Research
A Comparative Study of Administrative Litigation System of China and Bangladesh

Masum Billah (马苏姆)*
¹ School of International Law, Nanjing Tech University, Nanjing 211816, China

*Corresponding author
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Abstract: The purpose of this article is to explain the most important factors that differentiate the litigating between China and Bangladesh. This research is theoretical in nature as well as descriptive in the case of comparison. The data of this research was collected from secondary sources. The outcome of this research is specified based on theoretical and also practical to apply rules and regulations in court procedure between these countries. The ultimate finding of this research is that the Chinese Litigation System occupies a much more significant proportion of the law than do the corresponding parts of the Bangladesh Administrative Litigation System.

Keywords: Litigation, administration, judgments, court structure, settlement, Bangladesh Law, Chinese Law

Introduction:
Administrative litigation systems are a rapidly developing legal field in many countries. This paper provides a comparative study of the administrative litigation systems between China and Bangladesh. The Administrative Litigation Law of china, which was ratified not long ago by the National People’s Congress (NPC). In 2019, China's GDP grew at a rapid rate of 6.2 per cent. Along with this fast-paced economic growth comes a continued increase in the volume of business opportunities and of lawsuits. China already is an active and expanding litigation jurisdiction, including one of the most active patent litigation dockets in the world. China is focused on reforming its legal system to keep up with this increasing caseload, but its litigation system remains imperfect. The legal system of China is similar to the civil law system.

On the other hand, the legal system of Bangladesh is based on a common law system. However, unlike other common law jurisdictions, Bangladesh's Supreme Court has the power not only to
interpret laws made by the Parliament but also to exercise power to declare any law being ultra vires to the Constitution as null and void along with its power of judicial review. The Supreme Court can also enforce the fundamental rights of any citizen or any person for the time-being in Bangladesh. Although founded on the English common law system, most of the principles are incorporated in the statutory laws, as enacted by Parliament and interpreted by the superior courts. Civil procedure in Bangladesh is governed by the Code of Civil Procedure (CPC), 1908 and criminal procedural matters are governed by the Code of Criminal Procedure, 1898. The country-specific gives a structured overview of the key practical issues concerning dispute resolution in this jurisdiction, including court procedures; fees and funding; interim remedies (including attachment orders); disclosure; expert evidence; appeals; class actions; enforcement; cross-border issues; the use of ADR; and any reform proposals. All of the contributors have addressed a wide array of crucial issues in their particular jurisdiction, including court jurisdiction, the scope of judicial review, grounds of litigation claims and mediation in the judicial process. This article explains some of the most important things to know about litigating in China and Bangladesh.

**Methodology:**
This study follows the theoretical research methodology. We did not conduct any primary survey. We collected data from secondary sources. After receiving all some articles, we sorted out the valuable materials which are directly related to our topic. After sorting out, we studied the selected articles. All the information of one article is not necessary. That is why we picked up the information which directly matches with our research. Most of the study materials collected from the internet. In some cases, we studied some history books to see the difference before the present decade. Sometimes, a comparative study is somewhat difficult to find out an effective outcome. We tried our best to analyze the comparison between those two countries litigation systems. Mainly, we used personal judgmental analysis to point out the crucial factors of the comparison.

**Findings:**

**Main dispute resolution methods:**
The main dispute resolution methods used in China and Bangladesh are:

- Settlement by negotiation.
- Litigation.
- Arbitration.
- Court- or-arbitrator-administered mediation.
Many commercial disputes are resolved through negotiation, but a large number of arguments proceed to litigation or arbitration. The number of litigation and arbitration cases has increased rapidly in the past few years. Traditionally, the system was inquisitorial, but the recent trend is to move to a more adversarial system. The court has broad powers to control and manage litigation. For example,

- The court controls the schedule of the proceedings.
- The court must investigate and collect the evidence if a party is unable to collect evidence on its own for reasons beyond its control, or if the court deems that the evidence is necessary for the trial of the case.

The standard of proof in most civil cases is a high probability. But in limited civil cases, the standard of proof is higher, such as for evidence provided to prove the facts of fraud, duress or malicious collusion, or to prove the facts of a verbal will or gift. Where a court concludes that the facts can be proved beyond a reasonable doubt, it must deem that the facts exist.

