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Intellectual Property Rights Enforcement on Trademarks Counterfeiting: Bangladesh Perspective

M. Ahsan Kabir*

Abstract: In modern technology based society, counterfeiting is considered as a serious threat to the global economy. In Bangladesh, the problem is especially immense, but efforts to tackle it are inadequate. The term 'counterfeiting' is commonly used to refer to a broad range of IPR infringements. Counterfeiting constitute significant and growing problems facing industry worldwide. The existence of counterfeiting is damaging to a well functioning economy; restraining investment and innovation, hampering growth of national economies, depriving legitimate enterprises and the state of revenue. On the whole, counterfeiting has a negative impact upon consumers, businesses, and governments. The goal of this paper is to provide a comprehensive review of counterfeiting and provide a conceptual framework of IPRs to prevent Trademarks counterfeiting. The conclusion attempts to put together a number of suggestions for government and policy makers that should reduce the extent of counterfeiting activity in Bangladesh.

1. Introduction:

In Bangladesh, it is quite straightforward to scrutinize the quantity of goods offered for sale, especially by street vendor stalls as well as legitimate-looking stores. In recent years, many stores selling counterfeits have become increasingly well organized and established so as to imitate a store selling legitimate products. A more watchful look and we can observe that these goods bear trademarks, famous or not, and then a question comes to our mind: how many of them are used with the permission of their owners? Or, how many of them are nothing but an imitation of a registered trademark? Trademark counterfeiting is the practice of manufacturing goods, often of inferior quality, and selling them under a brand name without the brand owner's authorization. Generally, counterfeit goods are sold under a trademark that is identical to or substantially indistinguishable from the brand owner's trademark for the same goods, without the approval or oversight of the trademark owner. Many well-known brands, spanning various industries, are victims of counterfeiting.

Counterfeit and pirated goods can be found in almost all sectors of the economy. These products are produced and sold in underground economies or in markets where they go unregulated and escape normal tax and tariff payments. They expose

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consumers to health, safety and quality risks and impose costs on society at large, in terms of employment, crime and social service.¹

Counterfeiting is present in a considerably large scale in Bangladesh. It has been correctly said that the country has not been fighting properly against this phenomenon, and has not been complying with the joint efforts made by the international community. In fact, the results of any policy adopted by the country so far are not satisfactory and, as a consequence, not visible, but there is a definitely a movement to tackle the problem.

2. Trademarks protection in Bangladesh:

In the business world trademarks are an important advertising tool that allows business to distinguish themselves from their competitors. In doing so, trademarks can create a strong relationship in the minds of the consumers between a specific good and those who provide the goods. In other words, a trademark is a distinctive sign or indicator used by an individual, business organization, or other legal entity to help consumers identify that its products or services with which the trademark appears originate from a unique source, and to help distinguish its products or services from those of other entities.

Trademarks in Bangladesh may be designated by the following symbols:

™ (for an unregistered trademark, but for which application has been filed).

SM (for an unregistered service mark, but for which application has been filed).

® (for a registered trademark).

A trademark is typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements. There is also a range of non-conventional trademarks comprising marks which do not fall into these standard categories, such as those based on color, smell, or sound.

The owner of a registered trademark may initiate legal proceedings for trademark infringement to prevent unauthorized use of that trademark. However, registration is not required. The owner of a common law trademark may also file suit, but an unregistered mark may be protectable only in the geographical area within which it has been used or geographical areas into which it may be reasonably expected to expand.

The term trademark is also used informally to refer to any distinguishing attribute by which an individual is readily identified, such as the well-known characteristics of celebrities. When a trademark is used in relation to services rather than products, it may sometimes be called a service mark, as in the United States. Due to the value a trademark has to a business, the government has set up trademark laws to protect the intellectual property of a business. Trademark law consists of state law. Similar to a patent, trademark law gives owners of a trademark exclusive right

¹ <http://www.iccwbo.org/Data/Documents/Bascap/Economic-Impacts/The-Impact-of-Counterfeiting-on-Government-and-Consumers/> accessed date 16/03/2015.

over it. In doing so, registered trademarks cannot be used on a product without permission from the owners of the trademark. Individuals who use such trademark on a product without permission from the owner can face legal consequences as stated by the current trademark law in Bangladesh. Violation can also be sued by the trademark owners for financial and image damages.

Trademark application in Bangladesh can be filed in two categories: Ordinary applications and Conventional Application (claiming priority from a convention country)

Ordinary trademark applications filed in Bangladesh are applications without claiming any priority. Ordinarily a trademark application is filed on form TM-1. Multi class trademark applications cannot be filed in Bangladesh. However, the Trademark Act also lays down provisions regarding the filing of priority applications, wherein priority of the mark can be claimed in the said mark filed in a convention country.

On the other hand, a priority trademark application should be filed in Bangladesh within 6 months after the date on which the application was made in the convention country. A certified copy of the priority documents needs to be filed within 3 months from the date of filing of the convention application in Bangladesh.

The Paris Convention, 1883² established a Union for the protection of industrial property. It offers national treatment to the applicant residing in the member country of the Union, in other words. National treatment is a very important concept and is essential for successfully achieving the fundamental aim of the Paris Convention. The idea is to provide equal treatment to application from member countries, in a given member country and not to differentiate between the nationals of member countries for the purpose of grant, and protection of industrial property. Priority application can be filed in Bangladesh within 6 months of after the date on which the application was made in the Convention countries. The trademark if registered under the Act will be registered as of the date on which the application was made in the Convention Country and that date shall be deemed, for the purpose of the Act, to be the date of registration.

3. Registration – Mandatory or discretionary to Trademarks Protection?

Tom Blackett pointed out some reasons that registration provides the best form of protection for a trademark.³

- **Monopoly Rights**

The registered proprietor of a registered trademark is given the statutory monopoly to use of that trademark in relation to the goods or services claimed by it (and in many countries, similar goods or services) and can prevent the unauthorized use of the registered trademark, or a confusingly a similar trademark, by a third party.

- **Easier Enforcement**

Because registration grants a statutory monopoly, once a third party is

² The Paris Convention for the protection of industrial property, signed in Paris, France, on March 20, 1883.

³ Backett Tom, *Trademarks* (London: Macmillan Press Ltd, 1998), Pp- 44-45.

threatened with an action for trademark infringement, it is taken far more seriously, as the argument is simply a question of fact; is the trademark which is being used a confusingly similar trademark to the registered trademark and is such use on the same or similar goods or services? If it is, then infringement has occurred.

▪ **Use is not a Prerequisite**

Unlike passing off, the plaintiff does not have to establish a reputation through use of the registered trademark. Indeed, the registered proprietor of a registered trademark does not ever to use the registered trademark to bring an infringement action. It is worth pointing out, however, that if a registered trademark remains unused after it has become registered for a given period (ranging from country to country, usually between three and five years) it can be cancelled for non-use, and this should be borne in mind before proceeding with an infringement action.

▪ **More Cost Effective**

As no reputation has to be proved, nor indeed do actual instances of confusion or damage have to be shown (unlike passing off), an infringement action is often much cheaper to bring than a passing off action. There is nothing to prevent a trademark owner from bringing both actions at the same time.

▪ **Unlimited life**

The statutory monopoly conferred by registration can have an unlimited life, provided the trademark registration is renewed, and it does not become vulnerable to cancellation for non-use.

▪ **The Deterrent Factor**

Once a trademark is placed on the Trade mark Register, a public record of the registered proprietors' interest in the mark is created and can serve as a 'keep of the grass' notice to competitors thinking of adopting a similar mark.

▪ **Status of Unregistered Rights**

It is possible that if a trademark is used but not registered, a third party, if it is succeeded in registering the trademark, could prevent the further use of the earlier used unregistered trademark, or at least prevent the extension of such use.

In the concept of law, trademarks should be registered to obtain legal protection. The fact of existing as a registered trademark is a reason for the refusal of later applications for the same or similar sign for similar or identical goods or services filed by third parties—showing how important the registration can be in the process of assuring rights (especially in infringing trademark cases). Although, this is not the only prospect—the protection also based on the use of the sign, is admitted in various countries.

Bangladesh, as a member of the Paris Convention, followed Article 4(1) of this Convention adopting the right of priority for trademarks registration in its national legislation. According to this, the one who has a registered trademark in a member country can, within six months, claim the priority when applying for the same trademark in Bangladesh. So, it is another procedure to registering a trademark to obtain protection in the country.

However, as an exception, the Trademarks Act, 2009 states that well-known

marks have special protection in the country, whether they are previously registered or not? In Bangladesh, unregistered trademarks having reputation or well known to the people through the use can get protection in case of passing off.⁴ Passing off is a common law concept. It refers to the misrepresentation of the goods of one which is offering as coming from another party. This false impression is created through use of another provider's recognizable trademark, either by the production of an identical copy, or a closely comparable mark. The passing off action depends upon the principle that nobody has a right to represent his goods as the goods of another. In other words, a man is not entitled to sell his goods under the pretence that are those of another person.⁵ In a passing off action that the prior users' goods have acquired a reputation in the market and the misrepresentation has deceived or is likely to suffer damage by such deception. Goodwill, misrepresentation and damages are the three elements of passing off. A suit for passing off action arising out of the use by the defendant of any trademark which is identical with, or, deceptively similar to, the plaintiff's trademark, whether registered or unregistered, shall be instituted in any court not inferior to a District Court having jurisdiction to try the suit.⁶

Registration of a trademark confers a very valuable right. The person in whose name the trademark has been registered may take action against any person for passing off the goods as that of the registered owner. It confers an exclusive right of use of the trade mark in relation to the goods in which the trade mark is registered. The same is an assignable right, whereas an unregistered trade mark is not.⁷

4. Trademarks Registration System in Bangladesh

An application for registration of trademark is to be filed with the Department of Patents, Designs and Trademarks (DPDT), Dhaka in the prescribed form with payment of requisite fees. The following portrait will provide each person a apparent concept concerning the trademark registration procedure in Bangladesh:

Relevant Office	Department of Patents, Designs and Trademarks
Law in Force	Trade Mark Act, 2009
Documents required for filling a trade mark application	Simply executed Power of Attorney
	<ul style="list-style-type: none"> ▪ Filling a trade mark application ▪ Examination report ▪ Advertisement of mark in the trade marks journal

⁴ Section 24(2), The Trademarks Act, 2009.

⁵ IOSR Journal of Humanities And Social Science (JHSS), Vol. 5, Issue 3 (Nov.-Dec. 2012) p. 1.

http://www.academia.edu/1446661/Trademark_Protection_Bangladesh_Approach
accessed date 8/4/2015.

⁶ Section 96(d), The Trademarks Act, 2009.

⁷ Taraporevala V J, *Law of Intellectual Property*, 2nd Edition (New Delhi: Thomson Reuters,, 2013), p. 417.

Prosecution Process	<ul style="list-style-type: none"> ▪ Opposition, if any, within a period of two months from the date of advertisement ▪ Registration of the mark if no opposition is filed or is set aside ▪ Issuance of Registration Certificate
Registration Term	▪ 7 years from the date of application
Renewal Term	▪ 10 years from the date of previous registration

2.2.1. The Legal Provision

Any people who claim to be the proprietor of a trademark can file an application for the registration of the mark in respect of his goods/services. It should be filed at the trademark office, Dhaka.

After filing the trademark application, the same is then examined by the Trademarks Registry, Dhaka as to its inherent registrability and/or any similarity with existing marks. If any objection is raised, an official examination report will be issued by the Trademarks Registry. To overcome the objection, it is necessary to file a response to the examination report along with the supporting documents showing the marks as used.

If, following examination, the trademark application is considered allowable, an acceptance order is issued, and thereafter the trademark is published in the trademark Journal. If there are no oppositions filed within 2 months or within such further period, not exceeding 3 months in aggregate, from the date of advertisement in the Trademark Journal, then the trademark registration certificate is issued.

Trademark registration is a long process and it takes around 24-36 months to obtain registration in case no opposition is filed by a third party.

2.2.2. The Administrative Procedure

There are some administrative measures for the trademark owners to stop the infringement of his trademark.

- (i) **The Opposition Procedure:** Every application accepted in the Trademarks Journal (an official publication). Any person may object to the registration by following the procedure prescribed for the purpose. Any person may, within 2(two) months from the date of the advertisement of an application for registration, and on payment of the prescribed fee, give notice in writing in the prescribed manner to the Registrar, of opposition to registration.⁸ In this case, the examiner evaluates the level of similarity between the signs, and whether a further registration of the first would really infringe the rights of the existing mark and the evidence filed in support of the contentions and decides the case after giving an opportunity for hearing to the parties. If the answer for this question is 'Yes', then the application is denied.
- (ii) **The Nullity procedure:** In this case, the application is reexamined and in case of verifying that the existence of the trademark would affect the rights of already existing trademark, the registration is declared null.

⁸ Section 18, the Trademarks Act, 2009.

Applying in the administrative level the costs are lower, but there is some criticism about the efficiency of this action, i.e., it takes a certain time for the decision to come out. For this reason, most of the cases, judicial procedure has been preferred in order to solve disputes on trademarks infringement.

5. Trademarks Infringement:

5.1 Counterfeiting

Generally counterfeit means to imitate something. Counterfeit products are fake replicas of the real product. Counterfeit products are often produced with the intent to take advantage of the superior value of the imitated product. The word counterfeit frequently describes the imitations of clothing, handbags, shoes, pharmaceuticals, aviation and automobile parts, watches, electronics, software, works of art, toys. Counterfeit products tend to have fake company logos and brands. Basically it results trademark infringement. Counterfeit consumer products have reputation for being lower quality, sometime not working at all and may even include toxic elements.⁹

5.1.1 Definition and Considerations

In legal term counterfeit means to make something false, in the resemblance of that which is true; it always implies a fraudulent intent.¹⁰ Counterfeiting is the practice of manufacturing goods, often of inferior quality, and selling them under a brand name without the brand owner's authorization. Generally, counterfeit goods are sold under a trademark that is identical to or substantially indistinguishable from the brand owner's trademark for the same goods, without approval or oversight of the trademark owner.¹¹ Counterfeit products refer to the products that are copies or duplicates of original products with high brand value in the market, are sold at significantly lower prices than the original ones, and are almost indistinguishable at a distance from the original design in many aspects.¹²

Considerations for Trademark Counterfeiting¹³:

- Counterfeit goods are cheaper than genuine good;
- Easy availability of counterfeit goods;
- A layman with limited knowledge and awareness can easily fall prey to fake goods, especially since they are low cost;

⁹ Patil Suvarna and Hunda Arun, *Counterfeiting Luxury Brands Scenario in India: An Empirical Review*, International Journal of Sales & Marketing Management Research and Development (IJSMMRD). Vol. 4, Issue 2 (April, 2014), p.4.

¹⁰ Bouvier J, A law Dictionary,(USA: Adapted to the Constitution and Laws of the United States, 1856).

¹¹ INTA, Fact Sheets Protecting a Trademark, Retrieved 26/06/2013 from International Trademark Association (<http://www.inta.org/TrademarkBasics/FactSheet/Pages/Counterfeiting.aspx> accessed date 10/03/2015).

¹² M. Eisend,, and P. S. Guler, *Explaining counterfeit purchases: A review and preview* (New York: Academy of Marketing Science Review, 2006), p.4.

¹³ <http://www.worldipreview.com/article/tackling-counterfeiters-in-india> accessed date 10/03/2015.

- The fake goods have packaging identical to the original goods;
- Enforcement of laws against counterfeiting and piracy in developing countries still needs to be made stricter, although recent steps taken by the stakeholders, industry, government and the courts have shown marked improvement.

In practice, the limits of counterfeiting are unclear for two reasons; first, that the definition rests on views about consumer perceptions; second, goods are counterfeit and which are legally parallel traded is not always immediately obvious and may have to be determined under the law.¹⁴ Many IP violated things are used by the people not only because they are willing to use them but also for their non-affordability. People cannot buy things by their actual price as the prices are really high.

For the purpose of this discussion counterfeits are defined as—

- (a) Complete counterfeits: these are fakes, products that look identical and are packaged in an identical manner, packaged with the same trademarks and the same getup.
- (b) Look-alikes: these are not identical copies, but are packaged with a similar trademark or a similar getup to confuse consumers.
- (c) Products which miss-use of trademarks: these refer to those products that are not products which the trademark owner produces, but use identical similar trademarks.

Historically, Bangladesh has shown in its domestic law a concern with the counterfeiting and the consequences. In British regime, the first law to mention the trademarks matters was created and, since that time, imposed sanctions as imprisonment and fine for the one who would i) counterfeit any registered trademark, ii) use it, iii) intentionally label their products with someone else's trademarks and iv) sell products named with counterfeited trademarks, aware of this condition.¹⁵

The present Trademark Act stated that a registered trademark is deemed to be infringed by any person who, not being the registered proprietor of the trademark of a registered user thereof a trademark which is identical with, or deceptively similar to, any trademark, in relation to goods or services of his own trade.¹⁶

Some practical examples of counterfeit trademarks are, as follow: “Bata” and “Rata”: the second one is imitation of the first, a famous trademark for Shoes. The shape of the product and the color of the logo are very similar, causing confusion in the consumers, even the most attentive ones; Lee t-shirts and jeans: very poor quality clothes bear a slightly modified logo copying the original trademark. The counterfeiters are competitors in the same market obtain a share of it and profit from the reputation of others—this discourages foreign companies to invest in Bangladesh.

¹⁴ Sarkar Suvrashis & Dr. D'Silva Stephen, *Managing Problems of Product Counterfeiting in India*, PARIPEX –Indian Journal of Research, ISSN -2250-1991, Volume: 2, Issue: 10, October 2013, p-128.

¹⁵ The Trademarks Act, 1940.

¹⁶ Section 26(1), the Trademarks Act, 2009.

5.1.2 Confusion between Trademarks Piracy and Counterfeiting

A counterfeit good is an unauthorized imitation of a branded good. The official definition can be found in the enforcement section of an agreement on intellectual property rights negotiated in the World Trade Organization, known as the TRIPS Agreement. This Agreement stated that counterfeit trademark goods shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.¹⁷

Piracy consists in making an unauthorized exact copy—not a simple imitation—of an item covered by an intellectual property right. Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.¹⁸

The Paris Convention provides in its Article *6bis* that a well-known trademark must be protected even if it is not registered in the country. Article *6bis* is restricted to identical and similar goods, however. Often well-known trademarks are used by pirates on totally different goods, or for services. Furthermore, courts sometimes require a trademark to be well-known in the country where piracy is discovered, and deny protection, even if the true owner of the trademark can prove that it is internationally well-known in a considerable number of other countries. Improved protection against trademark piracy is therefore needed. The Joint Recommendation Concerning Provisions of the Protection of Well-Known Marks which was adopted by the WIPO General Assembly and the Assembly of the Paris Union in September 1999 provides some guidance in this respect.¹⁹

5.1.3 Negative Impacts of Unfair Competition and Likelihood of Confusion in Business Market

Unfair Competition consists of any act of competition contrary to honest practice.²⁰ One common form of unfair competition is a violation of the exclusive rights attached to a trademark without the permission of the trademark owner. Infringement may take place when one party, the "infringer," uses a trademark which is indistinguishable or astonishingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers. Unfair Competition Laws are designed to protect consumers and businesses alike against deceptive business practices. Some

¹⁷ Article 51, the TRIPS Agreement, 1995.

¹⁸ *Ibid.*

¹⁹ *WIPO Intellectual Property Handbook: Policy, Law and Use* (Geneva: WIPO PUBLICATION No. 489(E), 2004), p. 90.

²⁰ Article 10*bis*(2), the Paris Convention.

common examples of unfair competitive practices in commercial law include: trademark infringements, trade defamation, and misappropriation of business trade secrets. As pertains to consumers, unfair competition laws usually prevent unfair pricing strategies, like gouging, and false or misleading representations.²¹

There are three types of acts of unfair competition, namely, acts like to cause confusion, acts that discredit the competitor, and acts that may mislead the public.²²

There are a number of acts not mentioned in Article 10*bis* which have been recognized by the courts as unfair practices and which, increasingly, have become the subject of legislative provisions. Of particular interest in this connection is the trend towards explicit protection of trade secrets by express provisions in unfair competition laws, and the continuing evolution of provisions governing the practice of comparative advertising. Moreover, there has been an increasing recognition of the need to grant protection against undue “misappropriation” of, or “free riding” on, the achievements of competitors, regardless of the availability of specific industrial property rights, provided that, under the circumstances of the case, such acts are found to be unfair.²³

In Bangladesh, there is two main areas in which confusion frequently occurs. These are indications of commercial origin on the one hand, and the appearance of goods on the other. An indication can be any sign, symbol or device that conveys to the consumer the message that a product or service on the market comes from a particular commercial source, even if this source is not known by its name. Protection against confusion with respect to indications is already available under specific legislation on trademarks, service marks and trade names. Article 6*bis* of the Paris Convention constitutes an exception in favor of a well-known mark, which does not need to be registered in order to be protected against the potentially confusing use of a mark that is a reproduction or an imitation of the well-known mark and is used for identical or similar articles. It is to be noted that a trademark may be well-known in a country before it is registered or even used in that country, as a result of the advertising or reputation of the mark in other countries. Unfair competition law may provide protection against confusion for indications or signs that are not protectable under trademark law. The actual shape of a product could also lead to confusion among consumers. If the shape is so well known that consumers will relate the product with a particular commercial source (as in the case of the “Coca-Cola” bottle), then the shape can be regarded as a protectable indication. For protection against confusion concerning the products only, most requirements under unfair competition law are established by case law, frequently with reference to the practice of “slavish imitation.” Protection against confusion as to the commercial source of a product may also be available under specific trademark law if the applicable trademark legislation provides for the protection of three-dimensional marks or the “get-up” of products. However, if the product’s appearance is not registered as a

²¹ <http://www.hg.org/unfair-competition.html> accessed dated 12/04/2015.

²² Article 10*bis*(3), the Paris Convention.

²³ *Supra* note 18, p. 138.

trademark, or if particular forms are possibly excluded from statutory trademark protection, the same principles as outlined above will apply to the protection against confusion between product shapes under unfair competition law.²⁴

The Paris Convention obliges member States to prohibit all acts that are of such a nature as to create confusion, by any means, with the establishment, the goods or the industrial or commercial activities of a competitor.²⁵ The scope of this rule is very broad, as it covers any act in the course of trade involving a mark, sign, label, slogan, packaging, shape or color of goods, or any other distinctive indication used by a businessman. Thus not only indications used to distinguish goods, services or businesses but also the appearance of goods and the presentation of services are considered relevant for the prohibition of confusion. In Bangladesh, the likelihood of confusion is presented as—a registered trademark is infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof uses in the course of trade a mark where the mark is—identical with the registered trademark and is used in relation to goods or services which are identical with those for which the trademark is registered; and for this reason there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trademark.²⁶ In fact, there is no mechanical test for determining the likelihood of confusion. Of course, some factors are significant, like the similarity or dissimilarity of the marks in their entireties as to appearance, sound, color, connotation, shape, style of the letter or art and commercial impression, the number and nature of similar marks in use on similar goods. Basically, these factors are present in law and procedures of a number of countries—not being different in Bangladesh—and the examiner plays an imperative responsibility following them, using also his own perception of the facts and evaluating each case, concluding if there can be a counterfeiting evidence. He must consider what, is likely to happen if each of those trademarks is used in the normal way as trademarks for the goods of the respective owner of the marks, but it is not necessary to consider if one will be injured and the other will gain illicit benefit, and have regard to all the surrounding circumstances.²⁷

5.1.4 Legal Consequences of Trademark Counterfeiting

Some believe trademark counterfeiting is a victimless crime. But this statement is not utterly true and it has many far-reaching consequences. In this direction Bangladesh domestic law proclaim counterfeiting is a crime. A registered trademark is deemed to be infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof a trademark which is identical with, or deceptively similar to, any trademark, in relation to goods or services of his own trade.²⁸ The Trademarks Act, 2009 also mentioned the liability of ones who sells, import, export, offer, hide or store products with illegally reproduced trademarks or labels his/her product with

²⁴ Ibid., Pp.139-144.

²⁵ Article 10bis(3)1, the Paris Convention.

²⁶ Section 26(2)(c), the Trademarks Act, 2009.

²⁷ *Khoday Distillers vs. Scotch Whisky Association*, 2008 (37) PTC 413, 438, 444.

²⁸ Section 26(1), the Trademarks Act, 2009.

someone else's trademark. In both cases, the infringer can be sentenced to imprisonment or a fine or both.

5.1.5 Challenges of Trademarks Counterfeiting in Bangladesh

Counterfeiting of Trademark is global problem of enormous scale, impacting virtually every product sector and every country. Bangladesh is no exception and there are significant impacts of widespread counterfeiting in Bangladesh. The initial research and documents identified several major challenges on this issue.

Firstly, counterfeiting is detrimental to innovation, directly affecting job creation and economic growth. Industries protect their ideas through a variety of legal instruments such as patents, copyrights, designs, models and trademarks. Without the protection of their intellectual property rights, they may be less inclined to develop new ideas and products. Risks are particularly high for industries in which the research and development costs are high compared to the production costs of the finalized product (e.g. pharmaceuticals). Faced with a diminishing turnover due to counterfeiting and piracy, industry investment in research and innovation could well slow down. This would limit development, growth and competitiveness, forcing industries to simply close or at least limit production.²⁹

Secondly, counterfeiting is a growing risk to consumer health and safety. While some consumers are looking for what they believe to be bargains, knowingly buying counterfeit and pirated products, others may purchase counterfeit and pirated products believing they have purchased genuine articles. In both cases, a growing number of products are often sub-standard and carry significant risks that range from mild to life threatening. Sectors where health and safety effects tend to occur include: car parts (brake pads, hydraulic hoses, engine and chassis parts, suspension and steering components, airbags, spark plugs, filters), electrical components (circuit breakers, fuses, switches, batteries), food and drink (tea, rice, raw spirits, baby formula), chemicals, toiletry, household products and tobacco products. In nearly every instance, counterfeited goods are not made with the same quality materials or to the same high standards as the original.³⁰

Thirdly, the profit margins from counterfeiting and piracy are extremely high and in comparison to other forms of illegal business the penalties are low. As a result the trade in fake goods is considered to be high profit and low risk. As a result, they have become an attractive investment for organized crime.³¹

Fourthly, the value or satisfaction that consumer derive from a product is based in large measure on the quality of the products and /or its performance, taking the price paid for the product into account. When the quality and/or performance of a counterfeit or pirated product is inferior to a genuine product, consumer utility is decidedly lower for those individuals who pay full price, believing the product that

²⁹http://ec.europa.eu/internal_market/iprenforcement/index_en.htm IP/10/785 accessed date 16/03/2015.

³⁰ www.inta.org/TrademarkBasic/FactSheets/Pages/Counterfeiting.aspx accessed date 16/03/2015.

³¹ Ibid.

they have purchased is genuine. A consumer who unknowingly pays full price for a low quality counterfeit product that does not operate properly.³²

Fifthly, the motivation for Foreign Investments (FDI) in countries with a high rate of counterfeiting and piracy and/or no existing legal framework for enforcement of IPRs, is relatively low depending on individual sectors (especially in the pharmaceutical business, where an immense amount of money in research and development is involved).³³

In addition, counterfeiting damages brand owners' reputation and lowers consumer confidence in the affected brands. Consumer confidence and the value of branding may suffer when purchasers discover that the product they bought, believing that it was being sold under a recognized brand, is in fact not authentic. Damages do not stop with brand owners and consumers because counterfeiting also deprives national economies of customs duties and tax revenues. Counterfeiting may also be linked to organized crime or criminal activity, which may pose serious threats to the health and safety of consumers, economies and national security.³⁴

6. IP rights Enforcement Procedure Against trademarks counterfeiting:

6.1 Administrative Measures

Notice of opposition can be filed against trademark applications published in the trademark Journal in Bangladesh. Proceedings can be initiated for rectification or cancellation of registered trademarks before the Registrar of Trademarks Office.³⁵

6.2 Settlements

A settlement measure that is usual in a certain scale in Bangladesh. The owner of a trademark sends a legal notice through his attorney to the infringer warning that the trademark that this one is reproducing actually has an owner, and the case can be taken to the court if the notice does not stop the infringement. Sometimes, it fails, and the case ends up in litigation, but in other case the parties establish an agreement that include permission for the use of the trademark. It is common among small and medium enterprises, for those the costs of a lawsuit would be high and consequently, not worthy.

6.3 Judicial Measures

The court is enabled to solve trademark counterfeiting matters, which is usually claimed when the solution provided by settlement is not satisfactory. However, in practice Bangladeshi legal system in general has not been efficient because, even though the counterfeiters, its structure and procedures are too long and slow, and the decision occurs too late, making the enforcement less powerful. The hypothesis of judicial measures—

³² The Economic Impact of Counterfeiting and Piracy: Executive Summary-3 @ OECD 2007.

³³ Official Journal of the European Union (2005/C129/03), p.13.

³⁴ Ibid.

³⁵ Section 18(2), 18(3), the Trademarks Act, 2009

6.3.1. Civil Lawsuit

The Trademarks Act establishes that infringement suits must be instituted before the appropriate District Court. In the case of infringement suits, the trademark must be registered in Bangladesh as per section 24(1) of the Act. The Act also provides for passing off actions for unregistered trademarks before the District Court. Although civil remedies are available for both registered and unregistered trademarks, it can be extremely difficult to prove passing off actions and obtain relief for unregistered trademarks.

The civil suits aim to cease the act of infringement and also provide the compensation for the damages caused by the counterfeiter to the owner of the trademark. The judge will determine the amount of the compensation based on the losses that the owner had, on how much the infringer has profited from the violation of the right, or even on the value of licensing agreement, if this one had been made.

The plaintiff can claim a precautionary action of search and seizure, through which the counterfeit goods will be taken away from the defendant, at the same time ceasing the illegal practice of counterfeiting and providing evidence for the main suit. In certain cases, the Court decision can include the destruction of the goods or otherwise disposed of as the Court thinks fit.³⁶

Damages can also be required. The counterfeit of trademarks is harmful to the owner of the right, because someone else is causing confusion in the consumers to sell his products—it can be assumed that the amount of money obtained in this trade would be part of the legitimate owner's profits. But not only material losses have been considered. The courts and also the doctrine considers moral damages to be compensated, as the act of counterfeiting results in a lower quality of such products and a consequent harm to the image of the real owner.³⁷

Damages are a matter of right; the account of profits is an equitable remedy and the court has discretion whether or not to grant it. Generally, it is usual in particulars of claim to ask for the two in the alternative. The principle upon which the court grants an account of profits is that where only party owes a duty to another, the person to whom the duty is owed is entitled to recover from the other party every benefit which that other party has received by virtue of his fiduciary position if in fact he has obtained it without the knowledge or consent of the party to whom he owed the duty.³⁸

When an injunction is sought for by the plaintiff, the court must see (i) whether there is a prima facie case to go to trial, (ii) balance of convenience and inconvenience and; (iii) irreparable injury, that is, whether the plaintiff will suffer irreparable injury or not in case the injunction is refused. Deceptive similarity provides a good ground for temporary injunction.

³⁶ Section 79, the Trademarks Act, 2009.

³⁷ Rocha Monterio, Ana Cristina da Rocha, 'Trademarks Counterfeiting From the Brazilian Perspective' (WIPO: Collection of research Paper, University of Turin, 2007), p. 507.

³⁸ *MacDonalds v. Burgerking* (1987)F.S.R.112.

In the case of civil proceedings, trademark infringement suits can be instituted only at a District Court or higher. However, passing off proceedings can be instituted before an assistant judge or joint district judge. The Code of Civil Procedure establishes that rights holders may file suits for permanent injunctions before District Court.³⁹ If the infringement is proved, a suit for damages may then be filed separately.

In addition to civil infringement suit, rights holders may file an application for a temporary injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure. If it is proved that there is a prima facie arguable case and that the balance of inconvenience is in the right holder's favour, then the Court may grant a temporary or interlocutory injunction against the counterfeiter when the suit is filed. It can take up three or four years for case to be finally decided. So, in counterfeiting case the following remedies are available by way of civil action—

- temporary injunction;
- permanent injunction and attachment order with a declaration that the goods are counterfeit; and
- claim for damages.

6.3.2 Criminal Lawsuit

The Penal Code, 1860 has few sections about crimes against trademarks. From this starting point, it lists, from section 482 to 488, the procedures to be followed when claiming in the criminal court. In case of trademarks counterfeiting both actions (civil and criminal) can proceed simultaneously, and if done so, no prejudice is likely to be caused to any parties, in as much as both the actions are not mutually exclusive, but clearly co-extensive and quite different in content and consequence. The following are criminal offences punishable under the Penal Code:

- using a false trademark so as to mislead consumers about the origin of the goods; and
- counterfeiting a trademark used by another person.

The punishment for using a false trademark is imprisonment for up to one year or a fine, or both. The punishment for counterfeiting is imprisonment for up to two years or a fine, or both. The court also have the power to set the prison term and amount of any fine.

In addition, the penal Code identifies a number of activities as criminal offences and sets out various enforcement measures available to rights holders. Two such offences, and their punishments, are as follows:

- making or possessing any instrument for the purpose of counterfeiting a trademark—the punishment for this offence is imprisonment for up to three years or a fine, or both; and
- selling, exposing or possessing for sale or any purpose of trade or manufacture any goods bearing a counterfeit mark—the punishment for this offence is imprisonment for up to one year or a fine, or both.

³⁹ Section 24(1), the Trademarks Act, 2009.

In cases of counterfeiting, a rights holder may file a criminal complaint with the police, which then investigate. If the complaint is proved, the case then goes to trial before a court. In addition, police officials may launch raids against counterfeit and pirated goods and may take legal action.

All criminal proceedings begin in the Magistrates Court. All criminal cases relating to false trademarks or counterfeiting are tried by a magistrates court (first or second class, or a metropolitan magistrate in an urban area). Any appeal against the magistrate's order must be made to a District Magistrate or Session Judge.

The administrative authorities have no direct jurisdiction over counterfeiters and the seizure and/or confiscation of the infringing goods in question. The law governing agencies such as the police, BGB and RAB take cognizance of any matter relating to counterfeiting only after being directed to by the Chief Judicial Magistrate's Court, since the imitation or use of false trademarks is a non-cognizable and bailable offence under Sections 482, 483 and 486 of the Code of Criminal Procedure. As a result of the above discussion, remedies available in criminal actions include—

- raids on the premise where counterfeit goods are stored;
- seizure of the goods;
- destruction of the counterfeit goods; and/or
- imposition of penalties on the infringer.

6.4 Border Measures

A key point of the TRIPS Agreement is the obligation of members to introduce border measures for the protection of intellectual property rights. The Bangladesh Customs Act, 1969 confers power on the Commissioner of Customs to prohibit importation or exportation of certain goods. In exercise of the powers conferred by that section, the Commissioner of Customs has prohibited the import of those goods that have applied a false trademark or a false trade description. The Trademarks Act provides that the proprietor or a licensee of a registered trademark may give notice in writing to the Commissioner of Customs to prohibit the importation of any goods if the import of the said goods constitutes infringement under the Act.

If any goods bearing registered trademarks are imported into or attempted to be exported out Bangladesh in violation of the provision of section 15 or of a notification under section 16, such goods shall, without prejudice to any other penalty to which the offender may be liable under this act or any other law, be liable to detained and confiscated and shall be disposed of in such a manner as may be prescribed.⁴⁰

There is no provision for the record of trademarks with customs. However, upon receiving a complaint from a rights holder, Customs may take steps against any person or entity that imports goods in violation of section 15 and 16 of the Customs Act. Moreover, a rights holder may approach the High Court to obtain an order

⁴⁰ Section 17, the Bangladesh Customs Act, 1969.

directing Customs to detain and /or seize the counterfeit goods.

Customs officers normally deal with the tax receiving part. If the tax of the goods are not illegal according to the law of Bangladesh and the tax is paid perfectly, then the customs officers cannot seize goods generally because they do not have adequate knowledge about trademark or such things. They do not have much to do with the matter whether the goods are real or pirated. If the good is a tax-paid legal good in Bangladesh, then the customs officers actually cannot help much.⁴¹

The authorities that deal with this problem do not get information about the pirated or counterfeit goods till the goods come into the market. When these goods come into market and somehow doubted to violate IP laws, then police and other concerned authorities become aware. It has to be informed to the police station. Then the police will investigate the case. If the allegation is proved, then the goods will be seized and a regular case will be filed. Custom officers can take action if they are informed by the police after filing a case.⁴²

6.5 Anti-counterfeiting Technologies

Some features have been developed as a way of differentiating the original from the counterfeit goods, such as watermarked papers and holograms. At recent time it is very obvious and common in Bangladesh that various stakeholders has put in daily newspapers and magazines an advertisement warning the consumers about their new labeling, intending to be a way of assuring that they are buying the original good. Of course that, with time, the counterfeiter is also attentive to the trademark owner strategy and may try other ways of infringing, but these technologies enable the consumers to detect counterfeiting for a period of time.⁴³

6.6 International Efforts

The parameters within the enforcement that can be pursued are set by the legal and regulatory framework. As the national laws vary from state to state it is important to encourage more countries to join international IPR Treaties, as these provide some kind of common definition. The Global Congress has become a leading forum, shaping the direction of international responses to the crimes of counterfeiting and piracy, and raising public awareness of the dangers associated with illicit goods. The Congress has become a leading international forum for shaping practical strategies to combat counterfeiting and piracy. These international gatherings have provided a valuable platform for representatives from both the public and private sectors to pool their experiences, enhance cooperation and identify strategies to deal more effectively with the global problem of counterfeiting and piracy.

⁴¹ Khondker Bazlul H and Nowshin Sonia, *Developing National Intellectual Property Policy for Bangladesh* (Dhaka: An Assessment of National Intellectual Property System (Draft) October, 2013), p.16.

⁴² Ibid.

⁴³ A. CLARK, in *Trade Marks and the Relabelling of Goods in the Single Market: Anti-Counterfeiting Implications of Loendersloot v. Ballantine* in EIPR, 1998 (leading case).

The Fourth Global Congress on Combating Counterfeiting and Piracy, hosted by Dubai Customs and was convened by the World Customs Organization (WCO), the International Criminal Police Organization (INTERPOL), and the World Intellectual Property Organization (WIPO) in partnership with the International Chamber of Commerce (ICC) through its Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative, the International Trademark Association (INTA), and the International Security Management Association (ISMA) in February, 2008. The first three Global Congresses (Brussels, 2004, Lyon, 2005, Geneva, 2007) raised awareness of the growing problems of counterfeiting and piracy, encouraged the sharing of relevant information among all stakeholders, and indentified potential solution and strategies to combat this illegal trade through effective enforcement mechanism and actions. The Fourth Global Congress was organized around five themes (cooperation and coordination, legislation and enforcement, capacity building, awareness raising, health and safety risks) that consistently have emerged as the key focus areas for concrete to combat counterfeiting and piracy. In addition, the Fourth Global Congress also featured special session on the challenges facing Free Trade Zones and Transshipment Countries, and Counterfeit mechanisms and actions.⁴⁴

The Fifth Congress was organized around the theme, *Bridging Boundaries for Shared Solutions* to showcase the need for enhanced cooperation to more effectively combat the scourge of counterfeiting and piracy. The Congress headlined seven Challenges that consistently have emerged as the key focus areas for concrete actions in dealing with the illegal trade. There was consensus among speakers and delegates that governments, enforcement authorities and the private sector needs to enhance to enhance their efforts. It was agreed that coordination and cooperation between and among enforcement agencies and the private sector was critical to meeting the counterfeiting and piracy challenges. A number of dynamic suggestions and proposals were made on how the various stakeholders might more effectively combat counterfeiting.⁴⁵

In the Sixth Congress speakers and participants intensely discussed different subject-matter around the theme, *Building respect for IP: Sustainable Solutions to a Global Problem*. Several dynamic suggestions and proposals were made on how to find sustainable solutions that take into account variable levels of socio-economic development including the role of law enforcement agencies and right holders in fighting counterfeiting and piracy.⁴⁶

Seventh Global Congress was a high level event. The Congress attracts more than 1000 participants from a wide range of sectors. Among the attending personnel are government ministers and policy makers, senior civil servants, business leaders,

⁴⁴ 4th Global Congress on Combating Counterfeiting and Piracy, DUBAI DECLARATION (Dubai: U.A.E., 2008).

⁴⁵ 5th Global Congress on Combating Counterfeiting and Piracy, CANCUN DECLARATION (Cancun: Mexico, 2009).

⁴⁶ 6th Global Congress on Combating Counterfeiting and Piracy, PARIS OUTCOMES STATEMENT (Paris: France, 2011).

law enforcement officers, specialist investigators, judges, lawyers, brand owners, consumer group, members of academia, and representatives from intergovernmental organizations and nongovernmental organizations. Sessions covered a variety of issues, including sales of counterfeit goods on the internet; the impact on public health and safety; consumer attitudes and awareness and legal developments.⁴⁷

7. Suggestions to Reduce Trademarks Counterfeiting in Bangladesh

WIPO indicated that the principal barriers to eliminating counterfeiting did not subsist in the substantive law, but rather in the remedies and penalties available to stop and deter counterfeiting.⁴⁸ The ineffectiveness of enforcement systems was attributed, in many cases, to a lack of human resources, funding and practical experience in IP enforcement of relevant officials, including the judiciary; insufficient knowledge on the side of right holders and the general public, concerning their rights and remedies; and systemic problem resulting from insufficient national and international coordination, including lack of transparency.⁴⁹

The following set of suggestions, may be implemented on a national or international level to fight against trademarks counterfeiting more effectively and requiring the attention of policymakers.

- An effective legal and regulatory framework is essential for combating counterfeiting. It is important to create specialized IP units and IP courts to enhance effectiveness and Government of Bangladesh have launched well-publicized domestic campaigns aimed at disrupting counterfeiting activities. The establishment of a system whereby infringers are effectively held responsible by stronger penalties and therefore discouraged from future infringement.
- It is essential for consumers, rights holders and government officials (i) to be aware of the counterfeiting problem, (ii) to understand what the effects are economy-wide as well as on individual stakeholders, and (iii) to know what concerned parties can do to combat counterfeiting activities.⁵⁰ In this regard government should take initiatives for far-reaching training and education programmes. Media campaigns are also significant for increasing awareness against counterfeiting.
- In Bangladesh, a number of ministries and related government bodies (i.e., Ministry of Industries, Ministry of Cultural Affairs, Ministry of Science and Technology, Ministry of Commerce, Department of Patent, Design and Trademarks and the Copyright Office) are generally involved in administering and enforcing IPRs. Promotion of effective co-ordination

⁴⁷ 7th Global Congress on Combating Counterfeiting and Piracy (Istanbul:Turkey , 2013).

⁴⁸ WIPO Doc. 2002, WIPO/EIM/3.

⁴⁹ Blakeney Michael, *Guidebook on Enforcement of Intellectual Property Rights*, (London: Queen Mary Intellectual Property Research Institute, 2003), p. 41.

⁵⁰ The Economic Impact of Counterfeiting and Piracy, Executive Summary, OECD 2007, p. 27.

among these authorities appears to be the key to strengthening planning and enforcement.

- Collaboration between enforcement agencies, government departments and industry, in concert with an adequate IP protection regime and anti-counterfeiting measures from the industry, to protect fully IPRs and reduce IP crime.⁵¹
- Information is crucial in the fight against counterfeiting. Without a reliable information database, the development of strategies for combat struggles, not knowing what to fight against or how. Information needs to be systematically collected and comparable, covering different companies, sectors and economies. A probate tool to gather information is a survey and survey result must sent to consumers, rights holders and governments.
- Counterfeiting is an international problem which needs be addressed on a co-operative basis for best outcome. It has been suggested that Bangladesh must cooperation with international organizations (WIPO, WTO, and ILO) has resulted in the creation of bilateral cooperation and support programs in the field of enforcement. Information networks could consequently be useful for the exchange of information on infringement cases.

8. Concluding Remarks:

The range of counterfeiting activities spreads far and wide, and has a significant impact on many aspects of the global marketplace. The counterfeiting products have not only the loss of the right holder in the market, but also the economy of the nation. The Government of Bangladesh should develop such regulation mechanism and enforce such mechanism to control the counterfeit commodities extensively available in the market. So the strict measures and stringent action to eradicate the counterfeiting products is very significance. In action not only the strict measure taken by the authority to eliminate such counterfeiting products is necessary but also the cooperation from the right holders or owners of such products is important to stop spreading and eliminate such counterfeit products both internal and international markets. As a least developing country, Bangladesh required implementing the TRIPS Agreement by July, 2013. However, Bangladesh has already started the process and recently promulgated new legislation in the field of IPRs and is in the process of strengthening its IPR regime. IP rights enforcement is a multi-layered perception. It cannot be achieved only through the police, customs and courts. Without political will, the suitable legislative framework, sustainable IP practices and advancement of society (people awareness), there can be no enforcement, and ultimately, the nation and its economy will suffer.

⁵¹ International Survey on Anti-Counterfeiting And Piracy Report (London: September 2008), p. 20.

Development of Juvenile Justice in Bangladesh: An Analysis

Nahid Ferdousi*

Abstract: Since independence of Bangladesh in 1971, there were various laws concerning juvenile justice but mostly inherited from the British and Pakistani regime, and were not contained in specific statutes. The laws being outdated and child-unfriendly, and the process of juvenile justice being disintegrated had its evolvment with an unsystematic approach. In 1990, after signing the Convention on the Rights of the Child (CRC) 1989, the law and policy has not substantially been changed which ensures that juveniles are separated and treated differently from adults and to protect their best interest during all kinds of legal processes. In this context, the Children Act 2013 has been enacted on the basis of the CRC and it repealed the Children Act 1974. However, the Act of 2013 should be implemented and holistic approach must be followed by all concerned agencies that the children of Bangladesh achieve the fulfillment of their human rights. Against this backdrop, the study assesses development of the juvenile justice system in Bangladesh.

1. Introduction

Every nation in the world needs laws to regulate its citizens and accordingly has to frame its own justice system which sometimes may seem unique to another nation. Bangladesh, being an aftermath of British colonialism went through the rule of British and later the erstwhile Pakistan. One of the major issues of Bangladeshi justice system, the juvenile justice has also got its roots during the British colonial rule. The British rulers initiated only a few legal measures in India which were directly consequent to western ideas and philosophies and included the developments in the field of prison reforms and juvenile justice.¹

In this period, some laws were enacted for special handling of juvenile delinquents through prevailing criminal courts and the subsequently established separate reformatory institutions.² During Pakistani regime that started back in 1947,

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¹ Ved Kumari, *The Juvenile Justice in India: From Welfare to Rights* (New Delhi: Oxford University Press, First Edition, 2004), p 44.

