indication:

This Court notes with utter dismay that the Solicitor wing of the Ministry of Law, Justice and Parliamentary Affairs appoints the state defence lawyers who have very minimum knowledge about criminal cases of a grave nature, like sections 302, 396 of the Penal Code etc.

A practising lawyer of the Supreme Court, a KII interviewee of the study, stressed the importance of appointing 'qualified' as opposed to 'senior' lawyers as state-funded lawyers. In their words:

Some lawyers in these panels are not at all good. It is a matter of great concern, as it is a question of life and death. In my opinion, only the qualified lawyers should be allowed to be on the panels.

Our empirical findings indicate that a lack of incentive and motivation is largely responsible for the poor performance of state-funded lawyers. Almost all our KII interviewees raised concerns regarding the low fees that state-funded lawyers receive, and described an association between the low fees and the poor representation these lawyers generally provide. A prominent criminal lawyer in Bangladesh, a KII interviewee of the study, explained the matter in this way:

50 66 DLR (2014) 386.

One of the fundamental problems with the state defence lawyer system and the legal aid lawyer's system in Bangladesh is the exceptionally low fees. Such a low fee is not a good enough incentive to work hard in these cases.

Another KII interviewee, a Senior Advocate of the Supreme Court of Bangladesh, told us:

Although the initiative to provide legal aid is noteworthy, there are many problems that are hindering this good initiative. One fundamental problem is the low amount of remuneration provided to the lawyers for their hard work. It is not sufficient incentive for good lawyers to come or for existing lawyers to work hard.

The issue is further elucidated by an academic expert, another KII interviewee:

Due to the low fees, many experienced lawyers do not feel the desire to practise as a state defence or a legal aid lawyer. The existing lawyers also feel demotivated to work.

There were six state-funded lawyers in our key informants' list. Five of them emphasised that the absence of systemic incentives and motivation undermines the fundamental objectives of appointing state-funded lawyers. In the words of a district-level legal aid lawyer:

The fees for legal aid lawyers are too low. Moreover, obtaining the fees is also subject to many bureaucratic hurdles. A lot of lawyers are demotivated as a result of this.

"The government lawyer (i.e., state defence lawyer) was included just for show. He was of no use."

The uncle of a person on death row.⁵¹

The inadequacy of the fees for legal aid lawyers is further compounded by the rigorous demands of death penalty proceedings. The existing compensatory framework for legal aid operates on a standardised fee schedule that does not distinguish between general criminal cases and death penalty

⁵¹ Rahman, Muhammad Mahbubur, *Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh* (University of Dhaka, 2020) 43.

cases. A district-level legal aid lawyer, a KII interviewee of the study, has rightly pointed out: *‘All legal aid lawyers receive the same fees. This is problematic, as there is no separate fee structure for death penalty cases.’*

We asked all six of the state-funded lawyers interviewed about their motivation for taking on death penalty cases as state defence lawyers or legal aid lawyers. The primary reasons were humanitarian considerations as well as additional income. However, many experienced lawyers are often not similarly persuaded by these considerations. A Supreme Court Legal Aid Officer, a KII interviewee of the study, explained that: *‘Many experienced lawyers do not want to take these cases as they could earn much more in private practices.’*

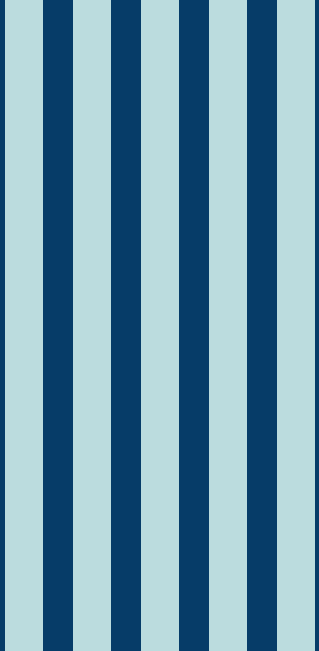
The reluctance of seasoned lawyers to represent defendants as state-funded lawyers in death penalty cases, however, is not solely attributed to insufficient remuneration, as explained by a KII interviewee, a prominent criminal lawyer in Bangladesh:

I think there are two main issues. One is, of course, the insufficient remuneration. The other is that the reputed lawyers often do not want to take these cases as they think taking these cases would damage their reputation. This is because there is, unfortunately, a negative image about state defence lawyers and legal aid lawyers. This stigma has to be removed if we want more experienced lawyers here.

