Criminal Justice in Bangladesh

A best practise Handbook for the criminal justice system

This Handbook was produced on behalf of the Justice Sector Facility (JSF).

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Author's note
The early parts of this Handbook are based on human rights and restorative justice related materials previously written by the author for a wide range of human rights related projects over many years. Some of these have been based on texts whose original sources have been lost over time. Where possible, references have been provided but many of the references have been lost over time.
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## Key Words

The following list of words appear in this Handbook that some readers may not be familiar with:

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<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Accused</td>
<td>A person who has been charged with an offence, but who has not yet been found guilty.</td>
</tr>
<tr>
<td>Acquit</td>
<td>When a court finds a person not guilty of a criminal charge.</td>
</tr>
<tr>
<td>Act</td>
<td>This is a written law that has been passed by Parliament.</td>
</tr>
<tr>
<td>Adjourn</td>
<td>To postpone the trial of a case to later on the same day or to another day.</td>
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<tr>
<td>Admission</td>
<td>A voluntary statement that certain facts are true. These can be made verbally or in writing.</td>
</tr>
<tr>
<td>Appeal</td>
<td>Where a person who has been convicted and sentenced requests a higher court to re-examine the case and decide on the conviction or sentence (or both). An aggrieved party (such as a victim who believes the accused was unlawfully acquitted) may also appeal where they believe an acquittal was wrong or the sentence was too lenient.</td>
</tr>
<tr>
<td>Appellate Division</td>
<td>This is the highest Court of appeal in Bangladesh. It is part of the Supreme Court and only deals with appeals from the High Court Division (which is also part of the Supreme Court). Decisions of this Court are final and binding on every other Court in the country.</td>
</tr>
<tr>
<td>Arrest</td>
<td>To legally detain someone suspected of committing a crime.</td>
</tr>
<tr>
<td>Bail</td>
<td>Security required by a court or police officer for the release of an arrested person. A person can be released on bail with or without sureties (people who agree to be held liable if the person fails to attend Court when required) and with or without security – which is a promise by the accused person or their sureties to pay a certain amount of money if they fail to attend court.</td>
</tr>
<tr>
<td>Bailable offences</td>
<td><strong>Bailable offences</strong> are generally less serious and anyone charged with these is entitled to bail as of right. That means bail must be granted (with or without sureties and security) unless the person is also charged with a non-bailable offence as well. <strong>Non-bailable offences</strong> are the more serious offences. Although people charged with any of these offences may be released on bail, bail cannot be granted if there is evidence that the person could be found guilty of an offence punishable by death or life imprisonment.</td>
</tr>
<tr>
<td>Bail Bond</td>
<td>A promise given to a court or police officer by a person or their sureties that they will appear in court at a future date to answer criminal charges.</td>
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<tr>
<td>Child</td>
<td>Although there are many different definitions of a child, when it comes to criminal law, a child is defined by the Children Act (2013) as anyone under the age of 18 years.</td>
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<tr>
<td>Child in conflict with the law</td>
<td>A child who is accused of committing a criminal offence.</td>
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<tr>
<td>Child in contact with the law</td>
<td>A child victim or witness in a criminal case.</td>
</tr>
<tr>
<td>Civil case</td>
<td><strong>Civil cases</strong> involve disputes that are not regarded as crimes. For example, disputes involving contracts or when someone’s actions lead to harm, injury or loss to someone else. Some crimes can also give rise to civil claims and cases as well. For example, when someone assaults someone else, they can be charged criminally for the assault. But the person they assaulted might also claim ‘damages’ from them. ‘Damages’ are an amount of money to compensate the someone for any costs they incurred or loss they suffered, such as hospital bills and loss of earnings.</td>
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<tr>
<td>Term</td>
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<tr>
<td>Cognizable offence</td>
<td>Cognisable offences are those where the police can investigate without an order from a Magistrate to do so and arrest a person without needing a warrant of arrest. The list of these offences is found in Schedule II of the Criminal Procedure Code.</td>
</tr>
<tr>
<td>Compensation</td>
<td>Usually a payment of money to a victim to compensate them for their loss.</td>
</tr>
<tr>
<td>Complainant</td>
<td>The person who lays a complaint of a crime with the police or a court. This is often the victim, but it could be anyone who witnessed or knows that a crime was committed.</td>
</tr>
<tr>
<td>Compoundable offence (and non-compoundable offence)</td>
<td>Offences that the accused and victim can agree to settle themselves (often through the payment of compensation) either with the permission of the Court, or without the permission of the Court (depending on the nature of the offence). <strong>Non-compoundable offences</strong> are those where the parties are not allowed to settle them.</td>
</tr>
<tr>
<td>Confession</td>
<td>A confession is where a person who has committed a crime admits that they committed the offence and that they have no legal defence to the charge. In other words, they admit every allegation against them.</td>
</tr>
<tr>
<td>Conviction</td>
<td>A finding by the court that the person is guilty — that they committed the crime as charged.</td>
</tr>
<tr>
<td>Criminal case</td>
<td>Criminal cases are those involving a crime or offence set out in any law — most are listed in the Penal Code, but other laws create crimes as well. In criminal cases, the ‘state’ is regarded as the party that has been wronged rather than the victim. And so the state (in the form of the prosecutor) is responsible for proving that the accused person is guilty. Criminal cases also differ from civil cases in that if the person is convicted, they can be sentenced to a fine, imprisonment or even the death penalty.</td>
</tr>
<tr>
<td>Criminal justice process</td>
<td>The process that is followed in criminal cases — from the moment that the crime is reported, through its investigation and prosecution, the acquittal or conviction and sentence of the accused, and any appeal that might follow.</td>
</tr>
<tr>
<td>Diversion</td>
<td>A restorative justice approach that tries to divert minor cases and those involved in minor offences out of the formal justice system as much as possible.</td>
</tr>
</tbody>
</table>
| Discharge                     | 1. To release a person at the time of charge hearing.  
2. To release a person at the end of trial either conditionally or unconditionally following a conviction.  
3. To release a person from prison after serving a sentence. |
<p>| Evidence                      | Anything that that tends to prove or disprove a fact. It can be witness testimony, documents or objects.                                                                                                    |
| Guilty                        | Found by a court to have committed a crime.                                                                                                                                                                |
| High Court Division           | The High Court Division is part of the Supreme Court (together with the Appellate Division). It deals with appeals from the Subordinate Courts although some cases (such as those involving the Constitution) can start in this Court as well. Its decisions are binding on all the Courts below it (that is, every Court in the country other than the Appellate Division), although its decisions can be appealed to the Appellate Division. |
| Non-cognizable offence        | Non-cognisable offences are those where the police can only investigate when permitted to do so by a Magistrate (whether it is reported to the police or a Magistrate. <strong>And</strong> the suspect can only be arrested with a warrant of arrest issued by a Magistrate (although the Code of Criminal Procedure also allows the Magistrate to summons an accused to court in minor cases rather than issuing a warrant of arrest). |
| Penalty                       | The punishment for the crime — a fine, imprisonment or death.                                                                                                                                             |
| Plea                          | An accused person’s formal response of “guilty” or “not guilty” to a criminal charge. The plea is regarded as the start of the actual trial.                                                                  |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Remand</td>
<td>Postponing a case to another day.</td>
</tr>
<tr>
<td>Remand in custody</td>
<td>Postponing a case to another day where the accused kept in detention.</td>
</tr>
<tr>
<td>Restorative justice</td>
<td>An approach to criminal justice that puts the victim’s right and needs first and tries to restore them to the position they were in before the crime was committed against them.</td>
</tr>
<tr>
<td>Retributive justice</td>
<td>The ‘traditional’ approach to criminal justice – where a crime is regarded as a crime against the state and the state prosecutes and punishes the offender.</td>
</tr>
<tr>
<td>Revision</td>
<td>The process where a higher Court looks at the procedures that were in the Court below it and, if these were illegal, the higher Court can set aside the decision of the lower Court.</td>
</tr>
<tr>
<td>Search warrant</td>
<td>A legal document, issued by a Court, which allows the police to search a place, vehicle or property to look for evidence.</td>
</tr>
<tr>
<td>Seizure</td>
<td>The taking or seizing of property by the police when the ‘thing’ involved may be required as evidence or cannot legally be owned.</td>
</tr>
<tr>
<td>Sentence</td>
<td>The punishment handed out by a Court.</td>
</tr>
<tr>
<td>Subordinate Court</td>
<td>These are the lower levels of the Courts and include Courts of Sessions presided over by a Judge and Magistrates Courts presided over by a Magistrate, as well as Special Tribunals created by other laws.</td>
</tr>
<tr>
<td>Summons</td>
<td>A legal document, issued by a court, ordering someone suspected of committing an offence to appear before the court on a certain day to answer the charges against them. A summons can also be used to call witnesses to court.</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>The Supreme Court of Bangladesh is made up of the:</td>
</tr>
<tr>
<td></td>
<td>- Appellate Division. This is the highest Court of appeal and only deals with appeals from the High Court Division.</td>
</tr>
<tr>
<td></td>
<td>- High Court Division, which deals with appeals from the Subordinate Courts. Some cases (such as those involving the Constitution) can start in this Court as well.</td>
</tr>
<tr>
<td>Suspect</td>
<td>Someone the police believe committed a crime, but who has not yet been arrested or charged.</td>
</tr>
<tr>
<td>Testify</td>
<td>Give evidence in Court.</td>
</tr>
<tr>
<td>Verdict</td>
<td>Decision at the end of the trial as to whether the accused is guilty or not guilty.</td>
</tr>
<tr>
<td>Village Court</td>
<td>Village Courts are the lowest level of Courts in Bangladesh. They are not permanent Courts but are set up by a Union Parishad to deal with minor criminal and civil cases as and when required.</td>
</tr>
<tr>
<td>Warrant of arrest</td>
<td>A document issued by a Court authorising the police to arrest someone.</td>
</tr>
<tr>
<td>Witness</td>
<td>A person who saw, heard or knows about anything related to a crime. They could be ordinary members of the public who are victims or who saw a crime being committed, or expert witnesses who give evidence about things like fingerprints, ballistics (evidence related to guns and bullets), injuries, or the level of alcohol in a person’s blood.</td>
</tr>
</tbody>
</table>
Abbreviations

ATP       Awaiting trial prisoner
CAPO      Child Affairs Police Officer
CJM       Chief Judicial Magistrate
CrPC      Code of Criminal Procedure
DLAC      District Legal Aid Committee
HCD       High Court Division (of the Supreme Court)
NGO       Non-governmental organisation
NLASO     National Legal Aid Services Organisation
PO        Probation Officer
SAARC     South Asian Association for Regional Cooperation
Tk        Taka
UN        United Nations
UP        Union Parishad
Part 1 - Background

1. About the Handbook
The criminal justice system is a network of various role players when it comes to criminal trials and includes the police, the Courts, prosecutors, lawyers (including those provided by the National Legal Aid Service Organisation) and the prisons. To function smoothly, all of these role players need to work together and coordinate their work. Delays or problems in any one part of the system cause delays and problems in other parts, which in turn contribute to further delays and problems such as prison overcrowding, case backlogs and denial of justice in general.

Example
When a Court refuses bail, the prison population is swelled by high numbers of awaiting trial prisoners. This makes it difficult for the prisons to cope and can lead to some accused falling off of the system or being left in prison when they are expected in Court. As a result, their cases taking longer to finalise which leads to backlogs of cases and a heavy burden on the Courts and prosecutors, and puts even more pressure on the prisons. And the longer cases take to finalise, the less likely victims and witnesses will attend Court. When they do, the length of time that has passed makes it less likely that they will remember critical details related to the offence. As a result, cases fail and criminals are released back into society to commit more crime. This increases the workload on the police, which makes it difficult for them to investigate cases properly. As a result, some accused spend a long time in jail even before the trial starts. Prosecutors struggle to obtain convictions when cases are badly investigated, cases fail, and more guilty people are released to commit further crimes.

Although some efforts are being made to address the problem, members of the criminal justice system often work in isolation and cooperation and communication between them is not always as good as it might be. One of the reasons for this is that while police officers, Judges and Magistrates, prosecutors and prisons know the problems they face in their part of the system very well, they don't always understand or think about how other parts of the system work and how much they rely on each other.

And these are not the only role players - those accused of crime, victims and witnesses all play an integral part. However, the criminal justice system is complex and hard for non-lawyers to understand. The procedure is complicated and confusing and the language used is full of words and phrases that many people may not have heard before. Lawyers are therefore needed but most people cannot afford them and don't know how to apply for legal aid.

This Handbook tries to address these issues by explaining, in plain language, the relevant laws and procedures covering investigation, prosecution, trial, and detention. It also explains who the role players are at each stage and
what they are expected to do in terms of the law, the challenges they face, and how they can work together towards a system that functions smoothly and efficiently.

The Handbook is mainly aimed at state employees in the criminal justice system, including:

- Magistrates and Judges, especially those in the subordinate Courts where the majority of criminal trials take place.
- Police officers.
- Prosecutors.
- Prison Service staff.
- The National Legal Aid Services Organisation.

It aims to help these improve how they work and how they cooperate and includes best practice ideas and guidelines from Bangladesh and other countries that might assist in speeding up the process of criminal trials. It also focuses in some detail on the rights of suspects, accused people, victims and witnesses. It explains where these rights come from and why they are important, and it offers guidance on how to respect these rights in practice.

2. Overview

- In Part 1 of the Handbook, we provide some background on the criminal justice system and process, the rights of suspects, accused and detained people, as well as the rights of victims and witnesses.
- In Part 2, we look at the actual process of criminal trials – from when it is first reported to the police or a Court, through the investigation and trial, and at what happens when a person is acquitted or convicted and sentenced.

Note (icon)

The Handbook does not cover what each role player is meant to do at each stage of the process in great detail. The criminal justice process involves many role players with very different roles and it is simply not possible to cover everything. Instead, we focus mainly on the overall process and try to suggest ways that this can be improved to both speed up the process and to ensure that the rights of everyone involved are protected.

3. Key role players in criminal justice

The main role players in the criminal justice process are:

a. The Bangladesh Police

The Bangladesh Police force was created by the Police Act of 1861. It is made up of nearly 125,000 personnel including around 85,000 constables. Police headquarters are in Dhaka but the Police is made up of many branches and units, such as:
**The Bangladesh Police**

| Special Branch. | Detective Branch. |
| Criminal Investigation Department. | Highway Police. |
| Armed Police Battalion. | Industrial Police. |
| Metropolitan Police. | River Police. |
| Range Police (including Railway Police). | Tourist Police. |
| Rapid Action Battalions (RAB) that were created to deal with serious crime and terrorist activities. | Police Investigation Bureau. |
| Traffic Police. |

The Range and Metropolitan Police are structured into Districts, Circles, Police Stations (Thanas) and Outposts.

The police are responsible for:
- Preventing crime.
- Protecting the safety of citizens and anyone else in the country.
- Maintaining peace, law and order.
- Investigating complaints and crimes, including identifying witnesses and securing evidence and identifying and arresting suspects.
- Making sure witnesses are brought to Court.
- Serving summonses and executing warrants of arrest.

The Bangladesh Police fall under the Ministry of Home Affairs and are headed by the Inspector General of the Police.

**Village Police**

The Village Police fall under the control of the Union Parishad (UP) rather than the Bangladesh Police and are governed by the Local Government (Union Parishads) Ordinance of 1983. They are mainly responsible for guarding government buildings and premises, assisting the UP Chairperson and the UP to perform its functions, assisting the police in the prevention and detection of crime, and assisting the police to apprehend suspects. More recently, they also support the Village Courts by serving summonses and assisting during sittings of the Courts.

**b. The Courts or Judiciary**

In terms of Part VI of the Constitution, the Judiciary of Bangladesh is made up of the following courts and tribunals, and the Chief Justice and all of the Judges and Magistrates who preside over them:
- The Supreme Court of Bangladesh.
- The Subordinate Courts including the courts of Magistrates.

Other laws also create a range of Administrative Tribunals.
Text box on the side of above. The branches of government

Government is made up of three branches:
- Parliament (also known as the legislature). Parliament is made up of Members of Parliament who are elected by the people to represent them in government. They pass new laws, amend existing laws, or vote to scrap old laws. Parliament also deals with and passes the budget and deals with money laws.
- The Executive. This is made up of the Prime Minister and Ministers and their role is to put the law into operation. They have Ministries and Departments of staff to assist them in this regard.
- The Judiciary. The Judiciary is made up of Judges and Magistrates and their role is to interpret, apply and enforce the law.

As illustrated in the flowchart on page (INSERT once known), there is a hierarchy of Courts in Bangladesh. Those at the lower levels deal with less serious crimes and are only able to sentence people to small fines or short prison terms. Those above them the deal with more serious cases and can impose higher penalties. Which court hears a particular case will usually depend on the seriousness of the crime, although a particular law may also state that only certain courts may deal with a particular crime.

Example

An offence under Section 138 of the Negotiable Instruments Act, 1881 can only be tried by the Court of Sessions even though the highest punishment is only one year imprisonment. (Courts of Sessions usually deal with very serious crimes and can impose a sentence of up to life imprisonment or even the death penalty unless the law dealing with the offence specifically sets a maximum sentence).

Those higher up in the hierarchy also act as appeal courts for decisions from Courts below them, while those at the very top only deal with appeals (although the High Court does deal with a limited number of cases as trial courts or as a ‘court of first instance’). Higher Courts also have the power to revise cases heard in the Courts below them.

Revision and appeal

A revision is where a higher court checks the decision of the court below it, mainly to make sure that the correct procedure was followed. Although people can apply to a higher court to ask them for a revision, the higher court also has the power to revise and correct decisions without waiting for someone to request it. Where problems are found, these may be corrected and sent back to the court below. The higher court also has the power to set aside the decision of the lower court.

An appeal is where someone challenges either the decision to convict them or the sentence they were given (or both) on the basis that the trial court made a mistake of fact or law. An aggrieved party (such as a victim who believes the accused was unlawfully acquitted) may also appeal where they believe an acquittal was wrong or the sentence was too lenient.
Supreme Court of Bangladesh
The Supreme Court is the highest court and consists of two divisions:

- The **Appellate Division** only deals with appeals from the High Court Division – it doesn’t deal with any new cases. Decisions of the Appellate Division are final and binding on all Courts below them – that is, every other Court must follow the decisions of the Appellate Division.

- The **High Court Division** deals with appeals from and revisions of criminal cases in the Subordinate Courts. It also has original jurisdiction in constitutional cases (where someone alleges the Constitution has been violated) and cases involving companies. Decisions of this Court are binding on the Subordinate Courts, unless they are overturned on appeal by the Appellate Division.

Subordinate Courts
The Subordinate Courts deal with both civil and criminal matters. The **Subordinate criminal courts** are generally created by the Code of Criminal Procedure, 1898 (although there are a range of other Courts and Tribunals created by laws such as the Special Powers Act, 1974, Nari-O-Shishu Nirjatan Daman Ain, 2000, and Anti-Corruption Act, 2004).

The Code of Criminal Procedure creates Courts of Sessions and Courts of Magistrates:

Courts of Sessions Judges
1. There is a Court of Session for every session division, and a Metropolitan Court of Session for each metropolitan area.

In terms of Section 31 of the CrPC, these Courts usually deal with the most serious criminal cases and can pass any sentence set out in the relevant law, including the death sentence – although any death sentence must be confirmed by the High Court Division of the Supreme Court. They also deal with less serious cases if a particular law requires such cases to be dealt with by a Court of Sessions. Appeals from this Court lie to the High Court Division of the Supreme Court of Bangladesh.

A Court of Sessions Judge or Additional Sessions Judge is also a court of appeal – it can hear appeals against the decisions of the Court of a Joint Session Judge, Metropolitan Magistrate, or a Judicial Magistrate of the first class, except:

- A decision of a Joint Sessions Judge where the sentence is more than 5 years (in which case the appeal must be heard by the High Court).
- A decision of a Metropolitan Magistrate or Judicial Magistrate in a case of sedition (in which case the appeal must be heard by the High Court).

A Sessions Judge can also revise or correct any judgment or order passed by any of the Courts below them except those of an Additional Sessions Judge.
Courts of Magistrates.
There are four classes of Judicial Magistrate:

1. Chief Metropolitan Magistrates in Metropolitan Areas and Chief Judicial Magistrates in other areas.

These Magistrates’ Courts can sentence an accused to up to five years imprisonment (including solitary confinement if authorised by a law) or to a fine of up to Tk 10,000 or both. They can also impose corporal punishment (whipping) where this sentence is allowed by the law. Where the Magistrate has been empowered under Section 29C of the CrPC, they may pass a sentence of up to 7 years’ imprisonment. Appeals from these courts lie to a Court of Sessions.

2. Additional Chief Metropolitan Magistrate, Metropolitan Magistrate, Special Metropolitan Magistrate, Benches of Magistrates (In Metropolitan Area), Additional Chief Judicial Magistrate, Senior Judicial Magistrate (In District Level)

These Courts have similar jurisdiction to Courts of Chief Metropolitan and Chief Judicial Magistrates and can pass sentences up to five years imprisonment (or 7 years where the Magistrate is empowered by Section 29C of the CrPC), including solitary confinement, and fines of up to Tk 10,000 or both. Appeals from this Court lie to the Court of Sessions.

3. Magistrate of the second class.

These Courts deal with less serious offences and can pass a sentence of up to three years imprisonment including solitary confinement, fines of up to Tk 5,000 or both. Appeals from these Courts lie to the Chief Judicial Magistrate, who may either dispose or transfer the appeal to the Additional Chief Judicial Magistrate for disposal.

4. Magistrate of the third class.

These Courts deal with the least serious offences and can sentence people to fines of up to two years imprisonment, fines of up to Tk 2,000 or both. Appeals from this Court lie to the Chief Judicial Magistrate who may either dispose or transfer the appeal to the Additional Chief Judicial Magistrate for disposal.

