

A Comparative Analysis between the Juvenile Justice Process of Bangladesh and China

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Abstract

Juvenile delinquency is an issue of concern all over the world. It has long been an issue of discussion throughout the world among the legal scholars, psychologists, and world leaders. Many international conventions and treaties, therefore, are still in action to deal with the problem. These legal guidelines are set as the standard of the rights for the juveniles or children who come in contact or conflict with the law. The pattern of the delinquency, the definition of activities as delinquency and crimes and other associated issues are not equal in all the countries of the world. Western countries are clearly ahead in establishing a more liberal justice system for the juveniles than other countries. Some Asian countries are also concerned with the issue and continuously striving to change their system as per the guidelines of the international legal instruments. China has also undergone a considerable headway in the present years in reducing the delinquency adopting new measures in this regard. Bangladesh, on the other hand, enacted a new legal framework replacing the old one to create a more congenial environment for the juveniles. As a result, the juvenile justice system in both of these countries is achieving new dimensions. A comparative study between these two countries reveals that there are some differences in the ways of dealing with the juveniles who come in the contact or conflict with the law. China's juvenile justice system is mostly criminal in nature where argumentative ways of prosecution are prevalent. On the other hand, seemingly the process of Bangladesh is more favourable for the juveniles. Both of these countries emphasise on the rehabilitation process while China has formally established that their means of handling juveniles will primarily be through the education followed by the punishment. Both of these countries need to establish many specialized treatment centres so that the juveniles can be rehabilitated properly under necessary supervision. Chinese Procuratorate system is also a good one that works like a circuit breaker in stopping mass and whimsical arrest of juveniles by police officers. This study, however, is based on content analysis and was conducted between January 2018 to March 2018.

Keywords: Criminal justice system, international legal instruments, Beijing rules, comparison, dissimilarities

1. Introduction

Juveniles belong to one of the most important stages of human life. This age group consists of that part of human lifespan where a person learns how to act towards the society and how to react to the reciprocal action of their known surroundings. When the expected growth of the children is hindered or challenged by some issues or something, it may proliferate delinquency among them. This is one of the most serious issues what society is dealing with. The strongest reason for this is if this delinquency goes on unchecked that can last longer even until a juvenile's later age. Thus, society may suffer for long because of the impact of such delinquency. Moreover, the future of the adolescent, its family, and the state all go under a serious threat. That is the reason why juveniles should be given priority in every country specially when they come in contact with the law. To deal with thus juveniles' violation of legal codes, one of the major hallmarks of the present justice system is to develop a distinct justice system for them (Shahidullah & Das, 2017).

However, if any legal violation is committed by any juvenile, it is expected that s(he) would not be treated like an adult because of his inability to understand the nature and consequence of the act like them. Now, the question arises that why the comparative study on juvenile is expected. It is evident that after the World War II a trend of macro level research is seen to be in an increasing trend due to the advancement of technology. Since then, to decentralize the world order in terms of focusing the issues beyond borders slowly drew that attention of the researchers (Chakraborty, 2008). The present study also intends to analyze the issue in the alignment of each other so that the overall justice process can be understood from a macro perspective. Moreover, China and Bangladesh are two Asian countries having similarities in many issues. The impact of states' legal action,

however, is not the same in these two countries. The number of juveniles who came in conflict with the law dropped by 4.5 percent in 2008 to 2012 in the case of China while in the case of Bangladesh it is still very alarming as the news report says. Recently the non-custodial rehabilitation process has increased in China and the procuratorates have rejected arrests in a large number (“Juvenile Justice,” n.d.). In this context, a comparative study will help all to understand the reality of the juvenile justice system and its management process from which both of these countries will be able to understand the actual scenario of the juvenile justice system. China’s reform initiative may influence its juveniles to be law abiding which have a direct influence in the crime statistics. It is to mention that the limitation for such study always is the non-western countries’ legal system is always in transition and does not necessarily stands on a specific position (Haines, 2008)

Bangladesh is a South Asian country located off the northern part of the Bay of Bengal, which is surrounded by India and a small border with Myanmar, by all other three parts. It is a unitary country and divided into 8 divisions. All of these divisions then divided into several districts and thus this country has 64 districts in total. Each district has several upazilas (subdistricts or police stations) (“Bangladesh,” 2018; Figure 1). At the present context, the number of recruitment of the children in different criminal activities in Bangladesh is in a rising trend. Street children or abandoned children are mostly vulnerable to organized criminals for engaging them in such heinous offences. Moreover, many children are under a serious threat of drug and sexual abuse because of their living in the slum areas. According to the Department of Narcotics Control, nearly 5,50,000 children are addicted to drugs and about 30% of them are involved in any criminal activities (Khan & Tipu, 2016).



Figure 1. Political Map of Bangladesh

[Source: <http://ontheworldmap.com/bangladesh/large-detailed-map-of-bangladesh-with-cities.html>
 (“Large detailed map of Bangladesh with cities,” n.d.)]

China, on the other hand, is a large unitary country having the world’s largest population by a single country. It has 22 provinces, five autonomous regions, four direct-controlled municipality and the special administrative regions of Hong Kong and Macau (“China,” 2018, Figure 2). Both of these countries (Bangladesh and China) include more than 1.56 billion people, which is more than 20 % of the world’s population. That’s why studying on these two countries’ legal system together is like studying the system for one fifth of the world’s total population. For getting into a wider view regarding the comparative juvenile justice system, this study intends to have a look over the juvenile justice process only.



