

# ADR for Criminal Justice System in Bangladesh



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# Nature of Criminal Justice System in Bangladesh

Followings are the nature and features of the Criminal Justice System of Bangladesh-

1. Criminal Justice System is **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. The judge acts as an umpire between parties.
2. A person accused of a crime is **presumed to be innocent** until the prosecution proves his guilt.
3. Guilt of the accused must be proved beyond any **reasonable doubt**. This is the criminal standard of proof.

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4. In criminal proceeding, the basic rule is that the **prosecution bears the legal burden (onus) 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.
5. 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.
6. In Criminal Justice System, there is **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.

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7. 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.

8. **Special criminal law prevails** over the general criminal law.

▶ There are almost **five agencies** in a criminal justice system. These are:

- (a) Law Enforcing Bodies,
- (b) The Prosecutors,
- (c) The Defence Counsel,
- (d) Adjudicating Authorities and,
- (e) Correctional Services personnel.

# Criminal Court Structure of Bangladesh

The apex criminal court is the Appellate Division and High Court Division of Bangladesh. Besides those there are some other ordinary criminal Courts which have their legal basis in the Code of Criminal Procedure, 1898. **Section 6 of the Cr.P.C** provides the following **two** types of courts-

1. Court of Sessions and
2. Court of Magistrates.

▶ The Court of Sessions is presided over by the following **three types of judges-**

1. Session Judge,
2. Additional Session Judge,
3. Joint Session Judge.

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▶The Court of Magistrates may be of the following classes-

1. Judicial Magistrate,
2. Executive Magistrate.

▶The Courts of **Judicial Magistrates** may be presided over by as many as **five types** of Magistrate-

1. Chief Judicial Magistrate or Chief Metropolitan Magistrate,
2. Additional Chief Judicial Magistrate or Additional Chief Metropolitan Magistrate,
3. Senior Judicial Magistrate (First Class Magistrate, Metropolitan Magistrate),
4. Second Class Magistrate,
5. Third Class Magistrate.

▶The adjudicating authorities perform its proceeding through following two stages-

1. Proceeding Stage and
2. Trial Stage.

# Causes of Delay in Disposal of Criminal Cases

Article 35(3) ensures the right to speedy justice as fundamental rights. But due to some unavoidable circumstances, it is impossible to ensure the right of speedy disposal of cases. From the analysis of the disposal procedure of cases, the following causes of delay can be remarked-

1. Absence of completion of trial of criminal cases within time.
2. Inadequate number of judges.
3. Non attendance of witness at trial.
4. Absence of skilled and experienced regular prosecution.
5. Absence of exclusive criminal courts of session.
6. Absence of regular inspection of the subordinate session court by the Session judges or Supreme Court.

# ADR in Criminal Cases in Bangladesh

►Types of ADR in Criminal Cases ADR in criminal cases may be of two types-

1. Compounding Offence.

2. Plea Bargaining.

►Compounding means **compromise** or **amicable settlement**. Generally, a criminal act in which a person agrees not to report the occurrence of a crime or not to prosecute a criminal offender in exchange for money or other consideration is called compounding offences.

►One the other hand, it can be said that compoundable offences are those which can be compromised by the parties to the dispute. The permission of the Court is not necessary. Note that the aggrieved party or the victim may compound an offence. Not even the public prosecutor has the power to compound an offence.



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- ▶ ADR has not been yet widely introduced in criminal justice system. Section 345 of the Code of Criminal Procedure enacts provision for compromise between the adversary parties to a little extent. Besides this Gram Adalat Ain,2006 and Birodh Mimangsha (Paura Elaka) Board Ain,2004 deals to dispose of some petty criminal offences by compromise.
- ▶ The Criminal Court has no other alternatives but to acquit the offenders if compromise petition is submitted in case of compoundable offences.
- ▶ The opportunity of ADR in criminal cases should be increased by widening the scope of Section 345 of Cr.P.C. It is needed to widen the ambit of compoundable offences may have the adverse effect on the public peace and tranquility. The success of the ADR will ensure the peace in society.

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- ▶ Offences which may lawfully be compounded are mentioned in section 345 of the Cr.P.C. **An offence created by a Special Law is not compoundable.**
- ▶ The Court cannot allow compounding of an offence which is not compoundable under Section 345.
- ▶ **Compoundable offence may be of two types:**
  - (a) Compounding with the permission of the Court;
  - (b) Compounding without the permission of the court.

