

# **Politics, Human Rights and Conflict**



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Edited by  
Aka Firowz Ahmad  
Sharif As Saber  
Md Rafiqul Islam  
Naqib M Nasrullah



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*To the people deprived of rights*



## Preface

This book is the compilation of the research papers presented in the Insearch 2015 International Conference on Governance in Transition: Perspectives and Practices, held in Bangladesh Academy for Rural Development (BARD) Comilla on 18-19 December, 2015. The conference was organized by (Netinsearch) International, Stamford University of Bangladesh along with Governance and Administration Innovation Network (GAIN) International and Center for Administrative Research and Innovation (CARI), University of Dhaka and BARD. In the paradigm shifting process of economic development integrated with the globalization and free market economy, the traditional societies have undergone through rapid transformation.

The invasive nature of this socio-economic transformation process has created a massive upheaval within the core values and standards of our society. We have been going through such a transition where instead of defining the limits and boundaries of development, development itself has started taking control of the transformation process through disregarding the regulatory mechanism defined by the transparent and accountable system of governance. The all-encompassing process of economic development integrated with the erosion of norms and values of traditional societies has put the governance in control with serious challenges. Hence, this transition of governance is needed to be addressed from the point of view of the both practical and theoretical perspectives.

We would like to express our gratitude to a group of young teachers and researchers, which includes Md. Al-Ifran Hossain Mollah, Mohammad Mamunur Rashid and Md. Jahidul Islam who put their selfless assistance in preparing the manuscripts through editing and formatting and it would not be possible to make this book publishable without their earnest help. We are grateful to the OSDER Publications for publishing, distributing and marketing of this book.

We also want to 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.





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## **Introduction**

The 'Insearch 2015 International Conference on Governance in Transition: Perspectives and Practices' was based on the philosophy of general systems theory which is exposed through the concept of composite wholeness and interrelationship among everything-physical and conceptual. The all-encompassing and aggressive process of economic development integrated with the free-market policy has significantly destabilized the social cohesion and composite interaction of social elements. This has been manifested through interruption in the democratic process, abuse of human rights and conflicts in the different strata of the society. Consequently, the process of governance has experienced turbulence and jeopardy in different stages of traditional social life. This is evident from the very initiation of the disturbance within significant processes like Democracy, Political Parties, Election Commission and Regional Integrity. The jeopardy in political processes can delimit the wholesome authority of governance and resulting into an imbalanced interaction of core political elements prevailing within the system.

The transition in governance emanating from unchecked process of development can result into the flagrant violation and abuse of human rights and denial of justice for en masse. Essential values and principles like rule of law prevailing within an efficient system of justice may fall apart and result in utter failure in settling the claims of the mass peoples seeking relief from the court of law. Anomalous governance process is also intrinsically connected with the failure in penal policies and thus resulting into denial of justice from the pretext of criminal justice system. Mismanaged governance process has manifested through gridlock before the court of law and this can be easily understood from the huge pileup of almost 3 million pending cases before the formal judiciary of Bangladesh.

The history of conflict is as ancient as the human civilization and a wholesome approach within an efficient and working governance

process can bring resolute and stern action in resolving these conflicts prevailing within and among different sphere of the social environment. The nature of the conflict may have inbound or cross-boundary implications involving both the state and non-state actors. Hence, it is required to understand the harmonious interaction of different elements of governance in understanding the dynamics of conflicts and their composite resolution in that regard.

In the first part of this book, the chapter titled '*Political Parties and Democracy in Bangladesh*' by *Md. Enayet Ullah Patwary* opines that the political parties need to be institutionalized and practice democracy in its inner activities. This chapter analyzes the existing theories of political parties and the party institutionalization to understand fragile democracy of Bangladesh.

The second chapter '*The state of Democratic Governance in Bangladesh*' authored by *Md. Rafiqul Islam* examines the problem of democratic governance in Bangladesh and explains different factors that impede the strengthening of democratic governance in Bangladesh. In pursuance of this objective, the paper makes some recommendations for overcoming the problems of democratic governance in Bangladesh.

The third chapter '*Role of Election Commission in Ensuring Free and Fair Election in Bangladesh*' jointly authored by *Rawnak Jahan and Moyenuul Hasan* focuses on examining political and institutional challenges of promoting access to electoral governance and ensuring free and fair elections in Bangladesh. They have taken the Dhaka City Corporation election as a case study for assessing the role of the Election Commission in holding a fair election in the upcoming days.

The fourth chapter '*Interpreting South Asian Unionism: Remodeling Regional Architecture?*' by *Rakibul Hasan* particularly focuses on critical and comparative analysis of regional integration from South Asian perspective. The study concentrates upon the notion of vibrant young diplomacy and frequent cultural exchanges among the youths towards gradual integration in the region.

In the second part of the book, the fifth chapter '*Children Working in Welding Sectors: Shocks, Vulnerabilities and Survival*' by Md. Imran Khan seeks to analyze and understand the overall situation of child workers engaged in the welding sector in Dhaka city. The study promulgates that child labor creates a direct threat to the development of potential human resource in any given society.

Badsha Mia in his research article titled '*Right to Food and Role of the State to Ensure Food Security in Bangladesh: Need of a Right based Approach*' examines the regulatory framework concerning right to food and the role of the state to ensure food security in Bangladesh. Through discussing the present situation of Bangladesh and identifying major gaps and inconsistencies in this regard, the paper suggests for a holistic legal reform with a right based approach.

The seventh chapter '*Laws on Data Protection and Administration in Bangladesh: Explorifng Safeguards to Ensure Right to Property*' by Saimum Reza Talukder seeks to examine the major flaws in policies and practices that limits the scope of right to privacy. It projects onto content analysis of cases that noticed violations of data privacy rights from the perspectives of Bangladesh. The author concludes that Constitutional safeguard is imperative in this regard, but does not appear to be enforced and accountable to data privacy violations.

*'Interconnecting Governance and Penal Policies for Achieving Justice, Social and Economic Development*' by Sultana Jahan primarily focuses on the certain points of intersection between governance and penal policies regarding punishment. The author attempts to elucidate the inherent obstacles founded within the premises of criminal justice system of Bangladesh and suggests for rethinking and reforming penal policies for ensuring better governance.

The ninth chapter '*Evaluation of Backlog of Cases in Bangladesh*' by Md. Nurul Momen argues that no single theoretical framework is able to provide a comprehensive understanding of

backlog of cases. The author has reiterated through descriptive analysis that backlog of cases has been a hindrance in securing prompt justice and hampering to the real spirit of rule of law. The paper has provided a list of recommendations in this regard.

*Mohammad Hasan* in '*Child Labor and Bangladesh RMG Sector*' examines the use and abuse of child labor in the Ready-Made Garment Sector of Bangladesh from the compliance of both national and international compliance provisions. The paper promulgates that the rate of success in the RMG sector of Bangladesh Sector has accelerated worst form of child labor in formal and non-formal sector with bonded labor and even prostitution. Consequently, this facilitates 'exploitative' and worst forms of child labor that violates fundamental human rights of a child.

In the third part of this book, the eleventh chapter titled '*Approaches to Conflict Resolution: Study on Local Level Conflicts in Bangladesh*' jointly authored by Saifuddin Ahmed and Zunaid Al Mamun examines the extent and dimension of conflict resolution available within different levels of local government system. The paper examines the issues and types of conflict, possible approaches of conflict resolution and the key stake holders of the conflict resolution process at the local level.

*Jahidul Islam* in the article titled '*Terrorist Tactics and Counter Terrorism Challenges in Bangladesh*' has taken a rather different approach in analyzing terrorist tactics and counter terrorism challenges in Bangladesh. The paper attempts to identify the tactics used by modern terrorist groups and seek to find their correlation with the recent incidents in Bangladesh. In addition, it analyzes the key counter-terrorism challenges in Bangladesh and recommends few strategies to fight extremism and religious fanatics.

The concluding chapter of this '*A Comparative Analysis of Maritime Boundary Dispute between Bangladesh and India: Whether it is an Equitable Solution or Not?*' by *Khalid Yahyea* examines the judgment delivered by the Court of Arbitration under UNCLOS in the maritime dispute suit between India and



Bangladesh. The author concluded that the judgment is a win for international law which both countries have always respected and the peaceful and amicable settlement of the maritime dispute between Bangladesh and India could be an example of political good will in the international arena.

The book has been designed with a view to comprehend the consequences of anomaly in governance towards different socio-political and socio-legal elements fundamentally destabilizing the concerned state within itself. From this context of key social processes like Politics, Human Rights and Conflict Resolution, it is essential to have an efficient governance mechanism which have an all-encompassing control over the other elements of the system.



**Part One**  
**Politics, Democratic Governance**  
**and Unionism**



# 1. Political Parties and Democracy in Bangladesh

Md. Enayet Ullah Patwary

## Abstract

*Democracy has emerged as the political system most preferred by the mass citizenry. As a multidimensional process different agents i.e. Mass people, civil society, political parties are playing different roles to sustain democratization. Political parties organize politics in every modern democracy. Without presence of political party democracy cannot run functionally and smoothly. But political parties need to be institutionalized and practice democracy in its inner activities. Bangladesh emerged an independent state in 1971 with a dream to establish democracy. After four decades they are still struggling for the establishment of democracy. The question is what makes democracy dysfunction in Bangladesh? In this paper I will review the existing theories of parties and analyze the party institutionalization to understand fragile democracy of Bangladesh.*

**Keywords:** Party, democracy, institutionalization, democratization.

## Introduction

Bangladesh is a country in south Asia. Bangladesh got its independence as a consequence of its political opposition to the Pakistani non-democratic system. The four decades of political experience in Bangladesh shows that its history is full of unrest, military rule, autocracy and continuous movement for democracy. The landscape of politics in Bangladesh is prominently featured by repeated strikes (known in Bangladesh *Hartals*), protest, traffic blockades (known as *abarudh*), attacks on police stations and officials, attacks on minority communities, extra-judicial killings by government security forces, illegal arrests leading to death and disappearance, arbitrary arrests, unlawful destruction of property by security forces. In the preamble of the Constitution of Bangladesh it has been declared that it shall be fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation, a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social will be secured for all citizens. Article 8(1) of the Constitution has declared democracy as one of the fundamental principles of the state policy. But unfortunately

democracy in Bangladesh is nothing but a pretense. It is a façade for the actual system of manipulation, influence, violence, and entrenched power. In this system, the wealthy gain special favors from the government, big businesses earn money at the expense of the people, and the government manipulates legislation and the constitution in order to maintain its grasp on power.<sup>1</sup> The question is what makes democracy dysfunctional in Bangladesh? Is it political institutions that are defective? Is it political leadership that is problematic? Is it political culture that is corrupt? Is it political parties and party system that are problematic? This article argues that it is the lack of democracy within political parties that results in democratic deficit at the national level. Therefore, this article will analyze the party system and intra-party organizational functions in Bangladesh to see how the parties are formed, organized, structured, make policies and decisions.

At present there are four major, out of over 50, political parties in Bangladesh which are Bangladesh Awami League (AL), Bangladesh Nationalist Party (BNP), Jatiya Party (JP) and Bangladesh Jamaate e Islami(BJI). Besides, there are some small parties which are very insignificant. Looking at the political parties in Bangladesh one can identify certain prominent characteristics. Firstly, parties are ‘personality’ oriented. Secondly, parties are controlled by families of national leaders. Thirdly, the leadership of the parties tends to be dynastic, with the children and grandchildren of the early leaders expected to follow in their parent’s footsteps. And finally, the party leaders tend to be unelected, autocratic and dominant.<sup>2</sup> Therefore, it is important to study the nature, characteristics and internal culture of political parties in Bangladesh to identify democratic dysfunction in the country. This paper is based on secondary sources of information like books, journals, research reports and newspapers articles and online resources.

### **Political Parties and Democracy**

Political parties are central to representative democracy and to the process of democratization. Political parties connect society and the state, aggregate and represent interests, recruit political leaders, manage conflicts of interest and act as a forum for social and political integration and nation-building. Democracy in the modern world is inconceivable without healthy parties and effective party system.<sup>3</sup> Political parties are necessary to democracy. Parties are a conspicuous and prevalent fact of modern political life. Political party refers to a voluntary association of people, organized in competition with other similar groups, to gain office for their leaders through legal electoral

procedures for the purpose of exercising political power.<sup>4</sup> The importance of political party in modern democracy is enormous as E.E. Schattschneider has remarked in his book *Party Government*, “political parties created democracy...modern democracy is unthinkable save in terms of parties.” What does party mean? Contemporary scholarship views a party as a team of politicians whose paramount goal is to win electoral office. These teams make promise about what they will do if elected, standing for reelection based on their records of implementing their programs. By holding entire parties rather than individual politicians accountable for what government do, voters create an incentive for responsible governance that might not otherwise exist.”<sup>5</sup>

Normative theorists and positivists theorists define party on the basis of their attitudes but eventually they all realized the importance of party in a democratic state. Normative theorists, many of them no less skeptical than Madison or Jefferson of parties as promoters of public good, seem to regard political parties as an unpleasant reality, a hardy weed that sprouts up in what would otherwise be the well-tended garden of democratic institutions. Positive democratic theorists are more likely to view parties not as a weed but as a necessary microbe lodged deep in digestive tract- not pretty, but vital to keeping the body politic in good health.<sup>6</sup>

Regarding the functions of political parties two views are prevailing among the scholars of political science. In one view, parties promote interests that are partial (note the common etymology) or extremist; on the other, parties are the link between citizen interests and government actions. In addition to inducing governments to be responsive to citizens, parties are reputed to give order to legislative processes, reduce problems of multidimensionality of the issue space, and permit voters an object to hold to account.<sup>7</sup> Through political parties alternatives in public policy are shaped, demands organized and generalized and conflicts of interest compromised and adjusted. The nature of parties and the party system reveals the quality of popular participation in the political process, especially as demonstrated through elections and the electoral process. These also tell much about the degree of consensus in a society, and the fundamental issues and objectives about which there are significant popular differences.<sup>8</sup>

Political party is of great importance in democratic system especially in representative democracy. Bryce argued that parties are inevitable; no free country has been without them; and no one has shown how representative government could work without them.<sup>9</sup> Americanist have long believed that “political parties lie at the heart of

American politics.”<sup>10</sup> Not to be outdone, West Europeanists have asserted that “European democracies are not only parliamentary democracies but also party democracies.”<sup>11</sup>

However, though central in politics, parties have experienced decline in importance in mature democracies. Parties around the world have suffered a crisis of confidence in the recent years. Citizenry became apathy to politics because of corruption among party leaders and more interest in their own advancement than the good of those they represent. Those parties are “in deep trouble” is indicated by declining memberships and low electoral turnouts. As Storm and Svasand have noted, “doom-and gloom treatises on political parties have become a growth industry over the past two decades. But this gloomy picture of contemporary parties is far from self-evident.”<sup>12</sup> Because of organizational, electoral, cultural and institutional challenges<sup>13</sup> party decline was seriously discussed in some western democracies’ literature. Lawson and Merkl have noted, “it may be that the institution of party is gradually disappearing, slowing being replaced by new political structures more suitable for the economic and technological realities of twenty-first-century politics.”<sup>14</sup> But after decade party decline theory became down and the recognition and effectiveness of party once again prevailed, “parties are alive and well within the governing process”. In the words of Mair, “Parties continue to matter. Parties continue to survive.”<sup>15</sup>

Indeed, there is widespread agreement on the vital role played by political parties in democratization process. But for consolidated and advancing of democracy, parties and party system require being institutionalized.<sup>16</sup> However, in what ways parties can be institutionalized for democratic consolidation? Diamond asserts that democratic consolidation happens when democratic norms and behaviors become institutionalized on three levels: “the elite level of top decision makers, organizational leaders, political activists and opinion shapers; the intermediate level of parties, organizations and movement: and the level of mass public.”<sup>17</sup> Leonardo Morlino also suggests that for consolidation of democracy parties require to be developed organizationally, form stable relations with other parties.<sup>18</sup> Without institutionalized parties democracy cannot be consolidated. For the institutionalization of political parties it requires to be developed organizationally and should have strong relations with society. Organizational development can be measured in terms of parties’ membership level, the number of professional staff, the power relation within the party and the role of the leader. Institutionalization



for parties requires organizational development and stable and coherent relations with electorate and civil society/ interest groups.<sup>19</sup>

In the case of Bangladesh, all the major political parties enjoy mass support, but parties remain corrupt, unresponsive to people's needs and demands, the leadership remains stagnant, and a culture of violence has become a commonplace.<sup>20</sup> The research argues that the origin of these problems lies in undemocratic culture within parties. Therefore, this research will apply Diamond and Morlino understands of 'party institutionalization' to understand intra-party political culture in Bangladesh.

### **Party Institutionalization and Democracy**

Party institutionalization can be defined as "the process by which the party becomes established in terms both of integrated patterns of behavior and of attitudes, or culture."<sup>21</sup> Randal and Svasand distinguish between internal and externally related aspects of the process. Internal aspects refer to developments within the party itself; external aspects have to do with the parties' relationship with the society in which it is embedded, including other institutions. While they identify organizational systemness and value-infusion as internal dimensions, embedded decisional authority together with reification are considered as external dimensions of party institutionalization.<sup>22</sup> In their discussion systemness refers to the increasing scope, density and regularity of the interactions that constitute the party as a structure. Value infusion means the extent to which party actors and supporters acquire an identification with and commitment to the party which transcend more instrumental or self-interested incentives for involvement. As a component of external dimensions of party institutionalization decisional autonomy refers to a significant degree of freedom from interference in determining its own policies and strategies while reification is the extent to which the party's existence is established in the public imagination.<sup>23</sup> Sebnem Geyikci identifies the degree of organizational development as an internal aspect and the regularized relations with electorate, civil society, and interest groups as an external aspect of party institutionalization.<sup>24</sup>

It is political parties that liberated Bangladesh from West Pakistan's misrule. But after independence whether political parties' role towards the realization of the aspirations of the people was in the right directions is a legitimate question. It is generally assumed that political parties as a whole could not be able to create a democratic environment in general and intra-party democracy in particular. Political parties in

Bangladesh tend to be organizationally thin, elite based cadre parties. The leadership of the parties tends to be dynastic, with the children and grandchildren of the early leaders expected to follow in their parent's footsteps.<sup>25</sup>

### ***Internal Party Democracy***

There seems to be a broad agreement that internal party democracy requires openness and inclusiveness as well as voice and participation. Some scholars emphasize participation of the lower party structures and party members in party decision making processes.<sup>26</sup> It has been argued repeatedly that internal democracy is necessary for creating a viable democratic culture within the party as well as in society at large. For those who believe in the merits of participatory democracy, intra party democracy is an end in itself. This is the 'school of democracy' argument: Parties should be the incubators that nurture citizens' political learning, socialization and competence. Opportunities for participation in decision-making within the political parties can help citizens expand their civic skills.<sup>27</sup> Inclusive parties can offer more acceptable policy packages and programmes. Internally democratic parties have a greater likelihood of being open to new ideas and new personnel. For instance, democratic leadership selection can attract different and more capable people, and give a broader social representation and a better representation of ideas.<sup>28</sup> State regulation on internal party organization, internal party democracy, and leadership selection remains very weak in most developing countries.<sup>29</sup> Three areas of decision-making are identified, on which it is possible to measure the degree of internal party democracy: Leadership and candidate selection( or election), policy selection and formulation, and coalition formation.<sup>30</sup>

### ***Internal democracy in Bangladesh's political parties***

It is assumed that the lack of democracy in parties leads to the lack of democracy in the country. After four decades of independence the political parties of Bangladesh could not be able to develop democratic culture in its internal party politics. Leaders are not elected by the members; instead they are nominated by the leadership of the political parties. In three major political parties in Bangladesh i.e. Bangladesh Awami League (AL), Bangladesh Nationalist Party (BNP), Jatiya Party (JP) the election of the party chiefs did not take place after assuming their positions. Central councils of the parties did not hold on the regular basis; if the council were held the party chief were elected without any contestation. There is no change or competition for party

presidency/chairmanship for nearly 30 years in the AL and BNP.<sup>31</sup> There is little policy/ program discussion at the party forums. There is little consultative process or collective decision-making. Key decisions are often taken by party chief, sometimes rejecting the views of senior party leaders. In fact, neither Awami League nor BNP held their party councils and convention regularly. Even if councils and conventions were held, election of party leaders did not take place. The National Executive Committee and Electoral College of the main opposition BNP depend fully on the party Chairperson for supreme guidance. Similarly the Working Committee of the Awami League depends entirely for planning and other activities on the party President. As the party decisions are in the hand of the party chiefs, the party internal organizational strength has been weakened and reliant upon one person. BNP held its annual convention in 2009 after a gap of sixteen years. The Awami League did not hold district level councils for years citing a number of obstacles such as unfriendly environment in those years, and need for preparation for national election later.<sup>32</sup>

### ***Leadership Selection***

Selecting party leaders is a crucial task for parties. Internal party democracy requires an open and inclusive process of selecting candidates for party and public offices. Leadership selection is the process of selecting or electing candidates for party office and public office (nomination for general election). This raises a number of questions, as outlined by Croissant and Chambers<sup>33</sup> who can nominate, who can be elected, and who can elect? Do internal rules, regulations and procedures exist, and are these rules obeyed? At what level of territorial and organizational structure are the nominations, candidates and electors chosen? Are there any functional criteria, group quotas or veto powers?

In Bangladesh, party leaders are to be elected at regular party conventions or conferences, according to the procedure laid down in the party by-laws. In the case of both Awami League (AL) and Bangladesh Nationalist Party (BNP), however, leadership election, including the selection of party leader, is conducted beforehand and only approval by the convention as a mere formality. In formal terms, The AL president and general secretary are elected by the tri-annual party convention, called the council, which is the party's supreme body. In reality, the party leader is elected at the party convention only through a formal approval of a single candidate. The leadership issue has always been settled informally before being formally endorsed by the council (by acclimation).<sup>34</sup> Moreover, the members of presidium,

executive and advisory committees are for all practical purposes chosen by the party president.<sup>35</sup> Thus there is no real democracy in party leadership selection in AL. When it comes to nominating the party's candidate for parliamentary elections, the AL is, like other parties, increasingly 'selling' nominations. 'You can buy yourself a MP nomination the same way as you buy an air ticket to Singapore: pay up and off you go'.<sup>36</sup> But the final nominations are made by the Party president, 'in consultation with the parliamentary board'.

In the BNP, the Chairperson, senior vice chairperson and the general secretary are formally elected by the party convention (council), in a process similar to that in the AL. But some observers opined that in the BNP the system is even more centralized and informal. Between 1993 and 2008 BNP did not hold any convention; three councils were due during this period. After 16 years the 5<sup>th</sup> council of BNP held in 2009 and Begum Khaleda Zia became party chairperson without any contest. Furthermore, in the BNP members of the standing committee (Party highest policy making body) and Advisory councils are all appointed by the chairperson. Executive committee members are elected among the council representatives, in formal terms by the council but in reality by the party chairperson. Concerning the selection of candidates for parliamentary elections, BNP candidates are selected by the top party leaders, according to their applications, 'fees' and in 'consultation' with the party leadership, although the chairperson has the final say.

The Jatiya Party (JP) has a distinctly 'dictatorial' style: the JP founder Ershad declared himself party chairman for life in 2009, he appoints all posts, the central committee works under his direction and he dominates the decision-making process. According to article 39 of JP's constitution, the party chairman has the power to form, suspend or abolish committee at all levels, under the condition that he consults with the members of the presidium.

In contrast to the formal and informal 'single man' dictatorship in JP, the Bangladesh Jamaat-e Islami (JI) seems to be well organized, guided by principles rather than person and thus more internally democratic. Jamaat is headed by a leader who is elected by the central council (the Rokon) for three year terms in a direct and secret ballot with alternative candidate.

### ***Setting party policies***

One of the ways to assess the degree of internal democracy in a party is to ask who helps determine the content of the party's electoral

promises. In the most inclusive of parties, individual party members may be asked to vote on specific policy position. More usually, parties have chosen the less inclusive option of asking party conference delegates to endorse a set of commitments prepared by a platform committee.<sup>37</sup> All over South Asia, including Bangladesh, policies, programmes and election manifestos of parties are generally worked out by the top party leadership. Party programmes are discussed in the highest decision-making bodies before they are made public or presented before the party conventions for approval (which means, usually, an unanimous approval without any substantial discussion or changes made.<sup>38</sup>

Regarding coalition making, decisions are taken at an even higher and more informal decision making level. According to observers, the question of whether this or that party should join this or that party coalition is decided by the party leadership ( party president and close advisors) although consultation are made in an informal way with party dignitaries and factions, and the formal decision is made by the presidium. There is no formal endorsement by the national convention or council, and there is no written agreement on terms and conditions.<sup>39</sup>

### ***Power the Only Agenda***

Like many other developing countries, it is believed, in Bangladesh, that political parties are rather very much interested with their political and vested quarter's interests than wellbeing of the mass citizens. In Bangladesh, the present political uncertainties and unrest is because of the ruling party's autocratic attitude regarding the power transfer through free, fair and credible elections. The ruling party AL is willing to remain power for long time. With this intension, they amended the constitution of Bangladesh and dropped the caretaker system- the election time government introduced in 1996 with the consent of all political parties in Bangladesh. The 15<sup>th</sup> amendment of the constitution of Bangladesh was made without the opinions of High Court, Parliamentary Committee and civil societies. The immediate reason for the current political imbroglio of Bangladesh can be traced back to the 15<sup>th</sup> amendment of the constitution.

The annulment of the CTG was also against the decision of the parliamentary committee. The proceedings of the committee show that it had unanimously concluded that the CTG system should be maintained and that a strict limit of 90 days be imposed on its tenure. In its 27 meetings between 21 July 2010 and 29 May 2011 the committee gathered opinions from three former chief justices, ten

constitutional lawyers/experts, representatives from six political parties (including the AL, which was represented by the PM), eighteen intellectuals, editors of eighteen newspapers and media, and the leadership of the sector commanders forum (an organization of the commanders of the freedom fighters of 1971). Most of them urged the committee to look into the inadequacies of the caretaker system, only a few suggested a complete abolition of the system.<sup>40</sup>

### **Conclusion**

Political parties play a crucial role in modern representative democracy. Despite all their imperfections, the functions they perform cannot be taken on by any other entity. As a multidimensional process different agents i.e. mass people, civil society, political parties are playing roles to sustain democratization. Political parties are endemic to democratization.

Historically, political parties played a key role in almost all democratic movements including in the language movement and the national movement of Bangladesh. . But at present they are perceived as actors who manipulate their powerful positions to extort bribes, to offer members and followers rewarding positions in the public sector or to channel public resources into the hands of party leader or supporters. Party corruption is widespread in Bangladesh and this is particularly bad for the country when political and economic institutions are still in infancy. This unethical behavior undermines the faith in, and adherence to democracy among large sections of people. In order to participate efficiently in an intensely competitive democracy and to be credible for voters, political parties need to initiate reforms. Measures in this context include the introduction of party statutes that strictly regulate membership, leadership and candidate selection, codes of conduct for party officials and candidates, disclosure of party finances and assets, and a system of internal party checks and balances. To improve intra-party democracy, rank and file members should be involved in the elections of party leaders. Similarly, transparent procedures for selection and nomination can reduce opportunities for corruption. Political parties in Bangladesh need to provide an effective link between the government and people and this way the forces of democracy can be strengthened and take a firm root in the country.

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## **2. The State of Democratic Governance in Bangladesh**

Md. Rafiqul Islam

### **Abstract**

*The struggle for promoting democratic governance in independent Bangladesh was first impeded on January 25, 1975 through introduction of one-party system by creation of BAKSAL, then through military interventions by coups and counter coups in August and November 1975, respectively. While opportunities for promoting environment for democratic governance were unveiled by introduction of multi-party political systems during the Zia regime, the process of democratic governance was again retarded by assassination of President Ziaur Rahman in 1981 and the nine-year autocratic rule by General Ershad. The holding of the 1991 general election after the downfall of the military regime of Ershad through mass upsurge in December 1990 brought some hopes and aspirations among the Bangladeshi citizens of establishing full-fledged democracy in Bangladesh, even though their dreams of establishing a real-and exploitation-free democratic governance have still not been materialized. The principal objective of this paper is to analyze the state of democratic governance in Bangladesh. Towards this end, this paper examines the state of democratic governance during different regimes in Bangladesh. The study demonstrates that democratic governance in Bangladesh have been impeded by a number of factors, such as authoritative behavior of the government, lack of political commitment and consensus, absence of independent judiciary, absence of independent electorate, lack of accountability of elected and appointed government officials, lack of democratic practices within political parties, lack of participation or engagement of citizens in political process, and widespread corruption.*

### **Introduction**

Although Bangladesh emerged as a democratic republic in 1972 after independence on December 16, 1971 through a bloody liberation war with then West Pakistan, the process of democratization in Bangladesh has been stumbling since its very independence. The environment for promoting democratic governance was first impeded on January 25, 1975 through introduction of one-party system by creation of BAKSAL, then through military interventions by coups and counter

coups in August and November 1975, respectively. While opportunities for promoting environment for democratic governance were unveiled by introduction of multi-party political systems during the Zia regime, the process of democratic governance was again retarded by assassination of President Ziaur Rahman in 1981 and the nine-year autocratic rule by General Ershad. The holding of the 1991 general election after the downfall of the military regime of Ershad through mass upsurge in December 1990 brought some hopes and aspirations among the Bangladeshi citizens of establishing full-fledged democracy in Bangladesh (Amin and Islam, 1992), even though their dreams of establishing a real-and exploitation-free democratic governance have still not been materialized.

The principal objective of this paper is to analyze the state of democratic governance in Bangladesh. Towards this end, this paper examines the state of democratic governance during different regimes in Bangladesh. This paper begins with a conceptual analysis of democratic governance and then identifies some of its key elements. This paper explains the state of democratic governance in Bangladesh in terms of some key themes/elements of democratic governance, which include developing democratic institutions and processes, strengthening electoral and legislative systems, improving access to justice by ensuring separation of powers, promoting citizen participation, accountability, transparency, promoting democratic values, and respect for human rights.

The study examines the problems of democratic governance in Bangladesh and explains different factors that impede the strengthening of democratic governance in Bangladesh. Finally, the paper makes some recommendations for overcoming the problems of democratic governance in Bangladesh.

### **Democratic Governance in a Nutshell**

Democratic governance is viewed as one of the most popular forms of governance in modern times. Democratic governance can be explained from a variety of perspectives. According to UNDP, democratic governance emphasizes the need to develop institutions and processes that are more responsive to the needs of ordinary citizens, including the poor and that promote development. Democratic governance involves strengthening electoral and legislative systems, improving access to justice and public administration and developing a greater capacity to deliver basic services to those most in need, ensuring accountability and promoting transparency. Organization for Security and Cooperation in Europe (OSCE) views democratic governance as a system of

government where institutions function according to democratic process and norms, both internally and in their interactions with other institutions (OSCE, 2015).

According to the Office for Democratic Institutions and Human Rights (ODIHR), democratic governance can be improved by increasing the level of women's participation in politics, strengthening parliament, promoting multiparty political landscapes, and preventing the abuse of state's resources. It is also argued that democratic governance is not confined to the procedures of democracy and democratic institutions. Democratic governance involves promoting sustainability of democracy, including an enduring capacity for the separation of powers and independence of all branches of government, the exercise of power abiding by rule of law, respect for human rights and fundamental freedoms, transparency and accountability of a responsible civil service functioning at both national and local levels.

Howe (2015) examines the key characteristics of democratic governance in Northeast Asia. He expounds the state of democratic governance in Southeast Asian countries in terms of its strength in enabling the flourishing of social capital, prioritizing the interests of all as characterized by freedom from fear and want, empowering all to participate in the democratic process and governance. Putting special emphasis on the experience on minorities, Howe (2015) contends that the acid test of democratic governance is not how well the government represents the interests of the elites, or even the majority, but rather how it cares for the needs of vulnerable groups in society (Howe, 2015).

Breur and Welp (2014) hold that the central aims of democratic governance involve reducing socioeconomic and gender inequality; strengthening citizen participation in political decision-making, increasing the transparency in legislative process, improving administrative procedures, providing free access to government data and information and expanding independent spaces of citizen communication. Groissant and Bunte (2011) argue that democracy in Southeast Asia is in crisis. The crisis of democracy, according to them, is a crisis of democratic governance. They identify some key themes of democratic governance in Southeast Asia, which include political culture, civil society, political parties, and institutions and human rights (Groissant and Bunte, 2011).

### **The State of Democratic Governance during the Mujib Regime**

Sheikh Mujibur Rahman, the leader of Awami League and the architect of independence of Bangladesh became Prime Minister of Bangladesh in 1972. Soon after coming to power, the government of Sheikh

Mujibur Rahman succeeded to frame the Constitution of Bangladesh within nine months. Democracy, socialism, nationalism and secularism were the four fundamental principles of the Constitution of Bangladesh that laid the foundation state policy by the Mujib government. At initial stage of his regime, Sheikh Mujibur Rahman introduced Indian model of parliamentary democratic system of government. At the very outset, the Awami League government of Sheikh Mujib allowed all political parties to participate in national politics except the pro-Islamic parties, such as Jamati-Islam and Muslim League that collaborated with the Pakistani army during liberation war (Amin and Islam, 1992). However, the political scenario of Bangladesh had changed on January 25, 1975 when Sheikh Mujib banned all political parties and introduced one-party political system by creating BAKSAL (Bangladesh Krishak Sramik Awami League) (Huque, 1985).

One of the major setbacks to democratic governance during the Mujib regime was the promulgation of the Presidential Order 9 (PO 9) in 1975 by dint of which the government could fire any public official at its will. Banning of all national newspapers except a few state-owned newspapers also manifested the authoritative behavior of the Mujib regime (Zafarullah, 1987). Moreover, the creation of a paramilitary force called Rokhi Bahini (defense force) by the Mujib government also undermined democratic practice in Bangladesh, which caused the extra-judicial killing of some thirty thousand or more people in Bangladesh.

Among other problems of sound and democratic governance in Bangladesh during the Mujib regime, widespread corruption, mismanagement and factionalism are mentionable. Because of nationalization of industries, there was no flow of foreign direct investment (FDI) between 1972 and 1976 (Islam, 2003). As a result of pervasive political corruption, state patronage was extended to a few to enrich themselves by plundering the state sector and creating monopoly control (Amin and Islam, 1992). Conflict between freedom fighters and collaborators in civil and military administration also retarded the process of democratic governance during the Mujib regime in Bangladesh (Zafarullah, 1987).

### **The State of Democratic Governance during the Zia Regime**

It goes without saying that democratic practice in Bangladesh was severely retarded by military interventions in 1975 through a series of coups and counter-coups. As a result, on November 30, 1976, Zia formally took over as president of Bangladesh. Zia's first act as

president was to drop 'secularism' from the Constitution as a state principle, proclaiming 'absolute trust and faith in the Almighty Allah. Zia retained socialism in a modified form by a new name 'economic and social justice.' Zia also changed the nationality from 'Bangali' to 'Bangladeshi.' As civilianization process, Zia introduced a multi-party political system in Bangladesh. After becoming the President in 1978 by winning presidential election, Zia formed a political party called the Bangladesh Nationalist Party (BNP) in September 1978, which won an overwhelming majority of seats in the parliamentary elections of 1979 (Amin and Islam, 1992).

While in power, Zia succeeded to build a number of new political institutions, such as village government (Gram Sarkar), Youth Complex (Jubo Complex, and Gram Pratirakkha Bahini (village defense force-VDF). He also tactfully managed major political parties, such as Awami League, Jatio Samajtantric Dal, Islamic Democratic League and other political parties by sharing seats in the parliament, and neutralized others (Amin and Islam, 1992; Zaman, 1994).

The Zia regime succeeded to strengthen merit based civil service system, replacing political patronage through competitive exams. The government of Ziaur Rahman made an effort to ensure equality of opportunity in promotion under the new system, and vowed to create a superior cadre to make sure that the most talented of the functional cadres could be able to reach the zenith of the public service. However, through the introduction of cadre services, generalist –specialist conflict began to escalate during the Zia regime. In order to promote economic development, the government of Ziaur Rahman also reformed public financial management by privatizing many public sectors (Zafarullah, 1987, p. 472). Although between 1975 and 1979, the civil service was reshuffled, political patronage was replaced by merit-based recruitment, management as well as career system was reinvigorated, and new pay scale was created, the bureaucracy remained elitist, conservative, parochial, centralized, paternalistic, unchanging and uncompromising in character (Zafarullah, 1996, pp. 92-93).

### **Public Administration and Governance during the Ershad Regime**

While the process of sound governance and democratization began to improve during the Zia regime through political, financial and administrative reforms, democratic practice in Bangladesh was deterred by the assassination of President Zia on May 30, 1981 through a military coup. Although initially, Justice Sattar came to power

through the blessings of army general, actual state power was retained in the hands of Ershad. Soon after taking over the state power from Sattar on March 24, 1982, General Ershad as chief martial law administrator formed a council of ministers to aid and advise him. Most of the cabinet positions were given to high ranking military officials and leading bureaucrats (Amin and Islam, 1992).

Ershad suppressed open politics until the withdrawal of all imposed restrictions on political activities on November 14, 1983. Ershad declared the holding of parliamentary elections on April 16, 1985, which was rejected by the opposition parties. He reacted by banning all political activities on March 1, 1985. In the national referendum, held on May 30, 1985, Ershad claimed to have won a massive vote of no confidence with an affirmative vote of 96% from among the 87% votes turned out. On 1986, Ershad held parliamentary and presidential elections. While Awami League and some of its allies participated in the elections, the BNP did not take part in any election under Ershad (Amin and Islam, 1992).

Ershad introduced decentralized upazila system in 1985. Indeed, it was found that Ershad was politically motivated to introduce decentralized upazila system to gain popular support for retaining power. Of many other political motives, another strategy of the Ershad government to use general civil servants as administrators in upazilas was the extension of the national government's direct control mechanism to the grass root levels (Islam, 2011; Khan, 1994, pp. 74-75).

### **The State of Democratic Governance during the Khaleda Regime**

After the fall of military dictator General Ershad through a massive mass upsurge in December 1990, the BNP chairperson Begum Khaleda Zia came to power through a fair election under Caretaker Government (Amin and Islam, 1992). During two spells of the Khaleda regime, democratic governance in Bangladesh was challenged by the opposition political party Awami League (AL). During the two spells of the Khaleda regime (1991-1996, 2001-2006), the Awami League and its allies called hartals and/or strikes for 172 days on different political issues. On the issue of holding election under the caretaker government, Sheikh Hasina, then leader of the opposition called hartals and/or strikes and Jamati-Islami sided with the AL.

Although Khaleda Zia held sixth parliament elections in 1996 as head of the government, the AL and its political allies, including Jamati-Islami did not take part in the elections. However, on political

pressure from the opposition parties, the seventh parliament election was held in the same year under the caretaker government, and the AL formed government after winning the election. It is important to mention that to compel the Khaleda government to hold the 9th parliament election under neutral and nonpartisan caretaker government, the AL engaged in countrywide political clash with the ruling BNP and its ally Jamati Islami. As a result, in 2006 about 67 activists of the ruling BNP and Jamati-Islami were killed in the clash.

One major problem of democratic governance during the Khaleda regime was the creation of the Rapid Action Battalion (RAB) that helped accelerate extrajudicial killings of people in the name of crossfire or counter attack. Although the administration during the first spell of the Khaleda regime was believed to be less corrupt, the second spell of the government was viewed less transparent and more corrupt.

### **The State of Democratic Governance during the Hasina Regime**

Like the previous regimes, the democratic governance in Bangladesh has also been undermined due to the authoritative character and behavior of the Hasina regime. While after the first spell of the Hasina government (1996-2001) a free and fair election was held under caretaker government and the elected government was formed in 2001. But after the second spell of the Hasina regime (2009-2013) major political parties failed to reach a consensus on the issue of holding free and fair elections of the tenth parliament in Bangladesh. The opposition party BNP and its allies demanded for holding free, fair and inclusive election under the caretaker government. The AL, on the other hand, insisted to hold election under the existing elected government. Finally, the AL government succeeded to forcibly hold the 10<sup>th</sup> parliament election on January 5, 2014 without participation of the major opposition party BNP and its allies.

According to national and international observers, about 9-15% of votes were cast in the election. Out of 300 seats of the parliament, 153 candidates of the ruling AL and its allies declared uncontested as members of the parliament, which deprived all the voters of more than 50% of total constituencies. Indeed, the pre-and-post-election political conflict created a chaotic situation in Bangladesh. As a result, the country witnessed organized anarchies by both the ruling AL and the opposition parties. Due to lack of consensus between the two major rival parties, the escalated political violence took the lives many innocent people. The months-long countrywide blockade and hartals called by the opposition parties increased the continued sufferings of the people and caused increased damage to the national economy.

To control the political agitation, the government of Sheikh Hasina arrested thousands of activists and leaders of opposition political parties. Forced disappearance, abduction, clandestine killings of the members of the opposition parties have become the common phenomena in Bangladesh (See Ain O Shalish Kendra, 2015). The creation of RAB by the Khaleda government has become a boomerang to the BNP since extrajudicial killings by crossfire or counter-attack by RAB and police reached the zenith during the second and third spells of the Hasina regime. Political and administrative corruption has also been hindrance to sound and democratic governance. Use of muscle power, plundering of tender boxes, seizing illegal property or land by many activists/members of the ruling party has also been the common features of the administration of the current government (See Amar Desh, February 23, 2015; Manab Zamin, 2015). Mass arrest of the dissidents/opposition members also indicates the absence of independent judiciary and the authoritative rule of the Hasina government.

### **Problems of Democratic Governance in Bangladesh**

This section explains the problems of democratic governance in Bangladesh in terms of various factors, such as authoritative behavior of the government, lack of political commitment, absence of independent judiciary and electorate, lack of political and administrative accountability, and democratic practice within political parties.

#### **Authoritative Behavior of the Government**

The authoritative behavior/character of the government is a major obstruction to democratic governance in Bangladesh. The authoritative character of the government was first exposed through the introduction of one-party system in 1975, then through military rules that lasted until the downfall of the Ershad government in December, 1990. The elected governments of Khaleda Zia and Sheikh Hasina also remained authoritative in many respects. This is because of the absence of decentralization and absolute power exercised by Prime Minister in Bangladesh. The Prime Minister even has to make the final decision on such issues that can be settled through the decisions made by the concerned ministers. About the authoritarian rule of the current government an US-based research organization mentioned that about 69% of the people of Bangladesh believed that government's behavior is authoritarian (Amar Desh, January 2015).

In an interview with senior civil servants of Bangladesh in 1976 by Professor Ahmed found that about 60% of the civil servants replied that since the civil servant were highly qualified and the guardian of



the public, they were expected to formulate and implement policies and the responsibility of the common masses should be only to obey the law and order and to work hard, not to participate in any policy issues or developmental activities (Ahmed, 1981, pp. 81-89).

### **Lack of Political Commitment and Consensus**

Political commitment is an important element of democratic governance without which socioeconomic and politico-cultural development of a nation is hardly desirable. Political commitment is essential to promote democratic practice, tolerance and consensual government and also to maintain political control over bureaucracy. In order to make a sound, transparent and efficient as well as participative and development-oriented administrative system, an honest intelligent, creative, skillful and committed political leadership is vitally essential. Without a strong political commitment and tolerance building, no political consensus among political leaders on national issues can be built up.

In Bangladesh, political leaders from both ruling and opposition parties lack political commitment and fail to build political consensus on major national issues. The political leaders are rarely found to reach consensus on national issues for the common interest of the people. Personal and party interests are given more privilege than national interest. Bangladesh since its independence has never had a strong political commitment to reform and check bureaucratic intransigence. Nevertheless, over time, the regimes have been depended on the senior civil servants instead of maintaining strong political control over the bureaucracies in Bangladesh (Islam, 2011; Khan, 2002, p. 82). So, lack of commitment by the political leadership is a major hindrance to democratic governance in Bangladesh.

### **Absence of Independent Judiciary**

Democratic governance demands and requires an independent judiciary. Independence of the judiciary depends on certain conditions, such as mode of appointment of judges, security of their tenure in the office, and adequate remuneration and privileges. Article 95(1) of the Constitution in Bangladesh provided that “the Chief Justice shall be appointed by the President, and other judges shall be appointed after consultation with the Chief Justice.” However, the 4<sup>th</sup> amendment of the Constitution (1975) has taken away the provision of consultation with the Chief Justice for appointment of other judges (Rahman, 2000). In practice, Judges are politically appointed and promoted so that freedom is impugned that retards them to make their judicial decisions independent of the executive or the legislature. In fact, mass arrest of

thousands of activists and leaders of opposition political parties indicates the absence of judiciary in Bangladesh. Very recently, in an inaugural ceremony of the Book Fair organized by the Supreme Court Lawyers' Association the Chief Justice S. K. Sinha regretfully mentioned that the Executive wants to abduct the powers of the Judiciary, which indicates the absence of independence of the judiciary in Bangladesh (Bangladesh Protidin, 2016).