Figure 2. Political Map of China

[Source: <http://ontheworldmap.com/china/china-political-map.html> (“China political map,” n.d.)]

This study wants to reveal the stages that the future civilians are supposed to encounter in terms of any conflict with the law. It is a general assumption that when the legal system would not be humane, that would reflect a pure backwardness of the state especially in the context of upholding the rights of the human. This study, however, can aid in knowing the condition of this delinquent juveniles in a most precise way for the selected countries. One question may arise that why is the comparative study essential in the present context. Many scholars have already given the answer. Though, once the sociological and criminological model was very much concentrated on ‘unilinear model’ (within borders) but this trend was changed throughout the recent years (Chakraborty, 2008). It is because of the fast developing communication technology. No crime can now be confined within the territory because of the media. That is why the problem in one country necessarily increases anxiety among the other countries also. Moreover, any positive approach of any country can similarly solve many problems in other countries. Therefore, the same problem may be eradicated by already discovered solution approach in any country.

Though this study is not a comprehensive one, this can broaden our outlook in settling a more practical and reality oriented set of policies in addressing this vital issues according to the accepted international legal guidelines. This paper also intends to compare two Asian archetypical countries to understand the differences between the selected countries.

2. Review of Literature

One of the landmark changes in the history of juvenile justice started from the UN Congress on the Prevention of Crime and the Treatment of Offenders held in Beijing of China in the year of 1985. Here, United Nations ratified several legal guidelines named “Standard Minimum Rules for the Administration of Juvenile Justice”. In the later stage, these guidelines become famous as the “Beijing Rules”. In this rules, it is stated that the children should be protected from torture or other cruel, inhumane or degrading punishment along with capital punishment, life imprisonment and unlawful or arbitrary punishment (Chakraborty, 2008). Besides these, some very important legal instruments for dealing with the children and juveniles come in contact or conflict with the law are as the following:

- Universal Declaration of Human Rights, 1948
- Geneva Declaration of the Rights of the Child, 1924
- Declaration of the Rights of the Child, 1959
- International Covenant on Civil and Political Rights, 1966 (Rights of persons detained)
- International Covenant on Economic, Social and Cultural Rights, 1966 (alternatives to imprisonment)
- Standard Minimum Rules for the Administration of Juvenile Justice, 1985 [Beijing Rules] (Rules, 1985)
- UN Convention on the Rights of the Child (UNCRC), 1989
- Rules for the Protection of Juveniles Deprived of Liberty, 1990 [Havana Rules]
- Guidelines for the Prevention of Juvenile Delinquency, 1990 [the Riyadh Guidelines]
- United Nations Standard Minimum Rules for Non-custodial Measures [The Tokyo Rules] (Ali, 2014)

Scholars tend to see the issue of the juvenile justice system in terms of impact in distinct ways. Smith (2005) in his paper argues that passive and active perspective of the juvenile justice system has almost the same impact on the level of delinquency. Only a program works well in a structure does not necessarily indicate that it may work in the same way in another system. There are a lot of variables which may have a great impact on the overall condition (Smith, 2005). For example- a great number of studies in the US have unveiled the reoffending rate of the released juveniles from the correctional facilities. Many of the studies have revealed a decreased rate of reoffending among the released juveniles who served in the rehabilitation centers. However, the interpretation of the result is still controversial.

In response to the approach to deal with the juveniles, many researchers found contradictory findings. According to a study in Canada revealed that the juvenile justice system does not work for most of the inmates where many of them mentioned that it could work as a deterrent approach for other potential juvenile offenders (Veneziano, Veneziano, & Gill, 2001). Many reasons like cultural conflict and generational conflict may contribute to the delinquency which also needs to address (Khondaker, 2007). Many researchers think that in recent years, the tendency among politicians is seen to convey the message that the existing juvenile justice system still can solve the problem though it is modelled with a punitive approach. Rather, this psychology can actually hinder further development of the juvenile justice process in a more effective way. In many cases, juvenile offenders have a history of prior victimization (Rapp, 2016). Criminal justice professional needs to be very careful, therefore, in course of addressing the issue of juvenile victims.

The programs, which are mostly successful presently, are very much associated with the behavioral features of the juveniles. Considering the social learning approach, getting social and interpersonal skills and the mentality of helping others can yield some good response in terms of rehabilitating the delinquent juveniles (Vesvikar & Sharma, 2016). Some researchers also suggest the evidence based policy in the programs and activities in responding to the individual juvenile delinquents' reintegration process (McKee & Rapp, 2014). Many of the scholars thin that the family involvement in case of juvenile justice process can bring a better solution (Walker, S. Bishop, D. Pullmann, & Bauer, 2015). Japan, irrespective of its small increase of juvenile offenders, still tends to depend on reintegrative shaming and restorative approach which they believe is working well (Dawkins & Gibson, 2018).

This paper however, focuses on the effective management of the juvenile justice system based on the secondary data or content analysis, where the philosophy of comparison has the preference. The researcher wanted to address the need for research from a comparative perspective between these two countries in the academia. This research, however, is a qualitative study where secondary data were used to draw a comparative inference between the juvenile justice systems of these two countries.

3. Research Objectives and Research Questions

The focus of the study is to know how the juvenile justice system works both in Bangladesh and China according to the new set of legal principles. Additionally, the research intends to investigate the similarities and dissimilarities of the juvenile justice process between both of these countries. The research also aims at measuring the compliance of these countries with the guidance of international legal standards.