<table>
<thead>
<tr>
<th>Court</th>
<th>Maximum sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>Only deals with appeals and doesn't pass sentences – although it can confirm or change the sentence of a lower Court. The High Court Division also has revision powers over the Courts below the Court.</td>
</tr>
<tr>
<td>• Appellate Division</td>
<td></td>
</tr>
<tr>
<td>• High Court Division</td>
<td></td>
</tr>
<tr>
<td>Courts of Sessions</td>
<td>Any sentence, including the death penalty (although a death penalty must be confirmed by the High Court)</td>
</tr>
</tbody>
</table>
Magistrates of the First Class: Chief Metropolitan Magistrates, Additional Chief Metropolitan Magistrates, Metropolitan Magistrates, Special Metropolitan Magistrates, Benches of Magistrates, Chief Judicial Magistrates, Additional Chief Judicial Magistrate, Senior Judicial Magistrate

<table>
<thead>
<tr>
<th>Magistrate/District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Metropolitan Magistrate</td>
</tr>
<tr>
<td>Additional Chief Metropolitan Magistrate</td>
</tr>
<tr>
<td>Metropolitan Magistrate</td>
</tr>
<tr>
<td>Special Metropolitan Magistrate</td>
</tr>
<tr>
<td>Benches of Magistrates</td>
</tr>
<tr>
<td>Chief Judicial Magistrate</td>
</tr>
<tr>
<td>Additional Chief Judicial Magistrate</td>
</tr>
<tr>
<td>Senior Judicial Magistrate</td>
</tr>
</tbody>
</table>

Judicial Magistrate of the Second Class

<table>
<thead>
<tr>
<th>Magistrate/District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 3 years imprisonment and/or a fine of up to Tk 5,000</td>
</tr>
</tbody>
</table>

Judicial Magistrate of the Third Class

<table>
<thead>
<tr>
<th>Magistrate/District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 2 years imprisonment and/or a fine of up to Tk 2,000</td>
</tr>
</tbody>
</table>

Executive Magistrate/Special Executive Magistrate

<table>
<thead>
<tr>
<th>Magistrate/District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 2 years imprisonment and/or a fine authorised by law.</td>
</tr>
</tbody>
</table>

Civil Courts

Although we don't deal with these in this Handbook, there are five classes of civil courts created by the Civil Courts Act, 1887. These deal with disputes and conflicts between people and/or companies that do not amount to crimes:

- Court of the District Judge.
- Court of the Additional District Judge.
- Court of the Joint District Judge.
- Court of the Senior Assistant Judge.
- Court of the Assistant Judge.

Other civil courts are also created by other laws, such as Arthorin Adalat, Family Courts, Labour and Land Survey Tribunals.

Special Courts

Special criminal courts have also been created by various laws to deal with specific offences. Most of these Courts follow the procedure in the CrPC, but they sometimes have special or different procedures that must be followed:

<table>
<thead>
<tr>
<th>Court / Tribunal</th>
<th>Established by</th>
<th>Deal with</th>
<th>Procedure followed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acid Violation Prevention Tribunal</td>
<td>Acid Violation Prevention Act, 2002</td>
<td>Cases involving acid violence. It has extensive jurisdiction, including the ability to impose the death penalty. Appeals are to the High Court and must be brought within 60 days.</td>
<td>CrPC</td>
</tr>
<tr>
<td>Drug Courts</td>
<td>Drugs (Control) Ordinance, 1982</td>
<td>Crimes relate to the manufacturing and distribution of illegal drugs.</td>
<td>CrPC</td>
</tr>
<tr>
<td>Environment Court and the Environment Appellate Tribunal</td>
<td>Environment Court Act of 2000</td>
<td>Crimes that cause damage to the environment. The Environment Court is presided over by a Joint District Judge or a government appointed Special Magistrate. The maximum punishment a Joint District Judge can impose is up to 10 years imprisonment and 10 Lac</td>
<td>CrPC in criminal cases and Civil Procedure Code in civil cases.</td>
</tr>
<tr>
<td><strong>Children’s Courts</strong></td>
<td><strong>Children Act of 2013</strong></td>
<td>The Children Act requires the government to establish Children's Courts for dealing with children, including those in conflict with the law and child victims and witnesses. We look at these in the section on the Children Act, 2013 below.</td>
<td>Largely the CrPC but there are specific rules for dealing with children. We look at these in detail later in the Handbook.</td>
</tr>
<tr>
<td><strong>Special Tribunals</strong></td>
<td><strong>Special Powers Act, 1974.</strong></td>
<td>These deal with ‘grave’ or serious offences including sabotage, corruption, smuggling, dealing in the black market and certain offences related to arms and explosives.</td>
<td>CrPC</td>
</tr>
<tr>
<td><strong>Speedy Trial Tribunals</strong></td>
<td><strong>Speedy Tribunal Act, 2002</strong></td>
<td>Sensitive and high profile cases related to murder, rape, firearms and narcotics. The Ministry of Home Affairs can transfer such cases to a Speedy Trial Tribunal during the trial stage. The Tribunal then has 90 days to finalise the trial, failing which the case is sent back to the original court to be dealt with. Decisions of the Tribunal can be appealed to the High Court and must be brought within 30 days.</td>
<td>CrPC</td>
</tr>
<tr>
<td><strong>Nari o Shishu Nirjaton Domon (Women and Child Repression Prevention) Tribunals</strong></td>
<td><strong>Women and Children Repression Prevention Act, 2000</strong></td>
<td>Cases involving severe violence against women and children – such as murder, rape, maiming, kidnapping, and torturing for dowry. The Tribunal may impose any penalty including the death penalty. Decisions of the Tribunal can be appealed to the High Court.</td>
<td>CrPC</td>
</tr>
<tr>
<td><strong>Cyber Tribunal</strong></td>
<td><strong>Information and Communications Technology Act, 2006</strong></td>
<td>To try online crimes in a speedy manner.</td>
<td>CrPC</td>
</tr>
</tbody>
</table>

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1 In Bangla: *Nari o Shishu Nirjaton Damon Ain*

*Criminal Justice in Bangladesh - A best practise Handbook for members of the criminal justice system (Final Draft - November 2015)*
### Hierarchy of the Criminal Courts

#### Supreme Court of Bangladesh
- Appellate Division
- High Court Division

#### Courts at District Level

##### Court of Sessions
- Court of Sessions
- Court of Additional Sessions Judge
- Court of Joint Sessions Judge

##### Court of Magistrates
- Court of Chief Judicial Magistrate
- Court of Additional Chief Judicial Magistrate
- Court of Senior Judicial Magistrate (1st Class Magistrate)/
  *Droto Bichar Adalat* (Speedy Trial Court)
- Court of Judicial Magistrate (2nd Class or 3rd Class)
- Court of Special Magistrate (1st or 2nd or 3rd Class)

##### Courts in Metropolitan Area

##### Court of Sessions
- Metropolitan Court of Sessions
- Metropolitan Court of Additional Sessions Judge
- Metropolitan Court of Joint Sessions Judge

##### Court of Magistrates
- Court of Chief Metropolitan Magistrate
- Court of Additional Chief Metropolitan Magistrate
- Court of Metropolitan Magistrate
- Court of Special Metropolitan Magistrate
- Benches of Magistrates
  *Droto Bichar Adalat* (Speedy Trial Court)

##### Executive Magistrate: (District Level)
- District Magistrate
- Additional District Magistrate
- Executive Magistrate/Special Executive Magistrate
Village Courts
These Courts fall under the Local Government Division of the Ministry of Local Government, Rural Development and Co-operatives. They use mediation to try to resolve minor crimes, although a hearing is held if the mediation fails.'

As such, they form a bridge between the formal Courts and less formal systems like Shalish. The formal Courts are often far from where people live. The procedures are complicated, it takes a long time for cases to be finalised, and they are expensive, mainly because one usually needs a lawyer. Because of this, most Bangladeshis choose to rely on traditional, informal forms of justice for dealing with crimes and conflicts. The most commonly used are the traditional Shalish, village elders or members of Union Parishads (UP).

**Text box on the side of above. Shalish**

Traditionally, a Shalish is a gathering of village elders and concerned parties to settle local or family disputes using arbitration or mediation. (Mediation is where the Shalishkars try to get both parties to reach an agreement, while with arbitration, the Shalishkars listen to both sides before making a decision). Although they are not really allowed to, they regularly deal with criminal matters and award compensation to victims rather than sentencing people to fines or imprisonment. This is usually acceptable, especially where the crime is a very minor one, because most crimes also give rise to civil damages and claims for compensation. For example, if you assault me, I can report the matter to the police and you will be criminally prosecuted. But I could also sue you to recover any loss I may have suffered, such as the costs I had to pay for medical treatment. Unfortunately, some traditional Shalish deal with far more serious crimes and some are known to impose penalties on those 'convicted' by them – usually some kind of public shaming, but also imprisonment and fines.

Although the traditional Shalish are still common, UPs have increasingly been offering these services as well. The UP Chair and Members make up the Shalish and use mediation and arbitration to try to resolve minor conflicts in their Union.

Many NGOs have started to offer Shalish services as well. They mainly deal with civil cases but will sometimes deal with minor criminal matters as well. They mainly use mediation to try to get parties to agree to compensation of some sort – if they can't, then the parties are advised to report the matter to the police instead.

Although these traditional and informal mechanisms offer some solution, they are often male-dominated and controlled or influenced by the rich, politically connected and powerful members of society. This makes it particularly difficult for women and the poor to find justice in the informal system.

At the same time, UPs have always had the power to help mediate between members of their communities, although this was never properly formalised and the level of justice differed greatly between different UPs. To improve the level of justice offered and standardise the approach being followed, the Bangladesh government introduced the Village Court Ordinance of 1976 that set out what cases the UPs could deal with and how to deal with them. This
Ordinance was later changed by the Village Court Act of 2006 (amended in 2013), that 'established' Village Courts at each UP to deal with a wide range of minor criminal matters and civil disputes.

### Criminal cases that Village Courts can deal with

The Village Courts Act lists a number of minor cases in Schedule 1 that the Courts can deal with.
- Voluntarily causing hurt to any person.
- Mischief (causing damage to someone else's property, including animals) where the amount of damage caused is not more than Tk 75,000.
- Criminal trespass.
- Unlawful assembly (where there are not more than 10 people involved and where the purpose of the assembly is to cause an unlawful hurt, mischief or criminal trespass).
- Rioting (where there are not more than 10 people involved).
- Affray (causing a disturbance using force).
- Wrongful restraint or confinement of a person or property.
- Assault.
- Insult with intent to provoke a breach of peace.
- Criminal intimidation.
- Getting someone to believe that they will be rendered an object of divine pleasure.
- Hand gestures that insult the modesty of a woman.
- Public misconduct by a drunken person.
- Theft of property up to Tk 50,000 or cattle up to the value of Tk 75,000.
- Dishonest misappropriation of property up to the value of Tk 75,000.
- Criminal breach of trust where the value is not more than Tk 75,000.
- Cheating where the amount involved is not more than Tk 75,000.

Village Courts are made up of a panel of five members (usually the Union Parishad Chair and two people nominated by each party, one of whom must be a member of the UP). If a civil or criminal case involves the interests of a woman, then that party (the woman or the person representing her interests) must nominate at least one woman – either someone from the community or one of the UP members.

### Criminal cases involving a minor

The Village Courts Act also says that the Village Court must include at least one woman if the interests of a minor are involved in a **criminal** case. This is problematic since, as we will see, the Children Act, 2013, states that all cases involving child offenders, child victims and child witnesses must take place in a Children's Court. Since the Children Act also says that its provisions override those in any other Act, Village Courts should not be dealing with criminal cases involving children at all.
The Courts employ a mix of mediation and arbitration to deal with minor civil and criminal matters and may award compensation of up to Tk 75,000.

Procedure followed in a Village Court
The CrPC does not apply to Village Courts and neither side is allowed to be represented by a lawyer. The procedure in both civil and criminal complaints is essentially the same:

- The complainant applies to the UP for a Village Court to be constituted and pays the necessary fee (Tk 4 for civil cases and Tk 2 for criminal complaints).
  - Applications in civil matters must be filed within 60 days on which the cause of action arose.
  - Applications in criminal matters must be filed within 30 days of the date of the offence.
- The UP Chair scrutinises the case to see whether the Village Court has jurisdiction – is it one of the offences or civil matters listed in the Schedule and is the amount of money involved less than Tk 75,000?
  - If the UP Chair rejects the application, they must provide written reasons for doing so. The applicant may then ask an Assistant Judge to review the decision, and the revision must be finalised within 30 days.
  - If the UP Chair accepts the complaint, the Chair will then summons the defendant and instruct the applicant to come to the UP on a certain day and time (both to be present at the same time). Although it is not set out in the Village Courts Act, in practice, the UP Chair will ask the parties whether they are willing to settle the case and if so, it can be finalised informally straight away.
- If the parties refuse or are unable to agree to a settlement, the UP Chair will instruct the parties to nominate their members for the Village Court within 7 days. Once members have been nominated, the Village Court is formed and the UP Chair formally transfers the case to the Court.
- The Court will instruct the defendants to submit a written statement within 3 days.
- Within 15 days of being constituted, the Court must invite both parties to attend the first hearing together with their witnesses. A more formal pre-trial procedure now takes place (in terms of Section 6B of the Act). After hearing both parties, the Chair of the Court will determine the cause of action and ask both parties whether they are prepared to try to settle or mediate the case themselves. They will often also offer to help in this mediation if the parties want them to. If the parties agree, they have 30 days to settle or mediate the case themselves. If they do, the agreement is then signed and may not be reviewed by anyone.
- If an agreement cannot be reached or the parties don’t agree to try to settle or mediate the case, the Village Court must start to hear the case within 15 days and must finalise it within 90 days. (If the case cannot be finalised within 90 days, the Court must record the reasons for this and will have an additional 30 days to finalise it). If the case cannot be disposed of in 90 days (or the additional 30 days) then the Court is automatically dissolved and the parties will have to find some other way of resolving the
matter and will have 60 days to file it in another Court if that’s what they choose to do.

- The Court may now summons anyone who it thinks can assist in the case to attend. Failure to obey the summons is an offence under the Act, liable to a fine of Tk 1,000.
- On the date fixed by the Court, the hearing starts with the applicant, who is called to explain their side of the story. The other side may not cross-examine them, but any of the members of the Court may ask questions of them.
- If the applicant has any witnesses, they are called to testify after the applicant and can also be questioned by the Court.
- Once the applicant and their witnesses have testified, the defendant and their witnesses testify and can be questioned by the Court.
- Once both sides have provided their testimony and any other evidence, the Court will confer and reach a decision.
- If they find in favour of the applicant, they may order compensation up to Tk 75,000. Although it can't pass sentences (fines or imprisonment) in criminal cases, if the Court is of the opinion that the defendant deserves to be punished it can refer the case to a criminal court for trial and punishment.
- The Court will then announce it’s decision and send the file back to the UP to enforce the order of compensation if it is not paid.
- Where the Court reaches a unanimous decision or decides 4:1 (or 3:1 when there are only 4 members present), the decision may not be appealed. But if they are split 3:2, the person they find against may appeal to the Court of a Magistrate of the First Class (in criminal cases) or Assistant Judge (in civil cases). The appeal court can then confirm the findings, refer the case back to the Village Courts to reconsider, or set aside or modify the decision.

This process is illustrated in the flowchart on the following page.
<table>
<thead>
<tr>
<th></th>
<th><strong>Village Court Flow Chart</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Submission of case before the Union Parishad Chair with required fees</td>
</tr>
<tr>
<td>2</td>
<td>Scrutiny and acceptance of the case by the UP Chair</td>
</tr>
<tr>
<td>3</td>
<td>Summoning defendant to attend on a particular day as well as instruct the applicant to be present at the same time</td>
</tr>
<tr>
<td>3a</td>
<td>Instruct both the parties to nominate representatives (2+2) within 7 days</td>
</tr>
<tr>
<td>4</td>
<td>If parties nominate their reference, a village court will be created with 5 members (4 panel members and 1 Chair)</td>
</tr>
<tr>
<td>4a</td>
<td>The case is formally transferred to the Village Court by the UP.</td>
</tr>
<tr>
<td>4b</td>
<td>The Court instructs the defendant to submit written statement within 3 days</td>
</tr>
<tr>
<td>4c</td>
<td>The Court invites both parties to attend 1st hearing (within 15 days) along with their witnesses</td>
</tr>
<tr>
<td>5</td>
<td>After hearing both parties and their witnesses, court will identify the issue. It will then offer the parties an opportunity to resolve the dispute through a pre-trial negotiation.</td>
</tr>
<tr>
<td>5b</td>
<td>If the parties agree or are able to resolve their dispute, they must prepare and submit a mutual settlement document to the court within one month</td>
</tr>
<tr>
<td>5c</td>
<td>Where the parties fail to resolve the dispute during the pre-trial negotiation, the Court will arrange a hearing within 15 days. (In both parties request it, the Court can hear the dispute on the same day and give the verdict)</td>
</tr>
<tr>
<td>6</td>
<td>After consulting all of the judges, the Chair will announce the Court’s verdict and state the date by which it must be implemented.</td>
</tr>
<tr>
<td>7</td>
<td>If the Court is split 3:2, the party against whom the decision went can appeal the verdict to the Court of a Judicial Magistrate or Assistant Judge within 30 days of the decision.</td>
</tr>
</tbody>
</table>
## Referrals and transfers

### Referrals

The Village Courts Act states that only a Village Courts can deal with the cases listed in the Act. However, many of these cases are reported to the police or a Court – especially where the Village Court is not functioning properly or people don’t know about it. Although the Act allows a Court to refer such a case to a Village Court for resolution, they don't have to do so. Government is making progress in activating these Courts and supporting them to function properly, but there is still a long way to go, especially since not all of the Courts have been created.

When it comes to cases reported to the police, the issue of referral is a little trickier since the police must comply with the CrPC. The CrPC requires them to register the case and then either investigate (in cognisable offences) or refer it to a Court for a decision on the way forward (in non-cognisable offences). Nothing in the law allows them to refer the complainant to a Village Court. Of course, it would reduce the burden on the police, the Courts and the prisons if such cases were referred to Village Courts to deal with and in practice, some police officers do so without registering the case. Unfortunately, this is not technically legal and attempts will be made soon by the Activating Village Courts in Bangladesh project to amend the law to create legal certainty and to provide guidelines to the police on which cases should and shouldn't be referred.²

### Transfers

Where the Chief Judicial Magistrate (CJM) is of the opinion that a criminal case before a Village Court is one where justice demands that it be dealt with by a trial in a criminal court, the CJM can withdraw it from the Village Court and send it to the criminal court for trial. (Similar provisions exist for civil matters, where a District Court Judge can withdraw a civil case from the Village Court for public interest and for ends of justice and send the same to a proper Civil Court for trial.)

c. **Prosecutors**

Public Prosecutors represent the state in criminal cases and assist the court to find the truth, from the first appearance of the accused in court until final judgment. At district level, a Public Prosecutor and Special Public Prosecutor are appointed in every district, supported by a certain number of Assistants depending on the district’s size and population. Prosecutors are appointed by the Ministry of Law from among practicing lawyers.

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² The Activating Village Courts in Bangladesh project is a project of the Department of Local Government to roll out and support Village Courts across the country. It is funded by the European Union, United Nations Development Programme and the Danish Ministry of Foreign Affairs.

*Criminal Justice in Bangladesh - A best practise Handbook for members of the criminal justice system (Final Draft - November 2015)*
**Best practise!**

Although the public prosecutor has no legal obligation to assist victims of crime, victims (and witnesses) are critical for the success of any prosecution. Prosecutors should therefore do their best to ensure that victims and witnesses are protected and that they are not called to Court unnecessarily. Where allowed for by the law, they should also try to convince the Court to order compensation or restitution for the victim. We look at all of these issues in the remainder of the Handbook.

### d. National Legal Aid Services Organisation (NLASO)

Both the Constitution and the CrPC state that an accused person is entitled to legal representation from arrest onwards - but neither require the government to provide legal aid to those who cannot afford a lawyer:

- Article 33 of the Constitution says everyone has a right to consult with and be defended by a lawyer of their choice, but it does not require the state to provide a lawyer to someone who cannot afford one.
- Section 340 of the CrPC says that an accused has the right to be defended by a lawyer but does not say that this should be provided at state expense if they cannot afford one.

Recognising the importance of legal aid for those who cannot afford a lawyer, government passed the Legal Aid Services Act in 2000. The Act is implemented by the National Legal Aid Services Organisation (NLASO) and District Legal Aid Committees (DLAC). The NLASO is responsible for developing rules and guidelines, while the DLACs are responsible for deciding which applications for legal aid to accept and for providing that actual lawyer. These are lawyers in private practice who are paid for their services by the DLAC.

**Who is entitled to legal aid?**

According to the Legal Aid Rules of 2014, the following are entitled to receive legal aid:

- A freedom fighter who is partly or totally incapable of earning money, or who is jobless, or whose yearly income is not more than Tk 1,500,000.
- Anyone receiving old age benefit.
- A helpless mother with a V.G.D card.
- Any women or child victims of illegal trafficking.
- Any women or child victim of acid throwing.
- Anyone who has been allotted a house or plot in any ideal village.
- A poor widow or any poor woman deserted by her husband.
- A person with a disability who cannot earn a living.
- Anyone who is financially incapable of protecting or defending their rights in Court.
- Anyone arrested under a preventive detention law who is financially incapable of defending their rights.
- Anyone that a Court regards as financially incapable or poor.
- Anyone that the Jail Authority considers to be financially incapable or poor.
- Anyone that the NLASO considers to be financially incapable or poor.

The Regulations to the Act define ‘financially incapable or poor’ as anyone whose yearly average income is not more than Tk 1,500,000 for people with matters in the Supreme Court and Tk 1,000,000 for those with cases in other Courts. In practice though, most applications are granted even where the person earns more than these amounts – as long as it is clear they cannot afford a lawyer. However, there is no obligation on a Court to tell an accused person that they have the right to apply for legal aid and most Judges and Magistrates do not.

**Best practise!**

To ensure that everyone accused of a crime is able to find a lawyer to assist them even when they cannot afford one, Judges and Magistrates should be encouraged to always advise unrepresented accused of their right to apply for legal aid and how to go about doing so.

