

LEGAL PROCEDURE

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Crime & Criminology

Crime: Crime means social harm, which has been defined and made punishable by law.

Crime may be defined as, an act of omission which can be definitely proved & prohibited & made punishable by the legislation of the country.

Criminology: It is the branch of Forensic Medicine which deals with crimes & criminals.

Civil & Criminal Law

Civil law: deals with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.

Examples: Landlord/tenant disputes, divorce proceedings, child custody proceedings, property disputes, personal injury, etc.

Criminal Law: This law is related with offenses, which are considered to be against the public interest, such as offences against the person, property, public safety, security of the state etc. (Here the state is the party represented by public prosecutor and accused is the other party)

Examples: Theft, assault, robbery, murder etc.

Civil & Criminal Law

Points	Civil Law	Criminal Law
Definition	Civil law deals with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.	Criminal law is the body of law that deals with crime and the legal punishment of criminal offenses.
Purpose	To deal with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.	To maintain the stability of the state and society by punishing offenders and deterring them and others from offending.
Case filed by	Private party	Government
Type of punishment	Compensation (usually financial) for injuries or damages, or an injunction in nuisance.	A guilty defendant is subject to Custodial (imprisonment) or Non-custodial punishment (fines or community service). In exceptional cases, the death penalty.

Court

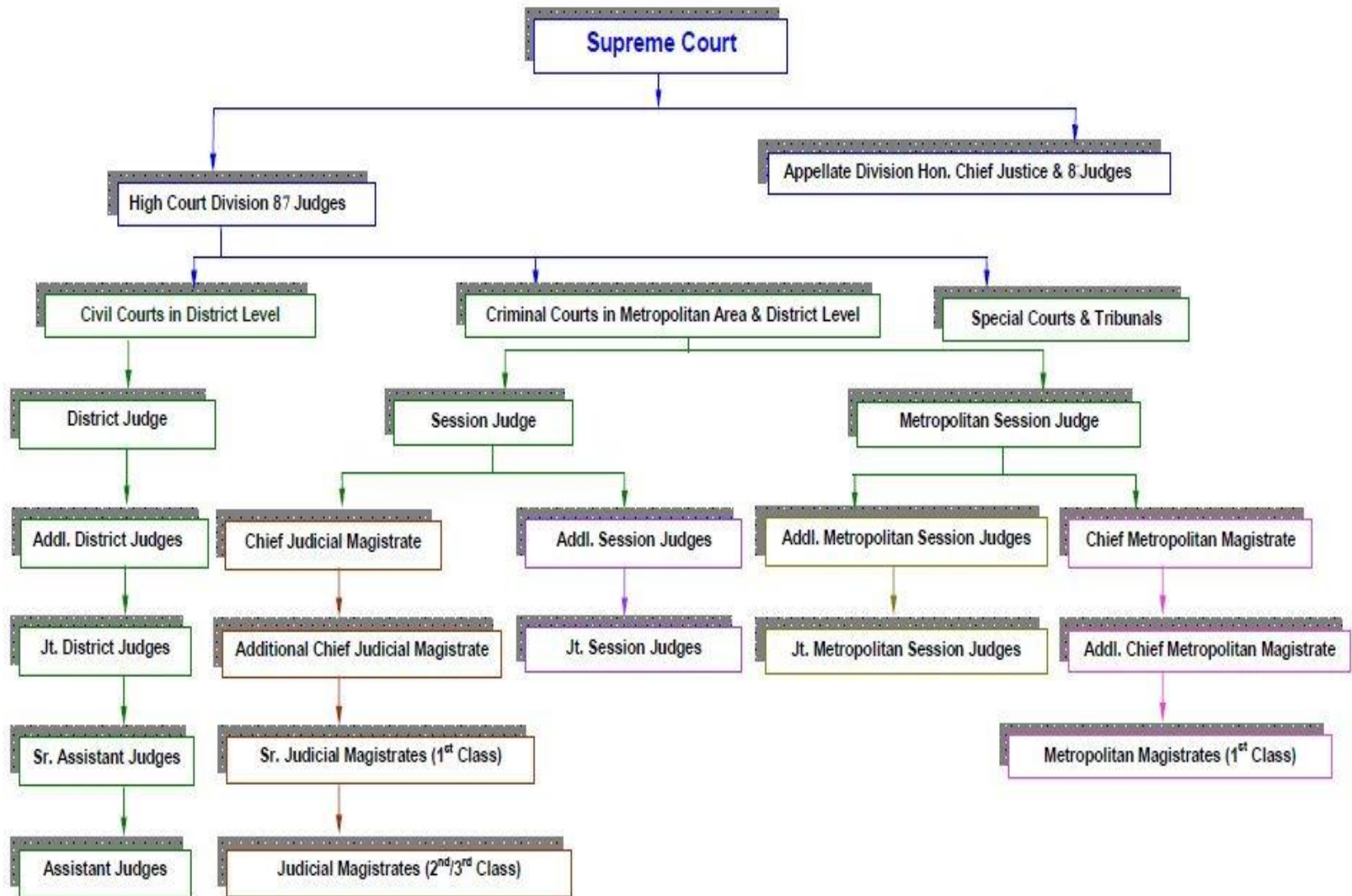
Court includes all judges & magistrates & all person except arbitrators, legally authorized to take evidence.