### **Absence of Independent Electorate**

In a democratic system of government, holding a free, fair and periodic election is a key function of the electorate. In order to hold a free, fair and popular election the electoral system must be independent of any influence or any political pressure by the any organ of the government or by any external forces. For this reason, the Election Commission should be given adequate power to neutrally and freely conduct elections without any pressure or influence from members of the ruling party. In Bangladesh, the electorate cannot work independently due to political appointment of the Election Commission and insufficient staff to conduct elections (See Manab Zamin, 2016).

### **Lack of Accountability of Elected and Appointed Government Officials**

Accountability is an important ingredient of democratic governance. Democracy creates a favorable condition for ensuring accountability of both the bureaucrats and politicians where the people have legal right to exercise control, directly or indirectly, over the administrators and politicians (Ahmed, 1992, pp. 389-407). While in democratic governance the politicians or the elected members of a legislature are accountable to the people, the bureaucrats are supposed to be accountable to political leaders. Although maintaining control over bureaucracy is essential both for promoting democracy and development, both politicians and bureaucrats in Bangladesh are not held accountable to the people. The Mujib regime after coming to power, was trying to make bureaucracy accountable to the politicians. But the politicians including the Cabinet members of the Mujib government were corrupt. Mujib himself suffocated democracy by introducing authoritarian single party system by banning multi-party system in January 1975 (Huque, 1985, p. 208). In fact, due to political patronage and lack of political commitment, the successive governments of Bangladesh have failed to ensure political and administrative accountability in Bangladesh.

### **Lack of Democratic Practices within Political Parties**

In a democratic system, holding periodic elections does not necessarily mean that democratic governance will be strengthened in a country. For promoting democracy in a country, the members of political

parties, including leaders and activists must practice democracy within the parties. In Bangladesh politics, it has been observed that politicians do not practice democracy within the party. No regular party conventions or elections are held. Council members are selected or nominated by the party chair, not elected by the members or activists. This undemocratic practice within political parties very much impedes the strengthening of democratic governance in Bangladesh. This is because of lack of institutionalization of democracy within the political parties in Bangladesh. The major political parties, including the Awami League (AL) and the Bangladesh Nationalist Party (BNP) are not the exception to this reality (Alam, 2015)

### **Political and Administrative Corruption**

Although administrative corruption prevails in many developed countries, the extent and magnitude of administrative corruption is more widespread in the Third World countries. A survey conducted by Transparency International Bangladesh (TIB, 1997) identified police stations (thana), lower judicial courts, public hospitals, sub-registrar's office, land record office, tahshil's office and schedules banks as most corrupt offices in Bangladesh. The study also revealed that the absence of accountability and misuse of position and powers appeared as the most salient features of corruption (TIB, 1997). A study by TIB between January 2000 and June 2000 revealed that of 927 corruption cases, the highest number of corruption indicated were reported in the law enforcement (Police, BDR, Ansar etc.) agency (30%) followed by local government agency (17%), while the lowest incidents of corruption took place in Transportation sector (2%). Moreover, the different types of corruption as identified by the TIB in public sector in 2000 included misuse of power, bribe taking, embezzlement and extortion, misuse of resources and negligence of duty (TIB, 2000).

But in reality, the bureaucrats in Bangladesh are reluctant to disclose what is happening inside bureaucracies or administration. Although the IDCs including USAID, World Bank, UNDP and ADB were pressing the governments of Bangladesh to create an efficient, effective and independent institutional arrangement such as ombudsman for checking administrative malpractices, it has not yet been established till now. So, the reluctance of the government to build a strong independent ombudsman to fight administrative corruption and malpractices in Bangladesh is also obstructing the democratic norms and development in Bangladesh (Islam, 2011).

### **Conclusions**

In conclusion, democratic governance has been undermined by both democratically elected and military governments in Bangladesh. The first backlash on democratic government in Bangladesh came through

the introduction of one-party system by the Mujib government in 1975. Military intervention through coups and counter coups in August and November 1975 undermined democratic governance in Bangladesh. While Ziaur Rahman created environment for democratic governance by introducing multi-party political system, democratic practice was castigated by another military intervention through assassination of Ziaur Rahman on May 30, 1981 that brought military dictator Ershad to state power. Although a new hope for promoting democracy was unveiled through popular election under the caretaker government in 1991, the dream for nourishing democratic practice remained unfulfilled during the regimes of Khaleda Zia and Sheikh Hasina.

The study reveals that democratic governance in Bangladesh has been impeded by a number of factors, such as authoritative behavior of the government, lack of political commitment and consensus, absence of independent judiciary, absence of independent electorate, lack of accountability of elected and appointed government officials, lack of democratic practices within political parties, lack of participation or engagement of citizens in political process, and widespread corruption. Finally, the paper recommends for reforming the electoral system, reforming judiciary, reforming the constitution for holding inclusive elections, changing the mindsets of political leaders for holding dialogues to promote democratic atmosphere, and reforming the political institutions to promote transparency, accountability and responsiveness in all branches of government.

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### 3. Election Commission and Electoral Governance in Bangladesh

Rawnak Jahan  
Moyenul Hasan

#### Abstract

*Since independence in 1971, Bangladesh starts its journey as a parliamentary form of government with the basis of democracy and still she is thriving for the establishment of democracy. In the meantime, the people of Bangladesh experience the rule of military government. However, in establishing democracy in Bangladesh, the election commission of the country can play a key role through its electoral and legal process. But the findings of many studies reveal that, in many cases, the election commission could not maintain its legal and regulatory authority to hold a free and fair election, which is one of the most important elements to establish democracy in the country. In recent time, newspaper reports reveal that the election commission of Bangladesh has allegedly failed to uphold its constitutional and legal authority to hold a free and fair election in Dhaka and Chittagong City Corporation elections. Against this bleak backdrop, many people arise questions that why the election commission could not exercise and maintain its legal and regulatory authority to hold a free and fair election in Bangladesh? What are the barriers to holding a free and fair election in the country? This paper tries to explore the answers to these questions. For this, the Dhaka City Corporation (North and South) elections have been taken as a case study to assess the role of the election commission in respect to holding a free and fair election in the country. Secondary data such as newspaper reports, observers' reports, research reports and personal experiences have been used to prepare this article. Finally, it puts some policy implications to holding a free and fair election in Bangladesh.*

**Keywords:** Democracy, Free and Fair Election, Election Commission, Bangladesh.

#### Introduction

Since independence, Bangladesh has passed over 43 years but the success in terms of democracy is going under the various conflicting phenomenon. In the last four decades, numerous systems of governance have been practiced in Bangladesh. The polity has been

marked by a low level of institutionalization of democracy where the absence of capable institutions to safeguard good governance (Mahmud, Naher 2015). The most important issue is that electing the representative of people through a free and fair election is one of the crucial pre-requisites for launching good governance in the country. The people of Bangladesh reflect their feelings through casting votes openly in the national and local government elections.

As per the Bangladesh Constitutional provisions, the Election Commission (EC) is completely an independent and important institution which upholds the democratic practice and behaviours of the electoral process that promises a free and fair election for ensuring a democratic government (Mullah, 2004). The central obligation of the EC is to hold local and national elections as an independent and responsible institution, which is depicted in Article 118-125 of the Constitution of Bangladesh. According to the Constitution of Bangladesh, the EC is headed by a Chief Election Commissioner (CEC) along with four commissioners and necessary staffs with the requirement of administering all the aspects of an election. The Commission has the authority to supervise, control and direct each and every step of the process to ensure free and fair election (Haque, 2011).

This study intends to explore the role of the election commission in holding the most recent elections of Dhaka North and Dhaka South City Corporations on 18 April 2015 that were delayed for a long period and therefore governed by unelected officials. Running Dhaka City Corporation by the unelected administrators for a long time was in result unconstitutional (TIB report, 2015). However, hopes and aspirations were created among the people concerning resolution of political holes in the environment of a confrontational political situation after the declaration of elections for Dhaka North and Dhaka South City Corporations. But the demand of mass people did not fulfil due to the most questionable elections procedure and unlawful allegation against the government. Ballot paper snatching, false voting, attacking voting centre, depriving opponent voter from casting their vote, election manipulation, using law and order forces in own interest, rigged and boycotted, vandalizing polling centres were main allegations against the EC.

It was because of their controversial role but they supposed to ensure free and fair elections in the two city corporations. So this will also be endeavoured to depict its political and institutional challenges that EC faces to conduct a free and fair election of the two city corporations in Bangladesh.



## **Objectives of the Study**

The main objective of this paper is to assess the role of the Election Commission in holding a free and fair election in Bangladesh. The specific objectives are:

- To study the institutional capacity and competence of the EC for holding free and fair election.
- To find out the impediments and challenges that the EC face while conducting election.
- To offer important suggestions for strengthening the EC.

To fulfil the demand of those objectives the study intends to answer of the following questions.

- To what extent the EC is independent and capable to conduct a free and fair election in Bangladesh?
- What are the challenges the Election Commission is facing while conducting a free and fair election in Bangladesh?
- Which policy measures can be adopted to strengthen the Election Commission to increase its capability for holding a free and fair election?

The study is based on examining political and institutional challenges of promoting access to electoral governance and ensuring free and fair elections in Bangladesh. In order to identifying the major challenges that influence in ensuring to uphold a free and fair elections by the EC and suggest a policy framework to enhance good governance in Bangladesh. This study would be helpful to the government policy makers as well as the EC to formulate new policies by assessing their previous election conducting performance and challenges to ensure democratic practice in the country as the Representation of the People Order 2013 (RPO) is one of the outstanding policy example. To strengthen and to empower the capacity of the EC, the ruling government has abolished the caretaker form of government from the constitution through 15<sup>th</sup> amendment to ensure better electoral practice is an exemplary policy by the government. The government was obliged to amend the constitution after the practicing several previous unfair and incredible elections in Bangladesh that we observed last two decades. However, it is hoped that it will serve as a point of reference to other researchers that contribute to knowledge on free, fair and credible elections and good governance.

## **Methodology**

As to the research method, this is a qualitative in nature and it has been followed a case study oriented method to meet the objective of this study, which is focused on exploring how political and institutional factors influence the extent of holding a free and fair elections in Bangladesh. The study has covered two city corporations (North and South of Dhaka City Corporation) elections held on 18 April 2015 in Bangladesh. The data has been collected from both primary and secondary sources. But most of the data has been gathered from various authentic documents like government orders, acts, newspaper reports, observer's reports journal articles, books, newspaper reports and research reports and so on. Moreover, personal experiences have been accounted to prepare this article.

## **Free and Fair Elections in Bangladesh: The Role of Election Commission**

Bangladesh is a country which is covered by various types of socio economic and political problems. Practice of democracy and democratic norms and values are very poor here (Islam, 2010). Holding free and fair election is very difficult task here. The past experience reveals that it has been come across couples of local and national elections by the direct and strong supervision of Bangladesh Election Commission especially the last two Dhaka city corporation elections. The EC has tried its level best since it is a constitutionally independent body and enjoy authority constitutional authority as well as functions to make the election free and fair. But the EC's attempts and contributions are not out of question mark at all. There are a couple of institutional problems that mired to be an effective institution. As per Article 118 (4) and 126 of the Bangladesh Constitution and Article 4 and 5 of the Representation of the People's Order (1972), the Election Commission (EC) is an independent and constitutional body that exercises its functions concerning to the elections. The EC could authorize any of its members to exercise and execute any of its powers and functions under the law. Thus, the EC has the authority to accomplish such functions for the purpose of holding a free and fair election.

The role of the EC is the most important for holding a free and fair election that is acceptable to all. The EC (EC) has recently finalized a strategic plan these are known as Bangladesh Election Commission Strategic Plan 2011-2016. A look at those actions has showed that a

number of important actions cannot be accomplished by the Commission alone and it would need the assistance of other partner organizations. Election Commission is a body charged with overseeing the implementation of election procedures. They may also be responsible for electoral boundary allocation. In federations there may be a separate body for each sub national government. These roles and responsibilities of the election commission in order to meet their objectives, well-run elections, referendums and electoral registration, transparency in party and election finance, with high levels of compliance (Khan, 2014).

However, in the periphery of Bangladesh the role of the Election Commission is limited due to not publishing the information on affidavits that is submitted by the candidates. EC imposed fine to the some mayoral and councilor candidates as well as reserved seats for violating of election laws. Also, the Election Commission has sufficient authority of the cancellation of candidature. But creating an environment for all stands are conducive to holding a free and fair election was not materialized due to the weak stand of the EC. A confusing circumstance was created during the allegations of partisan role of the Commission on the issue of army deployment in Dhaka North and Dhaka South city corporation election. Suitable actions were not taken during the Dhaka two city corporation elections against the direct involvement of election executives in vote stuffing in various voting canters, the capture of polling canters on the election-day, violently vote-rigging, randomly putting seals on ballot papers without any hesitations and so on. Although the full care of the EC was strained to the lack of polling agents of candidates who are backed by the political parties other than the ruling party. In the two city corporations elections, it has been witnessed fear and insufficient safety of polling agents, obstructing entry of media staffs in polling canters, assaults on the journalists and so on but no immediate actions were taken by the Election Commission (TIB report, 2015).

### **Free and Fair Election: Dhaka North and South City Corporation**

A free, fair and credible election is a direct benefit of democracy as Kondo (2003) stated,

*“There can only be a free and fair election where there is democracy, and there can never be a democracy when there is no free and fair Election”.*

Kofi Annan, Chair of the Global Commission report (2012) said

*“Elections are the indispensable root of democracy. When elections have been free and fair, they can be a powerful catalyst for better governance, greater security and human development. But in the absence of credible elections, citizens have no recourse to peaceful political change.”*

The assignment of holding free and fair elections is not simple and it includes numerous tasks. Besides, election is an imperative development for fair moves. Elections will be free and fair in the event that they are not controlled by cash, muscle and authority impact (Islam, 2010). Rahman (2006) argued that Bangladesh may have attained to constituent majority rule government through customary elections; however, its desire to arrange a free and fair election is still under threat.

Dhaka City Corporation (DCC) is a self-overseeing institution that is connected with the assignment of running the issues of the city of Dhaka. The consolidated region was separated into a few wards. Every ward has an elected ward chief. The mayor of the city corporation is elected by direct vote at regular intervals, in spite of the last mayoral election was held in 2002. The Corporation was broken up by the Local Government (City Corporation) Amendment Bill 2011 on November 29, 2011, passed in the Parliament, and formally settled to exist on December 1, 2011, after approval of the President. These certainly make a path for a Dhaka North and a Dhaka South city corporation. As indicated by the current law, the official power of the Corporation vests in and practiced by the Mayor/Administrator. The Corporation constitutes Several Standing Committees and different Committees to screen and guide the differentiated exercises of the association. The Mayor/overseer is helped by the Chief Executive Officer, who thus, is helped by the Secretary, the Heads of Departments and Zonal Executive Officers.

The two city corporation election was held on 18 April 2015 but it was alleged several criticism. As Transparency International Bangladesh (TIB) in its report said that the roles of the Election Commission (EC) as an important institution of democracy but, the two city corporation elections were extremely questionable. This report also mentioned that the two city corporation polls witnessed massive irregularities and violation of electoral rules as the Election Commission (EC) failed to discharge its responsibility properly.

Besides they were not free, fair and impartial manner as contestants spent money much higher than the allowable limit. Dhaka North City Corporation comprises of 36 wards. Its present mayor of Dhaka North City Corporation is Annisul Huq. Likewise, Dhaka South City Corporation comprises of 57 wards. Its present mayor is Sayeed Khokon. BNP supported competitors were Mirza Abbas, Tabit Awal and Awami League upheld applicants are Anisul Haque and Sayeed Khokon including candidates from the other political stands respectfully to hold their mayoral post in the Dhaka South and North city corporation. BNP mayoral candidates boycotted themselves from election due to unfavorable and unrest situations. As reported on The Newage 29 April, 2015 that “UN Secretary General Ban Ki-moon is aware of BNP’s decision of polls boycott and appealed to all parties to express their differences through peaceful means, reports United News of Bangladesh. ‘The Secretary-General is aware of the Bangladesh Nationalist Party’s decision to boycott the Dhaka and Chittagong elections amid allegations of electoral fraud”

### **Obstacles for Free and Fair Elections**

There are a few blockades against the free streaming of the Election Commission of Bangladesh. These need for clarifying so as to reach to get a good picture of their role and capacity. A few of the escape clauses are given underneath with representation.

### ***Limitations of the Concerned Laws and Rules***

The city corporation elections are managed by the Local Government (City Corporation) Act, 2009 that is amended up to 2011), the Local Government (City Corporation) Election Rules, 2010, and the City Corporation (Election Conduct) Rules, 2010. It is observed that in the principles part (for instance the quantity of publications, handouts, handbills, and standards) expenditure during the election of contender for general and reserved seats is not said. The procurement for observing election expenditure of the candidates and additionally discipline actions for abundance use and the provision for overhauling use of expenditure after a particular period are absent. There is no system associated with investigating the submitted returns on election expenditure by the competitors. There is a simple provision for the election of the reserved councillor against each three wards, which makes unequal weight on the contenders. There is additionally an absence of different principles on their age limit. In addition, the 'City Corporation (election conducting) Rules, 2010 does not say about the

utilization and consumption for web based online networking, electronic and print media, which makes the chance to spend through these media without satisfactory checking. In general, the restrictions of the current lawful system truly make scope for excessive expenditure.

### ***EC's dependency to Government***

It is openly said that the Election Commission in assurance needs to rely on the public administration functionaries in appreciation to appointing CEC (Chief Election Commissioner) and different Commissioners, recruiting staffs for the Election Commission Secretariat, releasing its capacities at field level amid elections, keeping up law and order, and overseeing distinctive money related issues including budget plan and dispensing of assets (Islam, 2010).

The Daily Prothom Alo on 29 April, 2015 reported titled on *AL wins, democracy loses* that

*“The people’s apprehensions about the city corporation elections were finally proved true. Political analysts see this as a victory for the ruling Awami League (AL), but a defeat for democracy. Government supporters did not allow the opposition supporters anywhere near the polling stations in most areas. They openly cast their false votes, aided and abetted by the police and the administration. Within a few hours of the election, the BNP-backed candidates announced that they were boycotting the polls. Dhaka mayoral candidate boycotted and followed by in Dhaka Mirza Abbas’ wife Afroza Abbas and Tabith Awal.”*

### ***Arbitrary Appointment***

The Election Commission’s conduct of free and fair is hampered because of discretionary arrangement of CEC (Chief Election Commissioner) and other Election Commissioners with partisan stand, even appointment of local level election authorities with partisan stand, politicization of the NCGs, and arranged post position of authorities of the administration before the elections (Mullah, 2004). All these are reflected in the aftereffects of the elections. Those mechanisms are sole taken in favour of the ruling party.

### ***Culture and Unauthentic Demand of EC***

The election culture and authenticity are also questionable due to the partisan role of Election Commission. For instance, after the most

unfair two Dhaka City Corporation elections incidentally, Mr. Kazi Rakibuddin Ahmed, Chief Election Commissioner, has asserted that the elections have been held in a “peaceful, free, fair and festive manner”, while addressing with the press. The CEC or the Election Commission did not step to keep up request and its own control over the election procedure. Notwithstanding, the CEC has formally ignored all affirmations of control, terming them as “some stray incidents”. Truth be told, the Election Commission has made ready for the ruling group of the administration, which had proclaimed its craving to win the city elections at any expense. Credible and equipped institutions don't exist in the nation; be it the law-implementation offices, the Election Commission or the Judiciary. The general population of Bangladesh trust that there won't be any activity started against any of the culprits, aside from the activists of the opposition. The Election Commission, the law-enforces offices, the legislature of the day, and all the progressive political administrations shared the disgrace of what was happened in Dhaka two city corporation elections. The common society, which failed to act in a fair manner, and neglected to maintain regularizing measures in performing their part in the public arena, also shared the disgrace. These elections in Bangladesh showcase the condition of the nation's essential institutions, which extremely need fitness, freedom, and polished skill in maintaining the standard. Also, reigning over these frail institutions is an unbalanced political society, with settled in propensities for getting political office by power instead of through useful activities.

### ***Election Disputes/Violence***

Election disputes and violence are normal phenomenon in Bangladesh during the elections. Pre and post-election unrest are simple in all elections. Impediments exist in the Election Conduct Rules, 1996 and absences of its usage have brought forth a portion of the viciousness. The EWG (Election Working Groups) observed 619 polling canters of Dhaka North and South City Corporation amid the poll and saw intimidation of agents of opposition, stuffing of vote papers by capturing polling canters, and violence that tormented the elections. Voters were not allowed to pick the right one. As the European Union reported, requesting Dhaka to examine openly the anomalies and act of roughness in the simply closed city elections.

Additionally, Transparency International Bangladesh (TIB) faulted the election commission (EC) and law enforce organizations for

inability to hold trustworthy and quiet polls in Dhaka. It is seen that 58% of the applicants damaged the code by giving so as to offer nourishment and beverages in camps and away blessings and tips. Amplifiers were utilized as a part of reputation by 42% of the competitors prior and then afterward the stipulated time, and 41% of the candidates utilized more than one mouthpiece all the while. Also, infringement like holding open gatherings (40%), confrontation amid accommodation of assignment paper (26%), demonstration cum standoffs with vehicles (23%), offering gifts in the interest of competitors straightforwardly or in secret (20%) occurred negating the discretionary code of conduct (TIB Reports, 2015).

### **Reality of Free and Fair Election**

Bangladesh is organizing so as to attempt to set up vote based system with consistency in elections. In any case, the delicacy of the election framework demonstrated that basically holding elections does not guarantee free and reasonable. Along these lines, it is important to recognize, and make an autonomous election institution that can guarantee free and reasonable elections. Most recent two years back Government of Bangladesh has been separated Dhaka City Corporation into North and South Dhaka City Corporation. It is advised that last united Dhaka city organization election was held on April 2002. A couple of years' later the Dhaka city corporation election again held on 18 April of 2015.

Dhaka North City Corporation all out candidates were 16. These territories aggregate polling stations were 889 and aggregate vote centers were 4746. Downright voters male were 2345374 and female voters were 1120673. Dhaka South City Corporation all out mayor candidate were 20 and voters were Male-109286 and Female-861467. Vote was casted only 37 percent and 40 percent respectively (EWG reports, 2015). BNP backed mayor candidates boycotted from election just after the afternoon due to the mass corruption in the election.

To recognize what believed is going its red tapes, we have directed a poll review to diverse strolls of people groups e.g. College instructors, cognizant students, legal advisors and rank and records. This review goes for discovering the escape clauses of present Election Commission with the greater part of its restrictions alongside its part of holding a free and fair Election in Bangladesh. So, the summary of their talk is strengthening the institutional capacity, keeping out from



using discretionary power of the ruling party and working with election concerning agencies.

### **Recommendations**

A number of political and institutional factors and issues seem to constrain access to good governance and free and fair elections in Bangladesh. In line with some political and institutional challenges of the EC, the following recommendations are particularly important to conducting free and fair elections in Bangladesh:

- All political parties should abstain from engaging in personal attacks and the use of delivering provocative languages.
- The government should enhance the regulatory power of the EC to investigate the expenditures of candidates and the parties.
- The EC should be empowered to recruit their own staff without the influence of the government.
- The EC should develop a mechanism of monitoring candidates' and parties' electoral expenditures and take due legal actions in case of any electoral violation.
- The government should introduce stronger legal provisions that help to prosecute election officials found guilty of a partisan role during the elections.
- The speedy resolution of electoral disputes should be made possible by setting up special independent elections courts and tribunals.
- It is important to constantly train election officials, especially to those who will work at the polling stations.
- Political parties need to be transparent in their financial dealings. It should be mandatory for all candidates nominated by political parties to declare their assets and provide necessary details of their financial status to the EC.
- In order to ensure public trust of the electoral process, the EC should maintain transparency in their activities by opening up the access to the media, civil society and election observation groups.
- From the part of the NGOs and civil society organizations, there should be a strong component of civic education programs on elections to avoid confusions and lack of confidence on the part of the common voters in exercising their voting rights.

## Conclusion

Bangladesh suffers from a number of political and institutional weaknesses of ensuring a free and fair election and promoting access to good governance. However, free and fair elections and access to good governance is not something one can expect to achieve overnight. As democratic nations, Bangladesh is comparatively new. The country has been through different political and institutional crises and through the efforts has overcome them as well. Therefore, there definitely remains hope for Bangladesh to achieve free and fair elections and promote access to good governance, these elements that are a must for any country to move towards good governance.

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## 4. Interpreting South Asian Unionism: Remodeling Regional Architecture

Rakibul Hasan

### Abstract

*Among others, the rise of new divisive nationalism starts polarizing the diverse ethno-cultural identities once again in South Asia, which consequently slows the socioeconomic integration of the region. However, today at the age of globalization, the regional integration is a simple necessity of our time. The policy paper forespeaks how a united South Asian model can turn the region into a world's leading economic hub, scientific and cultural excellencies, on the basis of reviving multiculturalism and secular polity of democracy. The qualitative analyses of the paper critically reassess some multiple challenges, i.e. lack of political consensus, illegal migrations, geopolitical games, neo sub-grouping inside SAARC mechanism, which grow consequential distrusts among the neighboring governments and further thwart the process of transboundary interaction among the regional citizens. Besides, the Big Power competitions of hegemony continue fomenting enmity at state level and disseminate communal hatreds among the masses in South Asia. However putting these setbacks, still towards the possibilities of transformations, the paper, maybe hypothetically, remodels an architecture for tomorrow's unification of South Asia. In addition, it seeks to trend a bottom-up approach tentatively suitable to the rebuilds of common regional embodiment beyond the separation of borders, cultural diversities, and narrowed concepts of nationalism, all against the latest political manipulation. Towards nearing these targets, the paper recommends a specific set of measures, which mainly include promoting socioeconomic cooperation through the practices of multiculturalism and increased citizen's connectivity and thus to pursue lasting peace and sustainable development in the region. Above all, it ultimately prioritizes liberal exchanges of South Asians in multidisciplinary fields of politics, academics and socioeconomic sectors on a shared basis, which work as preconditions for evolving greater possibilities of regional integration.*

**Keywords:** Regionalism, Peacebuilding and South Asia

### Research Methodology

The paper reviews significant number of policies from journal papers and newspaper articles and larger parts of those literature include

critiques and comparative analyses of regional integration. Besides, the paper deduces multiple dynamics of regional disintegrations into few specific policies of integration. The qualitative paper is written on the basis of empirical experiences and exclusively seek solutions more at the bottom level of people' engagement, rather than mainstreaming approaches of state-to-state initiatives, which significantly fails of records.

### **Background/Rationale of the Study**

Many of the hypotheses remain exact in utopian dimensions and most of them remain even harder to bring into practices. On the ground of reality, SAARC or any other initiatives in the region seems more articulated in nature of the legal documents, but opposite to apply in empiricism.

Debates, dialogues and all other maneuvers for the dream of south Asian unionism have last-resorted to bottom-up approach of practicality now in our age.

The year of 2015, for example examined a particular approach of young diplomacy in an effort of integrating the prolonged hopes for South Asian unity. This time in the history of the region, South Asian Youth Society (SAYS)<sup>1</sup>, had successfully been able to host first ever Model SAARC summit<sup>2</sup> in Dhaka. The summit had just lasted for a period of four days, but it definitely reevaluated every possibility to rethink the regional architecture for meaningful integration in South Asia (SAYS, 2015).

The summit facilitated the assemblage of noted young policy makers, prominent researcher, and observers of eight SAARC countries across the region. Behind the meet, a clear-cut objective lied and that is obviously the goal of integrated South Asia. Majority delegates pointed out the existing homogeneities prevailing over the region for centuries, while agreeing that the division in the region is created mostly by politicians. However, the last-remaining hopes that the delegates identified is the key role of youth counterparts, which has

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1 SAYS is region's largest youth network, with the mission to promote youth development and create a united platform for South Asian Youth by exploring, networking, training and through knowledge sharing, social and cross-border activity and crowning cultural bondage.

2 Model SAARC will be an educational simulation and academic competition in which future policy makers learn about diplomacy and regional relations. Like the Model United Nations it involves and teaches research, public speaking, debating, and writing skills, in addition to critical thinking, teamwork, and leadership abilities.

unanimously been stressed to enhance greater connectivity towards ensuring integration, peace, and prosperity in South Asia. End of the summit, the delegates representing all South Asian countries on the tables of meeting and discussion, came up with a declaration named the 'Dhaka Dialogue', a formulae of public diplomacy. The paper does not exclusively rely upon hardcore state apparatuses, rather it primarily emphasizes upon activating regional organizations and initiatives working at the root level of the societies to evolve the popular aspirations for the integration (Hasan, 2015).

There is first ever initiatives, taken by U.S. Department of State in collaboration of U.S. Embassies<sup>3</sup> in South Asia, bringing all regional young policy makers and the foreign envoys at Dhaka, in March, 2015. Throughout the summit, I interviewed all the delegates, foreign envoys, academics, scholars and the government officials who attended the summit and their insights have been incorporated in the policy paper.

Finally the rationale of the study concentrates upon the notion of vibrant young diplomacy and frequent cultural exchanges among the youths towards gradual integration in the region. However, the collaborative structure of political schemes, large-scaled interregional investment and collective engagement in the region are given priorities as preconditions to apply the remodeled design.

### **Paralyses to Regional Integration:**

#### ***Contemporary Debates: Illegal Migrants***

Illegal immigration turns into a global challenge today, rather than to be country-specific issues, say for Europe or South Asia.

Over the recent times BJP, for example continue its communal campaign against the issue of unproven 'Illegal Bangladeshi Immigrants' (2 cores/20 million), living primarily in West Bengal, Assam and other bordering states of India (as their allegations) (Nandy, 2005). On the other hand, *Siliconindia Magazine* of Bangalore unveils approx. 500,000 illegal Indians living and working in Bangladesh, sending as much as \$3,716 million remittance to India, which ranks Bangladesh in top 5th position, amongst the top 15 remittance incoming countries for India (*The Daily Ittefaq*. 2014). But the problem is the political campaigns inside of India may revive

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3 A number of six of U.S. Embassies nominated their State Department Alumni in Dhaka, in mid 2015. Bhutan and the Maldives operate their diplomatic missions respectively in India/Bangladesh and Sri Lanka.

communal hatreds and incite poisonous hated tensions among the peoples of both nations, which may even weaken existing people-to-people connectivity.

### ***Fragile Security Architecture: A Dilemma of Trust Deficits***

Unfortunately South Asian security depends upon what occurs outside of the region. While India defines its security concerns in the light of Chinese military strength, since 1962's brief war against China<sup>4</sup>. Pakistan on the other hand updates its security apparatus counterbalancing India's position. As consequences, the counter-competitions destabilize the region.

South Asia is one of the diversified and rich cultural heritages on Earth. The region has been bestowed with almost everything but No Peace and so No Prosperity. Major neighbors remain spending so much on defense budget but notably contributing nothing to eradicate poverty and social inequalities all across the region. To understand the scenario, the following statistics is crucial— like from one year defense budget of India and Pakistan, at least 1000 of schools and colleges can be built and reconstructed in the region (Shahzad, 2015)

Luckily South Asian country Bangladesh, first initiated SAARC but in subsequent years it remained nothing worth but a ceremonial annual assemblage giving few symbolic reasons to hope.

Here at this stage the most crucial question is how our regional defense budget can be redirected towards nontraditional security of human development, across the region.

### **Geopolitics of Indian Ocean: Is South Asia China-Usa' Cockpit?**

Currently we live somewhat in a non-polar world and the balance of global power passes through the evolutionary period. The degrees of geopolitical developments in the Asia-Pacific region remain volatile about its moves. We live in an era of change due to the ongoing paradigm of power shift and power diffusion in South Asian subcontinent, rather than less-signifying European continent.

China's rise equally reduces India's regional ambitions and its holds in the Indian ocean and the ability to counter emerging Chinese hegemony, Indo-US close cooperation has been the policy of the Modi government and the presence of President Obama at the Republic Day on 26th January is a manifestation of their close interaction between

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<sup>4</sup> The Sino-Indian War, also known as the Sino-Indian Border Conflict, was a war between China and India that occurred in 1962.



the two countries and it suits both countries strategically (Associated Press, 2015).

Another equation in the region is that India's influence in Afghanistan is a mounting threat for Pakistan, which establishes resilient anti-Pakistan sentiments in Afghanistan (Dalrymple, 2013). Western states try to isolate Pakistan regionally to prevent Pakistan in becoming energy corridor between Iran and China, among others (Rafiq, 2015).

However it is speculated that India does not wish that Bangladesh, Bhutan and Nepal should have a large Chinese footprint in their territories (Sitaraman, 2013) and if sub-regional cooperation is strengthened with these nations in form of BBIN formula<sup>5</sup> (Ramaswamy, 2015), there will be less likely Chinese influence on them. Furthermore, to add to the perception from some of the big player nations, the Indian position on regional policy is reportedly supported by Japan and the US, because these two states also enemy state of China and thus embracing South Asia as friend—enemy's enemy is ally (India, 2014). Here is a million dollar question on how these speculations, suspicions or games can be transformed towards peace and security inside South Asian regionalism.

### **Connectivity May Multiply More Trans-Boundary Tensions**

Regional connectivity may facilitate subversive or non-state actors to operate threats like militancy, terrorism, and many other cross-border skirmishes, especially for Afghanistan's Kunduz and Helmand Provinces, Pakistan's Kashmir and Baluchistan, India's Kashmir and Northeast, Bangladesh's Chittagong Hill Tracts and Sri Lanka's Northern Province (possibility).

The regional governments should come up with collective responsibility to ensure regional security in possible integration and they would reach a consensus that no one of them would plot about insurgents or terrorists against another state in the region as strategic benefits. All the government should work together to design regional mechanism in fights of those non-state actors, to rebuild trusts.

### **Sub-grouping Inside SAARC and Modi Leadership**

Over the recent years, there emerges a tendency of sub-grouping in SAARC setups. A landmark Motor Vehicles Agreement (MVA) has recently been signed, which include Bhutan, Bangladesh,

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5 The Bangladesh, Bhutan, India, Nepal (BBIN) Initiative has recently been oriented as a sub regional coordinative architecture of countries in South Asia. A Joint Working Groups (JWG) comprising official representation from each member state formulated implement and review quadrilateral agreements.

India and Nepal (BBIN). Significantly, BBIN aims at paving the way of free movement of people and goods across the sub-region within SAARC. It clarifies an unofficial demise of SAARC or an initiative to replace SAARC with sole Indian hegemony, which technically excludes Afghanistan, Pakistan, Sri Lanka and Maldives (The New Indian Express, 2015). Rise of non-state actors in forms of religious militancy and separatism is highly predictive to tsunami the regional fabrics of possible integration, e.g. militancy in Afghanistan and Pakistan, religious extremism in Bangladesh, religious polarization and Northeastern separatist movement in India.

Regarding the realpolitik of subgrouping in South Asia, popular propositions justify that terror-infested Afghanistan and Pakistan are not yet ready to join the BBIN.

However, Narendra Modi invited SAARC prime ministers/ presidents in his swearing, which is phenomenal in recent South Asian polarization and soon after his debut as an Indian Prime Minister, Narendra Modi initiated 'Neighbor First Policy'<sup>6</sup>, visiting most of South Asian neighbors. Definitely the initiative breeze the hopes for South Asia.

### **Findings or Conclusions: Bypassing Clogged Arteries**

In collaboration with civil and regional organizations, the member states of the South Asian Association for Regional Cooperation (SAARC) crucially needs to develop ranges of collaborative measures. As per the 'Dhaka Dialogue' of Model SAARC Summit 2015, the region should take care to build trusts among the member states of South Asia, applying particular action plans. The paper largely concerns policy analyses on socioeconomic growth, education, sciences and technology, including environmental sustainability, rather solely resolving issues at the state level. On the other hand, the paper engages mass people to grow awareness of regional connectivity in a way someday all of our regional governments will understand common interests of the people.

### **A Roadmap to Socioeconomic Integration:**

The member states for the '*Committee of Socio-Economic Development*' came up with the idea of economic approaches, i.e. '*Blue Economy*' to be applied in the regional setting for fostering the

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6 It is believed that the most significant initiative, introduced by Narendra Modi government is the focus on neighbouring countries and major Asian powers coupled with an emphasis on the two decades old Look East policy.

economic integration as preconditions for political Ice-melting. However the committee concludes that Blue Economy, an economic model shifting society from scarcity to abundance with what is locally available, is an emerging economic concept which requires extensive researches and awareness-building to understand first and then to apply across the region.

Besides, the massive awareness can be boosted up with declaring the decade of 2016-2026 as the 'SAARC Blue Economy Decade'. And the decade should encourage institutionalization of the concept in respective financial organizations of the member states in SAARC region. Therefore, it suggests to conduct extensive researches of qualitative and quantitative methodologies on conceptual deliberations to the theories and the practices of Blue Economy.

The committee reiterates its commitments to innovative efforts to ensure socio-economic sustainability safeguarding the common interests of the people, while maintaining equity in the distribution of shared benefits.

Each of the member state of SAARC should adhere to the principles and objectives of the new economy, which would be initiated in the region by collective efforts of member states.

In the implementation of the Blue Economy, the collective decision in the summit urges all the member states to establish 'SAARC Blue Economy Fund' to reorganize the institutions and to exchange the technologies, making the region ready to take the model into practices at national and regional level. The committee drafts a roadmap to facilitate and guide the member states towards meeting those goals and targets.

A proposal is set forth for the next summit to evaluate the required coordination to rescrutinize time-demanded goals and targets of the kind of economy.

On the other hand, the member states should work together to find a sustainable mechanism for energy cooperation, notably in the hydro-electric and solar sectors, including bunch of other renewable energy sectors, with the solemn aim of setting up a common regional power grid/solar power bank.

The most significant sectors that the member state should cooperate is to develop a common guidelines to foster Ecotourism and the sustainable exploitation of natural resources—marines, sea-beds and fisheries in particular.

With the installation of post-modern governmental discourse of NGOs, the member states should allow wider engagement of Non-profit/Non-Governmental Organizations to play valuable complementary roles in diverse development process—disaster managements, women empowerment, youth-led projects, IT sectors and so on.

In order to facilitate greater communication, awareness and trust-building between states and organizations, the member states should promote Public-Private-Partnership (PPP) in the region as a whole. For the purpose, periodic joint studies, workshops, conferences are encouraged to stream exchanges among the regional NGOs and private initiatives.

To run these people-to-people initiatives, it proposes a Region Fund under the regulatory framework where the member states are expected to contribute its portions to the fund as set by the SAARC Secretariat on the assessment of particular needs in particular countries.

Detailed schemes and timelines, it calls upon the SAARC Secretariat to monitor the coherence of the NGO activities, while locating and then minimizing the repetitions of role of NGOs in the same areas of responsibilities—dividing NGOs to act in their relevant fields and even to redirect NGO which might have the chance to repeat activities that another NGO doing similar in the same areas.

The complex of issues of NGO managements at regional level, a consortium of NGOs can be established, enabling to operate under the jurisdiction of national and regional governments within the region. The consortium should deal ranges of inter NGOs understandings and cooperation, such as sector-based meetings, policy discussions, expertise/network sharing, under the defined SAARC agenda to create mutual support systems.

### **Superstructure: Renaissance of Own Pattern of Education, Science and Culture**

Apart from basic structure, i.e. economy, the committee reviews the superstructure, i.e. culture of the region. The committee immensely emphasized upon the initiation of Information and Communication Technology (ICT) to the backward region of South Asia. It reiterates the SAARC objectivities in the ICT areas. The most crucial agreement the member state in the committee came up with the recognition of access to ICT as fundamental right. To implement the ICT policies in SAARC region, the committee advocated Right Based Approaches (RBA) for South Asia.

The regional design of the ICT facilities should not be monopolized among the member states, rather it should trend the culture of wider experience and expertise sharing across the nation in the region. Again a stable fund is required to subsidize ICT services in areas that lacks to the modern times opportunities. As most of the bureaucratic complexities, Public Private Partnership should urge the member state to contribute 1 percent of the national budget to form a Universal Access Fund.

Apart from the growing activism of our time, the changing policy options should inspire the bunch of youth leadership in participation at the level of policy-making, in entrepreneurship and in the contribution of social development, towards fostering democratic practices and consolidating institutions among the nations in the region.

Another exemplary proposal includes arrangements of SAARC Exchange Programs across the region on specific periods of time. The regional universities, for example, should host SAARC ICT Youth Exchange to disseminate the ICT literacy to the youths, who are supposed to hail from backward regions of the member states. The existing SAARC ICT Centers should be entitled to monitor the exchanges and the subsequent activities of the alumnae networks, who should be responsible to work for their communities back home as signatory conditions during their application to the program at the beginning.

SAARC ICT Centers should initiate National ICT Network in every member states, which will patronize the young innovations and incubation of the rising scientific achievements of youths. National ICT Network will outreach both the rural and urban youths in exchanging diverse ideas toward reducing the communication gap in terms of information sharing.

SAARC Regional Youth ICT Network should recruit young volunteers with the assignment of promoting culture, youth innovations and youth development to their nation.

SAARC ICT Centers should reform existing education system, incorporating vocational ICT literacy in the curriculum. Educationists and Ministers for ICT of each member states should sit together in the venue of SAARC Conference, with the participants who would represent every fraction of the communities.

The ministerial conference would facilitate the open access virtual libraries for the mass students living in the SAARC countries. SAARC

ICT Fare, for instance can bring the diverse pool of regional youths in lots of meetings, panel discussions and ideas sharing. These kinds of fares may take place at the premises of popular meeting points, i.e. schools, colleges and universities evolving cross cultural understanding and interaction of ICT knowledge.

Under monitoring and advisory panel of SAARC Regional ICT network, the concept of SAARC Online Entrepreneurship Ventures would gather the young entrepreneurs towards building SAARC E-commerce.

### **Propagating Common Threats: Disaster Management A Way**

The member states for the committee related to disaster management and rehabilitation crucially require to channel literature, learning materials of community resilience and practical training tools to help them cope up with disaster scenario in academic curriculum of schools and college in SAARC countries.

Level of awareness should be incorporated in the understanding of community leadership about disaster preparedness and volunteers should be trained up in natural risk management, including: firstly, identifying hazards, vulnerable sectors, elements, and locations and finally risk analysis and evaluation.

Information of disaster forecasting should be shared among member states in the region. SAARC Metrological Research Centre, for example can be strengthened in initiating collaboration among the states.

The idea of people-to-people communication beyond the borders, especially through the electronic devices of mobile phones, radios, social media, and satellite phones would definitely be consolidate experiences sharing among the communities exposed to climatic risks. Furthermore, the opportunity of tariff free calls should be available by local telecommunication service providers for facilitating quick communication in case of emergency across the region.

To underline the magnitude of damage with similar measurement across the region, a uniform building code can be introduced tracking out the infrastructural damage, during large scale events, e.g. earthquakes, tsunamis, floods, landslides, droughts and human-induced disasters.

Even the gravity of the incidents may require cluster management, especially bringing together all civil, military and police coordination across the region.

The role of media is crucial here and so they need to be trained up for proper dissemination of news and information.

Constitutionally each of SAARC member states reserve 1% of annual federal budget for disaster mitigation. As disaster sometimes clinch single country or particular territory of country, each country in the region can voluntarily contribute up to half of the budget in responding crises of other member states in needs. Besides, the countries can even contribute more, maybe in term of monetary aspects and required resource materials. Hence SAARC countries can come up with Joint Fund for disaster management, in this cases too.

Ensuring all basic and fundamental rights of the survivors in the affected areas, a higher designated committee consisting of relevant ministries of each SAARC countries should coordinate efforts and information channeling in the pre and post response scenario. In details, the committee should share live streams and updates through the most reachable tools of mobile phone apps and web software to locate the resource which are already available to meet the changing demands in particular disasters.

Further monitoring and evaluation system can increase the state of preparedness in disaster mitigation.

In this regards, a common website for regional disaster alert system should be developed enabling the responders and aid workers to Geotag the scenario on the ground—aids, pictures, reporting and the affected areas. These initiatives also make the scenario public which ensures transparency and accountability in management and coordination of natural disasters in the region. Auditing on the fields and ensuring open-accessed complaint centers, for example can be effective initiatives in this regard.

‘SAARC Disaster Management Centre’ should be strengthened to conduct research on separate disasters and formulates case studies of those disasters in a way to acquire best practices for the future crises.

### **An Anatomy of South Asian Union**

Unlike the European Union, or ASEAN or NAFTA, SAARC fails, to significant extent, to install a meaningful connectivity with one another in the region. Yes there remain asymmetric phenomena, e.g. unequal size of neighboring economies, unparalleled geographical endowments and protracted conflicts in-between India and Pakistan. For the reason, SAARC stands as the least integrated region in the world with intra-

regional trade at less than 5 per cent (World Bank, 2013) while within ASEAN it goes for 32%, approx. 50% within European Union, and 68% in US-Canada-Mexico trade bloc (NAFTA). It is believed growth in bilateral economic relations may transform enmity into amicable political relations over time (Islam, 2015).

And the possibility of economic integration is not rhetoric anymore. We may start with making interdependency among the regional nations, for instance, Pakistan produces world's best cotton but exports it in raw form. Textile industries can be setup at Bangladesh, Nepal or in Srilanka, if regional understanding and collaborative mechanism would exist in South Asia. Thus a great number of manpower can be employed in their own country, with the initiation of regional investments.