The above dispute resolution methods between Bangladesh and China are similar, but Bangladesh has an additional method of dispute resolution, which are Tribunals and Ombudsman.

Bangladesh does not have a national arbitration institution. However, the Federation of Bangladesh Chambers of Commerce and Industry introduced the Bangladesh Council of Arbitration (BCA) as an arbitral body in 2004. The BCA is a new body, and it aims to provide a simple, harmonious, cost-effective and speedy process of dispute resolution. The arbitrators may award an arbitral award which must be in writing and signed by the arbitrators. Once a 60-day period has passed from the date the award was made – and if no application has been made to set aside the award – the domestic award may be enforced in the same manner as a judgment of the court. With regard to foreign awards, the procedure is to apply to the district court in Dhaka to enforce the award. An application for the execution of a foreign award should be accompanied by the arbitral award, the agreement for arbitration and such evidence which proves that the award is foreign. Arbitration is increasingly being employed as a means of getting around the judiciary and the length of time it can take to resolve cases. Arbitration in Bangladesh has proved to be a successful and efficient means of resolving disputes arising out of commercial matters. Businesses, especially those with foreign concerns, have now begun to write arbitration clauses into their standard contracts. As the Bangladesh Council of Arbitration (BCA) is still new, there is a little experience of arbitrations.
being conducted under its rules. Therefore, in Bangladesh, ad hoc arbitrations are more in vogue than institutional arbitration.

**Court structure:**
In China, there are four levels of courts:
- Highest level: The Supreme People's Court.
- Provincial-level: the high people's courts.
- Intermediate people's court.
- Basic people's courts.

Besides, China has railway transportation courts, maritime courts, and IP courts at the intermediate people's court level.

Try criminal, civil and administrative cases as courts of first hearing, except where otherwise provided for by law. Cases deemed to be of a severe nature that should be handled by superior courts can be referred to those superior courts. Most civil matters with international components may be brought directly to an intermediate court, and if certain jurisdictional thresholds are met can even be delivered directly to a provincial higher court. Judges in the intermediate and higher courts, especially in first-tier cities and provinces, tend to have more experience in international litigation and may be further removed from the protectionist influence of local governments. Some judges, especially at lower levels and in less developed regions, lack the education needed to grasp the more nuanced issues in complex international litigation. The major intermediate courts have specialized divisions and sometimes unique panels for foreign-related cases.

Only Chinese nationals working for Chinese law firms may appear in court. Thus, it is essential to find an advocate who can communicate effectively in both Chinese and the language of the foreign party. In many cases, international law firms operating in China play an essential role in coordinating and overseeing such litigation on behalf of their foreign clients. On the other hand, the Bangladesh Court structure is different from China:

The Constitution of Bangladesh created the Supreme Court of Bangladesh with two divisions, the High Court Division and the Appellate Division. The Appellate Division is the final Court of Appeal. It hears appeals from the judgement of the High Court Division and also has jurisdiction to hear appeals from the Administrative Appellate Tribunal. The High Court division has been vested with the power to hear appeals and revisions from subordinate courts and also to enforce fundamental rights and to grant other relief available under the writ jurisdiction.
Subordinate Courts (Courts which have Original Jurisdiction):

**Civil:**
(i) District Judge  
(ii) Joint District Judge  
(iii) Senior Assistant Judge  
(iv) Assistant Judge

**Criminal:**

i. Sessions Judge  
ii. Additional Sessions Judge  
iii. Chief Judicial Magistrate  
iv. 1st Class Magistrate  
v. 2nd Class Magistrate  
vi. 3rd Class Magistrate

**Special Courts:**

i. Labor Courts decide labor disputes.
ii. Administrative Tribunals decide service disputes of public servants, allowing an appeal to the Administrative Appellate Tribunal.
iii. Income Tax Appellate Tribunals decide income tax disputes, custom and excise matters. VAT Appellate Tribunals decide on disputes regarding custom and excise duties and VAT.
iv. The Court of Settlement decides disputes relating to abandoned properties.
v. Artha Rin Adalat (Money Loans Court) decide money claims of banks and other financial institutions.
vi. Insolvency Courts declare defaulting borrowers as insolvent.

