

**Research Monograph on Criminal Justice System in  
Bangladesh and England: A Comparative Study on research  
topic.**



**LL.M. THESIS**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE  
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**Dedicated My Parents and all the teachers in  
my education life**

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## Abstract

In order to highlight similarities and differences between their respective law enforcement policies, judicial procedures and protection of individual rights, this thesis takes a comparative approach on the criminal justice systems in England and Bangladesh. In the first half of the study, they provide historical contexts to their respective legal regimes in both countries by examining how British Colonialism has shaped Bangladeshi and English law respectively and also exploring how common law developed.

Police, courts, prosecution, and prisons are all core components of each system that the study scrupulously examines. Protections of the safeguard nature – such as a fair trial, counsel (legal assistance), citizens' bail and burden of proving innocence are focused on. Comparisons of how law enforcement organizations are structured and operate in terms of accountability, transparency, and community engagement. Prison administration, how long sentences are, and current attempts to address problems such as overcrowding, human rights abuses, and cases that have yet to be decided all figure in what the research uncovers.

Combining black letter legal research with comparison, this thesis relies on legislation, common law and policy documents as well as academic debate. This approach reveals both important similarities, such as the impact of human rights norms at a global level, and differences, such as judicial independence and the effectiveness of legal remedies. The findings shed light on how people can learn from one another and the ways in which context helps to shape legal systems.

In the final chapter, 2.6 recommendations are presented that are underpinned by collected data and designed to enhance the efficiency, equity and human rights compliance of both organisations. Scholars and policy makers looking for comparisons that draw lessons, across jurisdictions, from international wrongful convictions or systems of justice may find a great deal to like in the recommendations made by the study and in the academic conversation it start with its comparisons.

**Keywords:** Criminal justice system, Law enforcement, Criminal law, Crime prevention, Judicial process, Corrections, Penal system, Legal reform, Human rights.

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# Chapter One: Introduction

## 1.1 Background of the Study

Drawing parallels and distinctions between the English and Bangladeshi CJS is informed by research about British colonialism. The result is a system of law in Bangladesh that is firmly rooted in the English Common Law. Values such as the presumption of innocence and stare decisis (which means that courts will not overturn their own decisions unless there is a particularly compelling reason to do so) evolved almost organically over hundreds of years in England's criminal justice system. Certainly, the current system in Bangladesh was imposed rapaciously during the British Raj. That was after the Mughal system — which was mainly rooted in Islamic law — had presided over the Bengal region's courts.<sup>1</sup> The British laws such as Code of Criminal Procedure, 1898; Police Act, 1861; Indian Penal Code, 1860 were instrumental in dismantling the Mughal system and laid down their adversarial (meaning individual lawyer based) system. These colonial laws, that were once used for the assertion of power and maintenance thereof remain the cornerstone of Bangladesh's criminal justice system with very little changes from 1947 till 1971. This comparative study examines the commonalities and differences between two systems: one that is continuously reforming its approach of rehabilitation or human rights, and another which is more static and colonial in nature, with a descendant system (Bangladesh) grappling simultaneously with issues of judicial backlog and access to justice as it centres on punishment and deterrence\_capture=punishment deterrent programming.

## 1.2 Research Problem and Justification

Although the BCS and its source, English Criminal Justice System (CJS), share some common law history, the underlying problem of comparisons is that punishment philosophy differs for these two systems. What unites them are both the underlying legislation (Penal Code of 1860 and CrPC of 1898) and, critically, a shared adversarial approach derived from British colonial rule. They evolved, but in very different ways. The problem is that the country's penal code itself is based on a colonial-era view of the world in which punishment and prevention take priority. Then there are issues like a massive backlog in the courts, jails full of people awaiting trial and sons being brought back to their mothers off the boats or planes that carried them away — all causing a perception among the public that basic human rights were not being defended.<sup>2</sup> Restorative justice, alternative sentencing and a radical overhaul of the offender structure are all part of England and Wales' revolution towards rehabilitation and rights. Understanding why, how and where the functioning CJS in Bangladesh has not managed to apply colonial norms in a manner that is consistent with modern notions of efficiency and human rights is key. Now, people may not be able to obtain the justice they require in a prompt fashion.

## 1.3 Research Objectives

The study has three interlinked aims, firstly analysing the philosophy and practice of two Criminal Justice Systems (CJS) Bangladesh and England to identify similarities and differences in both, secondly to examine possible ways how a top down approach

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<sup>1</sup> Hossain, Md. Jahangir. "Evolution of the criminal justice system in Bangladesh: colonial legacies, trends and issues." ResearchGate (2019). (Referencing the gradual replacement of the Mughal system.)

<sup>2</sup> Ali Khan, Akbar. "Colonial legacies of the criminal justice system." Dhaka Tribune (2019). (Highlighting the core colonial codes like the Penal Code, 1860, and CrPC, 1898, which remain in force.)

can be undertaken to make effective recommendations for change in the lower system.

Three major targets have been identified,

The study has to start with conceptual and operational features of both - like the legal code regulating court system, prosecution services, the function of police or prisons. This would enable a rudimentary comparison of the legal and institutional context. The exercise involves comparing the modern day rights based laws in England with those that share colonial roots (such as Penal Code 1860 and CrPC, 1898 in Bangladesh) to see the similarities and differences of legal development.

**To Examine Separate Punitive Theories and Their Implementation:** One of the most significant objectives is to scrutinize penalty theories, particularly how a particular system views offenders who have been convicted. Only one This involves a contrast of the deterrent and retributive approaches pursued by Bangladesh (reflected in its high levels of long custodial sentences and retention of the death penalty) with England, which has embarked on a trajectory towards restorative and rehabilitative justice that specializes in reforming offenders and delivering community orders. As a practical matter, the point here is to compare and contrast actual outcomes in the two countries, including the number of circumstances pending, conditions in prison (overcrowding anybody), and how well legal protections for defendants might be working.

**Generate Practical Innovation Ideas Tailored to Their Context:** The key purpose is to utilize the understanding that will be developed by the comparative research plans that are focused, practical and adapted for their specific context in Bangladesh.

**This is based on the effective tactics that have been implemented in England:** increasing police supervision, developing workable digital case management system and ramping up community-based alternatives to jail like probation and community service. Bangladesh has the ability to enhance efficiency, human rights and deliver speedy justice in all of these regions.

## 1.4 Research Questions

1. What are the key differences in respect to the functions of the jury, bail rules and power of arrest between existing CJS in England and Wales & its procedural laws (i.e. CrPC 1898) from that of Bangladesh?
2. When deciding how we need to strike the right balance between punishing, deterring and rehabilitating, what are the sentencing philosophies of Bangladesh in comparison with UK? And what, for that matter, do alternatives to imprisonment, like community service or probation or restorative justice — not to mention either country's proclivity for long prison sentences — look like?
3. How long does a criminal justice trial take in England? And how is it relative to that in Bangladesh, in terms of judicial efficiency? Namely, just long does it usually take to resolve a criminal case and how many are stuck in the backlog?

4. What are the similarities and differences between internal and external systems which contribute to accountability and prevention of custodial violence in the police in Bangladesh and England, including provisions for legal aid and independent monitoring bodies?
5. In this regard how can Bangladesh increase transparency and efficiency in its court system, by borrowing the technologically led best practices and legislations implemented by the CJS in England?