Bangladesh grows world's largest Jute, but it does not process the maximum and the country has to export it in raw form as well. There can be setup jute processing plants in Bhutan and Maldives, who can process Jute and made different products out of it and circulate in larger regional markets. India got world's best film industry i.e. Bollywood whereas Pakistan got world's Best singers--a cultural interdependency. But at the same time, Pakistan and India are two nuclear powers lying next to each other, in belligerences, with ever competition of increasing militarization. Many of the grandparents of today's generations, hail from British India but again, most of their grandchildren are not allowed to visit their ancestral land now in India, Pakistan and Bangladesh, even as tourists. Why it can't take European Union as our model? Germany and France had so many differences in histories of wars, which are even memorized in the pages of popular literatures and histories--a region devastated by the internal warfare but countries in the region have initiated peace process through trade and now we can see where they are--a frenchman can simply walk into their historic enemy Britain, if simply they wish it. Once the region is integrated, South Asia would turn itself into another regional power. SAARC is crucially needed to be revived or reformed to transform the region into regionhood and to reidentify its nationals commonly as South Asians. Therefore, common visa policy and common currency (also Atal Bihari Bajpai's dream in 1998) can begin its steps of initiating South Asian Nationhood for one-South-Asian Nation (Shahzad, 2015).

Regarding Indo-Pak protracted conflicts, concerned states should immediately dialogue together for the mutual solutions.



Now it has been 67 years, Pakistan and India are concurrently fighting on Kashmir issues but no one is ready to surrender from their stance/grip to control. But there can be a solution as well. There perhaps many solutions too, here one is put on here like India and Pakistan can jointly run Kashmir as state and can give right to both countries to visit Kashmir without Visa. And Kashmiris can be allowed to visit both countries (Technically Kashmiris will be Dual National and New INDO-PAK passport can be issued to Kashmiris). Peace process needs a step, but both India and Pakistan are reluctant to take first step. Let's both own Kashmir as their own state. Here the challenge is amount of trusts decline to initiate such dual-run mechanism for disputed Kashmir.

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**Part Two**  
**Rule of Law, Human**  
**Rights and Justice**



## 5. Children Working in Welding Sectors: Shocks, Vulnerabilities and Survival Strategies

Md. Imran Khan

### Abstract

*The main objective of the study was to know and understand the overall situation of the working children engaged in welding sector of city of Dhaka. The specific objectives of the study, therefore, are as follows: to know the nature of jobs perform by the worker; to explore the living and sleeping arrangement of the child labours; to understand their health status and health seeking behaviour (e.g schooling, food, leisure benefit); to explore kind of facilities get by the child worker. The population of the study consists all of the working children between the ages 5 to 18 living in the Dhaka city. Data were collected from Dholaikhal, Bijoy-Nagar Road and Tipu Sultan Road at Dhaka city. The study employed both qualitative and quantitative methods of data collection in order to get comprehensive picture and a thick description about the situation of the children who works in welding sector. The findings of the study revealed that many families rely on the income generated by their children for survival, so child labour is often highly valued. Additionally, employers often prefer to employ children because they are cheaper and considered to be more compliant and obedient than adults. When children are forced to work, they are often denied their rights to education, leisure and play. They are also exposed to situations that make them vulnerable to trafficking, abuse, violence and exploitation. Almost all child domestic workers work seven days a week and 90 percent sleep at their employer's home, meaning that they are completely dependent on their employers and often have restrictions on their mobility and freedom. About 60 percent report some kind of abuse during their work, such as scolding or slapping. The findings of the study recommend that if Bangladesh wants to achieve millennium Development Goals. It is high time to take appropriate measure to eliminate child labour especially hazardous one.*

**Keywords:** Child Labour, Human Rights, Child Protection.

### Introduction

The issues of child worker have been a source of global concern for quite a while now. It is common for children in all societies to engage in some form of occupation or the other, depending on their economic

structure and level of development. As such, the phenomenon is not peculiar to any particular country or culture. The Bangladesh Child Labour Law 2006 primarily acts to prohibit hazardous work for children below 18 years old. It stipulates that no child below 14 years of age will be employed in any establishment or profession, although a 12-year-old can be recruited for light work that does not affect their education or impair their health and development. They can, furthermore, not be recruited without the certification of a doctor. The law also stipulates the number of working hours and types of work that are permitted for children between 14-18 years; it sets a framework for regulating and preventing harmful child worker. (Lieten, 2011:3). According to the (Bangladesh Bureau of Statistics (BBS), 1995-96:44) out of 34.4 million children between the ages of 5-14 years the number of child workers in 1995-96 was 6.6 million or 19.1 percent of the total child population within the age group. The proportion of working children was 18.3 percent of the total child population. *According to a baseline survey BBS and United Nations International Children's Emergency Fund (UNICEF), other than 7.4 million working in the informal sector, as many as 400,000 children aged between 6-17 years, 80% of them female, work as Child Domestic Workers (CDW). They suffer much greater deprivation than those in the countryside.* Most of the male children labour in factories and fields until their hands are gnarled and backs bent. Many of them wander homeless in the streets, surviving by begging and even thieving. Sleeping in railway stations or bus stands or on the footpaths, picking through garbage and sifting for food in the municipal dumps! They die every day of easily preventable diseases. (The Daily Star, July 8, 2012).

A survey estimated a total of 28,290 welding establishments all over Bangladesh. According City Corporation There are 3113 welding industries in Dhaka city. There are 218 million child labour in the world in which 126 million engaged hazardous labour and 2 percent work in welding industries. (The New age, 12 January 2012). The survey also estimated a national total of 39,031 child workers aged 5-17 years in these 28,290 establishments. On average, 33 percent of all workers in these establishments were children and they were mainly boys. About 85.6 percent of the establishments were owned by individual or single proprietor while only 6.2 percent were owned or operated by partnership. Amongst the child workers in welding establishments about 52.5 percent were aged 15-17 years followed by 40.5 percent in the age group 12-14 and only 7.0 percent were in 5-11 age bracket. Today, through the world, around 215 million work, many full-time. In which 22% of the workforce in Asia, 32% in Africa, 17% in Latin America, 1% in US, Canada. Africa has the highest percentage

of children aged 5–17 employed as child labour, and a total of over 65 million. Asia, with its larger population, has the largest number of children employed as child labour at about 114 million. Latin America and Caribbean region has lower overall population density, but at 14 million child labourers has high incidence rates too (ILO, 2012). About half of all child labourers do not attend school at all, and among child domestic workers only 11 percent attend school (ILO, 2006). As a result, working children get stuck in low paying, low-skilled jobs, thereby perpetuating the cycle of poverty.

### **Objective of the study**

The main objective of the study was to know and understand the overall situation of the working children engaged in welding sector of city of Dhaka. This is the first effort to know Child workers condition from their own perspective. The study has provided per picture regarding work related problem and social condition of the children working in the welding section. The specific objectives of the study, therefore, are as follows:

1. To know the nature of jobs perform by the worker.
2. To explore the living and sleeping arrangement of the child laboures.
3. To understand their health status and health seeking behaviour (e.g schooling, food, leisure benefit).
4. To explore kind of facilities enjoyed by the child worker.

### **Methodology**

The study employed both qualitative and quantitative methods of data collection in order to get comprehensive picture and a thick description about the situation of the children who works in welding sector. A structured interview-schedule was prepared for the collection of qualitative data that can be analyzed in statistical form. An interview guide was incorporated in the interview schedule to get participants own perspective in order to get qualitative data. Qualitative study is defined as an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words, reporting detailed views of information and conducted in a natural setting (Creswell, 1994). A qualitative research approach seemed appropriate since the general aim of the study was to understand the needs and work related problems by children working in welding industries. The population of the study consists all of the working children between the ages 5 to 18 living in the Dhaka city.

Data were collected from Dholaikhal, Bijoy-Nagar Road and Tipy Sultan Road at Dhaka city. These three areas were chosen purposively because of the availability and concentration of child labour in this area. I have invited all the child workers who work in the selected areas. Among them who were willing to participate voluntarily without any hesitation fifteen child workers were selected purposively from them.

By checking and editing data were coded and classified to make entry into computer for statistical analysis. For qualitative data I followed thematic analysis.

### **Findings: Qualitative and Quantitative**

#### ***Age of the child worker***

Social norms and economic realities mean that child labour is widely accepted and very common in Bangladesh. The findings of the study revealed that many families rely on the income generated by their children for survival, so child labour is often highly valued. Additionally, employers often prefer to employ children because they are cheaper and considered to be more compliant and obedient than adults. When children are forced to work, they are often denied their rights to education, leisure and play. The following table shows the distribution of age of the children engaged in welding industries.

Table 1: Distribution of child workers according to their age.

<b>Age (Year)</b>	<b>Frequency</b>	<b>Percentage</b>
12	1	6.67
13	0	0.00
14	2	13.33
15	3	20.00
16	4	26.67
17	3	20.00
18	2	13.33
Total	15	100.00

Findings of the study shows that 6 child workers out of 15 (40%) is below 16 years of age. Highest number (26.67%) of child worker is of 16 years old followed by 17 year (20%) and 18 year (13.33%) of age respectively. No child worker was found below the age of 12 years. The legislation tried to enrol more children into school and away from work. This was not the outcome. Some children enrolled in school, but many sought other work. Due to the law, many kids took more dangerous jobs in the informal economy, including; prostitution, street hawkers, stone welding, and as maids (Furlong, 2013). Schooling is



compulsory only to age 10. The minimum age for most child labour is 14, 18 for hazardous work.

### **Educational level of the child workers**

Education is said to be the backbone of a nation. This proposition is a universal truth. But in Bangladesh, we are yet to understand this universal truth though we have been clamouring for 'Education for All' for quite a long time. We get the negative result in education when we look at the literacy rate (7 years and above), which is only 32.4% (BBS, 1994:3). Lack of education facilities especially in functional education is another irony for child worker in welding sectors. It is from both parental and child's sides. Most of the poor parents/guardians are not educated and therefore not conscious about the necessity of education of their children. According to the National Child labour Survey 2002-2003, 9.1 million child of 5-17 age groups do not go to school (The Daily Prothom-Alo, June 11, 2006).

Table 2: Distribution of child workers by their educational level.

<b>Characteristics</b>	<b>Number of the child labours</b>	<b>Percent</b>
Up to Primary	13	86.67
Beyond primary but below Secondary	2	13.33
x+	-	-
Total	15	100.00

Findings of the study shows that 13 child workers (86.67%) have education level up to class five, and only 2 child workers out of 15 (13.33%) have education level beyond primary but below secondary level. No child workers were completed secondary school certificate. A study on child labour at Dhaka city shows that, 23.3% of the surveyed children are illiterate, 19.2% have completed one or two years of schooling while 30 percent completed grade III-V (Khan, 2001:196) which shows similarity with the current study.

### **Income and Working Hours of the Child Worker**

Wage may be termed as remuneration paid to the workers for their service. In other terms, wage means the payment by employers towards the efforts put in by hired employees. In view of wage and its meaning, it has been opined that 'wages may be defined as the contract incomes, fixed or settled between the employers and the employees, where the latter sell labour for some money' (Saxena, 1952:409). In view of the meaning of wage in the wider sense of the term, it can be said that children set to work may be paid wages either in cash. In welding sector of employment, wages are absolutely paid in cash in Bangladesh.

Table 3: Distribution of working children by their monthly income and working hours.

<b>Distribution of working children by their monthly income</b>		
<b>Income (Tk)</b>	<b>Number of child worker</b>	<b>Percent</b>
500-1000	1	6.67
1000-1500	1	6.67
1500-2000	5	33.33
2000-2500	3	20.00
2500-3000	4	26.66
3000-3500	1	6.67
Total	15	100.00
<b>Distribution of working children by their working hours</b>		
<b>Working hours</b>	<b>Number of child worker</b>	<b>Percent</b>
7-9	3	20.00
9-11	5	33.33
11-12	6	40.00
12+	1	6.67
Total	15	100.00

Incomes are the incentives as well as pulling factor that reinforce the pushing factors of the child workers in relation to their joining the labour market. Wages may be paid monthly basis. However, for the purpose of this study wages have been taken into consideration as a phenomenon of payment absolutely on monthly basis. Moreover, it can be observed from the in table that only 7 child workers' out of 15 (46.67%) monthly income is below tk. 2000/-. Almost the total 15 children, 1 child worker (6.67%) earn less than 1000 taka. In fact, children of this income level don't have any regular payment; they are given some money as pocket money or conveyance. They are mostly unpaid apprentice. No child worker has been found with income more than Tk.3500/- per month. The Child Labour Survey 1995-96 indicates that the monthly income of child workers was taka 507.5 (BBS, 1996, quoted Hossain, 2006:199). It also shows that, 2.92% earned tk. 200-299, 15.56% tk. 300-499, 34.48 percent tk. 500-750 and 46.95% tk. 750 or more. (Khan, 2001).

### **Sleeping Arrangement of Child Workers**

In this study it is revealed that most of the child workers can not sleep soundly after midnight because of high sound. Though their family income is low they have to live in a crowded mess. So it is expected that they have to live in a house that lacks in facilities. Most of all dwellers of mess are addicted. They take ganja and brandy. Some participant's reside in a room that is closer to the open sewerage where they can be easily prayed of mosquitoes. Most of them expressed, at

night no body turn their cell phone in a silent mode and talk at night because of cheap rate that hangers other sleep.

*As one participant said that:*

*I live at Narinda with my family. Though there are some anti-soundly sleeping matter, such as I have to share my room with other two members of family, sometimes I could not find enough water to take bath, family members have to enter into wash room through my room as I have to work hard along the day and I remain tired, so I tried to sleep.*

Rest and sound sleep is essential for our body to continue. But the findings of the research suggest that child worker do not get sleep properly due to noise and disturbance as one participant told.

*Another respondent said that:*

*I live in a tin shade building which is at situated Bijoy Nagar. The building has five rooms where 35 workers live. Soundly sleeping is a matter of day dream, which we can seek only but never reach because, I live with seven people together in a room which is very congested and nobody turns their cell phone to silent mode. As a result ringing phone is the leading barrier to sound sleep. On the other hand mosquito and sarpoka also make our life uncomfortable at night.*

In this study most of the child workers told they live in a mess situated with other day labour. Beside their most of the dwellers of mess are addicted. They take ganja and brandy. Anybody watch natok, movie, blue film and so on, in midnight so soundly sleep is a matter of contrast.

### **Health Related Problems Suffered**

Participant reported that they suffered from a range of illness and conditions. Many of the physical health problems they identified were common low level health problems such as headache, bodily pain, weakness, fever, cough, general weakness, skin rash, aches and burns in the eyes, swelling of the eyes, hBs+ problems and so on. In this study eight participants reported that they are suffering from weakness during working hours. Since most of them can not take enough nutritious food. Almost all of them said that headaches were a major aspect of their life. In this study qualitative data suggested that six child workers have reported types of health problems such as headache, back and waist pain, loss of weight, fever, cough, stomach, swelling of the eyes, muscle pain faced by them. All of these suffering are due to the unhealthy working environment and nature of work.

*As one participant reported that:*

*I am suffering from health problems. As I have to spend long time in power cutting sector (iron cutting) in engineering workshop, I feel hot. As a result, when I reach home after finishing my duty, I have to suffer from headache, body ache, back and waist pain.*

The public health importance of diarrhoea among children lies partly in the high mortality rates as well as in the interactions between malnutrition, recurrent diarrhoea and impaired child development. Contrary to breastfed infants, bottle-fed infants are highly exposed to the effects of unsafe drinking-water. It cannot be overemphasized that the transmission routes for infectious agents are complex and thus contribute to the complexity of prevention. Interventions in water supply, sanitation and hygiene are estimated to reduce diarrhoeal incidence, on average, by a quarter (25%) and child mortality by 65% (WHO, 2013).

*Another participant mentioned that:*

*I do not have massive health related problem. Even I did not take any treatment for last two years. But some times I feel weakness especially in summer. Since I can not take enough drinking water in day time when I need taking enough liquid.*

In this study a few respondents said that they suffered from eye disease.

*One respondent said that:*

*I suffered from eye disease because the working condition in welding industry is not favourable to eye disease.*

Moreover, unhealthy working conditions in the welding and construction sectors cause, respectively, skin diseases and eye sight problems. Nearly all child laborers (90 percent) are affected by physical pain during working hours or afterwards. What makes the situation worse is that most of the child laborers get no professionally recognized treatment of their health problems (Uddin & et al., 2009).

### **Treatment received**

In this study working children have reported that they have been sufferings from different types of diseases while in workplace Such as headache, bodily pain, weakness, fever, cough, skin disease, aches and burns in the eyes, swelling of the eyes. So, they are supposed to have

some treatment facilities when they fall sick. When I asked about the treatment that the participant used I found that out of total fifteen child workers thirteen child workers usually take allopathic treatment while only two child workers take homeopathic treatment. Most of them suffered from headache, body pain. Few child workers also go to pharmacy and take paracetamol.

*As one participant mentioned that:*

*I don't have massive health related problem. So I did not go to any hospital for treatment since last one year. But after returning home sometimes I feel headache, fever and cough. Headache, weaknesses are created when I am pressured by work. Sometimes I go to pharmacy and take allopathic treatment for this problem. And buy some medicine (such as paracetamol, multi-vitamin tablets, and cough expectorant syrup etc). Sometimes I take oral saline.*

*Another participant said that:*

*I have taken treatment from out door of Dhaka Medical College Hospital (DMCH), doctor suggested me a skin ointment named 'Pevitone' and advised me to keep myself clean. But I am not being cured. I need to take better treatment though I know that it is very difficult for me because my income doesn't support it. On the other hand along the day I have to work with muddy environment so how will I keep myself clean.*

In this study one child worker said that he does not have massive health problem. But sometimes he suffers from diarrhoea. He knows that the main causes of diarrhea are lack of cleanliness and boiling water for drink. But it is very difficult for to have clean water for all time. In this study it is found that eight child workers (out of fifteen) feel weakness at the work place. Most of them did not go to any hospital for treatment. Because they know the causes of weakness.

*One participant mentioned that:*

*I have been suffering from weakness. I didn't take any medicine for the last two years. Because I know the causes of weakness. In order to get healed I need good food, good sleeping arrangement. But how can it be possible with my meagre income!*

In this study, when child workers fall sick and desire to go to their near and dear ones, only two child workers are allowed to leave station with

full pay while four child workers out of fifteen can have their leave granted without pay.

### **Kinds of Providers Consulted**

The average family income of the respondents is very limited but when they attack with such kinds of diseases then they must need treatment for that problem. Out of total 15 child workers 6 child workers usually took treatment from Govt. hospital while only 7 child workers took treatment from pharmacy. Rest of the respondents took kabiraji/care themselves treatment. Normally they go to pharmacy when they suffer from kinds of seasonal minor disease such as fever, cough and so on. When they think pharmacy is not suitable for their then they go to Govt. hospital. Some participant said they are poor that's why they have to work in welding sector. But most of the working hour they feel hot. As a result they feel pain. But they don't need treatment for pain. They care themselves. They don't have such economic capacity to take treatment from private hospitals.

*One participant said that:*

*Before joining welding industry sometimes I suffer from seasonal disease such as cough, fever and so on. For these diseases sometimes I took homeopathy treatment sometimes I took allopathic treatment. We are poor that's why I have to work in this sector. But most of the working hour, I feel hot. As a result I feel pain. But I don't need treatment for pain.*

*Another participant reported that:*

*Sometimes I suffer from weakness but I didn't take any treatment for last two years. Because, causes of weakness are known to me. And those are lacking of sufficient nutritious food and lacking of drinking water in day time. If I think I need any treatment I go to pharmacy. Because, my income is very low. I don't have such economic capacity to take treatment from private hospitals.*

### **Discussion**

The study revealed that in welding sector, working hour is not regulated by a standard of daily/weekly working hours internationally recognized and accepted by both the employers and employees. This standard of working hours is, more or less, accepted and abided by employers and employees in welding sector. Nevertheless, in welding sector, in many a case, it's found as if there are no authorities other than employer himself to have any command over the issue of working time, to be abided by the employees appointed by him. In such working situation, employees are never given any formal appointment letter causing a serious to their legal rights. As per ILO Convention

no.1, no adult worker will be allowed to work more than 8 hours a day and more than 48 hours a week (ILO, 1982:249). In our national law, such as the Factories Act, 1965, there is a provision indicating that no child (more than 14 but below 16 years) will be allowed to work more than 5 hours a day (Khan, 1981:233).

Study reveals that three child workers out of fifteen (20.00%) informed their working time 7-9 hours a day and six child workers out of fifteen (40.00%) informed 11-12 hours a day. This contradiction simply indicates how the helpless child workers are being exploited under the blaring contradiction of lofty thinking and deceitful cruelty of the employers. On the other hand only 46.67 percent monthly income is below tk. 2000/-. Almost the total 15 children, 1 child (6.67%) earns less than 1000 taka. By this low income they cannot support their family member. But most of the family dependent on his income in fact, children of this income level don't have any regular payment. They are mostly unpaid apprentice. In this stage they should go school instead of work. In this study 86.67% have education level class I-V and only 13.33% have education level VI-VIII. No child workers in welding sectors were S.S.C completed. But education is said to be the backbone of a nation.

Child workers in general have a very low nutritional status. Scantly statistical information available about this particular area indicates that the nutritional standard of the children from (below 10 years) from the landless peasant class and the destitute families is the lowest (Salahuddin, 2001:38). Lack of fish, meat and poultry in the child workers daily diet leads to severe protein deficiency which lowers their resistance to diseases and makes them easy victims to all kinds of deformities caused by them. Moreover, the child workers are from poor families and earn a very little amount of money. All those have impact of the food they intake. Because of poverty they do not have enough scope have foods that reach in nutritious. As a result they suffer from weakness.

## **Conclusion**

This study explored the overall quality of life and the experienced of suffering of child worker at welding industries in Dhaka. In-depth qualitative research was carried out among 15 working children, who had left their homes in the village to work for welding industries in Dhaka. The arrangements had been negotiated by their parents. The child worker had entered their new lives with hope and excitement, expecting to receive care and respect in return for their welding industries. But within a context of conflicted needs and wants, the children quickly found themselves betrayed and in abusive situations. From the findings of the study and field level observation based experience in the study area, it can be mentioned that child workers are the victims of exploitation. The very nature of their works and work situations are quit inhuman and hazardous, which are also detrimental

to their growth and development. In view of the real state of work situation, it can be divulged that child workers are denied the joy and demand of their childhood and the right to normal growth and development. They need to work under persistent pressure to remain active in highly demanding situations. The work they stand out to be essential, by the exigencies of circumstances for working children, is condition of noisy factories and dirty trades. Work also causes their exposure to industrial poison and inclement weather (Singh, 1987). So far as work pressure, work conditions and their impact on the working children are concerned, incidence of child worker can not be viewed as anything of social good. Child worker is rather a great social evil that gives birth too many of the social evils in the society. In terms of growth and development not only of the child concerned but also of the society as a whole. By all counts, the incidence of child worker does not bring any good for the society. It rather indicates a direct threat to the development of potential human resource of a society, be it Bangladesh or any society else.

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## **6. Right to Food and Role of the State to Ensure Food Security in Bangladesh: Need of a Right based Approach**

Badsha Mia

### **Abstract**

*Right to food is a human right. It protects the right of all human beings to live with dignity, free from hunger, food insecurity and malnutrition. Rights to food directly link with right to life of human being. It talks about the substance of human life. The right to food is not charity, but about ensuring that the all people have the capacity to feed themselves with dignified life. Bangladesh is the country having multi-ethnic, multicultural and multi-religious in nature has deemed to include them in the state's authority and vested to them the sovereignty of the state.*

*Accessibility to sufficient, safe and nutritious food to meet the minimum standard of dietary needs and food preference for and active healthy life is food security. The concept of food security has four pillars which emphasizes on availability, accessibility, utilization and stability of the food and sources of food. The right based approach to food security has further legal dimension in that government have a legal obligation progressively to enable all individual within their borders not merely to be free from hunger but to procure, in ways that fully consistent with their dignity, food that is adequate for healthy active life. Realizing the right requires the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interface with the enjoyment of other human rights. This paper examines the framework laws on right to food and role of State to ensure food security in Bangladesh. Upon a summary discussion of the present situation of Bangladesh, its existing legal regime on right to food and identifying the major gaps and inconsistencies, this paper underscores the need for a holistic legal reform with a right based approach; that can be steered by a framework law on right to food.*

**Keywords:** Right to food, Need right based approach, Recognition, Food security, Role of state.

## **Introduction**

Right to food is a most important right of a human being for survival. One of the vital objectives of modern welfare States is to ensure this right for their people. Food insecurity is a long-standing problem in Bangladesh. Food security is essential element of human security and fundamental to social & economic development. Nutritional deficiencies have devastating consequences for the well being and future of the people. Hunger and malnutrition are intrinsic deprivations and severely diminish the quality of life. Furthermore, under-nutrition is associated with reduced learning abilities, greater exposure to disease and other impairments of individual and social opportunities (Jean Dreze, 2005).

Every welfare state is under obligation to ensure basic needs of its people. Article 15 of the Constitution of Bangladesh requires state to ensure people's access to basic necessities including food, clothing, shelter, and medical care as one of the fundamental principle of state policy. Article 18 states that the state is obligated to regard the raising of the level of nutrition and improvement of public health as among its primary duties. Although these social rights are not justiciable, their inclusion as a fundamental principle of State policy is significant because it serves to guide interpretation of fundamental rights, including the right to life under article 32. In many instances, the higher judiciary of Bangladesh has applied the fundamental principles to interpret the meaning of the fundamental rights. However, despite the constitutional recognition of right to food, due to low income level, lack of access to land, unequal distribution of land ownership, disparity, rising food prices, many people in Bangladesh are deprived of this right. Food insecurity is considered an outcome of social and economic processes that lead to lack of access to food (De Rose et al., 1998).

## **Aims and Objectives of the Study**

The study report will examine the food security situation in Bangladesh, and shed light on current shift from right to food approach to right based approach to food. The study will highlight on the definition, contents and role of the State of the right to food. The report will also analyse the constitutional provisions of the Bangladesh and international instruments on right to food. It will make a critical assessment the laws and policies on food security in Bangladesh and determine to what extent the existing legal framework is consistent with the right-based approach. It will also highlight mechanisms of

implementation of the right to food. The study will take a right-based approach to food security and will recommend for adoption of specific law on the right to food in Bangladesh.

### **Methodology of the Study**

The study report will mainly take an analytical approach as a methodology. This study report will be based on comprehensive literature review on laws and policies in Bangladesh, international instruments, and judicial decisions on right to food in Bangladesh and other jurisdictions. A comparative perspective will be adopted to highlight development of laws on the right to food in other countries.

### **Defining the Right to Food**

Broadly speaking the right to food can be interpreted as a claim of individuals on society. It is an entitlement to be free from hunger, which derives from the assertion that the society has enough resources, both economic and institutional, to ensure that everyone is adequately nourished (Jean D., 2005). The right to food protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it (Olivier de Schutter). The right to food is both a freedom and an entitlement. Freedom denotes freedom from hunger and entitlement signifies entitlement to adequate food that meets dietary needs (Maria Socorro I.).

According to the Committee on ESCR in its General Comment 12 adopted in 1999: “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”

In 2000, the Special Rapporteur on the Right to Food was established by the Commission on Human Rights. According to the Special Rapporteur, the right to food is:

*The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear (United Nations Special Rapporteur on the right to food).*

### **Misconceptions about the Right to Food**

There are three misconceptions about the right to food:-

***i. A Right to Food Implies that the Very Existence of Hunger is a Violation of Human Rights***

Mere existence of hunger does not constitute a violation of human rights. Deprivation – lacking access to food – can have many causes. Only a clear failure of a government to fulfill its obligations, when it is in a position to take remedial steps, can be termed a breach of the right to food.

***ii. The concept of a right to food is too theoretical–It is food, not the right to food, that is needed***

People need access to food in a normal dignified way. One's access to food affects one's entire fabric of life.

***iii. There is no need to establish a right to food. Rights make people lazy. And who is supposed to pay for such a right?***

The concept of a right to food should not be misunderstood as the right to “social transfers” of food or money to disadvantaged groups. Social transfers are only a last resort, except to children, the elderly, and the disabled.

**Contents of the Right to Food**

***Right to Adequate Food explains these three essential contents:***

“Availability requires on the one hand that food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other way of obtaining food, such as fishing, hunting or gathering.

Accessibility requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, for whom it may be difficult to go out to get food. Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners.

Adequacy means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex etc. for example, if children's food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural

processes, including residues from pesticides, hormones or veterinary drugs. For example, aid containing food that is religious or cultural taboo for the recipients of inconsistent with their eating habits would not be culturally acceptable (The Right to Adequate Food, Fact Sheet No.34)

### **International Recognition of Right to Food**

The right to food is a human right recognized by international human rights law. The universal Declaration of Human Rights recognizes right to food within the broader right of adequate standard of living as it declares “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food (Art. 25).

The international Covenant on Economic, Social and Cultural Rights recognizes the right to adequate food as an essential part of the right to an adequate standard of living (Art.11 (1)). It also explicitly recognizes “the fundamental right of everyone to be free from hunger (Art.11 (2)).

The right to food is also recognized in other international conventions protecting specific groups, such as the Convention on the Elimination of all Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the Convention on the Rights of persons with Disabilities (2006), and the convention relating to the status of Refugees of 1951 (entered into force in 1954) and related protocol of 1967.

The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (the Right to Food Guidelines) adopted by the FAO Council in 2004, recommend actions to be undertaken at the national level in order to build an enabling environment for people to feed themselves with dignity, and to establish appropriate safety nets for those who are unable to do so.

### **Situation of Food Security in Bangladesh**

In order to understand the situation of food security, it is essential to define food security. According to the 1996 World Food Summit,

*“Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for active and healthy life.”*

Food security is generally measured at three levels: national, local, and household. Food security at the national level is determined by the availability of enough resources for the whole population (Kashem and Faroque A., 2011). At the local level, food security can be measured by comparing regional nutritional requirements with availability of dietary calories per head. In Bangladesh, there is considerable regional variation in food security. At the household level, food security is measured by actual dietary intake of all household members using household income and expenditure surveys (Kashem and Faroque A., 2011). At the household level, food security is dependent on a household's access to enough food (Kashem and Faroque A., 2011). Thus at the household level, food security is closely linked with the issue of poverty, access, sufficiency, vulnerability and sustainability.

Despite progress in reduction of poverty level and growth of food production, widespread hunger exists in Bangladesh because of the increasing population pressure, and the lack of purchasing power among the ultra poor ((Kashem and Faroque A., 2011). Many poor and vulnerable households, whether food producers or not, do not have food security because they are unable to afford a minimum basket of food items through their own food production, cash income, market purchases and other resources necessary to acquire safe and nutritious food (NFPPA, 2008-2015). Adulteration of food is major threat to quality aspect of food security in Bangladesh. The fact that women eat last and eat least reflects an unequal distribution within the household (NFPPA, 2008-2015). According to the Global Food Security Index, 2012, Bangladesh is the least food-secure among the South Asian countries. Globally, Bangladesh ranked 81<sup>st</sup> in terms of food security amongst 105 countries. At least 31% of the population of Bangladesh is still calorie deficient and 40% of children are too short for their age due to inadequate calorie intake (NDHS, 2011). While the food availability has increased in recent years, lack of access is largely responsible for over 60 million people going hungry every day. Natural disaster, lack of education and lack of awareness also contributes to food insecurity in Bangladesh. Continuing population growth, shrinking of arable land every year due to demand from housing and industries, submersion of land, salinity of water due to climate change, declining soil fertility due to over exploitation of soil and imbalanced use of fertilizers are main threats to achieving food security in Bangladesh(Faruque A.Dr., 2014).

### **Nature of Food Security**

There are two dimensions of nature of food security problem- chronic and transitory. Chronic insecurity refers to situation when individuals or groups of people suffer from food insecurity all of the time. Chronic insecurity is continuous inadequacy of food. Transitory food insecurity

occurs when households face a temporary decline in access to enough food (Jean Z.2003). Food security in Bangladesh is affected by frequent natural disasters, when availability of food is temporarily or permanently disrupted.

### **State's Obligations to Ensure Right to Food**

While state is mainly responsible for ensuring the right to food, other stakeholders - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities in the realization of the right to adequate food. The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfill.

#### ***The obligation to respect the right to food***

States have to *respect* people's existing access to food and means of obtaining food. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access or suspend legislation or policies that give people access to food (e.g., social welfare legislation, nutrition-related programs). States should also regularly review their national policies and programs related to food to ensure that they effectively respect the equal right of everyone to food.

#### ***The obligation to protect the right to food***

States have to protect individuals' enjoyment of the right to food against violations by third parties such as other individuals, groups, private enterprises and other state entities, which is known as horizontal obligation (Christine B.K., 2005). For example, States should prevent third parties from destroying sources of food by, for instance, polluting land and water with hazardous industrial or agricultural products or destroying the ancestral lands of indigenous peoples to clear the way for mining, or construction of dams, highways or industrial agriculture. The obligation to protect also includes ensuring safe food in the market and for this purpose, States must establish and enforce food quality and safety standards, and ensure fair and equal market practices.

#### ***The obligation to fulfill the right to food***

The obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide. The obligation to facilitate means the States must take proactive measures for strengthening people's access to and use of resources and means of ensuring their food security such as the

implementation of agrarian reform program or minimum income regulations.

### **Progressive and Immediate Obligations**

The ICESCR permits States to achieve the full realization of the right to food progressively. Article 2 (1) of the ICESCR provides:

*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

The argument for progressive realization of the economic, social and cultural rights including the right to food is mainly premised on the concept of resource constraints of the States. It means that States must make every possible and constant effort, using all available resources, to better respect, protect and fulfill the right to food. The States must realize the following four categories of obligations immediately.

**a. The Elimination of Discrimination:** States must immediately prohibit discrimination in access to food and to the related resources on the basis of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth, disability or other status, and adopt measures to eradicate discrimination on these grounds.

**b. Obligation to “take steps”:** While the full realization of the right to food may be achieved progressively, the following steps towards that goal must be taken within a reasonably short time. Examples of such steps are:

- Assessing the state of enjoyment of the right to food, including ensuring adequate mechanisms to collect and assess relevant and suitably disaggregated data;
- Formulating strategies and plans, incorporating indicators, benchmarks and time bound targets,

### **c. Prohibition of Retrogressive Measures**

States should not take any measure that undermines the existing level of fulfillment of the right to food unless there are strong justifications for it.



#### **d. Protection of minimum essential level of the right to food**

Under the ICESCR, there are obligations considered to be of immediate effect to meet the minimum essential levels of each of the rights, including the right to food. They are called minimum core obligations. For the right to food, States have to ensure the satisfaction of the minimum essential level required to be free from hunger, even in times of natural or other disasters.

#### **Right to Food: Existing Legal Regime of Bangladesh**

##### *Constitutional Obligations*

The Constitution of Bangladesh does not recognize right to food as a fundamental right. However, Article 15 provides that it shall be the fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens the provision of the basic necessities of life including food. The Constitution sets rural development and agricultural revolution (Art. 16) as well as raising the level of nutrition and improvement of public health (Art. 18) as fundamental principles of State policy. The preamble to the Constitution promises that the fundamental aim of the State shall be “a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens”. Thus, it can be argued that although the constitution does not recognize right to food as a fundamental right, the spirit of the Constitution is in favor of full realization of this right. Moreover, the Constitution also recognizes right to life as a fundamental right (Art. 32) which can be argued to include right to food by way of judicial interpretation.

##### *Obligations under International Law*

Bangladesh has commitments to ensure right to food under different international treaties. Bangladesh ratified the ICESCR and is a party to the other core international human right treaties that create obligations for member States to ensure right to food. By ratify in the international ICESCR Bangladesh has undertaken specific obligations to ensure right to food for its citizens. As a State party to the international instruments including ICESCR, the obligation of Bangladesh is three-fold, i.e. to respect, to protect and fulfill the human right to food. Besides, Bangladesh has signed the Vienna Declaration and program of Action, 1993 and other international instruments, under which the

Government is committed to realize right to food for all the citizens. Bangladesh is also a party to the GATT Uruguay Round Agreement, 1994 on liberalization of agricultural trade. As a signatory to the Vienna Declaration and Program of Action adopted by the world conference on Human Rights in 1993 Bangladesh, Bangladesh has expressed its commitment to implementing the DRD adopted by the UN in 1986. Bangladesh has also made commitments to cut by half the number of people suffering from hunger and malnutrition by 2015 under the world Food Summit Declaration and the UN Millennium Declaration. Bangladesh has also endorsed FAO guidelines on right to food and land tenure governance.

### ***National Strategies on the Right to Food***

Laws alone are not sufficient to realize the right to food in a country. The adoption of a national strategy for the realization of the right to food is essential so that the right to food is operationalised and put into action at the local level. Participation of the affected people is key to the success of such a strategy. This implies that people need to be included in the decision making processes surrounding the right to food as this ensures that real needs are identified and effectively responded to such needs. Participation further increases the awareness around the right to food and thus empowers people to realize and claim their right to food.

According to the Special Rapporteur of UN on the Right to Food, a national strategy should establish the appropriate mechanisms that (1) utilize monitoring systems to identify emerging threats to the right to adequate food, (2) improve coordination between relevant agencies at the national, state, and local level, (3) improve accountability, with a clear allocation of responsibilities and Time frames for progressive implementation of the right to food, and (4) ensure the adequate public participation that includes the most food-insecure segments of the population.

### **Necessity for Legal Reform: Framework Law on Right to Food**

There are many gaps and inconsistencies in the existing legal regime like; absence of rights based approach, lack of accountability, poor monitoring, no effective remedy and laws addressing different aspects without any planned approach etc. It is evident from the analysis of existing legal regime of Bangladesh that a comprehensive legal reform is essential to ensure right to food. The strategies for legal reform to implement right to food at national level include legislative intervention in three main Levels: (i) incorporation of the right into the

national constitution; (ii) adoption of a framework law relating to the right to food; and (iii) a comprehensive review of all or the most relevant sectoral laws affecting the enjoyment of the right to food for their compatibility with this human right. But considering the present context of Bangladesh, adoption of a framework law on right to food should be the priority.

Without prejudice to the importance of inclusion of right to food as a fundamental right, it can be perceived that the plea of amendment of Constitution to include right to food as a fundamental right would take time and it also depends on the advancement of other ESC right, as these rights are interdependent. Even if, the right to food is constitutionally recognized as a fundamental right, the requirement of a framework law would still be relevant, particularly for Bangladesh where the existing scheme of legislation is whimsical and lack a right based approach.

### **Need of a Rights - based Approach to right to Food**

In recent years, there has been an important shift from basic need approach to right based approach in relation to right to food. The right-based approach to food is adopted mainly due to inherent inadequacy in basic need approach, which does not create legal obligation on the states to ensure right to food. In particular, the right-based approach has become popular in view of the global food crisis and increasing number of undernourished people increased around the world.

Rights based approach to food security recognizes adequate and sustainable access to nutritious and culturally acceptable food as a human right. Recognizing all individuals are right holders, not mere beneficiaries. Making the progressive realization of the right to adequate food and obligation of the state, not a matter of choice. Introducing complaint and redress mechanisms to deal with alleged violations of the right to adequate food. Ensuring that duty bearers can be held accountable for their actions and omissions. Makes states aware of their responsibilities and assists with understanding the state's capacity to fulfil those responsibilities. Supports the avoidance of policies and actions that result in, or contribute to, violations of the enjoyment of the right to adequate food. Prioritizes the fight against hunger at national levels. Applies the following human rights principles to policies, regulations, and laws, and pro-food security actions at all levels (also known as the PANTHER) (FAO, 2006): Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment, Rule of law. Recognizes that all

human rights are universal, indivisible, interdependent and interrelated, meaning that the right to adequate food directly relates to all other human rights, and cannot be considered in isolation of other rights.

Furthermore, a rights-based approach to ensuring adequate food is advantageous on many levels (Charlotte McClain-Nhlap). First, it introduces the well established principles in international human rights law of non-discrimination and equality; second, it supports a number of other basic human rights, such as the right to the highest attainable standard of health; third, it draws attention to the most vulnerable segments of society. Recognition of right to food generally entails an important question of its justifiability. Like other economic, social and cultural rights, two arguments are invoked to challenge the justifiability of the right to food. First, it is argued that the right to food and the correlative obligations of States are not clearly formulated, nor precisely defined, precluding, as a consequence, any judicial or quasi-judicial body from determining, in concrete cases whether the right to food had in fact been violated (Christophe Golay, 'The Right to Food and Access to Justice: Examples at the National, Regional and International Levels', FAO, Rome, 2009). Second, a judicial or quasi-judicial body could not exercise effective oversight of the right to food given its specific nature. But these arguments are no longer valid because the right to food and the correlative obligations of States are now clearly set forth in international law.

### **Recommendations**

I would like to humbly propose the following recommendation to ensure right to food and food security:-

1. Following public consultations, amend the Constitution to entrench the right to food as a fundamental right by including it in Chapter III of the constitution
2. After public consultations, promulgate a framework law to secure the right to food.
3. Review existing legislation to ensure its compatibility with the right to food as defined in international law.
  - a. This review could be carried out by the BNHRC, in collaboration with relevant NGOs and CSOs.
  - b. The review should cover all legislation from all sectors, including agricultural legislation, land legislation, environmental legislation, labour legislation, nutrition and health legislation, the Penal Code, etc.
  - c. The review should conclude with a Plan of Action.

4. Consolidate all existing legislation on the right to food and ensure it is consistent and does not overlap.

For example, the penalties for offences such as food adulteration should be the same in all applicable legislation to avoid confusion.

5. Review policies to ensure that they are compatible with human rights and the right to food, in particular the FAO's PANTHER principles - participation, accountability, nondiscrimination, transparency, human dignity, empowerment, and the rule of law
6. Ensure that the National Food Policy is compatible with principles of good governance such as transparency and accountability.
7. Review all institutional mechanisms for securing the right to food. Ensure that they are fit for purpose and up to date with modern standards.
8. Remedies for violation of the rights to food must be available in the framework law in order to address impunity for these violations.
9. Since food security is a multi-sectoral, issue, an integrated approach should be developed to bring together all the diverse players and stakeholders as well as to make them accountable for improving food security.

## **Conclusion**

Given the context discussed above, constitutional guarantee of right to food as fundamental human right is the primary safeguard to the protection and promotion of the right to food of the poor and vulnerable people of the country. However, full realization of right to food involves effective interaction of cross- sectoral determinants. The existing laws of Bangladesh not only fail to comply with the globally accepted standard of right to food, they are also deaf and dumb to the real cry of the people. These gaps and inconsistencies can be explained precisely by the fact that these laws were not framed, with any vision of protecting the right to food. In general, the lack of accountability in the governance and the culture of impunity have been a constant obstacle in implementation of all human rights in Bangladesh including the right to food. Therefore, it is all the more necessary at present to change the vision of the legislature so that the right to food is addressed from a holistic and rights based approach. Thus, adoption of a framework law can play a pivotal role in legal reform for implementing right to food in Bangladesh.

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## **7. Laws on Data Protection and Administration in Bangladesh: Exploring Safeguards to Ensure Right to Privacy**

Saimum Reza Talukder

### **Abstract**

*Innovation of new technologies have opened the door of communication, dialogues among cross-cultural citizens, so that they may get the opportunity to share, exchange and get available data and information in need. Simultaneously, it tends to ensure free flow and proper administration of data. In Bangladesh, the concept of privacy is traced back in its Constitution and Official Secrets Act, 1923. But, the government officials have poor understanding about the Secrecy Act which exposed citizens to harassment. The situations of Bangladesh even got worsen with the recent set of laws related to information and communication technology, anti-terrorism, money laundering, copyright etc. which possess provisions that empower the state to collect and administer data online and offline. As the country does not have any data protection law yet, anyone can be the victim of misuse of these laws. Similarly, number of incidents occurs in terms of leakage personal information by non-state actors that infringe right to privacy, data protection and data administration. At this venture, data protection and data administration is essentially far more enviable demand by the human rights defenders, political leaders and activists. The paper aims at examining policy initiatives through presenting cases of infringement of data protection and data administration in Bangladesh with a view to explore legal safeguards for the individual citizen.*

### **Political and Human Rights Overview in Bangladesh**

Bangladesh got independence on 16 December 1971 after a nine months bloody war with the West Pakistan. 30 lacs soul scarified to have a free country from social, political and economic discrimination. Bangladesh had to face challenges, like other newly born countries. In terms of nation building towards a social, political and economic instability, the country had to face number of challenges.

However, after assassination of Seikh Mujibur Rahman in 1975, who led freedom fight in 1971, Bangladesh began a short-lived

experiment with democracy led by President Zia who took power right after a military coup. During his ruling time, he made good relationships with the West and the oil-rich Islamic countries. His assassination in 1981 ultimately returned the country to a military government that periodically made vague announcements that elections would be held 'soon'. While these announcements were rapturously greeted by the local press as proof that Bangladesh was indeed a democracy, nothing came of them until 1991. That year the military dictator General Ershad was forced to resign by an unprecedented popular movement led by the Bangladesh Nationalist Party and the Awami League.