Courts in Bangladesh:

1. Civil court (দেওয়ানি)
2. Criminal court (ফৌজদারি)
3. Both civil & criminal court:
 - a) Supreme Court
 - b) High Court
 - c) Session Court



BANGLADESH JUDICIARY



Classes of Criminal Courts in Bangladesh

Under section 6 of the Code of Criminal Procedure, 1898, there shall be 2 classes of Criminal Courts in Bangladesh, namely-

1. Courts of Sessions; and
2. Courts of Magistrates

Courts of sessions are presided over by 3 types of judges:

- (i) Sessions Judge (দায়রা জজ)
- (ii) Additional Sessions Judge; and
- (iii) Joint Sessions Judge

*A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by such Judge shall be subject to confirmation by the High Court Division. - Sec. 31(2)

*A Joint Sessions Judge may pass any sentence authorized by law; except a sentence of death or of transportation for a term not exceeding 10 years- Sec. 31(3)

Classes of Criminal Courts in Bangladesh

On the other hands, Magistrate Courts is presided over by 5 types of magistrates:

- (i) Chief Judicial Magistrate;
- (ii) Additional Chief Judicial Magistrate;
- (iii) Senior Judicial Magistrate or Magistrate of First Class;
- (iv) Second Class Magistrate; and
- (v) Third Class Magistrate

Chief Judicial Magistrate and Additional Chief Judicial Magistrate:

Chief Judicial Magistrate or Additional Chief Judicial Magistrate with power to try as a magistrate all offences not punishable with death

Classes of Criminal Courts in Bangladesh

Senior Judicial Magistrate or Magistrate of First Class:

- Imprisonment for a term not exceeding 10 years;
- Such solitary confinement as authorized by law;
- Fine not exceeding 10 thousand taka;
- Whipping

Second Class Magistrate:

- Imprisonment for a term not exceeding 5 years;
- Such solitary confinement as authorized by law;
- Fine not exceeding 5 thousand taka;

Third Class Magistrate

- Imprisonment for a term not exceeding 2 years;
- Fine not exceeding 2 thousand taka;

Classes of Criminal Courts in Bangladesh

In Metropolitan Areas:

- (i) Chief Metropolitan Magistrates (CMM)
- (ii) Additional Chief Metropolitan Magistrates (ACMM)
- (iii) Metropolitan Magistrates (MM)

Chief Metropolitan Magistrates (CMM) & Additional Chief Metropolitan Magistrates (ACMM):

- Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrate with power to try as a Magistrate all offences not punishable with death.