However, based on the research objectives, the following research questions have been formulated for the study.

1. How does the justice system of both Bangladesh and China work according to the new set of legal instruments?
2. What are the similarities and dissimilarities between the juvenile justice systems of these two countries?

3. What kinds of international legal instruments these countries have made compliance with?

4. Methods and Materials

The present study is an effort to analyze juvenile delinquency from a comparative perspective. A comprehensive and empirical study is nearly impossible here to conduct without the help of secondary data and documentary evidence. Therefore, the author relied on the secondary data collection method here to understand the nature of juvenile delinquency of these two important Asian states. This is a qualitative study. The author has taken help from different secondary kinds of literature like-journals, books, articles, news reports, and edited books to collect and analyze relevant data in course of fulfilling the research objectives. Tables, charts and different pictorial diagrams which have been extracted using different secondary materials.

5. Findings and Discussion

5.1 Juvenile Justice System in Bangladesh

5.1.1 Background of the Juvenile Justice System of Bangladesh

Though the history of juvenile justice is much older (started in the late 19th century), the entrance in the different structure for the juvenile justice system is comparatively new for Bangladesh. There are some legal provisions for the children in different legal documents but the Children Act of 1974 was the first comprehensive legal framework for dealing with the juveniles in Bangladesh. Then a set of rules were adopted namely, the Children Rules in 1976. Though these legal instruments did not necessarily comply with the international legal standards properly which were approved and ratified on later age, it was a giant step in Bangladesh at least to initiate a separate judicial process for the juveniles. Afterwards, the Children Act, 2013 was enacted and it replaced the previous Children act of 1974. This act is mostly based on the guidelines of the United Nations Convention on the Rights of the Child that was adopted in 1989. Actually, Bangladesh made an unnecessary delay in incorporating the UNCRC guidelines after ratification. On the other hand many European countries like Germany, Netherlands and Austria integrated some educational approach for the juvenile offenders and established a balance among education, control and reintegration (Oriol-Granado, Sala-Roca, & Filella Guiu, 2015). UNCRC is a good legal instrument in black and white that incorporated all the required institutional frameworks for creating an empathetic justice system for the juveniles.

5.1.2 Legal Provisions of Bangladesh Addressing the Child or Juveniles

A number of legal provisions have addressed the issue of juveniles in Bangladesh which are sometimes misleading for the law enforcement officials in course of selecting the appropriate provision in a particular situation, although a very comprehensive set of procedures and a special act for the treatment of juveniles are available there (Ahmed & Khan, 2010).

The major legal provisions, which address the juveniles in Bangladesh are-

- a) *The Constitution*: According to the article 31, 32 and 35 (3)-all the persons of Bangladesh, irrespective of their gender and age are supposed to be free from arbitrary arrest and get personal liberty, equal protection of the law and a speedy and fair trial (ibid).
- b) *The Code of Criminal Procedure*: Section 29B of the Code of Criminal Procedure (sometimes referred as the CrPC) provides provision for the separate trial of the children or juveniles in separate courts (“Code of Criminal Procedure, 1898 (Act No. V of 1898).,” n.d.). The maximum age is 15 here according to the provision (ibid).
- c) *The Bengal Jail Code and Prison Act of 1894*: These two provisions instructs to separate children from the adults in case of incarceration (ibid).
- d) *The Vagrancy Act, 1943*: This act defines a vagrant as anybody who is found in public asking for alms, those who do not work, who live on taking help from others in the form of alms and who fidget here and there without having any fixed place. This act has given the policemen greater discretion to arrest them, though they may not be adult always. This act thus is an instrument to suppress the rights of the children falling in the definition of vagrant (Ahmed & Khan, 2010).
- e) *The Penal Code*: The Penal Code of Bangladesh has two sections, i.e-section 82 and 83 which stated the minimum age of criminal liability. According to the article-82- “nothing is an offence which is done by a child under nine years of age”. In section 83 the limit of freeing children from criminal liability is 12 years when a child is unable to judge the nature and consequence of his conduct (“Penal Code, 1860 (Act No. XLV of 1860).,” 1860) (ibid).
- f) *The Children Act of 1974, the Children Rules of 1976 and the Children Act of 2013*: Until the last

enactment of the Children Act of 2013, other similar acts and Rules namely, the Children Act of 1974 and the Children Rules of 1976 were in action. However, the Children Act of 2013 is based on the CRC and has referred to the CRC in the preamble and replaced the Child Act 1974 (Ferdousi, 2013). The objective of this enactment was to remove the inconsistencies among the legal provisions of Bangladesh in case of the juvenile justice process. In addition, the long cherished dream of incorporating the standards of UNCRC (United Nations Convention on the Rights of the Child) has come into reality with this enactment of the law. The major issues of this act go as the following (ibid).

The Age of the children

Previously, the age of the children in the Children Act, 1974 was 16 and in the present act, this age was set as 18 years which is fixed. It was one of the important changes that Bangladesh was supposed to incorporate into its legal system since it ratified the UNCRC in August 1990.

Protection of the Victims and Witnesses

The children who are in contact with the law and in conflict with the law both of these groups need help from the state authority. The new act has arranged legal protection for the accused, witnesses and victims which is really very time demanding and consistent with the CRC. The law is pretty easier in dealing with the children involved in petty offences. In the case of their involvement in heinous crimes, if they are not much violent or harmful for the society, there are provisions for them to grant bail.