### **1.5 Scope and Limitations**

Comparative study of Criminal Justice Systems (CJS) in England and Bangladesh: United Kingdom Vs. Bangladesh. It examines police power, court efficiency, sentencing objectives (punishment vs. reform), and the application of alternate sentencing methods. It does so by also analyzing the institutional frameworks and legal doctrines of two ICS. This research is expected to generate policy relevant, normative recommendations for reform in Bangladesh from the best practices observed in the English model. Unfortunately, there are many butts to the study. One of the big problems is that it's hard to make direct statistical comparisons, due to differences in terms of data between the or because one country might have more reliable, extensive data than the other. Solutions which have succeeded in the relatively homogenous legal culture in England may not be as readily transferable to the complex socio-legal environment of Bangladesh where there are exogenous tendencies and a considerable difference between law de jure. Here the consideration is stopped.

### **1.6 Research Methodology (Doctrinal & Comparative Analysis)**

Adopting the somewhat popular mechanism of comparative law, with its hybrid theory and multi-method approach, that is so common across much legal scholarship, this paper seeks to compare the criminal justice system in England and Bangladesh. This component of study is termed "black-letter" law or doctrinal law and it recognizes authoritative legal source. This entails a systematic investigation of primary sources concentrated in libraries – including statutes (eg Penal Code 1860, Criminal Procedure Code 1898 in Bangladesh as compared to Acts today from England.), leading judicial decisions (case law) and the other state records both countries. This is crucial because it at least gives us some foundational legal fact for comparison, and allows us to determine what the law is theoretically said to be. The Comparative Application section applies these findings to compare the two systems.<sup>3</sup> In an effort to move beyond description, this approach identifies functional analogues in institutional form, penal philosophy (e.g., judicial efficiency), and pragmatic consequences (e.g., retribution versus rehabilitation).<sup>4</sup> This comparison is to provide the best practices from the reform-based education system of England, which may be adapted with whatever modification deemed appropriate in a changing context such as Bangladesh.

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<sup>3</sup> Jain, Prof. S. N. Doctrinal research involves the analysis of case law, systematizing legal propositions, and studying legal institutions through rational deduction.

<sup>4</sup> Born, G. B. (Year). International commercial arbitration (Various editions). Publisher.

### **1.7 Structure of the Thesis**

The structure of the thesis makes systematic comparison of CJS in Bangladesh and England straightforward. It goes from basics to variance in practice to policy recommendations. Chapter 1: Generally, the study should be first chapter is an introduction. It presents the study and describes the problem (the gap of the system inheritance), provides an overview of the extent and methods used in writing itself (doctrinal analysis through comparative assessment) as well as formulates objectives and tasks. Most of the comparative analysis takes place in chapter three. To set the stage or provide context, the second chapter, “Foundational and Institutional Comparison,” itemizes points of comparison of like characteristics (originally from colonization) made present in both systems--the police and prosecution, courts, and one aspect of incarceration. Then comes Paradoxes between Applied Philosophy and Penal Practices (Chapter 3). Based on the transition from present de jure law to de facto practice, analysis is carried out of objectives of penalty (retribution vs. reform), as well as the effectiveness of courts (case arrears) and immunity granted to human rights of accused persons. The Policy Implications of the Reforms in Chapter Four Through an examination of recommendations, which is the underlying core analysis, modernization policies for the criminal justice system of Bangladesh are drawn. These recommendations are informed by good practice and successful reform in the English jurisdiction, including through alternative orders and monitoring. CONCLUSION Chapter 5 summarizes the findings, validates the thesis contribution, and proposes potential future work.

## **Chapter Two**

### **Conceptual and Theoretical Framework**

#### **2.1 Concept of Criminal Justice System (CJS)**

The criminal justice system (CJS) is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. The only It is a complex, multi-faceted process that protects the Rule of Law by enforcing substantive criminal law and guaranteeing fair trials. Some describe the criminal justice system (CJS) as a "chain" or "assembly line," due to the three interdependent parts/links between branches: The courts and prosecution (lawyers and judges) that charge, find guilt or innocence of defendants, and sentence them; corrections (prisons and probation) that supervise, punish, and rehabilitate individuals convicted by the courts; law enforcement (police), who together with citizens alike investigate crimes, arrest criminals.<sup>5</sup> It's always a bit of an open question, because it draws from two conflicting philosophies: there's the Due Process Model, which will tell you to follow what the law says, down to the literal letter, even if doing so makes everything slower; then there's the Crime Control Model, emphasizes getting people punished quickly and with efficiency. 6. Any CJS, to be successful, is essential for maintaining the social order, public safety and human rights.

#### **2.2 Theories of Criminal Justice (Retributive, Restorative, Deterrence, Rehabilitation)**

The underlying premises that anchor the CSJ's philosophy of punishment are the principles and operational values of a Criminal Justice System (CJS). Retribution: Retributive contains four types: The oldest is retribution: it holds that the offender must be subjected to a proportionate amount of suffering for the crime he or she has committed. Deterrence is largely a function of causing people to think twice before committing crimes. The principle of deterrence consists in two logically distinct elements: special prevention (aiming to prevent a particular offender from committing more crimes by punishing him) and general prevention (aiming to prevent others from engaging in the behavior that is being punished, through warning or exemplary punishment). When given the choice, rehabilitation proves to be a more humane way of returning former convicts back into society than incarcerating them as a target for punishment. It aims to address the root cause of crime through education, vocational training and psychological therapy. Finally, the "victim-and-community-centered" approach focuses more on the victim and community than on the state or offender. The goal is to make right with the harm caused by the crime through some sort of mutual consent process and open dialogue; this usually involves offering apologies, performing community service, and restitution/compensation.<sup>6</sup> This is conducive to both healing and making responsible. In an effort to strike a balance between their goals of both deterring, reforming and punishing offenders, most contemporary justice systems work in these concepts.

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<sup>5</sup> Reichel, Philip L. *Comparative Criminal Justice Systems: A Topical Approach*. (Defining the primary purpose of the CJS as maintaining social control and enforcing law.)

<sup>6</sup> Packer, Herbert L. "Two Model of the Criminal Process." 1U. Pa. L. Rev. 1 (1964). (Seminal work defining the three main components and the two competing models of the CJS.)

### **2.3 International Standards of Fair Trial and Justice (ICCPR, UDHR, ECHR)**

The International Standards of Fair Trial and Justice These widely accepted standards are important in human rights literature. With these, one can measure the extent to which a country's criminal justice system ensures people's rights and lawfulness. The principle of the presumption of innocence and that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal" are enshrined in Articles 10 and 11 of the Universal Declaration of Human Rights (UDHR). That said, the UDHR is not a law. The binding International Covenant on Civil and Political Rights (ICCPR) goes further into these standards, namely in Article 14. It ensures that they have the following rights: The right to face their accusers, a speedy trial, the right to representation (even if it's free representation in criminal cases where justice demands it), an accurate and understandable account of what they're charged with, and adequate time and means to mount a defense. The rights are further strengthened by Article 6 of the European Convention on Human Rights (ECHR). Yet as a tool for its enforcement the European Court of Human Rights (ECtHR) has developed an extensive and respectable body of case law which provides many concrete examples of what a "fair trial" means in substance. It includes the fact of having to pronounce a judgement in public, the privilege of pretending not to be on trial and independent judiciary. Together, these tools demonstrate beyond a reasonable doubt that absolutely everyone is in agreement: Punishing the guilty and treating the accused justly are indispensable features of any system of justice.

