

Edited by

Aka Firowz Ahmad ■ Sharif As-Saber  
Niaz Ahmed Khan ■ Masuda Kamal

# GENDER GOVERNANCE and HUMAN RIGHTS

South Asian Perspective



OSDER  
PUBLICATIONS

**Gender, Governance  
and Human Rights  
South Asian Perspectives**



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*Dedicated to the persons who are devoted to holistic justice*



# Preface

The book ‘Gender, Governance and Human Rights South Asian Perspective’ is the compilation of selected research papers presented on the International Integrative Research Conference on Governance and Innovation (GAIN 2014) held in Bangladesh Academy of Rural Development (BARD) Comilla on 19-20 December, 2014. The Conference was organized by Netinsearch International- Network for Integrative Research, GAIN International, Centre for Administration Research and Innovation (CARI), University of Dhaka and the Stamford University Bangladesh.

In the South Asian socio-economic conundrums, where social dynamics are shifting rapidly towards urbanization and industrialization having been influenced by aggressive policies of consumerism, it is essential to ensure a feasible interaction between different elements of governance mechanism with a view to keeping domestic as well as cross-border stability of both the traditional society and growing economy. Hence it is essential to keep the equilibrium among differing social elements. This book particularly focuses on the recent trends of governance with reference to the issues pertaining law, gender and violence in the changing context of the South Asian Societies.

Publication of the book is the product of the dedicated and synergic efforts of a team of young academics and researchers including Jahidul Islam, Al-Ifran Hossain Mollah, Mamunur Rashid, Abdur Rahman and Akram Hossin. Without their supports in various forms it would be difficult to publish it within the time frame. We express our highest gratitude to them with the hope of their bright intellectual achievements in future. We are also thankful to Osder Publications for publishing, printing and bringing the book to readers.

Finally, we also admit our liabilities and limitations. Despite several readings, there may still be typos and other minor mistakes for which we seek our sincerest apology and feedback from the readers to correct them in subsequent editions.

Editors





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# INTRODUCTION

Shifting paradigm of gender governance fuelled by the change from Agrarian society to industrialized society and from industrialized society to the market economy based society has changed the traditional role of women as home maker to bread earner. This has turned the longstanding simple framework of the South Asian societies into a more complex and sophisticated one which seems to be hard to grasp by the common people's perceptions leading to a conflict between traditional values and modern approaches towards gender equality. On the other hand, 21<sup>st</sup> century's socio-legal dynamism coupled with the rising level of cross-border terrorism and global counter-terrorism campaign has been successful, albeit in implied manner, in shaking the basic structure of traditional societies of the South Asia stretching from the Bay of Bengal to the edge of the Arab sea. The people living within those bays bear a longstanding heritage and culture of social norms and values respected and cared for centuries. Basic structure of those societies is on the brink of extinction with the growing instability almost in every frontiers of this region. This book deals with the transitional issues pertaining to the Gender, Law, Human Rights, Violence, Conflict and Terrorism in the changing perspectives for which the book has been divided into three parts and sixteen articles.

The first part of this book deals with gender rights, infant mortality and autism. The next part deals with judicial reform governance and crime of genocide. The final part deals with human rights, refugee, conflict and terrorism.

Article 1 (Gender Rights Practice and Empowering Women through Village Organization: BARD Experience) investigates the experimented projects of Bangladesh Academy for Rural Development (BARD) on gender development and women empowerment issues since 1990. The author also attempts to analyze the influence of these project interventions in empowering women through the role of group activities of village societies to promote the gender equality by practising human rights in rural life cycle and to what extent women gain capabilities to change their condition and increase position in the society. The next article (Victim Blaming in Contemporary Bangladesh: An Exploratory Study on Rape Victims in Tangail) addresses victim blaming experiences of rape victims regarding victim roles in rape and its associated factors in contemporary Bangladesh. It also explains a dynamic relation between victim blaming and social construction of rape victim based on aftermath reaction by different actors in the society.

Article three (Context and Consequences of Domestic Violence against Women in a Rural Area of Bangladesh: Analysis from Sociological Perspective) focuses on the trends, context, nature and the consequences of domestic violence against women in the form investigation of a village in the Narail District of Bangladesh. The core objective of the study was to reveal the context in which the violence used to occur, more specifically, the causes that directly or indirectly facilitate the violence in rural Bangladesh as well as to expose the consequences of this monstrous act. The next article (*Maternal Health and Infant Mortality Related MDG Achievements in Bangladesh: A comprehensive Review Progress and Challenges*) focuses on the current status and achievement of maternal health and infant mortality related MDG's status from 2000 to 2014 in Bangladesh. This paper also suggests that achievement in child mortality is positive but accomplishment of immunization is very much demanding and the health related MDGs are closely interrelated and require a joint and comprehensive approach.

Article 5 (*Towards Sociology of Autism: A Case Study on the Parents of Autistic Children in Dhaka City*) particularly focuses on the general understanding of autism from sociological perspectives and its consequences. To achieve this purpose, the study employed both quantitative and qualitative techniques of data collection. The study finds that most of the autistic children face language and communication problem followed by social developmental problem, sensory integration dysfunction and behavioral problem. Article sixth (*The Village Courts in Bangladesh: Review and Analysis*) contemplates an assertive review and analysis on the village courts of Bangladesh. It provides a brief analysis on the approach, outcomes and challenges of the Village Courts system and provides policy recommendations thereafter through following Focused Synthesis and Participant Observation methods.

Article seventh (*Judicial Reform in Bangladesh: What to Achieve and How to Achieve*) deals with the judicial reformation in Bangladesh. In doing so, the author questions the very approach towards the judicial reformation process that has been the obsession of policy-makers and their interventions, both homegrown and from abroad. The author argues for a move away from the focus on delay-reduction and efficiency through judicial reform to looking at judicial reform taking justice as a key deliverable of development. The next article (*An Overview of Alternative Dispute Resolution from Sociological Jurisprudence*) focuses on the underlying loopholes of Alternative Dispute Resolution (ADR) prevailing in the present legal regime of Bangladesh. The author has argued the relevance of charismatic leadership with a view to find out

relationships between instinct personalities of authorities and its efficacy considering unique and sound charismas of adjudicators of Alternative Dispute Resolution as focal point from the very sociological context.

Article 9 (A Comparative Study of the Crime of Genocide: From the era of Cold War into the era of Hot Justice) demonstrates how the politics of Cold War era has affected the process of the drafting of the Genocide Convention of 1948 and subsequently the proper implementation of this Convention including the creation of International Criminal Court in the both global and Bangladeshi perspective. The paper pointed out the persistent lacunas of the present age by dint of illustrating some present scenarios and also by hinting the emergence of new international political dimension. Article ten (Online Human Rights Defenders (OHRDs): Recognition, Challenges and Prospects in Bangladesh) attempts to recognize the term “Online Human Rights Defender (OHRD)” through finding out the challenges and prospects to it. The aim of the paper is to broaden the horizon for the OHRDs so that they can do the liberal application of the concept of “Freedom of Speech, Thought and Conscience” to mingle the different ideologies in order to create a peaceful just society.

Article 11 (Human Rights Education and Realisation in India: A Case Study of NGOs) focuses on the human rights violations in India. The author argues that besides government, non government organizations can play vital role to improve the human rights situation in the country. This research paper is aimed to analyse the contribution of Sulabh International which is pioneer in the field of sanitation, manual scavenging and caste related issues. The next article (Labor Rights a Global Manufacturing: The Case of Women Garment Works in Bangladesh) of this book particularly draws on Amartya Sen’s ‘social justice’ approach and empirical evidence from the Bangladesh Readymade Garment (RMG) industry, and found that labor practices at global factories are uneven and unfair, yet employment in this sector is necessary for survival, particularly for women workers. The study also demonstrates the employers’ and states’ unwillingness to enhance workers’ capability from a gender perspective.

Article 13 (Understanding Waters, Sanitation and Hygiene Situation among Tea Laborers Community in Sylhet) discusses the present situation of water, sanitation and hygiene among tea laborers community of Bangladesh. This paper has put forward certain suggestions in the form of both long term and sustainable intervention by different stakeholders like government, NGOs, tea garden authority as



well as the tea laborer community separately or jointly so that people's behavior on health, sanitation and hygiene can be changed permanently.

Article 14 (The Rohingya Refugee and Security Dilemma of Minority Groups in Bangladesh) of Part Three of this book deals with the definitional terms and the causes and consequences of Rohingya influx in Bangladesh. In doing so, the authors put an effort to draw the attention of the readers with the manipulations and politicization of Rohingya infiltration. The authors aim to find out the process that how the Rohingya ethnic group was expelled from Myanmar and entered into Bangladesh with a traumatic experience, as well as how they have been informally integrated to the host society gradually. Moreover, the four socio-cultural domains i.e. social contact, language, education, and political participation, has also been examined to measure the integration process of Rohingya minority group in Bangladesh.

Article 15 (The Escalation of Militarized Conflict: An Analysis from the Great Epic the Mahavaratta) focuses on the territorial disputes, memory of previous repression (physical, psychological, political exclusion etc) by one group on another; renege of mutual agreement by one party; and failure of peace initiatives (mediation, negotiated, conciliation) to settle dispute contribute to escalate violent militarized conflict. The author analyse these factors of conflict in the context of Kuruskhetra War from the ancient epic, the Mahabharata.

The final article (Relevance for India-Bangladesh Comprehensive Anti-Terror Joint Action Plan) attempts to finds out a holistic approach in combating the threat of cross-border terrorism from the context of both Bangladesh and India. In doing so, the author has also suggested that joint action plan for combating terrorism should follow the democratic norms, rule of law, and respect for human rights which are the common shared ideology of both the country.

This book makes no claim of being exhaustive, or representative of all issues concerning gender governace and human rights issues in South Asian region. But, our sole objective is to record, develop and facilitate to a basic and down to earth understanding of some of these crucial issues, whih remained largely ignored. This integral and less explored area of research calls urgent attention as at present our knowledge on the subject is at best marginal.

# **PART ONE: GENDER RIGHTS AND DISABLES**



# 1 Victim Blaming in Contemporary Bangladesh: An Exploratory Study on Rape Victims in Tangail

Nurjahan Khatun

## **Introduction**

Victim-blaming has been identified as the issue of most concern to academicians and human right activists in recent days. It is a phenomenon that has been happening since at least the beginning of recorded history but has only recently been identified as a dynamic used to empower the criminal and maintain the status quo (Schoellkopf, 2012:33). Public conversations about victimization and victim blaming in the United States began in the late 1960s and 1970s, influenced by forces such as the civil rights movement, the women's movement, an increased focus on crime response and control, and the growth of the mental health profession (Best 1997:8-10; Karmen 1956). In Bangladesh recently different reports in print and electronic media highlighted the blaming experiences of rape victims that attract the attention of academicians and researchers regarding this issue.

Early concern with the victim can be found in the work of Mendelsohn (1937) and Von Hentig (1948) that challenged conceptions of the victim as passive actors and focused on those characteristics of victims which precipitated their suffering and on the relationship between victim and offender (Zedner, 1994). Mendelsohn (1937) drew particular attention to the victim provocation in violence. In addition to this, Wolfgang (1958) and Schafer (1968) also highlighted on the role of victim as co-precipitator of the crime. The issue of victim precipitation has been subject of much criticism of different feminists researcher, particularly the most controversial application of 'victim precipitation' in Amir's *Patterns of Forcible Rape* (1971). He argued that 19 percent of rape were victim precipitated (Silvestri and Dowey, 2008:92). Eminent Feminist scholar Brownmiller criticized the notion of 'shared responsibility of victim' and cogently argued that beliefs such as "women provoke rape by their physical appearance" and "women want to be raped" have led to the victimization of women (Tang et.al 2002:968-996). She also told that these beliefs enhance male dominance and provide justification for those who commit crime as well as blaming the victim. In particular, feminists focus on culture and social structures that establish and maintain male dominance.

According to feminist social construction theorists, the psychoanalytic literature have also provides an important intellectual foundation for victim-blaming explanations (Allison & Wrightsman, 1993; Scully, 1990), lending support to some of the cultural myths about victim blaming. In rape, these cultural myths include “It isn’t rape, only rough sex”; “Women say no when they mean yes”; and “Women enjoy rape.” (Tang et.al 2002:968-996). In addition, Marxist and Critical victimologists opined that system of patriarchy and structural pattern of capitalist societies penetrates victimization of women as well as victim blaming in modern era (Walkate, 1996)

Eminent scholar William Ryan coined the phrase "blaming the victim" in his 1971 book *Blaming the Victim*. In the book, Ryan described victim blaming as an ideology used to justify racism and social injustice against black people in the United States (Kirkpatrick: 1987). Ryan wrote the book to refute Daniel Patrick Moynihan's 1965 work *The Negro Family: The Case for National Action*. He describes victim blaming as a way to preserve the interest of the privileged group in power. On the other hand, Schwartz and Legget (1999:251-271) defined that ‘victim blaming is where individual find instances within the victims’ behavior, such as drinking alcohol, to hold the victim at least partially responsible for the incident (Hayes et al. 2013:202). After coining the phrase “blaming the victim” by William Ryan advocates for crime victims, particularly those of rape, have adopted the phrase. The present research is also tried to explore the blaming experiences of rape victims and its associated factors in the context of Bangladesh.

It is notable that rape is one of the least-reported of all violent crimes in contemporary days. One study estimates that only one to four rapes in every 10 committed are actually reported to the police in America, though most studies estimate that between 25 percent and 50 percent of actual and attempted rapes are reported (Williams, 1984:456-467). At present Bangladesh, the uncontrolled nature of rape incidents creating a ‘culture of fear’ among women in the society (Rezina and Mustfee 2007). From January, 2001to February, 2007 a total of 5816 women and children were reported to have been raped across the country. Among these numbers, 636 women were killed after being raped and 69 committed suicide after the incident (Elan, 2007). According to the reports of human rights organization, in 2009 the total numbers of reported rape incidents were 456 and it increased in 2010 and 2011 that was 556 and 771 accordingly (Odhikar, 2010:64-67, 2011:112-114).

Though among violent crimes rape is a least reported crime in Bangladesh but these data indicated the increasing rates of rape in our country. Now rape has been treated the most violent crime against women in Bangladesh.

In Bangladesh, women are blamed from different level of society for their victimization particularly when she becomes a victim of sexual offences such as eve teasing, adultery, rape and so on. But blaming is being more serious, heinous and harmful to the rape victims than any other women victims in our society. A rape victim is especially stigmatized in cultures with strong customs and taboos regarding sex and sexuality (Wikipedia, 2014). During the early seventies different feminist researchers in developed country vividly criticized the issues of victim blaming specifically in rape and argued that focusing on the victim's involvement, attention is diverted from the structural causes of women's victimization. But in the context of Bangladesh, victim blaming is an ignored area of research still now. Though Rezina and Mustfee (2007) highlighted the nature, extent and prevention of rape in Bangladesh; Khatun et al., (2012) explained the socio- psychological condition of rape victims in Bangladesh. But no research has been conducted by the scholar, academicians and professionals on rape victim highlighting their blaming experiences in our society. The present research is an attempt to remedy this situation. The research plan was developed on the basis of two major objectives. Firstly, to addresses victim blaming experiences of rape victims regarding victim roles in rape and its associated factors in contemporary Bangladesh and secondly, to comprehensively understand the dynamic relation between victim blaming and social construction of rape victim based on aftermath reaction by different actors in our society.

### **Research Methodology**

Exploratory research design was used to understand the victim blaming experiences and its associated factors of rape victim. The study covered the entire area of Tangail District. The rationality of study area selection was the unique nature of rape statistics, availability of rape victims, crime proneness and heterogeneous character of the area and easy access to researcher. The study was conducted in 2011 and involved in-depth interviews with twelve (12) rape victims who reported experiencing rape and sexual coercion in a heterosexual relationship. All of the cases of rape victims were selected as population for the study, which were under

trial in the Tangail District Judge Court between 1 January 2011 and 30 June 2011. Data were collected from the rape victims from July 2011 to September 2011. Besides in-depth interview the researchers have also used the others secondary sources: court, judges and police records. Firstly, rape related information and statistics was collected from court and police stations. Then, interview was taken of rape victims in settings chosen by the participants preferably in their homes. Both narrative (Riessman 1993) and semi-structured interviewing (Mason 1996) approaches were used in the study.

The interview was started with a series of questions to obtain socio-demographic information and following covered a wide range of questions related to victim blaming and its associated factors, societal reaction and their coping strategies to the wider societies. The interviews lasted from one to two hours and some needed multiple sessions. Among 12 cases for the incompleteness of the interviews researcher selected to analysis 9 cases for the present study purposes. All the women experienced complete sexual assault with one girl being raped by strangers, five by acquaintances and three by date rape. The demographic and assault information of the study participants is provided in the appendix. The researcher takes notes during the interview and transcribes the notes into a detailed written report which serve as the text data for the following analysis. Thematic analysis technique was used to data regarding blaming the victims.

## **Findings**

### ***Demographic and Rape Victims information of the Study Participants***

The study revealed that among the types of rape, only one of the victims faced stranger rape while maximum (five) victims faced acquaintance rape. Rests of the three victims were raped when they were in date with the offenders. So it can be said that in maximum cases (in case of acquaintance rape) the sexual activities are imposed upon the victim by someone they know before. Secondly, if we notice the style of rape, six of the victims were raped by the single perpetrator and rests were raped by groups. It is noticeable that, in case of single offender, all the offenders were previously known to the victims. During group rape, two of the victims admitted that they were victimized by known people while the rest one was victimized by unknown offenders. The related information of rape focuses the offender-victim relation and possible causes of victimization. Refusal of love and marriage was the most

predominant factor of occurring rape. It is frustrating that in some extents victims had love affairs with the offender and at a time she was raped by his beloved. In some cases, the offender followed some fraud techniques. The offender made fake marriage registration and then raped the victim. In a case of acquaintance rape, offender had good relation with victim and later she was raped in absence of her husband. But the stranger rape was committed by a group of offender while the victim was in dark place. In response of these rapes, cases have been filed in most incidents while two of the cases are in FIR stage. The more alarming matter is that police could apprehend offender only in three cases. So it can be said that in most cases the offenders are escaping from the eye of the criminal justice system. Regarding the demographic information, it is found that all the rape has been committed in rural area except one case. The age distribution of the victims represents that maximum victims are of young ages and belongs the age group between 13 to 20 years. The victims belong to Muslim religion in eight of the cases and the other belongs to Hindu religion. Concerning marital status it is found that five of the victims were unmarried while being raped and others four of the victims were raped after got married. The occupational status of the victim shows that four of the victims were housewives and three of the victims were students. So the students and housewife is in higher risk groups for rape victimization that woman of other professions. Lastly, the findings also show that most of the offenders were unemployed and vagabond in nature. So person without having without jobs are involved more with rape.

### ***Thematic Analysis***

The study analyzes the blaming experiences of rape victims in the context of Bangladesh society. Findings from the in-depth interview regarding victim blaming researcher identified some common themes experienced among the rape victims. Based on the both existing literature on victim blaming and societal reaction to rape victims in our culture this author identified four themes: women provoke rape by their appearance and attitudes, only bad girls experienced rape, raped girls and women lost their virginity and chastity, rape victims are the burden of family and society.

#### ***‘Women provoke rape by their appearance and attitudes ’***

When a crime occurs, usually the role of offender gets more attention in the discussion of that incident. But in case of sexual offence, the role of



victim is being highlighted rather than offender. Especially in rape cases the role of victim viewed seriously than offenders and often victims are blamed for their victimization. This study found that, among nine interviewed victim three of the rape victims has been blamed for their provocation in rape. One victim of date rape (DR-07) indicated, she was blamed by the member of her family and neighbors for the incident. They told, ‘as you went for dating with the rapist so you were interested to make sexual relation with him. Without your provocation never it will happen to you.’ Another victims of acquaintance rape (AR-08) stated, when she was raped her husband was in abroad. The members of her father in laws family and neighbors blamed that, ‘in the absence of her husband she presents herself seductively to the perpetrator to fulfill her biological need’. One survivor (DR-09) in absence of her husband, involved in an affair with her neighbor and she was raped by him. After knowing the incident of rape the members of her father in laws family and also her parents blamed that, ‘when a married women can make an affair, it is very natural that she can provoke anybody to make sexual relation with her. So, you are fully responsible for being raped.’

### ***‘Only bad girls experienced rape’***

Characterological blamed as bad girls or women is a predominant feature among most of the interviewed victim of rape. One victim of stranger rape (SR-01) indicated that, as she was a maid servant, her master and his wife raised different types of questions about her character after being raped. Justifying the rapist activities they told, ‘a bad girl like you deserved it.’ They always used slang language to me and ordered to keep a distance with her daughter. Another victim of acquaintance rape (AR-05) stated that, before raped she had been faced teaching several times by the rapist. Her parents also complained to the local chairmen against the teacher. But the victims did not get justice from local authority. After some days when she was raped by the same person, the all members of society blamed her as a bad girl. They told, ‘the rapist also knew that you are not a good girl, so he will be able to make sexual relation without any resistance from you.’ The study found that, the victim’s family members also faced different types of blamed about their character. One victim’s (DR-07) sister indicated that, one of her neighbor said, ‘I think you have also a desire to make sexual relation like your sister, if you share the experience of your sister in details with me I will do the same thing with you.’

***'Raped women and girls lost their virginity and purity'***

Loss of virginity or purity is also a predominant concern among interviewed victims and their family members. In our culture women's respectability mostly depends on their premarital chastity and marital fidelity. Women who have been raped are viewed as damaged goods with low value, consequently blamed about their purity become a part of their daily life. Particularly, blame turned into a highest severity to the unmarried rape victims. According to three unmarried rape victims (SR-01, AR-03, DR-07) stated, after knowing the rape incidents their parents' first response was, 'What we will do with such a damaged girl?' Parents of every unmarried victim of acquaintance rape tried to arrange marriage with the rapist rather than file charges against them. Because they believed no other man would marry a girl with such experiences. When they failed to do these then they go to police station for filing a case against rapist. Though most of the time the police arrest the rapist but in a condition of marriage the guardian of victim withdraws the case. Even married rape victims also faced blaming about their bodily purity. In this study two married survivors (AR-02, AR-04) indicated, though their husband was abroad but they said, 'we don't want to continue our conjugal life with such a dirty girl, who has lost her bodily purity.' The members of their families blamed them and forcedly send their parents home.

***'Rape victims are the burden of family and society'***

The study found that, the entire rape victim often faced negative responses from their social network. Though a rapist gets acceptance in their family, moves freely in the society on the contrary, victim's arena of social life has become congested. Ultimately they are blamed and treated as a burden of family as well as society also. One married victim (AR-04) opined that, a rape incident has destroyed her total life and everybody avoids her deliberately in all interactions. After rape when she seeks help from the police to file a case against rapist, police also blamed her by asking many embarrassing questions. Her mother blamed her, 'we have lost our all prestige as we are the parents of a raped woman like you. Only your death can be a solution of this harassment.' By knowing this victim takes an attempt to suicide. Another victim (DR-06) was raped by a kidnapper but her parents said, 'all the time we faced different types of harassment and blamed by our neighbours only for you.' One married survivor (DR-09) said, as a rape victim when she returned her father's

home, the members of society pressured her parents for not giving entrance her in their family. They told ‘if you allow your raped daughter, we will not celebrate Eid-UI-Ajha with you.’ In addition victim said, my parents frequently asked to Almighty, ‘why you are not taking the life of my raped daughter? She will destroy the life of my younger daughter, nobody will marry her.’ Another survivor’s (DR-09) indicated, ‘only for me nobody invites our family in any social ceremony or cultural celebration. They believed if they faced us it will bring sufferings for them.’ Victim’s mother also blamed her and said, ‘sometimes I wished to murder you with poisoning your meal for getting relief from the burden of you.’

### **Discussion and Conclusion**

The study explores a dynamic understanding of victim blaming experiences of rape victims regarding victim roles in rape and its aftermath reaction by different actors in society. This study interviewed 9 rape victims and analyzed their blaming experiences in relation to the socio-demographic and economic status of rape victims. The study also explained the relation between victim blaming and social construction of rape in Bangladesh society. Women provocation in rape, character related blame, loss of virginity or chastity and victim as a burden of society are the predominant blaming on victims as explored in the study findings.

In our society when women are victimized by sexual offences particularly rape, we derogate victims, holding them more responsible for having been victimized than perpetrator or rapist. Radical feminists argued that, ironically we tell girls not to talk to strangers, but they are more likely to be harmed by someone they know (Curren & Renzetti, 2001). Acquaintance rape victims were blamed more than stranger rape victims (Pollard, 1992:307-326). The study also found that most of the rapes are acquaintance rape, which is the victim is familiar with or knows her rapist. In acquaintance rape, victim faced more blaming of provocation in rape. The severe blaming experiences have also been observed to the victims of date rape. Here women being treated fully responsible for their victimization. As in our culture women’s involvements in date bear negative meanings about their attitudes and behavior. In these cases rather than rape incidents, the victim’s participation in date is a matter of concern to the all members of society.

Blaming as bad girl to the married and unmarried women for loosing virginity or chastity was evident among the interviewed rape

victims. Female who do not behave in a manner consistent with the cultural stereotypes of a “good girl”,...will be blamed for leading their partners and will be regarded as deserving to be raped (Burt,1991:217-230). These types of construction of rape victim are also dominantly prevailing in Bangladesh society. In our culture male portrayed having much more sex drive and argued that it is very natural that he will fulfill his desire in a favorable given situation. On the contrary women treated as having less sex drive and seemed that, it is the responsibility only women to preserve their virginity and chastity. When women involves in premarital or extramarital affair and being raped by her lover, all blames goes to the victim. Reasoning that, this type of women’s involvement is not compatible with the cultural expectation of ‘good girl’ in our society. Consequently rape is treated as fate of bad or disobedient girls or women who deserved it as well as they are considered as a burden of society.

It is evident from the study that, marginal statuses of women particularly lower level of income and educations leads to victim blaming to the rape victims in our society. In *Blaming the victim*, William Ryan (1971) explores the systematic derogation of those who are poor and badly educated for failing to rise above conditions to which society may predispose them(Howard,1984:270-281). In Bangladesh, rural women faced the larger extent of abuse and negligence due to poverty, ignorance of law dependence on what is imposed on them by the social and religious elite and the locality (Khan, 2000). In the study most of the interviewed survivor’s were poor and lack of education was also predominant features of them. As a rape victim their double marginality as women and lower socio-economic status deprives them to get justice from society as well as criminal justice system. Moreover all the member of society blamed her for the rape incidents.

Patriarchal cultural tradition is also closely related to the victim blaming experiences among the interviewed rape victims. Patriarchy is a system of social stratification, which means that it uses a wide array of social control policies and practices to ratify male power and to keep girls and women subordinate to men (Renzetti and Curran, 1999). Patriarchal tradition enrolls with male dominancy and which is always oppressive, allows male perpetrators to blame their victims for the justification of their actions in order to avoid punishment and maintain freedom to abuse in future ( Schoellkopf, 2012:33). The patriarchal tradition of Bangladesh society often place men is a superior and dominant role and women in an inferior or submissive role. The similar reflection of patriarchal traditions

also observed in the construction of the rape incidents in the context of rural society. In the study most interviewed rape victims were rural background. Here found that, for the dominating status of male a rapist can easily avoid punishment, freely moved in society, whereas victims face blaming for victimization and become a burden of society.

The study was an initial attempt to explore the blaming experiences of rape victims in the context of our society. The limited number and homogeneous nature of the cases are major shortcomings of the study to reach a generalization from research findings. Additionally, research involving victim blaming in rape poses difficulty because victim feel embarrassed and unsecured to discuss their experiences with researcher. Overall, the study revealed that marginal status of victim and construction of rape based on patriarchal traditions demonstrably influenced the blaming towards the rape victims in our society. It also found that, blame on victims diverts attention away from rapist responsibility in rape and cultural and structural factors in our society that oppress victim and foster this types of violence against women. This study recommended that the victim blaming experiences in rape and its context must be taken into account for effective controlling this crime in our society.

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## 2 Maternal Health and Infant Mortality Related MDG Achievements in Bangladesh: A Comprehensive Review Progress and Challenges

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Md.Samiul Islam

### Introduction

Bangladesh has already met the target of reducing under-five mortality rate: against the target of achieving 48 per 1,000 live births in 2015, it has already achieved 44 per 1,000 live births in 2011. The target of reducing the infant mortality rate is also on track. The successful programs for immunization, control of diarrhoeal diseases and Vitamin A supplementation are considered to be the most significant contributors to the decline in child and infant deaths along with potential effect of overall economic and social development. Despite these improvements, there are challenges ahead. While the mortality rates have improved, major inequalities among the population still need to be addressed. Childhood injuries, especially drowning, have emerged as a considerable public health problem responsible for a full quarter of the deaths among children from one to four years of age (UNDP, 2013).

Figure 1-MDGs improve child mortality health status.

Goal, targets and indicators (as revised)	Base year 1990/91	Current status (source)	Target by 2015
Goal 4: Reduce Child mortality			
Target 4.A: Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate			
4.1: Under-five mortality rate (per 1,000 live births)	146	53(BDHS 2011) 44 (SVRS 2011)	48
4.2: Infant mortality rate (per 1,000 live births)	92	43 (BDHS 2011) 35 (SVRS 2011) 37.3 (Sample Census 2011 BBS)	31
4.3: Proportion of 1 year old children immunized against measles, %	54	87.5 (M:88.3, F:86.8) (BDHS 2011) 85.5 (CES 2011)	

Source –UNDP, 2013.

According to the country's first MDG Progress Report, the maternal mortality ratio in 1990 was 574 per 100,000 live births in Bangladesh. However, according to Bangladesh Maternal Mortality Survey (BMMS), maternal mortality declined from 322 in 2001 to 194 in 2010, a 40



percent decline in nine years. The average rate of decline from the base year has been about 3.3 percent per year, compared with the average annual rate of reduction of 3.0 percent required for achieving the MDG in 2015. The BMMS 2001 and 2010 show that overall mortality among women in the reproductive ages has consistently declined during these nine years (UNDP,2013).

Figure 2- MDGs improve maternal health status.

Goal, targets and indicators (as revised)	Base year 1990/91	Current status (source)	Target by 2015
<b>Goal 5: Improve maternal health</b>			
<b>Target 5.A: Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio.</b>			
5.1: Maternal mortality ratio (per 100,000 live births)	574	194 (BMMS 2010) 209 (SVRS 2011) 218 (Sample census, 2011 BBS)	143
5.2: Proportion of births attended by skilled health personnel (%)	5.0	31.7 (BDHS 2011)	50
<b>Target 5.B: Achieve by 2015, universal access to reproductive health.</b>			
5.3: Contraceptive prevalence rate (%)	39.7	61.2 (BDHS 2011) 58.4 (SVRS 2011)	72
5.4: Adolescent birth rate (per 1,000 women)	77	118 (BDHS 2011) 59 (SVRS 2010)	-
<b>5.5: Antenatal care coverage (at least one visit and at least four visits) (%)</b>			
5.5a: Antenatal care coverage (at least one visit), (%)	27.5 (1993-94)	67.7 (BDHS 2011)	100
5.5b: Antenatal care coverage (at least four visits), (%)	5.5 (1993-94)	25.5 (BDHS 2011)	50
5.6: Unmet need for family planning (%)	21.6 (1993-94)	13.5 (BDHS 2011)	7

Source –UNDP, 2013.

Despite spectacular progress in reducing child (MDG 4) and maternal deaths (MDG 5) the world over in recent times (both reduced by 47% from 1990 to 2012), every year, approximately 6.6 million children under the age of five die (44% as newborns) and there are more than 287 000 maternal deaths, all from mainly preventable causes. It is therefore, imperative to accelerate the process to achieve MDG 4 and 5 goals. The reduction in mortality hasn't been consistent in the 75 'high burden' LMICs, even where levels of income and initial mortality burden were

similar. Some of the countries did better than others. To understand what works and what doesn't including strategies adopted countries would help other countries to accelerate their progress towards achieving MDG 4 and 5 goals (Syad.masud, 2014)

NIPORT projected that the national infant mortality rate (IMR) declined from 150 per 1000 live births in 1975 to 87 in 1999. The annual crude death rate has also fallen from 19 per 1000 in 1975 to just 5 in 2000 (NIPORT, 2000). The annual birth rate declined from 43 per 1000 population in 1980 to 36 in 2000, giving a population growth rate of 1.7% in 2000, compared to 2.4% in 1980. This lowering of fertility is largely due to increases in the contraceptive prevalence rate (CPR), standing at 53.8% in 2000 (NIPORT, 2000). Another study on quality of antenatal services provided at selected MCWCs revealed a number of quality problems. For example, service providers at MCWCs were said to take inadequate patient histories. Furthermore, FWVs were not skilled in identifying the fetal heart sound. Essential tools for screening of high risk pregnancies, such as reagents for haemoglobin estimation and urine analysis were also found to be unavailable. Records were not maintained properly as the number of expectant mothers receiving ANC exceeded the capacity of the service providers (Habib, 2000).

In another study by Rahman, a majority of women in both urban and rural areas reported rickshaw or van as their primary means of transport to be used during pregnancy, delivery, and emergencies (Rahman, 2000). Interestingly Bangladesh is a very flat and densely populated country, so transportation access barriers might not be expected to the same extent as in other countries with lower population densities or more challenging terrain. However, when pregnant and in labour, particularly with complications, any distance may prove to be a large obstacle, and transportation difficulties are often described. Hladyet *al.*'s findings that women who chose to deliver with a trained attendant were much more likely to live close to a health centre, particularly illustrates the importance of geographical access Hladyetal,2000).

Afsana and Rashid also discuss common beliefs and views of childbirth in a separate work (Afsana and Rashid,2000). Similar to Goodburnet *al.* they find that supernatural phenomena may often be viewed as the cause of complications or difficulties during pregnancy. They further describe many of the social norms and expectations that may affect delivery behaviour, explaining how rural women may be ostracized for not delivering at least their first child in their natal home (presumably where they were born themselves). This feeling was so

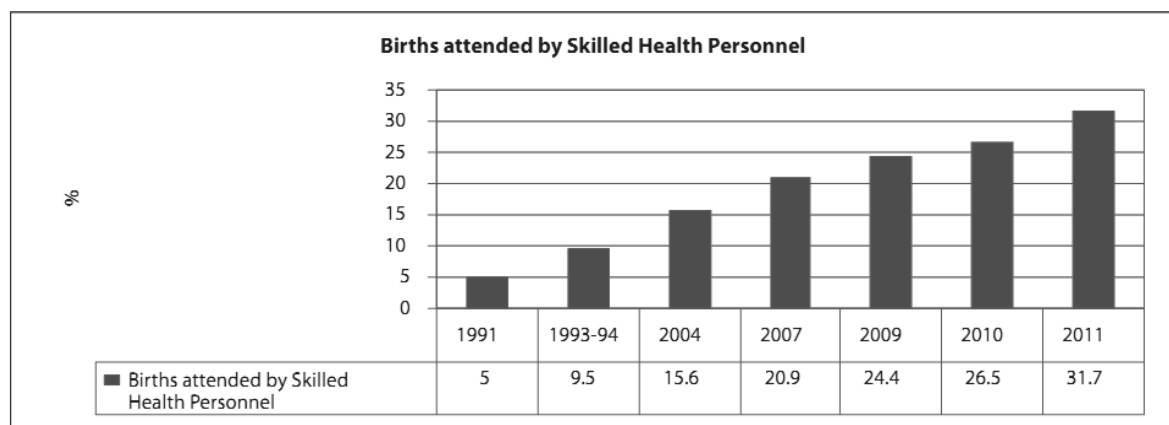
strong that female workers from NGO providing delivery services were found to still choose to deliver their own children at home, most of them mentioning factors such as “family pressure, sudden onset of labour, distance from the clinic, and transport as the reasons for giving birth at home” (Afsana and Rashid 2000: 31).

### **Materials and Methods**

The study has been conducted mostly on the basis of BDHS, UNDP and others previous reports published at national and internal levels related to maternal health and child mortality issues in the context of Bangladesh. It is mentionable that, apart from the local perspective, the study also focuses on various reports conducted by the different international organizations or by individual researchers in recent times from global perspectives. The Objectives of the paper mainly emphasize on the previous and present maternal health development and child health mortality status and the challenges might be faced to reach millennium development goals by 2015. However, the paper also shows a probable way out for Bangladesh to meet the challenges and then reach the target of MDG related to maternal and child mortality.

### **Maternal Health**

According to Bangladesh Demographic and Health Survey (BDHS) 2011 (NIPORT 2013), 31.7 percent of births in Bangladesh are attended by medically trained personnel, e.g., a qualified doctor, nurse, midwife, family welfare visitor (FWV), or community skilled birth attendant (CSBA). Additionally, trained birth attendants assist in 11 percent of deliveries. However, more than half of births (53 per cent) in Bangladesh are assisted by *dais* or untrained birth attendants, and 4 percent of deliveries are assisted by relatives and friends. Medically-assisted deliveries are much more common among young mothers and first births. The births in urban areas and in Khulna are much more likely to be assisted by medically trained personnel than births in other areas. Delivery by medically trained personnel is more likely for births to mothers with secondary or higher education as well as births to mothers in the highest wealth quintile. The proportion of deliveries by medically trained providers has doubled from about 16 percent in 2004 to about 32 percent in 2011, mostly due to improvement in institutional delivery mechanism.



Source: BDHS 1993-94, 2004, 2007, 2011; MICS 2009; UESDS 2010

Figure 3- Births attended by skilled health personnel

According to Unicef (2013), around 83% of the population live on less than US\$ 2 a day and 36% on less than US\$ 1 a day. Through continuous effort of the government and the non-government sectors, income poverty has declined from an estimated 58% of the population during 1983-84 to just below 50% in 2000 with one percent reduction every year (GoB 2004). Bangladesh is one of the most densely populated country with a land mass of 147,570 sq. km and a population of more than 140 million, 70% of whom live in rural areas (BDHS 2004).

The population growth rate is 1.7% per annum and it ranks 139<sup>th</sup> position (out of 173 countries) in UNDP's Human Development Index (HDI) with an estimated per capita GDP of US\$ 1,900 of which 22% is generated by agriculture (UNDP 2005). The estimated lifetime risk of dying from pregnancy and childbirth related causes in Bangladesh is 1 in 21, compared to 1 in over 4,000 in industrialized countries. Of the total maternal deaths, 69% are due to direct obstetric causes, 14% are reported as due to injury and violence, leaving 17% due to indirect causes. The most common obstetric causes of maternal deaths are postpartum haemorrhage, eclampsia, complications of abortion, obstructed labour, and postpartum sepsis. The high reported incidence of injuries and violence as causes of maternal mortality indicate social issues that must also be addressed to improve maternal health in Bangladesh (UNFPA, 2002). On the other hand Like maternal mortality, the situation of maternal morbidity in Bangladesh is considered unacceptable. In general, there appears to be a higher prevalence of morbidity and malnutrition among women than their male counterparts. The common complications observed for maternal cases specifically include abdominal pain, swelling of the leg or body, anaemia, urinary problems, eclampsia and haemorrhage. High rates of maternal morbidity and mortality continue to be important challenges for Bangladesh health systems as three million

mothers become pregnant each year in Bangladesh, out of which 600,000 are expected to develop complications. About nine million women suffer from lasting complications such as fistulae, prolepses, inability in controlling urination, or painful intercourse (Bangladesh Ministry of Health and Family Welfare, 2002).

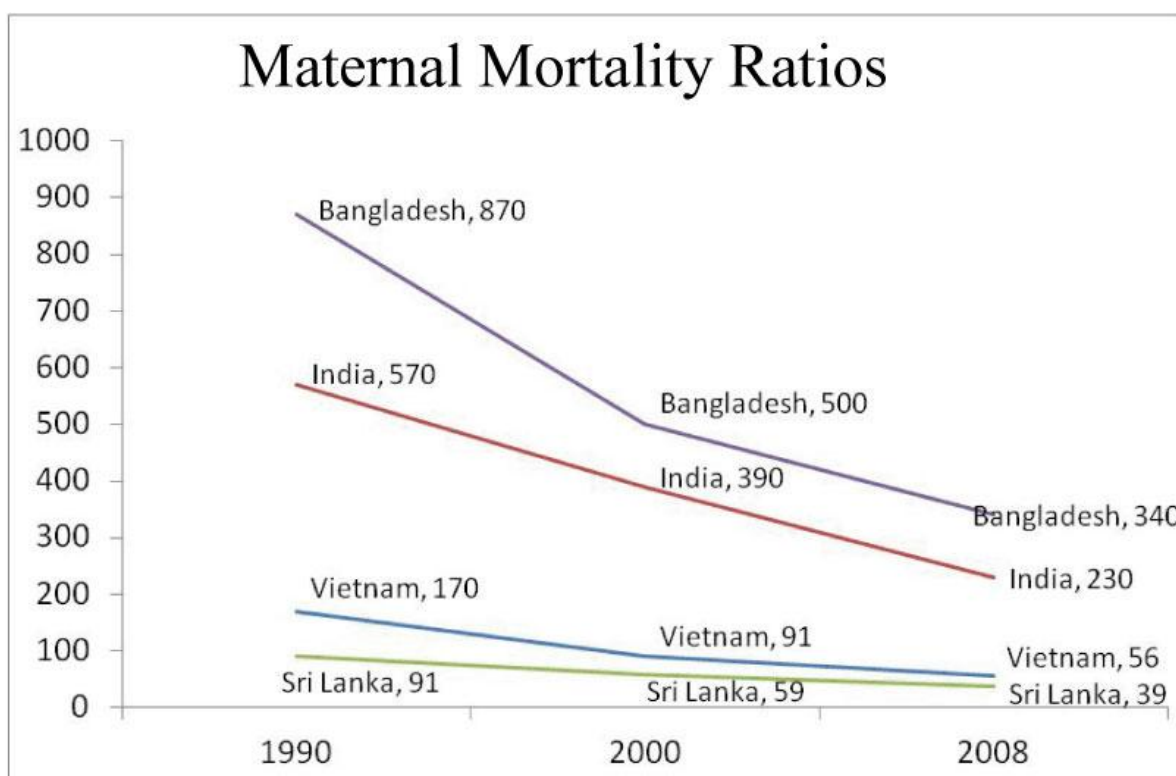
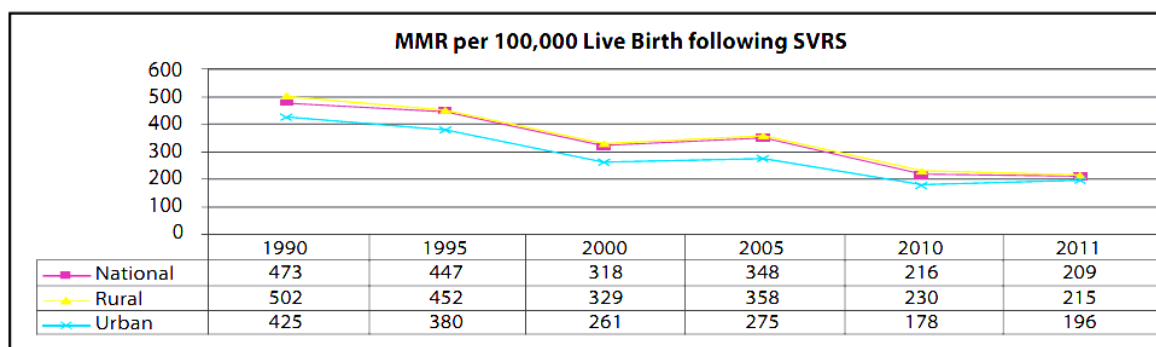


Figure 5- Comparison of Maternal mortality trends in South Asia and Bangladesh.

Source- UNICEF, 2010.

In South Asia the graph depicts that the less number of mortality rate has been found in Sri Lanka and the highest mortality rate has been found in Bangladesh. Despite very low levels of the use of antenatal and skilled delivery services, the situation with respect to Tetanus Toxoid (TT) vaccination among women was found satisfactory in 2004, with 2 in 3 women receiving two doses of tetanus toxoid and 21% receiving one dose, a 19% improvement since 1995-1999 (BDHS 2004). Due to past efforts of both the government and the development partners, the total fertility rate (TFR) has declined (NIPORT 2001; BDHS 2004). Considering the trend, maternal health status is apparently approaching the targets set for the MDGs. Despite this progress, at present about 12,000 women die each year from maternal causes. The estimated lifetime risk of dying from pregnancy and child birth-related causes in Bangladesh is about 100 times higher than that in developed countries

(NIPORT 2003). A tragic consequence of these deaths is that about 75% of the babies born to these women are also likely to die within the first week of their life (WHO 2004).



Source: SVRS, BBS, different years

Figure 6-Trends of MMR in Bangladesh, 1990-1991.

### Child Mortality Perspective in Bangladesh

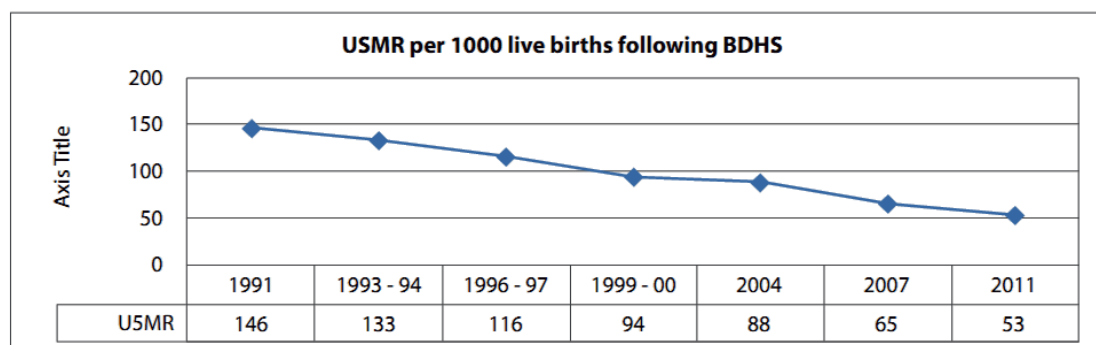
UNICEF-supported national study in 2004 revealed that the leading cause of death among children aged 1 to 4 years is drowning, followed by pneumonia, malnutrition, and diarrhea. Some 22 per cent of infants are born with low birth weight, 43 per cent of under-5 children are stunted and 48 per cent of under-5s are underweight. Only 10 per cent of children are birth registered. An estimated 4.4 million orphaned children have lost a mother, father or both parents. Infant mortality has decreased from 100 deaths to 52 deaths per 1000 live births from 1990 to 2006. The under-5 mortality rate fell from 149 to 69 between 1990 and 2006. Neonatal deaths account for two thirds of infant deaths and over one half of all under-5 deaths (Unicef for Children, 2005). The report also states that Bangladesh is one of the few developing countries on track to meet some targets for the Millennium Development Goals (MDGs), particularly those relating to nutrition, universal primary education and reducing under five mortality. Five of the eight MDGs relate directly to women and children and The MDGs were born from the Millennium Declaration. The second point of the Declaration calls on the world's leaders to recognize their duty to the vulnerable "and, in particular, to the children of the world, to whom the future belongs" (Unicef, 2005).

Antenatal care is an essential component of safe mother-hood. The Bangladesh Demographic and Health Survey (BDHS) 1994 and BMMS 2010 indicate steady increases in the past 15 years with regard to the occurrence of at least one antenatal visit. The proportion of women who received at least one instance of antenatal care (by any provider) has increased from 28% in the early 1990sto 71% in 2010.

The Unnayan Onneshan, a local research centre in Bangladesh prophesized that globally agreed all eight Millennium Development Goals (MDGs): eradicate extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, reduce child mortality rate, improve maternal health, combat HIV/AIDS, malaria, and other diseases, ensure environmental sustainability and develop a global partnership for development by 2015, are closely connected and all the targets might be achieved if the targets of the health related Millennium Development Goals are achieved. By reviewing literature related to health related Millennium Development Goals in Bangladesh issue this paper finds that progress made by Bangladesh on the MDGs, especially those related to health, has been extremely slow. With only five years left, it might be quite difficult to achieve the health related Millennium Development Goals as in most of cases the progress is not on track rather far away from the desired target (Unnayan Onneshan, 2010).

The major causes of infant deaths are acute respiratory infections, neonatal and prenatal problems, diarrhoea, pneumonia etc. Neonatal and prenatal causes amount one-half or two-thirds of under-five mortality or infant mortality (GoB and UN, 2005). According to the Bangladesh Demographic and Health Survey (BDHS) 2007, each year 1.2 lakh newborn babies died within 28 days. Neonatal deaths now substantially amount 57 percent to overall mortality of children aged less than five years (BDHS, 2007). So, neonatal and prenatal care for the mother is very important. Around four in ten women receive no antenatal care. In rural areas, about 90 percent natal practices occur at home; while in urban areas, little over one-fourth of this practice is done at health care center (BDHS, 2007). Only 24.4 percent of births are delivered by skilled health personnel (MICS, 2009). There is a strong association between under-five mortality and mother's education.

UnnayanOnneshan projection reveals that the projected infant mortality rate might possibly reach to 43 deaths per thousand live births by 2015, which is higher by 12 deaths per thousand live births against the target. In 2009, the rate was 45 per thousand live births must be reduced annually by at least four deaths per thousand between 1999 and 2015. Infant mortality rate in Bangladesh, like under-five mortality rate, has also decreased impressively from 1990 to 2009 (Figure 4). The average annual reduction between 1991 and 2009 was 2.84 percent against a target of 2.76 percent (UnnayanOnneshan, 2010).



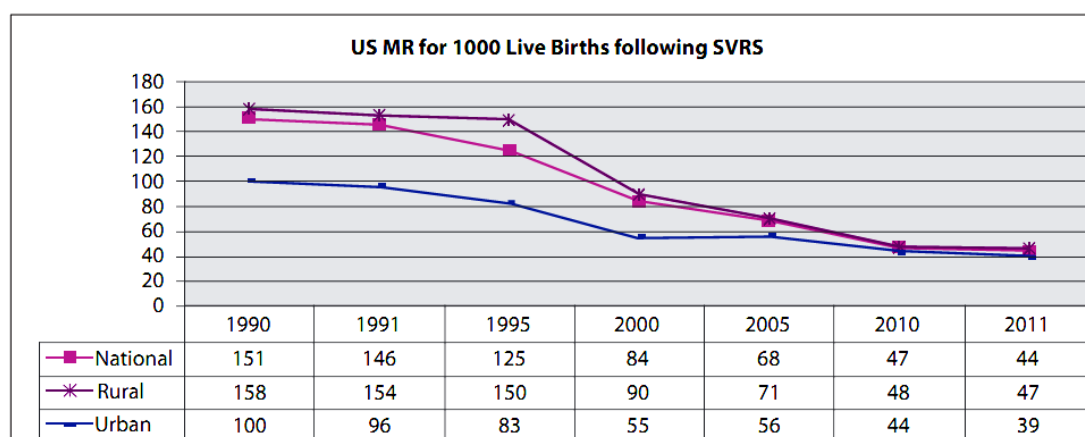
Source: BDHS, NIPORT, MOHFW (1993-94 to 2011)

Figure 6- Trends of Under-Five Mortality Rate 1991-2011 (following BDHS)

Under-5 mortality rate is the number of deaths among children under 5 years of age per 1,000 live births in a given year. The data from the Bangladesh Demographic and Health Survey (BDHS) 2011 show that there has been a remarkable decline (53 per 1,000 live births) in the under- five mortality rate since 1990. This means that one in nineteen children born in Bangladesh dies before reaching the fifth birthday. Between the 1989-1993 and 2007-2011 periods, more impressive (71 percent) decline was seen in post-neonatal mortality and 60 percent decline was evident in under-five mortality. The corresponding decline in neonatal mortality was only 38 percent. Comparison of mortality rates over the last four years shows that infant, child, and under-5 mortality declined by about 20 percent. As a consequence of this rapid rate of decline, Bangladesh is on track to achieve the MDG 4 target for under-5 mortality (48 per 1,000 live-births) by the year 2015.

On the other hand, data provided by the Sample Vital Registration System (SVRS) 2011 show that the under- five mortality rate was 44 per 1,000 live births in 2011 as compared with 146 in 1991(BDHS 2011). This figure suggests that Bangladesh has already achieved the MDG target. In the case of rural areas, the under- five mortality rates for both sexes, male and female were 47, 50 and 43 respectively and, in the case of urban areas, these were 39, 37 and 41 respectively. The levels and trends in under- five mortality rate can be seen in above figure. At the national level the reduction was 70.9 percent for both sexes; while this was 70.8 percent for males and 71.1 percent for females, during 1990 to 2011. In the rural areas, under- five mortality rate for both sexes declined by 70.3 percent, the decline being 68.8 percent for males and 72.3 percent for females during 1990-2011. Over the same period, the reduction in the urban areas was 61 percent for both sexes, while it was 64.1 percent for males and 57.3 percent for females.





