DAILY LIFE BLUES

Dhaka's traffic chaos

Why fair enforcement is essential to law's existence

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PHOTO: **PRABIR DAS**

Dhaka is the noisy, chaotic capital of Bangladesh. Whenever you go out for a walk, you will always find its footpaths occupied by hawkers, often illegally, without having to pay any legal fee. A formal shopkeeper, in contrast, has to obtain trade permission, pay rents, taxes, and utility bills for carrying on his business in commercial spaces. Similarly, it is all the more convenient to park a car on the street illegally than to find a legal parking spot, which costs you money. The unfit buses emitting black smoke often get away with their non-compliance, whereas the fit ones have to bear the cost of renovation, production of fitness certificates, etc. These scenes appear far too common. But rarely do we ask what led the city to fall into such disarray.

The recent advent of e-rickshaws makes the asymmetry more apparent. While a licensed vehicle owner has to face legal hurdles for violating the traffic rules, the same does not apply to the unlicensed, unregulated e-rickshaws. With weak brakes, high speeds, and a lack of control, they often imperil the lives of pedestrians, especially children on the streets. Seeing all these irregularities and asymmetric application of law, one may be tempted to breach the law rather than to comply with it. Anarchy in Dhaka thus seems the natural conclusion for rational actors.

This apparent chaos in Dhaka can be explained using HLA Hart's concept of *sanction*. Hart was one of the most influential legal theorists of the last century. In his *magnum opus* 'The Concept of Law', in which he developed his own theory of legal positivism, Hart devoted a significant portion of the book to critiquing Austin, one of the earliest proponents of legal positivism. Austin defined law as the command of the sovereign backed by *sanction*. By *sanction*, he meant the pain or punishment inflicted upon a person in case of non-compliance with a sovereign command. Its purpose is to provide the motivation for abiding by law. Without a sanction, there can be no command; without command, there can be no law at all. Thus, sanction plays an essential role in Austin's legal theory.

Contrarily, Hart showed that sanction is not always necessary for the existence of law since people may obey the law, not out of fear of harm, but out of respect for the authority or being morally obliged. But Hart discovered something more to it. Despite being a legal positivist, who viewed law merely as a system of rules devoid of moral content, Hart conceded that a few rules of conduct must exist in order for any community to survive. They have their foundations in the human condition itself and are thus named as '*the minimum content of natural law.*' These are derived from the five truisms about ourselves: (1) we are all vulnerable to each other, (2) we are approximately equal in powers, (3) we are selfish (limited altruism), in general, (4) we have limited resources, (5) we suffer from limited understanding and strength of will.

These limitations necessitate the formulation of some rules for the protection of life and property. However, the fifth truism is particularly useful to explain the situation in Dhaka. Because of our limitations in the understanding of the world along with our limited strength of will, we are often tempted to pursue our own immediate interests without considering their far-reaching consequences. This requires the establishment of social organisations for detecting and punishing them *(sanction)*, without which many would succumb to such temptations.

Notably, the sanction Hart refers to here is different from the one Austin developed. According to Hart, the object of punishment *(sanction)* is not to supply the motive for obedience but to serve as a 'guarantee that those who would voluntarily obey shall not be sacrificed to those who would not'. In other words, sanction exists so that a person is not put at a greater disadvantage for obeying the law than the one who violates it. Thus, Hart pointed out that the lack of sanction does not nullify the existence of law (as Austin described) but may reduce its efficacy.

Dhaka, if not the whole of Bangladesh, is facing the same crisis that Hart had warned us about. Due to the limitations in our human nature, there is always a temptation to breach the law for immediate self-interest. However, the social organisations exist so that such violations do not go unpunished. When law imposes sanctions on a particular class of people while others remain unchecked, it not only engenders disparity but also endangers the proper functioning of a society. This also shows why enforcement of law is necessary to a certain extent in order to create a viable social organisation. Because, in the absence of the threat of sanction, breaking the law becomes more profitable than abiding by it. The result is complete chaos, as we now see in Dhaka.