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- ▶ Section 345 (1) provides the list of offences which can be compounded without the permission of court.
- ▶ Section 345 (2) provides the list of offences which can be compounded only with the permission of the Court.
- ▶ Penal Code, 1860 covers wide range of offences, defining the offences and the provisions of punishment. Whereas the Code of Criminal Procedure prescribes the procedure to try the offences compoundable can also be compromised outside the court. Main object of compounding to maintain peace in the society. But **all kinds of offences are not compoundable, basically in case of heinous offences.**
- ▶ Except the offences mentioned in the column of section 345 of the Code of Criminal Procedure cannot be compounded, such as murder, rape, kidnapping, dacoity, smuggling, abduction etc.

# General Rule of Compounding of Offences

- 1. Compounding of Abetment of Offences:** When any offence is compoundable under section 345 of Cr.P.C, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.
- 2. Person Competent to Compound:** When the person who would otherwise be competent to compound an offence under section 345 of Cr.P.C is (under the age of eighteen years or is) an idiot or a lunatic, any person competent to contract on his behalf may (with the permission of the Court) compound such offence.
- 3. No Composition in Some Case:** When the accused has been sent for trial or **when he has been convicted and an appeal is pending**, no composition for the offence shall be allowed without the leave of the Court to which he is sent or the case may be, before which the appeal is to be heard.

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- 4. Direction of High Court Division to Compound Cases:** The High Court Division acting in the exercise of its **power of revision** under section 439 (and a court of session so acting under section 439A) **may allow any person to compound any offence** which he is competent to compound under section 345 of Cr.P.C.
- 5. Acquittal:** The composition of an offence under section 345 of Cr.P.C shall have the effect of an acquittal of the accused (with whom the offence has been compounded).
- 6. No Compounding except Section 345:** No offence shall be compounded except as provided by section 345 of Cr.P.C.

# Guiding Principles in Compromise of Criminal Cases

No compromise can be made before charge sheet is submitted. Following points should be kept in mind while compromising an offence:

1. The compromise **proceeding should be guided by legal process** and no legal provisions shall be hampered by compromise.
2. **Patience hearing** should be given to both the parties.
3. Conciliator **should not impose any decision** over the parties.
4. **Extra benefit should not be given** to any parties.
5. **No one should be declared guilty** or convicted in conciliation proceeding.
6. **Equality should be ensured** in case of male and female.
7. Deed of compromise should be in **written form**.
8. **Copy of the deed** of Compromise should **be provided** both the parties

# When Compounding Possible?

- ▶ **At any stage** of Criminal Proceeding the parties may take initiative to submit deed of compromise and **even in appellate stage** it can be submit before the Court.
- ▶ The order is **discharged** of the accused when the deed is **filed before framing of charge** whereas the accused is to be acquitted if the compromised deed is submitted after framing of charge whereas the accused is to be acquitted if the compromised deed is submitted after framing of charge.
- ▶ **Before pronouncement of judgment compromise deed can be filed.**
- ▶ The **Pakistan Supreme** Court permits submission of deed of compromise after serving the conviction and acquit the accused in appellate stage.
- ▶ But when the lower Courts record is called for under section 435 of the Code of Criminal Procedure, Magistrate can not permit the parties to submit compromise deed.

## Necessary Steps to Introduce ADR in Criminal Justice

- ▶ **Delivery System** The opportunity of ADR in Criminal Cases can be increased by **enlarging the scope of Section 345** of the Code of Criminal Procedure carefully.
- ▶ It would **eliminate the various malpractices** now resorted to be the parties to put an end to criminal proceedings pending in the Courts in which a non-compoundable offence has, in fact, been compounded out of court.
- ▶ In Criminal Jurisdiction, thousands of cases filed under **section 138** of the Negotiable Instrument Act, 1881 which **are not compoundable**. But in this case, ADR system may be very much effective and the Complainants will be benefited.
- ▶ This system can also be effective for the trial of **environmental cases** under the Environmental laws.



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- ▶ A considerable number of cases filed **under section 385 [extortion] of the Penal Code are pending in the Courts of Session for years together.** These types of cases are suitable for compromise through Court if necessary amendment be made in the procedural laws.
- ▶ To **preserve Human Rights** it is necessary to introduce ADR system in Criminal Justice delivery system. In the case of *Md. Joynal and others v. Rustam Ali and others*, Supreme Court encourages compromise in criminal cases.
- ▶ ADR system can also be introduced to confirm **juvenile justice** under the Children Act, 2013.
- ▶ Establishment of **ADR training institute** and allocation of fund is another requirement for introducing ADR in Criminal Justice.
- ▶ For the success of this system, **mass awareness** should be built.

# Questions Session