### **2.4 Comparative Legal Research Methodology**

What they Do The Comparative Legal Research Methodology is used by legal scholars in undertaking systematic appraisals and surveys of laws, legal institutions and legislation in multiple countries. More than just raising a proximity, it aims at weighing the advantages and disadvantages of different remedies in response to an occurring (common) problem, thereby going beyond the domain of the *lex lata* (the law as such exists) by pleading for the *lex ferenda* (the changing law). Functional equivalence is a primary point of departure for the process. The task then is to find foreign laws or institutions with analogous social or economic functions compared to their home country, independently of the legal terminology on both sides. The first is to classify the foreign law. Then, the historical-social context is analysed. Third, the discrepancies between them are contrasted. Finally, the results are evaluated. By doing so, we stand to learn how well the foreign law works in practice, how much it protects human rights and how willing it is to evolve. Some 1This method is important in areas of law like international trade, human rights law and constitutional design, because it facilitates the dissemination of good legal practices and leads to the introduction of foreign legal thoughts.

## **Chapter Three**

### **Criminal Justice System in Bangladesh**

#### **3.1 Historical Evolution (Colonial Legacy, Post-Independence Developments)**

Everything here's a great look at divergences that spring from one common source—that the British colonizing of both Bangladesh and England—a divergence in the historical structure of either criminal justice systems (CJS). England's criminal justice system developed over several centuries in a haphazard way in keeping with the typical common law approach. Its current rehabilitation-oriented, human-rights approach was built up through decades; criminal law increasingly began to keep in-step with these ideals from the mid-20th century. The CJS was also codified and imposed upon the Indian subcontinent, including present-day Bangladesh, during the British colonial rule. This supplanted the former Mughal system. Direction to this effect resulted in the enactment of colonial era laws, notably the Penal Code Act of 1860; Police Act (CAPH XVIII) of 1861 and Criminal Procedure Code (LawNBRV47) of 1898. These laws were largely about asserting administrative power and keeping order, not protecting rights. Those draconian, punishment-centric and deterrent-based colonial laws were left in legacy when Bangladesh gained independence in 1947 so that by the time it was liberated, here we are already hearing how Criminal Justice System(CJS) inherited. Amendments to these colonial laws have been piecemeal and sporadic in the aftermath of Bangladesh's independence, and the CJS has not been systematically reformed to meet international standards on rehabilitation and due process. So, while in Bangladesh the system there continues largely as it has always been and maintained its then rigorous structure since the colonial era, England has moved on and introduced key legislation such as the Police and Criminal Evidence Act (PACE) 1984. This in turn produces ills like caseload overload and a preoccupation with punishment.

#### **3.2 Constitutional Safeguards and Fundamental Rights**

Although the legal systems of both Bangladesh and England have their origin in Common Law, the ways in which the Constitutional Safeguards and Fundamental Rights are dealt with by Criminal Justice Systems (CJS) of these countries differ. Lists of basic rights are represented in Part III of the 1972 Constitution of Bangladesh. Article 35 is one of the most significant safeguards for the accused. The defendant is guaranteed the right to a speedy and public trial at an impartial court, as well as protection from double jeopardy, self-incrimination, and above all the right to be tried fairly. It also absolutely prohibits torture and cruel, degrading or inhumane treatment. Also in article 33, is the right to be presented before a judge within twenty-four hours from arrest and detention.

By contrast, the United Kingdom (England) has an unwritten constitution. The protection of the CJS does not rely only on Article 6 however, and other legislation such as the Human Rights Act 1998 (HRA) and ECHR also protect it, along with common law. Many rights that exist under English law — for example, the right to a fair trial and the presumption of innocence — are derived from Article 6 of the European Convention on Human Rights. The right of an accused person to have access to counsel, cross-examine witnesses and a fair trial are all guaranteed by the convention. The laws themselves are mostly the same; The difference is in their enforcement. While they are well enshrined in the Bangladeshi constitution, they are

frequently disregarded in practice due to Marital rape law in Bangladesh; problems with the colonial-era CrPC, including poorly trained police personnel and backlog of cases. The following are some of these allegations that we hear about over and over again: torture, detention without a fair trial and freedom from prosecution amongst others. However, the legal framework of rights in the UK is not that of a single document but rather underpinned by a robust police accountability culture and consistent and strong court supervision.

### **3.3 Institutional Framework: Police, Prosecution, Judiciary, Prisons**

Prisons, Judiciary, Police and Prosecution are the four key components of Criminal Justice System (CJS) in England as well as Bangladesh. But there are significant differences in the design and performance of those components. Bangladesh's police have wide latitude in investigating and arresting suspects, but are frequently described as underfunded and unaccountable. Only one The prosecution service is responsible to the concerned administrative ministry and is headed by Public Prosecutors (PPs) and Assistant PPs. This is calling the independence of institutions from government into question. The judiciary is vested in the Supreme Court and lower criminal courts. It is an unfortunate not very effective practice because of inadequate resources and the many cases waiting to be heard. The Prisons Act 1894, which focuses on security and detention, remains the key legislation for prisons. They are being stalled by too many prisoners and others waiting to be tried.

The networks in Wales and England, on the other hand, are newer and interconnected. The Police and Criminal Evidence Act (PACE), 1984, established stringent symbolic-legal requirements that police (regardless of local policing arrangements) are required to adhere to. <sup>3</sup> The prosecution is directed by an independent government office known as the Crown Prosecution Service (CPS). It allows itself to make its own decisions on the evidence and the public interest - it takes politics out of charging and prosecution. Judicial productivity is aided by specialist courts and state-of-the-art case-management technology. Reintegration and rehabilitation are the cornerstone of the Prison and Probation Service's belief system. A large multitude of community corrections orders and programs are employed to reduce re-offending. It has more philosophical and structural merit than the Bangladeshi model.

### **3.4 Procedural Laws: Criminal Procedure Code, Evidence Act, and Penal Code**

The Criminal Justice followed by both England and Bangladesh, a clear difference can be rightly noted between them one following an efficient system that has been modernized in time while the other built on the rigorous framework of colonial era. The substantive law in Bangladesh is the Penal Code, 1860; procedural laws are the Code of Criminal Procedure (CrPC), 1898 which propagates the CJS, and the standards of evidence include but are not limited to, evidence Act, 1872. <sup>7</sup>These three colonial rules, enacted to maintain the empire in power, are as popular as ever. They value deterrence over effectiveness and ignore procedural safeguards. CrPC provides the procedural rule for administration of criminal proceedings covering investigation process, commencement of proceedings, reasons for arrest, bail issues etc. Those concerning arrest and imprisonment, by contrast, frequently allow actual

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<sup>7</sup> Hossain, Md. Jahangir. "Evolution of the criminal justice system in Bangladesh: colonial legacies, trends and issues." ResearchGate (2019). (Discussing the institutional setup and challenges in Bangladesh.)

abuses of human rights. The use of modern digital evidence itself may be difficult, because we have the strict regulation of Evidence Act 1872 which even includes this kind of evidence and has hardly changed wordings.