² Mohammed Sadeque, "Juvenile Court for Bangladesh," *The Journal of the Institute of Bangladesh Studies*, University of Rajshahi, Vol. IV (1979-80), p. 47.

the Probation of Offenders Ordinance, 1960 was promulgated. *The Ordinance* not only provided for the trial and the rehabilitation efforts for the juvenile delinquents but also laid down specific legal provisions for special handling of the first petty offenders by the magistrates. These various laws related to custody, protection, trial and treatment of children were ultimately consolidated to produce *the Children Act, 1974* and *the Children Rules, 1976* in Bangladesh.³ Although these two major laws named *the Children Act, 1974* and *the Children Rules, 1976* had been enacted the juvenile justice issues in Bangladesh which were pre-dated of many international standards. In this perspective, for effective functioning of the juvenile justice system, *the Children Act 2013*⁴ has enacted and it is needed the Government and public attention on this issue. The new law emphasises the need to keep children with their families and enhancing well-being in accordance with global norms. The law also encourages the involvement of organizations and the family group in responding to children offending. Thus, a child-friendly justice system by the proper implementation of the Act 2013 would be started as soon as possible in Bangladesh. This article analyzes the legal history of juvenile justice system towards understanding weaknesses and potentialities from British regime to present Bangladesh.

2. Historical Development of the Juvenile Justice in Bangladesh

The history of the juvenile justice system in Bangladesh has been divided into three periods with references to policies and laws on juvenile justice. These are as follows:

- a. British Period 1773 to 1946
- b. Pakistan Period 1947 to 1970
- c. Bangladesh Period 1971 to 2014

2.1 Practice of Juvenile Justice during British Period (1773 to 1946)

The Regulating Act of 1773 was an epoch making milestone and a historical elevation of Indian legal system towards the rule of law. This *Act* armed the East India Company with requisite power to make and enforce laws. Sixty years later from then, *the Charter Act of 1833*, converted the commercial East India Company into a governing body. Simultaneously, from 1773 to 1850, numerous committees examined the conditions of jail in India and set the stage for special focus on children in jails.⁵ In the field of criminal justice, various laws were enacted in this period covering a wide range of matters concerning children. But unfortunately any integrated approach towards the welfare of the children being absent in British India, these hardly had the opportunity to extract the benefit of rule of law and proper

³ Sumaiya Khair, "Juvenile Justice Administration and Correctional Services in Bangladesh: A Critical Review," *Journal of the Faculty of Law, The Dhaka University Studies Part-F* Vol. 16, Number 2, University of Dhaka, December 2005, p. 8.

⁴ *The Children Act 2013* (Act No. 26 of 2013).

⁵ Ved Kumari, *The Juvenile Justice in India: From Welfare to Rights*, p. 57.

administration of justice. These were treated with both civil and criminals laws.⁶

The first law commission under the British rule was formed in 1834.⁷ From that time, India had played an important role in the evolution of special laws for criminal justice and juvenile delinquents. As a consequence, *the Apprentices Act, 1850; the Penal Code, 1860; the Bengal Jail Code, 1864; the Reformatory Schools Act, 1897; the Prisons Act, 1894; the Criminal Procedure Code, 1898; the Railway Act, 1890; the Whipping Act 1909 and the Bengal Children Act, 1922* were enacted.

The first law concerning the welfare of the children came in 1850,⁸ when *the Apprentices Act* was passed in India. This *Act* although not primarily concerned with delinquent and the aim being providing regulations for determining the relation between employers and apprentices. The *Act*, however, contained some provisions, wherein some principles and practices of future juvenile courts and institutions may be discerned.⁹ Thus, this *Act* was the initiative of the juvenile justice machinery. Later on, this *Act* was repealed by *the Apprenticeship Ordinance, 1962*.¹⁰

*The Indian Penal Code, 1860*¹¹ was the second law which declared the age of criminal responsibility. The first Law Commission, appointed in 1835, drafted *the Indian Penal Code*¹² which in fact came into force in 1860. It provided a special consideration for the children of immature understanding. It exempted children below the age of 7 years from all criminal responsibility,¹³ and also the children between 7 to 12 years of age but have less understanding of judging the nature and consequences of their behavior are exempted from all criminal convictions.¹⁴

In 1860 and 1861, the number of juvenile delinquents remarkably increased in the jails in Puna. So, the change in the policy and administration of the jails including separate provisions for the juveniles were needed. The prison conditions were not good enough and the necessity of a correctional school for the delinquent children was felt. In 1864, *the Bengal Jail Code*¹⁵ was enacted and provided for the separation of children from adults in jails. Until 1864, jail administration was carried out by means of sporadically issued circular letters and general orders. There had been in

⁶ Jyotsna Shah, "Welfare of Children under Indian Laws," cited in the book of *Social legislation in India*, Volume Two (Delhi: Concept Publishing Company, 1978), p. 95.

⁷ V.D. Kulshreshtha, *Landmarks in Indian legal and Constitutional History* (Lucknow: Eastern Bank Company, 1987), p. 300.

⁸ *The Apprentices Act, 1850* (Act No. XIX of 1850).

⁹ Ahmad Siddique, *Criminology: Problems and Perspectives* (Lucknow: Eastern Book Company, 1997), p. 236.

¹⁰ *The Apprenticeship Ordinance, 1962* (Ordinance No. LVI of 1962).

¹¹ *The Penal Code, 1860* (Act No. XLV of 1860).

¹² A Draft *Penal Code* was submitted to the Governor General in Council on October 14, 1837. It was circulated to judges and law advisers of the Crown. On April 26, 1845, another Commission was appointed to revise the *Code*. This Commission submitted its report into two parts one in 1846 and the other in 1847. The Bill revised remained pigeonholed. Subsequently, it was presented to the Legislative Council in 1856 and was passed on October 6, 1860.

¹³ *The Penal Code, 1860*, section 82.

¹⁴ *Ibid.*, section 83.

¹⁵ *The Bengal Jail Code, 1864*.

effect no uniformity among the jail procedures. Section 962 of the *Code* demarcated a prisoner under the age of 21 as a juvenile or adolescent. Section 499 provided that none should be sent to any jail without summon, warrant or order, signed by a competent authority. The provision was a safeguard against the abuse of juvenile delinquents.

The reform process was initiated by the British rulers in India with the *Reformatory Schools Act, 1897*¹⁶ which was the second special law directly related to the treatment of juvenile delinquents. Under this *Act*, an initiative was taken for incorporating rehabilitative ways in the penal philosophy for the juvenile offenders.¹⁷ According to the *Reformatory Schools Act, 1897*, "youthful offender" meant any boy who had been convicted of any offence punishable with imprisonment and who, at the time of such conviction, was under the age of 15 years.¹⁸ Under the *Act*, the sentencing court could detain boys in such an institution for a period of 3 to 7 years¹⁹ but they could not be kept in the reformatory schools after they had attained the age of 18 years.²⁰ It provided for special courts which could order 3 to 7 years of detention and training instead of imprisonment thereafter. There was a time when no new reformatories were being constructed and because of shortage of reformatories the juvenile had to be sent to adult jails and in that way juvenile justice was enforced in India.

The report of the *Indian Jail Committee, 1889* restated the need for separation and classification of delinquents according to their age and duration of sentence. In 1894, the *Prisons Act*²¹ provided for the separate trial of children and adults. Section 27 of this *Act* provided that prisoners in jail under the age of 21 years would be kept separate from other prisoners and those under the age of 16 years would be firmly kept separate from all others.²² There were also provisions for the separation of male and female prisoners, male minor prisoners and male adult prisoners, convicted prisoners, criminal prisoners and civil prisoners.

In 1890, the *Railway Act*²³ was passed with special provisions with respect to crimes of boys endangering safety of train passengers. According to the *Act*, if a minor boy under 12 years old threatened or harmed trains intentionally²⁴ or acted as such which threatened the security of the passengers²⁵ or has done deceptive and negligent work,²⁶ then he will be regarded as a delinquent. Again if such acts harmed

¹⁶ *The Reformatory Schools Act, 1897* (Act No. VIII of 1897).

¹⁷ B.N. Mishra, *Juvenile Delinquency and Justice System* (New Delhi: Ashish Publication House, 1991), p. 40.

¹⁸ *The Reformatory Schools Act, 1897*, section 4.

¹⁹ *Ibid.*, section 8.

²⁰ *Ibid.*, section 18.

²¹ *The Prisons Act, 1894* (Act No. IX of 1894).

²² *Ibid.*, section 27.

²³ *The Railway Act, 1890* (Act No. IX of 1890).

²⁴ *The Reformatory Schools Act, 1897*, section 126.

²⁵ *Ibid.*, section 127.

²⁶ *Ibid.*, section 129.

the train or its engine or if he acted in such a way, which was not expected from him, then he would be considered as delinquent and would be punished.

The Code of Criminal Procedure enacted in 1898, contained provisions regarding the jurisdiction of criminal courts and the custody of the juvenile delinquents.²⁷ It provided that when a juvenile under the age of 15 years was sentenced by any criminal court to imprisonment for such offences, the court might send him to a reformatory school instead of a jail. The reformatory school was established by the State Government as an appropriate place for confinement in which there was the means of suitable discipline and training in branch of some useful industry.²⁸ Further it provided that the probation of good conduct to delinquents is up to the age of 21 years.²⁹

In 1919, *the Juvenile Smoking Act*³⁰ was passed prohibited sale of tobacco, etc. to young persons under the age of 16 years. This *Act* stated that it should be lawful for a police officer in uniform, or any other person or class of persons duly authorized by the Government on its behalf, to seize and to destroy any tobacco, pipes, cigarette papers or any such other articles in possession of any person under the age of 16.³¹ In that circumstance, no magistrate should take cognizance of an offence under this *Act*, except upon a complaint made by, or at the instance of the parent or guardian of the children concerned or a police officer or other person empowered to make a seizure-list under above section.³²

The most significant development in the history of juvenile justice system in British India was the Report of *Indian Jail Committee 1919-1920*. The *Committee* emphasized the separation of trial for the juvenile delinquents and recommended for the establishment of children court. Moreover, the *Committee* made strong recommendations for framing of special legislations. *The Madras Children Act, 1920* was the earliest venture towards this end in the whole of India. Thereafter, *the Bengal Children Act, 1922* and *the Bombay Children Act, 1924* were passed.³³ These *Acts*

²⁷ *The Code of Criminal Procedure, 1898* (Act No. V of 1898), section 29(b). Section 29(b) was inserted by *the Code of Criminal Procedure (Amendment) Act, 1923* (Act No. XVIII of 1923), section 6. Later, section 29(b) of *the Code of Criminal Procedure, 1898* was deleted by section 78 of *the Children Act, 1974*.

²⁸ *Ibid.*, section, 399.

²⁹ *Ibid.*, section, 562 (now repealed by section 16 of *the Probation of Offenders Ordinance, 1960*).

³⁰ *The Juvenile Smoking Act, 1919* (Bengal Act No. 11 of 1919).

³¹ *Ibid.*, section 4.

³² *Ibid.*, section 5.

³³ Mohammad Sajjad Hossain, "Separate Treatment Measures for Juvenile offenders in Indian Sub-continent: A Brief Historical Description," cited in the book of *Human Rights, Investigation-Prosecution and Juvenile Treatment* (Dhaka: Social Science Research Council, Ministry of Planning, 2008), p.121.

provided preventive services in addition to the remedial measures. Preventive services were given specially to those who were in need of intense care and protection. *The Bengal Children Act, 1922*³⁴ was especially significant because it provided for special courts for the hearing of charges against juveniles. This *Act* was repealed by section 78 (2) of *the Children Act, 1974*.

As a supplementary legislation during British regime, *the Borstal School Act* was passed in 1928.³⁵ The enactment of this legislation made an important beginning in the process of instituting separate procedures for the trial and rehabilitative dispositions of juvenile delinquents. This *Act* was empowered to make the provision for the establishment and regulation of Borstal Schools for the detention and training of the adolescent offenders. As per the *Act*, the juvenile delinquents are reformed for not less than 2 years and not more than 3 years in Borstal School through general education and different vocational trainings along with simultaneous psychological treatment.³⁶ Afterwards, the *Act* was repealed by *the Children Act, 1974*.

In 1930, the Government ratified an International Convention for the suppression of immoral trafficking and the exploitation of prostitutes. Thereafter, *the Bengal Suppression of Immoral Traffic Act, 1933*³⁷ was passed. This *Act* is still active with some amendments, which controls prostitution and other offences. *The Vagrancy Act, 1943*³⁸ was enacted in the backdrop of the great famine in Bengal in 1943. It was passed for the social rehabilitation of the vagrant beggars and other handicapped persons through appropriate training and other means under the supervisions of Government. This *Act* provided for training to the vagrants and children below 14 years who (i) lived by begging; (ii) were under incompetent guardianship; (iii) were under the care of parents, who had addiction to alcoholic drinks or committed crimes; or (iv) frequently visited prostitutes; (v) were destitute; (vi) were subject to a bad treatment.³⁹ The said *Act* was still applicable before 2010 in Bangladesh.

During the British period, the juvenile justice was still in the rudimentary and primary form.⁴⁰ There seems to be a difference in the spirit of the various *Acts* enacted in this period. The enactment of these legislations made an important beginning in the process of instituting separate procedures for the trial and rehabilitative dispositions of the juvenile delinquents. But there was no uniformity in the policy persuasion or in the execution of the relevant *Acts* in dealing with juvenile

³⁴ *The Bengal Children Act, 1922* (The Bengal Act No. II of 1922).

³⁵ *The Borstal School Act, 1928* (Act No. I of 1928).

³⁶ *Ibid.*, section 3.

³⁷ *The Bengal Suppression of Immoral Traffic Act, 1933* (Bengal Act No. VI of 1933).

³⁸ *The Vagrancy Act, 1943* (Bengal Act No. VII of 1943).

³⁹ *Ibid.*, section 2(3).

⁴⁰ Hans Nagpaul, "Sociology of Child Welfare Legislation in India: An Evaluative Examination," cited in the book of *Professions, Law and Social Change*, by JS Gandhi (ed.) (New Delhi: Har-Anand Publications, 1994), p.105.

delinquents in all parts of India as a whole. Unfortunately, there was no such policy or plan regarding juvenile delinquents before partition of the Indian sub-continent in 1947.⁴¹

2.2 Legislative Profile of Juveniles during Pakistan Period (1947 to 1970)

The colonial rule of the British regime came to an end after August 14, 1947. Under the provisions of the *Indian Independence Act, 1947*, passed by the British parliament, the British India was divided into two countries namely: India and Pakistan. During the Pakistan regime, juvenile delinquency had increased extremely.⁴² The Decline in the social principles as an aftermath of the colonial rule was regarded as an extra problem. In Pakistan until 1953, *the Bombay Children Act, 1924* was active in Sind and Karachi City only. Under the authority of the said *Act*, a juvenile court was established in the city of Karachi in 1938.⁴³

In that period, *the Bengal Vagrancy Act, 1943* was adopted by the East Bengal Legislative Assembly with little modifications. In 1951, the Metropolitan Areas of Dhaka-Chittagong and in 1952, Narayangonj-Chandpur towns were brought under the jurisdiction of this *Act*. During the 1960's, it became effective in certain other urban areas also. In addition, according to *the Borstal School Act, 1928*,⁴⁴ the Borstal School was set up at Murapara near Dhaka in 1949. No initiative was taken to transfer the reformatory juvenile delinquents there, due to the negligence of the authority.

In Pakistan period, *the Probation of Offenders Ordinance* was enacted in 1960 in order to provide probation service for delinquents.⁴⁵ After an amendment by the erstwhile *East Pakistan Assembly* in 1964, the *Ordinance* was turned into an *Act* called *the Probation of Offender (East Pakistan Amendment) Act, 1964*. The *Act* provided for specific legal provisions of probation service for the first and petty offenders.⁴⁶ After the passing of the *Act* the Social Service Department had been administering the programme of probation along with its manifold services related to casework, group-work, community development and general welfare. In this context, the probation of a delinquent for the first and minor offences would range from 1 to 3 years of time with some conditions determined by the court. The delinquents were placed under a probation officer attached to the trying court for their supervision and correction while keeping them in their homes and community.

⁴¹ Abul Hakim Sarker, "Separate Treatment of Juvenile Offender in India and Bangladesh: Some Background Information," *The Journal of Social Development*, Institute of Social Welfare and Research, University of Dhaka, Vol. 4, Number 1, June, 1989, p. 34.

⁴² Golam Rahman Bhuiyan, "Juvenile Delinquency: Law and Practice in Bangladesh," Unpublished Ph. D. Dissertation (Dhaka: Prime University, 2005), p. 119.

⁴³ M. A. Khan, "Pakistan," A paper presented at the United Nations Economic and Social Commission for Asian and the Pacific Seminar-cum-Field Study on Programmes to Rehabilitate Juvenile Delinquents in the ESCAP Region, January, 1992, ESCAP, p.66.

⁴⁴ *The Borstal School Act, 1928* (Act No. I of 1928).

⁴⁵ *The Probation of Offenders Ordinance, 1960* (Ordinance No. XLV of 1960).

⁴⁶ Mohammed Sadeque, "Juvenile Court for Bangladesh," p. 49.

Moreover, in this period, there were some national plans for the development of the children's activities. *The First Five Year Plan (1955-60)*, had various reformation programmes for the children. It proposed for the establishment of pilot projects, encouraged the participation of private agencies and recommended extensive research on the improvement of children rights.⁴⁷ *The Second Five Year Plan (1960-65)*, besides establishing model institutions and augmenting private agencies, suggested that the children were socially vulnerable.⁴⁸ It initiated two projects in 1962: (i) Probation of Offenders Project; and (ii) After Care Service Project. Moreover, proposals for establishing juvenile court were made in the *Second Five Year Plan of Pakistan* but no definite steps were taken to establish any such court.⁴⁹

In the *Third Five Year Plan (1965-70)*, the Department of Social Welfare drew up a new programme to implement its policy. At that time, some welfare organizations used to manage the remand homes and certified schools. In the City of Karachi, the juvenile courts had a very close and direct relationship with the welfare agencies.⁵⁰ Additionally, juvenile courts were very often located in the premises of welfare organizations as in the case of Karachi Organization.⁵¹

2.3 Legal Framework of Juvenile Justice in Bangladesh (1971 to Present)

Bangladesh upon its independence in 1971 has always emphasized on the welfare and policy of children and such emphasis resulted in to the promulgation of a major Act namely *the Children Act, 1974*⁵² and subsequently associated *the Children Rules, 1976* with the aim of administering the juvenile justice properly.⁵³ *The Children Act* consolidated all previous laws, for example, *the Reformatory School Act, 1887*, *the Bengal Children Act, 1922*, etc. and provided for a wide scope to the custody, protection and treatment of the children under 16 years in almost all spheres of their lives. It provided for separate juvenile courts, and forbade the joint trial of child offenders with adults, even where the offence had been committed jointly.

According to *the Children Act, 1974* three juvenile courts were established in three Child Development Centres/Kishor Unnayan Kendras (KUKs) which are established at Tongi, Gazipur; Pulerhat, Jessore and Konabari, Gazipur in the years of 1978, 1995 and 2003 respectively. Section 3 of *the Children Act, 1974* provided for separate courts in each KUK for juvenile delinquent which is called the "Juvenile Court". *The Children Rules, 1976* provided for procedures for the certification or

⁴⁷ *The First Five Year Plan, 1955-60*, Government of Pakistan, The Planning Board.

⁴⁸ *The Second Five Year Plan, 1960-65*, Government of Pakistan, The Planning Commission.

⁴⁹ *The Second Five Year Plan, 1960-65*, Government of Pakistan, The Planning Commission, pp.389-391.

⁵⁰ *The Third Five Year Plan, 1965-70*, Government of Pakistan, The Planning Commission.

⁵¹ Mohammad Sajjad Hossain, "Separate Treatment Measures for Juvenile offenders in Indian Sub-continent: A Brief Historical Description," p. 122.

⁵² *The Children Act, 1974* (Act No. XXXIX of 1974).

⁵³ *The Children Rules, 1976* (Rules No. S.R.O.103-L76).

recognition of institution, management of certified institution, observation of the inmate, and the powers and duties of a probation officer.⁵⁴

Apart from the *Act* and *Rules* mentioned above, there are some provisions of other laws particularly dealing with juveniles. At first, the welfare and social provisions had been included in the *Constitution of Bangladesh* for the protection and development of children.⁵⁵ Other laws such as the *Special Powers Act, 1974*,⁵⁶ the *Arms Act, 1887*, the *Nari O Shishu Nirjaton Domon Ain, 2000 (Women and Children Repression Prevention Act, 2000)* etc. were passed which empowered the police to arrest any delinquent on suspicion of anti-state activities as well as to take measures to stop heinous offences committed against the women and children.

Similar to the other penal laws six Metropolitan Police Ordinances which are namely; the *Dhaka Metropolitan Police Ordinance, 1976*,⁵⁷ the *Chittagong Metropolitan Police Ordinance, 1978*,⁵⁸ the *Khulna Metropolitan Police Ordinance, 1985*,⁵⁹ the *Rajshahi Metropolitan Police Ordinance, 1992*,⁶⁰ the *Sylhet Metropolitan Police Ordinance, 2006*,⁶¹ and the *Barisal Metropolitan Police Ordinances, 2006*⁶² for six divisions prohibit juvenile offences. These *Ordinances* provide punishments for the offences committed by the juvenile delinquents such as eve teasing; suspicious circumstances between sunset and sunrise etc. empowered the police officers to arrest without any warrant. However, these penal laws do not lead the best interest of the juveniles in a uniformed way.

The Government had signed the *Convention on the Rights of the Child (CRC)*, 1989 and thereafter, formulated various national plans and policies for children. Among the plans and policies *National Programme of Action (NPA) of first NPA (1992-1997)*, *Second NPA (1997-2002)* and *Third NPA (2005-2010)* are mentionable. Additionally the Government has started creating some institutional bodies, councils and committees strengthening the juvenile justice system from the year of 1992. Since then the children issues have been incorporated into the national planning process.

The Government under the auspices of the Ministry of Women and Children Affairs (MoWCA), formulated a *National Child Policy in 1994* and the *National Council for Children* in 1995 to protect the rights of children and ensure their healthy development in every aspect. Thereafter, a committee named the *Inter-Ministerial Committee on Improving the Conditions of Children Confined in Jails* was formed in 2002. The *Committee* implemented several decisions to improve the situation of the

⁵⁴ *The Children Rules, 1976*, Rules 3,4,6,8, 9 and 21.

⁵⁵ *The Constitution of the People's Republic of Bangladesh, 1972*, Article 27, 28 and 31.

⁵⁶ *The Special Powers Act, 1974* (Act No. XIV of 1974).

⁵⁷ *The Dhaka Metropolitan Police Ordinance, 1976* (Ordinance No. III of 1976).

⁵⁸ *The Chittagong Metropolitan Police Ordinance, 1978* (Ordinance No. XLVIII of 1978).

⁵⁹ *The Khulna Metropolitan Police Ordinance, 1985* (Ordinance No. LII of 1985).

⁶⁰ *The Rajshahi Metropolitan Police Ordinance, 1992* (Ordinance No. XXIII of 1992).

⁶¹ *The Sylhet Metropolitan Police Ordinance, 2006* (Ordinance No. I of 2006).

⁶² *The Barisal Metropolitan Police Ordinance, 2006* (Ordinance No. II of 2006).

juvenile offenders in jails. From 2003, some landmark judgments and *Suo Moto Orders*⁶³ of the High Court Division of the Supreme Court in Bangladesh issued some directions to implement the *Children Act, 1974*. These legal directions have changed the trend of juvenile justice system in the country. To address the problems faced by the juvenile delinquent and assist their social rehabilitation, a National Task Force (NTF) was set up in 2003.

In 2004, the Government has amended the *Penal Code, 1860* and raised the minimum age of criminal responsibility of a child from the age of 7 to 9 years.⁶⁴ Also in the same year, the *Birth and Death Registration Act, 1873*⁶⁵ was repealed by section 24 of the *Birth and Death Registration Act, 2004*.⁶⁶ As per section 1(2) of the *Act of 2004*, it was amended again in 2006.⁶⁷ This *Act* made a compulsory and obligatory provision for the registration of all births and deaths in Bangladesh and the issuance of birth certificates.⁶⁸ According to the law, from July 3, 2006 to 2008, the registration of birth was enforced as mandatory and free of cost which was an attempt of utmost importance in upholding the rights of juveniles. Birth registration is particularly important for ensuring the development and protection of the rights in the *CRC*.⁶⁹

Furthermore, from 10 November 2010, the Government has empowered the mobile courts under the *Mobile Court Ordinance, 2007*⁷⁰ by adding a new section numbered 509 to the *Penal Code, 1860*, for a speedy trial in cases of sexual harassment and stalking in Bangladesh. Thereafter, in 2013, the new *Children Act, 2013* has been enacted and repealed the *Children Act, 1974*. The *Act* of 2013 was modified on the basis of *CRC* and the age of the child has been increased from 16 to 18 years. As a result of this change, the juveniles will have the right of being treated equally both under the national and international laws. The *Act* is the only principal law that provides for a very distinct justice system for the care and protection of children at risk. Additionally it provides for the custody, care and treatment of neglected, destitute, and accused children and also the victims of violence.

The Children Act 2013 covers many aspects of the children's vulnerability in

⁶³ *Suo Moto Order No. 248 of 2003*, 11 BLT 2003 HCD 281.

⁶⁴ *The Penal Code (Amendment) Act, 2004* (Act No. XLV of 2004).

⁶⁵ *The Birth and Death Registration Act, 1873* (Bengal Act No. IV of 1873).

⁶⁶ *The Birth and Death Registration Act, 2004* (Act No. XXIX of 2004) was enacted and Gazette on December 7, 2004.

⁶⁷ *The Birth and Death Registration (Amendment) Act, 2006* (Act No. XLV of 2006). Section 1(2) *the Birth and Death Registration Act, 2004*, had provided that the Government will later announce the date of the coming into force of this Act. This was the *Birth and Death Registration (Amendment) Act, 2006*. *The Birth and Death Registration Act, 2004* has come into force from May 8, 2006.

⁶⁸ Shanaz Huda, *A Child of One's Own* (Dhaka: Bangladesh Shishu Adhikar forum, 2008), p. 38.

⁶⁹ Kamal Siddiqui, *Better Days Better Lives: Towards a Strategy for Implementation on the Rights of the Child in Bangladesh* (Dhaka: The University Press Limited, 2001), p. 64.

⁷⁰ *The Mobile Court Ordinance, 2007* (Ordinance No. XXXI of 2007).

their justice system. The Act introduces new provision regarding Child Affairs Police Officer (CAPO) who maintains separate treatment for the offender child.⁷¹ For the effective justice system, National Child Welfare Boards (NCWB) at national level and diversionary measures has been prescribed in the Act. The district Boards have the responsibility to visit and to supervise, coordinate and evaluate the activities undertaken by the Child Development Centers (CDCs), certified institutes, prisons.⁷² Further, Boards determine the appropriate method of care for the welfare of the detained children.⁷³ The Act specifically provides that no child below the age of 9 years may be arrested under any circumstances.⁷⁴ These provisions of the new Act are yet to be implemented fully with child-friendly police desk, adequate probation officers, and child welfare boards. The implementation of these provisions necessities big amounts of financial supports from the Government and the Children Rules is formulated as soon as possible.

3. Analysis of Legal History of the Juvenile Justice

In persuasion of an analysis of the legal history of juvenile justice system in Bangladesh, it was found that a separate legislation was in practice from the colonial rule in India but it was not integrated and comprehensive. The way most of the laws would approach to address the issue was unsystematic and similar to that of the criminal justice system and ultimately would not suffice. There was no specific law on the juvenile protection but various provisions in different legislation existed to protect them. However, the juveniles accused of committing crimes, are dealt with special penal laws and the rights of juvenile delinquents with these has become unjust.

After the independence of Bangladesh *the Children Act, 1974* consolidated all the previous laws and it had to be read together with *the Children Rules, 1976*. Although *the Children Act, 1974* and *the Children Rules, 1976* were basic laws designed for the best interests of juvenile delinquents, their enforcement in practical terms was not efficacious enough and often unfavourable to the children. Often children were treated under the criminal justice system in our country. They may be arrested for the breach of penal laws of the land or under suspicion of committing an offence. Hence, *the Vagrancy Act, 1943*, *the Criminal Procedure Code, 1898*, *the Special Powers Act, 1974*, *the Arms Act, 1878* are often used to arrest children.

Since the independence, the Government has taken various initiatives resulting into many plans and policies on child rights in Bangladesh. But the juvenile protection issues are not properly addressed in these policies. Unfortunately, there is no separate policy for juveniles' welfare and protection; rather there are scattered policies and plans for the juveniles well being. Moreover, there still remain some obstacles in this policies and plans regarding children's rights. These obstacles are

⁷¹ *The Children Act 2013*(Act No. 26 of 2013), section 14.

⁷² *The Children Act 2013*, section 9.

⁷³ *The Children Act 2013*, section 86.

⁷⁴ *The Children Act 2013*, section 44(1).

the lack of adequate awareness about the rights of children, prevention and decay of traditional values and attitudes towards the children. Besides, the absence of a separate department of children affairs to deal with child related issues can be attributed to be being one of the major constraints.

In Bangladesh, implementation and monitoring committees have been established to ensure coordination and monitoring of the plan of action. An *Inter-Ministerial Committee* was established in 2002 for the protection of children. In 2003, the National Task Force committee was set up for the proper enforcement of the *Suo Moto* Order of High Court Division. All the concerned persons agreed on the principle that no child should, thereafter, be sent to jail or police lock-up. More than a thousand children, locked in jails, had to be transferred to the KUKs. But due to the lack of monitoring, lots of children are still yet to be transferred and languishing locked away in many jails in our country.

Furthermore, a positive legislation requiring the fulfillment of physical, moral and intellectual development of children is also absent in Bangladesh. Most of the laws related to children allow the punishment to juveniles, hence, fail to reflect fair attitude towards children. Since there were some significant loopholes in *the Children Act, 1974* and *the Children Rules, 1976*, the Government took initiatives to amend and make it up to date. Therefore, *the Children Act, 2013* was approved by the cabinet on 25 February 2013. However, the ultimate success of the *Act* will depend on the proper awareness and execution by the concerned competent authorities.

4. Conclusion

Owing to the vulnerability arising from physical frailty and mental immaturity, the interests and needs of the juveniles need to be protected along with deterring them from re-offending, promoting their rehabilitation, smoothening and accelerating their reintegration into society.

The British colonial rulers initiated some protective laws for juvenile offenders in Indian sub-continent which flew into and was following coupled with newer laws to serve such a purpose in the erstwhile Pakistan regime which ranged from 1947 to 1970. Thereafter, in Bangladesh, a favourable situation had been created with the enactment of *the Children Act, 1974* and *the Children Rules, 1976*. Under these children laws, most of the juveniles had hardly any chance of rehabilitation and reintegration into the society at all. Consequently, the Government enacted *the National Children Policy, 2011* and has enacted *the Children Act, 2013* which is positive step for the protection of best interest of child. So, it is high time to make a separate child-friendly juvenile welfare rules that addresses the issue of special protection and development of juveniles. The main objective of which would be preventive rather than punitive in order to revert a child from not evolving into criminal activities. Besides, there should also be mechanisms and supervising authorities for the proper implementation of the laws. Indeed no juvenile justice system would be effective without corresponding initiatives for providing child-friendly preventive and protective measures by the Act of 2013.

Child Marriage Scenario in Bangladesh: A Legal Study

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Abstract: Child marriage is a social problem in Bangladesh. The Government of Bangladesh has enacted child marriage restraint laws, which do not fully match with other statutory and religious laws and practices. It seems somewhat difficult to implement these laws properly. Thus, the situation has been getting worse day by day. The study focuses on the causes of child marriage and its impacts in Bangladesh. The aim of this article is to review the existing laws relating to child marriage and recommend ways to improve those laws. At the same time, this article encompasses a review of executive measures so far taken by the government of Bangladesh in this regard.

1. Introduction

Child marriage is a big concern in Bangladesh. Persons belonging to different religions abide by different social norms, customs or culture.¹ Marriage in Islam is considered as a contract and every Muslim of sound mind who has attained puberty may enter into a contract of marriage. According to Muslim and Christian personal laws, consent of a father or guardian is necessary to consider marriage of a child.² Girls, who are adulthood, may enter into a marriage, according to ancient Hindu scriptures.³ The Christian ecclesiastical law does not consider marriage of a girl before the age of puberty.⁴ The brides were betrothed at or before puberty in ancient and medieval societies. According to the English Civil laws which were derived from Roman law, marriages before the age of 16 were common in the Middle age (from

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¹ About 90% of Bangladeshis are Muslim, Hindus are 9%, and other religions have the rest 1%. Other religions and ethnic groups are Christian, Chakmas, Garos, Jainta, Khasi, Manipuri, Marmas, Mros (Mrus or Moorangs), Santals, Tanchangya, Tripura, and other tribals. National Institute of Population and Training (NIPORT): *Bangladesh Demographic Health Survey 2011*. Mitra and Associates–Dhaka, Bangladesh; Measure DHS, ICF International– Calverton, Maryland, USA (2013).

² D.F. Mulla, *Principles of Mohamedan Law* (Bombay: M.M. Tripathi Private Ltd., 17th ed., 1972). p. 255.

³ Ancient Hindu scriptures defined adulthood as three years after the onset of puberty and above. Website: <https://en.wikipedia.org/wiki/Child_marriage> Accessed on 19 October 2015.

⁴ Richard Burn, Robert Tyrwhitt and Robert Phillimore, *The Ecclesiastical Law* (Vol 4, Sweet Stevens & Norton, London, 1842). p. 54.

5th to 15th century).⁵ The boys at 18 years and girls 14 years may enter into a marriage in Bangladesh with the consent of his or her father or guardian under the Special Marriage Act, 1872.⁶ The Government of Bangladesh enacted the Child Marriage Restraint Act, 1929 (amended in 1984), which is the principal law relating to age of marriage; the Birth and Death Registration Act, 2004 (came into force in 2006), and the Children Act, 2013. The Government of Bangladesh also accessed the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages on 5 October 1998. The age of marriage and right to free and full consent of the intending parties are recognized in the Universal Declaration of Human Rights (UDHR), 1948. However, the Government of Bangladesh has taken different initiatives to prevent child marriages in Bangladesh, which do not seem sufficient.

Child marriage means a marriage in which either the bride or the groom is child.⁷ For marriage law, male below 21 and female below 18 years are considered as child in Bangladesh.⁸ A good number of scholarly works have been made in the field of child marriages in Bangladesh. Most of the researches worked on conceptual issues, causes and effects of child marriage.⁹ Some of them focus on the nature, causes and consequences of child marriage considering the social customs and statutory laws of Bangladesh.¹⁰ While, others have shown that parents prefer to organise the marriage for their daughters at their early age as a means to protect family norms. Education, working status, and places of resident exert the significant effect on child marriage in Bangladesh.¹¹ Different patterns of child marriage exist in the kinship system in South Asia and South-East Asia.¹² According to a report, two of every three women in Bangladesh get married before reaching the age of marriage 18; child marriage affects the child's cognitive and physical development, discontinues their education, reduced family income, denies the rights and turns the child into a social and economic burden.¹³ However, a few of the articles and reports are devoted to searching the gap between existing child marriage restraint laws and executive measures taken by the government to their implementation in order to prevent child marriage in Bangladesh.

⁵ Z. Zhao, "Demographic Systems in Historic China: Some New Findings from Recent Research." *Journal of the Australian Population Association*, Vol.14. No.2 (1997).

⁶ *The Special Marriage Act, 1872* (Act No. III of 1872). Sec-2(2,3).

⁷ *The Child Marriage Restraint Act, 1929* (Act No. XIX of 1929). Sec-2(b).

⁸ *The Child Marriage Restraint Act, 1929* (Act No. XIX of 1929). Sec-2(a).

⁹ Nahid Ferdousi, "Child Marriage in Bangladesh: Socio-legal analysis". *Research International Journal of Sociology and Anthropology*, Vol.6 (1) (January, 2014). pp.1-7.

¹⁰ Shahnaz Huda, "Child Marriage: Social Marginalisation of Statutory Laws," *Bangladesh Journal of Law*, vol.1 (2) (1997).

¹¹ Prosannajid Sarkar, "Determinants and Effect of Early Marriage in Bangladesh, 2007". *Research Journal of Applied Sciences*, Vol. 4 (5), (2009). pp.178-184.

¹² Gavin W. Jones "Changing Marriage Patterns in Asia". *Asia Research Institute Working Paper Series*, No. 131. (2010).

¹³ National study conducted by Plan International in collaboration with International Center for Diarrheal Disease Research, Bangladesh (ICDDR) in 2013.

The present study focuses on the causes and consequences of child marriage in Bangladesh. This article also reviews the existing laws relating to child marriage to improve them. At the same time, this article encompasses a review of executive measures so far taken by the government of Bangladesh in this regard. This study will try to fill in the gap of these respective areas.

2. Child Marriage in Bangladesh

Child marriage in Bangladesh is treated as a common phenomenon. The rate of child marriage is very high in Bangladesh. A survey report on married women aged between 25 and 29 shows that 45% women are married by the age of 15.¹⁴ According to the UNICEF, 63% of all women aged 20–24 were married before the age of 18.¹⁵ Bangladesh Demographic and Health Survey (BDHS) stated in the report published in 2007 that 66% of married women aged between 20 and 24 were got married before the age of 18, and average age for marriage of girls is 16.4 years.¹⁶ It also stated that average age for marriage of girls was 16.00 of its previous reports (2004). The average child age for married women turned into 16.4 from 16.00 between three years i.e from 2004 to 2007, which is indicating low progress in terms of reducing the rate of child marriage in Bangladesh. The report of UNICEF revealed that one-third of women aged between 20 and 24 are found married by the age of 15.¹⁷

2.1 Causes of Child Marriage

There are a number of reasons for high rate of child marriage in Bangladesh such as:

- Poverty, lack of awareness, social and traditional customary practices, dowry and superstition.¹⁸
- A child, specially the girl child of a family is treated as a burden due to poverty, and anxiety caused from fear of humiliation. In many cases, the parents in rural areas of Bangladesh commit to child marriage for their daughters (whether the bride is a child or an aged man is not a fact), either get rid of debts or to get some money or to escape the cycle of poverty as well as to save their child from any social violence.¹⁹
- A large number of people think that girls should be married at their child age due to social and religious traditions as well as for their family happiness, learning household chores and responsibilities.²⁰
- Lack of implementation of law and universal birth and marriage registration

¹⁴ UNICEF's state of the World's Children report 2005.

¹⁵ UNICEF's state of the World's Children report 2009.

¹⁶ Bangladesh Demographic and Health Survey (BDHS) report 2007.

¹⁷ UNICEF's state of the World's Children report 2011.

¹⁸ UNICEF, "Child protection from violence, exploitation and abuse"(2011). Available at <<http://www.childinfo.org>> Accessed on 21 September 2014.

¹⁹ F. D. Chowdhury, "The Socio-Cultural Context of Child Marriage in a Bangladeshi Village," *International Journal of Social Welfare*, Vol.13 No.3 (July 2004).

²⁰ UNICEF, "A Note on Child Marriage," (July 2012).p.3. Available at <www.en.wikipedia.org/wiki/Child_marriage> Accessed on 10 September 2014.

along with cultural rethinking on the status of a child is also another cause of child marriage in Bangladesh.²¹

- In most cases, fathers or guardians are arranging marriage of female children to save dowry price.²²
- Lack of education and awareness is also another cause of child marriage. At the same time, parents or legal guardians have to be under pressure to arrange affair or forced marriage of their children to keep household and social peace and to avoid any undue events, for instance, suicide, murder etc.²³
- Poor law and order situation is also the cause of child marriage in Bangladesh. Above all, to escape the above troubles, parents become worried about arranging marriage of their daughters as soon as they become grown up.

2.2 Impacts of Child Marriage

Child marriage creates severe problems in the society.

- It pushes girls into premature motherhood when they are not physically and psychologically ready to take responsibilities of newly born baby.²⁴
- Child mothers are prone to obstructed delivery and other severe childbirth and pregnancy related complications and such complications trigger higher mortality rate both for mothers and children.²⁵
- Child marriage affects the physical development of a child, discontinuation of their education which triggers to reducing family income.²⁶
- Child marriage often manifests itself in the form of domestic violence, and deprivation of food.²⁷
- Early divorce or separation is increasing day by day due to age disparity between the couple where either bride or groom is a child. Child marriage

²¹ Mahbubur Rahman Khan, "Preventing Child Marriage." *The Daily Star*, Dhaka (1 July 2012).

²² Dowry is an ancient practice for the bride's family. The amount of dowry depends upon the age and virginity of a bride. F. D. Chowdhury, "The Socio-Cultural Context of Child Marriage in a Bangladeshi Village." *International Journal of Social Welfare*, Vol.13 No.3 (July 2004).

²³ Website: <<http://www.wikigender.org>> Accessed on 22 December 2013.

²⁴ Dr. Bilkis Begum, Gynecological Consultant of Dhaka Medical College Hospital. "Preventing Child Marriage," *The Daily Star*, Dhaka (1 July 2012).

²⁵ *Ibid*.

²⁶ Nasima Akhtar Jolly in a seminar on "Poverty, Illiteracy, Social Instability and Negative Attitude towards Daughter Responsible for the Perpetration of Child Marriage" held at the Secretary of National Girl Child Advocacy Forum. Cited in *The Daily Star*, Dhaka (1 July 2012).

²⁷ DM Badrud, "South Asia Study of Population Policy and Programme: Bangladesh". UNFPA, (1990).p.11-12.

generates to higher population growth and number of orphans.²⁸

Besides this, the married child also suffers from demoralization due to poverty, easy access to drugs, arms and black money. As a result, they involve with theft, robbery, dacoity or any other social crimes. As a result, they are put into jail and live with professional criminals due to absence of sufficient save homes for child.

3. Laws Relating to Child Marriage in Bangladesh

The Government of Bangladesh has enacted the following laws and ratified the transnational/ international conventions to prevent child marriage in Bangladesh:

3.1 The Child Marriage Restraint Act, 1929 (amended in 1984)

The Child Marriage Restraint Act, 1929 (amended in 1984) is the main law for controlling child marriage in Bangladesh. The purpose of this Act is to restraint the solemnization of child marriages.²⁹ According to the law, the required age for marriage is 21 for boys and 18 for girls. The provisions of punishment of any violation of minimum age limits are also included in this Act. The punishment for a male adult above twenty-one years of age or female adult above eighteen years of age marrying a child is imprisonment upto one month, or a fine upto one thousand taka, or the both.³⁰ The same punishment is also granted against those persons who solemnize a child marriage.³¹ Parents or guardians of a couple (child) are also under punishment upto one month imprisonment or a fine upto one thousand taka or the both.³²

3.2 The Special Marriage Act, 1872

The boys at 18 years and girls 14 years may enter into a marriage in Bangladesh with the consent of his or her father or guardian under the Special Marriage Act, 1872.³³ The age of a bride or a groom under the Special Marriage Act, 1872 does not match with the existing child marriage restraint Act of Bangladesh.

3.3 The Marriage and Divorce Registration Laws of Bangladesh

Marriage registration is compulsory only for the Muslim in Bangladesh under the Muslim Marriage and Divorces (Registration) Act, 1974. In 2012, the government enacted the Hindu Marriage Registration Act, 2012 for registration of Hindu marriage in Bangladesh. It is mentionable that the Hindu marriage registration is not compulsory for them; it has been kept open upon their will whether they like to

²⁸ Website: "Save the Children, State of the World's Mothers: Nutrition in the First 1000 Days," (May 2012). Available at <[www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0->](http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-) Accessed on 14 March 2014.

²⁹ Mohammad Faiz-ud-din, *A Text Book on Islamic Law* (Shams publications, Dhaka, 2007). p.273.

³⁰ *The Child Marriage Restraint Act, 1929* (Act No.XIX of 1929).Sec-4.

³¹ *The Child Marriage Restraint Act, 1929* (Act No.XIX of 1929).Sec-5.

³² *The Child Marriage Restraint Act, 1929* (Act No.XIX of 1929). Sec-6.

³³ *The Special Marriage Act, 1872* (Act No. III of 1872). Sec-2(2,3).

register their marriage or not. The marriage registration for other religions is not compulsory in Bangladesh. In that case, there is a scope of child marriage in the Hindu community as well as other religious communities of Bangladesh.

3.4 The Birth and Death Registration Act, 2004 (which came into force in 2006)

The Government of Bangladesh has introduced the Birth and Death Registration Act, 2004 which came into force in 2006 to determine the age of a person. The birth registration certificate is also required to determine the age of a bride or groom. The birth registration is itself a typical problem and widely prevalent in rural areas of Bangladesh. The birth registration system is not implemented fully for which actual age of bride or groom cannot be ascertained.

3.5 The Transnational/International Conventions

The transnational/international organizations have been working with the Government of Bangladesh in preventing child marriage in Bangladesh. Bangladesh is a member of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 which includes child marriage along with victim women and children forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, or any other unlawful means in the definition of persons subjected to trafficking.³⁴ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 include a provision of the minimum age for marriage as well as making civil registration of births, marriages and deaths with compulsory enforcement of national laws.³⁵ The Universal Declaration of Human Rights (UDHR), 1948 provides a provision of full age of marriage with free and full consent of the intending parties to enter into a marriage.³⁶ Similar provisions also include in the International Covenant on Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966. The African Charter on the Rights and Welfare of the Child, 1990 specify the minimum age for marriage is eighteen years.³⁷ The same provision also includes in the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964 and the Convention on the Elimination of All Forms of Discrimination against Women, 1979. Bangladesh acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1984, which prohibits child marriage, stipulating 18 as the minimum age in its General Recommendation 21 in 1979. The Government of Bangladesh also signed the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages in 1998 which requires signatory states to obtain consent from both parties entering into a marriage and to establish a legal minimum age for

³⁴ *The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002*. Art 1(5).

³⁵ *The SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002*. Art 4.

³⁶ *The Universal Declaration of Human Rights (UDHR), 1948*. Art 16.

³⁷ *The African Charter on the Rights and Welfare of the Child, 1990*. Art XXI.

marriage.³⁸ The provisions of child marriage which are included in different transnational conventions, already exist in the national laws of Bangladesh-which do not seem sufficient in preventing child marriage.³⁹

The Government of Bangladesh also drafted a new Child Marriage Restraint Act, 2014 where a provision included making higher punishment from one month to two years imprisonment and penalty from taka one thousand to fifty thousand for those who perform or facilitate child marriage-which punishment is not enough in preventing child marriage in Bangladesh. In spite of taking the aforesaid initiatives, the child marriage is going on in Bangladesh.

4. Initiatives in Preventing Child Marriage in Bangladesh

The Government of Bangladesh has been working on many fronts to prevent child marriage. At first, the government introduces the Child Marriage Restraint Act in 1929, and then the Muslim Marriage and Divorces (Registration) Act, 1974 and the Birth and Death Registration Act, 2004. At the same time, the government also working with some transnational organisations to prevent child marriage. Besides this, the government has taken different initiatives to empower children and women, for instance, introduces a program of free cost of school and college fees for girls and books for both boys and girls in school level as well as maintained quata for women in some service sectors of Bangladesh. A Secondary school scholarship is also offered to girls who are postponing marriage in Bangladesh since 1994. To make conscious about the effect of child marriage, government using electronic media, arranging seminar and symposium. *Union Parishads*, along with the Municipal Corporation and City Corporation working to stop child marriage with the help of executive magistrate and police department. The Executive Department and civil society are also working with the collaboration of NGOs and transnational organizations from different corners to create nationwide public awareness on negative effects of child marriage, health care services for the child, empowerment of women, and counseling services with legal assistance to the victim of child marriage.⁴⁰ Local Government Institutions (LGIs) are working at *Union Parishads* level with Plan International Bangladesh to identify and celebrate child marriage-free

³⁸ Early Marriage in Bangladesh. Available at <www.bbc.co.uk/news, posted on September, 2012> Accessed on 28 March 2014.