A criminal case can be started either by the Police Station or by the Magistrate Court, and A civil suit is generally commenced by the presentation of a plaint or statement of claim. A complaint must be signed and verified by the plaintiff. Once a plaint is accepted by a competent court, a summons is served on the defendant(s) to appear before the court. The court may refer any dispute to Alternative Dispute Resolution (ADR) before the trial is commenced. At the hearing, the plaintiff and the defendant present respective witnesses and documents to support their respective claims or defence. The time limit for bringing a civil claim is laid down in the Limitation Act,
1908. Generally, the time limit for bringing a civil suit varies from 6 months to 12 years, depending on the nature and subject matter of the suit. However, in the case of lawsuits brought by or on behalf of the government, the limitation period is 60 years.

Rights of the audience:
Which types of lawyers have rights of audience to conduct cases in courts where significant commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers do cases in these courts?

Rights of audience/requirements:
China and Bangladesh are similar on rights of audience and their requirements. There is no distinction regarding the rights of the audience between lawyers to appear in courts. The following persons can be entrusted as litigation agents:

- Lawyers.
- Close relatives or employees of a litigant.
- Citizens recommended by the local community, the employer of a litigant and particular social body.
- Litigants involved in significant commercial disputes are usually represented by lawyers.

Foreign lawyers:
Foreign law firms can open offices in China. However, foreign lawyers are prohibited from representing clients concerning Chinese law issues, including attending court hearings. On the other hand, in Bangladesh, there is no scope for foreign lawyers to defend the accused of crimes against humanity before the International Crimes Tribunals as per relevant laws. As per the Bangladesh Bar Council laws, only lawyers who are citizens of Bangladesh can practice law in the country, and adding that the council regulates the profession of the country's lawyers.

What can legal fee structures be used? Does law fix fees?
The court fees are different between China and Bangladesh. According to section 7 and the first and second schedule of the Bangladesh court fees Act 1870, the court fee is determined by mainly two ways;

Advalorem court fees:
When the court fees have to be paid according to the value of the subject matter that is known as the Advalorem court fees.
Fixed court fees:
When the court fee is to be paid according to the prescribed amount fixed by the government, is called fixed court fees.
China has four types of court fees system;
- A fixed fee.
- A fee is proportional to the amount in dispute.
- A fee charged by the hourly rate.
- A contingency fee.
In practice, the fee structure may be a mixture of the above, such as an upfront fixed fee plus a contingency fee. There are no laws or regulations that fix legal fees in significant commercial disputes, but contingency fee must not exceed 30% of the disputed amount.

The procedure of funding litigation and contingency fee:
In China, there are no particular rules for funding litigation. Contingency fee arrangements are not permissible in criminal cases, administrative cases, state compensation cases or collective litigation; but are admissible in civil cases involving property relationship, excluding marriage or inheritance, social insurances or minimum living costs, payments for supporting parents or minors, alimonies, pensions for the disabled of family of the deceased, welfare payments, or compensation for work-related injuries. In cases where a contingency fee is allowed, such cost should not exceed 30% of the amount stipulated in the engagement agreement. On the other hand, in Bangladesh, lawyers are not allowed to charge contingency or conditional fees in litigation. However, for any additional work outside a court setting or litigation, i.e. recovery of debt out-of-court procedure, ADR, cross-border transactional work, setting-up project, etc., lawyers may charge conditional fees. A claimant residing outside Bangladesh, who does not have sufficient immovable properties in Bangladesh, may be required to furnish security for costs. Security for costs may be ordered only in exceptional circumstances. Usually, litigations are funded by the parties themselves. There is no restriction on funding litigation by third parties in China and Bangladesh.

Court proceedings:
In principle, court proceedings are public in China and Bangladesh, except for the cases involving state secrets, personal privacy or otherwise stipulated by the law. Cases involving trade secrets can be heard in private if a party so requests. Since 2014, China’s Supreme Court issued new regulations on publishing judgments on the internet as part of the courts’ transparency reform.
According to the new regulation, all effective judgments must be published on the website of China Judgement Online (http://wenshu.court.gov.cn/Index), except for cases involving state secrets, personal privacy, juvenile delinquency, cases that are closed by mediation and any other cases unsuitable for publishing at the court's discretion. Before publishing the judgments, certain information must be deleted or redacted, such as personal information, information concerning minors, the bank account of legal persons or other organizations, trade secrets and additional information unsuitable for publishing.