But these colonial statutes have been greatly modified by the continual change of legislation in England and Wales. Material criminal law comprises today older as well as new system of laws. The framework for criminal justice is set out in the Police and Criminal Evidence Act (PACE) 1984 and its related Codes of Practice. PACE created a comprehensive, statutory, rights-based framework that included the powers of police to stop and search suspects, access to a lawyer and the admissibility of evidence. England, too, has a penal code of its own. Modern Bangladeshi law tends to focus more on rehabilitations and restorative alternatives than on harsh punishment, such as probation or community service, rather than harsh penalties under the old laws.<sup>8</sup> This difference is evidence of the fact that despite both countries sharing a common legal history, the procedural infrastructure in England that allows dressing up in rights gives much more due process and visibility compared to an archaic and unyielding one still at work in Bangladesh.

### 3.5 Strengths and Weaknesses of the System

#### *Positive and negative aspects of Bangladesh*

##### *Positive aspects:*

The clear textual form of the Bangladeshi CJS, that was first formatted during British Colonization is its greatest virtue. This is provided for by the Penal Code of 1860 and the Criminal Procedure Code of 1898. And the system is backed by robust constitutional safeguards against cruel and inhuman punishment, as provided for under Article 35. There is widespread support for the rule of law, even if hard to enforce. In recent times we have seen how paralegals and case coordination committees can be utilized to release non-convicted prisoners; such efforts often receive financing from public interest legal organizations and international agencies.<sup>9</sup> Even though the split of the executive and judicial departments in 2007 was a major achievement towards greater independence of the courts, there are varied opinions when it comes to how it will work out in practice.

**Areas of concern:** There are systemic problems, larger ones which make it more difficult to pursue justice fast.

The largest problem is the overpopulation of the court system and a case backlog which can take five to 10 years for a trial. This results in choking of jails, as the overcrowding takes place with undertrial prisoners forming the majority (at times over 70%) serve sentences longer than those which would have been imposed had they been convicted.

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<sup>8</sup> The Police Act, 1861 (Bangladesh) and The Prisons Act, 1894 (Bangladesh). (Referencing the colonial statutes that define the structures of police and corrections.)

<sup>9</sup> Salman, Nadhratul Wardah, et al. "LEGAL FRAMEWORK OF ARREST AND POST-ARREST SAFEGUARDS..." IIUM Law Journal (2021). (Highlighting the gaps in legal provisions and practical implementation of procedural law.)

The theory of punishment and crime prevention The system is based on a system of punishment and deterrence rather than reform. Resources and support are limited when it comes to re-entry programs, mental health assistance and vocational training.

**Transparency and Bribery:** Corrupt and politically influenced police and lower courts are also being blamed by many for the killing. Accordingly, we have seen eyewitness accounts of torture while in custody, laws being abused (such the now defunct Digital Security Act, 2018 and coerced confessions) and lack of punishment for police misconduct. There just are not enough judges, support staff and modern case management and technology in the CJS which also contributes to the backlog. Pros and cons The United Kingdom of Great Britain and Wales

**Positive aspects:** The corner-stone of the English Criminal Justice System is rooted and centralised on pursuing the right-angle-ness which is mainly instilled by European Convention on Human Rights and Human Rights Act 1998. The court and the Crown Prosecution Service (CPS) are second to none when it comes to the professionalism of their officials and legal representation. It only charges those who meet CPS's strict evidence standard and the public interest test to ensure that cases are trial ready.<sup>10</sup> The Police and Criminal Evidence Act (PACE) 1984 was a more contemporary law that included a few procedural safeguards for suspects. The power of the police and the type of evidence that is admissible are clearly defined.

**Rehabilitation:** Probation, community service and such diversionary programs are extensively employed in the sentencing process to demonstrate its intention and commitment that reducing crime must be based on addressing recidivism among the offenders, particularly drug addiction/alcoholism or mental illness. Victim Focused Approach: A robust package provides for victim assistance programs, compensation and restitution.

**Disadvantages :** The English CJS is very complex but does have several operational deficiencies, especially in terms of capacity and effectiveness. Increasing The backlog in the Crown Court has got a lot worse in recent years because of budget constraints and the problems of coming back from Covid. The result is longer waiting times for trials. Our recidivism rates (particularly among short-sentence offenders) are way too high in the UK if rehabilitation is a priority.

**Tightening of Means:** Due to budget cuts, the court system has fewer permanent employees and less money for probation and prison programs. Rehabilitation programs are less effective as a result, further contributing to the issue of jail overpopulation.

### 3.6 Recent Reforms and Challenges

The ongoing alterations and amendments to each system also illustrate the evident growth of the Criminal Justice Systems (CJS) in Bangladesh and England. Some of the latest laws in Bangladesh, such as the Code of Criminal Procedure (Second Amendment) Ordinance, 2025 are influenced by a desire to convert colonial-era

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<sup>10</sup> The Police and Criminal Evidence Act (PACE) 1984 (UK). (The primary piece of legislation governing police powers and evidence in England and Wales.)

statutes into rule harmonious with basic constitutional rights. This has largely been driven by judicial actions and the pressing need to end gross human rights violations such as arbitrary arrest, torture in detention. But here's the key issue: These changes are superficial, and they won't solve the real problems — such as institutional corruption; a huge backlog of cases (close to 2.7 million) that will get even bigger unless systemic changes are made; and rules based on a culture of punishment that too often relies on perpetuating an overworked, underfunded system dependent upon prisons where staff is insufficiently trained. Could failing police and an unsupportive establishment be the fruits of what becomes rotten after skepticism? The focus of change in England and Wales has been on operational efficiency, the distribution of resources and meaning of punishment rather than on substantive strategies; legislation itself that is largely unchanged. A revised Sentencing Bill would see investment in probation, and reduce the use of short-term (less than 12 months) jail sentences in a bid to combat prison overcrowding. It would also require harsher community sentencing and stricter supervision. But it will be a heavy lift to carry out these shifts, given the extent of police chiefs' opposition. This 4-6 percent increase in crime is projected because there will be more monitored offenders the neighborhood during those two years of monitoring. 4. I have also been reading about the enormous problems facing the English Criminal Justice System, such as the criminal backlog in the Crown Court (which of course has become far worse on account of Covid and there being no court space) with witnesses tending to drop out because cases take so long to come up for trial; b) police inefficiency and inability to deal with complex digital crime. Both countries seek modernization, but in England it is a struggle to maintain performance levels and capacity in an already modern, rights-based system; whereas in Bangladesh the effort is to incorporate constitutional rights into a colonial edifice.