³⁹ The national laws are *the Child Marriage Restraint Act, 1929* (amended in 1984), *the Muslim Marriage and Divorces (Registration) Act, 1974*, *the Birth and Death Registration Act, 2004* (came into force in 2006), *the Hindu Marriage Registration Act, 2012*.

⁴⁰ The NGOs and transnational organizations are Save the Children on behalf of the Child Rights Advocacy Coalition in Bangladesh, Action aid Bangladesh, Ain O Shalish Kendra, Bangladesh Shishu Adhikar Forum, Child Rights Governance Assembly, National Girl Child Advocacy Forum, Plan International Bangladesh, Terre Das Home Netherland, World Vision, Bangladesh Legal Aid and Services Trust, CARE, ASHA, South Asian Association for Regional Cooperation, United Nations Children's Fund (UNICEF) and World Health Organization (WHO).

villages and *unions*.⁴¹ Such efforts may contribute to lessen child marriage. The government also started online universal birth registration with the support of Plan International Bangladesh. UNICEF sponsors 2,580 adolescent centres in 28 districts across Bangladesh, where trained adolescent leaders educate their peers about child rights, child marriage, reproductive health, gender, HIV/AIDS, dowry, and violence. Sessions on critical thinking and communication encourage adolescents to build up their new knowledge by speaking to parents about the issues that affect them. The centres also provide a safe place for adolescents to socialize and discuss their concerns.⁴²

5. Conclusion

Child marriage has been continuing in Bangladesh for a long time. The Government of Bangladesh has taken different initiatives to prevent child marriage which seems insufficient. There are certain problems faced by the law enforcement authority in preventing child marriage in Bangladesh, namely, the gap between child marriage restraint laws and religious practices, lack of comprehensive procedure for registration of births and marriages where existing laws are not implemented properly, different rules for different religions in case of marriage registrations. Guardians yet arrange marriage of their children secretly. Considering the increasing rate of child marriage, the following suggestions may be followed:

- * Government should ensure compulsory birth and marriage registration for all citizens of Bangladesh with correct information.
- * There is a need to identify approaches, methods and good practices across the country to contribute towards the development of a national strategy in preventing child marriages. The existing child marriage restraint laws and its preventing measures should be amended from time to time to fill the gap and introduced grave punishment for relating and arranging child marriage.
- * Awareness of the people should be developed through workshops, motivation rallies, awareness campaign, producing and disseminating posters, leaflets, and television and radio spots. In addition, a course on the impacts of child marriage and its legal protection should be included in the syllabuses of secondary school level of education.
- * The social and cultural rethinking on the status of a child is needed, and networking should be increased between government organizations and NGOs, village police, family members, teachers, religious and community leaders at all levels.

Finally, the harmonization of family and statutory laws regarding the minimum age of marriage may bring better results in preventing child marriage in Bangladesh

⁴¹ Website: <www.icrw.org/.../PLAN%20ASI..> Accessed on 25 June 2015.

⁴² Website: <www.irinnews.org/.../banglades..> Accessed on 25 June 2015.

Challenges in Police Reform of Bangladesh: Promoting Effectiveness and Accountability

A K M Iqbal Hossain*

Abstract: The issue of promoting effectiveness and accountability within the police force is a serious matter for Bangladesh. Historically, mainly due to the archaic Police Act of 1861, Bangladesh police holds colossal power to exercise but most frequently they are failing to use it judiciously and ethically. Mostly cited other reasons are: misuse and abuse of police by more powerful people in the society, lack of proper orientation and training, organizational failure to control, inadequate accountability, and the inhuman terms and condition of their services. The author on the basis of factual evidence has shown that these lacunas are creating enough spaces for the police to be ineffective and non-accountable. In conclusion, he has argued that a meaningful reform within Bangladesh police can make much headway, other piecemeal efforts may not bring out the expected outcome.

Introduction

The issue of promoting effectiveness and accountability within the police force is a serious matter in any society and its importance has been captured in the phrases 'who shall guard the guardians' and 'who shall police the police'. The two phrases draw attention to the role of the police as guardians while at the same time expressing the fears that guardians are not always benevolent and need to be subject to monitoring. More substantively, the coercive power of the state is routinely exercised by the police. No other public institution has the opportunities to exercise so much power as the police.¹ The question is whether the police as a force is being able to use that power independently enough, judiciously enough and also ethically enough. There are many factors in our county, which do not allow our police to act judiciously and ethically. First, their psyche is such that they feel once they are given power they can do things as they wish, which is wrong. Secondly, they are also made to use that power by more powerful people in the society, particularly in our experience, by the ruling party. Thirdly, the police force are not adequately trained and given enough orientation to judiciously decide when to use that power. Once they have specific power in their hands, they have to be educated enough in a broader sense to know at which point they can use that power. If they don't know when to use their power, they will abuse it. This kind of knowledge gap ultimately creates the space for the police to be ineffective and non-accountable.

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¹ E.E. Alemika and I. Chukwuma (eds.), *Police Accountability in Nigeria: Framework and Limitation* (Lagos: Center for law Enforcement Education, 2003).

Although no one disputes that the police has to be accountable, there are differing views as to whom the police should be accountable to. It has often been argued that the police are answerable and accountable to too many authorities and institutions. They are answerable to their higher-ups in the organization; they are answerable to the judiciary and the executive magistracy, to the political executive and to the public. There is another view that the existing accountability mechanisms especially outside the police hierarchy are in fact too weak to extract any kind of accountability. In addition, there is a school of thought that the police should be accountable to the law and law alone. This, it is argued, would give the police the required autonomy to function in a fair and impartial manner and would totally insulate them from political and bureaucratic interference.²

The Bangladesh Context

Like many other developed countries of the world Bangladesh is very much concerned about the performance, integrity and conduct of its police force. The police forces of this country are widely criticized for extra-judicial killing, corruption, incivility, brutality and torture, non-response to distress called by citizens. Thus rather than serving to protect the freedom and integrity of communities, the police are all too frequently accused of excessive use of force, torture, failure to follow due process, discriminatory behavior, and corruption. As a whole police interaction with the public in the enforcement of law and crime prevention is much below the required level. Several examples of police misconduct, including cases of excessive force, brutality, and corruption, appear regularly via the news media. Media and public view many police actions as arbitrary and express concerns about the lack of accountability for police actions and inactions. Consequently the relation between the police and the public has reached at a point where the citizens rather avoid reporting a crime to the police.³

The Historical Legacy

It is expected that the accountability of police towards their citizen are laid down in sufficient detail in the laws of the land. Unfortunately the main focus of the Police Act of 1861, which is still the basic police law of the land, is to protect the ruling regime's interests, rather than to serve the general people. As a matter of fact this act was principally aimed to administer a static, immobile and backward rural society living in villages and small towns. This act still today envisages exercise of authority without local accountability. It presupposes a society without any constitution, basic and fundamental rights, organized public opinion and mass-media projecting and agitating the public interest. The overriding objective of this Act was to maintain the stability of the Raj and the same was achieved by placing the District Superintendent

² Government of India, *Second Administrative Reforms Commission Fifth Report on Public Order* (New Delhi: Ministry of Public Administration, 2007).

³ E Martensson, *The Indian Police System - A Reform Proposal* (Hyderabad: Foundation for Democratic Reforms, 2006).

of Police under the direction and control of the District Magistrate who acted as the agent of the central government. By any objective measure this Act is not in consonance with the requirements of democratic policing.⁴ It is widely believed that this act created by British rulers is an insurmountable yolk which could not be replaced in long 151 years. So present Bangladesh Police is the same Bengal Police with old design. The Police Regulation of Bengal (PRB) 1943 and the Police Act 1861 are still the main body of laws followed by Bangladesh Police. To be very specific these laws date back to an era when there were no civil service organizations (CSOs), human rights or democracy. In fact, many of these regulations are incongruent with the Constitution of Bangladesh, for instance articles 26, 28, 32, 33 (Part-iii). On the other hand many key laws such as 'the Penal code (1860), Code of Criminal Procedure (1898), the Anti-Corruption Act (1947), the Special Power Act (1974), Women and Children Repression Prevention (Special Provision) Act (2000), Special Trial Tribunal Act (2002), The Law and Order Disruption Crimes (Speedy Trial) Act (2002) etc. remain outdated and do not match the needs of contemporary Bangladesh⁵.

The Caretaker Government and the Draft Police Ordinance 2007

The Caretaker Government Bangladesh Police and the UNDP (ibid) observed that there are 935 laws in Bangladesh that touch on the issue of policing in some way. For obvious reasons due to huge number there are contradictions and gaps in the legislative framework. They considered all the laws together and prepared the Draft Police Ordinance 2007. Almost everybody who is well conversant with matters relating to policing and police reform concede that the Draft Police Ordinance, 2007 is an exceptional document. If implemented, it would serve as a template for regional neighbors to emulate.⁶ It is to be noted that initially, the Caretaker Government (CTG) appeared to demonstrate the political will but unfortunately they could not do anything viable before they left office in December 2008. The present Awami League government is in the office since last 6 years have passed dozens of ordinances (left by the Caretaker Government) as bills, thereafter as Parliamentary Acts, yet ironically they even did not take the Draft Police Ordinance, 2007 as worthy for consideration. Against this backdrop, an attempt has been made here to see and examine where does Bangladesh Police stands now in terms of organization, mechanism and procedures for promoting effectiveness and accountability? At the same time to explore the ways and means to build-up people's trust on Police. And finally to argue that no other option remains for Bangladesh Police except reform,

⁴ Government of Pakistan, *Police Reforms in Pakistan: Opportunities for Citizens – A Training Modules* (Islamabad: Ministry of Law, Justice and Human rights Division, 2006).

⁵ UNDP, *Towards Police Reform in Bangladesh: Needs Assessment Report 2003* (Dhaka: UNDP, 2003).

⁶ Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed – Moving from Force to Service in South Asia Policing* (New Delhi: CHRI, 2008).

specially to change the mind-set of the police towards pro-people.

Accountability, Effectiveness and Police Reform as Concepts

One of the most rigorous, yet broad, definitions of accountability, that this article leans on has been provided by Andreas Schedler (1999). In the language of Schedler the “term *accountability* expresses the continuing concern for checks and oversight, for surveillance and institutional constraint on the exercise of power”⁷. Furthermore, Schedler argues that accountability carries two basic connotations: *answerability*, the obligation of public officials to inform about and to explain what they are doing; and *enforcement*, the capacity of accounting agencies to impose sanctions on power holders who have violated their public duties. This two-dimensional structure of meaning makes the concept a broad and inclusive one that embraces with lots of other terms – surveillance, monitoring, oversight, control, checks, restraint, public exposure, punishment etc. On the other hand UNODC has provided an exhaustive list containing key elements of effective police accountability.⁸ These are:

- Legislation (in line with international human rights law) specifying the functions and powers of the police
- Practical instructions based on the legislation that reflect both the spirit and the letter of the law
- Opportunities for the public to voice their concerns
- Policies that set priorities on how to deploy police capacity
- Adequate police training, both basic and ongoing
- Equipment that is adequate for prescribed police functions
- Proper reporting procedures and facilities
- Adequate supervision that supports officers in carrying out their duties professionally and reporting these correctly
- A working culture that promotes transparency and evaluation
- Monitoring of police actions and operations by both police leadership and external organs
- Complaints procedures, both for making complaints to the police directly and to independent bodies
- Fair and effective procedures and policies on how to deal with misconduct, including both disciplinary and criminal codes, adequate investigative capacity, procedures for punishment and appeal procedures
- An independent body to oversee such procedures
- Scrutiny and oversight involving feedback to the police in order to improve future activities and prevent future wrongdoings
- Evaluation and complaints procedures that contribute to the development of

⁷ A. Schedler, “Conceptualizing Accountability” in Larry Diamond; Marc F. Plattner, and Andreas Schedler (Eds.), *The Self-Restraining State –Power and Accountability in New Democracies* (Boulder, Colorado, Colorado: Lynne Rienner Publishers,1999), p.13.

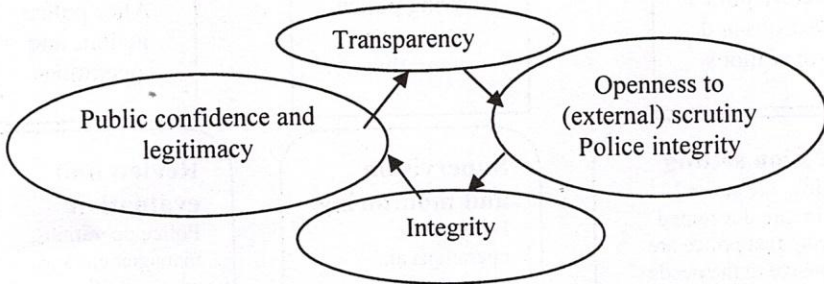
⁸ United Nations Office on Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity* (New York: UNODC, 2011).

new policies, procedures and instructions

- Reliable statistics on police performance, related both to effectiveness in dealing with crime and public order, as well as to their integrity and public confidence
- Procedures for overseeing the feedback, evaluation and complaints procedures and statistics

Miller has categorically pointed out that the lack of integrity and ineffective accountability are connected and mutually reinforcing likewise transparency, openness to scrutiny, integrity and legitimacy are also mutually reinforcing.⁹ This has been shown in figure: 1.

Figure: 1 Mutually Reinforcing Qualities



Source: United Nations Office on Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity* (New York: UNODC, 2011).

Police that lack integrity desire “operational freedom” without the burden of responsibility.¹⁰ Given that accountability includes responsibility for giving directions and preparing police officers for their work, it follows that accountability is not limited to the actions of individual officers but applies to supervisors as well as the agency as a whole. Most importantly police as a whole need to be accountable to society at large for their success in maintaining order and security and in controlling crime in a cost-effective way and with integrity otherwise they would lose their effectiveness. Figure-2 presented below shows how effective police accountability can be ensured at different phases— before, during and after police actions and operations.

Police Accountability Mechanisms

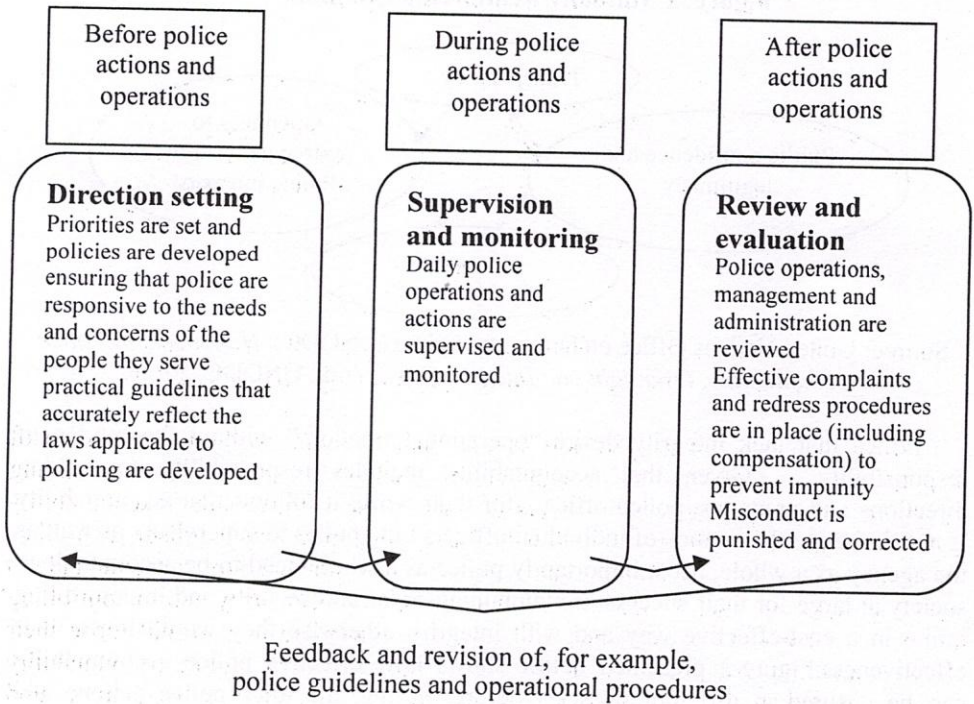
Discussions of police accountability tend to be dominated by the controversy over whether mechanisms should be internal or external. There are several advantages and

⁹ Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature* (New York: Vera Institute of Justice, 2002).

¹⁰ Ibid.

disadvantages for either internal or external complaint review systems. The police generally resist external mechanisms (EM) on the grounds that they undermine their authority and the confidence of their subordinate. The EM may be used by citizens as a platform for vendetta, revenge for arrest and prosecution, and for frustrating prosecution. Police fear that non-police citizens who do not understand the peculiarities of police work, especially the ubiquity of danger, will sit in judgment over their conduct and actions. As a result of these and other considerations, police officials are usually hostile to an EM. The fear of the people for the police is not unwarranted. In any case most professions are allowed wide powers of self-audit and self-discipline.

Figure: 2 Ensuring Effective Police Accountability



Source: United Nations Office on Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity* (New York: UNODC, 2011).

However, citizens do not usually have trust in internal mechanism (IM) because police officers are not enthusiastic about uncovering and punishing misconduct among their officers and are therefore likely to dismiss complaints without adequate investigation. There is a great deal of solidarity between officers, and rank and file that inhibits effective investigation leading to substantiation of complaints. The Code

of secrecy and silence in police departments inhibit effective investigation. Administrative review mechanisms within the police are opaque and lack transparency. Standard of proof used by the police authority is subjective and favours police officers accused of wrongdoing. Intimidation of and threat against civilian complainants by police officers. Complainants are not adequately informed about how their complaints are being processed, and of the final decisions.

The reality is that in the absence of proper control and accountability, the Police Force may turn out to be monster rather than saviour of the public. In praxis, Police personnel are internally accountable to their higher-ups in the organization, and externally they are accountable to Executive Magistracy, Judiciary, political executive and the public. All over the world, the external control of police has been strengthened not only to ensure that it functions according to the provisions of the Rule of Law, but also to make it a service-oriented institution. For instance, the Police Integrity Commission of Australia, National Public Safety Commission of Japan and an authority like London Metropolitan Police Authority (which is accountable to the local citizens through the local police authorities, which comprise elected local Councilors, Magistrates and eminent persons) have already been able to play effective role in establishing proper control and accountability within their police force.¹¹

Issues and Challenges for Bangladesh Police Reform

Being a developing as well as a democratic country, police reform in Bangladesh naturally should be based on democratic culture, norms and values. And when it is about democracy then maintenance of the highest standards of human rights within the police organization of Bangladesh must be ensured. But unfortunately Bangladesh police is lagging far behind to maintain such standard. A number of factors could be held responsible in this regard. Two former Inspector Generals of Police and an expert in this field (Shahjahan, 2005 Karzon, 2008 and Huda, 2009) have correctly pointed out that so far attempts at police reform have placed too much emphasis on individuals behaving badly, rather than on the systemic problems of the police department. Unless there is significant change in the beliefs, values and attitudes of the members of the police service there is little prospect that meaningful changes would result. M.A.Kabir Committee on Police Training constituted in the year 1977 onward to police reform initiated by UNDP(2005) made a significant number of recommendations in different points of time but most of those are still waiting for implementation. In this connection, observation made by Justice Aminur Rahman Khan's commission (1988-1989) deserve special mention.¹² These are:

¹¹ J Burack, W. Lewis and E. Marks, *Civilian Police and Multinational Peacekeeping: A Workshop Series-A Role for Democratic Policing* (Washington: United States, Department of Justice, National Institute of Justice, 1997).

¹² J. A.R. Khan et al., *Police Commission of Bangladesh 1988-1989* (Dhaka: Ministry of Home Affairs, 1989).

- I. inadequacy of manpower and deficiencies in the organizational set-up;
- II. lack of transport, equipment including arms and ammunition etc;
- III. absence of confidence, willing co-operation of people, co-operative and cordial relationship with the magistracy;
- IV. defects in recruitment of police, training facilities and promotion procedure;
- V. non-recording and minimization of crimes and incorrect crime statistics;
- VI. unsatisfactory and perfunctory investigation of offences and prosecution of the offenders;
- VII. interferences in the discharge of duties by the Police;
- VIII. corruption in the Police; and
- IX. lack of strict discipline and effective supervision, inspection and control.

On the other hand, *The Needs Assessment Report*¹³ prepared by UNDP has also pointed out that:

- Significant problems exist with law and order, corruption, rule of law and access to justice in Bangladesh, and these issues adversely impact on the poor and vulnerable especially women and young people:
- The problems are so profound that they have serious implications for the social and economic well being of Bangladesh; and
- The police alone cannot solve these problems and need to work in close collaboration with the Ministry of Home Affairs, Government of Bangladesh, relevant Ministries, other agencies in the broader criminal justice sector, civil society and NGO and media, development partners and the community.

UNDP at later stage has further observed that among the serious constraints undermining the police system of Bangladesh are: (1) an outdated legal and institutional framework (devised for nineteenth century India consisting of near static villages with hardly any urbanization or industrialization, and meant principally for a colonial rule), (2) arbitrary and whimsical (mis)management of police by the executive authority of the state at every level (policemen were increasingly recruited, trained, promoted and posted without regard to merit and mainly for their subservience to people with influence and power), (3) inadequate accountability, (4) poor incentive systems, (5) widespread corruption, and (6) severe under-resourcing of law and order.¹⁴

¹³ UNDP, *Towards Police Reform in Bangladesh: Needs Assessment Report 2003* (Dhaka, UNDP, 2003).

¹⁴ UNDP, *Public Attitude Baseline survey for the Police Reform Programme Bangladesh* (Dhaka: UNDP, 2007).

Very recently, Hossain¹⁵ has observed very steep differences among the MPs, members of the civil society, general masses and the members of the police force about the challenges of police reform in Bangladesh. He pointed out that lack of political will has got the highest importance by the police (58%), while 20% of the members of the civil society and the politicians i.e., MPs have mentioned about this challenge. Similarly, bureaucratic hegemony has got the highest importance by the police personnel (58%) while 52.67% members of the civil society have mentioned this as very important. Again, the MPs have attached least importance on bureaucratic hegemony. Among all the challenges, the interest of the vested group and the resources and information shortages have got top most priority by the members of the police personnel. On the other hand, corruption and malpractices within the police force have appeared to be the biggest challenge of police reforms as have been mentioned by members of the civil society. Similar percentages of MPs (70%) have identified corruption and lack of stake holder's commitment as the biggest challenge on the way to reform in Bangladesh.

However, with Bangladesh beset with so many governance related issues, one of the major challenges is to illustrate why policing issues ought to be heard above the din. This is because the police are the most visible institution of the security sector and their reform is vital for lasting human security. Without law enforcement and the sense of workaday safety, security, and order that the police can provide, the potential for wider political, social, and economic development dips dramatically. As a matter of fact, the demand for police services has increased at a rate faster than the growth and expansion of the service delivery capacity of the police. Crime is increasing; the criminal justice system is cracking, perpetuating impunity and absence of accountability. The notion that a policeman is merely a citizen in uniform providing a lawful service to the population is rarely understood in government or within the police establishment. A number of problems can be held responsible in this regard. First of all, the lack of understanding and cooperation between the public prosecutors and the police. As public prosecutors do not come under the police department and the police department is not liable to them. This typical situation creates serious communication gap and deters proper understanding between the police and the prosecution. As a result, most of the accused get acquitted, due to poor presentation of cases and facts in courts of law. The number of convictions therefore remains very low. On the other hand, a major hindrance in the way of effective policing is the absence of cooperation and antagonistic attitude from the civil bureaucracy. Bureaucrats from the Ministry of Law, as well as others from the powerful Ministry of Public Administration (erstwhile Ministry of Establishment), argued that increased autonomy would reduce police accountability. Reflecting a

¹⁵ A K M Iqbal Hossain, "Reforms in Bangladesh Police Administration: Issues and Challenges," unpublished PhD Dissertation, Jahangirnagar University, 2013.

longstanding rivalry between the police and the civil administration, Humayoon Kabir, the Deputy Commissioner (DC) of Bogra district explained,¹⁶

Box: 1

The police have money these days, so they want to rule over other people and be accountable to no one. But if they have both the gun and no accountability, there will be anarchy. So there should be oversight from an executive magistrate, like us, for the sake of accountability. (Quoted in International Crisis Group: 2009 p.5)

While there is some truth to this, many senior civil servants are guarding against further erosion of their authority by opposing greater autonomy for the police. In addition, a major reason behind ineffectiveness of Bangladesh Police stems from the absence of cooperation from the public. Many people refuse to come forward to give evidence or to make a statement about any crime, accident or any unlawful activity, even if they know the facts and have sufficient information. Some members of the general public have a tendency to lodge a false complaint and also include the names of innocent persons, who are in no way involved in the incident or crime. Still worse is the fact that some people fearing harassment lodge no complaint. It is also very hurtful to note that enforcement of even simple civic laws is so poor that it gives rise to the 'Broken Window Syndrome.'¹⁷ The recent public outcry against the acquittal of the accused in some high profile cases is a pointer to this deeper malaise.

Where Does Bangladesh Police Stand Now

It is evident that so far Bangladesh Police has completed a very long journey but not yet been able to reach at right destination. Undoubtedly, Bangladesh police face serious limitations and constraints. Therefore in order to properly consider why Bangladesh Police is not efficient and accountable it is important to assess what resources are at their disposal. For instance, per capita expenditure on policing is \$1.40 USD in Bangladesh, as opposed to \$215 USD in the United States.¹⁸ On the other hand, as is evident from table 1.0, the police also lack human resources. Consequently, police personnel work 24-hour shifts without a rest day. The national police to population ratio are 1:1300, and at the sub district level it is as low as

¹⁶ International Crisis Group Bangladesh, *Getting Police Reform on Track - Asia Report No 182* (Dhaka: ICG, 2009).

¹⁷It is a theory which conveys about a situation of complete lawlessness. More specifically if a window in a building is broken and left unrepaired people walking by will conclude that no one cares and that no one is in changes. It is a vivid picture of ineffectiveness on the part of the police.

¹⁸ A. S.M. A Shahjahan, *Police Reform: A Bangladesh Concept. In: the Report from the ADB Symposium on Challenges in Implementing Access to Justice Reform* (Dhaka: Asian Development, 2005).

1:8000.¹⁹ An obvious deficiency in manpower results in inefficient service. Even Thanas (Police Stations) which are the most important units holding wide legal powers for the preservation of peace, prevention and detection of crime within the limit of its jurisdiction yet most of these nucleus of policing severely suffer from manpower and logistics shortages. The sizes of the existing police stations vary widely in respect of both area and population.

Table-1.0: Manpower Strength in Different Categories of Thana

The Pattern	Sub-Inspector		Asst Sub-Inspector		Constable		Others	
	M	F	M	F	M	F	M	F
Metropolitan	24	3	9	4	46	2	3	0
District	9	1	4	1	26	5	2	0
Upa zila	4	0	1	0	21	0	3	0

Source: Transparency International Bangladesh, *Investigation Report on Three police Stations* (in Bengali) (Dhaka: TIB, 2004).

By any objective measure the present man-power available in a Police Station is extremely inadequate for maintenance of law and order prevention and detection of crimes. In consequence, the people's securities are in serious jeopardy and gradually people are losing confidence in police efficiency to protect their lives and properties.

Table 1.1: Police Populations Ratio of Different Countries of the World

Country	Population
Russia	1:28
Thailand	1:228
Malaysia	1:249
United Kingdom	1:290
USA	1:334
New Zealand	1:416
Japan	1:563
Pakistan	1:625
India	1:694
Bangladesh	1:1052

Source: A K M Iqbal Hossain, "Reforms in Bangladesh Police Administration: Issues and Challenges," unpublished Ph.D Dissertation, Jahangirnagar University, 2013.

Officers at the thana are often deprived of the basic necessities required to do their jobs. Public complaints cannot be written because paper is frequently out of stock and if a vehicle is available for use, then it is without petrol. Many officers are often forced to pay out of pocket to complete even the most routine police functions. Expense claims are sent from the districts to Dhaka and reimbursements often follow

¹⁹ Ibid.

months later – and not always in full, which further drives corruption a case study presented below, would give a vivid picture. One inspector, while based in Rangpur district, described an all-too-common situation.²⁰

Box: 2

A man came to me in the middle of the night and said that a murder had been committed in his village. It was my duty to investigate. I asked the man to drive me to his village because the station vehicle was in disrepair, it had been broken for days and we had no money to fix it. The villager didn't have a car so we had to hire a taxi, which was a few hundred taka. An autopsy had to be done on the body, and I had to take it to the morgue. But the driver refused to put the body in his taxi. So, I then had to pay-with my money-for another car, which was another few hundred taka. The coroner would not perform the autopsy on the corpse without some alcohol to drink. So I had to buy a few bottles for the coroner. Then I had to pay the dome for his work. In the end I had to spend Tk2000 to Tk3000 (\$30 or 40) out of my pocket to do my job. The inspector said, "You tell me, who is going to reimburse for me this. No one" (Quoted in International Crisis Group: 2009 p.10).

In general terms, Bangladesh police encounter several problems in course of discharging their duties which can be listed as under:

- a) excessive workload due to inadequacy of manpower and long working hours even on holidays and the absence of shift system.
- b) non-cooperative attitude of the public at large.
- c) inadequacy of logistical and forensic back up support.
- d) inadequacy of trained investigating personnel.
- e) inadequacy of the state of the art training facilities in investigation, particularly in service training.
- f) lack of coordination with other sub-system of the Criminal Justice System in crime prevention, control and search for truth.
- g) distrust of the laws and courts.
- h) lack of laws to deal effectively the emerging areas of crime such as organized crime, money laundering etc.
- i) misuse of bail and anticipatory bail provisions.
- j) directing police for other tasks which are not a part of police functions.
- k) interrupting investigation work by being withdrawn for law and order duties in the midst of investigation.
- l) political and executive interference.
- m) existing preventive laws being totally ineffective in curbing criminal

²⁰ International Crisis Group Bangladesh, *Getting Police Reform on Track, Asia Report No 182* (Dhaka: ICG, 2009).

tendencies of hardened criminals and recidivists.

Currently there are eighteen ranks in the police force, which are divided into gazetted and subordinate ranks, roughly analogous to commissioned and non-commissioned officers in the military. Out of a total force of 1,48,273 police officers, there are 5,433 class-1 gazetted ranks, 15872 class-11 ranks (sub-inspector, town sub-inspector and sergeant) and the rest 1,26,968 belong to low subordinate positions which constitute Assistant-Sub-Inspectors, head constables (armed and unarmed), naiks and constables. The total strength of the force, however, does not depict the actual number of policemen available for crime control and law and order functions which concern the common man.²¹ It has been observed that only one third (a little bit more than that) of the total force are actually involved in duties like prevention, detection, investigation and prosecution of crimes and maintenance of law and order while the rest of the force are engaged in various other duties including protection of the VVIP, VIPS and other dignitaries,²² key point Installations, escort another misc. functions. Historically, majority of the police (80% constables) was equated with unskilled labour.²³ However, mere numerical strength of a Police force does not determine its effectiveness and combat power. Hossain²⁴ has strongly argued that quantitative expansion alone may not automatically lead towards qualitative improvement which is crucial for enhancing effectiveness of the police force.

Mechanism for Maintaining Accountability

Above all, police organization of Bangladesh lacks adequate accountability, both internal and external. To monitor and to collect intelligence about the activities of the Police officers across the country a specialized wing namely Police Internal Oversight (PIO) was set up in 2007. This internal oversight is headed by an Assistant Inspector General (AIG) at the Police headquarters and directly reports to the Inspector General of Police (IGP). All the units of Bangladesh Police fall under the surveillance of PIO. This unit does not have enough strength to execute power and authority.²⁵ However, Hossain has recently examined the issue and to his utter surprise he observed maximum numbers of the police force (36.67%) to state that the existing procedure for ensuring transparency and accountability is neither adequate nor inadequate. Near about 11% have stated that the procedure adopted is very poor.

²¹ A K M Iqbal Hossain, "Reforms in Bangladesh Police Administration: Issues and Challenges," unpublished Ph.D Dissertation.

²² J. A.R. Khan et al., *Police Commission of Bangladesh 1988-1989* (Dhaka: Ministry of Home Affairs, 1989).

²³ M. A. Baki, "Bangladesh Police: Historical Origins and Contemporary Developments," unpublished dissertation of MSC in Criminal Justice and Police Management, University of Leicester, UK, 2009.

²⁴ Ibid.

²⁵ T. Nasreen and M. Maniruzzaman, "Police Accountability: Problems and Prospects of Police Internal Oversight in Bangladesh," *Journal of the Department of Government and Politics* (Jahangirnagar University), 2009, pp. 125-136.

More than 18% has termed it as very poor. As a whole, only one third of the police force has opined that the existing procedure is adequate. Amazingly, OC/Inspectors is the particular group who have provided maximum (47%) support towards the existing procedure while among the ASI, SI groups have seconded (42%) the support of the OC/Inspectors. Except Additional DIG most of the higher ranking officers have expressed their view that the existing procedure for maintaining accountability and transparency within the police service is very poor.

Conclusion

In order to initiate meaningful reform to ensure accountability and to enhance effectiveness within Bangladesh police we can borrow many things from different countries. For instance we can form an authority like London Metropolitan Police Authority to promote and develop democratic as well as community policing. We should also think of enactment of act like Police Integrity Commission Act, 1996 of Australia to prevent police corruption and other serious misconduct. We must take into cognizance of constituting a commission like National Public Safety Commission of Japan to ensure the democratic control and political neutrality of the police forces. The Strategic Plan, 1991 of South Africa, specially the six 'areas of change' this plan identified viz. depolarization of the police force, increased community accountability, more visible policing; establishment of improved and effective management practices, reform of the police training system and restructuring of the police force — all these should not be overlooked while considering police reform in Bangladesh. Again it is imperative that Bangladesh Police must be strengthened in terms of manpower funds, logistics and autonomy. Nobody would like to contest that, that kind of reform would best suit to the needs of Police which is politically neutral, non authoritarian, accountable, and responsive to the community, professionally efficient and last but not least, which is an instrument for the enforcement of the rule of law. All these can be the driving force that can deliver reformed Police in Bangladesh.

Sexual Harassment in Hostile Work Environment: A Legal Study

Md. Abdul Alim*

Abstract: In a working place usually no employer is entitled to discriminate against employees on the basis of religion, sex, race, physical disability, national origins, and political affiliation. When an employee is subjected to comments of a sexual nature, unwelcomed physical contact, or offensive sexual materials as a regular part of the hostile environment harassment occurs. Supervisors, managers, co-workers and even customers can be responsible for creating such a hostile environment. Employment discrimination has become subject in various departments such as hiring, recruiting, evaluations, training, promotion policies and disciplinary action. Moreover, dissimilar political, legal and cultural constraints, feminists and other social actors have shaped sexual harassment in various ways. This article scrutinizes the cultural experiences that are not universally shared by all women in constitutional and judicial commitments to formal equality. Cultural experience of women's biological events of pregnancy, childbirth, and care affects their wage of works. In this article the author examines the laws when an employee or learner is subjected to comments of verbal, non-verbal, physical, psychological or visual harassment of sexual nature, unwelcomed physical contact, or offensive sexual materials as a regular part of the environment.

1.1. Prelude

Sexual harassment is one of the most prevalent and disturbing problems for women not only in the developing country but also in some developed countries. For many years women have recounted experiences sexually harassing behavior as part of their daily life. Man and woman are looked upon as equal, and any action trying to change the balance in status with the differences in sex as a tool, is sexual harassment.¹

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¹ This comment focuses on the sexual harassment of working women by men. However, men also have alleged sexual harassment and discrimination on the basis of sex in the workplace. See, e.g., *Huebschen v. Department of Health and Social Services*, 716 F.2d 1167 (7th Cir. 1983) (male plaintiff could not bring a § 1983 claim against his female supervisor based on Title VII since she was not an employer); *Joyner v. AAA Cooper Transp.*, 597 F. Supp. 537 (M.D. Ala. 1983), *aff'd*, 749 F.2d 732 (11th Cir. 1984) (male employee established *prima facie* case of discrimination on the basis of sex and sexual harassment based on

Sexual harassment is a very serious problem in employment sector. Each and every organization should have policy to deal with and hold a zero tolerance to investigate report and punish. The concern of social justice was the main object of the world so that people would be equally and fairly treated in all spheres of life irrespective of their race, birth, status or nationality. Any deviation from the path of justice is likely to lead to many other evils which surely demolish the whole system.² Sexual harassment could be unwanted conduct of a sexual nature, in which a reasonable person would have predicted that the person harassed would be offended, humiliated, insulted or intimidated. In the workplace, jokes, remarks, etc., are deemed discriminatory if the employer has stated it in their written policy. Sexual harassment can be any verbal, non-verbal or physical action. This is used to change a victim's status against the will of the victim. Its result is in the victim feeling inferior or hurting the victim's dignity. Due to the prevailing of sexual harassment in the workplace and its acceptance in legal framework working women fail to report harassing behavior and it causes detrimental psychological health that is harmful to their occupation development.³

1.2. Clarification of Sexual Harassment

Sexual harassment is a serious problem for working women both in developing and developed countries. It is not just the victimized employees who experience the devastating emotional injuries of sexual harassment for a long time, but is it the harasser too who fails for years to come the sting of laws that prohibit sexual harassment. In a society with attention focused on eliminating sexual harassment how do we learn to draw the line between acceptable behavior and unlawful harassment? There is no special provision in the employment law that provides for moral or sexual

unwelcome homosexual advances by manager); *Wright v. Methodist Youth Servs.*, 511 F. Supp. 307 (N.D. III. 1981) (discharge of a male employee for refusing to accept sexual advances of homosexual supervisor is a violation of Title VII). It can be said that in the two cases above involving unwelcomed homosexual advances the employees were protected because they were male, not because they were either heterosexual or homosexual. Thus when a male supervisor approaches only male employees, there is a violation of Title VII on the basis of sex, just as there would be if a male supervisor approached only female employees. An interesting dilemma might arise in the case of a "bisexual supervisor who demands sexual favors from members of both sexes." C. Sullivan, M. Zimmer, & R. Richards, *Federal Statutory Law of Employment Discrimination*, S 8.7.1, 360 n.2 (1988).

² Muhammad Afzalur Rahman, *Encyclopedia of Seerah*, vol 3 (London: Seerah Foundation London, 1984), p.75.

³ Ignoring sexual harassment may cause women to feel depression, anger, alienation, anxiety, or other psychological traumas leading to emotional breakdown. Physical effects often include headaches, nausea, loss of appetite and fatigue. See Krista J. Schoenheider, "A Theory of Tort Liability for Sexual Harassment in the Workplace", *University of Pennsylvania Law Review* at 1464-66 (1986).

harassment; however it is commonly accepted by the jurisprudence that sexual harassment occurs when the employee is subjected to acts of another person in order to obtain favors of a sexual nature. In India, *Vishaka v. State of Rajasthan*⁴ recognized sexual harassment as illegal.⁵ Bangladesh prohibited sexual harassment, and gave milestone decision in 2009.⁶ A public interest litigation brought by the Bangladesh National Women's Lawyers Association challenged in the High Court Division to step in and take action as there was no national law against sexual harassment. In 2002 the European Union Council and Parliament emphasized on the equal treatment of men and women in employment and prohibit sexual harassment in the workplace. They called it a form of sex discrimination and violation of dignity. The European Commission of the EU defines sexual harassment as:

"Unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This includes unwelcomed physical, verbal or nonverbal conduct."

The European Commission also distinguishes three types of harassment, physical, verbal, and nonverbal sexual harassment and states that there is a range of unacceptable behavior:

Conduct is considered sexual harassment if it is (1) unwanted, improper or offensive; (2) if the victim's refusal or acceptance of the behavior influences decisions concerning her employment, or (3) the conduct creates an intimidating, hostile or humiliating working environment for the recipient.

The United Nations defines sexual harassment of women as

[S]uch unwelcomed sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.⁷

In the US Federal context sexual harassment is considered to be a form of sex discrimination under Title VII of the Civil Rights Act of 1964.⁸ A workplace

⁴ AIR 1997 S C 3011.

⁵ In April 2013, India enacted its own law on sexual harassment in the workplace: The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Almost 16 years after the Supreme Court's landmark guidelines on prevention of sexual harassment in the workplace is known as the *Vishaka* Guidelines.

⁶ In the Supreme Court of Bangladesh, High Court Division (Special Original Jurisdiction), Writ Petition No. 5916 of 2008. In the matter of an application under Article 102(2) (a) (ii) of the Constitution of the People's Republic of Bangladesh. *Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh and Others*.

⁷ The United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination Against Women

⁸ Title VII of the Civil Rights Act of 1964 is to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief

harassment complainant must be filed with the Equal Employment Opportunity Commission (EEOC) and received a "right to sue" clearance, before they can file a lawsuit against a company in Federal Court. The EEOC defines sexual harassment as: a) unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when; b) submission to such conduct was made either explicitly or implicitly upon a term or condition of an individual's employment; c) submission to or refusal of such conduct by an individual used as the basis for employment decisions disturbing such individual, or such conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. The first and second are called "*quid pro quo*".⁹ They are essentially "sexual bribery", or promising of benefits, and "sexual coercion". Type third known as "hostile work environment," is the most common form. This form is less clear cut and more subjective. Sex discrimination can take two forms, either 1) *Quid Pro Quo* Harassment, or 2) Hostile Work Environment Harassment.

1.3. Defining Discrimination

In a democratic state neither the constitution nor the government is supreme. It is the people who are supreme, and they have the right to change the constitution to some extent or completely.¹⁰ In this sense social justice is more concerned with satisfying the needs rather than the wants of the society.¹¹ It itemizes the enforceable fundamental rights of all citizens, including the rights to equality before the law, the protection of the law and the prohibition of discrimination based on religion, race, caste, sex, or place of birth. In CEDAW¹² discrimination against women is defined as:

against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Civil Rights Act of 1964".

⁹ *Quid pro quo* is a Latin term means "this for that" or "something for something". In common law it indicates the exchange of something of value for something else of value. English speakers often use the term to mean "a favour for a favour"; phrases with similar meaning include: "give and take", "tit for tat".

¹⁰ A.K.M. Shamsul Huda, *The Constitution of Bangladesh*, vol.1, 2nd Edition (Chattagong: Published by Istiaq Hasan, 1997), p.959.

¹¹ David Mcquoid-mason and Likoyd Lotz, "Street Law to Teach Social Justice to Law Students in South Africa" in *Human Rights and Non-state Actors*, Edited By Dr. Mizanur Rahman (Dhaka: LECOP, 2005), p.46.

¹² The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), is adopted in 1979 by the UN General Assembly, is often described as an

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW provides a broad definition of discrimination against women as "any distinction, exclusion or restriction made on the basis of sex." It requires that women receive equality in the civil, political, economic, social, and cultural fields. This includes full access to health, physical and mental services, information, education and economic development including access to non-traditional jobs, access to credit, the right to work; and the obligation to counter stereotypical views of gender. Article 11 of the Convention¹³ deals with employment and its various sub Articles are more or less covered by the government policies and labor laws. The labor laws have specific provisions relating to employment of women in commercial and industrial establishments, shops, tea-gardens and factories. Specific work-hours with rest hours, maternity leave etc. are expressly detailed in the relevant labor laws but unfortunately due to lack of sincerity on the part of the authority to enforce the laws violations take place especially in the garments, electronic sectors and in the tea-gardens of Bangladesh. Women do not necessarily experience the same employment opportunities and equal remuneration, including benefits and the decent health and safety conditions, when compared to their male counterparts. At present in Bangladesh a large number of female workers are working in the informal sector of the garments industry without the right to organize trade unions. Women workers do not have a proper working environment. They often face violence and insecurity in their working places. Working mothers do not have facilities for their children and

international bill of rights for women. The Convention may be called the CEDAW throughout the study.

¹³ States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

are deprived of day care center facilities at their work places. Women face different kinds of harassment in their work places. There are often no separate toilets or proper water supplies for the majority of working women in their work places which promotes a disinclination to use the services provided often resulting in different urinary tract infections and other health hazards. Many woman workers work without formal appointment letters. The existing dormitory and center facilities for working women are very insufficient to meet the need. Inadequate transport, security, dormitory and hostel facilities for working women create great hazards in their lives and leave them vulnerable with their male counterparts.¹⁴ In order to prevent discrimination against women on the grounds of marriage or maternity the State must prohibit dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status. The State have to ensure women's effective right to work introducing maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. The State must take appropriate measures to provide special protection to women during pregnancy in types of work proved to be harmful to them.

1.4. Tangible and Intangible Harassment

There are two different types of sexual harassment claims, one is tangible and another is intangible. Sexual harassment occurs when a supervisor or one in authority requests sex, or a sexual relationship, in exchange for not firing or otherwise punishing the employee. It may occur in exchange for favors such as promotions or raises. In a *quid pro quo* situation an employer proposes to exchange an economic benefit for sexual compliance by an employee.¹⁵ This may be such as, "If you won't sleep with me, you won't get your promotion". This also is something less explicit, "If you want the job, you have to do something 'nice' for me."¹⁶ In *Bell v. Crackin Good Bakers Inc.*¹⁷ the plaintiff claimed that her supervisor constantly harassed her with insults such as calling her the "pimp for the office" and talking to her "like (she) was about two years old and two inches high."¹⁸ The plaintiff was again harassed by her supervisor who suggested that "he would have no women in the plant at all because men were better able to perform all of the functions required in its operation."¹⁹ The trial court granted defendant's motion

¹⁴ Hameeda Hossain, Roushan Jahan and Salma Sobhan, *No Better Option* (Dhaka: University Press Limited, 1990), pp.105-111.

¹⁵ Lin Farley, *Sexual Shakedown: The Sexual Harassment of Women on the Job* (New York: McGraw-Hill, 1978), p. 98.

¹⁶ Barbara Zalucki, *Discrimination Law - Defining the Hostile Work Environment Claim of Sexual Harassment under Title VII*, 11 W. New Eng. L. Rev. 143 (1989).

¹⁷ 777 F. 2 d 1497 (11th Cir. 1985).

¹⁸ 777 F. 2 d 1499 (11th Cir. 1985).

¹⁹ *Ibid.*, at 1501.

for summary judgment for it "considered the case as if the petitioner had been seeking relief from sexual harassment." Another example may be as such: during a business lunch at which an office worker and her employer are discussing the employee's future promotion, the employer suddenly makes sexual advances. When the employee rejects her employer's propositions he attempts to physically restrain her from leaving the table. Soon afterward the office worker is threatened with physical harm, demoted, and eventually fired.²⁰

1.5. Hostile Work Environment

A hostile work environment claim can arise from conduct of a sexual nature based on sex or based on gender.²¹ Sexual harassment may occur through the presence of shameful or sexual photographs, jokes or threats. The inappropriate behavior or conduct must be pervasive as the name implies, and create a threatening and offensive work environment. The actionable claim of sexual harassment, a hostile work environment, is more subtle and need not be characterized by the loss of an economic benefit.²² A claim based on sex involves conduct of a sexual nature, such as unwelcomed touch, leering, innuendoes, rough jokes, or the display of explicit pictures. Unwelcomed touch may include, but is not limited to, pinching, deliberate fondling, or brushing against another's body. On the other hand a claim based on gender involves conduct that is non-sexual and detrimental to a woman as a member of a protected class.