POOR LAWYER-CLIENT COMMUNICATION

Lived experience interviewees revealed that the level of lawyer-client communication in death penalty cases frequently fails to align with clients’ expectation and needs. This hampers the quality of legal representation provided to defendants. Out of ten interviewees who were represented by private lawyers (or whose family member was represented), five said they were not satisfied with the level of communication the lawyers had with them. One such interviewee (a family member) said:

Since he was a busy lawyer, we could not reach him on the phone. The only way of communication was to visit him in his chamber, which was in the capital city. It is not very easy to make such long travels, and I do not have any relatives there to stay with. As a result, we were often in the dark about what was happening.



"I tried communicating with my lawyer a couple of times. He never received my calls. Suddenly, one day, he told me that the day of the hearing is the next day. He spoke with us for only 10 minutes before the hearing and lost the case. His lack of preparation and effort were telling."

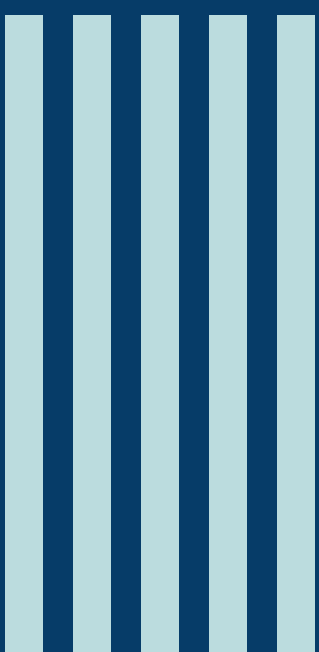
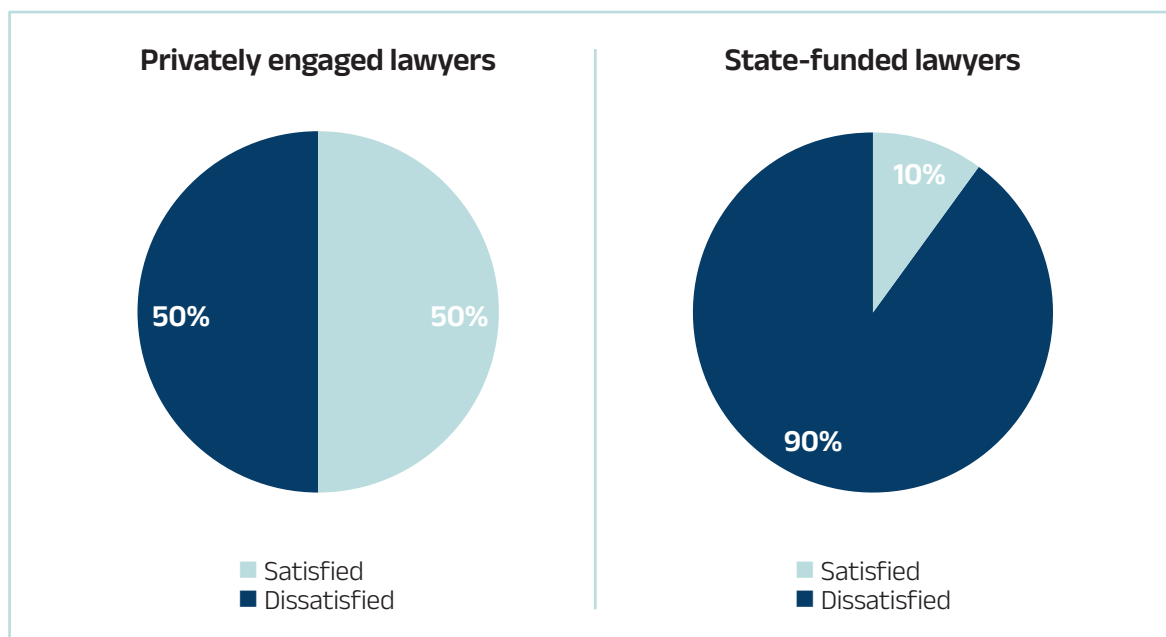