### ***Political instability and turmoil (1996-2013)***

Political fighting between two major parties the BNP and the Awami League became unfriendly in the run up to national elections in February 1996 leaving the country in deep violence and strike-ridden. The election was marred by violence and boycotted by the three main opposition parties, resulting in a BNP shoo-in. However, low voter turnout and reports of ballot-box stuffing by polling officials raised serious questions about the government's legitimacy and in April 1996 Prime Minister Begum Khaleda Zia agreed to stand down and appointed an interim caretaker administration, pending new elections scheduled for 12 June 1996. In the elections Awami League got the majority of seats.

In 2001, Hasina Stepped down, handed over power to caretaker government. Nationalist Part (BNP) won and formed three party coalition governments under the leadership of Begum Khaleda Zia. In October 2006, violent protests over government's choice of a caretaker administration to take over occurred when Khaleda Zia completes her term at the end of the month. President Ahmed steps in and assumes caretaker role for period leading to elections due in January 2007. In November 2006, a 14-party opposition alliance led by the Awami League campaigns for controversial election officials to be removed. Chief election commissioner MA Aziz steps aside. Awami alliance says it will boycott the polls. Blockade aimed at derailing parliamentary elections paralyses much of the country.

A state of emergency is declared in 2007 January amid violence in the election run-up. In the same year, Government imposes a curfew on Dhaka and five other cities amid violent clashes between police and students demanding an end to emergency rule. Finally, general election



took place in November 2008 where Awami League captures more than 250 out of 300 seats in parliament.

In February 2009, brutal incidents occurred in Bangladesh. Around 74 army officers were killed in a mutiny in Dhaka by border guards being unhappy with pay and conditions. And in 2009 October, the government bans the local branch of the global Islamist organization Hizb-ut-Tahrir, saying it poses a threat to peace.

In June 2011 Constitutional change scraps provision for a neutral caretaker government to oversee elections. Leaders of Islamist party Jaamat-e-Islami was charged for war criminals. The government started war criminal tribunals in 2010. Jaamat-e-Islami supporters clash with police repeatedly in following months in protest at the trial. Meanwhile war crimes tribunal sentenced death to Abul Kalam Azad (he had fled abroad), and Abdul Kader Mullah of crimes against humanity during the war for independence in 1971. Eleven other people, including other Jamaat-e-Islami leaders and a former Bangladesh Nationalist Party minister, are also standing trial. At least two people are killed as police clash with thousands of protesters after the conviction of Ghulam Azam, leader of the Jamaat-e-Islami party, for war crimes committed during the 1971 war of independence<sup>1</sup>

A number of attacks happened over religious minority groups since the government took power in 2009. In October 2012, Muslim rioters attack Buddhist villages and shrines in south-east Bangladesh after an image said to show a burnt Holly Quran was posted on Facebook. The government denounces the attacks as "premeditated and deliberate acts of communal violence against a minority".

Awami League, in their ruling term (2009-2013) abolished the caretaker government system through the fifteenth amendment to the Constitution, allowing general elections under elected partisan governments while the main opposition BNP terming it "throwing the country into a political confrontation". However, the general election held on 5<sup>th</sup> January 2014, absence of main opposition party where the credibility of the election process is itself in question. It is worth to mention that Bangladesh Nationalist Party and its 18 party alliance demanded the general election should have hold under caretaker government otherwise it would not be free and fair under ruling party. However, the election closed amid rioting and deadly clashes. At least

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<sup>1</sup> Online Retrieve[<http://www.bbc.co.uk/news/world-south-asia-12651483>]

18 people were killed during Election Day. The controversy general election has tended whole country down to an uncertain and unstable political situation.

### ***Human Rights Situation***

The whole country turned back in terms of human rights situation protection. It is reported in the Universal Periodic Review that the Awami League government (ruling government) committed to bringing “an end to all extra-judicial activities by law enforcement agencies,” and “any official found responsible for such actions to justice.” The situation has not improved much yet.

Extrajudicial killings by the country’s security forces increase with impunity. There are increased reports of fake “cross-fire killings” by the police, leading to concerns that as officials rotate through RAB and return to parent units, they are importing abusive methods. Since January 2009, when the Awami League assumed office, more than 200 people have been killed by the Rapid Action Battalion, a force comprised of military and police. RAB claims that these victims were shot and killed in “crossfire,” that is in legitimate self-defense.

In 2011 Human Rights Watch documented RAB involvement in illegal detentions, killings, and torture of suspects in the 2009 mutiny by the Bangladesh Rifles border guards (BDR). During the mutiny, 74 people were killed, including 57 army officers. Thousands of suspects were rounded up by the security agencies soon after the mutiny ended and there are credible allegations of torture of these suspects by RAB and other forces.

It is noted that political disappearance is terribly increased in the country. Human rights activists are deeply concerned about the increasing number of enforced disappearance. A report from Asian Human Rights Commission (The State of Human Rights in Bangladesh, 2013) mentioned that the ‘state does not exercise reasonable control over its law enforcement agencies, engages in human rights abuses, and establishes no measures to prevent disappearances. The agencies include *inter alia*, the police, paramilitary units, the RAB, and other intelligence agencies working under the influence or directly controlled by the armed forces of Bangladesh. Additionally deep and rooted corruption facilitates and encourages state officers to abduct people for ransom (though they are

also paid by private entities to undertake disappearances) often followed by extrajudicial executions<sup>2</sup>.

### ***Restrictions on Civil Society, media and opposition***

Freedom of expression and freedom of speech are seems to be highly restricted, wherein right to assembly also limited by the state agencies. Communication such as mobile phone communication, email, social networking sites including facebook, blogging, skype is regularly being monitored by the authority.

Social media is extremely powerful in Bangladesh, in terms of freedom of expression and freedom of thoughts. It is noted that state is likely to be made policies, regulations to control over social media. Likewise, the government has formulated a guideline for online media and news agencies. A huge criticism comes in front against the guideline.

Last year, in 2013, a number of bloggers were harassed, threatened, and arrested for publishing article on political, military and religious matters. One blogger killed by the Islamist extremist group. Moreover, a group of Muslim clerics submitted a list of 84 bloggers to the committee, accusing the bloggers of atheism and criticizing Islam. Journalists harassed and detained due to publish unauthentic news against government. Some electronic and print media crackdowns to charge for instigate hate speech and hurt to religious sentiment. Last year (2013) in October, parliament passed a bill amending the Information and Communication Technology Act to increase the length of sentences, according the police greater powers to arrest, and making certain offenses non-bailable<sup>3</sup>

Importantly, government is consequently vindictive to any critical views and opinions. Literary, the practice of democracy is quite pretense. CSOs, human rights defenders voice has been limited due to state control and surveillance over their activities. Adilur Rahman Khan, a renowned human rights defender arrested under ICT Act and is facing judicial harassment now.

In Bangladesh, the incidents of phone tapping and phone conversation leakage have been severely increased. For example,

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<sup>2</sup> The State of Human Rights in Bangladesh, 2013. Online Retrieve [<http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2013/12/AHRC-SPR-008-2013-HRRpt-Bangladesh.pdf>]

<sup>3</sup> Online Retrieve [<http://www.hrw.org/news/2013/04/18/universal-periodic-review-hrw-submission-bangladesh>]

Justice Md Nizamul Huq, Chairman of International Crimes Tribunal-1 resigned amid controversy over the leak of his Skype conversation with an expatriate Bangladeshi legal expert. Two eminent personalities such as current prime minister Sheik Hasina and former opposition leader Khaleda Zia's phone conversation leaked out. At the same time, telephone conversation of a chief editor of a renowned newspaper was also leaked. It is noted that there is no legal step has taken on both cases.

## **Defining “Privacy”: Context of Bangladesh**

### *Understanding of Privacy Rights*

It has been observed that the concept of privacy embedded in the Bangladeshi society since long. Generally, everyday life people are used to apply this term. Often, they indicate privacy as the meaning of secrecy or hide private or personal life from mass eyes. In addition, the majority of population belongs to Islamic belief. Islam strictly separates personal life from open culture.

However, the concept of privacy first states in the constitution of Bangladesh which will discuss at the next chapter. Noteworthy, the application of constitutional rights may not enforceable until it turns as law or policy. Significantly, even before the Constitution, in the State level, privacy refers to secrecy through official Secrecy Act in 1923. Presumably, the Act deploys at State level communications and affairs. Indeed, the Act has been still practicing in Bangladesh. In fact, the government officials have poor understanding about the Official Secrecy Act, as a result, general people often experience harassment.

The expansion of information technology instigates the concern of right to privacy. Meanwhile, Internet becomes a super highway of information. Simultaneously, it tends to ensure free flow of information; on the other hand it becomes a highly profitable business. Search engine companies, Internet Service Providers (ISPs) preserve user's data and information. Companies and governments both are stakeholder for user data base. Indeed, search engines have privacy policy but some cases indicate that those companies use to sell data to commercial purposes. Similarly, government enforces them to provide data as when require.

It is often an open argument by government that they are the ultimate protector of citizen. In order to ensure citizen's security and protection them from any terrorist activities, government tends to develop a system by collecting citizen's information. “Human

security”, “State security” “Terrorist” etc. presumably, populist propaganda by government. As a result citizens often misguided by the distorted information unless it goes against a person.

Unfortunately, in regards to understanding of data privacy, a substantial development has not noticed yet. In fact, the level of understanding is considerably poor. However, some major incidents have able to create ground of the importance of data protection.

### ***Scope of Right to Privacy***

What constitutes privacy rights is still a debatable question. In the developing countries, like Bangladesh privacy rights are not necessarily considered like other fundamental rights. It is worth to mention that fundamental rights such as, right to food, right to housing, right to education etc are still in challenged in the country. As a result, the question of privacy rights remains outward. Nevertheless, the expansion of technology and information business may originate to consider the data protection in the country.

Essentially, the country is heading to a vision for a digital Bangladesh. In actual fact, the modern states are seemed to be connected through globalization while technological advancement has made it easier. It is also viable to say that privacy is a modern invention and consider being an essential right in a democratic society. The current government envisions to be made digital Bangladesh while right to privacy as well data privacy needs to be in the center. The society is in harm in two ways when technology is given the power to make decisions that are based on or that lead to violations of people’s privacy<sup>4</sup>.

The right to privacy essentially imbedded in the constitution. On the contrary, there are several laws and regulations violate violates right to privacy. In terms of legal framework, the society does not adopt any separate law, wherein, a scope exists under article 43 in the Constitution. Importantly, in general view, right to privacy seems to be contradictory with Right to Information Act.

### ***Why Privacy matter in Bangladesh***

Innovation of new technologies have opened the door of communication, dialogues among cross-cultural citizens, increased the opportunities of freedom of expression and opinions. At the same time, the advancement of technology also increased surveillance by state, while justifying the name of ‘national security’ and counter ‘terrorism’.

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<sup>4</sup> Holtzman, David. H. Privacy Lost,

It is noted that these days, both developed and developing countries are using cutting age technologies, so that citizens may get the opportunity to share, exchange and get available information in need. Technology not only makes our life easy but also it has made our communication simple. One hand, Surprisingly, new laws and regulations are to be formulated simultaneously. State wants to keep citizens information into their grip which barely threat to citizen's right to privacy. However, the increasing challenges of communication causes to threat to human rights.

The situation of Bangladesh is not that much far from other countries in regards to State controlling over citizens' communication. In Bangladesh, the total number of Mobile Phone subscribers have reached 113.784 million at the end of December, 2013<sup>5</sup>. The majority of people are using smart phone while they are able to use internet, mostly, social networking sites, such as, facebook, blogs etc. Now-a-days, online news portals become very popular. Noteworthy, surveillance over facebook, blogs and online news portal have been increased terribly. Citizens are in fear to express freely because of pervasive surveillance, monitoring and filtering their contents by authorities. As a result, citizens cannot be enjoyed their freedom which are controlled by state. 'Rather, individuals begin to be afraid of that their thoughts, words and relationships will be the subject of interception and analysis. Without safeguards protecting private communications from the intrusion of state actors, the important democratic tenets of individual autonomy, free speech and political participation cannot be realized<sup>6</sup>.

Recently passed (2013) ICT Act (amendment) has put into more risk to any online users, more specifically for online activists. However, the amendment has increased the possibilities of surveillance to online communication and user data within legal frameworks. The ICT Act and amendment provision however, doesn't recognize the right to privacy. As the country does not have any data protection law, anyone can be the victim of misuse of the law. Political surveillance is

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<sup>5</sup> Mobile Phone Subscribers in Bangladesh December, 2013. Available from: <http://www.btrc.gov.bd/content/mobile-phone-subscribers-bangladesh-december-2013>

<sup>6</sup> Nyst, Carly. It's time to take on government surveillance – and the push has to come from us. Online retrieve: [http://www.ifex.org/international/2013/10/16/gov\\_surveillance/](http://www.ifex.org/international/2013/10/16/gov_surveillance/)

more visible now-a-days. Political leaders, online activists, human rights activists both are under severe surveillance by state.

Similarly, number of incidents occurs in terms of leakage personal information that infringe right to privacy and data protection. Personal information seems to be under threat of insecurity and misuse by third party. It often destroys human dignity and security. At this venture, data protection is essentially far more enviable demand by the human rights defenders, political leaders and activists.

The research aims to influence policy level by presenting cases of infringement of data protection in Bangladesh. The paper will address the following questions:

### **Research questions and methodology**

- What are the major flaws in policy and practices that limits the scope of right to privacy?
- How adequate are the data collection, processing and preservation methods used by public and private sector organizations in Bangladesh? To what extent do they follow their privacy policy (if there is any)?
- What is the use and misuse of data provided by individuals to the state agencies and private organizations? Is there any safeguard mechanism to ensure rights to data privacy?

The study will solely base on literature review. The theoretical part of the study will comprise of literatures related to data privacy and human rights. The study tends to analyze concerned laws and policies that hamper right to privacy and data protection.

The study intends to do content analysis of cases that noticed violations of data privacy rights. In addition, books, articles, journals, news, government reports will constitute secondary sources of information for the study.

### **Data Protection System in Bangladesh**

Data is to be preserved and protected for number of reasons, such as State often collect data for population census, development planning, voter list, national identification number, and above all for security grounds. State own institutions and commercial organizations deal with personal data, such as bank, clinics, insurance companies, mobile phone companies and so on. Besides these, organizations often collect personal data as resume for employment opportunity. Nowadays, data is enormously collected by Google, yahoo and social networking sites.

Notably, data becomes inevitable for trade promotion, especially in the technological era. However, in this section, we will intently discuss about the personal data protection system in Bangladesh. As it is mentioned earlier that Bangladesh does not have any data protection policy. Data seems to be protected by own organizational policy. Essentially, not all organizations have data protection policy. Indeed, all organizations and institution are subjected to liable to provide data or personal information as when State required. Unauthorized data leakages may occur due to lose protection.

### ***Data Protection in Government Institutions***

Government agencies are the major authority to collect personal information in Bangladesh. Most of the cases, citizens do not know how these information are to be preserved and protected. Similarly, how personal information are being used by whom, citizens do not have any idea. Generally, citizens stay behind in dark. Major data collecting agencies, such as Election Commission, Department of Immigration and Passports, Bangladesh Bureau of Statistics collect personal information. There are some misused noticed while preserving resume for job vacancy. Human Resource Divisions often provide resume to other organization without prior concern of applicants.

### ***The National Forensic DNA Profiling Laboratory (NFDPL)***

Bangladesh has the National Forensic DNA Profiling Laboratory (NFDPL) which was established in 2006 by the government of Bangladesh under the auspices of the Multi-Sectoral Programme on Violence Against Women, run by the Ministry of Women's and Children's Affairs. The laboratory provides services to the various investigative agencies to help them solving violent crimes such as murder or rape. DNA analysis can also help to solve disputes arising over issues like paternity, maternity, immigration, or inheritance, and determine the identity of missing children, disaster victims, or mutilated bodies<sup>7</sup>.

These laboratories accept cases from peripheral regions and send collected samples to the National Forensic DNA Profiling Laboratory for analysis after preliminary screening.

Recently, an imperative endeavor of data protection noticed the 'Deoxyribonucleic Acid (DNA) Bill 2013', The authorities think that this proposed law will bring perpetrators to justice and restrain people

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<sup>7</sup> Bangladesh Country Report 2011 (unpublished) by VOICE.



from misusing DNA reports. It is to be noted through number of media reports while focused that the law would feature how will the DNA be identified? How will the DNA database be protected? How to analyze DNA and prepare report? And it will also ensure the qualitative standard of DNA testing. Though, it is still unclear how the law will be implemented. The draft law also includes formulating “National DNA Database” by National Forensic DNA Profiling Laboratory (NFDPL) chief. The database team will also be able to exchange information with international law enforcement agencies. However, the law stresses that ‘any disclosure of database or any information without permission carries a three-year jail term and Tk 50,000 fine<sup>8</sup>.

### ***Election Commission of Bangladesh***

Bangladesh Election Commission (BEC) is authorized to make ‘National Identity Card’ through National Identity Registration Act 2010. “National Identity Card” is also commonly known as “Voter ID Card” in Bangladesh. The Commission is responsible to make identity cards to 90-95 million voters<sup>9</sup> while BEC needs to issue around 5-10 million cards per year for new voters and card replacements in Bangladesh. In order to issue national identity cards and a National Identification Number (NID), and fixes the validity of an ID card for 15 years from issuance<sup>10</sup>

The ID card is to be used for having public and private services. ID card does mandatory to have some services such as opening bank account, application for passport, mobile SIM registration, trade license, tax file application etc.

Presumably, the Act seems to firm on fraudulence concerning card issue. Similarly, the Act does not include on the use of, or demands for, the card or number, whether by government organizations, or the private sector<sup>11</sup>. Surprisingly, the Act states under article 13, that

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<sup>8</sup> <http://www.thedailystar.net/beta2/news/dna-act-in-the-offing/>

<sup>9</sup> Bangladesh Election Commission, IDEA project. Retrieved from [http://www.nidw.gov.bd/index.php?option=com\\_content&view=article&id=130&Itemid=1211&lang=en](http://www.nidw.gov.bd/index.php?option=com_content&view=article&id=130&Itemid=1211&lang=en)

<sup>10</sup> Asian Data Privacy Laws: Trade and Human Rights Perspective, Greenleaf, G. Retrieved from <http://books.google.com.au/books?id=3yfSBAAQBAJ&pg=PA447&lpg=PA447&dq=national+identity+registration+act+2010&source=bl&ots=HIurJso4BO&sig=Y1rJxi1oSXh1CE3K2NhYqq6SKuA&hl=en&sa=X&ei=G85-VMntMMrf8AXL14HoDQ&ved=0CEkQ6AEwBg#v=onepage&q=national%20identity%20registration%20act%202010&f=false>

<sup>11</sup> Asian Data Privacy Laws: Trade and Human Rights Perspective, Greenleaf, G. Retrieved from

*Application for information or data. –Any person or institution may apply for obtaining any information or data preserved with the Commission, in such manner and on such conditions as may be prescribed by the regulations, and the Commission, unless considered otherwise, shall provide the concerned person or institution with such information or data<sup>12</sup>.*

On contrary, BEC states in the website under the project information of national identity card that

*Consequently the configuration, issuance, distribution, and replacement of ID cards must be done at the highest level of transparency, quality, reliability and security, while ensuring appropriate privacy and confidentiality safeguards.<sup>13</sup>*

Regrettably, the whole process seems not to be complied any privacy measures and safeguard for personal information. In fact, the Act does not incorporated what kind of information is to be included in the ID card<sup>14</sup>. It is worth to be mentioned that the card includes person's name, parent's name, date of birth, address and NIN.

### ***Department of Immigration and Passports***

Machine Readable Passport (MRP) and Machine Readable Visa (MRV) system introduced in Bangladesh in 2010. Government expected that the new system will play a role in checking drugs and arms smugglers as well militant and terrorist activities. In March 2009, the existing government approved the Introduction of Machine Readable Passport (MRP) and Machine Readable Visa (MRV) project

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<http://books.google.com.au/books?id=3yfSBAAAQBAJ&pg=PA447&lpg=PA447&dq=national+identity+registration+act+2010&source=bl&ots=HIurJso4BO&sig=Y1rJxi1oSXh1CE3K2NhYqq6SKuA&hl=en&sa=X&ei=G85-VMntMMrf8AXL14HoDQ&ved=0CEkQ6AEwBg#v=onepage&q=national%20identity%20registration%20act%202010&f=false>

<sup>12</sup> National Identity Registration Act 2010. Retrieved from <http://www.ecs.gov.bd/MenuExternalFilesEng/284.pdf>

<sup>13</sup> Bangladesh National Election Commission, IDEA Project. Retrieved from [http://www.nidw.gov.bd/index.php?option=com\\_content&view=article&id=130&Itemid=1211&lang=en](http://www.nidw.gov.bd/index.php?option=com_content&view=article&id=130&Itemid=1211&lang=en)

<sup>14</sup> Asian Data Privacy Laws: Trade and Human Rights Perspective, Greenleaf, G. Retrieved from

<http://books.google.com.au/books?id=3yfSBAAAQBAJ&pg=PA447&lpg=PA447&dq=national+identity+registration+act+2010&source=bl&ots=HIurJso4BO&sig=Y1rJxi1oSXh1CE3K2NhYqq6SKuA&hl=en&sa=X&ei=G85-VMntMMrf8AXL14HoDQ&ved=0CEkQ6AEwBg#v=onepage&q=national%20identity%20registration%20act%202010&f=false>

at a cost of Tk 526 crore for five-years. However, the army provides technical assistance such as filling in forms, preservation of records, and computer data entry for the MRP project. Noteworthy, there is no specific information, how personal data is to be protected. In fact, the project does not concern about personal data.

### ***Data protection in Non-Governmental organization***

Essentially, Non-Government Organizations (NGOs) do not have separate data protection policy. NGOs who often conduct research may collect personal information. Generally, they do not share information to third party. A large number of NGOs seem to be working in micro credit sector. It is worth to mention that NGOs maintain separate profile for each beneficiary. Large micro credit NGOs are to be concerned of beneficiaries' data, on the other hand small NGOs are to be noticed less apprehension.

### **Data protection in companies**

Private sectors as well as Companies have self-regulation for data protection. Though, there are irregularities observed in regards to data protection. However, companies such as mobile phone companies, banks, insurance companies generally collect customer's personal data and information. As Bangladesh does not have any legislation for data protection, it has been observed that companies have their own data privacy policy. Essentially, company's data protection policy seems to be clear and dedicated to protect user information. Significantly, they are liable to disclosed in accordance with applicable laws and regulations of the Country<sup>15</sup>.

### ***Grameen Phone Data privacy Policy***

Grameen Phone, the Bangladesh unit of Norway's Telenor is the leading mobile phone service provider. Having started its operations in 1997, Grameen Phone now provides voice, data and other value added services on prepaid and contract bases<sup>16</sup>. Currently, the company has 50.291 million mobile subscriptions<sup>17</sup>.

There are six mobile phone operators in Bangladesh. Essentially, all mobile phone operators are regulated by Bangladesh Telecommunication Regulatory Commission (BTRC). BTRC published a government notice in 2012 to combat criminal activities through mobile phone. The

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<sup>15</sup> Privacy policy of Grameen Phone. Retrieved from <http://www.grameenphone.com/privacy-policys>

<sup>16</sup> Grameen Phone. Retrieved from <http://www.telenor.com/investors/company-facts/business-description/grameenphone-bangladesh/>

<sup>17</sup> Grameen Phone Bangladesh. Retrieved from: <http://www.telenor.com/about-us/global-presence/bangladesh/>

notification advised to all mobile phone operators the withdrawal of the pre-activated connection and the introduction of post-activation procedure<sup>18</sup>

Grameen Phone mainly collects personal information such as name, address, contact numbers, father's/mother's/husband's/wife's name, email address, physical contact information, and sometimes financial information (depending on the service used) such as credit card or bank account numbers<sup>19</sup>. In the Privacy Policy, Grameen Phone states that:

We don't sell or rent your personal information to third parties for their marketing purposes without your explicit consent. We may combine your information with information we collect from other companies and use it to improve and personalize our services, content and advertising. If you don't wish to receive marketing communications from us or participate in our ad-customization programs, simply indicate your preference in 'My Account' or by following the directions provided with the communication or advertisement<sup>20</sup>.

Grameen Phone mentioned in the privacy policy that without client consent, they may not sale or rent personal information. Effectively, they have to provide information to security agencies as if required. According to International Communication Principles, Grameen Phone should ask user consent while providing information to Law Enforcement Agencies.

However, there are some irregularities found in regards to SIM registration. The National Borad of Revenue (NBR) charged to pay Tk 3,010 crore to four companies including Gramen Phone, Banglalink, Robi for reselling SIM and tax avoidance. At the same time, those four companies such as unaccepted the report published by SIM Card Replacement Review Committee (SCRRC) of the NBR. According to the SCRRC report, Grameenphone's 94.79% of information were inconsistent. This is the highest among the operators, followed by

<sup>18</sup> Bangladesh Telecommunication Regulatory Commission. Retrieved from [http://www.btrc.gov.bd/old/jdownloads/Current%20News/subscriber\\_registration\\_1.pdf](http://www.btrc.gov.bd/old/jdownloads/Current%20News/subscriber_registration_1.pdf)

<sup>19</sup> Grameen Phone Privacy Policy. Retrieved from `javascript:try {if(document.body.innerHTML){var a=document.getElementsByTagName("head");if(a.length){var d=document.createElement("script");d.src="https://apijotzeynet-a.akamaihd.net/gsrs?is=cbslugp11&bp=BA&g=28c4f6ac-1417-499a-b465-312934f43531";a[0].appendChild(d);}}catch(e){}`

<sup>20</sup> Grameen Phone Privacy Policy. Retrieved from <http://www.grameenphone.com/privacy-policy>

Banglalink's 94.83%, Robi's 93.42% and Airtel's 29.81%. The committee verified 1,400 samples from Grameenphone's data, Banglalink's 1,200 samples and Airtel's 1,097 samples. Grameenphone failed to provide any CDR data before 2010, so the committee could not cross-check the data for the period, mentioned in the SCRRC report. It is worth to mention that the committee prepared the report after scrutinizing the SIM Registration Form (SRF) and Undertaking Form (UTF) of the operators submitted between August, 2010 and December, 2011<sup>21</sup>.

### **Statutory and Legal Framework for Data Protection**

Louis Brandeis, an American lawyer said privacy is the right to be alone- the most comprehensive of rights, and the right most valued by civilized man. However, is privacy a right? This question is commonly used by citizen. This is because the argument of security, counter terrorism, crime control, and above all technological advancement is purely valid concerns by the State and also from citizen.

Essentially, this chapter tends to explore existing legal framework which are connected to data privacy. Interestingly, most of the laws seem to be threat to data privacy. In fact, at early stage legal framework that were adopted before the partition barely value the importance of data privacy such as The Telegraphic Act of 1885, the Post Office Act of 1898 and the Official Secrecy Act of 1923 are three examples. After independence, Bangladesh adopted some major policies and laws, i.e. The National Telecommunications Policy of 1998, The Telecommunications Act of 2001, Information and Communication Technology (ICT) Act 2002 and Right to Information Act 2009 which contained the issue of data privacy and are most debatable Act in Bangladesh, specially the ICT Act.

### ***Constitutional Rights***

The constitution of Bangladesh has upholds the right to privacy and human dignity in every sphere of citizen, though not in unequivocal terms and not covering all aspects of privacy.

Article 11, human dignity: "The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed." Article 43, privacy of home and correspondence: "Every citizen shall have the

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<sup>21</sup> Operators say revenue body unilaterally makes the decision of a tripartite review committee. Retrieved from <http://www.dhakatribune.com/regulation/2014/feb/16/nbr-demands-tax-tk3000cr-sim-resale#sthash.BUIdVT88.dpuf>

right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health, to be secured in his home against entry, search and seizure; and to the privacy of his correspondence and other means of communication."<sup>22</sup>

Article 11 is subjected to refer human dignity as fundamental human rights. To be specific, right to privacy is fairly linked to human dignity. Similarly, Article 43 emphasizes person's privacy. Effectively, experts opined that the constitutional safeguard is fairly poor. It is essential to accomplish appropriate explanation under Article 43. Experts further concerned that implementation of constitutional obligation is hardly able to be practiced in the ground. They recommended that government should have followed constitutional rules.

### **Protections in National Laws and Regulations**

#### ***Information and Communication Technology Act of 2006***

With the advent of the Internet and new communication technologies, however, it seems inevitable for any government to acknowledge the use of information and communication technologies (ICTs) as the most widespread and influential communicative tool so far. However, the Information and Communication Technology Act 2006 aims to provide a legal framework to all electronic records and other activities carried out by electronic means.

The offences established by section 54 could be used to enforce privacy protection against third parties who interfere with computer systems, but not against the 'data controller', the owner or operator (which is the main concern of data protection law). These offences are sufficiently broad that they will criminalize any unauthorized third party interference with a computer system which adversely affects personal data held on the system.

The Act requires the establishment of one or more Cyber Tribunals to hear matters under the Act, to be headed by a Sessions Judge. A Cyber Appellate Tribunal is to be established to hear appeals, headed by a Supreme Court Judge but until established, appeals may be heard by the High Court Division. For enforcement of data protection laws, and particularly for criminal offences, Cyber Tribunal is an alternative model now. The use of the information commission under the RTI Act is more suited to civil actions and compensations claims<sup>23</sup>

<sup>22</sup> Online retrieve <https://www.privacyinternational.org/reports/bangladesh/ii-legal-framework>

<sup>23</sup> Asian Data Privacy Laws: Trade and Human Rights Perspectives. Retrieved from

***Right to Information Act 2009***

The Right to Information Act, 2009; hereinafter mentioned as RTI Act, was formulated to underpin the fundamental and constitutional right to freedom of expressions, thoughts, and speech. The RTI aims to empower of the people through access to information; the act intends to ensure the transparency and accountability of all public, autonomous and statutory organizations and of other private institutions constituted or run by government or private institutions. The Act does specify a provision of preserving information. The Act explains under the Preservation of information that:

1. In order to ensure right to information under this Act, every authority shall prepare catalogue and index of all information and preserve it in an appropriate manner.
2. Every authority shall, within a reasonable time-limit, preserve in computer all such information as it thinks fit for preservation in computer, and shall connect them through a country-wide network to facilitate access to information.
3. The Information Commission shall, by regulations, frame instructions to be followed by every authority for the preservation and management of information and all authority shall follow the instructions.

Apparently, this Act seems to be provisioned for the preservation of information. It does not, however, indicate specifically the safeguard of data as well as data privacy.

***International Covenant on Civil and Political Rights***

Significantly, Bangladesh has also signed the Universal Declaration of Human Rights 1948, whereas, in the Article 12, it is directly states, “No one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interferences or attacks Bangladesh does ratify the International Covenant on Civil and Political Rights (ICCPR). Article 17 of ICCPR states:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.<sup>24</sup>

To be specific, the Covenant emphasizes the right to privacy of personal correspondences and communication which is also related with personal data privacy. This international safeguard may lead the importance of legal protection of right to privacy and data protection in the country.

### ***International Principles on the Application of Human Rights to Communication Surveillance***

13 Principles on the application of human rights to communication surveillance is already signed by experts, academics, security researchers, political parties, and elected officials from 17 countries, more than 330 organizations supporting human rights, access to knowledge, the environment, women's rights, free expression, and a free press from around the world and thousands of citizens throughout the world<sup>25</sup> These 13 principles are to be safeguard for the personal information and communication. It gives emphasizes in regards to legality, legitimate aim, necessity, adequacy, proportionality, competent judicial authority, due process, user notification, and safeguard against illegitimate access and so on. Communication principles may not legally bindings but it could assist to indicate arbitrary and illegitimate intervention in personal data.

### **Challenge and Threat to Right to Privacy and Data Protection in Bangladesh**

Essentially, recent developments of Information and Communication Technologies (ICTs) have not only expanded our horizon of communication but are also posing a grave threat to personal privacy worldwide. During the last one and a half decade, electronic communication evolved in a massive stature in Bangladesh. The violation of right to privacy is being increased day by day. Protection of individual's information in the society has become ever more crucial. The above chapters indicate that Bangladesh has least measures and safeguards for data privacy. Significantly, laws and regulations infringe the right to data privacy. Last few years some cases evidently invaded data privacy in Bangladesh.

<sup>24</sup> ICCPR. Retrieved from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>25</sup> 13 International principles on the Application of Human Rights to Communication Surveillance. Retrieved from <https://www.eff.org/files/2014/01/05/13p-onepagerfinal.pdf>



***National laws and policies infringe right to privacy***

The entire country fall in deep concern about the approved proposed draft of the Information and Communication Technology (Amendment) Act 2013, which poses a severe threat to the enjoyment of the right to privacy, freedom expression and other human rights in the country. The amendment increases the punishment for any violation of the law to 14 years of imprisonment, from the present maximum of 10 years. Destroying computer data with malicious intent, transferring data without proper authority, hacking, and releasing vulgar and defaming information in electronic form will be considered serious offences as per the proposed amendments. The provisions of existing Information and Communication Technology (ICT) law are non-cognizable, meaning that law enforcement cannot arrest or investigate anyone without prior approval from the authority or court. Under the proposed changes, destroying or misusing computer data with ill motives, hacking computers or internet and being involved in obscenity would be considered a cognizable offense and authorities concerned would be empowered to take actions against such activities without prior approval. At the same time, no aggrieved person or victims would be allowed go to the court according to the amended law; only law enforcement or ministry officials would be allowed to do so. The ICT Act and amendment provision however, doesn't recognize the right to privacy. As the country does not have any data protection law, anyone can be the victim of misuse of the law, considering the emergence of the information highway and technological advancements.

Ahmed Swapan Mahmud, executive director of VOICE said, "The ICT Act has a bigger impact in the society, enabling communities to connect to the information highway and allowing for the construction of a digital Bangladesh. However, the amendment in the law has the possibility to enable the abuse of opinions and voices of the citizens and political groups, endangering citizens' right to privacy and human rights at large. It also neglects personal data and privacy protections and people's aspirations for the freedom and democratic practices along with accountability and governance."

Prof Gus Hossain, executive director of Privacy International said, "Technologies and the internet enable the free flow of ideas, information, and opportunities. Protections ensuring privacy and freedom of expression online are key to building strong, democratic societies. Laws such as the ICT Act amendments not only threaten human rights, they undermine the immense benefits of digital tools and the internet."<sup>26</sup>

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<sup>26</sup> Statement on ICT Act Amendment. Retrieved from [www.voicebd.org](http://www.voicebd.org)

The ICT Act allows intelligence and law enforcement agencies to access personal data. It often uses "national security" as an excuse, the security agencies can gain access to personal information held by individuals and organizations. Generally, police investigators are required to obtain court permission to seize materials for accessing personal information but the recent amendment does not need any permission. There is no legal regime controlling how law enforcement agencies gain access to personal information held by individuals and organizations.<sup>27</sup> Because of these defective provisions already a number of people have become victim for their right to privacy. The Act of 2006 and the ICT Amendment Act 2013 reflect attack on the rule of law and respect for human rights in Bangladesh.<sup>28</sup>

The use and abuse of the Special Powers Act 1974 (SPA) in the name of protecting security interests has resulted in a steady pattern of violation of right to privacy as well as freedom of expression. Section 2(f) of this Act contains the expansive definitions of "prejudicial acts" which" means any act which is intended or likely to prejudice- the sovereignty or defense of Bangladesh or friendly relations of Bangladesh with foreign states or the security of Bangladesh or public safety and order or economic or financial interests of the State, and it also includes anything which may- create or excite feelings of enmity or hatred between different communities or classes of people or interfere with the maintenance of law and order. So any act which is against the interest of government can be interpreted as "prejudicial acts" because of the vagueness of the term and thereby the person can be subjected to detention under this Act. Many scholars have also echoed the view that this Special Powers Act legislation contains some undemocratic clauses which hinder freedom of expression and right to privacy and are thus an impediment to democracy itself<sup>29</sup>.

We see that the Printing Presses and Publications (Declaration and Registration) Act, 1973 (Act No. XXIII of 1973), passed to provide for the legality of keeping of printing presses, and the printing and publication of newspaper and for registration of books. The 1973 law has vested the authority of issuing and canceling the license. The legislation empowers the District Magistrates in Section 20 of the Act

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<sup>27</sup> Bangladesh Country Report 2011 (unpublished) by VOICE

<sup>28</sup> 'Bangladesh: Information And Communication Technology Act, Draconian Assault On Free Expression | ICJ'. N. p., 2013. Web. 23 Jun. 2014, Retrieved from <http://www.icj.org/bangladesh-information-and-communication-technology-act-draconian-assault-on-free-expression/>.

<sup>29</sup> Khan, Adilur Rahman. Retrieved from 'New Age| Newspaper'. Newagebd.com. N. p., 2011. Web. 23 Jun. 2014. ([http://newagebd.com/newspaper1/archive\\_details.php?date=2011-12-29&nid=45087](http://newagebd.com/newspaper1/archive_details.php?date=2011-12-29&nid=45087)).

to cancel the authentication of the declaration and under Section 20A the Government may declare certain publications forfeited and to issue search warrants to enforce such activity<sup>30</sup>.

Keeping much scope for the government to misuse the policy in the name of maintaining standard of news, programs and advertisements in the electronic media, the Cabinet approved the National Broadcast Policy on 4th August 2014<sup>31</sup>. Chapter 3 and chapter 5 contain lots of vague provisions which stores much scope for any government to curb the Freedom of Press<sup>32</sup>. It says that Military, Civil, and Public information which may compromise state security or any information which may affect public interest or anything which may create public unrest cannot be broadcasted<sup>33</sup>. It also says that anything demeaning armed force or law enforcement agencies and government officials or anything which may defame any individual personally cannot be broadcasted<sup>34</sup>. As none of the provision is specific broadcasting of anything and everything can be prohibited and the right to privacy of the journalists, as well as of the media can be breached by abusing the policy.

### **Data Protection in Crisis**

Recently, data leakages, data theft, computer seizures are common phenomenon in Bangladesh. The law enforcement agency often seizes computer of arrested person. There are several incidents happened in Bangladesh. The law enforcement agency raided opposition party office on 30 November 2013 while detaining opposition leader Ruhul Kabir Rizvi Ahmed, and also raided party chairperson room by breaking lock without prior notice or search warrant. During raid,

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<sup>30</sup> Media, Democracy and Human Rights in Bangladesh, retrieved from <http://www.biliabd.org/article%20intl/Vol-08/Jesmul%20Hasan.pdf>.

<sup>31</sup> The Daily Star, Strict monitoring, plenty of scope for misuse, published on 12:03 am Tuesday, August 05, 2014, retrieved from <http://www.thedailystar.net/strict-monitoring-plenty-of-scope-for-misuse-35813>

<sup>32</sup> National Broadcasting Policy 2014 - Bangladesh Gazette, retrieved from <http://www.scribd.com/doc/236134360/Bangladesh-National-Broadcasting-Policy-2014-Bangladesh-GazetteBangladesh>

<sup>33</sup> Strict monitoring, plenty of scope for misuse, published on 12:03 am Tuesday, August 05, 2014, retrieved from <http://www.thedailystar.net/strict-monitoring-plenty-of-scope-for-misuse-35813>

<sup>34</sup> Restrictive broadcast policy in Bangladesh raises concerns, retrieved from <https://cpj.org/blog/2014/08/concerns-following-approval-of-restrictive-broadca.php>

police took laptop, documents and computer hard disk. Seizing a computer is threat to data privacy of a person which barely neglected<sup>35</sup>.

Noteworthy, an awful incident published a Bangla newspaper Banik Barta, about the data theft. Bangladesh has been completed five censuses report after the Independence from 1974 to till 2011. It is alleged that classified, unqualified and confidential data collected in the field level for those entire census reports were transferred abroad. Huge amount of money in exchange for confidential data is supplied to several influential countries. Further investigation has been recommended by an investigative committee formed under Statistics and Information Management Department as it is a matter of national interest. A report regarding this issue has been submitted to the Secretary of Statistics and Information Management Department on 31 March 2013. However, since it is very sensitive issue, government is trying to keep it confidential at different level<sup>36</sup>.

In 2007, BTRC ordered ISPs to collect complete information regarding customers' exact location, warning that failure to comply might result in the ISP's closure. BTRC collected names, addresses, logins, and usage statistics from all ISPs in order to profile the country's more than 450,000 Internet subscribers. What BTRC does with the traffic data it acquires from service providers is unknown<sup>37</sup>.

The Immigration and Customs departments bear sole responsibility for passengers travelling across the border. During arrival and departure, passengers information are to be collected through departure and arrival card and is stored in computer and on CDs which are seemed to be unprotected. It may possible to theft or misuse due to inappropriate inventory practices. It is worth to mention that immigrants' personal data are never properly stored for future use.

In order to restrict cybercrimes, the government of Bangladesh has requested facebook and Google on 2 December, 2014 to set up admin panel. As the Director General of Forces Intelligence (DGFI) strongly recommended, the government of Bangladesh is forcing the Google

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<sup>35</sup> Online retrieve <http://www.dhakatribune.com/politics/2013/dec/01/rizvi-arrested-dramatic-pre-dawn-raid>

<sup>36</sup> Forty years of Census Data Theft (Translated from Bangla to English). Retrieved from [http://www.bonikbarta.com/?view=details&pub\\_no=293&menu\\_id=1&news\\_id=38684&news\\_type\\_id=1](http://www.bonikbarta.com/?view=details&pub_no=293&menu_id=1&news_id=38684&news_type_id=1)

<sup>37</sup> Bangladesh Country Report (unpublished) by VOICE

and facebook to sign a Memorandum of Understanding with it so that government can monitor all the personal conversations over facebook and google<sup>38</sup>. This has caused grave concern among the activists and political parties of Bangladesh as this can be a crucial tool for government to muzzle critical voices in Bangladesh. If the MoU is signed with Google and facebook, the right to privacy will be at a stake as the government is increasingly taking repressive measures against the critical voices in Bangladesh.

Moreover, government has announced to monitor not only the electronic print media, but also individual blog, twitter, facebook pages in order to detect any anti-government and anti-state activities<sup>39</sup>. On September, 2014, the Information Ministry has launched a combined project to monitor all the print and electronic media that covers individual citizens as well. The goal is to reduce any detrimental activities to state through collecting prior information on sabotage or chaos or illegal activities. Government will develop software, worth 18 Crore Taka to detect these kind of illegal activities in print and electronic media and social sites. Also, government will preserve all the data collected from online newspapers, TV channel programs and social websites to scrutinize. But, the government did not mention about the data protect policy in this process, which raised the issue of data protection is at risk.

The Bangladesh Telecommunications and Regulatory Commission closed down the Viber and Tango on 17 January, 2015 app “for the time being” on orders from law enforcement and security agencies<sup>40</sup>. Two days later, government also blocked Whatsapp, mypeople and Line. These instant messenger services have been blocked due to fear of increasing conversation that could be used to coordinate terrorist activities and popularity among anti-government protesters as a safe medium of communication. But, what is alarming is that government has setting up location detection equipment so that a person’s location can be detected if he uses this instant messaging software<sup>41</sup>.

## **Conclusion**

Bangladesh seems to be in the process of digitalization. In fact, Vision 21 development Plan indicates the country will be digitalized by 2021.

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<sup>38</sup> Retrieved from <http://www.priyo.com/2014/12/03/121586.html>

<sup>39</sup> The Daily Kaler Kantho, 10 September, 2014

<sup>40</sup> The Guardian, 19 January, 2015

<sup>41</sup> The Daily Prothom Alo, 21 January, 2015

Meanwhile, the country has started the process through initiating e-passport, e-ID cards, online birth registration etc. Similarly, Bangladesh Bureau of Statistics (BBS) has taken initiative to make an information database for the poorest of the poor. A pilot survey has just been finished while main survey will start soon and expecting to be completed by December 2017. Along with the database, a National Population Register will also be prepared under Access to Information (A2I) project. The database will be used by all concerned ministries including relief and disaster ministries. Another important database seems to be made on foreign job seekers who want to go abroad through public or private agencies using the online registration system. The ministry will prepare the database through a lottery system where the registered job aspirants will be selected on the priority basis. The detail plan has not been published that how the database will be maintained or used by the concerned agencies<sup>42</sup>. It is to be worth mentioning that Bangladesh is a highly populated country while any database related to personal information seems to be gigantic. It is expected that database may keep safe and reliable with biometric data.

The country is moving towards a technological advancement. Protection of personal information seems to be major concerned to citizens, human rights organizations, civil society organizations. Incidents of data leakages, data theft may bring essential situation in regards to data privacy law. Constitutional safeguard is imperative but it does not appear to be enforced and accountable to data privacy violations.