Bundy v. Jackson,²³ is the first case to recognize a claim of a sexually hostile work environment. It holds opposing views from previous sexual harassment cases in that the employee did not allege a loss of a tangible job benefit. As a substitute she alleged that sexually stereotyped insults, such as "telling her that 'any man in his right mind would want to rape you,'" and degrading propositions to "spend the workday afternoon with him at his apartment," affected her work environment and were thus prohibited by law. The court in *Bundy*, following the guide of Judge Goldberg's opinion in *Rogers*, extended the principles of Title VII to include a protection of an individual's psychological well-being from sexually harassing conduct as a condition of employment.²⁴ It described, "terms, conditions, or

²⁰ Krista J. Schoenheider, "A Theory of Tort Liability for Sexual Harassment in the Workplace", *University of Pennsylvania Law Review*, at 1464-66 (1986).

²¹ "Sex" is reserved for anatomical identity, based on genitalia and physical secondary sex characteristics. The term "gender" is used to indicate aspects of identity or behavior related to both perceptions of self and social roles. See M. Richmond-Abbott, *Masculine and Feminine: Sex Roles over the Life Cycle*, 41-53 (1983).

²² *Abolishing the Quid Pro Quo and Work Environment Distinctions in Sexual Harassment Cases under the Civil Rights Act of 1964*: Vinson I. Taylor, 60 ST. JOHN'S L. REV. 177 (1985).

²³ 641 F. 2d 934 (D.C. Cir. 1981).

²⁴ *Bundy*, 641 F. 2d at 944-45.

privileges of employment is an expansive concept which sweeps within its protective ambit the practice of creating a working environment heavily charged with ethnic or racial discrimination. ... One can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers.”²⁵ In *Henson v. City of Dundee*,²⁶ the Court of Appeals for the Eleventh Circuit delineated the necessary elements of a hostile work environment claim against an employer under Title VII. These elements include the followings: (1) the employee belongs to a protected group, i.e., a simple condition that the employee is a man or a woman; (2) the employee is subject to unwelcomed sexual harassment; (3) the harassment complained is based upon sex, i.e. but for the fact of petitioner’s sex she would not have been the object of harassment; (4) the harassment complained of affects a “term, condition, or privilege” of employment; and (5) liability is determined under the doctrine of respondent superior.²⁷

1.6. Sexual Harassment Myths

One of the basic rights women have is not to be discriminated against in the workforce and in the workplace. This right is enshrined in international law, such as United Nations Conventions, International Labor Organization (ILO) Conventions and the revised European Social Charter, as well as in the national law of all Council of Europe member states and in European Community Law.²⁸ Unfortunately reality does not always comply with the law and women continue to be discriminated against in various ways, both in the workforce and in the workplace. This is not true that only women can be harassed and that a woman can’t harass another woman and a man can’t harass another man. A man can be harassed by a woman, although such a situation is less than a male harasses a woman. The US Supreme Court recognized that illegal sexual harassment can occur between people of the same sex. Sexual

²⁵ Ibid. at 944 (quoting *Rogers v. EEOC*, 454 F. 2 d 234, 238 (5th Cir. 1971), *cert. denied*, 406 U.S. 957 (1972).

²⁶ 682 F.2d 897 (11th Cir. 1982). In *Henson*, the plaintiff was a police dispatcher who alleged that her supervisor continually propositioned her and that she had been subjected to a hostile work environment created by daily use of vulgar language. Ibid. at 899. While the court correctly decided that this is an element that needs to be stipulated, it is highly probable that such a determination would require neither excessive time nor substantive examination.

²⁷ Ibid. at 903-05. One commentator has suggested a revision of the *Henson* test, which “align[s] all actions involving harassment,” and “removes the unnecessary showing of unwelcomeness.” Michael D. Vhay, “The Harms of Asking: Towards a Comprehensive Treatment of Sexual Harassment” in *The University of Chicago Law Review*, 55 U. CHI. L. Rev. 328, 355-56 (1988).

²⁸ Sandra S. Tangri, Martha R. Burt, Leonor B. Johnson, “Sexual Harassment at Work: Three Explanatory Models”, *Journal of Social Issues*, volume 38, Issue 4, pp. 33-54, 1982.

harassment can only occur in a workplace. This is also not true. The US Supreme Court ruled that teachers, professors, and other individuals with authority in school systems, including universities and colleges, can sexually harass students in violation of the law. A teacher can sexually harass a student, male or female. Only supervisors or those in authority positions can be a harasser. A harasser can be a coworker and, in some cases, a third party such as an agent or client of the employer. The key is whether the employer knew or should have known of the harassing behavior and failed to take action.

1.7. Gender Discrimination and Retaliation

Gender discrimination is a subset of sex discrimination. It is often non-sexual but is nonetheless directed at a person because of his/her sex. Examples of discriminatory comments include employers: a) asking whether an employment candidate is married or plans on having children; b) claiming that a woman should be more feminine and wear makeup; c) claiming that a person isn't fulfilling certain gender role; d) calling a womanish male a "fairy," or "prissy" or stating that he should act more like a man; e) refusing to hire a woman in a "man's job" and *vice versa*. Retaliation happened when an employee experienced a negative action after he or she has made a report or filed sexual harassment complaint. Retaliation is illegal even if the original charge of sexual harassment was not proven. Negative actions may include being fired, downgrading, suspension, denial of promotion and poor evaluation. Any adverse employment decision or treatment would be likely to discourage a reasonable worker from making or supporting a charge of discrimination.²⁹ Retaliation is as illegal as the sexual harassment itself, though also as difficult to prove.

1.8. Sexual Harassment in Working Place

Women have been a much neglected and exploited segment from a long time. There is a direct link between a country's attitude towards women and her social and economic progress. Status of women is central to the health of a society. If one part suffers, so does the whole. From the 1970s, several US courts began to expand this definition of unlawful discrimination to include other behavior in a claim of discrimination on the basis of sex. The United States District Court of Columbia in *Williams v. Saxbe*³⁰ considered whether unwelcomed sexual behavior such as sexual advances by a male supervisor constituted unlawful discrimination. Similarly, in *Barnes v. Costle*,³¹ the Court of Appeals for the District of Columbia Circuit acknowledged that when a female employee refuses to submit to the sexual advances

²⁹ *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006).

³⁰ 413 F. Supp. 654 (D.D.C. 1976).

³¹ 561 F. 2 d 983 (D.C. Cir. 1977).

of her male supervisor and, as a result, loses an economic benefit her employer is guilty of an illegal employment practice. In *Munford v. James T. Barnes & CO.*,³² the court concluded that sexual harassment was a form of discrimination on the basis of sex and that it was a type of activity prohibited by law. However, until 1986 the United States Supreme Court recognized the hostile work environment claim as a form of sexual harassment actionable under Title VII. In *Meritor Savings Bank v. Vinson*³³ a supervisor touched female employees in public and repeatedly asked one employee to have sexual relations with him. *Vinson* alleged that during her four years of employment, she was harassed constantly by her supervisor and that such conduct affected her work environment to the point where she frequently became ill and was discharged for too much sick leave.³⁴ In considering *Vinson's* claim the Supreme Court acknowledged the existence of a hostile work environment claim of sexual harassment. Although it failed to create a detailed framework for identifying a hostile work environment³⁵ the Court observed that "sexual harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."³⁶ The harassment in this case was pervasive enough to contribute a basis for stating a claim for hostile work environment sexual harassment. It would consider facts alleging sexual harassment on a case by case basis; it may be at the record as a whole and at the totality of the circumstances, requiring particular attention to the context and nature of the harassment. The remainder of the guidelines focuses on the issues of employer liability for sexually harassed employees and prevention of sexual harassment in the workplace. The guideline points out that an employer is responsible for sexually harassing acts and with regards of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained.³⁷ This comment will not address the issue of employer liability.³⁸

³² 441 F. Supp. 459 (E.D. Mich. 1977) (employee who refused sexual advances from her supervisor subsequently was subjected to repeated sexual innuendoes).

³³ 477 U.S. 57 (1986).

³⁴ *ibid*, 60.

³⁵ *ibid*, 66.

³⁶ For a more extensive discussion of *Vinson* and the repercussions of that decision, see Note, *Meritor Savings Bank v. Vinson: What Makes a Work Environment "Hostile"?*, 40 ARK. L. Rev. 857 (1987); Note, *Between the Boss and a Hard Place: A Consideration of Meritor Savings Bank FSB v. Vinson and the Law of Sexual Harassment*, 67 B.U.L. REV. 445 (1987); Note, *Meritor Savings Bank v. Vinson: Sexual Harassment at Work*, 10 HARV. WOMEN'S L.J. 203 (1987); Note, *Meritor Savings Bank v. Vinson: Finally Supreme Court Ruling on Sexual Harassment in the Workplace: For What It's Worth*, 38 MERCER L. REV. 733 (1987).

³⁷ 29 C.F.R. § 1604.11(c) (1988).

³⁸ For a further discussion of employer liability in sexual harassment cases see Sykes, *The Boundaries of Vicarious Liability: An Economic Analysis of the Scope of Employment Rule and Related Legal Doctrines*, 101 HARV. L. Rev. 563 (1988); Smith, *When Should an*

1.9 Invasive and Offensive Behavior

In *Phillips v. Smalley Maintenance Services Inc.*³⁹ an employer touched the plaintiff without her consent. Again, he hit her bottom with the back of his hand. In addition to physical contact, the employer repeatedly harassed Phillips by asking "how often [she] and her husband had sex and 'what positions' they used" and by telling her that she had to "engage in oral sex with [her employer] at least three times a week."⁴⁰ In *Phillips*, the court accepted with little debate the claim that the employee was subject to unwelcomed sexual harassment.⁴¹ In *Robson v. Eva's Super Market, Inc.*,⁴² an employer touched the plaintiff on her buttocks and felt the back of her top, without her permission, to see if she was wearing a bra.⁴³ The court held that this conduct, in addition to verbal harassment in the form of frequent vulgarity directed towards her, and an offer of one hundred dollars to "go to bed" with him, constituted sexual harassment.⁴⁴ In *Priest v. Rotary*⁴⁵, an employer engaged in many sexually harassing physical acts, such as placing his arms around an employee's waist, grabbing areas of her body, rubbing his body against her body, and unzipping her uniform. The court held that such behavior, along with comments to another employee about her breasts, and other offensive remarks made about her to patrons, constituted sexual harassment. Other cases point out that pushing a stray tag into a woman's blouse could be as sexually harassing as peering over a bathroom stall when a woman is there, when attended by other factors such as a pattern of offensive verbal harassment or other forms of physical sexual conduct.⁴⁶ After determining whether the conduct itself is offensive, courts then questioned whether the plaintiff invited the conduct by her own behavior. In *Sand v. Johnson Co.*,⁴⁷ the court considered behavior such as giving modest gifts, an attempted kiss, and a comment about a woman's bosom as teasing behavior rather than sexual harassment. The employer followed a relationship with Sand by giving gifts which she accepted; the court concluded that these events

Employer Be Held Liable For the Sexual Harassment by a Supervisor Who Creates a Hostile Work Environment? A Proposed Theory of Liability, 19 ARIZ. ST. L.J. 285 (1987); Note, *Employer Liability for Sexual Harassment: Inconsistency Under Title VII*, 37 CATH. U.L. REV. 245 (1987); Note, *Employer Liability Under Title VII for Sexual Harassment After Meritor Savings Bank v. Vinson*, 87 Colum. L. Rev. 1258 (1987); Note, *Employment Discrimination Defining an Employer's Liability Under Title VII for On-the-Job Sexual Harassment: The Adoption of a Bifurcated Standard*, 62 N.C.L. REV. 795 (1984).

³⁹ 711 F. 2d 1524 (11th Cir. 1983).

⁴⁰ *id.*

⁴¹ *Ibid.* at 1529.

⁴² 538 F. Supp. 857 (N.D. Ohio 1982).

⁴³ *Ibid.* at 859.

⁴⁴ *Ibid.* at 859, 864.

⁴⁵ 634 F. Supp. 571 (N.D. Cal. 1986).

⁴⁶ 634 F. Supp. 571 (N.D. Cal. 1986).

⁴⁷ 33 Fair Empl. Prac. Cas. (BNA) 716 (E.D. Mich. 1982).

indicated more of a "romantic ambience." In summary, if the sexually harassing conduct is both verbal and physical and represents an offensive pattern of unwelcomed behavior, courts agree that the plaintiff has asserted a valid claim of sexual harassment.

In the case of *Janzen and Govereau v. Platy Enterprise Ltd.* (Supreme Court of Canada), *Dainna Janzen* made a complaint to the Human Rights Commission of Manitoba against *Platy Enterprise Ltd.*, its owner's agents and servants, *Pharos Restaurant*. During her period of employment at the restaurant, she was constantly sexually harassed by *Tommy*, the cook. On many occasions *Tommy* grabbed her legs and touched her knee, bum and crotch area. When she resisted his sexual advances, he told her to shut up or he would fire her. He began to scream at her in front of staff and criticize her work. Five days later, *Tracy Govereau* made a complaint of a similar nature against same parties alleging sexual harassment by "Tommy, the cook". The case went up to the Supreme Court of Canada. Chief Justice *Dickson* who delivered the judgment of the Court held that sexual harassment in the workplace might broadly be defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. When sexual harassment occurred in the workplace it was an abuse of both economic and sexual power. By requiring an employee to compete with unwelcomed sexual actions or clear sexual demands, sexual harassment in the workplace attacked the dignity and self-respect of the victim both as an employee and as a human being. *Alok Bhasin*⁴⁸ referred to a definition of sexual harassment which was mentioned in the decision in the Canadian case of *Canadian Pacific Ltd. and B.M.W.E. (Parker)* as bellow:

While physical touching and the making of sexual demands may be the crudest form of sexual harassment, giving rise to the earliest complaints and court or tribunal decisions, experience has shown that the concept of sexual harassment can be much broader. Innuendo by words or gestures, unwelcome staring, sexually-abusive jokes or other language, the unwelcome displaying of pornography and the writing of graffiti on workplace walls which singles out or demeans individual employees are all now generally recognized as forms of sexual harassment, even though they may not involve an abuse of power or the making of sexual demands by the member of one sex upon a member of the other sex.⁴⁹

In the case of *Vishaka v. State of Rajasthan*⁵⁰ a group of women's NGOs brought a petition to the Supreme Court of India. It was relating gang rape about a social

⁴⁸ Alok Bhasin wrote a book named "Sexual Harassment at Work" (Lucknow: Eastern Book Company, 2007).

⁴⁹ The quotation was extracted by Malone, J. in *David Dotchin v. Saskatchewan (Worker's Compensation Board)*, Queen's Bench, *Judicial Centre of Regina*, Canada, 2002 SKQB 279.

⁵⁰ *Vishaka and Others v. State of Rajasthan*, AIR 1997 SC 3011.

worker. The perpetrator was her own colleagues in a village in *Rajasthan*, and the malfunction of local officials to investigate. However, the problem was there were no laws in India that proscribed sexual harassment in the workplace. Legal question is whether the State actually had responsibility to protect women from sexual harassment. The Constitution prohibited discrimination on the basis of sex, and guaranteed just and humanitarian conditions of work, but it didn't refer clearly to sexual harassment. Then the Supreme court said sexual harassment includes determined behavior as: a) physical contact and advances; b) a demand or request for sexual favors; c) sexually colored remarks; d) showing pornography; e) any other unwelcomed physical, verbal or non-verbal conduct of sexual nature.⁵¹ In the landmark judgment the Supreme Court of India in the case of *Vishaka* formulated guidelines to protect women at their workplaces by defining sexual harassment and prescribed procedures for redress. The concluding portion of the judgment runs as follows:⁵² "Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly." In the above case the learned Solicitor General for the Union of India helped the Court in formulation of the guidelines. The Commission circulated the Code of Conduct for workplaces widely amongst all the Central Ministries and Government Departments. The Commission also circulated it to all State Commissioners for women, NGOs and apex bodies of the Corporate Sector and to the Media. While analyzing the definition of sexual harassment in the case of *Vishaka* the Supreme Court of India in the case of *Apparel Export Promotion Council v. A.K. Chopra*⁵³ held that:

Sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.⁵⁴

1.10. Sexual Harassment in Bangladesh

The *Nari o Shisu Nijaton Domon Ain's* definition of 'sexual harassment' is sexual urge illegally, touches the sexual organ or other organ of a woman or a child with any

⁵¹ Ibid.

⁵² Ibid.

⁵³ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁵⁴ Ibid.

organ of his body or with any substance. Section 292 of the Penal Code provides for three months imprisonment or fine or both for exhibiting or selling pornographic or obscene materials. Again section 354 of Penal Code states, 'Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.' These laws do not address the consequences of the said offence and the mental trauma of the victim and her family which are the main causes of suicides by the victims. Sexual oppression includes teasing and has taken place in context of social background and mental setup. While teasing may be enjoyable and pleasant to an American or British female of young age, it may be unpleasant and harmful to a Bangladeshi female of the same age because of cultural difference. Teasing of younger sister-in-law is a common phenomenon in Bangladesh and is generally accepted in good grace. Sometimes the same teasing in Bangladesh may cause different degree of harm to the girls/women of different mental, social and psychological make-up. The government has included section 509 of the Penal Code, 1860 in the Schedule to the Mobile Court Act, 2009 empowering the Executive Magistrates to impose punishments on the perpetrators on the spot. Section 509 of the Penal Code is quoted below: "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."⁵⁵ Intention to insult the modesty of any woman used in section 509 of the Penal Code or sexual urge illegally used in *Nari O Shisu Ain*, is very vague and almost impossible to prove. This law has not addressed the mischief of stalking and mental trauma of the victims and their family members. Ultimately this harassment is apparently the main reason for the suicides of the victims. Only one reported case in DLR in 1957, where the conviction under section 509 of the Penal Code was upheld by the then Pakistan Supreme Court.⁵⁶ The highly regarded observation of *Justice Bimalendu Bikash Roy Chowdhury* addressing this issue is quoted below:⁵⁷

The national courts should not, I feel, straightway ignore the international obligations, which a country undertakes. If the domestic laws are not clear enough or there is nothing there in the national courts should draw upon the principles incorporated in the international instruments. But in the cases where

⁵⁵ Section 509 of the Penal Code of Bangladesh.

⁵⁶ *Muhammad Sharif v. State*, 9 DLR (1957) S. C. 27 (A group of young men followed a group of college girls, who were holidaying in a public place, and passed indecent remarks and made obscene gestures).

⁵⁷ *Hussain Mohammad Ershad v. Bangladesh & others*, 21 BLD (AD)2001, p. 69, para -2

the domestic laws are clear and inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies.

In *BNWLA v. Bangladesh*⁵⁸ a High Court Division bench examine the definition of 'Sexual Harassment'⁵⁹ in education institutions and workplaces of women. Afterwards another Division Bench of High Court explains sexual harassment and its application.⁶⁰ Sexual harassment are not confined only to educational institutions and work places but extend to all private and public places, railway and bus stations, public and private transports, streets, shops, markets, cinema halls, parks and so on. The above mentioned places are not exhaustive.⁶¹

(i) Sexual Harassment includes:

- a. Unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances.
- b. Attempts or efforts to establish physical relation having sexual implication by the abuse of administrative, authoritative or professional powers.
- c. Sexually coloured verbal representation;
- d. Demand or request for sexual favours;
- e. Showing pornography;
- f. Sexually coloured remark or gesture;

⁵⁸ *Bangladesh National Women Lawyers Association (BNWLA) v. Bangladesh* reported in 29 BLD (HCD) (2009) 415.

⁵⁹ Sexual Harassment includes-

- a. Unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances.
- b. Attempts or efforts to establish physical relation having sexual implication by the abuse of administrative, authoritative or professional powers.
- c. Sexually coloured verbal representation;
- d. Demand or request for sexual favours;
- e. Showing pornography;
- f. Sexually coloured remark or gesture;
- g. Indecent gesture, teasing through abusive language, stalking, jokes having sexual implication.
- h. Insult through letters, telephone calls, cell phone calls, SMS, pottering[sic], notice, cartoon, writing on bench, chair, table, notice boards, walls of offices, factory, classroom, washroom having sexual implication.
- i. Taking still or video photographs for the purpose of blackmailing and character assassination.
- j. preventing participation in sports, cultural, organisational and academic activities on the ground of sex and /or for the purpose of sexual harassment.
- k. Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;

- l. Attempt to establish sexual relation by intimidation, deception or false assurance.

⁶⁰ 29 BLD (HCD) (2009) 415.

⁶¹ *Ibid*.

- g. Indecent gesture, teasing through abusive language, jokes having sexual implication.
- h. Insult through letters, telephone calls, cell phone calls, SMS, pottering [sic], notice, cartoon, writing on bench, chair, table, notice boards, walls of officer, factory, classroom, washroom having sexual implication.
- i. Taking still or video photographs for the purpose of blackmailing and character assassination.
- j. preventing participation in sports, cultural, organizational and academic activities on the ground of sex and /or for the purpose of sexual harassment.
- k. Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;
- l. Attempt to establish sexual relation by intimidation, deception or false assurance;
- m. 'Stalking' as defined below:

Definition of Stalking:

A male individual stalks a female if the male engages in a course of conduct-(a) with the intention of causing sexual harassment or of arousing apprehension of sexual harassment in the female and (b) that includes any of the following: i) following the female;

- ii) contacting the female by post, telephone, fax, text message (SMS/MMS/blogging/ twitting), email or other electronic communication or by any other means whatsoever.
- iii) causing an unauthorized computer function in a computer owned or used by the female or her family members;
- vi) entering or loitering outside or near the female's place of residence or place of business or work or any other place frequented by the female;
- v) keeping the female under surveillance;
- vi) acting in any other way that could reasonably be expected to arouse apprehension or fear in the female for her own safety or the safety of her family members.

1.10. Conclusion and Suggestion

"Sexual harassment" is an offensive behaviour of sexual nature that includes words or actions against a person at work, business or other dependence relations. Regarding work the employer shall: a) apply equal recruitment criteria; b) ensure equal work conditions, equal opportunities and improve the qualifications for equal earnings; c) apply equal evaluation criteria of work quality; d) apply equal salary for

an equal value work; e) take measures against sexual harassment at work; f) take measures to prohibit the persecution towards the employee who has submitted a discrimination claim to employer; and g) provide work for every position or vacancy without gender differences at all levels of professional hierarchy. The employer actions are considered discriminatory if on the grounds of gender: a) the employer uses different standards related to working hours and/or salary on equal value work towards employers; b) the employer establishes differing work conditions for his employees; c) the employer undertakes disciplinary measures towards the employee; changes work conditions, transfer him or her to another work, or terminate terms of agreement; d) the employer punishes the employee due to an appeal on the above mentioned grounds. Discriminatory announcements should not be allowed. Some propositions are to be kept in mind: a) a study or job announcement constitutes discrimination if it contains gender-specific priority criteria. b) it is forbidden to ask for information on civil status, private or family life in the job announcements. c) Producers of advertisements should ensure that their advertisement message does not conflict with the natural gender equality, does not imply any discriminatory statement on both sexes, and does not portray any woman or man in an offensive manner. On the other hand, neither State nor the courts adequately defined what sexual harassment is. The EEOC attempted to define sexual harassment broadly and to define the hostile work environment as consisting of "unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" which interferes with an individual's work performance. The guidelines clearly referred to harassment based on sex in the biological sense. A variety of distinctions were then developed in case law to define behavior as sexual harassment. Harassment could take many forms: physical, verbal, or symbolic. Courts considered the frequency of the conduct and the offensiveness of the behavior in order to find a sexually harassing condition of employment. Courts also focused on the behavior between the harasser and the victim to determine if the conduct was unwelcomed in the sense that the employee did not solicit the undesirable conduct. These distinctions were then evaluated within a pervasive standard of harshness and persistence. If the court is confronted with a case of harassment that exhibits no behavior directed at a woman in a sexual sense, but behavior directed at her because of her gender the existing EEOC definition on sexual harassment should be modified to include not only sexual conduct, but also gender-based behavior. In effect, courts have been dealing with gender harassment since the first case involving a claim of a hostile work environment. Many instances of sexual harassment are instances of gender harassment. When a co-worker selects and displays a calendar with pictures of nude women, he is making a symbolic statement that could be actionable as sexual harassment as well as gender harassment. Likewise, sexual harassment toward a woman can obviously result from conduct other than explicit behavior, if it interferes with her work performance and broadens possible terms to define harassment. In

Bangladesh the existing legal frame work supports a rape victim is very limited and outdated. Under section 375 of the Penal Code “rape” occurs when a man has “sexual intercourse” with a woman under one of the following circumstances: against her will or without her consent or with her consent, when her consent has been obtained by putting her in fear of death, or of hurt or with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married and with or without her consent, when she is under fourteen years of age. Again penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.⁶² This definition of rape needs modification because it exclude male. The new definition of “rape” should include penetration of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person. It should include instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. Sexual harassment crimes over the internet have also increased. For example, a couple may have taken intimate pictures of each other when they were together in a relationship, but distributing these pictures online without the consent of the woman is abuse and a breach of trust. These should also be included within the definition of sexual harassment.

⁶² Penal Code section 375 retrieved from <http://bdlaws.minlaw.gov.bd>.

Culpable Homicide Amounting to Murder in Bangladesh: A Legal Analysis

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Abstract: Culpable homicide and murder are the two offences under the Penal Code, 1860. Culpable homicide is defined under section 299 and Murder is defined under section 300 of the Penal Code, 1860. There is some inherent ambiguity in the provisions of culpable homicide and murder which exists in the Penal Code. Culpable homicide includes culpable homicide amounting to murder and culpable homicide not amounting to murder but it is not expressly provided in the Penal Code. It is established by our case laws. In this article an attempt has been made to distinguish culpable homicide amounting to murder and culpable homicide not amounting to murder elaborately and at the same time some concrete suggestions have been given to classify culpable homicide into three degrees for clear understanding of these two offences of the Penal Code. These suggestions have been developed considering the views and opinions given by the justices of both Appellate and High court division of Bangladesh and jurists, lawyers and other professional experts.

1. Introduction

No offence is more serious than murder in the class of offences against the person¹ and no provisions are more capable of causing confusion than section 299 and section 300 of all the provisions in the Penal Code, 1860.² Generally people get confused between culpable homicide and murder. Culpable homicide is of two kinds- culpable homicide amounting to murder and culpable homicide not amounting to murder. The difference between them is very subtle. A great deal of caution has to be exercised in separating the two offences. Murder is deliberately causing the death of a person, while culpable homicide not amounting to murder means causing the death of a person with the knowledge that the act may lead to death, but without guilty mind to

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¹ Thomas Babington Macaulay, "Introductory Report upon the Indian Penal Code" in *The Works of Lord Macaulay* (London: Longmans, Green, and Co, 1866), vol. 7 at p. 493, where Lord Macaulay, the principal draft man of the *Indian Penal Code*, opined to the Governor-General of India, Lord Auckland: "The first class of offences against the body consists of those offences which affect human life; and highest in this first class stand those offences which fall under the definition of voluntary culpable homicide."

² Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (Macmillan and Co, London, 1883), vol. 3 at p.313, where the author expressed the view that "the definitions of culpable homicide and murder are... the weakest part of the Code."

cause death. In other sense any blameworthy homicide with an intention to kill is culpable homicide amounting to murder and the offender has a positive intention to cause the death of the victim. Any other homicide, though, blameworthy but without the element of *mens rea* (guilty mind) is culpable homicide not amounting to murder. The academic distinction between these two has always vexed the Courts for more than a century.³ This has resulted in the courts being drawn into minute abstractions.⁴ Depending on the interpretation made an accused could potentially be found guilty of murder even though he has committed the offence of culpable homicide not amounting to murder and intended to inflict a minor injury. The aim of this article is to give a clear and transparent idea about culpable homicide amounting to murder and culpable homicide not amounting to murder for better comprehension of the people. Analytical and descriptive methods have been followed in writing this article. For better understanding the nature of the problem, several techniques like Key Informants Interviews (KII) with semi structured questionnaire, Focus Group Discussions (FGD) and content analysis have been carried out.

2. Homicide in the Penal Code, 1860

The word homicide is derived from two Latin words - *homo* and *cido*. '*Homo*' means human and '*cido*' means killing by a human. Homicide means killing of one human being by another human being.⁵ Although the term homicide is sometimes used synonymously with murder, homicide is broader in scope than murder. Murder is a form of criminal homicide; some other forms of homicide might not constitute criminal acts. These homicides are regarded as justifiable or excusable. For example, individuals may, in a necessary act of *self-defense*, kill a person who threatens them with death or serious injury, or they may be commanded or authorized by law to kill a person who is a member of an enemy force or who has committed a serious crime. The intent of the killer usually determines whether a criminal homicide is classified as murder or culpable and at what degree. So, homicide is either 1 Accidental, or 2 Justifiable, or 3 Culpable. The last mentioned is alone an offence under the Code, accidental and justifiable homicide being in effect excluded from the category of offences by the Chapter of General Exceptions of the Penal Code, 1860.

3. Culpable Homicide

Culpable homicide in the most simple understanding refers to taking the life of a person. It means where the killing of another human being is not approved or justified by law. Culpable means blameworthy and homicide means killing of a human being by a human being. Thus, culpable homicide means killing of a human being by another human being in a blameworthy or criminal manner.⁶ Section 299 of

³ Ratanlal & Dhirajlal: *The Indian Penal Code* (Nagpur :Wadhwa & Company, reprint 2004), p 466.

⁴ Ibid.

⁵ "<http://legal-dictionary.thefreedictionary.com/homicide>" accessed on 20. 09. 2013.

⁶ Zahurul Huq, *Penal Code*, 5th ed (Dhaka: Anupam Gyan Bhandar, 2005), p. 749.

Penal Code, 1860 does not define culpable homicide. It refers only to elements of culpable homicide.

3.1. Elements of Culpable Homicide:

According to section 299 of the Penal Code, the important elements of culpable homicide are:

- 1) Causing death of a human being and
- 2) Such death must have been caused by an act-
 - i) With the intention of causing death; or
 - ii) With the intention of causing such bodily injury as is likely to cause death; or
 - iii) With the knowledge that the doer is likely by such an act to cause death.

1) Causing death of a human being:

In order to hold a person liable under the impugned section there must be causing death of a human being as defined under section 46 of the Penal Code.⁷ But causing the death of a human being is not enough. Without one or other of those elements mentioned above, an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide. As for example, A and B are playing hide and seek. A hides behind a bush. C, who is on a prowl to hunt for rabbits observing some movement near the bush and assuming a rabbit is hiding there fires and kills A.. C does not know that A was hiding behind the bush. C will not be liable for the act though it is criminal in nature, as he did not have the intention to kill A. His act is mistake of fact and excusable by section 79 of the Code.

2) Death must have been caused by an act:

i) With the intention of causing death

An act causing death cannot amount to culpable homicide unless one of the ingredients mentioned is present. It is so when caused with certain intention or knowledge.⁸ For instance, A knows Z to be behind a bush. A intending to cause or knowing it to be likely to cause Z's death fires at the bush and kills Z. Here A has committed the offence of culpable homicide because he had intention of causing death of Z. So, the doer of the act must have intended to cause death.

ii) Intention of causing such bodily injury as is likely to cause death

The intention of the offender may not have been to cause death but only an injury that is likely to cause the death of the injured. For example, A might intended only to hit on the skull of a person so as to make him unconscious, but the person dies. In this case, the intention of the person was only to cause an injury but the injury is such that it is likely to cause death of the person. Thus, he is guilty of culpable homicide. However, if A hits B with a broken glass and A did not know that B was hemophilic.

⁷ Section 46 defines death, "the word 'death' denotes the death of a human being, unless the contrary appears from the context."

⁸ *State vs Ashraf Ali and others*, 46 DLR (AD) (1994), 241.

B bleeds to death. A is not guilty of culpable homicide but only of grievous hurt because he neither had an intention to kill B nor he had any intention to cause any bodily injury as is likely to cause death.

iii) The act must have been done with the knowledge that such an act may cause death

Knowledge is different from intention to the extent that where a person may not have the intention to commit an act which kills, he knows that the act which he commits will take someone's life or is likely to take someone's life will be considered having the "*knowledge that he is likely by such act to cause death*".

A person is responsible for the death which is caused as a result of his act when he knows that it has a probability to cause death. For example, A knows that loosening the brakes of a vehicle has a probability of causing death of someone. If B rides such a bike and if he dies, A will be responsible for B's death.

3.2. Explanations of Section 299

There are three explanations to section 299 which are discussed in the following head:

i) Knowingly a person accelerates someone's death

A person suffers from some disease or bodily infirmity and knowing about it, another person has caused an injury which has accelerated the death of that person is deemed to have caused his death. As for example, B knowing that C is labouring under such disease that a blow is likely to cause his death, strikes him though not absolutely intending to cause his death. B is deemed to have caused C's death.

ii) Infliction of such bodily injury on someone and the person dies because of such injury

Where death is caused by bodily injury the person who causes such injury is deemed to have caused the death though by proper remedies and skilful treatment death might have been prevented. An example may be given that, A cuts B's hand deliberately. B bleeds and no one helps him and he dies as a result of such bleeding. A cannot take the excuse that if B had taken medical treatment at the right time, B would have lived and there would be no culpable homicide.

iii) Abortion does not constitute culpable homicide

The causing of the death of a child in the mother's womb is not homicide; such an offence is punishable under s.315 of the Penal Code 1860. But it may amount to culpable homicide to cause the death of a child partly brought forth though such child may not have breathed or have been completely born.

It is pertinent to mention that these three explanations of section 299 are redundant for this section because after discussion of these explanations it is assumed that explanation 1 of this section 299 is similar to clause (ii) of section 300 both state intentionally causing someone's death. Besides, there is no link between the other

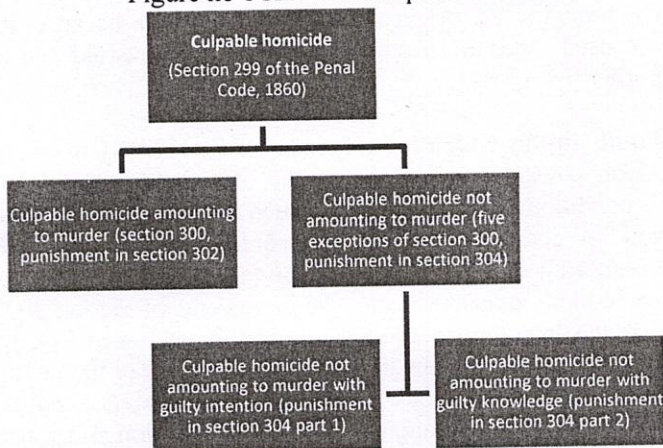
explanations and the section 299. So, it would have been better if it is omitted.

3.3. Kinds of Culpable Homicide:

There are two kinds of culpable homicide. These are not expressly provided in Penal Code. It is established by our case laws. These two kinds of culpable homicide are:

1. Culpable homicide amounting to murder as defined in section 300 of the Penal Code and
2. Culpable homicide not amounting to murder as described in five exceptions of section 300 of the Penal Code. According to the punishment of culpable homicide not amounting to murder as prescribed in section 304, it can be divided again culpable homicide not amounting to murder with guilty intention and culpable homicide not amounting to murder with guilty knowledge.

Figure no 1 Kinds of Culpable Homicide:



3.4. Culpable Homicide amounting to Murder

Section 300 of the Penal Code does not define culpable homicide amounting to murder. It only deals with the elements in which culpable homicide becomes murder. For an act to be classified as murder it must first meet all the conditions of culpable homicide *i.e* it must have firstly three elements of culpable homicide then it becomes murder. An aggravated form of culpable homicide is called murder. Secondly, all acts of murder are culpable homicide, but all acts of culpable homicides are not murder. According to section 300 of the Penal Code culpable homicide becomes murder if the act by which the death is caused is done-

1. With the intention to cause death.
2. With the intention to cause such bodily injury as the offender knows to be likely to cause death;
3. With the intention to cause such bodily injury as is sufficient in the ordinary course of nature to cause death;
4. Having knowledge that such act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and

without fair excuse for incurring the risk thereof.

So, culpable homicide is murder in four situations:

i) When an act is done with the intention of causing death

The degree of intention required is very high for murder. There must be intention present and the intention must be to cause the death of the person. Section 300 of PC does not expressly mention the high degree of intention. Whether the degree of intention is high or less can be determined from the facts and circumstances of each particular case. Instances would include: Shooting someone at point blank range; stabbing someone in the head; hanging someone by the neck till he dies; strapping a bomb on someone; administering poison to someone. From the instances it has been observed that the intention to cause death is very strong in every case.

When the accused shoots the deceased not only with the intention of causing death but also the intention of causing such bodily injury which in all probability cause his death has clearly brought the offence within section 300 because the definite intention of the accused appeared from his shooting the deceased and the offence will amount to murder.⁹

ii) Inflicting of bodily injury which the offender knows is likely to cause death

The second situation covers instances where the offender has special knowledge about the victim's condition and causes harm in such a manner which causes death of the person. Section 300 clause (2) states that culpable homicide is murder if the act by which death is caused is done with the intention to cause such bodily injury as the offender knows to be likely to cause death. The ingredients of section 300 clause (2) are, firstly, there is the intention to cause bodily injury and secondly, there is the subjective knowledge that death will be the likely consequence of the intended injury. The inherent meaning of the word "*the offender knows to be likely to cause death*" is the offender has special knowledge about the victim's condition and causes harm in such a manner which causes death of the person and it can be understood from illustration (b) of section 300. The offence is murder, if the offender knows that the particular person injured is likely, either from peculiarity of constitution, or other special circumstances, to be killed by an injury which would not ordinarily cause his death.¹⁰

iii) Bodily injury which is sufficient in the ordinary course of nature to cause death

These situations cover such acts where there is bodily injury which in ordinary sequence of events leads to the death of the person. For example, A intentionally hits B with a hockey stick and repeatedly hits him on the head. B dies as a result of the injury. Here, A is guilty of murder, although he may not have intended to cause B's death but his act is sufficient in the ordinary course of nature to cause death of B.

⁹ *Govt. of Bangladesh vs Siddique Ahmed*, 31 DLR (AD) (1976), 32.

¹⁰ *Nibir Chandra Chowdhury vs State*, 53 DLR (AD) (2001), 114.

Where the injury deliberately inflicted is more than mere likely to cause death but sufficient in the ordinary course of nature to cause death the higher degree of guilt is presumed. Thus, where the accused has inflicted four knife blows repeatedly on the person of victim which ultimately caused his death, therefore, the offence attracts section 300 that in a voluntary infliction of knife blows which is sufficient in the ordinary course of nature to cause death of the victim although he had no intention to cause death and as much the accused can not escape the liability of causing culpable homicide amounting to murder.¹¹

iv) Commission of an imminently dangerous act that it must in all probability to cause death or such bodily injury as is likely to cause death and without fair excuse for incurring the risk thereof

This head covers the commission of those acts which are so imminently dangerous which when committed would cause death or bodily injury which would result in death of a person and that such an act is done without any lawful excuse. Cases under this head have three requirements:

- (i) Commission of an inherently dangerous act
- (ii) the knowledge that the act in all probability will cause death or bodily injury which will cause death and
- (iii) the act is done without any excuse (the excuse must be lawful or legitimate excuse).

An example may be given in this regard that A without reasonable excuse throws a high intensity bomb in a crowded public place though without absolutely intending to kill any particular person and hits Z. A is guilty of murder, although he may not have a premeditated design to kill any particular person. A person who administers a well known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability to cause death or such bodily injury as is likely to cause death, and if death ensures, he is guilty of murder notwithstanding that his intention may not have been to cause death.

3.5. Punishment for Murder

Section 302 of the Penal Code provides punishment for murder: Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine; sentence is given at the discretion of the court in consideration of the facts and circumstances of the case.¹²

3.6. Culpable Homicide not amounting to Murder

Exceptions of section 300 of the Penal Code do not define culpable homicide not amounting to murder. It only deals with the situations in which culpable homicide does not amount to murder. In other words the section states that culpable homicide is not murder in certain situations. For an act to be classified as culpable homicide

¹¹ *Abdul Aziz Mina and others vs State*, 48 DLR 382.

¹² *Nausher Ali vs State*, 39 DLR (AD) 194.

not amounting to murder it must first meet all the conditions of culpable homicide *i.e* it must have firstly three elements of culpable homicide then it becomes culpable homicide not amounting to murder.

According to exceptions of section 300 of Penal Code, culpable homicide not amounting to murder covers five specific situations. These are: (a) Provocation; (b) Right of private defense; (c) Exercise of legal powers; (d) Absence of premeditation and heat of passion; and (e) Consent. As culpable homicide not amounting to murder is one of the kinds of culpable homicide under section 299 it must have the elements of i) intention of causing death; or ii) intention of causing such bodily injury as is likely to cause death; or iii) knowledge that the doer is likely by such an act to cause death. But exceptions of section 300 of Penal Code do not expressly mention these elements. Whether there is any intention or knowledge can be determined from the facts and circumstances of each particular case. It is a great lacuna of this section of 300. Because it should be expressly mentioned in the section otherwise it causes numerous divergent interpretations by the courts. However, the situations in which culpable homicide does not amount to murder are-

i) Acts under grave and sudden provocation

Culpable homicide is not murder, if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. Provided-1st- That the provocation is not sought or voluntarily provoked by the offender as an excuse for the offence.

2nd- That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of his powers.

3rd- That the provocation is not given by anything done in the lawful exercise of the right of private defense.

For example, A has an affair with B. A's husband returns home to find A in a compromising position with B. Seeing his wife in such a position and without further thinking he reaches out for a knife and kills B. A's act is not murder rather it is a culpable homicide not amounting to murder.

ii) When private defense is exceeded in good faith

Culpable homicide is not murder, if the offender in good faith in the exercise of the right of private defense without premeditation and without intent to do more harm than is necessary for the purpose of such defense exceeds the power given to him by law and causes death. As for example, A breaks into B's house and attacks him with a club. B thinking that A will not relent takes out his pistol and shoots A. If it proved that B does not exceed the rule of proportionality while exercising right of private defence, then it is not murder but culpable homicide not amounting to murder.

iii) Exceeding the ambit of discharging public duties

Culpable homicide is not murder, if the offender being a public servant or aiding a public servant acting for the advancement of public justice exceeds the powers given to him by law and causes death by doing an act which he in good faith believes to be

lawful and necessary for due discharge of his duty as such public servant and without ill will toward the person whose death is caused. For instance, Inspector C was given instructions to capture G but not shoot him. When the transport convoy broke down and G moved from his seat C thought he is going to escape and shot him. Here C would have committed culpable homicide not amounting to murder.

Death of a suspected accused due to crossfire by the Rapid Action Battalion (RAB) in Bangladesh may be another example of this exception. At present in Bangladesh the practical scenario is that Rapid Action Battalion (RAB) kills innocent persons under political motivation. In this case whether the provision of such exception will be applicable to them is a matter of question of law as well as fact. This kind of killing will be considered as murder or anything else has to be thought by the jurists.¹³

iv) When death is caused in sudden fight or heat of passion upon a sudden quarrel

Culpable homicide is not murder, if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. It is immaterial which party offers the provocation or commits the first assault.

When it is clear from the evidence that the accused did not intend to kill the victim and a free fight between the parties took place following an altercation it stands out that death of the victim was caused without any premeditation in a sudden fight in the heat of passion and without the offenders having taken undue advantage or acted in a cruel or unusual manner, it constitutes culpable homicide not amounting to murder.¹⁴

Here it has been noted that the situation of exception 1 and exception 4 of section 300 is very similar. In both situations there is absence of premeditation. In exception 1 there is total deprivation of self control, in exception 4 there is such heat of passion as clouds sober reason and urges the man to do something which he would not otherwise do.¹⁵ These two exceptions always perplex the readers. So, it will be better if these two exceptions are merged into one exception and the new exception may be:

'Culpable homicide is not murder, if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident; or if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.' It is immaterial which party offers the provocation or commits the first assault.

¹³ The Daily Star, September 18, 2014.

¹⁴ *Abul Kalam Azad vs The State*, 14 BLD (HCD) 401; *State vs Khalilur Rahman*, 48 DLR 189.

¹⁵ Ratanlal & Dhirajlal, *supra note 3*, at p. 538.

v) When death is caused of a person above eighteen years of age who voluntarily took the risk of death

Culpable homicide is not murder, if the person whose death is caused being above the age of eighteen years suffers death or takes the risk of death with his own consent. This exception should be read with sections 87 and 92 of the Penal Code.

The consent by the deceased must be given unconditionally and without any reservation. It must be further unequivocal consent which does not involve the choice of alternatives to which the person taking the life more or less has driven the person.¹⁶

3.7. Punishment of Culpable Homicide not amounting to Murder

Section 304 of the Penal Code provides punishment for culpable homicide not amounting to murder. Under this section there are two kinds of punishments applying to two different circumstances:

a) If the act by which death is caused is done with the intention of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine.

b) If the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

It is to be observed that section 304 of Penal Code consists of two parts. The first part applies to a case where there is guilty intention and the second part applies to a case where there is no such intention, but there is guilty knowledge.¹⁷

3.8. Culpable Homicide not amounting to Murder with Guilty Intention

If any accused committed the offence with intention to cause death or with intention to cause such bodily injury as is likely to cause death under the situations prescribed in exceptions of section 300, his act must be culpable homicide not amounting to murder with intention.

The section (exceptions of section 300) which provides the situations in which culpable homicide not amounting to murder does not provide where there is intention of causing death or intention of such bodily injury as is likely to cause death or where there is knowledge to cause death. It always depends on the discretion of the judges to determine whether there is any intention or knowledge in particular case considering the facts and circumstances of each case.

3.9. Culpable Homicide not amounting to Murder with Guilty Knowledge

If the act is done with the knowledge that it is likely to cause death but without any intention of causing death or such bodily injury as is likely to cause death under the

¹⁶ *Ajit Singh vs State of Punjab*, AIR 1991 SC 1738.

¹⁷ *Govt. of Bangladesh vs Siddique Ahmed*, 31 DLR (AD) (1976) 32.

situations of five exceptions of section 300, the act will be culpable homicide not amounting to murder with knowledge.

Indeed the Penal Code practically recognizes three degrees of culpable homicide. These are also established by our case laws. The first is what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is called as "murder" and punishable under section 302. The second may be termed as "culpable homicide of the second degree" *i.e.* culpable homicide not amounting to murder having guilty intention punishable under section 304 part I. Then, there is "culpable homicide of the third degree" *i.e.* culpable homicide not amounting to murder having guilty knowledge punishable under section 304 part II.¹⁸

4. Difference between Culpable Homicide Amounting to Murder and Culpable Homicide not amounting to Murder

Culpable homicide amounting to murder and culpable homicide not amounting to murder are two types of culpable homicide. The elements of culpable homicide exist in both kinds. But in culpable homicide amounting to murder the elements *i.e.* intention and knowledge are mentioned in section 300 and in culpable homicide not amounting to murder the situations are mentioned in exceptions of section 300. Their characteristics are not same. As a result it is difficult to compare culpable homicide amounting to murder and culpable homicide not amounting to murder with link of interrelation to each other. In awarding punishment of culpable homicide not amounting to murder intention and knowledge are referred in section 304. Indeed, intention and knowledge are important elements of both culpable homicide amounting to murder and culpable homicide not amounting to murder. It is inferred from case laws that the intention and knowledge of culpable homicide not amounting to murder is in lesser degree than that of culpable homicide amounting to murder. Even it is perceived from punishment of culpable homicide amounting to murder and culpable homicide not amounting to murder under sections 302 and 304. Therefore, here it has been tried to distinguish culpable homicide amounting to murder and culpable homicide not amounting to murder in terms of intention and knowledge.¹⁹

¹⁸ Ratanlal & Dhirajlal: *supra* note 3, at p. 465.

