

**JOURNAL
O F
THE ASIATIC SOCIETY OF BANGLADESH
(HUMANITIES)**

Vol. 59

No. 2

December 2014

Editor

Akmal Hussain

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Journal of the Asiatic Society of Bangladesh (Humanities), is published by the Asiatic Society of Bangladesh in June and December every year. Scholarly articles relating to *Peoples and Nature of Asia* are considered for publication in the Journal. It also receives books for reviewing.

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Website : www.asiaticsociety.org.bd

Published by The Asiatic Society of Bangladesh

Price Tk. 200.00 (Two hundred taka)

ISSN 1015-6836

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3. W.H. Morris-Jones, "Pakistan Post-Mortem and the Roots of Bangladesh", *Political Quarterly*, Vol. 18 (April-June), 1972, pp. 187-200.

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THE FOOD GRAINS MARKET IN THE NEW MILLENNIUM: INTERNATIONAL LINKAGES*

Mohammad Ali Taslim**

Abstract

Trade liberalisation policies pursued during the last two decades have effectively integrated Bangladesh into the world economy. A consequence of this integration is that the prices of tradable commodities such as food grains are greatly influenced by the movements of the world prices. The latter is influenced by the global supply and demand factors. Thus, the prices in individual domestic markets depend less on their own supply-demand balances; instead, they depend mostly on the global balances. A heightened awareness of the business community about the global market and quick flow of information have ensured that global developments are transmitted to the local market quickly. This implies that the reasons for price increases in the domestic market cannot be explained without an understanding of the reasons for price increases in the international market. This has major implications for the effectiveness of domestic policies, which are not always fully understood. Domestic prices of cereals are determined to a large extent by the same factors that determine international prices. One of the ways Bangladesh could push domestic prices below international prices would be holding large stocks of cereals, which could be sold in times of shortages at subsidised prices to ease supply shortages. If Bangladesh were to become a food surplus country, then domestic prices could be held below international prices by imposing export bans or export taxes or by giving subsidies.

The Food Grains Market and International Linkages

Food prices are a serious political issue in many countries as rising prices often spark off food riots and political crises. The price of rice, the staple food of Bangladesh, is of particular concern to the people and the government of the country. Increasing economic liberalisation has constricted policy space of the government such that it can in general have only limited success in controlling the market. Since cereals are tradable commodities, their domestic market

* This paper was presented as the National Professor Atwar Husain Memorial Lecture 2014 on 5th July 2014 at the Asiatic Society of Bangladesh. The author gratefully acknowledges the assistance of N. Hossain, M. S. Haque and Rafique Siddiqui with data collection and analysis. The suggestions of an anonymous referee were helpful in preparing the final revision. However, the author alone is responsible for the views expressed in the paper or any errors.

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prices are significantly influenced by their prices in the international market. The cost of deviating domestic prices from the international prices through government interventions could be considerable.

This paper analyses the evolution of cereal prices in both the international and domestic markets. It identifies the major influences on the international cereal prices and their transmission to the domestic economy. Data required for this study were collected from the websites and publications of the Food and Agriculture Organisation (Crop Prospects and Food Situation), US Department of Agriculture (USDA, Grain: World Markets and Trade, and WASDE), World Bank Pink Sheets, the Statistical Yearbook published by Bangladesh Bureau of Statistics, and other sources as mentioned in the text.

Food price: Supply and demand balance

After a fairly long period of relative calm, the international food grain market became highly unstable during 2007 and 2008. The prices of all major cereals including rice, wheat, and maize rose very sharply. The food price index in mid-2008 was more than twice its value compared to the price level five years ago. The amplitude of the fluctuations was so large that globally it pushed down many poor households below the poverty line. Bangladesh was no exception; the very steep increase in the price of rice and flour hurt the ordinary people, especially the poor. It was feared that a large number of them had fallen back into abject poverty reversing much of the good work done earlier for poverty alleviation.

Prices of essential goods, especially rice and wheat, plummeted toward the end of 2008 bringing some relief to the ordinary people. Within only six months the food price index had crashed by more than one-third from its peak in June 2008 and the rice price by nearly one-half. However, the reprieve was only short-lived. Prices crept up from around mid-2010, and by the end of 2011 rice prices had risen by nearly 50 percent increasing real fears of a civil unrest around the world. However, rice prices stabilised, and by the beginning of 2013 prices started falling gradually. During January-November of 2013 the price of Thai rice (5% broken) fell in the world market by 22 percent to reach the lowest level since January 2008.¹

The retail rice price in Bangladesh at the end of 2010 was 41 percent higher than its level a year ago, and the retail wheat price was higher by about 50 percent. Since then both retail and wholesale prices fell gradually and declined

¹ *World Bank Commodity Price Data (The Pink Sheet)*, January 2014

by about 20 percent. But surprisingly the upward march of the prices resumed at the beginning of 2013 despite falling international food prices. By the end of the year the domestic prices were almost at the same level as they were three years ago.

A large increase in the prices of essential food items puts great pressure on the government to act in order to reduce the sufferings of the ordinary people. A thorough understanding of the market forces that cause the prices to rise is essential if the government is to design a cost-effective policy to moderate the amplitude of price increases. This paper makes an attempt to understand the forces underlying the recent bouts of price-hikes of food grains which constitute a major part of the food basket of the ordinary people.

The price of a commodity in a free market is determined by the interaction of market supply and demand. The price increases only if there is excess demand for the commodity. Conversely the price decreases when there is excess supply. Excess demand for a commodity will arise if either there is an increase in the market demand or a fall in the market supply. Hence, an enquiry into the reasons for fluctuations in the price must be sought in the circumstances determining the demand for and the supply of the relevant commodity.

However, demand and supply must be understood in the proper context. Trade liberalisation policies pursued during the last two decades have increased the trade ratio of Bangladesh very substantially and effectively integrated it into the world economy.² A consequence of this integration is that the prices of tradable commodities are greatly influenced by the movement in world prices. The latter is influenced by global supply and demand factors. Thus, the prices in individual markets depend less on the domestic supply-demand balances and more on the global supply-demand balances. A heightened awareness of our business community about the global market and a quick flow of information made possible by digital technology have ensured that any global development is transmitted to the local market quickly. This has major implications for the efficacy of domestic policies, which is not always fully understood.

The major essential food products consumed in Bangladesh are imported in various amounts. Imports constitute a small part of the supply of some essential commodities such as rice, but a very large part the total market supply of some

2 The trade ratio, defined as the ratio of exports and imports to GDP, increased from 21.7 percent in 1990-91 to 45.4 percent in 2012-13. See Bangladesh Bank, *Monthly Economic Trends*.

other essential commodities such as edible oil, lentil, wheat and sugar. Whatever be the share of import in the total supply of a commodity in the domestic market, its price will be strongly linked to the international price because of the arbitrage opportunities opened up by trade liberalisation. Only when barriers are erected to obstruct the free flow of goods between countries, such as export or import restrictions, a price differential will open up since the country is then effectively delinked from the global economy. This can cause serious dislocations in the supply-demand balances of some countries. The export ban on rice imposed by India in 2007, and later by a few other countries fearing food shortages, had a destabilising impact on the international market. Rice prices trebled within a few months. This had a harmful effect on the welfare of the ordinary people of Bangladesh and many other countries which import significant quantities of food grains. Russia imposed export ban in 2010 in the wake of a severe drought and devastating wildfires that destroyed large part of its standing crops. Wheat prices shot up anticipating supply shortages. Such unilateral actions need to be avoided to ensure that trade is not interrupted suddenly by individual countries in response to their immediate domestic concerns since these may destabilise the international market.

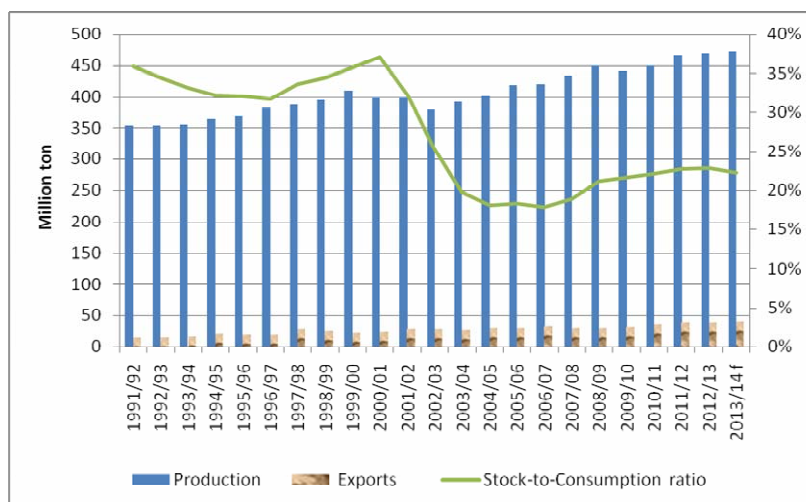
World Rice Production and Stock

World production of rice increased steadily during the 1980s and 1990s. There was a record harvest during the 1999/2000 period with the production of milled rice surpassing 400 million metric ton mark for the first time (Chart 1). The high and rising volume of production, that was generally higher than total consumption, permitted a very robust stock-to-consumption ratio, which reached a record high level of 37.1 percent in 2000/01. Total global trade (export) also increased steadily and reached a record high of 27.7 million metric ton in 2001/02. This was a period of a generally comfortable supply situation.

The global rice production declined and remained lower than the 1999/2000 level during the next few years, but total consumption increased steadily. Consequently, world consumption of rice exceeded world production in all years but one during the period between 2001/02 and 2006/07. The excess consumption led to a decline in the stock-to-consumption ratio from a high 37.1 percent in 2000/01 to only 17.8 percent by 2006/07. Thereafter the stock-to-consumption ratio rose steadily to 22.9 percent in 2012/13 due to successive good harvests. Clearly, the stock situation in the rice market eased substantially during the last few years. However, the USDA forecasted that the stock ratio would decline slightly in 2013-14. The rice market during the first half of the

first decade in the new millennium was considerably tighter than the rice market during the 1990s.

Chart 1: World milled rice production, export and stock-to-consumption ratio

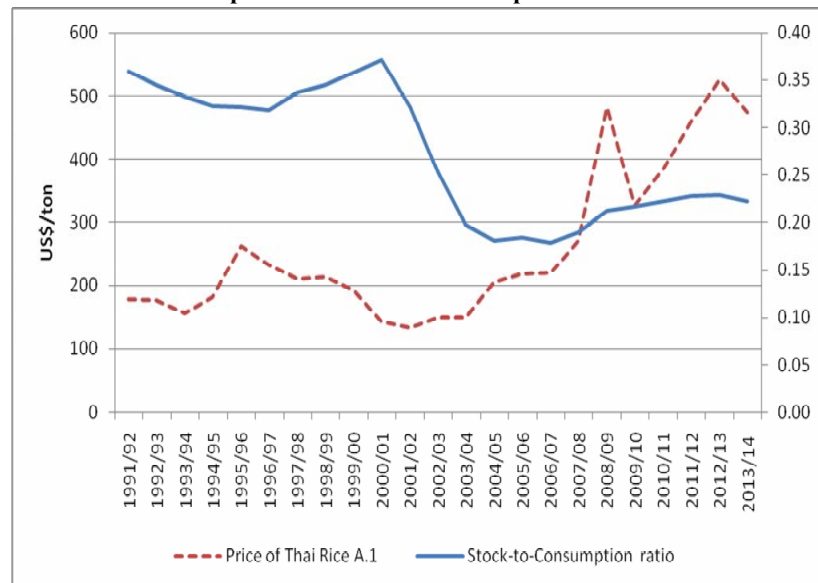


Source: US Department of Agriculture, *Foreign Agricultural Service*.

A modest fall in the stocks during the first half of the 1990s signified a build-up of an excess demand pressure that caused a substantial increase in the international rice price. However, rising stocks and abundant exports during the second half of the 1990s due to an easing of the supply situation permitted a large decline in the price (Chart 2). The international price of rice in nominal terms reached the lowest level in 28 years in 2000-01 on the back of a very high stock-to-consumption ratio. Since then the price rose steadily in response to a falling stock ratio; it rose by three-fifths by 2006-07 when the stock ratio reached its lowest level. But surprisingly, even though the stock ratio improved significantly during the next two years, the price increased by 120 percent. The rice price really exploded in early 2008; it more than doubled in just four months. Since the stock ratio increased by more than 3 percentage points between 2006-07 and 2008-09, the explosive price increase had, perhaps, less to do with the supply shortages in the market and more to do with business expectations and market breakdown due to government actions in some countries. The factors behind the price increase are discussed in some detail

later. Although the price declined substantially since mid-2008, it still remained at a historically very high level. Even if we disregard the large spike in 2008, the international price of rice exhibits a trend increase since the turn of the century.

Chart 2: World rice price and stock-to-consumption ratio



Source: US Department of Agriculture, *Grain: World Markets and Trade*, and *World Bank Commodity Price Data* (The Pink Sheet).

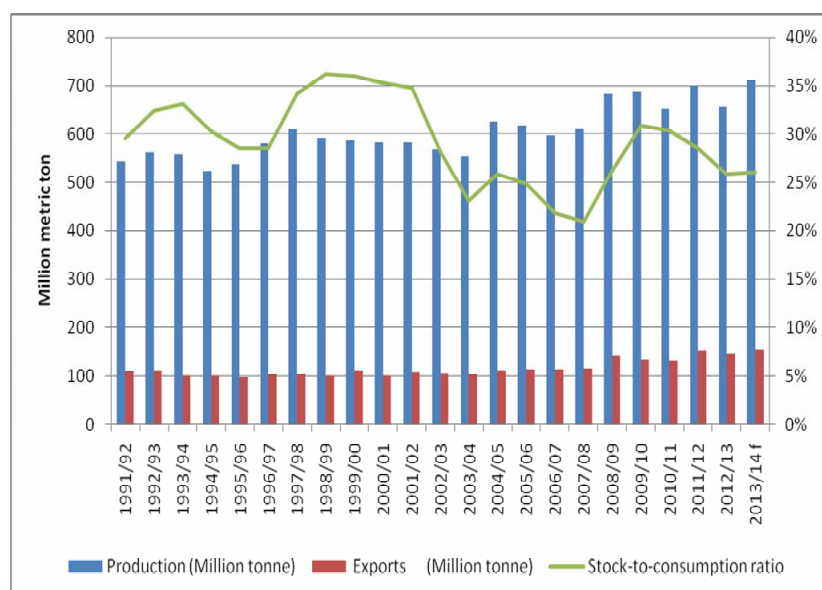
Wheat and maize: Cross-substitution in consumption

The rice stock situation alone cannot explain the explosive increase in the international rice price in 2008. The stock-to-consumption ratio for rice actually rose marginally in 2007/08, and it increased considerably in 2008/09. This should normally imply a stable or declining price of rice in the international market through most of 2007 and 2008. But rice prices in the world market started increasing sharply from November 2007, and by May 2008 it rose almost three times! Such a steep increase in rice price cannot be reconciled with the production and stock situation of rice for the year, both of which had, as shown in Chart 1, actually increased.³

³ Note that the sharp price increase occurred soon after the imposition of the export bans on rice.

Even in countries where rice is the staple food, other cereals, especially wheat, are also consumed as food. If the rice price increases, one would expect a substitution of rice for other cereals in consumption and vice versa. Thus, a reduction in the supply of other cereals is very likely to have an impact on the rice market.

Chart 3: World wheat production, export and stock-to-consumption ratio



Source: US Department of Agriculture, *Grain: World Markets and Trade*

As chart 3 shows, the stock-to-consumption ratio for wheat fell continuously since 1998/99, and after a brief rise in 2004/05, it fell again during the next three years to reach a historical low. This was due primarily to poor wheat harvests. The world wheat production fell continuously from 1998/99 to 2003/04. There was a large increase in 2004/05, but it tumbled again during the next two years. These large reductions in wheat output brought down the stock-to-consumption ratio from 0.36 in 1998/99 to only 0.23 in 2003/04. The decline was temporarily reversed in 2004/05 when it rose to 0.25. A particularly bad harvest in 2006/07 brought down the stock ratio to 0.21 in 2007/08. It rose very markedly during the next two years to reach 0.31 in 2009-10. But since then it has been on a decline.

Table 1: Production level in major wheat-producing countries

Million metric ton

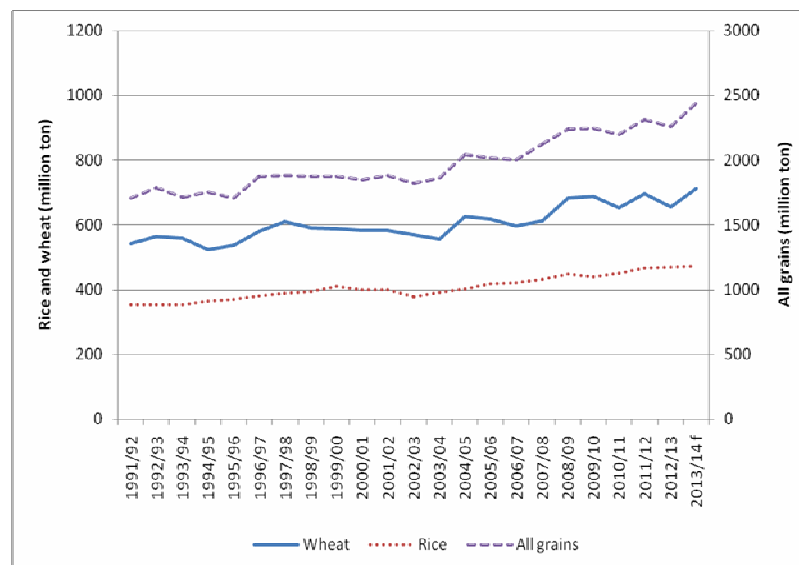
Country	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
EU-27	132.4	124.9	119.4	151.0	138.1	136.5	138,182	133.9
China	97.4	108.5	109.3	112.5	115.1	114.5	117,400	121.0
India	68.6	69.4	75.8	78.6	80.7	86.9	86,870	94.9
USA	57.2	49.2	55.8	68.0	60.4	60.1	54,413	61.7
Russia	47.7	44.9	49.4	63.7	61.7	41.5	56,240	37.7
Canada	25.7	25.3	20.1	28.6	26.9	23.2	25,288	27.2
Ukraine	18.7	14.0	13.9	25.9	20.9	17.2	22,324	15.8
Pakistan	21.6	21.3	23.3	21.0	24.0	23.9	25,000	23.3
Australia	25.2	10.8	13.8	21.4	21.9	25.0	29,905	22.5
World	620.0	596.1	611.0	683.7	682.6	645.8	697.3	656.3

Source: US Department of Agriculture, *Grain: World Markets and Trade*

Australia, a major grain-producing and exporting country, suffered from severe droughts in 2006 and 2007 resulting in very large crop losses; wheat production declined from 25.2 million ton in 2005/06 to only 10.8 million ton in 2006/07, and 13 million ton in 2007/08 (Table 1).⁴ The European Union (EU-27) also had poor harvests for three years in a row culminating in the lowest output in five years in 2007/08. Wheat output in the EU declined from 147 million ton in 2004/05 to 119 million ton in 2007/08 before sharply rising to more than 151 million ton in 2008/09. It then fell to less than 140 million ton in the subsequent years.

Global cereal production declined during the fiscal years 2005/06 to 2006/07. Although rice production increased, it was not sufficient to offset the substantial reduction in wheat as well as coarse grains production such that the production of all grains declined (Chart 4). The food grain stock of the world reached the lowest level of the new millennium in 2006/07 when the food grains stock-to-consumption ratio dipped to only 16.7 percent. It remained low in 2007/08 (17.1 percent) before recovering in the following years.

⁴ The reduction in Australian wheat production in 2006/07 accounted for more than 60 percent of the decline in world output.

Chart 4: World cereal production

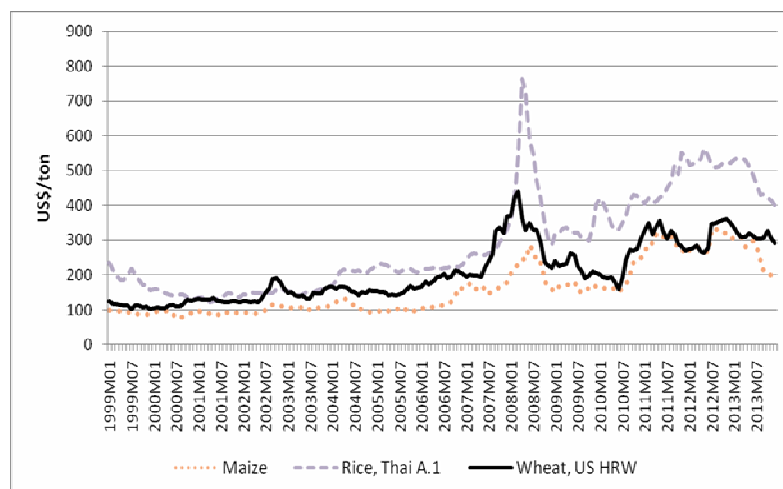
Source: US Department of Agriculture, *Grain: World Markets and Trade*.

The tight situation in the food grain market in 2006/07 was a prelude to the sharp increase in cereal prices during the next year. The price of wheat started rising from May 2007 (Chart 5). By February 2008 it had more than doubled. The rice price started increasing from November 2007 soon after the imposition of the export ban by India on non-basmati rice, and nearly trebled within six months. The market for maize, a coarse cereal, also went through similar changes; the price of maize almost doubled between July 2007 and June 2008. Export bans, supply shortages of cereals in the world market, and expectations all combined to raise the cereal prices to their highest historical levels.

The substitution possibilities in consumption engender a close relationship between the different cereal prices as shown in Chart 5. The correlation coefficient between rice and wheat prices (January 1999 to January 2014) is 0.87 suggesting that if either cereal price increases the other will most likely increase. The relationship between wheat and maize prices is even stronger; the correlation coefficient is very high at 0.90. This suggests that any of these markets will be difficult to stabilise in isolation if the domestic market is tightly integrated with the world market.

The cereal market situation started improving from 2008/09 and continued to improve through 2009/10. The wheat harvest was significantly better, and production in 2008/09 was 12 percent higher than production in 2007/08. Global wheat production in 2009/10 was virtually unchanged from that of the 2008/09 level, but there was a 5 percent fall in output in 2010/11 and a 7 percent increase in the following year. The stock situation in 2008/09 improved markedly to 0.26 and rose further to 0.29 in 2009/10. As a result, the wheat price started falling sharply. By the end of 2008 the price of wheat had halved and stood lower than that in June 2007. Rice price also decreased in tandem by 60 percent in December 2008 relative to May 2008. By December 2008, the maize price was also back to its mid-2007 level. Throughout 2009, prices of all major cereals were fairly stable with a slight downward trend which continued into the first half of 2010. But since the middle of 2010 the cereal market became unstable again with wheat prices rising by 125 percent within a year, while rice price increased about 40 percent. Thereafter, both prices fell and the falling tendency lasted throughout 2013.

Chart 5: Prices of cereal crops in the world market



Source: *World Bank Commodity Price Data (The Pink Sheet)*

Some international determinants of the price hike

In the following sections we take a look at the underlying forces that caused the international market prices of cereals to increase. The international market price refers to the price at which the grains are traded between nations. Globalisation

ensures that international prices set the benchmark for domestic prices; hence domestic market prices cannot be explained in isolation from the world market.

High fuel oil price

Historically, large increases in fuel oil prices have been associated with large increases in rice and wheat prices. The oil price shock of 1973 that raised oil price more than five times was instrumental in causing a four-fold increase in the rice price. The next oil price shock in the late 1970s that trebled the oil price was followed by about an 80% increase in the rice price. Finally, the four-fold increase in oil price over 2003 to 2008 was accompanied by more than three-fold increase in the rice price. There were also similar large increases in wheat and maize prices during these oil price shocks.

Chart 6 shows a scatter plot of crude petroleum price against rice price. There is evidently a very strong positive relationship between the two variables. A regression line fitted to the data has a high explanatory power with $R^2=0.854$, which indicates that more than 85 percent of the variations in the rice price is accounted for by variations in the oil price.

High oil prices have a direct impact on the price of agricultural inputs such as fertilizer, irrigation and chemicals as well as transportation. Hence, a large increase in oil prices translates into a large increase in agricultural production costs. Coupled with high transportation costs, these increases cause a corresponding increase in the market prices of agricultural crops. According to a study higher oil prices contributed 20-30 per cent to the higher export prices of US food commodities.⁵ Furthermore, higher energy prices usually lead to higher inflation, which also pushes up cereal prices. The contribution of higher energy prices to food price inflation is likely to be even higher in Bangladesh since the weight of energy cost in total food cost is likely to be higher because of the lower wage cost.

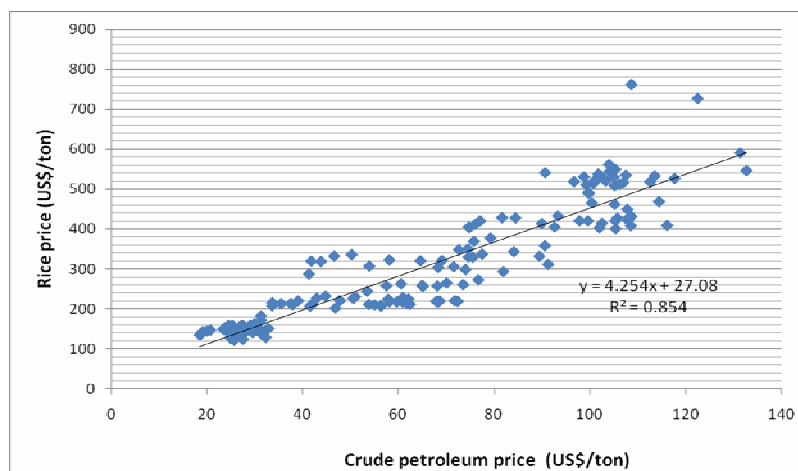
Increase in bio-fuel use

A new development in the fuel market from the end of the second millennium is the large-scale use of food/feed crops, especially maize and soybean, for the production of fuels, also called bio-fuels to distinguish them from fossil fuels. The use of maize for the production of ethanol accelerated in the first decade of the new millennium. The United States of America (USA) is the largest

⁵ Derek Heady and Shenggen Fan, 'Anatomy of a Crisis: The Causes and Consequences of Surging Food Prices', IFPRI Discussion Paper 00831, December 2008.

producer of ethanol from maize. The production of ethanol in the USA accelerated from 2001 to 2011. During this period ethanol production increased from only 1.8 billion gallons to 13.9 billion gallons. Since then production stagnated, and in 2013 ethanol production stood at 13.3 billion gallons.⁶ The other major producers of ethanol are Brazil and EU.⁷ The world production of ethanol stood at 28.4 billion gallons in 2012, which was 117 percent higher than the production 5 years ago.

Chart 6: Relationship between crude petroleum price and rice price in the world market



Source: *World Bank Commodity Price Data (The Pink Sheet)*

The higher ethanol production in the USA required large-scale switch of arable land from other crops to maize, the principal feedstock of ethanol. The demand for maize increased rapidly. The USA alone used up more than 130 million ton of maize in 2013-14 (see Chart 7). The large increase in the demand for bio-fuels put pressure on the prices of maize and soybean.

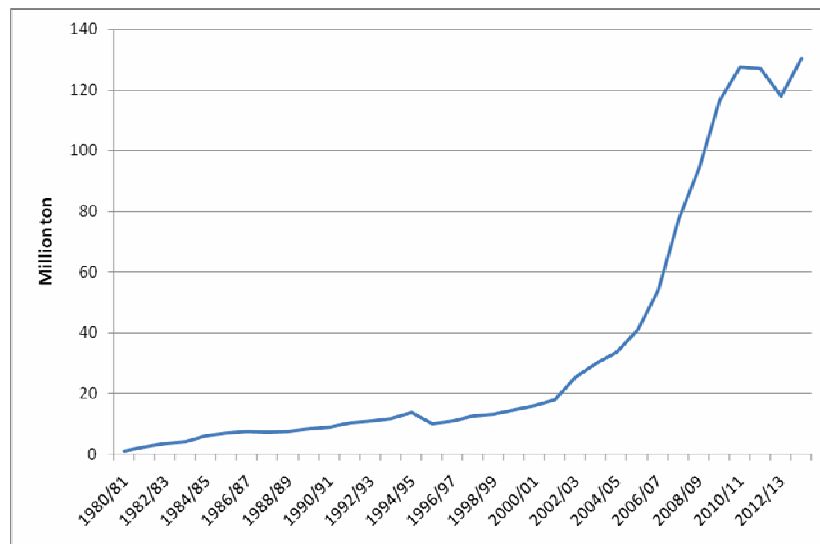
The boom in bio-fuel production in the USA and the EU were assisted by various tax credits, subsidies and mandates. The USA had mandated minimum production targets of ethanol from maize and bio-diesel. This helped quick

⁶ See Renewable Fuels Association at <http://www.ethanolrfa.org/pages/statistics#sthash.qRQPABh.dpuf>.

⁷ EU uses oilseeds and Brazil uses sugar cane for the production of much of their bio-fuels.

increase in ethanol and bio-diesel production. The US government provided generous tax-credit and trade protection through tariffs to encourage the production of bio fuels. The EU also provided trade protection and tax credit to encourage greater production of bio fuels. It had mandated that effective measures must be taken to substitute 10 per cent of transport fossil fuels with bio-fuels by 2020. The EU used mostly rapeseed and also soybean oil and sunflower oil for the production of bio-fuels and used up 6.1 million ton of vegetable oil in 2007 for this purpose. The USA used up 3.3 million ton of vegetable oil to increase bio-diesel production. The sharply increased use of vegetable oil for bio-fuels contributed to the increases in the price of vegetable oils.

Chart 7: Use of Corn for the Production of Ethanol



Source: US Department of Agriculture, *U.S. Bioenergy Statistics*, November 2014.

The high prices of maize due to its use for the production of ethanol led to a reallocation of agricultural land from soybean to maize in the USA causing a reduction in soybean production. In the EU, oilseeds needed to produce bio-fuels displaced wheat as more land was allocated to the former. Between 2001 and 2007, oilseeds area increased by 36 per cent in the top-8 wheat exporting countries of the world while wheat area declined by 1 per cent. The reduction in wheat output led to a reduction in stocks, which pushed up the price of

wheat. Overall, the growing global demand for bio-fuels led to a reallocation of agricultural land in favour of maize and/or soybean leaving less land available for the expansion of production of wheat, rice, and other crops in countries that produced ethanol on a large scale.

Export Bans

The supply and price behaviour of the wheat and maize market must have affected the rice market through substitution effects or expectations of substitution. Some rice exporting countries such as India, Cambodia, and Myanmar were concerned about the domestic food security situation and announced a ban on the export of non-basmati rice in October 2007. It also banned the export of wheat-flour. Further effective bans were imposed in April 2008 by setting a very high export price of rice of \$1000/ton for non-basmati rice.

Cambodia was also spooked by the developments in the international rice market, and despite a record rice harvest banned rice export in March 2008. Myanmar imposed export bans to ensure domestic supply after the Cyclone *Nargis* devastated the rice-producing region of Irrawaddy and Yangon division on 23 May 2008.

Table 2: Rice exports of major exporting countries ('000 ton)

Country	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
India	4537	6301	3300	2149	2228	4637	10250	9000
Thailand	7376	9557	10016	8570	9047	10647	6945	8000
Vietnam	4705	4522	4649	5950	6734	7000	7717	7400
United States	3307	3029	3500	3017	3868	3247	3326	3400
Pakistan	3579	2696	3000	3187	4000	3414	3399	3200
Cambodia	350	450	500	820	750	860	800	975
Uruguay	812	734	775	926	808	841	1056	900
Brazil	291	201	500	591	430	1296	1105	850
Egypt	958	1209	450	575	570	320	600	850
Burma	47	31	541	1052	445	778	690	750
Argentina	487	436	450	594	468	732	608	600
World total	29500	32100	29700	29398	31569	36246	39150	38602

Source: *All India Rice Exporters Association*.

Vietnam effectively imposed export bans by setting the minimum export price of rice at \$720/ton. Brazil also announced a restriction on rice export in April

2008. Egypt, Indonesia, and China followed the suite by imposing export bans on rice. Bangladesh also imposed export bans on rice in 2008 to secure sufficient supplies for the local market. These export bans on rice jolted the world rice market with total export falling by 7.5 per cent in 2007-08 (see Table 2). Consequently, the international rice price shot up alarmingly, and by March 2008, the export price of rice nearly trebled. Only after most of these countries relaxed or withdrew the export bans, and production improved, that the rice price started coming down from the middle of 2008.

India started the herd effect by imposing the export bans on non-basmati rice. It was the second largest producer and exporter of rice in the world in 2006/07 with its export accounting for nearly one-fifth of the total world trade in rice. The bans reduced its share of world export to less than one-fourteenth by 2009/10. It is difficult to rationalise the Indian trade intervention. Officially it was said that the bans on the export of non-basmati rice and also wheat flour were introduced to control the food prices. However, the production data of both rice and wheat for 2006-07 and 2007-08 do not suggest any significant supply shortages in India (Table 3). Both rice and wheat output grew very robustly. It is likely that the Indian government wanted to delink Indian food market from the rest of the world to create excess supply situation in the domestic market when the world market was suffering from excess demand as evidenced by a sizeable reduction in the global stock-to-consumption ratio of cereals in 2006/07. The bans prevented the Indian farmers from profiting from the price hike in the international market as they were forced to sell their products in the domestic market. There was a very sharp downturn in rice production in 2009 due to drought, and India continued with the export bans despite the fact that the world market was sedate and the world rice prices were generally low and falling. India also introduced export bans on wheat in 2009 to avoid food shortages after drought and floods reduced rice and sugar cane output.

The situation started changing from 2009/10. Rice export of Thailand increased by nearly half a million ton to 9 million ton; it increased by another 1.6 million ton in 2010/11. Export of both Pakistan and the USA increased by about 0.8 million ton in 2009/10. Total world export of rice increased by 2.2 million ton to 31.6 million ton. Thereafter global export increased rapidly to 39.2 million ton in 2011/12. The fact that the price did not decline suggest that the world demand for rice had also increased.

Table 3: Indian rice and wheat output and export

('000 ton)

	2005/06	2006/07	2007/08	2008/09	2009/10
Rice output	91,790	93,350	96,690	98,900	89,130
export	10,520	6,301	3,300	2,149	2,200
Wheat output	68,640	69,350	75,810	78,600	80,680
export	2000	200	50	200	100

Source: US Department of Agriculture, *World Agricultural Supply and Demand Estimates*

Despite considerable worldwide stocks, the trebling of export prices of rice in 2008 point to the risks of over-dependence on the international market for food security. It suggests that stabilisation of the international rice price will require, at the minimum, an international agreement on prohibiting or at the least restricting the use of export bans that disrupt the smooth functioning of the world cereal market. Whether such an agreement, even if agreed upon, could be enforced in an environment of perceived overall shortages of cereal supply is a moot point, but it will not be wise to rely exclusively on the global market.

The world witnessed a repeat of the 2008 scenario in 2010 when severe drought and wildfires led the Russian government to impose bans on wheat export. Like India in the global rice market, Russia is a major producer and exporter of wheat. Its ban on wheat export had a huge negative impact on the wheat market. However, the wheat market is quite large relative to rice such that the impact of the ban on wheat price was not as immediate or sharp as in the case of price of rice in 2008. Nonetheless, the wheat price (US SRW) that had reached its lowest level in September 2009 since the 2008 price hike, more than doubled by the beginning of 2011.

Domestic cereal market

Cereal production in Bangladesh remained stagnant during the first half of the new millennium, but increased steadily thereafter. There was a large increase in the production of rice crops in 2008/09 when the total production of rice was 31.31 million ton, an increase of 8.2 per cent over that of 2007/08 (Table 4). The large increase was due mostly to *Aus* and *Aman* output, which increased

substantially after poor harvests of the previous year due to floods and a cyclone (Chart 8). These increases would seem to have been caused by the ‘cobweb’ response of the farmers to the extremely high cereal prices in 2007 and 2008, as well as government efforts to provide timely input support to the crop farmers. However, the sharp reduction in grain prices subsequently dampened the incentive. The total rice and wheat production for 2009/2010 was 32.88 million ton, which was lower than the target of 35.08 million ton and only marginally greater than the previous year’s output. There was a very substantial increase in cereal production to 34.5 million ton in 2010/11. Cereal production increased incrementally during the next three years to reach 35.6 million ton in 2013/14.