DLACs have been set up in every district and Legal Aid Committees have also been established in many Upazilas and Union Parishads. There are also Committees at the Supreme Court and Labour Court.

**The Children Act, 2013**

Importantly, the Children Act of 2013 states that every child in contact or in conflict with the law – that is, to any child accused of a crime and all child victims and witnesses – is entitled to be represented by a lawyer at every stage of the process. If they or their family cannot afford a lawyer, the Children’s Court must immediately appoint one from amongst the panel of advocates of the DLAC or of the Supreme Court.

e. **Prisons**

Prisons in Bangladesh fall under the Ministry of Home Affairs. They are headed by the Inspector General, Prisons and governed by the Prisons Act, 1894.

The role of the prisons is to house and take care of all prisoners under their care including both those who have already been convicted and sentenced, and those whose trial is ongoing and for whom no bail has been set or they have been denied bail. These are known as awaiting trial prisoners (ATPs) or unsentenced prisoners.

The role of the Prisons with regard to sentenced prisoners is to house and rehabilitate them so that, once released, they can play a meaningful role in society. Their role with ATPs is to house them during the trial, to take care of their food, health and other needs, and to ensure that they are at Court on all court dates.
Prisons in Bangladesh are severely overcrowded, largely as a result of the slow criminal justice system that leads to high levels of ATPs – often estimated at two-thirds of all prisoners. This leads to all sorts of problems:

- Overcrowding, contributing to all sorts of problems such as limited access to health care and medical staff.
- Young prisoners (under 18) often being kept with older prisoners
- Case files becoming lost leading to ATPs spending excessive amounts of time in custody, especially where they do not have a lawyer to follow up on their behalf.
- Delays in the system generally that lead to high levels of ATPs – and limited access to justice for them as a result.
- Lack of access to lawyers, compounded by the fact that the process of obtaining a ‘vokalatnama’ (a document that must be signed by the client in every case, even if the person is in custody, to prove that the lawyer has been appointed) is very bureaucratic and it can take up to three days for the document to be returned to them since it needs to be signed by various prison officials before being released to them, despite the fact that there is no such provision in the law.

f. Lawyers

Lawyers are an integral part of the criminal justice system, both those provided by the NLASO and those in private practice (if one can afford them). Many NGOs also have lawyers on staff to both provide legal advice and assistance, and to represent clients in certain cases. The criminal justice process is complicated and confusing and often uses language that ordinary members of the public have not heard before and struggle to understand. As a result, people represented by lawyers are usually in a better position to receive justice than those who are not represented.

On the other hand, some lawyers are known to deliberately cause delays since it means they earn more per case – for example, by requesting numerous adjournments and by lengthy and unnecessary cross-examination. Some would argue that the quality of lawyers differs greatly, with the better lawyers charging fees that most people could not afford, and that there are not enough women lawyers. Nonetheless, because they know the procedure in criminal cases and are skilled at leading and cross-examining witnesses, they can help to speed up the process, to ensure that the truth is found, and that innocent people are not convicted.

g. Victims and witnesses

Victims and other witnesses are critical to the success of a criminal case:

- They provide information to the police immediately (at the scene or when reporting the crime) that can help the police to locate and arrest suspects.
- They assist during the investigation by providing the police with additional information about where suspects may be hiding and where other evidence might be found.
- They assist during the trial by testifying, both for the prosecution and the defence, so that the Court can come to the correct decision.
• Victims are able to testify about the effect of the crime on them and their families. This evidence can be used to determine an appropriate sentence.
• In some case, victims’ testimony provides the only evidence the state will have to prove its case.

The police and prosecutors are responsible for victims and state witnesses (those testifying for the prosecution) and need to treat them with the greatest respect. They need to be kept informed of what is going on with the investigation and trial and, in many cases, they need to be protected from the accused and their families to ensure that they come to court and testify when required. In reality though, many victims and witnesses complain that there are too many adjournments, they are required to attend court many times before they are called to testify (which means they waste time and money getting to court and they may also lose wages or productive work or farming time), and they are often harassed by the accused or their families – both in their communities and when attending court. Some victims also complain that they are required to pay the police to investigate cases and that, in some cases, the accused is able to bribe the police officer, prosecutor or even the presiding Judge or Magistrate to avoid prosecution or conviction.

**Best practise - Victim Support Centres and One-Stop Crisis Centres**

Victims of crimes involving violence and victims of sexual offences in particular are often in need of special care and assistance. Two important initiatives are underway in Bangladesh to provide such victims with the support they need:

**Victim Support Centres**
The police have begun a process to create victim support centres to assist victims of violent and sexual crimes in Bangladesh. There are currently eight such centres – one in each of the seven Divisions, plus one in Rangamati that has a specific focus on the indigenous people (‘Adibashis’) of the Chittagong Hills Tract. The centres are staffed by police officers, assisted by members of NGOs who provide counselling, legal advice, medical assistance and other services. There is space for a Doctor to consult with and treat victims and beds to accommodate up to nine or 10 victims at a time. Police officers in police stations nearby are trained to refer victims of serious violence and sexual offences to these centres where they can be provided with all of the support they need. Courts can also refer victims of other crimes to them as well.

**One-Stop Crisis Centres**
The Ministry of Women and Children Affairs has established One-Stop Crisis Centres at all or most Divisional Medical College Hospitals (including Dhaka, Rajshahi, Chittagong, Sylhet, Barisal and Khulna Medical College Hospitals) to assist women and child victims of serious violent offences and sexual assaults. In addition to medical care and attention, the Centres also provide police assistance, DNA tests, social services, legal assistance, psychological counselling and shelter.
4. Legal framework
Numerous laws create crimes and deal with the procedure to be followed in criminal cases. The most important for our purposes are:

a. The Constitution
The 1972 Constitution of the Republic of Bangladesh is the supreme law of Bangladesh – that is, it is the highest law of the country and any other law that goes against what it says is invalid.

Although it doesn't create crimes or set out the procedure to be followed during trials, the Constitution is very important when it comes to criminal justice. Amongst other things, it:

- Sets out a list of all fundamental rights of citizens in Part III (which includes rights that are important for both the accused and victims of crime).
- Establishes the Supreme Court of Bangladesh with two Divisions - High Court Division and Appellate Division - and lays the foundation for other Courts and Tribunals created by the Acts of Parliament.
- Deals with how the Chief Justice (CJ) and other Judges are appointed, for how long, and how and under what circumstances he CJ or a Judge may be removed from office.

In this Handbook, we focus mainly on the fundamental human rights of victims of crime and those suspected or accused of a crime through all stages of the criminal justice process. We look at the rights protected by the Constitution in the section on human rights below.

b. The Penal Code, 1860
The Penal Code sets out most of the crimes in Bangladesh – including the most common ones such as affray, assault, theft, murder and robbery. It also creates defences to some criminal charges in Chapter IV. For example, Section 94 of the Code says that, other than in cases of murder or those punishable by death, one cannot be found guilty of an offence if someone threatened you with death if you didn't commit it – unless you voluntarily put yourself in a situation where you knew you might be ordered to do so.

Example
Saqeb orders Maqbul to steal something from a shop – he threatens Maqbul that if he doesn't do so, he will kill him. Ordinarily, Maqbul cannot be found guilty of the theft.

But if Saqeb was the head of a gang of dacoits and Maqbul had joined the gang knowing that he might be forced to commit crimes for them, then can be found guilty.

The Penal Code is very old (it was written in 1860) and many other laws since then create crimes. For example, the Narcotics Control Act, 1990 creates many crimes related to drugs that are not mentioned at all in the Penal Code. Of course, role players in the criminal justice system need to know all of the
crimes in Bangladesh as well as the elements of each crime (what has to be proved in each case). But this Handbook is more concerned with the procedure followed during the investigation and prosecution of crimes rather than with the entire scope of criminal law. As a result, we don’t really focus on the Penal Code that much.

c. The Code of Criminal Procedure (CrPC), 1898
The CrPC the basic law of procedure for almost all criminal trials. It sets out the entire procedure – from first report, through the investigation and arrest of suspects, and through all stages of the trial up to conviction, sentence and appeal. Although some laws have introduced special procedures – such as the Village Courts Act or the *Nari-O-Shishu Nirjatan Daman Ain* – the CrPC is still the basic procedure. It is therefore crucial to the criminal justice process and we look at it in some detail in the sections that follow.

d. Evidence Act, 1872
The Evidence Act deals with which evidence can be led to prove that a crime has been committed and the rules related to such evidence. For example:
- It says that only ‘relevant’ evidence is allowed – that is, evidence that is strictly related to the charge the accused is facing.
- It deals with admissions that the accused may have made and how these have to be proved in court.
- It states that a confession to a police officer cannot be used against the accused. And a confession made by a person in police custody cannot be used either unless it was made in the presence of a Magistrate. The reason for this is mainly to prevent the police from torturing, threatening or offering people anything to confess their guilt.
- It deals with documents such as a map or a photograph and sets out the rules for getting these documents accepted by a Court – including that in most cases, the original document is required (unless there are very good reasons why it cannot be produced).
- It sets out the burden of proof in criminal cases.

Who may testify in a criminal trial?
In terms of the Evidence Act, almost everyone is both:
- Competent to testify.
- Compellable – that is, they can be forced to testify.

The exceptions to this rule are:
- Witnesses who are too young or too old to understand the questions or giving rational answers are incompetent witnesses and cannot give evidence.
- People with a physical or mental disability that prevents them from understanding questions or giving rational answers are incompetent witnesses and cannot give evidence. A witness who cannot speak though is entitled to give evidence in any other way that they can make
themselves understood – for example, by writing down what happened and their answers to questions in open court.

- A spouse is competent but not compellable. That means they can give evidence in a criminal trial if they choose to, but they can’t be compelled or forced to testify about any communication between them and their spouse during the course of the marriage.

The law of evidence is relatively complicated and could fill an entire handbook on its own. All of those who need to know the law in detail – police officers, lawyers, prosecutors and Judges and Magistrates – will have received extensive training on the law and rules of evidence and so we do not cover the Act in any great detail. But we do refer to it where necessary in the sections that follow.

**e. Children Act, 2013**
The Children Act of 2013 replaced the 1974 Children Act and deals with how ‘disadvantaged’ children (such as children living on the streets), children in conflict with the law (offenders) and children in contact with the law (child victims and child witnesses) must be treated.

**Who is a child?**
The Children Act defines a child as anyone who was **under the age of 18 years** on the date on which the crime was committed. Importantly, the Act also states that a child under the age of 9 years can **never** be found guilty of an offence and **never** be arrested.

The procedure in the Act for any criminal case involving a child offender, victim or witnesses is therefore critical for all criminal trials involving children and we look at it in some detail later in Part 2 of the Handbook.

**f. Torture and Custodial Death (Prohibition) Act, 2013**
Article 35 of the Constitution (1972) gives everyone the right to be free from torture and cruel, inhuman or degrading treatment or punishment. Bangladesh is also a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that requires every country to pass a law outlawing torture, which Bangladesh did in 2013 with the Torture and Custodial Death (Prohibition) Act.

**Why is torture prohibited?**
The prohibition against torture is absolute – that is, torture can **never** be used, no matter what the circumstances.

The reason torture is not allowed is very simple – a person being tortured will admit to anything to get the torture to stop, even if they are completely innocent. A confession or admission obtained by using torture is therefore no proof of a person’s guilt at all. Instead, it’s use can lead to innocent people being convicted while the person who actually committed the crime remains free to commit further crime.
And because torture is outlawed, its use to extract an admission or confession from someone will be rejected by a Court, even if that person is guilty. Because the police rely heavily on confessions in Bangladesh and often have very little other evidence against someone, if the confession is rejected by a Court it can lead to the collapse of the State’s case so that a guilty person is released to commit more crime.

The Act applies to all law enforcement agencies – including the police, RAB, border guards, the Criminal Investigation Department, and Special Branch – and makes it a crime to torture anyone or to treat or punish them in a cruel or degrading way.

**Definition of ‘torture’ in the Act**

The Act defines ‘torture’ as any act (or failure to act) that causes physical or mental pain to **anyone** and that has been used to:

- Obtain information or a confession from that person or some other person.
- Punish someone for doing something that they are suspected of having done.
- Intimidate or coerce anyone to do something – not necessarily the person being intimidated or coerced. For example, if a police officer threatens an accused person’s wife to try to get the accused to confess, then they are guilty of torture.

The Act doesn't specifically talk about cruel and inhuman treatment or punishment as a separate offence – instead, these are included in the broad definition of torture in the Act.

In addition to punishments for anyone found guilty of violating the Act, the Act also allows a Court to order the guilty party to pay compensation to victims of torture or to the families of those who die in custody:

- Anyone found guilty of torture can be sentenced to at least 5 years rigorous imprisonment (with hard labour), a Tk. 25,000 fine, or both a fine and imprisonment. They can also be ordered to pay compensation to victims of up to Tk 25,000.
- Anyone who attempts to commit such torture or who assists in any way can also be sentenced to up to two years imprisonment with hard labour, a fine of Tk 20,000 or both.
- And if the person dies as a result of the torture, or if they die during an illegal detention or during an arrest, the sentence can be anything up to life imprisonment with hard labour or a Tk 100,000 fine both. The person who caused the death can also be ordered to pay compensation to the victim’s family in the amount of Tk 200,000.

What happens when a person alleges they have been tortured or where a police officer or Court notices injuries that might have been caused by torture? We look at this in Part 2 of the Handbook.
g. Police Act, 1861, Police Regulations (1943) and Prisons Act, 1894

The Police Act deals mainly with the set up of the police and various administrative issues and, while it is very important for all police officers to know about, is not dealt with in the Handbook. The Police Regulations though do contain some important rules for the police and are referred to where appropriate.

The Prisons Act covers administrative issues related to prisons and the roles and functions of various levels, from the Inspector General to the Jailers. However, it also deals with the treatment of prisoners and creates important rights for them and so we do consider what it says when talking about anyone in detention – including awaiting trial and sentenced prisoners, juveniles and women.

h. Decisions of the Supreme Court (Appellate and High Court Divisions)

Decisions of the Supreme Court are binding on all of the Courts below them, as well as on the police, prisons, and everyone in the country. Although we cannot cover all of the Supreme Court decisions in a Handbook like this, some recent decisions of the High Court Division have provided specific guidelines for the police on arrest and detention in particular that we look at where appropriate.

i. Police ‘Guidelines’ on Arrest and Detention

The Bangladesh Police have recently prepared a document entitled ‘Existing Laws, Rules and Procedures on Arrest and Detention’ (18 December 2014). These are based on the rules in the International Covenant on Civil and Political Rights, the Constitution, the CrPC, the Torture Act, the Children Act, the Police Regulations, 1943 and on decisions of the Supreme Court.

The document has not been formally adopted yet but when it is, it will provide official guidelines for the police. In fact, since they are based on the existing law, the police are really expected to follow most of what the guidelines say already and they really just put all of the law and rules in place to make it easier for people to follow. We will therefore refer to them wherever appropriate in this Handbook.

Overview of the ‘Guidelines’

Part 1 – Arrest
- The national law related to arrest
- Responsibilities at the time of making the arrest
- The introduction of the use of electronic recording devices
- Searches undertaken during arrest operations
- Rules for dealing with military suspects/offenders
- The role of police supervisors and managers in the arrest process
5. Human rights and criminal justice

Human rights are the rights and freedoms that everyone has from the moment they are born. They don’t have to be earned and everyone has them equally – regardless of their age, sex, gender, religion, wealth, social standing or even where they live in the world.

Human rights are linked to basic human needs and the law has protected most of them for thousands of years. For example:

- The right to life is protected by the crime of murder.
- The right not to be deprived of property is protected by crimes like theft, robbery and fraud.

Human rights are protected by international and regional instruments and in most countries’ Bills of Rights.

a. International and regional instruments

International instruments

Although some countries have included human rights in their Constitutions for hundreds of years, human rights became increasingly important and recognised after World War II and with the establishment of the United Nations (UN).

The UN has been committed to human rights from the outset and issued its first international instrument - the Universal Declaration of Human Rights - in 1948. An international instrument is simply an agreement between countries represented at the UN. There are many of these and not all deal with human rights – although we are only interested in those that do.

There are two broad types of international and regional instruments:

- Those like Covenants and Conventions that are legally binding on countries that sign and ratify or accede to them.
- Those like Declarations and Standard Minimum Rules that are guidelines and not legally binding. Countries are not asked to sign and ratify these or to accede to them – but as members of the UN, they have to try to comply with what they say.

How a UN Covenant or Convention becomes legally binding

Signature

When a country signs an international instrument, it agrees that it will not pass any new laws or do anything that goes against the instrument. It also agrees to begin the process of bringing its existing laws into line with the instrument.
Ratification
When a country ratifies an international instrument, it means it totally accepts the instrument and that it will from then on be regarded as part of its own law.

Accession
International and regional instruments need to get a certain number of signatures before they are regarded as being in force. Where a Convention is already in force and a country wants to accept its rules, a process known as accession is usually used. Accession has the same legal effect as ratification.

For many countries, including Bangladesh, a law must be passed by government though before an international instrument becomes part of Bangladesh law - as has recently been done with the Torture and Custodial Death (Prohibition) Act, 2013 which makes the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment part of the law of Bangladesh.

The most important international instruments when it comes to criminal justice are:

<table>
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<tr>
<th>Legally binding</th>
<th>Guidelines</th>
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<tbody>
<tr>
<td>International Covenant on Civil and Political Rights (1966). This is one of the most important international instruments and contains many provisions related to criminal justice including:</td>
<td>Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’). These rules are useful but all of the most important guidelines in them are now part of the Children Act (2013).</td>
</tr>
<tr>
<td>• Equity before the law without discrimination. • Equal protection of the law; • The right to a fair and public hearing by an independent and impartial tribunal. • The presumption of innocence (see text box below). • The right to a defence. Bangladesh acceded to the Covenant in 2000, although it did not agree to follow all of the rules related to courts and relevant rights. For example:</td>
<td>Standard Minimum Rules for the Treatment of Prisoners. These set out various rules related to how people in detention in police stations or prisons are to be treated, including sentence prisoners, awaiting trial prisoners, child prisoners, women prisoners. These rules are often criticised on the basis that they are almost impossible for poorer countries to comply with, but we mention them as guidelines when appropriate in the Handbook.</td>
</tr>
<tr>
<td>• Bangladesh did not accept the part of Article 10 that requires prisons to focus on rehabilitation of prisoners on the basis that Bangladesh does not have the facilities for this cannot afford it. • Bangladesh did not agree to Article 14 (3) (d) which requires that the entire trial takes place in the presence of the accused. The CrPC allows a Court to try a ‘fugitive offender’ in their absence or continue with a trial when the accused fails to attend without a good reason. More recently, the Children Act of 2013 allows a Children’s Court to remove the</td>
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accused if a child victim is too scared to testify in their presence (although the accused's lawyer can remain in Court).

Most of these rights are protected in the Constitution and other laws (such as the CrPC that requires people be given a fair and open trial, amongst other things).

Signed and ratified by Bangladesh in 1990. The provisions related to children in conflict with the law have been made part of Bangladesh law by the Children Act (2013).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). This Convention outlaws torture and requires governments to take measures to prevent and punish torture, including by passing laws.
The Convention was acceded to by Bangladesh in 1998 and Bangladesh passed the law required by it in 2013 – the Torture and Custodial Death (Prohibition) Act.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
This sets out guidelines for how victims should be treated – including that they should not be discriminated against, they should be provided with medical assistance and other care, they must be kept informed at all stages of the investigation and trial, and they must be protected as far as possible. It also states that compensation should be provided whenever possible – either by the perpetrator or the state (when they have suffered serious injury).

Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
These deal with the need for legal aid to be provided by the state but also stress that various forms should be provided and encouraged, such as that provided by legal aid NGOs. It says that legal aid should be made available to anyone suspected or charged with a criminal offence, and to victims and witnesses when appropriate.

The presumption of innocence
The presumption of innocence is a principle in law that everyone must be presumed to be innocent and treated as such. In Bangladesh, this principle is included in the law by Section 101 of the Evidence Act, which states that anyone who wants a Court to pass judgment on any facts must prove those facts. In other words, when the state charges a person with committing a crime, they must prove that the person committed the crime. Until they have done so, the person must be regarded as innocent.

The presumption of innocence can also be seen in other parts of the law and procedure in Bangladesh - for example, people are generally entitled to bail until they are convicted and sentenced. And Bangladesh is a party to the International...
Covenant on Civil and Political Rights, which includes the right to be presumed innocent until proven guilty in Article 14 (2).

Regional instruments
Bangladesh is a member of the South Asian Association for Regional Cooperation (SAARC). The SAARC came into existence on 8 December 1985, when the SAARC charter was signed by the governments of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The Charter requires member countries to work together, in a spirit of friendship, trust and understanding, to improve people's quality of life; to accelerate economic growth, social programs, and cultural development; to strengthen self-reliance among South Asian states; and to promote collaboration in economic, social, technical, and scientific fields. But while the Charter states that all member countries reaffirm their faith in human rights, it doesn't list or protect any human rights.

The SAARC has also passed a number of conventions, but these are focused mainly on dealing with cross-border crimes such as trafficking and drugs. Examples include the following but once more, these do not set out or protect any specific human rights:
- SAARC Convention on Combating and Prevention of Trafficking in Women and Children for Prostitution.
- Convention on Mutual Assistance on Criminal Matters.
- SAARC Convention on Narcotics Drugs.
- SAARC Regional Convention on Suppression of Terrorism.

Although international and regional instruments are important, most of what they have to say is already included in the Constitution or in other Bangladesh laws, such as the Children Act (2013) and the Torture and Custodial Death (Prohibition) Act (2013). As a result, we don't spend a lot of time on these in the Handbook unless they suggest something not already protected by the Constitution and other laws.

b. The Bill of Rights in the Constitution
A Bill of Rights is simply a list of human rights that are protected in any given country. The Bangladesh Bill of Rights is found in Part III of the Constitution – Protection of Fundamental Rights and Freedom of the Individual. Because they are part of the Constitution, the rights in the Bill of Rights are part of the supreme law of Bangladesh and must be respected and protected by everyone – including the police, Courts and prisons.