Source: SVRS, BBS, various years

Figure 7- Trends of Under-Five Mortality Rate, 1990-2011 (following SVRS)

Division level divergence of under-five mortality is also documented in the SVRS 2011. According to the survey, under-five mortality was the highest in Chittagong division (52) and lowest in Khulna division (41). In the case of males, it was the highest in Chittagong division (57) and lowest again in Khulna division (44). In case of females, it was the highest in Sylhet division (48) and lowest in Khulna division (40). In the rural areas, the highest under-five mortality was observed in Chittagong division (52) and the lowest in Khulna division (42) while, in the case of urban areas, again the highest was in Chittagong division (52) and the lowest in Khulna division (39). There exist many socioeconomic including behavioural and health related factors which underlie the regional differences in the under-five mortality rates across divisions. Also the rates differ for the 1-11 months and 12-59 months age groups as well as for the neonatal period. The surveys moreover show a sharp decline in under-five mortality with increase in wealth with the risk of dying by the age of five in the top quintile much lower than that for the bottom quintile (MDG, 2012).

### **Challenges and Scopes to meet MDG 4 and MDG-5 in Bangladesh:**

Unicef suggested that Bangladesh has made significant progress in improving the health of its population, and is one of the few developing countries that is on track to achieve Millennium Development Goals (MDGs) 4 and 5. On top of the progress listed above, in 1990 the infant mortality rate was 100 deaths per 1000 live births and by 2006 it had declined to 52 deaths per 1000 live births. accelerate progress towards achievement of MDG 4, UNICEF is focusing its support in the following areas; i) improving community and household care seeking behaviors for sick children and neonates) working in selected districts to develop

sustainable programs that will reduce drowning; especially among children aged 1 to 4, for whom it is the biggest single killer, and iii) the expanded programme on immunization (EPI) with emphasis on the poor performing districts and hard-to-reach areas. EPI annually vaccinates about 3 million children by their 1st birthday. These networks were channeled for the Measles Catch Up Campaign in 2005-2006, which saw 35 million children vaccinated against the preventable disease (Unicef-2005).

MDG 4: Reduce child mortality	MDG 5: Improve maternal health
Bangladesh Target:	Bangladesh Target:
To reduce deaths of children under 5 by two-thirds by 2015, so reduce the under-five mortality rate to 48 deaths per 1000 live births	To reduce the maternal mortality ratio by three quarters between 1990 and 2015
Progress:	Progress:
1994: 133	1990: 570
Current Status: 65	Current Status: 320
2015 target: 48	2015 target: 143

Figure 8- Updated improvement in reducing child mortality and maternal health.

*Source: (Unicef-2005)*

A study on safe motherhood programs in Bangladesh found that women's low status in society, the poor quality of maternity care services, lack of trained providers, low up take of services by women and infrastructure all contribute to the high rate of maternal deaths. This is compounded by strong cultural and traditional ties that deter women from delivering at health centres or with medically-trained attendants because their mothers have given birth "naturally" for generations. There is also little understanding about taking additional nutritious food during pregnancy. Moreover, the low status of women within the family means one in every two women will have her health care decided by her husband. Often her mother-in-law will be a key decision maker.

Another key factor in the high mortality rate is dealing with emergency obstetrics care. Despite the presence of a well-established service delivery infrastructure in Bangladesh and various measures taken so far, the utilization of emergency obstetric care (EmOC) services is still low. The Bangladesh Maternal Mortality Survey (BMMS) 2001 found there were delays in recognition of emergencies, and further delays in deciding what treatment should be sought. The BMMS found that one in five women could not decide whether to seek treatment within six hours

of recognizing complications. There are then delays in travelling to treatment facilities, with the survey finding that traveltime was more than one hour in about one fifth of the cases (BMMS, 2001).

There are often delays in actually receiving the treatment and the costs involved are yet another deterrent for many people in a country where 36 percent of the population live on less than US\$1 a day (SOWC, 2007). Violence against women is another problem in curbing maternal mortality, with 14 percent of the deaths of pregnant women associated with injury and violence. Few women attend hospital after violence, or even for a checkup, because of the patriarchal social structure.

The Study opines that important concern in the health sector is maternal nutrition, as measures indicate around 50% of Bangladeshi women suffer from chronic energy deficiency. Low birth weight incidence is estimated at 45%, and micronutrient deficiencies are common. Over 43% of pregnant women are iodine deficient and more than 2.7% develop night blindness during pregnancy (Bangladesh Ministry of Health and Family Welfare, 2000).

Country	Progress made for MDGs
Bangladesh	MDG4
Nepal	MDG5
Cambodia	MDG6
Sierra Leone	MDG6
Liberia	MDG3
Rwanda	MDG4 & 5

Figure 9- List of countries which received UN MDG Awards in 2010

Source- MDG 2013

The MDG report 2013 said that six countries including Bangladesh received the UN Millennium Development Goal (MDG) Awards for their significant achievements towards attaining the goal. Three of these countries are from Asia and three from Africa (MDG 2103, *Where Bangladesh Stands?*) When only 5 years are ahead to reach the dateline of year 2015 for meeting the targets of MDGs, assessment is ongoing throughout the world to find the answer whether or not the countries crossed sufficient road. The answer, in general, is no, although progress has been made in some areas. The same is true also for Bangladesh. A report has been published by the secretariat of the World Health Organization for the 63<sup>rd</sup> World Health Assembly held in May 2010 (WHA document A63/7).

The report summarizes the current global status of the health-related MDGs. The report reveals that the global child mortality rate overall has shown declining trend; but uneven between countries; and the target may not be achieved in all countries. However, the interesting well-known fact is: about 40% of the under-5 child deaths occur in the first month of the newborns' life and most in the first week. The rest 60% of under-5 deaths occur due to malnutrition, HIV, vaccine preventable and other communicable diseases including pneumonia, diarrhea, and other causes. The report also said that the maternal health is the area which shows the poorest performance globally. In some countries of Africa the maternal mortality rate is about 900 per 100,000 live births, whereas the lowest figure in the world is 27 per 100,000 live births. It is evident that half of all maternal deaths occurred in the African Region and another third in the South-East Asia Region. Reports consistently show that most of the maternal deaths can be prevented if skilled care is ensured during pregnancy, child birth and postpartum period and emergency obstetric care is ensured. In both the African Region and South-East Asia Region, less than 50% of women receive skilled care during childbirth. Maternal care during postpartum period also creates opportunity to look after newborn. Therefore, a comprehensive pregnancy care package can improve both maternal and child health situation.

The report narrated that Nepal has received a Millennium Development Goal (MDG) Award for significantly improving maternal health. Nepal was selected for the award from among 49 Least Developed Countries (LDC)s for the outstanding national leadership, commitment and progress towards achievement of the MDG goal related to improving maternal health. Cambodia has been presented with a Millennium Development Goals Award for its national leadership, commitment and progress towards achievement of Goal 6 - Combating HIV, malaria and other diseases. Cambodia has been honored within the 'Government' category of the annual Awards initiative, presented at a high-profile event in New York City.

Sierra Leone received the United Nations Millennium Development Goal (MDG) Award in recognition of President Ernest Koroma's

remarkable leadership commitment and progress towards achieving the MDG6. Liberia has been named as the winner of this year's prestigious Millennium Development Goal Three (MDG 3) award for outstanding leadership, commitment and progress toward the achievement of the MDG-3 through the promotion of gender equality and women's empowerment across the country (MDG 2103, *Where Bangladesh Stands?*).

In the recent World Development Report (WDR, 2014), the World Bank specially focused on the issues of risk management as a means of enhancing MDG within the stipulated time. The following figure shows the WB's latest approach developed by the WDR team titled as 'A holistic approach to managing risks':

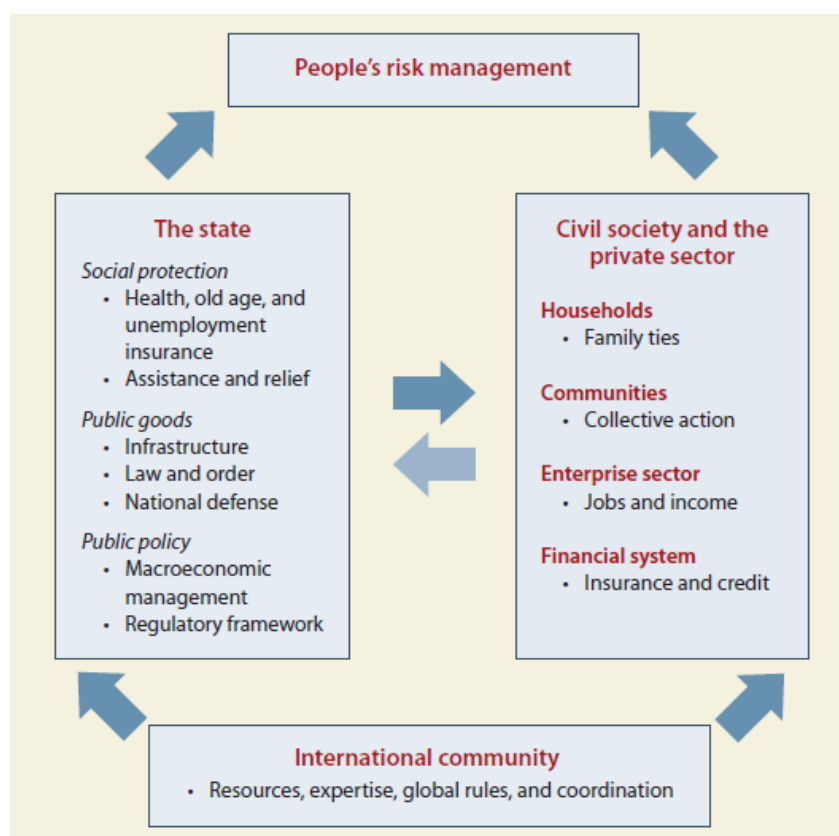


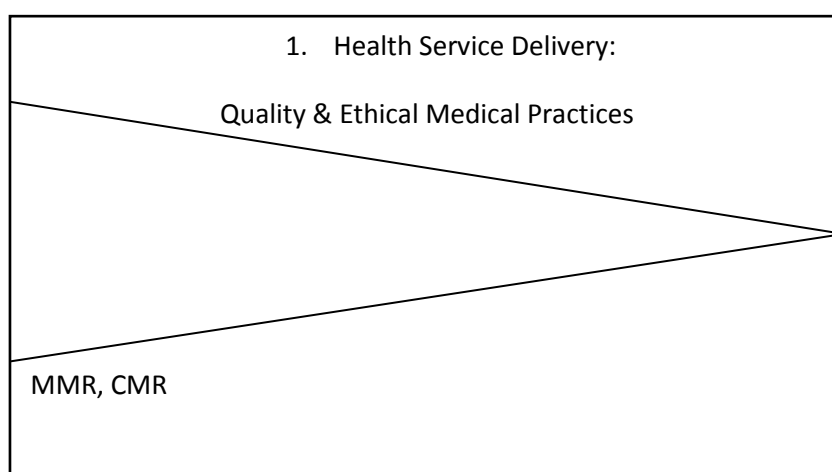
Figure 10- World Bank's conceptual framework for managing risks through social and economic systems

Source: WDR, 2014

The framework identifies health issue as one of the prime one and suggests the management of risk through policy adoption focused on social protection based upon insurance. At the very beginning of the report, it introduces the concept of insurance as service that *includes any instruments that transfer resources across people or over time, from good to bad states of nature* (WDR 2014, Page:14). The success story of

Turkey and Kyrgyz Republic influences the WDR team to adopt their experience as a prescribed model for the rest of the developing world. But the challenge for considering such prescription is that without contextualizing the social and economic reality of other countries, there may be negative outcomes as well. As a highly populous country like Bangladesh, addressing the health issue under the umbrella concept of insurance may not be realistic.

A conceptual framework of the millennium development goal of improving maternal health in Bangladesh suggested by Akhter and Wohab (2008) prescribes a kind of policy implementation guideline that can be presented in an abridges version as follows:

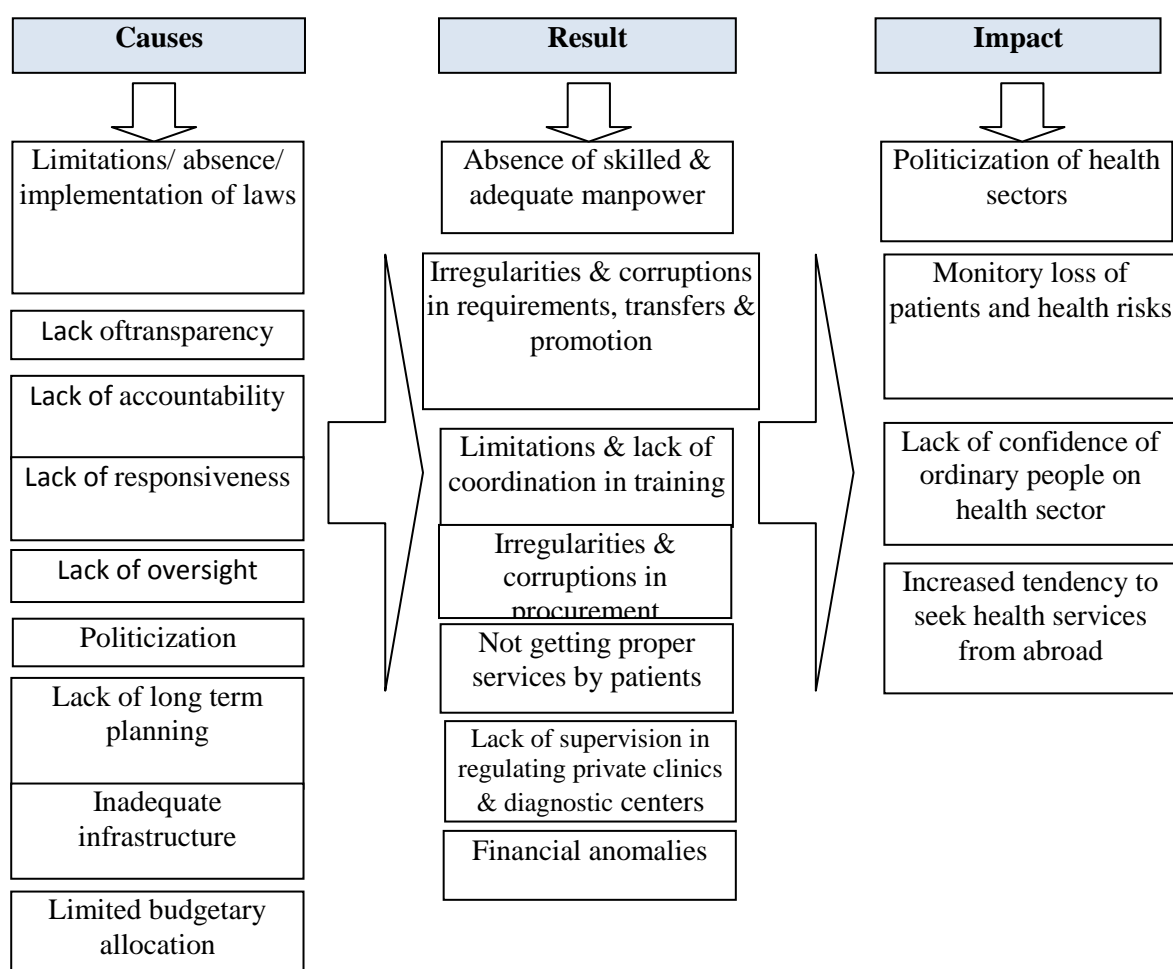


The framework suggests that quality health service delivery and social cohesion from state and community level has to be ensured at the same time. The more these two aspects of intervention will increase, the more MMR we shall be able to reduce.

In a recent research on *Governance Challenges and the Way Out* (2014), TIB addresses the challenges for ensuring health services in the Bangladesh. Despite the fact that there are numbers of studies on the quality of services and nature of irregularities in different institutions, there is a dearth of research that specifically covers governance related issues with particular emphasis on health services. As health is one of the priority sectors for TIB's activities, the present research has been taken. However, despite the above successes, governance challenges in this sector exist that hinder further achievements. According to TIB's National Household Survey (2012), 40.2% of the recipients of health services from public institutions became victims of irregularities and corruption while receiving services. According to this survey the

estimated amount of bribes at the national level in this sector was Taka 703 million. News reports on irregularities such as absenteeism of doctors, lack of quality of services, irregularities in getting bed and medicines, active presence of middlemen luring patients to private health facilities, financial corruption of the health professionals and hospital staff are regularly published in the print media (TIB.2000).

The following diagram shows the overall findings of the challenges for Bangladesh in the said research:



TIB also reported that sometimes, patients and their attendants experience corruption and irregularities during receiving services from health facilities. According to TIB's National Household Survey on Corruption 2012 40.2% households experienced corruption while receiving health services. Moreover, various surveys conducted by TIB during 2011-2013 also revealed that some doctors do not attend their duties up to the official time at different levels of hospital particularly those in upazilas and districts; some patients do not get bed immediately

after admission; some patients have to stay on floor up to a certain period, some patients are asked to go to doctor's private clinics and chambers and some patients expressed their unhappiness about the quality of food they get from hospitals. Moreover, some patients have to make illegal payments for getting services from hospitals that include services like purchase of tickets, getting bed/cabin, use of trolley, doing different medical tests and investigations, pushing of injection and saline, dressing services and ambulance services, receiving services from ward boys and sweepers etc. Sometimes, patients are asked to go to doctor's preferred diagnostic clinics or centers for doing medical tests and investigations (TIB.2000).

The research findings of TIB advocates for the need of adopting an integrated policy that can remove the obstacles away from the path of our journey to meet the MDG4&5. In the previous discussions of this article, the progress of Bangladesh in this regard creates the ground of being optimistic despite of having above stated challenges. The challenges rather create scopes for further growth in development in the overall health sector if we can address all the stakeholders and their functionality through an integrated and interactive approach. With such an intention, the following schematic framework has been suggested where recommendations from global and local expertise have been assembled in a sensible way and then emphasized on the management of local resources to boost up the achievements MMR and CMR status of the country as set by the MDG 4&5. The proposed schematic framework suggests three greater aspects of stakeholder at global and local level. Our previous development experience proves that not always the expertise from the global level is fit for the context of our local experience. But at the same time, there are so many expert areas where we need to share each other's learning and understanding adopting each other's ideas and other resources. For this, the triangle of GO, NGO/private sector and the international community must work together. We realize- prioritizing the local issues at international level may have some political or geo-political considerations. But, strong political leadership accompanied by grounded expert knowledge may overcome such situation. We have considered this issue in our schematic framework very seriously and our suggestion in this regard is a kind of ministerial integration of policy and operation of



each other.

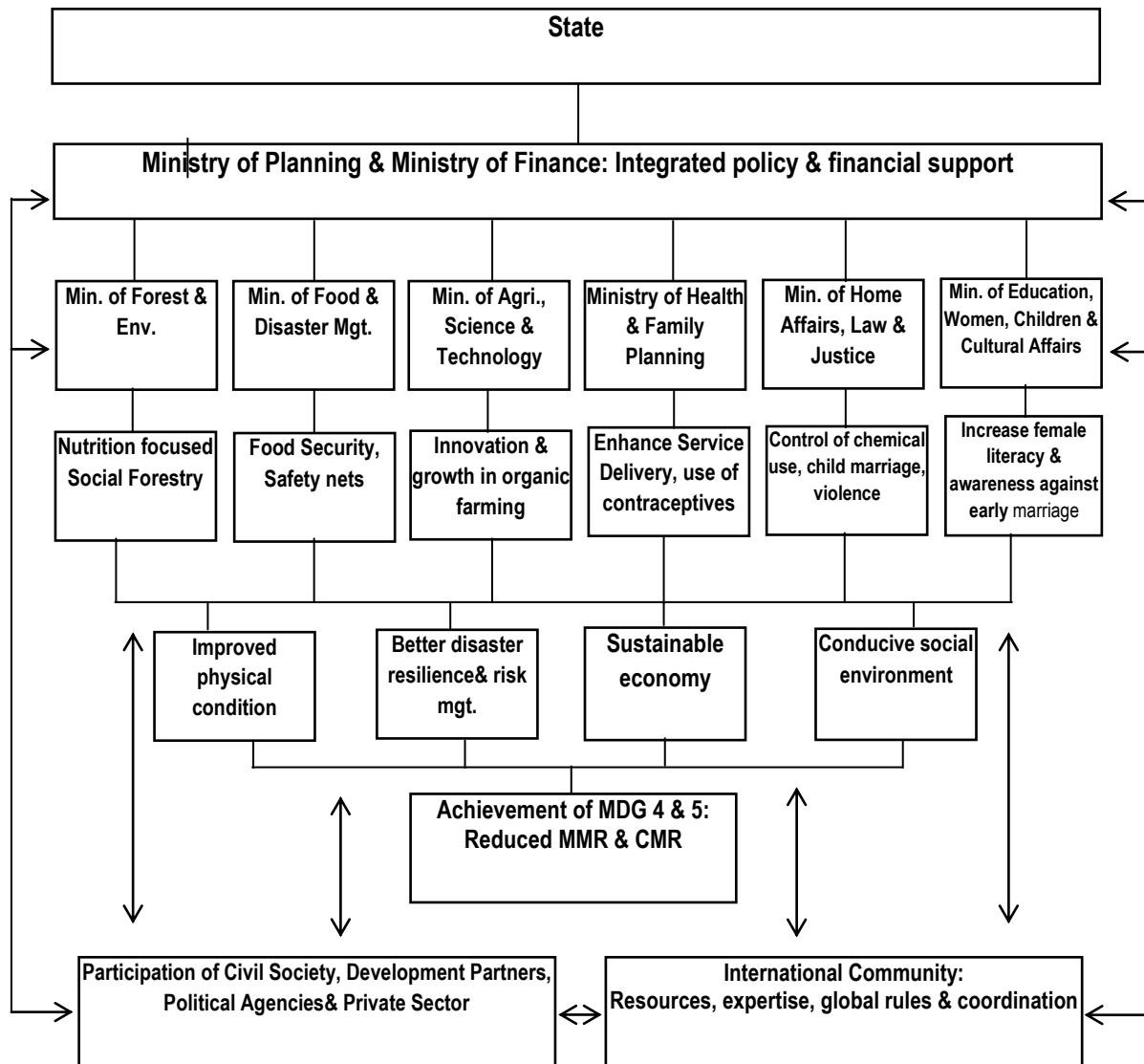


Figure 11- Integrated Policy Framework for Achieving MDG4 & MDG5 (Recommended)

For achieving MDG 4&5, the framework refers to the ownership of health sector not only by the Ministry of Health & Family Planning, but for all other ministries of the state. We perceive improving health status of the country or reducing MMR, CMR as a consequence of concerted efforts at all levels. This can be ensured through adopting a kind of public policy where the ownership of different public sectors are cross linked. Such as, the Ministry of Forest & Environment may adopt such a forestation policy where the health issue like nutrition will be addressed and thereafter will be resulted in availability of vitamins through fruits through different social forestry programs. In same way, all the ministries are some way linked with the background of achieving MDG 4&5. So, if

we fail to link those issues all together, a kind of progress may be achieved, but there is a question whether the condition will remain consistent the same in following age or not. We do not claim this schematic framework as a model taken for granted. Rather this is a kind of hybridization of different models already discussed in this article and then reflects on utilizing local recourses to manipulate our health related MDGs. Experts at different level may think critically about this and we are quite optimistic for further development of our developed idea.

### **Conclusion**

The Transparency International Bangladesh (TIB) said that there are significant efforts and laudable achievements of the government in the development of the health sector. However, the achievements could have been higher if there were less limitations, irregularities and corruption. It is observed that there are lacks of long-term planning in terms of human resource management (recruitment, transfer and promotion), procurement management, control and supervision, and ensuring transparency and accountability. The monitoring and supervising system for public and private healthcare institutions is not strong. Moreover, the institutionalization of corruption in this sector particularly with regard to administrative and service-providing aspects is observed. (TIB.2000). Prof Shams El Arifeenet al (2014) pointed that the MMR fell from 322 deaths per 100 000 livebirths (95% CI 253—391) in 1998—2001 to 194 deaths per 100 000 livebirths (149—238) in 2007—10, an annual rate of decrease of 5.6%.

This decrease rate is slightly higher than that required (5.5%) to achieve the MDG target between 1990 and 2015. The key contribution to this decrease was a drop in mortality risk mainly due to improved access to and use of health facilities. Additionally, a number of favourable changes occurred during this period: fertility decreased and the proportion of births associated with high risk to the mother fell; income per head increased sharply and the poverty rate fell; and the education levels of women of reproductive age improved substantially. We estimate that 52% of maternal deaths that would have occurred in 2010 in view of 2001 rates were averted because of decreases in fertility and risk of maternal death (Shams El Arifeen et al .2014). However, following such evidences, this paper reviewed the present status of maternal mortality and child mortality regarding MDGs status and provided some recommendations for falling of child mortality and maternal mortality in Bangladesh.

According to UNICEF the maternal health survey said that considerable progress has been made in increasing the coverage of Emergency Obstetric centers (EmOC) services. More and more women are seeking, and receiving essential and emergency obstetric care during pregnancy, delivery and after delivery. About 192 facilities have been strengthened to give comprehensive EmOC (59 district hospitals and 132 upazila health complexes). This has tripled the number of facilities and met the need for EmOC in the past five years. The number of public facilities providing comprehensive EmOC services has increased more than seven-fold since 1994. From 30 centers in 1994 there were 212 comprehensive centers in 2006. The proportion of deliveries at EmOC centres has also increased. Compared to a baseline study in 1999, there was a 93% increase in deliveries at Emergency Obstetric centers in 2006 (Unicef, 2011). MDG report last stated that Bangladesh is on track in meeting the target of this goal measured in three different indicators like under-five mortality rate, infant mortality rate and immunization against measles.

The successful programs for immunization, control of diarrhoeal diseases and Vitamin-A supplementation are considered to be the most significant contributors to the decline in child and infant deaths along with potential effect of overall economic and social development (MDG, 2013). Despite these improvements, there are challenges ahead. While the mortality rates have improved, major inequalities among the population segments still need to be addressed. Childhood injuries, especially drowning, have emerged as a considerable public health problem responsible for a full quarter of the deaths among children 1-4 years of age. According to Bangladesh Maternal Mortality Survey (BMMS), maternal mortality declined from 322 in 2001 to 194 in 2010, a 40 percent decline in nine years (BMMS, 2010). The average rate of decline from the base year has been about 3.3 percent per year, compared with the average annual rate of reduction of 3.0 percent required for achieving the MDG in 2015. The BMMS 2001 and 2010 show that overall mortality among women in the reproductive ages has consistently declined during these nine years (BMMS, 2001).

The Multiple Indicator Cluster Survey (MICS) of BBS and UNICEF have found 43.5 percent of women age 15-49 years with a live birth in the last 2 years were attended by skilled health personnel in 2012-2013, which was only 24.4 percent in 2009. The government has framed the *National Health Policy, 2011* with a view to revamping the health sector and the *National Population Policy 2012* has also been finalized. Moreover, in order to strengthen primary healthcare facilities, the

government has launched 12,217 community clinics to expand health services to the grassroots level. The innovative idea to use the Information and Communication Technology for progress of the health of women and children has already been acclaimed by the world. However, challenges remains in the area of access to reproductive health. But all individual efforts must come under the umbrella of integration and interactions not only in policy papers and also in its operational means. The recommended schematic framework through this paper may function as a key to implement in achieving MDG 4&5 in this respect.

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### 3 Gender Rights Practice and Empowering Women through Village Organization: BARD Experience

Nasima Akhter

#### **Introduction:**

The term empowerment contains a variety of issues. It has different meaning in different socio-cultural and political context. Local term associated with empowerment gives it different meaning in different locality. It includes self-strength, self- power, self-confidence, own choice, life dignity in accordance with one's values, capacity to fight for one's right, independence, own decision making, being free, awakening, capability and control.

In Bangladesh, Poverty as well as inequalities in standard of living and human rights practices is a great problem for poor women. Women are less empowered because majority of women are asset less and having no capabilities to influence issues and events that affect their lives. In general women are the victim of ill health and illiteracy, unskilled and lacking opportunities in earning cash income. Poverty leads them to ill health including less access to affordable health care and medication despite of women constitute about a half of the total population of the country (BBS: - 2014:5). Millenium Development Goals and Vision 2021 emphasise the gender equity at the society. There has been some progress in increasing female's participation in some areas of public life and in the formal labour market but some areas remain a concern.

In Bangladesh Female participation in socio-economic activities is one of the lowest in the world (Chowdhury 2004:01). Low rate of literacy, poor educational status of women and children are the obstacles on the way of rapid socio economic development of the country (BBS, 2005:341,1996, p.1-7,UNDP, 2009:12, 1994:27; Arens and Beurden, 1977:17 Duza, 1989:21, White, 1992: 19).

In this context, it was one of the special studies intended to find out the impact of the different interventions of the WEINI project activities to empowering women in rural areas and gender rights operation and violence elimination (GROVE) project for reducing gender discrimination.

The general objective of the study were to assess the impact of women's organizations of WEINI (Women's Education, Income, Nutrition Improvement) and GROVE Project on empowering rural women.

The specific objectives of the study will be to:

- a) assess the demographic and socio-economic characteristics of the respondents in the project villages;
- b) assess the impact of different interventions of the project in gender rights practice as well as empowering rural women; and
- c) make recommendation based on the findings of the study.

The study will include socio-economic characteristics of respondent's households, Population, literacy rate, child women ratio, household size, household assets, livelihoods and occupation, income and expenditure  
 b) women's education, child and maternal health and nutritional status  
 c) Decision making power, Respondents autonomy, Social mobility and freedom from the male domination .

### **Methodology of the Study**

In order to assess the impact of women's org. on empowerment of women in WEINI project and GROVE project villages, the survey method was followed. Ten villages located in ten different unions under Comilla Sadar and Burichang Thana of Comilla District was selected for this study. This village was selected purposely keeping in mind the objectives of the study. Among the societies of WEINIP of Comilla villages, five villages that are Durgapur, Haripur, Uzirpur, Dhawanish, Lampur, from 2 No.Durgapur, Jaganathpur, Kalirbazar, East Jurkarun union were selected. Among the GROVE villages, five villages that are Salmanpur, Daulotpur, Rupoddi, Daurlabpur, Shremontopur from Bijoypur, Comilla Sadar, Mokam, Jaganathpur, Chowara union were selected. The sample survey method was followed for data collection.

The information of this study was collected through complete enumeration of the 442 women members' household from old and new societies of WEINI and GROVE project.

The method was adopted for collecting data of this study comprised (1) questionnaire survey and interview and (2) focus group discussion.

### **Profile of the WEINI Project and the Study Villages**

This section introduces the Women's Education, Income and Nutrition Improvement (WEINI) Project along with its objectives, methodologies, strategies, present situation and activities of the programme.

#### *Objectives of the Project:*

- Organize the rural women into groups and to develop managerial skill and leadership qualities in them;

- Help rural women in formation of their own capital, getting access to the institutional credit and creating opportunities for investing this capital in productive, employment generating and income generating activities with appropriate market linkage;
- Train the rural women on various aspects of nutrition and primary health care and establish linkages and documentations.

### ***Organisational Activitie***

The general objectives of the project were to Organising women through cooperatives. During the period under review the project organised women in 24villages. As regards membership coverage, the number of members was1024 which increased coverage of 858 families under the village society.

### ***Economic Activities***

- a) Micro Savings and Capital formation: Formation of capital was considered vital for removing one of the basic problems of women which is the economic dependency. Therefore, the members were mobilized and motivated to build up their own capital through weekly thrift deposit. They also purchased share. Growth of village level cooperatives, coverage of households and accumulation of savings and share of the societies was 43,78,200 taka which are shown in table 1.
- b) Weekly Meeting : The project put emphasis on weekly meeting and this is considered as education and training forum for the members. During the reporting period, on an average, 42 weekly meetings were held in each society annually.
- c) Access to Credit :The sources of credit disbursed from the project were two: own capital of the society and revolving fund of the project. In total Tk. 1,04,29,100 h was disbursed among the 2021 women members from own and revolving fund respectively during 1994-2014. It was observed that about 16,115 members availed regular and special 774 training. Among the credit borrowers it was observed that about 1520 members utilise their learning skills as well as they were engaged in IGAs like poultry and livestock rearing, small trades, mobile service vegetable gardening, embroidery, fish cultivation and others. The corresponding figures for the repayment rate was 97 to 99 per cent during the recent period.

*Education:* Community participation is most essential for achieving success in compulsory primary education. The project, therefore,



motivate the members to send their children in the schools. Besides they were also motivated parents to reduce early marriage of girl child as well as encourage to set up feeder schools for the minor children (up to class 1 and 11.)

**Maternity and Child Health Care Nutrition and Family Planning (Profile of the Gender Rights Operation and Violence Elimination GROVE) Project)**

*Objectives of the Project:* The main objective of the project is to improve gender relationship and establish gender equity through eliminating violence and promoting gender based rights practices particularly in poor households of rural areas.

The specific objectives of the project are to:

- (1) organize and train group leaders of existing local institutions as gender and child rights activists and develop their leadership qualities and conflict management skill for combating gender based violence;
- (2) improve legal literacy and ethical values, and facilitate advocacy campaign among rural leaders and villagers to promote social security and harmony in the villages; and provide them institutional and legal aid support through establishing linkages of local leaders with social welfare and legal aid services;

**General Information of the Study Villages**

*Area and Location:* The study was conducted in ten villages of WEINIP areas which are located in eight different unions of two Upazila : Comilla Sadar and Burichang of Comilla district. Among the ten (10) old societies of WEINIP of Comilla villages, Durgapur, Haripur, uzirpur, dhawanish, Lampur, from 2 No. Durgapur, kalirbazar Jaganathpur, East Jurkarun, union were selected. Among the ten(10) societies of Grove project of Comilla villages Salmanpur, Daulotpur, Rupoddi, Daurlabpur, Shremontopur from Bijoypur, Comilla Sadar, Mokam, Jaganathpur, Chowara union were selected. All of these villages are situated at a distance about 5 to 24 kilometers from the Comilla sadar thana headquarter and are linked by pucca/metal road.

*Communication and Transport Facilities:* All of the studied villages are situated at a distance about 5 to 24 kilometers from the Comilla sadar thana headquarter by metal road. In the Studied Villages, there was no all along metal or pucca road inside the villages. Majority have semi-pucca / Kancha or non metal road inside the villages.

*Population:* The population of an area has an effect on all types of basic needs including health and nutritional services of a community. According to BBS, Total number of population all ages are 123151000

and the total households are 25362. The male female ratio of this population is 51 and 49 respectively. The total number of respondent's households in the study villages was 442, of which 262 (55%) were WEINIP member household. On the other hand, 180 (40) were covered as GROVE member households were selected as respondents. The WEINIP member respondent households had a total of 777 male and 705 female i.e. 1482 members with an average family size of 5.60 persons. In case of GROVE Villages, the respondent household had a total of 553 male and 545 female which covers 1098 member with an average family size of 6.1. It was slightly higher in comparison to national figure of 4.8 (BBS, 2009: 82, 1994.6). In the studied villages only 12% household were women head and they were engaged in rich household or employed as temporary worker in the local level (Annual report, 2013:2). The sex ratio (Male: female) of the total population was 51:49. It means that there were 110 males for every 106 female, little higher than that of national ratio of 100 (BBS, 2013:90).

***Employment Status and Occupation:*** The Number of Economically active people and occupational pattern is one of the indicators for assessing the socio-economic condition in a locality. The total number of economically active population (Aged 10 years and above) in WEINIP villages was 988 (68%). Of them 525 (54%) were male and 463 (46%) were female. In the GROVE villages it was 652 (59%), of which male were 478 (73%) and 174 (28%) were female respectively. This is similar to national labour force survey (BBS, 2006:23). About 265 (61%) female in WEINIP villages and 38 (21%) female in GROVE are found engaged in various income generation activities. In WEINIP villages 6 percent female were engaged in service and small business Occupations. Rest of them are unemployed house wives and looking for involvement with income source.

***Crop Cultivation:*** Rice is the main crop of the both WEINIP and GROVE villages. In few villages they also practice good production of fish, livestock, poultry and vegetables. Villages under study area have electricity though not connected with the all households.

***Religion:*** The principal religion in the studied villages is Islam about 97% of the total respondents were Muslims, while the Hindu community constitutes only 2.9%. A very few were Christian.

***Primary Education and Health Care Facilities:*** All of the studied villages have at least one primary school, mosque or maktab. Moreover five villages have Secondary Schools facilities in side and nearby the villages.

**Water Supply and Sanitation:** Each of the study village has at least one deep tube-well. Durgapur had four deep tube wells. Less deep tube well was found in GROVE villages. Access to pure drinking water and availability of water sealed/sanitary latrine facilities is a major concern for reducing rapid spread of communicable diseases. Credit program has been introduced for the members to buy tube well and sanitary latrine with repayment facility through instalment basis.

### **Socio-Economic Characteristics of the study villages**

This section narrates the socio economic characteristics of the respondents in the study villages located in two different areas of Comilla sader and Burichang Thana.

**Population by Age Group and Sex in the Study Villages, 2014:** Age sex composition of population of respondent household observed from the table that out of 2580 population male constitute 1330 (51%) and female 1250 (49%). The sex ratio (male: female) of the total population was 51:49. It means that there were 106 males for every 100 females. Thus the sex ratio was 106, which was little higher than that of national ratio of 100 (BBS, 2013:90). The sex ratio of the total population in WEINIP village was 106 and in GROVE villages it was same as 100 respectively.

**Household Size:** The household size is an important variable for measuring socio-economic condition of an area. The estimated number of household and average household's size are presented in following table.

Table - 1: Number of Respondent Households and Average Household size in the study Villages, 2014.

Type of villages	No.of respondent h/hs	Total Population			Average
		Male	Female	Both	
WEINIP	262	777	705	1482	5.6
GROVE	180	553	545	1098	6.1
Grand total	442	1330	1250	2580	5.8

It was observed that the total number of respondent households in the study villages was 442 of which 262 were in WEINIP and 180 were in GROVE area.

These households had a total of 2580 members with on average family size of 5.8 people.

***Children Women Ratio and Average Number of Children per Households:***

Age specific structure of the total population in the respondent's households was find out. Women belonging to the reproductive age (15-40 years) in WEINIP villages was 286(41%) and GROVE villages it was 178 (32%).

***Employment Status and Occupation of Working Age Population (aged 10 years and above) in the study households:***

The Number of Economically active people and occupational pattern is one of the indicators for assessing the socio-economic condition in a locality. The total number of economically active population (Aged 10 years and above) in WEINIP villages was 988 (68%). Of them 525 (54%) were male and 463(46%) were female. In the GROVE villages it was 652 (59%), Of which male were 478(72%) respectively. This is similar to national labour force survey (BBS,2006:23). About 265(61%) female in WEINIP villages and 38(21%) female in non are found engaged in various income generation activities. In WEINIP villages 6 percent female were engaged in service and small business Occupations. Rest of them are unemployed house wives and looking for involvement with income source.

***Level of education of the population Aged 5 years and above:***

Table-2: Educational level of the Population Aged 5 years and above by Area and Sex, 2014

Level of Education	WEINIP			GROVE		
	Male	Female	Both	Male	Female	
Illiterate	85	86	160	49	43	
Primary	135	153	296	25	24	
Secondary	108	85	18	29	22	
SSC/Dhakhil	32	27	62	24	21	
HSC/ Alim		9	49	5	4	
Degree & above		5	21	2	2	
Total literate		279	611(78.2.1%)%%	85	73	158(46 %)
Total No. of Population (5 years and above)		365	782	183	156	

Level of education of the different segment of group included persons who have attended up to five years of schooling. It was found that out of 611(78.2.1%) literate population (Table-5) in WEINIP villages, a total of 296 (48%) belonged to 01 to 5 years of schooling. Of which 45.6% was male and 54.4% was female respectively. In GROVE villages, a total of 158(46.6 %) literate population 49 (31.1%) and 51(32.2%) had primary and secondary level of education. The percentage distribution of male and female who passed this level was nearly 51 and 49 respectively.

***Literacy and Training:*** During the survey the total number of population aged fifteen years and above was 988. Of them, 66% were literate and 658 persons (66.6%) availed training mostly on Health education and IGA activities. Female participation in education and training was higher in WEINIP villages rather than GROVE Villages which was 51.2.1 and 10.6% respectively. There was a positive relation with involvement of female in the educational attainment of the WEINIP society children.

***Income:*** Income of the villages is considered as one of the vital variables for maintaining of living style. Previously it was mentioned that 41%, were economically dependent or no source of income. Available data revealed that service and business or petty trading was principal occupation for 6% women. However, more than 80% households dependent on this source to provided maximum income to their family. It is evident that there is a little variation between WEINIP and GROVE areas as 6.7%, household dependent on the agricultural source. Per capita annual income of all the members of a respondents household was less than the national average of lakha (US\$ - BBS 2010). In WEINIP villages there were 262 households and the total amount of annual income of these household was taken 29149782 and per capita income was 19669 taka whereas in GROVE it was 14132139 and 12871taka respectively. In WEINIP villages the total amount of annual Expenditure of these household was taken 1,36,01,000 and per capita income was 19669 taka whereas in GROVE Expenditure was 58,03,300 and 12871taka respectively.

***Society performance:*** Findings revealed that more than 78 % percent female respondents were involved in the WEINIP society as member of executive committee. The significant works of the village level female societies under WEINIP were female leadership promotion and Accounts or record kipping, managerial capacity development through training, group meeting and by giving executive and managerial posts. Trained Village level community health worker, social welfare activist and female

activist and Traditional Birth Attendants (TBA) have been working as change agent/catalyst to providing better services. These provide opportunities of better access to health services. Consequently, MMR, IMR and CMR have decreased significantly. It was found that in WEINIP societies located in Comilla districts nearly 100 percent WEINIP respondents' have positive opinion regarding proper immunization and self responsibility and control over on reproductive health rights practice. More than 69 percent of female have access to and control over on complex and expensive medical treatment if needed

***Empowerment Framework:*** The Emancipation Framework put great emphasis on gradual changes in existing of male and female status from practical to strategic needs. The emancipation framework developed or Gird metrics has been used for the understanding that females could easily enhance their own well being as well as their household and communities when they have the right to put their choice and ideas in the development programme.

- i) Material resources and services: This is a stage of assertiveness.
- ii) Socio-political and rights issues: Trust/belief is an essential element at this level. S/he will be motivated to make changes in live, despite the overall barriers.
- iii) Intellectual: 1v) Idealistic: This part of emancipation is the process of regaining and recouping of one's sense of competence, Positive self-image. And recognition of the hidden power relationships inherent through development activities. Emancipation has a number of elements or attributes as follows:

In the study area data revealed that the rate of enrolment and retention of both girls and boys at Primary and Secondary level have increased. In the study area the enrolment rate was more than 98 percent. On the other hand the rate of drop out has decreased significantly. More than 90 percent female respondents have control and individual decision making power practiced on children's education achievement. Around 77 percent garments training, 81 percent female activist received regular fortnightly training and 67 percent respondents received feminine types of training on homestead agriculture, sewing and small-scale cottage crafts. Only a few ic. 28 percent received vocational management training which is gainful and lucrative. Respondents were asked what types of training they received from different sources. It was observed that out of 158 trained persons 53 (33%) have got training. On IGA related issues such as poultry, livestock, agriculture, net making, etc.

From the table- it is clear to note that 95% and above women have given positive opinion about their consciousness of better life such as education training and health nutritional factors.

***Economic Empowerment through Credit utilization:*** According to indicator of empowerment framework index related to credit operations, it was found that 78 percent of female opinion have access to and control over use of small and indium amount of micro credit ranging from Tk. 5000 to 10000. Around 25 percent women can utilize medium to large amount of credit ranging from Tk. 20000 to Tk. 40000. Around 41 percent respondent has access to and control over use of large amount of capital resources. About two-thirds of female members from poorest group have been able to improve their condition from blow poverty level to lower middle class through the support from the societies i.e. credit, training, materials, machineries, feasible technology etc. Data indicated that 82 percent females had intellectual strength, self-confidence and bargaining power against injustice, inequality. Moreover, they were able to take decisions for remedial action against family conflict or violence. Nearly 48 percent respondents were able to take legal advocate services.

### **Conclusion and Recommendations**

Bangladesh is actually doing better than our bigger neighbours on several fronts. Firstly, one of these is gender parity at the primary level of education. Bangladesh is also ahead in terms of female: male ratios at the secondary level. Indeed, between 2001-13 women outnumbered men by 9-11% in secondary schools. The latest figures for India and Pakistan are 80 (females to every 100 males) and 74 respectively. Secondly, they indicate that half of our population can no longer be constantly excluded from the workforce based on gender stereotypes, leading to greater productivity and specialisation. Thirdly, educated women make better choices for their children in terms of health and education than uneducated ones, regardless of the father's education. In terms of these three things, we are in a better position for the future than our neighbours (all else being equal). A set of recommendations can be drawn from the analyses and description presented in this paper. A comprehensive review of the status of gender parity in education and training sector is very important at this stage. As a lot of claims in terms of attaining gender equity are made, it is time for a reality check, focusing particularly on quality and outcomes, because, as Titumir and Hossain (2006) notes, "Gender equality in education incorporates in itself not only the notions of numerical parity in access and participation but also equality in terms of outcomes".

The Government of Bangladesh is obliged by the Constitution and a number of international conventions to make schools available for all school aged children irrespective of class, ethnicity and gender. Yet the number of schools currently available is not enough to meet the demand of all school aged boys and girls. The Government is also obliged to provide same quality education to all. But this is also not being done due to presence of multiple systems and quality aspects of education in Bangladesh. So should be a priority of the government to make physical availability of school side by side increasing role of village societies for quality of life's.

On the basis of the findings it was recommended that WEINI Project should organise more skill training, support and services for IGAS which needs appropriate technology to promoting women's economic empowerment on the priority basis of their own need and resource assessment. For better utilisation of knowledge gained in training conducted under the WEINI Project there should be more fund allocation to address diversity of these training covering village societies variation and the community requirement on education, health, nutrition, and gender neutral rights practice, violence protection strategies consistent with national women development plan of action (NWDP) .In order to increase the coverage of households members, changed leadership of society executives and regulator and special village level activities needs more incentives or supports. Trained Village level social welfare and community health worker, gender and child rights activist and Traditional Birth Attendants (TBA) have been working as change agent/catalyst should be provided better social services. Consequently, MMR, IMR and CMR should be decreased significantly. Respondent members of village societies should given more training on intellectual strength and self-confidence developement to take positive initiatives for proper immunization and control over on reproductive health issues and credit use, access to decision making power on children education, marriage with bargaining power against injustice, It is recommended that project should organise need based and diversified training with materials and technological services.

Finally it can be said that WEINI societies can take a vital role to reduce poverty and social problem of rural poor households and follow up programme should be developed and expanded other areas for better education, health, nutrition and Family Planning services which can be made available easily through these institution to the clients in the rural areas.



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## 4 Context and Consequences of Domestic Violence against Women in a Rural Area of Bangladesh: Analysis from Sociological Perspective

Sabina Sharmin

### **Introduction**

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”(United Nation,2002). Incidence of Domestic Violence against Women (DVAW) is a common phenomenon in most societies including ours whether it is physical, mental or economical. Being one of the most under reported crimes in Bangladesh, the incident of domestic violence was 264 in 2004 while 397 in the year of 2010 (Ain O Salish Kendra (ASK) Documentation Unit, 2011), which indicates increasing trend. In a patriarchal society like Bangladesh, women’s position, prestige, power etc., are generally determined and dominated by males. Accordingly, males’ attitude towards females is important and it does not generally give equal and due treatment to the female counterparts (Hossain & Sumon 2013). Women are considered as men’s property. Their incomes, labor- power, liberty, even sexual activity, are controlled by the men within their families. Social expectations still pivot around child rearing and household management (Farouk, 2005). As a result violence against women is viewed as a normal phenomenon even from the women’s perspective and the findings of International Center for Diarrhoeal Disease Research, Bangladesh (ICDDR, B 2006), indicates that 60 per cent of women in Bangladesh experience any sorts of domestic violence during their lives.

The rural women are more vulnerable in this regard. Many global initiatives have been taken to endorse women’s right. The declaration of the decade for women [1975-85], the adoption of the Convention of the Elimination of all forms of Discrimination Against Women [CEDAW] in 1979, are significant steps. Though Bangladesh ratified CEDAW in 1984, and formulates the women and child Repression Act, 2013’ the picture of violence against women in this country seems never ending. According to the statistics of the police head-quarter of Bangladesh, the number of incidents of women oppression including the rape ,killing, abduction and sexual harassment reached 12904 in 2009 and 16212 in 2010[www.violence against.com]. Although, the past four decades the country is going forward in some cases like; increased political

participation of women , better job prospects, improved education ,and the adoption of new laws to protect their rights , however, issue like domestic violence ,acid burning and rape still could not controlled as expected level. Until now, there is no organized information regarding the context and consequences of DVAW. The Specific objectives of this study are:

1. To explore the types of domestic violence against women in Bangladesh
2. To investigate the context of domestic violence against women
3. Find out the impact of violence against women on the women and their children.

### **Methodology**

Study has been selected a village named Ratadanga under Narail sadar upazila as its study area. The study area is located about four km. from its district head quarter at the bank of river Chitra. Most of its inhabitants are Muslims and their occupation is agriculture. Quantitative data has been collected through semi-structured interview technique as a part of survey method. At the same time, as the researcher is from the said village, personal observation has been also applied in this regard. So, to carry out the study, an integrated method has been applied as research methodology. Samples of 80 married women have been selected purposively as respondents from the age group ranging from 14 to 49 years. Data were computerized, analyzed and interpreted by using frequency distribution, percentage, etc.

### **Theoretical Framework**

Sociological perspectives on violence such as the ‘power and control’ theory recognized the abuser intent to gain control over their wives’ action, thoughts and feelings. It assumed that that the purpose of the violence is to exert power and control over the victims. Domestic Abuse Intervention Project (DAIP, 1981) reported that for more power and better control over intimate partners, men also abuse the children. Gottfried (1998), Gelles and Loseke, (1993) argued that under this perspective domestic violence against women by their inmates seems to be a natural phenomenon. On the other hand, according to the ‘feminist’ perspective, domestic violence originated from the unequal distribution of gender power in a patriarchal society. It focuses on the societal messages that sanction a male’s use of violence and aggression throughout life, and the proscribed gender roles that dictate how men and women should behave in their intimate relationships (Pence & Paymar,

1993). The 'loss of control' theory sees the incident of domestic violence as a result of men's loss of control over their anger and frustration. As men often became violent and abusive against their wives in private and secured places, there could be no evidence of abuse their strong social counterparts like police or law making personnel, employer and persons at their hierarchy (1995). 'The ecological model' of violence describes the relationship between individual and contextual factors (Gelles and Murray, 1989). The model divides the cause of violence under four major leadings i.e. individual characteristics, relationship factors, community characteristics and societal factors of the praetors' and victims. The "cycle of violence" was the next theory to gain popularity in the United States. This theory was based on the belief that men did not express their frustration and anger because they had been taught not to show their feelings. The man's tension built until he exploded and became violent. The tension was released, and the couple enjoyed a "honeymoon" period, during which the husband was apologetic and remorseful (Walker, 1979).

### **Review of the Literature**

Hossain et. al. (2001), identified that Violence against women is largely the result of perceived differences between men and women as ascribed by norms of patriarchy. Rahman, (2007) put the responsibility of VAW on the cultural beliefs, norms, social institutions that legitimize and hence perpetuate it. Hossain & Sumon (2013) asserted that different types of violence against women take place quite frequently in Bangladesh such as domestic violence, acid violence, rape, gang rape, murder, forced prostitution, "Eve-teasing" and recently eve-teasing has become a serious social problem in the country. They make a suggestion that under the existing social values and norms, males' attitude and behavior towards females need to be changed as well. Khatun & Rahman's (2012) socio-legal analysis suggests a comprehensive intervention where protective and preventive measures would be devised to address the problem which will help in changing the patriarchal mindset and behavior against wife or women. Islam and Dey, (2013) shown the physical, mental, economical and sexual are more common forms of violence and these violence hampers the conjugal, marital, individual, family and social life of the respondents.

### **The Socio-economic Status of the Respondents:**

The socio-economic features of this study illustrated that, among the respondents, age group of '30 to 35' years belonged to the highest (25%), all the respondents of this study are married and house wife (100%), and 99% respondent's religion is Islam, 43.75% of the respondents are

illiterate and in respect of their husbands' educational status, half of them (50%), have completed only primary level. Observing the nature of husbands' occupation, maximum (46.25%) husbands' occupation is peasantry (46.25%) and the findings of this study indicated that majority (39%) respondent's husband's monthly income is between TK.10000 to 15000.

### **Context of Domestic Violence against Women**

To find out factors associated to violence against women, many studies have been done and many theories have been developed. Domestic violence is one of the most prevalent form of violence committed against women by men in Bangladesh; as a result the country posited second position in the year 2002 (BNWLA, 2010) among the UN countries. A study by ICDDR, B in 2006, indicated that 60% of violence occurs within their home. The ethnographic findings of this study revealed the background that led the women being tortured. Social relationship within the family particularly husband, mother in law, sister in law and others in-laws of family is a factor that directly contribute a lot to DVAW. Family's economics and educational status have direct implications on the repression of women. Cultural construction of motherhood, womanhood and other relevant construction that are socially maintained, contribute to women subordinate position and it reflect in forms of violence against them. The religious believes and values of the members of the family as well as the woman her-self also responsible for both the shaky and oppressed conditions.