Supervision and Monitoring by Probation Officer

The new legal system has ascribed the bindings to appoint one or more probation officer(s) in the district, upazila and other metropolitan areas as per the legal instructions.

Child Help Desk in the Police Stations

Police stations need to establish the help desks all over the country as per the legal provision. An officer, not below the rank of sub-inspector and preferably women should be responsible for this help desk.

Arrest Procedure

The children if requires to be arrested should be arrested without handcuffs, ropes or any other waistbands that can make the arrestee think that they are being arrested.

Prohibition of Single Charge sheet with the Adults

This legal provision forbids submitting single charge sheet with the adults in case of juveniles' involvement in the same offence.

Juvenile Courts at district Level

As per the legal provision, every district or metropolitan area should have at least one juvenile court to deal with the issues associated with the children or juveniles who come in contact or conflict with the law. Irrespective of the nature of the crime, these courts will try them.

Child Welfare Board in National, District and Upazila Level

The Children Act has stated about the establishment of the Child Welfare Board in national, district and upazila (sub-district) level. The minister of the ministry of Social Welfare will be the head of this board. All other responsible administrative and police officers along with other members from different walks of life will form the committees at different levels. This committee will decide different vital issues regarding the welfare of the children and other approved institutions that are established according to the law.

Alternative Measures for the Rehabilitation

Police officers and all other officials need to find out alternative preventive measures while the accused is a child or by any means come in the process of formal judicial process. A continuous monitoring and evaluation by the responsible officers are mostly emphasized there.

Safeguard for the Children

This act has strict provisions for those who will provoke children to involve them in various criminal activities or other prohibited acts like begging. If anybody provides them any conducive environment for these criminal activities or show cruelty to them, they will get imprisonment up to one year and up to one lakh BDT (Bangladeshi currency; approximately 1300 USD) fine.

The responsibility of the Media

Media are not allowed to publish any articles, news reports or any other propaganda by which any juvenile or child can be identified. This was also an important requirement of the CRC.

The welfare of the Children

This act inspires mainly family based counselling and cares so that the children can get the proper environment to develop their potentials.

From the above discussion, it becomes clear that the juvenile justice system in Bangladesh has touched a landmark in Bangladesh at least in course of establishing a legal instrument keeping a good alignment with the international guidelines, i.e., UNCRC (Ferdousi, 2013; "The Children Act 2013," 2013).



Figure 3. Laws dealing with child and Juveniles in Bangladesh

The juvenile justice system in Bangladesh is associated with the police, juvenile courts, and corrections. Either by the police case, direct involvement in crimes or complaints of the guardians can initiate the process. Then juvenile courts hold the sole responsibility to decide what should be the rehabilitation process of the child. After getting the social enquiry report, the judge can make a decision either to send him to the certified institutes, allow him or her in the custody of his or her legal guardians or release him/her (Ali, 2013).

5.1.3 Nature and Features of Juvenile Justice System in Bangladesh

The nature of the juvenile justice system of Bangladesh is as the following.

- The juvenile justice system is practically a quasi-judicial process where the unnecessary legal complexities have been omitted.
- The legal process discourages to keep the children in the safe custody or in any other certified institute other than extreme necessity.
- According to the new act, the language of the court will be the easiest language so that the children in contact or conflict with the law can understand the whole process.
- Maximum age limit for being a juvenile (or child according to the law) is 18 years.
- The new laws have the provision to establish a separate juvenile court for dealing with the juvenile victims, witnesses or delinquents.
- The act has given liberty and social reorientation a special emphasis. That is why it has eased the provision of getting bail.

- The timeframe for the completion of the trial is fixed and any tribunal needs to give its final verdict within 360 days of the juvenile's first appearance in the court.
- No child should get the death penalty, imprisonment for life or any term. They only can be sent to the certified institutes.

5.2 Juvenile Justice System in China

5.2.1 Background of the Juvenile Justice System of China

Historically, Chinese culture was mostly influenced by Confucianism, Maoism, and the doctrine of *parens patriae*. Therefore, from the ancient times, juveniles of China did not have any independent personality. That does not mean that Chinese people did not pay any heed to them. Actually, they were more concerned about their custodianship. Confucianism plays an important role in establishing the philosophical base and moral standards of Chinese culture. According to this philosophy, Chinese juvenile justice system puts emphasis on “caring tenderly for the young” and “protecting infants” doctrine (Zhao, Zhang, & Liu, 2014). The domination of Confucianism has thus made the perspective of the modern juvenile justice system.

This philosophy, combining with other extraneous factors has created a new doctrine “temper justice with mercy”. This doctrine actually encourages the philosophy of forgiveness to loathe the needs for justice. However, some past incidents influenced China to shift its focus to a more formal justice system for the juveniles because of the ever-increasing complex social system. Wong (1999) identified four noticeable factors as relevant to the nature of a modern juvenile justice system in China: positive punishment and forgiveness, the logic of interdependency, the attractiveness of gang unity, and social disadvantage and delinquency (Wong, 1999) (Figure 4). Recently, Chinese scholars and professionals have become more interested in using conciliation approach because of the influence of western “restorative justice”. It is so lenient due to the people's empathy towards the juveniles.