The rights of suspects and accused
Suspects and accused people have all of the rights listed in the Bill of Rights – even when they in detention. In other words, they are entitled to the freedom of thought and conscience and of speech (Article 39) and freedom of religion (Article 41). But while our human rights can never be taken away from us, most can be limited when there are good reasons for doing so. There are clearly very good reasons for keeping people in jail when they've committed a crime and so some of a person’s rights are limited in such cases. For
example, once in custody or as a sentenced prisoner, one clearly no longer has the right to freedom of movement in Article 36. Other rights, such as the prohibition of forced labour, are expressly excluded for prisoners – Article 34 (2) states that the right to be free from forced labour does not apply to compulsory labour for sentenced prisoners.

The rights of victims
When it comes to victims and witnesses, the Bill of Rights doesn't list any specific rights for them. Nonetheless, it does protect some rights that are particularly important – such as the right not to be discriminated against and the right to equal protection of the law. We look at how these rights can be protected at various stages in the criminal justice process in Part 2.

The most important rights in the Bill of Rights when it comes to criminal justice are:

<table>
<thead>
<tr>
<th>Art.</th>
<th>Right</th>
<th>Who is it important for and why?</th>
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<tbody>
<tr>
<td>27</td>
<td>Equality before law</td>
<td>This right guarantees that everyone is equal when it comes to the law and no one is above the law. It's especially important for victims of crimes committed by powerful people, and for victims, witnesses, suspects and accused people generally since it requires that they be treated equally regardless of their personal circumstances.</td>
</tr>
<tr>
<td>28</td>
<td>Discrimination on grounds of religion etc.</td>
<td>The State may not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. This right is particularly important for women victims of crime, people with disabilities and those from minority religious or ethnic groups. Such people often find it difficult to lodge criminal cases, mainly because the police do not take them seriously. Women face particular difficulties reporting sexual violence, especially when most of the police officers in the country are men. People with disabilities also face difficulties reporting crime and testifying, particularly those who cannot speak, hear or see. This right requires the police, prosecutors, Judges and Magistrates and prisons officials to treat everyone with respect and not to discriminate against victims, witnesses and suspects and accused in any way.</td>
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<tr>
<td>31</td>
<td>Right to protection of law</td>
<td>Everyone in Bangladesh (not just citizens) is entitled to the protection of the law and must be treated in accordance with the law. In particular, no action should be taken against them that might be harmful to their life, liberty (freedom), body, reputation or property except in accordance with law. This right therefore protects people from arbitrary killing or arrest by the police and requires the police, Courts, prisons and so on to follow the law at all times.</td>
</tr>
<tr>
<td>32</td>
<td>Protection of right to life and personal liberty</td>
<td>This right is similar to that in Article 31 but says specifically that no one may be deprived of their life or freedom except if it is allowed by the law. Although Bangladesh still allows the death penalty for certain crimes, it is only when someone is found guilty of one of these offences that their life can be taken away from them. And of course, no one may be locked up or detained unless the law allows it or a Court has ordered it in terms of an existing law.</td>
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</table>
| 33   | Safeguards as to arrest and detention       | This right is actually a list of various rights that apply specifically to arrest and detention:  
• No one who has been arrested may be detained unless they have been told, as soon as possible, why they have been |
arrested unless they are an enemy alien or they have been arrested under a law that allows for preventative detention (such as the Special Powers Act).

- Everyone under arrest is entitled to consult and be defended by a lawyer of their choice (if they can afford one of course), unless they are an enemy alien or they have been arrested under a law that allows for preventative detention.
- Anyone who is arrested and detained must be brought before a Magistrate within 24 hours of arrest, excluding the time required for the journey from the place of arrest to the Magistrates Court (unless they are an enemy alien or they have been arrested under a law that allows for preventative detention).
- No one may be detained for more than 24 hours without a Magistrate authorising such detention unless they are an enemy alien or they have been arrested under a law that allows for preventative detention.
- A law that allows for preventive detention (such as the Special Powers Act) may not allow a person to be detained for more than six months unless an Advisory Board has decided that there are grounds for doing so after the person has been given a hearing.
- When anyone is detained by order under a law allowing preventive detention, the authority making the order must tell the person the grounds for the order as soon as possible. They must also give them an opportunity to challenge such an order.

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<thead>
<tr>
<th>34</th>
<th>Prohibition of forced labour</th>
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<tbody>
<tr>
<td>This right protects people from forced labour and requires Bangladesh to make forced labour a criminal offence (Article 374 of the Penal Code creates the criminal offence of unlawful compulsory labour). However, this right does <strong>not</strong> apply to compulsory labour for anyone who is undergoing lawful punishment for a criminal offence. So provisions in the Penal Code allowing for 'rigorous imprisonment'- imprisonment with hard labour - do not violate this right.</td>
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<table>
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<tr>
<th>35</th>
<th>Protection in respect of trial and punishment</th>
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<tr>
<td>This is also a list of various rights that relate to trial and punishment and are thus critical for anyone accused of a crime:</td>
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<tr>
<td>- No one can be convicted of a crime if what they did was not a crime when they did it. (For example, if a law was passed on 1 January 2016 to make chewing gum an offence, no one who had chewed gum before that date could be prosecuted under the law).</td>
<td></td>
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<tr>
<td>- No one can be given a penalty that is more severe than the penalty in the law at the time they committed the crime.</td>
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<tr>
<td>- No one can be prosecuted or punished more than once for the same offence.</td>
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<tr>
<td>- Everyone accused of a crime has the right to a speedy and public trial by an independent and impartial court or tribunal established by law.</td>
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<tr>
<td>- An accused cannot be compelled to testify – they have the right to remain silent.</td>
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<tr>
<td>- No one may be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.</td>
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This Article is a bit controversial since it also says that the right to a speedy trial and the right to be free from torture and cruel treatment does **not** apply to any laws that existed before the Constitution (1972). In practice though, the law on torture and
c. Protection in other laws

Some of the rights of suspects, arrested and accused people are also protected by other laws – including the CrPC. For example:

- Section 61 of the CrPC states that the police must produce an arrested person before a Magistrate within 24 hours.
- Section 340 of the CrPC give anyone accused of an offence the right to be defended by a lawyer.
- The Sections dealing with search and seizure, although empowering the police to search a person or building and to seize certain property, also limit their powers to protect the rights of suspects and everyone else. So the police cannot just seize any property that they choose – they can only seize illegal goods and anything involved with or proving an offence has been committed.

Victims’ rights are also protected to some degree by laws such as the Torture and Custodial Death (Prohibition) Act, 2013 and the Probation of Offenders Ordinance of 1960 that allow Courts to order a convicted person to pay compensation to the victims of crime. And the civil law also protects their rights to claim damages from anyone who has caused them loss, injury or other harm as a result of their criminal actions.

d. Why is it important to respect the rights of victims, suspects and the accused?

Failing to respect the rights of victims, suspects and accused people can have serious consequences for the successful prosecution of the case, for the safety and security of the public, and for the person who violates their rights. For example:

- Victims (and witnesses) whose rights are respected will be more likely to testify when required. On the other hand, where they are treated badly, not kept informed of what is going on or not protected from the accused and their families, they are less likely to assist the police in the investigation or to testify. This can lead to guilty people going free and endanger the safety and security of the public.
- Violations of the rights of suspects (for example, through torturing them to extract a confession) can result in innocent people being convicted (leaving the real guilty person free to commit more crime) and guilty people being acquitted, freeing them to go back into the community to commit more crime. And now that the Torture and Custodial Death
(Prohibition) Act has been passed, it can also lead to imprisonment, fines and/or compensation orders against whoever commits the torture.

- Section 220 of the Penal Code makes it an offence for a police officer (or anyone else who has the power to arrest and detain anyone) to arrest or detain anyone corruptly, maliciously or knowing that the arrest of detention is against the law. Anyone convicted of such an offence can be sentenced to up to 7 years imprisonment, a fine or both.

In fact, the Supreme Court has called for police officers to be charged for committing the offence in Section 220 of the Penal Code when they have no reasonable suspicion or proper grounds for arresting or detaining someone in at least two cases:

**Case icon:**


The Court held that a police officer arresting a person other than on reasonable grounds or a well-founded belief renders themselves liable for prosecution under section 220 of the Penal Code.

**BLAST (Bangladesh legal Aid and Services Trust) vs. Bangladesh 55 DLR (HCD) (2003) 363**

If a Magistrate releases a person on the grounds that the accusation or information against them is not well-founded and there are no materials in the case diary against that person, the Magistrate must take cognizance that the police officer has committed the offence of arresting or detaining someone without good reasons – which is an offence in terms of Section 220 of the Penal Code).

### 6. A note on restorative justice

One of the basic ideas underlying criminal law is that crimes cause an injury to ‘the state’ or ‘the people’. Criminals are expected to repay the state for the harm they have caused by paying a fine or by imprisonment. This approach is known as **retributive justice** – the state gets retribution from the offender and the rights of the victim are not important. Instead, victims who want to recover their losses are expected to sue the offender in civil court. Where an offender has paid a heavy fine or is serving time in jail, a victim’s chances of getting any compensation from the offender are greatly reduced.

Recently, many countries have begun to move away from the retributive justice approach and to introduce elements of **restorative justice**, especially for less serious offences. Restorative justice tries to find ways to heal the relationships between offenders and victims, and to ‘restore’ the victim to the situation that they were in before the offence by providing them with compensation or restitution, to divert minor offences out of the system, and to heal the relationship between the offender, the victim and the community. Although it differs from one country to the next, the most common approaches in restorative justice are:

- Diverting cases out of the formal system by sending them for mediation between the victim and the offender.
• Ordering those convicted of minor offences to pay compensation to the victim rather than sentencing them to a fine or imprisonment.
• Sentencing people to a period of community service, where they work at a hospital, school or similar, rather than to fines and imprisonment.

The advantages of these approaches for the entire criminal justice system are fairly obvious - restorative justice approaches:
• Divert cases out of the formal criminal justice system and reduce the burden on criminal courts.
• Ensure victims are compensated for their injuries and loss rather than requiring them to claim these in a separate civil trial.
• Help to reduce the burden on prisons by providing speedy resolution of cases (thereby reducing the number of awaiting trial prisoners) and by using alternatives to imprisonment.
• Reduce the burden on the police who need to spend less time tracing witnesses, getting them to court, and testifying during the trial.

Many of these approaches are already familiar to Bangladeshis from the way traditional Shalish, NGOs and other role players in the informal justice system deal with minor crimes. And as we will see in Part 2, the Children Act also includes diversion and other restorative justice approaches. The CrPC and related laws also include a number of options that Courts can use to ensure a more restorative approach to justice:
• Compounding. In terms of Section 345 of the CrPC, a number of offences may be ‘compounded’ – that is, they can be settled between the parties without the Court having to decide them with one party agreeing to pay the other compensation for the harm they have caused. The CrPC distinguishes between those offences that can be compounded without the permission of a Court, and those that require the Courts permission. Cases can be compounded at any stage of the process, as we will see in Part 2.
• Diversion to Village Courts, NGO-led Shalish and mediation committees.
• Compensation and restitution. Although not mentioned in the CrPC, the Children Act and Torture and Custodial Death (Prohibition) Act, 2013 and the Probation of Offenders Ordinance of 1960 all allow Courts to order compensation in certain cases. We look at this in more detail in Part 2.

**Best practice! Restorative justice**

The entire criminal justice system would benefit from increased and formalised restorative justice approaches. Some development partners such as GiZ are supporting mediation committees to deal with minor cases while others such as the EU and UNDP are supporting government to roll out Village Courts across Bangladesh. But concerted efforts will need to be made by many role players to bring about the changes to the law and policy that an increased focus on restorative justice will require. Some ideas for improving the situation include:

<table>
<thead>
<tr>
<th>Low / no cost immediate</th>
<th>Longer term</th>
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*Criminal Justice in Bangladesh - A best practise Handbook for members of the criminal justice system (Final Draft - November 2015)*
• Courts need to remember to refer appropriate matters to Village Courts where these exist and to award compensation where the law allows for it.
• Agreement needs to be reached among key role players into the type of cases that should be diverted out of the system. Based on this, clear guidelines need to be developed for police, prosecutors and magistrates within the existing law.
• To relieve congestion in prisons, courts need to be encouraged to make use of alternative sentences to imprisonment in minor cases.
• Either the CrPC or the Village Courts Act or both should be revised to allow the police to refer appropriate cases to a Village Court before they enter the formal system.
• Although minor offences should be compounded whenever possible the list of compoundable offences in S 345 of the CrPC is outdated and contains some offences that are perhaps regarded as more serious now than they used to be in the past – such as offences against women. The list of offences in the Code should also be revised to only allow for minor offences to be compounded.
• A system should be considered to allow for NGOs to be accredited to help parties to settle minor criminal cases through mediation and compensation. The CrPC should then be amended to allow for Courts to refer certain matters to NGOs to deal with, as long as both parties agree.
Part 2 – The criminal justice process

1. The basic procedure in all criminal cases
The Code of Criminal Procedure (CrPC) sets out the basic procedure for all criminal trials. It is relatively complicated compared to the procedure in other countries – which is why the process often takes so long – but it can be simply stated as follows:

- Crimes can be reported to the police or to a Court:
  - If reported to the police, the police may investigate and arrest the person if it is a non-cognisable offence. If it is a cognisable offence, the police will refer the case to a Court which will ‘take cognisance’ of the offence and direct the police as to what to do next.
  - If it is reported to a Court, the Court will once again take cognisance and refer the case to the police to investigate or take any other steps.

- Once the police have identified a suspect or suspects, they will arrest them or a Court will summons them to appear in Court in minor cases. In non-cognisable cases, the police may arrest an accused without a warrant of arrest. If it is a cognisable offence, they will need to ask a Court to issue a warrant of arrest before arresting the accused.

- In minor cases, the police may release a suspect and warn them to be at court on a future date, or they may grant them ‘police bail’ after they have been arrested. Bail is simply an amount of money that someone undertakes to pay if the accused does not attend all future Court dates. If the bond is furnished, the accused will be released.

- On their first appearance in Court, the accused may be asked to plead to the charge (to say whether they are guilty or not guilty). In practice though, the case will most likely be adjourned to allow the police more time to investigate. In such cases, the accused may be released with or without having to furnish a bail bond as directed by the Court.

- Once the police have completed their investigation, they will submit a report to the Magistrate.

- If the Magistrate does not accept the police report, they can refer it back to the police or release the accused.

- If there is a case to answer, the matter will go to trial. If the Magistrate has sufficient power to hear the case, the trial will take place in their Court (now known as the ‘trial Court’). If not, the case will be transferred to an appropriate Court for trial.

- The trial starts once the accused has pleaded – either guilty or not guilty. Because the Evidence Act states that whoever alleges something must prove it, the prosecutor (often called ‘the state’) is required to start the case by trying to prove that the accused is guilty of the crime. To this end, the prosecutor will call witnesses and enter any other evidence into Court (such as a knife that was used in an assault). This is known as the ‘prosecution case’.

- Once a state witness has testified (given their evidence), the accused or their lawyer will be given an opportunity to cross-examine them to try to
prove whether or not they are telling the truth. The trial Court (the Judge or Magistrate) may also question the witness in some circumstances.

- Once the prosecutor has called all of the witnesses and introduced all of the evidence they have, they will close the prosecution case.
- In some cases, where there is no evidence against them or where the cross-examination of the witnesses shows they are lying or are unreliable, the accused may be acquitted at this stage (found not guilty). The accused may also decide to try to prove their case. They will do so by calling witnesses and entering any other evidence they have – the ‘defence case’. Although they do not have to, they may also decide to testify themselves.
- Once the accused or their witnesses have testified, the prosecutor will be given an opportunity to cross-examine them. The Court may also ask questions.
- Once the defence (the accused or their lawyer) has closed their case, both sides will be given an opportunity to argue why the accused should be found guilty or not guilty.
- The Court must then decide. If it is sure that the state has proved its case, the Court will convict the accused (find them guilty). If not, they will find the accused not guilty and acquit them. In such a case, the accused is free to go. If they are in custody, they must immediately be released. If they are on bail and have paid any bail money, the money must be returned to them.
- If the accused is found guilty, the trial moves to its final phase – sentence. Taking into account the maximum sentences in the Penal Code or any other law says with regard to the particular crime, the Court will impose an appropriate sentence.
- Anyone found guilty may appeal the conviction or sentence (or both) to a higher Court – right up to the Supreme Court. An aggrieved party (such as a victim who believes the accused was unlawfully acquitted) may also appeal where they believe an acquittal was wrong or the sentence was too lenient.

FLOWCHART

The Special Powers Act, 1974

The Special Powers Act, 1974 allows the Government to detain people who they believe might be involved in terrorist or other activities to prevent them from committing crimes in future. In other words, they can be arrested and detained before they have committed an offence – which is known as ‘preventive detention’. The Code of Criminal Procedure does not apply to these people and nor do they have the protection of the rights in the Constitution.

There are safeguards in the Act and the Constitution to make sure that people detained under it are not being abused. For example, the Constitution states that any law that allows for preventive detention may not allow for a person to be detained for more than six months unless an Advisory Board has decided that there are grounds for doing so after the person has been given a hearing.
2. The procedure in cases involving children – the Children Act, 2013

As we saw earlier, the Children Act, 2013 deals with the procedure to be followed in all cases involving children – both where a child is the accused (children in conflict with the law) and where the child is a victim or witness (children in contact with the law).

The Act creates key positions (probation officers and Child Affairs Police Officers) and requires structures be set up (Child Affairs Desks at police stations and Children’s Courts) to ensure that children are protected. It is therefore crucial that all members of the criminal justice system are aware of what it says and how to comply with it.

a. Probation Officers

In terms of the Children Act, government must appoint one or more Probation Officers (PO) in every district, Upazila and metropolitan area. The PO’s responsibilities are as follows:

- When any child in conflict or contact with the law is brought to a police station, the PO must find out why the child was brought there, meet the child and provide any assistance required. In particular, they must talk to and coordinate with the police, trace the parents and assist the police in communicating with them, assess the possibility of bail with the Child Affairs Police Officer, and undertake a diversion process if appropriate. Where diversion is not possible or the child is not released on bail, the PO must arrange for them to be placed in a safe home. (At the moment, the Act only contains a few diversion options that we look at below. However, Rules to the Act are expected to set out various other options available to police and Courts).

- The PO must assist child in conflict and in contact with the law to apply for a lawyer from the District Legal Aid Committee or an NGO.

- At the Children’s Court, the PO must remain present throughout the trial to assist the child, hold a field inquiry and prepare a report on the conditions of the child and submit the report to the Court.

- When a child in conflict with the law is sent to a Child Development Centre or certified institute (while awaiting trial or after they have been found liable for the offence), the PO must monitor the child and make sure that it is receiving formal and vocational education. They must also submit regular reports to the Court and provide counselling and advice to the child.

- Some cases may be sent to the PO to take care of the diversion option (such as a family group conference). In such cases, the PO is responsible for making sure that the child complies with the diversion measures and must inform the Child Affairs Police Officer and Court accordingly.
b. Child Affairs Desks and the Child Affairs Police Officer (CAPO)

The Ministry of Home Affairs is required to set up a Child Affairs Desk at every police station, headed by a Child Affairs Police Officer (CAPO). The CAPO must at least have the rank of Sub-Inspector and if there is a female Sub-Inspector at a police station, she should be the CAPO for that station.

<table>
<thead>
<tr>
<th>Responsibilities of CAPO</th>
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<tbody>
<tr>
<td>All children brought to the station (children in contact with the law, victims and witnesses)</td>
</tr>
<tr>
<td>Assisting to determine that the child is indeed a child (by checking birth certificates, school certificates etc.).</td>
</tr>
<tr>
<td>Informing the Probation Officer whenever a child is brought to a police station.</td>
</tr>
<tr>
<td>Providing immediate mental support for the child.</td>
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<tr>
<td>Arranging medical care for the child, including transporting them to a hospital or clinic when required.</td>
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<tr>
<td>Taking measures to meet the basic needs of the child (such as food, clothing and bedding).</td>
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</table>

c. Children’s Courts

The Act requires government to establish a Court of an Additional Sessions Judge as a Children’s Court in each district and metropolitan area. If there is no Additional Sessions Judge in a district, then the District and Sessions Judge must perform the responsibilities of the Children’s Court. The Children’s Court has the powers of a Court of Sessions and is expected to deal with all criminal cases involving children in conflict or in contact with the law.

In other words, cases involving children who have committed a crime and any cases where the victim or witness is a child must be heard in the Children’s Court. This is a little confusing since it would seem to mean that a case where
any of the witnesses is a child would have to start and finish in the Children’s Court. This might put a lot of pressure on the Children’s Courts and it remains to be seen how the Courts will deal with this in practice.

Note

Although the Children Act, 2013 says only a Children’s Court can hear cases involving a child accused of a crime, the Women and Children Repression Prevention (Nari O Shishu) Act, 2000 Act and the Acid Violation Prevention Act, 2002 say that cases where a person charged under these Acts is a child, the case must be heard in the tribunals established by the Acts. There is some legal uncertainty as to which Courts should hear these cases that will hopefully be addressed soon.

To try to make the Court more accessible and less intimidating for children, a Children’s Court must be held in a building or room separate from one where trials of adults take place. The room where these are held should be an ordinary room and there should not be a witness box or a podium surrounded by red cloth. And while the Court is in session, lawyers, police officers or any other official present shall not wear any professional or official uniform. (The seating plan for chairs, tables and so on will be spelled out in the Rules).

Only the following may be present in a Children’s Court at any stage of the proceedings, from first appearance onwards:

- The child.
- Their parents or, in their absence, foster carer, legal guardian, or member of their extended family.
- Officers and employees of the Court.
- Parties to the case or proceeding.
- The CAPO.
- The child’s lawyer and any other lawyers connected with the case.
- The Probation Officer.
- Anyone else directly concerned with the case or specially authorised by the court to appear or remain present.