Polygamy of up to four wives is permitted for a Muslim man if he has legally take written permission from his current wife. In practice, however, the wife's permission is obtained through coercion, threat and violence (Farouk, 2005). The more specific direct factors behind domestic violence against women in this study are failure to meet dowry demand (39%), misbehave with their husband as well as other in laws (23%), Disagree with and interference of husband's second marriage, economic insolvency and some time without any visible rational cause. In the version of the women of the study area, the root causes of violence against them are: are poverty (45%), dowry (38.75%), family conflict (23%), patriarchal social system (31.5%), unemployment (42.5%). extra marital relation etc. This findings is similar to the findings of Khair (2001), Jahan (1994), Hossain and sumon (2013), where they argued that, deteriorating social values and a lack of respect for women acted as catalysts for sexual harassment.

### **Nature of Domestic Violence against Women**

Globally 35% of women have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence (WHO, 2005). On the other hand in Bangladesh, 87 per cent of women victims of domestic violence (BBS, 2011). Most of the women specially married women faced the violence of their life course either in form of physical, mental, economical or sexual by their husband or in-laws in their husband's house. Wife beating is the most common feature of domestic violence in Bangladesh and ranked first (UN, 2000) in the world. The women of this village generally faced physical tortured in their everyday life. The data of this study reveals that respondents faced slapping (58%), pushing (50%), torture by socking (46 %), tortured by kick (37%) in their everyday life They also tortured by pulling by hair, beating by stick, chocking, burn by hot iron, pinching, spitting, and heat in sensitive organ. This findings are supported by the findings of Khatun and Rahman (2012) where they wrote that most of the women in Bangladesh experience DV in their lives which takes different forms of abuses, i.e. physical (slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, murder), psychological (threats of abandonment or abuse, to take away custody of the children, verbal aggression and humiliation, threats of killings), sexual abuse (coerced sex through threats, intimidation, forcing unwanted sexual acts), economic (denial of funds, refusal to contribute financially, denial of food and basic needs, controlling access to health care and employment) etc.

### **Consequences of Domestic Violence against Women**

As the societal norms do not perceive Domestic Violence against Women to be a criminal offence, so as its consequences also do not get due important and recognized as a social crisis as well as a predicament of development. Moreover, common notion in this regard is that it is a family matter and it should be solved within the family. So, it is a matter of concern that a culture of acceptance, even, has grown and is being transmitted from generation to generation to the point of being institutionalized (Doza, 2013). A study of BNWLA shows that 30 percent of women think that husbands have the "right" to inflict physical violence upon their wives. However, in Bangladesh some times it magnitude became so high, and then it come out from the inside of the family. It is found that the impacts of domestic violence are multifarious. It hampered the conjugal and marital, individual, family and social life of women (Islam and Dey, 2013). It is found from this study that due to violence the women suffered from physical trauma like, headache (73.75%), back pain (87.5%), Broken any parts(10%), abdomen-pain (45%), psychological

impact includes, Inferiority (57), Unwillingness to life (69%), sleeplessness (50%), socio-economical consequences are loss of social dignity (81%), insecurity (26%), decrease working ability (21%), economic crisis (58.75%), lowering social position (66.25%) and finally it hampered the social status of the women. Violence against women not only put an impact on the women, but also on the children of the family, because most of the respondents are tortured in the presence of their children. The nature of impact on children includes, frustration (35%), impede in socialization (25%), behavioral problem (27%), unwillingness to go to school (66%), Criminal tendency (40%), that is a dangerous indication for the nation. In Bangladesh, a victimized woman usually tries to avoid the legal process as she becomes more stigmatized by the society. She dares not file complaints; fearing negligence and harassment in police station, courts and society (Farouk, 2005). As this oppression is considered as a hidden and family matter, most of the respondents did not seek the legal assistant from any quarter (75%). However a significant amount of respondents wanted to terminate their marital relationship (15%).

### **Conclusion**

Domestic Violence against Women has been an issue of serious concern in Bangladesh for a long period. Despite experiencing a significant progress in women empowerment in certain fields over the past few years, Domestic Violence against Women still remains very high in comparison to many other developing countries. This fact may be startling to the international community, however, in Bangladesh it is common knowledge that husbands exert their authority and physically assault wives for even minor mistakes, such as an unsatisfactory meal, an untidy room, a conversation with another man, or any act of disagreement or disobedience (Farouk, 2005). Illiteracy, poverty, religious belief, patriarchal social norms, etc. seem to be considered as the key contributing factors in facilitating the increased rate of Domestic Violence against Women in the rural areas of our country. There could be many other customs, socio-economic or cultural factors associated with this that are not well reported due to the lack of remarkable study in this field especially in the rural areas of Bangladesh. However, the study has been an effort to explore *the Context and consequences of domestic violence against women in a Rural Area of Bangladesh*. Therefore, the core objective of the study was to reveal the context in which the violence used to occur, more specifically, the causes that directly or indirectly facilitate the violence in rural Bangladesh as well as to expose the consequences of this monstrous act. Understanding of the causes and

consequences of domestic violence against women through this study will help the academicians as well as the policy makers to guide the use of widely viable interventions for the elimination of all forms of Discrimination against Women.

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- Source: Field survey, 2013*

## 5 Towards Sociology of Autism: A Case Study on the Parents of Autistic Children in Dhaka City

Md. Abdur Rakib  
Abul Kalam Azad

### ***Introduction***

Autism is a neurological, pervasive developmental disorder, which is still a mysterious and a complex disorder evident before 30 months of age, in which there is a profound and general failure to develop normal social relationships, together with delayed and deviant language development and the presence of ritualistic or compulsive phenomena. Leo Kanner, a former child psychologist at Johns Hopkins University, first introduced autism to medical literature in 1943 (Hill & Uta, 2003). All the epidemiological studies show a significantly greater number of boys than girls with autism. Male to female ratios vary from 2:1 (Giadella & Mabelle, 1989) to almost 3:1 (Steffenburg & Gillberg, 1986).

The sex ratio seems to vary with ability: most girls with autism are at the lower end of the ability range, while at the more able end boys may out-number girls 5:1 (Lord & Schopler, 1987) with male: female ratio of 4:1 (Hirtz, Thurman & Gwinn-hardy, 2007). Historically autism was considered a form of social withdrawal by vulnerable children from emotionally cold, rejecting, "refrigerator mothers" (Bettelheim, 1967; Kanner, 1943). Little is known about what causes autism, but some theories exist. Autism research reports suggest that autism is triggered by a virus or genetic disposition. Or autism may be caused by intrauterine, prenatal, or neonatal stress or trauma (Waldron, 2000). There is a growing concern that toxins and pollution in the environment can also lead to autism.

The number of people diagnosed with autism has increased dramatically since the 1980s in developed countries but some later in developing countries. In The United States of America autism is diagnosed in one in every 166 births (Autism Society of America, 2007). In the 1990s, in the United States of America, the autism increase was 172% (Autism Society of America, 2007). In the United Kingdom 38.9 in every 10 000 children are diagnosed with autism. Simplified, this is a ratio of 1 in 257 (The National Autistic Society, 2007). Autism affects one in 158 children under the age of six in South Africa (Autism Western Cape, 2007). Current prevalence rates of Autism are 1 in 160 children in

Australia, 1 in 100 in United Kingdom and 1 in 91 in the United States. The prevalence rate of autism in India is 1 in 250 and currently 10 million people are suffering in India (“Report Casts Shadow,” 2013). The government is going to count the number of autistic children in Bangladesh. About 10% of Bangladesh's people are challenged of those, 1% is estimated to be autistic, amounting to around 1.5 lakh people (Shegufta, 2012). There will be around 76,000 children with ASD under the age of five in Bangladesh if we consider prevalence rate of India

*Sociologists are now thinking about the issue of autism. Perhaps as sociologists spend more time watching how children with autism are taught to navigate the social world and how socialization despite disability still determines. Sociologists are well positioned to weigh on how autism is diagnosed and treated, and how families and other social institutions cope with the challenges associated with it. Though, sometimes, being reluctant to study biological and genetic disabilities, sociologists especially in Western Europe and Australia are beginning to make important contributions to both public and medical understandings of the conditions underlying autism and how to deal with them most effectively. But there has no dynamic sociological study conducted on autism in Bangladesh to overcome the problems of autistic children and challenging issues of parents to cope with society in difficult situation. The present study, hence, needs to analyze autism from sociological perspectives.*

*The study is conducted taking into account that autism affects girls and boys of all races and in all geographic regions and has a large impact on children, their families, communities and societies. People see autism as a problem due to their impairment of reciprocal social interaction e.g., appearing aloof and indifferent to others, not fully understanding the meaning of common gestures, facial expressions or tone of voice. (Frith, 1989) Difficulties in social understanding mean that the simplest interactions are fraught with problems. Inability to cope with change and the need to adhere to fixed routines and patterns of behavior can make every-day life threatening and disturbing (Howlin, 1991). The inability to engage in social play, to join in with the activities of their peer group, or to form close friendships are well documented (Schopler & Mesibov, 1983). Parents with autistic children have felt stigmatized in public situations such as supermarket or a shopping mall (Gray, 1993).*

Parents of autistic children are considered to be at a higher risk for depression, social isolation and marital discord. Some parents go through periods of disbelief, deep sadness and depression and self-blame and guilt whereas others experience helplessness, feelings of inadequacy, anger, shock and guilt (Gupta & Singhal, 2005). Social interaction problems are forming attachments and showing affection, parents of autistic children denied fundamental rewards of parenthood. Parents of children with autism face greater challenges than other parents (Laura, Schieve & Blumberg, 2007). *Still, the most basic questions about autism and the broader implications they raise are the most intriguing to sociological readers and researchers.*

The main objective of the study is to understand autism from sociological perspectives. To achieve this purpose, the study seeks to detail two questions:

1. Is autism a social problem?
2. What are the consequences of autism on society?

### **Autism: Sociological Understanding**

Though classical sociologists were not concerned about theorizing on this particular area, autism as a public health problem can be explained from different sociological approaches: *Parsonian functionalism*, *Symbolic interactionism*, *Marxism*, *feminism* and *Foucauldianism*. Parsonian functionalism is centered on the role the sick person plays in society. This perspective requires the social responsibilities to cure the patient(s) in order that the equilibrium can be restored and the disequilibrium cannot be furthered due to the sick role. Symbolic interactionism seeks to understand how the assimilation between the different role players in the health and illness drama is constructed through the doctor-patient interaction. Marxist theory explains the concepts 'health' and 'illness' in connection with capitalism as a social organization, focusing on how health and illness are addressed by economic activity in capitalism (Nettleton, 1995). Feminist theory sees the illness and treatment of patients in terms of their gendered nature, where a medical treatment encompasses male domination over women's bodies and identities (Lesley, 1995). Foucauldian theory describes how the dominant medical discourse addresses normality (health) and deviance (sickness) and plays

an important role in the management of individual bodies (Evans & Ellie, 2002).

## **Study Design and Methods**

### *Study Population and Data Collection*

The present study is based on mixed methods. Data have been collected from the study areas from April to May 2014. Quantitative technique like a structured questionnaire survey was used to collect data on the parents of children with autism. Also qualitative techniques like FGD and semi-structured questionnaire were conducted in order to authenticate quantitative data. The data of this study were collected from four autistic welfare institutions of Dhaka city: Shymoli (Society for Welfare of Autism Children), Mohammadpur (Autistic welfare Foundation), Lalmatia (School for Gifted Children) and Mirpur (Autistic Children's Welfare Foundation). A total of 240 parents of autistic children were selected based on simple random sampling by considering the fact that most of the parents face homogeneous societal problems for their autistic children. However, while collecting data some target respondents were found to be unavailable. In this situation, alternative respondents were selected in order that the overall sample size was achieved.

### *Data Analysis and Ethical Issues*

After the completion of the fieldwork for the descriptive instrument, SPSS Version 20 was used to code data. Then descriptive statistical analyses were advanced by using tables. This study did not use any unethical means to collect information. Voluntary sharing of the respondents as well as confidentiality of their information was strictly maintained and to monitor any potential risks associated with participation in the study. While interviewing the respondents, force and coercion were avoided and their privacy was safeguarded.

## **Study Findings**

### *Personal and family information of the respondents*

In total 240 parents of autistic children participated in our study. It focuses on the condition of autistic children and their family members. From the table-1, it is evident that most of the autistic children ages (65.00%) was ranged from 11 to 15 years.

Table-1: Information about autistic children

Autistic Children	N	%
Age (in year)		
<4	7	2.92
5-10	52	21.67
11-15	156	65.00
>16	25	10.42
Total	240	100.00
Gender		
Male	180	75.00
Female	60	25.00
Total	240	100.00
Religion		
Islam	225	93.75
Other	15	6.25
Total	240	100.00
First diagnosed age		
0-2	75	31.25
3-5	120	50.00
6-8	30	12.50
9-11	5	2.08
12-14	5	2.08
>15	5	2.08
Total	240	100.00

In terms of gender, most of the autistic children were found to be male (75.00%) where *boys are at the level of high risk for ASD* and most of the children were Muslim (93.75%). However, autism cannot be diagnosed at the time of birth. When the respondents were asked to expose their first diagnoses age, 50.00 percent autistic children were found to be diagnosed at the age of 3 to 5 years.

From the table-2, it is seen that the majority of the respondents (68.75 %) were less than 35 years old. As reported by nearly 89.58 percent respondents, their monthly incomes exceeded Tk. 20,000, which clearly indicates that most of the autistic children were come of rich family. The study found above 90 percent of the respondents as literate. In terms of household goods, more than 85 percent of the respondents answered positively.

Table-2: Socio demographic features of the respondents

Socio demographic	N	%
Age		
<35	165	68.75
>35	75	31.25
Total	240	100.00
Household Income		
< 20,000	25	10.42
> 20,000	215	89.58
Total	240	100.00
Education		
Illiterate	20	8.33
Literate	220	91.67
Total	240	100.00
Household Goods		
Highly Priced	205	85.42
Normal	35	14.58
Total	240	100.00

*Autism a social problem:*

Autistic children are unable to successfully communicate and interact with others. Children with ASD may have difficulty developing language skills and understanding what others say to them. They also may have difficulty communicating nonverbally, such as through hand gestures, eye contact, and facial expressions. Autism is not only a problem to the family members but also to the people of the society. It is one kind of life-long disease. Most of the people do not afford proper interaction with autistic children whereas they interact with other disease patients. They take autism as a curse of Allah. For these reason autism become as a problem to adapt her/him in society and most of the time family members feel stress for their children. In this study, some common problems of autistic children are found as evident from table-3.

Table-3: Percentage distribution about the Problems of autistic children

Problems	N	%
Common Problems		
Sensory integration dysfunction	24	10.00
Language & communication problem	98	40.83
Social development problem	95	39.58
Behavioral problem	23	9.58
Total	240	100.00
Daily life problems		
Sleeping problem	68	28.33
Toileting problem	48	20.00
Playing problem	48	20.00
Eating problem	76	31.67
Total	240	100.00
Social developmental problems		
Social cues	55	22.92
Sharing	43	17.92
Fail to develop peer relationship	76	31.67
Responsiveness	26	10.83
Lack of social or emotional reciprocity	40	16.67
Total	240	100.00

This data set shows that more than 40 percent of autistic children face language and communication problem followed by social developmental problem (39.58 %), sensory integration dysfunction (10 %) and behavioral problem (nearly 9 %). In case of daily life affairs, they face some problems related to eating (31.67 %), sleeping (28.33%) as well as both toileting and playing (20 %). In addition, the autistic children face social problems where most of them (31.67 %) failed to develop peer relationship following some other problems which relate to social cues (22.92%), sharing with others (17.92%), social or emotional reciprocity (16.67%) and responsiveness (10.83%). These problems do upset the parents of autistics children. As an FGD participant puts it:

I cannot express my sorrows about how much problems I face everywhere due to my autistic child. That gives pain all the family members in every sphere. My child is discriminated in the society considering her as workless or fruitless. She is underestimated for inability to communicate with others. Consequently, society departs her from social activities. Thus, both my child and family members are being deviant from the mainstream socio-cultural practices and stigmatized by the different individuals of the society (32 Years Old Fatema Begum, Field Work, Dhaka).



*How autism is addressed by society*

It is found in the study that society addresses autism as a problem. 67.50% household members see it burden whereas merely 6.25 percent household members shows friendly behavior with them and 7.08 percent feel pity with autistic children. When relatives get together, nearly 60 percent parents do not willingly introduce their children with relatives. The study also finds that the attitude of the majority neighbors (48.33%) towards the autistic children were found to be very discriminatory while 14.58 percent regard them as the disgrace to the family, 23.76% see them as funny and merely 13.33% feel pity towards them. This study also finds that nearly 65 percent of autistic children face obstacle to move to their school, approximately 13 percent of them cannot get any help from their classmates (see table- 4).

Table-4: Autism addressed by society as problem

Autistic addressed by society	N	%
Attitude of other household members towards autistic children		
very bad	40	16.67
very good	6	2.50
Friendly	15	6.25
Burden on family	114	67.50
They feel pity	65	7.08
Total	240	100.00
Willingly introducing autistic children with relatives		
Yes	102	42.50
No	138	57.50
Total	240	100.00
Attitude of neighbors towards autistic children		
Disgrace to the family	35	14.58
They find funny	57	23.76
Nothing to do with them	0	0
Very discriminatory	116	48.33
They feel pity towards of them	32	13.33
Total	240	100.00
Obstacle to achieve education		
Obstacle to move to school	153	63.75
Non-cooperation by classmates	33	13.75
Lack of care by teachers	12	5.00
Others	42	17.50
Total	240	100.00

*Autism and its Consequences on Family Members and Society*

The table 5 shows that no parent was found without facing problems. For their autistic children, all the parents face numerous problems related to behavior, sleeping, community, eating and socialization. As FGD participants, for instance, put it:

Autistic children are treated as mad person in the society. When I take my child to a park, he behaves ‘abnormally’ and therefore people misbehave with them by labeling “mad” or “Psycho”. This humiliation, rejection makes me feel bad. I feel humiliated, stigmatized and become isolated in social interaction because of my child. People didn’t communicate, cooperate with me. In such progression, I found my autistic child a burden for me (25 Years Old Mily, Field Work, Dhaka).

Parents also face various difficulties in their lives such as stress as reported by almost 50 percent of them followed by other problems such as social discrimination (27.50%), sleeping problem (10.42%), financial problem (8.75%) and divorce for autistic child (6.25%). The similar trends of data have been reflected in the qualitative findings. As an FGD participant puts it:

I gave birth to a boy after two years of marriage. He was a good looking boy and my husband was pleased with me but when he knew about the illness (autism) of the boy, he began to misbehave with me. Sometimes he underwent battering. His family members started blaming me on baby’s state. This matter finally ended up with a divorce (28 Years Old Rubi, Field Work, Dhaka).

The study also shows that parents cannot be freed from tension about their children even they feel uncertainty in future life of their children because their children cannot expose their names and cannot do normal eye-contact with others as reported by respectively 20.83 and 84.58 percent of the parents. 68.75 percent parents of autistic children informed that they could not join in various social or religious ceremonies for their autistic children due to their children’s incapability of coping with new environment and of taking any food items in new places. When the teachers of the autistic schools were asked about their education, they unfortunately showed negative attitude towards the policy makers of our country, reporting the high cost of education in those schools. Almost 50 percent teachers reported this cost as to be ranged from Tk. 3000 to 3500 and nearly 40 percent said that the monthly expenditure for autistic children were Tk. 3500 to 4000. As reported by 70 percent of the parents, GOs’ and NGOs’ contribution to the betterment of autistic children were not sufficient. The similar trends of data have been reflected in the qualitative findings. As FGD participant, for instance, puts it:

“Despite the problems such as discrimination, deviation from the mainstream rituals, stigma and labeling as unproductive part of society, we did not observe significant measures and policies to be taken by GOs or NGOs through which autistics children can apply their inherent competencies and potentialities for contributing to the society. They also shared that they have exclusive potentialities in different areas like mathematics, painting, innovation etc. that the policy makers are not concerned.” (31 Years Old Rayhan, Field Work, Dhaka).

Table-5: Social consequences of autism on society

Social consequence	N	%
Problem faced by parents		
Yes	240	100.00
No	0	0.00
Total	240	100.0
Parental Problem		
Financial	21	8.75
Stress	113	47.08
Social stigma	66	27.50
Divorce problem	15	6.25
Sleeping problem	25	10.42
Total	240	100.00
Response his / her name		
Yes	190	79.17
No	50	20.83
Total	240	100.00
Normal eye- contact		
Yes	37	15.42
No	203	84.58
Total	240	100.00
Participation in social & religious ceremonies		
Yes	75	31.25
No	165	68.75
Total	240	100.00
Cost in institutions		
2500-3000	32	13.33
3000-3500	119	49.58
3500-4000	89	37.08
Total	240	100.00
Activities of GOs & NGOs		
Sufficient	24	10.00
Not sufficient	168	70.00
Don't know	48	20.00
Total	240	100.00

## Conclusion

The objective of the present study was to understand autism as a social problem and its consequences on the family members and society as a whole. To achieve this purpose, the study employed both quantitative and qualitative techniques of data collection. The study finds that most of the autistic children face language and communication problem (40.83 %) followed by social developmental problem (39.58%), sensory integration dysfunction (10%) and behavioral problem (nearly 9%). Among significant problems faced by autistic children in their daily life affairs are sleeping problem (28.33%), toileting and playing problem (20%), eating problem (31.67%), problem of share with others (17.92%) and failure in developing peer relationship (31.67%). The study shows that the parents of autistic children face various difficulties in their daily lives such as stress (47.08%), victim of discrimination for social stigma from different facilities of societies (27.50%) and divorced by husband (6.25%). In addition, 90 percent respondents opine that they are neither supported by the structural or community level nor by NGOs in order that their autistic children cannot be labeled as a burden for society.

The study concludes suggesting some recommendations through which autistic children can be considered to be asset instead of burden for society. First of all, the policy makers and the leaders from different sectors of the government should take the proper initiatives to flourish the competencies of autistics children through special educational programs and measures. Secondly, GoB should find out the comfortable job areas for autistic children and create opportunities for recruiting them accordingly. Thirdly, GoB also should take proper and quick steps in building up alternative care centers for them in the absence of their parents. Fourthly, sociologists of Bangladesh should conduct rigorous studies on the Problems and Consequences of Autistic Children in Bangladesh and move to the Sociology of Autism to Medical Sociology. Finally, the significant others should play important role in socializing both the present and future generations, raising the slogan “autistic children are not burden but asset for the society”.

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## PART TWO: LAW AND GOVERNANCE



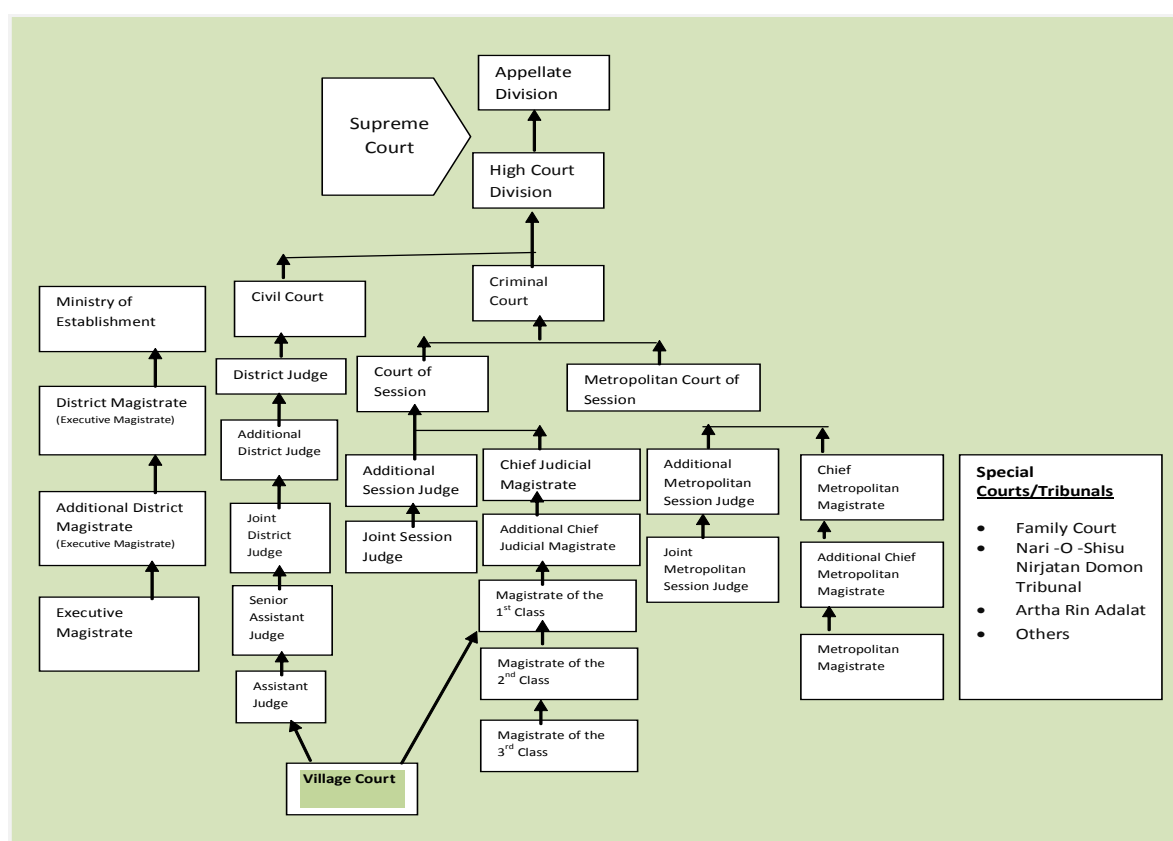
# 6 The Village Courts in Bangladesh: Review and Analysis

Mohammad Rafiqul Islam Talukdar

## Introduction

Access to justice is a means to build pathways for overcoming human poverty. A workable justice system is significant for state functioning with good governance as well as to help the poor in breaking their dependency cycle of having no remedy to their grievances and social injustices they face.

Figure 1: Justice System in Bangladesh



Source: Baseline survey report 2010, AVCB

The figure 1 above demonstrates how Judiciary of Bangladesh is structured. At the top, there is a supreme court comprised of appellate and high court divisions, then there are subordinate courts with two distinct sets of civil and criminal courts. There are also special courts, for instance, family court or arbitration council and administrative tribunals. In addition, now there is state-led rural justice system – ‘Village Court’ – which is, in fact, a quasi-judicial system and functions under the portfolio of Union *Parishad* (UP). It is also technically linked with the Assistant Judge of the concerned civil court and first class Magistrate of the criminal court.



In fact, there are two types of rural justice systems in Bangladesh: Non-state rural justice systems and State-led rural justice system. For the non-state rural justice systems – traditional *Shalish* and NGO-organised *Alternative Dispute Resolution (ADR)* – there is no specific law to follow and therefore these are known as informal justice systems. These basically pass decisions based upon circumstances, and follow traditional norms, local customs and/or religious dicta. Participants' observation, however, supports that ADR, the NGO led *Shalish* is less likely to be dominated by norms, customs or religious dicta, and typically follows fair judgments.

While the State-led rural justice system Village Court is constituted under specific laws. Rahman *et al.* (2010) notes that, during the Pakistan period, two ordinances were promulgated, namely the Muslim Family Laws Ordinance, 1961 (MFLO) and the Conciliation Courts Ordinance, 1961 (Ordinance No. XLIV of 1961), among which the later now stands repealed. The Muslim Family Laws Ordinance made provisions for the constitution of the Arbitration Council, a dispute resolution body which works in both urban and rural areas, deals with the matters related to family disputes as per the ordinance. The Conciliation Courts Ordinance dealt with minor criminal offences and civil disputes. After the independence of Bangladesh in 1971, the Government decided to continue with the systems of both the Arbitration Council and the Conciliation Court, but in 1976 repealed the Conciliation Courts Ordinance. It promulgated a new legislation named the Village Courts Ordinance, 1976, by which the village courts were established to deal with petty criminal and civil disputes in rural Bangladesh. In 2006, the Government repealed the Village Courts Ordinance, 1976 and the parliament enacted new legislation called 'The Village Courts Act, 2006' to deal with affairs of the village courts.<sup>1</sup> Thus, the present architecture of the village courts is based on the provisions of the Village Courts Act, 2006 and its subsequent revision – the Village Courts (Revision) Act, 2013. The current study is a qualitative one by nature. It follows Focused Synthesis<sup>2</sup> and Participant Observation<sup>3</sup> methods in an opportune fashion.

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<sup>1</sup> Baseline survey report 2010, AVCB

<sup>2</sup> Focused Synthesis allows collecting and documenting information as well as data from a range of sources as diverse literature review, researchers' personal experience, web and media evidence, legislative hearing, court verdict, staff memorandum, unpublished project or study document, anecdotal evidence and story, citation or in-depth discussion with experts, practitioners and stakeholders (Talukdar 2012 and 2013).

<sup>3</sup> Such research involves a range of well-defined, though variable techniques: Informal interviews, direct observation, participation in the life of the group, collective discussions, analysis of personal documents produced within the group, self-analysis,

Table 1 below shows the methods and techniques along with the sampling note at a glance.

Table 1: Methods, techniques and sampling note

Qualitative Methods	Techniques	Sampling note
Focused synthesis	Literature review	Three important studies (baseline survey for the Village Courts in 2010, review of social barrier and limitation of Village Courts in 2012 and mid-term review of Village Courts project in 2013) and other relevant pieces.
	Discussion with practitioners and experts	AVCB Project Manager, concerned Programme Manager of UNDP-Bangladesh, Executive Director of Ain-o-Shalish Kendro and Head of Politics, Democracy and Governance cluster of BIGD, BRAC University.
Participant observation	Past experience	Evidence from past consultancy and research engagement of the author.

*Source: The Author*

The research questions here are: Whether the approach of the village court is operationally manageable? Is it pro-poor? Whether it has legal and legislative basis? Does it count traditional norms and customs or is it bound by rules? Are village courts in a better position to provide a fair trial? To what extent the pilot project ‘Activating Village Courts in Bangladesh (AVCB)’ has gained acceptance both by the government and community? What are the visible outcomes of the pilot exercise? Is the government ready for scaling up and replication of best practices now? Whether the cost associated with village courts’ functioning is a burden for a UP? Are UPs adequately funded or do they have staff resources to try cases at village courts? To what extent village courts are capable to try cases which are transferred by the magistrate court? Are jurors legally/technically capable to try cases? Is there any conflict with state structure: Judiciary vs. Executive? What are the key policy concerns?

The focus of the study includes approach, outcomes and challenges of the Village Court system and policy recommendations thereafter. There are five sections of the paper. Following the introduction, section two discusses approach of village courts, presents architecture, scope, process and legislation of the village courts. Section three: Outcome of

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results from activities undertaken off or online, and life histories (DeWalt, DeWalt and Wayland, 1998).

Village Courts, identifies and analyses the facts related to ensuring local justice, evidence based success, rights based service delivery, while section four: Challenges Ahead and Overcoming Barriers, reveals the key challenges regarding scaling up, Union *Parishads*' capacity, social barriers as well as legal concern, and prescribes how to overcome those challenges. Finally, the fifth section concludes the paper and deliberates what policy makers need to do.

## **Approach of Village Courts**

### ***Architecture, scope and process***

A village court functions under the institutional framework of a Union *Parishad* (Council), while a Union *Parishad* (UP) is the lowest unit of local government bodies, which “shall be consisted of a chairman and twelve members including three members exclusively reserved for women.<sup>4</sup> The Chairman and the members shall be elected by direct election on the basis of adult franchise in accordance with the Local Government (Union *Parishad*) Act, 2009 and subsequent other rules” (*Talukdar, 2013a*).

Union *Parishads* must assume the responsibility of functioning village courts under the Acts mentioned in section 2.2: Legislation. Thus, the village courts formally exist in all UPs in Bangladesh despite the fact that these are predominantly dysfunctional in most of the cases. Importantly, Government takes phase by phase implementation strategy with the Village Courts Act (2006 and its revision in 2013)<sup>5</sup> to activate village courts across the country. Initially at the first phase 500 out of 4,500 UPs were selected by the Government through Activating Village Courts in Bangladesh (AVCB) project so as to activate village courts, the number of which was then reduced to 350 UPs.<sup>6</sup> As per prodoc the

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<sup>4</sup> There shall be reserved three seats exclusively for women members in each Union *Parishad*, who shall be elected by direct election on the basis of adult franchise in accordance to the provision of the Local Government (Union *Parishad*) Act, 2009, and subsequent other rules, provided that these shall not prevent a woman from being elected to any of the nine general seats, or even to compete for the chairmanship.

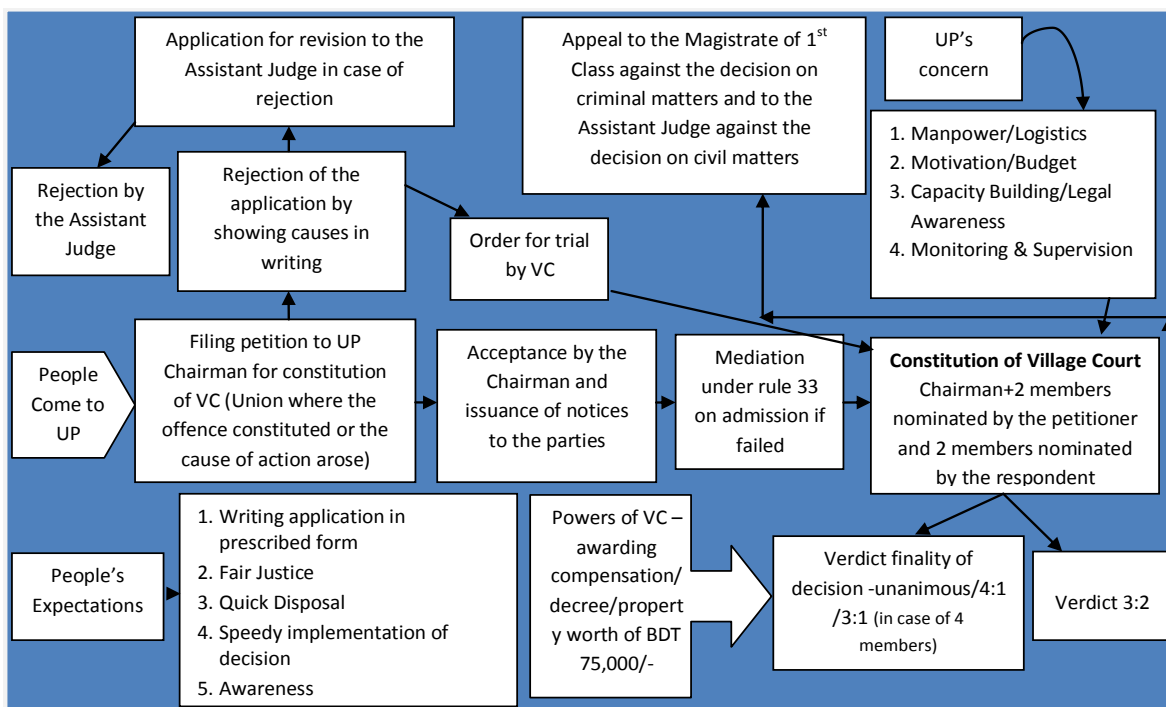
<sup>5</sup> Despite the fact that the provision of village courts was originally established under the Village Courts Ordinance, 1976 so as to deal with petty criminal and civil disputes in rural Bangladesh, in practice such court did not get activated.

<sup>6</sup> Nevertheless, participant observation given in a consultancy assignment - review of governance programmes in 2012 funded by *Manusher Jonno* Foundation (MJF), supports that it does not limit any other initiative to help UPs to make the village courts effectively functional following the Village Courts Act, 2006 and the Village Courts (Revision) Act, 2013. *Sabalamby Unnayan Samity* (SUS), for instance, is helping the UPs in 5 Upazilas of Netrakona district – outside the AVCB project coverage area – in ensuring access to justice by activating the village courts.

project AVCB started in January 2009, but it became operational in 2011 and no-cost extension is in place up till December 2014. This pilot project took on board both the state and civil society groups and sketched based heavily on lessons of the work initiated in 2002 by the Madaripur Legal Aid Association. The mid-term review of the same in 2013 reveals the fact that the AVCB has succeeded in activating 338 of the 350 targeted village courts. The mid-term review also shows promising indications of being a highly effective model for scaling up across the country. According to the Act, the number of judges in a village court would be five: four equally nominated by conflicting groups, out of which usually two from UP members, while chairman shall be the chief of the jurors. Figure 2 below shows the architecture of the Village Courts.

The figure 2 below demonstrates the architecture of the village courts with link to the Assistant Judge of the concerned civil court and first class Magistrate of the criminal court. It also reveals people’s expectation from the Village Courts and UP’s concern on the same. The revision of the law in September 2013 has strengthened the provision of mediation for compromise under the Village Courts Rules, 1976 (see revision section 6B of the law). The revised Act also empowers the village courts with power of awarding compensation/decreed/property worth of BDT 75,000.

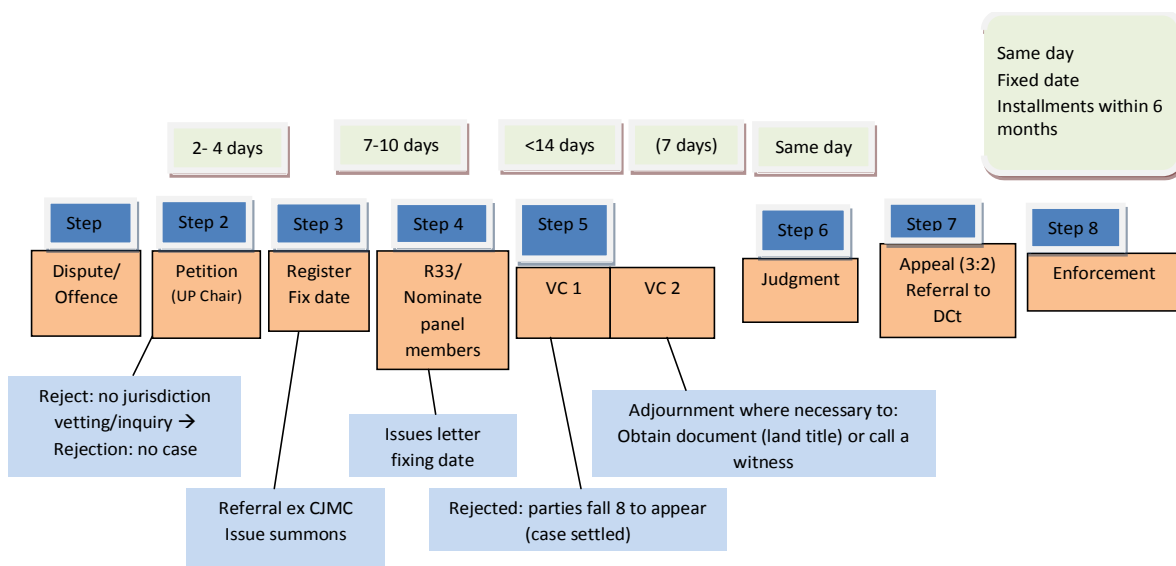
Figure 2: Architecture of the village courts



Source: Adapted from Baseline survey report 2010, AVCB

Discussions with practitioners, for instance, AVCB Project Manager and concerned Programme Manager of UNDP-Bangladesh, suggest that the approach – architecture, scope, process and legal framework – of village courts requires extensive training and support to make these operationally manageable by UPs. These practitioners also opine that theoretically village courts are pro-poor and the purpose of activating these courts is to strengthen rural justice system and ensure access to justice and fair trial to the rural community, particularly of its vulnerable group. They also state that these courts have retrospective as well as current legal basis - the Village Courts Ordinance, 1976, the Village Courts Act, 2006 and the Village Courts (Revision) Act, 2013; and thus these must run with the rule bound process. They further argue that there is no significant cost associated with filing and running cases in the Village Courts. The AVCB Project Manager, in particular, opines that village courts in the project UPs usually follow speedy as well as relatively fair trials and judgments, which of course is the result of project support to the capacity building of those UPs to make the village courts efficiently and effectively functional. However, Rahman *et al.* (2010) reveals that *there are some formalities like filing application for constitution of VC, application fees and case registration, notice to the parties for nomination of members of the VC, issuance of summons, recording decision, and implementation of the decision.*<sup>7</sup> The process of the village court is documented at figure 3 below.

Figure 3: Village Court Process



Source: Mid-term Review 2013, AVCB

<sup>7</sup> Baseline survey report 2010, AVCB

The figure 3 above shows the process of a Village Court functioning and number of days or period required at each stage within the eight steps. The process starts with a victim petition or court referral to a UP Chair and ends with three possible options: rejection of the case, or through mediation for compromise, or through constitution of a full-fledged court which is then followed by judgment and enforcement, or judgment and appeal to the Assistant Judge of a concerned civil court /first class Magistrate of a criminal court and enforcement of the final judgment.

### ***Legislation***

The present form of village court is constituted under the provisions of the Village Courts Act of 2006 and its subsequent revision of 2013—despite the fact that the provision of village courts was originally established under the Village Courts Ordinance, 1976. The village court as a state-led rural justice system which has jurisdictions to try specific nature of disputes either civil or criminal (see Annex-1), for instance, civil clash, dispute with movable or immovable properties, theft, damaging of crops, harming cattle, breach of monetary deal, poisoning fish in pond or canal. Despite of its legal bindings it is in fact required to follow less formal procedure for adjudication of disputes. The revision of the law in September 2013 has made it more effective with the provision of compromise under pre judgment (revision section 6B).

According to the revised Act, jurisdiction of the village courts for fining a guilty party or the value of the disputed property would be BDT 75,000 (USD 974) instead of the previous limit of BDT 25,000 (USD 325). The revision has, in addition, a built-in mandatory provision of inclusion of a woman member by the parties in forming five members judges panel, given the fact of resolving matters related to the interest of minors and/or women. The revised Act can tackle counterfeit attempts, for example, filing a false case in a village court would land the guilty party with fines up to BDT 5,000 (USD 65), while for contempt of village court or non-compliance of its order, the respective party can be fined up to BDT 1,000 (USD 13). It also has a provision to dispose of any revision petition against any village court verdict within 30 working days (revision section 4).

## Outcome of Village Courts

### *Ensuring local justice*

The EU study on the criminal justice system in the country<sup>8</sup> acknowledged that, for years, the poor have been *priced out* of the justice system.<sup>9</sup> Jahan and Stapleton (2013) cited Jahan (2007) in the mid-term review of Activating Village Courts in Bangladesh project – “The problems of access to justice in the state courts had become a daunting task for the poor and the legal complexities, cost, delayed justice, corruption, too much emphasis on the normative aspect of law have caused the poor to rely heavily on the informal sector.”

Three important studies which were reviewed for this paper (see table 1) – baseline survey for the Village Courts in 2010, review of social barrier and limitation of Village Courts in 2012 and mid-term review of Village Courts project in 2013 – reveal that here poor people have very limited access to state courts, which makes them interested in local justice systems for resolving their disputes. But the local informal justice system *shalish* becomes de-facto, to a great extent, infested with corruption, biasness and imposition of illegitimate decisions including *fatwa*. In a recent interview<sup>10</sup> Advocate Sultana Kamal, Executive Director of Ain-o-Shalish Kendro, opines that *shalish* has been traditionally used to contain ‘anti-social’ behaviour of rural women with some conservative influences. Participants’ observation, however, reveals that NGO-led alternative dispute resolution (ADR) – another non-state rural justice system<sup>11</sup> – is a good one, but new in Bangladesh. Therefore, the state-led rural justice system the Village Court, which is a quasi-judicial system, might have an opportune position for ensuring access to justice to the rural community under the legal framework and rule bound process, as long as the challenges ahead to UPs – towards adeptly as well as usefully activating such courts - shall be properly addressed, acknowledged and facilitated to mitigate those by the state, civil society and development actors.

<sup>8</sup> Activating the criminal justice system in Bangladesh, Balenger *et al.*, EU, 2005

<sup>9</sup> UNDP, ‘Human Security in Bangladesh: In search of Justice and Dignity’, 2002

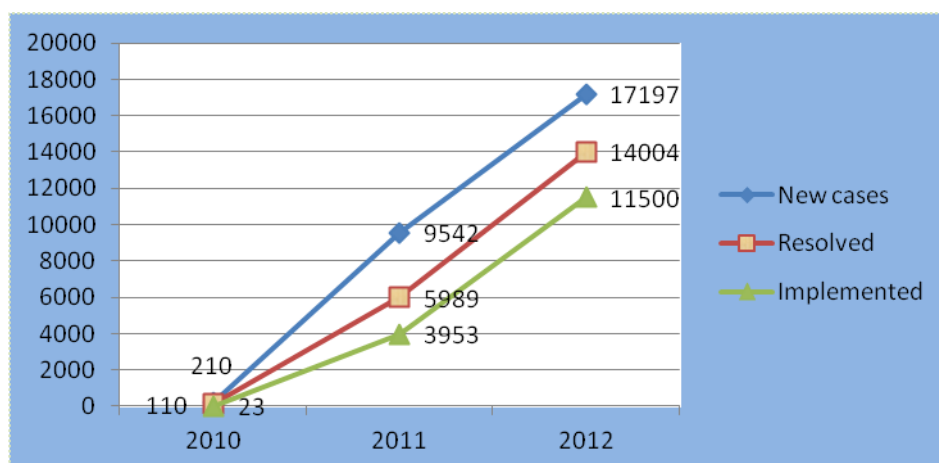
<sup>10</sup> The interview was conducted in April 2014 by Jens Stanislawski and Nabila Zaman from BRAC Institute of Governance and Development (BIGD), BRAC University.

<sup>11</sup> The ADR is increasingly standing between formal and informal justice systems and becoming integral part of judicial and/or sub-judicial process.

### *Evidence based success*

According to the mid-term review of AVCB in 2013, the village court system has gained acceptance both with the government and the community given the facts: its legal structure is simple, the courts are local (most are within a 3km radius of people's homes), income is no bar to accessing the courts, the enforcement rate is high because of the restorative nature of the proceedings and relatively low compensation awards made, cases are processed speedily – lasting between 23-28 days from filing of petition to judgment, and filing fees are very low while transaction costs (such as transport costs or survey fees) are deemed affordable. The report also reveals that the numbers of cases filed in village courts and resolved and implemented by the same between 2010 and 2012 show a sheer rise.

Figure 4: A sheer rise of cases in village courts



*Source: Mid-Term Review of AVCB, 2013*

Figure 4 above shows that number of cases filed, resolved and decisions of those implemented in 2010 were respectively 210, 110 and 23, whereas in 2011 the trend sharply rose and extended at respectively 9542, 5989 and 3953, and in 2012 it continued to rise and reached at respectively 17197, 14004 and 11500.

### *Rights based service delivery*

Similar to Walker (2012) the write-up argues if lack of access to justice is considered to be a central characteristic of human poverty, addressing the issue requires creation of an enabling institutional environment, where village courts could be practical as well as rights based legal solution centres providing the proper nurturing of the system.

Walker in the Village Courts conference 2012 specifically opined that the justice should be treated as an essential public service, and thus



state must provide the mechanism to effectively remedy the grievances of citizens, especially the poor and vulnerable groups who often have no resource or knowledge to access justice. He further argued that the Village Courts project might be one such mechanism of the Government that brought justice to the doorstep of the people at low cost and in a reasonable timeframe. Furthermore, scaling up the lessons of this pilot project throughout the country would allow the village courts to help substantially reduce backlogged cases<sup>12</sup> of the formal courts and ensure responsiveness of citizens and local government institutions and tailor pro-poor local governance.

### **Challenges ahead and overcoming barriers**

#### ***Scaling up***

AVCB project, started in 2009 in partnership with the Local Government Division (LGD), United Nations Development Programme (UNDP) and the European Union (EU), has covered 338 Union *Parishads* (UPs) out of the finally targeted 350 UPs of 56 upazilas, in 14 districts of 6 divisions.<sup>13</sup> The outcome mentioned in the previous chapter suggests a significant improvement has been made in the project operational area. This, however, remains to-date only at 7.5% Union *Parishads* (UPs) in the country in spite of the fact that eight years have passed since the Village Courts Act was adopted in 2006. The challenge now is to scale up the successes of the pilot village courts across the country. A discussion with concerned Programme Manager of UNDP-Bangladesh indicates that development partners are strongly interested in supporting the nationwide coverage of the local justice services through effectively activating village courts in particular, but this will require the Government's further commitment. This study, however, could not check with the Government views concerning the issue given the time constraint, while the development partners' impression is evident at 2012 conference.<sup>14</sup> The Mid Term Review (MTR 2013) of AVCB project reveals that evidence of

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<sup>12</sup> According to Walker, as of April 2012 total 906 cases have been referred to village courts by district courts. This indicates a positive link in reducing case backlogs in the upper courts.

<sup>13</sup> Case data and project reports from NGOs and Project Management Team (PMT) suggest that the project has achieved its principal objective of activating the Village Courts (VCs) in 338 UPs, but it is yet to complete direct project implementation in the 12 UPs under the current phase target of the project. (AVCB MTR, 2013).

<sup>14</sup> Village Courts conference at Dhaka on 9 June 2012.

effective commitment of Government – associated with adequate financial resource allocation through the national budget – is still missing. MTR 2013 specifically points out that the Finance Ministry needs to be assisted in seeing the delivery of basic justice services, such as the village courts, less as a cost and more as an investment in a public cause.

Furthermore, Walker in the 2012 conference opined that it is important for village courts to be gender-friendly and sensitive to the needs of vulnerable and poor people including women and children for their access to justice. Broader human rights principles and a human rights framework should be upheld while justice service is rendered through village courts. And village courts services should be considered comprehensively as a part of services delivered by UPs.

### *UPs capacity*

While discussing with the AVCB Project Manager, the queries mentioned were – whether cost associated with village courts functioning is a burden for UPs or are they adequately funded and whether they have staff resources to try cases at village courts. Acknowledging these as critical concerns, he opined that generally UPs have neither additional funds nor support staff to make the village courts functional. According to Sultana Kamal, village courts are not commonly functioning well considering the fact that there is a lack of genuine interest among councillors and chairmen of UPs, and in many cases they still do prefer conducting *shalish*. The AVCB Project Manager, however, argues that is why pilot project exists. He cited the Walker (2012) observation: The project provides technical and financial support to building the institutional capacity of UPs through tailored trainings, installation of court benches, provision of Village Court forms and formats for efficient case management together with supporting staff to Village Courts in target areas.

The basic challenge now, as discussed in the previous sub-section 4.1: Scaling up, is to replicate this pilot exercise throughout the country. Importantly, UPs capacity building throughout the country requires huge budget and strong pledge of the Government and donors. Importantly, considering the fact of UPs capacity, the AVCB Project Manager appreciates the importance of total coverage of the project throughout the country. If the new phase of the project covers total population – all 4500

UPs in the country – the challenge would be bestowed with exit strategy of the same. Once the project gets completed, how the UPs would survive in terms of resource support that needs to be proactively dealt, building a framework under the new phase of the project.

### ***Social Barriers and Legal Concerns***

Statistics from the study 'Review of social barriers and limitations of Village Courts' support that, weak socio-economic background has been viewed as the most crucial social barrier for seeking justice for the poor and marginalised people. According to the report, nearly 64% of the respondents have mentioned this as a barrier. A 62% of the respondents believe that women's concern about family reputation/social dignity is a crucial barrier for them to seek justice. Lack of awareness of the mass people about village courts and its jurisdiction is the major limitation of village courts to work actively. A 55.7% of the respondents have mentioned this as the main limitation of village courts. More than 62% of the survey respondents demanded ensuring fair justice while 55% have suggested increasing awareness of the people as well. Another 26% of the respondents have viewed that power (authority and jurisdiction) of village courts should be increased. The other opinions are: proper monitoring of village court activities by higher authority (17.2%); adequate staffing for managing the activities of the village courts (7.5%); and infrastructure and logistic development of village courts (5.3%). 61% of the respondents have viewed that the UP chairmen and members should ensure justice in the village courts. Nearly 55% of the respondents have reported that UP representatives should make people aware about village courts. Another 68% per cent of the respondents have opined that the mass media should increase awareness of the people about village courts through increased publicity. A 26% of the respondents have also viewed that the media could broadcast drama/serial on village courts to enhance people's awareness.

Three legal concerns here are: 1) Are jurors legally/technically capable to try cases? 2) To what extent village courts are capable to try cases which are transferred by the magistrate court? 3) Is there any conflict with state structure - Judiciary vs. Executive? The Project Manager's responses to the first two research questions were: Jurors are legally authorised to endow with verdict in village courts by the Village

Courts Act, 2006 and the Village Courts (Revision) Act, 2013. Their social technical capability is inbuilt in their social obligations, while legal technical competence is being tailored through capacity building initiatives of the project, which allow them, even to try confidently the cases transferred to them by the Assistant Judge or Magistrate courts. But again the project is currently targeting only 350 UPs at this pilot phase. So, nation-wide replication of the pilot experiences is a must and very urgent.