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LAW VIEWS

How ADR can play a bigger role in criminal cases

ASHRAFUL ISLAM PLABON

An agreement of 9 lakh taka has not stopped the legal controversy and the case around the recent Baridhara road crash. A 17-year-old boy accused of driving the car that killed construction worker Mehedi Hasan Mim was refused bail by a Dhaka juvenile court on 4 October. A report forwarded by the police to the court says investigators reviewed CCTV footage of the scene and surrounding areas, and it shows that the teenager was involved. The case brings up a question: when can a criminal case be settled by an agreement between the people involved, and when should the State continue with the trial?

In the civil justice system of Bangladesh, Alternative Dispute Resolution (ADR) is firmly embedded in the form of mediation, arbitration, and conciliation, especially in sections 89A to 89E of the Code of Civil Procedure, 1908. But its application in the criminal justice system is not so widespread. However, delays due to case backlogs, shortage of judges, and problems of obtaining witness evidence should prompt one to wonder whether ADR can play a bigger role in criminal cases as well.

Compounding of offences, as per section 345 of the Code of Criminal Procedure, 1898, is a significant form of criminal ADR. Compounding implies a compromise arrangement between the alleged victim and the accused to terminate the criminal procedure. However, simply because the two parties wish the criminal proceeding to end does not make it legal.

Section 345 identifies offences that may be compounded. In general, there are two categories: section 345(1) lists offences that are compoundable without the permission of the court, and section 345(2) deals with offences that require the court's permission. Offences with a clear public element cannot automatically be converted into private offences simply because some form of compensation has been made. Under Section 345(6), lawful compounding results in the acquittal of the accused person with whom the offence is compounded.

The Appellate Division of the Supreme Court of Bangladesh also recognised the importance of compromise within the statutory framework in *Md Joynal* v *Md Rustom Ali* (1984). The case is frequently cited in discussions of compromise as a form of ADR.

Coming back to the Baridhara case, the action was brought under sections 98 and 105 of the Road Transport Act, 2018. Section 117 of the 2018 Act makes the offences mentioned under sections 66, 72, 75, 87, 89 and 92 compoundable, while sections 98 and 105 are not compoundable. Hence, I believe even when the relatives of the deceased accept Tk 9 lakh voluntarily, the private compromise cannot end the proceeding.

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However, the punishment provided under sections 98 and 105 is noteworthy as well. Section 98 provides imprisonment for a term which shall not exceed three years, or a fine not exceeding Tk 3 lakh, or both, and such fine may be paid in whole or in part to the aggrieved party by the court. Under section 105, an offender is liable to imprisonment for a term which shall not exceed five years, or a fine not exceeding Tk 5 lakh, or both. The reason behind considering the settlement of Tk 9 lakh as an ADR issue may be that the said settlement is above the maximum limit of fine prescribed in both the sections. The question thus arises whether there exists any mechanism within the legal system which can allow this allegedly voluntary settlement on the part of the victims' family?

However, this is not to suggest that such issues can simply be swept aside. For Bangladesh, there could be a system where a judge ensures that compensation, consent, and the interests of the victim are considered while giving the government the right to ensure that the state interest is also protected. This discussion has become pertinent considering the amendment made in the Code of Criminal Procedure in 2026. Section 345(8) lays out that the court has the power to help in the compounding of compoundable offences when both parties agree to do so or refer the matter to the Legal Aid Officer or advocates. Such an agreement can be put on record and can be executed provided the rights of third parties are safeguarded.

It is also possible that Bangladesh may introduce a plea-bargaining scheme, which will be properly regulated. Contrary to compounding, plea bargaining will involve the acceptance of guilt in exchange for some legal bargain. Some examples of plea bargaining include charge bargaining, sentence bargaining, and fact bargaining, but it should be done very cautiously.

There is a need for criminal ADR in Bangladesh that should neither be dismissed completely nor considered without any caution. There is a need for a system in Bangladesh through which the minor crimes that deserve it can be disposed of through an efficient system, but the serious crimes must continue to attract public accountability. It is important for the courts to ensure that such agreements are made voluntarily, the parties are informed, and the agreements are legal, especially when vulnerable crime victims are forced to accept money. Only with sufficient safeguards in place will such a system work.

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