**Starting proceedings:**

Usually, a claim is commenced by filing a complaint. Since 2015, China’s courts have adopted a new register-based case acceptance regime, in which courts have seven days to review the filing and decide whether or not to accept the case. If the court dismisses a complaint, the claimant can appeal against the court's decision to the higher court within ten days. In Bangladesh, a civil suit is generally commenced by the presentation of a plaint or statement of claim. A complaint must be signed and verified by the plaintiff. And a criminal case can be started either by the Police Station or by the Magistrate Court. Generally, in the Police Station, a case is started by the submission of First Information Report or FIR in case of a cognizable offence. After examination of the complainant, the Magistrate may dismiss the case or take into cognizance or order to an inquiry by a Magistrate or investigation by a Police Officer. If it is taken into cognizance, it is sent for trial into the competent court.

**Notice to the defendant and defence:**

The defendant is given notice of the claim by the court within five days from the acceptance of the case. The court can serve a defendant without a domicile within the territory of China. The defendant must file a statement of Defence with the court within 15 days from receipt of notice of the claim, or within 30 days if the defendant has no domicile in China. The court can grant an extension of the filing period at the defendant's request. In Bangladesh, the Summons shall be issued to the defendant with a copy of the plaint to inform the defendant about the case against him and the date of appearance before the court. The defendant has to appear at the court in the fixed time with her Written Statement (WS), which is a denial or the assertion of the claims of the plaintiff.
Submission Evidence:
In China and Bangladesh, the Parties to the dispute may present both oral and documentary evidence. During the trial, the parties are at liberty to present witnesses in support of their claim or defence. Common law principles of examination-in-chief and cross-examination are applicable at the time of deposition of an oral witness. Witness statements are also permissible by way of affidavits. Although courts have the power to order the preservation of evidence. Thus, parties must generally find and submit their evidence to meet their burdens of proof. The timeline for evidence submission is highly abbreviated. After any jurisdictional objection is resolved, parties must prepare and exchange evidence and attend an evidentiary hearing. Typically, no new evidence will be allowed after that stage, although parties sometimes receive extensions. This timing leaves a tiny window to gather evidence and places a premium on early preparation as plaintiff and fast action to collect evidence as to the defendant. Witness testimony is not common in Chinese courts. Most cases depend upon original written evidence (and in some cases court-appointed independent experts). Notarization and legalization requirements are strictly enforced. The evidence which is authentic, legitimate and relevant is admissible. The photocopy evidence which is not verified by it's original and the statement of a witness who fails to testify in court will not be acceptable. A party may apply to the court to request individuals with specialized expertise to appear in court and provide an expert’s opinion. If the expert fails to testify in court, the expert shall not be admitted.

Trial or examination of parties:
In China, the parties must be notified of the members of the panel within three days from when a judicial committee is established. If there is a third party who is required to participate in the proceedings, the court will notify the third party to join the process. The hearing is split into two parts: the investigation of the facts and the presentation of arguments. During the investigation of the facts, the parties state their case and adduce evidence, and witness statements are given. The evidence is cross-examined by the other side and examined by the judge. The judge will then summaries the contentious issues, and the parties will debate about the disputed issues. In Bangladesh, the Prosecution is examined by Examination in Chief (by prosecution lawyer), Cross-Examination (by opposite party's lawyer), Re-examination (by prosecution lawyer. If a prosecution is failed to establish the case, accused may be discharged. Otherwise, Defence is examined by Examination in Chief, Cross-Examination, Re-examination. This process is done generally in
Session Court. Pleadings on both sides are given last chance to establish their cases through arguments. And in civil cases, the trial is started by the opening statement of the plaintiff if the burden of proof is not shifted. After the opening statement, the plaintiff shall produce the witnesses in favour of him, which will be examined before the court. Examination of Chief shall be done by the own party's lawyer, and cross-examination shall be done by the opposite party's lawyer. The re-examination shall be done by their own party's lawyer if it is necessary. After the submission of the evidence by the plaintiff, the defendant may raise the plea that 'there is no case to answer' for the defendant and if the court is convinced, the case shall be dismissed. Otherwise, the defendant has to produce the witnesses before the court to submit the evidence by their examinations (Chief, Cross, Re). After the conclusion of the submission of the evidence, the parties (generally by the Lawyers) have to present their final arguments before the court based on evidence submitted during the Trial. The party which open the trial presents argument at the end and argument is the last chance for the party to convince the court in its favour.