Even then, the Court can order that any of the above be excluded from the Court if it is in the best interests of the child. And where a child is called as a witness in any offence against decency or morality, the court can order that everyone must leave other than the child, their lawyer, the Probation Officer and Court officers and employees.

d. Diversion

Importantly, the Act introduces the idea of diversion into the law. ‘Diversion’ is where a child who admits that they have committed a relatively minor offence is diverted out of the formal criminal justice system before the trial starts, at any stage during it, and as a ‘sentence’ at the end of the trial.

Much of the detail about what type of diversion options will be used in Bangladesh has been left to the Rules to the Act that have still to be finalised.
Some common types of diversion in other countries or already mentioned in the Act are:

- **Apologies.** In very minor cases, especially with younger children, it will be enough for the child to apologise to the ‘victim’ for what they have done and to promise never to do it again. A police officer could help to facilitate this rather than registering a formal case (provided the rules allowed).

- **Warnings.** In some cases, a warning from a police officer is enough to prevent a child from re-offending. Although most of the diversion options need to be spelled out in the Rules, this is already included in the Children Act, 2013. According to the Act, the CAPO may release the child (in appropriate cases) after giving the child a written or verbal warning in the presence of their parent(s), foster carer, legal guardian or member of the child’s extended family.

- **Family Conferences.** Although some of the detail may still be in the Rules, the Act already allows the Children’s Court to refer appropriate cases to a family conference. This is a meeting between the offender and their family and the victim and their family to try to resolve the conflict together with the Probation Officer (who is expected to mediate). The rules of the conference are generally agreed by those taking part but the CAPO may specify certain steps to be followed. The aim of the conference is to reach agreement on how the child can compensate for the loss or damage that they have caused. Once again depending on the Rules, this could be working in the victim’s field or shop (depending on the age of the child), repairing the damage they have caused, or performing a service for the community such as sweeping the mosque every Friday for one month.

- **Community service as a ‘punishment’ after conviction rather than imprisonment or a fine.**

According to the Children Act, where diversion is ordered and the parents, foster carer, guardian or member of the extended family does not comply with the conditions, the Children’s Court may:

- Issue a warrant of arrest for the child.
- Send a written notice requiring the child to attend the Court or the police station.
- Refer the case to the Public Prosecutor to initiate a trial.
- Send the child to a certified institute.

### e. Protecting the rights of the child during criminal cases

Of course, diversion is only appropriate in minor criminal cases. Children commit a whole range of crimes, some of which can be very serious. In such cases – or where the diversion option doesn’t work – the case will need to be investigated by the police and to go to trial. The Children Act therefore creates various structures and sets out detailed rules for the investigation and trial of cases involving children in contact or in conflict with the law. These are specifically designed to protect the rights of any child involved in a criminal case at all stages of the process:

<table>
<thead>
<tr>
<th>Rights</th>
<th>How protected in the Children Act</th>
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<tbody>
<tr>
<td>Best interests of the child</td>
<td>- Whatever is done regarding children in conflict with the law and child victims and witnesses must be done in the best interests of the child.</td>
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</tbody>
</table>
To protect their best interests, children in conflict with the law, child victims and child witnesses are entitled to legal representation at every stage of the hearing. If they or their family cannot afford a lawyer, the Children’s Court must immediately appoint one from amongst the panel of advocates of the District Legal Aid Committee (DLAC) or of the Supreme Court. Where a Court believes that the lawyer is not handling the case properly or is repeatedly absent, the Court may report them to the Chair of the DLAC and to the Bar Council for steps to be taken against them.

The trial must be concluded within 360 days of the first appearance (although an extension of 60 days can be granted).

### Taking care of child victims and witnesses when a crime is reported

- Anyone who suspects that a child is a victim of a crime must report this to the CAPO, PO or Social Worker who must then make arrangements for the child’s safety.
- The CAPO must interview a child victim or witness in a child-friendly environment and in the presence of their parents, foster carer or legal guardian or member of their extended family, and the Probation Officer (but only if the child feels comfortable and is willing to be interviewed in front of them).
- In the case of a girl child, the interview must be conducted by a female police officer.

### On arrest of a child

- A child under the age of 9 years may never be arrested under any circumstances. Children under 9 are regarded by the law as incapable of committing a criminal offence and so can never be arrested or detained for an offence.
- When arresting a child, the child may not be handcuffed or tied with a rope around their waist.
- If the arresting officer believes a person they are arresting may be a child, they must try to establish the child’s age (by checking birth or school certificates or the like). If it appears that it is a child, they must immediately inform the CAPO of the reason for the arrest, the place of arrest and details of the allegations against him. They
- The CAPO must, as soon as possible, inform the child’s parents (or their foster carer, legal guardian or member of the child’s extended family) as well as the Probation Officer. If they don’t they must file an explanatory report in Court on the first day the child is produced there to explain what they have done and why they have not informed the necessary people.
- The CAPO may only question a child in conflict with the law and record their statement in the presence of the child’s parent(s), foster carer, legal guardian or member of the child’s extended family and the Probation Officer or Social Worker.
### While in detention (before being brought to court)
- A child under the age of 9 years may never be detained under any circumstances.
- When there is no safe place for the child to be detained at a police station before being brought to court, they must be detained in a safe home – where they must be kept separately from adults and any children who have been convicted of a crime.

### On first appearance – bail and legal representation
- No trial against involving a child in contact with the law, child victim or witness can proceed without that child being legally represented at every stage of the hearing. If a child accused or their family cannot afford a lawyer, the Court must appoint a lawyer at the very first opportunity.
- If an arrested child has not already been given bail by the CAPO, then the Children’s Court must consider bail. In keeping with Section 497 of the CrPC (which allows a Court to grant bail to a child even in non-bailable offences) the Children Act also allows the Court to grant bail in non-bailable offences.

### In detention
- If the Children’s Court refuses a child bail, they must only be detained at a certified institute or Child Development Centre.

### During trial
- In all cases
  - The Act allows for the Court to clear everyone out of the Court when a child is testifying other than those people who are essential to the running of the Court, the child’s parents (or foster carer etc.) and the child’s lawyer.
  - If anyone gives false information about a child during the court proceedings, they can be ordered to compensate the child with at least Tk 25,000 – if they fail to do so, they can be sentenced to up to 6 months imprisonment.

### Children in conflict with the law
- Children may not be tried together with adults. Instead, separate trials must take place. (According to Section 17 (2) of the Act, both trials take place in the Children’s Court on the
same day – one after the other. The idea here is at least partly to ensure that witnesses are not inconvenienced, but it will take some skill to manage the trials this way).

- The Children’s Court may order diversion before the trial or at any stage during the trial.
- The Children’s Court must be held in a room that does not resemble a formal Court so that children are not intimidated.
- The Children’s Court can order that no photographs or descriptions of the child are disclosed or published. It is a crime to disobey such an order under the Act, with a maximum sentence of up to one year’s imprisonment, Tk 50,000 or both for anyone who publishes their name or details. And the newspaper or television or radio station’s registration can be suspended for up to two months and ordered to pay a fine of up to two lac taka.

Children in contact with the law (victims and witnesses)
As we have seen, the Act is a bit confusing in this area, but it clearly intends to make sure that child victims and witnesses are protected by:

- Having any case involving a child victim or witness held in a Children’s Court – which is laid out to be less intimidating than an ordinary Court.
- Requiring that a child victim or witness is entitled to a lawyer and provided with one by the Court / District Legal Aid Committee if they cannot afford one.
- Allowing the Children’s Court to order that no photographs or descriptions of the child be disclosed or published.
- Allowing for special measures to be used when taking the evidence of a child victim or witness, such as allowing them to testify:
  - Behind a screen.
  - In a pre-recorded video (which must be made in the presence of the accused’s lawyer who must be allowed to cross examine the child).
  - Through a qualified intermediary.
  - Video linkage (where available).
- Allowing the Court to order that the accused be removed while the child testifies if the child refuses to testify in their presence or if Court believes they will be prevented from telling the truth by the presence of the accused. (The accused’s lawyer can remain and cross-examine the child).
- Requiring security to be provided for the child and their parent or guardian.
- If the Court or CAPO believes that the child may be exposed to harm, they can take steps to prevent the accused coming into contact with the child. They can also require the police to
provide security for the child (and their family if necessary) and to keep the child’s whereabouts a secret.

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<thead>
<tr>
<th>On conviction / sentence</th>
<th>Children in conflict with the law</th>
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<tr>
<td>A Children’s Court may not use the words ‘offender, ‘convicted’ or ‘sentenced’ in relation to children. Instead, they may only say that they have found the child guilty of an offence and they have made an order as to what should happen to them (or similar words). When considering any order (‘sentence’), the Children’s Court must take into account:</td>
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<tr>
<td>• The child’s age and gender, physical and mental condition, qualification and level of education and social, cultural and ethnic background.</td>
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<tr>
<td>• The family’s financial situation.</td>
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<tr>
<td>• The lifestyle of the child and their family.</td>
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<tr>
<td>• The reason they committed the offence.</td>
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<tr>
<td>• Any involvement in gangs.</td>
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<tr>
<td>• The child’s opinion.</td>
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<tr>
<td>• A social inquiry report. This PO is required to submit this report to the Court within 21 days of the child’s first appearance. It must set out their social background, family and living relationships, educational levels, any other relevant information relating to the child, and the circumstances under which the offence took place.</td>
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<tr>
<td>No child may ever be sentenced to death. And they should only be sentenced to imprisonment:</td>
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<tr>
<td>• In extremely serious cases.</td>
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<tr>
<td>• If the child is so ‘unruly or depraved’ that they cannot be sent to a certified institute instead of prison.</td>
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<tr>
<td>Where a child is sentenced to imprisonment, they must be kept separately from adults.</td>
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<tr>
<td>Instead of imprisonment, a Children’s court can order:</td>
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<tr>
<td>• That they be detained in a Child Development Centre for a period of between 3-10 years where the child has been found guilty of an offence punishable with death or life imprisonment.</td>
<td></td>
</tr>
<tr>
<td>• That they be detained in a Child Development Centre for up to 3 years for any other offence.</td>
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</tr>
<tr>
<td>In minor offences, the Court can also warn and discharge the child or order that they are released on probation for up to three years. This means that they are released into the care of their parents, guardian or another fit person (under the Supervision of the PO) on condition that the child behaves itself properly for the next three years – if they don’t behave, they will be sent to a certified institute for the remainder of the three years.</td>
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</table>
Finally, the Court is required to periodically review its order and if it is satisfied that a child in a certified institute has seen the error of its ways and won’t re-offend, they can order the child be released.

**Child victims**
According to the Children Act, a Court that convicts someone of committing any offence against a child can order them to pay compensation to the child. The court may also order that whatever money is paid must be used for the child’s welfare (clothing, food, education etc.). Where the guilty party is also a child, then the Court can order that their parents, guardian etc. pays the compensation – provided that they can afford it and that the child committed an offence because the parent or guardian was negligent.

**On appeal**
Appeals from any order of a Children’s Court are made directly to the High Court Division. To speed up the process and reduce any unnecessary harm, the appeal can be brought within 60 days from the date of judgement. The High Court must finalise the appeal within 60 days.

**f. Crimes created by the Children Act**
The Act also creates a range of crimes and sets penalties for specific offences involving children, including:
- Cruelty to a child (which includes blinding, damaging hearing or injuring any limbs, which is sometimes done to a child to be used as a beggar).
- Engaging a child in begging.
- Being drunk while in charge of a child.
- Giving intoxicating liquor or harmful medicine to a child.
- Allowing a child to be in a brothel.
- Leading or encouraging a child to immoral activity

**3. The start of the process – the first report**
Victims and witnesses can report a criminal offence to a police station or a Magistrate. How the case is dealt with will then depend on whether it is a cognisable or non-cognisable offence:
- Cognisable offences are those where the police can investigate without an order from a Magistrate and arrest a person without needing a warrant of arrest. The list of these offences is found in Schedule II of the CrPC. This list is very long and cannot be repeated here, but it includes almost all of the most common offences including murder, robbery, rape, theft, rioting and assault.
- Non-cognisable offences are those where (a) the police can only investigate when ordered to do so by a Magistrate (whether it is reported to the police or a Magistrate. And (b) the suspect can only be arrested with a warrant of arrest issued by a Magistrate (although the CrPC also allows the Magistrate to summons an accused to court in minor cases rather than issuing a warrant of arrest). These are also listed in Schedule II of the CrPC and include offences like
bribery, intentionally wounding someone’s religious feelings, causing a miscarriage, voluntarily causing hurt, misappropriation of property, and cheating.

Of course, it is not the responsibility of the person reporting the offence to know whether it is cognisable or non-cognisable. Members of the public cannot be expected to know the difference and they can report both cognisable and non-cognisable offences to the police or to a Magistrate. The difference is simply how the case is dealt with by the police or Magistrate after the case is reported.

a. First report of a cognisable offence
   According to the CrPC:
   
   • Where someone reports a cognisable offence to a police station, the police officer must then record the details of the offence – which now becomes known as the First Information Report (FIR). If the Officer in Charge believes that an offence has been committed, they may investigate it themselves or delegate another officer to investigate the case without requiring an order from a Magistrate. If during investigation the investigating officer reasonably suspects that a particular individual or individuals committed the offence, they may arrest the suspect or suspects without a warrant of arrest.

   • Where a cognisable offence is reported directly to a Magistrate, the Magistrate may refer the petition of complaint to the police as a FIR for the police to investigate further. If the Magistrate is of the opinion that the petition does not need to be referred to the police, they can interview the complainant and any witnesses and record what they have to say in writing (Section 200 of the CrPC). If the Magistrate is of the opinion that there is no substance to the complaint, they may dismiss it. If they believe there is a case to answer, they will take cognisance of the case and proceed.

b. First report of a non-cognisable offence
   • Where a non-cognisable offence is reported to the police, they will record the complaint and make a case entry in the Diary (known as a ‘GDE’) and refer the informant, together with the original copy of the GDE to a Magistrate to obtain permission for investigation. The Magistrate will examine the complainant (and any other witnesses present) under oath.
     o If the Magistrate believes that an offence has been committed, they will instruct the police to investigate and take whatever steps are necessary. (The police can only investigate such cases when instructed to do so by a Magistrate).
     o If the Magistrate is not convinced that an offence has been committed, they may dispose of the case.

   • Where the complaint is made directly to a Magistrate, the Magistrate will examine the complainant (and any other witnesses present) under oath. If the Magistrate believes an offence has been committed, they will instruct the police to investigate. If not, they may dispose of the case.
c. Recording of witness statements
A police officer can question anyone who may know anything about an offence and they are bound to answer any questions asked of them. (Section 161 of the CrPC). Witnesses are not bound to answer any questions that might expose them to any criminal charges. But if they do choose to make a statement, the police officer may record what the person says. But the police officer must not ask the suspect to sign the statement if they do write it down (Sections 161 and 162). However, if an accused person requests it during the trial, a copy of a witness’ statement must be given to them or their lawyer and can be used during cross-examination of the witness. (Section 162).

d. Best practise – interviewing victims of sexual violence and child victims
As we saw earlier, the government has established eight Victim Support Centres in Bangladesh for victims of violent and sexual crimes - one in each of the seven Divisions, plus one in Rangamati. The centres are staffed by police officers, assisted by members of non-governmental organisations (NGOs) who provide counselling, legal advice, medical assistance and other services, and there is space for a Doctor to consult with and treat victims. Police officers near these Centres are trained to refer victims of violent and sexual crimes to these. The Ministry of Women and Children Affairs has also established One-Stop Crisis Centres at all or most Divisional Medical College Hospitals (including Dhaka, Rajshahi, Chittagong, Sylhet, Barisal and Khulna Medical College Hospitals) to assist women and child victims of serious violent offences and sexual assaults.

But what if there is no Victim Support or One-Stop Crisis Centre nearby?

Interviewing victims of sexual crimes requires a lot of sensitivity to avoid what is commonly known as ‘re-victimisation’. This is where a victim is made to feel like a victim again because of the way they are treated or where they are forced to relive the experience they have been through without support. It can lead to victims refusing to cooperate during an investigation or to give evidence at a trial.

Wherever possible, statements in sexual violence cases should be taken by an officer of the same sex as the complainant. While there are no guidelines about how to do so in Bangladesh, the following guidelines are provided to Detectives dealing with sexual offences in South Africa and suggest how to act when taking the statement of victim of a sexual offence:

<table>
<thead>
<tr>
<th>Guidelines</th>
<th>Description</th>
</tr>
</thead>
</table>
| Preparation for taking the statement | • Set aside enough time to take a statement of this nature (the victim’s statement must be comprehensive, rather write too much, than too little);  
  • The statement must be taken in a relaxed, private atmosphere; and  
  • Try to identify an interviewing room where there are few distractions, without a telephone. |
| Discussion of intimate details | Explain to the victim that the taking of the statement will involve the discussion of intimate details of the assault. If the presence of a third party (such as a
Child victims and witnesses are often at risk of intimidation from the accused and their families and friends – especially in sexual offences – and they pose challenges for police investigators. Taking statements from child victims and witnesses is a skill and it is highly recommended that people trained in this skill (like members of Victim Support or One-Stop Crisis Centres) should be used as far as possible. Where this is not possible, the following should be borne in mind to protect child victims and witnesses during investigations (and trials):

- Whenever a child is a victim or witness, the Child Affairs Police Officer (CAPO) must be notified and must take responsibility for the child’s welfare and for interviewing the child.
- If the child requires medical attention, the CAPO must immediately take care of their medical or other needs.
- According to the Children Act, a child victim or witness is entitled to be represented by a lawyer at every stage of the process and the PO must assist them to apply for legal aid. They should also wait until a lawyer is appointed before proceeding to take the full statement of the child.
- Where there is no Victim Support or One-Stop Crisis Centre nearby, police officers should contact the Probation Officer to assist in taking the statement.
- When interviewing a child victim or witness, the parent or guardian should be invited to be present (as well as the child’s lawyer and the Probation Officer). Although they should not speak about anything related to the case during the interview, they should be allowed to encourage the child to speak, offer support, and to comfort the child. (Note – where one or both of the parents, or guardian, is the ‘accused’, this person should obviously not be present).
- The child must be interviewed in a child-friendly environment. In the case of a girl child, the interview must be conducted by a female police officer.
- Where the child is at risk in their own home (such as where a parent or guardian is the suspect), arrangements should be made to find the child accommodation in a Child Development Centre or certified institute.

4. Arrest
After a complaint has been investigated and the police have a reasonable suspicion as to who committed the offence, they may arrest the suspect. The CrPC allows for two types of arrest – with a warrant, or without a warrant of arrest.

a. Arrest without a warrant
Section 54 of the CrPC allows the police to arrest, without a warrant:

<table>
<thead>
<tr>
<th>Guidelines</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>husband, parent or boyfriend) may make it difficult for the victim to disclose these details, the police officer should suggest that the third party leave.</td>
<td></td>
</tr>
<tr>
<td>If the victim wants a third party to be present during the taking of the statement, the third party may not comment on the merits of the case, prompt the victim or interfere in any other way. However, if the third party is a witness to the crime, they should not be present at all.</td>
<td></td>
</tr>
<tr>
<td>The victim must be told, with great sensitivity, that if he or she has done something that might put them in a bad light when they are cross-examined – for example, if they were drunk at the time - it is essential that they do not try to hide it.</td>
<td></td>
</tr>
</tbody>
</table>
• Anyone who the police officer reasonably suspects was ‘concerned’ in the commission of a cognisable offence.
• Anyone found in possession of tools or any other implement usually used for housebreaking and who cannot provide a reasonable explanation for why they are carrying such implements.
• Anyone who is found in possession of anything that might reasonably be considered to be stolen property and who can’t account for it.
• Anyone who obstructs a police officer in the execution of their duty.
• Anyone who has escaped or attempts to escape from lawful custody.
• Anyone reasonably suspected of being a deserter from the armed forces.
• Anyone reasonably suspected of having committed an offence outside of Bangladesh that would have been an offence if it had been committed outside of the country.
• Anyone who has been convicted of an offence but who has been released by a Court or prison on certain conditions (such as that they notify the police of their change of residence), and who then violates this condition.

Best practise when it comes to arrest without a warrant

As a general rule, the police should always consider whether there are any alternatives to arrest – such as a summons or warning the person to be at Court in a minor case – and only arrest the person when there is no alternative. If an arrest is the only option, then the Constitution and the CrPC must be followed. As you will recall, Article 33 of the Constitution states:

• Anyone who is arrested or detained must be told why they are being arrested and detained.
• Anyone under arrest is entitled to consult and be defended by a lawyer of their choice (if they can afford one of course) at all stages of the proceedings against them.
• Anyone who is arrested and detained must be brought before a Magistrate within 24 hours and may only be detained for more than 24 hours with the authorisation of a Magistrate.
• When anyone is detained by order under a law allowing preventive detention, the authority making the order must tell the person the grounds for the order as soon as possible. They must also give them an opportunity to challenge such an order.

Section 54 of the CrPC can also be confusing – particularly the words ‘reasonable suspicion’. To provide clarity on this and to make sure that the police understand their powers – and the consequences of arresting someone when there is no evidence against them - the Supreme Court have provided guidelines related to arrest without a warrant in two important cases:

BLAST (Bangladesh Legal Aid and Services Trust) vs. Bangladesh 55 DLR (HCD) (2003) 363

According to Supreme Court (High Court Division), a ‘reasonable suspicion’ means that the arresting officer must have some facts before them that actually create a suspicion. In other words, if they don’t believe the complainant or victim, then they should not arrest anyone.
The Court then went on to set guidelines and best practise when it comes to arrest without a warrant under Section 54 of the CrPC:

- An arresting officer must tell the person they are arresting that they are a police officer and, if the person demands it, they must show them their identity card.
- The arresting officer must record the reasons for the arrest, time of arrest and information on where the suspect is being kept in the Register of Arrest.
- The arresting officer must tell the person why they been have arrested within three hours of bringing them to the police station.
- An arrested person must be allowed to consult with a lawyer of their choice or to meet with their relatives.
- If a police officer finds injuries on the arrested person, they must record what caused the injury and take the person to the nearest hospital or Government doctor for treatment. The police officer must also get a certificate from the doctor setting out the injuries to the arrested person. (Not though that these guidelines have been overtaken by the Torture and Custodial Death (Prohibition) Act, 2013 that we looked at in Part 1 and that sets out what must be done when an arrested person has injuries).
- If the person has been arrested somewhere other than at home or at their place of business, the arresting officer must inform one of their relatives within one hour of bringing them to the police station by phone or through a messenger.