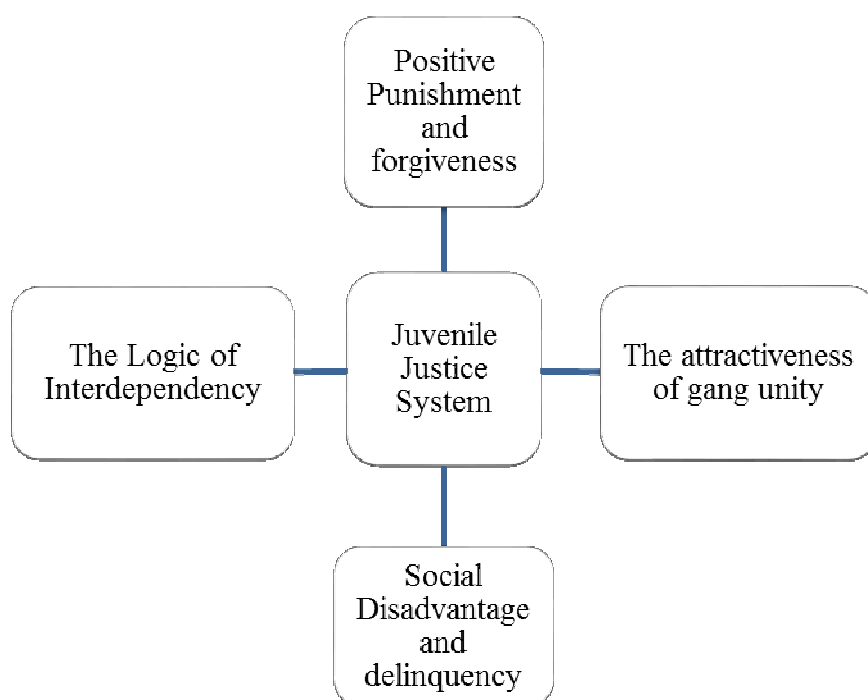


Figure 4. Factors Influencing Chinese Juvenile Justice System

5.2.2 Legal Provisions of the Chinese Juvenile Justice System

The major Chinese legal instruments are given in the following (Figure 5)-

- a) The Chinese Constitution of 1982: Article 46 of the constitution declares that the state will promote all sorts of moral, intellectual, and physical development of children and young people.
- b) Shanghai youth Protection Ordinance of 1987: This is the first mentionable legal instrument addressing the juveniles, which established the juvenile tribunals.
- c) The Juvenile Protection Law of 1991 (revised in 2006): It established standards for juvenile justice and set the basic assumption that education is the primary means of handling the delinquent juveniles. This

- is the first legal instrument, which has set some standards for the juvenile justice system at the national level. This law was then revised in 2006.
- d) Juvenile Delinquency Prevention Law of 1999: It stipulates that the guardians, parents, and school have the responsibility towards the children so that they do not hang around the street at night. Thus, it vests the responsibility on the local guardians.
 - e) Criminal Procedure Code: In 2012, China added a new chapter in its Criminal Procedure Code (Article 266) about the juvenile criminal procedure. This chapter included the detailed procedures for addressing the juvenile delinquency regarding free legal aid, appropriate adult presence during the questioning, conditional non-prosecution, non-publicizing the trials, the sealing of criminal records of juveniles and the compilation of background reports on young people.



Figure 5. Laws Concerning Juveniles in China

5.2.3 Procedure of the justice system for the Juveniles of China

The Police

Police are the first authority to encounter the delinquent juveniles. A police officer enjoys the discretion of arresting, not arresting or giving warning to the delinquents. There is a different law like the Juvenile Delinquency Prevention of 1999 where the responsibility of maintaining the children is vested to the parents, guardians, and schools. In this way, a kind of control over the delinquency is maintained in China.

Juvenile Court and Procuratorate

Juvenile court does not indicate any particular court here. Rather, it is a kind of tribunal which is attached to the activities of courts at various levels. Chinese courts are of different forms, like military courts, special courts, local courts, and the Supreme Court. The local courts have different levels, i.e.-Grassroot courts (county court or urban district court levels), intermediate courts (at prefectural levels) and higher courts at provincial levels.

The Supreme court and other local courts have arranged the juvenile justice system in a pretty different way from the western societies. Supreme court has established a separate steering division for the juvenile tribunals in the jurisdiction of its office (within its research office). Beijing higher Court has established juvenile tribunals. Since the establishment of Shanghai's first juvenile court in 1984, juvenile tribunals have been formed in three distinct types, namely-

- a) The criminal Tribunal's juvenile collegial panel: In the earlier stage, this was the sole tribunal for hearing the criminal cases for the juveniles though it was affiliated to the criminal tribunal.
- b) The Juvenile criminal tribunal: With the growing number of juvenile collegial panels, China established specialized juvenile criminal tribunals.
- c) The Juvenile tribunal: Some juvenile criminal tribunals were then upgraded to juvenile tribunals to additionally help them in certain civil and criminal cases within the tribunal's jurisdiction.

Chinese judicial system has a different procuratorate system. Procurator is a kind of discretionary authority where (s)he is liable for working in a parallel way with the courts. This authority is supposed to issue the arrest decision. These officials are also liable to render other sentencing suggestions in case of handling the juvenile offenders.

