



*Research Article*

## **The Role of the Police in Criminal Mediation**

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**Abstract:** This article highlights the role of the police in criminal mediation as one of the means used by the police in combatting crime and strengthening its social role using community policing. The research concluded a series of findings, notably the possibility of using criminal mediation to strengthen the concept of community policing and the recommendation that the proposed legislative amendments to the conciliation regime should be made to allow police officers to assume their role as intermediaries for the settlement of criminal disputes in criminal proceedings.

**Keywords:** criminal mediation; community policing; police reconciliation



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## Introduction

The primary role and mission of the police is to enforce laws and create security and stability within society. They enforce the law, arrest violators, investigate and suppress crime, investigate traffic and bicycle accidents, and provide a full range of services to the community. Methods for achieving these objectives vary through various preventive administrative, judicial, and community-based humanitarian roles. Community policing is one of the most essential in bringing the police and the public closer together. It can be activated through any means, notably criminal mediation. Criminal mediation involves seeking the assistance of a neutral third party who communicates with the offender and victim in simple crimes or crimes between the parties with continuous links. Mediators listen to each party, trying to bridge the points of view between the two parties to reach an amicable settlement<sup>[1]</sup>. The application of criminal mediation has been widespread in most of the comparative Latin and Anglo-American legislation, and the European Union recommended its application in the legislation of European countries. Some Arab legislations have applied it.

This article highlights the role of the police in criminal mediation as one of the means used by the police to strengthen its social role in combating crime and achieving social peace within a community policing framework. To achieve this goal, it first aims to define criminal mediation and to shed light on its advantages for criminal justice, crime parties, and society. In addition, it clarifies the relationship between community policing and criminal mediation. Finally, it analyzes the role of the police in the application of criminal mediation and its overall impact on the security and stability of society.

## Nature and Definition of Criminal Mediation

Criminal mediation is a system aimed at reconciling adversaries through the intervention of an impartial third party, called the mediator, who conducts his or her functions under the supervision of the Public Prosecutor's Office. This mediator communicates between adversaries to bring them closer together and to reach an amicable settlement of the dispute, which ends with the satisfaction of the victim and the repair of the damage caused by the crime. Criminal mediation shall be based on negotiating the consequences of the crime between the offender and the victim through the intervention of the prosecutor or his or her delegate. The success of this shall result in compensation for the damage caused to the victim, repair of the consequences of the crime, and rehabilitation of the offender in such a way that there is no need to continue the criminal proceedings.

Criminal mediation is designed to resolve simple conflicts of little social harm, particularly conflicts with permanent ties, such as domestic violence, neighborhood disputes, labor disputes, and other conflicts that occur frequently daily. When cases are mediated outside the courtroom, the Public Prosecution can have the chance to devote itself to examining more severe crimes and relieve the burden on the judiciary.

### *The history and genesis of criminal mediation:*

Criminal mediation emerged in the mid-1960s in Canada, then moved to the United States of America. It was subsequently introduced in France in the mid-1980s to reduce the problem of increasing the number of custody orders in the prosecution and to clear the number of cases heard by the courts. In 1993, France formally approved criminal mediation to become regulated in French legislation.

The application of criminal mediation in most comparative Latin and Anglo-American legislation has been publicized, and the European Union has recommended that it be applied in the bill of

European States. Indeed, some Arab legislations, such as Algerian and Bahraini legislation, clearly indicate the importance of their role in criminal proceedings. The French experience of criminal mediation is one of the most visible and visible comparative experiences in criminal procedure. It is used in criminal proceedings and under the supervision of prosecutors.

*Success and efficiency of criminal mediation:*

Criminal mediation programs in the United States of America in 1994 alone reached 294 mediation programs, and more than 1300 criminal mediation programs in more than eighteen states that have adopted it worldwide indicate the prevalence of criminal mediation in comparable procedural systems. This solidifies the view that it is one of the features of criminal proceedings. It achieves many practical advantages for the criminal justice system, victims, offenders, and society<sup>[2]</sup>.