**Saifuzzaman v State 56 DLR 324**

This case deals in some detail with what the words ‘reasonable suspicion’ in Section 54 of the CrPC mean. According to the Court, what amounts to a reasonable suspicion will depend on the circumstances of each case. But the suspicion must be based on some clear facts that tend to throw suspicion on a particular person and not just a vague assumption by the police officer. The police officer must actually believe that the person has committed an offence and there should be some evidence on which this belief is based. For example, if someone claims that they were assaulted, there should be some evidence of the assault such as injuries or torn clothing or a medical report.

The Court also provided additional guidelines for what the arresting officer must do on arresting someone:

- The arresting officer must prepare a memorandum of arrest immediately after the arrest, which must be signed by the arrested person.
- The arresting officer must inform a close relative or a friend suggested by the arrested person as soon as possible, but not more than 6 hours after the arrest, of the fact that the person has been arrested, where they were arrested, and where they are being kept in custody.

All of these rules and guidelines have also been included in the Police ‘Guidelines’ on Arrest and Detention that we looked at in Part 1.

According to Section 55 of the CrPC, the police may also arrest without a warrant:

- Anyone who is hiding within the area falling under the police station who the police reasonably suspect is planning to commit a cognisable offence.
- Vagabonds.
- Anyone who is known to be an habitual robber housebreaker, thief or extortionist.

And in terms of Section 57, the police may arrest anyone who commits a non-cognisable offence (where a warrant of arrest is required) in the presence of a police

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officer and who refuses to provide the officer with their name and address, or who
gives a name or address that the officer has reason to believe is false.

### Arrests by members of the public and Magistrates

According to the CrPC:
- Anyone (including ordinary members of the public) may arrest a person who is a
proclaimed offender or who commits an offence in their view which is a non
bailable and cognizable offence. (S 59). Of course, how an ordinary member of
the public would know what a ‘non-bailable’ or ‘cognisable’ offence is debatable,
but the Section may be understood by saying that a member of the public can
arrest anyone who commits a serious offence in their presence.
- A Magistrate may order anyone to arrest of a person who commits an offence in
their presence.
- Anyone who has escaped from lawful custody may be pursued and arrested by
the person from whose lawful custody they have escaped.

### b. Arrest with a warrant

The CrPC allows a Court to issue a warrant of arrest in various
circumstances. The most common is where an investigating officer applies for
a warrant of arrest after completing their investigation of a non-cognisable
offence and where they have identified a suspect or suspects. But a Court can
also issue a warrant of arrest for someone who fails to attend Court on a
particular day when they have been summonsed or instructed to do so. The
rules around how such an arrest must be conducted are similar to arrest
without a warrant, but the CrPC also specifically requires the arresting officer
to explain to the person why they are being arrested and to show them the
warrant if asked to do so. (Section 80).

### c. The use of force

The CrPC sets out the rules for how an arrest must be made in Section 46.
According to this, the person making the arrest must touch or confine the
person being arrested. The least force possible should always be used. If the
person resists or attempts to escape, any means necessary can be used to
arrest them. However, deadly force can only be used against someone who is
suspected of having committed an offence punishable by death or life
imprisonment.

If necessary, the police may break open and enter any place where a person
is hiding if they are denied access and they believe that the person will
escape if they first have to apply for a search warrant. (Section 48 of the
CrPC). And if the police enter a place to arrest someone and are then locked
up in it, they may break a window or door to get out. (Section 49).

### d. Use of restraints

Restraints such as handcuffs or rope can also be used, but again, the police
should only use what is actually necessary to prevent the person escaping
(Section 50 of the CrPC).
When it comes to women and the old and infirm, Rule 330(a) of the Police Regulations states that these. And then the person to be arrested is a child, the child may not be handcuffed or restrained with a rope around their waist (Children Act).

e. Search and seizure on arrest
Once a person has been arrested, the arresting officer may search them and seize any illegal items found on them (such as drugs), evidence that they have committed an offence (such as a bloody shirt) or any weapons. (Sections 51 and 53). Where a woman needs to be searched, the search can only be performed by a woman police officer or member of the public with due regard to decency. (Section 52).

f. Ascertaining the age of an arrested person
One of the tasks of an arresting officer is to establish the age of the arrested person. The main reason for this is that if the person is under 18 years, the provisions of the Children Act of 2013 must be complied with.

Reminder! Children in conflict with the law

Remember that the Children Act of 2013 sets out numerous rules relating to the arrest of children (under 18) in conflict with the law. Please remind yourself of these rules and note in particular that a child under the age of 9 years can never be found guilty of a crime and can never be arrested – with or without a warrant of arrest.

5. What happens after arrest?
The period between when someone is arrested and when they are first brought to Court is a critical period in any investigation. It should be used to question the suspect to see whether they admit their guilt, to identify additional witnesses and to find additional evidence. But it is also a time when the suspect is extremely vulnerable to abuse and torture. In this section, we look at some of the most important issues and the rights involved.

a. Evidence of excessive force during arrest
According to the Police Rules Bengal (Rule 321), if the arresting officer or detention officer notices any injury or illness to a detained person, they must immediately:

- Record the detail of, and the apparent reasons for, any injury or illness.
- Take the person to the nearest hospital or government doctor for treatment.
- Get a certificate from the attending doctor that sets out the injuries and whether or not the person is healthy enough to be further detained by police.

If there is evidence that excessive force was used during the arrest, the arresting officers must be charged appropriately, depending on the nature and

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severity of the injury. Such charges could include assault, voluntarily causing grievous hurt, attempted murder, or even culpable homicide or murder if the suspect dies.

If there is any evidence of torture or if the suspect dies as a result of their injuries, then the police will also be liable for prosecution under the Torture and Custodial Death (Prohibition) Act, 2013. If found guilty, they face a sentence of imprisonment, a fine, or both a fine and imprisonment. And they may be required to compensate the victim or their family.

b. The right to legal representation
In terms of Article 33 of the Constitution, a person must be told why they are being arrested and must be allowed to consult with a lawyer (if they have one or if they or their families have been able to get a legal aid lawyer). Remember that anyone under the age of 18 years must be provided with a lawyer and must be represented at every stage of the proceedings according to the Children Act. Arresting officers or CAPOs are expected to assist in this process. In addition, the child’s parents and the Probation Officer or Social Worker must be contacted and must be allowed to be present throughout any interviews with the child.

c. Bail
Bail is the release of a person on condition that they appear in Court whenever they are required to. To this end, they sign a bail bond, promising to appear in Court on a particular day and all subsequent days. Bail is usually set by a Court, but the CrPC also allows bail to be set by the police in certain cases.

Bail can be granted:
• With ‘security’. This is an amount of money that the accused person and their sureties to pay if the accused doesn't appear in Court every time that they are required to be there. The order of bail can also be cancelled and they can be arrested and kept in custody until the end of the case (or until they are granted bail again) if they fail to attend without a valid excuse.
• With ‘sureties’. These are people who sign a bond to say that they will make sure the accused attends Court when required and that they agree to pay a certain of money if the accused fails to attend.
• Without sureties or security. This is sometimes known as ‘release on own recognisance’ – the accused simply promises to attend Court whenever required. If they don't attend and don't have a valid excuse, they can be arrested and kept in detention until the case is finalised.

In Bangladesh law, offences are split between bailable and non-bailable offences.

**Bailable offences** are generally less serious and anyone charged with these is entitled to bail as of right. That means bail must be granted (with or without sureties and security) unless the person is also charged with a non-bailable
offence as well. In fact, Section 496 of the CrPC states that the Officer in Charge of a police station must grant bail for bailable offence (if the arrested person is prepared to furnish a bail bond). The failure to do so amounts to dereliction of duty. Of course that doesn’t mean the person will be released – if sureties or security is required and they cannot be provided, then the person will remain in custody.

Non-bailable offences are the more serious offences. Although people charged with any of these offences may be released on bail, bail cannot be granted if there is evidence that the person could be found guilty of an offence punishable by death or life imprisonment. (Note – a Court can still grant bail in such cases if the person is under 16 years, a woman, or a sick or infirm person. But an Officer in Charge of a police station can not grant bail in such cases at all). In other words, the police do not have to release a person charged with a non-bailable offence and most often do not.

The decision by an Officer-in-Charge or Court as to whether or not to grant bail and the level of sureties or security to set in a non-bailable offence where the charge is not one punishable by death or life imprisonment will depend on a number of factors. These have been developed by the Supreme Court over many years and include:

- The nature of the offence. The more serious, the less chance of bail and the higher the level of sureties and security.
- The nature of the evidence against the accused. The stronger the evidence, the less chance of bail and the higher the level of sureties and security.
- The chances that the accused will run away and not return to stand trial. The greater the chances, the less chance of bail and the higher the level of sureties and security.
- The possibility that the accused may commit further crimes. The greater the possibility, the less chance of bail and the higher the level of sureties and security.
- The possibility that the accused might tamper with evidence or witnesses. The greater the possibility, the less chance of bail and the higher the level of sureties and security.

Anticipatory Bail

Although it doesn’t specifically say so, Section 498 of the CrPC allows a person to apply to the High Court Division or to a Court of Sessions for bail before they are arrested in non-bailable offences. Where this is granted, the person must be allowed on bail from the moment they have been arrested and may not be kept in detention at all.

There are also some offences where the relevant law states that bail should not be granted unless certain conditions are fulfilled – for example, Section 32 of Special Powers Act, 1974, and section 19 of the Prevention of Oppression Against Women and Children Act 2000.
Reminder! Children in conflict with the law

According to the Children Act, children should be released into the care of their parent, guardian or family member whenever possible. Bail can be set, but should only be used in more serious offences. A child should only be detained in the most serious offences or where the child might come into contact with a ‘notorious criminal’ or be exposed to moral risk.

Best Practise!

Victims and witnesses should always be told by the Investigating Officer when an accused is granted bail. They may well be at risk from the accused and should be informed in case they need to take steps to protect themselves.

Victims and witnesses should also be told that they can report any threats or interference from the accused to the Investigating Officer – who can then apply to court to have the accused’s bail withdrawn and for them to be kept in custody. They can also report to the Officer-in-Charge (during the investigation) or directly to the Court (at any stage).

d. Interviewing suspects, admissions and confessions

Interviewing suspects
The Constitution, CrPC and Evidence Act all deal with how suspects must be treated during interviews and when taking their statements:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Where found</th>
</tr>
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<tbody>
<tr>
<td>Anyone arrested and detained by the police is entitled to consult with a lawyer of their choice (if they can afford one). Note – although the Constitution doesn't say so, the arresting officer must facilitate this if requested – for example, by calling the lawyer or sending a messenger.</td>
<td>Art. 33 of the Constitution</td>
</tr>
<tr>
<td>Suspects have a right to remain silent and cannot be compelled to make a statement.</td>
<td>Art. 35 of the Constitution</td>
</tr>
<tr>
<td>The arresting officer must arrange for an interpreter if the suspect does not understand the language of the Court and if they are requested to do so by the Court.</td>
<td>Section 364 of the CrPC</td>
</tr>
<tr>
<td>Confessions must only be made to a Magistrate (see below for more detail) and cannot be made to a police officer.</td>
<td>Section 164 of the CrPC and Section 24 of the Evidence Act.</td>
</tr>
<tr>
<td>Suspects cannot be threatened with, tortured or promised anything to make a statement or confession.</td>
<td>Section 163 of the CrPC and Section 24 of the Evidence Act.</td>
</tr>
<tr>
<td>The statement to the police must not be signed and cannot be used in evidence against the suspect except for the purpose of contradiction and corroboration.</td>
<td>Section 161 of the CrPC</td>
</tr>
</tbody>
</table>

Admissions

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In some cases, a suspect may not confess to a crime but may admit certain parts of it. For example, they may admit that they killed someone but claim that they acted in self defence (which is a defence to the crime of murder). Or they may admit that they were at the scene of the crime but deny that they were involved in it. Such admissions are extremely valuable, since they may mean that certain facts don’t need to be proved. These must therefore be thoroughly recorded by the police.

Confessions
A confession is where a person admits every aspect of the charge against them. What happens when an accused wants to confess to a crime? The rules regarding confessions are found in the Evidence Act, the CrPC, the Torture Act and Rule 79 of the Criminal Rules and Orders. When read together, the following rules apply:

- A confession to a police officer by anyone in custody is not admissible as evidence. However, if someone confesses to a police officer and the confession leads to the police officer finding other evidence against them, then that evidence can be used (See Section 27 of the Evidence Act). For example, Farah confesses to the police that she stole money from her employer and hid the money under her mattress. The police then search her house and find the money. Although the confession is not admissible, the evidence that her house was searched and that the exact amount of money that was stolen was found under her mattress can be led in Court.

- Only confessions made to a Metropolitan Magistrate, Magistrate of the First Class or Magistrate of the Second Class especially empowered by the Government can be used as evidence. Confessions should preferably be taken in Court premises no one else may be present (including and co-accused or police officer) while the confession is being taken.

- Magistrates should avoid using their own houses to take confessions (such as on weekends or public holidays) and should rather arrange for the accused to be at Court, and to meet them there. If the Magistrate sees fit, they can order any members of the public present in the Court room to leave.

- Confessions must be freely and voluntarily made. If a person confesses because they have been threatened or promised anything, it is not admissible against them.

- Before recording a confession, the Magistrate must explain to the person that they are not bound to make a confession – but if they do, then the confession can be used against them in Court. They must also give the person a reasonable amount of time to think about what this means before starting to record the confession.

- The Magistrate must ask the accused when and where the alleged offence was committed and when the person was first placed under police observation, control or arrest and whether they have been threatened or promised anything by the police, or anyone else, to confess to the crime. They should also ask the accused whether they have any injuries and, if they do, the Magistrate should record this fact. (See the note below on what the Magistrate should do if the accused alleges they have been tortured).
The Magistrate should also inform the accused that whether or not they make a confession, they will not be returned into police custody again.

If the Magistrate is certain that the confession is being made voluntarily, then they must record it. They may ask questions, but should avoid cross-examining the suspect. The confession must be signed by the accused to say that it is true and that the statement was made voluntarily.

The Magistrate will then forward the signed confession to the Magistrate who has taken cognisance of the case, who will then add it to the case record and send a copy to the investigating officer to continue the investigation.

If the Magistrate suspects that the confession is not being made voluntarily, they must not record it. And in terms of the ‘Torture’ Act, if they believe that the person has been coerced, intimidated, threatened, assaulted or in any other way tortured, they must follow the steps in that Act.

<table>
<thead>
<tr>
<th>The procedure where a person alleges they were tortured</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where a suspect who appears before a Court alleges that they have been tortured, the Court must comply with the Torture and Custodial Death (Prohibition) Act, 2013. In terms of this Act, the Court must:</td>
</tr>
<tr>
<td>- Immediately record the person’s statement.</td>
</tr>
<tr>
<td>- Direct that they be taken to the nearest doctor for treatment and examination. (Women should only be examined by a woman doctor). The doctor must submit a report within 24 hours setting out the injuries, wounds or marks of violence upon the person, and the approximate time when such injuries or marks might have been inflicted. If the doctor thinks the person requires treatment, the Court must order that they be admitted to a hospital.</td>
</tr>
<tr>
<td>- Forward a copy of the statement to the Superintendent of Police or a superior police officer with a direction to register a case (unless the person asks that they don’t send it to the police – in which case, the Court must order a judicial investigation.</td>
</tr>
<tr>
<td>The Act goes on to say that:</td>
</tr>
<tr>
<td>- The investigation must be completed within 90 working days from the date of recording of the first complaint. If it is not, the investigation officer must appear before the Court to explain the delay.</td>
</tr>
<tr>
<td>- Only a Court of Sessions can hear a case of torture and the trial must be completed within 180 days of the registration of the complaint. If there are good reasons for the delay, then this period can be extended by 30 days.</td>
</tr>
<tr>
<td>- A person who is ordered to pay compensation under the Act must do so within 14 days and may not appeal until such time as they have fulfilled this obligation. Appeals are to the High Court Division.</td>
</tr>
</tbody>
</table>

A third party can also report that someone is being tortured to a Court (or a senior police officer). The Court must then hear the person and if they believe that a person is being tortured, they can visit the place to see whether or not it is true and proceed in the same way as set out above.

State vs Abul Hashem 50 DLR (1998) (HCD)
On appeal to the High Court Division of the Supreme Court, the Court held that it was the duty of the Magistrate who recorded their confession to ask the person how they were treated in the police station, why they were making confessions and whether they would be remanded in police custody. The Magistrate had not done so and had also failed to inform the accused persons that he was not a police officer but a Magistrate. As a result, the confession was inadmissible against the accused.

e. Search with a search warrant

If any document or any other evidence needed in any trial or other proceedings cannot be obtained from a person by summoning them to produce it, a Court may issue a search warrant for it in terms of Section 96 of the CrPC. This is an official document authorising the police to search for the document or evidence and to seize it when they find it.

f. Search without a search warrant

According to the CrPC, a search warrant is usually required before the police can search anyone or any place. But as we’ve already seen:

- The police may search someone and seize relevant property when making an arrest. (S 51 of the CrPC). (Note that a woman may only be searched by another woman in terms of Section 52).
- If a police officer wants to arrest someone and believes the person is hiding in a building, they may enter the building and search for them (Section 47). If entrance is refused, they should apply for a search warrant – but if the delay would allow the person to escape, they can break a window or door, enter and search for them without a search warrant. (Section 48)

The CrPC goes further than this and allows an investigating officer to search for anything necessary for the investigation wherever it may be, if the delay that would be caused by applying for a search warrant would mean that the thing they require might be hidden, moved or destroyed. (Section 165).

General rules for searches – with or without a search warrant

Section 102 and 103 of the CrPC set out the following general rules that apply to all searches:

- Anyone in charge of a place to be searched must allow the officer to enter and search. If they don’t, the police may break a window or door to enter.
- Every search must be conducted in the presence of two witnesses. These witnesses must sign the list of items removed from the place of search.
- The occupant or owner of the premises has the right to remain present and receive a copy of the list of items removed during the search.

What happens to seized property will depend on the duration of the case and the nature of the property:

- If the property can be lawfully owned and the owner will definitely bring it to Court when required, the property can be given back to them on condition that they sign a bond to say that they will bring it to Court when required to do so.
g. Test Identification Parades
An identification parade is usually held when a victim or witness saw someone committing an offence but did not know the person involved. Although not covered in the CrPC, Rule 77 of the Criminal Rules and Orders states that all identification parades must be conducted by a Magistrate and set the following rules for how these must be run:
- The parade should ideally be held inside a jail. If that is not possible, it may be held in the Courtroom outside of normal Court hours.
- The Magistrate must make sure the witnesses are kept far enough away that they have no chance of seeing the suspect. A Court Peon or anyone else other than a police officer must control them.
- The suspect should be paraded along with 8-10 other people. If there is more than one suspect, then the parade should be 18-25 people. They should all be similarly dressed, from the same religion and with the same social status. (Note – no parade should include more than 3 suspects. If there are more than 3 suspects, then they should not all be in the same parade. Instead, a number of parades will be required).
- Witnesses must be brought one at a time by the Magistrate’s Orderly (or someone other than a police officer), out of earshot of the other witnesses, and asked to identify the suspect. If the witness is afraid, then they must be allowed to view the parade from a place that they cannot be seen (through a window or a hole in the wall).

h. Diversion options for the police
As we discussed in the section on ‘restorative justice’ in Part 1, one of the ways of ensuring that minor cases do not clog up the system and that victims are compensated for their loss is to allow certain cases to be diverted out of the formal system for negotiation or mediation.

The Bangladesh legal system contains at least two diversion options that might allow the police to divert specific cases out of the system. The two options are:

Compounding (Section 345 of the CrPC)
Bangladesh law allows parties to certain offences to agree to settle the case – usually by the accused paying the complainant of victim compensation. If the case is settled, the case need not continue. by having the accused pay compensation to the victim rather than having a trial.

Offences can be compounded at any stage of the proceedings:
• If a settlement is reached before the framing of the formal charge, the court may release the accused.

• If a settlement is reached after the trial has started then the accused is regarded as having been acquitted (found not guilty). However, the permission of the Court is required in all such cases.

This is known as ‘compounding’ and is a form of diversion that allows cases to be finalised without taking up the Court’s time. It is also very much in line with restorative justice in that the victim is compensated rather than having the accused pay a fine or go to jail. As such, it is usually to be encouraged.

The CrPC sets out two ‘types’ of compoundable offences – offences that the parties (accused and victim) can agree to settle themselves (often through the payment of compensation) either with the permission of the Court, or without the permission of the Court.

<table>
<thead>
<tr>
<th>Examples of compoundable cases in S 345 of the CrPC</th>
<th>Permission of court not required</th>
<th>Permission of court required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uttering words with the intent to wound a person’s religious feelings</td>
<td>Rioting armed with a dangerous weapon</td>
<td></td>
</tr>
<tr>
<td>Wrongfully restraining or confining someone</td>
<td>Causing grievous hurt</td>
<td></td>
</tr>
<tr>
<td>Assault or the use of criminal force</td>
<td>Any act endangering the life or safety of others</td>
<td></td>
</tr>
<tr>
<td>Adultery</td>
<td>Wrongfully confining a person for 3 days or longer</td>
<td></td>
</tr>
<tr>
<td>Defamation (saying or publishing information about someone that you know to be false and that lowers their standing in the community)</td>
<td>Assault with criminal force to a woman with the intent to ‘outrage her modesty’.</td>
<td></td>
</tr>
<tr>
<td>Insult intended to provoke a breach of the peace</td>
<td>Theft in a dwelling house.</td>
<td></td>
</tr>
<tr>
<td>Criminal intimidation (except where the offence is so serious that it could attract a sentence of 7 years imprisonment)</td>
<td>Killing or maiming animals</td>
<td></td>
</tr>
<tr>
<td>Trespassing on someone’s land or in their house.</td>
<td>House trespass with the intent to commit a crime other than theft.</td>
<td></td>
</tr>
</tbody>
</table>

**Note**

Only victims can agree to compound a case. The informant or family members may not agree to this on behalf of the victim.