Sentencing, Adjudication, and Rehabilitation

In the United States and many other western nations, juvenile courts function as a civil court but in China

juvenile tribunals are treated as the criminal court. Legal representative and defense counsel should be present there at the presence of juveniles' legal guardians, if necessary. Pretrial detention for the juveniles is less preferred other than necessary. In case of arrests, the decision of a procuratorate is a must. Only police are entitled to arrest the juveniles. Police after arresting them, need to send the juveniles to the procurator and the procurator after maintaining a file-based system evaluate the whole case and take decisions accordingly. He can allow a conditional nonprosecution to avoid spending time in jail while keeping the juveniles under the surveillance. If the juvenile can comply with the rules he can get a release, otherwise, the procurator can cancel the option and send that accused to the further legal process.

Cases begin in the juvenile court with the issuance of a criminal complaint either by the public procurator or by a public citizen. The hearing may be conducted by a bench or a single judge in grassroots court and only by a bench in an intermediate court. If the juvenile is proved as guilty, the final disposition is made based on legal (seriousness of the offence, prior records etc.), individual and social variables. The court heavily depends on the investigation report on the social issues by the procurators, police officers or any other agents. Then analyzing various issues like family history, attendance, grades and behavior in school etc. the court gives it a final judgment.

Prior records play important role in the judgment. In case of getting a sentence for not more than 5 years of fixed-term imprisonment, prior criminal records are sealed. The sentencing alternatives finally are dismissal, probation and imprisonment. Death penalty is not applicable to the juveniles. The most serious consequence for them may be life imprisonment.

The juveniles are supposed to be kept in the juvenile reformatory after the sentence of imprisonment (Article 74 of the Prison Law of 1994). Since the starting of setting up modern prisons in 1909, model prisons, including juvenile prisons have been established in most of the provincial capitals. Certainly, the reformatories here indicate the prisons having separate special treatments. Here, the philosophy of reform through labor is applied. Among the other kinds of correctional measures parole, probation and serving prison term outside of the prison are popular. Probation is for them who are the first time offenders and committed any non-violent offence. However, probation and parole may be revoked in case of violating any of the conditions imposed on a particular juvenile.

5.2.4 Nature of Juvenile Justice System of China

Because of the rapid social change and economic reform in the late 1970s provokes a wave of increasing trend of juvenile delinquency because of the complex social structure and the subsequent stress of that on the juveniles. By the late 1990s, China experienced a great number of juvenile delinquencies throughout the country. Consequently, laws and different correctional approaches just sprung up around China. The steps are broadly the following.

- a) The first official juvenile court was established in Changning district of Shanghai in 1984 and considered as the beginning of the Chinese juvenile justice system.
- b) The National People's Congress adopted important laws to address the juveniles, specially for protecting and rehabilitate them.
- c) The legal instruments triggered the acceleration of the establishment of juvenile courts fast development of the juvenile justice system.
- d) In 2007, the Chinese Supreme Court started a pilot program to establish juvenile courts in large 17 cities.
- e) In 2010, Chinese Association of Adjudication Theory, which is a semiofficial research group initiated by the Chinese Supreme Court set up the Professional Committee for Juvenile Trials.

5.2.5 Features of Chinese Juvenile Justice System

Chinese Juvenile justice system possesses the following features-

- a) The laws for dealing the juvenile delinquents are the constitution, criminal justice laws, specialized juvenile protection law, and a juvenile delinquency prevention law.
- b) Chinese legal structures have not made any distinction between the terms child and juvenile.
- c) Juvenile justice law is applicable to those who are under 18 years old.
- d) A legal assumption was supported inherently in various laws that protecting and rehabilitating the young offenders is the responsibility of the state.
- e) Along with the legal enactment the Chinese Supreme Court and the Chinese Supreme Procuratorate have given a different explanation about the execution of different laws for the juveniles.
- f) The Juvenile Protection Law of 1991 declares education as the primary means and punishment is the secondary one for rehabilitating the delinquents.
- g) Chinese traditional courts have separate divisions for juvenile tribunals which are not treated as the separate courts.
- h) Unlike the American juvenile proceedings (where juvenile proceedings are considered as civil proceedings), Chinese juvenile court proceedings work as criminal proceedings.