Figure 2: Defendants' satisfaction with lawyer-client communication



Many lawyers do not proactively provide updates to their clients on the progression of their case. As one interviewee complained: *'The only way to remain updated is through the juniors or clerks of the lawyer. If you are not persistent, you cannot get any updates.'* Another stressed the importance of client pressure: *'The result ultimately depends on how much pressure we can exert on the lawyer to work.'*

There are no legal limitations restricting a defendant from consulting with their lawyer while detained. Despite this, our empirical findings reveal that lawyers representing defendants in capital cases rarely meet their clients in prison. A Senior Advocate of the Supreme Court, a KII interviewee, explained this issue:

In Bangladesh, we often see that the lawyers do not go to jail to speak with the client, although it is a regular practice in many other countries. This is extremely important to understand all the intricacies of the case and prepare a strong defence case. For instance, we handled a case where a death sentenced prisoner had severe psychological issues. However, looking at the lower court records, we found that the concerned trial court lawyer never even raised that issue. Upon further inquiry, we found that the lawyer never spoke with the client, as she was in jail.

The problem of poor lawyer-client communication is more acute in death penalty cases where the defendants are represented by SDLs or legal aid lawyers (see Figure 2). Out of ten interviewees represented by state-funded lawyers (or whose family member was thus represented), nine said they were not satisfied with the level of communication the lawyers had with them. One interviewee said:

I tried communicating with the lawyer a couple of times. He never received my calls. Suddenly, one day, he told me that the day of the hearing is the next day. He spoke with us for only 10 minutes before the hearing and lost the case. His lack of preparation and effort were telling.

This may occur in cases where a state-funded lawyer is assigned because the accused has absconded. In these circumstances, it is understandable that there would be no communication between the lawyer and the defendant. However, even when the defendant is in custody, the evidence revealed that state-funded lawyers hardly ever met their clients in prison. This is explained by the low remuneration these lawyers receive, which does not account for the costs and time involved in conducting a prison visit. Moreover, legal aid lawyers are often overburdened with work and deprioritise their legal aid clients, as opposed to their private clients.

Interestingly, the state defence lawyers interviewed as key informants also agreed that the lack of communication is a problem. However, they framed the situation differently. To quote one such interviewee, who has been serving as a legal aid lawyer and a state defence lawyer in the Supreme Court of Bangladesh:

I completely agree with you that it is important to be able to speak with the client to make a proper case. As I also practise privately, I know how important the private communications with the clients are in terms of finding the correct line of defence or alibi. However, in these cases, it is not possible to communicate with the clients. We only receive a paper-book where no contact information of family members is given. Based on that paper-book, we have to prepare our case. We are never given the opportunity to meet with our clients.

The problem of poor communication arises from multiple issues: lawyers may face difficulties accessing the correct contact information for clients or their families; family members are often unable to afford to travel to meet with lawyers; and lawyers are unable or unwilling to meet with clients in prison. All of these challenges lead to a breakdown of communication, hindering the lawyers' ability to provide adequate legal representation.

MEDIA TRIAL AND GOVERNMENT INTERFERENCE

Death penalty cases, because of their gravity, invariably attract more public attention. Particularly in the most serious cases, even before the trial has commenced, the media and/or the general public reach their own verdict (Goni 2024; Raisa 2020; Bhuiyan 2019). In these cases, the right to legal representation is affected in many ways. First, it becomes difficult to find a sufficiently competent lawyer to represent the defendant. The general public not only persecutes the defendant, but also the legal representative in the court of public opinion. As a result, the majority of lawyers are reluctant to accept such cases. Second, as most lawyers refuse such cases, the defendants have little choice but to pay an excessive amount of money to convince a lawyer to take on their case. Third, even if the defendants or their

family members are able to find a lawyer, and that lawyer has sufficient experience and standing to navigate the intricacies of a capital case, public attention creates a real risk of bias within the courtroom, leaving the defendant in a position of disadvantage.