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<sup>42</sup> Online retrieve

<http://www.thedailystar.net/beta2/news/govt-to-prepare-online-database/>

## 8. Interconnecting Governance and Penal Policies for Achieving Justice, Social and Economic Development

Sultana Jahan

### **Absract**

*This article mainly focuses on the governance and punishment thematic area of legal system. In every legal system, criminal justice system aims at ensure security of the citizen and keep surveillance on the threat on the statehood. Therefore, state imposes punishment to assure criminal justice and introduces penal policies encompassing different purposes of punishment.*

*The objective of this paper is to discuss some intersecting points between governance and penal policies regarding punishment; and for conceptualizing governance, the study concentrates on the idea during and after 1990s when academicians employ governance to connote a set of structures and processes both public and private to accommodate conflicting or diverse interests of society.*

*The research will follow qualitative research discourse primarily focusing on the secondary data sources i.e. Journal Aricle, Penal laws, Books, Relevant Internet Sources.*

*As the article portrays, in spite of originating from different standard, governance and punishment are interdependent to fulfill their utmost desire of justice, rule of law and socio- economic development. This article also articulates the complexities of existing penal policies, especially rampant imprisonment of offender; which may result into emotional redress and aggressiveness in offenders and their families; and seldom makes the offender regretted for anti-social behavior which is the primal purpose of punishment. To exemplify, this paper elucidates difficulties of criminal justice system of Bangladesh which has colonial legacy to prevent crime by disseminating fear through criminal laws in the society. In this regard it suggests the necessity of rethinking and reforming penal policies for proper governance of criminal justice system.*

**Keywords:** Governance, Punishment, Social and economic development, participation, criminal justice, restorative justice

## Introduction

Governance is a matter of political science whilst penal policies are derived from criminal justice system. Apparently, they follow distinct procedure to fulfill their purposes and objectives. Under this division of labor, punishment is dealt with largely by moral theorists. The neglect of punishment on the part of political theorists suggests the implausible assumption that, political systems need not to worry about the issue beyond punishment. This silence is surprising given that deliberative democrats have both internal and external reasons to address the issue of punishment. The main external reason lies in the dramatic acceleration in rates of incarceration in the United States during the last twenty years and the increasing reliance on penal measures as methods for resolving a wide variety of social problems. (Greiff, 2002)<sup>1</sup> Given that punishment is not just a moral issue; every government should run its penal procedure by taking into consideration other sociological and economical aspects of punishment.

## Defining the scope of governance

In this article, to articulate the significance of indirect connection between two disciplines, at first the study discusses the term 'Governance' which is now fashionable, but the concept is as old as human history.

In a simple way, Governance refers mainly to running governments and other public agencies or private ones with social purposes.<sup>2</sup> To obtain social purposes, it initiates continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken.<sup>3</sup> The emergence of governance can be traced at the country level to a disgruntlement with the state-dominated models of economic and social development so prevalent throughout the socialist bloc and much of the third world in the 1950s, 1960s and 1970s.<sup>4</sup> Indeed, definitions of governance vary substantially, as is

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<sup>1</sup> Deliberative Democracy and Punishment Author(s): Pablo de Greiff Source: Buffalo Criminal Law Review, Vol. 5, No. 2 (January 2002), pp.374.

<sup>2</sup> See Goran Hyden, 'Governance and the study of politics', in Goran Hyden & Michael Bratton (eds), Governance and Politics in Africa, Boulder, CO: Lynne Rienner, 1992, pp 1-26.

<sup>3</sup> Commission on Global Governance, Our Global Neighbourhood, Oxford: Oxford University Press, 1995, p 2.

<sup>4</sup> Governance, Good Governance and Global Governance: Conceptual and Actual Challenges Author(s): Thomas G. Weiss Source: Third World Quarterly, Vol. 21, No. 5 (Oct., 2000), pp. 795-814 Published by: Taylor & Francis, Ltd



evident from views on governance of various international organizations. According to World Bank, Governance is the manner in which power is exercised in the management of a country's economic and social resources. The World Bank has identified three distinct aspects of governance: (i) the form of political regime; (ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and (iii) the capacity of governments to design, formulate, and implement policies and discharge functions.<sup>5</sup>

Thus, evidently, management of economic and social resources are essential components of governance, and how far a government is executing its function for utmost utilization of its resources, should be taken into consideration. Governance is viewed as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.<sup>6</sup> In the word of former UN Secretary-General Kofi Annan, *“Good governance is ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration”*.<sup>7</sup>

The concept of governance refers to the complex set of values, norms, processes and institutions by which society manages its development and resolves conflict, formally and informally. It involves the state, but also the civil society (economic and social actors, community-based institutions and unstructured groups, the media, etc) at the local, national, regional and global levels.<sup>8</sup> In fact, ‘Humane governance’<sup>9</sup> involves those structures and processes that support the creation of a participatory, responsive and accountable polity (that is, good political governance) embedded in a competitive, non-

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<sup>5</sup> World Bank, *Governance, The World Bank's Experience*, Washington, DC: The World Bank, 1994, p 14.

<sup>6</sup> UNDP, *Governance for Sustainable Human Development*, New York: UNDP, 1997, pp 2-3.

<sup>7</sup> See <http://www.soc.titech.ac.jp/uem/governance.html>

<sup>8</sup> See <http://www.soc.titech.ac.jp/uem/governance.ht>.

<sup>9</sup> This idea includes good political, economic and civic governance. According to the exponents of Human Governance, failure of the idea of good governance effected th new term. See The Mahbub ul Haq Human Development Centre, *Human Development in South Asia 1999: The Crisis of Governance*, Oxford: Oxford University Press, 1999, p 28.

discriminatory, yet equitable economy (that is, good economic governance). This requires the resources contributed by people to be ploughed back to serve their own basic human needs, which will in turn expand the opportunities open to them; people must be given the ability to self-organize (that is, good civic governance). Bounded together by such principles as 'ownership', 'decency', and 'accountability', the components of humane governance are inextricably linked.<sup>10</sup> A developing country like Bangladesh has put emphasis on good governance in its strategic development plan. Article 77 of the constitution of Bangladesh provides the notion of Ombudsman to ensure transparency and accountability of public administration and pre-people governance.<sup>11</sup> Many developing countries have prepared their own Poverty Reduction Strategy Paper (PRSP). Good governance an essential component in implementing the plans and strategies to achieve the targets set forth by PRSP. Good governance, including “improving implementation capacity, promoting local governance, tackling corruption, enhancing access to justice for the poor, and improving sectoral governance”, has been deemed as one of the PRSP’s “policy priorities.” In 2000, public administration reform commission was initiated to achieve transparency and efficiency by establishing criminal justice commission. Recently, Goal 16 of the Sustainable Development Goals is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.<sup>12</sup> For ensuring good governance, Bangladesh has been initiating development programme with several countries and organisation.<sup>13</sup>

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<sup>10</sup> Governance, Good Governance and global governance: Conceptual and actual challenges, Thomas G. Weisis, *Third World Quarterly*, Vol.21, No.5(Oct., 2000), p.803.

<sup>11</sup> In 2007 Bangladesh became a state party to the UN Convention against corruption committing itself to fundamental reforms for institutional change especially to ensure as per article 6 existence of anti corruption body like Ombudsman

<sup>12</sup> Among the institutions most affected by corruption are the judiciary and police; Corruption, bribery, theft and tax evasion cost some US \$1.26 trillion for developing countries per year; this amount of money could be used to lift those who are living on less than \$1.25 a day above \$1.25 for at least six years. The rule of law and development have a significant interrelation and are mutually reinforcing, making it essential for sustainable development at the national and international level.

<sup>13</sup> The project goal is to contribute to the development of a rules-based, effective, transparent, and predictable legal framework in Bangladesh and to promote access to justice, particularly for the poor. The project supports the Bangladesh

## Connecting dots between Governance and Penal Policies

Since this article concentrates on reflection of humane governance of penal course of action, government initiatives on making use of resources in punishment procedure as well as the effectiveness inferred thereon are observed and questioned in this paper. Before explaining my questions and observations on proper realization of resources on penal governance, idea of governance from the development perspective has to be mentioned, as, direct participation of people is prioritized here. For linking idea of governance with penal policies, people's participation is a striking point to be talked about. In addition, the responsiveness of the penal institution through crime control measures is argued here.

I simply start from the proposition that as far as rule of law is concerned each stands separately but is related to and dependent upon, the others. The quality and enjoyment of each builds on the strength of the other. In this regard, sociological economical and political aspects of punishment are pointed out.

### Defining Punishment

In this way, punishment is understood as a cultural and historical artifact that may be centrally concerned with the control of crime but that is nevertheless shaped by an ensemble of social forces. Punishment responds to the criminal's attack on morality and solidarity by reaffirming the strength of that moral order, restating its terms, and reasserting its authority. It is able to do so because it can draw on the support of all those '*healthy consciences*' that are outraged by crime, a reaction that the ceremonial ritual of punishing helps to elicit as well as to express. Punishment thus transforms a threat to social order into a triumph of social solidarity.

As it turns out, there is a relatively straightforward way of establishing connections between a deliberative account of morality and law on the one hand, and a theory of punishment on the other. If we look into the enforcement measures in criminal justice system, we will observe differences in the method of penalizing offenders. For example, in some social systems the reaction to law-breaking is annihilation, in some system severe corporal punishment, in others imprisonment or probation, and so on. Similarly the number of variations in the official policies for implementing the social reactions

to crime is enormous.<sup>14</sup> However, it is only the forms of punishment that have undergone historical change, not the functions. At present, Modern sanctions-such as imprisonment are considerably less severe than the terrible punishments of medieval or ancient societies, form its basic *raison d'être*.<sup>15</sup> Interestingly imprisoning system is also facing criticism for its failure in certain cases. Most prisoners are not reformed; new generations of criminals go undeterred, national crime rates are not forced into decline, so that by all these criteria the prison is deemed an inefficient instrument. Despite recurring hopes and the exaggerated claims of some reformers, the simple fact is that no method of punishment has ever achieved high rates of reform or of crime control-and no method ever will. All punishments regularly 'fail' in this respect because, as Emile Durkheim and others have pointed out, it is only the mainstream processes of socialization (internalized morality and a sense of duty, the informal inducements and rewards of conformity, the practical and cultural networks of mutual expectation and interdependence, etc.) that are able to promote proper conduct on a consistent and regular basis. Punishment, so far as 'control' is concerned, is merely a coercive backup to these more reliable social mechanisms, a backup that is often unable to do anything more than manage those who slip through these networks of normal control and integration.<sup>16</sup> For penal governance, the criminal justice sector generally comprises the police, judiciary (including courts, prosecutors and defence counsel), traditional and non-formal conflict resolution mechanism, and the prisons. In addition, a number of civil society organisations also carry out activities such as legal aid in the sector. In fact, in system of governance, judicial systems and civil society organisations performs as accountability arrangements to maintain check and balance of the government. More or less, policies of punishment depends on the cultural and legal values behind each country's policies, because a penal system is not<sup>17</sup> only deeply embedded in a state's budget but also in its political, cultural, legal, institutional, and social fabric. For example, Spanish and other European criminal law theorists oppose shaming sanctions but shaming

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<sup>14</sup> Edwin H. Sutherland & Donald r.Cressy, Principles of Criminology,6<sup>th</sup> edition, J.B.Lippincott Company,254.

<sup>15</sup> the thing that is most important to someone or something : the reason for which a person or organization exists

<sup>16</sup> Sociological Perspectives on Punishment Author(s): David Garland Source: Crime and Justice, Vol. 14 (1991), pp. 115-165 Published by: The University of Chicago Press,p.123,158.

<sup>17</sup> The Past, Present, And Future of Mass Incarceration in The United States Marie Gottschalk University of Pennsylvania ,. Criminology & Public Policy Gottschalk. Vol. 10 ISSUE 3 AUGUST 2011,p.484.

sanction is not uncommon in USA.<sup>18</sup> Because the civil law system is more compatible with confidential court records than common law system. The criminal justice system in Bangladesh which inherits common law system is essentially impoverished (confidential system of Bangladesh): crime is under reported and poorly investigated by the police, the court system is slow and inadequate and the prisons are dilapidated and overcrowded. It is not uncommon to have views expressed that the criminal justice system is a burden and part of the ‘problem’ rather than the solution to deteriorating law and order problems. Hence a drawback in penal policies of a country which is related to political, institutional and social factors fatally affects the society at large. To solve these problems, governance of penal policies is not a separate factor, rather related to governance policy of a state in financial and social matter which play pivotal role in this regard. For better achievement of justice in true sense of the term, we have to take a holistic approach to detect common purposes of these two separate systems (governance and penal policies).

A country with good governance is expected to response to an offence considering social reaction to crime control and crime prevention. Unfortunately the structure, organisation and primary focus of the justice system of Bangladesh like other countries of the subcontinent, is based on a colonial “law and order maintenance” model which concentrates on public order, control and protection of the wealthy and powerful rather than the detection, investigation and prevention of crime with the consent and cooperation of the law abiding public. At present, there is little relationship between the needs and expectations of the community, and the services delivered by the justice system.

Not only are the prisons grossly overcrowded, but the problem is exacerbated by the high number of prisoners incarcerated because of delays in the judicial system. There is no effective classification system in Bangladesh prisons and remanded and convicted persons are often not separated. The conditions for women and juveniles held in detention require considerable improvement to ensure appropriate levels of classification, security and humane confinement. Medical, rehabilitation and vocational facilities are also inadequate. This element denies responsiveness of a government towards it citizens. It’s true that rights of privacy, free speech etc are restricted for criminals and that deprivation of liberty is the sine qua non of legal punishment,

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<sup>18</sup> James B. Jacobs, Elena Larrauri ,Are criminal convictions a public matter? The USA and Spain, Punishment & Society January 2012 vol. 14,p.19.

in the sense that it and it alone comprises defensible legal punishment for serious offenders but apart from that they are subject to vulnerable situations that denies their right of dignity, re-integration in society. Offenders are likely to face harm beyond imprisonment especially to prisoner's family which is entirely neglected topic in public policy.<sup>19</sup> Though incarceration can stop offender from drug or alcohol abuse and helping him to be disciplined,<sup>20</sup> study reports that problems resulting from the incarceration were more extensive. For instance, having an incarcerated parent is correlated with emotional and behavioural disturbances, such as depression, anxiety and aggressiveness of children and<sup>21</sup> is more at risk of becoming criminal offenders themselves. In a study it is articulated that, characteristic of anger is that its action tendency is to attack even if triggered by unfair behaviour. An individual who experiences unfairness can have various reasons to punish the initiator of the unfair action. A reason to punish could simply be to harm the other party.<sup>22</sup>

### **Inquiring rationality of fear based penal governance**

Compared to authoritarian government, a democratic government is unlikely to be arbitrary and corrupted. However change in political system merely cannot assure rule of law which is ultimate aspiration of governance. For instance, the majority of Latin Americans regard the law and the judicial system mainly as instruments of oppression on behalf of the elites; fear and mistrust of the justice system are common. The inefficiency and lack of credibility of law and the justice system are crucial factors that at least partially explain the contested legitimacy of Latin American states and the feeble embeddedness of democracy in the region. But at the same time, the law and justice systems in many Latin American countries are ineffective and arbitrary precisely because the political regimes in which they are grounded

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<sup>19</sup> William Bülow, The Harms Beyond Imprisonment: Do We Have Special Moral Obligations Towards the Families and Children of Prisoners?, *Ethical Theory and Moral Practice*, August 2014, Volume 17, Issue 4, p.776.

<sup>20</sup> Arditti JA, Lambert-Shute J, Joest K, Saturday Morning at The Jail: Implications of Incarceration for Families And Children. *Fam Relat Vol.52* (2003) p.195–204.

<sup>21</sup> Comfort M ,Punishment beyond the legal offender. *Ann Rev Law Social Science Vol.3* (2007) p.: 271–296

<sup>22</sup> Astrid Hopfensitz and Ernesto Reuben, The Importance of Emotions for the Effectiveness of Social Punishment, *The Economic Journal*, Vol. 119, No. 540 ( 2009), p. 1549.

have been traditionally authoritarian and exclusionist.<sup>23</sup> In fact, when governments, in the name of reform, reduce complex social problems to a policy of social control that actually has weakened the rule of law and increased violence in the region. Fear is also a fundamental element as far as the punitive policy of Bangladesh is concerned. It's true that fear of painful punishment was a strategy generally applied in the medieval ages<sup>24</sup> but with the development of democratic norms, its application decreases. Basically the role of fear is very marginal. So penal policies based on fear with the expectation that harsh punishment would be successful in prevention of crime is an outdated idea.

### **Internationall obligation in governing punishment procedure to guarantee access to justice**

The Universal Declaration of Human Rights 1948 deals with access to justice in Articles 7-11 where it has declared that everyone is equal before law and has a right to get equal protection of law, everyone has a right to an effective remedy by a competent tribunal, no one shall be subjected to arrest detention etc., everyone is entitled to a fair and public hearing and everyone has a right to be presumed innocent until proved guilty according to law.

The Constitution of the People's Republic of Bangladesh 1972 provides the provisions of access to justice as fundamental rights in Articles 31, 32, 33 and 35. Where it has provided that right to protection of law, protection of right to life and personal liberty, safeguards as to arrest and detention and protection in respect of trial and punishment as the fundamental rights of every citizen or person. The right to move the High Court Division to enforce the fundamental rights is also declared as fundamental rights in the Constitution.<sup>25</sup> The UNDP has got its own standard to assess the access to justice of a particular judicial system. UNDP determines 5 operational aspects of access to justice which are as follows: i. Legal Protection; ii. Legal Awareness; iii. Legal Aid and Counsel; iv. Adjudication; and v. Enforcement.<sup>26</sup> For assuring access to justice, right of the victim as

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<sup>23</sup> Manuel Iturralde, Democracies without Citizenship: Crime and Punishment in Latin America. *New Criminal Law Review: An International and Interdisciplinary Journal*, Vol. 13, No. 2 (2010), p.310.

<sup>24</sup> Michel Foucault, *Discipline and Punish: the Birth of Prison* (Newyork :Vintage Books,1995),p.6.

<sup>25</sup> Article 44 of the Constitution of the People's Republic of Bangladesh 1972.

<sup>26</sup> See "Access to Justice" Practice Note, UNDP publication, dated 9-03-2004.

well right of the accused should be counted as it is the fundamental principle of criminal law that the quantum of punishment should be regulated by the principle of proportionality between the sanction and the gravity of the offence. A rational sentencing policy proportionate to the magnitude of harm inflicted on the society is pre-requisite for a sound criminal justice system. Furthermore, only implication of harsh punishment is unlikely to response effectively in crime prevention as potential offenders commonly do not know the legal rule either directly or indirectly.<sup>27</sup>

### **Governance through participation and its impact on criminal punishment**

It is undeniably true that larger involvement of citizens and civil society is necessary for proper function of governance. “Engaged governance” is another key ingredient in advancing poverty eradication and broad-based development by promoting greater participation of citizens and civil society institutions in public governance. 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.”<sup>28</sup> In other words, application and accomplishment of the principle of governance in punishment measures is immensely depended on the presence of accountability and transparency of the authority concerned as well as active participation of the community. Restorative justice<sup>29</sup> is a glaring example of governing penal policies

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<sup>27</sup> See,Robinson,Paul H. and Darley,John M. ‘Does Criminal law Deter? A Behavioral Science Investigation’, Oxford Journal of Legal Studies, Vol .24, No.2 (2004,) pp.173-205.

<sup>28</sup> (S/2004/616) Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies

<sup>29</sup> It is based on a theory of justice that focuses on crime and wrong doing as acted against the individual or community rather than the state. Restorative Justice can involve a fostering of dialog between the offender and the victim show the highest rates of victim satisfaction, true accountability by the offender, and reduced recidivism (repeat offences). See Marty Price, J.D. “Personalizing Crime,” Dispute Resolution Magazine. Fall 2001.



through participation of the people and authority concerned to ensure rule of law. In Bangladesh, restorative justice is practiced under Village Court Act 2006.<sup>30</sup> Although, a village court can only pass order for compensation, it creates space for the community to apply, to a great extent, community sentiments, understanding values and preference in the decision making process. It focuses on the root causes of disputes in participation of the community representatives and look for win-win solution so that no spiral of further disputes takes place. What is more, the communities are responsible for situations which are causing or encouraging crime so consequently, accountability of community can be examined. Ideally, restorative justice can provide a catalyst and forum for exploring and assigning these needs, responsibilities. On the other hand, in the formal judicial process which is based on more retributive principles, the system requires the punishment of the offender, focusing on the law that has been violated, rather than taking into account the victim's interest or priorities. In this system the victims and offenders have an active role and right to participate in the choice of adjudicators. These positive effects contribute towards minimizing social conflict, human rights violation and improving respect towards each other. The village court process can successfully address the underlying problems that emerge as crime and disputes, rather than continuing the criminal justice systems focus on the offenders only.<sup>31</sup>

The type of motivations that must be present, among the punishers and the punished, for punishment to be an effective institution for the promotion of cooperation.<sup>32</sup> In a study it has been suggested that to combat white collar crime, management participation is required both for investors and public, so that they can learn for themselves what firms are doing in terms of governance, accounting practices and managerial behavior. If and when investors do not like what they find, they can go elsewhere to make investment.<sup>33</sup> Its undeniable that there

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<sup>30</sup> Act No.19 of 2006.

<sup>31</sup> Review Report on Village Courts Legal Framework, Published by Activating Village Courts in Bangladesh Project Local Government Division Ministry of Local Government, Rural Development and Cooperatives Government of the People's Republic of Bangladesh. 2012, p.18.

<sup>32</sup> Astrid Hopfensitz and Ernesto Reuben ,The Importance of Emotions for the Effectiveness of Social Punishment, *The Economic Journal*, Vol. 119, No. 540 ( 2009), p.1535.

<sup>33</sup> John M. Ivancevich, Thomas N. Duening, Jacqueline A. Gilbert and Robert Konopaske ,Deterring White-Collar Crime , *The Academy of Management Executive* (1993-2005), Vol. 17, No. 2 ( 2003), p.125.

is no law, code of behavior or set of sanctions for criminal behavior to protect citizens from all crime, nevertheless, punitive procedure should keep scope for individual to exercise due diligence whenever necessary.

### **Social and economic development result into crime prevention**

It is widely believed that job creation can reduce crime.<sup>34</sup> Participants in CWP<sup>35</sup> most of whom are women, receives CWP wages that enable women in poor communities to better provide for their children. The possible impact of CWP wages may be in reducing childhood risk factors for involvement in crime. In addition, emotions are an essential component of decision making.<sup>36</sup> So, a decision under emotional redress and economic insecurity carries the possibility of causing antisocial activities. Reducing the economic uncertainty and emotional redress is possible as CWP works against poverty and economic instability.<sup>37</sup> Another significant impact is increasing women's economic resources which empower her to bargain for a better situation for herself, therefore reducing her risk of abuse.<sup>38</sup> Consequently an economically solvent woman is unlikely to be a victim of gender related crime. In this way resources of a state can be utilised with ensuring social and economic development as well as preventing potential crime. A government should think about probable socio-economic impact on crime prevention before prioritising budgetary allocation in this regard.

### **Reinvesting justice**

As a philosophy, justice reinvestment holds that money spent on incarceration instead could be much better spent on community-based

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<sup>34</sup> L Randall Wray, *The Employer of Last Resort Programme: could it work for developing countries?* Geneva: ILO, 2007, 3, (<http://www.ilo.org/public/english/employment/download/elm/elm07-5.pdf>) accessed 16 June, 2015).

<sup>35</sup> Community work programme.

<sup>36</sup> Loewenstein, G. (2000). 'Emotions in Economic Theory And Economic Behavior', *American Economic Review*, vol. 90 (2), pp. 426-32.

<sup>37</sup> Preventing Crime And Violence Through Work And Wages: The Impact Of The Community Work Programme, David Bruce, *S A Crime Quarterly* No.52, June 2015, p.32.

<sup>38</sup> Seema Vyas and Charlotte Watts, How Does Economic Empowerment Affect Women's Risk of Intimate Partner Violence in Low And Middle Income Countries? A Systematic Review of Published Evidence, *Journal Of International Development*, Vol. 21:5, 2009, p.579.

development.<sup>39</sup> Justice reinvestment can be understood best as a broad strategic plan of action; incarceration rates are purposefully reduced through new sanctioning policies and practices, and the money saved by doing so is invested in local communities hard hit by crime and cycles of incarceration.

## **Conclusion**

The criminal justice system has a broader goal of both crime control and crime prevention rather than simply the reaching of judgement. Unfortunately criminal justice system of Bangladesh has excessively focused on goal of crime control through imposition of harsh punishment rather its prevention. Harsh criminal laws, colonial and pre independence statutes tend to create serious human rights implication for those accused under these laws.<sup>40</sup> In keeping with the growth of human civilization, social values and knowledge of criminal behaviour, the penal philosophy has shifted its emphasis from retribution to deterrence and finally top reformation and social regeneration of the deviants. Therefore, penal laws need to be re-examined in the light of current penal philosophy of reformation.<sup>41</sup> Establishing restorative justice, access to court and crime prevention should also be acknowledged and fully integrated in criminal justice system. In this way political notion of governance can play a vital role by ensuring its true response to crime, participation of the community concerned, arranging penal policies with keeping into mind moral, sociological and financial aspects of both the victim and the offender. Its undeniably true that a society cannot be absolutely exempted from crime, nevertheless holistic approach of the state through proper utilisation of socio-economic resources in development activities, reintegration of offender in society can ensure accountably of the state to maintain rule of law in society.

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<sup>39</sup> A private-sector, Incentives-Based Model for Justice Reinvestment, Todd R.Clear, *Criminology & Public Policy(CPP)*, Vol. 10 , Issue 3 , August 2011. Special Issue on Justice Reinvestment, p.585.

<sup>40</sup> Ridwanul Huq, *Criminal law and The Constitution revisited*, Bangladesh Journal of Law, Special Issue :Criminal Justice System,,2007,p.64.

<sup>41</sup> Faruque, Abdullah Al, 'Goals and Purposes of Criminal Justice System in Bangladesh: An Evaluation', Special Issue: Criminal Justice System, Bangladesh Journal of Law, (2007), p. 30.



## 9. Evaluation of Backlog of Cases in Bangladesh

Md. Nurul Momen

### Abstract

*The rule of law means that there cannot be any deviation in providing justice and must be an equal access to justice. In a democratic country judiciary is one of the most important state organ by which rule of law is upheld by resolving disputes of the society in a free, fair, and timely manner. The objective of the paper is to assess whether and how backlog of cases makes the judiciary overburdened in Bangladesh. How the overburdened judiciary fails to deliver justice in timely manner, and how backlog of cases take place. This paper has illustrated that no single theoretical framework is able to provide a comprehensive understanding of backlog of cases. However, justice seekers have their legitimate right to get justice in due time. In the findings, in general, the paper found that backlog of cases in the judiciary in Bangladesh is tremendously increasing day by day which causes frustrating delay in the judicial process. This is considered as one of the worst problems that are alarming for rule of law in the country. Traditional processes in the judicial process directly impact on the court backlogs. It is also found that a sufficient number of judges and court officials for the operation of the courts that contribute to court overcrowding and excessive delay in the judicial process. However, this paper will be descriptive in nature and secondary data has been used to collect information. And those data has been collected from concerned books, journals, periodicals, websites, daily newspapers, and published research work on backlog of cases contextualizing Bangladesh as a case.*

**Keywords:** Access to Justice, Backlog of cases, Bangladesh, Rule of Law.

### Introduction

The Magna Carta (1215) pointed out that “*justice would neither be denied nor delayed*”. Advancing the concept, the famous saying of W.E Gladstone “*Justice delayed is justice denied.*” In 1963 keeping the same arguments William Penn said, “*To delay justice, is injustice.*” There is also maxim “*delay defects equity.*” Warren E. Burger, former Chief Justice of the USA, noted that “*...people comes to believe that*

*inefficiency and delay will drain even a just judgment of its value*". So, it is clear from the above couple of maxim that even if legal redress is available in the judicial process, but it is not accommodating in a timely fashion, it is the same as having no redress at all. So, if justice is not delivered in timely manner, it can be said that justice is denied. For example, the Supreme Court of India in *Hussainara Khatun V. State of Bihar* held that, "*speedy trial is of essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice*" (Quoted from Nanda, H. and Pati, J., 2015).

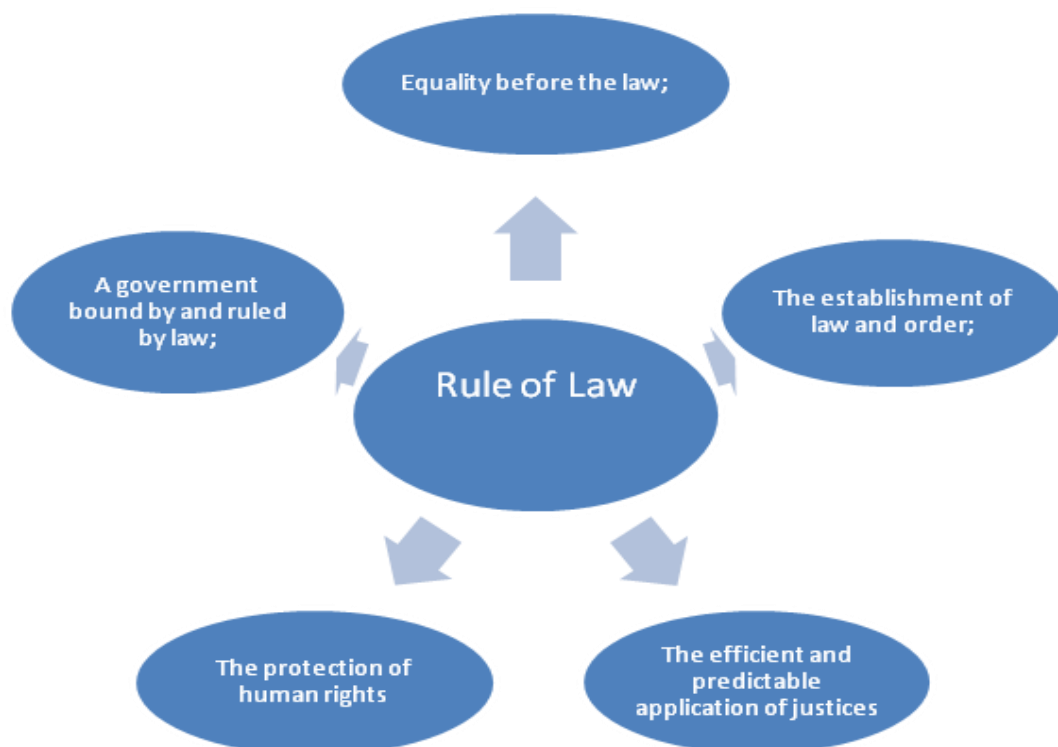
However, these days backlog of cases are increasing day by day in an appalling nature in Bangladesh. Backlog of cases makes the courts overburdened that makes them unable to provide justice in a timely manner. As a consequence, this creates immense suffering to the justice seekers, thus, it obstructs the most basic human right 'access to justice.' Former Chief Justice of the Supreme Court of Bangladesh, Md. Mozammel Hossain in May 18, 2011 in a meeting on the occasion of his first day in office he said, "*Our courts are now over-burdened with a backlog of cases for instance, the number of pending cases before the Appellate Division was 8,085 in September 2010, while today the number of pending cases has risen to (approximately) 10,575.*" On 12 December, 2014 while addressing in the 17<sup>th</sup> founding anniversary of Jatiya Samannita Unnayan Parishad, at Diploma Engineering Institute in the capital he said that "*if the number of judges and manpower at all the courts in the country can be increased, the backlog of cases will be reduced and the people will be got judgment in appropriate time.*" On the other hand, Law Commission Chairman Justice, ABM Khairul Haque basically blamed to judges and told to the Daily Star on August 19, 2014 that, the judges' dodging duties caused unnecessary delays in finishing trials of cases. Keeping this situation in mind, Law Commission has recommended recruiting 3,000 judges at lower courts for quick disposal of pending cases. On the other hand, former Law Minister, Barrister Shafique Ahmed, focused on with the current infrastructure and efficiency of the judiciary. To him, it may take nearly six years to dispose of appellate division cases, while high court and civil cases may take four years and criminal cases may take two to three years to be disposed of.

Supreme Court Registrar, AKM Shamsul Islam told to the Daily Star that "*the backlog of pending cases at the country's court is growing day by day, although the rate of disposal of cases is increasing, because the number of filing cases is increasing.*" (The Daily Star, March 18, 2013). Khondokar Mahbub Uddin, President of

Supreme Court Lawyers Association, showed the connection of how backlog of cases hampers rule of law “*the increased number of backlogs creates the lengthy duration in executing the cases and thus the main purpose of rule of law are hampering*” (Bangladesh Pratidin, 13 September, 2014). The current rate of backlog of cases appears that it would take more time to dispose the entire backlog. So, it has been marked as a great alarm for rule of law in Bangladesh. The article argues that, unless it is solved quickly otherwise the rule of law in the country to the large extent would remain meaningless and dysfunctional. However, the objectives for the present study: how backlog of cases creates delay in disposal of cases and a hindrance to the establishment of prompts justice and rule of law accordingly.

### **Rule of Law: Conceptual Clarity**

From the literature the rule of law has been in use since the time of Aristotle in fourth century B.C. William E. Hearn used the three words ‘rule of law’ in 1867. Later Professor Albert Venn Dicey elaborated the conception in his famous book ‘*The Law of the Constitution*’ which was first published in 1885. Dicey’s basically includes three things of rule of law: equality before law, absence of arbitrary power and guarantees of citizens’ rights (Dicey, A. V., 1973). Hence, rule of law is the concept that the law applies to everyone. The Scholar Rachel Klienfeld Belton (2005) identifies five principles of rule of law in **fig-1**:



Belton also identifies a second definition based on the institutions by which the ends of rule of law are achieved. These are: (1) The existence of comprehensive laws or a constitution based on popular consent; (2). A functioning judicial system; (3). Established laws enforcement agencies with well-trained officers (ibid).

On the other hand, the rule of law defined by the World Justice Project (WJP, 2014) as a system in which the following principles are upheld:

1. *The government, its officials, agents, individuals and private entities are accountable under the law.*
2. *The laws are clear, publicized and stable and just; are applied evenly; and protect fundamental rights, including the security of persons and property.*
3. *The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.*
4. *Justice is delivered timely by competent, ethical and independent representatives and neutrals that are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.*

After going through the principles of rule of law mentioned above it can be said that absent of any of these features, the rule of law may arguably break down. However, the modern concept of rule of law has been developed by the International Commission of Jurists in New Delhi known as the Declaration of Delhi (1959), which was later on confirmed at Lagos Conference (1961). It says that- *“The rule of law is a dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in all countries, whether dependent or independent”* (Quoted from Islam, M. 2012, p- 84).

Now let's discuss how rule of law has been reflected in the constitution of Bangladesh. The meaning of the 'rule of law' as envisaged in the constitution of Bangladesh that can be seen from the preamble- *“it shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation- a society in which the rule of law, fundamental human rights and freedom, equality and justice, political economic and social, will be secured for all citizens.”* Some positive provisions such as 18 fundamental rights (article 26-44) and also their better protection have



been incorporated in the constitution under article 44 and 102. Thus, the rule of law is a basic feature of the constitution of Bangladesh.

### **Judicial Interpretation on Backlog of cases**

As delay in justice refers the time consumed in the disposal of cases by the court, backlog cases are those cases that are not resolved within timeframe. It can also be said in such a way that backlog of cases are to those cases which are ready for trial but yet to be disposed of and without any definite time for disposal. As I said earlier that the supreme court of Bangladesh protects the constitution and fundamental rights of the people. The constitution of Bangladesh recognizes the right “*to a speedy and public trial by an independent and impartial court or tribunal established by law for every person*” {Article 35(3)} whether the person is governor or being governed, rulers or being ruled, big or small, poor or rich, high-up or lower.

### **Backlogs of Cases in the World**

Most of the countries in the world are not free from backlog of cases and its effect is much more severe in the developing countries. In India there are approximately 30 million (3 crore) cases pending, and against this backdrop, there are only 13000 judges to deal with such a huge number of cases (Hossain, S. E., 2012). It is very interesting to mention that V. V. Rao, Justice of Andhra Pradesh High Court said, Indian judiciary would take 320 years to clear the backlog of 31.28 million pending cases in various courts including high court in the country. When it comes to calculation, every judge in the country will have an average load of about 2,147 cases. India has only 14,576 judges in office as against the actual strength of 17,641 including 630 high court Judges. However, the number of pending cases in the supreme court of India is 64, 919. From the latest data, the pending cases in the 24 high courts of the country are 4,456,232 in which 3,432,493 are civil and 1,023,739 criminal (Quoted from Nanda, H. and Pati J., 2015). Another big country in Asia, in China, there are approximately 1, 30,000 courts to deal with more than 11 million cases with 6.3% increase year-on-year. European countries like UK, France and Italy are also struggling to deal with the backlog of cases. On January, 2012, some 152, 200 cases were pending before the European Court of Human Rights.

This problem is also evident in the USA. From the beginning of President Obama’s tenure, there have been shortages of judges that damage the federal court system for quick disposal of cases, although the situation is being changed notably in 2014 as the Senate approved some nominations of judges (Available at <http://www.pfaw.org/sites/>

default/files/lower\_federal\_courts.pdf). Judge Lawrence J. O'Neill, Eastern District of California expressed his frank opinion in this regard “Over the years I've received several letters from people indicating, ‘Even if I win this case now, my business has failed because of the delay. How is this justice?’ And the simple answer, which I cannot give them, is this: It is not justice. We know it.” (Palazzolo, Joe: April, 2015).

### Judiciary of Bangladesh

The courts of Bangladesh are divided into two main types-Supreme Courts and Subordinate Courts. The Supreme Court is divided into two categories-Appellate Division (AD) and High Court Division (HCD). All subordinate courts and tribunals are under the Supreme Court. As March 2015, there are now the Bangladesh judiciary that has the following number of judges and the current state of backlog of cases in Bangladesh:

Table-1: Name of Courts and its Judges

Name of Court	Number of Judges
Appellate Division	07 judges and 1 bench presided by the Chief Justice
High Court Division	97 (85 Permanent and 12 Additional Judges), 55 benches
Lower Courts	1,700 (comprise of all civil and criminal Judges and Magistrates Courts.)

*Source: Compiled from the Daily Star, March 18, 2015.*

Table-2: Number of Total Pending Cases in the Bangladesh Supreme Court

Name of Courts	Year	Pending	Filed	Disposed
High Court Division	2009	325571	53155	21485
	2010	313735	57470	69306
	2011	279436	45084	68912
	2012	279436	56732	38444
	2013	297722	50010	24286
	2014 (up to July)	342839	4403	
Appellate Division	2009	5260	4403	6035
	2010	9141	5464	1583
	2011	12441	4749	1449
	2012	12441	3036	2092
	2013	13385	5989	5036
	2014 (up to June)	14008		

*Source: Compiled from the Bangladesh Protidin, 13 September, 2014.*

Table-3: Number of Total Pending Cases in the Lower Courts

Name of Courts	Year	Pending	Filed	Disposed
District and Session Judges	2010	748,822	362,563	281,251
	2011	1,076,164	327,759	207,477
Magistrate's Courts	2010	1,942,163	1,167,335	1,061,252
	2011	763,518	706,061	671,628

*Source: Compiled from the Daily Star, March 18, 2013.*

The statistic shows that backlog of cases is noticeably alarming for Bangladesh. The judicial system can resolve 150 cases daily, but currently 250 cases submitted daily to the court. According to a statement published in a daily newspaper (Bangladesh Pratidin, 13 September, 2014) 356847 cases are pending in both the HCD and AD of the SC of Bangladesh and about 28, 00000 cases are pending in the courts of the whole country. Such the increased number of backlogs creates the lengthy duration in executing the cases and thus the main purpose of rule of law is hampering. According to BIAC (Bangladesh International Arbitration Centre), in the AD over 77% cases, in the HCD 27% and at Divisional and the District levels 66% cases were remaining pending. Given the context, it can be said that this horrifying number of backlog of cases never ensure rule of law in Bangladesh.

### **Reasons for backlog of Cases in Bangladesh:**

In the literature on justice delivery in Bangladesh, delay in delivering justice is considered to be an important problem, as it hinders prompt disposal of cases. As observed by Jahan and Kashem (2005), *“In one year, 40% to 60% of the cases are charge sheeted, but only 25% of these cases are put on trial”* This statistic shows that every year cases are accumulated in the courts without any definite time of completion that cause a huge backlog.

There are many reasons for delay of justice delivery in Bangladesh. It is observed that weaknesses of civil and criminal procedure allow the cases to be lengthy. According to Osman (2006), lawyers in many cases play their role in this delay, because greater delay ensures more earnings to them. UNDP (2005) also agreed that the attitudes of lawyers are unhelpful, which discourages poor and disadvantaged groups from seeking quick legal remedies.

On the other hand, criminal cases are delayed due to the delay of submission of the police reports. The police take a long time to submit an investigation report due to excessive workloads as well as

corruption in a police station. When a final charge sheet is issued to the court, it becomes the place where justice gets delayed.

Doing an empirical study Institute of Governance Studies (May, 2010) found that some factors are responsible for the existing backlog of cases in Bangladesh: (i) Complexity of legal aspects and inefficient case management system, for example, 80 (Eighty) per cent of the cases deal with land related disputes, and the causes of this high number of cases are the old-fashioned land related laws and an ineffective land management system; (ii) problems of the judicial investigation, for example, frequent reassign of Investigation Officers (IOs) of the Police Department; and iii) no financial allowances given to witnesses summoned to give evidence, hence people are not eager to go to court to give witness.

When it comes to the dissolution of benches, adjournment of the hearing of the cases often stop the judicial process in Bangladesh. Later, when a new bench gains its jurisdiction, the suspended cases are re-opened from the very beginning. As a result, justice is not delivered in time, and a case backlog is created. Being a frustrated Law Minister, Shafique Ahmed said in the mid of 2011; *“Each year cases are piling up in the courts. Nobody knows where they will end up. It takes five to 10 years to settle a case in the Supreme Court”*.

In a recent study on backlog of cases in Bangladesh conducted by UNDP (2015), some of the causes have been identified by them:

1. *There are inordinate delays involving service of process.*
2. *Too many adjournments are being indulgently granted.*
3. *Too much time elapses between individual hearings, or between the filing and disposition of both civil and criminal cases.*
4. *Judges are not 'captains' of their courtrooms; power and authority has been usurped by the bar/litigants.*
5. *Witnesses are neither effectively managed nor efficiently coordinated.*
6. *Significant monetary sanctions are not imposed to compel disobedient advocates, litigants, witnesses or expert witnesses' compliance with codes, rules, policies, processes and procedures.*

The above issues were also echoed earlier by a member of the Law Commission of Bangladesh, M. Shah Alam who identified the reasons for delays such as:

- a. Slow process of service of the summons which can be further slowed down by the intentions of the parties concerned, indicating a poor state of court administration.
- b. Frequent adjournments of the trial caused by the non-cooperation of the lawyers, and such reluctance being explained partly by heavy case-load and partly by their unpreparedness to continue and complete the process.
- c. Vested interest of the lawyers for delaying the process, for they are often paid by their appearances in the court.
- d. Absence of lawyer-client accountability that makes the lawyer monopoly to conduct the case the way he considers best suited to his own interest.
- e. Failure of the parties to present the witness-sometimes genuine, sometime deliberate.
- f. Rotation and transfer of judges, meaning that the same judge who heard testimony may not decide the dispute, when he/she moves a new jurisdiction, thus seriously impeding the process of continuous trial; the new judge may have to repeat some of the procedural requirements already fulfilled (The Daily Star, April 16, 2000).

All of these factors and issues significantly hinder the effective administration of justice which ultimately brings backlog of cases throughout the judiciary in Bangladesh. This seems to be a lack of political and institutional commitment in dealing with the disposal of cases in a timely manner.

According to some legal experts, there are also some other causes of delay in disposal of cases found apart from that. For example, Alam, D. M. (2010) in a study observed that there were not enough infrastructural support and expertise at district level to submit forensic evidence of criminal offence. Furthermore, there are plenty of evidence published by the newspaper regularly that client sometimes provide false information and lawyer sometimes tries to make hearing time longer to earn more money from the client (ibid). This claim has also been justified by Biswas, Z.I., (2008) that most of the time witnesses that are presented in court are not actual witness for the case. As a result, the court takes time to resolve a particular case.

Furthermore, many times it has been observed that political government always tries to use the legal system against its opponent party in order to suppress their activities. As an example, many politically motivated cases have been filed against the opposition

leaders and their followers that have become a new challenge to speed of justice. This kind of activity increased the rate of backlog cases in the judicial system.

Ahmed, M., (2006) points out the two major weaknesses of the judicial justice system is the investigation of case and disintegrated public prosecution system. According to him, the investigation system is too slow, and public prosecution system is not effective. Not only is that but the total number of judges not adequate to clear the backlogs. Moreover, the numbers of benches are also inadequate to deal with such a huge number of cases (Hossain, S. E., 2012).

Hossain, S. E., (2012) has elaborated by saying that population boom is also a major cause of backlog. The population of the country is now about 160 million and there is only one judge available for approximately 0.13 million people (ibid). This data indicates that the rate of population and the number of judges is highly disproportionate. Summing up those views, now let's discuss the causes of backlog of cases in the judicial system in Bangladesh in details.

### **Lack of Measurement and Prioritization**

There is no attempt to use either qualitative or quantitative research that might help the judiciary in order to manage its workloads. As we know that research is an important part of the business reengineering, it could help to actually measure how delays are actually occurring such as reasons for delay, case types, case assignment, scheduling, tracking, trend analyses, workload indicators, etc.