The comfortable domestic supply situation reduced the need for import of food grains in 2008/09. The total import (public and private) of food grains during the year was 3 million ton as compared to 3.5 million ton in the previous year. The government stocks were substantial at 1.2 million ton in April 2009. What is rather surprising is that despite the highest ever (by a long margin) cereal output in 2010/11 and a stock in excess of one million ton, food grain import also rose sharply to 5.3 million ton.⁸ It is very difficult to reconcile the food availability figures (production plus import) with demand and the soaring domestic market prices. It would seem that either the crop production figures were overestimated, or the importers including the government miscalculated the domestic demand and import need.

The ministries have a proclivity to set high targets, but this is sometimes counterproductive. When a target is set, any shortfall tends to be viewed as something of a discredit for the ministry. Consequently, there could be a tendency to exaggerate the actual outcome. Crop production targets are frequently set at a high level. The Awami League led government that assumed power in January 2009 also set very ambitious targets for agriculture. The agriculture ministry claimed to have achieved bumper crops for *Boro* and *Aman* in 2009/10 and a cereal output of 35.57 million ton (34.6 million ton of rice). These were much greater than the estimates of the Ministry of Food and Disaster Management or the Bangladesh Bureau of Statistics.⁹

⁸ The average food grain import during the previous 10 years was about 2.8 million ton.

⁹ Bangladesh Bureau of Statistics, *Statistical Yearbook of Bangladesh-2011*.

Table 4: Domestic food grain production ('000 ton)

Yeare	Rice production	Wheat production	Cereal production	Cereal import
2000-01	25086	1673	26759	1542
2001-02	24300	1606	25906	1790
2002-03	25188	1507	26695	3208
2003-04	26190	1253	27443	2786
2004-05	25157	976	26133	3372
2005-06	26530	735	27265	2562
2006-07	27319	737	28056	2420
2007-08	28931	844	29775	3467
2008-09	31317	849	32166	3013
2009-10	31975	901	32875	3449
2010-11	33542	972	34514	5313
2011-12	33889	995	34884	2290
2012-13	33904	1255	35159	1872
2013-14	34265	1375	35640	n.a.

Source: Ministry of Food, Government of Bangladesh

That the Government was taken by the hype of a bumper harvest created by the Ministry of Agriculture is seemingly suggested by the cessation of import of any rice by the government of its own accord; the only import of a meager 3631 ton in the public sector in 2009-10 (up to March 2010) was financed by foreign aid.¹⁰ In contrast, the government had imported 415,304 ton of rice during FY2008-09 despite the fact that the international price was the highest of the last 40 years. There was also a near shutdown of the government procurement machinery during the *Aman* season. The government set a low procurement

¹⁰ For the whole year 2009/10, government import was 51.5 thousand ton. (FPMU, *Bangladesh Food Situation Report* 83, 2010)

price of Tk22 for *Aman* rice based perhaps on the then comfortable rice market situation and the expectation of an imminent bumper harvest. It is arguable that it perhaps would not have set such a procurement price if it had anticipated a poor harvest. The market price of rice had already started rising by the middle of December 2009. The procurement price turned out to be too low, which dissuaded farmers from selling to the government. The total amount of *Aman* procured by the government stood at a negligible 14,690 ton (as of 31st March 2010) against a target of 302,700 ton, which was less than 0.5 percent of the target. The rice stock fell sharply from 1.2 million ton before *Aman* harvest to 0.3 million ton by March 2010. During the same period in the previous year the rice stock had decreased only marginally from 1.2 million ton to 1.1 million ton.

The bumper crop hype must have also misled the private sector rice importers. They virtually ceased to import rice. While they had imported 182.7 thousand ton of rice during the July-March 2008-09 periods, they imported only 36.6 thousand ton in FY 2009-10, which was only 19 percent of the previous year's import. By contrast, wheat import was not negatively affected. It actually increased to 3.4 million ton in 2009-10. This ensured adequate supply of wheat in the market, and hence the wheat price remained stable.

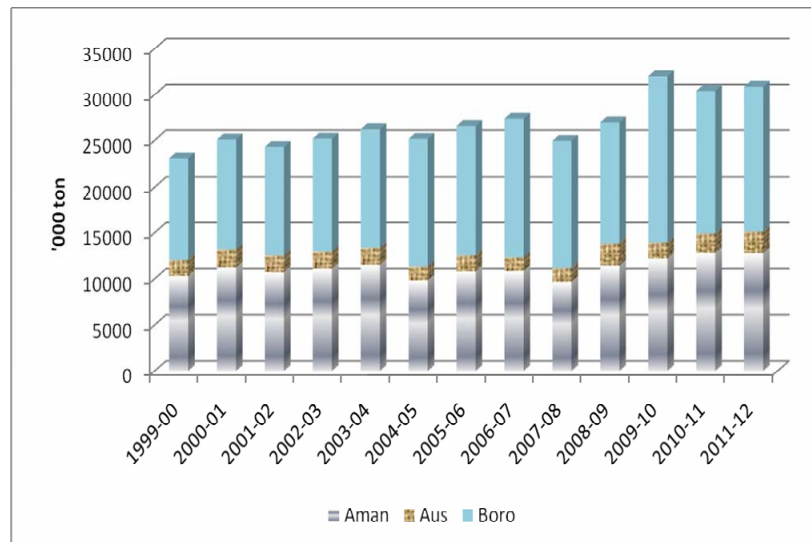
If the possibility of a modest *Aman* harvest were flagged early in the season, both the public and the private sectors might have been activated in anticipation of a relative supply shortage. This would have helped to keep a lead on the rice price. Overstated data could have misled the market into inaction when there was an urgent need for import. In the end, the rice price increased in the domestic market despite the fact that the price was on a downward trend in the international market. Government and civil society experts predictably blamed the rice traders for the price hike.¹¹

A comparison of the domestic and international rice prices in the new millennium suggests that the two prices moved very close together until mid-2007. Since then there has been a very substantial divergence between the two series as shown in Chart 9. Initially the domestic price increased much faster than the world price probably due to the market disruptions caused by the ill-advised anti-corruption drive of the then Caretaker Government that rattled the business community. However, since the beginning of 2008 the international rice price shot up about 300 percent within a few months as a result of the export bans. The price in the local market also increased, but not by such a large

11 M. A. Taslim, 'Off the mark: It ain't so', bdnews24.com, 20th August 2010

amount. The world price remained considerably above the local price throughout much of 2008 suggesting a substantial delinking of the international and local rice markets. The divergence narrowed down from the early 2009 as many of the rice export bans were withdrawn and the effects of the bans on the market waned.

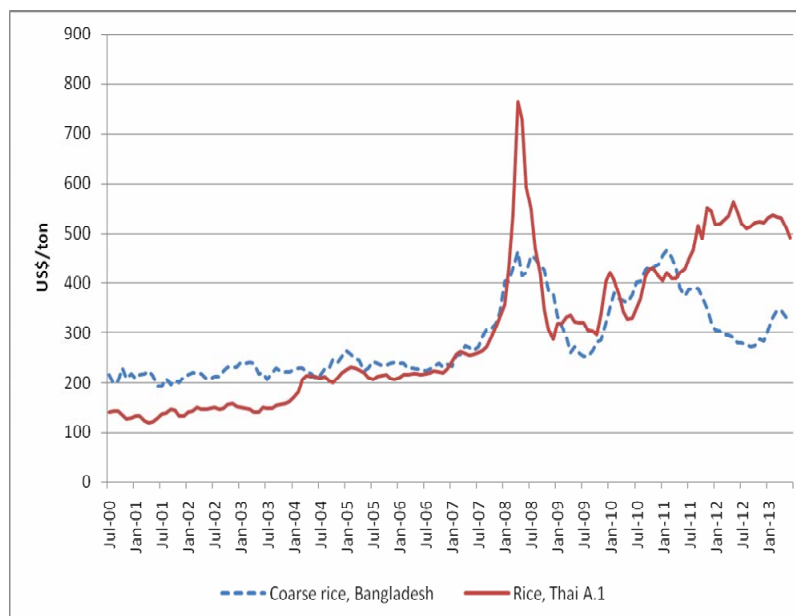
Chart 8: Domestic rice production



Source: Bangladesh Bureau of Statistics and Department of Agricultural Marketing

The large divergence in the domestic and world rice prices in 2008 is indicative of a breakdown of the smooth functioning of the international rice market. As mentioned earlier, the international trade in rice was disrupted around late 2007 by the imposition of effective export bans by India, and subsequently by many other countries including Bangladesh.¹² These bans ruptured the link between the domestic and the foreign markets, and segmented the international rice market along national boundaries. Thus, the price of rice in each country was determined by its own supply-demand balance, rather than the global balance.

¹² For a good account of the impact of the export bans on the domestic rice market, see Abdul Bayes and Mahbub Hossain, *Tin Bigha Jomi: Krishi O Khaddo Biborton Brittanto* [Translation: *Three Bigha Land: A Study on the Evolution of Agriculture and Food*] (Dhaka: A. H. Development Publishing House, 2013), pp. 293-324

Chart 9: Price of rice in the domestic and world market

Source: *World Bank Commodity Price Data (The Pink Sheet)* and Bangladesh Bureau of Statistics, *Average Retail Prices of Selected Commodities*.

These bans were temporary measures to protect the individual countries against perceived food shortages. Most of these were withdrawn by the end of 2008 in the face of good harvests such that international grain prices fell sharply. The decline continued through 2009 with good output growth. However, it seems unlikely that international rice prices will fall back to the level that existed before 2008 unless there is substantial increase in global export supply of rice.

Since the beginning of 2011, the domestic price of rice diverged from the world price. The latter increased markedly, but the former fell by a large proportion. There were, according to the government, good harvests of rice from FY2010/11 to FY2012/13. In addition, there were large amounts of cereal import. These must have caused an excess supply situation in the domestic market which pushed the price down below the world price. The maintenance of export bans by Bangladesh prevented any arbitrage by Bangladeshi traders in order to profit from the higher world price.

Bangladesh should take measures against sharp fluctuations in the prices of essential cereals, especially rice, in the domestic market. One option is to build up cereal stocks through purchases from the international or the domestic market when the world market is slack or the domestic supply is excessive. The government itself should hold cereal stocks of at least 10 percent of consumption to tide over difficult times. Building up of a substantial stock through domestic purchase would also enable the government to prevent sharp reductions in cereal prices immediately after harvests thereby securing a fair price for the farmers.

Conclusion

While the international price is a major influence on the domestic price of a tradable good such as rice, there are domestic factors that may cause a price divergence. One such factor is government intervention. If the government intervenes in the market to procure a certain volume of rice at an administered price, it will influence the local free market price. When the government sells a substantial amount of rice at a subsidised price, it will push down the free market price. The government procurement price should normally set a benchmark for market price. However, if the procurement price is set too low, there may be no one willing to sell his or her product to the government. This was evident during the 2009/10 crop season when the government's procurement drive had to be abandoned as the farmers were not keen to sell rice to the government. Consequently, the government was obliged to import on a large scale to build up the public food grain stock which had fallen to a low level. A low food grain stock held by the government may engender expectations of shortages, and reduce the ability of the government to influence the market as and when needed. The government needs to improve its forecasting capacity in order to take timely offsetting measures, and set the price fixation mechanism in a manner such that the procurement prices align closely to the market prices.

THE QUEST FOR ESTABLISHING INTELLECTUAL PROPERTY RIGHTS OVER FOODS, HANDICRAFTS AND CULTURAL HERITAGES: THE CASE OF BANGLADESH

Mohammad Atique Rahman*

Abstract

In 2013 the United Nations Educational, Scientific and Cultural Organization (UNESCO) recognized Bangladeshi handicraft Jamdani as a sole tradition of the country. The UNESCO's recognition of Jamdani as a traditional product brings forth the issue of global intellectually property rights models and their relevance for Bangladesh. This paper argues that currently there are two major approaches to the protection of intellectual property rights: the United States is in favor of the trademark and certification model of protection, whereas the European Union and developing nations are in favor of adopting Geographical Indication (GI) model. It analyzes the quest of Bangladesh at the national and international levels for the establishment of intellectual property rights over its foods, handicrafts and cultural heritages. The central research question is why Bangladesh supported the establishment of Geographical Indication method, and not the trademark and certification model; and how Bangladesh has established GI rights at the national and international levels. The paper is divided into three sections. The first section traces the evolution of GI as form of intellectual property rights. The next section explores the ongoing debates between members of the World Trade Organization (WTO) in regard to the adoption of national and international legal protections for the GI products. The concluding section analyzes the initiatives taken by Bangladesh to protect her traditional products.

Introduction

Recently, Bangladeshi traditional handicraft Jamdani has been recognized by the world community as sole tradition of the country. Bangladesh has been able to negotiate at the 8th Conference of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage at Azerbaijan in 2013 and presented necessary information in favor of establishing ownership of Jamdani. At this meeting, the traditional art of Jamdani weaving in Bangladeshi has been included in the UNESCO's heritage list as the sole tradition of the country.¹ The

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1 Jamdani Included in UNESCO's Heritage List, The Daily Financial Express, December 6, 2013, available at: www.thefinancialexpress-bd.com/2013/12/06/7476, accessed on 12.03.2014. According to UNESCO, "Jamdani is a vividly patterned, sheer cotton fabric, traditionally woven on handloom by craftspeople and apprentices

inclusion of Jamdani saree on the UNESCO's list of 'Cultural Heritage of Humanity' has opened new opportunities for thousands of local and deprived craftspeople in Bangladesh. This product represents the distinct identity, skill and dignity of the craftspeople. This recognition will help to increase interests among entrepreneurs, local producers and consumers at home and abroad to be engaged in the production, branding and marketing of Jamdani.²

In this highly integrated global market, people have larger access to products from various corners of the world. But do they consciously think for a while that why they have to pay more for drinking Ethiopian Sidamo coffee from Starbucks than a cup of Folgers? It is natural that consumers can distinguish products on the basis of taste and quality. But in spite of taste and quality a secret lies with the intellectual property rights. Therefore, some products are protected by intellectual property designations such as trademarks, certification marks, collective marks and Geographical Indication (GI).³

Question arises, whether Bangladesh can establish intellectual property protection over its popular mango varieties such as the Fazli and Langra from Rajshahi, Nakshi Kantha (embroidered quilt) from Faridpur, and Jamdani saree from Dhaka. The list of traditional Bangladesh products requiring protection includes Kataribhog rice from Dinajpur, Hilsha fish from Chandpur, and honey from the Sundarbans forest.⁴ The central logic behind protecting such products is straightforward: Bangladesh can reap economic benefits by establishing brand value and quality control of its inherited products under a system of intellectual property rights.

In this context, this paper analyzes the quest of Bangladesh at the national and international levels for the establishment of intellectual property rights over its foods, handicrafts and cultural heritages. It asks two central questions:

around Dhaka. Jamdani textiles combine intricacy of design with muted or vibrant colours, and the finished garments are highly breathable. Jamdani is time-consuming and labour-intensive form of weaving because of the richness of its motifs, which are created directly on the loom using the discontinuous weft technique." See UNESCO, "Traditional art of Jamdani weaving," available at: www.unesco.org/culture, accessed on 12.03.2014.

2 Z. Hasan, Jamdani weaver Enamul Hopes for Better Future, The Daily New Age, 09 December, 2013, available at: www.newagebd.com/detail.php?date=2013-12-09&nid=76005, accessed on 12.03.2014.

3 F. Addor, F and A. Grazioli, "Geographical Indications Beyond Wines and Spirits, a Roadmap for a Better Protection for Geographical Indications in WTO/TRIPS Agreement", *Journal of World Intellectual Property*, Vol. 5(6), 2002, pp. 865–97.

4 M. A. Yusuf and S. R. Burhan, "Geographic Indication: The role of the Private Sector", The Financial Express, Dhaka, Tuesday, November 12, 2013.

- Why has Bangladesh supported the establishment of GI rights in spite of trademark and certification mark?
- How has Bangladesh established GI rights at the national and international levels?

In addressing these questions, this paper is divided into three sections. The first section traces the origin and development of geographical indication as a method of intellectual property rights. The next section explores the debates between WTO member states on the adoption of GI rights. It also elaborates the involvement of WTO Dispute Settlement Body (DSB) and the Trade Related Aspects of Intellectual Property Rights (TRIPS) Council in addressing the debates over GI legal principles. The third section investigates why Bangladesh supported the GI method, instead of the trademark and certificate mark protection method. It also explores how Bangladesh adopted the GI legal protection. The paper concludes with a discussion of key aspects of the recently adopted GI Act in Bangladesh.

History of Geographical Indication Method

Geographical Indication (GI) has evolved as distinct form of intellectual property to provide indication to the consumer about the identification of the place of origin for a product. The Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement, adopted in 1994, was the first major international treaty recognizing the GI as distinct form of intellectual property rights. TRIPS articulate three major characteristics of GI products. These are:⁵

- It must relate to a specific type of goods;
- These goods must originate from a defined area; and
- These goods must have qualities, reputations or other characteristics that are clearly linked to the geographical origin of goods.

The GI method is commonly used in agricultural products as they have typical qualities that derive from their places of origin and are influenced by specific local and geographical factors such as climate and soil. For instance, the Roquefort cheese, Blue Mountain coffee, Darjeeling tea, Cognac, Scotch, Porto, Havana are the most common and world famous GI products which are well known because of their association with certain nature and quality associated with particular geographic origins.

5 I. Kireeva and B. O'Connor, "Geographical Indications and the TRIPS Agreement: What Protection is Provided to Geographical Indications in WTO Members?", *The Journal of World Intellectual Property*, Vol. 13, No. 2, 2010, pp. 275-276.

Most of the GIs relate to agricultural products, foodstuffs, wine and spirit drinks. However, the GI protection can be extended to non-agricultural products. GI may also be used for highlighting specific qualities of products that are due to human skills found in the product's place of origin.⁶ In that sense, GI is close to traditional knowledge and know-how as it focuses on old and local creativities and skills of the community. Handicrafts and other local products which reflect local traditions, cultural traits as well as contain local natural resources can also be considered GI products. For example, India has adopted the GI legislation to protect its traditional handicrafts such as Kanchipuram Silks, Kolhapuri Chappal (type of traditional footwear), Channapatna toys and Dolls made of Ivory-wood, Mysore Silk, Mysore traditional paintings, Mysore Agarbathi, Pochampally Ikat tie-and-dye saree.⁷ On the other hand, the Czech Republic protects Jablonec Jewellery and Bohemia Crystal under its national GI law.⁸

The foregoing discussion suggests that GIs offer intellectual property rights to ensure protection of specific agricultural products, food stuff, and handicrafts which are originated in a specific place and possess qualities, reputation, traditional know-how or other characteristics that are essentially attributable to that place of origin. During the TRIPS council meeting in December 1998, many countries submitted their products under GI (Table 1).

The Trade Related Aspects of Intellectual Property Rights (TRIPS) recognizes GI as collective and community rights. GI is economically and culturally significant for countries. Worldwide protection for GI has been basically patronized by the European Union (EU) as the EU conceived it as means of promoting sustainability of small farming and rural communities. GI protections preserve the income-profit of small firms and promote rural economy. The EU was successful in its efforts to include wines and spirits under the GI protection in Trade Related Aspects of Intellectual Property-TRIPS. Article 23 of the TRIPS agreement provides for recognizing wines and spirit as GI products which all member countries should agree upon. In addition, Article 24 of TRIPS in conjunction with the Article 23 reveals the exception that the member states can negotiate to increase the protection of individual geographical indication.

⁶ *Ibid*, pp. 281.

⁷ Article 1(e) of the Geographical Indications of Goods Act, *supra*, n. 14. Also consult Geographical Indications Registry of the Intellectual Property Office of India [online], available at www.keralaindustry.org, accessed on 13.02.2014.

⁸ Official website of the Czech Republic Industrial Property Office, available at: www.isdvapl.upv.czi, accessed on 13.02.2014.

Table 1: List of Geographical Indication Products⁹

Name of Country	GI Products
Bulgaria	Bulgarian yoghurt, Traminer from Khan Kroum (wine), Merlou from Sakar (wine)
Canada	Canadian Rye Whisky, Canadian Whisky, Fraser Valley, Okanagan Valley, Similkameen Valley, Vancouver Island
Czech Republic	Pilsen and Budweis (beers), various vines, liqueurs, Saaz hops, Auscha hops, Jablonec jewellery, Bohemia crystal, Vamberk lace
European Communities	Champagne, Sherry, Porto, Chianti, Samos, Rheinhessen, Moselle Luxembourgeoise, Mittleburgenland (all wines); Cognac, Brandy de Jerez, Grappa di Barolo, Berliner Kummel, Genièvre Flandres, Artois, Scotch Whisky, Irish Whiskey, Tsikoudia (from Crete) (all spirits); and a range of other products, such as Newcastle brown ale, Scottish beef, Orkney beef, Orkney lamb, Jersey Royal potatoes, Cornish Clotted Cream, Cabrales, Roquefort, Gorgonzola, Azieta de Moura, Olive de Kalamata, Opperdoezer Ronde, Wachauer Marille, Danablu, Lübecker Marzipan, Svecia, Queijo do Pico, Coquille Saint-Jacques des Côtes-d'Amour, Jamón de Huelva, Lammefjordsgulerod
Hungary	Eger (wine), Szatrademarkar (plum)
Liechtenstein	Malbuner (meat products), Balzer (Hi-tech products)
Slovak Republic	Korytnická minerálna voda (mineral water), Karpatská perla (wine), Modranská majolica (hand-painted pottery), Piešťanské bahno (healing mud)
United States	Idaho, (potatoes and onions), Real California Cheese, Napa Valley Reserve (still and sparkling wines), Pride of New York (agricultural products), Ohio River Valley (viticulture area)

The EU and many developing countries opted for ongoing negotiation within the TRIPS council in order to seek additional protections of GI. The TRIPS also promotes multilateral registration system for other products under the purview of the concept of additional protections for GI. In this regard, these countries have advocated for extending GI protections on agricultural products, food stuffs, and handicrafts which are originated in a specific place. However, this proposal was opposed by the new WTO members led by the United States. As a result of this debate in the TRIPS council and in the absence of a solution for further harmonization of the GI, the European Communities in 2005 submitted a radical TRIPS-plus¹⁰ proposal to amend the TRIPS agreement in favor of

⁹ WTO News, available at www.wto.org, accessed on 25/10/2013.

¹⁰ WTO, General Council, Trade Negotiations Committee, Council for Trade-Related Aspects of Intellectual Property Rights, Special Session on Geographical Indications, Communication from the European Communities, 14 June 2005, WT/GC/W/547, TN/C/W/26, TN/IP/W/11, accessed on 3.4.2014.

mandatory multilateral system for all products. They advocated that this proposal would also meet the need of the developing countries.

The historical evolution of Geographical Indication as an important aspect of intellectual property can be explored throughout the adoption of various multilateral conventions and agreements on industrial property in the past two hundred years. Earlier GI was a locally developed notion with limited effect. With the rapid increase in commerce and business across the world, the national protection on GI was not sufficient as the same products had a mere chance of imitation outside the border. Therefore, countries felt that GI protection should extend outside the borders and in this regard international cooperation was highly required. The primary objective of seeking international cooperation on GI was to ensure protection for the specific products at the international level and to adopt the practice of reciprocity in the level of protection between states. Against this backdrop, it is pertinent to discuss various international treaties and conventions dealing with GI protections.

Paris Convention for the Protection of Industrial Property. The 1883 Paris Convention for the Protection of Industrial Property identifies GI as a separate intellectual property rights. The notion of GI has been expressed through the protection of sign which bears the name of product's place of origin as an 'indication of source' or appellations of origin.¹¹ Article 10 (1) of the Paris Convention provides for certain remedies in respect to the unlawful use of indications of source on goods. This means that no indication of source may be used if it refers to a geographical area from which the products in question do not originate (Indication of source).¹² Article 10bis¹³ of the Convention gives the basis for protection against misleading indications of source, including

11 M. R. Ayu, "How Does Australia Regulate the Use of Geographical Indication for Products other than Wines and Spirits", *Macquarie Journal of Business Law*, Vol. 3, 2006, p. 3

12 Paris Convention for the Protection of Industrial Property of March 1883, available at: www.wipo.int, accessed on 23.04.2014

13 Art. 10bis stipulates that: all acts of such a nature as to create confusion by any means whatever with the (i) establishment, the goods, or the industrial or commercial activities, of a competitor; (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; (iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods. (See: Convention for the Protection of Industrial Property of March 1883, available at: www.wipo.int, accessed on 23.04.2014

appellations of origin. It obliges members to provide protection against unfair competition and contains a non-exhaustive list of acts, which are to be prohibited. The Paris Convention does not provide for any special remedies against infringement of this provision.

The Madrid Agreement on Indications of Source. The 1891 Madrid Agreement on Indications of Source is the first multilateral agreement for adopting specific rules for the Repression of False or Deceptive Indications of Source of Goods. Article 1(1) of the Madrid Agreement provides that all goods bearing a false or deceptive indication by which one of the countries to which this agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.¹⁴ It extends protection to the deceptive indications of source in addition to false indications. That means a deceptive indication of source can be the true name of the place where the good originates from, but it would be confusing to the customer as to the true origin and quality of the good.

International Convention on the Use of Appellations of Origin and Denominations of Cheeses: This international convention held on June 1, 1951 in the Italian town of Stresa to determine origin of Parmesan cheese, which is commonly known as the ‘king of cheeses’. The signatories of the Stresa Convention were France, Italy, the Netherlands and Switzerland. These countries committed to prohibit the use of false designations of origin on their territory. The convention determined to offer higher level of protection for Parmesan cheese, and other food products such as Gorgonzola, Pecorino Romano and Roquefort. This convention paved the way for the adoption of the 1958 Lisbon Agreement to ensure legal protection at the national and international levels for GI products.

The Lisbon Agreement for the Protection of Appellations of Origin and the International Registration: The 1958 Lisbon Agreement for the Protection of Appellations of Origin and the International Registration covers only a few countries. It is widely known for providing strong protection for a product bearing the true name of its place of origin under its special concept of appellations of origin. Lisbon Agreement extends protection to not only to the goods but also to the services. Article 2(1) of this agreement states that, “appellation of origin is the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and

14 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, available at: www.wipo.int, accessed on 23.04.2014

characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”.¹⁵

The Lisbon agreement ensures protection of appellations of origins of products from any usurpation or imitation. This means a good or commodity can be produced in same kind, type or imitated by others. The duration of protection for the appellations of origin is for unlimited period of time as long as it is effectively used in the country of origin. Therefore, there is no requirement for international renewal. Furthermore, Lisbon agreement also recognizes the fact that when the product is protected as appellations of origin it cannot be registered or used as a generic one.

The Madrid Agreement Concerning the International Registration of Marks:

It is evident that in some countries GI products can only be protected by trademarks. Since 1891, the Madrid System for the International Registration of Marks as collective marks, certification marks or guarantee marks have also been applicable to the protection of GIs. This means that an international registration system for trademarks, established by the Madrid Agreement of 1891 and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks of 1989, can also serve as a means of international protection of GI.¹⁶ This system can only be used by those countries who do not have specific (sui-generis) rules on the protection of GI. They can protect GI by using certification trademark.

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):

The 1994 WTO agreement on Trade Related Aspects of Intellectual Property Rights dedicates a specific section to GI. It is considered the first binding multilateral treaty dealing with GI. Article 22 of the TRIPS agreement provides a definition of geographical indications. They are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.¹⁷ This definition in TRIPS includes the concept of appellations of origin contained in Article 2 of the Lisbon Agreement to protect goods which merely

¹⁵ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, available at: www.wipo.int/lisbon/en/legal_texts, accessed on: 23.04.2014

¹⁶ Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, available at: www.wipo.int/wipolex, accessed on 14.04.2014.

¹⁷ Uruguay Round Agreement: TRIPS Trade-Related Aspects of Intellectual Property Rights, available at: www.wipo.int/treaties, accessed on 13.04.2014

derive a reputation from their place of origin without possessing a given quality or other characteristics which are due to that place. The TRIPS agreement adopts protections for GI in two levels. Sub-article (2), (a), (b) of 22 stipulates that member countries should prevent the use of any false geographical indication that have the potential to mislead the public and to constitute unfair competition. The second level of protection, as enshrined in Articles 23 (1), (2), (3), (4), calls for additional protection for geographical indication, specializing in wines and spirits.¹⁸

The TRIPS ensures more protection of these two types of alcohol beverages. That means protection is not only against false use of GI indication for this two types of beverages but also against any use of GI to indicate other geographic origin, even when the true origin of the good is indicated in translation or accompanied by an expression such as kind, type, style, imitation of the like. It means that especially for wines and spirits, protection is not only provided for consumers against misleading information, but also for producers, from harmful conduct on the path of competitors.

An example can simplify the situation of protection to GI. The beer under the mark Budweiser is a well known product which has been produced by Anheuser-Busch Companies, Inc. in the United States. Since 1957, Budweiser has also been produced in the Czech Republic by Budweiser Budvar, which claims to be the 'original' producer of Budweiser beer.¹⁹ The Anheuser-Busch has been producing brewer since 1957 and it is one of the leading companies in U.S and the world's largest beer brand. Therefore, under GI protection prohibition Anheuser-Busch needs to relinquish use of its beer's name which is similar to the European product name.²⁰

From the above presentation of treatment of GI in various multilateral agreements, it is easily conceivable that the GI has always been an evolving notion which encompasses various types of protections as its scope. The graphical presentation in Figure 1 reflects the current scope of GI protections.

18 See Article 23: *Additional Protection for Geographical Indications for Wines and Spirits of Uruguay Round Agreement: TRIPS Trade-Related Aspects of Intellectual Property Rights*, available at: www.wipo.int/treaties/en, accessed on 1.12.2013

19 Budweiser Budvar, "Trademarks", available at: www.budvar.cz/en, accessed on 1.11.2013

20 I. Shalevicht, "Protection of Trademarks and Geographical Indications", *Buffalo Intellectual Property Law Journal*, 2008, available at: www.heinonline.org, accessed on 23.11.2013, p. 69

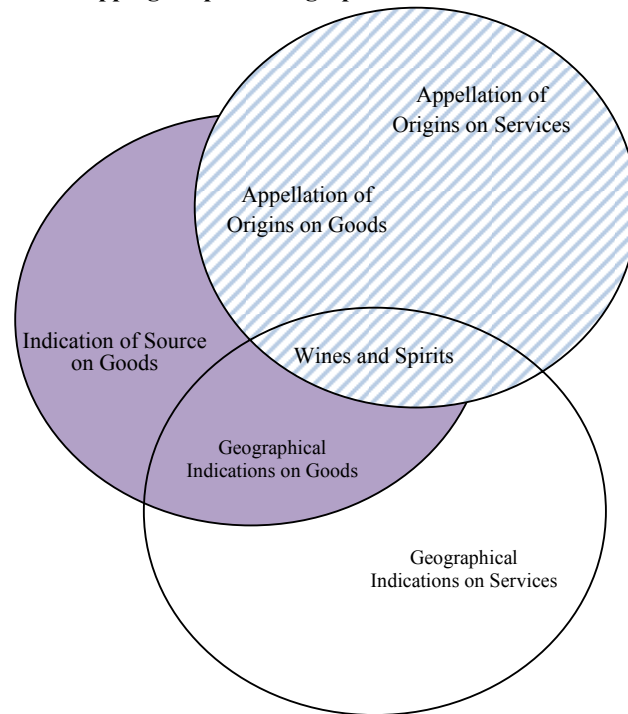
Figure 1: Overlapping Scope of Geographical Indication²¹

Figure 1 shows that GI has been used as synonymous for indication of source in the Madrid Agreement (1891) and in the Paris Convention (1883). Here the GI refers to a source to identify the geographic origin of a product.

The foregoing discussion on the evolution of geographical indication clearly shows the difference between GI and trademark. The latter introduces the proprietor or manufacturing enterprise of a product or service to its customers. By contrast, the concept of indication of source does not imply any special quality, characteristic or reputation of the identified product attributed to its place of origin. The 1958 Lisbon Agreement specifies GI products by labeling them under the appellations of origin. It is more specific than the source of indication. It extends protection beyond indications of source because a product identified using an appellation of origin must not only originate from a specific place but also have indigenous characteristics and qualities that reflect the

21 M. Risnag, "How Does Australia Regulate the Use of Geographical Indication for Products other than Wines and Spirits", *Macquarie Journal of Business Law*, Vol. 3, 2006, p. 3

special environment, unique geography, and natural and human factors not likely to be found elsewhere. The TRIPS agreement adopted GI as appellations of origin. But unlike Lisbon which focuses on quality and characteristics of a product, TRIPS also adds the reputation of product. Under the TRIPS Agreement, quality, reputation, and other characteristics are each in its own right sufficient and indispensable condition for the existence of a GI.²² Countries adopted the notion of reputation and extended it to include services other than goods as GI. Therefore, the scope of protection has been overlapping with indication of sources, appellation of origins and geographical indication. In this regard, countries are increasingly facing challenges for choosing appropriate legal measures from the existing scopes of GI protection at their national levels.

Debates among WTO Member Countries Regarding the Adoption of GI Protections

On the question of GI protection, the United States and the EU offer two competing models. Interestingly the debate is not between the Global North and the Global South; instead, between north-north countries. There are some intricate reasons behind the differences between these two models of protection of GI. These are as discussed below:

The U.S. approach to geographical indication. The US approach to GI is different from the EU approach. The United States protects GIs under trademarks, collective or certification marks regime.²³ In fact, it is a leading state that refuses to protect GI under the special independent law or Act. Instead of adopting special sui-generis legislation, the US has established certification and collective marks legal regime for the protection of GI products. According to the US Trade Mark Act 1946, The United States Patent and Trademarks Office suggests that:

Certification Mark is defined as any word, name, symbol device, or any combination, used or intended for use in commerce with the owner permission by someone other than its owner, to certify regional or other geographical origin, material, mode of manufacture, quality, accuracy, or other characteristics of someone's goods or services.²⁴

Collective marks can be used by associations, unions, corporations, or other organized groups. In the US certification mark system, GI is compounded with

²² *Ibid*, p. 71.

²³ I. Shalevicht, "Protection of Trademarks and Geographical Indications", *Buffalo Intellectual Property Law Journal*, Vol. 6(1), 2008, p.68.

²⁴ The United States Patent and Trademark Office, 2003, available at: www.uspto.gov, accessed on 12.03.2014.

other unregistered marks that do not identify the origin of a good or service but are eligible to be certified. As a particular type of trade mark, the certification mark does not identify a source of goods, but indicates their quality or conforms to its particular standards. For geographical indication purposes, the US certification mark recognizes all aspects of the nature of origin of the goods or services to which it has been applied.²⁵ Under the US GI protection system, the scope is much wider for acquiring protection. Under this system individual, club, private or public enterprise can be owners of GI. The US geographical indication ownership is therefore not a typical collective or communal ownership as is commonly known in many countries, especially in the European Community.²⁶ The United States also extends GI protection through collective marks which is a particular type of trademark that does not identify the source of a good but indicates membership in particular organizations. The benefit of protecting all types of geographical indication under certification marks are as follows:²⁷

- The certification mark is successfully used to identify the origin of an individual agricultural product;
- As a form of protectable unregistered mark, the certification mark system enables an unregistered geographical indication or indication of source to be protected, as long as it has a distinct reputation that can be proven in court. This system reduces the cost of formality; and
- Protecting geographical indication under certification marks, the objects of protection can be broader, not only for goods, but services as well.

The EU approach to geographical indication: Europe has a long history of fostering and protecting geographical symbols.²⁸ The European Union believes that such symbols should be associated with a given place which has greater influence in determining characteristic of specific products. It is evident that this autonomous protection (*sui-generis*) other than trademarks, collective or certification marks had been developed and practiced across the European

25 International Trademark Association's Information Centre, 'Certification Marks', available at: www.inta.org, accessed on 15.11.2013.