Regarding the last concern, it seems that divergence is evident here given the state structure: Judiciary Vs Executive. Union *Parishads* fall under executive organ of the state while village court affairs are judicial matters. In a recent interview,<sup>15</sup>Tofail Ahmed, Head of Politics, Democracy and Governance cluster of BIGD, BRAC University, argues that the Village Courts Act, 2006 as well as its successive amendment contradicts with the spirit of the Article 22 of the Constitution of the People's Republic of Bangladesh.<sup>16</sup> Furthermore, Ahmed (2012) points out that establishment of courts and operating judicial activities under the Village Courts Act are not acceptable. Given the fact of separation of judiciary on Article 22 of the constitution, dealing of judicial matters by political persons could not be legitimate. Moreover, the jurors here are neither educated on judicial matters nor well trained or efficient on legal affairs. Even they do not have any professional oath of impartiality.

## **Conclusion**

The State-led rural justice system village court is a de facto one considering the spirit of separation of judiciary despite the fact that the system is developed under specific laws legislated by the legislature. Anyhow, the reality of the formal justice system in Bangladesh is to be acknowledged. A note on Activating Village Courts in Bangladesh (AVCB) Project in the project website addresses that the formal justice system in Bangladesh is under tremendous pressure with much workload and inadequate number of officials and staff to dispose the cases. As a result, the case backlogs add up to the existing pending cases and at present it stands at about half a million cases. It creates a negative impact

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<sup>15</sup> The interview/short discussion was conducted in August 2014 at BIGD, BRAC University.

<sup>16</sup> Article 22 of the constitution prescribes - "The State shall ensure the separation of the judiciary from the executive organs of the State."

for the rural poor and vulnerable group of people who cannot afford the expenses of cases and do not have clear understanding of how to get access to justice in the upper courts on some issues that could be easily resolved at the local level.<sup>17</sup>

Importantly, Jahan and Stapleton (2013) acknowledge the fact that village court as a system has gained acceptance both with the government and the community,<sup>18</sup> while Barkat *et al.* (2012) identifies that lack of awareness of the mass people about village courts and its jurisdiction is the major limitation of this court to work actively. Furthermore, the participants' observation, practitioners' opinion and literature review support that the pilot AVCB project has tested and gained number of lessons and outputs which are now strongly sought after to be replicated country-wide. Certainly, the country-wide replication or scaling up the lessons learned from the pilot areas will have faced several challenges with different magnitudes of complexity. The policy recommendations set forth underneath and the analysis of challenges ahead as well as overcoming barriers in the previous chapter are likely to help the Government to determine obligations and to develop a comprehensive approach in accord with its own as well as donor commitments and resources so as to ensure an effective as well as efficient justice service delivery for the rural poor in Bangladesh.

The key policy recommendations of the study include:

- Urgently scaling up the pilot exercises of village courts across the country
- Framework building for the village courts to make it more gender-friendly
- Tailoring human rights based and service delivery approach of Union *Parishads* to development

The study, however, acknowledges the fact that further research is required to frame the last two policy recommendations more sensibly and to sketch their implementation strategy.

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# 7 Judicial Reform in Bangladesh: What to Achieve and How to Achieve

Saqeb Mahbub

## Introduction

The existence of a need for reform in the judicial system of Bangladesh has national and international consensus. The surge of donor-funded judicial reform projects, most notably from the World Bank and the United Nations Development Program, are evidence of international opinion while the government acknowledgements in its five-year strategic plans show national interest. Pursuing the need for reform, initially the World Bank, through its Legal and Judicial Capacity Building Project and subsequently, the UNDP through currently ongoing projects under its Democracy and Governance Cluster, have injected funds and technical expertise in the judicial system. The government has undertaken ad-hoc, but more regular reform, albeit often spurred by advocacy by the donors. But the question then arises, what purpose do these efforts aim to serve? To answer this question, it is useful to look into the reform efforts in Bangladesh and the purposes they have pursued so far.

## Reform Efforts

The World Bank funded and administered the biggest reform project in the judiciary from 2001-2008, having at the core of its objectives, the Bank's 2000 Country Assistance Strategy (CAS) to reform institutions to support the enabling environment for private-sector led growth and for better delivery of core public services.<sup>1</sup> This objective was in line with the then government's "Fifth Five Year Plan" (FY1997-2002) which acknowledged that "the judicial process is...cumbersome and time-consuming" and the legal framework is sometimes inadequate.<sup>2</sup> The Plan also pointed out that legal and judicial reforms are "essential for the creation of an enabling environment for the private sector to flourish and maximize its contribution to a sustained growth."<sup>3</sup> The Government's request for funds was met by the World Bank through the project.<sup>4</sup>

The World Bank project was built upon the ideal that judicial reform is required for investment and economic growth. This approach of looking

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<sup>1</sup> The World Bank (2010), *Implementation Completion and Results Report* (Report No: ICR00001200), Dhaka: The World Bank.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid



at judicial reform as a catalyst to attracting investment resulting in growth is not uncommon. Often, in many parts of the world, judicial reform has been seen as a way to resolve court disputes quickly and efficiently to therefore foster an investment climate. This has been considered a legitimate objective in implementation of other judicial reform projects too, most notably, ADB's Access to Justice Project in Pakistan, which to date remains the biggest externally funded judicial reform project (valued at USD 350 million).<sup>5</sup>

Although the World Bank project is largely considered to be an unsuccessful endeavour (its own evaluation terming the project's performance as "unsatisfactory"), the focus of this section is on the objective it started with.<sup>6</sup> The project design assumed that the judiciary was in need of greater efficiency, and training to that effect, in order to solve the various causes of delay and backlog identified by previous studies. Although the objective of promoting "accountability" was mentioned casually in the project's documents, the lion's share of its USD 30.6 million budget was devoted towards "efficiency" outputs. The central assumption was that if service could be streamlined and provided quickly, the judiciary could be said to be doing its job.

This type of approach based on "efficiency" has an inherent problem which can be unearthed with a simple analogy. If the litigant is given an option between resolution of her case in six months albeit with no guarantee of fairness and resolution of her case in two years but with an assurance of fairness, which one will she choose? Will she choose the more "efficient" resolution, or the more "fair" but less "efficient" resolution?

When the issue of fairness, or lack of, is brought into the fold, the question that also begs to be asked is whether a reform agenda excluding "fairness" can promote justice for all. It can be argued that in a judiciary where fairness does not exist, there is no level playing field - the rules of the game vary from player to player. The already disadvantaged stand a lesser chance of obtaining justice from a court than the advantaged. Such a situation, no matter how efficient it may be, certainly cannot be "just".

An improvement from the World Bank objective is found in the more recent ongoing UNDP projects in the justice sector. The Judicial

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<sup>5</sup> Siddique, O. (2013). *Pakistan's Experience with Formal Law: An Alien Justice*. New Delhi: Cambridge University Press

<sup>6</sup> The World Bank (2010) op. cit.

Strengthening Project of the UNDP, jointly implemented with the Supreme Court, in its Project Document, maintains that it “aims to improve access to justice, especially for disadvantaged and vulnerable groups” and further identifies “external interference in the administration of justice” as a problem.<sup>7</sup> However, when determining the route to take to achieve such goals, the document cites – “supporting the judiciary to improve case management and reduce case backlogs” as its chosen method.<sup>8</sup> The main indicators of the project measure its success through its percentage reduction of backlogs in its pilot courts instead of how the project would empower the “disadvantaged and vulnerable groups”. The focus again, unfortunately, was on efficiency and the usual suspects – delay and backlogs.

### **Evaluation of Efforts**

The apparent obsession with efficiency is not without context. One could argue that this narrow definition of justice protects the status quo in the institutions which require reform. Broader notions of justice would require changing of ways and could disrupt existing incentive and power structures. As the Government takes on the role of the primary stakeholder, as has happened in the case of all World Bank and UNDP interventions, it pushes an agenda of reform based on the problem of delay as it can be attributed to lack of resources, lack of technological prowess and so on. On the other hand, flagging up problems regarding impartiality and independence bring with them obvious political disadvantages and they themselves put themselves at risk of being viewed as part of the problem. In this context, while the problem of “delay” and the solution of “efficiency” have taken the front seat in Bangladesh judicial reform agenda, arguably “justice” and “fairness” have taken the back seat.

Osama Siddique, writing on Pakistan’s experiments with the efficiency-centric approach (which he calls the “efficiency-plus approach”) with World Bank, very aptly asked “whether delays in court were the only or even the most crucial problems facing the Pakistani

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<sup>7</sup> United Nations Development Programme (2012), *Project Document: Judicial Strengthening Project*. Retrieved from <http://www.bd.undp.org/content/dam/bangladesh/docs/Projects/JUST/Final%20JUST%20Prodoc.pdf>

<sup>8</sup> Ibid

litigant public”.<sup>9</sup> The same question is now already being asked with regard to justice-seekers in Bangladesh and being answered in the negative. Livingston Armytage, a leading academic in the field of judicial reform, and incidentally a former adviser to UNDP’s justice sector projects in Bangladesh, opines in one of his unpublished reports on the Bangladeshi reform efforts that delay is rather a symptom of a *bigger* problem. In his book, *Reforming Justice*, he describes reforms aiming to improve efficiency as *thin* or procedural notions of justice only, thus only scratching the surface of what justice should be.<sup>10</sup>

What is then a *thick* notion of justice? Armytage defines justice as “the notion of rightness built on law, ethics and values of fairness and equity which are foundational to civic well-being”.<sup>11</sup> This definition of justice apparently resonates well with modern philosophers John Rawls and Amartya Sen. Rawls in his book *The Theory of Justice* propagates the *difference principle* from which it can be derived that an action can only be termed as “just” only as long as it is of greatest benefit to the least-advantaged members of society.<sup>12</sup> Sen takes Rawls’s notion of justice one step further to argue that justice lies in expanding people’s *real* freedoms and rights.<sup>13</sup> Sen through his *capability approach* argues not only for “public goods” to be made available to the least-advantaged, but also advocates for their capabilities for enjoying those “goods” (in this case, justice) to be enhanced through empowerment.

As things stand now, judicial reform efforts in Bangladesh fall short of promoting or achieving justice in any but a *thin* sense of the word. While “pro-poor” rhetoric has been casually inserted into project designs, especially by the UNDP, proposed outputs of the project have mostly failed to reflect issues relating to vulnerable groups. If Sen’s standard is used as the benchmark, the gap between what reform projects are aiming to do and what will actually constitute justice is even wider. Not only are the disadvantaged groups not directly benefited, there is little effort to empower them to reap any benefits of reform either. Delay reduction and efficiency only tackle a single problem in the greater array of problems in delivery of justice.

<sup>9</sup> Siddique, O. (2013) op. cit.

<sup>10</sup> Armytage, L. (2012). *Reforming Justice: A Journey to Fairness in Asia*. New York: Cambridge University Press

<sup>11</sup> Ibid

<sup>12</sup> See Rawls, J.A. (1971). *A Theory of Justice*. Cambridge, MA: Harvard University Press

<sup>13</sup> See Sen, Amartya (1999). *Development as freedom* (1st ed.). New York: Oxford University Press.

### **Alternative Approaches to Reform**

As an alternative to the current approach, it may be argued that for judicial reform to be “just” and for it to really work, it must be part of a broader agenda of development. The judiciary cannot be reformed in a vacuum away from all the economic, social and political problems that it works within as it strives to deliver justice. Amartya Sen, speaking on the role of judicial reform in development, quoted Benjamin Franklin (albeit out of context) to have said: “Yes, we must all hang together, or most assuredly, we shall all hang separately”.<sup>14</sup> Sen’s core message, and now increasingly, the view in the international donor community, is that judicial problems come with a context and cannot be solved without an integrated and coordinated approach that addresses the core problems of a society.

It has so far been assumed that simply by ensuring better “access” through a more “efficient” court system, a bridge can be built to the idea of equal protection of all under the law. The assumption that an efficient system is also “competent” and equitable” is fast coming to light as a wrong one. Osama Siddique, again writing about a similar phenomenon in Pakistan, wrote “this conveniently unnuanced visualization of the judge as a monolithic, homogenous, and predictable machine-like instrumentality is of course highly problematic.”<sup>15</sup>

It is arguable that creating the linkage of judicial reform with a broader agenda of development will fill the ideological lacuna that judicial reform in Bangladesh now experiences. The question of *why* judicial reform is needed then will not be as difficult a question to answer. Judicial reform can be brought out of the small box of “efficiency”, which at best has a trickle-down effect on the disadvantaged groups of society, and be placed in Bangladesh’s already strong and ideologically-backed development agenda.

The development approach is far simpler to grasp. The goal of judicial reform must be to provide a “just” system where the benefits of a judicial system are made available even to the least advantaged of a society, and as Sen would argue, the least advantaged must be then empowered to *really* enjoy the fruits of reform.

For such a system to exist, besides being quick, other factors must be present in a judicial system. This paper argues that the system must also be firstly, fair. Ensuring fairness is no mean feat; it involves ensuring

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<sup>14</sup> Sen, Amartya (2000) op. cit.

<sup>15</sup> Siddique, O. (2013) op. cit.

equal opportunities for all sides to be heard with the same regard and justice to be done in accordance with fair and just laws. This is difficult for a number of reasons. The quality or veracity with which a case is argued on behalf of a side is most often determined by the resources available to them, which creates an imbalance. The judge, himself, cannot be looked at as living in a vacuum. His birth, upbringing, education and views about society inevitably dictate his reasoning. Most significantly, the professional integrity especially in the lower tiers of the judiciary is now under a giant threat. An ideologically backed judicial reform agenda must address these inherent biases that impede the fairness of the justice delivery system.

Secondly, the system must be *independent*. The Project Document of UNDP's Judicial Strengthening Project, implemented in partnership with the Supreme Court of Bangladesh, had identified "external interference in the administration of justice" as one of the problems it sought to resolve, although ultimately, it was not reflected in its proposed outputs.<sup>16</sup> It is extremely important that a decision-maker, while delivering justice, be independent of systemic and institutional constraints.

UNDP's agenda of supporting the creation of a "Judicial Secretariat" has kept the conversation of administrative independence alive despite soft resistance from the Government. However, such a problem will not simply be solved by a technical separation of the judiciary from the executive, as has been realised through implementation of the Masdar Hossain judgment.<sup>17</sup> But a *real* independence is required both for the institution (from the executive) and for individual judges within the institution (from pressures within the institution).

Thirdly, the system must be *understandable* to those using it. The justice-seeker must be enabled to understand the basic complexities of the procedural and substantive laws and more importantly her rights under the system. Without knowing her rights, she cannot be expected to be benefitting from them. A judicial system which is understandable to every member of a society is one which has empowered each of them to truly assert their rights. Reform efforts have not directly targeted this area so court rules, procedures and practical processes remain extremely user-

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<sup>16</sup> United Nations Development Programme (2012), *Project Document: Judicial Strengthening Project*. Retrieved from <http://www.bd.undp.org/content/dam/bangladesh/docs/Projects/JUST/Final%20JUST%20Prodoc.pdf>

<sup>17</sup> Secretary, Ministry of Finance v Masdar Hossain (1999) 52 DLR (AD) 82

unfriendly and full of jargon. However, UNDP supported efforts have some notable achievements like creating an updated online database of all laws and piloting online cause-lists with result updates in some districts and the Supreme Court.

Fourthly, the justice system must be *affordable* and *inexpensive*. Even if all the previous conditions are fulfilled, the least-advantaged of society will still be prohibited from accessing the fruits of justice if the costs of access are beyond their means. The state-funded National Legal Aid and Services Organisation has a growing base but is still underutilized due to problems of awareness and poor service, but NGO-led legal aid has better service albeit in limited geographical scale. Donor interventions in providing support, to the NLASO and NGOs, are a step in the right direction. But such demand-side action must also be coupled with supply-side interventions in making the system cheaper as not all will be able to access legal aid.

In conclusion to this section, it may be reiterated that Bangladesh's judicial reform agenda, as things stand, is obsessed with an efficiency-centric approach. This approach has neither been able to deliver results, as it appears from the unsuccessful World Bank endeavour, nor does it have the ideological backing to achieve a meaningful result which can be called "just". This paper has argued for an alternative approach grounded in the idea of judicial reform as part of the broader development process and having the ultimate goal of empowering the least-advantaged of society and creating a level-playing field where the litigant-public can *really* enjoy the benefits of reform.

### **How to Achieve the Reform Objectives?**

Upendra Baxi writing about judicial reform in India describes it as something almost always emanating from the "governing elites".<sup>18</sup> Things are not very different from the Bangladesh perspective. The evaluation of the World Bank project reveals that the project was designed and funded upon a request of the Government. It neither acknowledged any civil society calls for reform nor any public opinion for it. Although subsequent UNDP projects at the designing phase engaged in long consultations with stakeholders, the higher tiers of the judiciary and government dominated the consultations. More worryingly, the UNDP projects directly working with the judiciary, which are still ongoing, only rarely engage with civil society, and public perception surveys have only been mere formalities.

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<sup>18</sup> Siddique, O. (2013) op. cit.

The World Bank project, as has been mentioned repeatedly, was an unsuccessful endeavour as revealed by its own evaluation. However, the subsequent UNDP-funded projects do not seem to have learned from its mistakes, and although they have not yet ended or been evaluated, demonstrable and sustainable impacts are difficult to show. The Government's own initiative of reform of the Civil Procedure Code in 2003, notably limiting number of adjournments, and a much more lobbied reform in 2012, notably attempting to introduce mandatory mediation, have also seen little success so far. Arguably, judicial reform efforts in Bangladesh have suffered from two fundamental problems. The first problem has been the lack of an inclusive and participatory approach and secondly, an unaddressed institutional incentive structure.

### ***Inclusive and Participatory Approach***

Within the first problem of lack of participation, two groups can be identified as potentially having important roles in the reform process but have been left out – the implementers of reform at the ground level and civil society. Judicial reform is primarily implemented by judges, and secondarily by court staff, police, lawyers, and prisons, among others. The World Bank evaluation unearthed dissatisfaction among court staff, lawyers and even judges in the pilot courts of the project regarding the reforms. The report noted lawyers describing a newly installed Central Filing System (CFS) as having created just another table where money had to be paid.<sup>19</sup> In the ongoing UNDP projects, interviews with judges revealed the dissatisfaction with the number of hours they had to work beyond regular hours without overtime in order to fill-up an online cause list in addition to the mandatory paper cause list everyday.

It has been found from the author's experience that during implementation of the UNDP projects, inputs from junior judges are rarely sought let alone be considered. The projects took the direction the the top tier of judiciary and Government wanted it to take. The problem is even more grievous when it comes to participation of civil society. Reform in the judiciary, in comparison to other state institutions, has been an extremely secretive affair as the judiciary has long considered it beneficial to appear to be above criticism. This has led to very negligible civil society participation at design, implementation and evaluation stages of judicial reform efforts. Addressing specific issues through judicial reform, notably violence against women, have been campaigned for by the civil society but it has kept mostly silent in areas of substantive

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<sup>19</sup> The World Bank (2010), *Implementation Completion and Results Report* (Report No: ICR00001200), Dhaka: The World Bank.

reform. Most unfortunate is the lack of participation of the Bar, which is arguably the single most vital civil society actor in any judicial reform process. The Bar's lack of participation is arguably caused by its strong divide along partisan lines coupled with the judiciary's general closed-door attitude to reform.

The lack of participation of civil society and the key stakeholders have created two major weaknesses in the reform projects so far. The first and simpler weakness is to do with quality and effectiveness. No one is more versed in the problems of a judicial system than the ones who implement them on the ground. These very important voices found little audience in the design phases of the reform agenda as outputs and targets were determined by, as Baxi puts it, the "governing elites", making the reforms inherently technocratic. More often than not, governing elites are also likely to protect the status quo which they benefit from, instead of turning a system upside down even if that is the correct thing to do. Effectiveness of reform was also compromised as implementers demonstrably felt no ownership over them. The prevailing impression carried by junior judges, as expressed to this author, is that the people in charge of setting the reform agenda know little about the constraints they have to face to make it work.

The second and deeper weakness of non-participative reform efforts is the voicelessness of the people. Often, in the conversation of judicial reform, it is forgotten that the ultimate beneficiaries of a "just" judicial system are the people. Since judicial reform is an indivisible part of the political, social and economic alleviation of a society, the litigant public is the biggest stakeholder in the reform process. But yet, it is also the most ignored. The non-participation of civil society means that the fruits of reform are often run dry by the institution itself before they can trickle down to the people. The lack of external oversight creates a lacuna which is often taken advantage of by the national implementing agencies.

Some attempt to promote participation at the implementation stage has been made through "Case Management Committees" in the district level which involve representatives of all justice sector institutions including the Bar. However, the litigant-public is unrepresented except indirectly through the Bar leaders who primarily attend to represent interests of the Bar as opposed to the people. Furthermore, sustainability of these committees, which are supported by UNDP, is yet to be tested. At the Supreme Court level, similar committees exist albeit without any external participation, thus evidencing the problems stated in this section.



### *Incentives for Reform*

The reform projects have often jumped into ambitious ideas without considering existing incentive structures existing in the judicial institutions. This can partly be attributed to the Government and Judiciary alike who have kept reforms of the incentive structure off-limits to external donor-funded projects. One of the first rules of the game this author learned was that projects “must not talk about salaries”. Yet, the financial incentive structure for implementers is perhaps the most important variable in the effectiveness of a reform project. As salaries cannot be enhanced, projects have historically tried to compensate with ad-hoc trips, honorariums and so on, but inadequately and sometimes inappropriately so.

Furthermore, the incentives issue does not end at financial incentives. Arguably, a judge joins the profession knowing fully well that she will not earn as much as a lawyer, but does so for the honour, respect and appreciation the job carries. The practical manifestations of this appreciation are promotions and awards based on merit and hard-work. As things stand in the judicial system, merit-based promotions are uncommon and ad-hoc appreciation in the form of awards are non-existent. In fact, one could argue that the opposite is true. A judge interviewed by this author expressed fear to this author that he would be transferred to a remote area if he was strict in court with politically-connected members of the Bar. It is arguable that promotions and transfers are less based on merit and more on other considerations. While such an incentive structure exists, reforms become extremely difficult to implement as the implementers have little incentive to see the reforms succeed, especially when the reforms never aim to protect or save them from the existing power-plays.

In conclusion to this section, it may be argued that reform efforts need to embrace a participatory-approach involving key stakeholders to see success. The problems of attempting reform in a “command-and-control” environment are already manifested in lack of ownership of reforms and a serious lack of effectiveness in current and concluded reform projects. The reform efforts in Bangladesh have erred in their designs because of this and again erred in implementation without the participation of external observers. This can only be solved with an inclusive participatory approach to reform which is accountable to its primary beneficiaries – the people. Another major drawback in reform efforts has been the unaddressed incentive structure which is far from being conducive to reform. With the apparent inexistence of merit-based appreciation of judges and other implementers, there is little incentive for them to carry out the necessary reforms in the ground-level. Any reform effort, to be successful, needs to address this and create positive and appropriate incentives at all levels.

# 8 An Overview of Alternative Dispute Resolution from Sociological Jurisprudence

Mohammad Mamunur Rashid

## Introduction

Sociology, inter alia, a comprehensive social science, deals with many issues along with law, which is inextricably related to the external behaviour of the beings. Within the scope of sociology, there are law and policy, society, economy, life styles of *homo sapiens*, what have become inevitable for the expression of total human nature, that require to accept all either for professional field, or knowledge dissemination in formal or informal systems.<sup>1</sup> Sociology of Law (referred hereafter as SOL) is the branch of Sociology. SOL or sociological jurisprudence studies human behaviour, historical traditions, social patterns determined by ethico-legal norms.<sup>2</sup> Though it is not a very new field of studies/research, there is serious confusion about its scheme for the conflicting elucidation of laws, norms, ethics, values, politics and above all the social dynamisms by different theorists.<sup>3</sup> Sociology and Law (SAL), both are social sciences having diverse branches. We work on the room of SOL as it becomes a unique branch in the meantime. As law is the cultural force and has been imposing with no territorial boundaries the different norms upon the people depending on the individual will, jurisprudences or theoretical study intends to elaborate different norms.<sup>4</sup> Emergence of SOL as new different science is very positive. Alternative Dispute Resolution (referred hereafter as ADR) has originated to speed up the trial, make our system cost-effective, and reduce judicial complexities.<sup>5</sup> Practice of ADR is not unlikely even in the developed countries as the administration of justice universally encounters crises of confidence.<sup>6</sup> The Supreme Court of India firmly convicted and displayed in that erosion of faith and dignity of the court in dreary and disillusioned conditions, and inability of

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<sup>1</sup> Cotterrell, Rogger, *The Sociology of Law An Introduction*, Second Edition, Butterworths, London, Dublin, Edinburgh, 1992, p. 5.

<sup>2</sup> N. S. Timaseff, Article titled What is Sociology of Law in American Journal of sociology, Vol. 43, No. 2, (Sep-1937), P. 222.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Report of Lord Wolf prepared in 1995, visit: (<http://www.legco.gov.hk/yr06-07/english/bc/bc57/papers/bc570611cb2-1960-e.pdf>), visited on 04-10.2015.

<sup>6</sup> Huq, Naima, "ADR: Recent changes in the Civil Process", in Dhaka University Studies, Part F, Vol. XV (1), June, 2004, p. 37, she quoted it from AIR 1988 SC, 1208 at p. 1217.

the court to deliver justice to the needy people due to the tendency of winning game of the advocates<sup>7</sup> and judges cannot escape the responsibility of not accomplishing role for ensuring justice except as mere trial manager.<sup>8</sup> All these are reasons of the creation of ADR and societal in nature. Long and old tradition, informal justice dispensation system through village court has played significant role for emerging ADR.<sup>9</sup> The objectives of the article are to analyze the ADR from sociological jurisprudence to find out the loopholes to make it more society friendly. With view to these, it would try to analyze the *social dimensions* of ADR laws in different angles, which seriously impact upon the application of ADR, as well as way forward of the people to have access to justice and ends of justice. Finally I would try to recommend what changes are required here to improve the ADR laws in Bangladesh.

### **Sociology of Law (SOL): What does it mean?**

SOL has been drawing attention of the theorists, lawyers, judges and academicians seriously for long time as it deals with legal, social, economic and political aspects simultaneously. It is a multidisciplinary area of research situated between jurisprudence and social sciences as an interrelationship of legal practices, institutions, doctrines and social contexts.<sup>10</sup> Generally from the term, SOL may be branch of sociology and law despite having disparities among the scholars. One of the groups considers SOL as branch of sociology; other considers it as the branch of legal studies. It is neither a branch of sociology nor a branch of law rather it is branch of research. However, it is true that it remains intellectually dependent on its own traditions, methods and theories of the mainstream sociology nevertheless it less likens to empirical studies.<sup>11</sup> SOL is not philosophy rather it attempts to use the various social aspects to study the role of law as a living force for the social betterment.<sup>12</sup>

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<sup>7</sup> Ibid.

<sup>8</sup> Huq, Naima, "ADR: Recent changes in the Civil Process", in *Dhaka University Studies, Part F, Vol. XV (1), June, 2004*, she explained it with reference to Access to Justice, Interim Report, 1995, p. 39, cited is Slapper, Gray & Keily David, (2001), *The English Legal system*, Cavendish Publishing Limited, London, p. 258.

<sup>9</sup> See, Kulshreshtha V. D., *Landmark in Indian Legal and Constitutional History*, 4<sup>th</sup> edition. Eastern Book Company, Lucknow, 1977, pp. 6-25.

<sup>10</sup> (<http://www.helsinki.fi/law/disciplines/sociology-of-law/index.html>), last visited on 10-09-2015.

<sup>11</sup> Bankar, Reza and and Travers, Max, 'Introduction: Law and Social Theory', posted in the Social Science Research Network (SSRN), on August 12, 2013, p. 1-12. See for details for details: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1511112](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1511112) last retrieved on 14-02-2016.

<sup>12</sup> Gardner, James A, 'Sociological Jurisprudence of Pound, Roscoe (Part 1)' in *Villanova Law Review*, vol. 7, Fall 1961, Number 1, p. 1, see for details <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1522&context=vlr>, last retrieved 07-10-2015.

The practical objectives of the sociological jurisprudence have been formulated by Pound as follows:<sup>13</sup>

- (1) A study of the social effects of legal institutions, legal precepts and legal doctrines, of the law in action as distinct from the law in books.
- (2) A sociological study as an essential preliminary step in law making.
- (3) A study to ascertain the means by which legal rules can be made effective in existing conditions of life, including the limits of effective legal action.
- (4) An Attempt to understand the actual growth of the law by a study of the judicial methods and modes of thought of the great judges and lawyers.
- (5) A sociological legal history of the common law, for studying the past relations of law to then existing social intuitions.
- (6) Individualizations of the application of legal rules so as to take account of the concrete circumstances of particular cases.
- (7) The establishment of a 'Ministry of Justice' by the states to participate in this region.

Due to its significance in theory and practice, SOL has possessed its status in academic area either as independent discipline or sub-discipline. Whatever the status of law in sociological perspective is? To sustain social control, ensure disciplined environment in the society, accelerate the justice above all considering economic and political interest significantly, sociological analysis of law is essential.

### **What does Alternative Dispute Resolution (ADR) Mean: Is It Misnomer or Replaceable to Court System?**

Alternative Dispute Resolution (ADR)<sup>14</sup>, 'means of settling disputes outside of the court room'<sup>15</sup>, or less formal and flexible,<sup>16</sup> or 'any method sought for resolving disputes other than by way of litigation'<sup>17</sup> or

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<sup>13</sup> Ibid, p. 10.

<sup>14</sup> ADR is known in some countries, such as Australia, as an external dispute resolution.

<sup>15</sup> Warrier, Vishnu S, *Arbitration, Conciliation & Mediation*, LexisNexis, 2015, p. 1.

<sup>16</sup> Halim, Md. Abdul, Barrister-at-Law, *ADR in Bangladesh Issues and Challenges*, CCB Foundation: Lighting the Dark, Fifth Edition, April, 2014, p. 35.

<sup>17</sup> Supra note 15.

‘collective term by which the parties to any dispute can settle the issues, with or without the help of a third party’<sup>18</sup> comprising by different processes and techniques functioning as means to come to an agreement short of, or alternative to, full scale court processes or judicial process,<sup>19</sup> has achieved widespread popularity and acceptability for resolving civil and commercial cases in national and international levels respectively providing the parties with the opportunities to lessen hostility, conflicts in a friendly and amicable manner for ensuring the greater ends of justice in individual level.<sup>20</sup> ADR, alternative to formal litigation, might be free-standing (non-judicial), court annexed (judicial), binding or non-binding, formal or informal, mandatory or voluntary in nature. In few countries, courts require parties to resort to ADR before coming to court for trial.<sup>21</sup> Since ADR might be done by mediation, arbitration, conciliation, settlement, (named as beyond adversarial model,<sup>22</sup> or ‘alternative to ... forms of adversarial litigation’<sup>23</sup> external dispute resolution).<sup>24</sup> In Bangladesh, mediation has been inserted in procedural stages of civil cases. For instance, the courts trying civil matters require referring the matter for mediation before the peremptory hearing. Use of word ‘shall’ make this procedure compulsory for the judge to refer the issue for mediation.<sup>25</sup> Despite the selection of the mediator (adjudicator of each type of ADR) has raised, in some cases, varied types of questions due to practical inconveniences. An Appellate court may also refer appeal for

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<sup>18</sup> Ibid.

<sup>19</sup> Supra not 16, p. 31.

<sup>20</sup> Supra note 15, basically ADR has been introduced for the ends of justice and access to justice. For example in Bangladesh, people who are poor, weak, and disadvantaged and more particularly women, face innumerable obstacles in accessing justice from more formal organs, which are plagued by corruption delay, complicated procedures. See, Khair, Sumaiya, “Alternative Dispute Resolution: How It Works in Bangladesh” in *Dhaka University Studies, Part-F*, Vol XV(1), June 2004, p. 59.

<sup>21</sup> European Mediation Directive (2008) requires the parties to come before court for trial in civil and corporate matters after doing endeavor for remedy by mediation. This has been analyzed under the title ‘WHAT DOES THE DIRECTIVE DO and key points’, in this webpage <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:133251>. This page has been dedicated from European laws. It has been last accessed on 28-08-2015. The Directive applies to cross-border disputes in civil and commercial matters, with the exception of revenue, customs or administrative matters or the liability of the State for acts or omissions in the exercise of state authority. It does not apply in Denmark.

<sup>22</sup> Menkel-Meadow, and Carrie J (eds.), *Dispute Resolution: Beyond the Adversarial Model*, Second Edition (Aspen Casebook Series), p.

<sup>23</sup> Supra note 15, p. 1

<sup>24</sup> This is used in many countries especially in Australia.

<sup>25</sup> Section 89A(1) of the Cod of Civil Procedure, 1908.

Mediation.<sup>26</sup> Even the parties to suit may apply for settling the suit mediation even if the suit is pending before the court before the commencement of the Code of Civil Procedure (Amendment) Act, 2012.<sup>27</sup> In this respect section 89A and 89C are applicable as if they were not amended.

Despite the ADR is evolving as an alternative to the legal system, inclusion of different mechanisms of ADR in the usual court system does not replace court system rather it strengthens or further legitimacy of usual judicial system. ADR may function when the usual court system fails to function properly.<sup>28</sup> In traditional justice system, the advocates control the contents of disputes, unlikely in ADR systems; parties have the opportunities to control the contents of the disputes.

Due to differences in the application, ADR is misleading and it is not always alternative to litigation.<sup>29</sup> Sometimes it is part of litigation and court connected or only way of resolving the dispute. Professor Thomas J. Stipanowich explains that name of ADR is an outmoded and it survives only because of its convenience.<sup>30</sup> California Taskforce quoted that ‘alternative’ is not appropriate here rather ‘method best suited to resolving the dispute’... is the most suitable.<sup>31</sup> Professor Jean R. Sternlight has preferred the phrase ADR as ‘Appropriate Dispute Resolution’ rather than ‘Alternative Dispute Resolution.’<sup>32</sup> To clarify the definition of ADR, it is necessary to define every kind of ADR differently. The following are types of ADR.<sup>33</sup> ADR has originated from the social phenomenon such as failure of the court to accommodate the complexities of the disputes and human beings; classification of ADR

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<sup>26</sup> Ibid, Section 89C, *ibid*.

<sup>27</sup> Section 89D, *ibid*.

<sup>28</sup> Chowdhury, Dr. Jamila A., *ADR Theories and Practices A Glimpse on Access to Justice and ADR in Bangladesh*, London College of Legal Studies (South), 2013, p. 42.

<sup>29</sup> *Supra* note 16, p. 31.

<sup>30</sup> Thomas J. Stipanowich, ADR and the ‘Vanishing Trial’: The Growth and Impact of “Alternative dispute Resolution”, *Journal of Empirical Legal Studies, Volume 1, Issue 3, 834-912*, November 2004 at page 845.

<sup>31</sup> Report of Task Force on the Quality of Justice Subcommittee on Alternative Dispute Resolution in Civil Cases 3 (1999) (hereinafter California Report on ADR in Civil Cases).

<sup>32</sup> Sternlight, Jean R, *Is Binding Arbitration a Form of ADR?: An Argument that the Term “ADR” has began to outlive its usefulness*, 2000, J. disp. Resol. 97. See also her article, *Is Alternative Dispute Resolution Consistent with the Rule of Law?*, 56 De Paul Law Review 569 (2006), Willaim S. Boyd School of Law, University of Nevada, Las Vegas at page 569.

<sup>33</sup> *Supra* note 16, 32.

would not reflect or demonstrate the proper name of ADR. Only natures of ADR have been given here to room all ADR.

### **(a) Freestanding or court annexed ADR**

ADR may either be defined freestanding or court annexed. When the ADR is tied to law suit or court case then it is called court annexed ADR (judicial ADR). In this respect, taking resort to ADR is conditional to court process.<sup>34</sup> On the other hand, freestanding ADR has no relationship with court cases.<sup>35</sup> Freestanding ADR may be (i) Commercial Arbitration; and (ii) Local or Community based ADR.<sup>36</sup>

### **(b) Binding or non-binding ADR**

When any decision of ADR is obligatory for the parties by way of statute, or court, that is called binding ADR, On the other hand, when the decision of ADR depends upon the willingness of the parties to the dispute is called non-binding or voluntary ADR.<sup>37</sup>

### **(c) Formal or Informal ADR**

In compare to formal court proceedings, ADR is more flexible and less formal. Nevertheless, ‘when a particular ADR mode is court annexed and it tends to be more formal in the sense that its records and proceedings may be required to be presented before the court’.<sup>38</sup> Salish (Arbitration) or conciliation<sup>39</sup> or mediation<sup>40</sup> may usually be formal when the court intervenes through the ADR procedures. Practically impacts of these ADR are different.<sup>41</sup> Besides these, settlement conference and mini-trial are informal ADR.

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<sup>34</sup> Ibid, p. 32.

<sup>35</sup> Ibid, p. 33.

<sup>36</sup> Ibid, p. 33.

<sup>37</sup> Ibid, p. 35.

<sup>38</sup> Ibid, p. 35.

<sup>39</sup> see *Arbitration, Conciliation & Mediation, Vishnu S Warriar*, LexisNexis, 2015, p. 117.

<sup>40</sup> Mediation under this section [Explanation of the section 89A(13)] shall mean flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which the mediator shall facilitate compromise of disputes in the suit between the parties without directing or dictating the terms of such compromise. Compromise under this section shall include also compromise in part of the disputes in the suit.

<sup>41</sup> See, Halim, Md. Abdul, Barriser-at-Law, *ADR in Bangladesh Issues and challenges*, CCB Foundation: Lightning the Dark, Fifth Edition, April 2014, p. 41.

#### **(d) Basic and Hybrid ADR**

Basic ADR is one of the processes that include negotiation, conciliation, mediation, and arbitration. Hybrid ADR processes include specific elements of the ADR combined to create a wide variety of ADR methods. Hybrid processes may also accommodate natures and characteristics found in court based adjudication; for example, the mini-trial mixes an adjudication-like presentation of arguments and proofs with negotiations.<sup>42</sup>

#### **Diverse Sociological Paradigms of ADR: From Theoretical Perspectives and Statutory Evidence**

##### **(a) Importance of Alternative Dispute Resolution from Philosophical Perspective:**

It is really illogical to explain the importance of any law on the basis of insertion of that law by many statutes rather such statutes accommodate that because of its significance. ADR has become inextricable part of the legal system of Bangladesh (very likely to many other countries) that about more than 10 statutes has accommodated this technique. Economic, social, cultural, political and procedural vantages are the root causes for introducing ADR. Except few court annexed formal ADR, ADR, an alternative to the formal adjudication or litigation<sup>43</sup> though ADR is contradistinction formal litigation or adjudication based on two important aspects i.e. attaining consensual solutions to a problem with a win-win strategy and handling the process and outcome of the dispute resolution with no third party intervention.<sup>44</sup> Since ADR has originated from the social necessity, it not only deals with dispute but also addresses the emotions of the parties involved in the dispute.<sup>45</sup> Due to complex and time consuming procedure of the formal litigation or adjudication, social values, norms<sup>46</sup>, equity are clearly ignored in the formal litigation whereas ADR is founded upon the justice, social norms, relationships, status, social ties, and values.<sup>47</sup> Few countries of the world have set examples where ADR is conducted more according to the social norms

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<sup>42</sup> Ibid, p. 37.

<sup>43</sup> Ibid, p. 22.

<sup>44</sup> Berlin, Peter Lang, 'Mediation: A Necessary Element in Family Dispute Resolution?', 1994, p. 37.

<sup>45</sup> Indian Law Commission, *Need for Justice-dispensation trough ADR etc.*, Report No. 222. April, 2009 at page 24.

<sup>46</sup> See for details: E. Scott, Robert, *The Limits of Behavioral Theories of Law and Social Norm*, 86 Va. L. Rev. 1603-04.

<sup>47</sup> Supra note 33, p. 591.



than strict laws.<sup>48</sup> Justice includes the respect towards social norms, harmony and social equality and individual rights, so ADR being consistent with the social norms is part of the justice and rule of law.<sup>49</sup> Law may serve justice as the justice is broader than law. It also serves the purposes of the ‘Law should govern’ written by Aristotle.<sup>50</sup>

### **(b) Alternative Dispute Resolution (ADR): Rule of Law**

The rule of law is the legal principle that law should govern a nation, as opposed to being governed by arbitrary decisions of individual government officials. The phrase can be traced back to 16th century Britain, and in the following century the Scottish theologian Samuel Rutherford used the phrase in his argument against the divine right of kings. Albert Dicey laid out three principles of the rule of law in his 1885 book *An Introduction to the Study of the Law of the Constitution* i.e. (i) everyone is equal before the law; (ii) no one can be punished unless they are in clear breach of the law; and (iii) there is no set of laws which are above the courts.

Rule of law, the foundation of a civilized society,<sup>51</sup> refers to the principle whereby all members of a society including people in government are considered equally;<sup>52</sup> an enabler of justice and development, a culture and daily practice, inseparable equality, access to justice and education, access to health and the protection of the most vulnerable and crucial for the viability of communities and nations, and for the environment that sustains them. It expects the government which will ensure officials and their agents are accountable under the law which are clear, publicized, stable, fair, and have authority to protect fundamental or constitutional rights ensuring an independent, impartial judiciary considering the presumption of innocence until anybody is proved as guilty, the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict

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<sup>48</sup> Ibid.

<sup>49</sup> Supra note 16, p. 25.

<sup>50</sup> Round, Roscoe, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 Am. L. Rev. 732-733.

<sup>51</sup> *Commentary on the IBA Council ‘Rule of Law Resolution of September 2005 adopted by the International Bar Association on October 8 2009*, p. 2, available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=A89CFFB1-BD4A-445C-8CAB-553AF21BD7A7>, last accessed on 10-09-2015.

<sup>52</sup> Rule of law been defined here. Even the constitutional differences in different countries in defining rule of law is obviously visible here. Available at <http://legal-dictionary.thefreedictionary.com/Rule+of+Law,+the+and> last accessed on 22-09-2015.

protection of confidential communications between lawyer and client as preconditions. Arbitrary arrests; secret trials; indefinite detention without trial; cruel or degrading treatment or punishment; intimidation or corruption in the electoral process, are all unacceptable in the spirit of the rule of law. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that liberates and protects rights of the individuals with no inequality.<sup>53</sup>

Plato advocated for benevolent monarchy administered by the idealized philosopher king who was above law. Though Plato did not hope that the best men would be good at respecting and establishing laws if law is subject to any authority. In that case, no one will take the responsibility to protect the state from its collapse. Hence Plato indeed expected that law should be the master of government and Government should be the slave of the law. Then the situation would be full of promise and men would enjoy the blessings that the Gods shower on a State. Aristotle opposed the placement of the highest officials beyond law. He expected that government should work on principle.<sup>54</sup> Cicero thought that all are the servants of the laws in order that we may be free.

According to the Roman statesman Cicero, "We are all servants of the laws in order that we may be free." During the Roman Republic, controversial magistrates might be put on trial when their terms of office expired. Under the Roman Empire, the sovereign was personally immune (*legibus solutus*), but those with grievances could sue the treasury.

In China, members of the school of legalism during the 3rd century BC argued for using law as a tool of governance, but they promoted "rule *by* law" as opposed to "rule *of* law", meaning that they placed the aristocrats and emperor above the law. In contrast, the Huang-Lao school of Daoism rejected legal positivism in favor of a natural law that even the ruler would be subject to.

There has recently been an effort to reevaluate the influence of the Bible on Western constitutional law. In the Old Testament, there was some language in Deuteronomy imposing restrictions on the Jewish king, regarding such things as how many wives he could have, and how many horses he could own for his personal use. According to Professor Bernard M. Levinson, "This legislation was so utopian in its own time that it

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<sup>53</sup> Supra note 52.

<sup>54</sup> See for details: <http://www.nlnrac.org/classical/aristotle> accessed on 12-09-2015.

seems never to have been implemented...." The Deuteronomic social vision may have influenced opponents of the divine right of kings, including Bishop John Ponet in sixteenth-century England.

According to the functional view, a society in which government officers have a great deal of discretion has a low degree of "rule of law", whereas a society in which government officers have little discretion has a high degree of "rule of law".<sup>55</sup> The rule of law is the legal principle that law should govern a nation with no arbitrariness and guides to develop environment to govern according law equally including the law makers themselves. This term is similar to the concept of Aristotle 'law should govern'. It opposes to the autocracy, collective leadership, dictatorship, or oligarchy and likens to the nomocracy. The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

Whether ADR is consistent with the rule of law or not is controversial matter. In this regard, we see two divisions of thoughts. One side of these schools explain that informal and private nature of ADR is antagonistic to the rule of law and justice as it does not allow application of rules envisioned by Lon Fuller and other rule of law advocates.<sup>56</sup> It is concern for the people accepting ADR as antagonistic to the rule of law or justice is that ADR allows the powerful people to do injustice towards the less powerful people like women. On the other hand, who are willing to say that ADR is instrument to modernize the legal system and accelerate the rule of law.<sup>57</sup> Considering this promise, many national and international organizations use or expect to use the ADR for the

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<sup>55</sup> Stephenson, Matthew, Rule of Law as Goal of Development Policy, World Bank Research (2008),

<sup>56</sup> Basically Lon Fuller did not want accept the distinction between law and morality. He thought the law morality are the same in its nature. See for details: <http://www.gulawreview.org/entries/legal-theory/the-%E2%80%98inner-morality-of-law%E2%80%99-an-analysis-of-lon-l-fuller%E2%80%99s-theory>. Last accessed on 12-01-2016.

<sup>57</sup> Supra note 33..

resolution of the dispute and facilitate the justice to the people.<sup>58</sup> Now there may arise a question that why ADR is essential in spite of its inconsistency with the rule of law. It might be answered that ADR is essential as to make the law more efficient, effective, and fruitful and responding to the demands of the society.<sup>59</sup>

### **(c) Alternative Dispute Resolution: Access to Justice**

Access to justice is one of the fundamental conditions of the establishment of the rule of law in a society. Justice and 'Access to Justice' are two things. Sometimes 'justice' is said to be the goal and access to justice is the means to the goal. In usual or narrower sense the term 'access to justice' means access to litigation or access to courts of law i.e. access or scope of opportunity for bringing a matter of dispute to the courts and tribunals.

However, in broader sense, the term is much wider than this. The UNDP practice note on access to justice gives some broad ideas with regard to this. It specifies that access to justice is much more than improving an individual's access to courts or guaranteeing legal representation. Access to justice means to facilitate and strengthen the formal and informal mechanisms of justice to all with just and equitable judicial outcomes of legal system especially poor and marginalized. Now we may define 'access to justice' means meaningful access or right of every people to seek remedy from formal or informal institution with fairness, cost-effectiveness, accountability, reasonableness adequately and satisfactorily.<sup>60</sup>

From the above definition it can be understood that unusual delay and strong compliance with technical complexities, the ADR might be helpful for ensuring ends of justice. Since the usual legal system is time consuming, money consuming, complex, deceptive, politically motivated, corrupt, biased to particular section of the society and inaccessible to the poor. ADR might be helpful for the lawyers, judges, and parties to the proceedings, and contribute to the revenue of the Government by the lessening the backlog of the cases required for ensuring access to justice. ADR has originated philosophically to ensure win-win and cheaper,

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<sup>58</sup> Supra note 16, p. 26.

<sup>59</sup> *Law Commission of India, Reforms in the Judiciary-Some Suggestions, Report No. 230, August, 2009, at page 23.*

<sup>60</sup> Supra note 16, p. 16.

affordable outcome, social binding, social values and norms, consensual outcome.

**(d) Importance of ADR: Accommodation of ADR in Different Statutes**

About more than about ten 10 laws have placed the ADR or informal resolution procedures. This proved the serious importance of the ADR. The first step can be traced back to the Bengal Regulation Act, 1772, in this law, parties are to submit the same to arbitrator whose decision are deemed a decree and shall be final. The Regulation Act, 1781 envisaged that judges should recommend the parties to submit the disputes to mutually agreed person and no award of arbitrator could be set aside unless there were two witnesses that arbitrators had committed gross error or was partial to party. The Contract Act, 1872 also recognizes arbitration agreement as an exception to section 28 which envisages that any agreement in restraint of legal proceedings is void.

A recommendation for the first time was made to the Second Law Commission by Sir Charleswood to provide for a uniform law regarding arbitration. The Code of Civil Procedure, 1908 placed Arbitration, Mediation, as informal procedure. Having importance of ADR, the Code of Civil Procedure, 1908 made the ADR obligatory in every civil proceeding. It is very positive that informal resolution procedure has been accommodated to resolve the dispute quickly. Due to practical reason, few cases have required to be listed for compulsory mediation. As this has not been fixed, mediation is not applied even in applicable cases.<sup>61</sup> Sections 312, 313-325 and 326-327 of the contract Act, 1872 laid down the permission and procedure for arbitration without the court's intervention.

The Contract Act, 1872 recognizes arbitration agreement as an exception to section 28, which envisages that any agreement in restraint of legal proceedings is void. The Arbitration Act, 1899 was also enacted to apply only to presidency Towns to facilitate settlement of dispute out of courts. The Arbitration Act, 1940 repealed and replaced the previous Act of 1899 on the subject. This Act of 1940 was followed in Bangladesh throughout the Pakistan period till the year 2001 when the new law on arbitration viz. the Arbitration Act, 2001 was promulgated after the Law commission of Bangladesh proposed amendment in the law regarding

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<sup>61</sup> I talked to many judges who opined that listing the cases for mandatory mediation is required because never all cases are qualified for the Mediation.

Arbitration in 1999. As such, the current legislation in force in Bangladesh today regarding arbitration is the Arbitration Act, 2001.

An important feature of the current legislation in force is that it has been codified along the lines of Model Law on International Commercial Arbitration adopted by United Nations Commission on International Trade Law (UNCITRAL) and therefore corresponds to international standards of norms.

To modernize the civil procedure, the Money Loan Court Act (MLCA), 2003 has been changed. This law has introduced ADR in the general civil litigation and the suits for money recovery. Sections 38 and 44 A of MLCA provide for mediation at the stages of the execution, appeal and revision respectively.<sup>62</sup>

The Industrial Relations Ordinance, 1969 first introduced in the history of the legal system of Bangladesh, ADR (Despite this law has been replaced by the Labor Code, 2006). This law envisages the two approaches to dispute resolution considering both social and legal obligation. These are following approaches i.e. (i) pure legalistic approach to individual employment dispute; and (ii) socio-legalistic approach to industrial dispute.

Both the Muslim Family Laws Ordinance, 1961 and the Family Courts Ordinance provides avenues for the reconciliation or alternative dispute resolution. The Muslim Family provides provision for the reconciliation through arbitration council which is not judicial ADR. It is mostly in administrative in nature. Issues relating to Polygamy, giving *talaq* under section 7 of the MFLO, and failure of the husband to provide maintenance of his wife are the matters for the reconciliation or ADR. The Family Courts Ordinance 1985 facilitated family courts to encourage the disputants to resolve the issue informally, thus it roomed Family courts to be more well-wisher and friends than adjudicators.<sup>63</sup>

In 1976, the Village Court Ordinance, 1976 was passed. This was also another attempt to move away from the traditional legal and administrative forums and settle certain petty civil and criminal disputes through a panel of elected representatives of the local governments. This was arguably the first legislation on ADR after the independence of Bangladesh. The Village Courts Ordinance, 1976 was, subsequently,

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<sup>62</sup> Supra note 16, p. 111.

<sup>63</sup> Supra note 16, p. 135.

repealed by the Village Courts Act, 2006 which is the law currently in force on the subject. One of the unique features of this law is that no lawyer is allowed to be appointed by the parties in any proceedings before a village court. It is completely controlled and operated by people who are neither lawyers nor trained judges.

Two laws are epoch making, i.e. (i) The Code of Civil Procedure, 1908 (Amendment) Act, 2003, enacted on the 7<sup>th</sup> February, 2003 and given effect from the 1<sup>st</sup> July, 2003 and (ii) The *Artha Rin Adalat Ain*, 2003 (Money Loan Recovery Act, 2003), effective from 1<sup>st</sup> May, 2003.

The Code of Civil Procedure was amended to introduce, through sections 89A and 89B, as in India and Pakistan, ADR through mediation or arbitration in kinds of non-family litigations. Any time after a written statement is filed, if all the contesting parties are in attendance in the court in person or by their respective lawyers, (a) the court may mediate the dispute (b) or refer the dispute to the engaged lawyers of the parties (c) or to the parties themselves where no lawyer has been engaged (d) or to a mediator from a panel prepared by the District in consultation with president of the District Bar Association. If the dispute is referred to the respective lawyers they may, with the consent of their clients, appoint another lawyer not engaged by the parties, or retired judge, or a panel mediator referred to earlier or any other person whom they deem to be suitable judge, or a panel mediator referred to earlier or any other person whom they deem to be suitable to act as a mediator. You will be heartened to know that by further amending the Code of Civil Procedure, 1908, mediation has been extended to appeal cases as well in all non-family litigations from 1<sup>st</sup> July, 2006.