Metropolitan Magistrates (MM)

- Imprisonment for a term not exceeding 5 years;
- Such solitary confinement as authorized by law;
- Fine not exceeding 10 thousand taka;
- Whipping

The sentences/punishments authorized by law in our country

1. Death sentences(Capital Punishment)
2. Imprisonment for life
3. Imprisonment:
 - Rigorous: within hard labour including solitary confinement(the isolation of a prisoner in a separate cell as a punishment)
 - Simple
4. Forfeiture of property
5. Fine.

Capital punishment

Capital punishment means the death sentence

Methods of capital punishment:

1. Hanging
2. Electricution
3. Lethal injection (I/V Na-thiosulphate)
4. Gas chamber
5. Garroting
6. Guillotine

Inquest

Inquest is a primary inquiry or investigation into the cause of an unnatural, sudden or suspicious death.

Types of inquest :

- 1.The police inquest
- 2.The magistrate's inquest
- 3.The coroner's inquest

Police inquest

The police inquest : Done by police officer not below the rank of SI . Also known as IO. IO may be a magistrate/Police officer not below SI/Coroner.

- At first police officer receives information about an unnatural death from an area
- Then he informs to nearest executive magistrate and go to the place of death
- He conducts an inquiry into the cause of such death in presence of two or more witnesses
- He prepares a report about the cause of death as judge by him and the witnesses.
- Then the report is signed by him and the witnesses present.
- If no foulplay is suspected, the body is released for disposal
- If foul play is suspected, the body is sent for the post mortem examination to the nearest authorized govt. Doctor, together with a requisition and a copy of inquest

Magistrate's inquest

Magistrate's inquest: Done by magistrate.(District magistrate, thana magistrate, Metropoliton magistrate..etc)

Indications:

- 1.Death in prison
- 2.Death in police custody inside a PS
- 3.Death in hospital while in police custody or dies in a place of detention
- 4.Death inside a police van under police custody
- 5.Death due to cross firing of police in a mob
- 6.If a person is killed by any uniform person
- 7.Exhumation case
- 8.On appeal by an aggrieved person

Reasons of Magistrate's Inquest

- No person is deprived of his liberty and his rights as a citizen.
- No person is allowed to die, deprived of his right due to neglect or brutality by the people in whose charge he/she is.
- Doubt about the identity, cause of death, or manner of death of a person who is already buried.

The coroner's inquest

- The coroner's inquest : Done by coroner in case of unnatural death within his territorial limits.
- Coroner –is a lawyer or medical man with legal qualification of the rank of first class magistrate , appointed by the Govt. to hold an inquiry or investigation of cases suspected as unnatural, sudden & suspicious death in his jurisdiction.
- This type of inquest is not held in Bangladesh.
- It is found in UK and some states in USA and some other countries.

Inquest Report (সুরতহাল প্রতিবেদন)

Inquest Report : It is the investigating report made by an IO about the unnatural, sudden or suspicious death of a person, containing the particulars of the victim, brief history of the case, circumstances under which the body was found along with the apparent cause of death & signature of the IO at the right bottom & also signature of at least two witnesses present there at the left hand side of the paper.

Parts of an inquest report

1. Time and police station
2. Particularis of the victim:
 - *Name:
 - *Age:
 - *Parents:
 - *Residence:
3. Place where the dead body was found
4. Description about the case:
 - *Position of the body:
 - *About surroundings:
 - *Apparetn injuries and moarks on the body:
 - *Description of the cloths and other articles found near the body:

Parts of an inquest report

5. Opinion of the witness as to the cause of death
6. Opinion of the police officer as to the cause of death
7. Signature of the witness (atleast two)
8. Signature of the police officer.