26 M. R. Ayu, "How Does Australia Regulate the Use of Geographical Indication for Products other than Wines and Spirits", *Macquarie Journal of Business Law*, Vol. 3, 2006, p. 15.

27 M. Risnag, *Op. cit.* p.18.

28 M. Ricolfi, 'Geographical Symbols in Intellectual Property Law: the Policy Options' in Reto M. Hilty and others (eds), *Festschrift für Ulrich Loewenheim zum 75*, 2009, p.1.

Economic Area (EEA) before TRIPS negotiation. In 1979, the European Court of Justice (ECJ) held that products legally originated and marketed in one Member State could be marketed in another.²⁹ The Court's affirmation of the principle of free movement of goods within the European community thereby removed any protection of agricultural and food producers might have enjoyed in respect of measures equivalent to quantitative restrictions between Member States.

The EU has also adopted the idea that special GI protection would facilitate small and medium sized farms to compete in international commodity markets through achieving product differentiations and financial stabilities. In view of the inalienable relationship of GI with the land, in 1992 the European Commission took the decision to protect high-quality agricultural products based on geographical origin using designations of GI. In this regard, Regulation No. 2081 of 1992 created a *sui generis* or specialist system of indications of origin throughout the common market. The regulation expressed common agricultural policy as it is going to fulfill its objective of contributing to:

the diversification of agricultural production ... so as to achieve a better balance between supply and demand on the markets; ... [and benefiting] the rural economy, in particular ... less-favored or remote areas, by improving the incomes of farmers.³⁰

Later the EU also adopted regulation 510/2006 in which Article 2(1) enhances the protection of 'designation of origin' to only for agricultural products which at least in principle are unique because of the quality or characteristics. Unlike Trademark, the subject matter of GI in Europe is broad. GI rests on the principle of specialty. Therefore, Article 1 of the EU Regulation 510/2006 extends protection of GI to the agricultural products and foodstuffs intended for human consumption, which may comprise the subject matter of protected designations of origin and GIs.³¹ These include essential oils, meat, fish, dairy products, and preparations thereof, fruit and vegetables and preparations thereof, cereals and

29 G. E. Evans and M. Blakeney, "The Protection of Geographical Indications after Doha: Quo Vadis?", *Journal of International Economic Law*, Vol. 9, No. 3, 2006, pp. 8-9.

30 WIPO Database of Intellectual Property, European Community, Legislative Texts, Council Regulation (EEC) No 2081/92 of 14 July 1992 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, available at: www.wipo.int/wipolex, accessed on 23.04.2014.

31 Council Regulation (EC) No. 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, available at: www.wipo.int/wipolex/en, accessed on 2.03.2014.

medicinal plants, and beers, bread, confectionery, and pasta.³² The regulation applies to a wide variety of agro-products including Tuscany for olive oil produced in a specific area of Italy and also 'Roquefort' for cheese produced in France.

The amended regulation in Europe (Regulation 510/2006 on the Protection of Geographical Indications and Designations of Origin) establishes two types of GI designations. At first, the 'Protected Designation of Origin' (PDO) encompasses traditional and non-geographic names. To qualify for a PDO, a product must be manufactured, processed, and prepared within the specified geographical area. In exceptional cases a country is used as a designation for an agricultural product or a foodstuff. Secondly, the Protected Geographical Indication (PGI) is broader in scope. A PGI product has a specific quality, goodwill or other characteristic property, attributable to its geographical origin. This type of product is produced, processed and prepared within the determined geographical area. Therefore, to achieve PGI status a product needs to be entirely produced or at least partially manufactured (prepared, processed *or* produced) within the specific region and thus acquire unique properties. A registered PDO or PGI enjoys the broad description of exclusive rights that are provided in Article 13.³³ These are as follows:

- a. any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;
- b. any misuse, imitation, or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as style, type, method, as produced in, imitation, or similar;
- c. any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- d. any other practice liable to mislead the public as to the true origin of the product.

32 Treaty Establishing the European Communities, Official Journal C 325, 24 December 2002, consolidated version, available at: www.europa.eu.int/eur-lex, accessed on 2.02.2014.

33 Article: 13, Council Regulation (EC) No 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, available at: www.wipo.int/wipolex/en, accessed: 03.02.2014.

The EU Regulation not only prohibits food products from outside the region from using the same geographical name but also denies the use of the name of products within the region that do not meet the standards set forth in the application. In a nutshell, it can be argued that there are significant differences between the EU and U.S. approaches to GI. In Europe, GI is seen as a means of changing from quantity to quality based production and distribution of agro-products system which provides opportunity to consumers to recognize and pay a premium for high-quality products. In this respect, one of the most important differences between trademarks and GIs is that the GI cannot be sold or delocalized and are accessible to any producer within the specified region of origin.

U.S.-EU trade dispute over geographical indication: The EU proposes to extend protection for wines and spirits to other products. For example, the Parmesan cheese³⁴ originally came from Parmesan, Italy. The EU wants to take back the name so that it could only mean cheese produced in the Italian region. The geographical indications in cheeses, rice, and teas should obtain the same protection. Producers outside the region could not avoid the protection by noting that the product is in the "style of Parmesan" or "U.S. Parmesan cheese." It is obvious that such initiatives were seen by the U.S. and other countries as a threat to their trading interests.

The United States and Australia became highly concerned at the systemic discrimination of their trademark owners in the face of EU-registered GI which denies access to agricultural and food processing market at the global level. On 18 August 2003, the United States and Australia requested the establishment of a WTO dispute settlement panel to review the consistency of the EU Regulation 2081/92 with the rules of the TRIPS and GATT Agreements. They argued that the Regulation 2081/92 does not provide the same treatment to other nationals and products originating outside the European Community that it provides to the European nationals and products. The regulation also violates exclusive rights of registered trademarks and the principle of senior marks. Considering

34 It is a hard dry Italian Cheese used chiefly in grated form. ORIGIN C.16: from Fr., from Ital. *Parmigiano* 'of Parma.'" Concise Oxford English Dictionary, *supra* note 1, at 1038. Parmesan cheese is an Italian cheese from the Parma region of Italy that takes up to two years to mature and contains no additives. *Parmigiano-Reggiano*, (for more information see: Michelle Agdomar, Removing the Greek from Feta and Adding Korbel to Champagne: The Paradox of Geographical Indications in International Law), available at: www.iplj.net/blog/wp-content, accessed on 23.02.2014.

the arguments from the U.S. and Australia, the WTO Dispute Settlement Body announced³⁵ in 2005 that the EU Regulation 2081/92 is inconsistent with the national treatment principle of TRIPS Article 3.1 with respect;

- to the equivalence and reciprocity conditions, as applicable to the availability of protection for GIs;
- to the application procedures, insofar as they require examination and transmission of applications by governments; and
- to the objection procedures, insofar as they require verification and transmission of objections by governments.

The WTO panel also holds that the GI is a discrete form of intellectual property and it endorses the EU principle of coexistence with the most famous prior trademarks.

EU proposal for the extension of GI protection and developing countries. In line with the WTO Dispute Settlement Body's decision, the European Union proposed for an amendment to Article 23 of the TRIPS to extend their scope to GIs for all products. In support of the extension of GI scopes of protection, a number of developing countries have identified GI as an important category of intellectual property which can bring economic benefit for them.³⁶ Kenya, Nigeria and South Africa, requested that the protection of GIs be extended 'to other products recognizable by their geographical origins, notably agricultural, food, and handicraft products.'³⁷ This proposal was also adopted by Cuba, Czech Republic, Dominican Republic, Honduras, India, Indonesia, Nicaragua, Pakistan, Sri Lanka, and Venezuela. These developing countries supported an

35 G. E. Evans and M. Blakeney, *Op. cit.*, p.23.

36 European Communities argued that the proposal would also meet the needs of developing countries as Developing countries would find this proposal more tailored to their needs since it covers geographical indications on other products like coffee, rice and teas. Furthermore, it advances a protection system that is easy to apply. It is sufficient to determine whether the good has the origin referred to by the geographical indications. The suggested changes are important given that the current system cannot be used by poor producers as it requires costly evidence (e.g. consumer surveys) that the public is misled. (For more information see: See WTO, General Council, Trade Negotiations Committee, Council for Trade-Related Aspects of Intellectual Property Rights, Special Session on Geographical Indications, Communication from the European Communities 14 June 2005, WT/GC/W/547, TN/C/W/26, TN/IP/W/11).

37 Preparations for the 1999 Ministerial Conference the TRIPS Agreement Communication from Kenya on Behalf of the African Group, WTO Doc WT/GC/W/302, 6 August 1999.

extended GI regime for food in order to facilitate market differentiation for a variety of common commodities such as tea, coffee, and rice.

Significantly, the protection of GIs has been identified as a useful legal instrument for the protection of traditional knowledge in so far as such products have a strong association with the land and reflect historical links between a particular region and the products of that region.³⁸ In reaction to that such proposal for extension, the United States suggested that the extension of Article 23 (1) would oblige WTO members to protect the GIs of all other members at an enhanced level of protection and that 'this could involve a considerable burden, particularly in view of the fact that some members, such as the ECs, have over 700 hundred domestic GIs'.³⁹ The opponents, including Australia, Chile and Guatemala, further pointed out that any grant of exclusive rights to one group of producers necessarily involves depriving others of the right to use those terms. The example of 'Feta' cheese, which is produced by a range of companies in Australia, Canada, Denmark, Greece, New Zealand, and the United States, is given in the Communication as an example of the way in which the extension of Article 23(1) might cause conflicts between WTO members⁴⁰. Therefore the debate on GI resurfaced on the question of the extension of its scope of protections. Being a developing country, Bangladesh also supported the EU proposal in order to achieve intellectual property rights over its products and cultural heritages. The next section analyzes Bangladesh's quest for achieving GI protections and its impacts.

Bangladesh's Quest for Establishing Geographical Indication (GI) Protections

This section examines why Bangladesh has supported the adoption of GI protection and how the country has achieved such legal protection at the national level. As stated before, GI is the property rights used by the countries as a source identifier and protection of the integrity, specialty, and commercial value of products whose uniqueness is identical to their geographic origin and customary process of manufacture.⁴¹ The 1994 TRIPS agreement leaves the opportunity to the WTO members to determine the appropriate legal mean of

38 G. E. Evans and M. Blakeney, *Op. cit.*, p. 575.

39 WTO Doc. IP/C/W/289

40 *Op. cit.*, 2006, p. 31.

41 P. Matthews, "Increasing Revenue in Developing Nations Through Intellectual Property Rights: Why a Diversified Approach to Intellectual Property Protection with a Focus on Geographical Indications is the Best Method", *Buffalo Intellectual Property Law Journal*, 2010, p. 203

implementing GI protections at their national levels. However, TRIPS agreement provides two options for its member countries: first, a country can adopt specific ‘sui-generis’⁴² legislation for GI protection of GI; second, a country can protect GI by means of existing legislation i.e. trademark or through tort law. Bangladesh followed the path of many developing and underdeveloped countries, and adopted the GI protection model instead of the trademark model.

In 2013 Bangladesh adopted the Geographical Indicative Products (Registration and Protection). This Act is the product of a long-term quest at the national and international levels for establishing GI norms and regulations. The Bangladeshi policy makers conceived the idea that the GI will extend protection to the informal innovations. The purpose of adopting GI Act is to protect products of Bangladeshi origins, many of which have worldwide reputation. Bangladesh supports GI legislation as it provides protection of consumers against fraud, protection of producers of the goods, ensure territorial, community and local development, and conservation of biological resources, bio-diversity and cultural diversity.⁴³ Without GI protection these products can be wrongfully used by other producers in unfair ways as they can misappropriate the benefits emanating from the goodwill and reputation associated with such GI products by way of misleading the consumers.⁴⁴ Such unfair acts can cause huge loss of revenue for the genuine right holders of the GI in Bangladesh.⁴⁵ Therefore, like many developing countries, Bangladesh supported the initiative to extend GI protection for food items under TRIPS. Like Kenya, Egypt, Morocco, and Jamaica, Bangladesh had also supported GI extension during Uruguay round of multilateral trade negotiations.

42 Sui generis is a Latin expression, simply meaning of its own kind/genus or unique in its characteristics. This expression refers to an idea, an entity or a reality that could not be included in a wider concept, and in the structure genus4species, a species that heads its own genus. In intellectual property law, it is a term used to identify a legal classification that exists independent of other categorizations. (see: I. Kireeva and B. O’Connor, “Geographical Indications and the TRIPS Agreement: What Protection is Provided to Geographical Indications in WTO Members?”, *The Journal of World Intellectual Property*, Vol. 13, No. 2, 2010, pp. 275-276.

43 D. Marie and Vivien, “The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India”, *the Journal of World Intellectual Property*, Vol. 13, No. 2, 2010, p. 121.

44 K. Das, “International Protection of India’s Geographical Indications with Special Reference to “Darjeeling” Tea”, *The Journal of World Intellectual Property*, Vol. 9, No. 5, 2006, p. 461.

45 *Ibid*, p. 461.

In a joint communication (document no. IP/C/W/308/Rev. 1, 2 Oct, 2001) Bangladesh along with other developing and developed countries such as Bulgaria, Cuba, The Czech Republic, Georgia, Hungary, Iceland, India, Jamaica, Kenya, The Kyrgyz Republic, Liechtenstein, Moldova, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, and Turkey proposed for extension of the protection of Geographical Indications for wines and spirits to Geographical Indications for other products. They argued that GI extension would enable consumers:

clearly and quickly [to] determine whether the product they want to purchase does in fact originate from the territory referred to by the geographical indication as well as whether that product will actually have the qualities, reputation and other characteristics that are essentially attributable to its geographical indication.... Consumers are entitled to a real choice based on correct, distinctive indications.⁴⁶

Bangladesh supported this proposition because it can benefit from extending GI protection of food items. GI protection is relatively impersonal. The protected subject matter is related to the product itself and is therefore not dependent on a specific right holder. As stated before, the GI offers protection and benefit opportunities for local communities to control the productions, branding and marketing of their products. Bangladesh has diverse agricultural products and the country is rich in crafts, cultural heritage, and traditional knowledge. These rich crafts and agricultural products are indigenous to its communities and groups of people who need legal recognition in order to maintain their heritage. As a result, GI can offer necessary protections for these resources and foster economic and social development for the country. Bangladesh can reap benefits from its GI products and crafts.

The GI legislation in the country can add brand value to the local rural products which have certain special qualities. GI can provide support for the economic and social stability and encourage the expansion of small businesses in the rural areas. Trading on the name and origin of a food can bolster the economy of a local community and improve the income of small producers. GI protection can thus help Bangladesh to differentiate the uniqueness of its products from similar

⁴⁶ WTO, Council for Trade-Related Aspects of Intellectual Property Rights, Communication from Bangladesh, Bulgaria, Cuba, the Czech Republic, Georgia, Hungary, Iceland, India, Jamaica, Kenya, The Kyrgyz Republic, Liechtenstein, Moldova, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, and Turkey, document no: IP/C/W/308/Rev.1, 2 October 2001, work on Issues Relevant to the Protection of Geographical Indications Extension of the Protection of Geographical Indications for Wines and Spirits to Geographical Indications for other Products.

competing products originated from other countries. For example, India enacted the Geographical Indication Act in 2009 in compliance with the TRIPS agreement. It is evident that India has registered Jamdani saree, Fazli mango and Nakshi kantha as geographical indicative products of India. According to the Geographical Indications Registry of India, Nakshi Kantha was registered as a GI product in 2008, while Fazli mango and Jamdani Saree were registered in 2009.⁴⁷

Bangladesh can initiate several steps at the national and international levels to establish GI protection. At the national level Bangladesh can follow India's footsteps and enact special GI Act to establish its exclusive rights over its foods and products. Bangladesh has to register its food and products under its GI Act given the basic fact that such products should be able to indicate specific place, or region of production, that determines the characteristic qualities of the product which originates from that place. The community owners of these products will be encouraged to prove a specific "link" which exists between the products and their original place of production. As for example, Bangladesh can register Jamdani as Dhakai Jamdani which has been registered in India as Uppada Jamdani. In India Uppada Jamdani has registered to identify such unique handicraft item which is produced in the Andhra Pradesh state. Therefore, Dhakai Jamdani in Bangladesh as registered GI product can easily be identified by the consumers as a unique handicraft item made by Bangladeshi handloom workers. Protection of Dhakai Jamdani under GI protection is necessary for the preservation of cultural heritages, traditional knowledge, and community ownerships.

Like Dhakai Jamdani, Bangladesh can also register Fazli mango as Rajshahi Fazli Mango. In India the Fazli Mango has been registered as Maldah Fazli Mango of West Bengal. If Bangladesh registers Fazli Mango as the Mango of Rajshahi, this will not contradict with the Indian claim. The GI Act therefore will help local community producers to differentiate the uniqueness of the products from similar competing products originated from other countries. This Act will also ensure exclusive rights over Bangladesh's local food stuff, handicrafts and traditional knowledge as well as prevent others from using the name, logo and marks which exclusively identify Bangladesh's origin of products. By using GI Act, Bangladesh can assert sovereign rights over its

⁴⁷ A.B. Siddique, "Bill passed to protect local products' patent rights", *The Daily Dhaka Tribune*, November 7, 2013, available at: www.dhakatribune.com/bangladesh/2013, accessed on 04.03.2014.

products and provide evidence of these products' historical, cultural and geographic roots in the country. The GI Act can also establish brand value and goodwill of locally produced products, set high value and increase sales by protecting reputations of the products.

So far Bangladesh included seventy three products under GI in which fifty two are food products and the remaining twenty one are non-food products. Food products include three fish items, twelve fruits, fifteen processed foods and sweets, fourteen agricultural products and eight types of vegetables. These food products are mostly produced by the rural communities in Jessore and Chittagong districts.⁴⁸ The GI protection on food items in Bangladesh will certainly increase the level of food safety as many of food items are produced by traditional methods in small scales. These methods are pre-dated and out of modern technology and quality control measures. As these food products are produced at in-house facilities and concentrated in small and cottage industries, the issues of quality and taste need to be emphasized. Salt and heat are the principle means for controlling pathogens. For example, their time and temperature controls are based on years of experience rather than laboratory analysis. These practices can be carried over into the approval of a geographical indication. From the economic point of view Bangladesh can get benefits from product differentiation through GI.

Under the GI, a product can be differentiated from its generic and thus becomes a tightly controlled commodity. Some consumers express a preference and a willingness to pay a higher price for such a unique product. The GI can establish a monopoly of Bangladesh over some food items. This monopoly will provide leverages to Bangladesh in establishing control over the supply of the product and can be a great source of revenue when used correctly. Bangladesh must provide product information and create awareness among the consumers from different parts of the world to ensure GI protection. Such information sharing can create greater demand for the attributes and qualities of the traditional products originating in the country.

The 2013 Geographical Indication (Registration and Protection) Act in Bangladesh includes a preamble and consists of ten chapters, forty-six sections, eighty-five sub-sections and two provisions. According to this Act the authorized users of GI refers to the producer or collective organization of

48 FAO, Rural Development and Agri-food Product Quality Linked to Geographical Origin in Asia, Proceedings from the Technical Consultation, 8–10 June 2009, Bangkok, available at: www.foodquality-origin.org, accessed on 23.3.2014, p. 43.

producers or cooperative societies which are registered as the producers and users of such GI products. The registration of GI gives its registered owners and authorized users the right to obtain relief for infringement. The GI Act in Bangladesh defines producers of geographical indication products who in order to sell and trade:⁴⁹

- Produce agricultural product;
- Collect products from the nature ; and
- Prepare handicrafts and industrial goods.

The GI law deals exclusively with the community ownership of goods, and not with the individual ownership. Section 2 (9) of the GI Act, stipulates that geographical indication identifies;⁵⁰

such foods as agricultural goods or natural goods or manufactured goods as originated or manufactured in the territory of a country or a region or locality in that territory, where a given quality, reputation or unique characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or a processing or preparation of the goods concerned takes place in such territory, region or locality.

The section clearly articulates the fact that geographical indications (GI) is a sign which defines the special qualities, reputations, tastes, production methods and know-how which adds special characteristics, source and contains the goodwill of a product that originated in a particular area such as the Fazli mango from Rajshahi, Hilsha fish from Padma, Chamcham sweets from Tangail, Kanchagolla dessert from Natore and Jamdani saree from Dhaka. Therefore, if any country tries to registrar any GI products of Bangladesh then the government or the producers can go to the WTO dispute settlement panel or to the TRIPS council for litigation.

According to the law, a separate unit will be formed under the Ministry of Commerce's Department of Patent, Design and Trademark (DPDT), to deal with issues related to the GI products. Manpower from DPDT will form the GI Unit and the Registrar of DPDT will serve as the Registrar to lead the GI Unit. Under this law the Registrar of DPDT is required to classify goods in accordance with the International Classification of Goods for the purposes of the registration of GI. The special GI unit will conserve a detailed list of the GI products from across the country as a primary database of the local products.

⁴⁹ Geographical Indication (Registration and Protection) Act, Bangladesh Gazette, November 10, 2013, No. D.A-1, p. 9682.

⁵⁰ *Ibid.*

According to the law, products need to be registered to receive GI protection. The association or the co-operative for a product will have to apply. Under this law, no individual can register a product. The Act will ensure the quality of Bangladesh's traditional products and protect against indiscriminate replication. The validity of a registered GI product will remain for five years. The GI product can be re-registered within the period of three years after the expiry of registration. Therefore, producers would have to apply for re-registering after the validity expires. According to the law, if any party opposes the registration of a product then it will have to file complaint with the GI wing within sixty days from the date of the newspaper circular. Under this Act (Art. 18) the right holder holds the right to use the name of GI product. Such GI product cannot be licensed, deposited and under agreement without the permission of the right holders. If someone violates this right, right holders have access to a number of remedies.⁵¹

The GI Act of Bangladesh also includes remedies and punishment in regard to the false use, unfair competition, misleading consumers, and free riding on already registered GI products. In this regard, any person or organization will be punished with three years of imprisonment and BDT 200,000 fines for producing, transporting, storing and selling of a particular geographical indication product by providing false and fabricated information.⁵² Similar punishment will be charged for the marketing of a particular registered product, and for breaching the conditions of the registration as a geographically indicative product.

According to the GI law (Article 13, 3), registration of GI product can be denied by the authority given that such product can be fallen under the definition of geographical indication, contrary to public morality and religious sentiments. Article 21 in section 5 of the GI Act of Bangladesh includes provisions regarding trademark and geographical indication. Under this Act, any trademark license can be cancelled given that the trademark which indicates a specific product in reality does not originate or produce from the specific geographic area, region or locality. This provision is highly linked with the EU-led GI norms and standard. The authority can also cancel the trademark license if such mark mislead and can create confusion among the consumers about the origin of the specific product. However, the GI Act of Bangladesh grants the validity of the trademarks of GI products. Article 22 of the Act stipulates that producers

51. *Ibid*, p. 9687.

52. *Ibid*, p. 9693.

can preserve some old trademarks which are used to identify GI products given that such marks were adopted before the inaction of GI law in Bangladesh and done in fair trust.

Bangladesh can get benefit from using GI Act in the international trade. The GI Act of Bangladesh is only applicable at the national level. Therefore, to promote GI protection at the international level, Bangladesh needs to join international conventions and treaties on GI protection. Bangladesh needs to be the member of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. In this way, the country can place absolute claims to its products which will be respected and protected by other countries. Also as member of the World Trade Organization (WTO), Bangladesh can use Articles 22-24 of TRIPS agreement to prevent misuse of its geographical indication products by other countries. Bangladesh can lodge complain at the WTO Dispute Settlement (DSB) body against any member countries which allegedly misuse Bangladeshi GI products.

Conclusion

In an increasingly integrated and competitive global market, countries should establish their rights over their own products. Success in international trade depends largely on the product differentiation from their sources of origins. In this context, GI provides opportunities for the agro-based developing countries which produce goods with unique physical and cultural attributes. These products have the potential to translate into distinctive items and, therefore, to become highly valuable commercial assets. This paper argues that conventionally, intellectual property rights include copyright for original works of authorship, trademark for protection of signs and symbols identifying a product of specific company, industrial designs, and patent to protect new inventions. Apart from these rights, geographical indication has been developed as an intellectual property right to identify and protect product with specific geographic region.⁵³

Given the commercial values of GI products both developed and developing countries have been trying to adopt GI legislation at the national and international levels. Instead of promoting trademark and certification mark models, many countries have been advocating for adoption sui-generis GI

⁵³ S. Nyakoto, "The Protection of Geographical Indications in Zimbabwe: An Overview of the Relevant Legislation, Institutional Framework and Mechanisms", *The Journal of World Intellectual Property*, Vol. 16, No. 3-4, 2013, p. 189.

protection. Since the Paris Convention in 1883 several international conventions and treaties have been adopted to promote GI. Among them most notable are the 1958 Lisbon Agreement for the Protection of Appellations of Origin and the International Registration, and the 1994 Trade Related Aspect of Intellectual Property (TRIPS) of WTO. The TRIPS agreement is legally binding to all its members. The TRIPS leaves the opportunity to its members to extend GI protections. Following the TRIPS agreement, many countries have enacted national GI laws to establish sovereign rights over their products. An estimate shows that there are currently 10,000 protected GIs in the world with an estimated trade value of over US\$50 billion.

Interestingly ninety percent of these come from the developed thirty three countries of the Organization for Economic Co-operation and Development (OECD). From the developing countries perspectives, GI Act is highly beneficial for their social-economic development. Bangladesh enacted the GI Act in 2013 to ensure exclusive intellectual property rights over its foodstuffs, handicrafts and traditional knowledge. The development of GI mechanism and enforcement is expensive. Bangladesh should develop skilled manpower and institutions to foster GI registration process at the rural level. Skilled manpower is highly required to help rural communities which are GI owners in terms of litigations, dispute settlements, and negotiations. On the other hand, for effective implementation of GI law Bangladesh needs extensive activities regarding product recognition, marketing and sales. Marketing involves branding activities which require community level production and branding strategy, advertising and worldwide awareness programs. Also like other intellectual property right laws, the 2013 GI Act is a national legislation. Therefore, Bangladesh has to seek its GI protection in each nation state which also requires extensive negotiations and diplomatic efforts to seek GI protection worldwide. The country has already a well defined GI Act. A long-term implementation process of GI Act can help Bangladesh to establish intellectual property rights over its food, handicrafts and cultural heritages.

***JIBON THEKEY NEYA (GLIMPSES OF LIFE, 1970): THE FIRST
POLITICAL FILM IN PRE-LIBERATION BANGLADESH AND A
CINEMATIC METAPHOR FOR NATIONALIST CONCERNS***

Fahmida Akhter*

Abstract

The year 1970 was significant for Bangladeshi cinema. It was the time when the collective aspirations to construct a new national and cultural identity appeared on Bangladeshi screens, in tandem with the contemporary political situation. Just a few years earlier, in 1966, a new wave of a militant movement had swept over Pakistan when Sheikh Mujibur Rahman announced the Six Point programme. The Six Point, which was widely referred to as the Magna Carta of the Bengalis, drew strength from secular consciousness of the Bengali people and from the economic deprivation of East Pakistan. Slowly it cemented the struggle for a new nation. *Jibon Thekey Neya (Glimpses of life, 1970)*, a film by Zahir Raihan, captures the crucial moment of Pakistani repression by presenting the national experiences and exploitation of Bengalis under the military dictatorship of Ayub Khan. This paper explores how the film, within a family melodrama, introduced a new cinematic style by transforming personal stories into collective and symbolic narratives. The paper argues that by presenting contemporary facts and the identifiable shared narrative of Bengalis through a metaphoric form of fiction, *Jibon Thekey Neya* can be seen as the first instance of 'national cinema' in Bangladesh, even before its emergence as an independent state. The author also looks at how gender difference is constructed, interpreted and entangled with the concept of nation in the crisis moment of history.

Jibon Thekey Neya (Glimpses of life, 1970) tells the story of a family where the dominant behavior of one woman makes others' life miserable. From her husband to the maid servant, everyone suffers from her violent behavior; yet, no one has the courage to revolt against her rule. Her power is signified by the dancing key-ring attached to her sari, which rings like a bell to announce her progress through the house. Her husband, who is a lawyer and amateur singer, sings on the roof-top to escape her draconian regime but she cuts him off: he never reaches the end of his song. Her two unmarried brothers, Anis and Faruk, are also under an exclusive control. Anis is an advocate by trade, and even though he finances the entire family, he does not possess any power to challenge his sister. The younger

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brother, Faruk, is a student involved in leftist political movement. He is the only person who sometimes argues with his autocratic sister; yet, he also succumbs to her regime.

The family eventually finds an outlet for their anger, making posters expressing their demands or equality and placing them on the walls of the house (Figure 2). The matriarch's response is to threaten to starve them, and force them to clean the walls of the house, erasing their own voices. It is her husband who ultimately identifies her key-ring as the locus of her power; if he can decentralize the symbolic keys, have those shared out into other hands, the situation will change. To this end, he got Anis and Faruk married. They married two sisters named Shathi and Bithi. The newlywed women are permitted to have some keys, and a share of the power.

Shathi and Bithi's brother Anwar is a political activist, repeatedly arrested for his dissent against the political administration. In his character, we see a version of the *Vivek*¹ character of *Jatra*: he is a cipher for 'Bengali nationalism', glorifying the history, beauty and tradition of Bengal. Faruk, the younger brother of the dictator lady, is also involved in the protests. In fact the struggle for freedom continues in this film on two parallel levels: one is in the home, and the other is in public, revealed as a movement by the Bengali masses where Anwar and Faruk also take part.

In *Jibon Thekey Neya*, through the story of the dictator and her defeat in a bid to take back her power, she tries to poison one of her sisters-in-law, for which crime she is ultimately imprisoned. The film director Zahir Raihan has connoted the contemporary political struggle under the dictatorship, and expressed the desire for autonomy both in private and public life. He tells the story of Bengali nation which is not only denied the basic rights of freedom of expression, but also exploited appallingly under the West Pakistani military dictatorship of Ayub Khan from 1958 to 1969. Against this backdrop *Jibon Thekey Neya* has introduced a new trope that transformed personal stories into symbolic collective narratives, to mobilize and inspire the masses, encouraging them to understand their oppression and to move forward to freedom. Alamgir Kabir writes, "In the

1 *Vivek* means conscience, and is a generic character of *Jatra* who appears in any sequence to explain the psychological tone or feeling of a character or a scene by singing. Sometimes he even warns the character about their wrong doing. The influence of *Vivek* reflects on many famous characters written by Bengali writers or playwrights, for example, the *Dada Thakur* character of Rabindranath Tagore that is created in his many dramas, is having similar characteristics and spirit of *Vivek*.

film, through a metaphorically structured plot, Zahir Raihan not only epitomised the decade-long dictatorship of Pakistani militarist Ayub Khan but also provided the first filming expression to the rising tide of Bengali nationalism that became the living spirit behind the War of National Liberation less than a year later.”²

By presenting contemporary facts through a metaphoric form of fiction, the film portrayed the identifiable shared narrative and history of Bengalis. Applying Andrew Higson's account of national cinema it can be said that *Jibon Thekey Neya*, by “dramatizing their [Bengalis] current fears, anxieties, pleasures and aspiration,”³ became the first example of ‘national cinema’ in Bangladesh, even before the independence of the country in 1971. Incorporating a melodramatic narrative with a theatrical style of acting and using stock characters, this film was not without its flaws, but the patriotic sentiment it created through common codes, shared memories and collective rituals stimulated a desire for a free nation-state in the minds of Bengalis. This film, with its motifs, images, visual settings, themes, songs and characters displayed many cultural codes and metaphorical meanings to connote the collective concerns: the deprivation and subjection of Bengalis under the dictatorial rule.

The title music begins with the words *a country, a family, a key-ring, a movement, a film*, which appear on screen one by one as part of a slogan with the song *O amar shwapno jhora akul kora jonmovumi* (‘O my dreamy motherland who made me devoted to her’). In different Bengali or Sanskrit plays, the *Sutradhar* (narrator) gives an introduction to the plot and the characters of the drama to the audience. Here, the subtitles encapsulate the spirit of the *Sutradhar* and, like a dumb-show or chapter title, focus the audience's attention to these aspects of the film. This is also an echo of Brechtian placards⁴ in Raihan's work, which reminds us the fact that the director was also a leftwing activist. The film shows an interesting cultural dialogue with established Bengali theatrical forms. As the slogans play out here, we are shown images of the characters in photographic negative, fading into positive definition. The effect of the negative is to give the impression of figures, part of a collective narrative, rather than of specific characters. The Bengali group identity as precedent over the individual narrative is highlighted by the first frame of the film proper, after the title music

2 Alamgir Kabir, *Film in Bangladesh* (Dacca: Bangla Academy, 1979), p.45.

3 Andrew Higson, *Waving the Flag: Constructing a National Cinema in Britain* (Oxford: Clarendon Press, 1995), p.7.

4 In Brecht's epic theatre, actor/actress sometimes holds a placard to give an introductory idea of the scene, episode or a character.

fades: we are presented with two hand-written Bengali words, *Amor Ekushey* ('Immortal Twenty First') on a poster (Figure 1). As next day is *Ekhushay February*,⁵ and Anwar is preparing some posters to carry them in the *Provat Feri*⁶ (the morning procession of 21st February).



Figure 1. The first framing of *Jibon Thekey Neya* with the two words *Amor Ekushey* ('Immortal twenty first')

As "common codes invite the audience to consider and understand themselves to be members of a given community,"⁷ in the first framing of this film by capturing those Bengali words *Amor Ekushey*, Zahir Raihan engages the Bengali audience with their emotive insignia of collective identity and pride: the Language Movement of 1952 in East Pakistan. In the backdrop of the 1960s and the 1970s when the political repression was at its worst under the military dictatorship of

5 *Ekhushay February* or 21st February is observed as the Language Martyrs' Day in Bangladesh (formerly East Pakistan). Since the Language movement of 1952, this date is commemorated annually in Bangladesh to remember those martyrs who sacrificed their lives on February 21, 1952 for the recognition of their mother tongue Bangla as the state language of Pakistan. UNESCO later declared this date as 'International Mother Language Day'.

6 *Provat Feri* is a ritualistic annual procession in Bangladesh to the *Shaheed Minar* (Martyr Monuments) which has been held on the first hour of every 21st February since 1953 to pay homage to the Language martyrs. In this procession, Bengali men and women walk bare foot to the memorials, breaking the silence of the night, they used to sing the song '*Amar bhaier rokte rangano /Ekushey February / Ami ki bhulite pari?*' (Can I forget the twenty-first of February / incarnadined by the blood of my brother?) by Abdul Gaffar Choudhury.

7 Philip Schlesinger, "The Sociological Scope of 'National Cinema,'" in Mette Hjort and Scott Mackenzie (eds.), *Cinema and Nation*, 19-31, (London: Routledge, 2000), p.22.

the West Pakistani ruling authority, it was a skilful effort to boost up a patriotic resistance against the Pakistani state with the use of the Bengali script in the opening shot. Here it is worth recalling Willem Van Schendel's observation about the influence of the Bengali alphabet in different freedom struggle. In Schendel's words: "Each Bengali letter could be [effectively] used as a badge in the cultural guerrilla war."⁸ It needs to be noted that in this film the use of Bengali words take place several times as a means to express the aspirations for freedom and to protest, at home and in the state at large. When the family members protest against their personal, domestic dictator, they do it in Bengali. Raihan knowingly employs the symbolic power of Bengali script as an emblem of resistance. When he has finished making the posters with which the film opens, Anwar calls his two sisters Bithi and Shathi to rehearse the song of *Provat Feri*. Bithi places the *ghomta* (extension of the sari over the head), and starts singing the song; Anwar and Shathi also join in with the words, *Amar bhaier rokte rangano /Ekushey February/ Ami ki bhulite pari?* ('Can I forget the twenty-first February/ incarnadined by the blood of my brother?').