As per the amendment, mediation means flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which the mediator shall facilitate a compromise of disputes without directing or dictating the terms of such compromise. If the mediation results in a compromise decree both the plaintiff and defendant will get back the money they spent on court fee. Failure of mediation within a stated or extended period will bring the case back to the trial judge for trial. If the court was the mediator itself when the mediation failed, the trial will be held by another judge of equal jurisdiction. Whatever transpires in the mediation proceedings is not receivable in evidence at the trial of the case in question or at the trial of any other case between the parties. A decree given after such mediation is not amenable to appeal pr revision.

The Artha Rin Adalat Ain, 2003 originally stipulated a provision for mediation meeting under the chairmanship of the Judge of an Artha Rin Adalat. But subsequently through an amendment made in the Act in 2010, some new provisions for mediation through an independent third party have been incorporated. The Arth Rin Adalat Ain, 2003 also provides scope for resolution of disputes through ADR decree execution stage. Very recently the government has introduced the system of ADR in solving the tax disputes. The tax disputes can be settled now through ADR even at the appellate stage also.

It is indeed very heartening to see, and it is believed that it will not be out of context to mention here, that even in international arena, Bangladesh has shown her belief in resolving disputes through ADR in a friendly and peaceful manner. Earlier, in 2009 we referred our maritime disputes with Myanmar and India to the international arbitration tribunals under the United Nations. Very recently the International tribunal on the Law of the Sea (ITLOS) by a historic verdict, and indeed a very first one in these types of maritime disputes involving sovereign countries, decided the issues largely in favor of Bangladesh.

### **Importance of Social Phenomena in ADR**

Law or established legal system is working to regulate the society from family to public administration. If any issue is very serious in our society or significant, then new law is also enacted to handle that issue. Similarly if anything is uncovered by law, we reschedule law to accommodate that issue. Law, sometimes, changes its missionary steps to be more appropriate. ADR is one of the policies which have been taken in the legal system from the society to make the law more appropriate. This is also serious concern that ADR came into operation considering the loopholes of the law. That means social phenomenon has clear impact on the emergence of ADR in the legal system. Hence the success or failure of this policy also depends upon the social phenomenon. Now it is necessary to discuss how the social phenomenon is important in success of the ADR.

### **Speedy Trial: Social Phenomena**

Justice is the ends and laws are the means.<sup>64</sup> It is known to us that callousness in the profession is not serious crime, if it is frequent and usual, it, sometimes, creates unusual loss in the profession and it becomes a serious crime. Lengthiness or the delay in the procedures of the trial is

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<sup>64</sup> Khan, Maimul, *Jurisprudence, Reconstructing the Ideals of Legality, Politics, and Morality*, Law's Empire, 2011, p. 101.



not a crime, sometimes it is done so dangerously that it becomes gross violation of human right i.e. right to get justice. ADR has been originated to speed up the trial. Hence, it is significant for the ends of justice.

**(a) Political Phenomena: Compromise as a Consequence**

Politics are influential factors in the democratic countries. It empowers the people to express their opinion in many respects. Such expression sometimes throws the administration in such critical stage that Administration may not function properly. In that case compromise among different political ideologies is the solution. In the administration of Justice, compromise of the suit has been accommodated considering this social aspect. Even the ADR also facilitates the administration of justice to compromise any suit if the existing laws and regulations are not properly functioning to provide the justice due to political differences. Even the peaceful standing of the locals might also be ensured through this way.

**(b) Cultural Phenomenon: Appropriateness of ADR**

Likeliness of culture with the Administration of Justice is important for ensuring the ends of justice. ADR facilitates the environment of accommodation of culture in the administration of justice. Local culture, practice, tradition and historical significance may play significant role in the ADR. (Footnote required).

**(c) Personal Charisma<sup>65</sup> of Adjudicator as Authority: Success of ADR**

Authority is required for any civilization or society to exist; authority serves as foundation. It establishes laws, rules, determines what is true, specifies what will be done, by whom and when.<sup>66</sup> Due to its differentiated natures, Max Weber fixed different types of authorities .i.e. traditional, charismatic and legal-rational.<sup>67</sup> From this classification adjudicators of ADR should be from the people who are generally empowered by the law to adjudicate such as representatives as traditional

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<sup>65</sup> The term charisma refers to an extraordinary power, and Weber defined it thus: “The term ‘charisma’ will be applied to a certain quality of an individual personality by virtue of which he is considered extraordinary and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities. These are such as are not accessible to the ordinary person, but are regarded as of divine origin or as exemplary.”

<sup>66</sup> [www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf](http://www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf), p. 102. Last accessed on 16-02-2016.

<sup>67</sup> [www.danawilliams2.tripod.com/authority.html](http://www.danawilliams2.tripod.com/authority.html) and last accessed on 16-02-2016

authorities (listing as adjudicators), advocates and elected representatives as traditional authority. The people who are remarkably capable of doing something for the society might be appointed as the adjudicators. The people who are seriously popular to the mass people such as distinguished personalities in our society or institutions like Mohila Ainjibi samity, BLAST, as charismatic authority. Legal rational authority means those personalities who have legal power and reasonable acceptability to do something as authority. Hence, one types of authority might not be successful in ADR. Two types of authorities are exercising powers in ADR i.e. traditional and Charismatic. But Legal rational authorities are absent here.

All people of the society are not empowered to do justice or play role in the administration of justice. Many experiences, knowledgeable, morally sound people are available in the society. To get the assistance of their knowledge, morality, experience, ADR is significant. On the other hand, some people may have exceptional quality to serve the society different having charismatic powers. If we facilitate such charismatic qualities of any individual in our legal system, it would be helpful for the society. Despite charismatic qualities have also the negative results as well. Despite Weber tried to explain the charisma in anti structured society,<sup>68</sup> in revolutionary and sovereign manner transforming all values and norms, we referred here it to empower the adjudicator as authority.<sup>69</sup> It helps the ADR to be rationalized or traditionalized or combination of both which is appropriate as Charisma is not stable.<sup>70</sup>

## Conclusion

ADR originated to ensure the ends of justice, which is the primary objective of the law, however, that does not function due to the socio economic and socio cultural predicaments. If the implementers of the law function, the impact of the law is different due to the variation in the personalities. People commit civil wrongs or crimes not understanding the dynamics of the society. If the authority understands dynamics of the

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<sup>68</sup> [www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf](http://www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf), P.103 and last accessed on 16-02-2016.

<sup>69</sup> [www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf](http://www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf), P. 103 and last accessed on 16-02-2016.

<sup>70</sup> [www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf](http://www.tricksterbook.com/ArticlesOnline/Chapter8-MaxWeberCharismaDisenchantment.pdf), , P. 103, because of their instability, both pure charism and anti-structure (liminality) are opposed not only to structure but, almost paradoxically, ultimately themselves. P. 104 and last accessed 16-02-2016.

society and he has the charismatic power, law would be meaningful for the society. From the analysis of the ADR and SOL, it is manifested that that sociological jurisprudence would assist the lawyers, students and judges to ensure the ends of justice and access to justice, that also demanded adjustments, compromise and mutual resolution which similar to ADR. From the sociological jurisprudence, law may be interpreted considering comprehensive realization of sociological approach. We may conclude thus The body of the common law is made up of adjustments or compromises of conflicting interests in which we turn to some social interests, frequently under the name of public policy, to determine the limits of a reasonable adjustments.<sup>71</sup>

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<sup>71</sup> <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1522&context=vlr> p. 22, visited 07-10-2014

# 9 A Comparative Study of the Crime of Genocide: From the Era of Cold War into the Era of Hot Justice

Quazi Omar Foysal

## **Introduction**

When the world community witnessed the failure of League of Nations to tackle down the miseries of World War II, they committed not to make the mistake what they did after the end of World War I. They wanted to set out an example what will deter other warmonger nation to proceed i.e. the trial of the Nazi leaders and Japanese leaders. They did not stop there; rather they tried to construe a permanent fabric like Universal Declaration of Human Rights or Convention on the Prevention and Punishment of Genocide. What, one other thing emerged at the same time i.e. the beginning of Cold War. In the present paper, I am going to show how the politics of Cold War era has affected the process of the drafting of the Genocide Convention of 1948 and subsequently the proper implementation of this Convention including the creation of International Criminal Court in the both global and Bangladeshi perspective. In the following paper, I have mentioned two terms i.e. the era of Cold War and the era of Hot Justice. For the era of Cold War, I have referred the post-convention period till the end of cold war. And for the era of Hot Justice, I have referred the post-Cold War period till present time. My naming of the era of Cold war has been coincided with the politics of Cold War as per the nature of the periods. And the naming of the era of Hot Justice has been given not because it is its antonym, but because the rapidness of the justice following the genocidal atrocities. The principal aim of this paper is to compare the nature of justice of the two eras. This paper thus concludes by pointing out the persistent lacunas of the present age by dint of illustrating some present scenarios and also by hinting the emergence of new international political dimension.

## **Emergence of the Crime of Genocide**

Following the massacre and brutality done on the Armenian nationals of the Ottoman Empires during the 1<sup>st</sup> World War (1914-1918), the Polish born American Jewish Jurist Rafael Lemkin (1900-1959) tried to coin up a special name of what we call genocide, which once Winston Churchill named “a crime without a name.” He tried to introduce two terms “barbarism” and “vandalism” for the purpose<sup>1</sup> which finally ended into

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<sup>1</sup> Jones, A. (2006), *Genocide: A Comprehensive Introduction*. New York: Rutledge. P. 09

smoke. Even though, his proposal went as far as the International Congress on Penal Law with rejection in 1933. Following his migration to United States of America, he started to introduce a name for the nameless crime with renewed energy and finally he mentioned “genocide” on his famous book “Axis Rule of Occupied Europe” published in 1944. He settled on a neologism with both Greek and Latin roots: the Greek “genos,” meaning race or tribe, and the Latin “cide,” or killing.<sup>2</sup> When the World War II ended, two Tribunals for the trial of the atrocities done by Axis Power<sup>3</sup> were established in Nuremburg of Germany and Tokyo of Japan, but no indictment of genocide was brought there. But, the word “genocide” was pronounced in the chamber of the Nuremburg.<sup>4</sup> Genocide first appeared in legal literature in *Poland V Grasier* following his conviction on July 1946. It appeared in the international instrument on General Assembly Resolution 96(I) of United Nations. In Early 1947, the then General Secretary of United Nations conveyed the Resolution to the Economic and Social Council for taking appropriate steps for drafting a Convention relating to genocide. Finally, after a tough bargaining the convention came into being the Convention on the Prevention and Punishment of the Crime of Genocide, 1948<sup>5</sup> which predates one day by another human rights document Universal Declaration of Human Rights, 1948. Thus, Churchill’s “crime without a name” transformed into a “crime of the crimes.” The definition of genocide as appeared in the Convention is as follows-

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.<sup>6</sup>

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<sup>2</sup> Ibid. P. 10.

<sup>3</sup> Germany, Italy and Japan

<sup>4</sup> Schabas, W. A. (2009), *Genocide and International Law: Crime of Crimes*. London: Cambridge. P. 44

<sup>5</sup> It came into force in 1951

<sup>6</sup> Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, 1948

It includes within its ambit conspiracy to commit genocide<sup>7</sup>; direct and public incitement to commit genocide<sup>8</sup>; Attempt to commit genocide<sup>9</sup> and complicity in genocide<sup>10</sup>. Thus the crime of genocide was given an international legal shape. During the drafting of the Convention, bipolar rivalry prevented many important elements like political group as the protected group or cultural genocide as a form of genocide or universal jurisdiction from inclusion in the Convention. Initial failure to establish an international criminal court was largely due to this factor, which I am going to discuss in the later section of this paper.

Consequently, this definition was adopted in three subsequent legal instruments i.e. Draft Code of Crimes against Peace and Security against Mankind, 1954<sup>11</sup>, International Criminal Tribunal for Rwanda<sup>12</sup>, International Criminal Tribunal for Former Yugoslavia<sup>13</sup>, Draft Code of Crimes against Peace and Security of Mankind, 1996<sup>14</sup> and most importantly Rome Statute of International Criminal Court, 1998<sup>15</sup> which came into force in 2002.

### **The Silence of the Era of Cold War**

The end of World War has seen not only the neutralization of the powers of Europe, but also the beginning of the era of Cold War. As I have mentioned before, due to the rivalry during the drafting of the Convention, many effective provisions for implementing the justice of genocide were not included. The soviet approach<sup>16</sup> to international law and its subsequent influence on soviet's allies was responsible for aggravating the situation. Moreover, the volume of non-ratification and burden of reservation are to be linked with it. The establishment of an international criminal court, which was initiated by GA Res. 260 B (III) entitled 'Study by the International Law Commission of the Question of an International Criminal Jurisdiction', was frustrated due to this Cold War. According to one Soviet author, "the prevention and punishment of genocide should remain within the realm of national legislation and should not be left to some sort of a vague "international criminal law"

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<sup>7</sup> Ibid. Article III (b) of the Convention of 1949

<sup>8</sup> Ibid. Article III (c) of the Convention of 1949

<sup>9</sup> Ibid. Article III (e) of the Convention of 1949

<sup>10</sup> Ibid. Article III (f) of the Convention of 1949

<sup>11</sup> Article 2 (10) of the Draft Code of 1954

<sup>12</sup> Article 2 of the Statute of 1994

<sup>13</sup> Article 4 of the Statute of 1994

<sup>14</sup> Article 17 of the Draft Code of 1996

<sup>15</sup> Article 6 of the Statute of 1998

<sup>16</sup> Shaw, M. N. (2008). *International Law*. London: Cambridge. Pp. 31-39

and “international criminal justice” about which American diplomats have recently prattled much in the United Nations<sup>17</sup>.” Consequently, they bargained over a single definition of “Crime of Aggression” over the whole period of Cold War which was settled in 1996 following its inclusion in Draft Code of Crimes against Peace and Security of Mankind. A mal practice of this era is that every state power or belligerent power in this era took one of the sides to bypass its criminal liability in the event. Guatemala, Argentina, Chile, Cambodia, Indonesia, Timor-Leste, etc bear its testimony. Our Bangladesh also falls under this category. Sometimes, the power performed this type of atrocities superseding the culpability like Afghanistan or Vietnam. Sometimes, the state concerned itself caused genocide like Stalin’s Soviet Union or Mao’s China. More importantly, non-incorporation of political group within the ambit of the protected group has made it easier to deny the claim of the charge of genocide. No notable step was taken either to prevent genocide or to punish genocide. Domestication of this crime of genocide was less evident. Thus, this period has been termed by Diane F. Orentlicher as 'a half century of silence.'<sup>18</sup> No single judgment was pronounced after the end of trials of World War II atrocities in the Asia and Europe with the one but the more controversial exception of Adolf Eichmann’s case.<sup>19</sup>

Bangladesh has seen its sanguinary birth as an independent nation during the zenith of the era of Cold War. In spite of these nightmares, the framers of the Constitution of 1972 made no express effort to incorporate the issue of justice of the atrocities of 1971.<sup>20</sup> But, the initial steps to try both the perpetrators and the collaborators were taken. Establishment of the Collaborators Especial Tribunal under the Bangladesh Collaborators (Special Tribunal) Order, 1972 was the first step in this regard. The term “Genocide” was first used in the Preamble of this Order but the crime was not defined. The trial of collaborators was staged in remarkable

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<sup>17</sup> Volodin, S. (1954). Convention on the Prevention and Punishment of the Crime of Genocide. *Sovetskoe Gosudarstvo i Pravo*. P. 126, translated in Kulski, W. W. (1955) *The Soviet Interpretation of International Law*. *American Journal of International Law*, 49, P. 529.

<sup>18</sup> Mentioned in Hoque, M. (March 2013). *Bangladesh 1971: A Forgotten Genocide*. Volume 7, Issue 03, P. 05

<sup>19</sup> Eichmann was tried for “Crimes against Jews People” under Nazi and Nazi Collaborators (Punishment) Law, 1050 which is analogous to crime of “Genocide” of Genocide Convention of 1948

<sup>20</sup> The special provision for the trial of the war crimes and other related international crimes was incorporated in the Constitution by dint of the First Amendment in 1973.

sphere; but failed to go further for irregularities & corruption. All who were convicted were acquitted. The declaration of General Amnesty, the tragic end of the Mujib's regime and more importantly the repeal of the said Order made this law ineffective. Followed by the First Amendment of the Constitution of Bangladesh, International Crimes (Tribunals) Act, 1973 was passed. A definition of "Genocide" was adopted in this Act along with other forms of international crimes. It is as follows:

**Genocide:** meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as:

- i. killing members of the group;
- ii. causing serious bodily or mental harm to members of the group;
- iii. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv. imposing measures intended to prevent Births within the group;
- v. forcibly transferring children of the group to another group;<sup>21</sup>

This definition was not in fact the conventional definition as it has made two major changes i.e. it has included political group as the protected group<sup>22</sup> and it has made the list of the Actus Reas descriptive rather than exhaustive.<sup>23</sup> Moreover, Bangladesh did not ratify the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity and 1948 Genocide Convention at that time. The report of International Commission of Jurist in its report in 1973 did not articulate the vastness of the genocidal atrocities done at 1971. But it concluded that some genocide was perpetrated on the Hindu minorities.<sup>24</sup> When Bangladesh transferred the Pakistani Prisoners of War into India, Pakistani eventually initiated a suit against India in International Court of Justice<sup>25</sup> which was the first case relating to genocide in International Court of Justice. It was followed by Shimla Agreement which marred the possibilities of trial of the first grade perpetrators of the genocide of Bangladesh. In the post-Mujib regimes, the issue of justice remained unuttered, sometimes forgotten in the silence of the era of Cold War.

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<sup>21</sup> Section 3(1)(c) of the Act of 1973

<sup>22</sup> As the second country of the world after Ethiopia (1957)

<sup>23</sup> Linton, S. (2010). *Completing The Circle: Accountability for the Crimes of the 1971 Bangladesh War of Liberation*. International Criminal Forum. Hong Kong: Springer. P. 53

<sup>24</sup> Ibid. P. 10

<sup>25</sup> Pakistan Vs India 1973 ICJ



### **The Era of Hot Justice**

With the dismemberment of the United Socialist Soviet Republics in 1990s, the world has seen a rapid change of world geopolitics which also facilitated the incident of genocide of which the atrocities of Former States of Yugoslavia are worth to mention. But one thing changed i.e. the plea of justice for genocides were no longer weaker than the weight of silence. Thus the world community was seemed to be awakening from the sleep of Rip Van Winkle. With the establishment of the International Criminal Tribunal for Rwanda and International Criminal Tribunal for Yugoslavia in 1994 was that small step which seemed to be the Herculean Adventure for the justice issue of genocide in the era of Hot Justice. The trial process of Augusto Pinochet of Chile has made the autocrat regimes think of their positions for the accountability for genocidal atrocities committed while they won't be in power. The trial of Saddam Hussein in the controversial trial in Iraqi Supreme Criminal Tribunal for Kurdish genocide has furthered this paradigm. This echoed the domestic prosecution of genocide in other parts of the world. Apart from this, long awaited adventure for establishing a permanent international criminal court has been accelerated culminated into Rome Statute of 1998<sup>26</sup> and its enforcement in 2002. Especially, after the enforcement of Rome Statute of 1998, we have seen the embodiment of the crime of genocide in different national legislations. The embellishment of Truth Commission over the world in resolving the genocidal atrocities was also mention worthy.<sup>27</sup> The pronouncement of the 2<sup>nd</sup> verdict in the Extraordinary Chamber of the Court of Cambodia<sup>28</sup> in the 1<sup>st</sup> week of October of this year is its evidence of the trial of Cold War atrocity in the era of Hot Justice. The plea of Timor-Leste is echoing in our mind. The implied recognition of universal jurisdiction in many cases, especially which of Belgium has furthered the cause of genocide justice. The case of Hissène Habré is the ardent example of this phenomenon.

In relation to Bangladesh, during this era of Hot Justice, the issue of justice came in the spot light by dint of the effort of Jahanara Imam in 1990s, though not of the main perpetrators, but of the collaborators. In 2009, following notable amendments in the International Crimes

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<sup>26</sup> Rome Statute for International Criminal Court, 1998 aims at punishing inter alia Genocide

<sup>27</sup> Roht-Arriaza, N. & Mariezcurrena, J. (Eds). (2006) *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*. New York: Cambridge. Pp. 1-16

<sup>28</sup> For the trial of the atrocity committed by the regime of Khmer Rouge (1975-79), which was a cold war incident.

(Tribunals) Act, 1973; two Tribunals were formed. Now on, we have about 13 tribunal judgments<sup>29</sup>, 3 appellate division judgments, 1 review judgment<sup>30</sup>, one was sentenced to death, two died in jail, another sentenced to imprisonment until death and 3 in absconded. Among these judgments, 2 were convicted of genocides, all of them of crimes against humanity and none of war crimes. The government is thinking of trying Jama'at as an organization. The international communities like Human Rights Watch, Amnesty International, etc; international media like Economist and Ambassador Steven C Rapp were vocal about the non-maintenance of the international standards of justice, post ipso facto amendment during the trial and specially of death sentence; though they were not vocal in establishing justice about this crime in the whole period.<sup>31</sup> Moreover, the Pakistani Perpetrators are far away from the circumferences of justice.

Hence, Genocide is a crime; the study of a crime cannot go further if it is not addressed in the court of justice. Following the lack of justice in the atrocities and human rights violation in the era of Cold War in the Bangladesh, China, Russia, Nigeria, Indonesia, Cambodia, Vietnam, Lebanon, Sierra Leon, Latin American Countries made the genocide scholars to think the utility of development of genocide studies. Before the end of Cold War, genocide studies were sharply confined to the historical accounts of the Jewish Holocaust and rarely that of Armenian Genocide ventured by some historians and sociologists. But, in the era of Hot Justice the comprehensive genocide studies have been instrumental in reducing genocidal atrocities and Genocide Convention of 1948 has emerged as an important instrument of human rights which was previously at the bottom of the desk. William A Schabas in the 2<sup>nd</sup> Edition of his voluminous work "Genocide in International Law: The Crime of Crimes" has justified his 2<sup>nd</sup> edition by stating how the study of genocide has changed over the time span from his 1<sup>st</sup> Edition (2000)<sup>32</sup>. My point is that this change has not been brought by the two International Tribunals ( of Rwanda and Yugoslavia); not because the establishment of International Criminal Court; but because the obvious reason i.e. the end of the era of cold war and the start of the hot justice.

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<sup>29</sup> As on December 03, 2014.

<sup>30</sup> The Full Decision of The Chief Prosecutor Vs Abdul Quader Molla revealed that review under the International Crimes (Tribunals) Act, 1973 is admissible within 15 days from the date of verdict or full decision whichever is earlier. It has ended the ongoing debate over the admissibility of review under this Act of 1973

<sup>31</sup> Robertson, Geoffery; Crimes Against Humanity; Polity Press; 4<sup>th</sup> Edition; 2014; Pp. 658

<sup>32</sup> Supra 4. P. 641

**Conclusion**

It is well evident here that the effect of justice has made the reckless rulers think about the issue of justice while they will not more in power. Even though the absence of the cold war rivalry has furthered this cause, another factor is appearing to lose the warmth of the era of Hot Justice that is regionalizing of world politics which is the emerging equation of world politics. It evolves on the veto power enabled countries. If we closely look on the recent scenario of Syria, Egypt or Libya; we will get a clear image how Kaddafi succumbed to defeat and why Assad is still surviving. Unwillingness of the great powers to join the platform to combat the genocide i.e. International Criminal Court is resembling the Court as a toothless court. In this respect, my recommendations are (1) to make common consensus regarding the issue of justice in genocidal atrocities; (2) to ensure greater ratification to International Criminal Court; (3) to ensure further domestication of the crime of genocide in the national legislation; and (4) to recognize the genocidal atrocities as genocide in particular. Before concluding, it is pertinent to mention here that if we cannot set up a global platform to combat this crime of the crimes, the era of Hot Justice which emerged with the hope of justice will lose its warmth at the theatre of international justice.

**PART THREE: HUMAN RIGHTS, REFUGEE,  
CONFLICT AND TERRORISM**



# 10 Human Rights Education and Realisation in India: A Case Study of NGOs

Sakthivel Mani

## Introduction

Human rights education is the foremost step to make the people to realise about their inalienable rights and to sensitize on the same.<sup>1</sup> Spreading of human rights awareness among the people is state's obligation which is a mandate under the UDHR.<sup>2</sup> If the State organs are the violators of the human rights, then the solution is to approach the High Court or the Apex Court to get justice.<sup>3</sup> For approaching the Courts, how many of the people or victims of the human rights violations know these remedies. In some of the worst cases, victims do not realise that they are deprived of human rights and their dignity is affected. Even they realise that they are victimised, factors like poverty, social stigma, etc., do not allow them to get rid of those practises<sup>4</sup>. In this context, with the absence of effective remedial mechanisms, NGOs play a vital role in educating the people about their rights and spread awareness<sup>5</sup>. Human rights problems are

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<sup>1</sup>. For the detailed discussion about the evolutions and the strategies adopted for spreading human rights education, please see, George J. Andreopoulos, Richard Pierre Claude, *Human Rights Education for the Twenty-First Century*, University of Pennsylvania Press, (1997) and Richard Pierre Claude, *Human Rights Education in the Philippines*, Kalikasan Press. (1991)

<sup>2</sup>. From the Preamble of the UDHR, it is very much obvious that states are having an obligation to promote human rights. The same portion is extracted here. "UDHR, Preamble THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction". The same is available at <http://www.un.org/en/documents/udhr/index.shtml#ap> Last visited on 3<sup>rd</sup> December, 2014. Even by interpreting Article 30 of the UDHR, 1948, it may be well stated that State has an obligation to ensure not to restrict the rights.

<sup>3</sup>. In India, most of the UDHR Rights are part of the fundamental rights. Therefore, violations of fundamental rights are provided with constitutional remedies. These remedies are available either under Art.32 or Art. 226.

<sup>4</sup>. For the detailed discussion on the nexus between poverty and human rights please see, OLM Ferraz, "Poverty and Human Rights", *Oxford Journal of Legal Studies*, 2008 28 (3) 583-603.

<sup>5</sup>. For understanding various human rights issues in India, please see, Asish Kumar Das, Prasant Kumar Mohanty, *Human Rights in India*, Sarup & Sons, (2007)

having different dimensions and varying from State to State. Due to geographical locations, socio, economic and political circumstances of the State are the key factors in human rights violation.

India being a developing country, is confronting multiple social problems every day. Some of them are quiet common while comparing with other countries<sup>6</sup>. Most of them are very specific to this sub continent due to the social structure, geographical locations. When we try to diagnose all these problems through human rights perspective, then those social problems become human rights issues. Even though the state agencies are trying hard to provide viable solutions to those human rights issues in a sustainable manner, the result of those efforts are not so successful due to various obvious reasons such as social structure, lack of capital resources, corruption, etc.,<sup>7</sup> In this context, the role of Non Governmental Organisations (NGOs) become highly relevant to spread human rights education and sensitise the people to achieve a long time solution to all existing human right issues. This research paper is aimed to analyse the contribution of Sulabh International<sup>8</sup> which is pioneer in the field of sanitation, manual scavenging and caste related issues.

### **Sulabh: A Social Doctor**

Sulabh was founded as an international social service organisation by Dr. Bindeshwar Pathak in 1970. From its very inception, it has adopted the Gandhian philosophy so as to sensitise the people about their rights and helping them to get liberated so as to come out from the grave social sin. Sulabh focal point can be divided into 5 folds which are as follows:

- Removal of untouchability and social discrimination
- Removal of untouchability and social discrimination against human scavengers
- To develop/innovate cost effective toilet system to be adopted by all sections of the people
- To provide rehabilitation assistance so as to remove the social stigma to scavengers
- To educate the common man about the social evil

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<sup>6</sup>. *Ibid.*,

<sup>7</sup>. See Manoj Kumar Sinha, *Implementation of Basic Human Rights*, Lexis Nexis (2013)

<sup>8</sup>. Sualbh is a NGO founded in 1970s. It was focusing on the State of Bihar at its first inception. Then it expanded its jurisdiction to all over the Country.

From the above points, it is highly possible to have a preliminary opinion on Sulabh that it is striving for eliminating and rehabilitating manual scavengers from the country. However, as per Sulabh, the five folds are:

- Liberation
- Rehabilitation
- Vocational training
- Proper education of next generation
- Social elevation

Even though there are slight differences between the two groups, the core objects are one and same but the names are the different one. If these objectives are well experimented and achieved, then one has to realise the commitments of Sulabh for the social purification of human minds. Then it is worth to be called Sulabh as 'a social doctor'. Sulabh has been recognised UN, WHO, many other international institutions including other governments too. In this context, it is worth to examine the following two important issues.

- How far Sulabh objectives are being achieved?
- Whether the solutions provided to the victims of the social injustice are in a sustainable model?

If the above issues are critically analysed, it may be possible to project the outcome of the Sulabh's Human Rights Education and awareness creation. Let us examine the above issues with the help of a case study.

### **Human Rights Education for Peaceful Liberation: Alwar**

Open defecation is one of the serious concerns which would cause many socio-health problems.<sup>9</sup> However, dry latrine is most vulnerable than open defecation because cleaning of dry latrine has to be by human beings which is closely connected with caste factors.<sup>10</sup> A group of people mostly from a few communities were deployed for removing night soil on head.<sup>11</sup> They were paid with fewer amounts even among the lower

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<sup>9</sup>. See for the detailed discussion on the nexus between health and open defecation, Bonita F. Stanton & John D. Clemens, "An Educational Intervention For Altering Water-Sanitation Behaviors To Reduce Childhood Diarrhea In Urban Bangladesh; A Randomized Trial To Assess The Impact Of The Intervention On Hygienic Behaviors And Rates Of Diarrhea", *Am. J. Epidemiol.* (1987) 125 (2): 292-301.

<sup>10</sup>. See for detailed discussion on the history of the manual scavenging in India and caste factor, Srivastava, B.N. (1997). *Manual Scavenging in India: A Disgrace to the Country*. Concept Publishing Company (P) Ltd. p. 13.

<sup>11</sup>. *Id.*, p.15



caste communities, these people involved in scavenging were considered as untouchables among the untouchables<sup>12</sup>.

Development may change the appearance of a state however; it does not change the mindset of the social animals. Even people deployed in scavenging wished to give up, the social stigma which continued with them did not pave for any employment. Social non acceptance of these untouchables among the untouchables and other sections of the people, forced them to revert back to scavenging due to starvation. When the Govt machineries were expected to prevent inhuman practices, they did not.

When law was about to fail in its all attempts, technology extended its support to remove these anti social in human practices. Sulabh's starting point is also with the technology. Though the human right education and sensitisation among the scavengers were from 1970s, the results became obvious only at the end of 1990s and the beginning of this century.

Alwar is one of the places where caste system had penetrated to its possible extend in the northern part of India. Due to this caste system, many were deployed for scavenging. Many grandmothers used to take their granddaughters to train them even though the latter did not appreciate the same. Efforts were made to eliminate them however it was not for providing rehabilitation which resulted in successful failure. Even when the rehabilitation was provided, the social stigma attached with them did not allow to be accepted by rest of the people.

After realising these problems, Sulabh rightly assisted and helped them to realise and to learn the self sustain model. In Alwar, considerable numbers of people were engaged in scavenging activity. Due to sulabh's continuous efforts, one group of people agreed to liberate at first in 2003 then followed by the second group in 2006. Both groups were provided with vocational training for their self sustain. At last, in 2008, the last group had also come out of the inhuman practice.<sup>13</sup> As pointed out above, though the rehabilitation is provided, the social stigma factor needs to be addressed.<sup>14</sup> Then only the social acceptance of scavengers would be ensured by removing the scavenging stigma.<sup>15</sup>

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<sup>12</sup>. *Ibid.*,

<sup>13</sup>. Alwar Declared Scavenging Free –A Publication of Sualbh International, page no 3

<sup>14</sup>. *Ibid.*,

<sup>15</sup>. Social Stigma on Rehabilitated Manual Scavengers – A Case of Study Alwar; A Publication of Sualbh International.

Sulabh's very tactic way worked perfectly and provided a high social status by removing the social stigma. The new social status even paved a way for social acceptance. The method adopted by Sulabh is clearly set out in its objectives itself which reads as follows:

- *Liberation of scavengers from unhealthy and subhuman occupation of manual handling of excreta by converting bucket privies into Sulabh Shauchalaya (pour flush latrine with twin pits for on-site disposal of human waste);*
- *Rehabilitation of the relieved scavengers and their wards in other jobs after training;*
- *Help in social up gradation of scavengers and their promotion as equals in society;*
- *Set up information and employment exchange centers to help scavengers getting employment either in the government or non-governmental organizations;*
- *Open English-medium schools to provide education to the sons and daughters of scavengers along with others; and*
- *Help scavengers build their houses away from slums so that they can be taken out from the unhealthy environment.*<sup>16</sup>

In addition to vocational training is explained here:

- Helped them to declare that Alwar as a Scavenging Free
- Visit to President's Office<sup>17</sup>
- Visit to Parliament of India
- Celebrating festivals with Sulabh Family<sup>18</sup>
- Visit to United States of America

While celebrating the World Toilet Day, they took a oath and declared themselves as liberated. The oath reads as follows:

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<sup>16</sup>. Siddhart Kumar Rastogi, "A Case Study of Sulabh International Social Service Organisation", available at [http://web.archive.org/web/20110812205052/http://www.sulabhinternational.org/downloads/sulabh\\_case\\_studies\\_iim.pdf](http://web.archive.org/web/20110812205052/http://www.sulabhinternational.org/downloads/sulabh_case_studies_iim.pdf)

<sup>17</sup>. Meeting of the Hon'ble President, Republic of India, Smt. Prtibha Devisingh Patil blesses erstwhile untouchable scavengers of India - A Publication of Sulabh International

<sup>18</sup>. Worship of Sun God (Chhath Puja) Blessings for Liberated Untouchables- A Publication of Sulabh International

*“We, the Women of Alwar, make a solemn declaration that scavenging system for cleaning latrines has come to an end for good in this town. Now, neither any women nor man is engaged in cleaning toilets in Alwar. Nobody is treating us as ‘untouchables’ any more. We have become part and parcel of the social mainstream. We hobnob, mix and dine with everybody without any caste distinction or discrimination. We celebrate all the traditional festivals; mingle with everyone at marriages without any bar. We visit to temples to offer our prayers without any check or restriction. Our life is totally changed now. Even in our wildest dreams we could not imagine the dawn of a day when we would be able to move about with dignity and respect, holding our heads high. Now, we are witnessing the fulfilment of our cherished dreams.*

*Mahatma Gandhi Ki Jai!*

*Dr. Ambedkar Ki Jai!*

*Sulabh Andolan Ki Jai!*

*Jai Hind! Jai Bharat!”<sup>19</sup>*

It is obvious even from the Government of India documents that Sulabh plays a pro active role in reforming this social injustice. Sulabh has helped more than million people to get liberated and facilitated many self reliance schemes. Social acceptance has also been ensured. Many developments schemes were launched with the help of local administrations so as to accommodate and to have an inclusive growth.

### **Concluding Remarks**

Manual scavenging is grave social injustice. There are very few nongovernmental organisations working for the advancements of the socially excluded people. Among them Sulabh stands for away. Even though they are also working for the scavengers, Sulabh’s method stands unique and looks very attractive this has helped more than million scavengers to liberate and to be part of social mainstream. Removing the social stigma by creating new image by doing many value added services is an innovative tool. Self confidence and motivation provided by Sulabh cannot be explained with world. One has feel and realise. Really it is a journey of “Shame to Pride”.

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<sup>19</sup>. Alwar Declared Scavenging Free –A Publication of Sulabh International, page no 3

# 11 Labour Rights at Global Manufacturing: The Case of Women Garment Workers in Bangladesh

Md. Ismail Hossain

## **Introduction**

In the wake of ‘flexible accumulation’ under the conditions of neoliberal globalisation (Munck 2002; Smart 2003; Islam 2013) the issue of labour has become both significant and challenging. While only a minority of working people today hold jobs that are well paid, the majority of them are faced with inhuman working conditions and are living in poverty (Dahan et al. 2011). According to the International Labour Organization (ILO), thirty-nine per cent of the world’s workforce is living in poverty (earning less than \$2 a day) and twenty-one per cent live in extreme poverty (less than \$ 1.25 a day) in 2008 (ILO 2010a). The gender wage gap is at the centre as women are engaged in segregated sectors that are generally characterized by low pay, long hours, and oftentimes informal working arrangements (Bulut and Lane 2011; ILO 2010b; Islam 2008; O’Brien 2004). Despite these dire conditions, women need their jobs at global factories to survive. The precarious conditions and vulnerabilities of women ironically appear as an ‘advantage’ for the capitalists’ continued accumulation, generating a paradox known as ‘comparative advantages of women’s disadvantages’ (Arizpe and Aranda 1981: 453). This juxtaposing situation of workers is not unique in a specific country, but rather a common feature of all developing countries that are connected to the global production system.

Supporters argue that globalisation brings positive changes in the lives of women workers in various forms, such as expansion of employment opportunities leading to higher incomes (Barrientos et al. 2004), subversion of the century-old exploitative patriarchal relationships (Lim 1997), an increase of self-awareness about rights and duties (Kabeer 2004), and a shift in affirmative gender roles and value structures, as well as a reconfiguration of the public-private and production-reproduction dichotomies (Unni 2002). Critics of neoliberal globalisation, however, reject the claim of economic benefit to women resulting from economic globalisation, stating instead that it is pushing women into even more vulnerable situations than they were in before (Elson and Pearson 1981, 1997; Nash and Fernandez-Kelly 1983; Acker 2004; Standing 2009). Working conditions in the factories are characterized by, for instance,

extremely long hours, little training, absence of seniority payments, unhygienic work conditions, and little occupational and employment security. All of these in turn reduce the labour costs, leading to a 'profit heaven' for many multinational corporations (Jaggar 2001; Acker 2004; O'Brien 2004). The critics therefore argue that women workers are a vital resource for economic globalisation and are subject to capitalist exploitation. These dichotomous and polarizing trajectories in the existing literatures often obscure the extent to which labour practices at global manufacturing are just and fair which will be dealt in this paper.

### **Theoretical Framework: The Capability Approach**

The 'Capability Approach' developed and popularized by Nobel Laureate Amartya Sen (1992, 1999, and 2009) perhaps the most appropriate approach in understanding the issue of justice. Departing from the Rawlsian view of justice as fairness, Sen (2009) argues that a theory of justice based on fairness should focus on to what extent people are capable of taking control over resources rather than what goods and resources he or she holds. It is because the outcomes of initiatives are varied due to the differences in persons' capacities although they reside in same society. Sen proposes that people's well-being and standing in society should be assessed based on their 'capabilities to function'; that is, what the persons are actually capable of being and doing. He says, 'the core focus of the capability approach is thus not just on what a person actually ends up doing, but also on what he/she is in fact able to do, whether or not he/she chooses to make use of that opportunity' (Sen 2009: 235).

Sen's notion of capabilities takes note of both opportunity and process aspects of freedom. The opportunity aspect is concerned with the persons' ability to achieve that they reason to value, while the process aspect highlights that the chosen action or activities will not be forced because of constraints imposed by others. Sen puts much effort to explain the opportunity and process aspects of capability by presenting two important distinctions which are the keys to this approach. The first set of distinction is between freedom and achievement. Freedom is viewed as the prime means of achieving well-being and development. He used the concept of freedom in a wider sense. According to him, freedom is a process where persons are free to choose a set of activities that they reason to value, whereas achievement refers to the activities that a person actually performs from a possible set of alternatives. Thus, in first set of distinction, Sen prefers freedom to achievement. The second set of distinction is between wellbeing and agency. Well-being freedom

concentrates on a person's capability to have various functioning vectors and to enjoy the corresponding well-being achievement. On the contrary, agency aspect shifts the focus from seeing the person just a passive beneficiaries of the resources and services ignoring the importance of the person's own judgment and priorities to social commitment. It allows people actively to participate in and have an impact on the various collective decision making process.

The capability approach is suitable in the field of work as this perspective provides adequate tool to analyse individual situations, trajectories and potentialities; and the efficiency and fairness of social structures and collective arrangements (Bonvin, 2012). The operationalisation of this analytical and normative framework relies on two key concepts, namely capability for work and capability for voice. The issue of capability for work refers to 'job quality', the valuable work not only in terms of cash benefits but also conditions of work. The notion of capability for voice designates the extent to which people are allowed to express their wishes, expectations and concerns in collective decision making process.

### **Methodology**

This paper, qualitative in nature, is primarily based on data collected through a robust study on RMG industry in Dhaka, the capital of Bangladesh, during the period of October 2011 to June 2012. For empirical investigation, the researcher purposively selected eight manufacturing enterprises, considering the size and location of the firms. For a credible representation, both large and small, Export Processing Zones (EPZs) and Non-EPZs areas were covered while drawing the samples. A methodological triangulation—an in-depth qualitative interview substantiated by ethnography, focus group discussions, and a document search—was adopted in this study to represent diverse stakeholders. The researcher conducted in-depth interviews with 71 respondents that include 32 factory workers, 16 employer/management staffs, 6 representatives from 6 workers' unions (one from each union), 3 representatives from the government agencies (Ministry of Labour, Directorate of the Inspection of Factory and Establishment, and Bangladesh Export Promotion Zone Authority (BEPZA), 2 representatives from Bangladesh Garments Manufacturers and Exporters Association (BGMEA), 2 NGO staff members working on the labour issues, 6 representatives from Brand Companies and 3 labour experts. The women workers, selected through snowball sampling, for interviews

were between 18 and 45 years old, and had experience working in the RMG industry for at least two years.

Although a significant primary data was generated through in-depth qualitative interviews providing a substantial basis for this paper, some ethnographic techniques (direct observation and conversation with local people) added a significant value to the research. The researchers stayed six months in the research areas and spent a larger amount of time engaging in informal talks with local people residing in workers' residential areas including workers' family members, and tried to get their opinions about women employment in RMG industry. The researchers also arranged four 'Focus Group Discussions' (FGD) involving workers from different factories and local people. Finally, a robust document search was conducted to make a comparative gauge between our primary data and locally available secondary sources.

### **Situation of Labour Rights at RMG Industry: Just or Unjust?**

#### *Capability for Work*

Drawing on the idea of the 'capability approach', labour practices at RMG industry are elucidated below. The capability for work is assessed based wages and working hours, occupational health and safety, access to maternity leave and childcare benefits, and other structural factors and barriers affecting this freedom.

#### *Wages and working hours*

The most important factor that determines the well-being of the workers is their wage. According to international standard, workers are entitled to have living wages. In explaining the purpose of living wages, Los Angeles Living Wage Ordinance, for instance, recommends, 'to establish an hourly wage that, on a full time basis, would provide of worker with sufficient income to support a family of four above the federal poverty line' (Fairiss 2007: 2). The RMG industry in Bangladesh is unfortunately the lowest wage paid sectors all over the world (Muhammad 2011). The study shows that minimum wage of the workers is 'absolutely insufficient' for subsistence. To quote one worker, 'As a machine operator, I earn 4800 to 5000 taka [US\$60 to 65] per month. This is not sufficient to run our family. With my husband's income, our monthly income does not go over 10,000 taka [US\$125). After paying our house rent, we're unable to bear all other expenses.' While wages in different factories may vary, our findings show almost similar trajectory where a worker is not paid enough to even support herself let alone her family of four and more.

Since workers' wages are too insufficient to manage their daily costs, they are often forced to do over-time work, leading to long working hours. Most workers leave their homes early in the morning and get back home at mid-night. After returning home, they cannot avoid the usual household chores such as preparing food for their family with an intense pressure and anxiety of getting up early from sleep for next day work. Workers with young children are 'deeply concerned', 'too worried', 'awfully frustrated' and 'extremely sorry'—to quote some of their expressions—for not being able to give time to their children. With no proper child care facilities in their villages and slums, the younger children are usually left with relatively older ones. In spite of severe hardship, the compensation for overtime work is often below the minimum. Many workers, during interview, complained that their work hours are not even counted properly, leading to many hours of unpaid works.

### *Occupational Health and Safety*

Working conditions of most factories, as observed and alluded by workers, are unfavourable and unhygienic which have long run adverse effect on the labour productivity. During factory visits, it was found that none of the factories have a place to stand upright due to overcrowding. All of the sampled factories, irrespective of size and location, were hot and dusty because a long array of activities including sewing, cutting, and ironing is done on the same floor. In addition to poor working condition, workers' poor living conditions also contribute to their ill health. Along with other studies (Paul-Majumder and Begum 2006; Muhammad 2011), the study found that workers are threatened by malnutrition (for hunger and lower food intake) and ill-health caused from over-work, suffocating shelter and clumsy work environment. They are inflicted by various kinds of health hazards, such as skin problems, head-aches, gastric ailments, backbone pain, and fatigue (see also, Khatun et al. 2008). According to the view of the workers, employers place 'little attention' on working conditions and health safety of the workers, but 'strong attention' on their work. According to a worker:

If you suddenly visit our factory, you will see how we work there. Although the work floor is equipped with lights and fans, it is always too hot and overcrowded. The emergency exit room is too narrow, just as a show case. During the visit of buyers, all floors are kept neat and clean; toilets are equipped with towels and soaps. Unfortunately all are taken away as soon as they leave the factory. If we ask them for soap or towels, our bosses will be furious to us and will say, 'have you ever seen these



items at your home throughout your life?’ What is important to them is our work, and not our life.

Due to poor working conditions, lack of safety measures, and ill-health of the workers, accidents and deaths are sometimes common. The fatal fires at ‘Tajrin Fashions’ and ‘factory building collapse’ at savar which caused the death of workers 112 and 1127 respectively recount the hazardous and insecure work environment in Bangladesh RMG industry.

### *Access to Maternity and Childcare Benefits*

Following ILO conventions and recommendations, Bangladesh Labour Law (2006) adopted 16 weeks of maternity leave with full employment benefits. Unfortunately, very few workers actually can enjoy these maternity benefits. Workers’ testimony appears to support previous researches’ claims that despite a legal provision in place, workers have little or no access to maternity leave in most factories in Bangladesh (Absar 2001; Paul-Majumder and Begum 2000). Although there is a legal provision for childcare, only two were found to have childcare rooms. Notwithstanding of the availability, the conditions of these rooms are not even suitable for child health. Working mothers are usually reluctant to bring their children here if they find any alternative. All workers interviewed expressed their dissatisfaction for childcare facilities. The childcare rooms—although poor and unhealthy—have however some strict regulations. A working mother, for instance, revealed: “Although there is a baby care centre, children below two years are not allowed. As a result, workers bring their close relatives for taking care of their children during infancy. If anyone does not find alternatives to care her children, she leaves her job.” In many cases, working women resume their work leaving children in their slums and villages in care of their grandparents or other family members. The main cause for not keeping children with them is their low income for which they are unable to afford education for their children in urban areas.

### *Arbitrary Punishment and Workplace Harassment*

Coercive and punishment oriented disciplinary techniques are employed inside factories to ensure labour productivity. All interviewees expressed their dissatisfaction being molested by senior staffs (supervisor, line chief, production manager) by abusive words or physical assault as punishment. The sexual harassment was echoed by a female worker in the following way:

Bosses (line chief, supervisor) very often come and stand beside us. Within a moment, they mildly touch our neck and shoulder and blow

their hands on our back. Male bosses touch the body of female workers persuaded by sexual instinct. This harassment is more frequent for relatively beautiful and smart workers.

The most severe form of harassment in the workplace is rape. Although not common and open, women workers are sometimes raped by co-workers or senior bosses but very often it remains undisclosed due to a fear of possible economic (for example, loss of job) and social sanctions (humiliations) (see also, Siddiqi 2000).

#### *Forced and Compulsory Labour*

The capability for work implies that workers have the freedom not to work after the end of usual working hour. However, workers have not the freedom over overtime work. It is compulsory for all workers and decisions are made by the management. The main entrance of the factory is always kept locked and controlled by the security personnel (see also, Danneker 2002; Muhammad 2011). Workers' freedom to move for 'valuable work' is also constrained by the authority since wages are paid in second or third week of the month. This delayed payment, a tactic of the employers, hinders occupational movement of the workers that spurred from a focus group discussion where a woman worker disclosed:

If I switch over to another factory, I have to lose salary for seven to fifteen days, or even for a month. We can claim our dues provided that resignation letter is submitted at least 30 days in advance with the clearance from the line chief, supervisor and production manager and finally approved by the final authority. It is very difficult for us to get clearance from different persons by proving satisfactory explanation for resignation. Moreover, there is no certainty of getting a job after one month. Thus, we do not take the decision to leave unless an unusual event tremendously forces us to do so.

#### *Persisting Workplace Discrimination*

Although there is no direct discrimination in wage, gender and other indirect discrimination persists. Women workers are segregated in some sections, particularly in sewing, which are comparatively low-paid than other sections such as cutting and ironing. Usually, female entrants are recruited as helpers in the sewing section and they achieve their skills in sewing and remain in the section throughout their working life. This phenomenon, known as the 'feminization of workforce' (Islam 2008; Standing 1999), is justified by some gender biased beliefs (for example, nimble fingers, calm and patient) and myth of experience.

### *The Capability for Voice*

In the case of workers in global production enterprises, the capability for voice implies that to what extent workers are able to participate in collective decision making process. The capability for voice adequately equips the worker to achieve processual freedom of exit or voice, among the three alternatives of workers' responses against injustices (Hirschmann, 1970). It is the key component of job quality. Capability of voice provides a space to the workers to transform the resources that expand the opportunities for valuable work. The four main conditions of capability for voice (Bonvin, 2012) have been discussed in the following:

i. *The Availability of Political Resources*

The issue of political resources encompasses the workers' ability to constitute a collective body or built strategic alliances. It is also a process of recognition of workers' associations or trade unions' legitimacy. The field data shows that there is no viable existence of workers' unions at the factory level. Workers cannot form or participate in any associations or organizations due to the fear of losing jobs (see also, Danneker 2002). During our focus group discussions, a woman worker reported that: 'We never try to form associations inside the factory because our employers do not like it. They don't allow us to form any association. If anyone takes initiative to organize workers inside the factory, employers will take immediate action to discharge him or her from the job.'

ii. *Availability of Cognitive Resources*

The ability of workers and their representatives to produce their own information and descriptions is a key tool of capability for voice (Bonvin, 2012). If workers at firm level are not competent enough to press their demands and to express their views about 'valuable work' efficiently, then they should resort to representatives. Unfortunately, workers have not found any leadership for their representation in the negotiation table. Due to the absence of trade unions inside the factory, efficient leadership has not been developed. In many of the cases, the so called workers' leaders do not belong to a particular group; rather represent the workers as an outsider and very often motivated for their own interest. Corrupt practices and unethical role of the leaders are well reported by the

workers. At the same time, employers are not inclined to arrange any training programs to increase labor power.

iii. *The Available Entitlements*

Legislative provisions and collective agreements allow the workers to claim their legitimate benefits and entitlements what they see as ‘valuable job’. Legal guarantee and enforcement of mechanisms such as the right to strike may significantly contribute to a more balanced power relationship within a firm. For lack of collective bargaining and efficient leadership, the labour benefits and entitlements are at the minimum level. The workers cannot force the employer to comply with the legitimate entitlements and their enforcement.

iv. *The Readiness of Interlocutors*

Any process concerning the definition of ‘valuable work’ involves a collective decision of different stakeholders such as employers, shareholders or other corporation engaged in the global chain of production. The workers’ wellbeing is dependent on the good will and the legal framework and duties (voluntary or compelled) imposed on employers. It is evident that employer’s reluctance to listen to the concerns expressed by the workers is a great barrier to the path of transforming into ‘valuable work’. Employers and shareholders do not want to sit together with the workers and the decisions are taken unilaterally by the employers. Employers strategically keep workers from joining any trade union, since organized workforce may potentially induce more pressure on the owners to execute their demands. In case of a potential association or union, punishments and panics are common methods used by employers, as echoed by a union organizer:

In the absence of workers’ unions or associations, owners can easily ignore the rights of individual workers. Thus owners always follow ways so as to make sure that workers are not organized. By firing the organizers, employers often create panic among the workers, thus refraining general workers from joining any association.

## **Conclusion**

The study shows that the Bangladesh RMG industry apparently displays unjust labour conditions. Both ‘capability for work’ and ‘capability for voice’ are denied at the workplace. The study demonstrates the employers’ and states’ unwillingness to enhance workers’ capability. Workers—women in particular—accept the exploitative labour conditions due to the lack of other opportunities and an abundance of

cheap labours. These local dynamics certainly provide the local capitalist, state and the global buyers a 'comparative advantage' but at the cost of 'women's disadvantage.' Despite hyper-exploitation, most workers consider the RMG industry as an 'exit point' to enter the public spaces from their confined space at home, providing a possibility to become self-reliant. Despite bizarre labour conditions in Bangladesh, the labour rights situation is gradually improving by the role of different stakeholders. The study concludes that the fate of unfortunate workers will be written in different way, if all stakeholders (e.g.; employees, employers, state, multinational corporations, human rights organizations and consumers) work together to end unjust labour practices even staying in a capitalistic world in the 21<sup>st</sup> century.