One interviewee whose family member was accused of a capital offence described their experience: *‘My father’s case was a highly sensational case. As a result, no lawyer wanted to take the case. We ultimately did find a lawyer, but had to pay a lot of money to convince him.’* One prominent lawyer, a KII interviewee, explained that: *‘I usually try to avoid these cases [sensational cases] because, if I take these cases, the journalists would embarrass me.’*

Another practising lawyer, a KII interviewee, opined: *‘From my experience, I have sensed that even the judges get biased in such cases. As a result, you would see that in many sensational cases, all the defendants get the death sentence.’*

Media trials and populist sentiment often hamper the quality of legal representation in death penalty cases. This is concerning and underscores the importance of quality legal representation in capital cases, as well as transparent, consistent and equitable sentencing practices to prevent judge-centric bias.

Interference by government agencies in politically charged cases may also hinder defendants from accessing proper legal representation. One interviewee described their experience:

Some of the lawyers who had rejected me later told me that they were approached and harassed by the government law-enforcement agencies. As they did not want to get into any trouble with the government, they refused our case.

According to a human rights activist and researcher, a KII interviewee of the study:

In political cases, the defendants do not receive any proper representation whatsoever, as no lawyer wants to take these cases. The harassment of the lawyers is a major problem here.

DELAYED APPOINTMENT OF LAWYERS

A critical, yet frequently overlooked, issue emerging from the findings is that the belated appointment or engagement of lawyers in many death penalty cases adversely affects the quality of legal representation provided to the defendants. When lawyers are engaged at the earliest stage, they can preemptively advise defendants on significant matters that may affect the outcome of their trial. For instance, access to a lawyer at the earliest opportunity may assist defendants in deciding not to make a judicial confession under coercion or deceptive police assurances, which ultimately create major obstacles at trial. Furthermore, the early engagement of a lawyer provides a vital safeguard against various types of human rights violations, including custodial torture. A veteran criminal lawyer, a KII interviewee of the study, explained:

In many cases, clients don't come to us until it is nearly too late, yet they expect immediate results. Had they engaged us earlier, many of the complications they now face could have been easily averted.

Of ten interviewees who were represented by privately engaged lawyers or whose family members were thus represented:

- Five said they hired the lawyer immediately after the defendant was arrested;
- Three said they hired the lawyer after the defendant had already made a judicial confession;
- One said they hired the lawyer six months after the defendant was arrested; and
- One said they hired the lawyer during trial.

That many defendants are unable to engage lawyers at the earliest stage cannot, however, be attributed to the error or inaction of the clients. Rather, it is often a consequence of systemic issues, most notably the prevalence of police corruption. Corrupt practices during the investigation stage – particularly when a clandestine settlement is reached with the police at an early point – can sometimes enable an accused person to evade criminal responsibility altogether, thereby making legal assistance appear unnecessary. This possibility disincentivises defendants and their families from the timely appointment of a lawyer. An interviewee, the sister of a defendant, explained:

We were too late in hiring a lawyer for my brother. We initially tried to settle it informally with the police. However, one day we heard that my brother had given a confessional statement, under section 164, of mildly punching the victim [in a mob-violence case that resulted in the death of some people] under the assurance by police that, if he gave such a statement, his name would be dropped in the charge sheet, as he is only confessing to beating the victim mildly. He did not know that such a statement would be used for a murder charge against him. We should have hired the lawyer early so that this could have been avoided.