*Advantages of criminal mediation:*

Criminal mediation brings many benefits to the criminal justice system, the most notable of which is the activation of the Public Prosecutor's role in managing criminal cases by giving it a third option to deal with the criminal case effectively by referring the criminal conflict to a mediator to undertake a friendly settlement between the parties of the conflict, in addition to the two traditional options, which are closing the case or referring the case to the judiciary. It is acceptable to achieve the interests of the victim and ensure that he receives compensation and the accused avoids the consequences of proceeding with judicial procedures in a manner that reduces the burden on the shoulders of the courts, especially in minor disputes that involve ties between its parties.

*For the Criminal Justice System:*

The number of cases before the criminal courts could be reduced through mediation. Their success would entail the filing of cases by the Public Prosecutor's Office, which would help the judiciary to deal with critical cases, as well as the activation of the role of the Public Prosecutor's Office in the administration of criminal proceedings, by giving it a third option to deal in criminal proceedings between custody and motion, namely the referral of the dispute to an intermediary for friendly settlement between the parties to the dispute <sup>[3]</sup>.

Criminal mediation reduces the costs of trial proceedings and Punishment. For example, some American studies estimated the cost of mediation in the State of California in 1996 to be between \$250 and \$300, while in 2001, a study was conducted on the extent to which corrective justice mechanisms, particularly mediation, could be relied upon to reduce the costs of criminal justice administration before the prison sentence was applied and correctional and educational programs for (94) offenders referred to the program. This study showed that these costs would have increased from six million, 212 thousand, and 732 dollars to fifteen million, 902 thousand, and 885 dollars. That is, the cost reduction for ninety-four offenders amounted to approximately \$10 million, which indicates the extent to which mediation provides for criminal justice expenses<sup>[4]</sup>.

In addition to shortening the time of the proceedings and remedying the problem of the length of the proceedings. For instance, it is estimated in France that most cases of criminal mediation have been settled within not more than three months <sup>[5]</sup>. In 1995, a study was conducted in Canada, British Columbia, on the impact of mediation on the shortening of litigation; cases involving crimes of violence, sexual assault, premeditated murder, and armed robbery, on average, took between 3 and 7 years after the arrest. When they were referred to criminal mediation, cases took 3 to 5 hours for dialogue and discussion in the case file. They were resolved amicably, clearly indicating the role of mediation in completing and ending criminal disputes as soon as possible<sup>[6]</sup>.

*For the Security Service:*

In addition, the social role of mediation in achieving security and social peace allows criminal mediation to reform social relations by creating a communication channel between the parties to the conflict. On 28 March 1991, the Centre for Research on Criminal Policy in Paris noted the importance of the social role played by mediation in restoring social relations and the advantages of friendly solutions to disputes in French society <sup>[7]</sup>.

*For the victim:*

On the other hand, mediation ensures that the victim receives prompt and satisfactory compensation from the perpetrator, which does not provide them with judicial proceedings that may extend to years without compensation. Criminal mediation also activates the role of the victim in the criminal proceedings. Rather than limiting the role of the witness or the whistleblower in criminal proceedings, criminal mediation gives the victim a more significant role by engaging in discussions with the perpetrator, and the victim knows the circumstances of the offense <sup>[8]</sup>.

*For the offender:*

Criminal mediation avoids judicial proceedings and convictions that may lead to defamation, the stigma of conviction, and restriction of freedom within the prison <sup>[9]</sup>(Ebeid 2002, 18). Criminal mediation enables the offender to atone for his crime, reintegrate into society, and develop positive feelings and social responsibility for his actions. It can also play a positive role in recidivism reduction. A Canadian study in 2000 indicated that mediation played a positive role in reducing the incidence of recidivism. In persons involved in mediation programs, there are far fewer cases of recidivism among individuals involved in traditional justice, and mediation has thus played a clear role in the rehabilitation of offenders and the prevention of their recidivism<sup>[10]</sup>.

*Condition for criminal mediation:*

When an offense occurs, it reaches the public authorities, and the facts are brought before the public prosecutor's office. The public prosecutor will assess the facts before him. Suppose the circumstances surrounding the dispute have a clear link between the victim and perpetrator. In that case, the damage caused by the crime can be repaired, and the victim can be compensated and satisfied, then the public prosecutor may offer a referral for mediation. In that case, the public prosecutor may offer the parties to the dispute a referral to an intermediary for reconciliation.