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## 12 Understanding Waters, Sanitation and Hygiene Situation among Tea Laborers Community in Sylhet

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### **Introduction**

Like many other developing countries in the world, Bangladesh faces multiple challenges in sanitation, hygiene and water sectors. In every year, about 110,000 children under five years die due to diarrhoeal diseases. In its national water supply and sanitation sector development plan for 2011-2025, the government of Bangladesh fix target to achieve 100 percent sanitation for all by 2014. The access to water supply and sanitation is primarily related to economic condition of the population. Lack of awareness, education and fund are main reason of under coverage in the water supply and sanitation. Government has targeted the poor and marginalized people to bring them under the water supply and sanitation program. Research suggests this situation is much more vulnerable among marginalized and indigenous groups than that of majority people of Bangladesh. As a marginalized group, the situation of tea laborer community is also vulnerable.

A Total of 359,085 people live in tea garden areas. 89,812 registered laborers and 19,592 casual laborers are working in the tea gardens. The tea garden laborers of Bangladesh are a specific group of people who lead a very poor life due to their poor income. The minimum earning of the laborers does not support them to consume sufficient food and nutrition. Literacy rate is poor among them. Most of their rights as human being are violated. They have very less connection with majority system and services mainly due to their isolated habitats, distinct culture and lack of self consciousness caused by mainly illiteracy.

While Bangladesh has made commendable progress in supplying safe water to its people, gross disparity in coverage still exists across the country. Tea garden workers are among them who are usually excluded from many of the government services from the point of view that they should be cared by tea garden authorities. The tea garden authorities have the responsibilities to ensure housing, safe water, sanitation, medical and education facilities for the tea laborers and their families which is actually not in practice by the authority. The implications of using unsafe water and inadequate sanitation facility among tea garden workers causes



different water borne disease like: dysentery, diarrhea, typhoid, cholera, jaundice as well. The entire population of the tea estates especially the women and children are considered as vulnerable as the major part of them do not use sanitary latrine and go through unhygienic practices (IDEA, 2012). Study suggest that though Garden authority have some provisions and the local government bodies sometimes arrange hygienic sanitation and safe water sources for tea laborers community, those becomes useless as they do not use or maintain those sources regularly (IDEA, 2012). Though studies have been conducted to understand social, economic and cultural issues of this people, research on water, sanitation and hygiene among tea laborers with special emphasis is scarcely limited. There are key issues common to all tea gardens in Sylhet regarding water sanitation that needs to be identified properly through research so that policy recommendations can be made to improve the health status of tea garden workers.

### **Objectives of the Study**

The overall objective of this study was to understand the situation of water, sanitation and hygiene among tea laborers community. To cover this, following specific objectives were undertaken:

- to understand tea laborer community peoples perceptions on safe water, sanitation and hygiene
- to know the water, and sanitation arrangements available in the community
- to list the common diseases that are suffered by community frequently
- to identify policy gap regarding the implementation of water and sanitation program in the community by the government and other actors
- to seek recommendations for the improvement of water, sanitation and hygiene condition in tea laborers community.

### **Methodology**

With the objectives of an in-depth exploration on water, sanitation and hygiene condition in tea laborers community, the research project used qualitative design. Lakkatora and Malnichora tea gardens were selected purposively to conduct the study. All members of tea laborers community age of eighteen and above living in selected tea garden was regarded as the population of the study. Research team selected 30 respondents based upon their personal connection and relationship. The minimum age of

respondents was fixed as 18 years. Research team preferred to select mid-aged group of tea garden people so that they can provide maximum information based on their experiences. The research knocked few other actors in the garden with multiple capacities (e.g. *panchayet* leaders, tea garden authority and NGO workers) as key informants. Those people were selected purposively considering the possibility to get detail information on research topic. Standardized interview protocol was developed to collect data from the respondents. Checklist was developed to administer FGDs. Focus Group Discussions (FGDs) and informal discussions were conducted with key informants. Extensive field notes were collected through observation and informal discussion.

## **Findings**

### ***Sources of Water***

In near past almost all of tea garden community people were solely dependent upon cannel water. This cannel are flown into gardens bearing water from hills. This water is contaminated by many means. But the people viewed it as pure and were used to consume it for all household purposes. But present study found changes in their outlook; almost all of our respondents viewed that they came to know from NGO workers that cannel water is contaminated and may cause for different water-borne diseases. That is why almost all of them collect drinking water from tube-well. However few opined that they use cannel, ponds and ground water whole as sources of water for cooking, washing and bathing as they do not have their personal tube well.

### ***Ideas about Safe Water***

Multiple opinions were found about the concept of safe water. Few opined that if the water is clean it is safe. But the definition of safe was not clear to them. Few opined that safe water is good for health. But how and why safe water is good for health was not clear to them. Few stated that safe water protect us from diseases. Few defined safe water as protected water-comes from tube well and does not work as source of dysentery. Some opined that arsenic-free water is safe water and from this point of view few people view tube well water is not safe as it has arsenic. Though interventions were made by NGOs it is found that the approaches did not work properly. A partial awareness on safe water has been raised.

### ***Reasons for Using Cannel's Water***

As we mentioned earlier that the tea garden community is habituated to use cannel water for all purposes ancestrally and they view this water as clean and fresh. They have shown the logic that the water is looked like crystal clean and comes from small water falls of hills, so it is safe and

good. After NGO intervention their consciousness is raised but due to lack of personal tube well, it becomes difficult for them to arrange safe water for all household purposes. Moreover due to their up-land residences few tea laborers do not get easy access to tube well water. As fixing tube well is not possible on hills, they have to come down for collecting water from plain land and it takes good amount of time as well as the task is laborious. One of the respondents notices why her family uses canal water for household consumption except drinking water,

*I don't have personal tube well. During morning pressure on tube well gets high, many people have to stand in a queue to wash their face after brushing teeth. In this situation due to scarcity of time sometimes I have to go to canal for washing my face. My family also uses canal water for washing dishes and cleaning cloths. Our ten families are sharing one tube well.*

Few opined that a section of their community people still rely upon canal water for all purposes as part of their previous habits and as they get water easily from nearby canals, do not want to go far from home to collect tube well water. Few reported that,

*As tube wells are shared, once it becomes inactive due to huge pressure; occasionally they go for quick repairing. Everybody's responsibility becomes nobody's responsibility. In this situation our people go to canal or ground water hole for water. But all of these people were habituated to use tube well water particularly for drinking and washing kitchen utensils.*

Respondents noticed that few tube wells were fixed by garden authority. But, the number was too small to fulfill their needs and once the tube wells became inactive, no step is taken so far to make it workable and remains inactive year after year. The same fate is seen to tube wells fixed by local government. So naturally a section of their people became habituated in using canal water and can not change their habits despite today's easy access to tube well water arranged by IDEA.

### ***Understanding about Diseases Caused by Contaminated Water***

Due to not having education, few of the tea laborer community people are not conscious about the causes of diseases that they frequently suffer from. We found that most of the respondents have idea about water-borne diseases. They opined that this is the recent development that was made by NGO staffs. Before the intervention of IDEA they had no idea how and why water is contaminated and how contaminated water spread diseases. Few reported that they have learnt about water contaminated

diseases from IDEA staffs and by watching films and drama arranged by IDEA. We requested our respondents to list the name of diseases spread through canal water and about half of them could mention few names like abdominal pain, stomach upset, diarrhoea, fever and skin diseases. We asked our respondents whether any of their family members suffered from such diseases. Almost all of them replied that they have frequent experiences in last six months.

### **Sanitation Related Information**

Among our respondents about 73 per cent informed that they use sanitary latrine. 7 out of 30 reported that due to not having access to sanitary latrine they go for open defecation closer to their home. This group opined that they were not capable of constructing latrine or did not get opportunity to use shared latrine. But others, who have latrine, viewed that due to not having personal interest few people of their community still rely on open defecation system. They do have superstitions that same place should not be used by seniors and juniors for sanitation. Few do believe in evil spirit and avoid going distant toilet especially at night fearing the attack of evil spirit or bad year. Almost all of the respondents reported that they became aware about the importance of sanitary latrine by IDEA staffs and latrine owners constructed it on their own expenses. These latrines are low cost, and can be constructed easily. According to respondents IDEA staffs helped them in constructing their latrine. The study found that most of the people of tea garden are aware about sanitation issue but practice is comparatively lower than their level of consciousness.

### ***Sanitation System in the Community***

According to our respondents more than half of their community people have sanitary latrine. After the intervention of IDEA people in the garden inspired to become owner of a low cost latrine. We asked why they did not construct latrine before the intervention of IDEA. All of them opined that they had no idea about the concept of low-cost sanitary latrine, had superstitions and life-long ancestral habit in open defecation. Despite having personal latrine or access to shared latrine, a section of people still go for open defecation. As usually one latrine is shared by all family members, if the need becomes visible for more than one person at the same time, in that situation any one has to go for open defecation. Most of the elderly people still prefer to go for open defecation as part of their habit. Children also prefer to the same choice. They mentioned that due to not having good habit, people of the community are frequently affected

by different diseases. Maintenance of constructed latrine was found to be dismal. We found at least one fifth of the families who had latrine but not workable now and the owner does not show interest to repair it.

### **Hygiene Issue in the Community**

#### ***Knowledge about Hygienic Behavior***

Research team explored that a section of tea laborers have little or no idea about hygienic behavior. About one-third of our respondents opined that they do not understand how hygienic practices can be maintained. Few opined that they know about the negative affects of unhygienic toilets. According to them due to the habit of open defecation many people of their community frequently suffer from abdominal diseases. In most cases the respondents described hygienic issues only focusing sanitary latrine. We asked them about their personal hygiene practices by giving examples and most of them then opined that they know that people should maintain cleanliness, should wash hand with soap or ash after defecation. Few opined that if they keep their houses clean and maintain cleanliness hygienic behavior shall be ensured and they will be safe from different diseases. They came to know about these issues after the intervention of NGO like IDEA. By watching drama and attending meetings arranged by IDEA staffs they came to know about hygienic issues. But they poorly practice what do they know about it. In some cases tea garden people were found to be self-motivated and encourage all family members and neighbors to practice hygienic behavior for their better health.

#### ***Nature of Practicing Hygiene Behavior***

Although a good number of respondents knew about the nature and importance of hygienic behavior, practice of hygienic behavior in their personal life was found to be negligible. They know the negative affects of having food with dirty hands but they usually avoid cleaning their hand with soap before and after having food. Few avoid washing hand with soap or ash after defecation. It sometimes happen due lack of total understanding on the issue.

Few noticed that they have celebrated hand washing day in their garden and almost all of their children know the appropriate time of washing hand with soap or ash. According to them sometimes their children influence all family members to practice hygienic behavior. We found a section of tea laborer who avoids taking shower regularly. They argue that due to huge work load they failed to take shower. Most of them don't use soap during shower. They opined that they forget to use

soap during bath. Waste management habit is found to be faulty among tea laborers. Our observation reveals that most of them dump their household wastes nearby their houses or in jungle. Washing cloths regularly is important for personal cleanliness, despite knowing this clearly, only a few number of our respondents reported that they wash their cloths regularly. Respondents justified this reality,

*We do have scarcity of water, washing cloths regularly is so tough. Sometimes people get little time to do this job regularly. That is why most of our people do not wash cloths regularly.*

## **Health Related Information**

### ***Common Ailments***

As health is closely related to water, sanitation and hygiene in the community; naturally, tea laborers experience multiple health related complications. From the previous data it can be assumed that the community people are continuous sufferers of water-borne diseases. Findings of our study suggests that the tea laborer community people suffer from few common diseases like diarrhoea, fever, abdominal pain, jaundice, dysentery, cough and skin infection etc.

Many of them still do believe in super natural forces influence as well as the affects of evil spirit in their life. Once they get sick a portion label it as the influence of evil spirit. Few believe in the affect of bad air in their health.

Malnutrition is a common problem in the community. Due to poor income it becomes difficult for tea laborer community to arrange nutritious food for their family members. Due to lack of proper food most of the children in tea garden are malnourished- one health staff of a tea garden opined. According to our respondents few people in tea laborer community have bad habits; they are habituated to drink locally made unhygienic wine and smoking habit is widely seen. Those habits increase health risks and their average life expectancy is lower than majority people. Tuberculosis and Bronchitis are also found among them mainly because of their bad habits.

### ***Access to Health Care Facilities***

Every tea garden has a health center run by garden authority to take care of tea laborers free of cost. We found none of our respondents who were satisfied with the health services given by garden health center. Many of our respondents opined that the health staffs sometimes show their anger if people do not get cure with minimum medicine supplied by them. One

of the respondents shared his experience on the performance of health center,

*The medical staffs of tea garden recommend same medicine for all diseases. In most cases they recommend or supply only paracetamol for all diseases. As its result patients do not get cure soon Moreover garden health center is not well-equip for all types of treatments. They do have shortage of medicine and medical equipments. So getting cure by the services of garden health center is impossible*

Getting access to outside medical services sometimes become difficult for tea laborers community. Due to language barriers many of them sometimes can not explain about their ailment before physicians or health staffs. Few of them opined that they are neglected by medical staffs mainly because of their status as tea laborer.

We asked our respondents why they avoid going their own health centers. Almost all of them opined that due to having discriminatory behavior by health center staffs, many tea laborer community people prefer to go to medicine vendor's shops for treatment. They describe the nature of diseases to medicine vendor and medicine vendor give some medicine accordingly. They consider it as an easy process to take better treatment.

### **Discussion and Conclusion**

Tea garden community is in fact isolated from the mainstream culture and system. Due to this, despite having close proximity to majority community as well as urban center this people are not conscious about their life and personal well being. Due to lack of education they pose a minimum consciousness about all aspects of life. There are formal arrangements for the tea laborers by tea garden authority but most of those opportunities remain unused or inaccessible to those people. A systematic exploitation always keeps them in a specific cycle of life that only can provide poverty and sufferings. Development initiatives discriminate this people, the government services poorly benefit this people saying that they will be served by the garden authority. Health is serious issue, inevitably linked to the personal wellbeing and productivity. Considering this as important tea garden authority maintains health center but unfortunately the performance of health center is not good enough to serve the purposes. No intervention by the garden authority is found on water sanitation and hygiene situation improvement. Though few tube wells were installed by the garden authority, it remains inactive year after year and people use contaminated water and suffer

from multiple water-born diseases. Recently a local NGO called Institute of Development Affairs (IDEA) ran a program for promoting water sanitation and hygiene in the community and it was well supported by the community. But changing people's behavior is not an easy task, just after their project is phased-out, the tea laborer community people has turned back from the improvement and are again under risk. That is why long-term steps should be undertaken by the garden authority in this connection with strong supervision so that their behavior on health, water and sanitation is changed permanently. If it is possible, their productivity will be increased and ultimately benefit the garden authority to meet their business purposes.

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# 13 Online Human Rights Defenders (OHRDS): Recognition, Challenges and Prospects

Md. Saimum Reza Talukder

## Introduction

Due to the gradually increasing movements of the *Human Rights Defenders (HRDs)* on internet, the traditional power nexus between the state and citizen has been shifted in different ways in several countries including Bangladesh. Emerging cyber dissidents, bloggers, online activists and journalists have thrown challenges to the perpetrators of human rights violations and curtailed the repressive power of authoritarian governmental actions and policies. As a result, under the veil of national security, telecommunication safety, data protection, anti-terrorism and so on government is restricting internet freedom and online privacy.

In this critical situation, safety and security of the HRDs has become one of the major challenges in Bangladesh. There is strong need to protect and promote HRDs activities online and offline to bring positive and rights based changes into society. Unfortunately, The legal system of Bangladesh is yet to recognize formally the term HRDs. Being the signatory to the UN Charter, the time has come for Bangladesh to recognize the “United Nations Declaration on Human Rights Defenders”<sup>1</sup>, which was adopted by the United Nations General Assembly Resolution in 1998. According to the Declaration, anyone working for the promotion and protection of human rights, from their personal or organizational capacity is called a Human Rights Defender. This broad definition includes non-state actors such as volunteers, journalists, lawyers, activists, students, academia and anyone else carrying out their activities on human rights field. Due to the increasing ostensible and repressive measures by the state and non-state actors to the human rights defenders, the time has come to adopt Declaration in our local context in order to secure themselves as well as their activities. On the other hand, there have been recent developments to deal with the increasing online activities worldwide by the bloggers, online activists, journalists and citizens themselves. The new academic intervention with the term “Online Human Rights Defenders (OHRDs)” already popped up in academic arena based the above Human Rights Defenders Declaration.

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<sup>1</sup> The full title of the Declaration is “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.

Therefore, Bangladesh needs to adopt this idea in its existing socio-legal framework, which could be one of the strategies to protect OHRDs. For that purpose, there need to recognize the term OHRD through sorting out the challenges and emphasizing on the prospects to it. Also, reformation of existing laws regarding Information and Communication Technology or Cyber Crime with the special focus on OHRDs, can provide with some judicial safeguards to the OHRDs more and will encourage more human rights activities in future. This paper is an attempt to recognize the term “Online Human Rights Defender (OHRD)” through finding out the challenges and prospects to it. The aim of the paper is to broaden the horizon for the OHRDs so that they can do the liberal application of the concept of “Freedom of Speech, Thought and Conscience” to mingle the different ideologies in order to create a peaceful just society.

### **Who is a Human Rights Defender?**

In a layman’s word, a Human Rights Defender is a person whose action promotes globally recognized principles of Human Right. However, there is a formal definition of Human Rights Defender given by the United Nations through its “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.<sup>2</sup> According to the Declaration, the definition of the Human Rights defender is<sup>3</sup>-

Human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified above all by what they do and it is through a description of their actions and of some of the contexts in which they work that the term can best be explained. The examples given of the activities of human rights defenders are not an exhaustive list.

The term “Human Rights Defender” is a contemporary one that was not known to the world before 90s. According to the United Nations Office of the High Commissioner for Human Rights-

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<sup>2</sup> United Nations General Assembly Resolution A/RES/53/144n.d., *Declaration on Human Rights Defenders*, viewed 2 December 2014, from <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

<sup>3</sup> *United Nations Office of the High Commissioner for Human Rights n.d., Who is a defender*, viewed 2 December 2014, from <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

The term “human rights defender” has been used increasingly since the adoption of the Declaration on human rights defenders in 1998. Until then, terms such as human rights “activist”, “professional”, “worker” or “monitor” had been most common. The term “human rights defender” is seen as a more relevant and useful term<sup>4</sup>.

Another definition we can get from the international recognized organization The Front Line Defenders. According to them-

Human rights defenders are people who, individually or collectively, work peacefully on behalf of others to promote and defend internationally recognised human rights.

They are defined by their actions rather than by their profession, job title or organization. They can be community leaders, journalists, lawyers, trade unionists, students or members of human rights organizations. They can defend women's rights, environmental rights, indigenous peoples' rights, children's rights, minority rights, refugee rights or the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people. In many countries they face considerable personal risk because they stand up for the rights of others against powerful interests.<sup>5</sup>

### **Rights and Protections of a Human Rights Defender:**

According to the declaration, the HRDs enjoy following the rights and protections-

Articles 1, 5, 6, 7, 8, 9, 11, 12 and 13 of the Declaration provide specific protections to human rights defenders, including the rights: 1. To seek the protection and realization of human rights at the national and international levels; 2. To conduct human rights work individually and in association with others, 3. To form associations and non-governmental organizations; 3. To meet or assemble peacefully; 4. To seek, obtain, receive and hold information relating to human rights; 5. To develop and discuss new human rights ideas and principles and to advocate their acceptance; 6. To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights; 7. To make complaints

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<sup>4</sup> *Ibid*

<sup>5</sup> Front Line Defenders n.d., *Who are human rights defenders?*, viewed 2 December 2014, from <http://www.frontlinedefenders.org/about-human-rights-defenders>.

about official policies and acts relating to human rights and to have such complaints reviewed; 8. To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights; 9. To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations; 10. To unhindered access to and communication with non-governmental and intergovernmental organizations; 11. To benefit from an effective remedy; 12. To the lawful exercise of the occupation or profession of human rights defender; 13. To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights; 14. To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).<sup>6</sup>

The Declaration does not only confer rights and protections on the HRDs, it also defines the role of the State towards the HRDs. Under the articles 2, 9, 12, 14 and 15 of the Declaration, State has a responsibility and duty:

1. To protect, promote and implement all human rights;
2. To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice;
3. To adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms;
4. To provide an effective remedy for persons who claim to have been victims of a human rights violation;
5. To conduct prompt and impartial investigations of alleged violations of human rights;
6. To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;
7. To promote public understanding of civil, political, economic, social and cultural rights;
8. To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions;
9. To promote and facilitate the teaching of human rights at all levels of formal education and professional training.<sup>7</sup>

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<sup>6</sup> Declaration on Human Rights Defenders, *supra* note 2

<sup>7</sup> Declaration on Human Rights Defenders, *supra* note 2

Also, since the adoption of the Human Rights Defenders Declaration, the UN Commission on Human Rights unanimously adopted Resolution 2000/61 to appoint a Special Representative to deal with human rights defenders. Ms Hina Jilani, a noted human rights attorney from Pakistan, was appointed as the first Special Representative. In 2008, the name of the post was changed to Special Rapporteur. However, to protect human rights defenders, this is the first international mechanism that has been assigned to monitor the rights enshrined in the Declaration. The Special Rapporteur, who works in complete independence of any State, is mandated to conduct the following main activities:

To seek, receive, examine and respond to information on the situation and rights of defenders; to establish cooperation and conduct dialogue with governments and other actors on the promotion and effective implementation of the Declaration; to recommend effective strategies to better protect human rights defenders and follow up on these recommendations.<sup>8</sup>

Subsequently, following international mechanisms came out that particular deal with the HRDs- 1. The Human Rights Defenders Unit of the Inter-American Commission on Human Rights in 2001, 2. The mandate of the Special Rapporteur of the African Commission on Human and Peoples' Rights on human rights defenders in 2004, and 3. The European Union Guidelines on human rights defenders 2004.

Moreover, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights are also the core sources of the rights and protections for the Human Rights Defenders.

### **Who is an Online Human Rights Defender?**

Ancient Greek philosophy introduced us with the word “Citizen”. Now, in this twenty first century, the internet introduced us with the word “Netizen”<sup>9</sup>. On the other hand, concept of human rights is gradually realizing as universal value for the HRDs irrespective of any race, color, sex and religion. That means, HRDs and Internet users have created their

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<sup>8</sup> International Service for Human Rights, 2008, *UN Special Rapporteur on Human Rights Defenders*, viewed 2 December 2014, from <http://www.ishr.ch/news/un-special-rapporteur-human-rights-defenders>.

<sup>9</sup> Netizen = A person who actively uses the Internet especially in a proper and responsible way or an active participant in the online community of the Internet, Mariam Webster Dictionary, viewed 2 December 2014, from <http://www.merriam-webster.com/dictionary/netizen>.

virtue and space which is not limited by any nation state boundary and Netizens or HRDs are considered free from any dogma out of ostensible national interests or security. Through online activities, online human rights defenders only speak for unity and promote human rights of mankind.

Therefore, Human Rights Defenders are beyond any national territory while acting as Netizens and freedom of expression online or internet freedom became their motto to bring qualitative changes into the society. Now, even a single person can cause a revolution within couple of moments in Internet community. Endeavor by a single person can spread up through online in the blink of eyes that already brought political changes in Middle East and North African (MENA) region. Or, a little girl Malala in Pakistan leads the world now against Islamists by her voice echoed through online media worldwide, or a single video footage of massacring on Rohingya people compelled United Nation to raise its voice to defend these 'Stateless Community' in the Globe.

So, anyone with access to internet can certainly play a role of Human Rights Defender in online that has consequences in offline as well. In this sense, if any online activity by someone promotes human rights norms and if that activity complies with the principle of UN Human Rights Declaration, the person can be said Online Human Rights Defender (OHRD).

Not only this, the recent development from European Union clearly emphasizes on access to information and internet freedom as essential foundations for peace, stability, democratic values and sustainable development, which are completely human rights defending activities. The Article 33 of "EU Human Rights Guidelines on Freedom of Expression Online and Offline" says-

Information and communication technologies (ICT) are now part of everyday life and provide new opportunities for the fulfilment of human rights and for social and economic development. Non-discriminatory access to information and freedom of expression for all individuals, both online and offline must be ensured and protected.<sup>10</sup>

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<sup>10</sup> Council of the European Union, 2014, EU Human Rights Guidelines on Freedom of Expression Online and Offline, viewed 2 December 2014, from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/142549.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf).

The declaration, adopted in Brussels on 12 May, 2014 says-

all human rights which exist offline must also be protected online, in particular the right to freedom of opinion and expression.<sup>11</sup>

So, it is clearly evident that anyone promoting human rights principles and performing his responsibilities as a human rights defender in online falls under the category of Online Human Rights Defender. The classic example can be bloggers' community who monitor and share stories about the government's ostensible legal and administrative measures with a vision to improve human rights situations through providing food for thought that might bring socio-legal and political change in the society. In 2013, Bangladesh experienced one of the massive social protests after the independence that is the Shahbag Movement demanding death penalty for war crimes committed during Bangladesh's liberation from Pakistan in 1971. The whole movement was started just by a Facebook call by Bloggers and Online Activists Network (BOAN) to occupy Shahbag and demand capital punishment for the secretary general of the Islamist party Jamaat-e-Islami Abdul Quader Mollah, hours after he was sentenced to life in prison on 344 counts of murder, rape and torture committed during 1971.<sup>12</sup> Or, a single fact finding report on government mass killing on a political procession, which is published in internet, challenges the perpetrators of human rights violations and compels them to harass human rights defender.<sup>13</sup>

### **Recognition of Online Human Rights Defenders in our local Context**

Being the Member Party to the Charter of the United Nations, under the Article 56, Bangladesh has already pledged itself to take joint and separate action in co-operation with the United Nations for the

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<sup>11</sup> Intellectual Property Watch, 2014, New EU Human Rights Guidelines On Freedom Of Expression, Offline And Online, viewed 2 December 2014, from <http://www.ip-watch.org/2014/05/13/new-eu-human-rights-guidelines-on-freedom-of-expression-offline-and-online/>.

<sup>12</sup> Global Voice, 2014, *Bangladesh's # Shahbag Protests*, viewed 2 December 2014, from <http://globalvoicesonline.org/specialcoverage/2013-special-coverage/bangladeshs-shahbag-protests/>.

<sup>13</sup> FORUM-ASIA, 2013, *Urgent Alert-Bangladesh: Release human rights defender AdilurRahman Khan immediately*, viewed 2 December 2014, from <http://www.forum-asia.org/?p=16360>.



achievement of the purposes set forth in Article 55 (c) to the United Nations Charter.<sup>14</sup>

The Preamble of the Universal Declaration of Human Rights says-

...Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,...

..Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,....<sup>15</sup>

Article 19 of the Universal Declaration of Human Rights says-

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>16</sup>

The preamble of the International Covenant on Civil and Political Rights says-

...Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,....<sup>17</sup>

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<sup>14</sup> Article 55 (c) says “With a view to the creation of conditions of stability and well being which are necessary for a peaceful and friendly relations among nations base on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:.... c) universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion”

<sup>15</sup> United Nations n.d., *The Universal Declaration of Human Rights*, viewed 2 December 2014, from <http://www.un.org/en/documents/udhr/>.

<sup>16</sup> *Ibid.*

<sup>17</sup> International Covenant on Civil and Political Rights, viewed 2 December 2014, from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

The preamble of the Constitution of the People's Republic of Bangladesh emphasizes on maintaining international cooperation with the progressive aspirations of mankind in the following way-

...Affirming that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind....<sup>18</sup>

The Article 25 of the Constitution of the People's Republic of Bangladesh compels the State to respect the international law and principles enunciated in the United Nations Charter.<sup>19</sup>

From the above international and national legislations, it is clearly evident that Bangladesh has the duty upon it to recognize the United Nations Declaration on Human Rights in order to respect the solemn expression of the will of the people, as well as the promotion of peace and human rights with the progressive aspirations of mankind. The above international and national legislations also provide with directive to the local courts to recognize the Online Human Rights Defenders based on the internationally well settled human rights norms and principles. The judicial recognition could be one of the vital safeguards to protect the Online Human Rights Defenders while being engaged in real life situations.

## **Conclusion**

Once we will be successful to make people aware of the online activities as human rights defending activity by introducing the term "Online

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<sup>18</sup> The Ministry of Law, 2014, *The Constitution of the People's Republic of Bangladesh*, viewed 2 December 2014, from [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=367](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367).

<sup>19</sup> Article 25.(1) The State shall base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall

- (b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and
- (c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

Human Rights Defenders”, it will initiate “bottom-up” pressure upon the power gamblers. In the long run, this will help to build up social movements to ensure the Fundamental Freedoms that are ensured in the Constitution of Bangladesh. The bottom up pressure will also led to creation of adaption of new laws, rules and regulations regarding the promotion and protection of the Human Rights activities online and offline. This will strengthen the capacity of HRDs online and offline to monitor government’s ostensible legal and administrative measures with a vision to improve socio- legal and political changes on human rights discourse inside the country. The academic intervention with the recognition of the Online Human Rights Defenders will have greater impact and applicability to enhance social movement and digital democratization of Bangladesh.

# 14. The Rohingya Refugee and Security Dilemma of Minority Groups in Bangladesh

Md. Harun or-Rashid  
Saifuddin Ahmed

## Introduction

The shorter Oxford English Dictionary defines a refugee as ‘one who, owing to religious persecution or political troubles, seeks refuge in a foreign country; orig. applied to the French Huguenots who came to England after the revocation of the Edicts of Nantes in 1685. Since the Second World War, the principle legal definition of refugees has been that incorporated into the 1951 United Nations (UN) Convention Relating to the status of Refugees and its 1967 Protocol, which removed the convention’s geographic limitation of refugees as being those displaced by events in Europe before 1951. This definition of refugees was designed to meet the needs of individuals fleeing persecution in the post-war era. Certainly one of the current dilemmas facing the international system today is the inadequacy of this definition to respond to the needs of people uprooted by a different combination of causes than those present in Europe during the 1940s.

In the recent past, Bangladesh has experienced two influxes of refugees from Myanmar, the first in 1978 and the second in 1991-92. Around 250,000 people were involved both times.<sup>1</sup> Now it has taken a protracted shape of problem. Undoubtedly, Rohingya people have been a sparkling example of persecution, torture but it also has big impacts on the recipient country. The first part of this Article deal with the definitional terms and the causes and consequences of Rohingya influx .The Second part explored the Historical Background of Rohingya situation as well as the colonial period. The third part examined the nature of conflict with others likes politics, Language, Land, Environment, Race, Religion and Festival. The fourth dealt with a comparative analysis between Rohingya and Rakhaine conflict in 2012.The Fifth dealt with the Intrusion of “Rohingya” Delineates a Potential Security Threat to\_“Rakhaine” Community\_The six dealt with conclusion and recommendation. Finally we tried to draw an attention of the readers with the manipulations and politicization of Rohingya infiltration. Most of the ethnic conflicts in the

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<sup>1</sup> Kiragu Esther, Rosi Angela Li, et. al, “States of denial : A review of UNHCR’s response to the protracted situation of stateless Rohingya refugees in Bangladesh”, United Nations High Commissioner for Refugees & Policy Development and Evaluation Service, December 2011, Pg-7, Access on-11/7/2013, Available at-  
[www.unhcr.org/4ee754c19.pdf](http://www.unhcr.org/4ee754c19.pdf)

world are generally very dangerous. Most of these take perpetual shape if these are not resolved in incipient level. Misperception, lack of confidence, past hostility and religious antagonism are the basic causes of this ethnic conflict. The possibility of big scale ethnic conflict is zero here because to construct a big scale ethnic conflict the parities of ethnic conflict need to be strong in case of number or power. The difference of number and power between Rakhaine & local Muslim are huge.

So, there have no chance for the Rakhaine people to make any strong agitation against the local ethnic group if conflict rises. There will remain no chance to fight back against the local Muslim for the Rakhaine. So, if any incidence takes place against the Rakhaine people it must be an ethnic cleansing. In this case, to protect the rights of minority positive initiatives should be enforced quickly aiming to diminish the root of ethnic conflict.

### **Definition, Causes and Consequence**

The United Nations (UN) Convention Relating to the status of Refugees defines a refugee as: 'any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside to the country of his nationality and id unable or, owing to such fear, is unwilling to avail himself of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it.'(UN, 1951)

In contrast to this narrow definition of refugee status, the Organization of African Unity (OAU) in 1969 developed a Convention Governing the specific Aspect of refugee problems in Africa which expanded the UN definition to include those individuals displaced by generalized conditions of violence.

*The OAU definition of refugees includes 'every person who, owing to external aggression, occupation foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.'*(OAU,1969)

The most important parts of the refugee definition are

1. Refugees have to be outside their country of origin;
2. The reason for their flight has to be a fear of persecution;
3. The fear of persecution has to be well-founded

4. The persecution has to result from one or more of the 5 grounds listed in the definition, that is race, religion, nationality, membership of a particular social group, or political opinion;
5. They have to be unwilling or unable to seek the protection of their country.

### **Conceptual Analysis**

These definitions exclude two major groups-such as:

Several important groups of people uprooted by forces beyond their control. Both the UN and OAU definitions exclude those individuals who have been displaced or persecuted because of violence, but who, for one reason or another, have not left their country of origin.

A second major group exclude from these definitions are those leaving their countries for economic or environmental reason. Thus, the internationally accepted definition of refugees includes those who have been singled out for persecution for five reasons: religion, race, nationality, membership in a particular social group or political opinion.

The definition excludes those individuals who are displaced by violence and warfare and who have not been singled out for individual persecution: the vast majority of today's refugees.

### **Historical Background**

Most of the ethnic conflicts are deep rooted. The past history of the conflict is most influential fact to understand the conflict properly. The case of Rohingya & Rakhaine is also not an exceptional one. The historical adversity of these two groups has remained dominant to flare up their confrontation. In this part of the paper we are going to discuss the historical phenomena of this conflict chronologically.

#### ***The Emergence of Buddhism in Arakan***

If we see to the map it will be appeared as disintegrated state from the main territory. 'The Arakan Yoma, a range that forms the eastern boundary of the region, to some extent isolates Arakan from the rest of southern Myanmar' (Arakan: Encyclopadia Britannicca). Before the Buddhist dominance it was reined by Hindu kings. 'But, in the 8<sup>th</sup> century the two new dimensions were seen in this new province. One was substitution of Buddha religion in the place of Hindu and the rest one is establishment of one planned city named Wesali'(Khan, 1998: 3). Until the 9<sup>th</sup> century this region remained untouched by other religions.

### *The Emergence of Islam in Arakan*

At present Myanmar is constitutionally a Buddhist country. Before 9<sup>th</sup> century there was no Muslim in Arakan. The majority people were Buddhist & negligible portion of Hindu were also in existence there. Yegar cited that ‘Probably the first contact which Arakan had with Islam was through Muslim seamen from Arab in the ninth century’ (In Grundy et al, 1997: 79). The Arabs were charmed by the natural beauty & natural resources of Arakan. Subsequently they started to live there. In the British period a great number of Muslim people also migrated to Arakan from Indian sub-continent.

### *How Rohingya People Became Refugee of Bangladesh*

A refugee is a person, as has been said by Harun Ur Rashid, who takes refuge in another country for fear of persecution and threat to life.<sup>2</sup> To become a refugee one must leave his country of origin. It is first and foremost requirement for a person who claim himself a refugee. The fact of persecution must be specific. Rohingya people, took refuge in Bangladesh, are counted as refugee because they fulfill the requirement of being a refugee. Rohingya is an ethnic group who are generally from the Arakan state of Myanmar. The number of Rohingya Muslims is approximately 1.4 million, almost half of the total population.<sup>3</sup> So being persecuted Rohingya people leave their country of origin and take refuge in the neighbor country named Bangladesh. This problem first sought in 1978. In 1977, the Burmese military government launched an operation called “Naga Min” or Dragon Kings to registrar the citizens and prosecutes the illegal entrance. The nationwide campaign started in Rakhaine state, and the mass arrest and persecution, accompanied by violence and brute force, triggered in exodus in 1978 of approximately 200000 (Two Million) Rohingyas in Bangladesh.<sup>4</sup> Another influx came to Bangladesh in 1991-1992. Almost 270000 (Twenty Seven Million) people were contained in this influx. Most of them took refuge to Bangladesh in different camps.

### **Theoretical Framework**

Every research paper requires a theoretical basis of its work. That means, it is important for the strength of research to delineate the whole scenario under a well recognized theoretical basis. To make my case evident I used some theories which are described in the next pages-

<sup>2</sup> Rashid Ur Harun; Pg-243;2005; An Introduction to Peace & Conflict Studies.

<sup>3</sup> PDF; p.g-1; Ten Years for the Rohingya Refugees in Bangladesh.; [www.doctorswithoutborders.org/publications/.../rohingya-report.pdf](http://www.doctorswithoutborders.org/publications/.../rohingya-report.pdf).

<sup>4</sup> IBID; pg-10

### **Civil War & Diffusion of Violence**

We know the negative externalities which are generally imposed on the neighboring country of civil war or internal conflict torn country. Through these negative externalities the violence generally diffuses. These negative externalities are massive flow of refugee to neighboring country and bad impact on the economy (Carreras, 2012: 838). To analyze the causes of diffusion of violence Woodwell asserted that 'Conflict can also spread through transnational ethnic ties when political actors in the neighboring state act in solidarity with their ethnic group in the world torn country' (In Carreras, 2012: 839). In the same line with Woodwell many other authors named Moores, Davis & Saideman stated that 'Many civil wars involve ethnic groups seeking secession, and transnational ethnic ties may lead actors in one state to act in solidarity with their ethnic kin in another' (In Salehyan & Gleditsch, 2006: 336). In many cases the ethnic ties surpass the power of political actors. The multinational ethnic ties may be based on religion, language, race etc. In such cases, conflict may diffuse through the negative externalities mentioned above (Carreras, 2012: 839).

We saw the diffusion of violence through multinational ethnic tie, religion, in 1947 in India & Pakistan. It was one of the worst riots the world have ever seen. The problem with which I am working is also based on the same stage, religion. In Bangladesh the mainstream of population is Muslim. On the other hand Rohingya are also Muslim. This transnational ethnic tie, sometimes, is assumed as the detonator of a big riot against Rakhaine in Bangladesh.

### **Ideologies of Antagonism**

This theory is basically a psychological explanation of delineating a conflict. It emphasizes on historical evidences of ethnic or group conflict as a root of conflict. To define ideologies of antagonism Ervin Staub asserted that 'a history of conflict, hostility and mutual violence lead to perceiving the "other" as an enemy who represents a danger to one's existence. At the same time, each group's identity is partly defined by its enmity to the other. I call this an Ideology of Antagonism (In Richard et al, 2001: 79).

Ideologies of antagonism refer the adverse relationship of one group to another. We have seen this relationship between the Hutu & Tutsi in Rwanda, Tamil & Sinhala in Sri Lanka. This type of relation is also present in between Rakhaine & Rohingya. This type of ideology is very much responsible to flare up a dangerous riot. It has already been seen in



Myanmar. We cannot guarantee it unequivocally that this type of riot will not be taken place in Bangladesh.

### **Evaluation of Rohingya - Rakhaine Conflict: 2012**

The nature of politics of Myanmar is changing. It is likely to follow democracy. The riot was taken place when Myanmar government is busy with the shaping of democracy. I have already said that Myanmar government has been continuing persecution for many years. Examples are also given in above pages. Myanmar government has been continuing persecution on Rakhaine Buddhists Along with Rohingya Muslims from the historical time. It can be proved by the appearance of many rival groups of Rakhaine people who want freedom of Arakan such as ALP (Arakan Liberation Party), ALF (Arakan Liberation Front) etc. They constituted these groups to rescue from the persecution of Burmese government. But one thing is that Rakhaines' are not oppressed as Rohingya. In the last riot occurred between Rakhaine & Rohingya Myanmar government was silent at the first phase but when government saw that riot is going out of control then they interfere into it. So it is clear that it was totally a communal violence rather than political. The riot was cited in the city named "Mongdo". It is Rohingya dominated area. I already said that the amount of Rohingya people in Myanmar is 1.4 million. Most of them live in this city. This riot took place for the murder of one Rakhaine Buddhist girl. She was rapped before her murder by some Rohingya Muslim. After that the agitating Rakhaine Buddhist killed 10 general Rohingya which fomented the riot to take severe shape. Subsequently Rohingya people also torched many houses of Rakhaine. This riot was totally a riot between two general groups not the rival groups. It is also mentionable that the size of Rakhaine people is comparatively negligible than to Rohingya. On the other hand Rakhaine people of this state claimed that Rohingyas used fire arms against Rakhaine. They claimed that any rival group might help Rohingya. This claim also had basis. As like as the claim of Rakhaine people the foreign minister of Bangladesh also said in the parliament that, "Myanmar said Jamaat E Islami is interfering in the issue." Whatever it is, two groups were affected same in amount. People of every group leave their place of origin But Rakhaine became internally displaced person where Rohingya became refugee. Because Rakhaine people had opportunity to move in the own country but Rohingya people did not. In that case displaced Rohingya people crossed their own lands' border and turned into a refugee. This is the reason for what everyone outside the Myanmar thought that Rakhaine people were so brutal that Rohingya people were not able to stay in their own land. But the total scenario was not same as

people assume. We know that minority is all time defeated by the majority as Rohingya are oppressed by Myanmar. So with the same line in “Mongdo” city, Rohingya is majority and Rakhaine is minority group. So in this communal riot as well as the rule, minority or Rakhaine people were oppressed by the majority or Rohingya people. Some people argue that the military groups help Rakhaine people to persecute Rohingya. But at the same time we must remember that military personnel were implemented 4-5 days after the riot had began. But we can assume that in the conflicting situation 4-5 days is enough to destroy any groups. So it should not be thought that only Rohingya was affected badly in this riot. If comparison is conducted neutrally on the vulnerability of Rohingya and Rakhaine, the second one might be most vulnerable but it was avoided.

### **Rohingya Influx & Policy of Bangladesh**

The greatest influx of Rohingya refugee was cited in 1978 as told before. It contained almost 2 million people. Within 16 months of arrival, most of their forced back after bi-lateral agreements was made between the government of Burma and Bangladesh. Some 10,000 Rohingya Muslims were dead, mostly women and children. Due to severe malnutrition and illness after food rations were cut to compel them to leave.<sup>5</sup>The same thing also happened in 1991. But Bangladesh was unable to repatriate the whole population. So by following the international rules and regulation Bangladesh also gave shelter many refugees. Bangladesh has two camps regarding with Rohingya refugee. These are Kutupalong and Nayapara. The first one contains approximately 10000 refugees and second one contains approximately 16000 refugees. Today only 28000 refugees are recognized by the Bangladesh government and huge numbers of Rohingya refugees are illegally living in Bangladesh.

Few services are provided to the people of camps such as-basic health service; primary education and food ration services etc. Many NGOs are working in these two camps to give the facilities. On the other hand as a poor state Bangladesh is also facing problems regarding with this issue. So the Government of Bangladesh has increased restrictions on aid agencies and centralized all decision-making pertaining to both the registered and unregistered refugees at the Dhaka-level, significantly delaying aid operations. In the official camps, government officials abruptly halted refugee resettlement and have closed all income-generating activities, including small shops and tailoring, stating that skills were provided to only help refugees upon their return to Burma.<sup>6</sup>In

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<sup>5</sup> IBID; p.g-10

<sup>6</sup> Bangladesh: the silent crisis.

the present condition Bangladesh is unlikely to receive any influx of refugee. It was also seen in the last conflict occurred in Arakan between Rakhaine Buddhist and Rohingya Muslims. In that case Bangladesh government did not permit refugees to get enter in Bangladesh. Bangladesh government also unwanted to resettle the refugees because the available resources are already very low regarding with the existing population or country men of Bangladesh. Now Bangladesh argues that it is not only a problem of Bangladesh but also it is international concern. So, international community has the responsibility to come forward to promote the issue.

### **Rohingya Refugee & Problems with Bangladesh**

Rohingya is a big headache for Bangladesh because they create many problems in the place where they have taken refuge. The problems which are produced by government are traced below-

**Crime:** As a poor state Bangladesh do not able to give them adequate assistance. Bangladesh government is also unable to give shelter under the refugee camp. So they are remaining in very poor condition. So to fulfill the basic needs they try to find out work but most of them fail. Consequently they engage into various crimes. The rural people claim that the amount of crime has been increased to cautious level and they also claim the linkage of Rohingya people with these crimes.

**Lessening of Workplace:** There have almost 26000 registered refugees in two refugee camps in Bangladesh. These camps are situated in the Cox's Bazar. Without the registered refugees there have thousands of refugees who remained unregistered. So this huge amount also shares the limited resource of specific area. Consequently it creates feelings of anger to rural people. This process is lessening their scopes of workplace.

**Social Unrest:** Rohingya refugee is a byproduct of turmoil which has been taken place in their living place. We all know that in the Arakan state two types of communities live. One is Rakhaine and another is Rohingya. So whenever the Rohingya influx comes into Bangladesh it increases tension of Rakhaine people who are living in Bangladesh from hundreds of year. Because Bangladesh is a Muslim dominated country where Myanmar is Buddhist dominated. So there is a co-relation between Rohingya and Bangali based on religion. Sometime many prelude religious person or parties try to disseminate conflict with Rakhaine in Bangladesh as revenge. As an example- In last conflict of Rohingya and Rakhaine one of the most influential religious political parties tried to disseminate the communal riot in Bangladesh. In that case they tried to

foment general people to agitate against Rakhaine community. To make this possible they spread some horrible videos through internet as a mass killing of Rohingya in Arakan done by Rakhaine. I saw this video and this was not videos of discussed riot. Most probably these videos are taken from Vietnam War. Consequently in most Rakhaine villages they situated vigilance group for their own safety and many Rakhaine people leave their home and displaced to safe place. Although it is not discussed or written in any kind of media it is true. I gave this information from my own sight experience.

***Intrusion of “Rohingya” Delineates a Potential Security Threat to “Rakhaine” Community:*** The minority groups are always deprived and always have to face the wrath of majority group. ‘But the concept minority & majority are always relational & relative. A majority exists only in relation to majority and vice versa, and their relationship contingent on the relevant system boundaries’ (Eriksen, 2002: 122). That is- Hindus are minority group & Muslims are majority in Bangladesh but in India Muslim are minority & Hindus are majority. That means concept of majority and minority vary based on the system boundaries or territory.

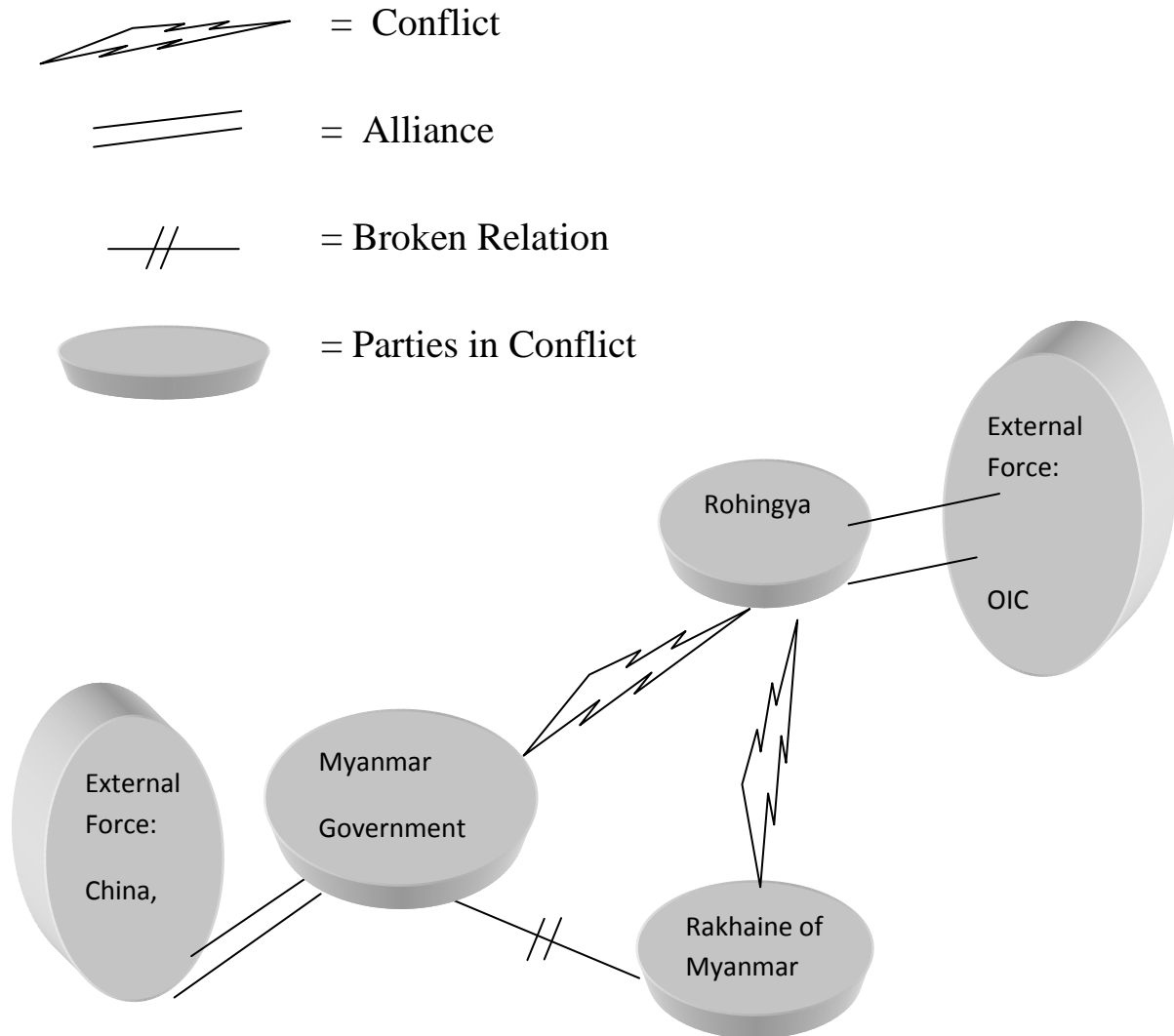
The same sentences will be appropriate on the relationship between Rakhaine & Rohingya. Rakhaine are Buddhist & they possess the majority of Arakan, Rohingya or Muslims are minority group in there. In that case as I have mentioned above Rohingya has to face the wrath of majority. With the same line in Bangladesh Rakhaine or Buddhist are minority. In that case I do not say Rohingya is majority here but I would like to mention the religious ethnicity, Muslim, as majority. So, as a minority group, the Rakhaine people possess potential security threat from the intrusion of Rohingya in Bangladesh. From the data and information that I have collected from the field in aiming to analyze the situation are being described following.

### **Conflict Mapping**

By using the theoretical tools we can easily find the root & connections of problem. ‘Conflict mapping is such kind of theoretical tool that means a technique used to represent a conflict graphically, placing the parties in relation both to the problem and to each other’ (Fisher et al, 2007: 22).