Difference between police inquest & coroner's inquest :

Point	Police inquest	Coroner's inquest
1. Investigating officer	1. Inquest held by a police officer, not below the rank of SI, who is not qualified in law or medicine.	1. Inquest held by coroner who is qualified and experienced and as such it is superior to police inquest.
2. Place	2. Held all over in Bangladesh & India except Bombay.	2. Held only in Mumbai in this subcontinent.
3. Informing the magistrate	3. He has to inform the magistrate of the area.	3. No need to inform the magistrate of the area.
4. Witness	4. Signature of witnesses are required.	4. Jury help. Signature of witnesses are not required.
5. Warrant of arrest	5. Can not issue warrant, but can arrest an accused in cognizable offence.	5. Can issue warrant for the arrest of the accused.
6. Summoning the doctor	6. Can not summon the doctor to give evidence	6. Can summon the doctor to give evidence in his court.
7. Exhumation	7. Can not order for exhumation.	7. Can order for exhumation.
8. Analysis of viscera	8. Can not direct for analysis of viscera.	8. Can direct for analysis of any part of body or viscera.

Difference between Coroner's court & Magistrate's court

Trails	Coroner's court	Magistrate's court
Type of court	It is court of inquiry	It is court of trial
Presence of accused	Presence of accused is not necessary	Presence of accused Is essential
Punishment to the accused	Cannot punish the accused	Can punish the accused
When can punish a person	Can punish a person for contempt of the coroner's court	Can punish a person for contempt of court or commission of an offence

Chalan

Chalan: It is the police requisite for doing autopsy of a dead body by an authorized medical officer in a prescribed Govt. form signed by IO (police officer, Magistrate, Coroner)

Difference between Inquest & Chalan

Point	Inquest	Chalan
Definition	Inquest is a primary inquiry or investigation into the cause of an unnatural, sudden or suspicious death.	It is the police requisite for doing autopsy of a dead body by an authorized medical officer in a prescribed Govt. form signed by IO
History about the dead body	Contains brief history about the dead body	Does not contain brief history about the dead body
Signature of the witness	Present	Absent
Types	3 types	No further types

Witness

Witness : Witness is a person who narrates evidence in the court from the personal knowledge about the fact in question. Who gives evidence is a witness.

A witness is a person who gives evidence regarding facts.

Types :

- 1.Common witness
- 2.Expert witness
- 3.Professional witness
- *Hostile witness

Witness

Other types : According to calling party.

1.Prosecution witness

2.Defence witness

3.Court witness

*Skilled or scientific witness

*Approval witness

Witness

Common witness: Common witness is the person who give evidence about what he himself has seen, heard or perceive in relation to the case.

example: in case of fighting between two person, a man who has seen the fighting becomes a common witness

Expert witness: Is the person who has undergone professional training & skill and is capable of giving opinion or deducing inference from the facts observed by himself or described by others.

example: Medical man, firearm experts, fingerprint experts etc.

Criteria of an ideal witness

- He should be mentally sound
- He should attend the court with confidence
- In the witness box he should stand erect and answer the questions slowly but steadily and audibly.
- He should not go beyond the limit of his knowledge
- He should not fumble
- He should not evade a question.
- He should not use superlative word and exaggeration word
- He answer only after completely understanding the question he should answer question with goodwill and accuracy.
- His presentation should be clear.
- With the permission of court he can volunteer a statement.

Differnece between Common witness & expert winess

Common witness	Expert witness
Common witness must see or observe or hear the fact to give evidence	An expert witness may give his evidence not present in the fact
Any person can be a common witness	Only expert or some selective professional can be expert witness
All common witness are not expert witness	All expert witness can be common witness
Example: any person	Example: Doctor, firearm expert, hand writing expert.. Etc.

Hostile witness

Hostile witness: Is the person who is assumed to have an interest or motive for concealing the truth or part of it or for giving completely false evidence. The lawyer of calling party can declare a witness as hostile witness during examination in chief. A common or expert witness may be declared as hostile witness.

Medico legal importance of hostile witness:

- Imprisonment extending upto 7 years (under oath inside the court)
- Imprisonment extending upto 3 years(other than under oath inside the court)

Perjury

Perjury: It means willful giving of false evidence by a witness under oath or a failure to state what he knows or believes to be truth. It is punishable & the witness is liable to be prosecuted.