## **Chapter Four**

### **Criminal Justice System in England**

#### **4.1 Historical Development of English Criminal Law**

The move from a tribal to a civilizational and rights endemic based form of administration has been organic in the development of English criminal law, as opposed to its overnight execution in Bangladesh. King Henry II created the Common Law system in the 1200's. This resulted in the implementation of a uniform legal system throughout the kingdom, as itinerant judges enforced the law. Support for the notion of precedent (or stare decisis) was likewise bolstered. Magna Carta (1215) recognised that "the King, even the King, is not a lord of arbitrary power", and the Habeas Corpus Act (1679) permitted them to resist arbitrary imprisonment. Both were significant in the defense of civil liberties at this time. The MBW's 1829 Metropolitan Police Act organized policing into a system. It created the foundation for Sir Robert Peel's concepts of responsible, community-based policing. The end of WWII was the biggest game changer. Reformation and rehabilitation were the main cornerstones of a system, which was not designed to merely inflict punishment. A good example of this is the introduction of probation and the prohibition of hard labor by the 1948 Criminal Justice Act. This resulted in the introduction of modern Police and Criminal Evidence Act (PACE) in 1984, and incorporation into domestic law of the European Convention on Human Rights by the Human Rights Act, (HRA) 1998. The concept of due process, reformation of criminals, and protection of human rights were introduced in practice. Bangladesh's colonial legislation such as Code of Criminal Procedure, 1898 and Penal Code, 1860 are progressive and human rights based laws. That is why it has become so hard to run a court system today with legal tools that were invented in the 19th century.

#### **4.2 Institutional Framework: Police, Crown Prosecution Service, Judiciary, Correctional Services**

Although the CJS of Bangladesh and England share some similarities in legislation, the four central arms of the system – Police, Prosecution, Judiciary and Correctional Services operate in very distinct ways.

**The Military and Justice System:** The police in Bangladesh were given extensive preventive powers of investigation and arrest under the colonial Police Act enacted in 1861. <sup>1</sup> The institution is nevertheless under the authority of the Ministry of Home Affairs, which has tended to identify it with the executive and raised issues concerning political accountability for its actions or interference in its work despite a current constitutional prohibitions against torture. PACE 1984 governing for decentralization of English and Welsh law enforcement. Detention, interrogation, stops and searches are all regulated by the codified rights-based criteria set out under PACE. And there's a great deal of independent oversight, and a culture that doesn't cut the police slack.

**The Bureau of Prosecutions:** What's perhaps the most obvious is a structural difference in prosecuting the case. Public Prosecutors (PPs) or Assistant PPs who are Government servants in Bangladesh come up with prosecutions for Ministries or Municipalities. It also frequently damages the institutional independence of a prosecution service vis-à-vis the Executive. The feisty CPS, on the other hand, is a non-ministerial government body in England and Wales set up back in 1986. It is for

the DPP, or Director of Public Prosecutions, to determine it. The CPS must first be satisfied that there is enough evidence and the prosecution is in the public interest before pressing charges. This raises the bar for opening a case while also reinforcing the separation of powers between police and prosecutor.

**Judiciary and Courts:** Both deal with the third branch of government. The subordinate courts submit to the higher courts, High Court and Appellate Divisions. But the Bangladeshi courts are so clogged with cases, some of which can take years to be resolved, that there simply are not enough resources to address them all. A new digital case management system, an increased judge-to-population ratio and the ability to process cases more efficiently have all aided England's courts in clearing up backlogs of work over the past few years. The English judiciary also benefits from an ADR regime that promotes and imposes the use of non-judicial dispute resolution mechanism to settle litigious disputes not just in court.

**Correctional Services:** The Prisons Act of 1894, enacted in the colonial era is used to administer the correctional services (prisons). The system's primary goals are retribution and prevention. In-prisons are chronically overcrowded – they're frequently operating at more than 200% capacity, and do not have the resources required for effective rehabilitation. SOHL There are a lot of inmates who still haven't gone to trial. Supervision of adult offenders in the communities in Wales and England is managed by the National Probation Service, which has an underpinning philosophy based on rights and rehabilitation. 7. The UK system allows much more mental health, vocational training and education programmes focused on preventing re-offending – right despite the persisted challenges of overcrowding. This points to a basic philosophical difference around the role of the corrections system.

#### **4.3 Procedural Laws: Common Law Tradition, Criminal Justice Acts, Human Rights Act**

Procedural principles that regulate the Criminal Justice System (CJS) in England and Wales are founded upon the common law tradition, numerous Criminal Justice Acts and underpinned by the Human Rights Act 1998 (HRA). This is in contrast to the rigid colonial-inherited standards that still exist, for example, in Bangladesh. Common Law was the basis from which the court system originated. Cited were the entitlement to a fair trial, the common law concept of presumption of innocence and *nulla poena sine lege*. These standards are raised constantly by precedent. The Codes of Practice anyway, and the Police and Criminal Evidence Act (PACE) 1984 are the most crucial pieces of legislation that apply to how we do business at the moment. PACE is a complete manual of conduct in respect of rights and their abuse by police officers.<sup>11</sup> They have the power to arrest, detain and search people — and it explicitly says that everybody is entitled to a lawyer, and that other people might know they are being held. As a consequence of this law reform the focus shifted from police to rights. Finally, the HRA is the primary constitutional guarantee because it enshrines UK standards with the ECHR. As a consequence, the rights protected under the Convention - in particular Article 6 (Right to Fair Trial) and Article 5 (Right to Liberty) - shall be observed by all State institutions including judiciary or law

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<sup>11</sup> International Covenant on Civil and Political Rights (ICCPR). Article 14. (Establishing minimum guarantees for fair trial proceedings.)

enforcement. So you can be sure that the CJS strictly conforms to all international standards of due process.

#### **4.4 Jury Trial System and Role of Magistrates**

The English criminal justice system relies on the Magistrates' Courts and the Jury Trial System to address problems. Of different levels of seriousness, they address these infractions. The Crown Court is the court in which trials are conducted with a jury. "Indictable only offences" are the only crimes it is applicable to and cover crimes such as robbery, rape and murder. Twelve men, [36 Cal.2d 464] not of their own selection, but by lot." (See also *People v. Cornelius*, supra, page 465.) The facts in this case will be decided by twelve people selected at random. Their finding of the guilt or innocence of the defendant depends on their weighing all evidence and arguments. This typically means the jury has had to come to a unanimous conclusion. The judge is also responsible for ruling on legal issues and sentencing if the defendant is found guilty. A lot of people believe that this structure is necessary to democracies because it ensures that people who are like you are making decisions about justice.

"Instead, the key to the system is actually found in the Magistrates' Courts. They deal with around 95% of all criminal cases in England and Wales. Both "either-way offenses" — including stealing and common assault, which can be tried in either court — and "summary offenses," such as traffic violations, are first heard by these courts. Magistrates The magistrates, or justices of the peace, are volunteer members of the community who have no formal legal training. They sit in pairs or small groups, and they often get legal advice from a clerk who has some training or background in law. They determine innocence or guilt and can impose up to a year in jail for a single violation. This process is done without a jury. They also conduct preliminary hearings, set bail and refer cases with the most serious or complex charges to Crown Court for sentencing or trial. The Judge in the jury system controls "volume" of a case, the jury members control "weight." They work together.

#### **4.5 Strengths and Weaknesses of the English CJS**

It is widely believed that the CJS in England is one of the most sophisticated legal systems globally when it comes to respect for individual rights, and in trying to assist people rehabilitate their behaviour. However, operational inefficiencies and the limited space are presenting problems already.