I personalized the conflict map to integrate the conceptual framework of civil war diffusion & ideologies of antagonism as a part of the contributing factors for the current situation. I have also tried to include

all parties that have minimal influence or participation to the conflict. The maps is following-

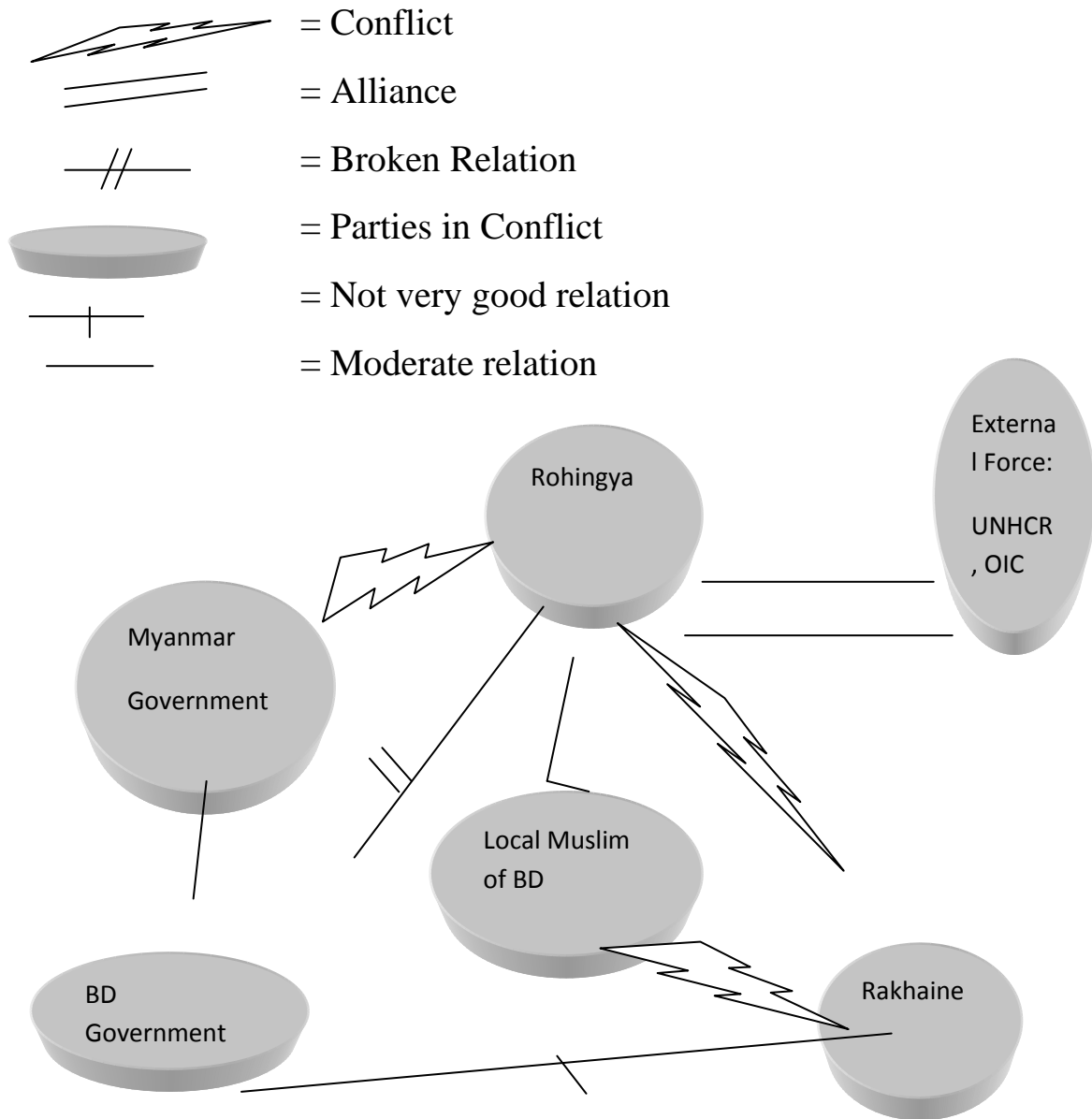


**Map 1:** Conflict regarding Rohingya in Myanmar

### Explanation

From the figure we see that how the parties in conflict are involved. It is clear in the map that the main parties of the conflict are Myanmar government, Rohingya & Rakhaine of Myanmar. Here the Rohingya as a Muslim ethnic group is counted as minority. Although the relation of Buddhist Rakhaine community with the Myanmar government is broken, in that case, for the same religious ethnicity, Buddhism, Rakhaine people are some extent immune from the wrath of Myanmar government. So, here we see that Rohingya is a one opposition confronting with two. In this case we also see some interference of external forces. But these forces cannot play strong role in favor with Rohingya. As a result being tortured in the country of origin the Rohingya take refuge in Bangladesh and termed as refugee. This product of human made disaster also

influences the condition in Bangladesh. In the next conflict map we will discuss it.



**Map 2:** Conflict regarding Rohingya in Bangladesh

**Explanation**

After the intrusion of Rohingya in Bangladesh take refuge in Bangladesh. In the past Bangladesh government used to give shelter to them for the humanitarian reason. But now it has become difficult to give them more assistance. On the other hand for the economic reason Banglaesh government wants to make a good relationship with the Myanmar government. So, the relationship with the Bangladesh government & Rohingya has been broken. On the other hand the relationship of Rohingya and local people is also not good because they have to share the scarce resource. But the local people, the erstwhile friend of Rakhaine oin Bangladesh, feel that Rakhaine is their enemy. The reason of their

thought is multinational ethnicity. They think that Rakhaine are the enemy of Islam. So the potentiality of conflict remains there.

**Possessing Threat to Observe Religious Festival**

In 2012, at the time of insurgency in Arakan, Rakhaine people were in a great uncertainty on the observation of their 2<sup>nd</sup> largest religious festival “Probarona Purnima” or “Wa Kyaw”. The total population of Harbang, Rakhaine, was divided into two groups. One group was in support to observe the outside activities of festival. Another group mainly was consisted of young people who wanted to observe both indoor & outdoor activities of the festival. The main reason of this paradoxical situation was the insurgency in Arakan of Myanmar” and the news of insurgency in Myanmar at this time. In other Rakhaine villages in Cox’s Bazaar there were also found quietly same scenario.

Yes		No		No Comment	
Male	Female	Male	Female	Male	Female
16	10	3	7	3	1

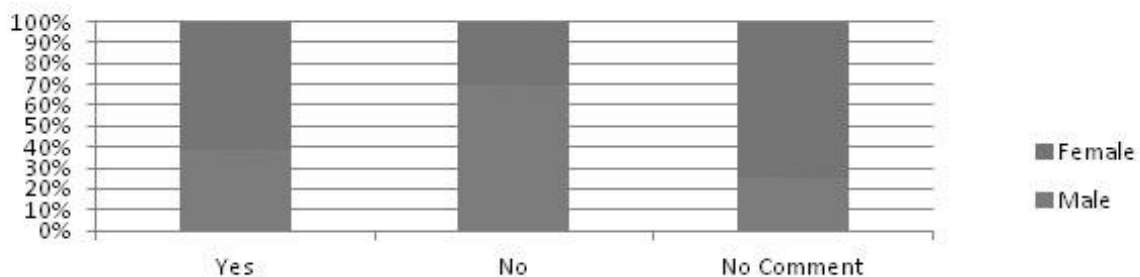


Figure 1: Opinion of Male & Female in regards of Possessing threat to observe religious festival.

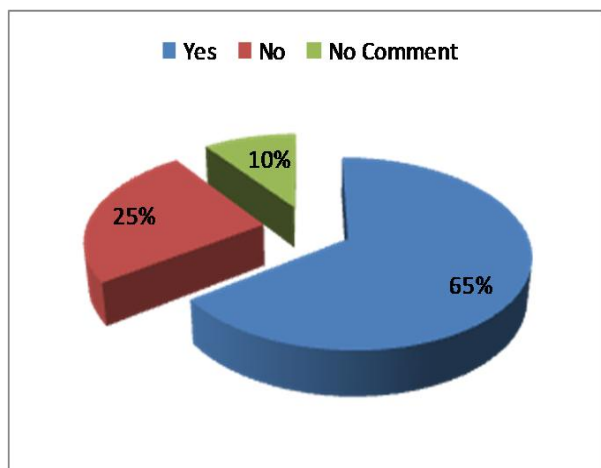


Figure 2: Opinion of total people in regards of Possessing threat to observe religious festival.

From the figure 1 we see that almost 40% of male respondents & 60% of Female respondents feel that to observe the outdoor religious activities is not safe. If we serve the data as total we see that, from figure 2, 65% people perceive that it is threatening. Only 25% people think it is not a matter of threat & 10% of total population refused to give any opinion.

### Fear of Sudden Attack

Whenever the tension arises in Arakan it becomes a crucial matter of great headache in Rakhaine society. Most of the people of the Rakhaine society think that the Muslims can attack them any time. Nothing will be done if once they attack.

In many Rakhaine villages including my research area, at the time of insurgency in Arakan, the people use to guard their own villages. It was also seen in 2012. They used to conduct surveillance at the entrance gates of the village. In 2012 the surveillance was crucial because the local Muslim people, a small portion, gave slogan against the Rakhaine people as the culprit of Rohingya-Rakhaine conflict in Myanmar. There was also a rumor existed that the local Muslim can attack the villages of Rakhaine at any moment

Yes	No	No Comment
29	8	3

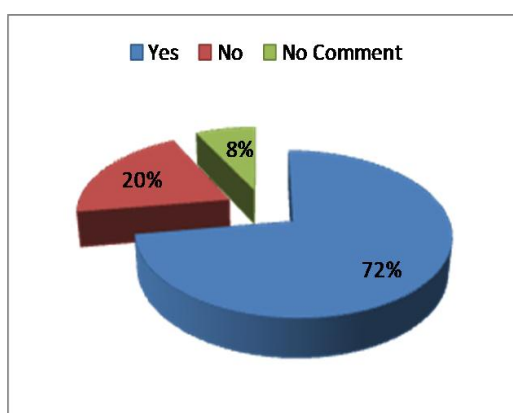


Figure 3: Opinions regarding fear of sudden attack.

As I have told at earlier discussion that most of the Rakhaine people fear that they can be attacked suddenly by the some portion of the local Muslim people. From the data of my field work I have found that 72% people consider that there is huge possibility of being

attacked. Only 20% people assume that possibility of being attacked is absent or zero & 8% people defied giving any opinion.

### Displacement & Uncertainty about Future Existence

Displacement generally means to leave the place of inhabitant. Most of the time displacement occurs because of fear of persecution, threat, environmental degradation etc. When the displacements leads a person to cross the border of state & bound the person to refrain to come back to the past place he or she will become a refugee. Displacement has not been in action in Rakhaine societies in full swing. Although the rate of displacement is almost zero, without some exceptional cases, most of the people fear that in the near future the displacement is prerequisite. I found only 3 families who has displaced from their place of origin by perceiving the fear of being attack. The Rakhaine people are in a perpetual uncertainty about their future existence in Bangladesh.



Yes	No	No Comment
21	14	5

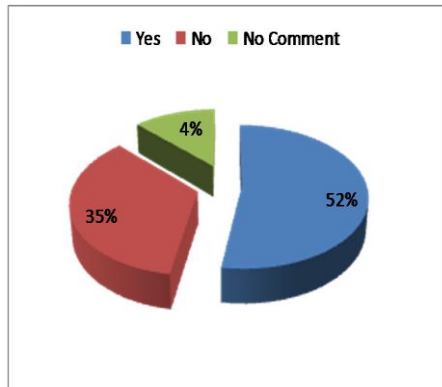


Figure 4: Perception on displacement & fear of sudden attack.

From the figure 4 we see that most of the people, 58%, perceive that in the near future it will not possible for the Rakhaine people to live peacefully as they do now. Only 38% people consider that there will be no problem in the near future to live peacefully. 4% people do not think the question should be answered.

### Change in Conduct of Local Muslim People

In Bangladesh the Rakhaine people have been living with peace and harmony from the historical time. Hardly there has any example of big scale conflict or tension with the local Muslims or vice versa. But in the present situation they, the Rakhaine people, are not in a situation to say confidently that we are safe here. Because of the multinational ethnicity and the manifestation of many groups against the Rakhaine, the mind set up of friendly local Muslims have been changing gradually. Most of them started to think the Rakhaine as an opposite nation to the Islam. I was unable to contact with any local Muslim people for my limitations to make conversation with this concerning issue. But, if the assumption of the Rakhaine mass is true the pitfall will be very dangerous.

Yes	No	No Comment
18	17	5

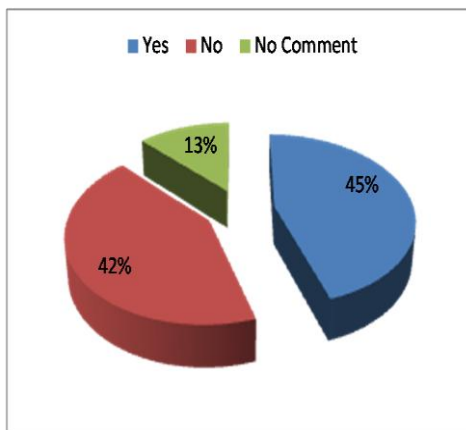


Figure 5: Perception of changing conduct of local Muslim people.

From the figure 5 we see that 49% said “yes” & 47% said “no” in relation to the changing behavior of local Muslim people. 4% people ignored to give any opinion. Although 47% said “no” the bigger portion said “Yes”. So, we also see here the same potential threat that Rakhaine people are being perceived.

### Factors that Intensifying the Threats

As I have mentioned above, the paradoxical relation with local Muslim was not prevailed in the past. Many factors have been playing crucial rule

in constructing the present situation. Now in this section of my paper I am going to explain those factors which I have attained from the data or opinions of my respondents from the field in following-

**Social Sites: Facebook**

In this modern era of science social sites have a great impact on the social issues. It has massive constructive sides but along with this the social sites are also being misused. This misusing of social sites is basically entitled as “Cyber Crime”.

In various social sites facebook is most popular in Bangladesh. The facebook users of Bangladesh are huge in number. So, if any matter is posted in facebook it spreads very fast all around. It also does not require any justification to share the opinion. By taking this advantages many wrong opinions, information are being shared in facebook which kindle the local Muslims people’s against the Rakhaine. Many of my respondents shared that at the time of insurgency many video clips are shared through the facebook that containing very dreadful images. But the images are hardly link with the real conflict.

Yes	No	No Comment
33	7	0

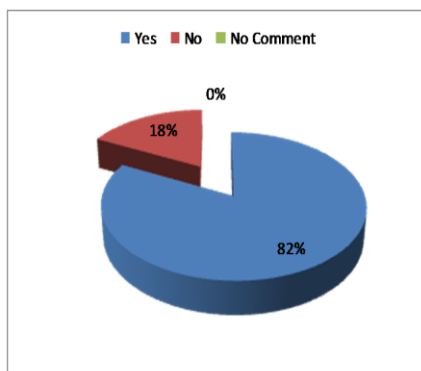


Figure 6: Opinions on Facebook as a detonator of conflict

Facebook is a very recent advent of science which has very lucrative sides to say about. Along with this the rebellious side of Facebook is also massive as we have seen in many places of the world. In the present crisis we are discussing here is also being influenced massively. 80% of the total

population assumes that Facebook is one of the most influential matters that help the local people to be agitated against the Rakhaine people easily. Only a few portions of the people, 17%, do not think facebook play any responsibility in kindling the situation. 3% did not think it is necessary to tell about anything regarding with this issue.

**Fundamental Religious Groups**

Most of the ethnic conflicts generally take place because of the dogmatic characteristics of the ethnic groups. Theoretically these are known as theories of antagonism. These dogmatic groups always try to construct an insurgency to show up their power. The potential conflict of Rakhaine & local Muslim people in Bangladesh is not also an exceptional case.

Although Bangladesh is a Muslim dominated country the policies of country are quite secular. So, the fundamentals groups are comparatively weaker than to other power. But in the current years there presence is become a matter of wary. Most of my respondents blame one political party named “Jamaet-e-Islam” & its student wing “Shibir” in kindling the situation.

Yes	No	No Comment
37	0	3

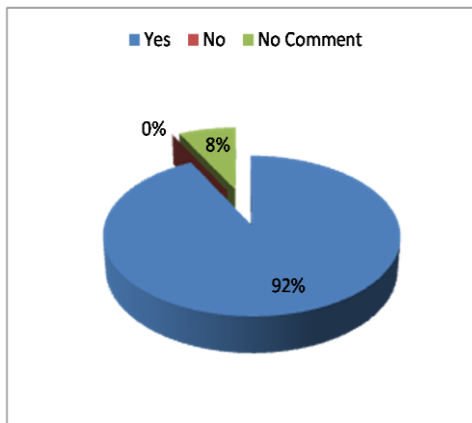


Figure 7: Estimation on dogmatic religious group as intense factor.

From the figure we see that 96% of the total population thinks that the dogmatic religious group, Jamaat-Shibir, is responsible to make the condition such intolerable or threatening. Here 4% did not give any opinion regarding with this question. In this case one thing which is very much important to give concern is no

people think Jamaat-Shibir is not responsible for the present situation.

### Weak Administrative System

As a developing country it is not unacceptable that the administrative system of Bangladesh is weak. I do not say that the administrative system play no role in controlling the situation. Certainly plays but it is not adequate to control any emergency. At the time of Arakan insurgency of 2012, 5-6 police personnel were deployed at every Rakhaine villages of Cox’s Bazaar. But this number was thought inadequate by the local Rakhaine people. To evaluate the role of Police most of them referred to the Ramu incidence. On the other hand some people also complained the deployment of police. They argued that the deployment of police may hamper the regular activities with local Muslims. They also told that local Muslims asked them why they have deployed the police at their area. So, here, the Rakhaine people also faced the dilemma with taking the help of legal institution.

Yes	No	No Comment
31	4	5

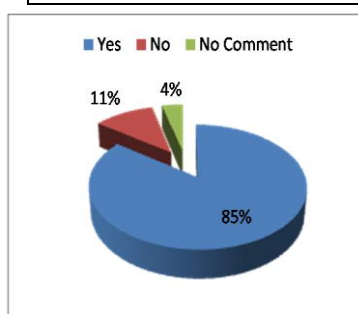


Figure 8: Perceptions on the ability of administration system.

As I have said about the dilemma of deploying police personnel, for which, most of the person thought it was not right or inadequate to deploy the police personnel. So the majority of the person or 85% do not support the strength of

police system existing in Bangladesh. 11% gave the support of initiatives that have been tried in making surveillance in 2012 at many villages of Cox's Bazaar by police forces. 4% people did not want to answer this question because they might not think this question as answerable one.

### **Recommendations and Conclusion**

Through my whole research I have tried to make clear the present situation from the perspective of Rakhaine people. Some may not count this is a conflict because it has not taken the obvious shape. But it should not be a wise work if we give the decision so early. Because we the academicians of conflict analysis know that conflict crosses many stages to become an obvious one. So, it might be the astute work to identify & find the possible solutions of the conflict when it belongs to the incipient level. To do this I would like to suggest some plausible recommendations to mitigate the problem before taking the fierce shape. The recommendations are following-

- The manifestation of dogmatic groups should be prevented through a planned way.
- Most of the local people think that the Rakhaine people of Bangladesh have link with the Rakhaine who are the residence of Myanmar. So, these misperceptions should be removed.
- Special committee should be formed to overlook the situation.
- The punishment should be severe in case of the person who kindles the situation against the minority.
- Religion is very touchy issue for all. So, the comments on religious belief in facebook or any other social sites should be conducted thoughtfully. It will be very good not to share any kind of criticism relating to religious activities in public or social sites.
- Everybody should be respectful to the religious belief of other.
- Special force of Police should be constituted to handle any kind of emergency.
- Confidence building mechanisms should be continued to remove all misperceptions.

Most of the ethnic conflicts in the world are generally very dangerous. Most of these take perpetual shape if these are not resolved in incipient level. Misperception, lack of confidence, past hostility and religious antagonism are the basic causes of this ethnic conflict. The possibility of big scale ethnic conflict is zero here because to construct a big scale

ethnic conflict the parities of ethnic conflict need to be strong in case of number or power. The difference of number and power between Rakhaine & local Muslim are huge. So, there have no chance for the Rakhaine people to make any strong agitation against the local ethnic group if conflict rises. There will remain no chance to fight back against the local Muslim for the Rakhaine. So, if any incidence takes place against the Rakhaine people it must be an ethnic cleansing. In this case, to protect the rights of minority positive initiatives should be enforced quickly aiming to diminish the root of ethnic conflict.

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# 15 The Escalation of Militarized Conflict: An Analysis from the Great Epic the Mahavaratta

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## Introduction

The Kuruskhetra war, according to the great Indian epic Mahavaratta is the largest war between two dynastic families of Kuru clan, called the Pandavas and Kauravas for Kingdom of Kuru. Kurusketra (literally, field of the Kuru) is the battleground on which this war was fought. The dispute between Pandavs and Kouravas started since the very beginning of their childhood. Pandavas were repressed by the Kouravas in several ways. Furthermore, the territory of Kuru's<sup>1</sup> was divided in two parts. One was ruled by Dritarastra (with the capital at Hostinapur) another part was ruled by Yudhistra (with the capital at Indroprotha) (Boshu, 2009:104). The major dispute arose between two sides through a dice-play in the court of Hostinapur, where the Pandavs were defeated in a deceitful way and went in exile for thirteen years due to the resolution of stake at the game (Boshu, 2009: 134-147). After completing of in-exile period, they wanted back their territory by pacific means. But, the leader of Kouravas vehemently rejected their claim. Following the dispute over the territory of Pandavas, peace initiatives had been taken by few actors. Mediators, negotiators and conciliators tried their best to convince Kouravas about the rights of Pandavas to their territory, but the leader of Kouravas dismissed all types of peaceful proposal of dispute settlement. All peace initiatives were failed because of Kouravas' tougher position not to share the territory with Pandavas, even not a small piece of land. Pandavas sought peaceful means to settle the dispute with enemy as well as armed conflict in case of failure of pacific measures. Krishna tried his best to settle the dispute by mediation and conciliation. In addition, many sage persons suggested Duryodhana, the leader of Koravas, to make peace treaty with Pandavas. Indeed, all initiatives of peaceful settlement of dispute by negotiation, mediation and conciliation have been failed. Consequently, the escalation of violent military conflict became inevitable and held in the Kurushkehtra.

This article demonstrates that the territorial disputes, memory of previous repression (physical, psychological, political exclusion etc) by one group on another, renege of mutual agreement by one party and failure of peace initiatives (mediation, negotiated, conciliation ) to settle

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<sup>1</sup> In Mahavaratta, the description of several generations' lives and deaths of ruling dynasty called kuru.



the dispute contribute to escalate of violent militarized conflict. The data to conduct this research is taken from the text of Mahavaratta.

### **Theoretical Framework**

There are no specific theories which explain the escalation of violent militarized conflict. But many scholars analyze some contributing factors for conflict. Few of these are discussed as follows:

The social conflict theory mentioned by Oberschall (1978) states that social conflict means to rebellion, civil war, internal conflict. Social conflict may escalate between two rival groups over struggle for power, scarce resources, status, prestige etc. When these issues become incompatible goals between two or many parties, then the probabilities of internal conflict, civil war, rebellion may rise.

According to Smith (2004: 5-8), the theoretical framework of the causes of armed conflict may be diverse. By drawing reference of Singer he states that, after 1945 the internal conflicts are more pervasive forms of conflict in present world. He argues by referring Gurr that the Relative Deprivation theory posits the basis of contrast between the parties on the actual expectation and prosperity of power. He also mentioned that the ethnicity is a problem in terms of internal conflict. Furthermore, mentioning about the theory of Homer-Dixon that environmental scarcities by environmental problem associating with several factors leads to conflict. Besides, he also mentioned about the democratic peace theory that the democratic states are less likelihood to go to war. By referring other writers he also mentioned that the economic conditions as the key factors to armed conflict. In drawing the general conclusion he states that, the repressive political system is more prone to conflict.

The research on Ethnic conflict (Lake and Rothchild, 1996) states that, three factors leads to the development of ethnic conflict that is information failure, when individuals or groups misrepresent or misinterpret information about other groups; problems of credible commitment, when one group cannot credibly reassure another that it will not renege on or exploit a mutual agreement; and security dilemmas, when one or more disputing parties has an incentive to use pre-emptive force. When these factors take hold, groups become apprehensive, the state weakens, and conflict becomes more likely. Morshed and Tajodden (2009) states that the greed and grievances are not important factors in escalating conflict but the institutional breakdown or the failure of social contract is important in escalating violent conflict.

Putzel and Jonathan (2012) state that state repression in Sub-Saharan African countries contribute to the rise of conflict in that region. Because of weak state structure the violence and repression against its own citizens or on opposition strengthen the scope and intensity of conflict. The repression creates the possibilities of conflict within a country. The internal dissent of the people against their government or the state authority may leads to conflict. The repression may be physical, psychological etc. Wyke (2007) states that capturing of state power by one group and exclusion of other political groups exacerbates the social division and increase probabilities of conflict.

Palmer (2008:22) states that the multiparty dispute over territory increase the probabilities of disputes going to war. Multiparty conflict over territorial disputes is three times more likely to escalate war than multiparty dispute over policy issues.

A research of DFID (2009:10-11) states that failure of negotiation may involve powerful parties to conflict and escalate the disputing parties to violent conflict. It also states that, the failure of peace process to bring the parties at a mutually agreed settlement escalate the conflict. Palmer (2008) states that the inability to reach a negotiated settlement inevitably leads to prolonged and protracted conflict. According to Leeds (2003) cited in Palmer (2008:14), "escalation to war and longer more costly wars are a result of particularly intractable bargaining problem."

Bercovitch eds. (1996: 19-29) states that in 55% mediation in international conflict was unsuccessful and 45% of successful cases. Where the mediation was successful the partial settlement, full settlement and ceasefire took place between the conflicting parties but where the dispute was unsettled results to violent escalation of long time conflict. The success of mediation depends on the nature of issues. He also states that, absence of vital national security interests, particularly territorial control as a necessary precondition for successful mediation. Furthermore, Bercovitch (1996: 24-25) states that, if a dispute affect the vital national interests, no amount of mediation is likely to prevent the outbreak of hostilities. He also argues that there are two types of issues the tangible and intangible types of issues that characterized the international dispute. These are: sovereignty, ideology, security, independence and all other issues (including ethnicity). Sovereignty disputes refer here to the dispute over a specific set of territory.. He also argues that by looking at data set, we see that the sovereignty (36.3 percent) and security (23.6%) are the most prevalent issues in contention

in international mediation. Sovereignty disputes have 44% success in mediation.

From the above discussion the following expectation can be made:

- Territorial Disputes between two actors increase the likelihood of conflict escalation.
- Repression by one over another party may increase the probabilities of conflict escalation.
- Renege of Mutual agreement by one party increase the probability of conflict escalation.
- Peace process failures increase the probability of violent conflict.

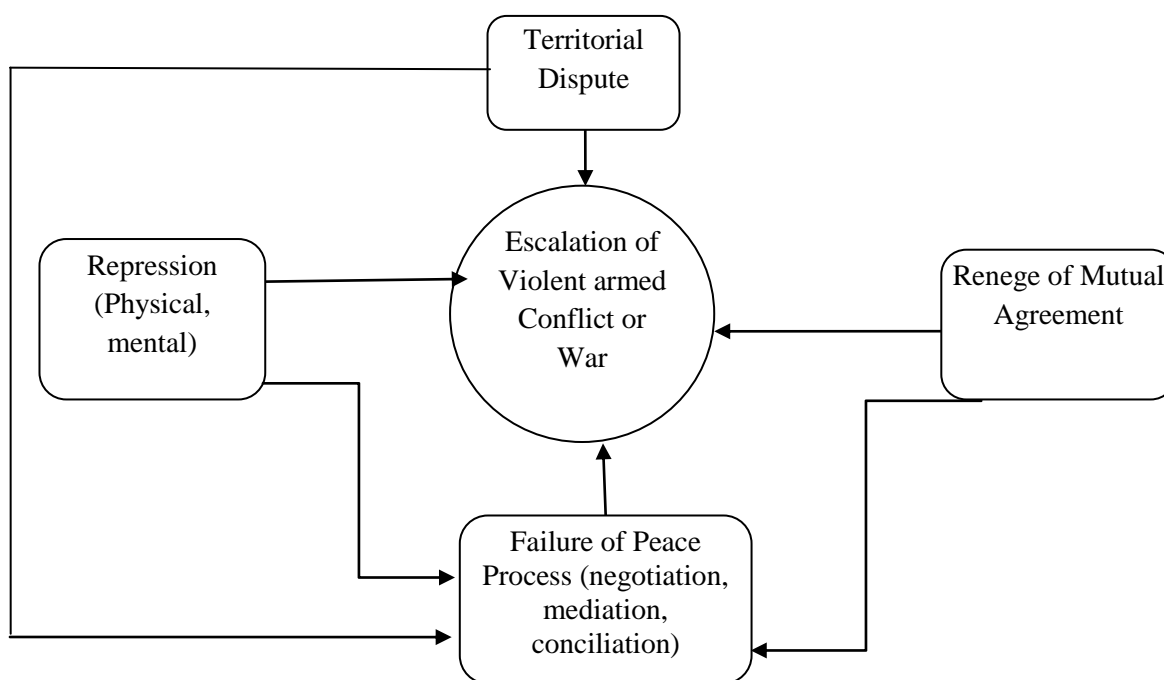


Figure 1.1: Theoretical Framework of escalating violent militarized conflict.

### Methodology and Operational Definition

This qualitative explanatory research is conducted in a textual analysis process. To test the theoretical framework conflict related data has been taken from the great Indian epic, the Mahavaratta. More specifically, the conflict related data between Pandavas and Kouravas has been accumulated to test the expectations in theoretical framework. The data has been analyzed in a textual analysis process. The story of war Kurushketra war between Pandavas and Kouravas is not important here but the escalating factors which have driven the dispute at a violent militarized war and caused millions of casualties.

## **Operational Definition**

In the Figure, 1.1: The dependent variable is the escalation of conflict and the independent variables are the territorial disputes, repression, renege of mutual agreement and failure of peace process. The operation definitions of these variables are given as follows:

### ***Escalation of Conflict***

For operational purpose the escalation of conflict, we indicate to inter-group violent militarized conflict or war where at least 100 death casualties occurred. By dispute we mean to the disagreement between rival groups over a certain issue but did not yet engage into militarized conflict over that.

### ***Territorial Dispute***

In operational definition we mean by territorial disputes as disagreement between two parties over a piece of territory or land. It may be any certain part or state of a kingdom. Territorial dispute is not more likely to resolve by mediation or negotiation. If any certain peace of territory become the incompatible issues of disputes, then the likelihood of militarized conflict is severe than other cases.

### ***Repression***

For operational definition we mean by repression to the physical and psychological torture, insult and harassment, exclusion from the country of origin or in exile and conspiracy of killing. This repression is carried out by group to punish another. The repression may also include the political exclusion of one group by another. Repression can also include inhuman and degrading treatment with the members of opposition groups or with their family member. Repression has a long term effect in the bilateral relationship between groups and individual. Memory of past repression helps to take decision against the perpetrators by the repressed group. It has negative effect on mutual trust and cooperation. Selecting the level of repression which contributes to escalate militarized conflict and contribute in failure of peace process is important. The physical and psychological torture, inhuman and degrading behavior and insult may be the parameter of level of repression

### ***Reneging of Mutual Agreement***

Reneging means the breakdown of promise or commitment. By “reneging of mutual agreement” we mean for operational definition, the violation of a resolution which conducted before by mutual consensus. The resolution

may be verbal or written. It includes the violation of mutually agreed resolution, certain commitment, violation of mutual trust etc. When the violation of mutual agreement occurred by one group, then it affects another group's behavior towards the violator. For the violation of resolution by one group on core national interest including territorial integrity and security may drive another group to take tougher position against the violator. This violation creates mistrust in bilateral relations and contributes in failure of peace initiatives by any third party.

### ***Failure of Peace Process***

For operational definition, by failure of peace process means to the mediation and negotiation failure to bring parties at mutual agreement on the disputing matters. Peace process refers to the political settlement by negotiation implementation of agreements between disputing parties. The peace process to settle a dispute may include negotiation, mediation, conciliation, diplomacy, etc. The process may be conducted by the official process between parties, any third party, civil society, nearest persons of a conflicting group. The peace process operates at multiple levels. The failing of peace process to bring the parties at agreement or mutually agreed settle escalate the conflict. (DFID, 2009:10) The failure of peace process is caused by one party's illogical tougher position on the disputing issue. The previous repression by one group on another, renege of mutual agreement by one group, the territorial disputes or disputes over core interest of the parties including territory have negative impact on peace process. Bercovitch (1996) and Palmer (2008) state that territorial disputes is less likely to settle by mediation than other issue.

### **Actors**

The main parties in terms of militarized conflict namely the Great Kuruskehtra War were the Pandavas and Kouravas. The main actors of two parties are discussed in brief as follows.

#### ***The Main Actors of Pandavs side***

*Yudishtra*: the elder son of the King Pandu and Queen Kunti, and the elder brother of Pandavs. He was the leader of Pandavs side. He was the King of Indroprotha and Later of Hostinapur. For his pity, he was known as *Dharmoraj* (which may be translated as righteous King) and *Ajatashatru* (one without enemy). He has been recognized established as

princes in the Age of seventeen Years of Hostinapur (Boshu, 2009: 83). He selected his course of action and behavior on the basis of religion, morality and justice. Before, Kurushkhetra war, he wanted to resolve the dispute through peaceful means. He believed, in Sham policy (resolving the dispute through peace treaty). In case of failing Sham policy then he believed to use force against the perpetrators. He loved dice-play but knew that it create division among friends and relatives. He was the supreme commander of Pandavas side in the Great Conflict (Kurushkehra War).

### *Others Actors of Pandavas' Side*

*Bhima:* the second son of Pandu and Kunti. He was the most powerful among his brother and has less tolerant capacity. He played an important role in all danger of Pandavs. He has less tolerant capacity.

*Orjuna:* the third son of Pandu and Kunti, was the most powerful warrior and archer. In terms of the war, Orjuna played vital role. Orjuna, owned the Draupadi through overcoming the obstacles and conditioned was set in the ceremony and engaged into a short war with Karno and Shalya and defeated them (Boshu, 2009: 97-10)

*Shahadeva:* the son of Pandu and Madri. When, Pandavs lost everything in the deceitful dice-play and prepared for in exile of thirteen years. He also expressed his intention 'to take revenge against Shakuni (Rajshekhori, 2009:146) in the battlefield because of their illegal acts and repression on Draupadi.

*Nakula:* was the son of Pandu and Madri and one of the brother of Pandavs. He also suffered in exile period with Pandavs for thirteen years. In terms of War, Nakula also play a vital role. He expressed his intention and commitment to vanquish the sons of Dritarastra, who repressed on Draupathi in case of dice-play (Boshu, 2009: 147). Before starting war, he, said Krishna to do work as his wisdom thinking all circumstances (Bohsu, 2009: 302). These five sons of Pandu are known as five-Pandavs or genrally Pandavas.

*Draupad:* is the daughter of King Drupoda of Panchasala and wife of Pandavas. When, Yudhishtra became the King of Indroporstah, she became the queen of Indroprosta. She is considered one the most important character for whom the Kurushketra war turned into a destructive all out war.

*Drupoda*: Father of Draupadi and Dhristadhyumna; King of Panchal; father of Shikhandi; Childhood friend of Drona. He was a realist and expressed his opinion to Krishna, that, Duryodhana will not return the kingdom of Pandavs by pacific means and proposed to send ambassadors to allies for soldier's collection (Boshu, 2009: 282).

*Krishna*: Incarnation of Lord Vishnu, who delivered Bhagavad Gita; cousin of Kunti; Friend and Charioteer of Arjuna; Chief counselor for Pandavas in the war. He played the important role in Kurushketra War. He was the chief policy advisor of Pandavs. He has taken a peace initiative to settle the dispute between Pandavs and Kourabs

### ***The Main Actors of Kouravas Side***

According to the description of Boshu (2009) the following people were important actors of Pandavas side. Who played vital role in peace and war.

*Leader*: The main leader of Kourab side's was Duryodhana, the first son of Gandhari and Dritarastra and the elder brother of hundred Kouravs. He could not tolerate the Pandavas and their betterment. He expressed his hostile attitudes towards Pandavas from the very beginning of their childhood. He is considered the most important perpetrator behind the Great Conflict between two dynastic clan of Kuru race. He became the successor of Dritarastra and King of Hostinapur.

### ***Others Actors of Kourava' Side***

*Dritatarastra* is the elder brother of Pandu, and the father of hundred Kourabs and husband of Gandhari. He became the King of Hostinapur after the death of Pandu. He was sympathetic towards Pandavas but could not control his greed. He always wanted to see his son Duryodhan happy. He has taken many decisions by the request of his son which caused immense suffering for Pandavas including sending Pandavas to Barnabat and arrangement of dice-play.

*Shakuni*, is the younger brother of Gandhari; maternal uncle of Duryodhana; An expert dice player. He is the policy advisor of Duryodhana. He suggested Duryodhana to arrange the dice-play and convinced him that he will capture all resources and Kingdom of Pandavs. His attitude was hostile and deceitful toward pandavs. He is considered as the key player behind the great conflict among Kuru race.

*Dushashana*: Brother of Duryodhana and son of Gandhari; He humiliated and dragged Draupadi by hair. For his repression on Draupadi following

the first time dice-play Vimashena, the son of Pandu declared loudly to take revenge by drinking his blood in the battlefield.

*Karna:* eldest son of Kunti, sired by sun God; Friend of Duryodhana; Raised by charioteer (hence sut-putra). He was a strong fighter and always suggested Duryodhana to fight and vanquish Pandavs. He always thinks himself as a strong fighter and committed to vanquish Orjuna.

*Drona:* Teacher who served the dynasty of Hastinapur; taught weaponry to both Pandavas and Kauravas but ended up fighting for Kaurvas; Son of Bhardwaj; He was married to Kripa and had a son named Aswatthama.

*Bhisma :* Eighth son of Shantanu and Ganga; Counselor of Dhritarastra; celibate by vow; had a boon to choose the time of his death; never engaged in conjugal love for protecting his promise. He was the well wisher of Kuru race, both Pandavas and Kouravas.

*Bidura:* is the half brother of Pandu and Dritaarastra born by a servant lady or maid. Later he was the minister of Hostinapur state and the second person of playing role in the state affairs before the Durodhana coming as the King. He always maintains the way of religion, morality and justice. He was the most righteous actors with Kaurabs. He was a well wisher of Pandavs and always thinking about the betterment of Kuru race.

*Sanjoy:* Sanjoy is the advisor and Charioteer of Dritaarastra. He was a negotiator with Pandavs from Dritaarastra before War. He went to Pandavs from Dritaarastra and sought peace but failed.

*Gandhari:* the mother of hundred Kouravas and wife of dritaarastra.

*External Actors:* In terms of conflict between Pandavas and Kouravas external Actors also derschrobed in Mahavaratta. Gods were on behalf of Pandavas and Danobas (demons) on behalf of Kouravas (Boshu, 2009: 230-31). Gods work for the betterment of Pandavs and Demons works for the betterment of Dyurodhanna or Kourab side.

## **Institutions**

There are two types of institutions in Mahavaratta. One is formal and another is informal. These two types of institutions set constraint on the behavior of individuals. These are discussed as follows.



### *Formal Institutions*

The most important formal institutions are the Religion and mutual agreement or resolution, Inheritance.

*Religion:* The religion was one of the most important institutions in the society of Mahavaratta. The courses of actions by any actors are justified at a great extent by the religion. The behavior of individual is guided and inspired by the rules of religion. Few examples of religious role in the behavior of individuals are as follows: Following the defeat of Yudhishtra in dice-play in a deceitful manner Krishna said Yudhishtra that killing of the deceitful man is Sonaton (Traditional) religion (Boshu, 2009:155). Furthermore, according to religion, he is accepted as Brahman to Gods who gives up his anger and greed (Boshu, 2009:221). For peace process the pious and religious man got priority (Boshu, 2009: 281). Yudhishtra always worked on the basis of religious principles and know as *Dharmoraj* (Boshu, 2009:293). If Pandavas die according to religion, then they will be happy. It was said by Krishna to Sonjoy (Boshu, 2009:293). Before going to Hostinapur, Krishna said Yudhishtra, to fight or die is the policy of traditional religion of Khatrio nation (Boshu, 2009:301). Furthermore, Fighting as per as own capacity is one of the policy of Khatrio religion (Boshu, 2009:352). Besides, fighting for the intention of heaven is a rule of religion (Boshu, 2009:370). According to the Khatrio religion, War is the best policy of Khatrio, they have to fight with son, parents, cousins, maternal relatives and friends (Boshu, 2009:451). In addition, Khatrio demolishes Khatrio according to religion (Boshu, 2009: 490). Bhisma said Yudhsitra, if fathers, grandfather, brother, teachers, relatives and friends engaged in unjust war, then religion will be obeyed by killing them (Boshu, 2009:494). Some principles of religion are non-violence (Boshu, 2009:42) and the person who can suppress his anger by mercy; he can conquer the whole world (Boshu, 2009:57). These all are religious point of view. These religious norms controlled the behavior of actors in Mahavaratta.

*Formal Resolution:* The agreement between groups is considered as institutions. It includes resolution and commitment. The resolution may be written or verbal but have an impact on the behavior of actors. By studying Mahavaratta, we found the resolution at stake between Shaukuni and Yudhsitra in terms of dice-play. According to the resolution, the defeated side went to forest in exile for thirteen years. There are many examples of commitment through which the successor of a Kingdom was selected. The order of King for selection of next generation King also found in the epic.

*Inheritance:* The inheritance was also selected by the religious principles and tradition of the society. The Kings' elder son was supposed to be the King. The resources of father were distributed among son or sons have legal rights to their father's resources. But, in some cases the successor of King was selected by the King himself. But, generally the elder sons a King become the King. For example, Krishna said at the Assembly of King Birat that Pandavas have the rights to their fathers Kingdom. In Mahavaratta, there are many examples, where the son of King, have been the next King. For example: After the birth of Duryodhana, Dritarastra said Bidura that the eldest son of his race Yudhishtra will be the King (Boshu, 2009: 71).

### ***Informal Institutions***

There are some informal institutions in Mahavaratta including norms, rituals, customs, morality, public pressure and sage man or Rishis etc. These are briefly discussed as follows.

*Morality, Norms and Public Pressure:* Morality is one of the most important informal institutions which set constraint in the behavior of actors. Some examples of morality based examples are as follows: the gambling or the dice-play is not morally supported by many people because it is source of dispute. The sentiment of general people also reflected in the description of Mahavaratta. For example, the public uttered Fi!Fi! in terms of dice-play when Draupadi was stake by Yudhishtra (Boshu, 2009:140-141). After the repression on Draupadi she said; the Kuru race lost their religion and morality because, they are not protecting him from the violence against her (Boshu, 2009: 142). Violence against Draupadi also became the cause of inflicts of all presents personnel except three. But this affliction indicates to the morality and humanity. In addition, Bidura said that virtue and morality are being persecuted by the repression on Draupadi. Furthermore, Bhishma said, course of morality is subtle. Kourabs' became greedy they will ruin in future. Indeed, Greed was hated by man (Boshu, 2009: 143).

*The Sage Persons:* Another type of informal institution was the sage peoples, who are termed as Rishi, Muni, etc. They show the right way when men try to violate the religious or general norms of society. Some of them are Vyasa, Markendaya, Parshuram, Naroda, Kanna, Moitrio etc. They explained different situation by mentioning any interesting incident. We can compare them with modern states civil society. For example: The Greatest sage of Muni, Moitrao said, Dritarastra, that dispute should not take between Pandavs and Kourabs, whether you are still alive. Vyasa

said to Dritarastra, if you want to save the life of your children's, then say them to stay with Pandavs in peaceful way (Boshu, 2009:154). Parshuram said Dritarastra after telling an incident, you should make treaty with Pandavs (Boshu, 2009:310). There are many examples of playing role of sage persons in different social issues.

## **Context and Major Events**

### ***A Short History of Pandavas and Kourab's***

***The Old generation:*** King Janmejoys' ancestor Shantanu, the King of Hostinapur had a short marriage with Gods Ganga and after death of seven son the eights son Bhisma remain live (Boshu, 2009: 34-65). Shantanu married later Satyavati by a condition that his son will be the successor of the Kingdom. The marriage held between Shantanu and Satyavati because of Bhisma's initiatives and his commitment to Satyavati and his father. Bhisma promised to keep his commitment with his father and took a vow to lifelong celibacy (Boshu, 2009: 65).

Shantanu has two sons in Satyavati. One of his sons the Vicitravirya became the ruler of Hostinapur. He has two wife that the Ambika and Ambalika. He died without any son. Satyvati asked her first son to father with her widows. The eldest, Ambika, shuts her eyes, when she see him, so her son Dritarastra born blind. Ambika turn pale and bloodless upon looking him, and thus Pandu born pale and unhealthy. Because of the physical defects of first two sons, Satyvati requested their widows again, but they send their maid, Bidura born and later became the wise minister of Hostinapur Kingdom (Boshu, 2009: 64-68).

***The Pandavs and Kourabs:*** Bhisma was rearing these three sons. Dritarastra was blind, Bidura was the son of a maid, and for that reason Pandu became the King of Hostinapur. Pandu married Kunti and Madri and Dritarastra married Gandhari, the princess of Gandharaj. Shakuni is the brother of Gandhari was committed to take revenge on Kuru's for Dritarastra' deprivation (Boshu, 2009: 64-68).

Pandu's older queen Kunti gave birth three sons by three Gods (Dharma, Vayu and Indra) through using a special mantra. They are Yudhistra, Vima, and Orjuna. Madri gives birth twins through the help of Kunti by God (Ashwini). They are Nakula and Sahadeva. These five sons of Kuni and Madri are known as Five-Pandavs (Boshu, 2009: 71).Dritarasrta has a hundred sons through Gandahiri. These hundred sons of Dritarastra are known as Kourabs (Boshu, 2009:70). Yudhistra was the eldest of Pandu's

and Dritarastra's son (Boshu, 2009: 72). After the birth of Duyrodhana, Dritarastra said that the eldest son of his race Yudhishtra will be the King. And expressed his intention after Yudhishtra, his elder son Duyrodhana will be King (Boshu, 2009: 72). After the death of Pandu, Dritarastra became the King of Hostinapur.

***Starting of Dispute:*** Pandavs' were living happily under Dritarastra in Hostinapur. But the son of Dritarastra could not tolerate Pandavs at all. For that reason they always try to torture panvadavs in many ways which ultimately lead to raise first dispute between two groups. Followings are some important events:

***Poisoning of Duryodhana on Bhima:*** Bhima, a son of Pandu, was more energetic and powerful who defeated the sons of Dritarastra in play ground. For that reason, Duyrodhana, the elder son of Dritarastra wanted to kill Bhima through poisoning by mixing with food. Bhima was drown into river by Duyrodhana. But Bhima got free from poisoning by the blessing of Nagraj (Snakes King) and got more power. After coming back from the door of death, he informed his elder brother Yudhishthira. Yudhishthira suggested him, not to disclose this incident; and suggested to be careful in future (Boshu, 2009: 74-75).

***The Affliction of Dritarastra and Duyrodhana and Plan of Killing Pandav's by Firing:*** Yudhishtra as the elder son of his father (King Pandu) became the Princes of Hostinair at the age of seventeen. But the growing development and his popularity became the cause of affliction for Dritarastra and his elder son Duyrodhana. A minister of Dritarastra advised him to vanquish Pandavs when get chance. (Boshu, 2009: 83). Duryodhana thinking with Shakuni and Karna about how they could demolish the Pandav's said his father Dritarastra that people want to see Yudhishthira as the King. Pandu became king because your blindness. If again Yudhishthira as hereditary become king, then we shall be deprived. According to conspiracy of Duyrodhana, Dritarastra ordered Pandavas to go Barnabat and live there for few years. Bidura, informed Yudhishtra, before going to Barnabat about the conspiracy against them. After one year, at a night Pandav's fired on their house and fled from Barnabat to dense forests. Duryodhana, Dritarastra and all persons except Bidur thought that Pandav's including their mother Kunti and minister Purochan have died (Boshu, 2009:83-86). After fleeing from firing Pandav's with their mother Kunti were living in forests and roaming in different kingdoms. They have faced different challenges and adversities and overcame these successfully (Boshu, 2009: 86-92).

***Swayamvara of Draupadi and a Short time Conflict:*** The Swayamvara of Draupadi, the daughter of Panchal King Drupod was arranged. The news was spread around the world. Different Kings and Princes went to the ceremony hoping to get Draupadi as their wife. Orjuna with Bhima went to the ceremony also. Orjuna owned Draupadi through overcoming the obstacles and conditioned set in the ceremony. But, others kings were hopeful to be the husband of Draupadi disappointed and angered. They scolded the King Drupod and wanted to kill him and his son. Then Bhima and Arjuna engaged into a short war with Karna and Shalya. Later, the marriage ceremony between five Pandabs and Draupadi was held (Boshu, 2009: 101-104).

***New Conspiracy against Pandavs:*** Bidura informed Dritarastra about Pandav's achievement of Draupadi and powerful ally. Dritarastra expressed his happiness before him (Rajshekhor, 2009:104). Duryodhana criticized Dritarastra for his happiness to observe the well being of Pandavs. Dritarastra convinced him that he is not happy but pretended in front of Bidura. Duryodhana demonstrated his new conspiracy strategies to vanquish Pandavs including creating division among Pandab and by convincing King Draupod so that he leaves Pandab's and so on (Boshu, 2009:104-105). Karna refused the way of conspiracy plan of Duryodhana due to ineffective and useless to demolish Pandavas. He suggested using force against Pandavas to vanish them. He also stated that unless the Panchal King is weak, we should use force against Pandavas (Boshu, 2009:105).

***Opinion for Peaceful Coexistence:*** After hearing the Karna's policy of using force against Pandavas Dritarastra called Bhishma, Drana and Bidura to discuss about the matter. Bhishma expressed his opinion for giving half state to Pandavas. (Boshu, 2009: 105). Drona supported the opinion of Bhishma and suggested to bring Pandavas by sending people, resources and soldiers (Bohsu, 2009:105). Karna did not support the Drana's position. Bidur expressed his support for Bhishma and Drana and said Dritarastra to obey the suggestion of his good friends. He also states that, it impossible to win over fight against Pandavs because they have also strong allies and relatives like Bolorama, Krishno, Satyaki, and Drupod, Drishthadyumna. He also requested Dritarastra not to listen the wretch, stupid and non-religious Duyrodhana, Shakuni and Karna (Boshu, 2009:106).

***Resolving Dispute-Khandavprotha as the Kingdom of Pandavas:*** Dritarastra sent Bidura to bring the Pandavas, Kunti and Draupadi. Bidura brought Pandavs at Hostinapur by taking the consent of King

Drupoda, Boloram and Krishna. Furthermore, Dritarastra proposed Yudhishtra to take the half Kingdom to avoid dispute among Kuru clan. Pandavas agreed with the proposal and went to Khandavprotha and established a beautiful city and were living with peace and harmony (Boshu, 2009: 106-108). Moy Danava, an expert artist of Danavas, built a magnificent palace for the son of Pandu at their Kingdom (Boshu, 2009: 115-116).

***Rajasuya Sacrificial Event:*** One day sage Naroda came to Prince Yudhishthira with four other sages and suggested many principles about religion, economy and sex (Bohsu, 2009: 119). Yudhishthira asked his brothers and ministers about doing a Rajasuya sacrifice which he heard from sage Naroda. His brothers and Ministers gave him permission and started collecting resources from kingdom and emperors for Rajasuya sacrificial event (Boshu, 2009:119-125). Furthermore, after completing all arrangements for doing a Rajsuya sacrificial event, Prince Yudhishthira invited all kings and performed a glorious ceremony and collected many resources and performed the ceremony (Boshu, 2009:126-134).

***The Affliction and Greed of Duyrodhanna and the Arrangement of Dice-Paly:*** Duyrodhanna was anguished and jealous to see the magnificent ceremony, resources and power of Pandavs. He wanted to suicide to see the prosperity of his foes (Boshu, 2009:134). Shaukuni suggested him to arrange a dice-play to capture all resources and Pandavs in a deceitful way (Boshu, 2009:135). Duyrodhana and Shakuni convinced Dritarastra for the arrangement of dice-play. After completing all arrangement Dritarastra ordered Bidura to summon Yudhishthira to play-dice in the court of Kouravas (Boshu, 2009:135-137). Bidura said to the king that it may raise dispute among the children and may destroy the Kuru race. But, Dritarastra said, if Gods become merciful, no dispute will arise among us. He also ordered Bidura to obey his order (Boshu, 2009:137).

***The Dice-Play:*** The dice-play is the most vital turning point when the previous hostility and enmity towards Pandavs by Kourabs manifested. After being informed Yudhishtra agreed to dice-play. He came to dice-assembly and started playing with Shakuni. The wretch Shakuni wined all resources (gold's, silvers, animals, honey, dress, cars, servants, slaves, palaces, villages, cities, ornaments, Kingdom and so on (Boshu, 2009: 137-141). Bidura urged to stop the dice-play and scolded by Duryodhana (Boshu, 2009: 139). In addition, Shakuni won the four Pandavas (Prince Nakula, Sahadeva, Bhimsena and Orjuna). Finally Shakuni requested Yudhishthira to keep Draupadi at stake as the last resource at his hand.

Yudhishtra Keeping Draupadi at the stake lost finally in the game. Everyone afflicted and uttered Fi! Fi! for this heinous act (Boshu, 2009:140-141).

***Repression and Insult on Draupadi:*** Duryodhana ordered Bidura to bring Draupadi into the Assembly, but Bidura scolded him and alerted him to prepare to handle the danger upon his head (Rajshekhore, 2009:141). Later, Duryodhana sent Pratikhamin to bring Draupadi but he failed. Furthermore, he was sent Dussasana to bring Draupadi to the Assembly. Dussasana said to Krishna, come now and accept the Kurus for thy lord and serve them. At these words Draupadi afflicted and ran to the ladies of Dritarastra's households (Boshu, 2009:141-142). At this time, Dussasana roaring in anger, ran after her and seized the queen by her locks, so long and blue and wavy. Indeed, Dussasana, dragging Krishna of long locks unto the presence. She was mourned and said that, the Kuru race lost his religion and morality (Boshu, 2009: 142).