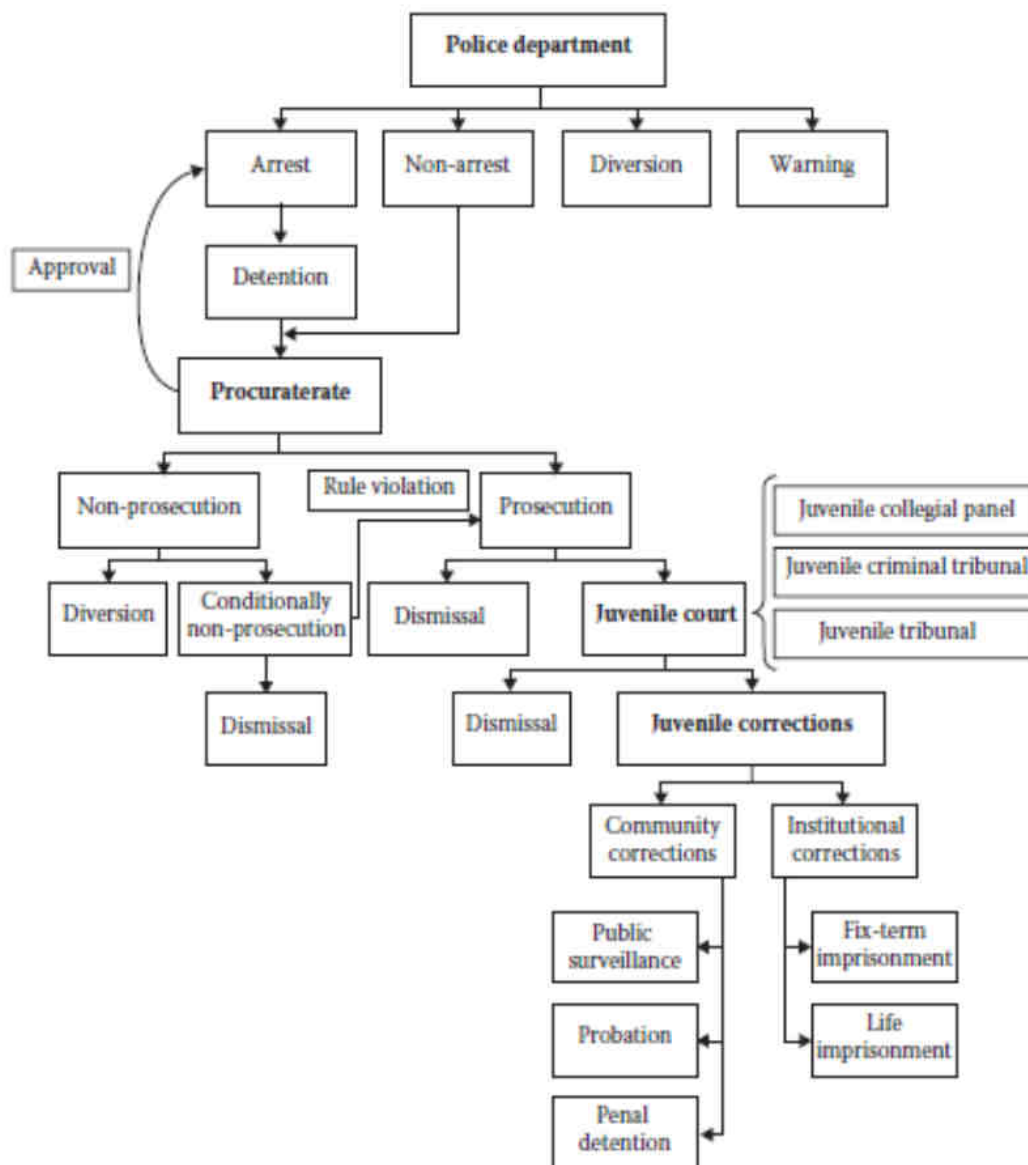


Figure 6. Juvenile Justice Process in China (Flow Chart)

[Source: (Zhao et al., 2014)]

Nature of Juvenile Justice System of China

5.3 Comparison between the Juvenile Justice System of Bangladesh and China

5.3.1 Similarities between the Systems in Bangladesh and China

Table 1. Similarities of Juvenile Justice System between Bangladesh and China

Issue of Comparison	Bangladesh	China
Age	Declared 18 in the Child Act of 2013	Declared 18 by Juvenile Protection Law 2006
Alignment with International Legal guidelines	Yes	Yes
Model of Justice	Preventive and corrective model	Restorative, crime-prevention model
The composition of the Criminal Justice System	Criminal justice system runs through police, juvenile courts, and corrections.	Criminal justice system broadly runs with three major institutions like police, juvenile courts and juvenile corrections.
Appropriate nature of the trial	It is a formal juvenile court	Chinese traditional courts have separate divisions for trying the juveniles that are not treated as the separate courts officially but it is more accurate to refer it as juvenile tribunal as per its function.
Provision of Death Penalty and life term imprisonment	Does not allow the death penalty, life time imprisonment or imprisonment. It only allows to send them in the certified institutes in case of serious violation.	Article 49 of the Criminal Code of 2011 states that death penalty is not allowed for the juveniles (who are less than 18 years) though, life imprisonment is the highest punishment which can be imposed on the juveniles in the most extreme cases.
Social Enquiry report	The probation officer should submit a social enquiry report within 21 days of the production of the child before the court.	In China, the Procuratorate, any police officer, and any agent can submit the social enquiry report about the juvenile offender. These reports are actively considered in their correction-planning

5.3.2 Dissimilarities between the Juvenile Justice Process of Bangladesh and China

Table 2. Dissimilarities between the Juvenile Justice Process of Bangladesh and China

Issue of Comparison	Bangladesh	China
Distinct legal system	Totally distinct legal system for the juveniles is present (As mentioned in the Children Act, 2013)	The distinct complete legal system is not present here (Zhao et al., 2014)
Major Legal Provisions	The Children Act of 2013	The Shanghai Youth Protection Ordinance of 1987 The Juvenile Protection Law of 1991(Revised in 2006) The Juvenile Delinquency Prevention Law of 1999
Basic Principle	The basic principle of operation is not specifically mentioned in the law other than having the purpose of having the separate justice system and handling them with care.	The basic principle is clearly written in the CrPC (amendment in 2012) that education is the first way to handle the delinquents and punishment is the second option (Article 266)
Interference of the Supreme court	Less frequent in Bangladesh. Only some occasional legal instructions are put forward.	Very frequent here. Supreme court frequently interferes by providing guidelines.
The difference between the Crimes committed	Crimes are generally divided heinous or serious crimes or petty crimes based on the effect of crimes on others.	Crimes are divided into bad misbehavior and serious misbehavior (According to the Juvenile Delinquency Prevention Law of 1999)
Alignment with the International Laws	Bangladesh greatly aligned its laws for the juveniles according to the UNCRC as it ratified it.	The juvenile justice system is greatly aligned with "the Beijing Rules" and "the Riyadh Guidelines"
Declaration of Maximum Age	The maximum age for defining the juveniles is 18 and this was adopted in 2013 by the Children Act.	The ultimate and unanimous declaration of maximum age (18 years) as the definition of the juvenile was adopted in 2006 according to the Juvenile Protection Law of 2006.
International Conventions/ Treaties/ Covenants	Alignment with UNCRC	Alignment with the "Beijing Rules"
Model of Justice	Preventive and corrective model	Restorative, crime-prevention model
Court Proceedings	The Court proceedings are formal but the environment is very congenial to the children.	The court proceedings are formal.
Proceedings	Quasi-civil in nature	Criminal in nature