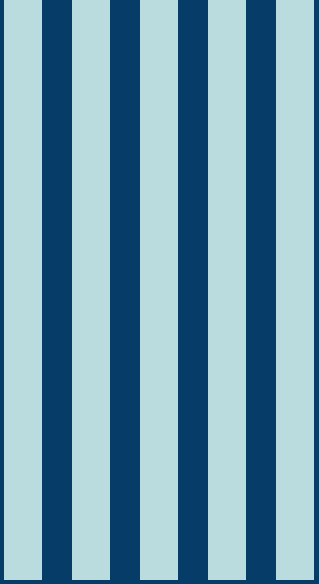
The problem of delayed appointment of counsel is not confined to cases in which private lawyers are engaged. In interviewing ten respondents who were represented by state-funded lawyers or whose family members were thus represented, it emerged that SDLs, in almost every case, were only appointed during the hearing stage. Legal aid lawyers are typically appointed earlier, albeit not at the earliest stage. A district-level legal aid lawyer, a KII interviewee of the study, explained that:

In most situations, we are appointed early. But sometimes we are appointed very late. When we are appointed early, sometimes the case records are not provided to us early. This must be avoided at all cost, otherwise our appointments become merely ornamental.

It appears to be a persistent systemic issue that state-funded lawyers at the High Court Division often receive the paper-books late.⁵² This adversely affects the quality of defence representation, as paper-books are the main source of information for SDLs and legal aid lawyers, and are crucial to the preparation of a solid defence case. As explained by a KII interviewee who works as an SDL:

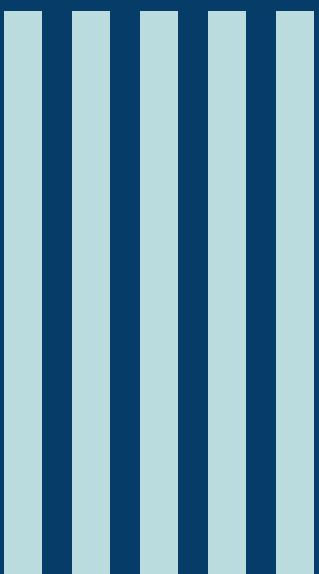
Whether we get sufficient time to prepare varies from case to case. Sometimes we are notified sufficiently earlier, and the paper-books are provided on time. But sometimes we are notified at a very late stage, where thoroughly reading the entire paper-book is not possible. ●

⁵² In criminal appeal and death reference cases before the HCD, several copies of a printed book are prepared, with all documents forming part of the record of the case. The book is called a 'paper-book' and is necessary for hearing and disposal of criminal appeal and death reference cases [Rules 12-14 and 19, Chapter XI, The Supreme Court of Bangladesh (High Court Division) Rules, 1973].



"I think there are two main issues. One is, of course, the insufficient remuneration.

The other is that the reputed lawyers often do not want to take these cases as they think taking these cases would damage their reputation. This is because there is, unfortunately, a negative image about state defence lawyers and legal aid lawyers."



Part four

Conclusions

This study reveals that the quality of legal representation in death penalty cases is largely compromised. In many cases, defendants receive legal representation that fulfills the formal requirements of the law, but it is not substantially effective. Our findings also indicate that legal representation for defendants in capital cases is characterised by a stark disparity in quality from case to case.

The key findings of the study can be summarised as follows:

1. There is an acute shortage of qualified defence lawyers in trial courts.
2. Financial constraints of defendants significantly limit their ability to access qualified defence lawyers.
3. The compensation framework for state-funded lawyers is not conducive to attracting high-quality defence lawyers. The immediate consequence is that defendants are denied their right to effective legal representation.
4. The ability of a defendant to exercise their right to engage a lawyer of their choice remains a significant challenge during the initial period of detention following their arrest.
5. The quality and frequency of lawyer-client communications in death penalty cases often fails to align with clients' expectation and needs, impacting on the effectiveness of the legal representation provided.
6. In many cases, trial by media and/or public opinion, as well as politicised interference, adversely impacts the ability of a defendant to exercise their right to legal representation.
7. A delay in the appointment or engagement of lawyers in many death penalty cases adversely affects the quality of legal representation provided to the defendants.
8. State-funded lawyers at the appellate stage often receive the paper-books at a late stage in the proceedings, which adversely affects their ability to provide effective legal representation.