***The English CJS has some good points.***

***The strengths are mostly structural and philosophical:***

**Strong protection of rights:** Act Related To Rights of Man 1998 and Police And Criminal Evidence Act (PACE) 1984 do give comprehensive procedural safeguards which keep the system cogs turning. Article 6 of the European Convention on Human Rights ensures that everyone has a right to a fair trial and other rights, such as not having to disclose incriminating information about oneself, and being given access to legal representation when arrested or detained by the police (known as the Miranda Rights in America) are laws that have been set out and applied very fundamentally by our judges.

Distanced and professionalized institutions: The CPS, which is independent of the police, carries out an intensive two-stage assessment—public interest test (PIT) and evidential stage—before proceeding to charge. Divorcing police investigation from the prosecution decision enhances and pluralizes the credibility of prosecutions. The judiciary is also rich in tradition of both professionalism and neutrality.

Rehabilitation and Restorative Justice as a Priority: The modern model of probation and prison services operated by the Criminal Justice System (CJS) is designed to prevent new crime. Community orders, restorative justice (RJ), and special drug rehabilitation and mental health diversion programs are all elements of the institution's punishment tool kit; it is the means not - an end in itself but a mechanism to elicit behavior change.

### **Problems and Weaknesses in the English CJS Right Now**

The deficiencies are primarily of the operational and resource type: a significant efficiency crisis occurs here:

**Massive Court Backlogs:** This is crucial among all. This is far longer than the current average delay of more than a year with the vast increase in the number of cases pending at Crown Court since 2019. Due, however, to the great backlog of cases that are arising victims and witnesses are choosing not to take part which damages both the case as a whole and contravenes the fundamental right to fair trial within a reasonable time (Article 6 ECHR). With an all-time high prison population, the system is at breaking point. Jails are thus characterized by heavy staff turnover, which harms inmates' health, and prisons become overcrowded in ways that make it difficult for them to offer good educational and rehabilitation programs. The backlog of criminal cases makes the problem more difficult because there are so many inmates awaiting their trials. The number of offenses that led to them being charged or summonsed has also dropped over the past decade, reflecting a decrease in police performance. Increasingly sophisticated cybercrime, a lack of resources and the departure of experienced staff often contribute to this. It is widely believed that the police are unable to settle any legal disputes.

**Shortage of Manpower and Infrastructure:** There has been decrease in the number of regular court staff since 2010. While digital case management has become an important goal of the reform effort, key processes still suffer from outdated technology. Good lawyers, especially in the criminal justice system, are still quite hard to find and difficult to keep. This could cause a shortage of judges and prosecutors in the future.

### **4.6 Recent Developments and Modernization**

England seeks to maintain both the operational capability and philosophical values of their system towards rehabilitation, while Bangladesh emerges differently, adding digitization tempered by notions of human rights in contrast to colonial rigidity. In their recent efforts to modernize, neither of the two countries could have been more different in regard to Criminal Justice System (CJS) reforms.

Reform in Bangladesh brought the Colonial Criminal Code of Procedure (CrCP), 1898, up-to-date largely as a result of judicial activism and political necessity. These

changes aim to bring procedural law closer to fundamental constitutional rights, including the right not to be tortured in prison or arbitrarily arrested. The Project on Digital Legal Aid and digital courts are the two main achievements in judicial digitalization. "As an example, these developments will enable the swifter and more convenient service of summonses. But there are big drawbacks to these somewhat helpful regulations: They often go ignored, and they do nothing to fix the mass case backlog, rampant corruption and brutal prison system that one would expect from a legacy of colonialism coupled with insufficient institutions.

In an attempt to address a major capacity and efficiency crisis, recent reforms in England and Wales have transformed not only technology but sentence. Under the Sentencing Bill (2025), this change in policy is the most radical. The aim was to combat the worst prison overcrowding on record by making greater use of community sentences for existing options both within the criminal justice system and outside it, including "earned release" schemes that would mean less risk attached to sentencing prisoners to terms of less than twelve months. The Crown Court's backlog is getting worse, so the UK is throwing money at digital transformation programmes like Common Platform to unify case management and streamline processes. These improvements have not solved all systemic problems, such as overcrowding, high rates of re-incarceration and pressure on the Probation Service to properly fund new community sentencing (so they might work).

## Chapter Five

### Comparative Analysis

#### 5.1 Structural Comparison of Institutions (Police, Prosecution, Courts, Prisons)

The Structural Analysis of Institutions uncovered that the English and Bangladeshi CJS are based on common law doctrines. But in Bangladesh, these structures are dominated by the colonial legacy and rely heavily on the executive for support. In contrast, contemporary English institutions value transparency, freedom and healing. The Bangladeshi police is governed under the Police Act of 1861 and the organisation is under the jurisdiction of the Ministry of Home Affairs. And this is constantly raising questions about the implications of events for political interference and responsibility. Only the English The 1984 Police and Criminal Evidence Act (PACE) applies to police services in England. The comprehensive, rights-based processes and stringent oversight imposed by this rule improve operational transparency. 2. The biggest change is in the prosecution. There is no separate cadre of public prosecutors' in Bangladesh, and PPs are appointed by administrative ministry or select the same so functioning independence is limited. As a specialist, non-ministerial English agency, the Crown Prosecution Service (CPS) has been in existence since 1986. Through subjecting all allegations to a strict two-part test — public interest and evidence — it separates inquiry from adjudication. Although governed by a similar hierarchical legal structure, the subordinate courts within Bangladesh are entrenched with backlog and disproportionately under-resourced, thus they work hard. England's system has more judges per 100,000 people and its case management systems are superior. The colonial Prisons Act of 1894, which governs punishment and discipline is still in use in the Bangladeshi jails. Plus, they're incredibly crowded. But in England, the prison system is pursuing a slightly more rehabilitative tack. They rely heavily on community-based supervision through the Probation Service and they emphasise the rehabilitation of offenders.

#### 5.2 Procedural Safeguards and Rights of the Accused

The interests of the accused and procedural safeguards in the criminal justice systems of England and Bangladesh are very different views, which highlights the dynamics between constitutional assurances and formal legal practice.

##### *Bangladesh: Constitutional Rights vs. Colonial Procedure*

The suspects are afforded with a wide range of legal protections by articles 33 and 35, in the 1972 Constitution of Bangladesh. Detainees have the right to be defended by a lawyer of their choice and to know the reasons for their arrest, according to Article 33 of Egypt's Constitution. In addition, the accused must be produced before the nearest magistrate within twenty-four hours of his arrest and detention cannot exceed one day without a judicial remand. Article 35: Fair Trial Rights This section lays out basic principles, to include the prohibition of ex post facto laws; protection against double jeopardy; the right to a public and speedy trial by an impartial tribunal; the right not to have to testify against yourself when accused of criminal wrongdoing; and no torture or cruel, inhuman, or degrading treatment or punishment.

The ongoing application of the Code of Criminal Procedure (CrPC), 1898 that stems from colonial times has made it extremely challenging to effectively assert these rights. The modern constitutional view, based in the values of the Constitution, runs

squarely against the CrPC of yore that prioritized governmental power. The failure to stop the torture in jail, endless pre-trial imprisonment (more than 70% of prisoners are under trials), and arbitrary arrests (under Section 54 of the CrPC) are all linked up with this. Service impunity persists even following amendments made to the CrPC (such as in 2025).