¹⁹ In most of the text books of Penal Code the writers have tried to distinguish between culpable homicide and murder. This distinction is not logical as culpable homicide is genus and murder is species. Culpable homicide (genus) has two species- murder and culpable homicide not amounting to murder. Genus (culpable homicide) can be compared with its two species separately or two species can be compared with link of interrelation to each other. It is difficult to compare murder and culpable homicide not amounting to murder (two species of culpable homicide) in the Penal Code because in the provision of murder only the elements *i.e.* intention and knowledge of murder are mentioned and in culpable homicide not amounting to murder only the situations are mentioned. Their characteristics are not same. Despite that they have tried to distinguish culpable homicide and murder as there is no clear distinction between these two offences in Penal Code. They have done it superficially. It has made very complex

Intention and knowledge of culpable homicide amounting to murder can be inferred from section 300 and of culpable homicide not amounting to murder from its punishment under section 304. These distinctions have been shown in the following table:

Table 1

Difference between Culpable Homicide amounting to Murder and Culpable Homicide not amounting to Murder

Culpable homicide amounting to murder	Culpable homicide not amounting to murder
Culpable homicide becomes murder if the act by which death is caused is done -	Culpable homicide is not murder if the act by which death is caused is done-
Intention	
(1) with the intention ²⁰ of causing death; (sec. 300).	(1) with the intention of causing death; (sec. 304).
(2) with an intention to cause such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused. (sec. 300).	(2) with an intention to cause such bodily injury as is likely to cause death. (sec. 304).
(3) with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death. (sec. 300).	
Knowledge	
(4) with the knowledge that the act is so imminently dangerous that it must in all probability to cause death. (sec. 300).	(3) with the knowledge that such an act is likely to cause death. (sec. 304).
Punishments	
(5) Section 302 provides punishment for murder- Whoever commits murder shall be	(4) Section 304 provides punishment for culpable homicide not amounting to murder -

to comprehend the distinction between culpable homicide and murder to the students and general people.

²⁰ In culpable homicide amounting to murder the intention is of high degree. 'High degree of intention' is not referred in section 300 but it can be perceived from various case laws of the courts.

Culpable homicide amounting to murder	Culpable homicide not amounting to murder
punished with death or imprisonment for life and shall also be liable to fine.	a) If the act by which death is caused is done with the intention of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine. b) If the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

(The bold words indicate the main differences of culpable homicide and murder).

5. Some thoughts of other Countries Regarding Murder and Culpable Homicide

The Penal Code was enacted in 1860 as 'Indian Penal Code' and it remains the law of India, Pakistan and Bangladesh. Versions of it have been enacted in Singapore, Malaysia and other Asian jurisdictions. The sources of Penal Code of some Commonwealth countries are also the Indian Penal Code. Despite some changes, most of the countries retain the substantive provisions of sections 299 and 300 of the Indian Penal Code. As the provisions of murder and culpable homicide bewilder the courts, it requires some changes to meet the loopholes of the provisions. A number of countries are trying to reduce the lacunae of the law of murder and culpable homicide by proposing a new idea about it.

In an international seminar in India²¹ it has been said that the Indian Penal Code is not a modern code in true sense and the provisions of murder and culpable homicide should be changed. Some of the speakers argued that the draft men of original Penal Code have created the confusion by defining culpable homicide under section 299 and creating five exceptions to murder under section 300 and calling it as culpable homicide does not amounting to murder. To them, since both sections 299 and exceptions to section 300 deal with the same matter, it would be better to omit section 299.

The Penal Code of Singapore was adapted from the Indian Penal Code of 1860. Despite numerous changes made to the Singaporean Penal Code, the substantive

²¹ This seminar was organized by Dr. Ram Manohar Lohiya National Law University, Lucknow, India, on December 14-15, 2010, commemorating the 150th anniversary of the Indian Penal Code, 1860.

provisions remain in *pari materia*²² to sections 299 and 300 of the Indian Code. In a paper in Singapore²³ the three alternative proposals regarding the provisions of murder and culpable homicide has been made. Proposal one offers the creation a third tier structure between the current two-tier structure of ‘culpable homicide’ and ‘murder’. A gross negligence provision will be added to culpable homicide. First tier will include section 300 (a) which will be called ‘First tier Murder’ second tier will include sections 300 (b), (c), (d) which will be called ‘Second tier Murder’ and third tier will include partial defence and gross negligence which will be called ‘Culpable Homicide’. Proposal two proposes to retain the existing two-tier structure *i.e.* ‘culpable homicide’ and ‘murder’. Proposal three proposes some refinements while largely preserving the current system.

The Law Commission for England and Wales²⁴ though they do not follow the Indian Penal Code but their Penal Code used the term murder and manslaughter (culpable homicide), recommend the adoption of a three-tier structure of homicide offences to replace the current two-tier structure of ‘manslaughter’ and ‘murder’. In descending order of seriousness, the offences should be ‘first degree murder’, ‘second degree murder’ and ‘manslaughter’. The New Zealand Criminal Law Reform Committee²⁵ although in New Zealand Indian Penal Code is not based, suggested abolishing the distinction between murder and culpable homicide and retaining only the provision of culpable homicide. It was met with scathing criticism and some years later the New Zealand Crimes Consultative Committee accepted that there was widespread support for continued legal use of the word “murder”.²⁶ The Law Reform Commission of Australia also recommends that the murder and culpable homicide distinction should be retained because the labeling of offences is important and labeling is the basis of the distinction between murder and culpable homicide.²⁷

6. Jurists and Lawyers views on Culpable Homicide and Murder in Bangladesh

The writer has consulted with some Justices and Advocates of Higher Court of Bangladesh on the law of murder and culpable homicide as stated in Penal Code, 1860. Almost all of them have given about same opinion regarding the law of culpable homicide and murder. Most of them have said that the law of culpable

²² The phrase *pari materia* used in connection with two laws relating to the same subject matter that must be analyzed with each other.

²³ Dierdre Grace Morgan, *How May the Definition of Culpable Homicide And Murder in the Penal Code be Removed or Improved?* AGC Law Reform Essay Competition 2013, p.5.

²⁴ Law Commission for England and Wales, Report on Murder, Manslaughter and Infanticide (Law Com No. 304, 2006) at Para 2.1.

²⁵ Criminal Law Reform Committee New Zealand, Report on Culpable Homicide (July, 1976). http://openlibrary.org/b/OL4277757M/Report_on_culpable_homicide. [accessed on 25. 09. 2013].

²⁶ The New Zealand Crimes Consultative Committee, *Crimes Bill, 1989: Report of the Crimes Consultative Committee* (April, 1991) at 43-45.

²⁷ The Law Reform Commission of Australia, Report on Homicide: murder and involuntary manslaughter ((LRC 87-2008) (Para 1.24.))

homicide and murder as stated in Penal Code should be changed. It is a hundred fifty years age old law in which from the very beginning there was vagueness in the term of murder and culpable homicide.²⁸ According to Justice Nazmun Ara Sultana, the law of culpable homicide and murder is feasible but the language of this law could be written lucidly. She further added that in case of appeal the justices of the higher court give verdict in cool brain taking due time. Although the language of the law is very complex, they (justices of higher court) get enough time to explain it. It results in least mistake in final judgment. She added for making the right judgment, the language of law should be lucid. It will help the judges to give judgments within short time.²⁹ As per Justice S.M. Emdadul Hoque the language of culpable homicide and murder is complicated. It is very difficult to comprehend the law easily. Not only the students but it is also difficult for the judges and lawyers of the courts to apprehend the differences between culpable homicide and murder.³⁰ He further added there are so many cases in which the lower courts convicted the accused under section 300 and gave death penalty or life imprisonment but in appeal the higher court acquitted the accused or gave only punishment under section 304 part two after considering the facts and circumstances of the cases.³¹ Abdul Mazid, District and Sessions Judge, also acknowledged that not all but some of the judges of lower court might make mistake in their judgments. He also opined that as the language of law of culpable homicide and murder is very complex, it is very logical to rewrite this law of culpable homicide and murder in simple language.³² Justice Moyeenul Islam Chowdhury also said that the provisions of murder and culpable homicide should be changed and written in plain language for better understanding of the judges and lawyers.³³ Justice Sayed Refaat Ahmed has also echoed the same view. He also expressed his view that there are three degrees of murder in English law. In our system it will be better if three degrees of murder is clearly explained.³⁴ Advocate A.S.M Abdul Mubin has said that murder and culpable homicide are so blended that most of the time the judges make mistake in giving decisions. If it is written in clear

²⁸ See Sir James Fitzjames Stephen's comment in footnote 2.

²⁹ Interviewed with Justice Nazmun Ara Sultana, the first female Justice of Appellate Division, Supreme Court of Bangladesh, held on 10.06.2014, time 1:30 pm.

³⁰ Interviewed with Justice S.M Emdadul Hoque (Justice of High Court Division, Supreme Court of Bangladesh), held on 09.06.2014 time 4:15 pm.

³¹ See the cases- *Abu Taher vs State*, 58 DLR (2006) 34; *Abdul Mannan alias Mona Miah vs State*, 58 DLR (2006); *Lal Miah alias Lalu vs the State*, 41 DLR (AD) (1989), 3; *Abdul Khaleque and others vs State*, 48 DLR (1996), 446; *Amar Kumar Thakur vs The State*, 40 DLR (AD) (1988) 147. In these cases the Lower Courts gave the accused death penalty but in appeal the Higher Court altered these verdicts and acquitted the accused considering the facts and circumstances of the cases.

³² Interviewed with Abdul Mazid (District and Session judge of Dhaka), held on 26.08.2014 time 4:15 pm.

³³ Interviewed with Justice Moyeenul Islam Chowdhury (Justice of High Court Division, Supreme Court of Bangladesh), held on 05.06.2014 time 4:45 pm.

³⁴ Interviewed with Justice Sayed Refaat Ahmed (Justice of High Court Division, Supreme Court of Bangladesh), held on 08.06.2014 time 4:30 pm.

language then there will be least possibility of error in judgments in courts.³⁵ Dr Shah Alam explained that the complexity of the provisions of murder and culpable homicide takes huge time of the judges to explain the reasons of their judgments and it may cause delay in dispensing judgments. So, it is reasonable to rewrite this law of murder and culpable homicide.³⁶

7. Suggestions to Dispel the Confusion about Culpable Homicide and Murder in the Context of Bangladesh

The Penal Code of Bangladesh recognizes three degrees, earlier clarified, of culpable homicide. Those are also established by our case laws. Unlike other countries there is no need to create the third tier of homicide in our Penal Code. The two sections (s.299 & s.300) are so much complex that the general people cannot understand the language easily. The distinction between them and the inherent word meaning of the sections are very complicated and not easily understandable. The definition of culpable homicide and its kinds are not expressly provided in section 299. It always perplexes the readers. Moreover, the explanations, exceptions and illustrations of these sections 299 and 300 make it more difficult to perceive the provisions. As there is no clear interpretation of meaning of the two sections it is always dependent on the discretion of judges to interpret it. As a result, a divergent interpretation may appear. So, considering these problems and above opinion of Justices and lawyers it can be said that there is a need for a detail and transparent interpretation of both the provisions to reduce this ambiguity.

The present study proposed a suggestion on the provisions of culpable homicide and murder. This suggestion has been made not on the classification of culpable homicide but on the degree of intention and knowledge of culpable homicide. The study proposed the following structure in replacement of sections 299, 300, 302 and 304 of the Penal Code, 1860 to make the law of culpable homicide, murder and its punishments more clear and transparent:

Proposed Section 299: Culpable Homicide Amounting to Murder (first degree of culpable homicide)

Where a person kills another unlawfully it shall be the offence of murder if the act is done:

- (a) With the intention to cause death.
- (b) With the intention to cause such bodily injury that the offender has previous knowledge about the victim's condition and causes injury in such a manner which causes death of the person.
- (c) With the intention to cause such bodily injury to any person which is

³⁵ Interviewed with Advocate A.S.M Abdul Mubin (Former Deputy Attorney General, Supreme Court of Bangladesh), held on 05.06.2014 time 2:15 pm.

³⁶ Interviewed with Dr Shah Alam (member of Law Commission of Bangladesh), held on 11.06.2014 time 12:15 pm.

sufficient in the ordinary course of nature to cause death.

- (d) With the knowledge that such act is so imminently dangerous that it must in all probability cause death or such bodily injury as is certainly to cause death and without fair excuse for incurring the risk thereof.

Illustrations:

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b) A knowing that Z is labouring under such disease that a blow is certainly to cause his death strikes him and causes his death though not absolutely intending to cause his death. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.
- (c) A intentionally hits B with a hockey stick and repeatedly hits him on the head. B dies as a result of the injury. Here, A is guilty of murder, although he may not have intended to cause B's death but his act is sufficient in the ordinary course of nature to cause death of B.
- (d) A without reasonable excuse throws a high intensity bomb in a crowded public place though without absolutely intending to kill any particular person and hits Z. A is guilty of murder, although he may not have a premeditated design to kill any particular person.

Note: the word 'likely' which is used in Penal Code frequently has not been used here because the meaning of the word is ambiguous.

Proposed Section 300: Culpable Homicide not Amounting to Murder with Guilty Intention (second degree of culpable homicide)

Where a person kills another unlawfully it shall be culpable homicide with guilty intention –

- (a) If the offender deprived of the power of self-control by grave and sudden provocation, without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel or unusual manner causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
- (b) If the offender in the exercise in good faith of the right of private defence without premeditation and without intent to do more harm than is necessary for the purpose of such defense exceeds the power given to him by law and causes death.
- (c) If the offender being a public servant or aiding a public servant acting for the advancement of public justice exceeds the powers given to him by law and causes death by doing an act which he in good faith believes to be lawful and necessary for due discharge of his duty as such public servant and without ill will toward the person whose death is caused.
- (d) If the person whose death is caused being above the age of eighteen years suffers death or takes the risk of death with his own consent.

Illustrations:

- (a) A has an affair with B. A's husband returns home to find A in a compromising position with B. Seeing his wife in such a position and without further thinking he reaches out for a knife and kills B. A's act is not murder rather it is a culpable homicide with guilty intention.
- (b) A breaks into B's house and attacks him with a club. B thinking that A will not relent takes out his pistol and shoots A. If it proved that B does not exceed the rule of proportionality while exercising right of private defence, then it is not murder but culpable homicide with guilty intention.
- (c) Inspector C was given instructions to capture G but not shoot him. When the transport convoy broke down and G moved from his seat C thought he is going to escape and shot him. Here C would have committed culpable homicide with guilty intention but not murder.
- (d) A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

Note: In proposed section 300 intention to cause death and in the proposed section 301 the knowledge to cause death have been stated for defining culpable homicide with guilty intention and culpable homicide with knowledge. Besides, in proposed section 300, exception 1 and exception 4 of original s.300 of Penal Code, 1860 has been merged together as exception 1 and exception 4 is similar.

Proposed Section 301: Culpable Homicide not amounting to Murder with Guilty Knowledge (third degree of culpable homicide)

Where a person kills another unlawfully it shall be culpable homicide with guilty knowledge-

- (a) If the act is done with the knowledge that it may cause death but without any intention of causing death.
- (b) With the knowledge to cause such bodily injury which is probably to cause death.

Illustrations:

- (a) A, a doctor uses an infected syringe knowingly on a patient thereby infecting him with a terminal disease. The act by itself will not cause death, but the doctor has knowledge that his actions will lead to someone's death. If any patient died because of any infected disease, it will be a culpable homicide with guilty knowledge.
- (b) A, incurring altercation with B gives B a blow. B, who suffers from an enlarged spleen of which A was not aware, B dies as a result. A is not liable for culpable homicide with guilty intention as he has no intention to cause death but merely to cause an injury which he has knowledge that it may cause death.

Note: The difference between illustration (b) of proposed section 299 and illustration (b) of proposed section 301 is that in former case the accused previously knows the ill condition of the victim and knowing it that a blow certainly causes his death hits the victim. So, it is a case of murder. In latter case the accused without knowing the ill condition of the victim hits him and the victim dies as a result.

Proposed Section 302: Punishment of Murder.

Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

Proposed Section 303: Punishment of Culpable Homicide not amounting to Murder with Guilty Intention

Whoever commits culpable homicide not amounting to murder with guilty intention shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Proposed Section 304: Punishment of Culpable Homicide not amounting to Murder with Guilty Knowledge

Whoever commits culpable homicide not amounting to murder with guilty knowledge shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

8. Conclusion

After analyzing culpable homicide which includes culpable homicide amounting to murder and culpable homicide not amounting to murder it has been found that there is some haziness of the wording of provisions of culpable homicide, murder and culpable homicide not amounting to murder, its explanations and illustration, as it exists in the Penal Code which causes numerous variations of interpretations. The section 299 does not define culpable homicide. It only mentions the elements of culpable homicide. Culpable homicide is of two kinds- culpable homicide amounting to murder and culpable homicide not amounting to murder. Section 300 deals with these two kinds of culpable homicide which is quite difficult to apprehend. Moreover, its explanation and illustration also makes it very complicated to understand sections 299 and 300. Sometimes it is possible that the judges of the courts may mistake to ascertain whether the accused would be punished under murder or culpable homicide not amounting to murder. Not only the judges but also the advocates of both defence and prosecution sometimes cannot focus the matter rightly. It takes huge time to give a final judgment which is not good for both the parties.

The field of culpable homicide *i.e.* culpable homicide amounting to murder and culpable homicide not amounting to murder is very vast and is of practical utility. The distinction between the two has always been perplexing to the law students. The

killing of someone is called homicide. Some homicides may be planned while others are accidental. The loss of life is equal in both circumstances, but the killer's criminal intent and the factors involved are used to classify homicide either as murder or not amounting to murder. So, whenever a charge is framed for murder, the question of distinction between mere culpable homicide not amounting to murder and culpable homicide amounting to murder shall necessarily come up for consideration. Now a days it is found that the trial courts in most cases, and the Appellate court in some cases, avoid entering into the elucidation of the law relating to culpable homicide and elaborate discussion of facts to find out which facts attract mere culpable homicide not amounting to murder and which attract murder. Sections 299, 300, 302, and 304 deal with culpable homicide, murder and culpable homicide not amounting to murder and its punishments in an elaborate manner. All the provisions are not exhaustive and there is need to elaborate interpretation of these provisions for better administration of justice. The detail discussions about culpable homicide, murder and culpable homicide not amounting to murder and its punishments made in this article and the draft structure about it which is proposed in this article may be helpful for this purpose.

Welfare Events of Female Workers in Tannery and Footwear Industries: In the light of Bangladesh Labour Act

Zelina Sultana*

Abstract: Female labours cannot work properly and continue their job without some essential requirements which shall be provided by their employers. Welfare facilities, leave especially maternity leave, working hours, room for their children etc. are very crucial for ensuring working environment for female labours at present. However these are unavailable in tannery as well as footwear industries in Bangladesh. Thus relocation of tannery industry without these benefits will become hostile for female workers. This paper mainly examines the present welfare measures with some other benefits which shall be provided by the tannery and footwear industries under Bangladesh Labour Act, 2006 (amended in 2013) here in after stated BLA and also find out the inconsistencies done by the employer as well as to give some suggestive measures for a better beginning of relocation in Savar near Dhaka.

1. Introduction

In every sectors woman plays significant role in Bangladesh including industries. Tannery industry of Bangladesh is the forth foreign currency earner of Bangladesh which plays a positive role in the development process of Bangladesh. So, female worker's contribution is also mentionable in the development of Bangladesh. Women are involving in every sector of tannery industries rather maintaining heavy machineries as owner can engage them with cheap rate. Tannery industries provide multi-types of functions like processing of raw hides, maintaining of machineries, finishing leather, footwear and other leather goods like handbag, suitcase, belt, wallet, gloves etc. making, polishing of the leather goods etc. Broadly it can be divided three components¹ leather tanning, footwear and other leather goods. Very few female labours are engaged in managing light machineries and processing animal hides for absenting some benefits which are pre-requisites for them. Tannery industries have already belonged to red category that is highly polluted in Bangladesh. Thus workers of these industries have to work in such a dangerous condition which is detrimental to their health and life. However, this paper mainly focuses on certain welfare procedures for female workers rather their safety and health issues. The welfare events and some other measures which are very essential

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¹ Nazneen Ahmed and Zaid Bakht, Leather Footwear Industry in Dhaka: A case Study, June 2010, Bangladesh Institute of Development Studies.

for female workers should be provided by the owners of tannery industries as well as footwear industries to give a friendly working environment. The ways for relocation journey of tannery industries in Savar area can be favorable for the female workers are studied in this paper.

2. Objectives

- To study the availability of certain welfare events like first-aid appliances, canteens, and child care room.
- To examine some other facilities like daily working hours, overtime, break for meals and maternity benefit which are available in the tannery and footwear industries.
- To suggest better facilities for women workers in the light of Bangladesh Labour Act for relocating of tannery industries at Savar, Dhaka.

3. Methodology

Data and information is collected from both primary and secondary sources to achieve the objectives of this research. An empirical study is made in the Exim Leather Industry and Exim Footwear Ltd. in Hazaribagh area, Dhaka to give a look on overall situation of female workers of tannery industry as well as footwear industries. About fifty female workers from different leather industries of Hazaribagh are interviewed to collect the primary data about the topic. Some secondary scientific web research have been reviewed also which mainly focuses on the pollution of tannery industries and its impact. There is a scarcity of research in the related field. Thus maximum data and information have been gathered from primary source through personal interview and field visit.

4. Welfare Measures for Female Workers in Law and Truth

Employers are liable to provide many safety and welfare measures for the betterment of their workers. Female workers need some extra facilities rather male for their better performance. Bangladesh Labour Act, 2006 (BLA) introduces many welfare measures for the betterment of workers and particularly for the female workers. The facilities which are provided by the owner of tannery and footwear industries have been examined during the survey. Study is based on two tannery industries named Exim Leather and Jamila Tannery Ltd. and also seven footwear industries. Exim leather which launches their new footwear section before three months ago has engaged female labours before one month ago for their new footwear section. The female workers have shared their experiences about their past experiences from different leather industries named Dhaka Footwear, Access Leather, Top Fit Industries, Asia Hand-gloves, Rupali Tannery and Helal Traders. Thus including Exim Leather Industry and footwear section, more six industries data have been collected from there. One experienced mechanical engineer under whose supervision five female workers work as light machine assistant in Jamila Tannery Ltd. has been interviewed.

Table I
Percentage of Women Labors are surveyed

Name of Industry	Total Female Workers	(%) of Surveyed Female Workers
Exim Leather Industry and Exim Footwear	100	70%
Dhaka Footwear	200	10%
Access Leather	250	15%
Top Fit Industries	60	30%
Asia Hand-gloves	150	10%
Rupali Tannery	120	10%
Helal Traders	130	10%

Source: Survey, 18 December, 2014

However, table I presents the percentage of female workers of different tannery and footwear industries. Footwear industries have employed more female workers in suing, cutting, packing and polishing sector rather tannery industries. Very few female are involved in Exim leather and Jamila Tannery like 3% and 5% respectively. Some welfare facilities are essential for both male and female workers and some are necessary only for female. Thus following benefits under BLA have been studied in different tannery and footwear industries.

- First-aid appliance: First aid box and an almirah for this reason are most important facilities which every establishment shall provide at least one for every one hundred and fifty workers employed. One trained person of first-aid treatment shall give the charge of the first-aid box and identified by a special badge for easy access.² These facilities are essential for all employed workers both male and female in the industries. All examined listed tannery and footwear industries have thousands of workers both male and female but unfortunately no such box and almirah have been found. Though these facilities are essential for occupational injury which is common in every industry, unluckily it is unavailable in surveyed tannery as well as footwear industries.
- Canteen and Shelters: For more than one hundred workers employed, every establishment shall provide adequate canteens for their workers.³ Reviewed seven industries have no canteens facilities for their workers and no room for shelters for their female or male workers. Employers and employees have showed the dangerous chemical and severe pollution cause for not having the canteens and shelters. It is interesting that all of the workers who are involved in tanning or footwear move to their own house for taking lunch at break time. There are no hotels or restaurants in the total area for the reason of dangerous effluent and chemicals. Tannery industries need more places for tanning and continuing other activities but very few industries possess such area for a

² Section 89, *Bangladesh Labour Act 2006* (Amended in 2013),

³ *ibid*, Section 92.

standard and complete tannery industry. On part of employer they argue that congested place and dangerous for making canteen and shelters in working place for female and male workers. However, a separate place is required where all canteens and shelters for both male and female labors will be established separately which will be situated few far from tannery or footwear region.

- Child Care Room: Child care room is not available in the examined tannery and footwear industries though there is a strong provision for room for the children in Bangladesh Labour Act. Every establishment shall provide and maintain a suitable room for the use of children where more than forty women workers are employed.⁴ Women workers of tannery and footwear industries keep their children at home during their working time. Those who have no one to look after their children, resign from their job. Nasrin Akter Asha (30 years) who has engaged in Access Leather industry for four years, resigned from her job at the time of birth of her first baby girl. She is unable to continue her job for not remaining a child care room though total number of women workers of that industry is 250. She is bound to give child marriage to her daughter for involving again in job. However, after long break she has joined Exim Leather Industry as unskilled labour.⁵ It is found that child care centre is absent from Hazaribagh area. Reasons are extreme pollution, use of dangerous chemical detrimental to child health and overcrowded. Female workers strongly support for separate tannery village at Savar with large child care centers in a safe place where canteens or restaurants can also be established for workers. However relocation of tannery cannot be successful without providing these all facilities in new area. Interviewed women workers are resided in Boubazar slum or Hazaribagh which is very near to tannery industrial polluted area. Workers are bound to make their houses near tannery for their resident for absent of canteens, shelters and child care room. Thus they are in fear about new relocation without these facilities. Ultimately the new area will be turned as residential area after some years without these services.
- Working hours, leave, and break for meal: Normal working hours for female labours should not be in between 10.00 pm and 6.00 am.⁶ Workers of industry and factory will get one day as weekly holyday.⁷ All footwear and other leather goods industries fortunately follow these rules. Female labours of footwear industries are liable to work 8 hours per day with one day holyday and one hour gap for lunch. Table II shows the working hours for female workers. They get one day as holyday on Friday and an hour mealtime from 1.00 pm to 2.00 pm. They all travel to their home for meal near the industries which is very tough to cover within one hour. Sometimes they resign for the reason of distance between house and industry.⁸

⁴ Ibid Section, 94.

⁵ Personal interview with Nasrin Akter Asha, 18 December, 2014.

⁶ Bangladesh Labour Act 2006, Section 109.

⁷ Ibid, Section 103.

⁸ Personal interview with Pia Akter Lia who has resigned from Helal Traders for distance reason.

Table II
Working Hours for Women Labours

Name of Industry	Daily Working hour	Gap for meal	Holyday
Exim Leather Industry Exim Footwear Ltd.	8.00 am to 8.00 pm	1 hour	1 Day
	8.00 am to 5.00 pm	1 hour	No Holiday
Dhaka Footwear	8.00 am to 5.00 pm	1 hour	1 Day
Access Leather	9.00 am to 6.00 pm	1 hour	1 Day
Top Fit Industries	8.00 am to 5.00 pm	1 hour	1 Day
Asia Hand-gloves	8.00 am to 5.00 pm	1 hour	1 Day
Rupali Tannery	8.00 am to 5.00 pm	1 hour	1 Day
Helal Traders	8.00 am to 5.00 pm	1 hour	1 Day

Source: Survey, 18 December, 2014

There is a different picture for women workers who have engaged in tanning or maintaining light machineries as assistant or directly in processing hides in tannery. There is no weekly leave for women workers. They receive extra payment for working at holiday only. Their working hour is not same with the women workers of footwear and other leather goods industries. They have to work from 8.00 am to 8.00 pm.⁹ Their normal working hour is 12 hours, though they receive no extra payment. They only receive refreshments in morning and in afternoon rather the workers of footwear industries. Reason behind this hard working schedule is animal leather is destroyed very quickly and cannot preserve for long time without further processing. Processing is necessary as soon as possible. Thus all workers both male and female who have engaged with this blue leather making process have to work hard without holiday and 12 hours a day. This is totally inconsistent with the provision of BLA.¹⁰ Very few women about 3% women¹¹ are involving as light machine assistant for this rigid schedule in Exim Leather Industry. At first 15% of female workers are engaged as light machine assistants in Exim Leather Industry. After few months number is decreasing and within one year it just dropped at 3%. Same condition has seen in Jamila Tannery Industries Ltd. 25% female workers are employed at first as light machine assistant but after one year and before auction sale the number is fall at 5% as stated in Table III.¹² Though female are interested to come this sector for their illiteracy cause¹³ but hard timetable is an obstacle. Female workers can continue if shift system is introduced and working time is reduced by the industries.

⁹ Both in Exim Leather Industry and Jamila Tannery Limited.

¹⁰ Section 103 of BLA

¹¹ Estimated in Exim Leather

¹² Personal Interview with Harunur-Rashid who is an ex employee in Jamila Tannery Ltd., 22 December 2014

¹³ No professional Degree and working experience is required in this sector

Table II
Percentage of Women Labours are employed as light Machine Assistant in Tannery Industry

Name of Industry	Percentage of Female Workers Employed	Percentage of Female Workers at present	Working Hour	Overtime For
Exim Leather Industry	15%	3%	12 Hours	Holiday
Jamila Tannery Ltd.	25%	5%	12 Hours	Holiday

Source: Personal examination on 18 and 22 December, 2014.

Overtime: Overtime is available for skilled workers only. There is no such provision in tannery industry that after how many days one worker will be treated as skilled. They have followed the working capacity of workers for offering overtime to them. Female workers get opportunity for overtime which is limited at 10 pm. As their salary is low, they happily take the overtime opportunity offered by the employers. The provision for payment of overtime work is at the rate of twice of the average of his basic wages, dearness allowance and ad-hoc interim wages is any or where workers are in paid on a piece rate basis, on consultation with the representatives of the workers fix time rates as nearly as possible equivalent to the average rates of earnings of workers.¹⁴ Here the existing rate of overtime is very low for the workers. They receive five taka per thousand per hour of their salary.¹⁵

Table IV
Overtime Payment receive by Women

Name of Industry	Per Thousand and Per Hour	Overtime Hour
Exim Leather Industry and Exim Footwear	6/ Tk.	5 pm to 8/9 pm
Dhaka Footwear	5/ Tk.	5 pm to 8/9 pm
Access Leather	5/ Tk.	6 pm to 9/10 pm
Top Fit Industries	5/ Tk.	5 pm to 8/9 pm
Asia Hand-gloves	5/ Tk.	5 pm to 8/9 pm
Rupali Tannery	6/ Tk.	5 pm to 8/10 pm
Helal Traders	5/ Tk.	5 pm to 8/10 pm

Source: Survey, 18 December, 2014.

¹⁴ Section 108

¹⁵ Personal interview with workers

Suchona who has worked at Dhaka Footwear receives 20 taka per hour against 4000/ Tk. salary and per day for three hours overtime she receives total 60/ Tk. However, recently she has joined in Exim Footwear with 4500 Tk. salary and she receives 6 taka per thousand per hour. Thus she receives 27 Tk. per hour and total 81 Tk. for three hours overtime a day.¹⁶ Overtime hour is varied in industry to industry. Particularly it depends on the demands of workload. Table IV shows the different overtime hours and payment rate of seven industries. Among these industries Exim and Rupali industries pay more money than the others. Helal, Access and Rupali industries overtime hours extend to 10.00 pm at night. However all of them expand their overtime hour up to three or four hours on the basis of demands except Rupaly Tannery and Helal Traders.

Maternity Leave and Maternity Benefit: All footwear industries provide maternity leave and benefit after completing the probation period (Six months) of the workers. Though maternity leave period is varied industry to industry. However, female workers of tannery industry work without any types of leave only for demolish nature of leather. Thus maternity leave is absent for women workers who have engaged in any part of processing raw leather.

Table V
Maternity leave Received by Female Workers

Name of Industry	Leave time	Leave Benefit
Exim Footwear Ltd.	3 Months & 10 Days	Total salary of this time
Dhaka Footwear	3 Months & 10 Days	Total salary of this time
Access Leather	3 Months	Total salary of this time
Top Fit Industries	3 Months	Total salary of this time
Asia Hand-gloves	3 Months	Total salary of this time
Rupali Tannery	3 Months	Total salary of this time
Helal Traders	3 Months	Total salary of this time

Source: Survey, 18 December, 2014.

Table V presents the data of maternity leave and benefit which are provided by the different industries. All the industries afford same period of maternity leave

¹⁶ Personal interview with Suchona Akter Sumi, 18 December, 2014

except Dhaka Footwear and Exim Footwear. Exim and Dhaka Footwear give as near as the existing provision of the Act. Female workers who are interviewed satisfy with the maternity leave and the maternity benefit without knowing about their maternity rights according to BLA. Women employed in establishment shall be entitled to maternity leave and benefit for eight weeks preceding the expected day of her delivery and eight weeks immediately following the day of her delivery.¹⁷ Total days for maternity leave are 112 days that is 3 months and 22 days. However, examined no Industry follows the provision completely.

Hence this study is limited with above welfare measures of the female workers working in the tannery and footwear industries. It has been found that employer though interested to introduce some welfare benefit but relocation is an obstacle. They reluctantly have argued that here they cannot provide more at present for congested area and the sifting of tannery will be started very soon. However it is mentionable here that sifting of tannery has been delayed for bureaucratic negligence for two decades.¹⁸ Government also ignored High Court ruling from 2001 for relocating tannery from Hazaribagh residential area. The Government officials who are authorized to inspect the provisions of Labour Act are not upholding Bangladesh Labour Act with respect to Hazaribagh.¹⁹ Moreover, office of Ministry of Labours Inspection Department is incapable to meet their liability for resource restrains and their attention is mainly on monitoring Ready Made Garments sectors (for its potential role in GDP).²⁰ Thus tannery is ignored always from monitoring by inspector regularly. Though sometimes inspection is conducted by authorized inspector but no legal action²¹ has been taken against the owner for continuous violation of the provisions of Bangladesh Labour Act. It is the duty of Inspector (including Chief, Deputy Chief and Assistant Chief) to make examination and enquiry within their local limits to find out whether the provisions of this Act properly complied by the establishments or not.²² Hence BLA provisions are neglected by both the owners of tannery and footwear industries as well as by the inspection authority.

5. Suggestive Measures

To make a continuous connection with the economic development process, female workers should give some benefits by the industries. Otherwise they are not able to carry on their activities in unfriendly working environment of the tannery and footwear industries. Relocation of tannery sectors shall be provided with some

¹⁷ Section 46.

¹⁸ Toxic Tanneries: The Health Repercussions of Bangladesh's Hazaribagh Leather, Human Rights Watch, October 2012, ISBN: 1-56432-950-X, p. 31.

¹⁹ Ibid, p. 33. Government Officials admitted it to Human Rights Watch.

²⁰ Ibid, p. 36.

²¹ Ibid, p 36-37.

²² Section 319 (c) of BLA.

benefits especially for female workers from the owners as well as the Government part. By this the Government of Bangladesh can complete its constitutional requirements through equal participation of women in every sector of state.²³ Thus to involve more female workers in these sectors following measures can be considered for relocating:

- A separate space for canteens and child care room for female workers can be allocated in a safe place,
- Residential area for these workers shall be determined and allocated by the Government so that no residential area can be built near tannery industry again,
- Separate conveyance facilities for female workers can be provided by the Government,
- Working hours in tannery for processing hides can be reduced or shifting system for female workers can be introduced,
- Overtime payment shall be increased in consultation with the owners association,
- Maternity benefit and leave shall be given according to the provision of BLA and punishment for neglecting these provisions should be increased,
- More inspectors shall be appointed in the office of the Ministry of Labour Inspection Department for strengthening their man power as well as their salary shall be increased,
- Monitoring system can be more efficient and regular for tannery and footwear industries as this is the primary duty of the inspection authority,
- The inspecting authority shall be accountable to an impartial authority for their activities.
- Moreover inspection shall be done without prior notice to the owners of the industries
- Immediate legal action should be taken for violating the provisions of BLA

6. Concluding Observations

Tannery industries and its leather goods always become a consistent part of exporting goods in Bangladesh. It can become more profitable by engaging female labours more in processing units. Female workers involve in tannery and footwear industries are continuing their profession with various limitations. The ratio of female workers is not half with the male workers particularly in tannery industries. Though

²³ Article 28(2), the Constitution of Peoples Republic of Bangladesh.

illiterate female may take this job without any experience or educational qualification but for some unreceptive conditions they are incapable to carry on for long time. If these working conditions become female friendly, this sector can become a prospective sector for female workers in future. Government can relocate tannery village as soon as possible by allocating space to the owners for this welfare facilities. Moreover Government can enforce the provisions of BLA for the welfare of the workers to permit a tannery industry in new shifting area and strengthen its inspection authority for regular checking of the working conditions of the female labours of tannery and footwear industries.

Gender Differences in Health Knowledge and Awareness among Rural Community in Bangladesh

Md. Siddiqur Rahman*

Abstract: Preventive as well as curative health measures primarily depend on individual's knowledge and perception about the threat of a disease. This article attempts to explore gender differences in health knowledge on contemporary fatal diseases. Discussion will focus on the relationship between socioeconomic factors and health knowledge by gender. Data were collected from a remote village in Bangladesh. Structured questionnaire was administered to 296 villagers (146 males and 150 females) aged 18 years and above. The results indicated that about half of the study population (47%) have not heard of HIV/AIDS and more than one-third (35.1%) of them showed ignorance concerning arsenic contamination in water. The results found significant gender differences in health knowledge. There was a strong evidence that better health knowledge is associated with higher socioeconomic status and education which has a profound positive impact on health knowledge. These findings highlight that poor health knowledge is a challenge to rural healthcare and policies are needed to improve the health knowledge of rural community.

Key words: HIV/AIDS, arsenic, gender, gender differences, health knowledge.

Introduction

Health knowledge is associated with health and illness behaviours, especially health care action. Preventive as well as curative healthcare requires reliable source of information that can guide people to take proper initiative about their health matters. Health knowledge can be understood as how much an individual knows and understands about current health related issues.¹ The positive correlation between health knowledge and good health is well documented. Lack of knowledge and awareness leads to enormous beliefs about illness that may delay or mislead people from seeking proper care.²

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¹ K. M. Thies & J. F. Travers, *Handbook of Human Development for Health Care Professionals* (Sudbury, Mass.: Jones and Bartlett Publishers, 2006).

² Chandrashekhar T Sreeramareddy, H N Harsha Kumar, and John T Arokiasamy, "Prevalence of Self-reported Tuberculosis, Knowledge about Tuberculosis Transmission and

Bangladesh is one of the most densely populated and poor countries in the world. The average per capita income of the country is as low as US\$ 848 and a great proportion of its population live below the poverty line (BBS, 2011).³ The earning of the ultra poor people is not enough to buy food-grain to maintain healthy bodies. The Human Development Index (HDI) for 2012 ranked Bangladesh at the 146 among 187 countries with an HDI value of 0.515 (UNDP, 2013).⁴ Although the country is struggling to emerge from the realm of the poverty, its HDI rank is well below the average of the developing countries.

Despite some progresses, the level of health knowledge and awareness has remained very poor in the developing countries (Hussain *et al.* 1997).⁵ In Bangladesh, village people have low level of education and poor access to media, therefore, generally they are less aware about current affairs as well as health matter. In this article, an attempt has been made to assess health knowledge of village people by asking such questions as - whether they have heard about HIV/AIDS and arsenic. HIV/AIDS infection has become a pandemic and dreadful health issue to mankind. Although the prevalence rate of HIV is still low in general people in Bangladesh, the challenge for prevention is very high due to lack of awareness among the people (ICDDR,B 2005).⁶ On the other hand, at present, arsenic contamination in drinking water has been recognized as the greatest health threat in rural Bangladesh. To inform people about AIDS and arsenic, both government and non-government organizations have some efforts, such as public health education through the media and program activities. Despite these efforts, rural community have a substantially lower level of health knowledge than urban community in Bangladesh (Rahman *et al.*, 2008).⁷ Health knowledge of the rural community regarding HIV/AIDS and arsenic will be explained in this article.

Methodology of the Study

This article is based on empirical data drawn from self-reported health knowledge conducted in a remote village of Barguna in 2009. Barguna is a coastal district in

Its Determinants among Adults in India: Results from a Nation-wide Cross-sectional Household Survey," *BMC Infectious Diseases*, 13 (2013): 13-16.

³ Bangladesh Bureau of Statistics, *Sustainable Development Networking Programme* (Dhaka, 2011).

⁴ United Nations Development Program, *Human Development Report 2013* (NY: UNDP, 2013).

⁵ Hussain A, L.E. Aaro and G. Kvale, "Impact of a Health Education Program to Promote Consumption of Vitamin A Rich Foods in Bangladesh," *Health Promotion International*, 12 (1997): 103-09.

⁶ Md Mofizul Islam, and M Conigrave Katherine, "HIV and Sexual Risk Behaviors among Recognized High-risk Groups in Bangladesh: Need for a Comprehensive Prevention Program," *International Journal of Infectious Diseases*, 12 (2008): 363-70.

⁷ Rahman A, A Isalm, and M Islam, "Determinants of Knowledge and Awareness about AIDS: Urban -Rural Differentials in Bangladesh," *The Internet Journal of Health*, 9, no. 2 (2008): 1-8.

Bangladesh, 360 km away south from its capital Dhaka. Quantitative analysis was done on the survey data using structured questionnaire interviews from respondents who were married and aged 18 years and above. Married males and females were considered as sample because the greatest sex differences are observed in young and middle adulthood when traditional family roles of men and women are most divergent (Nathanson, 1977).⁸ The study utilized the voter lists to get the number of married males and females living in the study village. Voter's list was chosen to avoid people who are less than 18 years of age. According to the list, the total number of married males and females were 597 and 660 respectively. Of them, 146 males and 150 females were considered eligible for inclusion in the study. Survey data have been coded and then it was entered into the computer using SPSS (version 15.00). This study utilized descriptive statistical analysis. Chi-square (χ^2) test was done to reveal significant association between socioeconomic characteristics and the components of health knowledge.

Results

The present study included questions on HIV/AIDS and arsenic in order to assess the general awareness and health knowledge among rural people.

Background Characteristics

The distinctive socioeconomic characteristics of rural people are important to understand the nature of health seeking behaviours as well as health knowledge of villagers. Poor socioeconomic status is clearly seen in patterns of income, education and employment status of rural mass. The level of education in the study area is very low. Consequently, the vast majority of the village population depends on manual labour. However, traditional gender roles and responsibilities keep almost all women as housewives (96.7%). Alternative income generative activities are few and far for women. Almost half of the households of the study population are hardcore poor and their income is insufficient to meet the basic needs. These factors, among others, compound the challenges of health seeking behaviours of rural men and women.

Ever heard of HIV/AIDS

Figure-1 shows the percentage of respondents who have heard of HIV/AIDS. It shows that altogether more than half (53%) of the participants in the study area have heard of HIV/AIDS. About 61% male have heard of HIV/AIDS, whereas the percentage of females who have heard of HIV/AIDS is much lower (45.3%). It is evident that women have high knowledge deficiency than men. Although the level of knowledge has been increasing among ever-married men and women in Bangladesh, awareness of HIV/AIDS is lower in this sample compared with the other divisions

⁸ Constance A. Nathanson, "Sex Roles as Variables in Preventive Health Behavior," *Journal of Community Health* 3, no. 2 (1977): 142-55.

(NIPORT, 2009)⁹. Generally, urban men and women have substantially higher level of knowledge about HIV/AIDS than rural residents (Meundi et al., 2008).¹⁰

Table 1
Background characteristics of the respondents

<i>Socioeconomic and demographic characteristics</i>	Male (n=146)		Female (n=150)		Total (n=296)	
	Number	Percent	Number	Percent	Number	Percent
Age (in years)						
18 – 30	26	17.8	55	36.7	81	27.4
31 – 45	65	44.5	71	47.3	136	45.9
46 – 60	37	25.3	18	12.0	55	18.6
61+	18	12.3	6	4.0	24	8.1
Education						
Below primary	102	69.9	84	56.0	186	62.8
Primary passed	31	21.2	65	43.3	96	32.4
Secondary & Above	13	8.9	1	0.7	14	4.7
Household income (in Taka) US\$ 1 = Taka 78						
Below 3,000	73	50.0	56	37.3	129	43.6
3,000 – 6,000	59	40.4	65	43.3	124	41.9
6000+	14	9.6	29	19.3	43	14.5
Employment status						
Non-manual work	22	15.1	1	0.7	23	7.8
Manual work	124	84.9	4	2.7	128	43.2
Housewife	0	0	145	96.7	145	49.0

Source: Field Work

⁹ National Institute of Population Research and Training (NIPORT), *Bangladesh Demographic and Health Survey 2007* (Calverton, Maryland: National Institute of Population Research and Training (NIPORT), Mitra and Associates, and ORC Macro, 2009).

¹⁰ A. D. Meundi, A. Amma, A. Rao, S. Shetty, and A. K. Shetty, "Cross-Sectional Population-Based Study of Knowledge, Attitudes, and Practices Regarding HIV/AIDS in Dakshina Kannada District of Karnataka, India," *Journal of the International Association of Physicians in AIDS Care (JIAPAC)*, 2007, 27-34.

Ever heard of Arsenic

The arsenic hazard in Bangladesh has now appeared to be a 'real disaster', affecting thousands physically, mentally and economically. It is intensifying malnutrition, poverty and destitution among the villagers. To deal with the health hazards related to arsenic, the villagers should know about arsenic. To find out the villagers knowledge about the sources of arsenic, the questionnaire included a number of questions. Figure-2 shows the percentage of respondents who have heard of arsenic. The result suggested that around 65% men and women have heard of arsenic, i.e., still there is 35% men and women who never heard of arsenic. However, there is no large difference in the level of knowledge relating to heard of arsenic among the respondents by sex.