The song plays on over images of a morning procession. Barefoot masses wearing in white dresses, carrying flowers and placards, approach the *Shahid Minar* (Martyr Monument) singing this song. The swelling of the song evokes cultural memories of *Bhasha Andolon* (Language Movement) in the audience, drawing their emotions to an event of collective mourning and the remembrance of self-dignity. Similar to the pace of the moving masses we then see an intercut of a very low-angle tracking-shot of the *Krishnachura* (Caesalpinia pulcherrima/ Red bird of paradise) trees are bowing down, suggesting their mourning for the losses of the lives of the Bengali Language martyrs. Anthony Smith argues that the role of memory is significant for the construction of identity. Smith is categorical in emphasizing the role of memory: "no memory, no identity; no identity, no nation."⁹ Smith's conception of the identity construction is also reflected in *Jibon Thekey Neya* by the use of collective memories. Raihan recalls here the memory of the collective past of Bengalis, the Language Movement, to stir the sense of their collective identity. In order to construct the vanished past, Raihan brings in this sequence a set of codes which in Eric Hobsbawm's words

8 Willem Van Schendel, *A History of Bangladesh* (Cambridge: Cambridge University Press, 2009), p.112.

9 Anthony D. Smith, "Memory and Modernity: Reflections on Ernest Gellner's Theory of Nationalism," *Nation and Nationalism*, Vol. 2, No. 3 (1996), p.383.

are ‘invented tradition’¹⁰ to glorify the communal past - Bengali language, *alponas* (geometric flowery design), first song of February, *Shahid Minar*, *Krishnachura* trees, the bare feet of men and women, black badges on white dresses □ these in fact appear to signify the ritualistic practices of the Bengalis in remembering the 21st February. During the procession, Raihan frames both women wearing *shakhas*¹¹ and the faces of bearded men, to demonstrate the ritualized practices of the 21st February as non-communal sphere for the Hindus and Muslims in pre-Liberation Bangladesh.



Figure 2. The posters appearing on the wall are expressing the protest of other family members against the dictatorial dominance of the tyrant.

The emotional empathy and imaginary bonds between the Bengali audiences and the ritualistic remembrance of the Language martyrs created in the procession scenes is abruptly broken in the next sequence. This is a close tracking-shot of the symbolic key-ring, fastened at the end of the tyrant's sari. The music changes, too: the shot is accompanied by the high-pitched, Western tones of a trumpet. The audiences are jolted out of a symbolized nostalgia created in the procession sequence by the entrance of the opposite, controlling force of the film: the domestic tyrant and her monopolizing power. This juxtaposition clearly leads the

¹⁰ Eric J. Hobsbawm, and T. Ranger, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), p.7.

¹¹ *Shakha* is a white bracelet, made of conch-shell. *Shakas* are worn by married Hindu Bengali women as a symbol of their married life.

audience to consider the domestic narrative before them in terms of the dictatorial Pakistani rule. It is another Brechtian method, an *alienation* effect, for constructing the conflicting force by creating many contrasts to make the audience critically aware about its purposes and postures. Forceful denial of the *Provat Feri* of February is voiced loudly by this tyrannical character later in this sequence, when her younger brother Faruk returns barefoot from the processions:

- Woman: Where have you been in so early in the morning like a thief on bare feet?
- Faruk: As today is the 21st February, I went to a *Provat Feri*.
- Woman: 21st February? What type of thing is this?
- Faruk: Don't you really know what is 21st February?
- Woman: I don't need to know. It seems that like a barbarian you danced on bare feet on the whole street, didn't you? Listen, knowing that these types of thing I can't tolerate why did you go there? Remember, if you go again there, I'll close down your study!

Her attitude toward the 21st of February enhances her difference from the other Bengalis in the household. Perhaps to emphasize the lady dictator's isolation from the rest of the family, Raihan did not give her a name, unlike all the other characters within the film. Her robust appearance has such characteristics that any Bengali would be able to metaphorically associate her with Field Marshal Ayub Khan. To enhance her metaphoric image as a dictator to most dynamic effect, two consecutive sequences, conveying opposite aspects of her character, are shown one after the other. First, we see her as a *Banganari* (traditional woman of Bengal), serving her husband food; the shot begins with a backwards zoom from a *hat pakha* (hand fan), which she is waving towards her husband, generating a peaceful breeze towards him, and towards the audience as well. Next, after a slip whereby her husband admits that he once saw her as *dajjal* (wayward), the mask slips, and her real face is revealed. She throws a bell-metal bowl, creating an alarming diegetic cacophony, out of which begins a collage of shots of different kitchen objects flying in from different angles. During this sequence we also see a jumping koi fish, connoting life without water under the dictator's rule. In this way, Raihan uses objects and sounds to translate the tyrant's *dajjal* nature – which is much more sinister than the term might make it seem. This juxtaposition technique is employed several times in the film. For example, immediately after the death scene of Madhu, the caretaker at Anwar's home, we see the birth of Muktee, Faruk and Bithi's daughter, gesturing to a new hope. The juxtaposition of the two events: Madhu's death and Mukti's birth, represent that Bengalis are encouraged not to drown in their grief, but to grab a new hope, the new chance of freedom.



Figure 3



Figure 4



Figure 5

Figures 3, 4 and 5: The juxtaposition and collages of freeze frames to depict and contrast the notions of love and hate.

Jibon Thekey Neya, for most of its parts, fits in the genre of melodrama, as it seeks to engage the audience's emotion through use of music, songs and common codes. Following melodramatic mode, this film also employs gender relations and issues of a family to explain nation-state ideology. Again, Raihan employs the pattern of creating contrasts, offering disruptions in the illusionistic nature of melodrama. Thus he extends a critical involvement of the audience. To emphasize one of the most dramatic moments, when the key ring shifts to Shathi and Bithi's hand after their marriage, Raihan utilizes freeze frames denying the flow or logic of continuity editing. This technique is also used to highlight the profound ecstasy of their married life. By avoiding the conventional Bengali film style, where lip-synch song-and-dance sequences are used to construct the love scenes and fantasies, Raihan uses a few freeze frames and some zoom in operations to illustrate the love sequence after Shathi and Bithi's marriage, along with soft background music, without language. 'Hate' is introduced by way of the same cinematic techniques as 'love': by freeze-frame with extreme close-ups of the tyrant, her furious gaze intercuts with freeze-frames of the lovers (Figures 3, 4 and 5).

The close-up shots illustrate the gaze of the tyrant and deny the perspective of a conventional narrative film where cinematic images solely position the audience as the subject of the gaze. Here we see an antipathy has been offered by the gaze of the tyrannical lady that distracts the audience from their conventional drive for pleasurable viewing and rather draws their attention towards a critical judgment on what they are going to watch (Figures 3, 4 and 5). The subject, the narrative structure and some visual effects of the film might make it seem to be a classic melodrama, but Raihan, in Brechtian fashion, requires more responsible ways of viewing of the audience. He creates series of critical distances between the audience and the narrative.

Again, it is also noticeable that the critical mode required from the audiences of *Jibon Thekey Neya* mostly appeals to the patriarchal, nationalistic sentiment to fight or die for the nation. The mother icon is employed to personify the nation. From the title music to the end credits, there is an attempt to reinforce anti-colonial thrust and a resistance by the Bengalis by positioning the mother as the image of the nation invaded by the enemy, the Pakistani dictator. In Anwar's reply to Madhu's anger about his constant references to country and soil, a nationalist discourse is clearly articulated by portraying an adored nation using the mother allegory, when he comes with Shathi, Bithi and Madhu to their village.

Anwar: Madhu, this soil is mine. This soil belongs to my land. You, me and all others were born on this soil [...] This soil which is so adorable and sacred is similar to my mother. I don't want to let this golden soil of my golden land be violated and that's the reason why I always speak about my country, about the soil of my land.

Just after this speech, Anwar kisses the soil and then, to heighten the emotional content of this sequence, the evocation of a strong powerful image of sublime mother-nation, the following famous song by Tagore starts upon and is sung by Anwar, Sathi and Bithi:

Amar sonar Bangla, ami tomay bhalobashi, (My Bengal of gold, I love you)
Chirodin tomar akash, tomar bathash, amar prane bajay basi (Forever your skies,
your air sets my heart on a tune as if it were a flute)
O ma, Fagune tor amer bone ghrane pagal kore, (In spring, O mother mine, the
fragrance from your mango groves makes me wild with joy,)
Mori hay hay re (Ah, what a thrill!)
O ma, aghrane tor bhara khete ami ki dekhechi madhur hasi (In autumn, O mother
mine, in the fully grown paddy fields I have seen spread all over sweet
smiles).....



Figure 6. The offspring of Bengal in its beautiful landscape are singing in a ritualistic way, glorifying the image of mother nation.

With its intense sounds, rhythms and melody, this song is followed by a sequence of beautiful landscape visuals of golden Bengal. By capturing a group of wide angle shots, Raihan places the characters in diverse compositions in different natural landscapes of Bengal, connoting the ritualized gaze and devotion of the

offspring of Bengal to the beauty of their mother land (Figure 6). To stir the nationalistic sentiment and a sense of imagined community, Raihan selects a powerful song that became the national anthem of Bangladesh after its independence. Thus it becomes very clear that throughout the visuals, narrative, songs, sounds and compositions of this film, Raihan's wishes to create the identity of Bengalis; and to shape the perception of Bengali nationalism.

Although the narrative of *Jibon Thekey Neya* largely focuses on the role of a woman, her role is chiefly allegorical, and there is no representation of revolutionary women. The sequences of street processions, movements and protests inside a prison cell are featured solely as the spaces for the male (Figure 7). We do not see a single woman. Women are restricted to the domestic arena where they appear in the traditional roles of woman as sister, wife and mother, fighting with each other to get the ultimate power of a household.

The female protagonists Shathi and Bithi are constructed with aspects of the middle-class, modernized Bengali women, acquiring university education, permitted to sing Tagore songs, and allowed to participate in cultural events and festivals. After marriage, all their efforts and aspirations are devoted to their home. As Partha Chatterjee observes, Indian middle-class women of the late nineteenth-century were provided with an education to acquire the skill of being perfect in the spiritual space of the home.¹² Here we see the construction of middle-class women with almost the same cultural essence. Occasionally, they come out from the home and join a national event like *Provat feri* of February 21, where they carry flowers and sing. However, they never participate in the critical situations of the nation.

The anti-colonial struggle is framed as an event for glorifying the participation and sacrifice of men, where Anwar and Faruk fight bravely and Madhu dies for the mother nation. In contrast, females' roles revolve around the home and their virtue depends on their quality of keeping and maintaining the home-space, which is further underlined in the dialogue between the husband of the 'tyrant' and a matchmaker. Due to an unfulfilled urge to have a good wife who makes the home peaceful, the lawyer husband expresses his resentment and blames the matchmaker for being dishonest in not finding a good wife for him in the manner of the old Bengali saying: *Shangshar shukher hoi romonir guney* (By the virtue of

12 Partha Chatterjee, "The Nationalist Resolution of the Women's Question," in Kumkum Sangari and Sudesh Vaid (eds.), *Recasting Women: Essays in Indian Colonial History* (New Brunswick, N.J.: Rutgers University Press, 1990), pp. 247-249.

woman the domestic life becomes happy). So, the ways in which women are constructed in *Jibon Thekey Neya*, firstly in the conception of mother nation and secondly in traditional roles, both follow a patriarchal paradigm.

On this point one needs to consider the context of the period in which this film was made. During the shooting it faced attempts by the authorities of Rawalpindi to stop the production.¹³ Therefore, facing a hostile and conflicting situation, Raihan revised the story line and many times had to improvise the shooting on set. The Pakistani authorities' opposition to this film appeared again when it was certified for exhibition. The Dhaka branch of the Central Board of Film Censors hesitated to issue a 'U' certificate and passed it to the higher authorities at Rawalpindi for further clearance even after many tickets had been pre-sold for its planned release on April 10, 1970.¹⁴ This incident triggered a spate of fierce protests among the audience who demanded its release. On April 11th, the authorities finally decided to issue a 'U' certificate. Although the Pakistani authorities could not stop the film's release in the face of mass protests, they took their revenge with the help of collaborators on January 30, 1972 when Zahir Raihan was disappeared. His brother Shahidullah Kaiser, an eminent writer and Bangladeshi intellectual, in 1971, was also killed by the Pakistani forces.



Figure 7. A street procession scene of *Jibon Thekey Neya*, exclusively led by men.

13 Alamgir Kabir, "Bangladesh Cinema: A Critical Note", *Sharanika*, February-March, 1989, p. 21.

14 Kabir, *Ibid*, p. 21.

In conclusion, *Jibon Thekey Neya* strategically places the national situation in a family plot under a dictatorial rule and serves as a model for political film making through its repertoire of metaphors for Bengalis. This production testifies to the fact that a film can be simultaneously stylistic and political, symbolic and realistic, domestic and national. By exploring the aspects of narrative film making Raihan employs an allegorical style to portray the history, memories, values and the existing political scenario of pre-Liberation Bangladesh on a cinematic canvas. His goal was to strengthen the identity of Bengalis, a nation without a state, and to mobilize a national consciousness to move forward to achieve freedom and to “glide [them] into a limitless future.”¹⁵

15 Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991), p.12.

POLITICAL COMMUNICATION IN BANGLADESH: THE USE OF VILE LANGUAGE

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Abstract

Politicians often use emotional appeals to the people as a weapon to gain political objectives, either personal, or for the party they represent, or both. This paper takes a look at the quality of, and civility in, political communication in Bangladesh between 1991 and 2014, a period during which the country has experienced parliamentary democracy as its system of government. Using specific examples of such communication by elected legislators, as well as by prime ministers, both inside the parliament during legislative proceedings, and outside of it, this paper examines whether the use of such language indeed has any impact, positive or negative, on the electorate. Evidence suggests a stark deterioration in the quality of, and civility in, political communication in the country since 1991. Such decline is at least a reflection of the manifestation of the deteriorating political culture, which, unless checked, and rolled back, could adversely affect the development of Bangladesh towards political maturity.

Introduction

Sean Richey poses a pertinent question regarding a possible correlation between politicians' use of a particular strategy and public response to it: "Can politicians use emotional appeals to stimulate and activate latent personality traits in the public?"¹ He cites several authors who have concluded that emotional appeals are used as political weapons.² The essence of politics is human interaction. Politics and communication go hand in hand because they are essential parts of human nature. Brian McNair provides a simple, but telling, correlation between politics and communication: political communication is "purposeful communication

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1. S. Richey, "Campaign Advertising and the Stimulation and Activation of the Authoritarian Personality", *Political Communication*, Vol. 29, 2012, pp. 24-43.
2. The pundits, politicians and commentators and their works he cites are Brader, T., *Campaigning for hearts and minds: How emotional appeals in political ads work* (Chicago, IL: University of Chicago Press, 2006), and Marcus, G.E., Neuman, W.R., & MacKuen, M., *Collective Intelligence and political judgment* (Chicago, IL: University of Chicago Press, 2000).

about politics.”³ The operative word is “purposeful,” since the ultimate objective of politicians and political parties is to gain the seat of government, through periodic elections in liberal pluralist democracies.

This paper uses a variation of Richey’s query, and applies it to Bangladesh, a developing country with a checkered political history. It explores the deterioration in the quality of, and civility in, political communication in the country between 1991 and 2014, a period of parliamentary democracy with varying level of effectiveness. The author uses specific examples of such communication employed by elected parliamentarians, as well as by prime ministers, both inside parliament during legislative proceedings, and outside of it. A central question is whether the use of such language indeed has any positive or negative impact on the electorate. However, as will be explained later, this aspect will be secondary to, and in support of, a phenomenon that has been hampering the proper functioning of liberal pluralist democracy in Bangladesh: a steadily deteriorating political culture. The paper relies primarily on speeches and statements made by parliamentarians and government ministers, prime minister and leader of the opposition in the parliament to make a particular point, while restricting ourselves to secondary statistical information to supplement the study.

A Brief Discussion on Political Communication

The importance of political communication, whether in democracies or in authoritarian regimes, whether volubly expressed or ventilated in measured terms, cannot be overstressed for the functioning of a government. This observation does not automatically endorse any view that this functioning would be smooth, of a high quality, and positively productive for the general welfare of the country and its people. In reality, political communication can also be a gimmick for politicians to gain their personal objectives, or those of the political party they represent, and such objectives may not necessarily enhance the well-being of the citizens. Instead, such communication may have adverse consequences in fuelling personal hatred and partisan politics.

Political or policy speeches, inside the legislature, or in other forums, provide the people, usually via media, a government’s, or a political party’s or an individual politician’s, plans, objectives, or agenda. In the current information age, where the new media (specifically, the Internet) is utilized at least as much as the traditional media by politicians to convey their messages, and the people to

3 Brian McNair, *An Introduction to Political Communication* (London: Routledge, 2003), p. 24.

receive them, political communication has come to rely heavily on the media in all its forms. That does not automatically provide for clear and meaningful political communication. As Jurgen Habermas observes, “Contemporary Western societies display an impressive increase in the volume of political communication, but the political public sphere is at the same time dominated by the kind of mediated communication that lacks the defining objectives of deliberation.”⁴

Exploring Richey’s query regarding the use of emotional appeal by politicians to stimulate the public, scholars are divided in their opinions on this issue. Delli Carpini is categorical about his viewpoint: “In spite of an inclusion of ever more citizens in the flows of mass communication, a comparison of recent studies arrives at an ambivalent, if not outright pessimistic, conclusion about the kind of impact mass communication has on the involvement of citizens in politics.”⁵ Habermas is more circumspect and pragmatic, believing that, depending on the circumstances, appeal to public emotions can have positive, negative, or indifferent response. He writes, “The influence of public opinions spreads in opposite directions, turning both toward a government busy carefully watching it and backward toward the reflecting audiences from where it first originated.”⁶ Clearly, Habermas emphasizes the public being in an essentially reactionary situation: “That both elected governments and voters can take an affirmative, a negative, or an indifferent attitude toward public opinion highlights the most important trait of the public sphere, namely, its reflexive character.”⁷ This paper argues that the effect of political communication varies from country to country, and the fact that it may evoke some reaction (including indifference) from the public can hardly be disputed.

Objectives and Limitations

In addition to applying Richey’s query in the context of Bangladesh, this paper takes stock of the deteriorating political culture in the country and its reflection in

4 Jurgen Habermas, “Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory of Empirical Research”, *Communication Theory*, Vol. 16 (2006), pp. 411-426, p. 414, cmt_280 411_426-1-Habermas, accessed on google, 2 October 2014.

5 M.X. Delli Carpini, “Mediating democratic engagement: The impact of communications on citizens’ involvement in political and civic life”, K. Lee Kaid (ed), *Handbook of political communication research* (London: LEA, 2004), pp. 395-434, p. 422.

6 Habermas, *Op. cit.*, p. 417.

7 *Ibid*, pp. 417-418.

the quality of political communication. The degradation of political culture undermines the growth of political institutions and hinders the functioning of a robust liberal pluralist democracy. Manifestation of intolerance of each other's viewpoints by the major political parties (Awami League and BNP), a tendency not to find a middle ground over contentious national issues, and the use of vile language against each other, among other matters, are symptoms, causes and/or results of a dysfunctional political culture. In essence, this paper investigates the causes and effects of the growing use of vile language in Bangladesh.

While Bangladesh is the main focus of the study, the political communication practiced in the United States, an advanced nation with centuries of experience in the practice of liberal pluralist democracy, is also brought into focus to compare and contrast the two. As Barbara Pletsch and Frank Esser argue, "In view of the significance of communication processes for the development of democracy many mainstream researchers dwelled on the United States as the country in which the modernization of political communication seemed farthest advanced and most apparent."⁸ However, the same authors, citing and endorsing Gurevitch and Blumber (1990), Swanson (1992), and Swanson and Mancini (1996), also enter this caveat to their statement: "Since the 1990s, European and American scholars have been asking themselves whether the American model of media democracy is indeed appropriate for describing generalizable patterns of developments of modern political communication in today's Western democracies."⁹ It stands to reason that different countries will likely have different modes of political communication, but there has to be a bottom line in the standard of the communication being offered. This point brings us to a limitation of this study. It would require an in-depth study on the educational and family backgrounds of the politicians (particularly of the elected Members of Parliament and office-bearers of the major political parties) since the resumption of parliamentary democracy in Bangladesh in 1991. Such a detailed study could determine if any correlation exists between the educational and family background of politicians and their use of vile language inside and outside the parliament. Due to time and resource constraints, the absence of such a detailed study has certainly reduced the evidentiary base of the arguments in this paper.

8 Barbara Pletsch and Frank Esser, "Comparing Political Communication: Reorientations in a Changing World", Frank Esser and Barbara Pletsch (eds.), *Political Communication: Theories, Cases, and Challenges* (Cambridge: Cambridge University Press, 2004), p. 5.

9 *Ibid.*

The Dubious Usage of Political Communication

Deborah Stone defines politics as “the sphere of emotion and passion, irrationality, self-interest, shortsightedness, and raw power.”¹⁰ They would in themselves, or in combination, explain political rationale. Politics, indeed, is heady stuff for those who actively pursue it, with their goal primarily being claiming the seat of power, through periodic elections in liberal pluralist democracies, and usually through force of arms in autocracies. As Stone points out, politics is a sphere of emotion and passion, irrationality, and self-interest, all of which attributes are understandable in the pursuit of that vocation. They manifest themselves even in the smoothly running democracies. The very same attributes will, at times, induce politicians to engage in heated debates and conversations in almost any forum, including the legislature.

Name calling, for example, is not uncommon in the political arena of a country. That includes the United States of America, which has been practicing liberal pluralist democracy ever since its Constitution was adopted in 1787 and ratified in 1788. In fact, the use of vulgar language by its politicians to describe or discredit opponents goes back to its early days as an independent country. The following examples will illustrate the colorful language used by its high profile politicians.

John Adams and Thomas Jefferson, the second and third presidents of the United States and signatories of the country’s Declaration of Independence, were lifelong friends. However, although Adams was the president and Jefferson the vice president of the country, they ran against each other in the 1800 race for the White House. During the run-up to the election, despite the two men’s lifelong friendship, the two camps ran various campaigns against each other, some of which involved personal attacks that would cause eyebrows even after more than two hundred years. Jefferson’s team charged Adams of possessing a “hideous hermaphroditical character, which has neither the force and firmness of a man, nor the gentleness and sensibility of a woman.”¹¹ Adams’ people labeled Jefferson “a mean-spirited, low-lived fellow, the son of a half-breed Indian squaw, sired by a Virginia mulatto father.”¹² Furthermore, while Adams was called a fool, a hypocrite, a criminal, and a tyrant, Jefferson was branded a

10 Deborah Stone, *Policy Paradox: The Art of Political Decision Making* (NY: W.W. Norton & Company, 1997), p. 373.

11 Kerwin Swint, “Mental Floss”, *Founding Fathers’ dirty campaign*, CNN.com/living, 2008, accessed on google, 14 September 2013.

12 *Ibid.*

weakling, an atheist, a libertine and a coward!¹³ Name calling by political candidates, or their aides and campaigners, who were at the highest level of political office of the country, might even test the credulity of many people today. And both Adams and Jefferson were well educated, successful professionals from well-to-do backgrounds. Their relationship remained acrimonious until 1812, when they resumed their friendship.

John Adams' son, John Quincy Adams, the sixth president, lost the presidency to Andrew Jackson, the seventh president, in 1828. During the campaign, John Quincy Adams was called a pimp, while Jackson's wife was branded a slut by the opposite camps.¹⁴ The press also had a field day with its own colorful characterizations. One newspaper had it that, "General Jackson's mother was a common prostitute, brought to this country by the British soldiers! She afterward married a mulatto man, with whom she had several children, of which number General Jackson is one!"¹⁵ If partisan journalistic foray into dirty presidential campaign manifested itself in 1828, it reached new heights during the 1880s. In Swint's words, "During 1880s, American politics witnessed the birth of its newest and most powerful player - journalistic sensationalism. And with it presidential elections entered a whole new era of toxicity."¹⁶ A nexus grew between partisan journalism and dirty political mudslinging. It was graphically exemplified by media mogul Joseph Pulitzer during the presidential campaign between Grover Cleveland and James Blaine. Cleveland defeated his rival to become the 22nd president during the period 1885 to 1889.

Blaine, who was Speaker of the House of Representatives, during the course of his campaign, played upon an indiscretion that Cleveland had committed in his past. He was thought to have an illegitimate child from an affair. One of the more catchy of Blaine's slogans directed at Cleveland was, "Ma, Ma, Where's My Pa?", an allusion to the product of that affair. It was carried by Pulitzer's newspaper *New York World*.¹⁷ Since the public was buying the paper without bothering to ponder if that juicy scandal was true or not, Pulitzer saw no reason not to run that, and similar partisan slogans, and emphasized on publishing human

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.* The first six US presidents came from affluent backgrounds. Andrew Jackson came from a humbler background, and was the first president to have really connected with the common man.

¹⁶ Kerwin Swint, "Grover Cleveland vs. James Blaine: Yellow Journalism in a White House", *Op. cit.*

¹⁷ *Ibid.*

interest and scandalous stories. A trend of journalism gained popularity, and continues to this day. Cleveland's people, however, had the last laugh with the perfect riposte, "Gone to the White House, Ha, Ha, Ha!"¹⁸

The preceding discussion suggests that a culture of incivility prevailed at the highest level of political office in the United States—a country which not only designed the first comprehensive written constitution in the world but also introduced judicious amendments to it to include the landmark document commonly called the Bill of Rights. One may question the standard of a media that resorts to sensationalism of the basest kind, especially when considered from the standpoint that the American press, or a section of it. This question comes due to the fact that the American media is seen as the yardstick for quality and responsible journalism, and is considered as among the freest in the world. However, that consideration must be tempered by the reality that the term yellow journalism was coined in terms of a practice that grew out of specific activities of the American press. The question that could legitimately be raised is why would foul language be used by politicians vying for the highest office of the land, or for the press to carry their crass statements or characterizations, or even editorialize along similar lines? Granted that the press is free to report on statements made by others, but to give them a partisan twist would indicate an attempt at titillating readers and listeners or viewers with the objective of swaying them towards its candidate of choice, besides selling its particular brand (such as newspaper, magazine, radio, TV, new media).

On the specific cases given, one of the opposing candidates in the John Adams vs. Thomas Jefferson, and John Quincy Adams vs. Andrew Jackson contests won, in spite of both camps having resorted to the use of crude language to characterize each other. There is, however, no reliable way of knowing if the use of such language had any effect at all on the voters in making their choices. In the Cleveland vs. Blaine case, though, the attack on Cleveland's character did not prevent him from winning. If the negative campaign line, or it being featured prominently in Pulitzer's newspaper, had any pronounced effect on the voters, the election result showed that either they did not care, or the negative campaign might have moved at least some of them to cast a sympathy vote for Cleveland. That conclusion cannot be definitively arrived at, but the election result is a fact. To take recourse to Stone, politics is an arena of emotion and passion, among other attributes. So, going along with this reasoning, one can expect passionate

¹⁸ *Ibid.*

speeches from candidates for political offices, although the use of vulgar and low-blow language would appear to be taking emotion and passion to an extreme. Such digging into the background of candidates to unearth unsavory doings and sayings by the opponents, and then making them an issue in political advertisements in both the print and audio-visual media during presidential races continue to this day, as exemplified most recently during the 2012 US election campaigns.

However, once elections are over, while the rhetoric does not go away, down-and-dirty malingering does go down significantly. The president takes the occasional swipe at the opposition party, while the opposition politicians reciprocate, but the language used is usually civil, if sharp. Occasionally, calling the president a liar by a member of Congress, as happened to President Barack Obama during his first term, the language will go over the edge, but the exception will be the rule.¹⁹ Furthermore, the debates in Congress will often be sharp, sometimes acrimonious, given the strong partisanship in Congress that has become more prevalent in the twenty first century, but almost never will language be used that can be construed as vulgar. The media, though, continues to dish out the dirt on politicians, but that falls more under sensationalism, “in-the-public-interest” excuse, in the process aiming for larger circulation or viewer time, rather than use of vulgar words and phrases to make one point or the other.

In summary, the American political culture shows that the practice of civility is often discarded by political passion and emotional behavior during the heat of political battle. However, once the heat of presidential campaigns is over, civility takes over the politicians’ psyche.

The Bangladesh Experience

Politics in Bangladesh is also driven by emotion and passion, irrationality, self-interest, shortsightedness and raw power, though the priority of these attributes would differ from that of the Americans. Furthermore, a average Bangladeshi citizen is prone to be more emotional and passionate about issues than the average American. One might possibly argue that the average Bangladeshi will think more with the heart than with the head, is quite garrulous, passionate, at times even irrational about politics, political parties, and political personalities, and is excitable. Unlike the American political scene, during the electoral

¹⁹ On 9 September 2009, while Obama was delivering his State of the Union address, Rep. Joe Wilson of South Carolina yelled at him, “You lie.”

campaigns, violence leading to injury and death is not at all uncommon in the Bangladesh scenario. However, as in the United States, the use of derogatory, even vulgar, language to denigrate opponents is quite prevalent during national elections. This trend, interestingly, has grown during the unbroken stretch of parliamentary democracy, interrupted by a two-year rule by an unelected caretaker government, which has been the system of government since 1991. The use of vile language has not only become quite pronounced in public forums, but also within the national parliament (Jatiyo Sangsad) in session.

Let us consider a few examples of the use of inappropriate language both inside and outside the parliament by top-level politicians of the two major political parties—the Awami League (AL) and the Bangladesh Nationalist Party (BNP). We can start with the outrage expressed in 2011 by Speaker of the Jatiyo Sangsad, and subsequently President of the country, Abdul Hamid, MP on the use of vulgarity in the parliament. While he was the Speaker, Hamid admonished the senior parliamentarians who should have felt embarrassed about colleagues who resorted to indecent words in their speeches. He accused parliamentarians from both the AL and the BNP of encouraging the users of vile language. “It is very unfortunate,” he said, “that both sides encourage (offending) lawmakers by thumping desks.”²⁰ Two days after this stricture, the exchange of vile language became even more intense on 23 March 2011, prompting Treasury bench (AL) MP and former law minister Abdul Matin Khasru to compare that language to the kind spoken in the “red light districts”.²¹

The use of extremely vulgar and abusive language did not abate in the least in 2013. In the budget session of 2013, BNP lawmaker Rehana Akhter Renu made offensive remarks to vilify Sheikh Mujibur Rahman, Prime Minister Sheikh Hasina, her son Sajeeb Wajed Joy, and her deceased husband Wajed Mia. The words used were often so vulgar and abusive that the Speaker switched off her microphone six times.²² Not to be outdone, AL MP Fazilatunnesa of the Treasury bench used similar vulgar and abusive language to characterize Ziaur Rahman, Leader of the Opposition and former Prime Minister Khaleda Zia, and their family members. In a snide remark clearly indicating an affair between the two,

20 “Vulgar language upsets BD Speaker”, *Thaindian News*, March 21, 2011.

21 Syed Fattahul Alim, “Using abusive words at JS”, *The Daily Star*, 28 March 2011. Red light district refers to a brothel, where the language used by its denizens is often very filthy and offensive.

22 *The Daily Star*, June 24, 2013. Sheikh Mujibur Rahman is the Father of the Nation of Bangladesh, and a former president and prime minister. His daughter Sheikh Hasina has thrice been the prime minister of the country.

she also wanted to know about Khaleda Zia's relationship with the man who accompanied her each time she went to perform Umrah hajj in Saudi Arabia. The Speaker switched off her microphone twice.²³ The verbal exchange between the two lawmakers caused Awami League parliamentarian Abdul Latif to walk out of the Jatiyo Sangsad. He expressed his feelings on his action: "I felt ashamed at the way abusive and unparliamentary language was used in the sacred House.... I am leaving this place to protest such bad mouthing."²⁴ When the opposition (BNP and allies) started applauding his walk-out, he lashed out at them, too: "Why are you clapping? I have not mentioned any particular party or any particular MP's name. You should be ashamed of what happened today in parliament."²⁵

Noting the sacrilege done to the Jatiyo Sangsad, an editorial of the newspaper *The News Today* commented, "Using unparliamentary language in the parliament has become a popular culture in Bangladesh.... The unparliamentary behavior of these lawmakers threatens the very existence of our democracy."²⁶ In this case we find that the situation of the use of abominable language with impunity in the Jatiyo Sangsad had become so pervasive that it warranted a first editorial in a daily newspaper. Whether it would threaten the very existence of democracy is probably debatable, but the editorial has a point. What it boils down to is a steady deterioration in the political culture of the country. And a worsening political culture is a threat at least to the proper functioning of liberal pluralist democracy.

A worsening political culture, which was both a cause, and result, of rigid partisanship of AL and BNP, one that bred mistrust of each other's intentions, and left little room for compromise, or give-and-take, which are vital to the working of democracy. It was the primary reason that the caretaker system of government was brought into being through a constitutional amendment.²⁷ The idea was a compromise arrangement based on the erroneous assumption that a so-called neutral caretaker administration would offer the perfect panacea for the country's sick political culture that prominently featured political intolerance and distrust. Interestingly, when they are in the opposition, both AL and BNP support

23 *Ibid.* Ziaur Rahman was a sector commander in Bangladesh's liberation war, and a president of Bangladesh. His widow, Khaleda Zia, was thrice elected prime minister of the country. One of their sons, Tarique Rahman, is senior vice chairman of BNP.

24 *Ibid.*

25 *Ibid.*

26 Editorial-1, *The News Today*, 24 June 2013.

27 The thirteenth amendment to the Constitution that was adopted by the sixth Parliament on 25 March 1996 provided constitutional legitimacy to the non-party caretaker government.

the interim caretaker government as a credible system for holding free and fair election. However, once they go to power, they want to scrap it. In a similar vein, the AL-led government that came to power in 2009, through a constitutional amendment, discarded the caretaker government system.

That, as much as for the sake of opposition as for real concern about the fairness of national elections under the AL-led government, drove BNP to agitate for its restoration. AL would have none of it. And, so, as its term was nearing its end, and the 2014 election was looming, Sheikh Hasina declared her resolve to the press about not bringing back the caretaker system: "I believe in the Constitution. Whatever happens (regarding the next general election) will happen according to constitutional provision. Not even a hair will move from that."²⁸ Khaleda Zia's rejoinder came promptly at a BNP affiliated organization's formation anniversary: "When the winds of agitation will blow, not only will you lose all your hair; even your very survival will be at stake."²⁹ The very same day, referring to Khaleda Zia and her hairstyle, AL issued this statement: "Those who wear wig to fluff up their hair and show the people, well, their hair will get blown away."³⁰ To the discerning readers these exchanges between senior politicians might appear trite and indicative of a poor political culture prevailing in the country. But, for political activists such bitter exchanges may act as an energizer to boost up their jocular spirit.

In 2014, with Sheikh Hasina and her alliance in power, the public trading of insults and denigration of individuals by the top politicians of AL and BNP have undergone a bizarre twist.³¹ The war of words began with a declaration by BNP senior vice chairman Tarique Rahman at a party meeting in London. After quoting the declaration of Bangladesh's independence, which contained the provision that Sheikh Mujibur Rahman was to remain president and Syed Nazrul Islam vice president until a constitution was adopted, he stated: "Sheikh Mujibur Rahman returned to the country on January 10 [of 1972] and became prime minister on January 12. There was no constitution in the country.... So should we not say that he was the illegal prime minister?" He then focused on the current prime minister: "Sheikh Mujib's daughter Sheikh Hasina remains the prime

28 Author's translation from "Andoloner batashey chool to thakbei na, ostittou jabe", *Prothom Alo*, 20 August 2013.

29 *Ibid.* Khaleda Zia was alluding to Sheikh Hasina.