The problem with the list of offences in the CrPC is that, while some of them may have been regarded as relatively minor in 1898 when the CrPC was drafted, they are not regarded as such anymore. Some involve serious crimes, including kidnapping and crimes against women, that should never be settled – especially since women are often in a vulnerable position compared to the accused.

As a result, it would seem that some reform of the CrPC is required to revise the list of offences and to bring them more in line with the approach in restorative justice (where only minor crimes are dealt with this way) and to
see clear guidelines on the type of cases that can be dealt with by compounding.

It is also not clear from the CrPC whether the police are allowed to suggest to a complainant that they try to resolve the case through negotiation. While some cases need the permission of a Court, others can be negotiated without such permission. But does that mean that a police officer can suggest to a complainant that they try to resolve the case rather than registering it as required by the CrPC? Although it might be possible for a police officer to suggest such a thing informally, the law would seem to suggest that the answer would seem to be ‘no’. The reason being that there is no specific provision in the CrPC allowing this and instead, the CrPC requires the police to register every complaint and either to investigate and report to a Court (cognisable offences), or to submit it to a Magistrate for direction on what to do (non-cognisable offences).

In addition, the CrPC seems to leave it up to the parties to settle the matter. In many cases, parties are not on an equal footing, which can lead to one party forcing the other into a settlement. For example, a rich person charged with a serious offence like … can avoid the consequences of their actions by offering a relatively small sum of money from their perspective to a young, poor victim.

As we saw earlier, some NGOs offer to mediate cases for free and some development partners (like GiZ) are supporting village based mediation services to mediate minor criminal cases. To ensure that one party is not forced into a compromise, the CrPC should be amended to allow police officers (and Courts) to refer matters to organisations that have been accredited to conduct mediation in such matters. (Accreditation is where certain standards are set. If an organisation or individual meets these standards, they are ‘accredited’ or authorised to act).

**Referrals to Village Courts**

Village Courts can deal with a variety of minor criminal matters.

But as with referral of compoundable offences, some of these are not clearly defined (for example, the severity of assault cases that the Village Courts can deal with). And the Act does not allow a police officer to refer cases to the Village Court. While the police may be doing so informally, the Act only says that a District Court can refer matters to a Village Court and does not specifically state that the police can do so. In fact, allowing the police to refer any cases listed in the Village Courts Act to these Courts to deal with could reduce the burden on the police, the Judges and Magistrates Courts, prisons and even the National Legal Aid Service Organisation and should be encouraged. However, it would seem that either the CrPC or the Village Courts Act will need to be amended to specifically allow for this, and also to set guidelines for exactly which cases the Village Courts can deal with.

It may also be possible to link the amendments of the CrPC and Village Courts Act so that they match up in terms of which cases can be referred to a Village Court or to some other form of mediation.

_Criminal Justice in Bangladesh - A best practise Handbook for members of the criminal justice system (Final Draft - November 2015)_
A note on police mediation

It is often reported in studies into criminal justice in Bangladesh that the police sometimes offer to mediate on behalf of the accused and victim when cases are reported to them. In some cases at least, they require a ‘fee’ to be paid to them for doing so. Although this could be explored as an option when revising the CrPC, police officers are not trained to do this, it is not allowed under the current law, and it should not be happening at all.

Important note

While it seems that the police do refer people to Village Courts or suggest they compound their case, it is not entirely certain that the law allows the police to do this. As we have already noted, it may require changes to the CrPC, the Village Courts Act or both to ensure that the police are able to divert minor cases this way.

i. Treatment of people in police custody

The draft ‘Police Guidelines’ include a lot of detail on how the police must treat people in detention. Drawing on the Constitution, CrPC, Torture Act and the Police Regulations (PR), the Guidelines provide the following on how to make sure that people in police custody are properly and humanely treated. Although they have yet to be formally adopted, they offer excellent guidance on best practice and are repeated here in full (slightly edited for ease of reading).

Guidelines on the treatment of anyone in police custody

Note: Numbering corresponds to the number of the guideline in the current draft of the Guidelines.

2.3.1 Under no circumstances shall a detained person be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Art. 35(5) of the Constitution and Section 13 of the Torture and Custodial Death (Prohibition) Act, 2013).

2.3.2 Detainees in need of medical attention (due to an injury or illness) must immediately be provided with medical care by an authorised medical practitioner (Rule 321(a) of PR).

2.3.3 If the arresting officer or detention officer (whoever has custody of the detainee) notices any injury or illness to the person detained, they must immediately comply with the rules for this in the Police Regulations (Rule 321). They must:
- Record the detail of, and apparent reasons for, any injury or illness;
- Take the person to the nearest hospital or government doctor for treatment.
- Get a certificate from the attending doctor that sets out the injuries and whether or not the person is healthy enough to be further detained by police.
2.3.4 If a detainee requires medical assistance, first aid shall be applied to the detainee if possible. In more serious medical cases, the nearest government medical officer should be called if they are within a reasonable distance. When this is not the case, the nearest private medical practitioner should be used (Rule 321 of the PR).

2.3.5 The number of people detained in the police lock-up shall not exceed the maximum authorised number for that lock-up and any excess shall be accommodated in a convenient building under an adequate guard (Rule- 327 (b) and (c) of the PR).

2.3.6 Detainees should be housed and separated in the following manner:
   - Juvenile detainees shall be separated from adult detainees; and
   - Females shall be separated from male detainees.

2.3.7 Adequate numbers of officers should be assigned to supervise detained people. Where possible, female officers must undertake duties related to the supervision of female detainees.

2.3.8 The officer responsible for supervising detainees shall provide them with food and drink (Rule 598 and Rule 1181, PR). The police must not permit relatives of the detained person to provide the detainee with food.

2.3.9 Detained people must be provided with appropriate clothing and blankets taking into account the local climate and conditions (Rule 328 of the PR).

2.3.10 A relative of the detained person is permitted to visit the detained person at a time set by the officer responsible for the custody of the detained person. However, visitation rights are not generally provided when the accused is in the precinct of the Court (Rule 489, PR).

2.3.11 A relative can only be prevented from visiting during the times set if there is a reasonable suspicion that the visit would compromise the matter under investigation or if operational requirements do not permit such visit.

2.3.12 The detention officer shall ensure that adequate security is ensured in all detention facilities to prevent escape and to ensure the safety of each detainee.

2.3.13 Detainees who are considered ‘at risk’ are to be constantly monitored to ensure their personal safety while in custody. ‘At risk’ individuals include suicidal people, those accused of crimes committed against children, or those from a vulnerable group within the community.

2.3.14 The religious beliefs of all detainees must be respected (Art. 41 of the Constitution).

2.3.15 In circumstances involving disruptive behaviour by detainees, police must only use a degree of force that is lawful, proportionate and necessary given the circumstances (Section 50 of the CrPC).

Additional guidelines are also provided for police Supervisors and Managers that all senior police officials and Officers in Charge should familiarise themselves with. For reasons of space, these are attached as Annex A.
Rape in custody

Rape in custody is recognised as a form of torture and is an offence under the Torture Act. In addition, it is an offence under the Prevention of Oppression of Women and Children Act, 2000, punishable by death.

Summons

Although we have focused on arrest up until now, there is a second way that a person can be brought to Court to answer a case against them – summons. A summons is a document issued by a Court to call a person to Court to answer charges against them rather than ordering them to be arrested. It is only used in minor cases though where it is clear that the person will come to Court without needing to be arrested and detained. (It can also be used to call witnesses, but at this stage we are talking only about summonses to an accused).

Should the accused fails to appear at Court at the time and date in the summons, the Court will issue an arrest warrant and unless the accused has a very good reason for being absent, they may find themselves detained until the end of the trial.

j. Release if no evidence

In terms of Section 169 of the CrPC, if the investigating officer is of the opinion that there is no evidence against the suspect after questioning the suspect and any witnesses, they must make arrangement for the release of the arrested person on bail. If they don’t, they can be charged with an offence under Section 220 of the Penal Code – which states that if any police officer detains a person or keeps them in detention knowing that what they are doing is unlawful, they may be punished with up to seven years imprisonment (with or without hard labour), a fine, or both a fine and imprisonment.

6. The 24-hour rule and the first appearance in Court

As we’ve seen, both the Constitution and the CrPC require that anyone arrested and detained by the police must be brought before Court within 24 hours. The reason for this rule, which exists in most legal systems, is to allow the Court to confirm that there is sufficient evidence against the accused, that the police do not delay in investigating the case, and that the accused has not been tortured, injured or harmed in any way. It is also an opportunity for the Court to release the accused on bail where possible.

What must be in the case diary?

Section 167 of the CrPC says that the arresting or investigating officer must submit the case diary to the Court when first bringing the accused to Court. It doesn’t provide much detail on what should be in the case diary, the Police Regulations (Rule 263) state that the diary must include at least:

- The time at which the police officer received the information.
- The time the police officer began and finished their investigation.
The places they visited.
A statement of what they found out during the investigation.

According to the decision in the Saifuzzaman case that we looked at earlier, the arresting officer must also state in the case diary:
- The reasons for the arrest.
- The name and address of the person who informed the police or made the complaint.
- The names and particulars of the relative or friend who they told about the arrest.
- The particulars of the police officer in whose custody the arrested person is.

If the police don’t provide copies of all the necessary documents, the Magistrate may release the person on bail.

a. Bail
The accused may apply to the Court for bail if the police have not already released them – when they first appear in Court or at any other time. The law distinguishes between two types of offences:
- Bailable offences, where the Court must grant bail.
- Non-bailable offences, where the Court can decide whether or not to grant bail depending on the nature of the offence and the facts related to it and the accused.

The rules and guidelines for whether or not to grant bail, with or without sureties and security, are the same as for the Officer in Charge and are not repeated here - other than to note that while the police cannot release anyone charged with a non-bailable offence, a Court can grant bail in non-bailable offences.

Best Practise - Legal aid

There is no requirement in the law that a Judge or Magistrate must explain to an undefended accused that they have a right to legal aid. However, although some lawyers deliberately delay cases so that they can earn more money (they are paid by the day or hour), a lawyer can actually help to speed up proceedings. They know what questions to ask and not to ask, they know how to apply for bail, and they know how to argue a case properly. More importantly, the right to be represented by a lawyer is an important part of the right to a fair trial and so Judges and Magistrates should be encouraged to explain to undefended accused that they can apply for legal aid and how to go about doing so.

b. Remands in police custody
The police are obviously not able to complete every investigation within 24 hours and will usually ask the Court to remand the accused back into their custody to allow them time to question the accused further and to complete their investigation. This exposes the accused to the risk of coercion or torture to confess to the crime and should be avoided. Instead, Courts should usually
order that the suspect be kept at a prison if bail is not granted. And if a Court does decide to allow it, such detention cannot be for more than 15 days.

The rules and the guidelines in this regard are found in:

- **S 167 of the CrPC**, which states that no remand in custody for further investigation can be for more than 15 days.

- **Police Regulations - Rule 324 (b)**. Based on decisions of the High Court Division, these Regulations state that applications for the accused to be remanded back into police custody should only be granted when it is shown that the police need the accused for identification of someone (such as an identity parade or where the accused can point out other suspects to the police), identification and discovery of property (such as stolen goods or a murder weapon) or a similar special reason. If the Court suspects that the police want the suspect to try to extract a confession, then the Court should not remand them back into police custody.

- **Rule 74 and 75 of the Criminal Rules and Orders**. These apply to all prosecutions and set out almost exactly the same rules to those in the Police Regulations. They also require the Magistrate to remind the investigating officer to finalise the investigation as soon as possible.

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**Note**

Anyone who is deprived of their liberty by arrest or custody is entitled to approach the High Court Division so that it can decide whether the detention is lawful and order their release if it is not. (Article 102 (2) (b) of the Constitution.)

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c. **Torture and Custodial Death (Prohibition) Act, 2013**

As we saw earlier, if the suspect alleges that they were tortured, the Court must follow the Torture and Custodial Death (Prohibition) Act, 2013. The procedure is the same as we looked at when considering confessions.

d. **Best practise – victims and witnesses**

Criminal cases can be postponed many times – both during the investigation stage and during the actual trial. To make sure that victims and witnesses only attend Court to testify when they are required:

- Prosecutors and police officers (especially the Investigating Officer) must keep victims informed throughout the process. This includes:
  - Notifying them when a suspect is arrested.
  - Inviting them to discuss whether they oppose bail and the reasons therefor with the prosecutor.
  - Informing them when the accused applies for bail and whether they are successful.
  - Keeping them informed of each new court date.
  - Advising them whether the accused was acquitted or convicted and what sentence they might have received – and discussing whether they should take any further steps.
• Prosecutors should avoid making victims and witnesses come to Court until they are actually required. Of course they are entitled to attend every single day if they want to, but they shouldn’t be forced to attend when not actually needed.

**Witness protection – affordable options**

Victims and witnesses might be at risk of intimidation or violence from the accused or their friends or family members. Witness protection schemes can be very expensive and are not always successful, but there are some things that investigating officers (and prosecutors) can do to reduce the risk:

- Try to protect the identity of victims and witnesses and their addresses at all costs. Invite witnesses to come to the police station to give statements rather than visiting them at home.
- Ask the prosecutor request the Court to set bail conditions.
- Give victims and witnesses your cellphone and any other numbers and encourage them to report any threats or intimidation to you:
  - If bail conditions have been set (such as that the accused is released on bail provided they do not contact witnesses), then inform the prosecutor and ask them to apply to have the accused arrested and kept in custody for the remainder of the case.
  - Even when bail conditions haven’t been set, intimidating and threatening witnesses is a crime (or even a number of crimes) and the person issuing the threats can be arrested and charged.

Where the victim lives with an accused who has been released (such as a spouse or a child who has been the victim of abuse), then make arrangements for them to find somewhere else to live. Victim Support Centres and child facilities are able to take at least some of these, while many NGOs working on women and children’s rights also provide safe accommodation.

7. Framing of the charges and plea

a. Framing the charges

Once the case has been investigated and the investigating officer is of the opinion that the accused has a case to answer, they will submit the matter to a Magistrate. If the Magistrate believes the case should be tried, they will consider whether they are competent to try the case (for example, the possible sentence might mean it has to go to a higher Court). If they are not, the case record will be transferred to a Court with sufficient jurisdiction to hear the case.

b. Plea

The plea is the beginning of the actual trial. It is simply how the accused responds to the charges against them and there are two main pleas in any criminal trial – guilty or not guilty.

Plea of guilty
If the accused admit all the allegations against them and plead guilty to the charge, the Magistrate or Judge may convict the accused and move on to the sentencing stage.

**Note**

While it is possible to convict someone charged with an offence that carries a death penalty, this is discouraged by the Supreme Court. Where a person pleads guilty in such a case, a plea of not guilty should be entered and the case referred for trial.

**Plea of not guilty**

If the accused denies the charges against them, or if they admit that they did what they have been charged with but claim that they have a defence to the charges – for example, that they acted in self-defence – the Magistrate or Judge will record a plea of not guilty and proceed to hear the case. They will set a date for trial and issue summonses for the prosecution witnesses.

**Other pleas**

Although rare, an accused may already have been acquitted or convicted and punished for the same offence by another Court. In terms of Article 35 of the Constitution, no one can be prosecuted twice for the same offence. As a result, an accused might plead that they have already been convicted or acquitted of the charge (rather than pleading guilty or not guilty).

A case might also have been dealt with by a Village Court. If it has and the order of the Village Court has been complied with, the accused cannot be charged again.

**Plea-bargaining**

A plea bargain is where an accused person agrees to plead guilty to a less serious charge than they one they are facing. This helps to speed up trials immensely, since the accused can be found guilty and sentenced without the need for any evidence to be led.

Although this may happen in practise in Bangladesh, there are no rules anywhere for how this should be handled. Most countries that have a formal procedure for plea-bargaining usually require a statement from the victim to say that they have no objection to the accused being allowed to plead to a lesser charge, and they require that the Court consider the plea carefully before accepting it – if they believe the accused is being allowed to get away with a very serious offence, they are allowed to reject the plea.

The system of plea-bargaining should be encouraged, but it is highly recommended that proper rules and systems are put in place as well.
c. Withdrawal of charges
In terms of Section 494 of the CrPC, a prosecutor can withdraw the case against an accused, with the consent of the Court, at any stage of the proceedings:
- If the accused has not yet pleaded, the accused is discharged. Since they have not been convicted or acquitted, they can still be charged again in future if new evidence comes to light.
- If they have pleaded, then they must be acquitted of the charge and cannot be charged again.

This is a useful way of ending prosecutions where there is no chance of success. But it can also lead to situations where a complainant or victim is threatened or promised something to drop the charges against the accused. And it also opens up the door to bribery.

Best practise!
To ensure that victims are not forced to drop charges, guidelines should be put in place requiring the victim to file a statement explaining why they want to withdraw the charge. This should be put before the Court to allow the Court to come to an informed decision as to whether or not to consent to the withdrawal. If the Court suspects that something may be wrong, they should call the victim to explain to them why they wish the charges to be withdrawn.

d. Diversion options
Similar diversion options exists for Courts dealing with minor criminal cases to those we discussed for the police – compounding and referral to Village Courts. The difference with Courts though is that they are actually empowered to divert such cases:
- Section 345 of the CrPC lists various offences that can only be compounded with the permission of a Court. In practice, this means that a Court can ask the parties to one of these cases whether they are willing to settle and, if they are, they can suggest to the parties that they try to do so. Of course if the accused does not admit that they did what has been alleged, or if the victim does not want to try to settle the case, they cannot be forced to do so.
- The Village Courts Act requires a Magistrate to refer a matter listed in the Schedule of the Act to a Village Court for finalisation. However, there is no requirement that the case must be referred within a particular timeframe. As a result, cases can stay in the system for many years before a decision is made to refer them.

Best practise
The CrPC could be improved by allowing Magistrates Courts to refer matters to accredited mediators. And consideration should also be given to introducing an early screening process at Magistrates Court level to identify and refer those cases that can be compounded or referred to a Village Court as soon as possible so as not to burden the system with cases that can be speedily resolved elsewhere.
8. Trial
The procedure during a trial is relatively simple although in practice. There are some exceptions to the rule, but the following process is followed in almost every trial. We look at this below but before we do, we need to consider the burden of proof in criminal trials.

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a. The burden of proof in criminal trials
The Evidence Act makes it clear that the ‘burden’ of proving any case or any fact lies on the person who alleges that fact. In the case of criminal trials, the ‘person’ alleging the accused did what they have been charged with is the state – represented by the prosecutor.

But how much proof is required? In a criminal trial, an accused person must be found guilty beyond reasonable doubt. That doesn’t mean that the state must prove the case beyond all doubt. But if the Judge or Magistrate is not certain that the state has proved its case, or if they think that the accused’s version might possibly be true, they must find the accused not guilty.

b. The Prosecution Case
The trial starts with the prosecution case, where the prosecutor calls all of the witnesses that they believe best prove their case.

The prosecutor usually starts with the evidence of the complainant or informant and then calls witnesses who either saw or heard what happened. They may also call expert witnesses who can testify to how fingerprints found at the scene were linked to the accused, ballistic evidence to prove that a bullet found at the scene belonged to a gun found on the accused, the level of alcohol in the accused’s blood and so on.

After each state witness has testified, the accused or their lawyer is entitled to cross-examine them. If there is more than once accused, each must be given an opportunity to cross-examine each witness. Where the accused is unrepresented, the Magistrate or Judge should explain to them what the purpose of cross-examination is and assist them if they do not ask all relevant questions (for example, by asking whether there are any more questions they want to put to the witness).

Once the cross-examination is completed, the prosecutor can re-examine the witness to clear up any issues that were raised during cross-examination. The Court is also entitled to ask questions, but should not cross-examine a witness.

The prosecutor may also enter documents, photographs, medial reports, items used in the commission of the offence and any other evidence into the record for the Court to consider. There are fairly strict rules about which evidence can be entered into Court in the Evidence Act – both when it comes to what people may say and when it comes to how documents and other

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exhibits are entered into Court – but these are too many to deal with in a Handbook like this.

Once the state has called all of its witnesses and presented all of its evidence, the prosecutor will close the prosecution case.

c. Discharge at the end of the Prosecution case
Where the state closes its case and there is very little, if any, real evidence against the accused, a Court can decide to acquit the accused without putting them on their defence. (Section 265H of the CrPC). Before doing so, they may ask the accused questions to clarify any issues and can ask the prosecutor and defence to address them.

If the Court decides to discharge the accused, they are immediately free to leave. They must be released from custody if they are still in custody, and they are entitled to recover any money put forward for bail.

d. Defence Case
If the Court does not dismiss the case for lack of evidence, they will ask the defence (the accused or their lawyer) if they want to produce any evidence. Usually the defence will begin with the accused giving their side of the story.

It must be noted though that the accused cannot be forced to testify since they have the right to remain silent in Article 35 of the Constitution. The Court is not allowed to presume that the accused is guilty merely because they decide not to testify. Instead, the state must still prove its case beyond reasonable doubt and if it has not, then the accused must be acquitted even though they did not testify. Of course the fact that they do not testify will mean that their case is weakened and that much of the prosecution case will remain unchallenged.

Whether the accused testifies or not, they can still call witnesses and present other evidence.