Figure-1
Ever heard of HIV/AIDS (n=296)

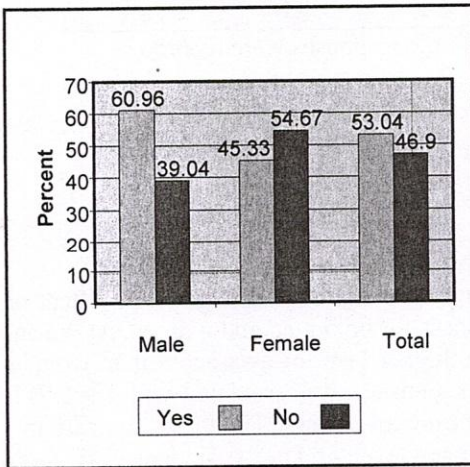
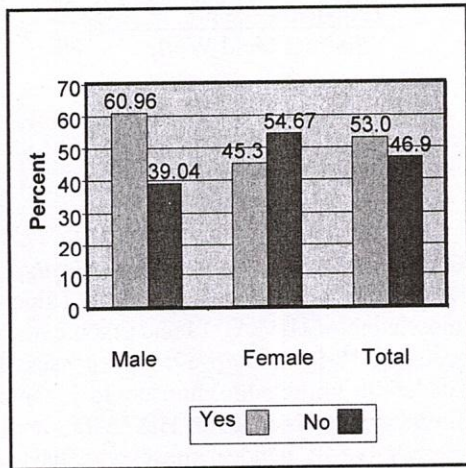


Figure-2
Ever heard of Arsenic (n=296)



Source: Field Work

Table-2 lists the sources of information about HIV/AIDS and arsenic. The table shows that most of the respondents in this sample come across with a variety of information sources. The sources of HIV/AIDS information, radio (51.6%), television (27.4%) and friends (24.2%) were the most frequently reported sources. A small proportion (1.9%) reported newspaper as their source of HIV/AIDS information. On the other hand, the question about source of arsenic information was asked among those respondents who heard of arsenic (n=192).

The most common source reported by the respondents was radio (53.1%) with the next sources of information being friends (31.2%) and television (16.1%). School (4.7%), health worker (4.2%), newspaper (1%) and religious institution (0.52%) were rarely mentioned as arsenic information sources in this sample.

Table-2
Sources of information about HIV/AIDS and Arsenic

Source	HIV/AIDS (n=157)		Arsenic (n=192)	
	Number	Percentage	Number	Percentage
Friends	38	24.2	60	31.2
Health worker	0	0.0	8	4.2
Newspaper	3	1.9	2	1.0
Radio	81	51.6	102	53.1
Religious institution	0	0.0	1	0.52
School	1	0.6	9	4.7
Television	43	27.4	31	16.1

Source: Field Work.

Note: Multiple responses were recorded.

Gender differences in health knowledge

Descriptive analysis (Table 3 and Table 4) shows that age has significant effect on knowledge of HIV/AIDS and arsenic awareness for both men and women. At the age group of 18-30 and 46-60, men possess the higher level of awareness than women. For health knowledge, household income is significantly associated with ($p=0.011$) the gender differences in HIV/AIDS and arsenic awareness. The tables indicate that irrespective of gender, those who have higher level of family income have more health knowledge than comparatively poor households. The result also revealed that women of poorer households are less likely to be aware about health matters than men in the same household income group. Education has profound positive impact for both males' and females' health knowledge. It also shows that education played a significant role for gender differences ($p=0.009$) in health knowledge related to HIV/AIDS awareness. Besides these, employment status has significant effect on HIV/AIDS and arsenic knowledge. The tables (Table 3 and Table 4) show that non-manual occupational group possess better knowledge about HIV/AIDS and arsenic than manual worker. Women of manual working group have significantly poor knowledge than men of the same occupational group.

Table-3

Socio-demographic factors and health knowledge about HIV/AIDS by gender

<i>Socio-demographic factors</i>	Heard of HIV/AIDS				<i>p value</i>
	Male		Female		
	Yes	No	Yes	No	
Age (in years)					
18 – 30	76.9(20)	23.1(6)	52.7(29)	47.3(26)	.033*
31 – 45	61.5(40)	38.5(25)	49.3(35)	50.7(36)	.151
46 – 60	64.9(24)	35.1(13)	22.2(4)	77.8(14)	.002**
61+	27.8(5)	72.2(13)	0(0)	100(6)	.070
Household Income (in Tk.)					
US\$ 1 = Taka 78					
Below 3000	49.3(36)	50.7(37)	30.4(17)	69.6(39)	.029*
3000 – 6000	72.9(43)	21.1(16)	50.8(33)	49.2(32)	.011*
6000+	71.4(10)	28.6(4)	62.1(18)	37.9(11)	.543
Education					
Below primary	51.0(52)	49.0(50)	32.1(27)	67.9(57)	.009**
Primary passed	80.6(25)	19.4(6)	61.5(40)	38.5(25)	.054
Secondary & above	92.3(12)	7.7(1)	100.0(1)	0(0)	.659
Employment status					
Non-manual work	90.9(20)	9.1(2)	100.0(1)	0(0)	.666
Manual work	55.6(69)	44.4(55)	0(0)	100.0(4)	.012*
Housewife	-	-	46.2(67)	53.8(78)	ψ

Source: Field Work

Table-4
Socio-demographic factors and health knowledge about arsenic by gender

<i>Socio-demographic factors</i>	Heard of Arsenic				<i>p value</i>
	Male		Female		
	Yes	No	Yes	No	
Age (in years)					
18 – 30	84.6(22)	15.4(4)	76.4(42)	23.6(13)	.385
31 – 45	61.5(40)	38.5(25)	69.0(49)	31.0(22)	.360
46 – 60	75.7(28)	24.3(9)	27.8(5)	72.2(13)	.001**
61+	27.8(5)	72.2(13)	16.7(1)	83.3(5)	.575
Household Income (in Tk.)					
Below 3000	46.6(34)	53.4(39)	58.9(33)	41.1(23)	.163
3000 – 6000	81.4(48)	18.6(11)	64.6(42)	35.4(23)	.035*
6000+	92.9(13)	7.1(1)	75.9(22)	24.1(7)	.151
Education					
Below primary	55.9(57)	44.1(45)	51.2(43)	48.8(41)	.523
Primary passed	83.9(26)	16.1(5)	81.5(53)	18.5(12)	.778
Secondary & above	92.3(12)	7.7(1)	100.0(1)	0(0)	.659
Employment status					
Non-manual work	90.9(20)	9.1(2)	100.0(1)	0(0)	.666
Manual work	60.5(75)	39.5(49)	(0)	100.0(4)	.007**
Housewife	-	-	66.2(96)	33.8(49)	ψ

Source: Field Work

Note:

- Results show in percentage and number in parentheses correspond to the number of the responses.
- p value denotes Chi-square test, *p<0.05 (significant); ** p<0.01 (more significant); ***p<0.001(most significant).
- In some cases, the sample size was smaller and expected count was less than five. For this, the likelihood ratio was used as p value.
- ψ no statistics are computed because sex is constant

Discussion

The article reveals that village people demonstrated poorer health knowledge. It appears that around 65% respondents have heard of arsenic and those who have never heard of HIV/AIDS is about 53% (Figure-1 & Figure-2). Whereas, around 93% of urban women are aware of HIV/AIDS (UN, 2002)¹¹ The current investigation thus confirms that there are enormous knowledge gap between urban and rural people in

¹¹ United Nations (UN), "HIV/AIDS: Awareness and Behaviour," *United Nations Department of Economic and Social Affairs (UN)*, no. 209, 2002.

Bangladesh. All the socio-demographic factors included in this study were significantly related to health knowledge of males and females. Among the variables, education and household income was positively associated with HIV/AIDS and arsenic knowledge for both male and female. The results indicate that respondents who came from wealthy family and those who have higher education, are more likely to have up to date health knowledge than those who came from comparatively low-income family and have low level of formal education. On the other hand, it appears that for both males and females, age was negatively associated with health knowledge. It also appears that younger men and women were more likely to have health knowledge of HIV/AIDS and arsenic.

The study found gender differences in health knowledge and these differences were also related to socio-demographic factors of the participants. Consistent with observations from other study, the study found that women had a lower level of health knowledge than men (Perumal & Subbiah, 2008)¹². The study shows that compare to males, females have significantly lower knowledge about HIV/AIDS. Nearly 39% of males have not heard the name of this virus, whereas around 55% females have not heard about it either. It may be speculated that women have less access to media than men in Bangladesh, particularly in rural areas. Consistent with prior findings, socio-demographic factors such as education and income are closely associated with health knowledge and awareness (Shafee et al, 2008; Li X, 2004)¹³. Bloom et al. (2002)¹⁴ mentioned that even when information on HIV/AIDS reach out to the poor, they may not understand the messages or may not perceive the risk related to their health. These may abstain them to take preventive health measures. It may be true for the people living in rural and remote areas, especially for the women who are less informed about current affairs.

The results show that females from the age group of 18-30 and 46-60 have significantly poorer knowledge of HIV/AIDS. Females belonged to lower income group and lowest education group have significantly less knowledge than males in the same groups. It appears that lack of educational opportunities and lack of resources may have deprived women from health knowledge. This lack of knowledge can act as barriers to health seeking behaviours of rural people, especially for women.

Access to media is essential to increase people's knowledge and awareness, which may affect their perceptions and behaviours. The findings show that majority of the respondents gained health knowledge through radio. Listening to the radio is common among the rural community, particularly among males. A study (NIPORT,

¹² Perumal V, and G. Subbiah, "A Quantitative Analysis of the Socio-economic Determinants of Health Seeking Behaviour Related to Bancroftian Filariasis and Its Impact on Elimination: A Case-control Study in Pondicherry, India 16: 339-346," *Journal of Public Health*, 16 (2008): 339-46.

¹³ Mohammed A Al Shafae et al., "Knowledge and Perceptions of Diabetes in a Semi-urban Omani Population," *BMC Public Health* 8, no. 249 (2009): 249.

¹⁴ Bloom D, A RiverPath, and J. Sevilla, "Health, Wealth, AIDS and Poverty," http://www.adb.org/documents/reports/health_wealth/hwap.pdf. 2002. Accessed on December 1, 2013.

2005)¹⁵ found that men are more likely to be exposed to any type of mass media than women.

Conclusion

Concerning health knowledge, the data indicated that health related knowledge and awareness are unsatisfactory in rural Bangladesh. Rural people were less informed about HIV/AIDS and arsenic contamination in water. Findings suggest that higher education has strong correlation with health knowledge of village people. However, better socioeconomic status such as family wealth and non-manual employment status are also positively related with health knowledge. The research findings have several implications for public health care system in Bangladesh. Both micro and macro level policies are needed to improve the health knowledge of rural mass. This study also suggests that media can play an important role to increase such knowledge. This indicates that health education programs should provide this information through radio and television, school and health workers. These health awareness programs must be comprehensive and continuous. It can be introduced at school levels and extended beyond formal education to reach the adults in the community.

¹⁵ National Institute of Population Research and Training (NIPORT), *Bangladesh Demographic and Health Survey 2004*.

Health Seeking Behavior among the Kalazar Affected People of the Scavenger (Methor) Community in Bogra District of Bangladesh

Md. Nasir Uddin *

Md. Aminul Islam **

Mst. Maksuda Khatun ***

Abstract: Health seeking behavior refers the strategy that people employ to decide which option they will use at which stages of their illness. The present paper describes the health seeking behavior among the Kalazar affected people of the scavenger community of Bogra district. The qualitative research methods have been adopted in this study. For the reliability and objectivity of data, cross-checking and triangulation techniques have been applied. As this paper is on the health seeking behavior as well as its causes and nature, it will obviously be helpful for the development planners and policy makers to take essential steps for the scavenger community to improve their health care system.

Introduction

The northern prefecture of Bangladesh contains eighteen different marginal ethnic groups. A diverse cultural landscape composed of majority Bengalis and minority indigenous communities reflects a long history of living and multiple cultural traditions. The minority ethnic marginal groups are scavenger, barber, porter, blacksmith etc, due to the predominant factors of poverty, lack of health awareness, malnutrition, prejudice, unhygienic dwelling condition and inadequate health care services those minority people became victim of various dangerous diseases, which result in high morbidity and mortality rate. Among these marginal ethnic groups, the condition of scavenger community in Bogra is much more deplorable. This community believes in Hinduism and they are regarded as lower caste 'shudra'. For this the majority Bengalis treats them as 'Nongra' (Polluted). They have distinctive culture and life cycle and they are always chided and harassed by the mainstream Bengali. Their culture (language, belief, rituals, art, religions) and social organization

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differ from the majority Bengali. Although the culture of minorities is the result of the acculturation of the majorities, they always maintain ethnic boundary. For that, minority ethnic groups are still backward in the modern civilization. They live below the poverty line. They are also discriminated by the majority in their everyday lives. The health status, educational status, economic condition, housing problem, land right etc., make them weak. National educational system is not appropriate for them and they live with nature, which are behind their present condition. From the primitive period, human being has been fighting with many diseases. Many prevention systems have been invented now. Before, the development of technology man treated illness by nature and ritual. The man kind found in nature and a treasure house of medical tress, herbs, and plant and used them to treat illness and promote health. In the passages of time many technologies, systems, processes, etc., have been built up to treat the diseases and many researches continue to develop medical sectors. But the marginal scavenger community in Bogra is still primitive in the context of their nature. At present, Kalazor has attached as epidemic in this community. About 19 peoples had died of Kalazor last years.¹ From belonging in the lower caste, they are deprived from modern medical treatment. As a result, when they become ill and are not helped by self treatment, make choice about whom to consult in the popular folk or professional sectors for further help. These choices are influenced by the context in which they are made which includes:² The types of helper actually available; whether payment has to be made for their services; whether the patient can afford to pay for these services and the explanatory models that the patient uses in explaining their ill health. It is required to remark here that, to know this deprived and marginal community, no research has done, still now. The present research entitled "Health Seeking Behavior among the Kalazar Affected People of the scavenger (Methor) Community in Bogra District of Bangladesh" has been presented the health seeking behavior of scavenger community of Bogra. Attitude, norms, values and behavioral practices define the important characteristics of health status. This differs between cultures and throughout history and therefore, is socially constructed. Culturally how a health problem is treated is an expression of how that problem is understood. Eventually the response to health issue and the process of understanding is culturally variable. So, today, illness cannot be defined using clinical criteria alone. Social factors create a large influence on this definition. Beliefs and practices related biological changes in the human organization have long been primary concern for this research. So, the study is worth doing as a qualitative study.

Objectives of the Study

The main objective of this study was to know the health seeking behavior of the scavenger community of Bogra district. The specific objectives of this study are:-

¹ *The Daily Chadni Bazar*, 24/04/11.

² Veena Bhasin, "Medical Anthropology: A Review," *Studies on Ethno-Medicine* 1, no.1(2007), 1-20.

(i) To explore the multiple health care options that scavenger community frequently uses. (ii) To know their perception of kalazare. (iii) To find out the emic categorization of severity of Kalazare, and (iv) To examine the therapeutic decision making process within the socio-political context.

Theoretical and Conceptual Framework of the Study

Health, although it is a factor of importance for both individual and society as a whole, is a difficult entity to define.³ A substantial body of empirical research, scientific literature and documentation on health seeking behaviour reflects the growing awareness that there is a legitimate field of public health expertise known as medical anthropologists, sociologists and other public health experts have recognized the accuracy with which they studying how individuals in a particular society perceive and react to ill health and the types of health care that they learn to know something about both the cultural and the social attributes of the society in which they live. It is only recently that research examining the associations between social relationships and health and well-being became a mainstay of the sociology of health and illness.⁴ Therefore, in understanding health and illness, it is important to avoid 'victim blaming'- that is, seeing the poor health of a population as the sole results of its 'culture'- instead of looking also at their economic or social situation. Talcott Parsons argued that those who are ill are not required to perform social roles but adopt the sick role that is characterized by the adoption of a dependent rather than an independent status.⁵ Durkheim, in his study of suicide, for example, found that individuals and groups that were well integrated into society were less likely to take their own lives than others.⁶

It is evident that the need for the research on health seeking behavior research has emerged within the cognitive, symbolic and Marxist political-economic anthropology. The cognitive, particularistic paradigm proposed by renowned American anthropologist Franz Boas, who was the first exponent of cultural relativism. To him, all cultures are unique and particular in nature and there is no need to dichotomize cultures either superior or inferior.⁷

The contemporary cognitive, political economy and symbolic approaches to development health planning are increasingly stimulating the significance of health seeking behavior. Because, by using this approach, medical anthropologists and sociologists attempt to examine the "perceptual structure underlying behavior, verbal and non-verbal rather than individual behavior and health or the lack of it and the

³ Cristina Victor, *The Social Context of Ageing: A Text Book of Gerontology* (New York: Routledge, 2005), 99.

⁴ M.K., Peek, and N., Lin, "Age Differences in the Effects of Network Composition on Psychological Distress," *Social Science and Medicine* 49 (1999), 621-636.

⁵ Talcott, Parsons, *The Social System* (London: Routledge and Kegan Paul, 1951).

⁶ Anthony, Giddens, *Sociology* (India: Blackwell Publishers Ltd, 2006), 150.

⁷ Thomas M Johnson and F Carolyn Sargent (eds.) *Medical Anthropology: Contemporary Theory and Method* (New York: Praeger, 1990), 24-38.

quality of health care are largely determined by social competition between groups of people and unequal distribution of scarce resource.

Regarding health seeking behavior William Hellam Rivers⁸ (1864-1922) theory of "*Native Medicine as a Part of Culture*" and the neo-liberal thinking of health are also helpful. Sketching socio-cultural arrangement and other procedures, the researcher employed W.H. Rivers theory which incorporate the idea that medical anthropology liaison a two part proposition.

- First, the primitive medical practices follow from and make sense in terms of underlying medical beliefs and
- Secondly, that both are best conceived not as folklorists but as integral part of cultures.

Rivers Basic Conceptual Model

It consists of three sets of variable. His dependent variable, whose range of manifestations he seeks to explain, has to do with observed or reported behavior, specifically, the practices of native peoples in coping with disease. His independent of causal variable, is what Rivers calls the group's attitude toward the world or world view, derived from, or a sub class of the later is a derivative variable.

Table 1
Rivers Basic Conceptual Model

World view	About diseases	Practices of behavior for tracking disease.
Magical	Diseases is believed due to magical (human) manipulation of forces	Sorcery or counter sorcery
Religious	diseases is believed to supernatural forces	Appeals to or propitiation of Supernatural forces.
Naturalistic	Disease is believed due to natural processes, to cause effect relation of natural phenomena	Naturalistic treatment of specific illness or injury.

Source: Primary data.

No body without world view. Everybody possesses some sort of view whether magical, religious and naturalistic views and when they feel sick they used their world view for cureness. So, the researcher think that, it would be so perfect to know the health seeking behavior of Bogra scavenger community. Though, there are no research regarding this issue, various scholars like H.A. Shafi and R. Mahmood (2003) "the light of an Ethnic Minority: the Munda of Northwest Bangladesh"

⁸ William H. R Rivers, *Medicine, Magic, and Religion* (New York: Harcourt Brace, 1924), 24.

Gunnar Haaland (1992) “cultural content and Ethnic Boundaries”, worked among the indigenous people. Their writings were useful for this study as secondary sources.

Methodology of the Study

Qualitative research methods have been applied in this study. Because, the researchers did not know what they would find and because they wanted to generate data rich in detail and embedded in context. The research has been conducted by using the *emic* approaches. Because, an *emic* one is in essence, valid for only one language (or one culture) at a time... it is an attempt to discover and to describe the pattern of that particular language or culture. The research site is Kamargarri, where the scavenger community is still living. It is located at Bogra Shadar Thana in the district of Bogra. There are about 169 people here. Purposive sampling has been used in this study. Because, one of the important elements in operationalizing of research is counting things in order to provide numerical statements of frequencies of different behavior, ownership of goods and prerogatives, indices of change from one time period to another, and so on. Observation of human behavior may serve different purposes. They can give additional, more accurate information on behavior of people than interviewer questionnaires. Both the qualitative and quantitative data have been used for this study. Data have been collected from both the primary and secondary sources. For collecting primary data, participant observation techniques, in-depth Interview, FGD have also been used for this study. Though participatory approach is the technique of this research, the researcher has also used some techniques to gather data in relation to situation. These are: Field Tolling, Field Diary, Field Note. Data has been processed through statistical method. The researchers have also been used MS Excel and supported software. The analysis of data and information has been done through table, chart and diagram.

Results and Discussion

Demographic features

According to the current population census the total scavenger population of Bogra town is about 169. Among them only 6 families (27 members) are lived at Kamargarri. The sexual distribution of the population is given below:

Table-2
Sexual distribution of the Scavenger population of Kamargarri.

Sex	N	%
Male	16	59.25
Female	11	40.75

Source: Primary data.

The table provides that among 27 persons 59.85% (16) are male where 40.25% (11%) are female. When the researchers have been trying to see the age grouping of 6

households of the scavenger community, they observed that most of the populations of the households are adult. The grouping is given below:

Table-3
Age grouping of the scavenger population of Kamargarri.

Group	Age	N	%
C	Up to 4 years	2	7.40%
I	5-9	1	3.70%
L	10-14	3	11.11%
D	Total	6	6 (22.22%)
A	15-19	4	18.81%
D	20-44	5	18.51%
U	45-59	9	33.33%
L	Total	18	18
T			(66.66%)
AGED	60+	3	3 (11.11%)
Grand total		27	27(100%)

Source: Primary data.

In the study households 22.22% population are child. Those who are belonging 0-14 year age considered as child in this research. Among children who are up to 4 years are 7.40% (2), 5-9 years 3.70% (1 person) and 10-14 years 11.11% (3) persons. The people who are belonging to 15-59 have been treated as adult 66.66% members. Among 27 populations 18 persons are adult. From the above data, we can say that, most of the people of the community are adult and the peoples are very much aware about population control.

Family structure

In this study, it has been seen that most of the people live in nuclear family. Among 6 families 4 are nuclear, two is joint family. The family pattern of the study community is given below:

a) **Nuclear family:** A nuclear family consists of a husband and a wife with or without children. It may also be a family of a widowed living together with her unmarried and the like. In some cases, one or more individuals may reside with them. They usually live in one house and always have a common health. Nuclear families becomes extended thought the addition of daughters-in-law and their children and other lineals or collaterals.

b) **Joint family:** In joint family, the Kin of three or more generations live under one roof and share all land and property. Such a family normally consists of brothers, their parents, unmarried sisters, wives and children. All the males here are co-owners of the land and property. They cook a common hearth, store grain in a common granary and so on. The head of the joint family is the eldest male member or some

other responsible male member of the family.

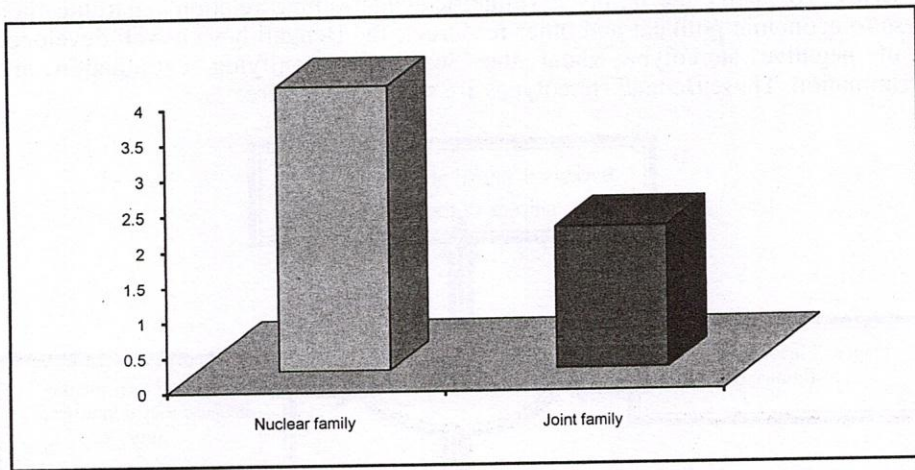


Fig. 1: Family structure.

Educational status

Education is one of the important indicators of socio-economic status. The educational status of the 6 studied families is described in below. The researcher has seen that among the 27 peoples 18 are illiterate (10 male and 8 females), 2 person are studying in primary school (both are Female), and other 7 person knows how to read and writes. So we, can, say that the members of the community are illiterate.

Religion of the studied people

Among the total informant's one religious group is included such as Hindu. The inhabitants of this community have been living here as inheritor process. The community is a Hindu dominated community.

Economic status of the scavenger people

Under this research, the researcher finds a deplorable economic condition. Because, the researcher has seen, the scavenger are often deprived for their traditional possession of land they are forced to sell their labor to the Bengalis, and the supply of wage laborers in the sweeping activities becomes higher than the demands. Both the males and females work collectively and leave some people behind to collect and cook food for all and take care of the children. Female labors are paid less than male laborers. The researchers have seen that, for each male laborer per latrine sweeping were 85taka, while the female laborers were receiving 40 taka.

The scavenger minority and the Bengalis majority: The structure of prejudice

The researchers have also seen that, in their day to day interaction with Bengali

neighbors, scavenger experience considerable stress in negotiating between two cultures that are very different in their traditions values, beliefs, cultural practice and life styles. To justify the highly asymmetrical inter-ethnic relation regarding their access to economic political and other resources, the Bengali have a well-developed set of negative stereotype about the Scavenger, justifying exploitation and discrimination. These Bengali stereotypes are summarized here:

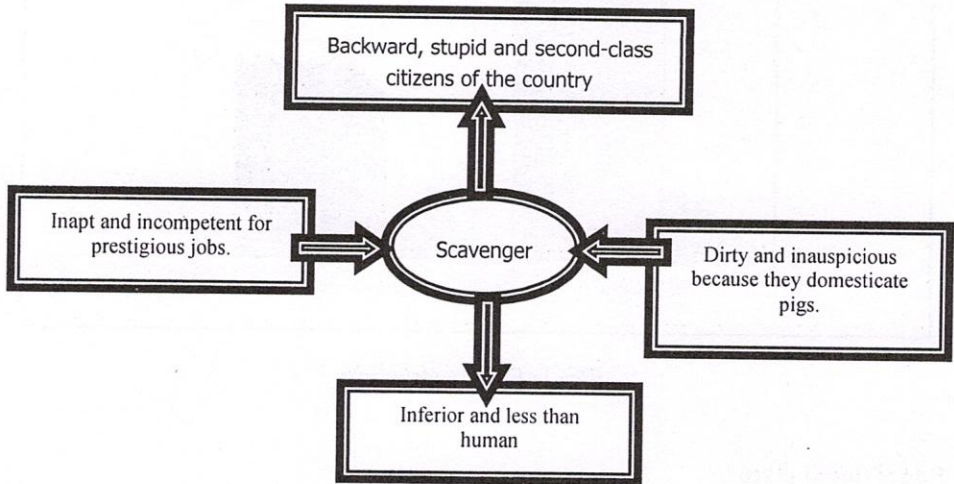


Figure 2: Bengali Muslim Views to the Scavenger

These attempt of Scavenger to transcend their stigmatized identify becomes explicit in their imitation of the Bengali, particularly whenever it is possible to under communicate their identify as scavenger. Indeed, he scavenger often hide their identities in the public sphere as a mark of shame.

Kalazare as a concept

At the present time human being has to face many new diseases. Such as Arsenic, AIDS, Search, Anthrax, Dengue etc. Every day we informed that many people die of unknown diseases, we don't know their identity. But Kalazare is not unknown disease. Present and past, in our country by attacking Kalazare thousand of people had died. Then there was lack of medical technology and health awareness. In last some decades there was no manifestation of Kalazare in our country. To day the age of modern technology, but the minority scavenger. Peoples were sawn out break of panic Kalazare. Last one year's by affecting Kala Azare 19 people had died at Kamargarri in Bogra. It is panic setuation of the scavenger community. Kala (black) + Azore (fever) = Kalazare. It is one kind of fever as like as dengue. By affecting Kalazare, the out side skin of the body is going to be Kala (black). So it is called Kalazare. Yet we don't know actual information about how to creat the Kalazare's bacteria in human body. According to medical science, a parasite named *Laisman and Danovan* is creating Kalazare, generally it is manifestation in tropical country.

This disease spreads by sunfly Mosquito. At first sunfly mosquito affects Kalazare then he bites man and animal and then it affects both man and animal. In this way Kalazare spreads man to total family to whole village. Kalazare is not contagious.

Type of Kalazare

According to medical science, the Kalazare is two kinds that of **Acute Kalazare:** There is 100-103 temperature is increase in over the body of attacking acute Kalazare. **Chronic Kalazare:** By attacking chronic Kalazare spleen and lever is to be increase Descentry and many other diseases will be appears. The scavenger people divided the Kalazare, two types, on the basis of temperature and time. Such as: **long time and huge temperature Kalazare.** The Kalazare, which lived in the patient body for a long time with huge temperature, is called long time and huge temperature Kalazare. **Short time and low temperature Kalazare:** The Kalazare, by which a patient affects for a short time will low temperature is termed as short time and low temperature Kalazare.

Perception of Scavenger peoples about the Kalazare

The most of the scavenger peoples claimed that Kalazare is a serious and dangerous disease. This disease generally attaches hardcore poor. The Kalazare affecting patient suffers from fever for a long time. At least they suffer from fever for 4-17 month. For this they could not treated continuous so long time. Actually Kalazare could not be identified at first ever also in our modern medical sciences. Because after being 3 month by sunfly mosquito. Starts the positive in blood. When we identify A. T. positive (Aldehyde test) then we ensure to Kalazare. So it is longitude matter. The scavenger people offered the following influence and traits regarding Kalazare. The fever is not still every time or always, the fever affects two times in a day, in the morning and in the night. The criteria of fever are deep always. Patient becomes pine away. The mouth, eye, nose of the patient becomes black. The frequency of vomiting is increased. Patient becomes so weak. Patient always dined to eat. The temperature of the patient body is being increased.

Kalazare, normal fever and the view of Scavenger people: For modern medical science, we can distinguish the Kalazare by the below table:

Table 4
Etic view about Kala Azare and Normal Azore

Kalazare	Normal Azore
(i) At first mainly suffer of fever. Then spleen and lever increased rapidly.	(i) Not applicable
(ii) Spleen increases the fever either still or not but is very soft	(ii) Not applicable
(iii) Slight fever may be still long day.	(iii)The duration of fevers at least 1-2 weeks.
(iv) In the attach lungs, most of patient die.	(iv) It is so rare.

(v) The skin is becomes black	(v) Strong headache and few weakness of body.
(vi) As the result of increasing lever, he eats more blood, the patient becomes bloodless which called anemia and the percentage of hemoglobin decrease	(vi) Not applicable
(vii) The skin is to be rusting and there in create sore in skin.	(vii) Not appropriate

Source: <http://www.doctorswithoutborders.org/our-work/medical-issues/kalazar-leishmaniasis> .

The perception of scavenger peoples regarding Kala Azor and Azore (fever) is given below:

Table 5
Emic view about Kalazare and Azore

Kalazare	Azore
It is so dangerous	It is sample. No need to take medicine at all.
The people who are black, dirty usually affected by Kalazare	It is appropriate for white man.
Acute chance to die	It is rare.
Patient becomes pineaway	Patient becomes less weak than Kalazare.
Usually patient deny to eat	It is not applicable for it.

Source: Primary data.

Illness and the causes of Kalazare: E.J. Cassell⁹ uses the word 'illness' to stand for 'what the patient feels when he goes to doctor and 'diseases' for what he has on the way home from the doctor's office. He concludes: disease, them, is something an organ has; illness is something a man has. Illness is the subjective response of an individual and of those around him, to his being un well, particularly how he and they, interpret the origin and significance of this event, how it affects his behavior and his relationship with other people and the various steps he takes to remedy the situation. Under this research, the researchers have seen that. Scavenger lives with nature. Their pattern of life system and household system helps to attack Kalazare easily. The Main cause of effecting Kalazare of Scavenger community at Kamargarri in Bogra are following- Most of their house is made by straw and plastered by mud it

⁹ F.E. Clements, "Primitive Concepts of Diseases," *University of California Publications in American Archaeology and Ethnology* 32, no-2 (1932), 185-252.

is the main shelter of sunfly mosquito, They slop the cowdung to be dried as fuel as their house wall it is the locus of creating sunfly. Their cow and pig shed room is very near to their living room. The whole members of a Scavenger family sleep combined flatting without net. Their nearest wetland's water is dirty and polluted in which the sunfly is born.

Stages of Kalazare

The researchers has observed that the scavenger people divides the stages of Kalazare in to three phases. Such as primary phase of Kalazare, secondary phase of Kalazare, and acute phase of Kalazare.

The description of above phases is given below by the table.¹⁰

Table 6: Stages of Kalazare

Name of the phases	Metaphor of the phases	Initial choice of treatment sectors	Ritual practices of respective phases
Primary	The patient and his relative treated this phase as normal and their respective relation with the patient is usual.	Family is the main choice of treatment in this phase. The popular sector is dominantly practiced during this phase.	Patient has to obey the rules and regulation prescribed by the family. Such as not to visit outside the house always has to stay in the room.
Secondary	The patient and his relative termed this stage as less serious. The old person and children have prohibited meeting and talking with the patient.	The folk sectors of treatment are greatly prescribed by the society in this stage.	Patient has to stay in a single room. He has failed to talk and meet with his respective friends and person.
Acute	The patient and his relatives treated this phase as so serious. Without the mother's or respective old women's of patients all peoples are forbidden to talk and meeting with patient.	Folk and professional both sectors of treatment are practiced during this stage.	The patient has to eat or drink by a separate plate or glass. He can't neither talk nor meet with others and he is prohibited to go outside the rooms. Family members are arranged a special worship to Kali.

Perceived diseases causation

Variability in treatment choice from different illnesses is largely dependent on the etiological perception of the local people.

¹⁰ Primary data.

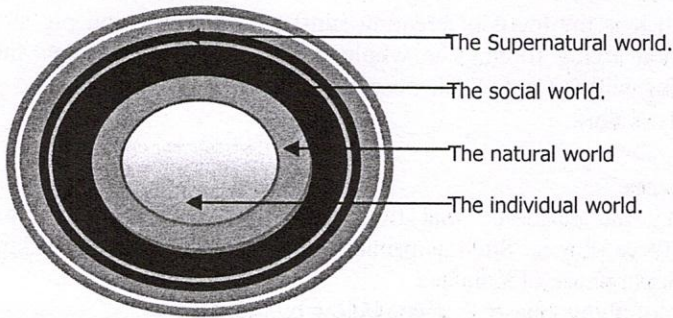


Figure 3: Sites of Kalazare etiology

This research was conducted immediately after the scavenger people of Kamargari come to learn that the cause of their suffering was due to health awareness; they discussed this issue at length among themselves and developed a share standard of perception with respect to panic Kalazare. Due to varied personal, social, cultural and religion values some formed distinctive perceptions. The local knowledge formed this distinctive perception. The researcher with this points in mind may present it from various angles:

a) The individual World: Lay theories points out that locate the origin of ill-health within the individual world deal mainly with malfunction within the body, sometimes related to change in diet or behaviour. Here the responsibility for illness falls mainly on the patient himself.

The local people identify one behavioural cause that ultimately results in Kalazare affecting, this is developed from their perception of uncleanness and personal hygiene standards and local health knowledge. An etiologically they perceive that uncleanness and unhygienic practice may results in Kalazare.

b) The natural world: This includes aspects of the natural environment, both living and inanimate, which are thought to cause ill-health. In this research, a number of respondents believe that their suffering is due to natural causes. Fifteen respondents believe that Kalazare is hereditary condition in some families.

The children of parents who have died of the disease are later observed to suffer from the same condition. Other peoples believe that hose people who are weak and with less resistance succumbed easily to the diseases. Few respondents report that their food habit like "Chuani", 'Pahachari" may be the cause of Kalazare.

C) The social world: Blaming other people for one's ill-health is a common feature of small-scale societies, where interpersonal conflicts are frequent.

Among the scavenger community "evil eye" as an most important a etiology of Kalazare. It is also known as "the narrow eye" 'the bad eye', 'the wounding eye' or simply as "the look". One respondent said that the evil eye as 'it relates to the fear of envy in the eye of the beholder, and [that] its influence is avoided or contracted by

means of devices calculated to distract its attention, and by practices of sympathetic magic, jealousy can kill via a look'.

d) The Supernatural world: Here illness is ascribed to the direct actions of supernatural entities, such as gods, spirits or ancestral shades. Many respondents believe that the causes of their suffering are supernatural. Twelve respondents said that any 'Fokir' (A man who possess superpower) has done the "*Kharap Korni*". It is the symbolic representation of some supernatural power. They show logic on behalf of their believe that the kalazare does not attach to the Bengalis, why have we suffered? Eight respondents believe that the Kaviraj has been downed up the "Kali" (In the Hinduism Kali is a evil deity) by processing of voron (It is a processing by a deity or evil spirit deceive) they strangely believe that kali visits the area, randomly whom kali touch he must get ill even any person touches the kalis shade and see face to face each other he also must be ill. Another respondents said that the '*Kala Bau*' has come in the locality. This Kala Bau (Polluted air) is also the symbolic representation of some supernatural power.

The sector of heath care

Under this research, the researcher has found the three sectors of heath care among the scavenger community. Such as,

The popular sector

This is the lay, non-professional, non-specialist domain of society, where ill health is first recognized and defined and health care activities are initiated. Most of the people informed that it includes all the therapeutic option that utilizes, without any payment and without consulting either folk healers or medical practitioners. Among these options is self-treatment or self-medication advice or treatment given by a relative, friend, neighbor etc. They said that, the main area of health care is our family. The main providers of health care are women, usually mother sister or grandmothers. They said that, it usually includes a set of belief disease like Kalazares. These are usually a series of guidelines that are specific to their cultural group, about correct behaviour for preventing Kalazares is oneself and in other. It includes beliefs about the 'healthy' way to eat, drink, sleep, cress, work, pray and generally conduct one's life. The researcher has observed that, in this sector a Kalazare affected people has to maintain little food prohibition. Such as:

Table-7
Food prohibition for Kalazare affected people.

Name of the food	Causes of avoiding
Chuani/phachan	Important for creating the germs of Kalazare in the body
Pig beef	It is the factory of the bacteria that led to the improvement of acute Kalazare.

Source: Primary data.

The folk sector

The scavenger people are the innate religiosity on even fatalism, which is, observed amongst all sectors of scavenger society. The one set of illness in the family would prompt a prayer or a special invocation to family deity on the almighty for a benediction. This may involve a priest, or a Fokir or any similar person, who would also use their, "Unconventional" treatment method (s) which the house holders would accept because their own presumed helplessness, and their trust in the practitioner's ability to achieve the desired result. The therapists' treating illness as caused by supernatural factors after religious leaders or priests whom supposedly in possession of supernatural healing power. They also use herbal related ingredients in their treatment. The practitioner's of the traditional system acquire their knowledge from other practitioner's. The following local methods are used to prevent Kalazare in the studied society:

- ▶ **Rice processing:** The rice processing traditional medical system contributes of Kalazare bear testimony in the scavenger community. If the patient really affected by kalazare the rice color would become radish as like vegetable color.
- ▶ **Give Bhoge to the Dorgabari (offering a feast of diet):** Scavenger people give Bhog (offering feast to diet) to the nearest Dhorgabari (Dhargabari is the place where live deity, ghosts, witches and ancestores) to please their diets. They give sacred food as milk, curds, banana, batasha (one kind of sweet), hen etc, and prayer to recover from illness under a big old banyan tree at Dhargabari. A priest patronete the Dhargabari, he is also the representator of almighty deity. He takes the Bhoge's foods and reaches the prayer to deity.
- ▶ **Worship to the Kali:** Scavenger people believe that the evil deity Kali is visiting the village and the Kalazare affects by touching of Kali. So they take the help of Fokir to bring down the Kali to the village. A Fakir was come of rent to deceive Kali. He presented the Kali processing by Bhoron and received him. Those believe and practices relating to disease which are the products of indigenous cultural development and are not explicitly derived from the conceptual framework of modern medicine.

The professional sector: legally sanctioned healing professions, such as modern western scientific medicine also known as allopathic or biomedicine. It includes not only a physician of various types and specialties, but also recognized para-medical professions such as nurses, midwives or physiotherapists. Under this research, the researcher has found that the scavenger people are very much reluctant to treat modern medical science. The underlying causes are given below:

- (i) Their socio-economic condition is so much deplorable and on the other hand modern medical treatment is so costly. They live on sweeping. So it is impossible for them to take modern medical therapy.
- (ii) They have strong belief that modern drugs have many side effects and usually it is not appropriate for them. So they always try to avoid the pharmaceutical

products.

- (iii) They have also strong belief in magic, rituals and religion. So they prefer traditional methods.
- (iv) One of the main factors of reluctance to modern medicine is social discrimination. As they are lived under poverty line and sweeping is their main occupation. So, the modern doctors are always tries to avoid them by demanding high payment.
- (v) Bogra Mohammad Ali hospital has taken 300 T.K. to admission into hospital from every Kalazare attacking patient. This is so hard for such poor people to pay such amount of money.

Therapeutic decision making process

In the scavenger community, the researchers has found that, people who became ill, and are not helped by self treatment; make choices about whom to consult in the popular, folk or professional sectors for further help. These choices are influenced by the context in which they are made which includes the types of helper actually available, whether payment for their services has to be made, whether the patient can afford to pay for these services and the explanatory model that the patient uses in explaining their ill health.

Kalazare affected people are at the centers of therapeutic networks, which are connected to all three sectors of the health care system. Advice and treatment pass along the links in this network- beginning with advice from family, friends, neighbors, friends of friends, and then moving on the sacred or secular folk healers or physicians. Even after advice is given, it may be discussed and evaluated by other parts of the patient's net work, in the light of his or her own knowledge or experience. Under this study, the researchers have found that, most of the respondents are chosen to take any kind of treatment from the popular and folk sectors. An important component of the popular sector is the wide range of *Self-help* groups. It includes. Mother. Sister, Grandmothers, because, they are very much experienced about the Kalazare. On the other hand, the folk treatment is cheep and available in the scavenger community.

As they lived within a group, so they have to maintain the rules and regulation prescribed by the social leader. Their social leader is termed as "Thakur"/Fokir". After failing in the popular sector, the family head of patients has to go to the "Fokir" (a religious perist) for better treatment.

Moreover, as the Bengali Majority termed them as 'polluted'. So they do not want to go to them for treatment. It is required to remark here that as a day laborer, they have minimum capacity to pay the demanding payment of modern doctors. So, they are very much reluctant to take modern medicine.

Conclusion

They people of the scavenger communities face the chronic Kalazare in various social, cultural and religious activities. In scavenger societies personal relationships are valued very highly. The area Kaviraj and Hakim provide a personal service to

their clients almost as a trusted member of their extended of families. The extensiveness of the herbal, ritual and religious methods of treatment is deeply rooted in their culture. Many medical specialist and medical Anthropologists have studied how ailments are perceived in cultural terms and how; therefore, some treatments become more easily accepted. The researchers' observations confirm that tradition culture, faith and societal compulsions play a role in determining the pattern of behavior of scavenger community in regard to health care.

Choice Behaviour of Visitors towards the Beach Tourism in Bangladesh

Dr. Md Enayet Hossain*
Md. Abdul Alim*

Abstract: This study is conducted to find out the visitors' choice behavior towards the beach tourism in Bangladesh. Total 434 usable samples were collected using Stapel and Likert Scales. Fishbein's Multiattribute Attitudes Model was used as a ground of the study. An exploratory factor analysis was conducted to find out influential factors and ANOVA was applied for testing hypotheses. The findings indicate that visitors have highest attitude toward Cox's Bazar. Four out of five hypotheses were supported at different significant levels. Practitioners can follow the outcome of the study for their policymaking and theoretically it will enrich existing literature. A brief discussion is presented including limitations and future research directions.

Introduction

There is no denying the fact that tourism is the largest industry in the world in terms of earnings and employment generation.¹ Now it is necessary to diversify the Bangladeshi economy to keep the up-lifting trends of tourism sector for generating more employment and income. It has a strong impact on overall economy of a country.² One of the most frequently used concepts in tourism is destination which means place or regions. Destination is described in terms of their content of attractions, facilities and services.³ On the other hand, domestic tourist means tourists within the country, not foreign tourist such as Bangladeshi are domestic tourists whenever they tour only inside of Bangladesh.⁴ Tourism activities first start with domestic tourists because they are the real customers of domestic tour destinations. They work as a promoter within county and abroad for introducing the domestic tour

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¹ S. K. Kuthiala, "Tourism and Hospitality Industry in India," *Journal of Services Research* 1, no. 1 (2001), 32-53.

² Melville Saayman, Andrea Saayman, and Juliet A. Rhodes, "Domestic Tourist Spending & Economic Development: The Case of the North West Province," *Development Southern Africa* 18, no. 4 (2001), 443-455.

³ Wolfgang Framke, "The Destination as a Concept: A Discussion of the Business-related Perspective versus the Socio-cultural Approach in Tourism Theory," *Scandinavian Journal of Hospitality and Tourism* 2, no. 2 (2002), 92-108.

⁴ Tareq and Arshad, "Measuring Domestic Tourist Attitude towards the Swapnapuri & Bhinnya Jagat: A Comparative Study," *An Internship Report*, Department of Marketing, University of Rajshahi, Bangladesh, 2006.

destination. Domestic visitors influence foreign exchange earnings in two ways. Firstly, when any international organization investment in tourism projects designed it causes an inflow of foreign exchange Secondly, by promoting domestic tourism, foreign exchange outflows.⁵ In order to maximize foreign exchange earnings from tourism, countries try to promote domestic tourism restrictions on the amount of money taken out of the country within a certain time frame.⁶

The term attitude is important in this study as it is "a summary evaluation of a psychological object captured in such attribute dimensions as good-bad, harmful-beneficial, pleasant-unpleasant and likable-dislikable".⁷ And,⁸ defined attitudes as "a state of mind of the individual toward a value." It is one of the pervasive notions in all of Marketing.⁹ Formally attitudes are learned predisposition to respond to some object in a consistent way. The response may be favorable or unfavorable.¹⁰ Consumers learn these attitudes over time by being exposed to the object directly or through receiving information about the object. This article would argue that tourism especially domestic tourism can make a significant contribution to economic growth and development in the country based on some influential variables for destination selection and retention.

Tourism Destination is one of the most frequently used concepts in tourism, but different stakeholders in the tourism industry and tourism researchers use it differently. In the tourism literature destinations are described as places, as regions and as images.¹¹ A destination abundant of natural resources, and/or other attractions can give competitive advantage.¹² The advantages of tourism destinations based on different products are qualifying determinants of visitation, as well as the fundamental reasons for potential visitors to choose one destination over another.

Beach Tourism is one of the most important aspects in the field of travel and tourism. The tourism which is happened for recreational, leisure, business purposes on beach is called beach tourism. Many visitors like to travel in beach for several reasons such watching the wave of the sea, hearing the sound of water, and observing the natural beauty of the sea and like the sea breeze and salt water. Some visitors want see clear blue vision of the sea/ocean. Beach tourism is one of the best types of tourism because it gives high income to the place and it attracts more visitors. The

⁵ Jeff Bennett, *Managing Tourism Services*, 2nd ed. (Pretoria: JL van Schaik, 1997).

⁶ Robert C. Mill and Alastair M. Morrison, *The Tourism System: An Introduction Text* (Englewood Cliffs: Prentice Hall, 1985).

⁷ Icek Ajzen, "Nature and Operation of Attitudes," *Annual Review of Psychology* 52, no. 1 (2001), 27-58.

⁸ Gordon Allport, *Attitudes in the History of Social Psychology*, N. Warren, M. Jahoda, eds, *Attitudes* (Middlesex, England: Penguin, Harmonds worth, 1966), 15-21.