*Nature of criminal mediator:*

It is the criminal mediator whom the Public Prosecutor's Office entrusts with the task of reconciling the offender and the victim. The mediator must meet certain conditions that enable them to carry out their task. The French legislator has stipulated that anyone who exercises the profession of a mediator must have deep knowledge or competence, be independent and impartial, not be a judicial official, be a natural person, and be a moral person, such as being associated with victim assistance associations or rehabilitation associations, under which mediation activities are carried out through agreements with prosecutors. The members of the Public Prosecutor's Office, the judiciary, and the police in France had initially initiated the task of mediating between the parties to the conflict, together with the members of the Associations for the Assistance of Victims, until a decree prohibiting members of the Public Prosecutor's Office from carrying out the mediation function in violation of the principle of impartiality and impartiality of the Public Prosecutor's Office.

*The working mechanism of the criminal mediator:*

When the matter comes to the mediator, he or she shall listen to each party, bring them closer together, and propose appropriate solutions to reach an amicable settlement. Suppose the mediator's endeavors to settle have been successful. In that case, he or she shall draw up a record or a peace agreement specifying the victim's satisfaction and the offender's obligations to the victim in preparation for submission to the Public Prosecutor's Office, which has the mandate to monitor the implementation of the peace agreement between the parties. If mediation efforts fail, the mediator prepares a report for submission to the Public Prosecutor's Office to explain the reasons for the failure of the mediation process.

*Offenses applicable to the criminal mediation:*

The position of comparative legislation is different, but most legislation limits mediation to offenses involving minor criminal offenses or civil conflicts. Leuven applied mediation for some serious crimes, but in France, many of the crimes for which mediation was used were thefts, domestic violence, other cases of abuse and physical abuse, non-payment of alimony, non-representation of children, insult and insult, and other minor offenses<sup>[11]</sup>.

**The use of Criminal mediation in community policing:**

Criminal mediation plays a central role in strengthening the social role of the police and activating the concept of community policing. This new policy philosophy has spread to many countries.

*Definition of community policing:*

Some Scholars define community policing as a modern philosophy of managing Police work. It is based on grounds different from traditional policing, with the idea of community policing promoting citizen participation in security work so that there is adequate participation between citizens and the police to maintain the security of society in various fields <sup>[12]</sup>.

The previous definition agrees in its content with the explicit definition of community policing, defining it as a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues, such as crime, social disorder, and fear of crime.

Others define community policing - given its essence - as a "policy and strategy aimed at controlling crime, reducing its fear, improving the quality of life, improving police services and improving police performance effectively and efficiently"<sup>[13]</sup>. Others define it as "combining and integrating the roles of all individual and non-governmental groups and groups of society into an integrated social security system - functionally and voluntarily - to eliminate the problems of society that lead to the commission of criminal behavior, compared with and under the supervision of the security institution."<sup>[14]</sup>. A third aspect defined it as "a philosophy of security management based on a full partnership between the police and members of the society and its various institutions to prevent crime and achieving security and stability for society in the face of all matters of public security"<sup>[15]</sup>.

From the previous definitions, community policing is based on the idea of community partnership, community problem-solving initiative, mass communication, and community awareness, and is aimed at achieving citizens' satisfaction with the security service, reducing their fear of crime, as well as at achieving satisfaction among police personnel. In addition, community police officers are working to consolidate the concept of comprehensive security in its idea and responsibilities, and the participation of all communities in the security institution in preventive measures and to give effect to their role in combating crime, to achieve the motto of security, everyone's responsibility

(Ashmawy 2012, 2).

Crime reduction cannot be based solely on the work of the police and other criminal justice agencies. Still, the efforts of politicians, the judiciary, civil society organizations, various public and private bodies, and individuals must be combined if crime prevention efforts are to achieve the best results in countering crime<sup>[16]</sup>. In fact, from my point of view, community policing is considered a police system based on strengthening the partnership between the police and government agencies, civil society communities, and institutions active in community service in the fight against crime and the reduction of crime rates. The achievement of community satisfaction with police work is through the adoption of a working mechanism based on several principles distinct from traditional police areas. It involves distributing conventional police functions in crime prevention and control among the official police services and community voluntary groups<sup>[17]</sup>.