Judgments & Orders:
In general, a judgement is made for substantive matters, and order is giving on procedural issues. If the accused is found innocent, an acquittal is pronounced, and punishment is given in case of guilt is proved against the accused. And in civil cases, after the conclusion of the trial, the court shall pronounce the judgement in the same day or later in a fixed date. The court may pass a Decree or an Order. The decree is the final adjudication of all the claims in a suit and order is given on any specific claim in some instances.

Enforcement of judgment:
After the passing of decree or Judgment, the party has to file an application in the competent court for the execution of the decree or judgment. If a party refuses to perform an effective judgment, the other party can apply for enforcement.

Enforcing Foreign Judgments:
The recognition and enforcement of a foreign judgment in the Chinese courts are conducted in accordance with applicable international treaties or conventions. A party can submit an application directly to an intermediate people's court, which has jurisdiction for recognition and enforcement. This will be reviewed by the intermediate people's court in light of any relevant international treaties, Chinese law and the principle of reciprocity. Successful enforcement of foreign judgments is rare in practice to absent an applicable bilateral agreement.
Generally, the law does not forbid any specific type of judgments from being enforced. The court will examine:

- Whether there is an international treaty applicable to the case.
- Whether the principle of reciprocity applies to the case.
- Whether the basic principle of the laws or public interest of China is violated.

A judgment of a foreign country cannot be enforced in Bangladesh in the absence of any reciprocating agreement. Bangladesh enjoys such reciprocity with most common law countries. The decree of any superior court of a reciprocating country can be executed under the supervision of the District Judge. However, the District Court may refuse to execute a foreign judgment if it:

- has not been passed by any court of competent jurisdiction;
- has not been passed on merits of the case;
- is founded on an incorrect view of international law;
- has been obtained by fraud; and
- upholds a claim in violation of any law in force in Bangladesh.

There is no such treaty between Bangladesh and China, and Bangladesh judgments generally cannot be enforced in China.

**Conclusion:**

I attempted to the comparative study of Administrative Litigation System and to set out some of the more conspicuous differences between the Administrative Law of China and Bangladesh. It is proposed to call them "the Chinese Administrative Law" and "the Bangladesh Administrative Law" respectively. The Chinese Litigation System occupies a much higher proportion of the law than do the corresponding parts of the Bangladesh Administrative Litigation System. At the same time some of the provisions of the Chinese Litigation System, those are similar on Rights of the audience, funding litigation and contingency fee, notice to the defendant and defence, submission of evidence, judgment and order, and enforcement of the judgment. And those are different on-court structure, foreign lawyer, court fees and some proceeding in a court in Bangladesh litigation system. Law is a large field that manifests wide differences among nations and even among states under a federal and unitary system like China and Bangladesh. However, such variations are not necessary, for laws are human-made and therefore changeable. The only difficulty is that when a particular rule of law has become a traditional custom and especially connected with social morality or family lies in a particular area, and it is not easy suddenly to change it. That is why we
need a comparative study. This dissertation is going to serve as merely a preliminary attempt to proceed along this line, and it covers only a few essential aspects of Chinese and Bangladesh Administrative Litigation System, with a view to ascertaining whether comparative analysis produces significant results.

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References:


15. Litigation and enforcement in China: overview by Zhang Shouzhi, King & Wood Mallesons

16. China Litigation and Dispute Resolution 2019

17. Administrative Litigation Law of the PRC

18. On the Administrative Litigation Law DOI: 10.2753/CLG0009-4609240343


20. The Code of Civil Procedure of Bangladesh 1908

21. The Legal System of Bangladesh by Barrister Abdul Halim

22. The Limitation Act of Bangladesh 1908

23. The Bangladesh court fees Act 1870


Dedication

Not mentioned.

Conflicts of Interest

There are no conflicts to declare.