⁹ G. A. Churchill, *Marketing Research: Methodological Foundations*, Sixth ed. (The Dryden Press, California: Harcourt Brace College, 1995), 451.

¹⁰ M. Wallendorf and G. Zaltman, *Reading in Consumer Behavior: Individuals, Groups and Organizations*: Jon Wiley & Sons, 1979.

¹¹ Wolfgang Framke, "The Destination as a Concept," pp. 92-108.

¹² Geoffrey I. Crouch and JR Brent Ritchie, "Tourism, Competitiveness, and Societal Prosperity," *Journal of Business Research* 44, no. 3 (1999), 137-152.

modern development of the beach as a popular tourism destination starts from the mid of 19th century. At present it used as global tourist industry.¹³ Beaches are serving as economic engines creating and spending employment and income for local residents. Impact of beach tourism is immense on economic and communities development. In Bangladesh there are different beaches here and there such as Cox's Bazar, Saint Martin, Kuakata, Patanga, Innani etc. However, the current study considers Cox's Bazar, Saint Martin and Kuakata for further investigation as most visitors visit these three destinations.

The most effective determinant for successful destination marketing is to maintain visitors' satisfaction that influences the choice of destination and the decision to return.¹⁴ When visitors intend to visit a destination, they interact with different quality components of the destination, which might be a package of diverse attributes that includes not only the historical sites and impressive scenery, but also services and facilities serving their everyday needs. It is known to all that dissatisfied visitors never return.¹⁵ Therefore, creating and integrating value-added products and services can increase visitors' satisfaction which is essential for enhancing loyalty of visitors.¹⁶

Study Area

Bangladesh is one of the countries with a unique scenic beauty and rich cultural heritage to offer to the visitors from home and abroad. Cox's Bazar sea beach is the world's longest unbroken clean sandy beach. It is about 120 km long. This beach is now utmost interest for visitors in the tourism world. It naturally attracts many tourists from different corner of the world due to its smooth and spongy carpeting of silvery sand sloping smoothly into the crystal clear water of the Bay of Bengal. Cox's Bazar is renowned for its peaceful nature with the magnificent green trees and attractive hills on one side and the appealing waves on the other with a rhythmic sound of the water. The sea beach is perfect for bathing, and swimming around the edge. The marvelous sight of the sunset behind the blue waves of the sea is truly breathtaking. Cox's Bazar is considered as the tourist capital of Bangladesh. The around-attractions of Cox's Bazar includes; Mohekahali, a Buddhist monastery at the

¹³ J. C. Holloway and N. Taylor, *The Business of Tourism* (Financial Times, Prentice Hall, 2006).

¹⁴ Yooshik Yoon and Muzaffer Uysal, "An Examination of the Effects of Motivation and Satisfaction on Destination Loyalty: A Structural Model," *Tourism Management* 26, no. 1 (2005), 45-56.

¹⁵ Salah S. Hassan "Determinants of Market Competitiveness in an Environmentally Sustainable Tourism Industry," *Journal of Travel Research* 38, no. 3 (2000), 239-245; Hossain M. Enayet, "An Empirical Study of Tourism Consumers' Perceived Quality: The Role of Intrinsic and Extrinsic Cues" (Paper presented at Curtin Graduate School of Business Research Forum, Perth Australia, 24-25 March, 2011).

¹⁶ Hossain M. Enayet and M. F. Islam, "Tourists' Preferences and Loyalty Towards Tourism Destination: An Empirical Investigation," *Rajshahi University Studies*, vol. 16 (2008), 231-251.

hills, Himchari picnic spot, just about 8 km from Cox's Bazar, Innani Beach, 32 km away from the city, Sonadia island with very little human visitation, Teknaf peninsula, some 80 km from town. A total of 15933 birds of 52 species have been spotted in Cox's Bazar according to a census of aquatic birds. All these places are easily accessible from Cox's Bazar by bus, jeep and water. As a result Cox's Bazar becomes a hub of tourism.

Saint Martin Island is the only coral island and one of the Eco-tourism destinations in Bangladesh. This Bangladesh Marine Paradise is located in the northeast part of the Bay of Bengal, just about 9 km south off the tip of the Cox's Bazar-Teknaf peninsula and 8 km west off the northwest coast of Myanmar. It is at the mouth of the Naf River. This island forms the southernmost part of Bangladesh. Among the locals this island is known as Narikel Jinjira (Coconut Island). Saint Martin Island is a unique location for island getaway in Bangladesh. Every a remarkable visitors visit this destination as their prime choice. This place is also famous for dry fish, dead coral, short film making place etc.

Kuakata locally known as Sagar Kannya (Daughter of the Sea) is a rare scenic beauty spot on the southernmost tip of Bangladesh. Kuakata in latachapli union under kalapara police station of Potuakhali district is about 30 km in length and 6 km in breadth. It is 70 km from patuakhali and 320 km from Dhaka, the capital city of Bangladesh. At kuakata excellent combination of the picturesque natural beauty, sandy beach, blue sky, huge expanse of water of the bay and evergreen forest in really eye-catching. Kuakata is one of the rarest places which bear the unique beauty of offering the full view of the rising and setting of crimson sun in the water of the Bay of Bengal in a calm environment. That perhaps makes Kuakata one of the world's unique beaches. It is a virgin beach which is famous for migratory winter birds across the globe, a series of coconut trees, and sandy beach of blue bay. Forest, boats plying in the Bay of Bengal with colorful sails, fishing, towering cliffs, surfing waves everything here touches every visitor's heart. The unique customs of the 'Rakhyne' tribal families and Buddhist temple of about hundred years old indicate the ancient tradition and cultural heritage, which are objects of great pleasure Kuakata. This temple is as place of pilgrimage of the Hindus and Buddhist communities. Thousands of visitors visit this destination each year. In fact, these three beaches have been drawing the majority of the visitors of the country.

Objectives of the Study

Bangladesh is a developing country but still her difficulties are immense. From a developing point of view tourism industry is very important for Bangladesh because it is labor intensive; provides a wide range of different employment opportunities; contribute to a geographical spread of employment not only in the main centers but also in rural areas.¹⁷ To date, little research has examined the impacts different tourism attributes for choosing the beach based destination The present study will

¹⁷ M. F. Islam, "Tourism Marketing in Bangladesh: A Case Study of Bangladesh Parjatan Corporation," *Rajshahi University Studies*, vol. 12 (2004), 291-305.

look into the different service attributes of Cox's Bazar, Saint Martin and Kuakata to find out the positive impact of tourism on social, cultural, economical and environmental. A little attention has been given to the overall tourism and its marketing in Bangladesh in different aspects. The study is conducted to measure attitudes of visitors towards three beach based destinations of Bangladesh who are the pioneer for developing these sectors. Thus the aims of this paper is two folds: 1) to look for the factors that visitors consider for visiting the destination; and 2) to look for variation of services among three famous beaches of the country.

Hypotheses

Accommodation plays a functional role by providing the facilities that make travel convenient and comfortable.¹⁸ Stated that as accommodation has a great influence specially demand side of the visitors, that is why; it is one of the major considerations into almost all kinds of visitors who wish to visit a destination.¹⁹ Mentioned accommodation helps the visitors to satisfy the visitors' primary need through the necessary support services of it.²⁰ Have also mentioned that accommodation facilities are most priority aspect for the visitors. Price is what a consumer wishes to sacrifice in order to gain something from a product or services.²¹ Again, emphasized on price²² as what customers actually pay in exchange for products or services' they received or a visible sign of services' level and quality.²³ Stated that price is an indicator of the amount of financial investment (to be paid) to obtain a product or services. A high priced product normally indicates variety of functions and high quality of performance.²⁴ Mentioned that the standard price of the product is the symptom of the favorable information so that consumers can easily evaluate the costs and benefits of the products obtained by them. However, international travelers consider price as a sensitive matter.²⁵ Therefore, it is important to pay particular attention to the price competitiveness of a country's tourism industry, as compared to other competitors, if

¹⁸ Colin M. Hall, *Introduction to Tourism: Development*, 2nd ed. (Melbourne: Longman Cheshire, 1995).

¹⁹ C. Cooper, P. J. E. Fletcher, D. C. Gilbert and S. Wanhill, *Tourism Principles and Practice* (London: Longman, 1996).

²⁰ Steven Pike "Destination Brand Positions of a Competitive Set of Near-home Destinations," *Tourism Management* 30, no. 6 (2009), 857-866.

²¹ Valarie A. Zeithaml, "Consumer Perceptions of Price, Quality and Value: A Means-end Model and Synthesis of Evidence," *The Journal of Marketing* 52, no. 3 (1988), 2-22.

²² L.L. Berry and A. Parasuraman, *Marketing Services, Competing through Quality* (New York: Free Press, 1991).

²³ Nargis Parvin and H. K. Chowdhury, "Consumer Evaluations of Beautification Products: Effects of Extrinsic Cues," *Asian Academy of Management Journal* 11, no. 2 (2006), 89-104.

²⁴ H. K. Chowdhury, "Generalizability of Perceived Quality Measures: An Evaluation," *Yokohama Journal of Social Sciences* 6, no. 1 (2001), 27-37.

²⁵ Geoffrey I. Crouch, "Effect of Income and Price on International Tourism," *Annals of Tourism Research* 19, no. 4 (1992), 643-664.

the industry is to continue to grow.²⁶ And²⁷ conducted the four elaborate studies covering the tourism and tourism environment in Bangladesh. In positive side, it focuses the tourism prospects and potentiality, marketing strategies of tourism industry and the foreign tourist arrival trends in Bangladesh. Down side, on the other hand some problems also discussed. In this regards,²⁸ mentioned that environment plays a pivotal role to attract both domestic and international visitors to visit a destination. An attitude toward the environment is a measure of how people would like to experience the landscape according to their personal preferences for environmental and other aspects. These preferences reflect more basic values or environmental value orientations,²⁹ and they are often related to attitudes toward specific environmental conditions and impacts as well as management and development options.

Safety and security is the primary factor for any tourism industry to provide quality services in tourism and it affects tourists while selecting destination. It is totally different from any other kind of economic activity, providing a safe and secure destination to the visitors led the degree of success or failure of a tourism destination. It is clearly proved after the tragic events of 11th September 2001.³⁰ However,³¹ noted that "Safety is the protection from unintended incidents while security is the protection from intended incidents". In this regard, safety is concerned with human life and health's protection, but security on the other hand, refers to the protection against criminal activities. Since there is an emerging consensus about crime which raises safety issues, no one can stand against it. It is a growing concern among tourism stakeholders for the potential damage of the industry through the negative perception of the visitors on safety issue.³²

It is quite difficult to operate tourism industry without having an effective and efficient transportation system.³³ It is a prime consideration for developing tourism

²⁶ S. R. Hasan, "Problems and Prospects of Bangladesh Tourism Industry," *Bureau of Business Research*, University of Dhaka (1992), 14-15.

²⁷ Ghazali Musa, "Tourism in Malaysia," *Tourism in South and Southeast Asia* (2000), 144-156.

²⁸ Kevin C. Dunn, "Contested State Spaces: African National Parks and the State," *European Journal of International Relations* 15, no. 3 (2009), 423-446.

²⁹ Pamela M. Homer and Lynn R. Kahle, "A Structural Equation Test of the Value-Attitude-Behavior Hierarchy," *Journal of Personality and Social Psychology* 54, no. 4 (1988), 638-646.

³⁰ Antonia Besculides, Martha E. Lee and Peter J. McCormick, "Residents' Perceptions of the Cultural Benefits of Tourism," *Annals of Tourism Research* 29, no. 2 (2002), 303-319.

³¹ Eirik Albrechtsen, "A Generic Comparison of Industrial Safety and Information Security," Term Paper in the PhD Course *Risk and Vulnerability* (2002). [Online] Available at <http://www.iot.ntnu.no/users/albrecht/rapporter/generic%20comparison%20of%20ind%20saf%20and%20inf%20sec.pdf>, [Accessed on 10-02-2014].

³² S. Volker and J. Sorée, "Fighting over Tourists: A Case Study of Competing Entrepreneurs in a Small Town in Belize," *Tourism Development and Local Participation in Latin America: New York* (2002), 101-114.

³³ R. A. Cook, L. J. Yale and J. J. Marqua, *Tourism-The Business of Travel* (Delhi: Pearsons Publication, 2007).

and it has both positive and negative effect in tourism. To begins, the up to date facilities have influenced tourism and the exploring of tourism has stimulated transport. But without better accessibility for the destination, transportation does not work. In order to access the areas that are mainly aimed, tourists will use any transportation mode. However, air transport is the main mode for international tourism.³⁴ But in context of Bangladesh transportation facilities are not same for each destination.³⁵

However, different scholars³⁶ presented different conceptual models and tested empirically generating elements that are used to build up causal links between quality factors of destination choice. But these studies are tested in Western and European context which failed to incorporate the important elements from the developing country like Bangladesh. From the different related literature as well as meet up the requirements of proposed objective, researchers of the current study have proposed following hypotheses.

H₁: *Accommodation facilities are different in three destinations*

H₂: *Pricing charges are different in three destinations*

H₃: *Environment is different in three destinations*

H₄: *Safety and security facilities are different in three destinations*

H₅: *Transportation facilities are different in three destinations*

Methodology

Pre-testing Methods: The purpose of conducting first pretest was to obtain a list of tour destinations those are available in Bangladesh. The respondent mentioned 70 destinations like Cox's Bazar, Saint Martin, Kuakata etc. which was cultivated among 80 respondent. Where 97% were students and rest of the respondents (3%) were professionals. The second pretest was conducted to select the attributes those were influenced the tourist to select the tour destination among same group. Respondents mentioned 35 attributes like Safety and Security and Natural Beauty of Destination. The third pretest was observed to help in developing questionnaire among 15 M.B.A students from the Department of Marketing, University of Rajshahi who had the travel experience. Final pretest was observed to find out the necessity revision of the survey design, layout, wording, and ambiguous measurement items.

³⁴ Medina L. Kroshus, "Commoditizing Culture: Tourism and Maya Identity," *Annals of Tourism Research* 30, no. 2 (2003), 353-368.

³⁵ Martina G. Gallarza and Irene G. Saurab, "Value Dimensions, Perceived Value, Satisfaction and Loyalty: An Investigation of University Students' Travel Behaviour," *Tourism Management* 27, no. 3 (2006), 437-452.

³⁶ Christina G. Chi and Hailin Qu, "Examining the Structural Relationships of Destination Image, Tourist Satisfaction and Destination Loyalty: An Integrated Approach," *Tourism Management* 29, no. 4 (2008), 624-636; Agarwal Sanjeev and Kenneth R. Teas, "Perceived Value: Mediating Role of Perceived Risk," *Journal of Marketing Theory and Practice* (2001), 1-14; J. J. Yuan and Jang S. S., "The Effects of Quality and Satisfaction on Awareness and Behavioral Intentions:- Exploring the Role of a Wine Festival," *Journal of Travel Research* (2007).

Respondent's comments and suggestions were incorporated into the design of the questionnaire.

Destinations and Influential Variables Selection: The respondent mentioned seventy tourism spots and 35 important variables during the presetting questionnaires for selecting tour destinations and variables identification for the study. It was found that about 35.9% visitors mention Cox's Bazar as their prime choice tourist spot, Saint Martin and Kuakata were 33.6% and 30.4% respectively. Only twenty four variables are selected for further analysis (Table 2).

Sample Respondents: Finally total 434 different categories visitors were randomly considered as sample respondents from three destinations (Cox's Bazar= 156, Saint Martin Island= 146 and Kuakata= 132) for this study. Among them majority were students (97%). There are many arguments in favor and against the convenience sample of students.³⁷ These scholars have been generally cited threats to external validity and arguing that students are a typical of the "general population". And findings based on students samples may therefore not be generalized to other population.^{38 39} Contends that such arguments are specious because regardless of what population is sampled; generalization can be made only with caution to other populations.⁴⁰ Used student sample for the same age group and unique response. Besides, many students usually visit the tour destinations for academic purposes. Moreover, all respondents were tourists during the data collection because they were visited there only for tourism purpose. Therefore, it can be used in general form for the final study.

Data Collection Methods and Procedures: Data were collected from Cox's Bazar, Saint Martin Island and Kuakata 156, 146 and 132 respectively with a set of pre-tested structured questionnaires. In the surface page of the questionnaire it was well described the purpose of the study that look for the factors that affect the visitors' attitudes for selecting the tour destinations. After the surface page of the questionnaire the respondents were asked to turn the page including information regarding the variables those are usually considered for selection of tour destinations. The respondents were asked using 5 point Staple and Likert scale (very good to very bad and strongly agree to strongly disagree) as this scale are easy to prepare and interpret, and also simple for respondents to answer.^{41 42} Argued that the Likert scale

³⁷ R. F. Beltramini, "Student Surrogates in Consumer Research," *Journal of the Academy of Marketing Science* 11, no. 4 (1983), 438-443.

³⁸ W. Oakes, "External Validity and the Use of Real People as Subjects," *American Psychologist* 27, no. 10 (1972), 959-962.

³⁹ H. K. Chowdhury, "An Empirical Study on the Concept and Measurement of Perceived Sacrificed," *Yokohama Journal of Social Sciences* 7, no. 1 (2002), 15-24.

⁴⁰ Paul Busch and David T. Wilson, "An Experimental Analysis of a Salesman's Expert and Referent Bases of Social Power in the Buyer-Seller dyad," *Journal of Marketing Research* 13 (1976), 3-11.

⁴¹ M. A. Zebal, "The Role of Synthesis Market Orientation Components in Determining Economic and Non-Economic Performance of Business-Bangladesh Context," *Journal of Business Studies* 36, no. 1 (2005), 171-180.

has several advantages like it is easy to construct and administer.

Attitudes Measurement Procedures: It stated earlier that attitudes would measure based on the overall evaluation of benefits of different services. Some scholars used benefit composition model.⁴³ Martin Fishbein's Multiattribute Attitude Model was used for the study that the evaluation of salient beliefs causes overall attitude. As per the model, people tend to like objects that are associated with the good characteristics and dislike objects that they believe have bad attributes. In Fishbein's Model focus has been given on overall attitude towards an object function of two factors, the strength of the salient belief associate with the object and evaluation of those beliefs. This attitude theory since has had perhaps the greatest influence on consumer attitude research over three decades.

Fishbein's Multiattribute Attitudes Model: According to Fishbein's model, "Attitude is an independent measure of affect for or against the attitude object, which is a function of belief strength and evaluative aspect associated with each attribute". Fishbein drew his support for this proposition from behavioural learning theory. Simply stated, his contention was that an attitude toward an object is more or less automatically learned as one learns about the object itself. That is, when one learns about a new product that learning occurs in the form of beliefs about product attributes. The "amount" of affect transferred from each evaluative aspect is a function of the belief strength associated with the attributes; the stronger the belief, the greater the amount of the attribute's evaluative aspect that will generalize to the attitude object. So, Fishbein's attitude theory captures how beliefs attributes of a certain object lead to the attitude toward that object. It was expressed as:

$$A_o = \sum_{i=1}^n b_i e_i$$

Where, A_o = Attitude towards the Objects, b_i = the strength of the belief that the object has attribute (i), e_i = the evaluation of attribute (i), n = The Number of the salient attributes (Engel, Roger, Paul 1990). Selected three destinations are; X_{co} = Cox's Bazar, X_{sp} = Saint Martin and X_{BJ} = Kuakata

Analysis Procedures: The data from the survey were coded and entered for statistical analysis using computer software. The analysis had been done in light of the analysis procedures used by Fishbein's for measuring attitude of consumers towards objects. From the Fishbein's Model it could be explained overall position of consumers' attitude towards the individual destination based on different factors but could not explain whether each factor is statistically significant for all destinations. ANOVA helped to overcome this limitation. Finally Duncan Multiple Range test was conducted to look for the visitors choice levels towards the destination according to their range of preference.

⁴² N. K. Malhotra, *Marketing Research: An Applied Orientation*, 5th ed. (Delhi: Pearson Education, 2008).

⁴³ Ledyard R. Tucker, *Intra-individual and Inter-individual Multidimensionality, Psychological Scaling: Theory & Applications* (New York, 1960), 155-167.

Findings of the Study

Profile of the Respondents: Among the total respondents male and female were 76.7% and 23.3% (Table-10). It was found among the total respondents 4.4% were below 20 years aged group whereas between 21-25 were 88.2%, and 26-30 were 6.5%. Age group 36-40 was exactly half of 1% and above 40 years was null. In case of profession most of the respondents were students (97%) and rest 3% were from other disciplines. Thus, the students visit Cox's Bazar, Saint Martin and Kuakata more than any other groups. Among the respondents about 2.8%, 6.2%, 14.7% and 33.4% were undergraduates of 1st, 2nd, 3rd and 4th year students respectively. Whereas 38.5% were postgraduate and others were only 3%. In case of parents' monthly income group it was found that among the respondents 23.7% was below Tk. 10,000. The highest number of population were visited between 10001 to 20,000 income earners which was 52.1%, and the other income groups are insignificant and they seldom visit the spots. Total 91% was unmarried and 8.5% was married. Geographically in the total respondents 60.8% came from Rajshahi, 16.8% from Dhaka, 15.2% from Khulna and rest were from Chittagong, Barishal and Sylhet.

Outcome from Fishbein's Model: Strength of belief (bi) is the perceived probability of association between an object and its relevant attribute. This belief was measured by having consumer rate in probability of association for each of their salient belief (Table-1). The belief associated with belief evaluation (ei) that reflected how favorably visitors' perceived the attributes. It is clear from the attitude of different detonations on the basis of Fishbein's model are; attitudes for Cox's Bazar= 24.50, Saint Martin = 17.25 and Kuakata = 17.93 (Table-1). Findings suggest that brand Cox's Bazar is viewed top most favorable position because it has received total (biei) 24.50 on all five factors. Kuakata bears second top most position among the destinations and Saint Martin is third position bearing attitudes 17.25 respectively $X_{SP} = 154.366$ based on overall attitude towards object.

Results from the factor Analysis: Principal component factor analysis with Varimax rotation (Table-2) was performed on the survey data. Before that it was found Kaiser Normalization Sampling Adequacy .872 (Table-3) that was in highly accepted level. Variable with loading higher than 0.5 are grouped under the factor 'accommodation facilities'. A factor loading is the correlation between the original variable with the specific factor and the key to understanding the nature of that particular factor. (Table-2) has been provided the Varimax rotated factor loadings against the mentioned 24 Variables consist of 5 factors. Moreover, factor analysis using Varimax rotation finds five derived factors. According to table 1, Factor 1 (F1) has an Eigen value of 6.42 and explains 25.69 % of total variance. The Eigen values of the second, third, fourth, and fifth factors are 2.86, 2.39, 1.27 and 1.14 with the explained variance 11.45%, 9.59%, 5.10%, and 4.58% respectively. The total variance accounted for by all the five factors was 56.429 %. However it is also found individual variable takes a strong role for the formation of the factor (Table1).

Results

Hypotheses Testing: The hypothesis related to factor accommodation facilities consist of seven qualities attributes each destination (Table-2). It is found from the statistical analysis (ANOVA) that $F= 84.99$, $p= .000$ (H_1) which is highly statistically significant at 1% level (Table-4). Thus the author of the study can express that the perceptions of visitors' on accommodations facilities are different for three destinations. This outcome is also consistent with the outcome of.⁴⁴ It is noted that from the F-test authors can only say the accommodation facilities are different but hardly can say which one is more responsible for this difference. Therefore, Duncan Multiple Range Tests (DMRA) was conducted and found absolute significant differences among the destinations in respect of accommodation facilities. It is seen from the Table-4 that the accommodation facilities in Cox's Bazar is much higher than the rest two destinations (Saint Martin & Kuakata). In this respect it can be suggested that destination operators need to highlight the factor accommodation facilities of Cox's Bazar as highest value than Kuakata and Saint Martin. It also found from Fishbein's model, maximum attitudes of visitors' towards Cox's Bazar. Thus, destination operator should highlight the different facilities of this destination using different promotional tools and techniques.

The hypothesis (H_2) related to price charges consists with six quality attributes for the destination of Cox's Bazar, Saint Martin & Kuakata (Table-2). It is observed from the statistical analysis that $F= 12.41$, $p= .000$ which is also statistically highly significant at 1% level (Table-6). Thus, the author of the current study can express the perceptions of visitors' on pricing charges is different for different destinations. This outcome is also consistent with the outcome of study of^{45, 46} From SMRA test it is seen (Table-6) that the price charges in Kuakata is much higher than rest of the two destinations (Cox's Bazar & Saint Martin). Therefore, marketing and management of Kuakata need to highlight the others facilities to visitors' logically against price charging. It will help visitors to be free in paying more money. Fishbein's model pricing charges shows the lower value than Cox's Bazar & Saint Martin. In this case destination operator can make the right balance between pricing charges and others facilities. Visitors are likely to get more satisfaction to visit the destination. Therefore, changing in pricing strategy for both pick and off pick season would be a good suggestion for the destination operator.

The hypothesis (H_3) related to environment facilities consist with five quality attributes for the destinations of Cox's Bazar, Saint Martin & Kuakata (Table-2). It is found from the statistical analysis that $F=7.91$, $p=.000$ which is statistically significant at 1% level (Table-4). On the basis of the outcome the study can express the perceptions of visitors' on environment facilities are different in destinations.

⁴⁴ Colin M. Hall, *Introduction to Tourism* (1995); C. Cooper, Fletcher, Gilbert and Wanhill, *Tourism Principles and Practice* (1996).

⁴⁵ James F. Petrick, "Are Loyal Visitors Desired Visitors?," *Tourism Management* 25, no. 4 (2004), 463-470.

⁴⁶ J. Alegre and C. Juaneda, "Destination Loyalty: Consumers' Economic Behavior," *Annals of Tourism Research* 33, no. 3 (2006), 684-706.

This outcome is also consistent with the outcome of.⁴⁷ It is noted that from the F-test authors can say the environment facilities are different but DMRA test present the absolute differences among the destinations in respect of environment facilities. It is found from the (Table-7) that the environment facilities in Saint Martin are much higher than rest two destinations (Cox's Bazar & Kuakata). Destination operators need to highlight the factor environment facilities of Saint Martin as it bears the highest value than Cox's Bazar and Kuakata in this regard. It also found from Fishbein's model, maximum opinions of visitors' towards Saint Martin. Thus destination operator of Saint Martin should concentrate to the others facilities e.g. accommodation in Cox's Bazar, pricing charges in Kuakata etc. for sustaining tourism. Environment factor is more important for protecting the natural environment which is also need to be focused.

The hypothesis (H₄) related to safety and security consists with four quality attributes for the three destinations i.e. Cox's Bazar, Saint Martin & Kuakata (Table-2). It is observed from the statistical analysis (ANOVA) that $F=.378$, $p=.679$ which is insignificant (Table-4). Therefore, there is no significant difference of safety and security facilities among the three destinations. In Bangladesh, there have no specific measures or special security system for tourists. So this outcome is consistent with the outcome of.⁴⁸ Duncan multiple range tests also present the almost same value each destination i.e. Cox's Bazar, Saint Martin & Kuakata in respect of safety and security facilities (Table-8). But this factor is important for traveling decision. So, it can be suggested to the destination operators can take initiatives to make the destination more visible or secured for visitors. If any destination among these three can take proper measure for improving safety & security, the destination will gain more competitive advantages positions than others.

The hypothesis (H₅) related to transportation facilities consist with two quality attributes for the three destinations (Table-2). It is found from the analysis of variance that $F= 25.95$ at 1% level of $P=.000$ which is statistically highly significant (Table-4). Thus the author of the study can express that the perceptions of visitors' on transportation facilities are different for different destinations. This outcome is also consistent with the outcome of.⁴⁹ Duncan multiple range tests present the absolute significant differences among the destinations in respect of transportation facilities. It is observed (Table-9) that the transportation facilities in Cox's Bazar is much higher

⁴⁷ Kevin C. Dunn, "Contested State Spaces," pp. 423-446; Pamela M. Homer and R. Kahle, "A Structural Equation Test," pp. 638-646; Christina G. Chi and Hailin Qu, "Examining the Structural Relationships," pp. 624-636; See also C. F. Chen and D. C. Tsai, "How Destination Image and Evaluative Factors Affect Behavioral Intentions?," *Tourism Management* 28, no. 4 (2007), 1115-1122.

⁴⁸ S. Volker and J. Soree, "Fighting over Tourists," pp. 101-114; James F. Petrick, "Are Loyal Visitors Desired Visitors?," pp. 463-470; J. Alegre and C. Juaneda, "Destination Loyalty: Consumers' Economic Behavior," pp. 684-706.

⁴⁹ R. A. Cook, L. J. Yale and J. J. Marqua, *Tourism-The Business of Travel* (2007); Medina L. Kroshus, "Commoditizing Culture," pp. 353-368; Martina G. Gallarza and Irene G. Saurab, "Value Dimensions, Perceived Value, Satisfaction and Loyalty," pp. 437-452.

than rest two destinations (Saint Martin & Kuakata). So, it can be suggested destination need to highlight the factor transportation facilities of Cox's Bazar as it bears the highest value than Kuakata and Saint Martin. It also found from Fishbein's model, maximum opinion of visitors' towards Cox's Bazar. Thus destination operator should highlight the transportation facilities of Cox's Bazar. Marketing manager of the rest two destinations can take initiative for developing transportation so that visitors can visit destination without reservation.

Conclusion

This study indicates different attributes of the destinations which influence attitudes of visitors towards the beach based tourism destinations in Bangladesh. It is found the visitors' topmost priority towards the different factors of Cox's Bazar. Therefore, destination marketers are advised to concentrate on developing promotional campaigns that emphasize not only destination as a whole, but also the distinctive and attractive attributes of each destination. Moreover, individual attitudes towards destination reflex the differentiation among the three destinations. Thus, the relationship between destination attributes visitors' willingness towards destinations provide visitors satisfaction and trust. Therefore, destination operators needs to highlight factors of destination positively which help for creating a strong and attractive destination which will be sustained in the tourism market. Developing a stronger, more favorable and distinctive destination is a good marketing strategy, and may also offer a well-defined form for sustainable competitiveness over the time.

Different limitations were found in this study and should be addressed to encourage more sound researches in the near future. This study investigated the influential variables that lead the tourist towards the tour destination from domestic visitors' perspectives in Bangladesh. The survey data were only collected in the Cox's Bazar, Saint Martin and Kuakata. This geographically limited survey may produce different results when data would from other competitive spots. This study somewhat limited in its selection of observed variables even if those observed variables were selected based on the survey, other variables may exist to achieve further insights of destination selection. In current tourism markets, any tourism destination may need to pay more attention to advanced technologies and techniques so that quality of products and services are delivered effectively and efficiently which was ignored. Therefore, future studies may address destination selection variables that include information technology and techniques. Therefore, consequently, the above-mentioned limitations should be considered as essential and critical suggestions for future research.

Appendices

Table 1: Attitudes Measurement

Factors	Cox's Bazar (cb)			Saint Martin			Kuakata		
	ei	bi	eibi	ei	bi	eibi	ei	bi	eibi
Accommodation facilities	3.78	1.96	7.44	3.13	1.01	3.17	3.18	1.25	3.91
Price charges	2.91	0.16	0.47	3.05	0.26	0.81	3.18	0.71	2.25
Environment	3.87	2.04	7.88	3.94	2.44	9.61	3.72	2.18	8.12
Safety & security	3.23	1.34	4.34	3.17	0.99	3.15	3.27	0.92	3.01
Transportation facilities	3.18	1.37	4.37	2.73	0.19	0.51	2.73	0.23	0.64
	A ₀ =		24.50	A ₀ =		17.25	A ₀ =		17.93

Table 2: Rotated Component Matrix and Total Variance Explained

Attributes	Component				
	Accommodation facilities	Price charges	Environment	Safety & Security	Transportation
Comfortable Room	.786				
Available Room Service Facility	.760				
Good Accommodation Condition	.746				
Available Restaurant at Accommodation	.682				
Clean Accommodation	.681				
Adequate Supply of Water & Electricity	.654				
Satisfied Shopping Facility	.585				
Favorable Accommodation Service Charges		.786			
Appropriate Price of Food at Accommodation		.732			
Reasonable Price of Goods		.698			
Affordable Price of Drinks		.697			
Normal Price of Internal Transportation		.644			
Normal Natural Sight Enjoying Price		.581			
Comfortable Weather			.721		
Satisfactory Natural Environment			.688		
Clean Beach and Sea Area			.662		
Comfortable Sunbathing			.611		
Chaos Free Environment			.544		
Secure Internal Transportation				.737	
Hygienic Food in Restaurant				.725	
Safe Beach				.641	
Safe Hotel				.552	
Available Air Transportation					.794
Available Train Transportation					.779
Eigen values	6.42	2.86	2.39	1.27	1.14
% of Variance	25.69	11.45	9.59	5.10	4.58
Cumulative %	25.69	37.15	46.74	51.84	56.42

Table 3: Data Adequacy Test for Factor Analysis

Kaiser-Meyer-Elkin Measure of Sampling Adequacy.		.872
Bartlett's Test of Sphericity	Approx. Chi-Square	3969.213
	df	300
	Sig.	.000

Table 4: Statistical Results of Visitors' Opinions Regarding Different Factors.

Factors	Sum of Squares	df	Mean Square	F	Sig.
Accommodation	122.476	2	61.238	84.997	.000
Price Charges	23.592	2	11.796	12.418	.000
Environment	15.347	2	7.674	7.919	.000
Safety & Security	.776	2	.388	.387	.679
Transportation	46.544	2	23.272	25.955	.000

Table 5: Visitors' Belief Evaluation about Accommodation Facilities

	Tour Destinations	N	Subset for alpha = .05		
		1	2	3	1
Duncan	Sent Martin	146	-.5305896	-.2294331	.6907131
	Kuakata	132			
	Cox's Bazar	156			
	Sig.	1.000	1.000	1.000	

Table 6: Visitors' Belief Evaluation about Price Charges

	Tour Destinations	N	Subset for alpha = .05		
		1	2	3	1
Duncan	Cox's Bazar	156	-.2714686	.0168513	.3021879
	Sent Martin	146			
	Kuakata	132			
	Sig.	1.000	1.000	1.000	

Table 7: Visitors' Belief Evaluation about Environment

	Tour Destinations	N	Subset for alpha = .05	
		1	2	1
Duncan	Kuakata	132	-.1596283	.2626377
	Cox's Bazar	156		
	Sent Martin	146		
	Sig.	.674	1.000	

Table 8: Visitors' Belief Evaluation about Safety & Security

	Tour Destinations	N	Subset for alpha = .05
		1	1
Duncan	Cox's Bazar	156	-.0528747
	Kuakata	132	.0101793
	Sent Martin	146	.0472931
	Sig.		.428

Table 9: Visitors' Belief Evaluation about Transportation

	Tour Destinations	N	Subset for alpha = .05	
		1	2	1
Duncan	Sent Martin	146	-.2949426	.4332749
	Kuakata	132	-.1858278	
	Cox's Bazar	156		
	Sig.		.329	

Table 10: Demographic Profile of the Respondents Tour Destinations

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Cox's Bazar	156	35.9	35.9	35.9
	Sent Martin	146	33.6	33.6	69.6
	Kuakata	132	30.4	30.4	100.0
	Total	434	100.0	100.0	

Age

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< 20 Years	19	4.4	4.4	4.4
	21 - 25 Years	383	88.2	88.7	93.1
	26 - 30 Years	28	6.5	6.5	99.5
	36 - 40 Years	2	.5	.5	100.0
	Total	432	99.5	100.0	
Missing	System	2	.5		
Total		434	100.0		

Student's Year of Education

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1st Year	12	2.8	2.8	2.8
	2nd Year	27	6.2	6.3	9.1
	3rd Year	64	14.7	15.0	24.1
	4th Year	145	33.4	33.9	57.9

	5th Year	167	38.5	39.0	97.0
	Others	13	3.0	3.0	100.0
	Total	428	98.6	100.0	
Missing	System	6	1.4		
Total		434	100.0		

Parent's Monthly Income

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< Tk. 10,000	103	23.7	24.0	24.0
	Tk. 10,001-20,000	226	52.1	52.6	76.5
	Tk. 20,001-25,000	64	14.7	14.9	91.4
	Tk. 25,001-30,000	13	3.0	3.0	94.4
	Tk. 30,001-35,001	3	.7	.7	95.1
	Tk. 35,001-40,000	6	1.4	1.4	96.5
	Tk. 40,001-45,000	5	1.2	1.2	97.7
	Tk. 45,001-50,000	1	.2	.2	97.9
	> Tk. 50,000	9	2.1	2.1	100.0
	Total	430	99.1	100.0	
Missing	System	4	.9		
Total		434	100.0		

Gender

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	333	76.7	76.7	76.7
	Female	101	23.3	23.3	100.0
	Total	434	100.0	100.0	

Marital Status

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Single	395	91.0	91.4	91.4
	Married	37	8.5	8.6	100.0
	Total	432	99.5	100.0	
Missing	System	2	.5		
Total		434	100.0		

Division

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Rajshahi	264	60.8	60.8	60.8
Dhaka	73	16.8	16.8	77.6
Chittagong	24	5.5	5.5	83.2
Khulna	66	15.2	15.2	98.4
Barisal	5	1.2	1.2	99.5
Sylhet	2	.5	.5	100.0
Total	434	100.0	100.0	

Role of Special Education on Children with Autism in Rajshahi

Afroza Nazneen*

Abstract: The present study explores the role of special education on children with autism in Rajshahi Division. Five special schools of Rajshahi Division were selected purposively. An interview schedule for parents' and an FGD questionnaire for teachers' were used as data collection tools. The study was qualitative in nature. The study found that after taking special education autistic children were self-dependent in daily and social life skills but progressing level of literacy skills were not so good. Very few children were capable to learn read and write in very few easy things. But they were not capable to learn critical things in different subject areas. Even, when they took special education these skills were developed but they did not practice regularly at home they forgot it. So, exercise and parents attention are essential for developing all skills. Both Teachers' and parents' agreed for developing all skills there is the need of teachers' and parent's co operation and regular practice. So, participation and co operation of family members are also very important for improving of children with autism.

Introduction

Unlike what most people believe, autism is not a psychological problem, but a neurological ailment. American psychologist Leo Kanner was the first one to term the syndromes as "autism", the Latin meaning of which is "to remain within oneself".¹ Another source explained that the word "Autism" is developed from the Greek word "Autos" which means "self and it is used to describe the group of the people who are isolated from the normal social behavior along with having triad impairment of social communication, interaction and imagination.²

The term autism spectrum disorder (ASD) is a common term nowadays because of the wide range of symptoms and levels of severity presented by individuals with autism. Autism spectrum disorder is an increasingly popular term that refers to a

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¹ Md. Selim, "Giving them a chance." *The Weekend Independent*, 8 November, 2013, pp.

² J. S. Genuis, "Is autism reversible?" in *Aeta Paediatrica* (2009), 98(10), pp. 1575- 1578.

broad definition of autism and includes the following conditions.³

- **Autism:** The classic, often severe, form of autism.
- **Asperger's Syndrome:** A form of autism is characterized by difficulty with social interactions, sensory integration processing, pragmatic language and motor skills.
- **Pervasive Developmental Disorder – Not Otherwise Specified (PDD – NOS):** A collection of features that resemble autism, but may not be as severe or extensive.
- **Rett's Syndrome:** A genetic disorder with hard neurological signs, including seizures that become more apparent with age and that affects only girls.
- **Childhood Disintegrative Disorder:** A disorder found in children whose development appears normal for the first few years, but then regresses with the loss of speech and other skills until the characteristics of autism are conspicuous.

Autism is a lifelong developmental disability that is best described as a collection of behavioral systems that affect verbal communication, non-verbal communication, and social interaction. It is generally evident before age 3, and autism adversely affects educational performance. Characteristics that often are associated with autism include

- Engagement in repetitive activities and stereotyped movements.
- resistance to environmental change or daily routines, and
- Unusual responses to sensory experiences.⁴

Autism was first identified as a category of disability in the federal legislation, IDEA, in 1990. Before 1990; autism was included in the category of other health impaired and before that in the category of emotional disturbance. Autism is also identified in the DSM-IV- TR (American Psychiatric Association, 2000). The forms of autism range from severe to mild. In severe autism, the difficulty appears during the first 3 years of a child's life.⁵

In Bangladesh, the educational history of autistic students is not very old. Autism was visually reflected in 1990 in Dhaka Shishu Hospital and other hospitals.

³ D. Zager, *Autism Spectrum Disorders: Identification, Education, and Treatment*, 3rd ed. (Mahwah, NJ: Lawrence Erlbaum, 2006), p. 240.

⁴ A. Klin et al., "Brief reports – Interrater Reliability of Clinical Diagnosis and DSM IV Criteria for Autistic Disorders: Results of DSM Autism Field Trial. *Journals of Autism and Developmental Disorders*, 30 (2000). pp.163-167.

⁵ J. Lerner & B John, *Learning Disabilities and Related Mild Disabilities, Characteristics, Teaching Strategies, and New Direction* (2009), p. 240.

Subsequently many other organizations like the Society for the Welfare of Autistic Children (SWAC), Autism Welfare Foundation (AWF), PROYASH and others came forward with their activities for autistic children from the year 2000 and onward. With the establishment of the centre for Neurodevelopment and Autism in Children in the Bangabandhu Sheikh Mujib Medical University awareness for Autism was boosted in Bangladesh.⁶ The constitution of Bangladesh clearly spelled in its article 28 (3) that every citizen can take admission to any educational institution. Besides, the National Policy on Disability 1995 and Bangladesh Disabled Welfare Act 2001-guarantee the equal rights and dignity of the Persons with intellectual impairment. It also ensures their full participation in social and state activities. Since all children with intellectual impaired are not able to receive general education, special education is their only alternative. At present, there are many Government and non-Government special schools for the autistic students and other special needs children. It is important to mention that their mental age was below than chronological age. For this reason, IQ (Intelligent Quotient) was below the normal range or had lost intellectual balance or was damaged, partly or wholly. As a result, they could not do maximum activities in proportionate to their age. For this reason, age factor got less priority in this research. So, they learn more slowly and at maturity his/her capacity to understand will be less than normal. They find difficulty in learning, social adjustment and economic productivity.⁷ So, their learning needs are different, they need more attention, support and special type of curriculum. Though, Bangladesh does not have a national curriculum of special education. As a result, each special school follows their self-developed study contents. This study attempts to explore how the role of special education plays on children with autism in Rajshahi Division. Rajshahi division consists of eight districts. These are Sirajgang, , Pabna, Joypurhat, Bogra, Chapainawabgang, Rajshahi, Naogaon, and Natore. There is no special school in Chapainawabgang and Joypurhat districts. There are special schools in Sirajgang, Pabna, Bogra, Rajshahi, Naogaon, and Natore, but there is no special school for children with autism. Among these schools, few schools have a separate section for children with autism. These are situated in Sirajgang, Pabna, Bogra, Rajshahi, Naogaon, and Natore. The schools of special education in Pabna, Naogaon, and Natore districts have recently started admitting autistic children but the number of students is very limited. The schools of special education in Sirajgang, Bogra, and Rajshahi districts started to admit autistic children in 2007. Society for the Welfare of the Intellectually Disabled, Bangladesh (SWID); Physically Handicraft Training

⁶ S. Hasina, "Adoption of Bangladesh Resolution on Autism at UNGA is a Diplomatic Success," http://www.albd.org/english/index.php?option=com_content&view=article&id=639, retrieved January 31, 2013.

⁷ A.,k. Sen and T. Dutta, "Social – Culture Aspect of Mental Retardation, Souvenir of the 7th World Congress of IASSMD," *Book of Virgin Village BANDAIKHRA, Its Women and Mental Handicaps* (1985), as cited in Sufi et al. in 1996, pp. 24-25.

Centre (PHTC) and Foundation for Women and Child Assistance (FWCA); School for Gifted Children (Tauri foundation) are the four special schools situated within Rajshahi city corporation area. SWID Bangladesh, FWCA and School for Gifted children are working for intellectual impaired and autistic children whereas PHTC works for visual and hearing impaired children. One school of special education is situated in Sirajgang district. This is the Society for the Welfare of the Intellectually Disabled, Bangladesh (SWID) and two schools of special education are situated in Bogra district. These are the Society for the Welfare of the Intellectually Disabled, Bangladesh (SWID) and another is the PROYASH. Different types of children with special needs are receiving special education in these schools. The researcher collected the information from Bangladesh Protibondhi Foundation (BPF) office of Rajshahi City and the schools.

Objective

There are differences between general and special education systems of children with autism and other special needs children, as they have different learning needs. So, the main focal point of this article are- before taking special education, how much did they develop in different developmental areas i.e. academic, behavioral and communicative, self – help, motor, social and vocational skills and after receiving special education how many changes can be seen in their developmental areas. Besides, which things are important for giving special education of autistic children and which types of facilities are needed for enhancing quality education in special schools?

Methodology

The study followed two steps for data collection and analysis. One was parents' opinion and another was teachers' opinion. The opinion areas covered from before taking special education and after taking special education about autistic students.

The study based on both primary and secondary data. Primary data have been collected from five special schools (A, B, C, D, and E) of Rajshahi Division. Five schools were selected purposively. All the teachers (27) and forty guardians of autistic students of those five schools were the respondents. Five Focus Group Discussion (FGD) sessions was organized in the schools with all the teachers. Moreover, the researcher contacted with the guardians individually and arranged interview sessions. These parents were also selected purposively. The data collected separately from the teachers and parents which helped to cross-check the information.

The study was qualitative in nature. An interview schedule was organized only for parent's, those children who were going to special school at least for three years.

This schedule was organized for collecting data about the level of performance of academic, behavioral and communicative, self – help, motor, social and vocational skills before receiving special education. There were thirteen questions for parents and it was an open-ended questionnaire.

For collecting teacher’s comments the researcher organized a FGD questionnaire. This questionnaire was an open-ended. There were ten questions for teachers about the skills of academic, behavioral and communicative, self-help, motor, social vocational skills and teaching- learning techniques.

The researcher calculated the percentages of the items of parents’ and teachers’ comments in different developmental areas used in special schools and made a thick description emphasized on the role of special education on children with autism.

Findings and Discussion

Parents Opinion about Their Children and Special Education

Those who were receiving special education at least for three years in a special school, only their guardians were selected for the study.