Medicolegal importance :

Imprisonment for perjury may extend upto 7 years.

Difference between hostile witness & perjury

Traits	Hostile witness	Perjury
Definnition	Is the person who is assumed to have an interest or motive for concealing the truth or part of it or for giving completely false evidence	It means willful giving of false evidence by a witness under oath or a failure to state what he knows or believes to be truth.
Evidence	Evidence may be concealed partly or completely or evidence may be completely false	Evidence is false
Oath	May or may not be under oath	Given under oath
Punishment	Under oath: upto 7 years Other than under oath: upto 3 years	upto 7 years

Procedure for witness in the court (As a doctor):

1. Attendance in the court
2. Oath taking
3. Deposition
4. Release of the witness from the court.

Procedure for witness in the court

1. Attendance in the court –Attend the court as per summon. Contact PP/lawyer of the calling party/bench clerk. Record/confirm attendance.
2. Oath taking –Step into witness box. Take oath.
3. Deposition/ Record of evidence- Any statement (oral or written) made by a witness on oath in judicial proceeding and signed by the witness and magistrate is called deposition.
4. Release of the witness from the court.

Parts of deposition

A)Examination in chief –Done by PP/lawyer of the calling party. To describe the fact Leading question not allowed.(Was the injury caused by sharp weapon? What type of weapon would cause this injury?)

B)Cross examination –Done by defense lawyer. To clarify the fact. Weaken/discredit the witness.

C)Re examination –Done by PP/lawyer of the calling party. To correct any mistake during cross examination.

D)Question by the judge –The judge may ask any question at any stage of examination to clear up doubts.

Leading question

A leading question is one which suggests to the witness the answer describe, or which include a material fact and admits of a conclusive answer by a simple “yes” or “No”

A leading question is one that suggests its own answer.

Evidence

Evidence :

All legal means which help to prove or disprove any matter in question is called evidence.

Types :

I. Oral evidence

- i) Direct evidence
- ii) Indirect or circumstantial evidence

II. Documentary evidence : Medical documentary evidence.

Evidence

II. Documentary evidence

i) Medical certificates

- Birth certificate
- Death certificate,
- health certificate,
- sickness certificate.

ii) Medicolegal reports –

- PostMortem report,
- Injury report,
- Reports on rape/ sexual offence.
- Report of chemical examination of poison etc.

iii) Dying declaration

IV) Dying deposition

Medicolegal reports

ii) Medicolegal reports –

These are reports prepared by a doctor usually on the requisition from some authorized person (e.g. A Judge, Magistrate or a police officer) in connection with some civil or criminal cases.

Examples of medicolegal reports:

- PostMortem report,
- Injury report,
- Reports on rape/ sexual offence.
- Report of chemical examination of poison etc

Parts of medicolegal reports

- 1. The 1st part/ Preamble:** It contains-
 - Particulars of the victim
 - Particular of police
 - Date, time & place of examination
 - Consent for examination
 - 2-3 identification marks of the person examined
- 2. The 2nd part/ Body of the report:** Fact observed in the examination
- 3. The 3rd part/ Opinion:** Opinion of the doctor drawn from the findings

Summon /Subpoena

It is writ served on a witness from the court demanding his attendance in the court of law on a fixed date & time to give evidence & not to depart from there without permission of the court, with a warning that failure to attend without reasonable cause is compelled him to attend the court by issuing a warrant.

Warrant

Warrant means a written order from the legal authority regarding arrest of the accused or for forcible production in the court as a witness.

Hear say: It is the evidence of one who has no personal knowledge of the facts of the case, but just repeats what he has heard others say.

Offence

- **Offence:** Offence means any unlawful act or omission made punishable by the law for the time being in force.
- **Cognizable offence:** An offence for which a police officer can arrest the offender without warrant from the court. Example –Rape, murder, kidnapping etc.
- **Non-cognizable offence:** An offence for which a police officer shall not arrest the offender without warrant from the court. Example –Assault.