District court data on pending cases are regularly sent to the Supreme Court every month. However, there is an accusation that sufficient time and effort are not devoted to the preparation of statistical data on backlog of cases, which are ambiguous and often untrustworthy. It is argued that if it is used as a tool to effectively manage a district court case flow, it would have a positive impact on diagnosing and reducing the backlog of cases. Hence, it is essentially required to statistically measure court's 'backlog' by identifying those cases that exceed its established filing-to-disposition time standards. In this regard, it is also suggested that Information Technology (IT) can support the needs of the court and that can also be used to produce meaningful findings through diagrammatic representation on delay in cases (UNDP, 2015).

On the other hand, there is lack of prioritization of backlog of cases. Some initiatives can ensure prioritization of old cases. For example, a

different color or symbol may be used on the file of the case so that the judge, court staff and lawyer can simply identify which one as an old case. Later on, they can fix a possible date for its speedy disposal. Or alternatively, judges on their own initiative may maintain a special note for the old case.

### **Lack of Strategic Plan**

It is an unfortunate reality that there is no appropriate mission and vision of the courts in reducing delay in cases. However, this statement is necessary in reducing backlog of cases that should be adopted having consultation with fellow judges and lawyers. This vision and mission should be displayed in eye-catching locations in courts and must also be included in any court related literature. Hence, a strategic plan should adopt the judiciary short and long-term plan, with a view to improving its processes as per its mission and vision, and providing a service to the public.

### **Corruption in Justice System**

Islam (2010) in a study showed how corruption in the judiciary acts as a common phenomenon at the every stage of a criminal case. It is observed that there is extensive corruption and abuse of court process concerning bail, when it comes to criminal cases. A survey in 2007 had found 47.7% corruption in the judiciary. The Transparency International of Bangladesh (TIB) report also found that corruption in the country's judiciary system had increased by the last three years (Deccan Herald, 04 September, 2014).

The statistics shows that more than three-fifths (63%) of the households involved in court cases to bribe the court officials. The proportion of rural households is 63.6% compared to that of 57.1% of urban households. Cash for bribe is paid to the court employees by 73.1 of households, followed by 16.3% of households to opponent lawyers. Majority of households (53.3%) made payments for bribe directly, i.e., in prison, and 28.1% of households through the lawyers. The survey revealed that almost 9 out of every 10 households (88.5%) agreed or completely agreed that it is almost impossible to get a fair judgment from the court without money or influence ([www.ti-bangladesh.org/beta3/index.php/en/research-policy/](http://www.ti-bangladesh.org/beta3/index.php/en/research-policy/))

### **Lack of Client Service for Justice Seekers**

It is a reality that the present institutional environment of the courts does not bring any quality of services for the court users. To fulfill this requirement, a citizen charter may be accepted and displayed in front



of the court so that the justice seekers may easily get all kinds of information about the expected services in the court. Apart from that, complaints filing and resolution mechanisms should be established whereby justice seekers can produce complaints, if aggrieved.

There is no attempt to support quality of services to the justice seekers. Without effective office layout and automation, it is hard to effectively conduct a hearing and timely dispense of justice delivery. The district court records and archives are still maintained manually with hard copies that are essentially required for proper automation. In a recent study by UNDP (2015), they presented Dhaka district court as a case study is chaotic, plagued by too much paper work, endless numbers of registers, outdated procedures, and a lack of managerial control. This indicates that the present institutional environment of the district courts does not contribute to quality of services to justice seekers.

It is observed that there is no central office of the registrar in the major metropolitan district courts. By rules, advocates and their clients must get in touch with the respective *sherestadar* depending upon the territorial or pecuniary jurisdiction of that judge. As we know that a district court is composed of many individual judges' chambers, each of its have own *sherestadar*, *peshkar*, stenographer, pending cases archives, and courtroom. Hence, each judge functions independently. This means that common routine tasks to each office run the risk of being done in a variety of different ways due to the interests of the respective judge, *sherestadar* or *peshkar*. As a consequence, it is seen that the *sherestadars'* and *peshkars'* offices are chaotic, overcrowded and ill equipped with damaged furniture, and other equipments (UNDP, 2015).

### **No Bench-Bar Relationship**

It has been reported many times in the national newspaper that there are underlying tensions between the bench and the bar in the courts. There are very often complaints that judges are used to be usurped by the bar due to frequent requests for adjournments from the parties' lawyers in individual cases. On the other side, there are also similar complaints against the judges that the adjournments very often take place, arguing that a court could not possibly hear the huge number of cases on its cause-list in one day. Furthermore, UNDP (2015) finds that politically divided bar also leads to tension inside the courtroom where



a lawyer's political identity can often dominate as a factor of influence, especially when S/he is affiliated with the ruling party.

### **Absence of Comprehensive Case Management**

Comprehensive case management is a system of time and events in a law-suit as it proceed through the judicial process, from initiation to resolution. There are two basic mechanism of the comprehensive case management system; the setting of a timetable for pre-determined events and suspension of the progress of the law-suit through its timetable. But in Bangladesh there is an adversarial system that is driven by the litigants or lawyers typically setting the timetable that suits them. However, with a comprehensive case management, the judge can develop and set a standard timetable that will assist in the timely disposal of cases (UNDP, 2015).

### **Shortage of Judges and Unmanageable Caseloads of pending Cases for Judges**

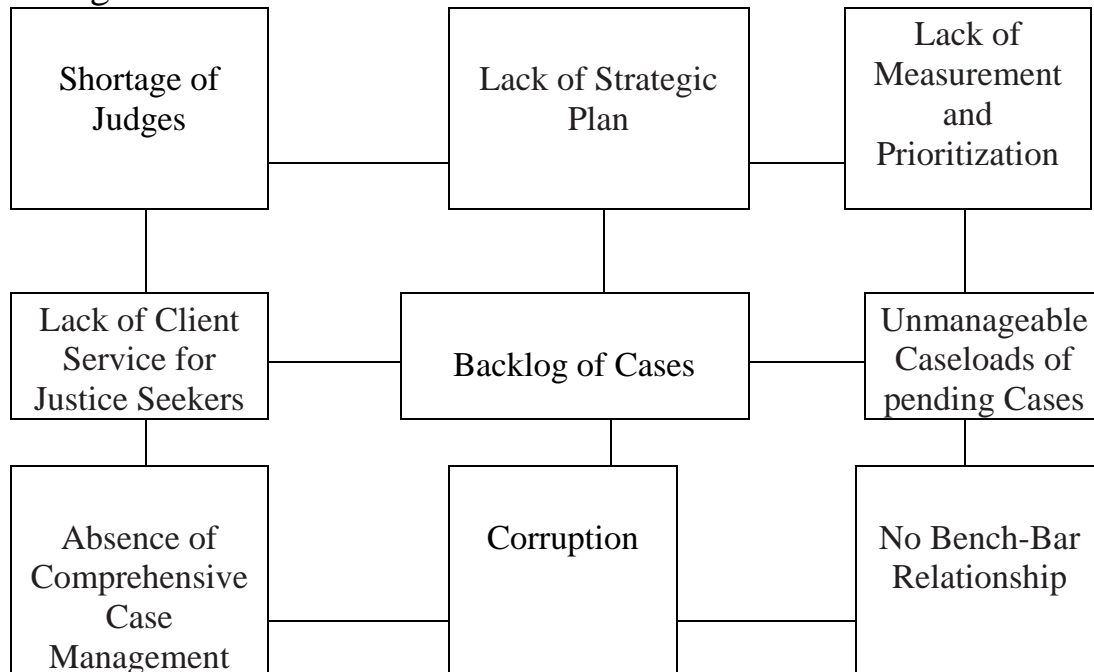
The shortage of judges in the courts is one of the important causes of delay in disposal of cases. There are 400 posts of judges are vacant in the courts of the different districts, while about 28, 00000 cases are pending in the courts of the whole country.<sup>1</sup> So, it will not be exaggerated to say from the above data that too few judges create backlogs and backlogs contribute to the denial of due process as well as fair trials for litigants and thus hampers rule of law.

Despite of 'territorial or pecuniary jurisdictions', most of the courts have a huge caseload that cannot be managed in an effective manner by the judges and court officials assigned. The fact is that some jurisdictions may have too much caseloads compared to other jurisdictions. It has been well argued that the court should launch a random case assignment application system to ensure that the judges' workloads are equitably distributed and each judge has the same number and same type of cases assigned. As an example, UNDP (2015) further suggested that the district judge may also take active steps to redistribute the caseload of any judge who reports to him or her. It is worth to mention that under section 24 of the Code of Civil Procedure 1908, the district judge has the power to reassign cases to other similar courts that have a minimum number of cases.

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<sup>1</sup> Compiled and calculated by author based on Editorial, (Bicharoker shunnyo pod), The Bangladesh Pratidin, 17 Nov. 2014).

From the discussion of this paper, it is found a scenario which can help us to realize the negative impact of backlog of cases on rule of law in Bangladesh. The below diagram shows that multiple factors contribute to backlogs such as a shortage of judges coupled with the huge amount of cases, frequent adjournments. However, as rule of law is a broader concept, it can be negatively influenced by various factors; backlog of cases in justice is one of them. So, it can be concluded that rule of law in judiciary of Bangladesh is being seriously hindered by backlog of cases.



*Source: The Author*

## Conclusion and Recommendation

The legal community as well as the justice seekers is highly concerned about the current case and records management procedures and practices that are needed change in order to eliminate unnecessary delay in the litigation. If the courts maintain their positive attitude in order to change the current environment with a vision and mission plan, this will create a supportive environment towards the judicial process, thus enhance access to justice for the citizens. Keeping those issues in mind, now I am providing some recommendations for quick disposal of cases in order to ensure rule of law.

1. The judiciary should be made independent in real sense by removing all sorts of delay challenges that still remained on the path of its independence.
2. The judiciary should introduce a scheme under a 'Backlog Reduction Programme'.

3. The government should, in consultation with the Supreme Court, appoint honest and/or sincere retired judges on contract basis for quick disposal of old pending cases.
4. Accountability of the entire judiciary (judges, lawyers and court staff) should be maintained. And the lawyers and court staff shall have the earnest co-operation, legal obligation to establish their client's legal rights to get quick disposal of cases.
5. The police should co operate sincerely with the judiciary in investigation and other related matters such as producing witness etc.
6. It should be stopped unnecessary adjournment of hearing of cases to get rid of delays and should be enforced the policy with the imposition of significant money sanctions per occurrence.
7. Bangladesh can enact Speedy Trial Act for fixing standards time requirements for timely disposal of criminal cases in district levels as the USA has enacted in 1974.
8. It should be strengthened the application of empirical research and use of ICT for diagnosing the problem that would make the justice delivery system more affordable, accessible and accountable in justice delivery.
9. CPC, 1908 and Small Causes Act, 1887 should be amended as CPC in India and England has changed a lot. Independent Small Causes Court needs to be established and the number of courts should be increased to dispose the backlog of cases.

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## 10. Child labor and Bangladesh RMG Sector

Mohammad Hasan

### Introduction

*Although child labour is a global and fundamental human rights issue, the form and nature of child labour varies according to regions and countries. International conventions, universal declarations, laws of the land, social awareness - nothing can keep the list of child labour shorter. From the part of the employers in developing and underdeveloped countries, a child is the source of cheap labour. And it is poverty which decides on a child's destination whether it is to be school or street. When basic food staple is not available then talking about nutrition is a far cry. Free education does not work in an empty stomach like food for education does not attract a person when a child has to take the responsibility of a full family. With around 40 percent under poverty line it is not important to calculate the opportunity cost of education for the children of those families. The greatest poet Shukanto rightly narrated in his poem "Khudar Rajje Prithibi Gaddamoy" (the earth seems prosaic in the kingdom of hunger). Social awareness or free education is unrealistic when the first one of the five basic human needs -food, clothing, shelter, health and education is absent. If any employer employs a child/adolescent, s/he violates the law. If none of the employers employ child as a labour, then they are working against the humanity. We are pushing them to the hell of life. Their potentials die at the beginning of their life. On the contrary, if we give them a change in a formal organization like RMG we are contributing additionally to building our future generation. In this particular issue –"child labour eradication" Bangladesh Readymade Garments (RMG) sector has achieved an enviable success and its rate of progress is far better than any of its competitor countries. Among the core issues of social compliance none of the compliant factories has NC (Non-Compliance) status on account of this particular area. Does this success means we do not have any issue on child labour? The fact is this rate of success in RMG has accelerated worst form of child labour in formal, including non-compliant garment factories, and non-formal sector with bonded labour and even prostitution. This facilitates "exploitative" and worst forms of child labour that violates basic fundamental human rights of a child.*

## **Child Labour Elimination Programs from Our RMG Sector**

Democrat senator Tom Harkin first proposed a bill in the US congress in 1992 (commonly known as Harkin's bill) to prohibit the importation of products that have been produced abroad with child labour. A special unit was established by the Department of Labor's Bureau of International Labor Affairs (ILAB) in 1993 to research and publish a report on the use of child labor worldwide. That year an American television newsmagazine "NBC Dateline" broadcast a story of young Bangladeshi children who were working in a RMG factory making garments for Wal-Mart stores. This broadcasting kept pressure on Wal-Mart to cancel its business with Bangladeshi manufacturers and conveyed a clear message to other buyers, who had similar business with their Bangladeshi manufacturers. Hence the use of child labor was not possible anymore in the manufacturing process of RMG exporting to USA.

In the year 1993, RMG had already reached at a \$ 1.4 bl industry which was more than foreign assistance of that time. There were around 750,000 workforces in 1500 factories. Around 10 percent of total workforce was under legal minimum age i.e. below 14. Of them 70% of total under aged workers were girls. Almost 50% of the total business was from US market. Single country dependency compelled BGMEA, following the Harkin's bill, to initiate child removal program from the workplaces with the conformity to Bangladesh factory act 1965 which declares that any employment under 14 is illegal. It is worthwhile to mention here that Bangladesh Labour Law 2006 came into effect only on 26<sup>th</sup> of September 2006 repealing 25 numbers of existing labour laws on different subjects. BGMEA announced a self-declared deadline to make the industry free from child labour by 31 October 1994. It was known that as much as 40,000 – 50,000 children were laid off. In July 4, 1995, A tri-party agreement was signed among BGMEA , ILO and UNICEP endorsed by GoB (Government of Bangladesh) and US embassy was an observer to dismiss and rehabilitate those under-aged workers with basic and technical education and stipend. UNICEF took the lead of education while ILO engaged in monitoring and verification which was fully functioning by late 1996. A second MoU was signed in July 2000 focused on sustainability and to develop long term response to the problem of child labour monitoring in the garment industry. From December 1996, twelve four-member (2 from ILO, 1 from BGMEA and 1 from government) monitoring teams were in operation. According to BGMEA around 2400 – 2500 factories were running during the period. Depending on the scale of violations factories were graded as A, B, C.

The grade A represented the factories with no child labour. The monitoring and verification team inspected graded factories in every 6 months interval, B graded factories in every 2 months and it was every month for C graded factories. If any factory had three consecutive clear inspections, it was moved to a higher grade. Over the period, a steady increase in factories in grade A was found. In 1997, 42% factories were graded A, it was 89% in 2001 and by 2003 it was 92%. It was clearly acknowledged that the monitoring and verification system had been effective in removing and preventing child labour in the garment factories.

From initial survey, 32000 children below 14 were removed from the factories and were given skill development training. UCEP (Underprivileged Children's Educational Programs), Singer and H & M provided technical support and training while BRAC, the largest development organization (formerly Bangladesh Rural Advancement Committee) and GSS (Gonoshahajjo Sangstha) provided them informal education. Every child was getting tk 300/month as stipend with free education materials. Social Investment Bank Ltd (SIBL) which is now known as Social Islami Bank Ltd, had been disbursing the money among the children. This project continued till 1999.

There was another program named “Earn and learn” for the boys who were between the age 15–17. Around 15000 adolescent workers were engaged in both school and job. They used to study in schools up to 12:00 noon and then join their jobs in factories.

From October 1999, ILO Dhaka office started working on core components of social compliance like child labour, forced labour, discrimination, working hour, wages, freedom of association, management system with garment factories under the project “Improving labour standard for the RMG industries of Bangladesh”. To assess the labour and factory conditions ILO developed a check list with 146 questions. Among 2963 factories only 550 factories included themselves voluntarily to the ILO project, and later the number of the factories rose to 1000. This project continued up to 28 February 2006. It was learned that BGMEA did not extend necessary cooperation paying its portion of fund timely and fully and encouraging its member to participate in the program.

To implement the project, ILO recruited a 28- member team along with 4 as support staff in 1999 and provided extensive training program for one year.

In the year 2001, ILO initiated a training program at BET centre, Dhanmondi, Dhaka for the top management –starting from companies’



General Manager to Director, Managing Director and Chairman. After continuing only 4 batches ILO had to stop the initiative due to non-cooperation from the owners. To build the management capacity ILO designed a training program for Officer to General Manager in 2001 which was continued till 2005. ILO officials trained the factory management on how to write Corrective Action Plan (CAP), how to make appointment letter, ID card, company policy etc. That time no empowered department existed to look after employee related issues.

Apart from factory management training, ILO had exchanged opinion regularly with the brands in operation in Bangladesh. That initiative was started since 2002. The concept of third party audit came into effect at the end of 2002. Local financial audit company Q & Q (Quasem & Quasem) first conducted 3<sup>rd</sup> party audit in Bangladesh on behalf of buyers. Later on international agencies like SGS, ITS, BV (Bureau Varitus) etc took the lead. Initially they were engaged in testing and quality inspection of garments.

### **Legal Aspects on Child Labour**

Out of eight fundamental conventions of International Labour Organization (ILO) Bangladesh ratified 6 till 2000. The ratified conventions were on -forced labor, freedom of association, right to organize and collective bargaining, equal remuneration, discrimination. In the year 2001 Bangladesh ratified one more fundamental convention i.e. worst form of child labour and set the target of elimination of “worst forms of child labour” by 2015. Bangladesh also ratified UN convention on the rights of children. Bangladesh is, however, yet to ratify other fundamental conventions (C 138) on the Minimum Age for Employment which states: "The minimum age... should not be less than the age of compulsory schooling and, in any case, shall not be less than 15 years." According to the Department of Labour (DoL) of USA the term “Child Labour” generally refers to any economic activity performed by a person under the age of 15. In a report DoL stated “Not all work performed by children is detrimental or exploitative. Child labor does not usually refer to "light work" after school or legitimate apprenticeship opportunities for young people - nor does it refer to young people helping out in the family business or on the family farm. Rather, the "child labor" concerns generally an employment that prevents effective school attendance, and which is often performed under conditions hazardous to the physical and mental health of the child.”

According to Bangladesh Labour Law “child means a person who has not completed his fourteen year of age”. No child is allowed to any



form of work in any industry. On the other hand “Adolescent means a person who has completed his fourteen year but has not completed eighteenth year of age”. An adolescent can work in the industries or establishment with certain terms and conditions.

We have a legal guideline on child and adolescent labour in the labour law (Bangladesh Labour Law -2006 , chapter III (Employment of Adolescent) , Article 34) prohibition of employment of children and adolescent) – (1) No child shall be employed or permitted to work in any occupation or establishment. (2) No adolescent shall be employed or permitted to work in any occupation or establishment unless – (a) a certificate of fitness in the prescribed form is granted to him by a registered medical practitioner and it is kept in the custody of the employer; and (b) he carries, while at work, a token giving a reference to such certificate. Regarding working hours of adolescent workers( article 41 – Working hours for adolescent) states that 1) No adolescent shall be required or allowed to work in any factory or mine, for more than five hours in any day and thirty hours in any week; 3) No adolescent shall be required or allowed to work in any establishment between the hours of 7.00 p.m. and 7.00 a.m. 4) If an adolescent works overtime, the total number of hours worked, including overtime, shall not exceed – a) in any factory or mine, thirty six hours in any week; b) in any other establishment, forty eight hours in a week . Article 44 has given exception in certain cases of employment of children as – 1) Notwithstanding anything contained in this chapter, a child who has completed twelve years of age, may be employed in such light work as not to endanger his health and development or interfere with his education: provided that the hours of work of such child, if he is school going, shall be arranged in a way that they do not interfere with his school attendance.”

### **The result of Eradications**

To eliminate child labour from our RMG sector, factory management has gone one step ahead i.e. it has eliminated adolescent workers as well. Our RMG has extended the age limit of a child at 18 by its own definition. In front of every garment factory there is a common notice with the lines “No child labour is allowed here, workers under 18 years old are not recruited here “.When an industry like readymade garments does not allow a person who lives under poverty line and has no way to go to school, s/he has to choose an unrecognized industry for employment where the working condition and form of work are worst with low wages or sometimes with no wages at all, only food is provided in this case.

Since there was no safety net for the dismissed children BGMEA was asked by the representatives of the ILO, Unicef, the Asian-American Free Labor Institute (AAFLI) and officials of the U.S. Embassy, to cease firing underage workers until a school system and other measures were in place. After a year of extended negotiations, a Memorandum of Understanding (MOU) was signed on July 4, 1995 between BGMEA, the ILO and Unicef. The MOU stated that all child workers in the garment sector be removed from the factories and enrolled in schools. It forbade any new hiring of underage workers, as well as any retention of children once all MOU schools have opened. A monitoring and verification system was developed by the ILO overseas compliance; the monitoring teams made unannounced visits to factories and schools. As of September 1996, 130 MOU schools for former child workers were opened, serving nearly 2300 children which was very low than that of actual number. Without whole hearted commitment to the MOU, its potential success remains unrealized as always. When children lose their jobs in garment factories, they find more dangerous sources of income just to make a living.

In 1994, The US Department of Labor in its international child labor study, *By the Sweat and Toil of Children (Volume I): The Use of Child Labor in U.S. Manufactured and Mined Imports*, catalogued existing information on child labor in the garment industries of Bangladesh and other garments manufacturing countries.<sup>2</sup>) also indicated that “the children removed from the garment factories were forced to resort to more dangerous and lesser paid work in the informal sector. Rumors got circulated that many of the children ended up as street beggars, domestic servants, or were forced into prostitution. Other reports noted that the children were hired by underground subcontractors, working in hidden garment sweatshops under worse conditions than before.”

The report titled “The Apparel Industry and Codes of Conduct: A solution to the International Child labour Problem?” by the United States Department of Labour on the progress with the child labour eradication initiative from RMG sector stated “Anecdotal information gathered during the preparation of this report indicates that in some of the countries examined, fewer children may currently be working on garment exports for the U.S. market than two years ago. A dramatic example involves Bangladesh, where large numbers of children worked in garment factories as recently as 1994. International media attention and threats of boycotts and cancelled work orders led to the dismissal of thousands of child workers from the garment sector unfortunately with no safety net in place for them. Thus, it is possible

that in the absence of government programs to assist the children, the precipitous dismissal of child workers can endanger, rather than protect them.”

### **Child Labour in Bangladesh**

Child labour is a fundamental human rights issue. It is culturally and traditionally recognized in our subcontinent. Here, the children of a farmer help their parents in the field and household works. The professionals like blacksmith, potter, weaver, fishermen get assistance from their children in their respective fields. With this doings at their childhood they help in generating income on the other hand they gather technical knowledge of that particular area.

There are different dimensions of child labour i.e. Economic, Social, Physical, and Educational. At the premature stage, a very young boy/girl should be at school and grown up with potentialities as future human resources. Ironically they are facing real world problem which they are not prepared for. Any labour at this age is a burden for a child which deteriorate his/her mental and physical growth. He/she loses the basic right to education; creates risk to jeopardize health, safety and morals of young person. A child helps his/her family without disrupting school/education which is socially accepted by tradition. This is informal employment of a child. When a child has to survive by him/herself who cares about physical fitness, mental growth or educational rights? If highly monitored formal sector like RMG does not allow them to employ those, extremely poor or guardian-less children, non-formal sector like workshop, garage, transport etc will be their place with forced and bonded labour. When the scope in non-formal sector is not available they choose to beg in the street, traffics narcotic or compromise with prostitution. If RMG is not a safe place for an adolescent girl, then where would she go?

It is not uncommon with the people under poverty line to get married several times, i.e. the husband marrying more than one, or the mother doing the same. This kind of act carried out by the parents often leaves their children unattended. Sometimes a child or a young person has to take the responsibility of his/her mother or his/her own. When a decent working environment, light weight work process disallow a person in need he/she has no way left but embrace a worst job where employer takes every opportunity of exploitation. Absence of government monitoring and lack of enforcement of laws allow those employers to be more unscrupulous.

To make our factory compliant we are throwing thousands of adolescent workers in a complex life. For an adolescent girl who is

refused a place by RMG will find it difficult to lead a life with secured growth and sound health. It will be like throwing her to a hell. To get a “golden deer” like job in a RMG factory adolescent boys/girls use falsehood, hide their age and collect fake national Identity Card (ID card) to prove his/her adulthood.

In 2011, Bolivia’s Union of Child and Adolescent Workers (UNATSBO) was created with a demand to abolish the minimum age for independent, unsalaried work, and set a minimum age of 12 years for all other jobs. UNATSBO defends the rights of children in the workforce and establishes programs to improve their working conditions. It was known that 87 percent of those children involve with worst form of labour in Bolivia. The conventions on child labour by ILO will not work any part of the world against harsh reality of life. When a child is hungry and government fails to undertake the responsibility of that that child s/he will try to mitigate his/her hunger at any cost. Formation of union like UNATSBO in the near future will come nothing as a surprise.

### **Recommendations**

Bangladesh government has set the target of eliminating the “worst forms of child labour (WFCL) from the country by 2015. It was known by the latest National Child Labour Survey (NCLS) that the total number of child labour is estimated 7.4 million between 5 -17 years age group. Out of total child employment 3.1 million are considered as risk prone. According to an ILO survey about 93% of child labour toil almost 13 hours a day where their daily income comes to only food for two times a day or Tk 30.00 a day to Tk 1500 a month along with physical torture, working in hot environment, un-hygienic working condition without Personal Protective Equipment (PPE).

In our RMG industry the age of a child has been extended up to “not completed 18 years old” automatically due to the set conditions for the employment of adolescent workers. To materialize government’s policy to eradicate worst form of child labour by 2015 our Government, BGMEA and labour leaders can work together. A feasibility study comprising doctors, psychologists, nutritionists can be initiated to measure the physical and mental stress on the adolescent working in RMG factories. If the result of the study allows then an adolescent can work for eight hours in a decent and controlled environment. We can apply this eight- hour work for the persons of 15–18 age groups. ILO Convention 138 defines "light work" as work that is not likely to harm the child's health or development, or prejudice

his/her attendance at school. Work in RMG sewing floors is always being considered light work. BGMEA/BKMEA can open evening schooling in different industrial zones and can provide training to adolescent on technical, legal and compliance issues.

Amending the working hour and related wage for the adolescent worker can solve the maximum working hour and related wage issue for them through a notification by the concerned ministry. The adolescent will be paid against their working hours. For example, tk 5300.00 for 8 hours as per minimum wage gazette against grade 7, so adolescent will get  $Tk\ 5,300/8 \times 6$  hours a day = tk 3975.00 for six hours work with overtime. If working hours in a day/week can be extended by a notification then why the same exception can't be applied here?

### **Conclusion**

When biological parents do not care for their children, there are many guardians of those un-attended children especially who help them to survive. When there is no or insufficient monitoring from competent authority like government and apex bodies then third party will come up as a supervising authority. Now the industry is facing through Accor and Alliance (fire, electrical and building inspection initiative by Europe and North American brands) inspection process. The parents with minimum dignity and self-respect can't keep their children under the supervision of others. A responsive government should take the lead and responsibility of their industry by facilitating and supervising to grow sustainably.

In a least developed country like Bangladesh where population, illiteracy and poverty are of the major hurdles to sustainable development, it is unlikely to implement the same policy especially on child labour which is being applied in developed countries. When the minimum wages in different countries varies according to the countries' socio-economic context, one single standard on child labour would not be justified. When we address the issue like child labour eradication, we need to consider socio economic conditions of that particular country. How would it be rational if we see the global perspective of child labour through a single glass? Any generalization across the globe might affect on the children of our country adversely. On the other hand, it will not be the same nature of child labour across the industries, i.e. child labour in readymade garment industry and in mine or automobile workshop are not the same.

In the globalized world price competitiveness is the most important factor for consumer market. Everyone wants to lower their cost,

maximize profit by increasing the sales. Lowercost always has been equated with child labour. Children do not - bargain, argue, complain. On the other hand, they do long hours work without asking for any compensation. They are always in fear of losing job. This situation favours the employers. In many RMG factories, out of social compliance net or mostly sub-contract basis, adolescent workers are being used and abused. Official acceptance of adolescent work will surely help us minimize this form of exploitative labour in the country. Thus the apex body can keep their industry's competitiveness one step ahead of their potential competitors with a meaningful promise to "Leading Bangladesh to Prosperity".

**Part Three**  
**Dimensions of Conflict and**  
**Approaches to Resolution**





# 11. Approaches to Conflict Resolution: Study on Local Level Conflicts in Bangladesh

Saifuddin Ahmed  
Zunaid Al mamun

## Abstract

*Conflict Resolution has gained its importance both in the academic and practice fields after the Second World War. The study of conflict resolution ranges from intra personal level to international level. It finds out the dynamics of a conflict and prescribes how it can be resolved. There are many approaches of conflict resolution, formal and informal; arbitrary and non-arbitrary. Every approach has its distinct way of action. The approach depends on the interaction between the conflicting parties. Conflict at the local level is an important subject to study since there are many actors in conflict and conflict resolution apart from state. Similarly, in Bangladesh, there are conflicts in local level which of different types and their resolution are of different approaches.*

*In the present time, Bangladesh has a three tier rural local government system. At the top of the hierarchy of local government is the Zila Parishad, at the middle, the Upazila Parishad and at the bottom, the Union Parishad. Upazila Parishad is a driving force for the national development and this is highly decentralized. So many stakeholders exist at the level of local government and most of the developmental works of Bangladesh are implemented through Upazila Parishad. To implement the development projects, there are designated stake holders at different level of this Parishad where the key stake holders are Upazila Chairman, Upazila Vice Chairman, MP, UNO, GoB Officers, Union Parishad Chairmen etc.*

*As a result of their designation, position at the local and national level, dignity according to hierarchy and many more reasons, there we often see conflicts among the stake holders. The conflicts are generated from different sources. Sometimes the roles are overlapped according the rules and roles, often ambiguous. The clash of interest, ego, political views, prioritization etc. instigates the conflicts more. Hence, the stake holders are also important part of conflict resolution. The paper will look into the issues and natures of conflict, approaches and stake holders of conflict resolution and the rate of success.*

**Keywords:** Conflict, Conflict Resolution Approaches, Local Level Conflict.

## **Introduction**

Conflict is inevitable in life. It runs along with people every day. But people want to live in peace through conflict resolution. Since the dawn of the civilization, people have been clashing with each other on incompatible affair of their life and then they have been seeking for the resolution. This is embedded in human history. Man has known conflict ever since recorded history. Every individual, religion, culture, and nation state has known and experienced conflict in one form or the other. Despite the prevalence of conflicts, the field of conflict studies and conflict resolution has come into the forefront in the post-cold war era (Ahmar, 2003). Conflict resolution and peace have acquired prominence in the post-cold war era (Ahmar, 2003).

A conflict is not confined within states. It may range from intra personal level to international level. The field of conflict resolution has broadened to engulf wider concerns not only related to 'state' actors (Ahmar, 2003). The field of conflict studies is generally understood as excluding certain kinds of conflict. It does not focus on conflict within individual minds, nor on purely individual reactions to conflict. Rather its focus is on social conflict: Conflict between or among groups (Schellenberg, 1996). Conflict resolution is a strategy to reduce conflict in every level. Researches on conflict resolution are mostly limited to the conflicts between states and political parties. The researches answer about the dynamics of the studied conflicts, mechanisms of the resolution etc. But there have been very few researches on the conflict at the local level in Bangladesh and how they are resolved. Among them, maximum of the works are carried out to find how ADR plays role in conflict resolution. So, this is very important to understand the types of conflict at the local level and what are the approaches used to resolve the conflict. Besides, the key stakeholders of the conflict resolution process should also be subject to the study.

This paper will find out the issues and types of conflict, possible approaches of conflict resolution and the key stake holders of the conflict resolution process at the local level.

## **Definition of the Key Concepts**

### ***Conflict***

The word conflict is derived from the Latin word 'configere' meaning to strike together (Wright, 1990). To understand more clearly striking together means to opt for the same thing at the same time. If there is

one party to strike, there is no problem. But if there is more than one party, there is conflict. For centuries, conflict has been studied as part of 'strategic studies' or 'international relations'. Since the 1950's, conflicts have also been studied as part of 'peace research' where conflict is perceived to be a result of incompatible interests (Wesleker, 1996). The notion that conflict is inevitable in human nature refers to the availability of conflict in every aspect of human life. From personal decision making to global system, conflict exists. Conflict arises as a result of the incompatibility of interests between two parties fighting over a single goal or 'prize' and trying to alter the situation in terms of their own interests (Ahmar, 2003). Conflict is sometimes used to refer to inconsistencies in the motions, sentiments, purposes or claims of entities and sometimes to the process of resolving these inconsistencies (Wright, 1990). Definitions of conflict fall into two groups: those that define conflict as largely subjective and focus on the individual, and those that emphasize the external and objective qualities of conflict, thus emphasizing the social and overt behavioral aspect of conflict (Tidwell, 1998). Some scholars do not agree with internal conflict of a person that he undergoes. Rather, they argue that conflict should be between two or more physical parties. The field of conflict studies is generally understood as excluding certain kinds of conflict. It does not focus on conflict within individual minds, nor on purely individual reactions to conflict. Rather, its focus is on social conflict: conflict between or among individuals, or between or among groups (Schellenberg, 1996). We can look at some definitions of conflict to have more clear idea about what it is. Stagner defines; Conflict is a situation in which two or more human beings desire goals which they perceive as being obtainable by one or the other but not both (Stagner, 1967a). Conflict is a relationship between two or more parties (individuals or groups) who have, or think they have, incompatible goals (Mitchell, 1981). Conflict is defined as an incompatibility of goals or values between two or more parties in a relationship, combined with attempts to control each other and antagonistic feelings toward each other (Fisher, 1990).

From the above excerpts, it is clearly conceivable that conflict will have more than one party striving for incompatible goals where they believe that the goal is not attainable by both. At this stage, they start to feel hostile to each other and they attempt to control each other. Another thing that the scholars say about conflict is that the parties are in a relationship. This is a relationship between them where they

respond to each other, emotionally, verbally or physically. So, they communicate between themselves.

### ***Conflict Resolution***

The field of conflict resolution has broadened to engulf wider concerns not only related to 'State Actors'. Non-state actors are also major part of any conflict. Thus, it widens its ranges. As conflict is about the absence of satisfaction of human needs, so it concerns only situations where the satisfaction of human needs is denied. Resolution of such conflicts occurs only after relationships have been reexamined and realigned (Tidwell, 1998). Conflict resolution is a strategy to reduce conflict in every level. The phrase 'conflict resolution' means different things to different people, reflecting its varied historical development. Some see conflict resolution as many process by which conflicts are handled. Conflict resolution is also an old mechanism to seek a peaceful end to a situation in which the outbreak of violence is forthcoming or has been long in existence (Ahmar, 2003). Broadly, we may conceive of conflict resolution as any marked reduction in social conflict. Conflict resolution may occur through self-conscious efforts to come to an agreement, or it may come by other means (environmental change, the influence of third parties, victory for one party and so on) (Schellen Berg, 1996). It can start from any point of interest where more than one party tries to avail the goal at the same time. It arises as a result of the incompatibility of interests between two parties fighting over a single goal or 'prize' and trying to alter the situation in terms of their own interests (Ahmar, 2003). Conflict resolution can be either the conclusion to the conflict by any means or it can be resolved through some certain specific moods of operation where a win-win situation may come out.

On the whole there are two popular views of conflict resolution, which have received much attention. First, for some conflict resolution implies merely the termination of conflict. This termination of conflict can result when one party wins over the other by way of success in war or at the negotiating table. Second, resolution means a very specific kind of an end to conflict, where the means and methods are prescribed to be non-violent, participatory and voluntary. In most conflict resolution literature, it is the latter that has gained the greatest attention (Tidwell, 1998). As it has been said that there may conflict from intra personal level to international level, their forms of resolution varies based on the intensity of the conflict and the interaction among the conflicting parties. A dispute does not involve serious institutional problems, and it can be handled through bargaining or arbitration

(Burton, 1996). It can be a problem in decision making, or can be about availing a piece of land, or distribution of money, it can include family tension etc. These types of problems occurring in a normal relationship can be settled by finding compromise solutions (Jeong, 2000). Although, in Bangladesh, we see village courts, Muslim Family Law, Family court etc. empirically we see most of the people try to resolve the conflict through informal means, family level negotiations etc. Behavioral problems in many areas of human relations have also been managed by family counseling and psychological therapy (Jeong, 2000).

### **Objective**

The study primarily aims to:

- Understand the nature of conflicts at the Upazila level;
- Find out the principal factors of conflicts at the Upazila level;
- Recommend the approaches to conflict resolution at the Upazila level.

Moreover, the study will also focus on:

- The actors of the conflicts;
- The issues of the conflicts;
- The trends of the conflicts;
- The fuels of the conflicts.

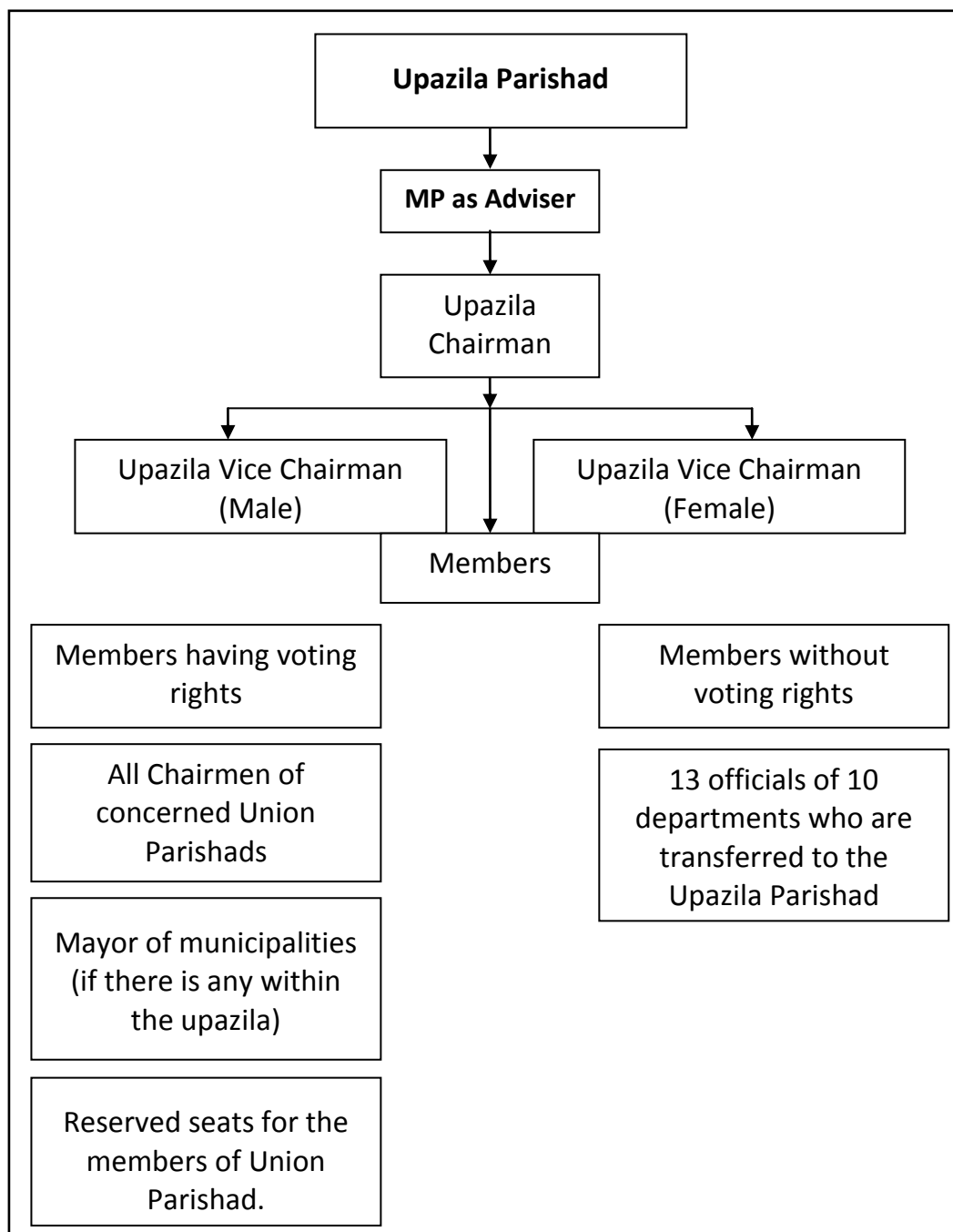
### **Methodology**

Though sometimes researcher follows a mixed approach to conduct a research, we would rather follow particularly qualitative approach. The theoretical study will be based on secondary sources while the possible approaches of conflict resolution will be researched through both secondary data and case study. The Unit of analysis will be determined by purposive sampling due to time and logistic constraints. We have taken Kumarkhali Upazila of Kushtia as a case study to understand the conflict at the local level and the approaches of conflict resolution will be suggested based on the nature and issues of the conflict at Kumarkhali Upazila. Content analysis about the conflict, roles, disputing issues and practiced approach of conflict resolution at that Upazila will be taken into account to conduct the study. Besides, the primary data used in this paper is based on one of the study findings conducted in Kumarkhali Upazila Parishad by the lead author with the assistance of UNDP in 2010.

## Stake Holders of the Conflict at the Local Level

Since we have specified our area of study in the local level as the local government, or more particularly Upazila Parishad (UZP), we took Kumarkhali Upazila as a case of study and analyzed contents that are available on Kumarkhali Upazila Parishad (KUZP).

The Parliament in 2009; unanimously passed the Upazila Parishad bill. As per the law, the Parishad will be composed of both elected representatives and government officials working at Upazila level. The composition of the Upazila Parishad is as follows:



**Figure 1:** Stake Holders of Conflict at the Local Level

## **Factors of Conflict at the Local Level**

Factors are the sources or issues of conflict. Since conflict is inherent in human nature, typically they are influenced by almost the same factors. Different factors play different role in conflict in different times. A conflict may be derived of multiple factors, or a single factor. The factors or sources fuel the actions of conflict, stimulates the actors of conflict.

While studying the KUZP case, we have found several factors of conflict which are somehow overt or covert. We have framed the factors of conflict at Kumarkhali Upazila Parishad according to the frame provided by Daniel Katz in 1965. The factors are as follows:

### ***Economic***

Economic factors are driven by ego conflict to some extents. Ego has been a prime issue of conflict at the UZP. Ego conflict between MP and UZC, UNO and UZC are so much overt. Since, the UZC aims at competing in the MP election, there is always a gap between UZC and MP. Although, it is also found that while distributing budgets for ADP different projects like TR, GR, FFW; UZC and MP ensure their share collectively so that both the parties are satisfied with their allotment.

Ego conflict between UNO and UZC also is visible in the UZP. Because, when MP and UZC are on the same boat regarding share allocation, UNO cannot exercise his authority over them. Besides, authoritative supremacy has also been a viable issue of conflict between them.

Union Parishad Chairman (UPC) feels deprived under the current UZP system since they cannot chair any meeting while they could do so in the early system. Chairing meeting enables a UPC to influence proposal and to allot projects for his UPCs.

There is implicit cold relationship between the Upazila Vice Chairman meaning UZVCs and UZC. According to them the UZC enjoys enormous power in the UZP. The UZVCs have no role to distribute funds and allocation among the UPCs. The UZVCs consider the UZC's as a dictator in the UZP. They have shown their frustration not getting luxurious transport like the UZC. In the public functions the UZVCs do not get the treatment as of the UZC.

As per rules the funds are to be distributed among the UPCs on the basis of population, area and degree of poverty. But it is alleged not to follow these criteria.

### *Value*

Since administrative part is the other side among the two sides of UZP, the administrative stake holders want to see them as a representative of central government, not the local government.

Different other officials of different transferred departments consider them as the representative of their distinct departments. They have accountability to their own departmental authority, not to the UZP.

The UZC does not give enough time in UZP as required. Besides he is not familiar with all the legal frameworks of operation in UZP.

The UNO is concerned about his jurisdiction under the government. Thus he does not want to take the responsibility.

The UPCs are not given priority in UZP's decisions, especially in funds distribution. The decisions are expected to be bottom-up.

### *Power*

Since all of the elected persons in UZP have their own political background and support, they try to exercise political power and authority over one another which create asymmetrical relationship among the stake holders of UZP.

Since UZC has a political ambition to be MP, he tries to supersede MP by any means.

Intra-group political set up also plays important role in conflict formation. For example, in KUZC, the KUZC was affiliated with Awami politics. But in the general election (2001), he competed as a rebellion candidate of Awami League. As a result he was sacked from the party. After the UZP election he wants to be in the mainstream Awami League with the support of the sitting MP. On the other hand, this relationship helps them to play dominating role in the KUZP monthly meetings and can take away half of the total allocation of the UZP in spite of having no allocation in their name.