5.3.3 What Lessons can both of the Countries Take from the Study

This study reveals that in case of China the secret of reduced juvenile delinquency is embedded with its procuratorate system (Figure 6) where the procurator applies his or her own discretion in allowing police comparatively a low number of arrests for the juveniles who commit petty offences. This discretion has significantly reduced the number of juvenile offenders. Instead, they applied the warning, contact with the legal

guardians and much other social integration processes to rectify them. Bangladesh can also apply this technique of low arrest. With this, it can rely much on social reintegration approach. In the case of Bangladesh, dedicated court system (while in China this is a separate tribunal) for the juveniles are rational as per the success example of western societies. China also can establish the dedicated juvenile courts in its all levels, not the separate wing of the court. One of the causes behind this is-the courts dealing with the juveniles must be professional and experienced in dealing with such a vital problem. Otherwise, the juvenile justice process can lose its intrinsic meaning of establishing justice for its stakeholders.

Bangladesh has for long operating the certified institutes for the delinquent juveniles. These are not the jails. These institutes provide all the required facilities for the development of the juveniles and necessarily run under the ministry of Social Welfare. China may also establish such kinds of institutes for the treatment of juveniles which should be separate from the jails. An institute for the juveniles should be established in a natural set-up like the boarding schools where the inmates will enjoy all basic facilities required for the children. China should also consider establishing a juvenile justice process which will no longer be treated as a criminal trial as such trial procedure always intends to ascribe the criminal liability to the accused. If the juveniles in their earlier stage learn that they are going through the criminal justice process being treated as an accused, that may create a negative impact on their later stage of life (Table 3).

Table 3. What Idea Can Bangladesh and China exchange with Each other?

What Bangladesh Can do?	What China Can do?
Giving priority on practicing low arrest	Dedicated juvenile courts
An integrated system composed of family, legal guardians, and schools or any other institutes.	Certified institutes in replacement of jails
Practicing in accordance with the law as China is doing for juvenile justice.	Considering the juvenile justice process as a civil proceedings

6. Conclusion

Discussing and comparing the juvenile justice process, it is to be said that there are some positive and negative sides among the juvenile justice processes of both countries. Every country has great responsibility for its future citizens. Both of these Asian countries, therefore, are trying to address the needs of the youngsters in contact or conflict with the law as per their own capacity and preference. It is to be noted that the main purpose of the juvenile justice system is preventing the juveniles from recidivism and rehabilitating them in the society successfully (Harun-or-Rashid, 2015). However, Bangladesh and China still can do a number of things to address the delinquency of the juveniles in a more effective way. If any of their activities comes in conflict with the law, they should handle it with care in a special way. In the case of China, the overall juvenile justice system runs as per the criminal procedure which is more formal and inherently possess the elements of proving someone guilty, it is not good for the juveniles. Additionally, instead of keeping the juveniles in the separate institutes China has established a separate part of the prisons. The matter is the juveniles, if are found guilty needs to be in the prison which may put a bad psychological impact on them. Moreover, China still has not established fully functional dedicated juvenile courts, which is very essential for the professionalism of judges dealing with the juveniles. This country may analyze the situations to develop it in the line of Bangladeshi legal instrument. On the other hand, in Bangladesh, juvenile crimes are increasing irrespective of having a comparatively balanced legal instrument overtly. Bangladesh can take the philosophy of handling the delinquent children with the help of education first from China and follow the circuit-breaker system in case of arresting the delinquent juveniles.

In fine, it is important for both of these countries to run their juvenile justice process as per the legal instructions. In consonance with that, the overall process should create an environment that will be congenial for the children. However, based on the present study the following recommendations are given below in course of establishing a friendly environment for the juveniles of Bangladesh and China.

- A comprehensive child friendly social environment for the development of juveniles acquiring all the good virtues through formal and informal institutions should be the preference.
- Managing a number of correctional centers to foster and rectify the juveniles who come in conflict with the established legal boundary.
- Arranging the justice system friendly for the inmates so that they can be reintegrated into the society easily by getting bail, probation or parole.
- Various non-government organizations (NGOs) should be given the opportunity to work with the

sanitation, education, and well-being of the children who need the detention.

- A continuous cooperation between the civil society and correctional institutions is necessary to ensure the quality management of the correctional institutes.
- Trained professionals and psychologists should conduct continuous research for understanding the trends, patterns, and causes of deviance over the time to take precautions for other juveniles who are still not in contact or conflict with the law.
- Mapping with the help of geographic information system (GIS) and other software is essential to understand the spatial distribution of the juvenile delinquents and their probation status in a scientific way.
- Finally, both formal and informal institutions need to reorient them to ensure social control on the juveniles so that they can become law abiding by dint of their attachment to those institutions.

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