Our study has identified a number of critical flaws in the systems and practices governing legal defence in death penalty cases. If these flaws are systematically addressed, it would ensure higher standards of legal representation for defendants in death penalty cases. Accordingly, we submit the following recommendations:

1. The Bangladesh Bar Council should arrange regular professional training to mitigate the current shortage of qualified defence lawyers in trial courts.
2. The Bangladesh Bar Council should formulate a baseline standard for lawyers representing a defendant in a death penalty case. The policy interventions of the American Bar Association, as stated above, may provide primary guidance in this regard.
3. The compensation framework for state-funded lawyers should urgently be revised to incentivise highly qualified defence lawyers to work as state-funded lawyers.
4. There should be a separate compensation framework for state-funded lawyers representing defendants in capital cases, taking into account the gravity, complexity and demands of capital proceedings.

5. In appointing state-funded defence lawyers, more emphasis should be placed on the lawyer's skills and ability to provide effective legal representation, rather than on technical seniority as measured by length of time in the legal profession.
6. In death penalty cases, state-funded lawyers should be engaged at the earliest stage of the proceedings.
7. State-funded lawyers at the appellate stage should receive the paper-books sufficiently in advance of the hearing.
8. Due compliance with section 46A(f) of the CrPC, allowing an arrestee to consult a lawyer of their choice, should be ensured.
9. Poor lawyer-client communication amounting to professional negligence should be routinely addressed by the current regulatory framework.
10. Lawyers representing defendants in capital cases should mandatorily be required to meet with their clients in prison.
11. The judiciary and the Bangladesh Bar Council should play a proactive role in upholding the presumption of innocence wherever there is a risk of sensationalised media trials and political interference adversely affecting defendants' right to legal representation and due process guarantees.
12. The prevalence of police corruption during investigation should be combated with robust oversight mechanisms to ensure that defendants are able to consult a lawyer at the earliest stage without the risk of corruptly engaging with the police.

The abovementioned recommendations are intended to facilitate higher standards of legal representation for defendants and mitigate the inconsistent and erratic quality of legal representation currently provided in death penalty cases. Adopting these measures will significantly improve the current situation. However, even when the most sophisticated mechanisms and protections are put into place, it remains a significant challenge to ensure every defendant receives equally competent legal representation.

Given that the financial constraints of defendants significantly limit their access to qualified and competent defence lawyers, achieving parity in the quality of legal representation remains an insurmountable barrier. In legal proceedings deciding the question of life or death, 'these disparities are not simply procedural flaws – they undermine the reliability of the criminal legal system' (Payán, 2026: 1). They also, ultimately, call into question the legitimacy of the death penalty. ●

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The Death Penalty Project (DPP) is a legal action NGO with special consultative status before the United Nations Economic and Social Council.

Driven by a belief that the death penalty is cruel and often discriminates against the poorest and most disadvantaged members of society, the organisation works to safeguard the rights of those facing the death penalty and other vulnerable people. For more than three decades, DPP has been working in more than 30 countries to end and restrict the use of capital punishment, protecting thousands of people from execution.

DPP commissions, supports and publishes independent academic research examining attitudes towards the death penalty, using original data from public opinion surveys and other empirical research to engage in dialogue with policymakers and politicians, and to challenge popular misconceptions around the death penalty

The Death Penalty Project

This report examines the role and effectiveness of legal representation in death penalty cases in Bangladesh, a jurisdiction that continues to expand the use of capital punishment and where more than 2,600 people currently live under sentence of death.

Drawing on empirical data and legal analysis, the study finds that individuals facing capital charges are routinely denied effective and competent legal representation at trial and on appeal – an essential safeguard in death penalty proceedings. It makes a compelling case for urgent legal and policy reform, concluding that Bangladesh's justice system is systematically compromised, particularly for poor and marginalised defendants. These failures result in prolonged delays, unsafe convictions and unequal access to justice, in violation of constitutional guarantees and international human rights law.

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