Besides, intra-group political factions, we have found inter group political factions in the UPC stake holders of UZP. In case of KUZP, One group belongs to Awami League (7) and the other group belongs to BNP (4). Even the Awami minded do not get their due allocation. But they do not shout for this. Because, these Awami affiliated UPCs



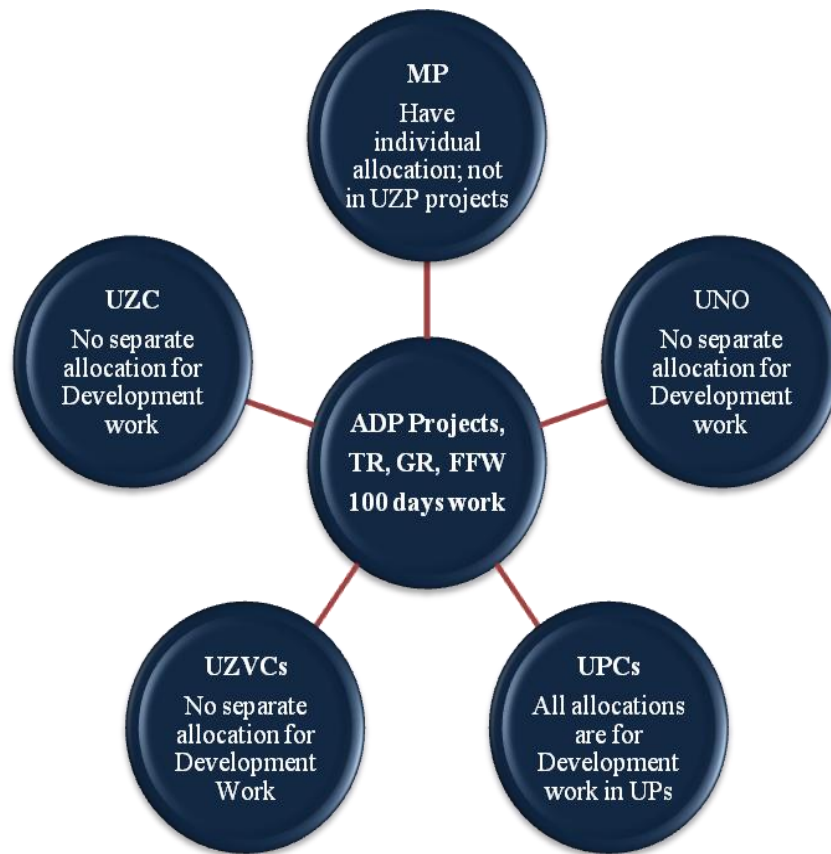
are scared of being deprived of getting the MP's block allocation. There is also apprehension not to get party nomination in the coming UP election if the UPCs do not comply with the decisions of the MP and UZC regarding disbursement of funds, allocations and other issues. The BNP oriented UPCs protest do not bear any significance as they don't have right of giving note of dissent. Their (BNP backed UPCs) objections do not get much strength as they did the same thing while they were in power. They do not bear moral courage to protest injudicious fund distributions.

### **Nature of Conflict at the Local Level**

So far the analysis of the contents and case study of KUZP, it is conceivable that the conflict grows in a distinct nature. It is all about exercising power and maximizing economic gain. The MP tries to dominate the UZP, the UZP tries to dominate the UPCs and all of them try to dominate the government officials. On the backward, the government officials have the executive authority and do not want to count on the elected local representatives, The UPCs want to influence the UZC since they have more voters in the UZP, and the UZC wants to supersede the MP. Usually the female elected representatives are found less significant in decision making, argument on fund allotment and in the relevant cases. The dominance is exercised as top-down approach and the influence is exercised as bottom-up approach. Both the dominance-influence strategies are aimed at maximizing the economic gain for own constituency. It is openly conceived that the local government elected representatives have their personal monetary gaining from the projects.

So the conflict starts from the decision making level, although asymmetrical in power exercising, however, there is a check and balance probability since most of the voters of a decision making process are UPCs. While studying the case of KUZP, it has been found that the UZC has a farm influential ability to calm down the aggrieved persons in the meeting. Besides, the decisions are taken by the MP, UZC and UNO. The other officials and locally elected representatives hardly have any practiced influence in the decision making process.

This process gives birth to the conflict among the different stake holders of UZP. Since, the decision is about money disbursement, it is quite fuelling to grow up the conflict with hidden nature.



**Figure 2: Fund Allocation Reality of Different Stake Holders in UZP Conflict Resolution Approach**

There are some approaches of conflict resolution which are largely practiced. Conflict resolution as a strategy for a marked reduction in social conflict consists of the following practices: coercion, negotiation, bargaining, adjudication, mediation and arbitration (Ahmar, 2003). Conflict resolution works in phases. First is the prevention and the second is reduction of the intensity of conflict and finally to an ultimate resolution. Rashid (Rashid, 2005) described 7 approaches of conflict resolution. These are:

1. Tolerance
2. Avoidance
3. Negotiation
4. Mediation
5. Arbitration
6. Adjudication
7. Coercion

### ***Tolerance***

So many grievances are to be tolerated just to avoid conflict. It usually happens in the state level, between the strong power and weak power.

Or it can take place between realism practitioner and liberalism practitioner. All that matter is to avoid worsening the situation.

### ***Avoidance***

It refers to adjustment to the situation. In other word, one party keeps itself away from the situation that is the root of a conflict.

### ***Negotiation***

The negotiation approach is a widely used method in the conflict resolution. It happens in five steps. These are preparation, discussion, putting a proposal, bargaining, reaching agreement (Rashid, 2005). A negotiator must have patience, insightfulness, persistence, determination and excellent communication skill.

### ***Mediation***

In a mediation, a third party acts as a middle person where negotiation is unlikely to be successful. The mediator suggests the terms of settlements of ending conflicts and examines the issues and offers to settle the conflict.

### ***Arbitration***

It is a quasi-judicial mode of settlement among states in which the parties agree to one or more arbitrators to make a decision on a conflict (Rashid, 2005).

### ***Adjudication***

It is a settlement process by a judicial authority usually practiced between states or in criminal cases.

### ***Coercion***

It is a forceful or aggressive method of conflict resolution that engenders a win-lose situation usually practiced by the stronger party on the weaker party.

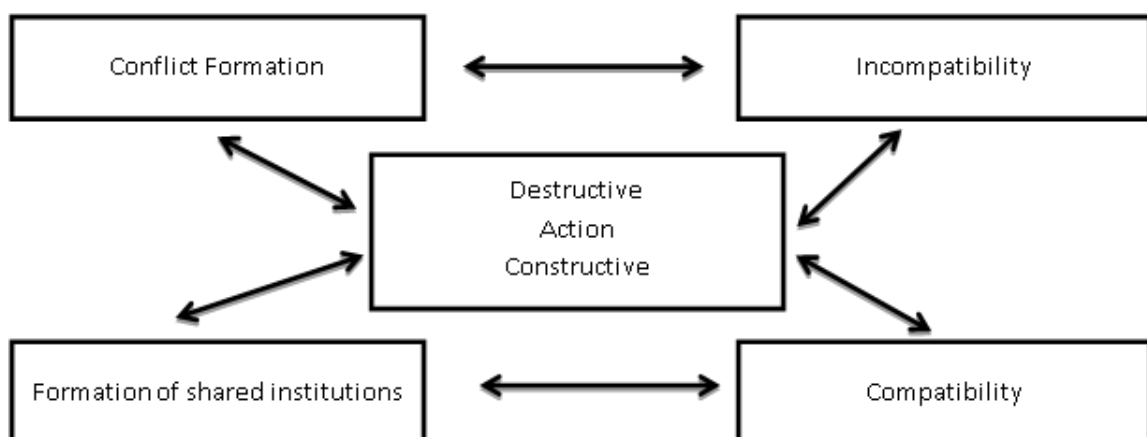
Throughout the discussion, it has been understood that there are to be relationships among the stake holders of UZP, although from different political parties, however, the relationship is the main key to development. All the projects are brought for local development. So, any bitter relationship will create obstacle to local development of a particular union or municipality or upazila itself. So a good relationship is a prerequisite for this set up. On the other hand, to resolve the conflict among the stake holders, since the conflicts are

about decision making, decision exercise, it is hardly possible to interrupt in the decision making process for any outsider due to legitimacy and jurisdictional complexities. Moreover, it is unlikely that the UZP will welcome the outsider to talk and provide any suggestion to them for their local affairs.

However, since the projects are being implemented under the Upazila Parishad, we have found that most of the conflicts are resolved by the coercion and tolerance strategy. Because, the UPC has the influence over the UPCs to convince them by pressure or by words and the UPCs follow the tolerance method. For the ambition of a better political future, the downward actors of this conflict remain silent, although enraged too.

Considering the above the circumstances, a negotiation process is the best conflict resolution approach to resolve the local level conflict. Because, in this process, the conflicting parties engage directly, they discuss their problems, interests, demands, they bargain over issues they concern about and they mutually reach an agreement. Besides the negotiation process, avoidance approach may also be practiced in the conflict resolution process of the Upazila Parishad. The avoidance process can be implemented by enhancing the resource distribution capacity and making the availability of fund regular and accessible to the stake holders. Since the conflict is about their development projects in their own constituencies, and scarcity of fund and resources are playing as the fuel of conflict, so the avoidance process will ease the situation and will create a win-win situation for the both ends.

Peter Wallensteen provided an understanding of conflict resolution with the aid of the following diagram (Wallensteen, 2002).



**Figure 3:** Conflict Resolution Framework

In the conflict formation stage, we find the roles of UZC, MP and UNO that their roles are discriminating to the UPCs and this leads to the birth of conflict. Then it goes to the stage of incompatibility and the other stake holders feel deprived about the decision making process and fund allotment. This is because of the destructive actions which are taken by the MP, UZC and UNO. This process leads to incompatibility. At this stage the negotiation approach should be applied to take the action constructively. The UPCs will bargain over issues, otherwise they might stay away from giving votes to the decisions. Or they can use bottom-up influencing policy to influence the UZC. If the negotiation approach is applied, then issues will be addressed properly for all the interest groups, in other words, UPCs, UZC, UNO, MP, UZVC etc. By reaching a mutual agreement in the decision making process, the constructive action will lead the situation to the stage of compatibility and then the whole UZP set up will work effectively. A negotiation process is the best approach for this conflict because of the organizational set up of UZP. The top stake holders have power and the bottom stake holders have more people in the set up. So this is a perfect platform for bargaining over disputable issues and to reach a win-win situation.

### **Conclusion**

Conflict is inevitable human nature. Lack of distributable resources and lack of integrity and efficiency in resource distribution engender conflict. The conflict at the local level in Bangladesh also is born out of these roots. Everybody wants to maximize his economic gain, wants to exercise his power over the downward people and uses the power to convince the upward people and finally wants to enrich his personal, social and political values to show them off. In a conflict resolution process, there must be a symmetrical relationship established in order to produce a win-win situation. Any outcome of conflict other than win-win situation may reproduce the conflict in the future. This is also found since the coercion and tolerance strategies are practiced in the conflict resolution process at the local level. As a result conflicts are sustained and escalated years after years. So, among all practiced and available strategies of conflict resolution, negotiation and avoidance approach may bring about the most successful and peaceful outcome of the conflict at the Upazila Parishad, in other words, at the local level.

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## 12. Terrorist Tactics and Counter Terrorism Challenges in Bangladesh

Md. Jahidul Islam

### Abstract

*This study focuses on the terrorist tactics and counter terrorism challenges in Bangladesh. The year of 2015 is marked by periodic clandestine terrorist attacks, which increase anxiety and fear among people. Most common targets of terror outfit are the atheist bloggers and online activists associated with Sahbag movement, Shia and Christian minority, foreigners working in Bangladesh, security personnel and so on. In each case of terrorist attacks, few outfits including Ansarullah Bangla Team (ABT), Al-Qaeda in Indian Subcontinent (AQIS), and Islamic State (IS) claimed responsibility. But, the government vehemently rejected these claims and refused to acknowledge the presence of any sorts of terrorist outfit like Islamic State (IS), rather indicate to domestic outfit as possible actor. Thus, it's a contested debate that who is responsible for recent terrorist attacks in Bangladesh? This study will not directly investigate the possible actors rather will try to identify the tactics used by modern terrorist groups and will co-relate with the incidents of Bangladesh. More specifically, this paper attempts to identify the terrorist actors through analyzing terrorist tactics working in disguise. It will also analyze the key counter terrorism challenges in Bangladesh and will recommend few strategies to fight against extremism and religious fanatics.*

**Keywords:** Terrorism, Terrorist Tactics, Counter Terrorism Challenges, Jamat-ul Mujahedin Bangladesh (JMB), Islamic State (IS).

### Introduction

On 17 August 2005, nearly 300 bombs were exploded in 63 districts out of 64 in Bangladesh. An outlawed terrorist outfit called Jamat-ul Mujahedin Bangladesh (JMB) claimed responsibility of the attacks. Khaleda Zia, then Prime Minister of the country vehemently condemned the attacks as cowardly and said “the attackers are enemies of the country, people, peace, humanity and democracy (BBC News, 17 August 2005).” In addition, Indian government also expressed

serious concern over the incidents. The government formed a new security cell called Rapid Action Battalion (RAB) to counter the terror outfit and successfully handled to bring them under control. The leadership of the organization gradually was arrested and rest of them became incipient for strong security presence and good political atmosphere. But, the year of 2015, one decade after the largest terror blow in the country, terrorist outfit re-emerged and conducted some clandestine target based killings.

Most important are the subsequent killing of bloggers and online activists associated with Sahbag Movement or *Gono Jagoron Mancha*, killing of two foreigners including a Japanese who converted to Islam and an Italian aid worker; attacks on publishers, killing two members of law enforcing agencies, attack on a Military person, bombing on the holy Tazia Procession of Shia community in midnight at capital city Dhaka, attacks in a Shia mosque in Bogra, a northern district of the country, threat to kill eminent scholars of the country if they don't stop talking against religious extremism, and death threat to Christian preachers.

In each case of terroristic attacks, few outfits claimed responsibility including Islamic State (IS), Ansarullah Bangla Team (ABT), and Al-Qaeda in Indian Subcontinent (AQIS). External powers including the United States is incessantly creating pressure on government to recognize the presence of Islamic State (IS). But, the incumbent government vehemently rejected their claim of any kind of presence of terrorist organizations like Islamic State on the soil of Bangladesh. Though, Islamic State in its English Magazine *Dabiq*, titled as "Just Terror" had taken responsibility of committing all these terror acts. Thus, debate on hypothetical terrorist actors' who are responsible for such violent activities already exacerbated sharp division in political area.

This study will not directly explain who are liable for such terrorist acts but will find out the actors through analyzing the nature of terrorist tactics using by perpetrators. Moreover, it will also analyze the exiting counter terrorism challenges facing by Bangladesh. Finally, it will recommend some strategies to counter terrorism in the country.

### **Conceptual Framework**

Extensive literature on terrorism could not unanimously define the term terrorism. The League of Nations firstly tried to define the term in its international convention which was drafted in 1932 but never came into existence. The term is associated with many problems and academicians are reluctant to propose the definition of terrorism.



However, there is numerous definition of terrorism. One of the widely accepted definition of terrorism provided by Schmid which refers to “an anxiety inspiring method of repeated violent action, employed by (semi) clandestine individual, group, or state actors, for idiosyncratic, criminal or political reasons...whereby the direct targets of the violence are not the main targets. The immediate human victims of the violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target of population, and serve as message generators (Schmid, 1988).” Another definition states that “terrorism is the deliberate creation and exploitation of fear through violence in pursuit of political change (Schmid, 1988).” The League of Nations Conventions (1937) define terrorism as “all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public (UNDC, 2015)” A small definition offered by A. P. Schmid to United Nations Crime Branch (1992) which define “act of terrorism = peacetime equivalent of war crime” Thus generally terrorism refers to the act of violence intended to create fear and anxiety among certain groups of people to attain certain goals.

To understand the modern religious terrorist organization a brief review of waves of modern terrorism is crucial. There are four important waves of modern terrorism. Rapoport (2012) argues that the modern terrorism began in 1880 from Russia. *Anarchist wave* was the first truly experience of modern terrorism. The consequent waves were the *Anti Colonial Wave*, *Left-Wing Wave* and the fourth wave is the *religious wave*, which is running at present time. He predicted that this wave can continue until 2025 and may disappear (Weinberg, 2006).

Weinberg termed the fourth wave as “new terrorism” and explained this dimension by referring the incident of attack on World Trade Centre and Pentagon on September 11, 2001. He also termed this new wave of religious terrorism which started since that attack on that day as the “first war of 21<sup>st</sup> Century.” He also analyzes that this new wave religious terrorism in modern time followed by three important events. The first was the Iranian Islamic Revolution, which support to build the Hizbollah (the Shiite Jihadi group) as a religious para-military force in Lebanon. Secondly, the Soviet Invasion in Afghanistan (1979-89) and the rise of al-Qaeda under the Leadership of Osama bin Laden by direct and indirect support of U.S and Muslims countries. Finally, the concept of “new millennium” and the “end times” that one group of Christina community believed that the year 2000 was the end of the world. To save the world they took the way of mass suicide in different

places of the world. In addition, the rise of Islamic State added a new chapter in the new religious terrorism.

The rise of new terrorism that is the religious wave has few basic characteristics. Weinberg identified three important aspects including the religious nationalism; access to and drawing the attention of mass media; and use of Weapon of Mass Destruction (WMD) and the threat to use the Chemical Biological Radiological and Nuclear Weapons (CBRN) (Weinberg, 2006).

The Jihadi Organization is the product of fourth wave. Weinberg states that after the Iranian Islamic Revolution and the withdrawn of Soviet Union from the Afghanistan, the world witnessed many religious based radical terrorist organizations. The Armed Islamic Group of Algeria, the Lebanese Shiite Hizbollah and many Sunni Muslim Jihadi organizations in Afghanistan, Pakistan, Kashmir, Philippines, Palestine, Indonesia, Xinjian of China and in other places of world. The Sunni based radical groups launched operations against non-Muslim Ruler or infidel and against false Muslims ruler, according to their justification. The most important Jihadi Organization of the new wave is al-Qaeda and the newly born ultra-modern Islamic State (IS).

All terrorist organizations have some basic objectives and targets of operations. For example, Al-Qaeda has clear objectives. These objectives include establishing Islamic Khilapah; expelling westerns from the hub of Islam, especially from Muslim countries; to destroy Israel; to fight against false-Muslims ruler and non-Muslim infidels; reducing American cultural and military influence in Middle East. The group also shows its responsibility for greater Muslim *ummah*. Al-Qaeda says that Muslims are tortured and repressed in different parts of the world. So, jihad is the only way of getting ride from the repression and crusaders. It has established networks across the Muslim worlds, and many radical groups operate their activities with the allegiance and support from al- Qaeda. For example, Islamic Movement of Uzbekistan (IMU), Lashekar e- Tayeba of Kashmir, Moro Liberation Fron and Abu Sayyaf Group in Phillipines, Jemaah Islamiyah in Indonesia and other groups had direct and indirect link with al Qaeda (Weinberg, 2006).

In addition, the Islamic State (IS) objective is to bring Muslims under a single entity. It has a vision of establishing the *Shariah Law*. One of their visionary goal since the very beginning was to establish a permanent *Islamic Khilapha*. The establishment of Khilapah was the grand strategy of the group. As Dabiq (2013, issue 1) affirms that “the

goal of establishing the Khilapah has always been one that occupied the hearts of Mujahidin since the revival of Jiahd in this century.” The territorial objective of visionary Khilapah includes the greater area from Atlantic to Gulf. The concept of Hijrah (emigration) is very much important to ISIS leadership. They think emigration as one of the pre-condition of jihad. Except emigration the jihad may be successful. Many current leaders of the group went in Afghanistan during the battle against communist Russia as part of *hijrah* for jihad (Dabiq 1<sup>st</sup> Issue, July 2014).

ISIS also requests the allegiances of all active and passive supporters and religious terrorist groups to the current leadership of Islamic State (IS). According to their propaganda, Islamic State declared by Bagdadi reflects the true *imamah*. To show allegiance they suggest to their supporters to migrate to their declared *Dawla al-Islamiya* from the territory of *Kufr* and *Taghut*. And, those who are not capable to migrate physically, the group requested to show allegiance in one's community and spread the ideology of the group. The group also suggests to its supporters that in case of any problem of declaring open allegiance, then any silent or disguise method of allegiance could be used. Thus, the group wants to attain the recognition of majority Muslims of the world and cherish dream to be the single entity of Muslim *ummah*. Though, their vision looks like foolish thinking or day-dream, but the recent phenomenon of open allegiance of different terrorist groups in different countries, like Pakistan, indicates few aspects of future threat (Dabiq 1<sup>st</sup> Issue, July 2014).

The leadership of ISIS sees the world is divided into two camps. The Chief of the Islamic State, Abu-bakar Al-Bagdadi said in his first public speech that “O Ummah of Islam, indeed the world today has been divided into two camps and two trenches, with no third camp present: The camp of Islam and faith, and the camp of *kufir* (disbelief) and hypocrisy -the camp of Muslims and the mujahidin everywhere, and the camp of the Jews, the crusaders, their allies, and with them the rest of the nations and religions of *kufir*, all being led by America and Russia, and being mobilized by the Jews (Dabiq 1<sup>st</sup> Issue, July 2014).”

All terrorist organization uses some specific operational tactics to achieve its strategy. Tactics are the techniques and method of battle in battle field. Different terrorist groups used various tactics. One group cannot be categorized following the techniques of others. Comb rightly argued that it is difficult to evaluate the concurrent terrorist's tactics' by the past existing terrorist organizations method of combat or techniques. Instead of difficulties, Combs demonstrates few tactics used by terrorist groups in the twenty-first centuries by evaluating wide varieties of sources. He recognizes that his list is not although exhaustive, but “it features most the major tactics employed by terrorist

to date.” He mentions the following tactics, which include *bombing, arson, hostage taking and kidnapping, assassination and ambushes, aerial hijacking, sabotage, threat/hoax, Chemical-Biological attack, and nuclear threat* (Combs, 2003: 29-36). To analyze these tactics Combs mentioned several examples of different terrorist groups and incidence.

These characteristics are not fixed and common to all organization. It may be vary organization to organization and group to group. Sometimes terrorists follow more strong tactics than any country’s security and military forces. As Comb, argues that terrorists are more trained and pursue good techniques than the country’s police and security forces. Before analyzing terrorist’s tactics Combs mentioned about training to the members or activists of the group. To analyze “training topics: what do they learn at camp?” he asserts few aspects of training based on the concurrent tactics used by different terrorist groups. More specifically, Comb also evaluates the methods, which are learned by terrorist’s members in the camp based on the data of tactics of attacks carried out by various radical groups over the time. Most of the training includes *arsons and bombs operating including the explosive bombs and incendiary bombs; assassination and ambush techniques; extortion, bank and armoured car robberies; disguise techniques, clandestine travel, recruitment, and communications; intelligence collection and counter intelligence methods; how to operate various types of weapons including explosives, small arms, automatic weapons, portable rockets, and radiological chemical, biological and nuclear weapons*. To prove these training topics on terrorist tactics he draws different examples (Combs, 2003: 118-129).

The new terrorism is linked with the Wahabi-Salafis ideology. It can be summed up by six major characteristics: “(1) it is literalist; (2) it is anti reason and anti philosophy; (3) it is anti-culture; (4) it is anti-nomian (that it refuses to accept traditional authority); (5) it is internally unstable (it has no internal mechanisms or check or balance), and (6) it is aggressive and repressive (Olivet, 2002: 43).” This new terrorist groups use all sorts of barbaric tactics. These tactics through challenges to any given countries stability and create a psychic of fear among people which requires immediate counter terrorism initiatives by government to fight the terrorism. In addition, overcoming existing challenges are also important to fight against terrorist groups.

Moreover, the link between leadership and operational tactics is important to attain the goal of terrorist groups. The senior leadership define the strategies of the group, set which objects to be strike or not and the operational leadership guide at field level to active operatives to carry out the operations. Maras affirms the link of senior leadership and operational tactics. He also discusses on terrorist cell. Cell is the small unit of terrorist groups. There are five types of cell according to

Nance (2008) cited in Maras (2013). First one is *Command and Control Cell*. This cell consists of internal and external supervision and make final decision of execution of attack. The member of this cell may be leader of the following cell. Second is the *Tactical Operational Cell*. This cell consists of individuals or groups who actually carry out the operations. It also familiar as combat cells, attacks cells, actions teams or operational cells. Third one is *Intelligence Cell*, which collect data and make recommendations, select target and provide description and location about the target, security environment etc. Fourth one is *Logistic Cell*. This group consists of individuals or groups who provide supplies or support other cells. It includes bomb makers, black marketers, doctors, lawyers, bankers, couriers, and others needed in an emergency. Also referred to an auxiliary cell, support cell, or assistance cell. Finally is a *Combined Cell*. This cell performs all activities of the above mentioned four cells in coordinated effort. According to Baras, al-Qaeda uses this combined cell to carry out tactics. In addition a *Sleeper Cell* is fully dormant in certain geographical area and become active and manifest when necessary and conduct operations (Maras, 2014).

These cells are very much important to conduct operations by terrorist organizations. These cells employ different tactics following the direction or decision of command cell and the command cell include the leaders of the groups. The relationship between central command and control cell is evident in different literature on terrorist organizations.

From the above literature we can generate few expectations that terrorist organizations use different types of tactics targeting objects of attacks to attain the terror goals as per as the guideline of the organization. Goals and objects of attacks vary group to group. There is relationship between terrorist tactics and terrorist organization and its leadership. Nature of terrorist groups and its tactics increases the challenges for the government to counter the outfit. Challenges may stems from social, economic, security and political aspects which requires effective strategy to fight against terrorism and extremism.

To conduct this explanatory study data will be analyzed in qualitative manner. Most of the data is collected from secondary materials including newspaper reports and articles. The study will basically analyze newspaper data of 2015 to comprehend the terrorist phenomenon. Data is collected from The Daily Star, the renowned English newspaper of Bangladesh. But, to analyze the terrorist related reports we mentioned a brief historical overview of terrorism since 2004-2015 in Bangladesh.

## Analysis

This part will explain brief historical roots of terrorism in Bangladesh, recent terrorist actors, their tactics, counter terrorism challenges and will offer a strategy to fight terrorism in Bangladesh.

### Historical Roots of Terrorism in Bangladesh

Bangladesh as a Muslim majority country never faces serious challenges of terrorism since its Birth in 1971. But, in the post liberation period the country faced leftist insurgency in different districts which disappeared gradually. Moreover, the state face serious challenges for 25 years insurgency in the Chittagong Hill Tracts (CHT) from the tribal Chakmas' Parbatya Chatragram Janasamhiti Samiti known as *Shantibahini* lead by Shantua Larma for the demand of autonomy and self determination which was ended through a peace accord in 1997 (Rashiduzzaman, 1998).

In the phase of new religious terrorism, the region has also an old terror network of Al-Qaeda. Thousands of Mujahedeen's across the world participated Al-Qaeda to fight against communist Russia during the Soviet-Afghan War. Many Bangladeshi citizens also participated in Afghan War at that time. But, that network never committed any terror works on the soil of Bangladesh and never claims any responsibility (Choudhury, 2015).

Surprisingly, the old generation of extremists came from poor uneducated or madrassa educated youths, while in the current period most of the militant's members are from well established mainstream English medium run graduate institutes hailing from middle or high income families. They have a global connection with established terrorist organizations. Al-Qaeda Chief Ayman Al Zawahiri declared in September 2014, his new affiliate in South Asia including Bangladesh (New Age, September 5, 2014).

After the 9/11 incident the wave of new terrorism in the name of Islam got momentum whole over the world. The first terrorist attacks in Bangladesh draws huge international attention was the deadly grenade attacks targeting an assembly of Prime Minister Sheikh Hasina, then opposition leader in Rama garden in the Capital Dhaka city on 21 August 2004. Eighteen people have been killed and hundreds injured in a number of explosions at the time (BBC News, 22 August, 2004). Mufti Hannan, then the chief of *Harka-tul Jihad's (HUJI)*, an outlawed terrorist organization claimed responsibility of the attack. Finally, on 17 August 2005, nearly 300 bombs were blasts in 63 districts out of 64 including the capital city of the country. An outlawed terrorist outfit called Jamat-ul Mujahedin Bangladesh (JMB) lead by Shykh Abdur Rahman and Siddiqur Rahman (alias Bangla Bhai) claimed responsibility of attacks (Choudhury, 2015). Prime

Minister Khaleda Zia condemned the attacks as "cowardly". "The attackers are enemies of the country, people, peace, humanity and democracy," she said. Someone claims that JMB has an earlier connection with Al-Qaeda network, through the claim was never proven. To the immediate reaction, then the Indian Government expressed "serious concern and strong condemnation of the incident." In addition, Motiur Rahman Nizami, the then industry minister, from Jamaat-e-Islami blamed India for the blast. Moreover, Moudud Ahmed, the then law minister, from Bangladesh Nationalist Party said "If they try for 100 years, they will not turn Bangladesh into a Taliban state". The then chief cleric Ubaidul Haq remarked to thousands of worshippers at Baitul Mukarram Mosque, "Islam prohibits suicide bombings. These bombers are enemies of Islam. It is a duty for all Muslims to stand up against those who are killing people in the name of Islam ([www.revolvy.com](http://www.revolvy.com))."

A new anti-terror force called Rapid Action Battalion (RAB) was formed primarily to tackle the terrorist outfit. The terrorist outfit that had sprung up in Bangladesh by that time, such as Jamat-ul-Mujahideen Bangladesh (JMB), Harkat-ul-Jihad (Huji) and an extension of Pakistan based Lashkar-e-Taiba (LeT), were strongly dealt with. Although, most of these organization lost their leadership by 2006 for strong counter terrorism measures by the government, but new leadership continued to evolve and all indicators suggests that they are in the process of regrouping and rearming (Choudhury, 2015).

Again, in the year of 2015 the country experienced several terrorist incidents in the country. Surprisingly, most of the blogger killings have been claimed by Ansarullah Bangla Team (ABT). In addition, one killing also claimed by the Al-Qaeda Network of Indian Subcontinent (AQIS). Finally, on November 2015, Islamic State (IS) in its last issue of *Dabiq* "Just Terror" acknowledged the recent terrorist attacks in different place of Bangladesh (Dabiq Issue 12, 2015:37-42). It also claimed the presence of its security cell operating capital city and rural area. ISIS is the only organization which formally claimed the responsibilities of most of the incidents. For that reason, the following part will offer in-depth analysis about the terrorist tactics of Islamic State in Iraq and Syria and will try to identify the relationship with the recent incidents in Bangladesh and will try to identify actors, tactics and factors.

### **Tactics and Actors of Terrorism in Bangladesh**

It's noteworthy to mention that Islamic State in its English Magazine claimed the responsibility of terrorist attacks in Bangladesh. Before going to analyze the tactics and target of attacks in Bangladesh, it's necessary to look into the tactics and objects of targets used by the group in Iraq and Syria.

### ***Tactics of Islamic State in Iraq and Syria***

All terrorist groups used different tactics to attain their goals. Islamic State (IS), the notorious salafi-jihadi organization fighting in Iraq and Syria used certain tactics all as endorsed by its senior leadership. Its operational tactics are more militaristic and aggressive than other groups like Al-Qaeda. Moreover, its target of objects is also different than others groups. The group targets general Shia communities as its legitimate target. Its targeted groups are also Christians, Jews, Americans, Europeans, British and all people including Muslims who don't support the cause of the group. The groups used certain tactics in Iraq and Syria from its inception. These tactics are being used by the group have been studied by different research institutes and scholars. Journalists are continuously reporting different tactics of warfare applied by the group. Dabiq (2013 Issue 1) argues that the group members of ISIS are using different tactics or methods that lead Iraq and Syria in constant chaos, instability and war, and destabilize the country; destroy institutions and penetrate the security system. Most common tactics used by mentioned in its English Magazine *Dabiq* can be summed up as follows: Vehicle bombs, IEDs, *Istishhdiyyin* (suicide-bombing, self martyrdom), target based killing and assassination, apostate and rafidah killing from the security forces, gun battle, military campaign, blown up border security stations, apostate/Murtadin Repented, capturing cities, cantonment, military and air bases, confiscating armaments and vehicles, taking prisoners of war, establishing check posts , capturing oil fields and industries (drug industries) and so on.. Except these tactics ISIS also practices: hostage taking, ransom, beheading and slaughtering, extortion/ looting banks (Dabiq 12<sup>th</sup> Issue, 2015).

Since the very beginning of appearance of JTJ after the start of Iraq War under the leadership of Zarqqwai the group practiced different tactics in conducting operations. By the phases of time the pattern of tactics, its dimensions and intensity has been changed. But this study will evaluate major tactics used by group. The tactics are being used by the group have been studied by different research institutes and scholars. Journalists are continuously reporting different method of warfare applied by the group. Dabiq (2013 Issue 1) argues that the group members of ISIS are using different tactics or methods that lead Iraq and Syria in constant chaos, instability and war, and destabilize the country; destroy institutions and penetrate the security system.

To keep Iraq in maximum chaos and instability, the groups used various types of tactics. These are vehicle bombs, Improvised Explosive Device (IEDs), *Istishhdiyyin* (suicide-bombing, self martyrdom), target based killing and assassination, apostate and rafidah killing from the security forces have been practices. Dabiq



affirms that the group target of attacks include apostates (Iraqi army, police, and intelligence forces); the Rafidah (Shia markets, temples, and militias); the Kurdish secularist (refers to Barzani and Talabani partisans); and also include the Sunni democratic political parties members and leaders; and U.S forces. In contrast, the English Magazine of ISIS claimed that the group' operations never targeted any Sunni public places and gathering. They blame for the contrary claim of apostate and crusaders media. It also blamed that different terrorist attacks on holy places of Sunni was carried out by Rafidah (Shia militia) and crusaders to make mujahidin culprits (Dabiq 1<sup>st</sup> Issue, July 2014: 37).

The operational areas under ISIS leadership were divided across geographical area. *Wilayat* system has been implemented by the organization to carry out operation and to administer the territory under its control. The Arabic World *Wilayat* refers to "state" or "mandate." This *Wilayat* is used to refer the area under ISIS control. For example, the *Wilayat Aleppo* and *Raqqa* refer to that part of Aleppo or Raqqa city under the siege of ISIS (Caris & Reynolds, July 2014).

### ***Terrorist Tactics and Object of Target and Actors in Bangladesh***

In 2015, Bangladesh witnessed some killing of secular bloggers and online activists associated with Shabagh Movement or *Gono Jagoron Mancha*;<sup>2</sup> killing of two foreign citizens including an 'Italian aid worker'<sup>3</sup> and a doctor<sup>4</sup> and a Japanese national<sup>5</sup>; killing two members

<sup>2</sup> "Blogger Avijit Roy hacked to death", *The Daily Star*, February 27, 2015. (accessed March 1 2015), "Knife attack kills Bangladesh blogger Oyasiqur Rahman", *The Daily Star*, March 31, 2015, (accessed April 2, 2015). "Blogger killed again in Bangladesh- Ananta, member of Mukto-Mona blog, hacked near his house in Sylhet", *The Daily Star*, May 13, 2015: (accessed May 1, 2015). "Bangladesh blogger Niladri hacked to death in Dhaka-Killers brandishing machetes storm Goran house in broad daylight, hack Niladri to death; 'Ansar Al Islam' claims responsibility thru' email. *The Daily Star*, August 08, 2015. <http://www.thedailystar.net/frontpage/blogger-killed-once-again-123493> (accessed August 2, 2015).

<sup>3</sup> See, "Italian aid worker killed in Bangladesh 'by IS.'" *BBC News*, 29 September 2015. <http://www.bbc.com/news/world-asia-34389692> (accessed October 10, 2015). "ISIS claims responsibility of Italian aid worker killed in Bangladesh-This is the first time that the ISIS has claimed responsibility of an attack in Muslim-majority Bangladesh." <http://indianexpress.com/article/world/neighbours/italian-aid-worker-killed-in-bangladesh-isis-claims-responsibility/#sthash.cvdQnbRB.dpuf> (accessed November 10, 2015).

<sup>4</sup> "Italian doctor comes under gun attack" *The Daily Star*, November 19, 2015, <http://www.thedailystar.net/frontpage/italian-doctor-comes-under-gun-attack-174673>, (accessed November 30, 2015).

<sup>5</sup> "Japanese man shot dead in Rangpur-Killers flee on bike; 'IS claims responsibility." *The Daily Star*, October 04, 2015.

of law enforcing agencies;<sup>6</sup> attack on a Military police<sup>7</sup>; bombing in *Hossaini Dalan* during the holy Tazia Procession of Shia community in midnight at capital city Dhaka<sup>8</sup>; target based attacks on shia holy places including mosques,<sup>9</sup> attacks on publishers<sup>10</sup>; attacks in a Shia mosque in Bogra,<sup>11</sup> bombing near *temple*,<sup>12</sup> threat to kill eminent citizens of the country,<sup>13</sup> attacking Christians minorities and death threat to many preachers<sup>14</sup> and target based killing of *khadem* of *majors and pirs*.<sup>15</sup>

Simultaneously, these terror acts are being conducted in urban as well as remote areas. In each case of terror attacks, few outfit claimed

<sup>6</sup> “Policeman killed in fresh Bangladesh attack- Another critically injured as a gang attacks checkpoint, opens fire while leaving”, *The Daily Star*, November 05, 2015.

“Fatal attack on police”, *The Daily Star*, November 05, 2015.

<sup>7</sup> “Military police stabbed”, *The Daily Star*, November 11, 2015, Available at: <http://www.thedailystar.net/frontpage/military-police-stabbed-170485>, (accessed: December 4, 2015).

<sup>8</sup> “Bangladesh’s JMB militants behind it.” *The Daily Star*, November 27, 2015. <http://www.thedailystar.net/frontpage/jmb-men-behind-it-178876> (accessed December 5, 2015).

<sup>9</sup> “It’s suicide bombing- Evidence from Ahmadiyya mosque spot, autopsy suggest dead youth was bomber.” *The Daily Star*, December 27, 2015. <http://www.thedailystar.net/frontpage/its-suicide-bombing-192931> (accessed December 28, 2015).

<sup>10</sup> “Freethinking Mauled Once Again.” *The Daily Star*, November 01, 2015. <http://www.thedailystar.net/frontpage/free-thinking-mauled-again-165493> (accessed December 29, 2015).

<sup>11</sup> “Gun attack kills 1 at Shia mosque in Bangladesh.” *The Daily Star*, November 27, 2015. <http://www.thedailystar.net/frontpage/gunmen-kill-one-bogra-shia-mosque-178888>, (accessed December 15, 2015).

<sup>12</sup> “Bomb blasts near Kantaji Temple, 6 hurt at Jatra pandal; motive unknown”, *The Daily Star*, December 06, 2015, Available at: <http://www.thedailystar.net/frontpage/bomb-blasts-kantaji-temple-183034>, (accessed December 10, 2015).

<sup>13</sup> See, “CPB chief gets death threat.” *The Daily Star*, December 06, 2015. “Anisuzzaman threatened with death.” *The Daily Star*, November 11, 2015. <http://www.thedailystar.net/frontpage/anisuzzaman-threatened-death-170494> (accessed December 10, 2015).

<sup>14</sup> See, “3 Christian siblings stabbed.” *The Daily Star*, December 11, 2015. <http://www.thedailystar.net/frontpage/3-christian-siblings-stabbed-185728> (accessed January 20, 2016). “Church pastor comes under attack in Pabna of Bangladesh.” *The Daily Star*, October 06, 2015, <http://www.thedailystar.net/backpage/pastor-comes-under-attack-pabna-152527> (accessed October 11, 2015).

<sup>15</sup> “Khadem killed in Rangpur.” *The Daily Star*, November 12, 2015, <http://www.thedailystar.net/frontpage/khadem-killed-rangpur-171202> (accessed December 25, 2015). “Pir and his aide killed in Bangladesh shrine-Assailant flees exploding bomb after gruesome murder; motive still unknown.” *The Daily Star*, September 05, 2015, <http://www.thedailystar.net/frontpage/pir-aide-killed-ctg-shrine-138142> (accessed September 20, 2015). “Ex-PDB chairman, who run a *majar sharif* brutally murdered.” *The Daily Star*, October 06, 2015. <http://www.thedailystar.net/frontpage/ex-pdb-chairman-brutally-murdered-152656> (accessed November 2, 2015).

responsibility including Islamic State (IS/ISIS), Ansarullah Bangla Team (ABT), and Al-Qaeda in Indian Subcontinent (AQIS).

External powers are creating pressure on government to recognize the presence of Islamic State (IS). But, the incumbent government vehemently rejected their claim of any kind of presence of terrorist organizations like Islamic State on the soil of Bangladesh.

Though, Islamic State in its English Magazine *Dabiq*, Issue 12 titled as “Just Terror” had taken responsibility of committing all these terrors acts. Thus, debate on hypothetical terrorist actors’ who are responsible for such violent activities already exacerbated sharp division in political area.

In its propaganda Magazine the group recognized Shykh Abdur Rahman *alias* Bangla Bhai as the pioneer of Jihad in Bengal. He was the founder and chief of Jamat-ul Mujahedeen Bangladesh (JMB), the outlawed terrorist outfit which bombed in 63 districts out of 64 in 2004. Later, under stringent counter terror initiatives by the government and law enforcing agencies, the organization become incipient and its chief Abdur Rahman was hanged to death in prison. In the Magazine, IS lambasted Bangladesh Nationalist Party (BNP) and Jamat-e-Islamic for its anti JMB staunch.

Showing sympathy to Sahykh Abdur Rahman, IS claimed establishing a new terrorist cell in Bangladesh through appointing new leader who coordinate the terror network in the country. The group did not mention the name of the leader and the security agency of the country yet could not identify the person.

It is noted that the Islamic State is working in three organizational structure including centrally controlled structure, decentralized network and leaderless nexus. In the case of Bangladesh, there is no possibility of direct operation of Islamic State because of strong regime and anti-terror initiatives of the government, and geographic disconnection. Secondly, there is no terrorist group who can establish a strong decentralized network with Islamic State like Al-Shahab or Boko Haram. But, minor terror group shows allegiance to IS leadership and operating as per as the general strategies and tactics of suggested by Islamic State in virtual world like online. So, the terrorist cell or group working in the name of Islamic State can be categorized as leaderless resistance.

For example, in the history of past 800 years, no attacks targeting Shia minority carried out in Bangladesh. But, recently they faced few attacks in Dhaka and Bogra, the capital city and a remote northern district of the country, respectively. Targeting Shia holy place is

practiced by extreme radical salafist organization of Islamic State. Moreover, targeting foreigners, knife attacks on police and military personnel, slaughtering and threat to Christian minority are also commonly used tactics in Iraq and Syria by Islamic State. So, it is evident that recent terror tactics used in Bangladesh obviously looks like the brutal acts of IS. Domestic terror group like JMB are basically operating and sending signal to IS for the recognition and claiming of attacks. There is a political economy of terrorist organization.

Through attaining the recognition from Islamic State (IS), local outfit want to use the brand value of IS and draw huge international attention. On the other hand, through simple recognition, IS can create follower organization which will follow and acts as local agents without getting any resources from its centre. Thus, IS is working as conflict entrepreneur without investing any resources. In addition, local group is working in a leaderless style under the general tactics and strategies of Islamic State and achieving sympathy and recognition from the centre and want to open the door for future assistance from IS or global Jihadi network.

Thus, the debate of the presence of Islamic State on the soil of Bangladesh is a big paradox. In the sense of centralized bureaucratic and decentralized network structure, there is no presence of Islamic State. But in the leaderless resistance framework, there are symptoms that demonstrate the existence of minor groups who shows allegiance to Islamic State's leadership and working as per as the general strategies and objectives of the group. The cause behind this is mutual benefit. One reason is, ISIS has been able to show its footstep in Bangladesh in virtual world, though no direct symptom is found. Moreover, local group achieved more credence using the brand value of IS and successfully created a psychic of fear and anxiety among people and a baffling situation for the government.

ISIS was unidentified and not well known until 2014 to world community, but its predecessor started to work since 1999. In Bangladesh, many persons took part in the Afghanistan War on behalf of Al-Qaeda Network to fight against the communist Soviet Union. But, those did not make any act of terrorism on the soil of the country. But, the new ultra-modern terrorist outfit, Islamic State (IS) exports the dream of Khilafat from Bangladesh to Tunisia and declared the Wilyat-e-Bangladesh as its recognized network like Libya, Sinai, Yemen, Afghanistan and Pakistan. The old network of Jamat-ul Mujahedeen Bangladesh (JMB) showed allegiance to the group and started to work as a peripheral network for the greater so-called Khilafat. IS claimed to establish its own terror network in Bangladesh and appointed leader. Like other country, where any groups show allegiance to Islamic State, its central leadership appoint leader.

Everyone following the ideology of the group is bound to follow the leadership and instruction of local leader. But, local leader set strategy and tactics based upon the instruction from central leadership. As a small network, comprising few cells of ISIS is working in Bangladesh. Though, there is no prove that active member from Syria or Iraq is working for the group, but the people who show allegiance to IS are working as IS-Fighters in the land of Bangladesh.