### *Criminal mediation and community policing:*

Some researchers have argued that police reconciliation committees, such as community policing applications, are considered to be based on the social role they play in conflict, conflict, and social peace, as well as one form of public participation in security work by contributing to reconciliation or as forms of community participation between the police and citizens, through the intervention of members of these committees to resolve social problems and conflicts between the parties to the conflict <sup>[18]</sup>.

So, it is undoubtedly considered one of the most essential local applications for community policing in Egypt. In this direction, reconciliation is one of the vital forms of police-people cooperation in combating crime and establishing trust in the police system, as it plays a role in reducing revenge crime and is one of the crucial hubs of crime prevention in its broad context <sup>[19]</sup>. Some consider that, although the reconciliation committees are geographically and qualitatively limited in scope, they can be used to develop an operational strategy for community policing, bearing in mind that the community security system covers all aspects of community security and is mainstreamed in all urban and rural areas according to the circumstances of each community <sup>[20]</sup>.

Many countries have known community policing applications, including the United States of America, the United Kingdom, France, the Netherlands, Denmark, Canada, Australia, and Japan, and from Arab countries, including Bahrain, Saudi Arabia, the Emirates, Jordan, Sudan, Libya and finally Egypt <sup>[21]</sup>. It is essential to point out the multiple experiences and models of community policing from society to society, depending on the customs and nature of the fabric of society in each State. We find some successful applications in some States, which may not have the same success in others. We want to point out that there is a difference between community partnership and community policing. Community partnership often extends to all areas of community development, not just security. On the other hand, community policing is one means of activating community participation in security work.

### *Can members of the Police proceed with mediation?*

There is a question about the role of the police in criminal mediation. Can members of the police authority initiate mediation? The answer to this question is yes. Police officers working at police stations and stations begin reconciling adversaries through what is known as the "Conciliation Notes" mechanism, which is established by the case book. Police officers intervene in adversaries with permanent ties and relationships, such as family and neighborhood disputes. Police officers often resort to reconciling adversaries.

It should be noted that practical application has shown the extent to which this mechanism has been applied in such a way as to say that, in comparison between conciliatory practices in some sections and police records edited daily, the peace notes in the case book may converge with the police reports that are edited daily in the section. Sometimes, even compromise practices may go beyond the preparation of police transcripts that are edited daily in these sections. In addition to the central role played by police officers in the Customary Judicial Councils in the feuds in Upper Egypt and the Police Reconciliation Committees in many urban police stations, it is essential to note that the police officer's role as a reformer between adversaries in criminal disputes is often due to the social standing and respect that citizens have for the police officer by his job, which helps him through his good dealings with the citizens to perform this function.

It should be noted that the status book mechanism is well-known in many countries. One study of the work of the Poitier Police Department in France showed that nearly a quarter of cases of petty altercation and riot had been completed (24%) (through police mediation, since French police officers tended to resolve family disputes, even if they were accompanied by abuse through mediation). According to the study, more than half of cases of family disputes, which included battery offenses (55%), were resolved through mediation (83%). When acts of battery did not accompany such disputes, the mediation of family disputes was reduced when such disputes were of some gravity since the police officer rarely concealed cases of destruction of public property or theft from a car. This mechanism was able to reduce the burden on the judiciary. The Paris Office had directed the police departments to cease mediation and to refer communications and complaints without discrimination, but direct referral of communications - on instructions.

In addition, the widespread use of this mechanism has occurred in Italy. Italian police often offer parties an amicable settlement surrounding non-serious crimes. The Belgian police also take a similar approach.

### *Does Egyptian legislation define criminal mediation?*

Although the Egyptian legislature has expanded the application of the reconciliation and criminal order regulations, it has not yet provided for a system of criminal mediation. The Egyptian parliament has adopted legislative texts on reconciliation that differ from criminal conciliation, which are close to being applied. Nevertheless, mediation is used in the areas of administrative dispute resolution, family dispute resolution at the Family Court, labor disputes, police mediation to deal with communal disputes and the phenomenon of retaliation, as well as customary peace councils in Sinai and Upper Egypt.