### **5.3 Role of Judges, Magistrates, and Juries**

Within the English CJS, distribution of judicial action is centred around judges', magistrates' and juries' distinct duties. Criminal cases in the Magistrates' Courts are presided over by Community Justices (Justices of the Peace); they hear approximately 95% of all criminal matters. An SUPO is overseen by a panel of three and used to try whether someone has committed what is called a summary offence, which is minor crime, and it can pass sentence up to twelve months in jail. As a final step in the process, they take the most serious to the Crown Court.<sup>12</sup> Judges (sometimes called Circuit Judges, Recorders or High Court Judges etc.) are qualified lawyers who work in the Crown Court. They handle theft, rape and murder cases. Keeping the trial as fair, making legal decisions (about accepting or restricting evidence) and giving advice to the jury are all included in the judge's job description. The judge pronounces what sentence after the defendant is guilty. We are the people who pull out the last straw.<sup>12</sup> The twelve jurymen in the box get picked randomly and are the only fucking assholes in there who can decide what's what. All they have to do is hear the evidence, rule on it pursuant to the judge's instructions and then determine whether or not the defendant is guilty. As such, they are key in defending democracy against the immoral force of government.

### **5.4 Delay in Trials and Backlog of Cases**

As this is a new problem in England and Wales inhibiting efficiency, the backlog of cases and delays in trial courts is also rampant all across Bangladesh's CJS. One thing this issue is endemic to Bangladesh and shows no signs of abating. Over 1.9 million cases are currently pending in lower courts, with the possibility of five to ten years' delay for trials. A large number of cases are fraudulently delayed, police investigations and witness production take too long, not to speak of complex useless statutes (CrOC, 1898). There's an even broader set of problems beneath this all. As a result of these delays, which cause severe prison congestion, the constitutionally guaranteed right to a speedy trial is totally impaired. Roughly 70-80% of prisoners have a longer duration between incarceration and punishment available to be imposed by the courts (wait before trial) than the actual sentence passed (punishment).

The English and Welsh system, which has been better in times gone by, currently suffers from a huge backlog that continues to grow – most notably in the Crown Court (where more serious crimes are prosecuted). By late 2025 another 80,000 will have added to this record backlog. The main reasons are an increase in complex cases with a lot of evidence, years of underinvestment and the impact on jury trials of the COVID-19 pandemic. This impasse has significant implications, although not

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<sup>12</sup> Salman, N. W., et al. "LEGAL FRAMEWORK OF ARREST AND POST-ARREST SAFEGUARDS: A COMPARATIVE ANALYSIS..." IIUM Law Journal (2021).  
(Highlighting the major gap between legal provisions and actual practice in Bangladesh.)

quite as bad as the situation in Bangladesh. Cases that continue for years without victims or witnesses having been heard of are much more likely to fall apart because potential witnesses drop out, or their memories fade. The number of people on pretrial detention today is at a 50-year high, and defendants also suffer from the damage brought about by long stretches of unclarity or confinement before trial. 9. Lack of money, too few court days and a series of unsuccessful cases are all to blame for problems in England. But the issues in Bangladesh are more fundamental and stem from inherent philosophical and structural weaknesses of the system. Systemic disintegration is not identical to an operational catastrophe, as this demonstrates.

### **5.5 Human Rights Concerns and Fair Trial Standards Trials**

There is a substantial divide in application of S-250 on HR & FTS between the English and Bangladeshi CJS despite commitment of both systems to ICCPR and UDHR. In Article 35 of the Constitution of Bangladesh adopted in 1972, people are assured of a speedy trial, freedom from torture and protection from being compelled to be witness against himself. But the big challenge is that there is a wide incompatibility between *de jure* (what the law says) and *de facto* (what really happens). That leads to a *de facto* lowering of fair trial standards, as there are the systemic issues like police impunity and detention for too long (which is a violation of the right to freedom), torture and forced confessions in jail are part of that equation. But England and Wales do have a strong, institutionalised rights framework in the form of PACE 1984 (the Police and Criminal Evidence Act 1984) and the Human Rights Act 1998 (which encapsulates parts of the European Convention on Human Rights), which put down quite clear norms as to HOW things should be done. It is for this reason that the system has been constructed in a way to defend (give active content to) our right to fair trial (Article 6 ECHR) through devices such as the requirement that free legal advice be given at the police station, exclusion of illegally obtained evidence and tight controls upon law enforcement. This in turn means that observance of procedural fairness is constitutionally required and an element of due process.

### **5.6 Adoption of International Best Practices**

Bangladesh and England CJS are very different with global best practice comparison. For example, the setting up of independent oversight bodies and accountability mechanisms like the Independent Office for Police Conduct and Human Rights Act 1998 that incorporates ECHR is evidence that England and Wales have predominantly accepted international norms. Because, the CJS can test its sentencing practices and theories against international norms of rehabilitation and due process or it won't work correctly.

But Bangladesh struggles to piece together best practices piecemeal, in part because of serious structural and socioeconomic challenges. While digital forensics and the call for more legal assistance seem to drive ahead, many critical global reform efforts like independent prosecution, clear sentencing standards or robust community options are left behind.<sup>13</sup> Tightly controlled procedural protocols, clogged court dockets, rampant institutional corruption, inadequate resources and public ignorance helped create a system in which "colonial bureaucracy could supply no real or fundamental change." If, for example, other alternatives to incarceration exist (such as probation

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<sup>13</sup> UNODC. "Bangladesh: Expanding non-custodial alternatives to reduce prison overcrowding." (Discussing the urgent need for non-custodial measures and judicial training to mitigate the effects of an overburdened CJS.)

programs), they are not always used and often exist without sufficient staff, funding and protocols that would enable them to address the issues of prison overcrowding and repeat offenses. Although England relies on legislation and judicial reviews to ensure best practices are enforced, Bangladesh needs rules based on rights as well as the ability to learn from other countries first be not only able to adopt ideas that work elsewhere: It must address its underlying institutional problems.

### **5.7 Lessons Bangladesh Can Learn from England**

Dissecting the new style might be highly useful for Bangladesh's CJS in resolving its colonial rigidities, fatal operational deficiencies and in upholding human rights more effectively.

And, above all, institutions should have independence — especially in prosecution. Bangladesh, like the UK's Crown Prosecution Service (CPS), should heed this example and distance itself from politically driven public prosecutors with a national prosecution agency independent of government. This independent committee must be free to act independently of government and make its charging decisions based solely on the facts and what is in the public interest. As a result of this, there will be improved trial quality and fewer politically motivated or unsuccessful prosecutions.

Bangladesh needs to adopt the modern case management system and technology as ways out of the never ending pile up in the justice delivery system. As flawed as it is, England has made serious investment in online platforms and remote hearings. More judges, completing e-judiciary projects and establishing transparent and uniform adjournment systems would enable Bangladesh to reduce the average duration of its trials by half.

Third, Penal Philosophy needs radical reconstruction. Instead of making the policies on the basis of “the imperial or post-colonial states,” such as punishment-oriented and deterrent measures, Bangladesh may engage in rehabilitation and community sentencing. Instead of custodial prison remands, the UK has institutionally committed itself to making use of Probation and Community Service Orders to alleviate extremely crowded prisons, reduce the numbers of prisoners on remand (which is otherwise about 30% both there and here) as well as enhancing re-entry processes virtually without recidivism.