30 *Ibid.*

31 BNP had boycotted these elections on grounds of them not having been held under the caretaker system.

minister forcibly just like her father, who became prime minister in 1972 illegally and forcibly.”³²

No sooner had Tarique opened the war of words on history, than Sheikh Hasina retorted along the theme of illegality by telling a gathering of newly elected local government representatives: “The higher court has declared illegal the rule of Ziaur Rahman who had grabbed power illegally and formed his party BNP. So, a party formed by such an illegal grabber of power is also illegal.”³³ She then upped the ante by making a snide remark on Khaleda Zia and her family’s educational qualifications. She said that Khaleda Zia could not pass her matriculation exams, Tarique had failed in the Higher Secondary Certificate exams, and Ziaur Rahman had joined the army after only passing matriculation exams. The upshot, according to her: “With this limited knowledge they are trying to confuse people about the country’s constitution, its history, the proclamation of independence, the country’s first president and prime minister.”³⁴ Acting secretary general of BNP, Mirza Fakhru Islam Alamgir, then took up the knowledge theme by advising AL leaders to study some history while claiming that Tarique had revealed some historical truths after studying various books.”³⁵

The cudgels of vicious words from both inside and outside the Jatiyo Sangsad by senior AL politicians followed Tarique Rahman’s claim. Here is a sampling of what they said and who said them:

“Restrain your (Khaleda Zia) madman of a son from issuing fatwas”
--- Health Minister Mohammad Nasim.

“He (Tarique Rahman) is mad, stupid and illiterate”
--- Commerce Minister Tofail Ahmed.

“Ziaur Rahman is the fourth Mir Jafar in Bangladesh’s history”
--- Information Minister M. Hasanul Haque Inu.

“Khaleda is Satan’s heiress and her son Tarique is the calf of Satan. Peace will not prevail in the country until she dies”
--- Disaster Management Minister M. Mofazzal Hossain Chowdhury Maya.

32 “Mujib ‘illegal’ PM in 1972”, *The Daily Star*, April 10, 2014. Tarique’s reference to Hasina clinging on to power forcibly was made in the context of the January 2014 national elections in which BNP did not participate. His comments elicited much criticism from historians, the media and other quarters. *The Daily Star* itself in “Hilarious-torian on the block” (April 10, 2014) and “Tarique & two collaborators” (April 14, 2014) took Tarique to task on charges of distorting history.

33 “PM terms BNP ‘illegal party’”, *The Daily Star*, April 13, 2014.

34 *Ibid.*

35 “Do ‘study’ as Tarique did”, *The Daily Star*, April 16, 2014.

The senior leaders of the BNP responded in the following words:

“Sheikh Mujib wanted to become prime minister of united Pakistan; he did not want Bangladesh’s independence”

--- BNP vice chairman Sadeque Hossain Khoka.

“If the BNP returns to power, we will write the true history of the Bangladesh Liberation War”

--- BNP Chairperson Khaleda Zia.³⁶

In Retrospect

We return to Sean Richey’s query, “Can politicians use emotional appeals to stimulate and activate latent personality traits in the public?” The short answer that would instinctively come out is a “Yes”. Most politicians as Stone suggests, fall in the realm of emotion and passion. They are also influenced by irrationality, self-interest, shortsightedness, and raw power. These attributes are applicable to both liberal pluralist democracy and authoritarianism. Interestingly, emotion and passion would have greater priority for a pro-democratic politician than for an authoritarian figure, especially because the democrat would be a populist appealing as much to the emotion and passion of the voter as to his/her reason. Great orators have the ability to sway masses with their speeches, and, although they may not always win elections for their political parties, or even, on the rare occasion, not get elected, they tend to leave a mark on their audience. Just how long that impression remains will vary from person to person, as well as from the proximity of elections to the speeches made, but some leave a lasting impression beyond that of the election or the circumstances of the speeches themselves. Therefore, there will be at least a degree of positive correlation between the politicians’ use of that particular strategy of making speeches and statements, and the public’s response to it.

How would the public react if the speeches are marked by crass words, low blows and, vicious character assassination of opponents? What happens when politicians make bald distortion of facts, and unseemly turns of phrases? This is difficult to answer, since it involves a study of human psychology. If we take the early American presidential races, where both sides resorted to distasteful attacks on each other, one candidate won, but there was no way of gauging just how positively or negatively the personal attacks using foul language affected the

36 “Dirty war of words”, *The Daily Star*, April 14, 2014. MirJafar popularly refers to a traitor in Bengali usage. Note how the traitor appellation given to Ziaur Rahman by Hasanul Haque Inu has been directed at Sheikh Mujibur Rahman by Sadeque Hossain Khoka.

voters. In the case of Cleveland vs Blaine, many of the voters did not seem to take into consideration the character assassination campaign launched by the Blaine camp on his opponent, since Cleveland won the White House! However, negative campaigning seems to intensify during presidential races in the US, but, after the contest ends, the rhetoric is toned down significantly other than the expected sniping at incumbent government policies to keep it on its toes as well as with the hope of unseating the party's candidate at the next general election. Furthermore, the use of obscene language during Congressional proceedings is unheard of.

In Bangladesh, we have seen multiple instances of obscene language used against opponents by senior politicians of the two major political parties. If this is undertaken in order to garner votes, then there is no hard evidence that they have succeeded in luring significant numbers of voters to their respective sides by using these tactics. Furthermore, one cannot fathom the reason for the use of obscene language during parliamentary sessions. Since those sessions are not connected with elections and vote-gathering, unless tangentially by a stretch of imagination, it may logically be surmised that those using such language have foul mouths and poor sense of decorum. Rather than a means of garnering votes, or capturing the voters' hearts and minds through the use of indecent language, the exercise in foul mouthing could be seen as a manifestation of deteriorating political culture.

If the operative word is "deteriorating," then it stands to reason that political communication was relatively more genteel before the visible onset of steadily worsening political culture since 1991. Evidence suggests that it was, and nowhere more than during parliamentary proceedings. We can go back to the days of Pakistan, when Bangladesh was its eastern province, to corroborate this point. For most of the years from 1947 to 1971, the country was under martial law and military rule with a democratic façade. However, for many of those years, there were Constituent Assembly, National Assembly, and Provincial Assembly proceedings. While sharp words were exchanged between government members and the opposition leaders, they did not degenerate to the level of vulgarity. There were occasions when wit was used in debates to make a point. The Constituent Assembly and the national and provincial parliaments were not denigrated by uncouth words and speeches, although, in one instance, a Deputy Speaker of the Provincial Assembly of East Pakistan was killed during an altercation within the legislature premises.³⁷ Outside the parliament, too, while

³⁷ Shahed Ali Patwary, Deputy Speaker of the East Pakistan Provincial Assembly, injured during a melee in the assembly on 23 September 1958, died two days later.

there were invectives hurled at the opposition by demagogues, they rarely contained obscene language, although many of the speeches were fiery and full of passion and emotion, aimed at rousing the public to lean towards the speakers' or their parties' way of thinking. But, then, passion and emotion are integral to politics.

The political exchanges were often intense primarily because the Bengali's demands for fair allocation of resources and better representation in the military, and civilian administrations was gaining momentum soon after the Language Movement had restored the status of Bengali language. But they almost never entered the realm of obscene language and indecorous behavior. Yet, they were vying for public support for their actions, or agenda, or engaging in intense parliamentary debates, as vigorously as any politician of any era. There is good reason to believe that the Bengali masses were influenced by their speeches because they had set ideals and objectives in mind. In those days, too, large public meetings held in open spaces were the norm, and the audience listened to speeches that had little indecorous words or phrases.

One possible explanation for the discreet speech pattern inside and outside the legislature is that the politicians of those days were largely drawn from an educated class, and from at least fairly respectable families, including those who could be labeled as elite. This statement is not a sweeping generalization but an assumption. Such an assumption can only be substantiated (or negated) by a thorough research on the family and educational backgrounds of the politicians of the pre-liberation and pre-1990 period, going back to the partition of India. Such an undertaking is beyond the scope of this paper, and, so, we will go along with the assumption made with regard to the politicians. Regardless of their family background or educational attainment, the politicians in East Pakistan and post-liberation Bangladesh, while pursuing politics with passion, did not resort to the use of vulgarity in speech and crass characterization of opponents to win votes or maintain public support for themselves and their parties. They usually were vanguards of, or adherents to, the cultural traits of their nation, or of their social background, which usually meant the more refined version of their national culture. The political culture also followed the politicians' behavior. It was intense, at times acrimonious, but hardly ever vulgar.

Many of those Bengali politicians of the Pakistan days now find themselves playing their familiar role in Bangladesh. While, in Pakistan, they would uphold the ideals of honor of the Bengali language, and struggle to end various forms of discrimination against the Bengalis, since the independence of the country in

1971, they have confronted the formidable challenge of nation-building. In the absence of a common enemy they had faced in Pakistan, those ideals gradually eroded. The first hint of an unhealthy political culture was seen during the flawed 1973 national election, which was won by AL in an almost total sweep. In Karim's estimation, "What was qualitatively different (from elections held during the British Raj) was the direct involvement of the government machinery in the manipulation of votes in favor of the ruling party...."³⁸ However, the parliamentary language did not degenerate to vulgar levels, which is understandable because most of the old guards of the Pakistan days were MPs, and they did not abandon their pattern and tenor of making speeches. Then, in quick succession, the one-party government was introduced, followed by the assassination of Sheikh Mujibur Rahman, and the imposition of protracted military rules and quasi-military governments. Healthy politics had taken a back seat during all those years, before the 1990 mass movement brought down a dictator, and brought back parliamentary democracy in 1991.

In the passage of time a whole new generation of politicians has come to politics. The daughter of a former president and prime minister, and the widow of a former president were now heading the two major political parties of the country. And the politicians themselves have come from diverse backgrounds. As the years have gone by, the businessperson-turned-politician has become fairly common, without necessarily having improved upon the quality of parliamentarians. Professions from different fields with varying level of family and educational backgrounds are now represented in the parliament. A new breed of politicians has come to the forefront of the political system. Largely gone are the days of massive public gatherings in public spaces all over the country, where the audience listened to passionate speeches made by ideologically-driven politicians. Those massive public meetings have not totally disappeared, although they have become few and far between. However, even in these infrequent gatherings, a trend in crass character assassination of opponents, as well as the use of crude language may be discerned. Such tendencies have worsened as the years have progressed.

If such vile language and unseemly character assassination are meant to sway voters, then one cannot be certain if they do so. Given the fact that both the major parties continue to use vile language, one may possibly conclude that the masses have also tuned in to their way of thinking. It is also possible that several

³⁸ S.A. Karim, *Sheikh Mujib: Triumph and Tragedy* (Dhaka: The University Press Limited, 2005), p. 308.

politicians have emerged from a societal background of crude behavior, foul mouths, and intolerance of opposing viewpoints. Combining these two possibilities, one may suggest, not without reason, that a distasteful cultural background has given rise to, and is nurturing, a parochial political culture. This may not be a far-out suggestion. After all, the masses, by and large, do not seem to mind the use of vile language, or is apathetic to it, or, some may even relish it. The poor state of political culture has led to mutual distrust, intolerance of opposing viewpoints, and abuse of the sanctity of parliament.³⁹

In conclusion, it is assumed that the filthy language used by politicians in Bangladesh is as much a manifestation of poor cultural and social background as it is a deliberate ploy to influence the public. It does not show the country in great light. The use of vile language has contributed to the deteriorating political culture and the weakening of political institutions. If such trend is not checked and rolled back, it could have far-reaching negative consequences for the growth of a democratic polity in Bangladesh.

³⁹ In the 2014 local government elections, another manifestation of this culture was seen. *The Daily Star*, which is not particularly inclined towards BNP, headlined the self-explanatory “AL excels in unfair polls” on April 1, 2014, and “AL loses grip on upazilas: Despite rigging in this year’s polls, AL performs worse than in 2009” on April 2, 2014.

RE-READING MUSLIM WOMEN'S RIGHTS IN BANGLADESH

Mir Tamanna Siddika* and Mahmuda Khatun**

Abstract

Religious interpretations play an important role in women's life. Misconceptions about Muslim women's rights have become norms in many countries. This paper explores the conventional interpretation of women's rights by interviewing both male and female madrassa teachers and mosque Imams in the capital city Dhaka in Bangladesh. We have used two instruments to collect data: in-depth interviews and focus-group discussions. The study finds that the patriarchal male values tend to dominate in providing explanations of women's rights. Such male-dominated views are constructed and reconstructed by misreading certain sections of religious text, and thus conceal an appropriate religious interpretation of women's rights. The adverse effect of such misinterpretation of religious text is enormous. It devalues women's agency and work; and exposes women to numerous challenges throughout their lifecycle. This paper concludes with an observation that Muslim women's subordination is not rooted in either religion or in tradition, rather, in patriarchal influence and arbitrariness, which have been dominating them for centuries.

Introduction

Religious interpretation plays an important role in shaping people's daily life. Members of the society rarely stand up on their feet to raise their voices against religious rights, defined by the holy books. Since religious laws often have been used to ostracize people from the community, any right can go unchallenged. For years, women around the world claim that their desire to enjoy equal rights has been denied. Even though most religions support women's human rights, these rights are called into question because of religious misinterpretations.¹ Since majority of the people in Bangladesh observe Islam as a religion, Islam undoubtedly plays an important role in the country. Even though the Quran stresses equity and equality between men and women's status, some practitioners

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1 Mahjabin Sultana, "Religion and Misinterpretation: Gender Perspectives", *Empowerment*, Vol.10, 2003, pp. 59-66.

use it for exploiting and discriminating against women after modifying some verses of the text to dehumanize them.²

After paying careful attention to the original texts of the Quran (Holy book for Muslims) for analyzing women's rights, we found that the Muslim women's rights in Bangladesh is a product of sheer misreading of religious scriptures. Many Muslims hold misconceptions about women's rights due to misinterpretation of the holy text. More specifically, some argue that male religious interpreters play a key role in interpreting women's rights.³ According to Hussain (1984), 'There are no Islamic societies to be found in the world today, various distorted interpretations of Islam have manifested themselves in Muslim societies. Such interpretations have been imposed on women and over the centuries have resulted in the institutionalization of a pseudo Islam.'⁴ Feminists try to reduce the gap between religion and feminism. They do not raise any question about the legitimacy of the Quran but express serious doubts of using the patriarchal interpretations of the text itself.⁵

As a result of this split, a vibrant debate continues over the rights of women in the Muslim world. Feminist scholars are continuously searching for plausible explanations behind gender disparities. They raise their voice against women's rights in Muslim societies by providing an alternative explanation.⁶ They have thrown challenges at Islamic jurisprudence based on patriarchal interpretations of the women's rights. Some found atypical verses used by the traditional scholars to formulate the laws discriminating against women. These laws mostly targeted women's marriage rights. Their attempts established women's right based on the Quran in some parts of the world. They consider it as a "Gender Jihad" (Jihad means fighting for religious reason) of their own.⁷

2 Rashida Akhter Khanum, "Feminism, Status of Women and Islam", *Empowerment*, Vol.15, 2008, pp. 67-78.

3 Mohd. Shahadat Hossain Mahmud and Maksuda Parvin Mimi, "Oppression of Muslim Women: The Text and Bangladesh context", *Empowerment* Vol.5, 1998, pp. 75-90.

4 Freda Hussain, 'The Ideal and the Contextual Realities of Muslim Women'. Freda Hussain (ed.), *Muslim Women*, (St Martin's Press 1984), p. 2.

5 Yvonne Haddad, 'Feminism and Islam: The Global Islamic Feminist Movement', <http://www.themosqueinmorgantown.com/forum/tag/amina-wadud/> (accessed 10 January 2010).

6 Islam and Laicite. org, 'What is Islamic Feminism? Promoting Cultural Change for Gender Equality,' http://portal.unesco.org/pv_obj_cache/pv_obj_id_F5F76BF7E4F12FA6393AB48BA50DB83E68260100/filename/programme.pdf (accessed 9 December 2009).

7 Yvonne Haddad, 'Feminism and Islam: The Global Islamic Feminist Movement', <http://www.themosqueinmorgantown.com/forum/tag/amina-wadud/> (accessed 10.1.2010).

In Bangladesh, little research has been conducted on the rights of women as enshrined in religious scriptures. Existing research reveals that women's religious rights are often interpreted with cultural values and popular notions about women. This paper adopts a feminist perspective to understand the rights of women in Islam in the national context of Bangladesh. It draws empirical evidence of cultural constructs which have existed for a long time. The central goal is to explore the religious interpretation of women's rights in Bangladesh and to examine the gap between existing knowledge and an authentic interpretation. More specifically, this paper attempts to understand the perception of gate keepers about women's rights, and to understand the nature of interpretation. It also wishes to understand their source of explanation, to explore how this interpretation contributes to women's subordination, and to identify their existing source of knowledge.

Data and Methodology

This paper uses an interpretive naturalistic approach that emphasizes how reality can be socially constructed.⁸ Research for this paper is conducted in two areas of metropolitan Dhaka— Jurain and Mohammadpur. The sample of this study consists of mosque's Imam (leader of the mosque) and Madrasa (religious educational institution) teachers. To make a comparative analysis, both male and female teachers have been included in the study. A total of twenty five participants are randomly selected for this study. Among them, thirteen are male Madarasa teachers and Imams, and twelve are female Madarasa teachers. were randomly selected. The age of the respondents ranges from twenty to sixty years. Most of the respondents, both male and female, were highly educated religious teachers. It is worth noting that the religious education system is divided into two categories in Bangladesh, namely the Alia and the Quami systems. Most of the respondents were educated in the Qaumi system as they still dominate in providing explanations of religious verses.

This study used focus group discussion (FGD) and in-depth interview method to collect data on the rights of women in Bangladesh. Two focus group discussions were conducted among female Madarasa teachers. The FGDs provided the researchers with an opportunity to identify new issues which had been discussed at a length during the in-depth interview. In contrast, the interviews provide an opportunity to contextualize women's rights in Bangladesh.⁹ In addition, this tool

8 Norman K. Denzin and Yvonna S. Lincoln, *Handbook of Qualitative Research*, 2nd ed., (Thousand Oaks 2000), p.8.

9 D'Arcy Davis-Case, "The Community's Toolbox: The Idea, Methods and Tools for Participatory Assessment, Monitoring and Evaluation in Community Forestry", <http://www.fao.org/docrep> (accessed 9 January 2010).

allowed to elaborate issues related to women's live.¹⁰ The present research consulted books, journals, scholarly articles, and relevant websites as the secondary sources of the data.

Explaining Women's Rights: Other's Perspective

Religion is omnipresent in people's life in different forms. It will be difficult to find a society where a religion does not play a critical role in people's life.¹¹ Some view religion as one of the main building blocks of the patriarchal systems which also manifested in men's superiority over women with reference to knowledge.¹² According to Postmodern feminists, there is an indivisible relationship between knowledge and power. Knowledge validates the supremacy of men over women. As there is no absolute authority over truth and knowledge is always acknowledged as truth, so it can be considered as the power also.¹³

Moreover, whose knowledge will be considered as knowledge is also associated with power. Production of knowledge is a political process as some knowledge is perceived better than others.¹⁴ Historical evidence shows that men were more literate than women. Men studied texts, commented on texts, and modified texts if they felt it deemed necessary. Sometimes women were denied the opportunity to listen to explanations of women's rights based on the religious scriptures. "Women as Others" is the title women carry, which excluded them from the religious activities leading to modification of women's rights. Male religious practices were considered as authentic and influential for devaluing women's practices as an ineffective one.¹⁵

The very idea of male superiority is not new; rather it has been perpetuated for centuries molding peoples' thoughts and actions. According to Bhasin, ideology matters as it performs two functions: to perpetuate social systems and to control people's minds. By performing these functions, ideology creates an environment that preserves patriarchal ideology.¹⁶ An ideology is predominantly 'understood',

10 Mary M. Gergen, 'Qualitative Inquiry in Gender Studies'. Joan C. Chrisler and Donald R. McCreary (eds.), *Handbook of Gender Research in Psychology*, (Springer 2010), pp. 103-132.

11 Anthony Giddens, *Sociology*, (Cambridge 2001), p.530.

12 Kamla Bhasin, *What is Patriarchy*, (New York 2000), pp 61-95.

13 Pamela Abbott and Claire Wallace, *An Introduction to Sociology: Feminist Perspectives*, 2nd ed., (London 1997), p. 297.

14 *Ibid*, p. 293.

15 David Kinsley, 'Women's Studies and the History of Religions'. Arvind Sharma (ed.), *Methodology in Religious Studies*, (State University of New York Press 2002), pp.1-16

16 Kamla Bhasin, *What is Patriarchy*, (New Delhi 1993), p. 21.

‘transmitted’ and ‘reproduced’ through oral and written texts.¹⁷ Religious stories narrate male superiority, say for example, Eve was created from Adam’s rib, or man was created in the image of God, or women are less intelligent than men.¹⁸ In most cases to uphold male dominance, new meanings were created with the help of the religious institutions.¹⁹ Feminist hermeneutics states that knowledge is produced using elite male perspectives, which portrayed women as objects; and used women to serve men by denying women’s knowledge and intelligence.²⁰

The feminist hermeneutics perspective is particularly important as it provides logical understanding of how men use cultural values and religion to interpret the religious texts. It also provides a framework to explain male biases intertwined with the women’s rights. This perspective is different from the male stereotypical ideas about women as it analyzes male focused religious myth, texts, traditions, and practices to find out how far women’s lives have been marginalized.²¹

The departure of Prophet Muhammad made it important to interpret Quranic principle to convert them into pragmatic decisions. After the Prophet’s death, Islam went through a major transformation until 750C.E from the Arabian community to Pyrenees. The varied cultures and dissimilar people of the huge extraterritorial land revealed the difficulties of translating Quranic guidance and converting them into laws. During the Prophet’s lifetime, the tribal societies of Mecca and Medina were explicitly less ‘patriarchal, less ‘misogynistic’ and less ‘restrictive’ of women than these societies. The Prophet familiarized some practices which were more liberal when compared to the time and social context, even in the late Abbasid society.²² However, after the Prophet’s departure, the position of women in Islam was influenced by both the Islamic belief and the

17 Wei-Hao Lin, Erik Xing and Alexandar Hauptmann. A joint Topic and Perspective Model for Ideological Discourse, Paper presented at the European Conference on Machine Learning and Principles and Practice of Knowledge Discovery in Databases, Antwerp, September 2008.

18 Kamla Bhasin, *Understanding Gender*, (New Delhi 2000), p.21.

19 Mary Ann Stenger, ‘Feminist Philosophy of Religion’. Arvind Sharma (ed.), *Methodology in Religious Studies*, (State University of New York Press 2002), pp. 147-178.

20 Elisabeth Schussler Fiorenza, ‘Method in Women's Studies in Religion’. Arvind Sharma (ed.), *Methodology in Religious Studies*, (State University of New York Press 2002), pp. 207-241.

21 David Kinsley, ‘Women's Studies and the History of Religions’. Arvind Sharma (ed.), *Methodology in Religious Studies*, (State University of New York Press 2002), pp.1-16.

22 Norani Othman, ‘Islam’. Cheris Kramarae and Dale Spender (eds.), *Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge*, Vol. 3, (Routledge, 2000).

diverse societies where Islam was practiced. The interpretation of Islamic laws and rituals became further politicized as the Ulema [religious scholars] were mostly men.²³ Consequently women's status began to decline. As Haifaa Jawad notes, "Slowly but surely their [women's] rights faded away."²⁴

This paper shows that in Bangladesh, Muslims make up the largest community. A large part of their lives is controlled by Islamic rules and regulations. But like the other patriarchal social systems, here the power to interpret the religious rules is also reserved by men and patriarchal interest is reflected through these interpretations and reinterpretations.²⁵

Finding of the Study

This section presents the central findings from the interviews and focus group discussions. It focuses on the respondents' views on women's status in Islam, their marital rights, women's inheritance rights and leadership potential. It also offers interesting perspectives on purdah (seclusion) and the potentiality for women to act as interpreter of Islamic laws.

Perception about women's status: Participants in this study agree on the view that although Islam accords women with numerous rights and privileges, there is a conspicuous discrepancy between men and women's status in almost all societies, including in Muslim majority countries. Some respondents claim that women enjoy high status, while others dispute such claims and observe that women's status in Bangladesh is lower than men's status. Interestingly, a third group of participants tends to believe that both men and women enjoy equal status in Bangladesh.

Respondents who think that the status of women is higher than that of men mainly emphasize women's inheritance rights and women's status as a mother. They also think women enjoy a high status because women have no family responsibility and it is not obligatory for them to engage in income-generating activities as men are responsible for pursuing a professional career. Others, who think that women are equal to men, view that "Though the husbands have more responsibility than their wives, both spouses enjoy an equal status." Female

23 John L. Esposito, 'Women in Islam and Muslim Societies'. Yvonne Yazbeck Haddad and John L. Esposito (eds.), *Islam, Gender, and Social Change*, (Oxford University Press 1998), pp. ix-xxviii.

24 Haifaa A. Jawad, *The Rights of Women in Islam: An Authentic Approach*, (London 1998), p. 97.

25 Dalia Ahmed, *The Dispensation of Fatwa and Women's Progress in Bangladesh: Forum on Women in Security and International Affairs*, (Dhaka 2004), pp. 4-5.

respondents, who believe women have lower status than men, mainly focus on women's leadership role and, inheritance rights. They think women are not equal to men because they tend to be physically and mentally weaker than men. As a result, women's leadership has never been accepted. On the inheritance rights, they refer to Quranic rules which state that a daughter gets half of what a son gets from their parents leading to the inferior status of women in general.

Men's superiority and women's status: It is explicitly revealed in the Quran and in the Hadith (explanation of Quran) that both men and women possess distinct physical characteristics, but they have been created from the same soul. As "the Holy Quran mentioned, 'O ye people! Fear your Lord, Who created you from a single soul and created there from its mate, and from them twain spread many men and women (Al Quran 4:1).'" With this verse, one can possibly conclude that there is no basic difference between men and women in terms of rights and duties. Both will receive the same judgment for their misdeeds.²⁶ Most of the respondents' view that 'men' plays the role of provider at women and their authority over women has never been questioned.

Participants who portray women as weaker sex do not consider women's work as "real work". When they were asked who could be the household head, they made a clear distinction between men and women, where men were given a superior position over women. They unanimously explained that men would be the head of the household for two reasons: first, men (husbands) are more respectable than women (wives); and second, women are less intelligent than men. Most of the respondents claimed that men possess more knowledge about Islamic jurisprudence than women. Although they claim men to have more religious knowledge, such claim is not supported by any empirical evidence.

Most participants in this study think a specific verse from Sura Al-Nisa confirms men's superior authority over women. The Quran says, "Men are (qawwamun) guardians over women because Allah has made some of them excel others, and because they (men) spend of their wealth...And *as for* those on whose part you fear disobedience, admonish them and leave them alone in their beds, and beat them. (Al Quran 4:34)." Most respondents interpreted this verse in a way that puts men in charge of women's affairs because God created men as superior to women in strength and reason, because they provide for women. They also view

²⁶ Haifaa A. Jawad, *Op. cit.*, p. 5.

that this verse gives men the right to discipline their women in order to ensure obedience. This verse clearly expresses men's superiority over women:

Interestingly, the word "qawwamun" is interpreted as "in charge", "an authority", "ruler," or "sovereign", which reflects the traditional image of men in the society. However, Ali, who analyzed the concept of sexual equality in Islam, has argued that the men's authority over women is contextual. The statement does not validate men's authority over women. He argues that the Quran describes men as women's saviors and providers, not as guardians and rulers.²⁷ However, he uses "strength" (which the Quran does not say) to convert the meaning of 'social responsibility' which is tacit, into a more paternalistic notion of 'in the charge.' It appears that the goal of such gendered interpretation is to give the impression that Allah prefers men to women. By interpreting the verse as the legitimizer of men's duty 'to maintain the women', the biological differences between men and women have been focused without considering it as a social responsibility.²⁸ For some, the word "qawwamun" refers to a person with responsibility for taking care of another's interest. This does not imply that men are masters of women, or who desire loyalty from women. Raga' El-Nimr finds that most men interpret the word "qawwamun" for their own benefits.²⁹

Feminist scholar Riffat Hassan argues that the verse should not be used to describe men's authority over women. She offers an interpretation of this verse, which equates qawwamun with "Hakim" or "rulers." The latter use of the word creates stratification in the middle of the Muslim community. The main thrust of this verse is to ensure that women should not be burdened with additional responsibilities as they perform the important tasks of childbearing and child-raising. She argues since women can only bear a child, men are obliged to support women economically. Hassan contends that the Quranic verse is often misinterpreted for the purpose of making men more powerful than women and to give an impression that men have the right to punish women. Although the Arabic word "Daraba" is generally interpreted as the permission of wife beating, but it has other meanings, such as separating "from the wives in the sense of living apart from them", "beating them" and "have sex with them". However, most of the interpreters, who are usually men, always read this word as "beating" to retain

27 Asghar Ali, *Rights of Women in Islam*, 3rd ed., (New Delhi 2008), p. 48.

28 Asma Barlas, "Believing Women" in *Islam: Unreading Patriarchal Interpretations of the Quran*, (Austin 2002), p. 185.

29 Raga' El-Nimr, 'Women in Islamic Law'. Mai Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives*, (ITHACA press 2006), pp. 87-102.

the control of patriarchal society.³⁰ Based on this discussion one can conclude that the popular views about women's right do not offer an authentic interpretation of women's rights in Islam.

Marital rights of women (consent, dower, divorce and polygamy): Women's consent to marriage is an important indicator of their rights. Most parents in Bangladesh tend to make important decisions on, albeit with varying level of success, who their daughters (and sons) should marry. However, the Quranic instruction is quite different: "Do not prevent them from marrying their husbands when they agree between themselves in a lawful manner (Al Quran 2:232)." A woman having full authority over and consent to her marriage is also given importance in the Hadith. A Hadith narrated by Imam Bukhari thus as follows, "a girl came to the Prophet (peace be upon him) and informed him that her father had married her to her cousin against her wishes, where upon the Prophet allowed her to exercise her choice. She then said, 'I am reconciled to what my father did but I wanted to make it known to women that fathers have no right to say in this matter'.³¹

All the respondents in this study unanimously admitted that it is obligatory in Islam to take the consent of a woman in case of marriage. However, Islamic rules were observed rarely. For example, some participants said that according to the Islamic law, a marriage should not take place without the consent of the girl. But if a girl chooses such a man who is not socially perfect for her, in such a case, her guardians can restrain her from marrying the person. However, most respondents thought this rule is exclusively for the women, not for the men. They think that a man can spend his life by marrying an ordinary girl but a girl cannot spend her life with an ordinary man. Even though Islam preaches an equal right of men and women about marriage, the interpretation often causes women to marry without consent, subsequently establishes women's inferiority and hinders a girl's rights to make a decision concerning her marriage.

Muslim women's marriage is associated with dower as well. Majority of the respondents view that dower is a women's right. Men have to pay because of women's service, which they will provide after marriage. Dower is a form of an

30 Riffat Hassan, "Religious Conservatism: Feminist theology as a means of Combating injustice Toward Women in Muslim Communities Culture," http://www.irfi.org/articles/articles_101_150/religious_conservatism.htm (accessed 15 December 2009).

31 "Exposing Fake Myth: Muslim women are forced in marriage?" <http://islamgreatreligion.wordpress.com/2011/05/08/exposing-fake-myth-muslim-women-are-forced-in-marriage/> (accessed 17 August, 2013).

honorarium from her husband to legitimize the issue of using her private parts of the body. A very critical argument came from a respondent: "If you buy a land, then you will pay for it, won't you?" Most male respondents considered women as an asset with real value. Some argued, "A woman submits herself to a man through a legalized way (marriage). Therefore, men have to give an honorable price for it. It is the order of Islam." Some think men pay price for women's chastity. Women respondents view it differently: "After marriage, women always have to stay with her husband, so through paying dower, a woman has been bought." Even though they mentioned it as an honorarium, their body language conveys it is humiliating for women. For them, women can be bought and sold as men desire.

Islamic jurists popularly define dower as an exchange of the sexual pleasure that a husband gets from his wife. Some view that dower is a standard rule set by the Sharia (Islamic law) to show respect to women and it has nothing to do with sexual pleasure. As Quran mentioned, "Of His signs is this: that Allah created for you spouses that you might find rest in them, and Allah ordained affection and mercy between you (Al Quran 30:21)." Therefore, a husband is not given permission to obtain sexual pleasure, rather he has to seek permission from his wife before performing any sexual activities, and it is a mutual right, not for sale.

Aftab outlines five terms in the Quran to denote dower: Atiyya (gift), Farida (gift), Sadaqa (voluntary charity/friendship, companionship), Nehala (gift), and Ujur (wage). None of these terms indicates or signifies the issue that men provide women dower out of consideration. The literal meaning of dower also nullifies the very idea of dower as "consideration" which lowers down women's image in the Muslim society. Rather a wife gains financially by receiving dower from her husband. Simply, dower provides an opportunity for a woman to enter into a man's life and to have access to his property.³² In addition, if a husband does not have sex with his wife from for the period of not less than four months to an unspecified period or if the husband is unable to fulfill his marital obligations without reasonable cause for a certain time, a wife is entitled to obtain divorce. These two provisions clearly indicate that the wife also has the right to sexual intercourse and thus one can conclude that marital intercourse is a mutual right and not a unilateral right to have been purchased by the husband from the wife in the name of dower or in the form of consideration.³³

32 Aftab Hussain, *Status of Women in Islam*, (Lahore, 1987), p.560

33 Babu Ram Verma, *Muslim Marriage and Dissolution*, (Allahabad 1975), p.130.

Since marriage is considered to be a contract, it can be dissolved either by a mutual consent or by either partner of the contract. Most of the respondents reported that a woman cannot divorce her husband, rather, she asks her husband to get a divorce. They claim that a husband has the unilateral and exclusive power over divorce issues. However, Islamic law provides right to divorce by a woman. A woman is allowed to use a special form of divorce called Khula.³⁴ A wife had the right to ask for a divorce from her husband on the same grounds on which a husband can ask to divorce his wife.

It is mentioned in the Quran: "And if you fear a breach between them, then appoint an arbiter from his folk and another orbiter from her folk. If they (the arbiters) desire reconciliation, Allah will affect it between them (Al Quran 4:36)." This verse stated the specific procedure to follow for carrying out a divorce. It is the business of the judge to decide the case, not a public matter. The judge's responsibility is to nominate two persons, one from the wife's family and the other from the husband's family, to resolve the issue. Appointed persons have to find a way to resolve the matter. If they fail to reunite the couple, a divorce takes place with the permission of the judge.³⁵ However, in some instances, a husband has the right to ignore any judicial intervention to divorce his wife even when his spouse is not willing to get a divorce.³⁶

Polygamy is also a big issue, which makes Islamic law controversial around the globe. In response to the issues related to men's polygamy in Islam, most of the respondents mentioned that Islam permits polygamy under certain conditions. According to them, in order to marry more than one woman, a man has to ensure fairness and justice for all of his wives provided he is an economically sound person. If a man fulfills the conditions, he can marry more than one woman at any time if he wishes to do so. If the husband fails to exercise equality, he is not allowed to marry more than one woman. Male sexual privileges allow them to practice polygamy in general. As some respondents mentioned, "In the devastating wars, generally females outnumber males. To fulfill the duties of the widows and orphans, Islam allows polygamy for men." They believe that Islam also permits polygamy in normal situations as Islam considers that a husband is physically stronger than his wife. However, a husband is not obliged to take permission from his wife when the question of polygamy comes up.

34 Asghar Ali, *Rights of Women in Islam*, 3rd ed., (New Delhi 2008), p. 143.

35 *Ibid.*, p. 145.

36 Syed Ameer Ali, *The Spirit of Islam: Life and Teachings of Muhammad*, (Calcutta 1902), p. 204.

To justify their arguments, some participants in this study mention the following verse of the Quran: "If you fear that you cannot treat orphans with fairness, then you may marry such women as seem good to you: two three or four of them, if you fear that you cannot do justice, marry one only or those you possess (Al Quran 4:3)." If we carefully read the verse, we can understand that this verse is not used properly. First, this verse specifically mentioned about orphans, which implies polygamy was allowed only for helping out the orphans and widows in wars.³⁷ If the social context of the revelation of the verse is considered, it would make more sense. The Quranic verses on polygamy came after the battle of Uhud. Out of seven hundred fighters in Medina, seventy were killed in the Battle of Uhud. In most cases, the State of Medina was unable to make any provision for widows and orphans.³⁸ Consequently, four marriages would have been permitted in a case if there were a large number of orphan girls and widows, or if there were any possibility of injustices, or had there been no responsible person available to take care of them. This law in the Quran is not general but conditional and the practice of polygamy is highly restricted. The sole purpose is not to serve men's sexual pleasure, nor as a privilege, and not to support men's personal ego.