Oath & Open verdict

- **Oath:** It is a religious asseveration declared on the name of Almighty God that he would tell the truth & His vengeance in case he acts to contrary.
- **Open verdict:** It means an announcement of commission of crime without naming or identifying the criminal. The inquest is adjourned indefinitely and could be reopened at any later date if further information becomes available.

- **Conduct money:** It is the term implied to the fee offered or paid to medical man as witness at the time of serving the summons to cover his expense .
- **Jury :**A jury is a panel of body of responsible educated persons of good repute and social standing composed of uneven number of persons to help or assist the presiding judge . One member is juror. Jurors are appointed in trial of criminal cases in High court & Session courts. This system is not in practice in Bangladesh.

Assesors

Assesors: Assesors are randomly selected perosn with or without medical knowledge to assist the presiding judge in the session court.

Qualifications:

- Must be 18 years of age and not more than 60 years
- Sincere, honest and educated persons of good social standing
- Must be resident of the place where the trial take place
- Must understand the language of the court
- Must have property or income.

Dying declaration

Dying declaration : It is a statement of a person , written or verbal , in a sound state of mind , who is dying as a result of some unlawful act, relating to the material facts or cause of his death or bearing of the circumstances responsible for his death.

Person authorized to take dying declaration:

1. A magistrate
2. A doctor in presence of atleast two witness
3. Village headman , police or any other person, but the evidential value will be less.

Procedure of recording dying declaration

1. If there is time , a magistrate should be called to take down the declaration.
2. If the condition of the victim is serious and there is no time to call the magistrate , the doctor should take the declaration in presence of two respectable witness.
3. It should never be made over to the police officer.
4. The doctor examine the mental condition of the victim before recording the statement –he certify the victim's soundness of mind and satisfy himself of the same.
5. DD should be recorded verbatim.
6. The investigating police officer should not be present when the declaration is in an embarrassing situation.
7. When the dying person is unable to speak and can only make signs in answer to questions put by the doctor, the questions & signs put together might properly be recorded as a verbal statement.

Procedure of recording dying declaration

8.If during undertaking DD, the victim suddenly goes to coma, it should be mentioned and wait until recovery. Other wise, the court can bring charge against the responsible doctor.

9.DD is considered to be authentic, because it is thought that the dying person would not speak false at that time.

10.When the declaration has been written down, it must be read over to the declarant and must, if possible , be singed by him and attested by the doctor and witness.

11.DD recorded by the doctor should then be forwarded to the magistrate in sealed envelop.

12.It the victim dies after giving declaration then it carries medico legal importance . But if the victim survives, the declaration does not carry importance.

Dying deposition

Dying deposition (Bed side court) : It is a statement made by a dying person on oath , in a sound state of mind , recorded by the magistrate in presence of the accused or his lawyer whop has an opportunity to cross examine the dying person.

Procedure of dying deposition

- It must be conducted by a magistrate, never by a doctor or police officer.
- Accused or his lawyer is present there
- Atfirst the doctor has to certify about the mental soundness of the person
- Then the victim is to take oath
- Deposition should be recorded in patients own word
- The accused or his lawyer has the oppotunity to cross-examine the victim
- After writing the statement, it is read over the victim
- The signature of the victim is taken.
- The signature of the magistrate, the accused or his lawyer is taken also.

Difference between dying declaration & dying deposition

Points	Dying declaration	Dying deposition
Recorded by	Magistrate or a Doctor	Always by a Magistrate
Oath	Is not necessary	Is necessary
Presence of accused or his lawyer	Is not necessary	Is necessary
Cross examination	No opportunity of cross-examination	Has opportunity of cross-examination
Value	Inferior to dying deposition	Superior to dying declaration
Value if patient survives	No value	Has value
Need of security	Closely scrutinized	No need of scrutiny as the magistrate & lawyers of accused is present

Thanks To All