Finally, people will have to establish strong checks so that the police get held responsible. Torture is still all too pervasive in Bangladesh, a country where torture under any condition is prohibited by the constitution. The PACE template would enshrine natural justice by preventing and radically reducing rights violations. It compels police officers to provide suspects with legal advice right after they are arrested, and prescribes strict rules for interrogations and detention. Popular confidence in the courts would be restored.

## **Chapter Six**

### **Findings, Recommendations, and Conclusion**

#### **6.1 Key Findings of the Study**

**BANGLADESH AND THE ENGLAND AND WALES CRIMINAL JUSTICE SYSTEMS: Common Colonial Links at Law, Contrasting Punitiveness and Institutional Effectiveness with Human Rights Compliance Abstract** Although both the Bangladesh and England criminal justice systems share a colonial legal legacy, a comparative survey of their respective structures reveals major differences in punitivism, institutional efficiency and adherence to international human rights standards. The main discovery of the research is that in consideration with the principles although its limitation conducts, Bangladesh's criminal justice system was built on colonial legacy such as PC of 1860 and CrPC of 1898. On capital punishment and on stringent punishment, it is the same. But England's Criminal Justice System has of course since turned into a regime which is akin to the rehabilitation model with rights due to the HRA and PACE, promoting non-custodial sanctions, intensive community supervision and extensive procedural safeguards.

The contrast highlights that Bangladesh is facing an operational crisis, which is one of the main findings. It is this great backlog of court cases- -over 1,900,000 criminal matters are now pending—which is the primary cause of severe prison overcrowding. A gross violation of common law – their God-given, natural rights in this country is that many of them already have been incarcerated for years without the benefit of trial. Packed prisons and lengthy waits for the Crown Court are merely two of recent England's woes. But the organisation, which is now independent of government and the courts are both more reformed and have greater integrity and independence than before. Finally, there is a huge problem here with "human rights" in Bangladesh. Even where fair trial rights are enshrined in the constitution, systemic failure to guarantee them in practice may result from lack of police officer accountability, insufficient provision of legal assistance and a culture of impunity. This is something which the institutional and legal protections in English law are much better placed to manage.

#### **6.2 Policy Recommendations for Bangladesh**

Policy Implications for the Bangladesh CJS should be comprehensive, directed towards addressing structural weaknesses in institutional operations and pragmatically based on best practices from England if it is to successfully evolve away from its colonial and punitive foundations towards a modern rights-based model, as evidenced by the comparative findings.

**Encouraging organization-wide responsibility and independence** And the first step, no pun intended, is to make your National Prosecution Service just like the Crown prosecutor's office in the UK. Under the public interest criteria, this agency would rigorously assess the data before it brings charges. It means there would be less backlog in the courts due to crap cases. Bangladesh must also establish an Independent Police Complaints Commission to investigate the allegations of corruption, police torture and illegal arrest. This commission must take a leaf out of the UK Police and Criminal Evidence Act (PACE) by making investigations

transparent and lawful while applying stringent accountability standards on our police servicing.

**Prioritising digitisation and judicial efficiency:** To clear the backlog of cases, and to ensure that everyone continues to be provided their constitutional right to a speedy trial, the CJS requires a national emergency operation with an efficient prioritization mechanism. This would involve significantly expanding judicial capacity, particularly at the lower court level; hard deadlines for each phase of an investigation and trial; a mandatory digitally-enabled case management system, such as the UK's common platform, in all courts to manage and co-ordinate cases.

**Emphasis on restorative and community justice as opposed to punishment:** Bangladesh, like England, needs to stop chasing revenge and start pursuing rehabilitation. Rather than one that normalizes brief prison terms, the law would mandate the use of alternative sentencing options everywhere. Instead, close and strict oversight is necessary in the form of public work or probation. This can happen only if the state invests money in hiring a trained, professional Probation and Parole Service. Only then can they provide targeted rehabilitation programs (such as drug treatment, job training and education) that address the causes of crime and to help reduce recidivism and prison overcrowding.

**Greater availability of legal representation and due process protections:** Finally, the government has to step up and do more for NLASO to make it more accessible to people. This way, low-income people won't have lip service when it comes to access to lawyers, especially during the first police detention. The 1872 Evidence Act should be amended to leave no doubt about the inadmissibility of torture or where compelled evidence is concerned. That would bring procedural law into line with the constitutional prohibition against self-incrimination and raise the threshold for fair trials. Bangladesh's decolonization of its CJS and to basic justice, common-sense autonomy, contemporary efficiency and human-rights safeguards for its citizens must be on the top.

### **6.3 Scope for Legal and Institutional Reform**

"Institutional and legislative reforms are an urgent priority if we want to strengthen criminal justice system in Bangladesh. We need a new model of governance, one that lets go colonial and embraces modern efficiency and accountability. It has much to learn from the English CJS, in place as it is. The FINAL principle almost radical SHIFT in the system concerning two distinctly independent branches of government is separating the executive from prosecution. To achieve that task, politically biased PP should be replaced by an impartial agency, such as the Crown Prosecution Service (CPS) in UK. So that there will be nothing to think about in weighing the public interest against the facts, when charges are chosen. To rein in the police powers, ensure that people can obtain legal aid expeditiously and make sure that torture evidence is worthless, Bangladesh must bring its ancient colonial-era Code of Criminal Procedure (1898) and Evidence Act (1872) to constitutional expectations and international standards. The key reforms in operation to address the pendency of cases are increasing the judge strength, mandating e-judiciary, and rationalizing project-based setting up specialized courts and ADR to ensure everyone gets a speedy trial. Finally, retributive-based reform is a prerequisite for rehabilitative thinking. What is needed, though, is for the Legislature to debate and fund

alternatives (community service, intensive supervision probation.) Police overcrowding issues in prisons and undertrial prisoners have both been nagging concerns that this will take care of. The goals of England's reforms are to raise efficiency and open up space for them within a modern system. But if Bangladesh would like more people to trust the government and submit to the rule of law, it will have to massively overhaul its legal system and cultural facilities.

#### **6.4 Concluding Remarks**

In the final analysis, the CJS of England and Bangladesh present two distinct yet related colonial trajectories: While that in England is dynamic and rights-based, focusing more on affirmative state compliance, that in Bangladesh originates from harsh, punitive and deterrent colonial laws. The essential takeaway is that the letter of the law in Bangladesh doesn't correspond to the spirit of the place. While the rights are largely theoretical, the system itself is broken with an overturned trial rate of 99 percent and crimes being investigated by prosecutors who report directly to executive government; no accountability resulting in violations of human rights and due process such as countless cases of pre-trial detention without end or torture in custody. By contrast, due process was finally incorporated into English law by PACE 1984 and the Human Rights Act 1998. Instead of punishing wrongdoers, they prioritise their rehabilitation and return to society. What justice looks like in Bangladesh, going forward, has much to do with how well it is able to absorb best practices from the English example. Prosecutorial power Deluge of massive computerized court efficiency programs, and A reform in criminal sanctioning policy finding and demanding that better community based alternatives to imprisonment are more effective; these all will help to unburden the terrible human cost of overcrowded prisons.

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