Secondly, the verse expresses great concerns over the equity issue. Ali stated:

The extreme importance of this provision, bearing especially in mind the meaning which is attached to the word "equity"(aadi) in the Qur'anic teachings, has not been lost sight of by the great thinkers of the Moslem world. "Aadi" signifies not merely equality of treatment in the matter of lodgment, clothing, and other domestic requisites but also complete equity in love, affection, and esteem.³⁹

As stated by Ali, the central question is whether an absolute justice in case of feelings can be achieved or not. A female madrasa teacher explained the practice of polygamy in a different manner. She said, polygamy was allowed in the past because it was possible to ensure equity among wives. She also mentioned a husband could not show the same level of love and affection to all of his wives. As a result, polygamy should neither be allowed nor be practiced. The final answer came from another verse of Quran about men's ability to show equal justice to their wives: "You are never able to be fair and just as between women,

37 Ibrahim B. Syed, "Qur'anic Views on Polygamy," http://www.irfi.org/articles/articles_151_200/quranic_views_on_polygamy.htm (accessed 1 February 2010).

38 Mohd. Shahadat Hossain Mahmud and Maksuda Parvin Mimi, "Oppression of Muslim Women: The Text and Bangladesh context", *Empowerment* Vol. 5, 1998, pp. 75-90; Haifaa A. Jawad, *The Rights of Women in Islam: An Authentic Approach*, (London 1998), p. 44.

39 Syed Ameer Ali, *Op. cit.*, p.190.

even if it is your ardent desire (Al Quran 4:129),” which clearly negates the issue of practicing polygamy. This is a legal obligation not to be ignored before polygamy takes place.⁴⁰ Interestingly, none of the respondents mentioned this verse.

If we look at the history, we find a clear idea about how a Quranic interdiction became a regular practice of the Muslim communities. Even early Muslim intellectuals opposed the practice of polygamy. In the eighth century, the Mutazillite jurists construed that the Quraic injunctions did not encourage rather proscribe the practice of polygamy. A remark from Syed Amir Ali is worth noting here:

In the third century of Hegira, during the reign of al-Mamun, the first Mutazalite doctors taught that the developed Qur’anic laws inculcated monogamy. And though the cruel persecutions of the mad bigot, Mutawakkil, prevented the general diffusion of their teachings, the conviction is gradually forcing itself on all sides, in all advanced Moslem communities, that polygamy is as much opposed to the teachings of Mohammed as it is to the general progress of civilized society and true culture.⁴¹

Women’s Inheritance Rights: Muslim women often question the inheritance law of Islam. Participants in this study note that although Muslim daughters have the right to inherit half of the property inherited by their brothers, their financial situation is guaranteed. The Quran made it clear that male relatives, especially brothers, have the obligation to take care of their sisters and to meet their financial constraints if needed. Besides, marriage contracts allow a woman or sister to get a dower, and maintenance allowance by her husband. These rights are neither waived nor reduced, even though she has access to any personal income obtained from work, rent, profit, or any other legal means.

On the question of women’s property rights, most respondents view that there is no way a woman can get an equal share of her parents’ property. If any woman claims equal inheritance, the very person will be blamed in the day of resurrection. On the other hand, a very few respondents suggest that a father can distribute his property equally between his son and daughter when he is alive. There is no restriction in Islam in doing so. It is mentioned in the Quran, “For men is a share of that which parents and near relations leave; and for women is a share of that which parents and near relations leave, whether it be little or much

40 Raga’ El-Nimr, ‘Women in Islamic Law’. Mai Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives*, (ITHACA press 2006), pp. 87-102.

41 Syed Ameer Ali, *Op. cit.*, p.190.

— a determined share (Al Quran 4:7).” The following verses from Quran will shed lights on women’s inheritance:

Allah commands you concerning your children: a male shall have as much as the share of two females; but if there be females only, numbering more than two, then they shall have two-thirds of what the deceased leaves; and if there be one, she shall have the half. And his parents shall have each of them a sixth of the inheritance, if he has a child; but if he has no child and his parents be his heirs, then his mother shall have a third; and if he has brothers and sisters, then his mother shall have a sixth, after the payment of any bequests he may have bequeathed or of debt (Al Quran 4:11).

The holy Quran also mentions that:

If a wife dies, her husband will get half of the wife’s estate if they have no children, but if they have a child, then he will get a fourth of her property. If a husband dies first the wife will get a fourth of her husband’s estate, if they are childless. If they have a child, she will get an eighth of the total property (Al Quran 4:12).

These laws are only applicable to a dead person’s property. This means a man has complete right to distribute his/her property according to his/her wish. Thus, while he or she is alive, the Quran gives the parents complete freedom to give their children as much property as they want to. The Quran explicitly mentioned that a person is obligated to prepare a will. The Quran says, “It is prescribed for you, when death comes to any one of you, if he leave much wealth, that he make a will to parents and near relatives to act with fairness; *it is* an obligation on those who fear God (Al Quran, 2:181).” Indeed, the Prophet highly recommended preparing a will without wasting any time. If a will is not prepared beforehand, then the estate is distributed in such a manner that the son gets half of what the daughter gets. However, the respondents have strongly supported the idea that a woman should take her property from her parents. It is her right, as it is not encouraged to receive paternal property.

Irrespective of the respondents’ opinion, it is possible that there is no problem if parents distribute property equally between a son and a daughter. Such views are offered in light of the radical changes in women’s property rights introduced in Morocco, Tunisia, and Indonesia. These countries used interpretive judgment to provide equal shares to men and women.⁴² If these changes are possible in other Muslim states, Bangladesh can possibly follow the suit after holding successful dialogues with Islamic thinkers and jurists.

42 Rashida Akhter Khanum, “Feminism, Status of Women and Islam”, *Empowerment*, Vol.15, 2008, pp. 67-78.

Gender Role: The Quran never refers to women as mothers. Apart from describing women's biological function, the Quran does not offer any verse collapsing the roles of wife and mother together. This implies that the cultural and psychological perceptions are attached with women's role as mothers.⁴³ Most of the respondents thought that a woman is primarily responsible for taking care of home and the welfare of her family. Her primary duties are to take care of her husband, to rear a child, to cook and other household activities.

Some respondents view that women are not responsible for household drudgery. It is not obligatory for a woman to cook food for her husband or children, or to wash their clothes or even to feed the infants. According to Islamic laws, a woman can refuse to do any of these household works. However, this piece of information is kept undisclosed to many women in Muslim countries.⁴⁴ In contrast, men wanted to ensure uninterrupted household work performed by women to uphold man's power in the society. This can be verified using one male mosque Imam's comment, "We do not deliver all kinds of sermon in all places. Already, women have become disobedient. If they come to know about these things, they will be totally out of control."

Women's leadership: Both male and female respondents raise no question against women's leadership. They do not believe in women's leadership using a specific Hadith. This Hadith is mentioned in Bukhari and reads as thus: "Abu Bakar said, when Allah's Messenger was informed that the Persians have crowned the daughter of Kisra (Khosrau) as their ruler, he said such people who are led by a lady will never be successful."⁴⁵ The respondents argue that the Prophet advised Muslims not to nominate a woman as leader as she will bring a devastating end. A counter argument came for two reasons. "First, the Hadith deals mainly with a specific case, namely, the situation of Persia at the time of the Prophet. It has no legal basis and cannot be generalized to include all women at all times."⁴⁶ Ghazali, a contemporary Muslim scholar, explains the context of the Hadith: "When Persia signs of imminent downfall because it was ruled by a despotic, corrupt queen and the people were lost and lacked guidance, the Prophet commented on this by the above mentioned Hadith and if the situation had been

43 Amina Wadud, *Quran and Women: Rereading the Sacred Text from a Woman's Perspective*, (Oxford 1999), pp. 89-91.

44 Raga' El-Nimr, 'Women in Islamic Law'. Mai Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives*, (ITHACA press 2006), pp. 87-102.

45 Haifaa A. Jawad, *Op. cit.*, p. 92.

46 *Ibid.*, 92.

otherwise his words might also have been different.”⁴⁷ Second, if the particular Hadith is accepted over Quran that is not acceptable either. However, in chapter 27, the Quran praises the Queen of Sheba for successfully ruling Persia. The verses say, “I found a woman reigning over the people. She is possessed of every virtue and has a splendid throne (Al-Quran, 27:24).” Therefore, it can be said that the Prophet’s statement regarding women’s leadership has to be understood with reference to a particular context, and should not be generalized to deny women a leadership role in society.

Purdah (Seclusion), women's mobility, and sexuality: Women were very active socially and politically when Islam gained popularity in the Arab world. Their participation in building Medina was highly encouraged; they served it rightly.⁴⁸ Under certain conditions, women had the permission to fight along with men to save themselves from their enemies. Women’s desire to be involved with any occupation was permitted.⁴⁹ Even Aysha led an army in the Battle of Camel.⁵⁰

In Islam, purdah has nothing to do women’s freedom, or their womanhood or mobility.⁵¹ Ali argued if women were forced to use veil that would not be consistent with Islamic law as Islam does not force anyone, not even women to do anything against a person’s will.⁵² However, when the respondents are asked about whether Islam permits women wearing a veil to join in any activities like politics, war or attending mosque with men and to move freely, most of them reply negatively. In defense of their views, , they focus on societal disorder to denigrate women’s sexuality. For them, going out of the house is a chaos as women are the main cause of all disturbances in the society. These findings complement Haddad’s remarks on women as trouble makers. Haddad (1998) mentioned that since women make chaos, they need to be disciplined before making further chaos.⁵³

Women as religious interpreters: Societal values influence religious interpretation, which makes traditional Muslim culture more patriarchal than ever. The sources

47 Raga’ El-Nimr, ‘Women in Islamic Law’. Mai Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives*, (ITHACA press 2006), pp. 87-102.

48 Haifaa A. Jawad, *Op. cit.*, p. 83.

49 Maulana Muhammad Ali, *Muhammed the Prophet*, (USA 1993), pp. 188-202.

50 Haifaa A. Jawad, *Op. cit.*, p. 87.

51 Mahjabin Sultana, “Religion and Misinterpretation: Gender Perspectives”, *Empowerment*, Vol.10, 2003, pp. 59-66.

52 Maulana Muhammad Ali, *Op. cit.*, p.23.

53 Yvonne Yazbeck Haddad, ‘Islam and Gender: Dilemmas in the Changing Arab World’. Yvonne Yazbeck Haddad and John L. Esposito (ed.), *Islam, Gender, and Social Change*, (Oxford University Press 1998), pp.3-29.

Muslims used to observe their religion are the Quran, Sunnah (following Prophet's rule), Hadith (explanation of Quran) and Fiqh (jurisprudence) mainly interpreted by Muslim men who used their authority to restrict women's rights.⁵⁴ This research finds that a strong patriarchal ideology prevails in the country which believes that women cannot act as interpreters of Islamic laws. In response to a question whether women have an authority over providing explanation of Islamic Laws, most participants answered in the negative. In their view, "Women cannot provide interpretation of these questions. It is not accepted by Islamic law. It will be a severe violation of Islamic law." Women respondents of this study were hesitant to consider themselves as experts to interpret any Islamic laws.

However, if we look at the history of Islam, Aysha, the Prophet's wife, had outstanding memory which allowed her as a person of authentic information about Hadith. She is considered to be one of the most reliable sources of Hadith by virtue of her quality.⁵⁵ Similarly, Fadel states that explanations of any revelation do not put any limitation on women. Men and women have the same moral right on legal opinions related to Islamic laws. This means a woman can be a legal expert whose task is to communicate issues to those who are not experts.⁵⁶

Conclusion

Scholars around the world suggest that woman's rights are often ignored, which might be the product of a gender biased religious interpretation. It finds that even though the Quran entitles men and women equal rights, a major distinction has been created to devalue women's rights in the society. A hierarchical relationship between men and women has been created, and later established by misinterpreting the Qur'anic verses in a different manner. Most issues, where female's legal rights might be at issue such as marriage, consent in marriage, divorce, inheritance rights and leadership went to a different direction due to the existing misinterpretation of Muslim laws. For instance, this study reveals, although Islam prohibits polygamy and curtails men's excessive rights over divorce, these principles are still misinterpreted to use against women. In a similar manner, issues related to women's rights, such as dower, marriage and divorce right, inheritance to property, are not properly interpreted. Though the rights of dower have been established to ensure women's economic independence,

54 Riffat Hassan, "Religious Conservatism: Feminist theology as a means of Combating injustice Toward Women in Muslim Communities Culture," *Op. cit.*

55 B. Aisha Lemu and Fatima Heeren, *Woman in Islam*, (UK 1992), p.16.

56 Mohammad Fadel, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought", *International Journal of Middle East Studies*, Vol.29 (2), 1997, pp.185-204.

it has been turned into an issue of humiliation for women in general. The Quran does not prescribe any laws how to distribute household chores in a family. It leaves this matter for an individual judgment. However, the prevailing practices in many Muslim states suggest household chores as women's religious duty. Islam does not forbid women to go outside the home, but by showing different reasons, women's mobility is restricted. As of today, only men are allowed to be religious interpreters. Though a large number of women have gained authentic knowledge about Islamic laws they still think they are not capable of interpreting religious scriptures as patriarchal values still dominates their thought processes.

Today women have acquired much greater role in public life, in employment, and in all other fields of production. Therefore, the issue of their fundamental rights as well as gender equity is to be considered as an issue of high importance. Article 28 of the Bangladesh constitution notes that, "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth." But this statement is only applicable for public life not for personal life such as marriage, divorce etc. For each religious community remained under the jurisdiction of its own personal status laws.⁵⁷ As a result, the personal religious laws have a great impact on women's lives. This means laws have been modified and reconstructed to devalue women's right which is not supported by the Quran. However, a redefinition of women's rights is much needed to enhance women's political power and prestige. Only then, women can cross their boundary and play an important role apart from their roles as daughters, wives, and mothers.⁵⁸

Findings from this study highlight the need for challenging the religious misinterpretation of women's rights. In Bangladesh, women's activist groups have long been struggling to establish women's empowerment and human rights. In doing so, they are in a direct battle with the fundamentalist religious groups. However, fighting religious orthodoxy requires a solid understanding of the religious texts, as well as demystifying popular notions about women, and deconstructing women's socio-cultural images.⁵⁹ This research addresses the existing knowledge gap in women's rights literature by focusing on the discrepancies between religious texts and their interpretation in shaping social

57 Naila Kabeer, 'The Quest for National Identity: Women, Islam and the State of Bangladesh'. Deniz Kandiyoti (ed.), *Women, Islam and the State*, (Temple University Press 1999), pp.115-143.

58 Mahmuda Khatun, "The Empowerment of Women: They are Coming Anyway", *Bangladesh Journal of Political Economy*, Vol. 24 (1&2), 2008, pp. 663-680.

59 Mahmuda Khatun, "Feminist Ethnography: The Question of Essentiality", *Social Science Review*, Vol. 23 (2), 2006, pp. 51-61.

practices. Further studies are needed to shed light on other country cases to develop a consciousness about the status of women in society. Better gender training is also needed for the religious leaders and the public to improve women's rights in the society.

**SOCIAL FORMATION IN BANGLADESH: AN ESSAY
ON THE POLITICAL ECONOMY OF STATE,
CLASS AND CAPITALISM**

Lipon Kumar Mondal*

Abstract

The paper offers a theoretical discussion on the social formation in Bangladesh. Taking a political economic approach, it traces the role of the British Raj (1757-1947) in reshaping the Indian socio-economic and political structures through exploitation, plundering, and exclusion. Then the paper focuses on the Pakistan period (1947-71) to examine how Pakistan, as a newly born state, played a significant role to reconstruct its class and capitalism. During the Pakistan period, we notice that West Pakistan tended to colonize East Pakistan and exploited the latter economically, politically, and socially. In West Pakistan, a capitalist class thrived on the process of capital accumulation from East Pakistan through plundering wealth and resources and appropriating potential surpluses. Finally, the paper explores the formation of state, class and capitalism in Bangladesh since 1971. It shows that the present pattern of state formation is the product of colonial rule as well as the penetration of neoliberal economic policies. The paper stresses that the “businessmen-politician oligarchy” creates a “political mode of production” which determines the state-class relationship, dominates capitalist relations and reshapes social structure through its own image.

Introduction

Karl Marx suggests that scientific explanation for any given society is possible only when we understand the mode of production. In other words, the mode of production is the determinant of the formation of state, class and capitalism in a given society. Following the Marxist tradition, this paper examines the dynamics of social formation from a historical perspective from the pre-British period to recent Bangladesh. The discussion begins with an examination of social formation during the British colonial period (1757-1947) in India. It then reviews the Pakistan period (1947-71) to trace the process of social formation in the newly born state. In the next stage, the paper explores the nature and pattern of state, class, and capitalism in Bangladesh from 1971 to present. There is a sharp

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distinction between pre-British and British period in India in terms of state's role for capital and class formation. During the pre-British period, the kings were the sole authority of the state with three main tasks or departments: finance, war, and public work.¹ By contrast, during the British colonial period, the British Raj focused on the first two tasks: finance and war. Colonial finance was a practice of capital accumulation through interior plundering, while war was used as an instrument of accumulation through external plundering. Thus, because of exploitation and plundering, the British Raj produced only British industrial and merchant bourgeoisie, but no indigenous bourgeois.² In other words, the class and capitalism under the British Raj remained in germinal phase. After the partition of India and during the Pakistan period, West Pakistani rulers treated East Pakistan as their colony and exploited the latter in various forms. In West Pakistan, capitalism and capitalist class thrived on the process of capital accumulation from East Pakistan through plundering wealth and resources and exploiting potential surpluses.

After independence of Bangladesh we find some eye-catching roles undertaken by the state in promoting capitalism and capitalist class. The leader of Bangladesh's independence movement Sheikh Mujibur Rahman nationalized all major industries.³ Therefore, a small fraction of population received a huge amount of wealth from state by using political power. Some of them also received foreign grants and projects. These types of capital accumulation and other political instabilities made a financial crisis in the first five years after independence.⁴ Dannecker, a German scholar, showed that due to regular pay constraint, the state faced huge challenges to run these industries. Therefore, after the demise of Sheikh Mujibur Rahman in a bloody military coup, when General Ziaur Rahman took over the charge of the state, he initiated privatization in public sectors and inducted a good number of retired civil bureaucrats and army persons into his cabinet.⁵ Among those new recruits, some were engaged in private

1 Karl Marx, *The British Rule in India*, New York Daily Tribune, June 25, 1853.

2 Anupam Sen, *The State, Industrialization and Class Formations in India*, (Routledge & Kegan Paul, London, 1982).

3 Petra Dannecker, *Between Conformity and Resistance: Women Garment Workers in Bangladesh*, (The University Press Limited, 2002), p.11.

4 *Ibid.*

5 Habibul Haque Khondker, "Class and State in Bangladesh: Political Economy of Authoritarian Democracy"; *Journal of Bangladesh Studies*, Bangladesh Development Initiative, Vol. 6, No. 1, 2004.

businesses and made money for themselves through taking the advantage from the privatizing state owned industries. Later, in 1982, after the killing of Zia, General Ershad took the power and initiated the IMF-, and World Bank-sponsored projects of privatization through the industrial policies of 1982 and 1984.⁶ Since then, the economy of Bangladesh has simultaneously adopted neoliberal policies on the one hand and politically designed national policies on the other hand. Under this economic system, the nature of state, capitalism and class have gained two distinct faces: a post-colonial face, and a neoliberal face. As a result, the nature of social formation in Bangladesh is strikingly hybrid with elements of both post-colonial nationalist ideals and neoliberal market principles.

One should note that social formation in Bangladesh is a relatively underexplored phenomenon. Perhaps the most interesting piece on this issue was written by Kamal Siddiqui et al. In *The Social Formation in Dhaka: A Study in Third World Urban Sociology*, Siddiqui et al focuses on the social formation in Bangladesh's capital city Dhaka by looking into four thematic areas: (a) social classes based on their respective social, religious, demographic, political, economic, cultural and spatial characteristics; (b) relative access to basic needs and amenities; (c) interactions and interrelations among the social classes; and (d) pattern of social change among the classes.⁷ Another important work by Abul Barkat⁸ shows that state, class and capitalism are mainly shaping and reshaping by the rent seekers class in post-independent Bangladesh. These two works by Siddiqui et al and Barkat, do not focus exclusively on the political economy of the state, class and capitalism and its contribution to social formation. This paper addresses the gaps in the existing literature by looking into the Marxist and neo-Marxist approaches to social formation and their relevance in Bangladesh. It relies on data and published materials and employs a qualitative case study methodology.

Social Formation in Pre-British Period

In Marx's analysis, Asia is a typical society fell asleep in history. Marx argues that dynasties may have changed but the structure of the state and society

6 Rehman Sobhan, *The State of Governance in Bangladesh, in Changes and Challenges: A Review of Bangladesh's Development 2000*. (Dhaka: CPD/UPL, 2001), pp.77-114.

7 Kamal Siddiqui et al., *Social Formation in Dhaka City: A study in Third World Urban Sociology*. (The University Press Limited, Dhaka, 1990), p. 1.

8 Abul Barkat, "Poverty-Disparity-Inequality in Bangladesh: In Search of a Unified Political Economic Theory", *Bangladesh Economic Association*, Dhaka, Bangladesh. (in Bangla), 2014, pp. 15-19.

remained the same until an outside force penetrated into the system.⁹ It is evident that hydraulic economy, despotic government, rigid caste system and the absence of private property were the main characteristics of Asiatic Mode of Production (AMP) which now pose major challenges to the rise of capitalism in Asia, especially in India.¹⁰ Moreover, in their correspondence to each other, Marx and Engels agreed that the absence of private property was key to the Oriental world.¹¹ Marx points out that the earlier version of mode of production in India, before the emergence of Mughal rule and British Raj, was similar to the mode of production in Italy and Ireland. In Marx's words:

Hindustan [Hindustan or the Indian sub-continent] is an Italy of Asiatic dimensions, the Himalayas for the Alps, the Plains of Bengal for the Plains of Lombardy, the Deccan for the Apennines, and the Isle of Ceylon for the Island of Sicily. The same rich variety in the products of the soil, and the same dismemberment in the political configuration. Just as Italy has, from time to time, been compressed by the conqueror's sword into different national masses, so do we find Hindostan, when not under the pressure of the Mohammedan, or the Mogul, or the Briton, dissolved into as many independent and conflicting States as it numbered towns, or even villages. Yet, in a social point of view, Hindostan is not the Italy, but the Ireland of the East. And this strange combination of Italy and of Ireland, of a world of voluptuousness and of a world of woes, is anticipated in the ancient traditions of the religion of Hindostan (Marx, 1853).

Marx also writes that the civil wars, invasions, revolutions, conquests, famines and destruction that happened in the Indian society, before the Muslim and British rule, did not go deeper than its surface.¹² But, he argues, England broke down the entire framework of Indian society and separated it from all of its ancient traditions. Marx also identifies six societal typologies in history from ancient period to present.¹³ He particularly discusses the Asiatic mode of production¹⁴ in his correspondence to Engels. Marx's notion of societal

9 Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, (New York, 1852).

10 Karl Marx, *A Preface to the Contribution to the Critique of Political Economy*. (New York: International Publishers, 1859).

11 I think Marx was influenced by the ideas of Hegel on Asiatic society. Because, Marx's notion of Asiatic society is very close to Hegel's. According to Hegel (Morrison, 2006, p. 31): there was the Asiatic form where the individual was part of the social mass, religion was dominant, the ruler was a dynastic lord, law was undifferentiated from custom and morality and class differences became crystallized into hereditary castes. Hegel, *Philosophy of Right*, (Oxford: Clarendon, 1958), p. 220.

12 K. Marx, *Ibid.*, 1853.

13 Marx's societal typologies are found in: *The Communist Manifesto*, 1848, and, *A Contribution to the Critique of Political Economy*, 1859.

14 Though Marx only mentioned the AMP in the Preface to the Contribution to the Critique of Political Economy, 1859, he discussed it in details in his book On Colonialism.

typologies can be applied to Bangladesh to understand the issue of social formation (See Table 1 and 2).

Table 1: Marx's Societal Typologies: Occidental vs. Oriental.

Societal Typologies	Europe	India	Bangladesh
Primitive Communism	Yes	Yes	Yes
AMP	No	Yes	Yes
Slavery (slave as means of production)	Yes	No	No
Feudalism	Yes	No	No
Capitalism	Yes	[not Weberian sense]	[not Weberian sense]
Socialism	Yes (distorted)	No	No
Communism	Yes (distorted)	No	No

Table 2: India and Bangladesh in Asiatic Mode of Production.

Key Characteristics	India	Bangladesh
Absence of private property	Yes/No	Yes/No
Self-sufficient village communities	Yes/No	Yes/No
Despotic state	Yes/No	Yes/No
Hydraulic economy (artificial irrigation by canals was basis of Oriental agriculture)	Yes/No	No
Rigid caste system	Yes	No
Surplus value (visible and potential) was appropriated by the ruling class	Yes	Yes
Present three departments of Government: Finance—plunder of the interior; War—plunder of the exterior; and, the department of Public Works.	Yes	Yes
Unconscious tool of history: no social revolution	Yes/No	Yes/No

As tables 1 and 2 show, Marx's framework for classifying Western society does not fit properly into either British India or Bangladesh. So, he offers a special framework called the Asiatic Society or the AMP. For Marx, the AMP is

responsible for not to develop modern state, class and capitalism in India. Neo-Marxist theorists extend the discussion by focusing on the absence of private property and land ownership.¹⁵ Here, in India, land tenure system is historically a political phenomenon where land ownership is associated with exploitation, oppression and exclusion.¹⁶ As a result, social formation prior to the emergence of the British Raj was in its nascent phase and there was no Western type of class and capitalism in the Indian subcontinent. Then social formation was only based on agriculture and merchant trades.

British Period, 1757-1947

Before the emergence of the Indian state, a capitalist class formed in the womb of British rule. The phase of primitive capital accumulation in India started from the plundering of resources by the European invaders. For India, the English bourgeois could bring in capitalism. Instead, they plundered the actual and potential surpluses/resources that India had possessed. This led Marx to say: “the British bourgeoisie drags individuals and peoples through blood and dirt, through misery and degradation, while being forced itself to sow the seeds of capitalist industry in India.”¹⁷ In this context, it has been found all over the world that the process of primitive capital accumulation is to some extent same by nature. According to Marx, “the Spanish plunder of Latin America, the sacking of Indonesia by the Portuguese and the Dutch, the French profits from the slave trade, the British gains from slave labor in the West Indies and the loot of India—these were some of the episodes of this phase.”¹⁸

15 There are five group of debaters on land ownership system in India such as- land ownership belongs to: (i) King or State- by the opinion of Bernier, Wittfogel, Marx and Engels and Nihar Ranjan (2) village community- by Mukharjee, Desai and Mazumder (3) joint ownership- by Maine, Leville and Mukharjee (4) peasants- by Habib, Ghosal, Shelvankkar and Omar (5) by Bottomore, Karim, Radha Kumud Mukherjee (M. Habibur Rahman and Fatema Rezina Pervin, , “Prak-British Bharatiya Samje Bhumi-Malikana Prosange” (in Bengali); *Dhaka Bishyabidhyla Patrika* [trns. “In the Context of Land Ownership in Pre-British Indian Society”, Dhaka University Journal], June, 2002.).

16 Lipon Kumar Mondal, “The Anatomy of Underdevelopment in Bangladesh: Toward an Integrative Framework”, *Journal of the Institute of Bangladesh Studies*, Vol. 35, 2012c, pp. 63-78.

17 K. Marx, *Ibid.*, 1853.

18 In this context, Brooks Adams (1959:250-256) also showed that: “...the Bengal plunder began to arrive in London, and the effect appears to have been instantaneous...the industrial revolution began with the year 1760- the battle of Plassey occurred in the year 1757 (Patnaik, 1973:200).” Besides, Digby records estimates which for India alone put the figure for treasure taken between Plassey and Waterloo, anywhere

Marx identifies three factors for capital accumulation in any country. These are: (a) a rural social structure and its free peasants; (b) the urban craft development that produces specialized, independent, and non-agricultural commodity; and (c) accumulation of monetary wealth derived from trade and usury.¹⁹ According to Sen, among the three characteristics, India lacks only the first, and this is why she failed to develop Western style capitalism.²⁰

As discussed earlier, before the start of British colonial rule, the Indian governments had three main tasks: finance, war, and public work. After establishing a colony in India, the British Raj followed first two departments (finance and war) for its own purpose and neglected entirely the public work department. It ruined the strong base of agriculture²¹ and destroyed the most reputed spinning-wheel and hand-loom industries producing muslin and other textiles.²² In the past, local communities dependent on hand-weaving and hand-spinning industries as well as hand-tilling agriculture were economically self-sufficient.²³ Therefore, the exploitation by the British did not give-birth to modern capitalism and a capitalist class in India. Instead, the British rule only produced an English educated managerial class. In Marx's analysis:

It was the British intruder who broke up the Indian hand-loom and destroyed the spinning-wheel. From 1818 to 1836 the export of twist from Great Britain to India rose in the proportion of 1 to 5,200. In 1824 the export of British muslins to India hardly amounted to 1,000,000 yards, while in 1837 it surpassed 64,000,000 of yards. But at the same time the population of Dacca decreased from 150,000 inhabitants to 20,000. This decline of Indian towns celebrated for their fabrics was by no means the worst consequence. British steam and science uprooted, over the whole surface of Hindostan, the union between agriculture and manufacturing industry (Marx, 1853).²⁴

Other Marxists and Neo-Marxists theorists who participate in such discussions are Samir Amin, Hamza Alavi, Irfan Habib, Ashok Rudra, Probhat Patnaik, Utsa

between £500 m and £1,000 m (Quoted in P. A. Baran, "Political Economy of Growth", London 1957).

19 Karl Marx, *Pre-Capitalist Economic Formations*, in *Grundrisse*, 1856.

20 A. Sen, *Op. cit.*

21 But in Asiatic empires we are quite accustomed to see agriculture deteriorating under one government and reviving again under some other government.

22 Karl Marx, The British Rule in India, New York Daily Tribune, June 25, 1853.

23 Karl Marx, The Future Results of British Rule in India," New York Daily Tribune, August 8, 1853.

24 *Ibid.*

Patnaik, Amiya Bagchi, and Anupam Sen. Among them, Samir Amin²⁵ argues that the advent of capitalism, in the context of Africa, was prevented by the process of capital accumulation from the colonial countries. I think this analysis also holds for India under the British rule and for East Pakistan under the West Pakistan's domination. Amin also claims that unequal exchange or the hidden transfer of values between centre and periphery is the main obstacle for the formation of capitalism. An analysis of other neo-Marxist scholars further illustrates this. For instance, Hamza Alavi²⁶ suggests that the main obstacles for the advent of capitalism in India were: colonial mode of production, colonial exploitation under direct rule, subordinate native social classes, and colonial state apparatuses e.g. bureaucratic-military apparatus and mechanisms.

Like Amin and Alavi, Sen²⁷ identifies three challenges to the emergence of capitalism in India. These were colonial exploitation, weak social force, and state's varying level of control over indigenous social classes.²⁸ On this debate, Bagchi²⁹ adds the list and argues that the formation of Indian society was based on three things such as extraction of surplus in the form of rent, forced labor, and centralized bureaucracy. He believes these three factors were responsible for remaining Indian society as non-capitalist.

A Marxian analysis is pertinent here to understand class formation. Marx identifies two important classes in India. First, in Madras and Bombay, a class emerged which looked like a French peasant proprietor who is at the same time a serf and the *métier* of the state. Second, in Bengal, a class was formed which was a combination of English landlordism (landlord who collects taxes) of the Irish middle man system and of the Austrian system.³⁰ In addition to the Madrasi and Bengali classes, other classes in India were the English bourgeois, money-lenders, and Rayatas. Sen also discusses the formation of the class in pre-colonial Bengal and colonial Bengal.³¹ In Sen's analysis the major classes in pre-colonial Bengal as well as in India were seen as commercial or merchant bourgeoisie and in colonial Bengal the prominent classes were the metropolitan bourgeoisie, new

25 Samir Amin, "The Peripheral Formations", *Berkeley Journal of Sociology*, Vol. 21, 1976.

26 Hamza Alavi, "The State in Post-Colonial Societies: Pakistan and Bangladesh." *New Left Review*, Vol. I (74), 1972, pp. 59-81.

27 A. Sen, *Op. cit.*, 1982, pp. 6-7.

28 L. K. Mondal, *Ibid.*

29 Amiya Bangchi, "British Imperialist Exploitation of India: Some Essential Links," *Economic and Political Weekly*, Vol. 18, No. 10, 1983.

30 Cited in Mondal, *Op. cit.*, 2012c, p. 6.

31 A. Sen, *Op. cit.* pp. 80-81.

middle class/literate class (a class of imitators, not an originator of new values and methods) and *Zamindars* (large landlords).

Social scientists agree that under the colonial rule, state did not exist in a modern sense.³² Despite such skepticism, Marx found some apparent elements in the British Raj which maintained a supreme authority over the Indian subcontinent like a state. He said that colonial state is the sole agent for exploiting capital and class relations.³³ A renowned Marxist thinker, Poluontaz, claims that in colonial and post-colonial phases, the main function of the state is to preserve and strengthen the capitalist mode of production and therefore, the state establishes the rule of the economically dominant classes.³⁴ Following Poluontaz, it can be argued that the British colonial power and the post-colonial states in India and Bangladesh have strengthened governance structures which are dominated by the dominant economic classes.

Pakistani sociologist Hamza Alavi³⁵ joins the debate with an interesting observation. Alavi argues that state is not established by an ascendant native bourgeoisie but by a foreign imperialist bourgeoisie. Sen³⁶ appears to concur with Alavi. He argues that colonial state preserved the unity and cohesion of the capitalist class and protected the general interest by acquiring freedom of action or functional autonomy. Bagchi³⁷ adds a yet more interesting point. In his view, social formation in colonial India followed a non-capitalist mode of production, in which surplus was extracted in the form of rent, forced labor and centralized bureaucracy. In addition there was a continuous flow of surpluses out of India and consequent failure to reinvest the surpluses as working capital. Such non-capitalist mode of capitalism failed to produce a Western European style of feudalism and private ownership of land.

Thus social formation in India under the British Raj was characterized by the colonial state, class and capitalism. In addition, English education initiated a new

32 According to Marx, state is not an embodiment of some abstract idea of political will or sovereignty but a reflection of the social dynamics resulting from either the constant change or relative stability of a mode of production and the resultant class configurations (see, Sen, 1982, p. 1). State is an object of class as well as a spokesman of the bourgeoisie, (see, Marx, 1848).

33 David Miliband said that the state is primarily a coercive or ideological instrument of class rule. The state is embodied in its various apparatuses—the bureaucracy, the police, the judiciary, the military, etc. (see, Sen, 1982, p. 7).

34 A. Sen, *Op. cit.*, pp. 7-8.

35 H. Alavi, *Ibid.*, 1972

36 A. Sen, *Op. cit.*, p. 8.

37 A. Bagchi, *Ibid.*, pp. 4-8.

managerial class which would later be labeled as the middle class. This class played a very significant role in changing the existing social structure and shaping the nationalist movement, which eventually paved the road to the creation of two independent states: India and Pakistan.

Pakistan Period, 1947-1971

Hamza Alavi takes a Marxist approach to analyze the nature of state, class and capitalism in a post-colonial society like Pakistan.³⁸ In his 1972 article titled “The State in Post-Colonial Societies: Pakistan and Bangladesh,” Alavi shows that post-colonial countries in all over the world inherit a basic pattern of colonial state, class and capitalism. He notes that in postcolonial societies the state is relatively autonomous against the dominant classes. And state is also overdeveloped because it was created by the colonial interests. For Alavi, an overdeveloped state such as Pakistan or Bangladesh preserves its autonomy for three competing classes: the metropolitan bourgeoisie, the indigenous or state-dependent national bourgeoisie, and the landed class. In a colonial regime, the state is a tool of exploitation for the metropolitan bourgeoisie.