### *Proposed concept for the application of criminal mediation in Egyptian legislation:*

It is proposed that criminal mediation be applied in Egyptian legislation through the referral by the Public Prosecutor's Office of cases that it deems suitable for resolution through mediation to its judicial services, which intermediaries' staff. The success of this mediation means that the mediator.

The parties shall be invited to a final hearing before the prosecutor, who may conclude the judicial proceedings.

The success of the mediation shall result in the termination of criminal proceedings or a registry of intermediaries with legal expertise shall be established. This list of intermediaries can include former judges, lawyers, former officers, and the clergy if they conduct their role independently and impartially. Once individuals are a part of this list, they may have assignments available to them.

*The proposed concept of activating the role of police commissions in Egyptian legislation:*

Police reconciliation is one of the proactive approaches to solving criminal problems. Egyptian police appreciate the situation and security on Egyptian streets through their role and administrative function in preventing crime and reducing crime rates. It is proposed that a bill to amend the Code of Criminal Procedure should be introduced to give effect to the role of police commissions, which would allow judicial enforcement officers and prosecutors to refer criminal cases that can be resolved amicably to police commissions, with the result that the termination of such disputes would have the effect of keeping papers or ordering those proceedings should not be brought.

18 bis "a" of the Code of Criminal Procedure by adding some paragraphs at the end of the article, which states:

*"The Department of Public Prosecutions or the Superintendent of Judicial Control may - if, by the circumstances of the case, the parties consider it possible to resolve the dispute amicably - refer the parties to the police commissions within their jurisdiction to reach a friendly settlement between the adversaries. When notified to the Public Prosecutor's Office, the Superintendent of the Department or their Deputy is competent to refer the dispute to the competent Committee at the village or village level. Suppose the Committee is competent at the district or town level. In that case, it may invite the parties to the dispute and the members of the Committee within 48 hours to attend the reconciliation session at the headquarters of the section, town, or other designated place. The reconciliation committees at the village, village, or district level operate under the supervision of their President. The meeting proceedings are established in a record of the proceedings. They are submitted to the competent department within two weeks of notification to the Public Prosecutor's Office. The report of the Commissions of Reconciliation must include the determination of the causes of the conflict, the solutions proposed by the members of the Commission, and the position of the adversaries thereon. The report submitted to the Office of the Prosecutor may include a request for an extension of the legal period established to resolve the dispute for a further week, which the Chairman of the Commission causes. Suppose a conciliation agreement is reached between the parties. In that case, the Chairman of the Commission shall prove it in a record of the peace, sign it by the parties to the dispute, and send it to the Office of the Public Prosecutor with the opinion on the conduct of the case. The assessment of this report and the conciliation agreement between the parties shall be subject to the authority of the Public Prosecutor's Office to ensure that criminal proceedings are brought or filed based on such proceedings. In the event of a failure to reach a reconciliation between the parties, the Chairperson of the Reconciliation Committees shall prove this, accompanied by a statement of the Commission's efforts to bring the conflicting parties closer to the solutions presented by it and the parties' position on attempts at reconciliation".*

## **Conclusion**

The research concluded a series of findings, notably the possibility of using criminal mediation to strengthen the concept of community policing and the recommendation that the proposed legislative amendments to the conciliation regime should be made to allow police officers to assume their role as intermediaries for the settlement of criminal disputes in criminal proceedings.



## Disclosures

None

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Dr. Ramy El-Kady is an Associate Professor of Criminal Law at the Police Academy and holds the position of Head of the Criminal Law Department. He was rewarded with the State Encouragement Award in Legal and Economic Sciences, Citizenship, and Human Rights Branch on "the right of persons cooperating with justice for protection in international conventions and national legislation. He graduated from the Police College in 1999. He obtained a postgraduate diploma in criminal sciences and public law, equivalent to a master's degree in criminal law, in 2003. He received a PhD in criminal law from the Faculty of Law, Cairo University, on the topic of (Mediation as an Alternative to a Criminal Case: A Comparative Study. He currently teaches criminal law subjects to college students. He supervised numerous studies submitted for doctoral degrees and higher diplomas and authored a host of research in the criminal law field. He has previously judged multiple research papers in several refereed regional scientific journals. He published a host of research in refereed and indexed periodicals and participated in several international and local conferences and symposia.

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