***Major Debate over Winning Draupadi and Repression:*** Now the debate over the winning of Draupadi started. Whether, she is religiously or righteously won in dice-play or not? But it was clear that every one disliked the matter and expressed their moral support against the incident of winning of Draupadi by Shaukuni (Rajshekhore, 2009: 142-143). Vikarna, the son of Dritarastra said that she is not won religiously but rejected by Karna and termed Draupadi is an unchaste woman and ordered Dussasana to take the robes of Pandavas and also the attire of Draupadi. Then, Dussasana, forcefully seizing Draupadi's attire before the eyes of all began to drag it off her persons (Boshu, 2009:143). Bidura said that virtue and morality are being persecuted by such conduct (Rajshekhore, 2009:144). Bhishma states that course of morality are subtle. Kouravas' became greedy they will ruin in future. To see the repression of Draupadi, Bhishma said loudly to drink the blood of wick-minded Dussasana at the battle field. (Boshu, 2009: 143). Furthermore, Duryodhana said to Bhishma that if Yudhishtra tell that Draupadi is not their wife, then she will be freed. Listening this Bhishma said, if Yudhishtra is not our King and elder brother, then I will kill this wick minded Duryodhana (Boshu, 2009:143-44). Then, by laughing Duryodhana quickly uncovered his left thigh and showed it to Draupadi in her very sight, and beholding this, Bhishmasena expanding his red eyes, said that he will break that thigh in the great conflict (Boshu, 2009:144). Finally observing all circumstances Dritarastra being afraid requested Draupadi to desire any boon to him. Krishna desires gradually their husbands immunity from slavery obtained by dice-play and got that. Finally,

Dritarastra said to Yudisthira to go thou in peace and safety and rule his kingdom and therefore follow the counsels of peace (Boshu, 2009:145).

***The Second time Dice-Play:*** Because of Dritarastra's pity Pandavas got everything back and started their journey to Indraprosthya. Duryodhana, Dussasana, Karna and Shakuni, again convinced the King Dritarastra to bring back Pandavas and expressed that by defeating in second time Pandavas will be sent for thirteen years in exile. If they came back after thirteen years we will vanquish them (Boshu, 2009:145). In addition, the royal messenger went to Yudhishthira and informed him about the second time dice-play summoned by Dritarastra. Yudhishthira with Pandavas entered into the dice assembly. In the second time the resolution of stake which includes the following elements (Rajshekhar, 2009:146): Shakuni said about the resolution with which Yudhishthira later accepted and defeated if knowing and understanding the bad consequences:

1. The defeated party at dice, dressed in deer skins will enter the great forest and live there twelve years.
2. After passing twelve years the whole of the thirteen years in some habitual region, unrecognized.
3. If recognized in thirteen years then return to an exile of another twelve years.
4. Thus the exile will increase if failed to do so as proper way.
5. In the exile of thirteen year, each is to have his kingdom surrendered by other.

With this resolution, the play started and Yudhishthira defeated and took preparation to go to forest. Duryodhana again insulted Draupadi and said her to give up the Pandavas, her husband's (Boshu, 2009:146). Vishma expressed his anger and said that he will take revenge by vanquishing Duryodhana with his followers. Arjuna, also expressed his intention of taking revenge. Shikhandi and Nakula also expressed their intention of taking revenge by demolishing the perpetrators (Boshu, 2009:146-147).

***Thirteen Years in Exile of Pandavas:*** After passing the twelve years in the great forests (Boshu, 2009:149-252) Pandavas entered into the Virat Kingdom for the thirteen years (Boshu, 2009: 253-280), unrecognized, and passed their whole time according to the resolution in the dice-play.

***Proxy War between Arjuna and Kauravas in Matsya Kingdom:*** Furthermore by passing of thirteen years unrecognized in the Kingdom of Virat, the Kauravas, leading by Duryodhana with his soldiers went illegally to capture 60,000 cows of King Virat (Boshu, 2009:269). Hearing the illegal confiscation of cows, Arjuna taking with him the



Prince of the King Birat fought a short war and defeated the Kouravas' including the Duryodhana, Drana, Bhisma, Karna and other soldiers. Arjuna brought back the cows. When King Birat listens about defeat of Kouravas by Orjuna became pleased.

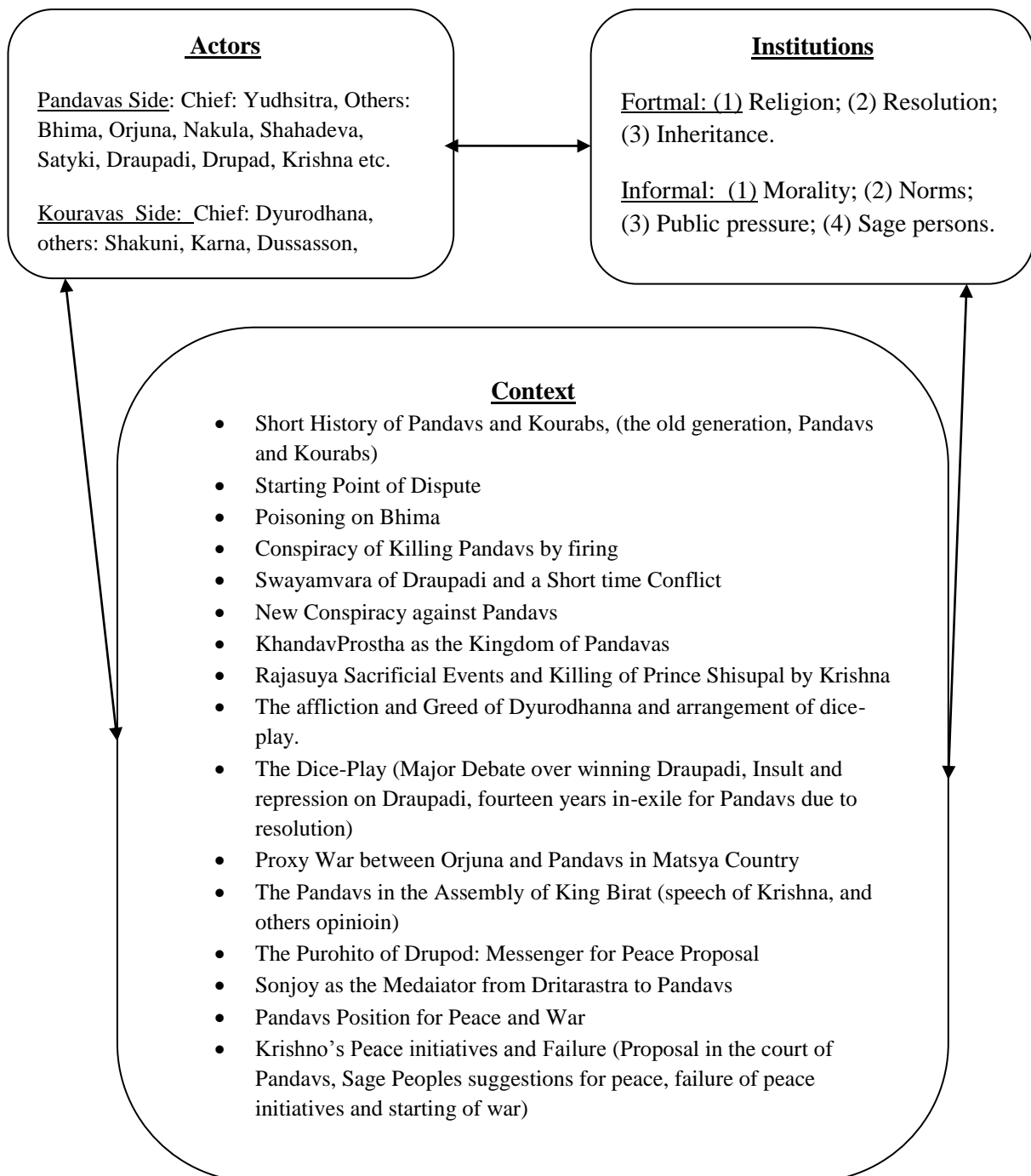
***The Pandavs in the Assembly of Kingdom of Birat:*** Indeed, Pandavas with Darupadi flourished their real identity in the Birat Assembly and accepted by the King of Motsay country as their ally by marriage ceremony between Ovimonnu and Uttara, the boys of Orjuna and the Daughter of King Birat respectively. Krishna, the relative and ally of Pandavas came to the Palace of King Birat and meet with all with various luxurious gifts for the newly married couple (Boshu, 2009:269-280). On the occasion of nuptials of Abhimanyu, the Drupod King, father of Draupadi, also came there. And many mighty kings belong to the alliance of Matsya King Birata also presents in the ceremony. Those valiant men came in the ceremony having conversed with one another upon various topics. Krishna, draw their attention to the matter of Pandavas (Boshu, 2009:280-281).

***Peace Initiatives and War:*** At the Assembly of King Birat Krishna informed all Kings about the previous hostile behavior of Kouravas with Pandavs and proposed to send a wise man to convince Dritarastra to regain the Kingdom of Padavas (Boshu, 2009:281). By taking the opinion of all persons, where Bolodev supported the pacific way of settling the dispute between Pandavs and Kourabs by conciliation (Boshu, 2009: 281-282). Satyaki supported the war as the best way to regain Pandavas father's kingdom. King Drupoda proposed for collection of soldiers for fighting. (Boshu 2009: 282). At the end of meeting Krishna, said to the King Drupoda to send a messenger who will seek peace in a just and right way. In case of failing the peaceful way, he indirectly proposed fighting as the alternative way (Boshu, 2009: 282-283). King Drupoda send a messenger to Dritarastra who try to convince Duyrodhana to give right share to Pandavas but failed (2009: 283-91). Furthermore, Dritarastra sent Sanjoy for seeking peace with Pandavs but his mediation efforts also failed because of any specific commitment from Kourabs side to give return of Pandavs territory (Boshu, 2009: 291-294).

Finally, Krishna decided to go to Hostinapur to seek peace (Rajshekhore, 2009:301). In terms of his peace initiatives the actors of Pandavs side expressed their opinion on behalf of peace and war. (Boshu, 2009: 301-303) With the proposal of pacific settlement of dispute between Pandavs and Kourabs Krishna proposed in the Kourab Court about the legal rights of Pandavas to their previous Kingdom and territory. But his proposal for

return of Pandavas Kingdom was rejected by Duryodhana. Several wise and sage people requested the Kourab side to establish peace by giving the legal share of Kiongdom to Pandavs. But all requests including the rquest for peace by the mother of Kourab’s Gandhari rejected by Duryodhana and finally the peace process failed to reach at any consensus and followed by a violent militarized armed conflict between Pandavs and Kourabs which is known as Kurushkhetra war. (Boshu, 2009: 304-317).

Figure: 1.2: The Cusal Relationship between Actors, Institutions and Context.



## **Analysis and Findings**

### ***Territorial Dispute and Escalation of Conflict***

Figure 1.1: states that the territorial dispute between two parties leads to the escalation of conflict. The textual data of Mahavaratta supports this expectation. According to the text of Mahavaratta, the territorial issue became most important when the Kuru state was divided into two parts by Dritarastra to avoid the dispute between Pandavas and Kouravas. Pandavas have a legal claim to the Kingdom of their father. For example: After the birth of Duryodhana, Dritarastra said Bidura that the eldest son of his race Yudhishthira will be the King and also expected that his son will get the Kingdom after Yudhishthira (Boshu, 2009:71). But as the tradition Yudhishthira was supposed to be the successor of his father's Kingdom. Later, Yudhishthira became the Prince of Hastinapur and achieved popularity like his father for his piety and talent. By observing the development and popularity of Yudhishthira King Dritarastra and his son planned to vanquish them by firing. Pandavas were sent to a remote area by Dritarastra to kill them. But Pandavas were aware of the conspiracy plan by Duryodhana and at night fled from their house by firing at their house. Everyone except Bidura assumed that they were dead. After a few years when Arjuna achieved Draupadi in her Swayamvara ceremony, Dritarastra was informed by Bidura that Pandavas are alive. Then by the suggestion of Bidura, Bhishma and Drona, King Dritarastra brought Pandavas to Hastinapur. Furthermore, Dritarastra expressed his intention that he wanted to give Pandavas a part of his Kingdom so that further dispute would not arise. By dividing the country into two parts, the dispute was resolved for the first time. For the division of Kuru state, one part was ruled by Dritarastra with the capital of Hastinapur and another part was ruled by Yudhishthira with the capital at Indraprastha. According to the resolution of the second dice game, Pandavas completed their thirteen-year exile.

After their return, as per the resolution they wanted back their previous territory but were rejected by Duryodhana. Yudhishthira wanted only five villages from Kouravas by sending a messenger for their living in their father's territory. But their claim for five villages also had been rejected by Duryodhana by the statement that he would not give any small piece of land to Pandavas. Krishna at the Bharat Assembly said to everyone that

Pandavas had legal rights to their father territory and requested all Kings to do such thing so that Pandavas will get back their father's territory. Dritarastra also requested his son to give half territory to Pandavas because of their legal share to their father territory. (Boshu, 2009:296-299). Duyrodhana said that he will not give any small piece of land to Pandavas (Boshu, 2009:299). On the other hand Pandavas were determined that they will regain their fathers territory by peaceful or coercion means. For example, Yudhisthira said Krishna that, if Kouravas want peace then they should give back our kingdom. In addition, having fighting capacity I wanted only five villages to Kouravas but they rejected that. Indeed, Yudhisthira expressed his intention to Krishna that he will try by all means to regain their territory by peaceful means, if failed then the war is only alternative (Boshu, 2009:300). Pandavas firm intention to regain their previous territory by pacific or coercive means indicate that when core issue like territory becomes the disputing factor, parties of disputes don't want to compromise with each another. Yudhisthira requested Krishna to do the work by protecting their interest or benefit. That means they need their territory and by give up their claim for their former territory will not go to any pacific settlement. To regain their fathers territory they were ready to die but will not share their right with other. Draupodi also said Krishna that if Kouravas' don't agree to give the half kingdom then you will not work for treaty. Pandavas will fight with their ally (Boshu, 2009: 303). In addition, Orjuna said Krishna, if Duyrodhana care about your proposal of giving us half Kingdom, then we will be happy. Otherwise, we will kill all Khatrios' of his sides (Boshu, 2009:304). Krishna tried his best to regain the Pandavas territory in a pacific way but failed. After the failing of Krishna, the territorial dispute turned into the violent militarized conflict between Pandavas and Kouravas which caused millions of death and causalities. So it is clear that the text of Mahavaratta support the expectation that the dispute over any certain territory increase the possibilities of conflict escalation.

### ***Torture, Repression and Escalation of Conflict***

Figure 1.1 states that repressions on one party by another increase the probability of armed conflict. Repression has positive link with the escalation of conflict. Furthermore, it also indicates that the repression has an effect on the failure of peace process (mediation and negotiation). In the operational definition repression indicates to the physical and

psychological torture, political exclusion, inhuman and degrading behavior, exclusion from the land of origin or in exile etc.

The textual analysis of data from Mahavaratta supports this expectations and states about the positive relationship between the variables. The repression on Pandavas by Kouravas were many forms including poisoning and throwing into river, firing, the violence against women, deceit, exclusion from territory, capturing resources etc. In the context section history of torture on Panadavas by Kouravas has been explained. These all forms of repression made a past memory of repression for Pandavas. The repression was operated on Pandavs by Kourabs. For example, the poisoning on Bhima by Duyrodhana and sending Pandavas with their mother Kunti at a remote area to kill them by firing are important examples. Furthermore, in terms of dice-play Yudhisthira was defeated by Shaukuni in a deceitful manner and lost all resources. Furthermore, Shaukuni wine-drapadi when she was at stake by Yudhisthira. The winning of Draupadi was a matter of great debate in the dice-play Assembly. But, the attack and repression upon Draupadi by Kouravas forced Bhima to take oath to vanquish the perpetrator. In the context it also been discussed that Duyrodhana ordered Bidura to bring Draupadi into the Assembly, but Bidura scolded him and alerted him to prepare to handle the danger upon his head (Boshu: 2011:141). Latter, Duyrodhana sent Pratikhamin to bring Draupadi but he failed. Furthermore, he sent Dussassona to bring Draupadi to the Assembly. Dussassona said her that come now and accept the Kurus for thy lord and serve them. At these words Draupadi afflicted and run to the ladies of Dritarastra's households was (Boshu, 2009: 141-142). At this time, Dussasana roaring in anger, ran after her and seized the queen by her locks, so long and blue and wavy.

Indeed, Dussasana, dragging Krishna of long locks unto the presence. She was mourned and said that, the Kuru race lost his religion and morality. To see the repression of Draupadi, Bhima said loudly to drink the blood of wick-minded Dussasson at the battle field. By hearing the terrible words of Bhima everybody applauded him and censured the sons of Dritarastra (Boshu, 2009:142). Duyrodhana said to Bhisma that, if Yudhisthira tell that Draupodi is not their wife, then she will be freed. By hearing this Bhima said, if Yudhisthira is not our King and elder brother, then I will kill this wick minded Duyroodhana (Boshu,

2009:144-145). Furthermore, by laughing Duryodhana quickly uncovered his left thigh and showed it to Draupadi in her' very sight, and beholding this, Bhimasena expanding his red eyes, said that he will break that thigh in the great conflict. Bidura then, addressing everybody, said, the greater danger arising from Bhimshena. The prosperity of Kuru kingdom is at an end. He also said, alas! the Kauravas are even now engaged in sinful consultations. If, virtue is persecuted, the whole assemblies become polluted. Many bad signs reflected at that time, Kripa, Dron and Bhishma understood the meaning and informed the king (Boshu, 2009:144).

Again in terms of second time dice-play when Yudisthira lost and prepared to go in-exile, Duryodhana again insulted Draupadi and said her to give up the Pandavas, her husband's (Boshu, 2009:146). Bhimshena expressed his anger and said that he will take revenge by vanquishing Duryodhana with his followers (Boshu, 2009:146). Orjuna also expressed his intention of taking revenge. Shahadeva and Nakula also expressed their intention of taking revenge by demolishing the perpetrators (Boshu, 2009:146-147). Later, Draupadi severely criticized Pandavas for their ineffective and silent role when, she was helpless and unprotected in the dice-play assembly. She expressed her intention to fight with Pandavas by her father, the King of Panchal and sons, if Pandavas are unwilling to fight against Kouravas. She couldn't forget the incident of repression upon her by Dussason, Duryodhana and other Kouravas. Furthermore, in terms of peace initiatives taken by Krishna, the past memory of repression worked to influence the failure of peace process.

For example, Draupadi said Krishna that, if Kouravas don't agree to give the half kingdom of Pandavas then you will not work for treaty. Pandavas will fight against Kouravas with their allied forces. In addition, they harassed and repressed me. If Pandavas seek peace my warrior childrens and my father will fight against Kouravas. Draupadi criticizing the Pandavs said that those enemies don't seek peace through Sham policy using force is the right way to punish them. Draupadi mentioning about the assault of Dussason upon her requested Krishna to remember in terms of treaty. Krishna also replied that he will keep it mind in the time of peace initiatives (Boshu, 2009: 303).

Another impact of repression by Kouravas on Pandavas reflected when Krishna met with Kunti, the mother of Pandavas. She requested Krishna to order Pandavas to fight against Kouravas to regain her husband's territory. She could not tolerate the miserable condition of Pandavas. She was also a sufferer repression by Kouravas. In the context, the incident of conspiracy against Pandavas and firing in Jotugriho (name of a house) has been already discussed, when Kunti was with Pandavas. The repression on Draupadi is considered one of major event which forced Pandavas to take oath to fight against Kauravas. For the repression on Draupodi, her father King Birat also influenced to take revenge against the perpetrators and send messenger to collect soldiers to fight against Panadavs.

### ***Violation of Mutual Agreement and Escalation of Conflict***

Figure1.1. states about the assumption that, the renege of a mutual agreement or resolution by one party previously conducted by the consensus of both has a positive link with escalation of conflict. Furthermore, the violation of a formal resolution by one party has also negative impact on peace process but positive link with the failure of mediation, negotiation and conciliation.

According to the text of Mahavaratta, in terms of second time dice-play, there was a resolution at stake that the defeated side will go in exile for 13 years and after completing their exile period as per as the resolution previous territory and resources will get back from the winner side. The full version of resolution was as follows (already mentioned in the context) (Boshu, 2009:146): the defeated party at dice, dressed in deer skins will enter the great forest and live there twelve years; after passing twelve years the whole of the thirteen years in some habitual region, unrecognized; if recognized in recognized in thirteen years then return to an exile of another twelve years; thus the exile will increase if failed to do so as proper way; In the exile of thirteen year, each is to have his kingdom surrendered by other.

As per as the resolution, Yudhsithira has lost in the game and were entered into great forest and lived there 12 years and 1 years unrecognized. Pandavas fulfilled their commitment and resolution in the dice-play but after the termination of their exile period, they wanted back

their previous kingdom, but rejected by Kouravas. So Kourava's violated the mutual agreement and resolution before the second time dice play. This violation of resolution by Kouravas increased the possibilities of violent militarized conflict between two sides and finally followed by the Great Conflict between two sides.

Following the peace initiatives, the Purohit of King Drupoda tried to convince Kouravas in religious or righteous way and requested Dritarastra to return back the Kingdom as per as religion and resolution (Boshu, 2009: 283-290). Bhisma, welcomed the peace treaty (Boshu, 2009: 290) but Karna, refused that and alleged that Pandavas did not fulfill their period in exile. According to Karna, Pandav's did not fulfill their commitment in the dice-play where the 12 years in forests and 1 year in unrecognized condition did not fulfill correctly. He also said, Pandavas will act according the resolution and commitment and then come Durydhana and live under him (Boshu, 2009: 290-91). But, when the proxy war between Orjuna and Kourvas in Matsya King, Bhisma clearly stated that Pandavas completed their commitment as per as resolution.

Furthermore, when Sonjoy took initiative to settle the dispute as mediator, the lack of credibility of commitment from Kouravas was raised by the Pandavas and finally his initiatives failed. For example, when Sonjoy said Yudhisthira that Dritarastra want peace with you not war. Yudhisthira replied that peace will be established but Duyrodhana must re-back the Indroprotha, the Previous territory of Pandavas as per as the commitment (Boshu, 2009: 291-93). So it is clear that the violation mutual agreement by Kouravas creates the possibility to escalate the conflict between Pandavas and Kouravas and play negative effect on the success of peace process means instigated the failure of peace initiatives.

### ***Failure of Negotiation, Mediation, Conciliation and Escalation of Conflict***

Figure 1.1: states that failure of peace process (mediation, negotiation and conciliation) to settle the dispute has a positive link with the escalation of conflict. Furthermore, the failure peace process has a positive link with the territorial dispute, renege of mutual agreement, and the memory of repression. In addition, these independent variables also affect the peace



process and contribute to its failure. The textual data of Mahavaratta supports this expectation.

The initiatives for peace to settle dispute through, mediation and negotiation and conciliation process had been taken by a Purohito of King Drupoda, Sonjoy (minister of Dritarastra) and Krishna. Many sage peoples and nearest persons of Kouravas requested Duyrodhana and Dritarastra to resolve the dispute by peace treaty with Pandavas. Some important peace initiatives are with contribution to escalate militarized conflict. Some negative factors which contributed to the failure of peace process also discussed side by side as follows:

In front of many Kings and valiant persons in the Assembly of King Birat, Krishna expressing the hostile and repressive behavior of Kouravas towards Pandavas informed everyone about the legal rights of Pandavs to their father Kingdom according to inheritance. He also mentioned that Pandavs are capable to fight and conquering the earth. But they were suffering these measurable periods because of truth, religion and commitment or resolution in the dice-play. Now the virtuous king Yudhishtira would not unrighteously cover even the celestial kingdom. But righteously he would accept the rule even of a single village. Pandavas have always had a regard for truth. They have fulfilled their promise to the very letter. If now treated wrongfully by the sons of Dhritarashtra, they would slay them all though banded together. After telling these words Krishna said, we don't know about the thinking and motives of Duyrodhana. Therefore Krishna said, let a person, virtuous and honest and of respectable birth, and wary, an able ambassador, set out to beseech them mildly for inducing them to give half the kingdom to Yudhishtira. (Boshu, 2009: 281)

Bolodeva, the elder brother of Krishna expressed his support for Krishna's pacific way to settle the dispute by sending an ambassador but expressed confusion about possible failure of gaining the Kingdom by war but may be gained by conciliation (Boshu, 2009:281-82). Satayki vilified the pacific position of Bolodeva's and suggestion for conciliation. He said, if the sons Dritarastra don't agree to return the half kingdom to Pandavas or they will die in the battlefield. King Drupada said, Duryodhana will not return the state of Pandavas by pacific means. He proposed to send ambassadors to allies for soldier's collection (Boshu,

2009: 282-83). At the end of meeting Krishna said King Drupoda, to send a messenger who will seek peace in a just and right way with Kouravas. If Duryodhana follow the right path then, the good-will between Pandavs and Kouravs will not be destroyed. If, he doesn't follow the way of peace for greed and power, then send ambassador to allies and call us (Boshu, 2009: 282-83).

Then, King Drupoda sent an aged, respectable and pious messenger to Hastinapur. He mentioned about the miserable sorrow of Pandavas in front of Dritarastra, Bhishma, Bidura and others. He tried to convince them in religious or righteous way and requested Dritarastra to return back the Kingdom or territory of Pandavas as per as religion and resolution (Boshu, 2009:283- 290). Bhishma, welcomed the peace treaty expectation by Pandavas in religious way and said it should be resolved as the rules of inheritance- they will get back their fathers kingdom. Karna became angry and criticizes Bhishma and said the controlling of Pandavas Kingdom is the consequences of stake and commitment by Yudisthira. He can't want the Kingdom within the time of commitment. According to Karna, Pandav's did not fulfill their commitment in the dice-play where the 12 years in forests and 1 year in unrecognized condition did not fulfill correctly. He also said, Pandavas will act according the resolution and commitment and then come Durydhana and live under him. (Boshu, 2009: 290-91). After vilifying Karna, Dritarastra said Bhishma's speech is better for two sides and informed the Purohito (messenger from Pandavas) that he will sent Sonjoy to Pandava's as soon as possible.(Boshu, 2009: 290-91).

In return, Dritarastra send Sanjoy without any commitment of giving back the Kingdom of Pandavs as per as the resolution. In addition, when Sonjoy said Yudhisthira that Dritarastra want peace with you not war. Yudhisthira replied that peace will be established but Duryodhana must re-back the Indraprotho, the previous territory and Kingdom of Pandavas. Sonjoy had tried to convince Yudhisthira to bring back from war, even don't get their previous land and tried to prove war as a sin. But Yudhsithira said him that, he follows the Khaitreo religion of his forefathers. The rejection of Sham Policy (unwillingness in treaty) may be sin for him. Otherwise, the avoiding of fighting by taking initiatives will be sin for him (Boshu, 2009:291-93). Krishna said Sonjoy following

the request of Yudhisthira that, Yudhisthira is seeking peace but the Dritarastra and their sons are greedy, so the war is unavoidable.

Yudhisthira inspired by Khatrio religion to regain his Kingdom, so it is not sin. If they will die, according to the religion, then they will be happy. By mentioning the incident of previous repression on Draupadi by Kauravas, finally Krishna said Sanjoy that I will suggest the way of non-violence and peace according to religion and norms, but will the Kouravas obey that? Pandavas are peace seeker and capable to fight. So understanding this, inform our opinion to Dritarastra (Boshu, 2009:293-94). In addition, Yudhisthira said Sonjoy that, you are a good mediator. Both sides trust you. You will said to Duyrodhana, that you should not be greedy to others wealth, we want peace, give us only a state of Kingdom, or give five villages for our five brothers, then we will be happy (Boshu, 2009:294). After the departure of Sonjoy, Bidura requested Dritarstra to make peace treaty with Pandavas and to save his children's and relatives from peril and said Duyrodhana should follow the way of truth like Pandavas' obedience to their commitment (Boshu, 2009:269). Bhisma asked Duyrodhana to seek the way of peace to avoid death causalities and destruction (Boshu, 2009:296-97). Karna expressed his opinion and said by the refereeing of Brihaspati that, the peace treaty could not occur with whom previous enmity existed. Drana supported the position of Bhisma and said Dritarastra for making treaty with Pandavas to avoid war (Boshu, 2009:297). After analyzing the fighting capacity of Pandavas Dritarastra requested his son to give the legal share of Pandavas (Boshu, 2009:296-299). Duyrodhanna said that, I will not live together with Pandavas and will not give any small piece of Land to Pandavas (Boshu, 2009: 299).

In the context of peace treaty Yudhisthira requested Krishna to do anything to save them from the danger. He also said Krishna that, without giving back their father's territory Dritarastra wanted to seek peace. If they want to peace then they should give back our kingdom. Having fighting capacity Yudhisthira wanted only five villages to Kouravas but was rejected by them. Indeed, Yudhisthira said to Krishna that we will try by our all means to make treaty for peace, if failed then we will fight against them (Boshu, 2009:300), which clearly denotes that the failure of negotiated settlement of their dispute certainly will escalate to violent militarized conflict.

Furthermore, Yudhisthira urged Krishna to do anything which will protect their benefit or interest and religion (Boshu, 2009: 300). By the request of Yudhisthira Krishna decided to go Kouravas to settle the dispute peacefully (Boshu, 2009:301). Krishna also said Yudhisthira that there is no possibility of accord with the sons of Dritarastra. He also observing the war signs requested Pandavas to take preparation for war. Bhima said, Krishna to negotiate in such way, so that peace will be established and said him not to spread the fear of war (Boshu, 2009:301). Furthermore, Krishna, asked Bhim about his peace seeking mentality, because before Bhima was committed to peril the Kouravas. Then Bhima replied that he is not seeking peace being frighten by enemy but for the tranquility and betterment of Kuru nation (Boshu, 2009:301-02). Orjuna said Krishna that, his opinion is same like Yudhisthira. He also said Krishna that, if you think that fighting and vanquishing is the best way of getting our Kingdom, then gives that advice us thinking all circumstances (Boshu, 2009:302). Nakula said Krishna to do work as his wisdom by considering all circumstances (Boshu, 2009:302). Shahadeva said Krishna that, you will not do the work for peace. If Kouravas seek peace, then you will arrange the war. Satyaki said, the killing of Dyurodhanna will give him pleasure (Boshu, 2009:303). Draupodi said Krishna that, if Kouravas don't agree to give the half kingdom then you will not work for treaty. Pandavas will fight with their ally. They harassed and repressed me. If Pandavas seek peace, then my warrior children and my father will fight against them. Draupadi criticizing the Pandavas said, those enemies don't seek peace through Sham policy; using force is the right way to punish them. Draupadi mentioning about the assault of Dussasson requested Krishna to remember in terms of treaty (Boshu, 2009: 303).

Associating with many soldiers and weapons, the car was ready to move Hostinapur for negotiation by Krishna (Boshu, 2009:304). Before starting journey, Orjuna said, Gobindo, If Duyrodhana care about your proposal of giving us half Kingdom, then we will be happy. Otherwise, we will kill all Khatrios' of his sides (Boshu, 2009:304). After reaching Krishna in Hostinapur, many sage people came in the court of Dritarastra to know about the peace initiatives taken by Krishana (Boshu, 2009:304-05). Getting the news of coming Krishna, Dritarastra wanted to give many resources as gift for taking him on their side in war. Bidura forbad that. Dyurodhona said, we have taken the initiative of war, so except war

there will be no peace. Grandfather, Bhisma said, Kouravas should obey the proposal of Krishna, because he will tell the right solution according to the religion and morality (Boshu, 2009:305). Duyrodhana said, I will imprison Krishna and will fight with Pandavas. Therefore whole world will come under my emperor (Boshu, 2009:304).

After reaching at Hostinapur, Krishna was firstly meet with Kunti, the mother of Pandavas. She became sorrowful remembering the miserable condition of her children and said Krishna, when Orjuna birth, a divine message came to me and said this son will be the conqueror of the world. She requested Krishna, to make that divine message in truth. Indirectly, Kunti suggested Krishna to fights against the Kouravas who captured her husband Kingdom illegally and immorally (Boshu, 2009:306).

Duyrodhana prepared many items of delicious foods for Krishna and offered him. But Krishna said, if messenger or ambassador or negotiator becomes success, then he can take food and worship. He also said, who thinks Pandavas as his enemy, he also think me so and who think them friends, they also think myself so. At the night Bidura said, Krishna that your coming here is not in good time. You should go as soon as possible by mentioning about the conspiracy of Duyrodhana of imprisoning him. He also said, Duyrodhana will not keep your proposal for peace. Many Kings, who were previously your enemies, came here to fight on behalf of Kouravas (Boshu, 2009:307).

In the court of Kouravas, Krishna said Dritarastra that, I came here to pray peace so that Kuru and Pandavas may live in peace and harmony and the warriors will not vanquished in the battlefield. After mentioning different immoral and hostile behaviors of sons of Dritarastra, Krishna said the King, if you rule your sons and become careful about treaty, then that will be better for two sides. If you don't solve the issue in peaceful way then the Kuru Nation will be vanquished. If you seek peace then, the Kings and soldiers came here from different countries will go to their countries (Boshu, 2009:308-309). Indeed, Krishna said Dritarastra about the message of Pandavas that they went in forest for twelve years in exile and one year in unrecognized in a habitual region for their commitment with you. They obeyed their commitment according to the resolution in the dice-play assembly.

Now you should keep your commitment according to the resolution that you will give back their half kingdom after thirteen years. Furthermore, Krishna asked to the all presented Kings and wise man at the assembly, whether his proposal is appropriate or not according to the religion. In addition, Krishna said Dritarastra, to save the Khaitrio nation from the side of peril. Krishna also said him, you know about the polite behavior of the enemy-less Yudhisthira with you. After the firing incident in Jotugriho they came back to you. You sent them to Indroprostho and they conquered many emperors and bring them under your rule, they did not cross your respect. Furthermore Krishna said Dritarastra that Shaukuni defeated Yudhistra in a deceitful manner and grabbed all his wealth and resources. By observing that and the repression Draupadi Yudhisthira did not do anything. Now, Pandavas are ready to serve you and ready to fight. So, do anything whatever you think better. (Boshu, 2009:309).

Many sage people in the court of Kouravas also expressed their opinion and suggestion for peace. For example: After the proposal of Krishna in the court of Kouravas', Parshuram said Dritarastra after telling an incident that you should make treaty with Pandavas (Boshu, 2009: 310). The sage Kanna said Duyrodhana that son you are alive until the time of fighting with Pandavas. You should give up the dispute and taking Krishna as mediator to save your caste (Boshu, 2009:311-312). Furthermore, the sage Naroda said Duyrodhana that you should obey the suggestion of your friends and respected people (Boshu, 2009:312). By discussing an incident Naroda again said him that, you should give up your anger and the intention of war and make peace treaty with Pandavs (Boshu, 2009:314).

Dritarastra expressed his incapability to control the wick-minded son Duyrodhana and requested Krishna to recon-ciliate with him. Then, Krishna said, Duyrodhana in a pacific way that your relatives are pious but you are fully different than them. Dritarastra, Bhisma, Drana, Kripa, Somadotta, King Balhmik, Bikarna, Bibinshoti, Sonjoy and your friends want peace treaty. You should obey your parents. In addition, Krishna said King Dyurodhana that, behave in such way so that the Kouravas race will not be demolished and peoples will not vilify you. Pandavas will set you as the Prince and Dritarastra as the Great king. So, give them half of their Kingdom (Boshu, 2009:314-15). Bhisma requested Duyrodhana to

obey the proposal of Krishna. Drana also said Duyorodhanna to obey the request of Bhishma and proposal of Krishna and cautioned him otherwise we will be peril like birds (Boshu, 2009:315).

Duyrodhanna refused all allegation against him and justified all his actions as right and said unless he is alive, Pandavas will not get a small piece of Land (Boshu, 2009:316). Krishna, said that you and your minister will be vanquished as soon as possible. Bhishma said Dritarastra that you should to hold Dyurodhanna, Shakuni, Karna and Dussaon and hand over to Pandavas or only by Duyrodhanna and seek treaty otherwise the destruction is unavoidable. Finally, the wife of Dritarastra and the wise mother of Kouravas, Gandhari requested Duyrodhanna in many ways to seek peace with Pandavas and to give up anger. She also said Duyrodhanna that, son you should take Krishna as mediator then he will do better for two sides. Duyrodhanna disrespected his mother and rejected all proposals of peace treaty. Being failed Krishna left the assembly and the destructive war between Pandavas and Kouravas in the battlefield namely the Kurushkhtra war started and caused millions of deaths from both sides. (Boshu, 2009: 316)

### **Conclusion and Exploring the Area of Further Research**

In essence it is clear to demonstrate that the territorial dispute is more likely to escalate violent militarized conflict. In addition territory is the core interest to the disputing parties. The territorial dispute is less likely to resolve than other issue. It directly contributes to escalate conflict. The data from Mahavaratta also supports territorial linkage with conflict escalation and failure of mediation and negotiation. Secondly, physical, psychological torture, inhuman or degrading treatment on any group by other has a positive linkage with conflict escalation. It also play role in case of failure of peace initiatives. The text of Mahavaratta also supports this expectation. The repression on Draupadi in the dice-play assembly forced Pandavas to take oath to vanquish the perpetrator at the battlefield. Furthermore, in terms of peace initiatives the issue of previous repression came in front of all. Krishna had taken the peace initiative considering and bearing in mind about the previous hostile behaviors and repression on Pandavas by Kouravas.

Moreover, the violation of mutual agreement by one group has a positive link to the escalation of conflict and failure of mediation and negotiation.

The textual analysis of the great epic also supports this expectation. The violation of promise by Pandavas had a negative impact on the peace process and contributed to escalate conflict. Besides, the renege of mutual agreement by one side makes mistrust and misperception to other side which affects the peace process and contributes to its failure. Finally, the mediation, negotiation and conciliation initiatives or peace process failure make the war only alternative and escalation of militarized violent war become unavoidable. Territorial disputes, memory of previous repression and violation commitment by disputing parties with one another contribute in failure of negotiation, mediation and conciliation initiatives and instigate militarized conflict.

Finally, this research has few limitations. The theoretical framework is not enough to describe all escalating factors of conflict. Besides these four set of independent variables (the territorial disputes, effects of repression, violation of mutual agreement and failure of peace process) religion, resources and war making capacity played vital role to choose the way of war. So bypassing role of these factors is also a limitation of this research. To overcome, this limitation, furthermore, to conduct research in this area these should include in the theoretical framework. In fact, working with only the specific aspect of data of conflict between two rival groups (the Pandavas and Kourabs) is also another limitation. To overcome this limitation more comprehensive data of conflict from the great epic should be taken into consideration. The specific focus of data on Kurushkhtera conflict bypassed other proxy event of conflicts between Pandavas and Kouravas on different occasions and issues. In further research these should account by the researcher. Moreover, the data of the Conflict is taken from a Bengali translated books of Mahavaratta. Which actually is a summary of real epic which written in Sanskriti Language. In further research more concentration is needed to collect the data from the original text.

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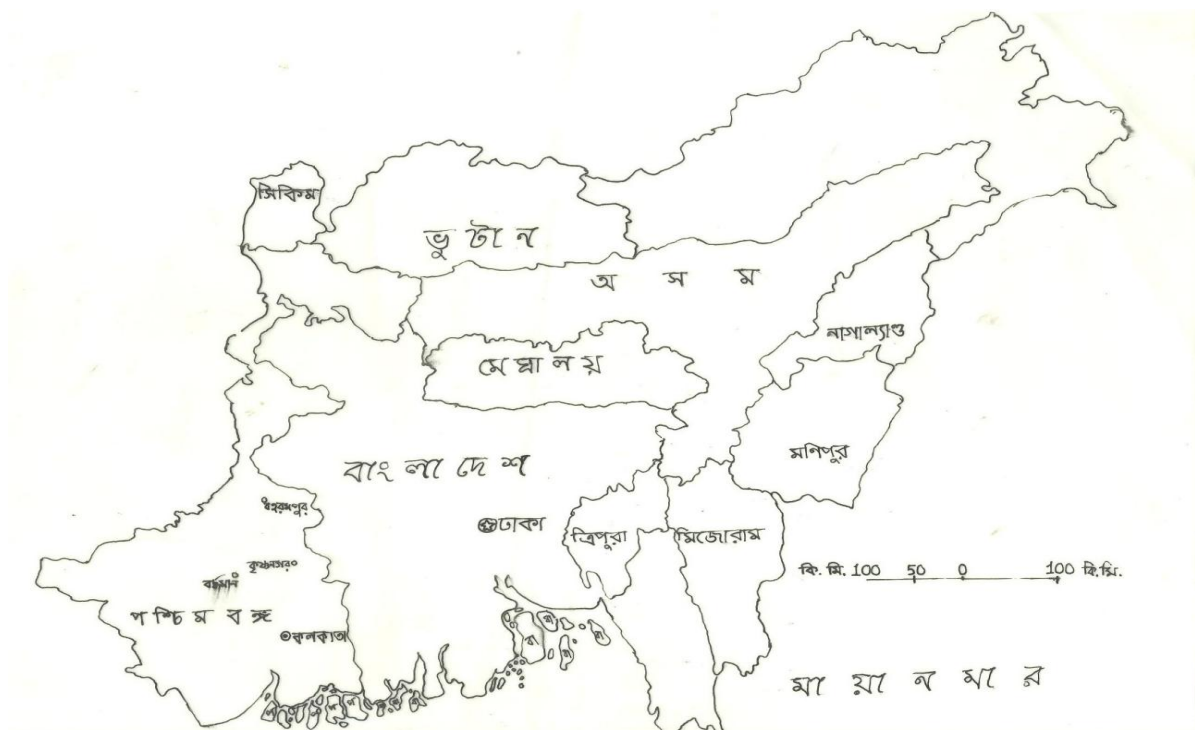
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# 16 Relevance for India-Bangladesh Comprehensive Anti-Terror Joint Action Plan

Suchandra Mitra

## Introduction

India encompasses 4096 Km long land boundary with the Peoples' Republic of Bangladesh by three sides. A little chunk share border with Myanmar. The extreme south portion of Bangladesh is open in the Bay of Bengal. The Indo-Bangladesh relations are primarily based on the geostrategic position of the Indian sub-continent whether in the form of challenges or developments. Long and prominently porous Indo-Bangladesh border shares land with the state of Assam, Tripura, Meghalaya, Mizoram, and most largely the state of West Bengal<sup>1</sup> (W.B.) in the Indian side.



*Source: Traced by myself from the Political Map of India of the Dept. of Geography of our College*

Illegal migration, infiltrations, cross-border terrorism, human, arms and drug trafficking and other cross-border crimes are keeping the border security forces always busy. Among three major generation of terrorism cross-border or spill over terrorism is the international type which routinely conduct their activities across nation-state border<sup>2</sup>. The geographical contiguity of India and Bangladesh, the absence of any natural barrier separating the states, and the presence of people belonging

to the same ethno-religious groups cutting across the territorial boundaries of these entities are conducive for this type of terror tactics. Investigators of the National Investigation Agency (NIA) of India suspect the foreign link with the accused of the recent Khagragarh blast in the district of Burdwan of West Bengal, India. The suspicion of Indian intelligence entangled with some reports of their Bangladeshi counterpart that could form a theory on the money route of the suspected terror outfit. Just not money but the explosives and chemicals found there also have given a strong point of suspicion of foreign link. This foreign link of Burdwan blast is none other than the banned extremist terror outfit Jama'atul Mujahideen Bagladesh<sup>3</sup> (JMB).

### **Relevance for Indo-Bangladesh Anti-terror Plan**

A week later the blast in Khagraragarh, Burdwan in the state of West Bengal, India on 2<sup>nd</sup> October the sources of Indian Home Ministry said there were tell-tale signs that cross-border terrorism was involved in the blast. It also pronounced that besides the possible role of the JMB, call records details (CRD) of the suspected terrorists show that they made calls to Jammu and Kashmir and Dubai. Not only that, the state investigating agency of WB earlier mentioned that the CRD also pointed a triangular chain touching the districts of Burdwan, Birbhum and Murshidabad of West Bengal from where members of the Bangladesh based Islamic outfit Hifazat-e-Islami<sup>4</sup> were also coordinating with one another.

Few things which are gruesome regarding this blast is *firstly*, it was not a terror strike to intend casualties to people. It was accidentally took place while the accused JMB operatives were mixing chemicals for making Improvised explosive devices (IEDs). These IEDs would suppose to be delivered and smuggled into Rajsahi, Satikha and finally Chittagong through the pre-planned route.

*Secondly*, the Khagragarh module prepare IEDs only on specific demand made from across the border and after money was paid through hawla channels. There was point person who took orders from his Bangladeshi handlers about preparing bombs and handling hawla money coming through from Dubai, Mumbai and Kashmir as revealed in the interrogations<sup>5</sup> of nabbed militants.

*Thirdly*, the kingpin of the blast Sajid said that he was looking to create a greater Bangladesh including the Bengal districts of Murshidabad, Malda and Nadia---that will strictly follow Shariat Law<sup>6</sup>.

Sk. Rehmatullah alias Sajid, the political chief of the militant group, is a Bangladeshi national. He crossed over to India upon getting bail in 2012<sup>7</sup>.

*Fourthly*, arrested JMB Assam module chief Sahanur Alom confessed that JMB's plan was to kill Sheikh Hasina, and stage a coup to set up a "Greater Islamic Bangladesh"<sup>8</sup>.

The JMB modules are actively operating in the Indian states which share border with Bangladesh. They are hiding out in other parts of India as well. The IEDs made by JMB might have been also distributed within India as indicated the JMB signature in the bomb blast of Chennai and Patna in this year<sup>9</sup>. Facts mentioned above are evidence of the strong presence of JMB in India. It was staged its operational wing in the state of West Bengal after being dismantled by the Rapid Action Battalion of Bangladesh. This wing of WB was declared as 65<sup>th</sup> unit of JMB. The JMB's network, which is most active in Muslim-majority areas of West Bengal, is recruiting its cadres from the madrassas specially formed to indoctrinate JMB's ideology. These madrassas also provide arms training. The modules of JMB are formed in couple model. It is a traditional strategy of the terror outfit. The tactics of matrimonial alliances provide easy access to India. And the couple model serves the accommodation purpose and formation of its women's wing. After being arrested by the Dhaka Metropolitan police, JMB women's chief Fatema Begum, the wife of Burdwan blast prime accused Sajid, confessed that she had trained at least 25 women at Simulia madrassa in Burdwan<sup>10</sup>.

Moreover, the JMB is collaborated with Indian Mujahideen, al Jihad, al Ummah, and the Students Islamic Movement of India. JMB's linkages with Lashkar-e-Toiba, Harkat-ul Jihad al (HuJi) and Taliban and al Qaida is also prominent. For its Myanmar operations it relied on Rohingya Solidarity Organisation. Linkages of JMB with West Asia, Pakistan and Afghanistan<sup>11</sup> are serious matters of concern. These connections of JMB not only anti democratic, anti Indian but the terror network is posing challenges against both India and Bangladesh by regrouping in Indian land.

India and Bangladesh both are parties of various regional and international conventions and resolutions to counter the threat of terrorism. Since the current Awami League (AL) government came to power in 2009 Bangladesh ceased being a point of safe hideout of any type of terrorists. The Government of Bangladesh enacted for the first time specific legislation of Anti Terrorism Act 2009 in accordance with UN Action Plan on counter terrorism strategy and lastly amended in 2013. It also establishes "National Committee for intelligence Coordination"

against extremism. The present Govt. Banned some extremist outfits including Jama'atul Mujahideen<sup>12</sup>. Most importantly Bangladesh and United States signed bilateral partnership on counter terrorism in 2013<sup>13</sup>. India is also a strategic partner of the US and the European Union in combating global threat of terrorism<sup>14</sup>. Since independence India is experiencing viable threat of home grown and transnational terrorism.

Indian parliament enacted laws like The Terrorist and Disruptive Activities Act (TADA) 1993 and Prevention of Terrorism Act(POTA) 2002 which had repealed later<sup>15</sup>. Being aware of the international ramification of terrorism, India has submitted a draft of Comprehensive Convention on International Terrorism to the United Nations(UN). It is also part of the UN Security Council's Resolution 1373<sup>16</sup>. Head of both the States India and Bangladesh show their firm intentions to combat the menace of terrorism in the recent UN annual meeting and at their bilateral talk. They have extradition treaty 2013 and Coordinated Border Management Plan<sup>17</sup> (CBMP) for combating such activities. However, it is in this backdrop of the JMB link of the Burdwan blast of this 2<sup>nd</sup> October symbolises pressing needs of having a more comprehensive and well coordinated joint Anti-terror plan to make the both entities stable and secure by unravelling the group's activities.

### **Proposal for Indo-Bangladesh Comprehensive Anti-terror Joint Action Plan:**

Possible external linkages compelled the Central Government of the Republic of India handing over the Burdwan blast to the NIA. Soon after the External Affairs Ministry received the request from Bangladesh for information on the case, Indian Home Ministry sources said that the JMB was planning severe unrest in Bangladesh while using Indian soil as a base for its operations. The terror outfit was also planning attacks on both the ruling Awami League (AL) and opposition Bangladesh Nationalist Party (BNP). The ministry stated that after putting together the information gathered by Research and Analysis Wing (RAW) and the evidence collected by NIA. Information of Bangladesh's Rapid Action Battalion (RAB) ensures that similar strikes against AL and BNP leaders had been planned by JMB before general elections in Bangladesh in December 2008<sup>18</sup>.

Meanwhile, intelligence sharing has started. But investigators yet to trace the money trail behind the terror operatives of JMB in India. Security delegations of India visited Dhaka for better interaction. Bangladesh government had also sent a team to share field level intelligence their Indian counterparts to track down JMB militants hiding

in Bengal and Bangladesh. Sources said the Banglaeshi sleuths seek four answers from the JMB trio—Sajid,

Khaled and Hakim: 1. how the outfit regrouped in Bengal after the massive crackdown in Bangladesh? 2. Its funding links; 3. The extend of the group in Bangladesh; 4. Whether it has already gained capacity to target VVIPs in Bangladesh<sup>19</sup>? It is in this context the present study likes to propose the Indo-Bangladesh comprehensive.

Anti-terror joint Action Plan. Security delegations of both countries have already made the foundation by sharing information and intelligence. They are trying to nab terror suspects of JMB. NIA and Bangladeshi security agencies are also trying to gauge the level of infiltration JMB has among the Rohingyas of Myanmar<sup>20</sup>. So far the investigators has bring out the connections of JMB with other neighbouring terror outfits of South Asian region, is posing security threat for both India and Bangladesh. Indian Prime Minister Narendra Modi had laid great stress on better cooperation between India and Bangladesh particularly on security issues.

Before moving forward the concept of anti terrorism needs to be mentioned here. Black Swan refers anti-terrorism as defensive strategy intended to reduce the chance of an attack using terrorist tactics at a specific point and/or to reduce vulnerability of possible targets to terror tactics, while counter-terrorism is a proactive set of techniques for denying an opponent the use of terrorism-based tactics<sup>21</sup>. We need to use these terms carefully. Similar but often incorrectly interchanged with the term “counter terrorism”, anti terrorism is a strategic, long term effort towards reducing and altogether halting terrorism by focusing on the root causes and seeking to change the environment that foster terrorism. It basically consist of gathering information and disseminating it broadly; promoting public discourse, lobbying policy makers to encourage violence reduction policies and legislations, and organising social institutions to accomplish these functions<sup>22</sup>. This paper suggests proper blend of both counter and anti terror strategy in the action plan.

***Proposed Measures for the Joint Action plan:***

Activities of the JMB would have gone unnoticed if the Burdwan blast had not taken place accidently and the militant outfit would have continued to operate in pursuit of their goal. For fighting against cross border terrorism and organised crimes both the entities need to agree on following measures:

- Identification of the measures that help to tackle down conditions conducive to foster cross -border terrorism ;
- Efforts need to take to block illegal migration and infiltration from Indo-Bangladesh porous border.;
- Blocking petro-dollar and narco-funds to reach to the terror outfit;
- Other fund mechanisms of the terror outfits need to be traced and ceased;
- Other facilities like having access of SIM cards of mobile, Epic card, PAN card of a foreign country should be blocked by tight verification system. Campaign should be promote and follow for the betterment of customers and dealers;
- Militants are now also using social media like Facebook,Whatsapp etc. So some sorts of cyber surveillances are also required.

**Main course of the plan must be implemented by the security delegation of both countries India and Bangladesh:**

- Support the work of the UN to ensure universal respect for human rights and relevant United Nations Security Council Resolutions and Conventions on terrorism and related protocols;
- Regular exchange of information and intelligence;
- Joint training program for technical expertise should be conducted;
- Visiting and raiding terror prone areas where illegal migration becomes practice;
- Deployment of more border security forces;
- Completing fencing the areas still left open and proper implementation of CBMP has to initiate urgently;
- proper checking system of goods which transported from one country to other;
- Expand the Indo-Bangladesh dialogue to include the link between drug trafficking, illicit arms trafficking , terrorism and cyber crimes;
- Regular meetings of the intelligence agencies should be held and implementation reports of coordination and cooperation of both parties is necessary;
- Cooperation and coordination of centre, state and local security personnel at national level should also be ensured.

## Conclusion

A framework for Indo-Bangladesh Comprehensive Anti-terror Joint Action Plan can be properly designed by experts only. However, the issues raised in the above discussion are important to incorporate in such documents if it happens ever.

Democratic norms, rule of law, respect for human rights... which are the common shared ideology of both the country should also be reflected. Absence of natural barrier separating the entities and the presence of people belonging to the same ethno-religious groups cutting across the territorial boundaries of these independent states is mounting the problem of externalization of militancy in this region. The former UN Secretary General Kofi Annan once said humanity will not enjoy security without development, it will not enjoy development without security, and it will not enjoy either without respect for human rights. Hence, for the cause of larger interest of human race we need to come together against inhumane force.

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