Alavi further suggests that there are two models of state-class relationship in the classical Marxist tradition. These are: (a) state emerges as an instrument of exploitation for the dominant class; and (b) state remains autonomous from the class structure. Habibul H. Khondker³⁹ observes that the second aspect in Alavi’s thesis—the relative autonomy of the state in colonial societies—is quite innovative and profoundly embedded in empirical and historical bases. In Alavi’s words:

The bourgeois revolution in the colony in so far as that consists of the establishment of a bourgeois state and the attendant legal and institutional framework, is an event which takes place with the imposition of colonial rule by the metropolitan bourgeoisie. In carrying out the tasks of the bourgeois revolution in the colony, however, the metropolitan bourgeoisie has to accomplish an additional task which was specific to the colonial situation. Its task in the colony is not merely to replicate the superstructure of the state which it had established in the metropolitan country itself. ...the colonial state is therefore equipped with a powerful bureaucratic-military apparatus and mechanisms of government which enable them through its routine operations to subordinate the native social classes. The post-colonial society inherits that

38 I am using Marxist political economic framework as starting point for analyzing the social formation of post-colonial societies and also following the tradition of recent Marxist thinkers namely Alavi, 1972 and Khondker, 2004.

39 H. H. Khondker, *Op. cit.*, p. 22.

overdeveloped apparatus of state and its institutionalized practices through which the operations of indigenous social classes are regulated and controlled.⁴⁰

Alavi further argues that the state's prominent position in post-colonial society is rooted not only in the colonial legacy, but also in the contemporary production process. This is evident in a post-colonial state, which directly appropriates almost all economic surpluses and invests it in bureaucratically designed economic activities. For this reason, we find a sharp distinction between the post-colonial state and the state analyzed in classical Marxist theory.⁴¹

In an analysis of class formation during the Pakistan period, Alavi posits that colonial mode of production created eight propertied and non-propertied classes.⁴² These were: (i) indigenous bourgeoisie; (ii) the metropolitan neo-colonialist bourgeoisies; (iii) landed classes; (iv) English educated contactors having connections with influential bureaucrats, who would receive all kinds of permits and licenses for business dealings; (v) a small trading class which was allowed to take benefits from the state in terms of construction, tax evasion, generous loans and official support; (vi) landed peasants; (vii) industrial workers; and (viii) landless peasants. In addition to offering such a comprehensive typology of economic classes in Pakistan, Alavi identifies a conflicting class consisting of the politicians and the military-bureaucratic oligarchy. These classes are competitive as well as complementary in nature.

In Alavi's view, the military-bureaucratic oligarchy is the real elite which participate in the political game to play a semi-autonomous role for establishing a direct control over the society. He adds: "...a new convergence of interests of the three competing propertied classes, under metropolitan patronage, allows a bureaucratic military oligarchy to mediate its competing interests and demands. By that token it acquires a relatively autonomous role and is not simply the instrument of any one of the three classes."⁴³

Alavi also mentions that the colonial rulers (metropolitan bourgeoisie) created a state machine for the purpose of exploitation and domination. He termed this as the over-developed state. Under this state apparatus, he also found the existence of a dominant class which was submissive to the metropolitan bourgeoisie. This class evolved, by nature, as a junior partner to metropolitan bourgeois whom Mao

40 Cited in John S. Saul. *The State in Post-Colonial Societies: Tanzania*. In: "Views From The Left" Lecture Series, Toronto, February 1974, p. 350.

41 J. S. Saul, *Ibid.*, 1974.

42 H. Alavi, *Ibid.*, 1972, pp. 59-88.

43 Cited in Khondker, *Ibid.*, 2004.

Zedong termed as “comprador bourgeoisie” and Andre Gunder Frank conceptualized as “lumpenbourgeoisie”.⁴⁴ Thus, it has been argued that this class never evolved into a national bourgeoisie either in East or in West Pakistan.⁴⁵ It is quite interesting that the comprador bourgeoisie has never transformed into a national bourgeois even in independent Bangladesh.

Alavi’s concept of the “military-bureaucratic oligarchy” is more relevant for explaining the social formation in Pakistan than in recent Bangladesh. Since its emergence as an independent country in 1947, Pakistan has experienced huge problems with increasing militarization of its political process. During the Cold War era, the military rulers in Pakistan supported U.S. foreign and security policy and in return they received U.S. military and economic aid for their sustenance.⁴⁶ According to Khondker this process inherently played a significant role in strengthening military-bureaucratic oligarchy in Pakistan.⁴⁷ Following Alavi’s military-bureaucratic oligarchy approach, Khondker finds that the state-led development in Pakistan from 1947 to 1960s allowed 22 business families to accumulate enormous wealth.⁴⁸ In this context, Anwar Ali claimed that the Pakistan state had a visible hand in the development of this super rich class in its Western part.⁴⁹ He further claimed that in the absence of state support, the small and medium enterprises in Pakistan failed to grow at par with the large enterprises. Thus grievances from the disaffected enterprises contributed to anti-Ayub movement in the late 1960s.⁵⁰ Khondker rightly observes that “such uneven

44 A class which was no more than the passive (rather than ‘active’) tool of foreign industry and commerce and its interests were therefore identical with theirs. The members of this class are deeply interested in keeping the status quo – a state (or shall we say, process) of wretched backwardness from which foreign commerce derives all advantages – a state Frank termed as “lumpendevelopment” (Frank, 1972, p. 5).

45 In the context of China, by the term national bourgeois Mao Zedong meant that: “The national bourgeoisie is a class which is politically very weak and vacillating. But the majority of its members may either join the people’s democratic revolution or take a neutral stand, because they too are persecuted and fettered by imperialism, feudalism and bureaucrat-capitalism. They are part of the broad masses of the people, but not the main body, nor are they a force that determines the character of the revolution.”

46 H. H. Khondker, *Op. cit.*, 2004, p. 23.

47 But both the global geo-political factors as well as internal political economy were not favorable for the rise of a military-bureaucratic oligarchy in Bangladesh, especially in the first few years (Khondker, 2004, p. 23).

48 H. H. Khondker, *Op. cit.*, p. 22.

49 Anwar Imran Ali, “Business and Power in Pakistan” in Anita M. Weiss and S. Zulfiqar Gilani (ed.), *Power and Civil Society in Pakistan*. Oxford University Press, 2001, pp. 112-113.

50 H. H. Khondker, *Op. cit.*, p. 22.

economic development which was translated into unequal regional development fomented the movement for regional autonomy in East Pakistan, paving the way for the independence of Bangladesh in 1971”.

Lastly, Alavi argues that the post-colonial society inherits a colonial over-developed apparatus of state and its institutionalized practices. Thus, in Alavi’s conception, state is not established by an ascendant native bourgeoisie but instead by a foreign imperialist bourgeoisie, which was also true for East Pakistan. Moreover, state is relatively autonomous and it mediates between the competing interests of the propertied classes. Accordingly, it can be argued that West Pakistan gradually emerged as a colonial ruler and the East Pakistan became a colony of West Pakistan. As a result, the social structure in West and East Pakistan were influenced internally and externally. During the Pakistan period, the internal factors associated with social formation were satisfaction with a separate state for the Muslim, distinct cultural identity, advent of indigenous bourgeoisie, and supreme control on business. On the other hand, the external determinants of social formation were cultural conflict between East and West Pakistan, economic exploitation of the Eastern wing of Pakistan by the West Pakistani rulers, international support and intervention, war and conflict between India and Pakistan.

Bangladesh Period, 1971-2014

This section examines the utility of Marxian and neo-Marxian concepts in analyzing social formation in independent Bangladesh. It argues that the social formation of Bangladesh from the pre-British period to the present period can be explained by the peripheral formations theory of Samir Amin, a Marxist development thinker. For Amin, the peripheral social formations have four major characteristics.⁵¹ These are: (a) the predominance of agrarian capitalism in the national sector; (b) the advent of a local bourgeoisie (mainly merchant) in the wake of dominant foreign capital; (c) a trend of peculiar bureaucratic development; and (d) the incomplete pattern of proletarianization.⁵² These characteristics are still relevant today for explaining why we have still greater dependence (more than 50% of people) on agriculture even though the contribution of agriculture to GDP is not significant (only 19%) compared to the service sector (51%) or the industrial sector (29%). Secondly, due to colonial social structure we do not find an indigenous bourgeoisie like the one that exists in Western societies. Instead, we find a non-institutionalized and irrational

51 S. Amin, *Op. cit.*, p. 27.

52 H. H. Khondker, *op. cit.*, p. 22.

bureaucratic system. As the pattern of capitalism and the structure of capitalist class still remained in a nascent phase, the formation of proletariat class is far away from a typical sense. In other words, the proletariat class is closely linked to the rational capitalist system where society divides its classes into two major rival sections: bourgeois and proletariat.

Immediately after the liberation war in 1971, the newly independent state of Bangladesh received widespread international attention.⁵³ Khondker argues that during the first few years since its independence the global geo-political factors and the dynamism of internal political economy did not encourage the rise of a military-bureaucratic oligarchy in Bangladesh.⁵⁴ Stanley Kochanek shares a similar view: “ever since its creation in 1971, Bangladesh’s urban-based political, bureaucratic, and military elites have dominated the political process and have been accountable to no one but themselves”.⁵⁵ Things began to change after the tragic death of Sheikh Mujib’s in a bloody coup in August 1975 and the emergence of a military-bureaucratic dominance in Bangladesh. However, this was not Alavi’s perfect military-bureaucratic oligarchy; because, the first military ruler of Bangladesh General Ziaur Rahman loaded his first council of advisors or Ministry with retired senior civil servants from the Pakistan days.⁵⁶ Moreover, following the new-Marxist thinker Alavi’s model, it can be said that the consolidation of military-bureaucratic oligarchy and the support base amongst the right-wing forces gave Zia the necessary support to run the state for five and a half year.⁵⁷ This regime is characterized by Serajul Islam (1986-87) as the advent of an “administrative state”—dominated by civil and military bureaucrats. According to Khondker:

In the post-Mujib period, Zia, a war hero and an astute politician, quickly moved to enlist support of both the sections of the military and bureaucracy who were actively involved in the liberation war as well as those who were repatriated from Pakistan and begrudged the Awami League government for not treating them with respect. Zia was also able to co-opt the support of both the right wing Islamicists and the left wing communists. The left and the right in Bangladesh had a common ground in their antipathy the centrist Awami League, the party of the petty bourgeoisie at the forefront of the country’s liberation movement.”⁵⁸

53 Srinath Raghavan (2013) in his book *1971: A Global History of the Creation of Bangladesh* has made an analysis, with international perspectives, of the emergence of Bangladesh where he said that “the breakup of Pakistan and the emergence of Bangladesh can be understood only in a wider international context of the period: decolonization, the Cold War, and incipient globalization.

54 H. H. Khondker, *Op. cit.*, p. 23.

55 Stanley A. Kochanek, “The Rise of Interest Politics in Bangladesh”, *Asian Survey*, 1996, p. 704.

56 H. H. Khondker, *Op. cit.*, p. 24.

57 *Ibid*, p. 24.

58 Quoted in Khondker, *Op. cit.*, 24.

General Zia formed the Bangladesh Nationalist Party (BNP) and consolidated his power as a civilianizing ruler. Marcus Franda (1979)⁵⁹ describes the class composition of BNP in the following way:

Zia's BNP government is composed of three distinct strands: (1) his own factional supporters within the Bangladesh military and bureaucracy; (2) the bulk of the leadership and party cadres of the Muslim League and other Islamic fundamentalist parties; and (3) the leadership of the major portion of the Maulana Bhashani faction of the National Awami Party (NAP).⁶⁰

In contrast, the class-basis of the Awami League (AL) ruling elites was not compatible with socialist ideals.⁶¹ After independence, people who came to AL were from non-owner section of people i.e. those who had minimal connection with the Marxian means of production. Initially, the AL elites inherited an economy which was dominated by the non-Benagles from India and Pakistan; but very soon they had been evaporated because of nationalization project undertaken by the government.⁶² According to Khondker, this nationalization process at the very first time gave the AL an ability to build up patronage system where greedy party leaders and officials gained benefits in return for their loyalty to the party even at great risk.

Following Marxian framework for class analysis, it is possible to draw a first-hand class schema for the four major political parties in Bangladesh (see Table 3).

As shown in table 3, each of these parties has peculiar pattern of class characteristics based on its ideology and vision. Using different determinants of class categories (rural/urban, elite/non-elite, bourgeois/petty-bourgeois etc.) and following the Marxian tradition, the class characteristics of four political parties can be identified. The class characters of the four major political parties give us

59 Quoted in Khondker, *Op. cit.*, p. 24.

60 Franda Marcus, Ziaur Rahman's Bangladesh Part 1 Political Realignment. American Universities Field Staff Reports No. 25, 1979.

61 In Khondker's own words: "The class-basis of the Awami League ruling elites was at odds with socialism nor did it ever have any commitment to socialist ideals. Socialism was more of a slogan than substance. In 1972 Awami League inherited an economy where the key means of production were owned by the non-Benagles from India and Pakistan who evaporated after the liberation. Awami League a centrist party and often criticized as pro-American in the pre-independence days had to nationalize these industries. This statist nationalization was consistent with a patronage system where greedy party leaders and officials wanted something in return for their loyalty to the party even at great risk" (2004, p. 24).

62 H. H. Khondker, *Op. cit.*

Table 3: Political Parties and Their Class Characteristic in Bangladesh

Political Parties	Class Characteristics			
	Urban Areas	Rural Areas	Class Relations (symbiotic vs. conflicting)	Class Determinants (formal vs. informal)
Awami League (AL)	Salaried middle class, elite and civil society members, police personnel, small sections of civil and military elites, business entrepreneurs, business shareholders, bankers, cultural activists, students, petty bourgeoisie (e.g. teacher, lawyer, doctor, etc.), and urban poor	Middle class, small peasants, middlemen, landless farmer, poor people, local politicians, students, NGO workers	Businessmen-politicians oligarchy, and patron-client relationship	Family-ties, friendship networks, international connection, nepotism, and factionalism
Bangladesh Nationalist Party (BNP)	Civilian and military bureaucrats, middle class businessmen, civil society members, industrial labor, right wing Islamists, pro-Chinese left wing communists, large portion of the Maulana Bhashani's NAP ⁶³ , apparel and stock market traders, students	Landed class, small peasants, middlemen, landless farmer, local politicians, students, NGO workers	Businessmen-politicians oligarchy, and patron-client relationship	Family-ties, friendship networks, nepotism, international connection, and factionalism
Jatiyo Party (JP)	Military personnel, civil servants, a section of civil society, a new bourgeoisie owned industries and black money, comprador bourgeois, NGO managers, and students	Peasants, landless farmer, rural poor, destitute, students	Businessmen-politicians oligarchy, patron-client relationship	Factionalism Family-ties, Friendship networks, nepotism, International connection
Bangladesh Jamaat-e-Islami (JeI)	A section of masses, a section of religious people with extreme views on faith-based politics, people from Islamic fundamentalist group, urban youth, students, and urban poor	Members from Islamic fundamentalist group, Some religious persons (extreme), one portion of masses, rural poor, students	Religious persons-masses alliance, patron-client relationship, international-local liaison.	Friendship-networks, wider religious harmony, International connection
Contradictory Class location	People change their party membership or political identity when they feel alienated and excluded and join to another party i.e. beneficiaries from both/all political parties	A good number of people change their party membership or identity when they feel alienated and excluded and join to another party i.e. beneficiaries from both/all political parties	Factionalism, unequal distribution of power, status, and wealth.	Personal attributes and public image.

63 Franda (1979, p. 2) and Khondker (2004, pp. 24-26).

unique insights into the political culture of Bangladesh. It is well evident that there is a gap between political institutions and political culture in Bangladesh. This can be a classic example of cultural lag as conceptualized by William Ogburn.⁶⁴ Khondker describes this cultural lag in the following words:

... a Lipsetian (and orthodox Marxist) would say, Bangladesh does not have the prerequisites of democracy, i.e., economic development, especially industrialization, high per capita GDP, high literacy, etc. (Lipset, 1994); ... One could say following Almond and Verba that it has not developed a civic culture yet which sustains democracy or following Putnam one could say that Bangladesh is a new democracy and as it becomes matured enough things would improve.⁶⁵

In order to further explain the cultural lag in Bangladesh context, it is pertinent to analyze the pattern of political institutions and recent political culture in Bangladesh. I argue that the political institutions and the political culture in Bangladesh are still underdeveloped, even in some cases it is in a germinal phase with higher level of uncertainty. This is evident in the contradictory aspects of Bangladesh politics such as authoritarian democracy, factionalism, and the prevalence of political violence.⁶⁶ Moreover, we find about 200 political parties in Bangladesh during the 1980s with stern party fragmentation and factionalism.⁶⁷ Although the country restored the parliamentary system through a general election in 1991 after the end of almost 15 years of military rule; the western style democratic norms and principles are hardly practiced here. This is why the *Time* magazine mentioned that because of poisonous political confrontation between two major political parties (AL and BNP) democracy in Bangladesh is throttled now.⁶⁸ These features are marked by the culture of parliament boycott, hyper-partisanship, state repression, and violent political programs such as *hartal* (shut down) and *oborodh* (road blockade).⁶⁹

64 William Ogburn, "Cultural Lag as Theory," *Sociology and Social Research*, Vol. 41, No. 3, January 1957, pp. 167-174.

65 Quoted in Khondker, *Op. cit.*, pp. 24.

66 Lipon Kumar Mondal, "Ethos of Development and Underdevelopment in Bangladesh: A Lumpen Manifesto". *The Journal of Social Development*, Vol. 24, pp.213-258, June 2013, Institute of Social Welfare and Research, University of Dhaka.

67 S. I. Khan, S. Aminul Islam, and Md. Imdadul Haque, *Political Culture, Political Parties and the Democratic Transition in Bangladesh*. Dhaka: Academic Publishers, 1996.

68 *Time*, 10 April, 2006.

69 For example, 827 *hartals* and 2,423 political conflicts have been found in democratic Bangladesh from 1991 to 2001 (S. Aminul Islam, "The Predicament of Democratic Consolidation in Bangladesh" *Bangladesh E-journal of Sociology*, 2006); Sobhan, *Ibid*, p. 84; and *Time*, 10 April 2006.

Besides, the pattern of political culture in contemporary Bangladesh might be known well if I incorporate the analysis on the dynamics of class formation. Because, class is one of the most important factors for finding out its relationship with the state, ruling parties, oppositions, businessmen, military, and bureaucrats. Here, by the term class I mean the Marxian conception of class which consists of a group of people who stand in a common relationship to the means of production- the means by which they gain livelihood.⁷⁰ I think, in Bangladesh, politicians and businessmen are the most important classes; and politics is a means of production by which people from different class categories can make money or gain livelihood. Being a businessman, for example, if one becomes a member of the parliament, he or she can make money. By investing money, in most cases, people seek nomination for contesting elections. Those who win an election become the owner of means of production. This means of production appears as the forces of production when the favorable party comes to power. As a result, the forces of production eventually comes into interaction with relations of production (to their own business); and finally, it becomes political mode of production. By this mode of production a businessman, being a parliamentarian can earn money if he or she wishes to do so.

Following the Marxian tradition, it can be said that this businessmen-politician oligarchy is similar to the financial aristocrats in France. Both of these classes are degenerative and dependent because they are mostly unproductive. Here unproductive means the way they accumulate wealth is nothing but the process of exploitation and plundering. In France, Marx said, a class struggle between finance bourgeois and industrial bourgeois was obvious. Though in Bangladesh the businessmen-cum-politicians have no conflict with other bourgeoisie, they suppress almost all other classes in market through greater crushing forces. The denouement of this suppression is the key element of recent social formation in general and of class formation in particular in Bangladesh.

In Bangladesh, we find a history of over two hundred years of plundering and exploitation first by the British colonial rulers, and then by the West Pakistani rulers. These foreign and alien forces extracted almost all the actual and potential surpluses which could give-birth to capitalism in its real sense.⁷¹ In a similar vein, the class formation in independent Bangladesh exhibited the characteristics of

70 Anthony Giddens, *Sociology*, 5th Edition, Polity Press, London, England, 2006, pp. 300-302.

71 Mondal, *Ibid*, 2012c.

prowling capital accumulation by the elite who are labeled as Lumpen Bourgeoisie.⁷² Therefore, class formation in the county can be characterized in many ways: as a comprador following Mao Tse Tung, as a lumpen bourgeoisie as Andre Gunder Frank would use the term, and finally as a merchant bourgeoisie following the writings of Hamza Alavi, and Anupam Sen.

There is abundant empirical evidence in support of such diverse characterization of the bourgeoisie in Bangladesh. From the early 1990s, the nature of capitalism has changed dramatically because of the massive expansion of market-driven neoliberal policies and practices. During this time, we find the emergence of new social classes such as garment owners, real estate businessmen, bankers, stock-owners, NGO managers, entrepreneurs in pharmaceutical industries, private university owners, and remittance-earners. Table 4 summarizes the class category in Bangladesh using a Marxist framework.⁷³

Table 4: Marx's Class Categories

Class Categories	Source of Income	Means of Income
Bourgeois	Profit	Owner of the means of production
Petty-Bourgeois	Salary	Jobs
Landlord	Rent	Land
Peasant	Wage	Labor
Worker/proletariat	Wage	Labor
Lumpen proletariat ⁷⁴	Rent	Gambling, security men at brothel, dungeon, and castles
Reserve army	X (no income)	X (unemployed)

If we incorporate Alavi's class taxonomy into the Marxian framework depicted in table 4, a different class category for Bangladesh emerges (see table 5).

72 Andre Gunder Frank, *Lumpenbourgeoisie, Lumpendevlopment: Dependence, Class and Politics in Latin America*. Monthly Review Press, 1972.

73 Five books namely: *Communist Manifesto* (1848), *Class Struggle in France* (1851), *The Eighteenth Brumaire of Louis Bonaparte* (1853), *The Grundrisse*, and *the Capital* Vol. 3, 1894.

74 This class, according to Marx, works for the Finance Aristocracy in France.

Table 5: Present Day Class Categories in Bangladesh

Class Categories ⁷⁵	Source of Income	Means of Income	Examples
Metropolitan industrial/finance bourgeoisie	Profit/stock	Owner of the means of production	Mega/corporate businessmen, RMG owners, shareholders, bankers, owner of pharmaceuticals/ships/telecommunications, real estate businessmen, and so on.
Metropolitan comprador bourgeois	Rent/interest	Projects, grants, foreign aids, micro-credits, bribes, donations, gifts, FDI.	Civil bureaucrats, corporate businessmen, poverty managers, NGOs owners, contactors, contractors, part of civil society and so on.
Metropolitan National bourgeois (in modest sense, who are not connected to politics)	Profit	Owner of means of production	A tiny portion of Garment owners, investors in pharmaceuticals/ships, and so on.
Metropolitan lumpen bourgeois ⁷⁶	Rent/interest	Gained ownership through exploitation and plundering	A large portion of politicians, bankers, shareholders, investors on real estate, underground businessmen, smuggler, tax evader, land grabber, corrupt professionals/businessmen, and so on.
Petit bourgeois	Salary	Jobs	Civil bureaucrats, professionals, intellectuals, civil society, remittance earner, other middle classes, and so on.
Lumpen petit bourgeoisie	Rent/interest	Associates of metropolitan lumpen bourgeois	Smuggler, broker, lobbyists, a fraction of civil society/intellectuals/professionals, and so on.

75 In this paper, the idea of urban class categories for Bangladesh generated from the primary ideas of A. I. Mahbub Uddin Ahmed (*Prospectus*, Department of Sociology, 2012).

76 Gunder Frank coined the term lumpenbourgeoisie from lumpenproletariat (the term lumpenproletariat is used by Marx in *The Eighteenth Brumaire of Louis Bonaparte*, 1853). He used this neologism primarily in the context of colonial and neocolonial elites in Latin America. He mentioned that the people who manipulate capitalist system through illegal ways for capital accumulation and who destroy the local economy by aiding the foreign exploiters are lumpen bourgeois.

Lumpen proletariat ⁷⁷	Contractual pay	Killing, extortion, threat, violence, crime etc.	<i>mastan</i> , muscleman, tout, contractors, middlemen, terrorists, extortionists, dacoits, thieves, hijackers, and so on.
Landlord	Rent	land	Metropolitan businessmen/politician/lumpen bourgeois; local land owners, and so on.
Farmer/Peasant ⁷⁸	Wage	Labor	Land owner (small or medium)
Worker/proletariat	Wage	labor	Non-owner (day laborer, industrial workers, construction workers, agricultural labor, and so on.
Landless	wage	labor	Non-owner (urban poor: slum dwellers, street dwellers; rural poor, share croppers, nomads, and so on.

The class categories in Bangladesh, shown in table 5, can better be understood by looking at the process of capital accumulation. As I have discussed earlier about Marx's analysis on the role of government in accumulating capital in India during the British period, I have taken the first two tasks (finance and war departments) in order to analyze the process of capital accumulation in Bangladesh. Marx said that "finance" department accumulated capital through internal plundering, while the "war" department made money through external plundering.

If we apply the Marxian concepts in the context of Bangladesh, we find the existence of a lumpen bourgeois which accumulates wealth through plundering: internal wealth and external resources. Internal wealth is plundered by the process of land grabbing, loan scamming, bribing, tax evasion, extortion, money laundering, stock market crashing, and various forms of corrupt practices. It can also be done through nepotism, controlling market and price through illegal syndicate, changing business rules and regulations, grabbing micro-finance, plundering govt. subsidy, shutting-down govt. industries. By contrast, external resources are plundered by securing foreign aids, projects, gifts, commission from foreign sources, for facilitating foreign investment, agreements, and bonds. These types of capital accumulation are possible only when people are connected

77 Lumpen proletariats, according to Marx, are "refuse of all classes" who work to the brothel, work-houses, lunatic asylum, bar of justice, dungeon and scaffold. The finance aristocrats who had created this class in order to help themselves to accumulate capital.

78 B. K. Jahangir (1977, pp. 2063-2066) has shown the major class categories in rural Bangladesh such as: rich peasants, rural entrepreneurs, urban investors in agriculture; poor peasants, landless laborers, and wage laborer.

with politics or political parties. Thus, following Harvey's notion of capital accumulation through dispossession, it can be argued that in Bangladesh we find capital accumulation through politics. This pattern is thriving out here because of undemocratic party ideologies, businessmen-politician oligarchy, lack of transparency and accountability.

For critics of neoliberal policies, the Jatiya Sangsad, the national legislature in Bangladesh, has become a safe haven for those who tend to monopolize the accumulation of both internal and external resources. A study conducted by Abul Barkat provides further credence to such claim.⁷⁹ Barkat shows that out of 150 million populations in Bangladesh in 2014, about 4.1 million people belong to the upper class. Of these 4.1 million people, 2 million are rent seekers or lumpen bourgeois representing the politicians and the businessmen. In addition, 7 million people are in the upper-middle class, and 14.5 million people are in the middle-middle class. In total, the upper and middle classes represent more than 25 million people. Truly speaking, these 25 million upper and middle class people control the means of production, and they possess almost all wealth in the country. Another 25 million people belong to the lower middle-class, which possess a trivial amount of wealth. And rests of them are poor (above 100 million). To convert these figures into percentage: 2.7 percent people are rich, 31.3 percent are middle class, and the remaining large majority of 66 percent people are poor in Bangladesh. Barkat's study differs sharply with the data provided by the Bangladesh Bureau of Statistics (BBS). According to 2014 BBS data, there are only 26.4 percent poor people in Bangladesh. Perhaps the official statistics tend to underestimate the severity of poverty problem in Bangladesh, and hence this statistical discrepancy.

Conclusion

Social formation is a complex phenomenon. It involves several dimensions with discernible peculiarities. Drawing on the historical evidence and writings by Marxian and neo-Marxian scholars, this paper has traced the origin of social formation in Bangladesh. It argues that the mode of production is a major determinant of the formation of the state, class and capitalism in a given society. It shows a profound difference between the pre-British and British-era political system in India to examine the state's role for capital and class formation. Citing Marx, it argues that during the pre-British period, the state and ruling class were the major agencies which contributed to social formation. But, because of

79 A. Barkat, *Op. cit.*, pp. 15-21.

exploitation and plundering by the British Raj a typical colonial social structure was formed which allowed the formation of a British bourgeoisie and blocked the possibility to create an indigenous bourgeois. Following the end of British colonial rule and after the partition of India, West Pakistani rulers treated East Pakistan as their colony and exploited the latter by plundering potential surpluses.

Data and analysis presented in this paper suggest that Bangladesh as a post-colonial country inherits almost all of the characteristics of a colonial society. It keeps nearly all aspects and elements of British Indian and Pakistan societies. After a brief experiment with democracy from 1971 to 1975, the country was under varying levels of military rule for 15 years. After the fall of Hussein Muhammad Ershad's military regime in 1990, Bangladesh restored parliamentary form of democracy in 1991. Even though parliamentary democracy was restored, the political culture in the country can best be described as authoritarian and patrimonial in nature. Although the country has achieved remarkable economic progress since 1991, economic exploitation and political oppression gained a momentum within this social structure. This leads one to conclude that the nature of social formation in contemporary Bangladesh is hybrid. It exhibits the amalgamation of post-colonial and neoliberal faces. This has created a highly unequal society, in which wealth is concentrated into the hands of less than three percent people.

USE OF DRONES AND PRIVATE MILITARY COMPANIES IN MODERN WARFARE: EFFECT ON INTERNATIONAL HUMANITARIAN LAW

Kanij Fatima*

Abstract

This paper examines how the use of unmanned aerial vehicles or drones and private military companies (PMCs) render the provisions of international humanitarian law (IHL) irrelevant. IHL is the product of a series of international treaties codifying the laws of armed conflict. At the heart of the IHL are four principles regulating the areas of targeting, detention and treatment of persons. This paper argues that the use of modern military technology has changed the nature, characteristics and location of the battlefield in the 21st century. It concludes with an emphasis on changing the existing IHL to reduce human sufferings and regulate the conduct of modern warfare.

I. Introduction

International humanitarian law (IHL) or the laws of war is one of the principal branches of the public international law. IHL has originated from a series of international treaties comprising various rules and principles in order to limit the effects of war on people and property and to protect particularly vulnerable persons. This law gives some legal boundaries to regulate war. The major function of the international humanitarian law is to create a balance between concerns for humanity and military necessity. In ancient times, there were different rules to regulate the conflict between nations. We find some rules of war in different religious text books and in the writings of some scholars and philosophers. Later on, these ancient rules that regulate the conduct of warfare have evolved as customary rules. Humanitarian law is the product of customary international law.¹ Modern humanitarian law has been drafted and adopted in The Hague and in Geneva. The main bases of this law are the Hague law and Geneva law. The Hague Conventions of 1899 and 1907 contain Hague law which

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1 Asser Institute, "What Is International Humanitarian Law?" (http://www.asser.nl/default.aspx?site_id=9&level1=13336&level2=13374&level3=13476)

discusses the permissible means and methods of war. The Four Geneva Conventions of 1949 and the three Additional Protocols to the Geneva Conventions are known as the Geneva law which aims to protect the victims during an armed conflict.²

There are four different principles of IHL which regulate the areas of targeting, detention and treatment of persons.³ According to the principle of distinction, all parties to the conflict must make a distinction between civilians and combatants.⁴ The principle of proportionality puts some limitations upon the use of means and methods of warfare. The main aim of this principle is to protect the civilians from unexpected sufferings.⁵ Thirdly, the principle of military necessity authorizes the armed forces to use all the weapons which are permitted under IHL and which are essential to fight against the opponent. Lastly, according to the principles of humanity, unnecessary suffering is prohibited and the weapons which cause unnecessary suffering are also forbidden.⁶ This paper argues that the nature of modern warfare goes against these principles and also violates other principles of humanitarian law.

Modern warfare includes those concepts, methods and technologies which are used during the war. Technological developments have changed different terms of the international humanitarian law and also changed the nature, characteristics and location of the battlefield in the 21st century. Now the unmanned aerial vehicles or drones, robots and robotic devices are increasingly used for the conduct of warfare, a task which would previously involve only traditional foot soldiers and vehicles.⁷ It is the contention of this paper that the modern laws of war are challenged due to the growing use of private military contractors and technologically advanced weapons such as drones. Evidence can be found during

2 J. Rehman, *International Human Rights Law*, 2nd edition, Pearson Education Limited, 2010, p. 786.

3 Laurie R. Blank, "After 'Top Gun': How Drone Strikes Impact the Law of War", *Journal of International Law*, Vol. 33, 2011-2012, pp. 657-681.

4 Art 48 of the Additional Protocol to the Geneva Conventions of 1977 (subsequently referred to as AP I), "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

5 Art 51(5)(b) of AP I 'any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated' as an indiscriminate attack and therefore prohibited.'

6 Art 35(2) of AP I 'prohibiting the use of weapons and methods of warfare that cause "superfluous injury or unnecessary suffering".'

7 Kas, 'Applying International Humanitarian Law in a New Technological Age', 2012 (http://www.kas.de/2012/17/01_israel/en/publications/29923/)

the U.S.-led wars in Afghanistan and Iraq, which have allowed the U.S. and coalition forces to test new military concepts and technologies in the battlefields.⁸ The paper concludes with a discussion on the need to reform the outdated international humanitarian law.

II. Methodology

This research follows a qualitative research methodology which includes primary and secondary sources to establish its arguments and suggestions. It follows international conventions and regulations as primary sources, depending mostly on background resources or literature commonly known as secondary resources. Here secondary resources include textbooks, legal journals, legal encyclopedias, conference papers, study reports, manuals and online resources, as they provide a broad overview of the legal provisions and their explanations, comparisons and commentaries. I also narrate some practical case studies of drone warfare and private military companies from Afghanistan, Iraq and Yemen. In this regard I consider different reports from national and international organizations dealing with the issue of drone strikes and operations of private military companies.

III. Literature Review

There is a growing body of literature on the modern laws of war and their relevance in contemporary era.⁹ Most studies on the laws of war or IHL highlight the evolution of such laws and their aim to restrict the methods and means of warfare employed. These laws were created by different specialized treaties such as the Hague and Geneva Conventions, UN Charter and the customary international law. In essence, IHL is the product of the 19th and 20th centuries. About 150 years ago, the four fundamental principles of IHL were first codified in the 1864 St. Petersburg Declaration and the 1863 Lieber Code. Later, the Hague and Geneva Conventions of 1864, 1899, 1907, 1929 and 1949 developed different rules and concepts of IHL.¹⁰ A close look at the provisions of these laws indicates that IHL is now a substantive as well as a legal right which is undeniable and recognized by the International community. However, confusions arise about the effectiveness and relevance of these principles during the most recent wars.

8 J. Rehman, *International Human Rights Law*, 2nd edition, Pearson Education Limited, 2010, pp. 906-918.

9 *Ibid.*

10 Kas, 'Applying International Humanitarian Law in a New Technological Age', 2012 (<http://www.kas.de/2012/17/01/israel/en/publications/29923/>)

The United Nations Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions has been very vocal on the issue of humanitarian laws and their relevance in modern warfare. According to the Rapporteur, “a missile fired from a drone is no different from any other commonly used weapon, including a gun fired by a soldier or a helicopter or gunship that fires missiles. The critical legal question is the same for each weapon: whether its specific use complies with IHL.”¹¹ The question of drone strikes and their compliance with IHL comes to fore for a few reasons. First, since the U.S.-led war on terrorism began, there is a growing record of drone strikes in Afghanistan, Iraq, Yemen, and other parts of the world. Second, these strikes are remotely controlled and carried out by the U.S. defense and intelligence personnel. Since the missiles fired from the drones do not involve a soldier in the battlefield, a legal vacuum appears to emerge the extent to which drone strikes can be termed illegal in IHL. For the UN Special Rapporteur, such doubts should not arise as drone strikes are not different from other forms of weapons used by soldiers. Interestingly, legal opinions offered by pro-administration experts reject the views of the Special Rapporteur, and assert the legality of the drone strikes. For them, “drone attack is conducted consistently with law of war principles, with great care taken to adhere to these principles in both planning and execution.”¹²

Another debate concerns that use of private military contractors (PMCs). PMCs are usually privately owned firms deployed by a state during internal and external conflicts.¹³ There is no clarity in the status of the PMC in the International Humanitarian Law. Their status depends on their activities. With such lack of clarity, it is difficult to control the employees of the PMC by the laws of armed conflict. Sometimes their activities render the international humanitarian law irrelevant.