If an accused chooses to give evidence under oath, the prosecutor is entitled to cross-examine them once they have finished. The Court may also ask questions, but should not cross-examine the accused.

At the end of the cross-examination, the accused or their attorney may be given a chance to clarify anything that arose during cross-examination. The accused or their lawyer can then call further witnesses and introduce other evidence (such as documents, photographs, exhibits and the like). The prosecutor can cross-examine each witness and the defence is also allowed to re-examine them once the cross examination is over. Judges and Magistrates may also ask questions to each defence witness.

Once the defence has finished calling witnesses, it will close its case.
e. Adjournments
Recognising that it is not always possible to finalise a case in one day, the CrPC allows a Court to adjourn (postpone) a case – either for further investigation (which we looked at earlier) or for the trial to resume at a later date. The CrPC sets no limit on the number of adjournments allowed or for how long they can be – except to say that:

- If the accused is remanded in police custody, they must be brought back to Court at least every 15 days. (Section 344)
- Magistrates must finish the case within 180 days (6 months), and Session Judges within 360 days from the date when they first received the matter for trial. If the trial cannot be completed within that timeframe, the accused must be released on bail if it is a non-bailable offence that is not punishable by death or life imprisonment. (Section 339C).

In fact, numerous and lengthy adjournments are regarded as one of the biggest problems in the criminal justice system. Despite the right to a speedy trial in Article 35 of the Constitution, many cases in Bangladesh take years to be finalised which puts pressure on the police, the Courts, prosecutors and prisons.

**Best practise – the need for guidelines, coordination and cooperation**

Reducing the number of adjournments requires a concerted effort by all role players. It is a bit of a vicious cycle, where the more congested the system becomes, the more pressure there is on the Courts and the more likely they are going to agree to requests for adjournments from lawyers and prosecutors. Nonetheless, it is recommended that clear guidelines are produced by the Chief Justice to guide lower Courts – for example, on:

- How many adjournments Courts should allow for the police to finalise investigations before the case against the accused must be withdrawn.
- The need to record every request for an adjournment and the reasons put forward so that they, or another Judge or Magistrate dealing with the case, can easily see whether a similar request should be granted again.

In addition, one of the biggest causes of delays in the criminal justice system is a lack of coordination and cooperation amongst key role players – the police, legal aid, Courts, prosecutors and prisons. As we have already seen, delays and problems in one part of the system lead to delays and problems in all of the other parts – for example, when prisons or the police don't bring an accused to Court, cases are delayed and witnesses get angry. Witnesses may then not be available on the next Court date as a result, and the trial will be delayed again.

To address this, the Judiciary are already considering using their **Case Coordination Committees**, which only focus on civil cases at the moment, to also focus on increasing coordination and cooperation amongst criminal justice role players. And the Justice Sector Facility (JSF) has also been assisting the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs to pilot **Criminal Justice Coordination Committees** in some areas. These are chaired by the District Judge and are responsible for identifying and dealing with day-to-day blockages, ensuring the police get witnesses to court, improving record keeping, prioritising cases where people have been in custody for many years, and...
so on. They are relatively inexpensive to set up or run and those in positions to drive such processes are encouraged to create and support similar committees in their districts.

A process is also underway to create a National Justice Coordination Committee to set policy, solve problems related to coordination, promote collaboration, and monitor the system’s performance (chaired by the Minister of Law, Justice and Parliamentary Affairs).

f. Protecting victims and witnesses during the trial stage (best practise suggestions)

To avoid inconveniencing witnesses and to protect them from harm during the trial stages, the following ‘best practise’ suggestions are made:

- Prosecutors and police officers (especially the Investigating Officer) must keep victims informed throughout the process, including notifying them of any new court dates and the judgment and sentence (if they were not present for this).
- Prosecutors should only call victims and witnesses to Court when they are actually required.
- Courts should set aside a room for witnesses to wait in. Ideally, there should be a room for state witnesses and a separate room for defence witnesses (to prevent intimidation and to allow the defence attorney to consult with them in private).
- Prosecutors should check each morning what witnesses are available. Where it is clear to the prosecutor that a witness will only be able to give evidence later that day, they should release them and ask them to come back later.
- Where it is clear that a witness will only be able to testify on the next or another day, the prosecutor should ask the Court to direct the witness to attend court on the subsequent date.
- Witnesses must be provided with water at very least and must be told where they can buy food if required.
- A private space should be provided for female witnesses to allow them to breastfeed babies and for babies to sleep.

g. Judgment

Once both the State and the defence have closed their cases, the Court will have to decide whether the State has proved that the accused is guilty of the offence they were charged with. This is known as the judgment of the Court:

- If the State has not proved beyond reasonable doubt that the accused committed the offence, they must be found not guilty and acquitted (set free). Sureties are discharged from their bail bond and the accused will be immediately released if they are still in custody.
If the Court is satisfied that the State has proved that the accused is guilty beyond reasonable doubt, the Court will convict them and move into the final stage of the trial – sentence.

### False cases

A major cause of the backlog in criminal cases and the burden on the police, Courts and prisons is the number of false cases laid in Bangladesh. Knowing that a person can be locked up for many years waiting for a trial to be finalised, some people lodge false claims with the police and Courts so that their enemies, business or love rivals, or anyone else that they might have a grudge against is arrested and kept in custody.

When it is clear to the Court that the case against them was false, the CrPC allows a Court to order the person who laid the complaint to pay compensation to the accused for the trouble they have caused them. If they don’t pay on time, they can be sentenced to up to 30 days imprisonment.

Unfortunately, this provision is outdated (the maximum amount of compensation is Tk 1,000) and is seldom used in practice. To make the law effective, this amount should be increased.

### 9. Sentence

As a general rule, the maximum sentence for each offence is set out in the Penal Code or any other law that create the offence. The Penal Code only includes fines, imprisonment and the death penalty though – it says nothing about compensation to be ordered for victims. But other laws also set out the punishment for crimes falling under the particular law and, as we will see, some of these do allow for compensation to be ordered.

#### Is corporal punishment (whipping) allowed?

Some laws allow a Court to sentence a person to corporal punishment? Is this still allowed in Bangladesh? The answer would seem to be yes, for now. The issue of corporal punishment was dealt with in the High Court Division in the case of BLAST vs Bangladesh (Writ petition number of 5684 of 2010 - sometimes referred to as the ‘whipping case’). However, the case only dealt with corporal punishment in educational institutions (such as schools) rather than with whipping as a sentence in the Penal Code. And while the Court decided it was not allowed in these institutions, it did not deal with whether or not it can be used as a sentence under the Penal Code and so it is still legal in criminal cases where the Penal Code lists it as a possible sentence.

#### a. Probation of Offenders Ordinance, 1960

This Ordinance allows Courts to sentence someone to something other than a fine or imprisonment in less serious cases – conditional discharge or release on probation.

#### Conditional discharge

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Where the person has no previous convictions and the offence is punishable by not more than two years imprisonment, and taking into account the nature of the offence and the personal circumstances of the convict, the Court may:

- Discharge them with a warning.
- Discharge them on condition they enter into a bond (with or without sureties) that they will behave themselves and not commit any further offences for a period of one year. If they do and if they are convicted of a new offence, they can be sentenced for both the original offence and the new offence.

The Court can also order that they pay compensation to the victim, including medical bills or the costs of replacing stolen or damaged property, and the costs that the victim has incurred during the trial. Such an order for compensation may not exceed the fine that the Court might have imposed.

**Probation order**

In any case where the Court is of the opinion that a person should not be sentenced to imprisonment (regardless of the maximum period in the Penal Code or other law), they can order their release on probation – except:

- A woman who has been convicted of an offence punishable by death.
- A man convicted of an offence punishable by death or certain other offences in Chapter VI or VII of the Penal Code - such as waging war against Bangladesh or its allies, offences against the armed forces, poisoning or drugging someone, extortion, robbery and housebreaking.\(^3\)

Where a person is released on probation, the Court will order that they be supervised by a Probation Officer for between 1 and 3 years on condition that they enter into a bond (with or without sureties) to keep the peace. The Court can also add conditions to the release – such as that the person abstains from intoxicants or does not leave a particular area.

As with conditional discharged, the Court can also order that the accused pay compensation to the victim up to the amount of the fine that the Court might have imposed.

If the Court subsequently suspects that the person is not complying with their bond, the Court may order their arrest or summons them and any sureties to Court for a hearing. If the Court finds that they have violated any of the conditions in their bond, the Court may sentence them for the original offence or fine them up to Tk 1,000 – if they don't pay the fine within the period set by the Court, they can sentence them for the original offence.

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**Best practise!**

As we noted in part 1, compensation is a very important part of restorative justice. In many minor cases, the victim would far rather be compensated for their loss or injuries than have the accused pay a fine to the state or be sent to prison. Not only

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\(^3\)In addition to all of the offences under Chapters VI and VII of the Penal Code, the following specific offences in the Code are listed in the Ordinance: 216A, 328, 382, 386, 387, 388, 389, 392, 393, 397, 398, 399, 401, 402, 455, or 458.

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do conditional discharges and release on probation help to reduce the burden on prisons, they also make it possible for the victim to be compensated at the end of the criminal trial rather than having to sue the accused in a civil court to recover their losses. As such, it is an excellent alternative to fines and imprisonment in minor cases and should be actively encouraged.

**Note – probation in the Children Act, 2013**

You will recall that the Children Act, 2013 also allows a Children’s Court to warn and discharge a child or order that they are released on probation for up to three years in minor offences. The child is released into the care of their parents, guardian or another fit person (under the Supervision of the Probation Officer) on condition that the child behaves itself for the next three years – if they don’t behave, they will be sent to a certified institute for the remainder of the three years.

b. **Penalties in the Penal Code and other legislation – fines, imprisonment or death**

The Penal Code, and any other law creating an offence, will set out the maximum penalty for the offence. Unfortunately, many Courts reportedly see this as the standard sentence and impose it in every case. That is clearly not what the drafters of the law had in mind – if they had, they would simply have said (for example) that the sentence for theft is five years imprisonment and a fine of Tk 50,000.

Instead, Judges and Magistrates are meant to consider various factors before deciding on an appropriate sentence, including:

- The nature of the offence.
- The seriousness of the offence – in terms of amount of money stolen, weapon used, injuries to the victim, whether the victim has or will recover from their injuries, whether the accused has already paid compensation to the victim or returned or replaced stolen property and so on.
- The accused’s personal circumstances. Are they single or married? How old are they? Have they been in trouble with the law before or is this their first offence? Are they in employment? How much money do they have and can they afford a fine? If so, how much can they afford to pay?
- The effect of the sentence on the accused and their family. Will it help to prevent them committing further offences? Can it keep them out of jail but still punish them for what they have done? Will the family be able to cope if the accused is sent to jail, or would a fine be more appropriate?
- The maximum sentence allowed by the law.
- Would a different ‘sentence’ – such as a conditional discharge or probation – be more appropriate than jail or a fine given the nature of the offence and the accused’s personal circumstances?

Only once all of these aspects have been considered should the Court decide on the appropriate sentence.

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As we’ve already seen, the Probation of Offenders Ordinance allows for compensation to be awarded together with a conditional discharge or release on probation in minor offences. But can it also be ordered in more serious offences? That will depend on the offence – neither the CrPC nor the Penal Code actually allow for it at all. But more recent laws, such as the following, do allow a Court to order that the accused pays compensation instead of or in addition to sentences of imprisonment or fines:


If the Court decides to sentence an accused to a period of imprisonment, they must deduct the period of time the accused has already spent in custody from the total sentence - unless the sentence is death. (Section 35A CrPC). If the total period they have spent in custody is longer than the period of imprisonment to which the accused is sentenced:

- The accused is deemed to have served out the sentence and must be released at once.
- If they are also sentenced to a fine, the fine must be regarded as having been paid.

**What if the penalty should be more severe than the Court can order?**

In some cases, a lower rank of Magistrate might try a case and then find that the facts are such that the accused really deserves a more severe penalty than they are authorised to impose. In such cases, Section 349 of the CrPC allows them to refer the case to a higher Court for sentencing.

10. **Appeal and revision**

Revision and appeal are ways in which higher Courts can correct decisions of the Courts below them:

- In revision, the higher Court is given the power to call for the records of a case to see for itself whether mistakes have been made, although in some cases, a person can also ask the higher Court to review the decision.
- In appeal, a person who believes the final decision that they are guilty was wrong, or that the sentence was too severe (or both).

**a. Appeal**

*(Sections 404-431 of the CrPC)*

An appeal can be based either on the belief that the lower Court made a mistake of fact or an error of law.

**Example**
Farah is convicted of breaking into someone’s house. If her defence is that the witness who testified to seeing her near the house was mistaken but the Court believed her, then her argument would be that the Court made a mistake of fact. If it had got the facts right, it would have acquitted her.

However, if Farah argued that she was being chased by someone who wanted to kill her and that she hid in the house to get away from him, she would really be saying that her actions were necessary and that she should not be convicted as a result. If the Court found that necessity was not a defence, they would have made an error of law, since the law does recognise this as a defence in some cases.

There is no automatic right of appeal and not all cases can be taken on appeal. Instead, the CrPC sets out (in Sections 412 – 415) what offences cannot be appealed against. They include:

- Where the accused pleaded guilty they cannot appeal against their conviction – although they can appeal against the sentence.
- Petty cases – those cases where a Court of Sessions would not pass any sentence of greater than one month.
- Cases where the fine is less than Tk 50.
- Where the accused has been convicted in a summary trial where the sentence is a fine of not more than Tk 200. (We look at summary trials below).

The CrPC also allows the Government to order the Public Prosecutor to appeal a judgment of acquittal to a higher Court – in which case, the decision of the higher Court is final and cannot be appealed further. It also allows a complainant to appeal against an acquittal, but only on the basis that the lower Court made an error of law.

b. Revision

(Sections 435-442 of the CrPC)

In terms of the CrPC, the High Court Division or a Sessions Court may revise any orders or decisions made by Courts below them to correct any errors that the lower Court has made – except decisions to discharge or acquit the accused. The higher Court will call for and examine the record of proceedings in the lower Court to make sure that no mistakes were made with any finding, including the sentence. If mistakes were made, the higher Court has the same powers that it would have if the case came before it on appeal – it can set aside the order or sentence and even increase the sentence if the lower Court misunderstood the law or made any other mistake. Where the revision [to be replaced by ‘revision’] is done by a Court of Sessions, then its decision is final and cannot be taken on appeal or revised again.

A person who believes the lower Court made an error may also apply to a higher Court to revise a decision that is not appealable. On the other hand, where a decision is appealable and the person has not appealed, they cannot ask a Court to revise the decision. (Section 439)
c. Bail on appeal and revision
In terms of Section 426 of the CrPC, the appellate Court can order that a person who is appealing their conviction or sentence be allowed out on bail and that the sentence be suspended until after the finalisation of the appeal. Similarly, Section 435 allows the Court to order that a person be released on bail while it is considering a revision of the decision of a lower Court.

11. Summary trials
To speed up the finalisation of trials, Sections 260 - 265 of the CrPC allow any Court of a Metropolitan Magistrate or Magistrate of the First Class to use a shorter procedure than what we have described so far in certain cases. (The list of cases is very long but includes mainly less serious offences that are not punishable with life imprisonment or death, such as theft where the value of the property is less than Tk 10,000, criminal trespass and receiving stolen property of less than Tk 10,000).

These are known as summary trials. The procedure is slightly different depending on whether the case is appealable or non-appealable:

- Where no appeal lies, the Magistrate does not have to formally frame the charges against the accused. And while evidence is led during the trial, the Magistrate does not have to record the evidence (since to do so would be a waste of time if the accused cannot appeal the decision).
- Where the case is one where the person might be able to take it on appeal, the Magistrate only has to record the substance of the evidence – they don't need to record every word that is said.

Where a summary trial is held, the maximum sentence is two years imprisonment and no appeal is possible against a sentence of fine not exceeding Tk 200.

12. Imprisonment
a. Rights in prison
The United Nations has produced guidelines on how prisoners should be treated– the Standard Minimum Rules for the Treatment of Prisoners. These are often criticised though for giving prisoners too many rights, especially in poorer and developing countries and in any event, they are only guidelines. As a result, few countries in the developing world are able or willing to comply with them.

Nonetheless, the law in Bangladesh does try to ensure that prisoner's rights are protected, including in the Constitution. As human beings, prisoners are entitled to all of the human rights protected in the Bill of Rights in the Constitution – with obvious exceptions. Obviously, they are not entitled to the right to equality of opportunity in public employment (Art 29), personal liberty (Art 32) or freedom of movement (Art 36). And the prohibition of forced labour in Article 34 does not apply to prisoners sentenced to hard labour. But they are most certainly entitled to things like the right to life (Art 32) (unless

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sentenced to death by a competent Court), freedom of religion (Art 41) and importantly, the safeguards as to arrest and detention in Article 33 - especially those applying to preventative detention.

The Prisons Act, 1894 also specifically protects the rights of prisoners, including in:

- Section 24, which states that every prisoner must be examined by a Medical Officer as soon as possible after admission. (It also protects the rights of women prisoners by stating that any search of women prisoners and their medical examination must be carried out by the Matron).
- Section 27, which requires women to be kept separately from male prisoners and for males under the age of 21 years to be kept separate from older males.
- Section 29, which requires that any cell used for solitary confinement must allow the prisoner to communicate with a prison officer, and that anyone kept in solitary confinement must be visited by a Medical Officer or Subordinate at least once a day.
- Section 31, which allows unconvicted prisoners to receive food, clothing, bedding and other necessities from friends and relatives.
- Section 33, which requires the prison to provide unconvicted prisoners with clothing and bedding.
- Section 35, which limits the number of hours a prisoner can work (including hard labour) to nine hours per day and requires that those performing hard labour must be checked by a Medical Officer from time to time.
- Sections 37 to 39, which requires sick prisoners to be taken care of by the prison.
- Section 40, which allows unconvicted prisoners to receive visits, including from their lawyers. (Interestingly, the right to receive visitors does not seem to apply to sentenced prisoners).

Of course, prison overcrowding caused by lengthy delays in finalising cases and over-reliance on imprisonment as a punishment make it difficult for prisons to comply with all of these provisions. But nonetheless, this is what the law requires.

Two other laws are very important when it comes to prisons and prisoner's rights:

- The Torture Act, which prohibits torture or inhumane treatment of anyone in custody, including unconvicted and sentenced prisoners. It also allows for compensation to be awarded to victims of torture and to the families of anyone who dies in custody as a result of inhumane treatment or torture.
- The Children Act, which states that children in conflict with the law should only be sentenced to prison in the most serious cases, and that children in detention in a Child Development Centre, certified institution or prison must be properly treated and kept separately from adults.

b. Parole, pardons and commutation of sentence

The law in Bangladesh does not really allow for prisoners to be released on parole after serving part of their sentence, and there are no real systems in

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place or Parole Officers to deal with this. It does seem though that prisoners can be released early if they are deserving of release because of good behaviour, or they have become old or too physically or mentally ill to remain in prison.

In addition:
• Section 401 of the CrPC allows the Government to release a person from prison, with or without conditions. If conditions are set that the person does not comply with, they can be re-arrested and required to serve out the remainder of the sentence.
• In terms of Section 402 of the CrPC and Sections 54 and 55 of the Penal Code, the Government may also commute the sentence of anyone sentenced to death, imprisonment with or without rigorous imprisonment, and even fines. Basically, this means that the Government can change a sentence of death to one of life imprisonment, or reduce the sentence or fine in other cases.

And finally, the Children Act requires the Children’s Court to periodically review the situation of a child in conflict with the law and to release them if they are satisfied that the child has seen the error of its ways and won’t re-offend.
Annex A - Guidelines on the treatment of anyone in police custody (additional guidelines for Police Managers and Supervisors)

In addition to setting general guidelines for how the police should treat people in their custody, the following guidelines are included in the draft ‘Police Guidelines’ and are repeated here as examples of best practice:

Note:
Numbering corresponds to the number of the guideline in the current draft.

2.4.1 Officers in charge of police stations shall report to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate (as required) all arrests made without warrant in their respective stations and advise if those persons have been admitted to bail or otherwise (Section 62, CrPC).

2.4.2 The officer in charge of each Thana and/or detention facility is to identify suitable and available medical officers in their vicinity to be included in an ‘on-call’ roster to attend to medical emergencies in the local detention facilities.

2.4.3 Vulnerable members of the community that include children, the elderly, women and disabled people may be granted bail by the officer in charge wherever possible (Sections 496 and 497 CrPC).

2.4.4 Any allegations of misconduct or unlawful behaviour by police officers involved in the arrest and/or detention in custody of an individual are to be reported immediately to the officer in charge of the Thana and to the Circle ASP/Zonal AC.

2.4.5 The officer in charge of the Thana will cause a prompt and professional investigation into any allegations of police misconduct or unlawful behaviour related to the arrest and/or detention in custody of an individual and notify his/her supervisor of progress in the investigation on a regular basis.

2.4.6 The officer in charge of a Thana is to be notified of all deaths in custody and for the conduct of appropriate investigations into the cause and circumstances of the death. The officer in charge is also required to immediately report all deaths in custody to a magistrate (Section 176(1) of the CrPC).

2.4.7 The Officer-in-charge of the station must make regular inspections of the detention facilities and those detained at his/her police station to ensure the welfare and security of detained persons (Rule 328 of the PR).

2.4.8 Inspecting officers (ASP Circle/Zonal AC and higher ranks) shall inspect detention facilities at police stations during their visit to police stations. Inspectors and officers of higher rank should frequently examine the staff of police posts including court offices as to their knowledge of regulations 237, 327, 328 and 329. Prisoners who may be in the hajat when a police post or court office is visited should, if time permits, be given the opportunity of making representations regarding their treatment if they wish to do so (Rule 51(h)(iii) of the PR).
2.4.9 Where arrested persons are temporarily detained in locations other than police stations, action is to be taken to transfer the detained person to the nearest Police Station as early as possible.

2.4.10 Police assigned to Police Camps, Outposts and Investigation Centres should not detain any person at the Camp, Outpost or Investigation Centre without lawful reason.