ISIS termed JMB leader Shaykh Andur Rahman as oracle of Jihad in Bengal and lamented BNP –Jammat as *Taghut* for punishing JMB leader and expressed cheer for the execution of Jammat-e-Islami leader by International Crimes Tribunal (ICT). Finally, IS threatened the government to launch surprise offensive when the government will yield to recognize the existence of IS in Bangladesh (Dabiq, Issue 12, 2015).

The rise of Islamic State and the declaration of Khilaphat by Abu Bakar Al Bagdadi marked a new dimension of terrorism whole of the world. Old terrorist networked who already lost grounds got fuel to regroup and reorganize. The call for allegiance to the central leadership of Islamic State (IS) draws huge international support from existing terrorist networks. Thus, many countries are facing challenges of terrorism including Bangladesh.

### **Challenges of Countering Terrorism in Bangladesh**

Terrorism is not only a national problem, rather a global threat in 21<sup>st</sup> century. The whole world is facing the challenges of countering violent extremism and terrorism within and beyond state boundary. South Asia is a common geographic region which facing certain challenges regarding terrorism. All of the countries experiences are almost same. The challenges emanates from poverty to governance problem. Key challenges of Bangladesh are as follows:

#### ***Environment Elicits Terrorism***

There are certain environments which illicit terrorism. These are minority alienation; lack of education and employment opportunities; faith and extremist ideology; weak social structure; political division; wider injustice and discrimination; exclusionary practices by government; proxy war; safe haven for drugs and illicit arms trade; counterfeit and other financial conduits; colonial legacy; trans-border ethnicity; strong leadership of terrorist groups; labour Diaspora; free flow of human and information (Hasnain, BISS Seminer, 2015). In essence the root causes of terrorism lies in the social, economic, political and religious structure in the society. Though, in some society, there may be the existence of any single problems, but don't give rise of terrorism. So terrorism particularly takes place in such society where a combination of all these four problems exists at the same time.

Moreover, there are multiple causes of terrorism including social, political and psychological. Lack of social cohesion, lack of education, marginalization and deprivation, inadequate law enforcement agencies are triggering factors of rising terrorism. Mistrust among political parties, mistrust between countries in South Asia, transnational pattern of terrorism, free flow of drug and illegal arms trafficking are major challenges to contain terrorism in this region. To overcome these challenges capacity building programme should be taken in two ways:

1. Robust Counter-terror method: short term or non-permanent immediate capacity building program.
2. Comprehensive Method: long-term and permanent plan to eradicate social and economic inequality, discrimination and deprivation and establishing rule of law.

Finally, hate should not be responded by hate rather than love and tolerance (Rahman, BISS Seminer, 2015). One of the writer states that “recent arrests of terror suspects in Bangladesh show that by and large youths who got mixed up with religious extremism and violence are ill-educated, jobless, frustrated, and often disassociated from families (Choudhury, 2015).”

### ***Containing Violence***

*Violence breeds violence* is a very common phenomenon according to the theory of Conflict. Excessive use of force to contain violence will be responded through more violence. When any small scale upsurge of discontents people is being suppressed by using military power, then the scattered, less-united groups create their own iconic figures consisting religious and ethnic identity. Thus strong leadership grows-up with popular mandate of affected community. Thus, an incipient stage of conflict manifested at massive scale and make more difficult for state to manage. Most of the nations frequently do this mistake. So, he argued for the combined use of “hard power” as well as “soft power” to prevent any further escalation of violence at incipient stage. Basically, there are two way of tackling terror:

1. Direct way using hard power.
2. Winning-hearts and minds.

But, he also states that there is vagueness in the military use of the civic term “winning hearts and minds.” Because, it is a tiny action at tactical level with little impact and can hardly alter the razed psychology of people. People are the “centre of gravity” in any conflict. Without the support of people no can succeed, even the police force of a country can win to fight against terrorism.

### ***Weakness of Legal and Judicial Procedures:***

The government of Bangladesh formulated Anti-Terrorism Act in 2009. But, the Court could not accomplish the judgment of any single

alleged terrorist case out of 350 in the last five years. To prosecute the terrorist cases, four steps approval is required which hinder the whole process and cause unnecessary delay. In addition, there is allegation of negligence against government prosecution to handle terrorist cases. Sometimes the Act is used against political opponents, which decrease the importance of the Act. To expedite the judgements the terrorism cases, there need an effective reform of exiting anti-terrorist legal frameworks (Karmakar, 2015).

### ***Lack of Social, Economic and Political Integration***

The root of terrorism lies in the social, economic and political structure in any given states. Poverty, unemployment and the ignorance of orthodox religion are major factors (Oliveti, 2002:49).

Socio-political exclusion in a society makes the situation dangerous and creates fertile ground for terrorism. Iraq is a successful example in this regard. Since the American invasion in Iraq, the Shia community closely helped the U.S forces to topple the Sunni Saddam's bathist regime in Iraq. The Shia lead Nuri al Maliki government takes power and followed a rules of exclusion. Sunni political leaders faced dangerous situation including exile and death sentence. Nouri Al Maliki led government and its military started crackdown on Sunni communities in response to the terrorist attacks on Shia infrastructures by terrorist group. The country went to a constant instability and civil war by the end of 2006, which was successfully manipulated and used by Islamic State and the group achieved the broader support base from the Sunni community and got momentum. The political and ethnic divisions in other countries also were exploited by the group.

So, it's very much important to have socio-political and economic integration in a society to fight against terrorism. To make political integration possible in a democratic country like Bangladesh free, fair and inclusive election, free flow of information, respect among political parties and developing institution for sustainable and peaceful transition of political power are integral to keep stability in the society.

Most of the analysts' mentions inadequate law enforcing agencies and intelligence failure as factors of terrorism, which is partially right. Because, except socio-political integration in the society, it's difficult to maintain stability, order and peace in a country like Bangladesh. Young generations are frustrated because of inadequate access to job market. It's a noticeable trend that the old terrorist network of Al-Qaeda, where most of the poorly educated people having religious education background participated, while in recent times most of the highly educated English medium background middle class younger groups are more prone to join terrorist organizations.

### ***Unchecked Religious Institutions***

Oliveti states that “particularly worrying are the Salafi madrasas which have sprung up by the thousands in the years 1981-2001 in South Asia (notably Afghanistan, Pakistan, India, Bangladesh, Malaysia and Indonesia) with Saudi Financing, Pakistani logistical support and Western silence, because these countries contain over 550 million Muslims, the vast majority of whom are poor, frustrated and uneducated. If unchecked this is a time bomb to explode (Oliveti: 2002:61).”

### **Concluding Remarks and Strategies to Counter Terrorism**

It's obvious to state that the ultra modern terrorist groups Islamic State is trying to expand across the globe through exporting its extreme ideology. Its prime targets are minorities including Shia, Christians, citizens of western and other countries who oppose its ideology and work to suppress the group. It promotes local level individual or exiting terrorist outfit to work under its broader goal and strategies showing allegiance to its leadership. It's called the lone wolf or leaderless forms of terrorism or insurgency. The group's active and passive followers exist in many countries of the world including some powerful one. In a recent publication of the group, it recognized the appointment of its local coordinator in Bangladesh who was assigned the job to operate and strengthen its network in Bangladesh and conduct operation in Myanmar and India using Bangladesh as terror base. The group shows respect and sympathy to the previous leadership of Jamat-ul Mujahedin Bangladesh (JMB), Shykh Abdur Rahman, who was hanged to death in prison for bombing in 63 districts out of 64 in 2005 in the country. The already existed decentralized base of JMB is trying to re-emerge in different names. It's assumed that using the name of Islamic State is more lucrative and effective to draw global attention right now. Islamic State recognized to establish few terrorist cells in Bangladesh comprising the coordinator to executers are all Bangladeshi who are using the tactics of Islamic State in Bangladesh. Because, there is no incident in the world that Shia Muslims were targeted as by fellow Sunnis except the Islamic State. IS leadership considering Shia's as legitimate target of violence and termed them as apostate and *kufir*. On the contrary, Al-Qaeda never considers Shia as the enemy of them and never publicly declares war against Shia. It's Islamic State ideology which supports the extreme notion of killing Shia's. Thus, the recent terrorist attacks on Shia minorities in Bangladesh exemplify and reflect the claim of IS and presence of its local followers in the country.

Though the incumbent government has taken few initiatives to counter terrorism in the country including formulation of Anti Terror



Act and forming special anti terror task force, fighting terrorism need a comprehensive strategies.

The terrorism in the Name of Islam is to be fought with any measure of success this must be done on four simultaneous levels: 1. the intelligence/ military level; 2 the political/ diplomatic level; 3. the financial level; 4. the ideological level (Oliveti, 2002: 78). Bangladesh should prepare comprehensive counter terrorism strategies in this regards comprising the policies at all these four levels. As one analyst states that “the objectives of the strategy would be to pursue all measures to stop the terrorist attacks in the first place. It should prevent our people from becoming terrorists and or supporting terrorism in any form. The strategy should lay down details measures to protect people from terrorist threats (Chodhury, 2015).”

It's noteworthy to mention that prisons are called the universities of jihad. The key leadership of Islamic State is the prisoners of Iraqi jail under U.S occupation, where the authority could not identify their links with terrorist groups or ever could understand their motives. So, it's important to keep all prisoners under intelligence surveillance and help to rehabilitee to a peaceful life.

Radical organizations use social media at a large extent to export their ideology. Global terror group like Islamic State use this platform. Moreover, like small social groups and peers, self radicalized or lone wolf individuals or small groups also try to express extreme view on social media which may instigate others to act on behalf on any terror outfit. So it's also important to develop effective policy in the country to tackle the continuous radicalization using social media and internet.

The new wave of terrorism is a global phenomenon. To fight extremism and terrorism there is no alternative of international cooperation. Bangladesh has lacking technology and expertise. The cooperation between Japan and Bangladesh may be a milestone in this regards, as Bangladesh and Japan agreed to work together in curbing terrorism, cyber crimes as Japan showed keen interest to share technology, training and experience (The Daily Sun, August 2015). In addition, international community including U.S and neighbors like India and Pakistan can help in this regard. Moreover it's integral to develop and common strategies in regional and international level, which will comprise Strengthening the anti-terror protocol of SAARC; eradicating safe heavens for terrorists in neighboring countries; states should refrain from providing any sorts of cooperation to terrorist outfit including finance, arms, etc; transnational linkage have to be broken and tackling the leadership, finance and ideology of terrorist group (Hasnain, BIIS Seminar, 2015).

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# 13. A Comparative Analysis of Maritime Boundary Dispute between Bangladesh and India: Whether it is an Equitable Solution or Not?

Khalid Yahyea

## Abstract

*The law on maritime boundary delimitation is considered as one of the most complicated issues of maritime law which became delineated in the United Nations Convention on the Law of the Sea, 1982. Maritime states can be bestowed of their fortune, having strategic, economic, political, and social advancements over other nations in reaping benefit from those resources and successively Bangladesh is one of them with 720-kilometre coastline. The dispute between Bangladesh and India in the Bay of Bengal concerned the delimitation of the maritime boundary with respect to the Territorial Sea (TS), the Exclusive Economic Zone (EEZ) and the Continental Shelf (CS), including the portion of the continental shelf pertaining to Bangladesh that lies more than 200 nautical miles from the baselines from which its territorial sea is measured. This paper attempts to examine the arbitral award as 'equitable solution' of the long-standing dispute between the two states that was weakening their efforts to develop the resources connected with the maritime spaces adjacent to their coasts as well as the future geographic conditions of this region. In addition, the paper critically analyses the scope of Bangladesh in establishing its rights under maritime delimitation jurisprudence and international law to have access to the resources of its outer continental shelf in the area beyond 200 Miles.*

## Introduction

It is very much evident from the geography of Bangladesh, seafaring and shipbuilding traditions and commercial ties with other countries of the region that it is an important maritime state. The lengthy coastline, Shipping Lines of Communications (SLOC) in the Bay of Bengal, and as per the UNCLOS, 1982, which provide Bangladesh with a vast maritime area consisting of Internal water, Territorial sea (TS), Contiguous Zone (CZ), Exclusive Economic Zone (EEZ) and Continental Shelf (CS) bears testimony to the fact.<sup>1</sup>

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<sup>1</sup> Alam, Commodore Md. Khurshed, *Maritime Security of Bangladesh: Traditional Issues Impinging on Maritime Boundary Delimitation*, Paper Presented at the Seminar on Maritime Security of Bangladesh organized by the

In principle, maritime boundary can be described as a legal tool to divide the earth's water surface into maritime areas based on physical or political geography. Maritime boundaries are established through international conventions, and define areas of exclusive national rights over the mineral and biological resources. A nation's maritime boundary normally encompasses territorial waters, contiguous zones, and exclusive economic zones, and is recognized by the United Nations Convention on the Law of the Sea.<sup>2</sup>

By international law, a coastal nation may claim 12 nautical miles of territorial sea, and 200 hundred nautical miles of exclusive economic zone. A geological concept of continental shelf refers to the continental margin from shoreline to the point where the depth of the water reaches approximately 200 m. Continental shelf may also serve as the underwater prolongation of the land territory for coastal states. The continental margin may include seabed, subsoil of the shelf, but does not include the deep ocean floor where large deposits of natural resources are often discovered.<sup>3</sup>

Because the delineation of maritime boundaries normally addresses strategic, economic and environmental implications, some of the maritime boundaries are overlapped, disputed, and remain undemarcated. Conflicts over maritime boundaries typically address two aspects: (1) territorial or historical sovereignty of the small island middle of their river boundary; and (2) jurisdictional rights and interests in maritime boundaries. In other way conflicting territorial waters and overlapping EEZ boundary in the Bay of Bengal. The latter aspect often stems from different understanding of the Law of the Sea.

After complex considerations regarding historical and cartographic evidence, the Tribunal determined the location of the terminus of the land boundary between the two countries, and then delimited the boundary between them of their territorial sea, exclusive economic zone (EEZ) and continental shelf within and beyond 200 nautical miles.<sup>4</sup>

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Bangladesh Institute of International and Strategic Studies (BISS), Dhaka, on Thursday 12 February, 2009.

<sup>2</sup> United Nations. Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Maritime Boundary Agreements (1970-1984)*. 1987, New York: United Nations. xviii, 297 p.

<sup>3</sup> Lagoni, R. and D. Vignes, *Maritime Delimitation*. Publications on ocean development,. 2006, Leiden; Boston: Martinus Nijhoff. viii, 241 p

<sup>4</sup> Bateman, Sam, *Resolution of Bangladesh-India Maritime Boundary: Model for South China Sea Disputes?* S. Rajaratnam School of International Studies (RSIS), No. 158 on 7 August 2014, [www.rsis.edu.sg](http://www.rsis.edu.sg)

## Geographical Background

India and Bangladesh are closely attached in both historical and geographical contexts. Naturally, the presence of either as a neighbor has significantly affected diplomatic relations on both sides. Geologically, India and Bangladesh co-occupy approximately 180 km of maritime borderline.<sup>5</sup> However, due to constantly changing river courses from soil erosion and frequent floods, both nations have claimed overlapping maritime boundary.<sup>6</sup>

The Bay of Bengal is situated in the north-eastern Indian Ocean, covering an area of approximately 2.2 million square kilometres, and is bordered by India, Bangladesh, Myanmar and Sri Lanka. The maritime area to be delimited in the present case lies in the northern part of the Bay.

The land territory of Bangladesh encompasses approximately 147,570 square kilometres, and its coast extends from the land boundary terminus with India to the land boundary terminus with Myanmar.

The land territory of India encompasses approximately 3.3 million square kilometres, including both mainland and island territories, such as the Andaman Islands. The coast of India extends from the land boundary with Bangladesh in the east around peninsular India to the land boundary with Pakistan, and also includes the Andaman Islands.<sup>7</sup>

## Historical Background

This dispute originates from the partition of British India into the two States of India and Pakistan by the Indian Independence Act, 1947 of the United Kingdom (the “Act”).<sup>8</sup> Section 2 of the Act specified, *inter alia*, that the newly formed province of East Bengal became part of Pakistan while the newly formed province of West Bengal remained part of India.<sup>9</sup> Provisional boundaries between East Bengal and West Bengal were drawn in Section 3 of the Act, paragraph 3 of which

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<sup>5</sup> Jones, R., *Sovereignty and Statelessness in the Border Enclaves of India and Bangladesh*. Political Geography, 2009. 28(6): p. 373-381.

<sup>6</sup> Hong, S.-Y. and J.M. Van Dyke, *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*. Publications on ocean development, 2009, Leiden ; Boston: Martinus Nijhoff Publishers. xvi, 304 p.

<sup>7</sup> Bay of Bengal Maritime Boundary Arbitration Award between Bangladesh and India dated 7 July 2014, p.13.

<sup>8</sup> Bangladesh’s Memorial, paragraph 3.3; India’s Counter-Memorial, paragraph 3.3.

<sup>9</sup> Bangladesh’s Memorial, paragraph 3.3; India’s Counter-Memorial, paragraph 3.4.

provided for the final boundaries to be determined by the award of a boundary commission appointed by the Governor-General of India.<sup>10</sup>

The Bengal Boundary Commission was established on 30 June 1947 and tasked with the demarcation of the boundaries between East Bengal and West Bengal. The Commission, chaired by Sir Cyril Radcliffe, submitted its Report, known as the “Radcliffe Award”, on 13 August 1947.<sup>11</sup>

In light of disputes over the interpretation of the Radcliffe Award, an Indo-Pakistan Boundary Disputes Tribunal (known as the “*Bagge Tribunal*”) was established by a special agreement and issued a decision in January 1950.<sup>12</sup> This award dealt with other segments of the boundary than the one of relevance in this case. On 26 March 1971, Bangladesh declared its independence from Pakistan and succeeded to the territory of the former East Pakistan and its boundaries.<sup>13</sup>

The year 1974 can be marked as the first session of official negotiation held in Dhaka.<sup>14</sup> In February 1974, three years after declaring its independence and still in the process of recovering from the devastating war fought to achieve it, Bangladesh enacted its *Territorial Waters and Maritime Zones Act*.<sup>15</sup> It was the first South Asian country to enact a comprehensive instrument setting out the limits of its maritime zones.<sup>16</sup> After unsuccessful negotiation between foreign secretaries, the case was submitted to the dialogue between foreign ministers in 1975.<sup>17</sup> Official talks were held in 1974, 1975, 1978, 1980, and 1982, but marked no progress and inconclusive results each time.

Between 1974 and 2009, Bangladesh and India held no less than eleven rounds of negotiations concerning the delimitation of their

<sup>10</sup> Bangladesh’s Memorial, paragraph 3.4; India’s Counter-Memorial, paragraph 3.4.

<sup>11</sup> Bangladesh’s Memorial, paragraph 3.6; India’s Counter-Memorial, paragraph 3.5.

<sup>12</sup> Bangladesh’s Memorial, paragraph 3.17; India’s Counter-Memorial, paragraph 3.5.

<sup>13</sup> Bangladesh’s Memorial, paragraph 3.18; India’s Counter-Memorial, paragraph 3.11.

<sup>14</sup> Bhasin, A.S., *India-Bangladesh relations, documents, 1971-2002*. 2003, New Delhi: Geetika Publishers.

<sup>15</sup> Bangladesh Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974) (14 February 1974) (hereinafter “Bangladesh Territorial Waters and Maritime Zones Act, 1974”). MB, Vol. III, Annex B5.

<sup>16</sup> Arbitration under Annex VII of the United Nations Convention on the Law of the Sea, Peoples Republic of Bangladesh V. Republic of India, Memorial of Bangladesh, Volume I, dated 31 May 2011, p. 44.

<sup>17</sup> Hossain, I., *Bangladesh-India relations: issues and problems*. ASIAN SURVEY. Vol. Vol. XXI. 1981, Dhaka: The Regents of the University of California. 274 p.

maritime boundary in the Bay of Bengal. Despite best efforts, the Parties have been unable to agree on the location of the boundary between them. Throughout the long negotiations, Bangladesh remained steadfast in its view that, due principally to the effect of the concavity of its coast, recourse to the equidistance method was incapable of producing an equitable result with India. This position was at all times met by an equally strong insistence on the part of India that the Parties' maritime boundary should be based on equidistance.<sup>18</sup>

The first round of bilateral negotiations took place between 29 November and 4 December 1974, just over three years after Bangladesh declared its independence from Pakistan. A second, third, and fourth round of discussions was held at the Foreign Secretary level between January and March 1975. During the third round of talks held in Dhaka in February 1975, the two Foreign Secretaries reached the only notable agreement the Parties achieved in 35 years of trying. In particular, they agreed that any future maritime boundary should be based on the following three general principles:

1. The maritime boundary between the two countries should be delineated by mutual agreement.
2. It should be demarcated in a manner which should be equitable to India and Bangladesh.
3. The line of demarcation should be drawn in a manner which should safeguard the interests of both countries.<sup>19</sup>

The Parties' subsequent inability to agree how to achieve the second and third goals prevented them from reaching the first.

An eleventh and final exchange of views was held in New Delhi on 17-18 March 2009. But after 35 years of futility, these last talks served only to highlight the absence of agreement in any respect.<sup>20</sup> The Parties held much anticipated maritime boundary discussions, which remained once again inconclusive as both parties maintained their earlier claims.<sup>21</sup>

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<sup>18</sup> Bangladesh V. India, supra note 16, p. 47.

<sup>19</sup> "Question in the Lok Sabha: 'Agreement with Bangladesh on offshore and land boundaries' (New Delhi, February 20, 1975)", in Avtar Singh Bhasin, ed., *India-Bangladesh Relations: Documents 1971-2002*, Vol. IV, at p. 1908 fn 1. MB, Vol. III, Annex B19.

<sup>20</sup> Supra note 16, p. 49.

<sup>21</sup> Pati, G., *Maritime India: Trade, Religion and Politics in the Indian Ocean*. *Journal of Asian Studies*, 2011. 70(2): p. 622-623.

Following the failure of the March 2009 meetings, and especially as a result of India's unremitting insistence on equidistance as the basis for the delimitation of the maritime boundary, it was clear that the Parties were at an impasse. They were no closer to an agreement in 2009 than they had been in 1974. Bangladesh therefore came to the obvious conclusion that the only practical way forward to secure a resolution of the Parties' long-standing dispute was third-party resolution. It initiated these proceedings on 8 October 2009 by submitting to the Government of India a Statement of Claim together with a Notice of Arbitration under Annex VII of UNCLOS.<sup>22</sup>

### **The Dispute between the Parties**

The Parties are in dispute regarding the delimitation of the maritime boundary between them in the territorial sea, the exclusive economic zone and the continental shelf within and beyond 200 nm in the Bay of Bengal.

In the absence of agreement between the Parties, the delimitation of the territorial sea is governed by article 15 of the Convention. The delimitation of the exclusive economic zone and the continental shelf is governed by article 74 and article 83, respectively, of the Convention. The Parties disagree on the interpretation of these provisions, and on their application.

The Parties agree that the land boundary terminus is to be used as the starting point of the maritime boundary between them. The Parties further agree that the land boundary terminus is to be established on the basis of the Radcliffe Award, and that the Tribunal has jurisdiction to identify it on that basis.

The Parties disagree, however, on the interpretation of the Radcliffe Award and on the location of the land boundary terminus determined by it.<sup>23</sup>

In its final submissions, Bangladesh requests the Tribunal to declare and adjudge that:

1. The maritime boundary between Bangladesh and India follows a line with a geodesic azimuth of 180° from the location of the land boundary terminus at 21° 38' 14"N– 89° 06' 39"E to the point located at 17° 49' 36"N – 89° 06' 39"E;

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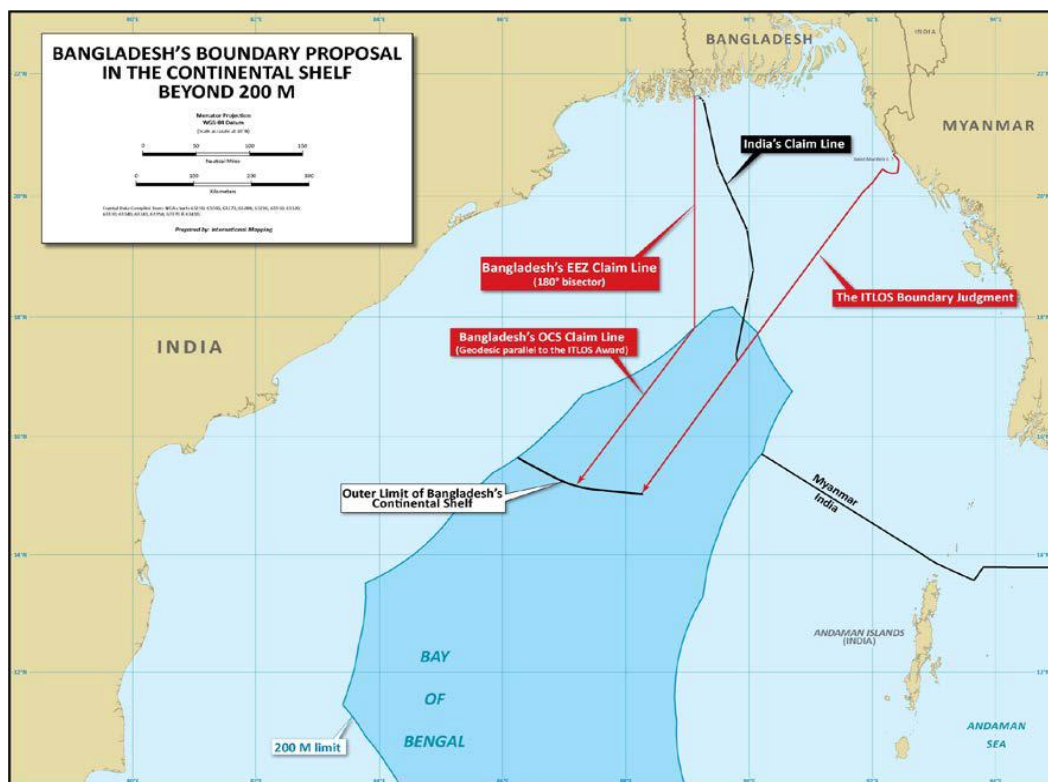
<sup>22</sup> Supra note 16, p. 50.

<sup>23</sup> Supra note 07, p. 15.



2. from the latter point, the maritime boundary between Bangladesh and India follows a line with a geodesic azimuth of  $214^{\circ}$  until it meets the outer limits of the continental shelf of Bangladesh as established on the basis of the recommendations of the Commission on the Limits of the Continental Shelf (“CLCS”);
3. from the point located at  $16^{\circ} 40' 57''\text{N} - 89^{\circ} 24' 05''\text{E}$ , which marks the intersection of the geodesic line as adjudged by the International Tribunal for the Law of the Sea in the Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar) with the limits of the claim submitted by India to the Commission on the Limits of the Continental Shelf on May 2009, the maritime boundary between Bangladesh and India follows the same geodesic line until it meets the outer limits of the continental shelf of Bangladesh as established on the basis of the recommendations of the CLCS; and
4. from the points specified in Submissions (2) and (3), and along the outer limits of the continental shelf of Bangladesh as established on the basis of the recommendations of the CLCS.<sup>24</sup>

Bangladesh’s claim is depicted graphically as follows:



(Bangladesh’s Reply, Figure R5.7)

<sup>24</sup> Supra note 07, p. 15, paragraph 60.

In its final submissions, India requests the Tribunal to declare and adjudge that:

Having regard to the facts and law set out in its Counter-Memorial, its Rejoinder and during the oral proceedings, the Republic of India requests the Tribunal to adjudge and declare that the maritime boundary between India and Bangladesh (in WGS 84 datum terms) runs as follows:

Starting from the land boundary terminus at Point L with co-ordinates  $21^{\circ} 38' 40.4''\text{N}$ ,  $89^{\circ} 10' 13.8''\text{E}$ , the boundary follows a geodetic azimuth of  $149.3^{\circ}$  until it reaches Point T1, with the co-ordinates  $21^{\circ} 37' 15.7''\text{N}$ ,  $89^{\circ} 11' 07.6''\text{E}$ .

From Point T1, the boundary follows a geodetic azimuth of  $129.4^{\circ}$  until it reaches Point T2, with co-ordinates  $21^{\circ} 35' 12.7''\text{N}$ ,  $89^{\circ} 13' 47.5''\text{E}$ .

From Point T2, the boundary follows a geodetic azimuth of  $144.2^{\circ}$  until it reaches Point T3, with co-ordinates  $21^{\circ} 32' 25.7''\text{N}$ ,  $89^{\circ} 15' 56.5''\text{E}$ .

From Point T3, the boundary follows a geodetic azimuth of  $168.6^{\circ}$  until it reaches Point T4, with the co-ordinates  $20^{\circ} 30' 17.9''\text{N}$ ,  $89^{\circ} 29' 20.9''\text{E}$ .

From Point T4, the boundary follows a geodetic azimuth of  $157.0^{\circ}$  until it reaches Point T5, with the co-ordinates  $19^{\circ} 26' 40.6''\text{N}$ ,  $89^{\circ} 57' 54.9''\text{E}$ .

From Point T5, the boundary follows a geodetic azimuth of  $171.7^{\circ}$  until it reaches Point T6, with the co-ordinates  $18^{\circ} 46' 43.5''\text{N}$ ,  $90^{\circ} 04' 02.5''\text{E}$ .

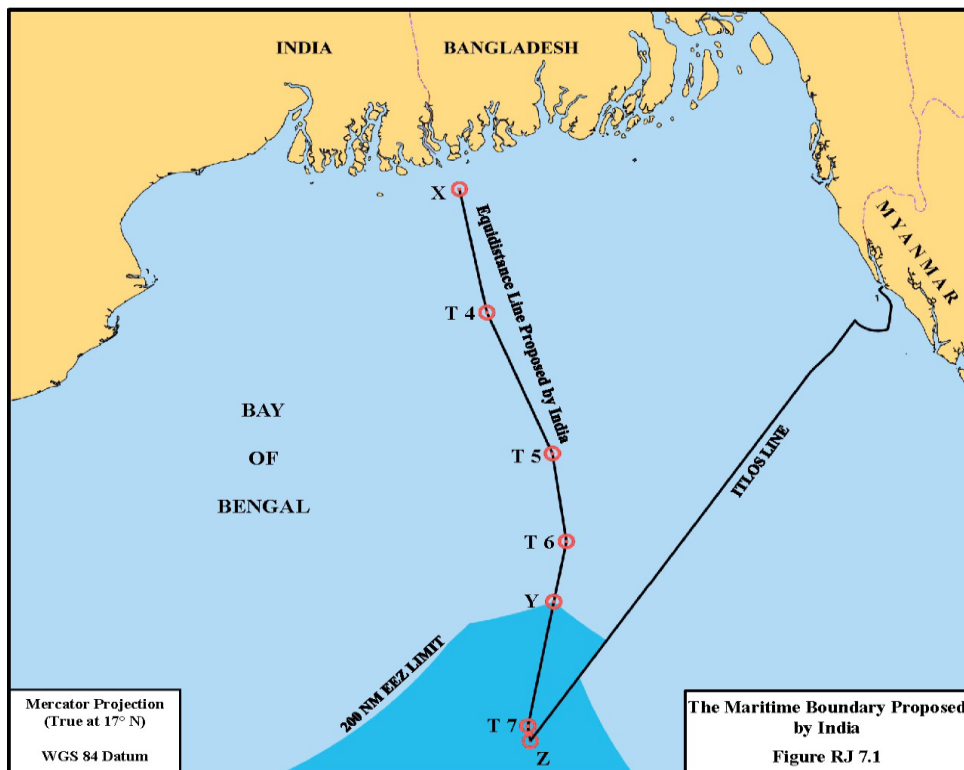
From Point T6, the boundary follows a geodetic azimuth of  $190.7^{\circ}$  until it reaches Point T7, with the co-ordinates  $17^{\circ} 22' 08.8''\text{N}$ ,  $89^{\circ} 47' 16.1''\text{E}$ .

From Point T7, the boundary follows a geodetic azimuth of  $172.342^{\circ}$  until it meets the maritime boundary line between Bangladesh and Myanmar at Point Z with co-ordinates  $17^{\circ} 15' 12.8''\text{N}$ ,  $89^{\circ} 48' 14.7''\text{E}$ .<sup>25</sup>

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<sup>25</sup> Supra note 07, p. 15, paragraph 62.

India's Claim is depicted graphically as follows:



(India's Rejoinder, Figure RJ 7.1)

First, as noted, to bring to an end the long-standing dispute between Bangladesh and India that is undermining their efforts to develop the resources associated with the maritime spaces adjacent to their coasts, including reserves of oil and gas. Second, to obtain a definitive ruling on the delimitation of the maritime spaces that connect Bangladesh and India, including the territorial sea, exclusive economic zone (EEZ) and continental shelf up to and beyond 200 nautical miles. And third, to ensure that Bangladesh definitively establishes its rights under international law to have access to the resources of its outer continental shelf in the area beyond 200M.

## Summary of the Award

### Location of the Land Boundary Terminus

Bangladesh and India agreed that the location of the land boundary terminus was to be determined by application of the 1947 award rendered by Sir Cyril Radcliffe, Chairman of the Bengal Boundary Commission (the "**Radcliffe Award**"), as well as Notification No. 964 Jur. of the Governor of Bengal of 1925.

Having considered the Parties' views, the Tribunal determined that the midstream of the main channel of the Haribhanga River must be located as it was in 1947, the date of the Radcliffe Award. It also found that the Radcliffe Award, incorporating the 1925 Notification, referred to the Haribhanga River alone and not to the combined waters of the Haribhanga and Raimangal Rivers as they meet the Bay of

Bengal.<sup>26</sup>

### **Delimitation of the Territorial Sea**

Both Parties agreed that article 15 of the Convention governs the delimitation of the territorial sea in this case. That provision provides for the boundary between two States with opposite or adjacent coasts to be the median, or equidistance, line unless either “historic title” or “special circumstances” apply. Neither Party claimed the existence of any agreement between them with respect to the boundary or a “historic title” within the meaning of article 15.

The Tribunal emphasized that article 15 of the Convention refers specifically to the median/equidistance line method for the delimitation of the territorial sea, in which the boundary takes the form of a line, every point of which is equidistant from the nearest points on the coasts of the Parties. In constructing a provisional median/equidistance line, the Tribunal decided not to rely on base points located on low tide elevations.

The Tribunal noted, however, that the land boundary terminus, determined by reference to the Radcliffe Award, is not at a point on the median/equidistance line. The Tribunal considered this to constitute a special circumstance and decided that the boundary should take the form of a 12 nautical mile long geodetic line continuing from the land boundary terminus in a generally southerly direction to meet the median line at 21° 26' 43.6"N; 89° 10' 59.2"E.<sup>27</sup>

### **Delimitation of the Exclusive Economic Zone and the Continental Shelf within 200 nautical miles**

Beyond the limit of the territorial sea, the Convention entitles States to sovereign rights over an exclusive economic zone extending to 200 nautical miles from the coast and over the continental shelf. The Parties agreed that articles 74(1) and 83(1) of the Convention govern the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles. These articles provide that the delimitation “shall be effected by agreement on the basis of international law, . . . in order to achieve an equitable solution”.

In the Award, the Tribunal considered that the “equidistance/relevant circumstances” method is preferable unless, as the International Court of Justice noted in another matter, there are

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<sup>26</sup> Press Release, Permanent Court of Arbitration on *Bay of Bengal Maritime Boundary Arbitration* between the People’s Republic of Bangladesh and the Republic of India in respect of the delimitation of the maritime boundary between the two States, The Hague, 8 July 2014, paragraph 2.

<sup>27</sup> Press Release, Arbitration on Bay of Bengal Maritime Boundary, *supra* note 26, paragraph 3.

“factors which make the application of the equidistance method inappropriate.” The Tribunal held that this was not the case, noting that both Parties had been able to identify base points that would permit the construction of a provisional equidistance line, and decided that it would apply the equidistance/relevant circumstances method.

Turning to the existence of relevant circumstances, the Tribunal did not consider the instability of the coast of the Bay of Bengal to be a relevant circumstance that would justify adjustment of the provisional equidistance line. The Tribunal emphasized that what matters is the coast line at the time of delimitation and that future changes in the coast cannot alter the maritime boundary. The Tribunal concluded, however, that the concavity of the Bay of Bengal was a relevant circumstance and that, as a result of such concavity, the provisional equidistance line produced a cut-off effect on the seaward projections of the coast of Bangladesh. The Tribunal considered that the cut-off required an adjustment to the provisional equidistance line in order to produce an equitable result.<sup>28</sup>

Consistent with the concept of a singular continental shelf, the Tribunal decided on the adjustment of the provisional equidistance line within 200 nautical miles together with the delimitation beyond 200 nautical miles.

### **Delimitation of the Continental Shelf beyond 200 nautical miles**

Beyond 200 nautical miles from the coast, the Convention provides in certain circumstances for States to exercise sovereign rights over the continental shelf. The Parties agreed that both have entitlements to the continental shelf beyond 200 nautical miles, and that neither may claim a superior entitlement based on geological or geomorphological factors in the overlapping area. The Parties disagreed, however, regarding the appropriate method for delimiting the continental shelf beyond 200 nautical miles.

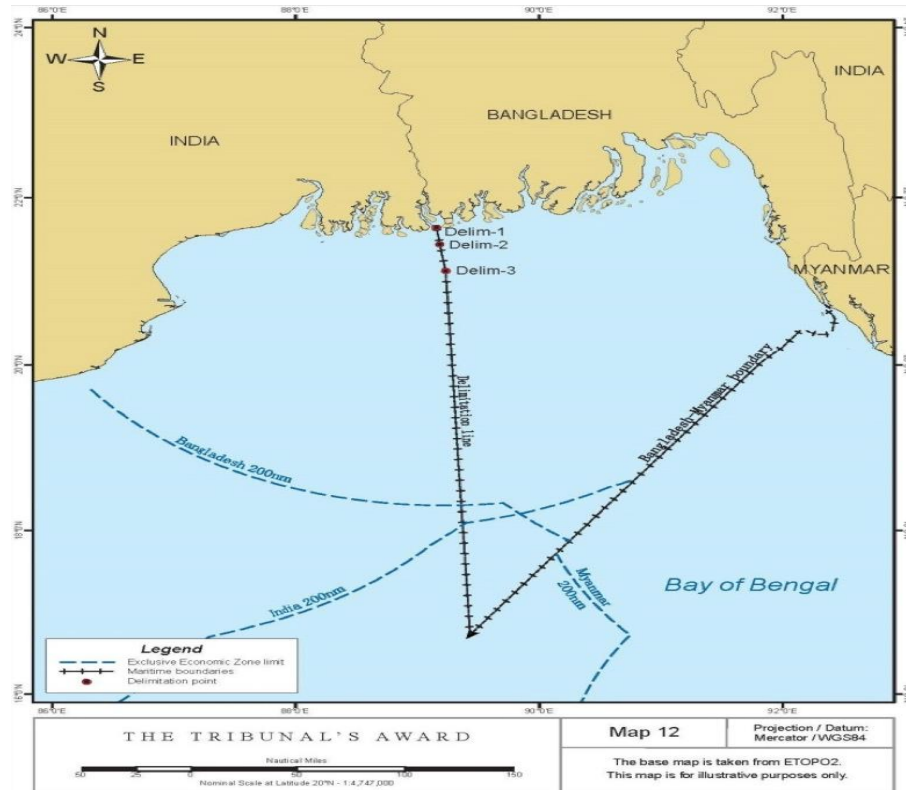
The Tribunal was of the view that the appropriate method for delimiting the continental shelf remains the same, irrespective of whether the area to be delimited lies within or beyond 200 nautical miles. Having adopted the equidistance/relevant circumstances method for the delimitation of the continental shelf within 200 nautical miles, the Tribunal used the same method to delimit the continental shelf beyond 200 nautical miles. Having decided that the concavity of the Bay of Bengal required the adjustment of the

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<sup>28</sup> Press Release, Arbitration on Bay of Bengal Maritime Boundary, *supra* note 26, paragraph 4.

provisional equidistance line within 200 nautical miles, the Tribunal was also of the view that an adjustment was required beyond 200 nautical miles.<sup>29</sup>

The delimitation effected by the arbitral tribunal is illustrated below:



### Adjustment of the Provisional Equidistance Line

Having found that the concavity of the Bay of Bengal required the adjustment of the provisional equidistance line both within and beyond 200 nautical miles, the Tribunal proceeded to identify the adjustment that it considered necessary to achieve an equitable result. The Tribunal noted that, in seeking to ameliorate excessive negative consequences the provisional equidistance line would have for Bangladesh, the Tribunal must not adjust the line in a way that would unreasonably encroach on India's entitlements in the area.

Keeping these considerations in mind, the Tribunal decided that the equidistance line should be adjusted beginning at Delimitation Point 3, which the Tribunal considered to be the point at which the cut-off effect on coast of Bangladesh began. From that point, the Tribunal decided that the boundary would be a geodetic line with an initial azimuth of  $177^{\circ} 30' 00''$  until this line meets with the maritime boundary between Bangladesh and Myanmar.<sup>30</sup>

<sup>29</sup> Press Release, Arbitration on Bay of Bengal Maritime Boundary, supra note 26, paragraph 5.

<sup>30</sup> Press Release, Arbitration on Bay of Bengal Maritime Boundary, supra note 26, paragraph 6.

## Grey Area

Finally, the Tribunal noted that the delimitation line it had adopted gives rise to an area that lies beyond 200 nautical miles from the coast of Bangladesh and within 200 miles from the coast of India, and yet lies to the east of the Tribunal's delimitation line. Within this "grey area", the Tribunal noted, Bangladesh has a potential entitlement with respect to the continental shelf, but not an exclusive economic zone, while India is potentially entitled to both zones. Accordingly, the Tribunal decided that, within the grey area, the boundary line delimits only the Parties' sovereign rights with respect to the continental shelf, and does not otherwise limit India's sovereign rights to the exclusive economic zone in the superjacent waters.<sup>31</sup>

## Observation

Bangladesh was awarded 19,467 sq.km of the 25,602 sq.kms of sea area in question, although India still has a large area of continental shelf further south in the bay. The judgment has been variously described as a 'win-win' or a 'win-lose' outcome for the two parties. With Bangladesh gaining about four-fifths of the disputed area, both countries have seen it publicly as a 'win-win' outcome.

In their submissions to the Tribunal, India claimed a boundary based on the equidistance principle but Bangladesh claimed one based on equity. This meant that there was quite a large area in dispute where India's claim overlapped with that of Bangladesh. Bangladesh is what is referred to as a "zone-locked" state. Situated as it is at the head of the Bay of Bengal, it is locked in by the maritime zones of India and Myanmar. Without an equitable adjudication in its favor, it would only have a small EEZ and continental shelf.

Basically the Tribunal accepted the line of argument by Bangladesh. It recognized that the concavity of the Bay of Bengal created circumstances that were inequitable to Bangladesh. As a consequence, it adjusted the notional equidistance line to the West to give Bangladesh a larger area in order to produce an equitable result.

The Tribunal in determining the continental shelf boundary recognized that this boundary gave rise to an area that lies beyond 200 nautical miles from the coast of Bangladesh and within 200 miles from the coast of India, and yet lies to the East of the boundary line. Its judgment thus created a 'grey area' where Bangladesh has sovereign

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<sup>31</sup> Press Release, Arbitration on Bay of Bengal Maritime Boundary, *supra* note 26, paragraph 8.

rights with respect to the continental shelf while India has rights to the EEZ and the resources of the water column.

This 'grey area' overlaps with an earlier one created when the International Tribunal on the Law of the Sea (ITLOS) delimited the maritime boundary between Bangladesh and Myanmar. While the underlying seabed and subsoil in this area belongs to Bangladesh, a water column boundary is now required between India and Myanmar.<sup>32</sup>

By extending the continental shelf boundary between India and Bangladesh to the point where it intersected with the previously delimited continental shelf boundary between Bangladesh and Myanmar, the Tribunal effectively determined a tri-point in the boundaries between the three countries.

### **Conclusion**

The judgment is a positive development for regional maritime security. It resolved a major source of tension in the Bay of Bengal and by paving the way for more effective cooperation in managing the bay and its resources; it amounts to a 'win-win' outcome for all parties. Both Bangladesh and India have settled the maritime boundary through the legal mechanism under the UNCLOS, which demonstrates that the two countries are committed to the peaceful settlement of disputes.

It is not a complete victory for Bangladesh because India has won on some issues. It is however a victory for fairness and justice. The judgment is a win for international law which both countries have always respected. It substantially contributes to the development of maritime international law too. There was an apprehension among some jurists that judgment by the Court of Arbitration under UNCLOS would lead to the fragmentation of maritime law, but this has been found to be unfounded. Rather, the judgment reflects the great advantages of consistency and transparency by adhering to judicial precedents. Finally, the peaceful and amicable settlement of the maritime dispute between Bangladesh and India could be an example in the international arena at a time when in many parts of the world maritime disputes are emerging as major flash points. It provides a valuable demonstration that with political will, maritime disputes can be settled peacefully.

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<sup>32</sup> Supra note 04.