Critics of the drone strikes and use of PMCs suggest the need for reforming existing IHL. This paper supports the reformist perspective. It argues that international humanitarian law is violated for a variety of reasons such as insufficient means to enforce them, uncertainty as to their application in some

11 Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Study on Targeted Killings*, Human Rights Commission, 79, U.N. Doc. A/HRC/14/24/Add.6, 2010.

12 Ryan J. Vogel, “Drone Warfare and the Law of Armed Conflict”, *Denver Journal of International Law and Policy*, Vol. 39, 2010-2011, pp. 101-114.

13 Mathew Kincade III, “The Private Military Company Complex in Central and Southern Africa: The Problematic Application of International Humanitarian Law”, *Washington University Global Studies Law Review*, Vol. 12, 2013, pp. 205.

circumstances, an unwillingness to respect the rules and lack of awareness about IHL among combatants, civilians and other people. Others reject such view and argue that present IHL principles are adequate to govern the drone and other technologically advanced weapons and regulate the misgivings by the PMCs. The Obama Administration claims that under IHL, it is not prohibited to use the technologically advanced weapons unless it is contrary with the applicable laws of war.¹⁴ But, the argument is that these rules are not followed fairly and consistently.

This paper considers the position that the international humanitarian law may no longer be relevant today due to the devastating use of technologically advanced weapons. Right to life is a non – derogative rights, no one has the authority to violate this fundamental human rights not even in war time. But drone strikes and private military companies are violating this right by killing the innocent civilians. Even, there is no accountability for killing innocent civilians which are against the rule of law. Some specific reformation of present humanitarian law will undoubtedly bring radical changes in the battlefield. Otherwise the ineffectiveness and irrelevancy of this law will definitely destroy the human world.

IV. Drone Warfare and its Effect on IHL

Drones are unmanned aircrafts run by external operators using a remote control technology. This vehicle is known as unmanned aerial vehicle (UAV). According to the U.S. Department of Defense, “an unmanned aerial vehicle is a powered, aerial vehicle which does not carry a human operator, uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry a lethal or non lethal payload.”¹⁵ The term ‘drone’ is not specially mentioned under the principles of international humanitarian law. According to Philip Alston, United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, “My concern is that these drones, these Predators, are being operated in a framework which may well violate international humanitarian law and international human rights law.”¹⁶

A close look at the history of the drone strikes gives clear ideas about why such drone strikes raise legal concerns. The United States uses two types of combat

14 Vogel, “Drone Warfare and the Law of Armed Conflict”, pp. 101-137.

15 Joint Chiefs of Staff, Joint Pub. 1-02, Department of Defense, Dictionary of Military and Associated Terms, 571, (2009).

16 BBC News, “US Warned on Deadly Drone Attacks,” 2009<

drones such as MQ-1 or Predator and the MQ-9 or Reaper. At first the Predator was used for observation but later on it was used to carry two Hellfire missiles. The MQ-9 or Reaper is created to use it as a vehicle weapons. This drone can carry up to fourteen Hellfire missiles and 500- pound bombs.¹⁷ At present the United States has more unmanned than manned aerial vehicles in its weapon store. In modern world, not only the USA but also other states and non – state actors have the drones. The United Kingdom, France, Russia, Turkey, India, China, Hezbollah, Israel, and Iran have drones and some of them also supply drones to the other countries.

In 2010, a report published by the United Press International (UPI) noted that more than 42 states bought drones from Israel.¹⁸ The United States of America introduced drone attack in Afghanistan in November 2001. Later, the US forces introduced drone strikes in Yemen on 3 November 2002, in Pakistan in June 2004, and in Somalia in late 2006. As the data show, drones have become weapons of choice in the fight against terrorism, particularly with respect to targeted killings of suspected terrorists.

Drone warfare has become a well-known feature of the U.S.-led war on terrorism. Under the administration of President Obama, drone strikes have increased significantly. Drone strikes violate the modern laws of war. This is evident in the ways the four principles of IHL are affected by the drone strikes. Data and analysis on the drone strikes and their compliance with the four principles are presented below.

Drone strikes and the principles of Distinction. It is the responsibility of the parties to the conflict, to identify the civilian population and combatants and make a difference between them and their activities.¹⁹ Different articles define the term combatant and military objectives. Under Article 52 of the Additional Protocol I to Geneva Conventions, military objectives include those objectives that are contributing to the military action and destruction of that objectives bring military advantages for the parties.²⁰ One of the purposes of the international humanitarian law is to protect the civilians from military operations. To comply with the principle of distinction, the target of the drone should be the combatants or military objectives and not the civilians. There are two requirements to

17 Mary Ellen O’Connell, “Remarks: The Resort to Drones Under International Law”, *Denver Journal of International Law and Policy*, Vol. 39, 2010-2011, pp.585- 588.

18 United Press International, “Iran Muscles into the UAV battlefield,” 2010.

19 Art 48 of AP I.

20 Art 52 of AP I.

establish the principle of distinction. These are: (a) to make a distinction between civilian and military targets; and (b) to avoid indiscriminate attack.

Drone's failure to make distinction between civilians and military targets. The powerful states that are using drones make an argument that drones are capable to make distinction between combatants and civilians. Because of its high qualities, it observes a potential target from altitudes as high as 50,000 feet, where drones are neither seen nor heard. It is also argued on behalf of the United States that suspected criminals and terrorists use protected persons and objects as shield.²¹ It is the responsibility of the concern states to ensure that they target the combatants and military objectives. If they target the civilians, before that they must be satisfied that the civilians lost their status of the protected person.²²

Under Article 51(3) of Additional Protocol II, "a civilian loses his protected status when they take a direct part in the hostilities." The international Committee of Red Cross did a research and study on this issue. Under the ICRC report, "to be targetable as a combatant, a person must perform a 'continuous combat function.'"²³ But the United States disagrees with this concept by saying that if any individual take merely part of hostilities, they must lose their protected status. By giving such kind of worthless arguments, US policymakers justify their drones operation. For targeted killing of the suspected criminals and terrorists, the United States and the United Kingdom use drones as a weapon of choice in Afghanistan, Pakistan, Yemen and Somalia. The United States uses drone outside the traditional battlefield. Most of the times, individuals are targeted by the drones in their homes, market places and in different urban centers. Civilians who are doing religious or other non – combat functions of the terrorist's groups also become the target of the drone strikes.²⁴

There are some public debates on the issue of whether drone strikes are making the perfect target and whether the majority of the drone strikes victims are combatants or not. The civilians who are often the victims of drone strikes get less importance. Drone strikes have strong impact upon the life and socio-economic status of the civilians. The impact of the drone strikes includes killings and injuries, destroying property and mental pressure upon the civilians.²⁵

21 Vogel, "Drone Warfare and the Law of Armed Conflict", *Denver Journal of International Law and Policy*, Vol. 39, 2010-2011, pp. 101-116.

22 *Ibid*, p. 118.

23 *Ibid*, p. 119.

24 *Ibid*, p. 122.

25 Stanford Law School & N Y U School of Law, "Living Under Drones - Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan. 2012 (<http://livingunderdrones.org/2012/11/08>).

There are several cases of U.S. drone strikes which have violated the principle of distinction.²⁶ It was reported by the Bureau of Investigative Journalism (TBIJ) that drone strikes killed 2,562-3,325 people in Pakistan, of whom 474-881 were civilians, including 176 children and injured an additional 1,228-1,362 individual; from June 2004 through mid-September 2012.²⁷ On March 17, 2011, a US drone strike targeted a large gathering place, near a bus depot in the town of Datta Khel, North Waziristan, Pakistan. US officials claimed that they killed only suspected terrorists. But the evidence of the other sources is contradictory with the statement of the US official. Attorneys, nine witnesses, survivors, victims and family members of that attack were interviewed by the Pakistani military and by the Associated Press. According to their report, 42 were killed and most of them were civilians. Immediately after the strike, Pakistani military chief General Ashfaq Parvez Kayani said: "It is highly regrettable that a jirga of peaceful citizens, including elders of the area, was carelessly and callously targeted with complete disregard to human life."²⁸

Different international organizations are working on this issue. Amnesty international and Human rights watch have investigated many of the attacks by taking interviews of the victims who are alive and other witnesses. Amnesty international reported that in July 2012, 18 laborers were killed by drone attack in North Waziristan when they were waiting for their dinner. This organization claimed that none of them had been involved in militancy and only the membership of any banned group does not authorize any one to kill them.²⁹ The United States is thus violating the international human rights law by unlawfully taking the life of the civilian though they are not connected with war. As per different international laws, it is a war crime or extrajudicial executions.

Israel also uses drone to attack the Palestinian territories for years. Israel did at least 18 air strikes in Palestine during 2012 and these air strikes also include drone strikes. Human Rights Watch investigated several drone strikes in Israel and released a report. In Israel, civilians and civilian objects, such as houses and

26 ICRC, "The use of armed drones must comply with laws," 2013. <http://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>)

27 The Bureau of Investigative Journalism, "Covert War on Terror," 2012. <http://www.thebureauinvestigates.com/category/projects/drones/> (last visited Sept. 12, 2012).

28 Stanford Law School & N Y U School of Law, "Living Under Drones - Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan," 2012. (<http://livingunderdrones.org/2012/11/08>)

29 The Guardian, "US drone strikes could be classed as war crimes", 2013. <http://www.theguardian.com/world/2013/oct/22/amnesty-us-officials-war-crimes-drones>)

farm groves, are attacked by Israeli missiles and a bomb without any apparent military objectives. It was reported by the Human Rights Watch that on 19 November 2012, three men were attacked by the Israeli drone strikes while they were carrying tomatoes in a truck, and a science teacher was killed and his 3 year old son was seriously wounded by this attack.³⁰

Indiscriminate attack by drones. Two types of weapons are prohibited under the law of armed conflict. These weapons are indiscriminate weapons which cause unnecessary suffering. According to Article 51(4) of Additional Protocol I, indiscriminate attacks are:

(a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat, the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.³¹

Indiscriminate weapons are those which attack the military objectives, civilians and civilian objectives without distinction and its effects are unlimited and against the principle of international humanitarian law. The ICRC study on customary international humanitarian law states that “the use of weapons which are by nature indiscriminate is prohibited.”³²

After analyzing different reports of drone attacks, it is found that a drone is incapable of targeting only military objectives and to make distinction between civilian and military.³³ The drone itself is a lawful weapon under the humanitarian law but it has been used in an indiscriminate way which is against the principles of humanitarian law. Some argue that a drone is inherently indiscriminate weapons because it causes multiple civilian fatalities.³⁴ The targeted killing and drone strike policy violate the rights of the protected civilians and which are against the principles of International Humanitarian law and the rule of law and other international legal protection.

30 Human Rights Watch, “Israel: Gaza Air strikes Violated Laws of War, 2013 (<http://www.hrw.org/news/2013/02/12/israel-gaza-airstrikes-violated-laws-war>)

31 Aaron M. Drake, “Current U.S. Air Force Drone Operations and Their Conduct in Compliance with International Humanitarian Law – an Overview”, *Denver Journal of International Law and Policy*, Vol. 39, 2010-2011, pp. 629, 653, 655.

32 Aaron M. Drake, *Op. cit.*, pp. 629, 653, 655.

33 A.S.M. Ali Ashraf, “U.S. Drone Strikes in Pakistan: Increasing Trends, Questionable Legitimacy, and the Issue of Tacit Cooperation,” *Pakistan Journal of International Relations*, Vol. 1, No. 2, 2010, pp. 1-46.

34 *Ibid.*

Drone strikes and the principle of Proportionality. The main consideration of the principle of proportionality is how the civilians and civilian objects are affected by an armed attack during a war. Articles 51.5(b) and 57.2(a) (iii) of Additional Protocol I deal with this principle. This principle puts some definite restrictions upon those attacks which have possibility to cause excessive incidental loss of civilian life, injury to civilians, and damage to civilian objects. Under these Articles, all the states must refrain from launching such kind of attacks. Any violations of this principle constitutes war crime under the Statute of the International Criminal Court.³⁵ The principle of proportionality is incorporated in different international treaties and it is a recognized concept of the customary international humanitarian law.³⁶ The US Army Field Manual on Counterinsurgency literally follows the laws of war but there is no practical implementation. Ryan J Vogel notes that:

attacks that result in civilian casualties do not by themselves constitutes war crimes, but reckless attacks that result in civilian deaths or destruction, or attacks that knowingly take civilian lives clearly in excess of what is necessary for accomplishing the military objective could violate the principle of proportionality and constitute war crimes.³⁷

In most of the cases drone strikes violate the principles of proportionality. In 2013, the Human Rights Watch reported that Israeli drone strikes killed a 79-year-old man and his 14-year-old granddaughter in their family's olive grove in Abasan and a 28-year-old woman carrying a blanket in the yard of her home in the town of Khuza'a.³⁸ Attacking and killing those civilians is not necessary for accomplishing the military objective.

Drone strikes and the principles of military necessity and humanity. Article 52 of the AP I states that only military objectives will be targeted. It is also prohibited to destroy or seizure the enemy's property unless that are necessary for the war. USA argued that drone strikes are necessary to find and identify targeted persons and reach into the place where the ground forces cannot enter. In modern times, civilian and civilian objects become the target of the attack, in order to destroy any country completely. Drone strikes make that target easy by its modern technology and explosive missiles.

35 Michael N. Schmitt, "Precision attack and international humanitarian law", *International Review of the Red Cross*, Vol. 87, 2005, pp. 445-456, available at (http://www.icrc.org/eng/assets/files/other/irrc_859_schmitt.pdf).

36 Aaron M. Drake', *Op. cit.*

37 Ryan J. Vogel, "Drone Warfare and the Law of Armed Conflict", *Denver Journal of International Law and Policy*, Vol. 39, 2010-2011, pp. 101- 125.

38 Human Rights Watch, *Op. cit.*, 2013.

There are numerous cases in which the United States conducted drone strikes in the same place for multiple times and that are known as ‘double tap.’ These secondary strikes killed those rescuers who came to rescue and help the injured victims.³⁹ It was reported by the Amnesty International that, some incidents where drone strikes violate the principle of military necessity and the principles of Humanity. Drone strikes killed Mmana Bibi (68 years old) while she was picking okra outside her home in North Waziristan with her grandchildren. Few minutes later, her family members who were giving treatment to her, were injured by a second strikes.⁴⁰

International humanitarian law is closely connected with human rights law. The dignity of the human beings is the main basis of these laws. The final principle of the international humanitarian law is the principle of humanity. The Hague and Geneva Conventions also discuss this principle. Under Article 22 of the Hague IV Convention, ‘the right of belligerents to adopt means of injuring the enemy is not unlimited.’ Article 23 of this Convention also puts some limitations upon using those weapons which cause unnecessary sufferings. In addition, the principle of humanity is also mentioned under Article 35 of the Additional Protocol I. This principle prevents the conflicting parties from causing superfluous injury or unnecessary sufferings though the attack complies with other principles. Drone is technologically advanced and it can survey the ground before and during a strike. In spite of these benefits, there is no opportunity for the target to surrender. Moreover, drone strikes are conducted by surprise and without warning. Drone strikes are violating the law of war by conducting attacks without giving any kind of warning. It creates mental pressure upon the innocent civilians. They fear to come out and don’t let their children to go to school. It turns the society into a horrible place where the enjoyment and practicing of human rights are totally impossible.

V. Private Military Companies and their Effect on IHL

In addition to the growing reliance of drone strikes, the United States and some of its coalition members have increasingly employed private military companies during the war on terrorism. PMCs provide combat capabilities and varying level

39 Stanford Law School & N Y U School of Law, “Living Under Drones - Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan,” 2012. (<http://livingunderdrones.org/2012/11/08>)

40 The Guardian, “US drone strikes could be classed as war crimes”, 2013. <http://www.theguardian.com/world/2013/oct/22/amnesty-us-officials-war-crimes-drones>

of security services to a contracted country. These companies are working in Algeria, Angola, Croatia, Ethiopia, Ghana, Indonesia, Ivory Coast, Rwanda, Uganda, Zambia, and many other countries to provide support to the government and rebel groups.⁴¹ When any armed conflict arises, it has become a common practice among the conflicting parties to hire military companies. The United States has a contract with 310 private military companies to protect American and Iraqi officials, installations, convoys and other entities in Iraq since 2003.

Confusion arises about the status of the employees of the PMCs. This confusion has arisen after two incidents that occurred in Iraq in 2004. In Fallujah, four employees of the 'Black Water' (private military company) were unlawfully executed. After that incident, US used devastating power and force in that city. The second incident is that the employees of the PMC brutally tortured the detainees at Abu Ghraib prison.⁴² Sometimes they take part in hostilities with uncertain regularity. Normally, a question arises about the role of these actors during the time of armed conflict. The main aim of the international humanitarian law is to control the conflicting parties from violating human rights. All the state or non-state actors, who are within the territory of armed conflict's state, are directly under the rules and obligations of the international humanitarian law.⁴³

Seven Iraqis were killed in Baghdad by the private military companies. It was addressed as a criminal activity by the Prime Minister of Iraq. On the other hand, PMC claimed that they did this as a right of self defense and to protect the lives of their client. In addition, they are addressed as mercenaries by the United Nations. Sometimes they are called unlawful combatants.⁴⁴ Generally, PMCs give three types of services: a) direct and tactical military assistance; b) strategic advice and training; and c) logistics, maintenance and intelligence services to the armed forces.⁴⁵ Sometimes the employees of the PMC act as a mercenary,

41 Amol Mehra, "Bridging Accountability Gaps-The Proliferation of Private Military and Security Companies and Ensuring Accountability for Human Rights Violations," *McGeorge Global Business & Development Law Journal*, Vol. 22, 2009-2010, pp. 323-324.

42 Lindsey Cameron, "International Humanitarian Law and the Regulation of Private Military Companies", 2000 (<http://www.baselgovernance.org/fileadmin/docs/pdfs/Nonstate/Cameron.pdf>).

43 *Ibid.*

44 Shawn McCormack, "Private Security Contractors in Iraq violates Laws of War", *Suffolk Transnational Law Review*, Vol.31, 2007-2008, p. 75.

45 Lindsey Cameron, "Private Military Companies: their status under International Humanitarian law and its impact on their regulation", *International Review of the Red Cross*, Vol. 88, 2006, pp. 573-576.

sometimes as a combatant and sometimes as a civilian. Their status depends on their activities and is determined on a case – by- case basis by the international humanitarian law.

PMCs as mercenaries. Some of the PMC employees fall under the Article 47 of the Protocol I and the Mercenary Convention. Article 47 deals with six conditions to be treated as a mercenary. These conditions are: a) recruitment for fighting in an armed conflict; b) taking direct part in hostilities; c) taking part in hostilities for personal gain; d) to be a national of third party who is not a party to the conflict; f) not a member of the armed forces of the conflicting parties; and g) not to be sent by the third parties not connected with armed conflict.⁴⁶ A number of employees of PMC provided protection services for the leaders of the Coalition Provisional Authority in Iraq from 2003. Hiring employees as a bodyguard to defend someone fulfils the first and second conditions of Article 47 of the Additional Protocol I. Here to defend means to engage in defensive combat not the offensive attack. However, evidence shows that some private military contractors were taking direct part in hostilities.

Moreover, employees who worked as a bodyguard earned up to \$ 2,000 a day which is higher than a US private earns in a month. They worked for personal gain. A South African Former Special Forces Fighter was hired as bodyguard. It is clear that they are not national of the conflicting parties. It is also prudent that they are not member of the armed forces of the conflicting parties and South Africa did not send them voluntarily.⁴⁷ So, few of the employees fulfill the conditions as specified in Article 47 of the Additional Protocol to be treated as a mercenary. But most of the employees are not within the definition of mercenary. They were hired to do defensive combat not the offensive attack. Under the international humanitarian law, mercenaries, have no right to be a combatant or a prisoner of war status. But they have right to a fair trial and adequate conditions of detention.

After analyzing various case studies documented by open source media, we find that sometimes the PMCs are engaged in a combat with uncertain regularity. A State Department convoy was attacked in Al-Nisour Square of Baghdad on 16 September 2007. The private security contractors fired into the streets by their

⁴⁶ Art 47 of AP I.

⁴⁷ Lindsey Cameron, "Private Military Companies: their status under International Humanitarian law and its impact on their regulation", *International Review of the Red Cross*, Vol. 88, 2006, pp. 573-581.

company's helicopters which caused civilian casualties and injuries. They fired openly and 17 civilians were killed. The security firm Black Water claimed that they did this to save themselves. In October 2007, an oversight panel of the United States House of Representatives released a report indicating that Black Water employees had been involved in at least 196 firefights in Iraq since 2005, an average of 1.4 shootings per week. In 84% of those cases, the report stated, Black Water employees opened fire first, despite contract stipulations to make use of force only in self-defense.⁴⁸

PMCs and combatant status. There are three categories of persons who are entitled to the prisoner of war status as mentioned under Article 4 of the third Geneva Convention. The first category is the combatant. Combatants are those persons who are the members of the armed forces of the conflicting parties and members of the militias and volunteer corps are also part of the armed forces. To be a combatant, PMC employees need to be formally incorporated into the armed forces of the parties to the conflict. Article 43.1 of the Additional Protocol I and Article 4A (1) of the Third Geneva Convention discuss this issue.⁴⁹ Incorporation of any members into the armed forces of the state under these two Articles is an internal law of that state. Moreover, it is a matter of domestic law how the members will be incorporated in the armed forces. If any conflicting parties incorporate PMCs into their armed forces, it is their responsibility to inform the opposite parties.⁵⁰ Such incorporation of the members in armed forces should not be under unduly influence and forcibly. Under Article 51 of the 4th Geneva Convention it is prohibited to incorporate the protected persons into the armed forces forcibly. There is a strong allegation against UK and US that they violated this provision by hiring thousands of Iraqis by private military companies. If the employees of the PMC have combatant status, they have to follow all the principles of international humanitarian law. If they commit war crimes, they will be prosecuted by the recruiting states. Some legal proceedings are pending before the US court against Titan and CACI for abusing detainees at Abu Ghraib.

48 UN Working Group on the Use of Mercenaries, 'Impact on Human Rights of Private Military and Security Companies'. Activities''2008, (http://www.globalresearch.ca/2008/11/10_impact-on-human-rights-of-private-military-and-security-companies-activities)

49 Louise Doswald, "Private Military Companies under international humanitarian law", (https://lapa.princeton.edu/conferences/military07/restricted/doswald-beck_military07.pdf Beck).

50 Lindsey Cameron, "Private Military Companies: their status under International Humanitarian law and its impact on their regulation", *International Review of the Red Cross*, Vol. 88, 2006, pp. 573-583.

PMCs and civilian status. According to IHL, civilians are those who do not qualify as combatants. PMC employees, who are not conscripted into the armed forces of the conflicting parties, will be civilian. The term civilian is described under article 50 of the AP I.⁵¹ Some PMC employees may be classified as persons who are accompanying the armed forces. They are entitled to get the prisoner of war status in accordance with article 4 (A) of 3rd Geneva Convention. Employees are not combatants and they have no right to take direct part in hostilities. According to Article 43 (2) of the Additional Protocol I, “Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.”⁵² Though most of the employees of the PMC have civilian status, they are violating the international humanitarian law by taking direct part in hostilities. There is confusion about the term ‘direct participation’. Direct participation means those acts of war which cause actual harm to the personnel and equipment of the enemy armed forces.⁵³

Moreover, questions arise whether all the supports and logistics activities of the PMC constitute direct participation in hostilities or not. Under Article 4A (4) of the 3rd Geneva Convention, persons who are accompanying the armed forces by supplying food, shelter and other logistic support, have civilian status. Providing such supports by the employees does not mean to take direct part in hostilities. These supports are helpful to the overall war effort. For example: some kitchen staff who are employees of the private security company are recruited to give guard and to fight for protecting the military objectives. But it does not mean to engage in combat beyond personal self defense.⁵⁴ If the employees of the PMC are civilians, they will enjoy the status of protected person under the international humanitarian law. They will be protected from the target and attack unless they take direct part in hostilities. If they take direct part in hostilities, they will lose their protected status.⁵⁵

51 Art 50(1) of AP I, ‘A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.’

52 Art 43 (2) of the AP I.

53 ICRC, ‘*Interpretive guidance on the notion of Direct participation in hostilities under the International Humanitarian Law*’, 1975 (http://www.icrc.org/1975/04/04_eng/assets/files/other/icrc-002-0990.pdf)

54 Lindsey Cameron, “Private Military Companies: their status under International Humanitarian law and its impact on their regulation”, *International Review of the Red Cross*, Vol. 88, 2006, pp. 573-589, 593.

55 ICRC, “*International humanitarian law and private military/security companies*” 2012 (http://www.icrc.org/2012/10/12_eng/resources/documents/faq/pmsc-faq-150908.htm)

During the Afghanistan and Iraq Wars, the U.S. and coalition forces employed private military companies to provide logistic and other supports. About 50,000 people were employed in Iraq by the PMC Kellong Brown & Koot (KBR). This firm would provide logistic support such as laundry, catering, sanitation and similar support and services to the armed forces. Some employees who have security experience work as a security guard and bodyguard to protect different reconstruction efforts and to give personal protection to the US Department of State Personnel.⁵⁶

However, there are strong allegations against the private military contractors were involved in activities which would violate the human rights and international humanitarian law. Such violation includes openly firing on civilians and killing them, the ill-treatment of detainees, destroying the property, sexual harassment and rape, human trafficking in the recruitment of third-country nationals and weapons proliferation.⁵⁷ After analyzing different incidents, it is found that some employees of the PMC fired on civilians indiscriminately. Between the periods of 2004 to 2005, they fired on civilian cars sixty- one times.⁵⁸ The PMCs have no legal responsibility to inform the recruiting states about these incidents. The State Department has a record about the number of shootings that are fired by the bodyguard. But such data are not easily accessible. The shooting rates of DynCorp and Black Water are unexpectedly higher and such data are also unavailable. Black Water Contractors killed eleven Iraqis and twenty four were wounded on 16 September, 2007. Moreover they killed 3 Iraqi guards of the Iraqi Media Network.⁵⁹ There is no exact report about death of the civilians, who were killed by the employees of the private military companies. These activities of the employees of the private military companies render the international humanitarian law irrelevant. In a nutshell, the growing use of PMC raises serious concerns about the relevance of modern laws of warfare.

VI. Conclusion

The foregoing discussion suggests that IHL faces different legal and practical challenges due to technological developments. Modern technology has changed

56 Shawn McCormack, "Private Security Contractors in Iraq violates Laws of War", *Suffolk Transnational Law Review*, Vol. 31, 2007-2008, p. 90.

57 Amnesty International USA, "Private Military and Security Companies", 2013 (<http://www.amnestyusa.org/2012/12/07our-work/issues/business-and-human-rights/private-military-and-security-companies>)

58 Shawn McCormack, "Private Security Contractors in Iraq violates Laws of War", *Suffolk Transnational Law Review*, Vol. 31, 2007-2008, p. 91.

59 *Ibid*, pp. 91, 92.

the nature, character and boundaries of the battlefield in the 21st century. It has also changed the concept of responsibilities of the conflicting parties and other parties who have relationship with this war. In light of the evidence presented in this paper, IHL is not adequate enough to govern the drone and other technologically advanced weapons and other new concepts and methods. This has raised the need for reforming IHL to govern the laws of war against new technologies and private firms.

There are concerns the CIA's drone operators are not properly trained up. They conduct drone strikes not within the framework of IHL. Drone strikes kill the civilians indiscriminately and operators are incapable to make distinction between the civilians and suspected terrorists. Moreover, there is no accountability for killing innocent civilians which are against the rule of law. Right to life is a non-derogative right, which is disrespected in U.S. drone strikes.

Another trend in modern warfare concerns the involvement of private military firms which also render the IHL irrelevant. They become the part of the world war business. This study finds that there is no clarity in the status of the PMCs in the IHL. Their status depends on their activities. With uncertain irregularities, it is difficult to control the employees of the PMC by the laws of armed conflict. In the IHL, there should be some legal categories and specific provisions where their activities would fall. Generally, individuals of the third world countries are recruited as a member of the PMC. They appear to have limited knowledge about the IHL and often they do not receive proper legal training. There should be mandatory provisions to train every member of the PMC about IHL and international human rights law. Such knowledge would help them not to commit war crimes. Under the doctrine of state responsibility, the states recruiting PMC employees will be responsible if the companies commit any war crimes or violate human rights. It is also the responsibility of the contracting states to warn the companies and train them under IHL law.

The International Court of Justice has given its advisory opinion in the *Legality of the Threat or Use of Nuclear Weapons* that "conflicting parties may not use weapons that are incapable of distinguishing between civilian and military targets."⁶⁰ International humanitarian law is violated because there is insufficient means to enforce them, and there is uncertainty as to their application in some

60 Laurie R. Blank, "After 'Top Gun': How Drone Strikes Impact the Law of War", *Journal of International Law*, Vol. 33, University of Pennsylvania, 2011-2012, pp.657-684.

circumstances. The advisory opinion added that IHL is often violated due to the unwillingness to respect the rules, and lack of awareness about IHL among combatants, civilians and other people. Now, the time has come to change the IHL. It is the urge of international community to reform IHL to prohibit those dreadful weapons, including the combat drones, and control the activities of the PMCs. The goals of such prohibition and control are to reduce unnecessary sufferings of civilians, and to ensure the accountability of all states using new weapons and methods of modern warfare. In the absence of such legal reforms, the PMCs would be more desperate to kill or injure innocent civilians, and technologically advanced weapons would become a killing machine in the hands of powerful states and terrorists.

Book Review

Shamsul Hossain, *Eternal Chittagong*, published by Mahfuz Anam
as part of The Daily Star's *Adamyia Chattagrama* Festival,
2012, 135 pages (no price mentioned).

In 2012 the *Daily Star* in association with 'Heritage Chatigrama' held Adamyia Chattagrama Festival. *Eternal Chittagong* is an outcome of that festival. It offers "an enlightened understanding of [Chittagong's] present, through a better knowledge of the past...[and] for the future generations who will be inspired by the region's glorious past and be motivated to work for its prosperous future" (p. xix)

The nicely produced book is more than a catalogue of exhibits; it contains an enormous volume of materials related to Chittagong's glorious past, and exposes to its readers the past history and heritage in a novel way. The cultural plurality is brought to the attention of the readers and researchers in such a way that can be considered a panoramic record of Chittagong's past glory. The author is concerned about the poor state of heritage preservation and conservation in the city, and he has successfully focused on this point through photographs.

A quick look at the book may give one the idea that it is 'a coffee-table almanac'. This is hardly the case. The author attempts to present a chronological account from Chittagong's pre-history to the history of the colonial period. But the book evolves in an interesting way: with a beautiful and high quality full-page photographs, with a note describing the object or building in English and Bangla on the adjacent page. In writing the notes the author often quotes the English translation of medieval Persian chronicles or modern English books.

The book is divided into six sections: Pre-history; Pre-medieval Harikela; Sultanate Chatigrama/Chatgaon; Arakanese Chatigrama; Mughal Islamabad/Chatgam and Colonial Islamabad/Chateegaon (vulgarly Chittagong). The first section covers only two pages. But the few lines of notes make it clear that the area needs to be brought under scientific archaeological survey and investigation, which has not yet been done, though pre-historic implements came to light from Sitakund Hill as early as 1886 C.E.

The next section deals with Pre-medieval Harikela, a kingdom that grew in the area. The author introduces the importance of this early kingdom by referring to

the relevant sources. In the same section we find the beautiful photograph of one of the famous Jhewari Bronze sculpture of a Rekha temple. Other photographs in this section are the highly impressive Vase Grant of Devatideva, king of Harikela; Kantideva's Copper-plate, Vase Grant of Attakaradeva; Nasirabad copper plate of Damodaradeva; Harikela coins including a few issued by Attakadeva and other Akara dynasty kings of Harikela. A few illustrations of the Jhewari Bronze sculptures of Buddha in his different postures clearly show the excellence of this sculptural school. The photographs of the Bronze images end with one of Basudhara, an excellent piece of art work of the Jhewari artisans. The last illustration in this section is the replica of a Stupa. The photographs of the Jhewari Bronzes are so beautiful that not only scholars of sculptural art, but laymen would be convinced of the excellence of the achievements of the Jhewari artisans. The author successfully brings the attention of the readers to Jhewari (in Anwara Upazila of Chittagong), an important seat of Bronze sculptural art. He also aptly concludes that "the recovered cultural properties helped Chittagong rank with the other famous art centers of pre-medieval period." The specific art-style of the Jhewari Brinzes is recognized as a distinct school having profound influence on the Bronze Sculptures in the neighboring countries of south-east Asia.

The next section is 'Sultani Chatgaon'. With a very brief one page note on the period the author reproduces the map of Jao de Barrows (1550 C.E.) and another map (source not mentioned) showing the route from Chittagong to Pandua. The pictorial reproductions start with Fakirer Masjid at Dewannagar, Hathazari, which the author claims to be the earliest mosque of the Sultani period in Chittagong. There is a fragmentary Tughra inscription, a photograph of which is also reproduced, fixed on the façade of the mosque. The next photograph shows the interior of the mosque which gives a very modern look, possibly due to several phases of renovation work. The photograph of another Sultani mosque with its do-chala gateway follows. The gateway is detached from the main building, on its eastern side. The author draws our attention to the prosperity of Chittagong in the Sultani period by reproducing photographs (with, of course, short notes) of the stone inscriptions with exquisite calligraphy, Terracotta ornamentations, ruins of a few mosques and a coin of Jalaluddin Muhammad Shah minted from Chatgam. The details of the writing on the coin are also given.

Chittagong under the Arakanese kings is dealt with in the next section. A few Arakanese coins are reproduced – bilingual as well as trilingual. The Mughal period of Chittagong is represented by 21 photographs of mosques; some in ruins, but mostly renovated and wear a modern look, though the Mughal features are

visible. The inscription on the Haji mosque at Pahartali contains the mention of the new name of Islamabad given to Chittagong by the Mughals.

Colonial Chittagong is represented by two types of buildings: the earlier structures and the later structures. This section starts with a beautiful photograph of the recently renovated Court Building. Then a series of renovated colonial buildings demonstrate the European influence in the architecture of the city. That Chittagong had to face the horrors of the Second World War is portrayed by a photograph of and an elaborate note on the War Cemetery. A complete list of colonial architecture is given as an Appendix to this section.

The inner consciousness of the author is clearly felt in the Bibliography section of the book. His feeling was that the photographs and the short notes (both in Bangla and English) may attract future researchers to take up the task of building up a comprehensive history of Chittagong. For them the author has given at the end of the book an exhaustive bibliography of both Primary and Secondary sources, which I believe, will be very helpful for future researchers. Though at first look the book may appear a pictorial exposition of Chittagong, the order and selection of the illustrations and the bilingual short notes on them give a clear indication of the author's intention to produce pictorial primary sources of the history and heritage of Chittagong, so that future researchers are attracted to build up the local history of a very important region of Bangladesh.

One cannot but admire the beautifully produced double-paged color photographs of various aspects of Chittagong and also some photographs of the colonial buildings. Here one must note that the colonial court house was going to be demolished and the hue and cry of the heritage-conscious citizens of Chittagong as well as of the whole country could save it and after excellent renovation, it is now one of the centers of attraction in Chittagong. Its photograph in the book would prove the veracity of the above statement.

Shamsul Hossain deserves our admiration for producing a beautiful pictorial monograph with the title 'Eternal Chittagong in the Eyes of Tourists, Travellers and Scholars'. The full title leaves very little to be guessed regarding the intention of the author. We only wish, the author could take some more time and produce a full monograph on Chittagong. We hope some future researchers will fulfill the cherished wish of Dr. Shamsul Hossain.

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