Table 1
Parents’ Statements about before and after Taking Special Education of their Children

No. of question	Parents statements	Percentage of answer
1	*Before 3 years they were responsive. *After 3 years they respond by sound.	77% 95%
2	*Communicated others by sound and laughing. * Communicated others by using few words.	70% 45%
3	*They express hunger by crying. *Toilet anywhere. *Liking things searching. *Using words.	90% 81% 95% 35%
4	*They were not aware about their cleanliness. *Able to do these things.	90% 10%
5	*Favorite things of playing (different types of balls, balloons, dolls, cars, etc). *Disliking things of playing (logo sets, puzzle games).	100% 100%
6	*Engagement in repetitive activities (ordinary sound, wearing particular items of clothe, unexpected noises,	100%

	throwing any things at outside, playing meaningless games etc).	
7	*Unable to express their feelings of happiness and sadness. *They express feeling of happiness by laughing and jumping and sadness by crying and anger.	90% 50%
8	*Excited attitude (throwing hands-legs and any things, jumping, crying, shouting).	100%
9	*Welcome of guests company. *Stay alone.	85% 10%
10	*Fond of travelling.	100%
11	*Uninterested peer company. *Interested in peer company.	15% 77%
12	*Unable to learn reading and writing in the right time. Able to learn reading and writing in the right time.	90% 10%
13	*Applied more effective teaching techniques must be important. *Reduce negative behavior and emotion, identify different values of money, estimated of money, shopping, interact with others. *Give more importance of life management and vocational training.	100% 100% 100%

The above mentioned table represents the statements of the parents. Forty parents gave these comments about their children and special education. These comments included before taking special education how many challenges faced their children and after taking special education how many improvements attained their children. Every child faced several challenges and beside them, their family also faced these challenges. So, their parent's opinion is that special education is very much important for recovering and making their children's independency. All parents agreed that before taking special education has no satisfactory level of performance in these areas but after receiving special education they are improving gradually. Their parents mentioned that after taking special education their children were self-dependent in daily and social life but progressing level of academic skills were not so good. Very few children were capable to learn read and write Bengali letters, few words and sentences but cannot learn many things in English and Mathematics. In English, they can learn capital and small letters, small words but cannot learn sentence making. In Mathematics, they can learn the number of 1 to 10 or 20 but cannot learn multiplication of table, addition, subtraction and other difficult rules of

Mathematics. Even their parents cannot identify which things they are much interested and like to do. As a result, they cannot find out any way, which training is important of them for livelihood. On the whole, their guardians felt much mental stress and are much worry about their children future.

Teachers’ Opinion about Their Students and Special Education

All teachers’ of special schools who teach autistic students were selected for the study.

Table 2
Teachers’ Opinion on Special Education of Autistic Students.

No. of qs	Teachers statements	Percentage of answer
1	*Progresses of academic skills are very slow.	100%
	* Few children are able to learn reading and writing.	100%
	* Speechless students learn by writing and physical gestures.	
	*Unable to learn all subjects at a time.	44%
	*Very few students able to learn all subjects at a time.	63%
		74%
2	*Communicated others by language and physical gestures.	100%
	*Communicated others by words and sentences.	45%
	*Controlling ability of negative emotion.	59%
	*Socialization.	59%
3	*After training they improve gradually.	100%
	*Verbal prompt is very important for developing them.	85%
4	*Able to do gross motor activities by running, jumping, sitting, walking, standing, crossing road and obstacles etc.	100%
	*Faced muscle problems.	5%
	*Therapy is very essential for improving them.	89%
	*After taking therapy and training decrease gross motor problems.	63%
	*Games and sports are helpful to develop them.	55%
5	*Progresses of fine motor activities (sketching and drawing by chalk and pencil, writing by chalk and pencil, drawing in a particular shape, cutting paper by scissor, walking in a particular place, easy sewing etc.) are very slow.	100%
6	*They are socialized by playing and sharing things day by day.	100%
	* Participation of social programs and activities are helpful to be socialized.	81%
7	*Favorite classes are music, dancing, drawing, rhymes, games and	100%

	sensory classes. *Less interested classes are reading and writing, vocational classes.	100%
8	*Set up a separate sensory room, a gymnasium and a canteen. * Should be needed to Recruit a speech therapist, physiotherapist and psychologist in each school. * Deliver sufficient salary for teachers. *Arranged Continues Professional Development Training (CPDT). *Essential more practice for doing better the students.	89% 55% 100% 100% 100%
9	* Below ability is in vocational skills.	100%
10	*ABA(Applied Behavior Analysis), PECS (Picture Exchange Communication System), Art therapy, Music therapy, Verbal Prompt etc. use for teaching.	

The above mentioned table discusses the comments of the teachers' on special education for children with autism. Twenty seven teachers gave these comments about special education.

In academic skills, the students are first taught letters, then small and simple words. Besides, they are also taught counting, easy and simple subtraction, addition, multiplication etc. As, these students cannot remember much and forget because of irregular practice, generally it was not possible to teach them big and complex words and sentences and more complex numeracy skills. Their learning was circulated in limited learning areas.

Teachers informed that after receiving special education most of them can acquire the efficiency of toilet training, washing hands and face, brushing teeth, self-feeding, arranging hair, wearing on clothes and taking bath but cannot arrange clothes and bed, wearing off clothes, washing clothes and utensil, cleaning table – chair, cooking of easy food, serving food, cleaning room and using family instruments (door, window, lock the key, switch on and off etc.). These are very difficult to do for them.

Schools offer different types of games in the class routine to increase interaction among the students, which is very helpful to develop social skills of them. Both teachers and parents agreed that participation in various social activities and programs help them to become social; but outside the school they do not get such opportunity. Most of the students can play with others and share their views with their play-mates. They learn to play football, cricket, badminton, suduko, ludo, puzzles solving, play with dolls, logo, and different types of computer games. But, they mostly lack the ability of puzzles solving, suduko and other types of thought related games. Students also participate in reciting, singing, dancing, drawing skateboarding and gardening; but these also seemed very difficult for them.

In fine motor skills autistic students are taught few items. The teachers explained that autistic students are taught skateboarding and drawing, writing with chalk and pencil, drawing a particular shape, cutting paper with scissor, walking in a particular place and sewing which are easy. But the progress of doing these activities are very slow. They are not competent to do all activities at a time. Moreover without regular practice they forget all. So, regular practice is essential for them.

For improving gross motor skills, schools give limited therapeutic services for autistic children. The researcher found that maximum children face few problems in gross motor skills because their body movement is normal. But few children face few problems in this skill. So, schools spent few time to develop gross motor skills among them.

The study also found that the schools also spent few time to offer vocational education. Teachers mentioned that parents are not interested to spend a long time in vocational education. Most of the parents required the schools teach vocational education like computer composing, photo copy, laminating works etc. But the schools cannot provide such supports. So, parents are not so much interested to receive vocational education for their children. Vocational skills are essential for autistic, intellectually impaired and other impaired people to live independently. It creates an opportunity for engaging in works of earning money. Schools informed that they teach the students making envelopes, simple handicrafts, packaging, making things with wood and wax, ironing clothes, sewing and embroidery, block and batik printing, making mosquito coils etc. It was found from the opinion of parents and teachers that they can do very little works perfectly, as they lack in doing such works. As a result, while selling these commodities, they fail to get good prices.

All teachers' agreed that after receiving special education the efficiency of these skills improved gradually. In special education, teachers try to apply many techniques for developing these skills. These are ABA (Applied Behavior Analysis), PECS (Picture Exchange Communication System), Art therapy, Music therapy, Verbal Prompt etc. So, students are benefited from it. When they took special education, these skills developed but they did not practice regularly at home they forgot it. So, exercise and parents' attention are essential for developing all skills. None is able to adopt all steps of all skills at a time. Somebody can adopt any skill quickly and somebody can adopt any skill slowly. Both teachers' and parents' agreed that for developing all these skills there is the need of teachers' and parents' co-operation and regular practice. So, participation and co operation of family members are also very important for improving of children with autism.

Conclusion

From the above discussion, it can be said that special education is most important for developing autistic children and other special needs children improvement. Since, they are our special citizens; so, safe, joyful and child friendly environment should be provided to ensure the Children Rights Convention-1989 and promoting education

for all-2000. Even, therapeutic services such as physiotherapy, occupational therapy, speech therapy, psychotherapy etc. should be developed for a more effective improvement. For being self -dependent should be of much importance in vocational skills and for enhancing proficiency in life skills should be created more opportunity of them. A social support network should be established for reducing discrimination and for developing social relationship. Parents and care givers should be trained up for child care and nurturing. Moral and emotional support should be provided through counseling at school for parents. Assistive technology and reliable supplies of necessary aids or applications, teaching or learning materials and equipments need to be developed for ensuring effective teaching learning environment. Government should take some initiatives for making and supplying low cost and no cost teaching aids of effective teaching- learning process.

Minorities in Bangladesh: Threats and Securities

Iqbal Husain*

Abstract: Presently around 10 per cent citizens are treated as minority in Bangladesh. These people are basically non-Muslim and they are not properly secured. There are many threats on their life, wealth and honor. Sometimes they are attacked by the reactionary majority. In between 2001 and 2013 there had been many incidents which clearly made utterly vulnerable. They have also been deprived of their basic rights. They have been treated just like second class citizens. To occupy their land and create force migration a reactionary group of people act in different ways. Nonetheless there is a long history and heritage of communal amity in Bangladesh. Culturally, all people leave peacefully in the same locality. No one ever creates any obstacle in religious belief or practice of other. But now the minorities are in threat. Many of them have migrated to India or other countries in Europe or the USA. Many others are waiting for their turn. Against such backdrop, I would like to review some cases regarding their present security condition in Bangladesh. Who and what causes are the really threats to them? Finally, I have proposed some recommendations to remove the threat and ensure security for these citizens.

Key words: Threats and Securities of Minority people in Bangladesh.

Introduction

Bangladesh is a country aged 44 in south Asia. The country was born in 1971 through a bloody liberation war. About three million people were killed and three hundred thousand women were raped during this war. These victims were not only Muslims or 'majority' of the land but, except for some black sheep, all kind of the people irrespective of majority, minority, religion, race and ethnicity participated and made sacrifices at that time. However the state could not ensure the equal rights for all citizens of the country in the last four decades. Bangladesh is a multi-cultural, multi-religious and multi-lingual country. Although the majority of the entire population belongs to one ethnic, linguistic and religious group called Bengali-Muslim. The country a population of around 160 million, of whom Muslims were 89.7 percent and Hindus 9.2 percent. According to the population census of 1991, Muslims formed 88.3 per cent, Hindus 10.5 per cent, Buddhists 0.59 per cent, Christians 0.32 per cent and other communities 0.26 per cent of the population¹.

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¹ Amena Mohsin, *Human Rights in Bangladesh 2001* (Dhaka: Aain O Shalish Kendra, 2002).

So, the number of Muslims has increased day by day, but there has been a gradual decrease of Hindu population. Many minority people, specially Hindus, have migrated to India and other countries in the last 2 decades due to threats, torture, land grabbing, etc. So, the breach between Majority and Minority in Bangladesh has unremittingly been increasing.

Who is a Minority?

Normally minority means a smaller in number between two groups forming a whole. A racial, religious, political, national, or other group thought to be different from the larger group of which it is part. A group having little power or representation compared to other groups in a society is called minority. Socially speaking, a minority is an ethnic, racial, religious, or other group having a distinctive presence within a larger society.

Sociologist Louis Wirth defined a minority group as “a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination”².

Feagin (1984) states that a minority group has five characteristics: (1) suffering discrimination and subordination, (2) physical and/or cultural traits that set them apart, and which are disapproved by the dominant group, (3) a shared sense of collective identity and common burdens, (4) socially shared rules about who belongs and who does not determine minority status, and (5) tendency to marry within the group³.

In Bangladesh, there are many types of minority groups. The vast majority of 98.5 percent of Bangladeshis are Bengali ethno-linguistic group. So, only 1.5 per cent are Non-Bengali called indigenous or ‘Adibashi’ people. At present, there are more than 45 types of indigenous group in Bangladesh Living in the CHT and various plain land districts⁴. On the basis of religion, only 10 per cent of total population is Non-Muslims like Hindu, Buddhist, Christian and others. Thus, we are getting two types of minority group in Bangladesh. These are:

- a) Ethnic minority group (1.5%), and
- b) Religious minority group (10%).

Beside, there are some other minority groups in Bangladesh. These are political minority, i.e. opposition party or alliance, leftists, fundamentalists, gender minority, i.e. transgender, Lesbian, Gay & Bisexual (LGB), age minority, i.e. adult, disabled etc. Any types of minorities in the world face some challenges or threats. Bangladesh is no exception. Nevertheless, in this article we have focused the rights and threats of religious and ethnic or racial minority groups.

² L Wirth, “The Problem of Minority Groups,” *The Science of Man in the World Crisis* (New York: Columbia University Press, 1945), p. 347.

³ Joe. R Feagin, *Racial and Ethnic Relations*, 2nd ed. (Prentice-Hall, 1984), p. 10.

⁴ Abul Barakat et al., *Life and Land of Adibashis: Land dispossession and Alienation of Adibashis in the Plain Districts of Bangladesh* (Dhaka: Pathak Shamabesh, 2009).

Rights of the Minorities in Bangladesh

All sorts of people participated in the war of liberation in 1971 irrespective of nation, religion, race and made the country independent. Hence the constitution of 1972 ensured equal rights to all citizens of the country. Nationalism (Bengali), socialism, religious neutrality and democracy were the basic foundations of the constitution. One of the main objectives of every constitution of any country is to ensure human rights and to protect the rights of the minorities⁵. The government that does not adhere to these basic tenets of its constitution cannot be called a democratic government, and the government that does not ensure equal rights and privileges to all its citizens irrespective of their caste, creed and religion is not a people's government⁶. Religious neutrality and non-communal principles were scored out through the fifth amendment of the constitution in 1979. Islam was declared as the state-religion through the eighth amendment in 1988⁷. The minorities were made second-class citizens through these constitutional changes⁸. The minority is almost half of total educated people in Bangladesh, but in the governmental jobs they are not more than 10 per cent⁹.

There are numerous laws and rules in Bangladesh to protect the rights of the minority people. There are certain international laws and convention in this connection and Bangladesh has ratified these. But this is unfortunate that the minorities of Bangladesh face different types of challenges and threats everyday.

Threats of the Minority in Bangladesh

Nowadays, suppression of the minorities has become a common dreadful practice across the world¹⁰. There are many evidences of such incidents in Bangladesh also. In 2014, 8 minority people were killed, 126 assaulted physically, 54 houses set on fire in the presence of law enforcer, 102 evicted from their homestead¹¹. There are at least 12786 cases of torture did on the minority people in Bangladesh from the 15 July 2001 to 25 August 2005¹². These cases were published in media. Sometimes, news on the minority's torture has been censored or even stopped from publication. So, Real cases of torture on minority groups are more than the mentioned numbers. Most of the time,

⁵ N Nahar, *People, Politics and Religion: Communalism in Bangladesh and India, A Comparative Study* (Dhaka: Pathak Shamabesh, 2005).

⁶ *Ibid.*, p. 19.

⁷ *The Constitution of the Peoples Republic of Bangladesh* (Dhaka: The government of Bangladesh, 2014).

⁸ N Nahar, *People, Politics and Religion: Communalism in Bangladesh and India, A Comparative Study*, p. 63.

⁹ Shahriar Kabir, *White Paper on 1500 Days Minority Torture in Bangladesh*, vol. 1 (Dhaka: Ekattorer Ghatok-Dalal Nirmul Committee, Dhaka, 2005).

¹⁰ N Nahar, *People, Politics and Religion: Communalism in Bangladesh and India, A Comparative Study*, p. 19

¹¹ *Human Rights Report of Indigenous People in Bangladesh-214*.

¹² *Ibid.*

the workers of the party in power torture the minorities. Before, during and after the election in 1991 and 1996 minority torture occurred also¹³.

A series of attack was launched on Buddhist monasteries, shrines, and houses of Buddhist inhabitants at Ramu Upazila in Cox's Bazar by local Muslim mob past the midnight past 29 September 2012. The mob destroyed 22 Buddhist temples and monasteries and 50 houses in reaction to a tagging of an image depicting the desecration of a piece of the Quran on the timeline of a fake Facebook account under the Buddhist male name. The violence later spread to Ukhia Upazila in Cox's Bazar and at Patiya Upazila in Chittagong where Buddhist monasteries, Sikh Gurudwaras and Hindu temples were targeted for attacks. An estimated 25,000 Islamists participated in the violence directed at Buddhists and Hindus and over 300 people were arrested in this connection.

Due to the construction of Kaptai Dam, more than 100,000 people were displaced. All displaced were ethnic minority known as 'Pahari Adibashi' (Indigenous people from the hill tracts)¹⁴. 200,000 to 400,000 landless Bengali farmers from several districts outside the CHT in 1979 and the early 1980s through a government-sponsored programme led to the dispossession of thousands of acres of lands (including forests) previously belonging to indigenous people, which are yet to be recovered. In accordance with the 1997 CHT accord and subsequent legislation, a commission on land has been formed to resolve disputes over land which is yet to start working¹⁵.

The minorities live under endless apathy and negligence. Below is given an account of the feeling of a minority member expressing this truth¹⁶:

1) As a member of the minority community, I have to encounter hundreds of problems socially, politically and economically. The member of majority community of Bangladesh more often tend to use the minority community to achieve their self interest in local politics and other matters that relate to dispute of land and property. It is not possible to defy their command for the sake of communal peace and to maintain self-dignity and honour of the family.

2) It is difficult to maintain and protect one's own property. Instances of trespassing and forcible acquisition of cultivable lands are aplenty, fishes from pond are netted and taken away by force, bamboos are cut and taken away, ripe and standing crops are plundered from fields in broad daylight, legally-owned lands are taken over in the name enemy property. The threat of Mastans (local hooligans) and toll-collectors are common phenomena and harassment of police and of the party in power is a regular feature in the life of the minority in Bangladesh.

3) Sometimes the freedom of movement is seriously restricted.

4) Freedom of speech and opinion is also curtailed.

¹³ Ibid, p. 8.

¹⁴ Abul Barakat et al., *Life and Land of Adibashis: Land Dispossession and Alienation of Adibashis in the Plain Districts of Bangladesh*.

¹⁵ Ibid., p. 29

¹⁶ N Nahar, *People, Politics and Religion: Communalism in Bangladesh and India, A Comparative Study*, pp. 67-68.

5) To exercise the right of franchise also in some cases becomes difficult in the face of physical threat and harassment. In such cases, we do not go to polling booth rather stay at home for honour and safety.

6) Remedy is scarce for deliberate harassment. If complaints are lodged with police, more harassment and extortion are inevitable.

7) We do not feel at ease in going to the Mandir and bringing out religious procession.

8) When a Hindu passenger travel in a bus or train the Muslim passengers make fun of him and taunt him on the slightest pretext

9) In some cases equal rights under law are not secured to the members of the minority community.

10) *In professional Life:*

a) Heavy workload is assigned to the minority employee.

b) A minority employee always experiences difficulties in obtaining sanction leave.

c) Despite rendering valuable services, proper evaluation is not recorded in the Annual Confidential Record (ACR).

d) In professional field, sometimes it is difficult to get a promotion.

e) A minority officer or employee is usually transferred to the least preferred place and is given lesser important desk.

Who does it and Why

After the emergence of Bangladesh, we have failed to construct a secular society. One aspect of secular society is to construct a sense of de-mystification about the universe. From this aspect, all structures, processes and situations are under constant scrutiny. The meaning of this scrutiny is to identify all probable indexes of change. The other aspect of secular society is to construct constitutional attitude towards political power. In Bangladesh, instead of constructing this twofold meaning of secular society we have kept the colonial societies of Pakistan and British times with minimal reform¹⁷.

More than 40 electoral areas in Bangladesh, Hindu voters are the main factor in election result. Four-party alliance local workers launched an attack on the minority, specially Hindus to resist them from casting their votes. This is a pre-planned scheme to defeat the AL (Awami League) candidates. After reviewing the cases, Shahriar Kabir said, the main objective of this torture converted Bangladesh to a monolithic Muslim country like Afghanistan¹⁸.

Most of the people of religious minority naturally support the Bangladesh Awami League due to their secularism. This is the reality in the most of the countries in the world. Religious minorities support those political parties who

¹⁷ B. K. Jahangir, *Nationalism, Fundamentalism and Democracy in Bangladesh* (Dhaka: International Centre for Bangladesh Studies, 2002.), pp. 121-122.

¹⁸ Shahriar Kabir, *White Paper on 1500 Days Minority Torture in Bangladesh*, vol. 1 vol. 3, p. 7.

believe and practice religious neutrality and non-communal ethics¹⁹. Shahriar Kabir said, Four-party alliance (Bangladesh Nationalist Party- BNP, Bangladesh Jamaat-e-Islami...) workers are the alleged for 99 per cent cases of minority torture from 2001 to 2005. Bangladesh Army is alleged for the major portion of minority torture in the Chittagong Hill Tracts (CHT)²⁰. During the AL regime (1996-2001) 44 % land grabbing of the minority group in the name of enemy property was executed by the AL workers. At the same time, 32 % cases have been done by the BNP worker. In the last 40 years (1965-2005), more than 4 million Hindu families (40 % of total Hindu people) became victims of enemy property act²¹.

Rohingya refugees from Myanmar are suspected to be involved in communal violence at Ramu, Cox's Bazar on 29 September 2012. BNP and, Jamaat-Shibir workers, madrasah students were allegedly behind the case. AL supporters even common people (majority) also were suspected of this violence. So, no one is free from the complaint of minority torture. Though, most of the minorities are the sincere supporters of AL, they are not secured to the AL supporters also. Land-grabbing and asset occupation are the main reasons of violence against minorities. Communal attitude, political interest, Islamic fundamentalism, etc. make the minorities more vulnerable.

Issues of security and Peace among the Minorities

If we believe that our country is a modern, democratic, non-communal and welfare state, we must stop all sorts of violence against the minorities. If we agree that our country is a land of all her children, we must ensure equal rights for all citizens. To stop violence and to ensure security and peace, there is no alternative but equal right. The points mentioned below can be considered in this regard:

a) *Construct secular state*: At the very early phase of the independence of Bangladesh, the policy makers tried to construct a secular country. They had a motto regarding this issue. So, they kept secularism as one of the four main pillars in the constitution. Later, the rulers however have changed the constitution and manipulated the non-communal ideology into a more communal strain. As a result, the minorities became unsecured and vulnerable day after day. If we really want to protect the minority people, there is no alternative but construct a secular country. Constitutional amendment is not enough for this, sincere commitment of the highest level of the government is also needed. To construct a secular country, movement of the civil society, people's interest, etc. are very important besides political will.

b) *Strengthen democracy*: A significant number of minority tortures have been exerted happened because of political fanaticism. The minorities support the progressive politics. That is why they become victims of torture of the reactionists before, during and after election. If our democracy became stronger, everyone would respect other's opinion and freedom. So, we should strengthen our democracy. To do

¹⁹ Ibid, p. 6.

²⁰ Ibid.

²¹ Ibid, p. 13.

it freedom of press, reformation of constitutional institutions, practice of democracy everywhere (party, profession, family etc.) should be ensured.

c) *Ensure punishment of the miscreants*: Some people are always opportunists. They have no party, politics or ideology. They try to achieve self-interest in a vulnerable or critical situation. But if the state can ensure exemplary punishment for these miscreants, torture on the minorities must be reduced. The political parties must say 'no' to such miscreants.

d) *Proper Rehabilitation*: Unfortunately, if any minority is victimized, proper rehabilitation must be ensured. If they lose their lands, homesteads, houses or any other properties, everything must be refunded with interest. If they become injured or killed, s/he or her/ his family must be compensated with sufficient financial aid. There is a good example of rehabilitation in Bangladesh. After the 10th national election (January 5, 2014), miscreants set the homesteads of a minority community on fire. Then the government made constructed 'Paka' houses instead of 'Kancha' houses. There is a little bit risk of arson at Paka house. The miscreants will be discouraged to make on with such schemes in future.

e) *Social awareness in favor of diversity*: Diversity is a beauty of any society. Most of the historical, classical and developed countries have diversified people in the world. So, people should be aware of and committed to diversity. If any society or country has a smaller community of people they may face different types of problems. Here we are mentioning an example: if any city authority kicks out the lower caste people, e.g. Sweeper (Dalit/horijon in Bangladesh) within a day, the entire city can be converted into a big dustbin. So, we need social awareness in favor of diversity. Harder will secular state, strong democracy and so on prove fruitful if the common mass does not become aware.

f) *Religious solidarity*: Religious solidarity is very much important to protect the minority community. Respect and tolerate the other religion is the precondition of religious solidarity. To ensure religious solidarity, leaders of the different religion (Imam, Priest, Father, etc.) can arrange opinions sharing meeting and/or participate in such programs jointly. Followers of different religions may also sit together. They can also make friendly relationship each other. Where these practices are available, religious solidarity among the people must be increased.

g) *Practice real ideology of religion*: No religion teaches brutality on the human beings. Whoever tortures minority people, s/he never believes or practices the real ideology of any religion. Just for private gain, some people create violence against the minority group. The communal political parties encourage such people and their activities. Because they do not believe secularism. The religious terrorists, fundamentalists misinterpret the religious principle. So, their followers break-down the communal peace in the name of religion. But this is not any actual ideology of the religion. We must know and practice real learning of the religion. At the same time, we should spread and accelerate basic and real ideology of the religion.

Conclusion

Bangladesh is a country for all of her citizens. We liberated the country in exchange of blood of all people irrespective Muslim, Hindu, Christian, Buddhist, Tribal people (Adivasi). We must remember the sacrifices of all types of people of this land. Due to political or minor interest we cannot leave make our country unsecured for any citizen even s/he is a single one. Firstly, the state has to take effective initiatives in this connection. Then the civil society, the common mass, media, etc. should be active in this regard.

Improving Educational Integrity for Sustainability

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Abstract: The paper argues that education, formal or informal, is meant to be a means to integrate various branches of knowledge aiming to develop sustainability integrity in terms of achieving self-reliance. Contemporary education has resulted in globalisation of dependence, natural resource degradation, unsustainable consumption culture, social disintegration and widespread socioeconomic and political injustice. These have disrupted the self-reliant livelihoods that existed widely in Bangladesh. The paper suggests that an integration of the spirit of values education at Madrasa (Islamic religious school) and that of the discourses of Baul mystic-philosophers of Bangladesh into contemporary curriculum would help develop people's spirituality to become part of social, economic and ecologically sustainable development. The paper depicts a blueprint of a policy framework integrating pedagogy for spiritual development into curriculum for restoring the declining social sustainability. In conclusion, an assertion is made how integrity in education would help improve ecological footprint of the country by way of practicing self-reliant living.

Introduction

Professor Klaus Bosselmann understands ecological integrity as the core meaning of sustainability.¹ The paper argues that, in fact, integrity and sustainability are the two sides of development coin – be it in the context of ecological and human. This has also been emphasized by several writers working on sustainability and integrity. Phillis and Andriantiatsaholiniaina observe that sustainability consists of two subsystems, ecological and human; and the overall sustainability is a function of the individual subsystem's integrity that fulfils criteria and principles of sustainability.² Westra and Lemons (1995) also view integrity in terms of sustainability: "A thing is

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¹ Professor Klaus Bosselmann. "Ecological integrity as the core meaning of sustainability," *Journal of Sustainability* 2, no, 10 (2010) 2424-244. doi:10. Access from: www.mdpi.com/journal/sustainability

² Yannis A. Phillis, Luc A. Andriantiatsaholiniaina. "An ill-defined concept and its assessment using fuzzy logic, *Ecological Economics*, vol.37 (2001), 435 – 456.

right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise".³ Blessing Chapfika defines integrity as "the state or quality of being complete, undivided, (and) unbroken"⁴. Here, integrity connotes a quality marked by completeness or perfection. In other words, the concept of integrity connotes a unity of parts that constitute a whole, which basically conforms the case with holistic sustainability that comprises individual, social, cultural, political, economic, ecological and environmental sustaining ability⁵. This clearly suggests that integrity is integrally related to sustainability. It is the state of integrity of a thing that retains its (sustain)ability to continue its ongoing change and development.⁶ Sustainability cannot sustain without integrity.

The overlapping sense of meaning between integrity and sustainability is global. The Baul-philosophers⁷ of Bangladesh prefer to use 'integrity' instead of 'sustainability' in their discourses on sustainability related matters, such as social integrity, ecological integrity etc. They consider integrity as a wholesome picture depicting sustainability comprising of, as Gibson et al. (2005) observe, "intricate combinations of social, economic and ecological factors that intertwine in different ways depending on local and regional conditions"⁸.

Depletion of sustainability is now a global phenomenon. Calder and Clugston believe that the state of the global environment and human wellbeing has been observed for many decades to be in a spiral of decline⁹. Boff reveals that the human race is essentially faced with an unparalleled situation. It has to decide whether to continue to live or choose its self-destruction. All these assertions are alarming indicating that if urgent and effective measures are not undertaken soon, the sustainability of the Earth-system can be increasingly volatile¹⁰. Hence, restoration of

³ Laura Westra and John Lemons, *Ecological Sustainability and Integrity: Concepts and Approaches* (Springer Online Publications), 1995, 218, this is a quote from Leopold (1949).

⁴ Donald W. Curl, "The Baltimore Convention of the Constitutional Union Party," *New York Times*, May 10, 1860.

⁵ Laura Westra and John Lemons, 225.

⁶ L. Westra. "An apology for ethics in defense of sustainability and integrity," *GLOBAL BIOETHICS*. Vol. 15, no. 4, 2002.

⁷ Bauls-philosophers are the mystics of Bangladesh. They educate people with their spontaneous songs that include metaphysics, religio-philosophy, socio-economic and political issues, solutions to environmental problems and naturalism. The Bauls' way of happiness and simple lifestyle is the national model of lifestyle to follow by others. They are highly respected in Bangladesh for their voluntary contributions to Bangladesh culture.

⁸ Gibson, Robert B., Hassan, Selma., Holtz, Susan., Tansey, James., and Whitelaw, Graham, *Sustainability Assessment – Criteria, Processes and Application*. London: Earthscan (2005), p. ix.

⁹ Calder, W. and Clugston, R. "International Efforts to Promote Higher Education for Sustainable Development," *Planning for Higher Education*, 31(3) (2003): 30-44.

¹⁰ Boff, L., *Life and death on planet Earth*. In Elizondo, V., Sobrino, J., (Eds), *Concilium 2000: Reality and Hope*, London: SCM Press, 2000, pp. 1-11.

degraded sustainability is now a big concern to policymakers at every level of social, economic and environmental management.

Emphasizing on social integrity in terms of social health, the paper argues that if social health can be restored through sustainable social development, then economic and ecological health affected by human's unjust manners of functioning would fix itself. To make this happen, educational integrity is the only means. According to Orr, educational integrity is meant to educate people to think broadly, to perceive systems and patterns, and to live as whole person¹¹. Thus, members of society need to be educated and trained holistically, i.e. with educational integrity, in order to restore and nurture different aspects of social health such as values, education, demography, culture, spirituality, lifestyle including consumption character, livelihoods etc. This suggests that educational integrity is the key to sustainability integrity, for it is a commitment to acquiring the key sustainability values such as simplicity (modesty-driven self-reliant lifestyle), respect (to all beings and non-beings in nature), and responsibility (to preserve natural systems), and the translation of these values into action.¹²

Meaning of Educational Integrity to Sustainability

Education, formal or informal, is meant to be a means to integrate various branches of knowledge aiming to develop sustainability integrity in terms of achieving self-reliance (i.e. self-sufficiency) through sustainable development. This suggests that education intrinsically results in acts or experiences that have effects on the mental or/and physical ability of people. Anthropologically, education is the process by which society inherently transmits its accumulated knowledge, wisdom, skills and values from one generation to another.¹³ In other words, education is an attempt on the part of individuals and society to transmit into the succeeding generations; their accumulated store of the knowledge of arts, values, customs and their ideals of life as a whole. In addition to their experiences in various fields that should help the younger generation in carrying on their activities of life effectively and successfully¹⁴. It is also emphasised that education is about developing a person aiming to foster creative, emotional, and values-enriched spiritual and intellectual development for conducting their activities in real life situation¹⁵. An integration of these views on education makes a notion that transmission of values and development of character are common in education and these are essential for

¹¹ Orr, David W., *Earth in Mind – On education. Environment, and the human prospect*. Washington: Island Press (1994), p. 2.

¹² Nannerl O. Keohane. *The Fundamental Values of Academic Integrity*. Center for Academic Integrity, (1999). www.unisa.edu.au/educationalintegrity/index.asp

¹³ <http://en.wikipedia.org/wiki/Education>. Accessed on April 18, 2015.

¹⁴ Ahmed, Manzoor, *Islamic Education*. (New Delhi: Qazi Publishers & Distributors 1990), p. 1.

¹⁵ Forrant, R., Pyle, J.L., Lazonick, W., Levenstein, C. (eds), *Approaches to Sustainable Development: The Public University in the Regional Economy*, (Amherst: University of Massachusetts Press, 2001), p. 18.

understanding the natural and social environment around us and for connecting our knowledge with our concerns about nature, ecology and other people i.e. sustainable development.

In view of the above notion it follows (to theorize) that human is natural to education- formal or informal, education is universal to human; and sustainability¹⁶ is the product of human's acquired level of educational integrity. This makes a point that education and sustainability, or more simply, education for sustainability appears to be human's natural companion throughout one's life to help attain personal integrity. Any lack in nurturing education or any lack of integrity in the educational curriculum itself can result in a lack in personal integrity, which can so result in a lacked sustainability management. Similarly, it is educational integrity that can attain holistic sustainability or sustainability integrity. In other words, achieving sustainability integrity is not possible without acquiring educational integrity. This is reflected diversely.

Orr maintains that education is a problem rather than a solution, when it lacks integrity. The conventional wisdom holds that all education is good, the more of it one has, the better. On the other hand, without significant precautions, education can equip people merely to be more effective vandal of the earth¹⁷. The writer observed in the 1990s how lacking in educational integrity resulted in inviting a dire unsustainability. In a typical day, the earth loses 116 square miles of rain forest, or about an acre a second; 72 square miles to encroaching deserts, 40 to 250 species lost or threatened; and add 2,700 tons of chlorofluorocarbons and 15 million tons of carbon dioxide to the atmosphere. Orr also stresses that many things on which our future health and prosperity depend are in dire jeopardy. Climate instability, diminishing resilience and productivity of natural systems, depleting beauty of the natural world, and decaying biological diversity - all these are not from the work of ignorant people. Rather, it is largely the results of work by people with high educational degrees including PhDs. What was wrong with their education? Orr believes that education of the day emphasises on "theories instead of values, concepts rather than human beings, abstraction rather than consciousness, answers instead of questions, ideology and efficiency rather than conscience"¹⁸

Baul guru Aziz Shah Fakir's (102)¹⁹ views on education seems to supplement Orr's observations with a key to realizing the deep meaning of education. According

¹⁶ Chapin, F. Sturat III; Kofinas, Gary P.; Folke Carl et al, "Principles of Ecosystem Stewardship- Resilience-based natural resource management in a changing world," *Springer*, New York (2009): p 18. Sustainability requires that people be able to meet their own needs, i.e self-reliance for sustain human well-being now and in future.

¹⁷ Orr, David W, *Earth in Mind – On education. Environment, and the human prospect.* (Washington: Island Press 1994), p. 5.

¹⁸ *Ibid.* p. 7.

¹⁹ Darvish Aziz Shah Fakir (102) is a renowned Baul guru. He lives with his wife Laily at the tomb of his guru Darvish Kalu Shah Fakir (d. 1971) in the village of Choraikole of Kushtia district of Bangladesh. It is important to mention that most Bauls including Aziz Shah Fakir are not formally educated.

to the guru the aim in human life is to attain personal 'happiness'²⁰ and socio-environmental sustainability; main objective is to acquire educational integrity for fulfilling the aim; and the goal is to establish happiness for present and future generations. Unlike most people who set their goal for accomplishing economic sustainability, the Baul-philosophers of Bangladesh stress on happiness as the ultimate goal. They reveal, as most religions do, that happiness is the symbol of integrity;²¹ it is eternal, it is sustainability while economic conditions are temporal. They also proclaim that there is no evidence that money or wealth can establish lasting personal, conjugal or social happiness. The Quran also puts money or wealth as unrelated to happiness: "[t]hose who seek to make wealth or status a means to happiness will come to know in the end how futile and fruitless their efforts were"²². This clearly indicates that happiness is unreachable only through material possessions, while money is thought to be the god of happiness in materialistic societies.

What makes people feel happy and satisfied is intrinsically linked to the value system they acquire and hold it by way of integrated education. That is why Baul-philosophers' discourses on sustainability reveal globalisation of educational integrity as an integral to sustainability upkeep. Hill considers that educational integrity is essential for removing ignorance, understanding nature and connecting the society through its tradition and developing new practices with changing sustainability scenarios²³. This indicates that human survival is integrally linked with people's happiness comprising of self-contentment, local knowledge and self-reliant living using simple technologies, while, according to Chambers (1989), the local knowledge has to be enriched through educational integrity and the technology used should be socially, culturally and economically appropriate and accessible to the people²⁴. This has not been the case in the contemporary education, though it is needed very much in present days.

In sum, it is suffice to say that education, formal or informal, is meant to integrate various branches of knowledge in order to develop sustainability integrity and self-reliance through sustainable development. The modern education, lacking integrity, has resulted in globalisation of dependence, natural resource degradation, unsustainable consumption culture, social disintegration, and widespread socioeconomic and political injustice. All these outcomes have synergistically not only degraded socioeconomic and environmental sustainability, but also have disrupted the tradition of self-reliant livelihoods that existed widely in the past and

²⁰ Happiness is an important element of self-worth and self-image (Smith, 2005:23).

²¹ Nuttall, John, *An Introduction to Philosophy* (UK: Polity Press, 2002), p. 196. (Happiness is more than satisfaction or pleasure and the totality of the satisfaction of all wants and pains).

²² The Holy Quran, Sura 6, Verse 94. (Quran 6:94).

²³ Hill, B., *Christian Faith and the Environment- making vital connections* (New York: Orbis Books, 1998), p. 61.

²⁴ Chambers, Robert, *Rural Development- Putting the Last First* (London: Longman Scientific and Technical Publications, 1989), p. 205.

still exist in traditional societies, though marginally. Then how do acquire educational integrity?

Achieving Educational Integrity

In December 2002, the United Nations General Assembly adopted resolution 57/254 to put in place a United Nations Decade of Education for Sustainable Development (DESD), spanning the years 2005 to 2014. The overall goal of the Decade of Education for Sustainable Development is the integration of the principles, values, and practices of sustainable development into all aspects of education and learning.²⁵ What follows from it is that a reorientation of education, as emphasized by UNESCO, can be the basis for achieving educational integrity. UNESCO's calls for a reorientation of education focuses on the need to acquire skills for achieving environmental and ethical awareness, values and attitudes, and behaviour consistent with the principles of sustainable development. It states that people's attitudes need to change and that both formal and non-formal education is indispensable to addressing sustainability concerns. In its report on the contribution of education to sustainable development, the key lessons include a new vision for education that seeks to empower people to assume responsibility for creating and maintaining a sustainable future. In addition, there is a call for a re-focus of educational programs and practices in order to build the concepts, skills, motivation and commitment needed for sustainable development; in particular, sustainability values should be nurtured and extended throughout one's life.

The paper argues that the reorientation of education emphasising the above assertions is unlikely to be practicable from the 'simple definition' of sustainable development unless it is comprehensively reoriented. Sustainable development is "development that meets the needs of the present without compromising the ability of the future generations to meet their needs"²⁶. UNESCO also asserts that "(T)his simple definition encompasses a complex dynamic that implicates values and value systems as well as interdisciplinary knowledge and experience, and stresses the interdependence of the environment, society and the economy."²⁷ However, in reality people generally recognise food, shelter and clothing as the basic human needs that are materialistic in nature and can be met through economic activity devoid of moral issues. Thus, UNESCO's emphasis on ethical awareness, values and attitudes, and behavioural development is too obscure to figure out in the present education curriculum. Moreover, clearly this is why the present education is resulting in only growth-driven economic development without paying little or no consideration for social and ecological sustainability. Consequently, both social and ecological sustainability is declining and bouncing back on economic sustainability with

²⁵ UNESCO, *Education for All: Is the world on track?* EFA Global Monitoring Report 2002, p. 3.

²⁶ World Commission on Environment and Development, *Report of the World Commission on Environment and Development: Our Common Future*, (New York: United Nations Head Quarters, 2010), p. 43.

²⁷ *Ibid.*, p. 1.

negative impacts. The global hue and cry for improving social and economical conditions is only increasingly becoming futile.

In order to save the humanity from sustainability disaster the paper stresses on the values that must be fostered in order to enrich the principles and practice of sustainable development. Firstly, this can be done elucidating the term human 'needs' in terms of both biological needs (food, shelter, clothing etc.) and spiritual health (self-reliance and happiness). Secondly, the integration of self-reliance and happiness into the definition of sustainable development is required, which would read: 'sustainable development is development that facilitates people to be self-reliant in meeting their basic needs and accomplishing spiritual development for personal integrity and happiness of the present without compromising the ability of the future generations to enjoy the same.' Self-reliantly or self-reliance in the context of sustainability management is crucial, for it can play a key role in achieving basic material needs as well as happiness - the basic spiritual need for sustaining individual and social integrity.

An integration of the concept of self-reliance is a state of acquiring of basic needs for enjoyment of a simple lifestyle on one's own accord. It intrinsically spiritualises people to be modest in consumption in order to maintain good health and food security, enlightened mind, pro-sustainability living standards and family size, caring for nature and other human beings, and hence supporting holistic sustainability²⁸. Bowers argues that the state of self-reliance can care for human as well as the local ecosystems to let it provide basic services for those who are living and those who are to be born²⁹.

The values education at Madrasa (Islamic religious school) and that of the discourses of Baul-philosophers of Bangladesh foster the principles and practice of self-reliance in terms of happiness as the goal. The prominent pro-happiness values they foster are simplicity, respect and responsibility. Acquisition of these values not only can generate happiness, it would also be integral to social, economic and ecologically sustainable development.

Simplicity

Simplicity as a human value utterly resents consumerism that is at the core of global sustainability issues. Jardine observes that consumerism is a subtle form of tyranny, it is not sustainable, and so modern consumer societies will have rendered the planet uninhabitable within a century. Consumer culture is definitely self-destructive; it generates expressive individualism that destroys social bondage, and relies on immigration to sustain socio-economic sustainability³⁰. Esposito and Watson maintain that in today's world, the desire to earn more and more money and consume

²⁸ Marinova, D., Hossain, A., Hossain-Rhaman, P. "Sustaining Local Lifestyle through Self-Reliance: Core Principles," in Wooltorton, S., Marinova, D. (Eds), *Sharing Wisdom for Our Future: Environmental Education in Action*. Australian Association for Environmental Education (Sydney: 2006), pp. 373-380.

²⁹ Bowers, C. A., *Revitalising the Commons: Cultural and Educational Sites of Resistance and Affirmation* (London: Lexington Books, 2006), p. 102

³⁰ Jardine, Murray, *The making and Unmaking of Technological Society – How Christianity Can Save Modernity From Itself* (Michigan: Brazos Press, 2004), pp. 126-127.

more and more unnecessary goods is a dominant force at the expense of spiritual growth and contentment³¹.

Voluntary simplicity with self-sufficiency has been advocated in the West by Daly and Princen as a common-sense thing to do: I eat because I am hungry, at some stage I am satisfied and if I continue to eat I will feel bloated³². This also links Gandhi's "The more I have, the less I am" and vice-versa³³. In Lorey's observation, questions arise as to "Can we do more with less? Is it possible to reduce consumption by more satisfaction with what people already have, by satiation, no more needing more because there is enough, and by sublimation, having more satisfaction with less to achieve some greater good?"³⁴

To the Baul-philosophers, simplicity is a value-based lived reality, which minimises the importance of materialistic possession. Adopting simplicity as a value means that it is unlikely there to be rebound effects.

Respect

This characteristic talks about respect for fellow human beings as well as for the living and non-living natural world, which is the source of enjoyment and inspiration for the community. The respect is practiced in a culturally appreciable framework without harming the environment, and this links to the environmental and social aspects of sustainability. In many traditional societies respect is built around knowledge and experience. Knudston and Suzuki talk about the "wisdom of the elders" and the "sacred ecologies" which can provide the foundation for new global environmental ethics³⁵. The Baul philosophers in Bangladesh are deeply respected and people are prepared to follow their advice. Respect of social cultural norms and traditions is also an important component of self-reliance and the long-term sustainability of Indigenous societies. Westra et al. reveal "Traditional communities demonstrate with their lifestyle a respect for the Earth that ensures the protection of ecological integrity"³⁶.

Respect includes consideration for fellow human beings as well as esteem and admiration for the living and non-living natural world, which is the source of enjoyment and inspiration for the community. In Bangladesh, respect exists in a

³¹ Esposito and Watson, John L and Michael, *Religion and Global Order* (Cardiff: University of Wales Press, 2000), pp. 198-199.

³² Daly, H., *Beyond Growth: The Economics of Sustainable Development*. (Boston: Beacon Press, 1996), p. 53. Princen, T., "Principles for Sustainability: From Cooperation and Efficiency to Sufficiency". *Global Environment Politics*, 3(1), 2003, pp. 33-50.

³³ Joshi, N., *Economics of the Spinning Wheel*. (Ahmedabad, India: Navajiban Mudranalaya, 1993), p. 53.

³⁴ Lorey, David E., *Global Environmental Challenges of the Twenty-First Century: Resources, Consumption and Sustainable Solutions*. (USA: SR Books, 2003), p. 44.

³⁵ Knudston, P. and Suzuki, D., *Wisdom of the elders*, (North Sydney, Australia: Allen & Unwin 1992), p. 29.

³⁶ Westra, Laura; Bosselmann, Klaus; and Westra, Richard et al, *Reconciling Human Existence with Ecological Integrity*, (USA: Earthscan 2008), p. 146.

culturally appreciable framework with reverence for the natural environment. In many ways respect as a value reflects humility and acceptance of the power of nature and can be juxtaposed to the Western paradigm of finding a technological fix or a technological innovation for any unsustainability problems.

The Baul adherents and folk naturalists pay their respect to nature by way of their practice of naturalism: they live following and in accordance with the laws of nature and its manifestations. Mujtaba and Musavi stress that naturalists acquire wisdom for naturalism from the manifestations in nature and by observing how every other species adapts to its changing conditions of life³⁷. This includes caring for and sharing of nature; respect to nature or to nature naturalism as a value teaches that humans should take care of nature's sustainability first, and then share its produce with humans and other living beings. To the people of rural Bangladesh, naturalism is to respect venerate through paying respect while exploring what it offers for meeting human needs.

In Islamic education system wisdom based stories related to respect is shared with students to motivate them to be respectful and learn the essence of respect. The value of respect is intensively focused on during the first two-three years of primary school. After that, it continues to be emphasised upon and demonstrated throughout the schooling years, primarily by the respectful conduct demonstrated by teachers. Students are expected to be like their teachers in their attitude and conduct. Students observe that their teachers not only respect their seniors at the school but also the students who are younger than they are. Teachers make a deliberate attempt to demonstrate as many values as possible throughout the school day. It is strongly believed by the teachers that values are best taught by way of demonstration, rather than explanation alone.

Responsibility

Why responsibility being recognised as linking to sustainability issues that are emerging in every sector? Newton points out that a century ago we thought that the natural world was limitless, infinite in its possibilities for our own use and that of future generations.³⁸ This view is no longer maintained. We have grown into a position of responsibility, in our recognition that nature is limited and vulnerable, and that the actions taken by humans can seriously affect its future as well as its present. Now we have embarked upon a new project as we for the first time we have the knowledge and scientific evidence e.g. IPCC³⁹ that humans as species are responsible for the future of the natural world on which we depend. To address this would require

³⁷ Mujtaba, S., and Musavi, L. *God and His Attributes: Lessons on Islamic Doctrine* (translated by H. Algar),

(Motomac, MD: Islamic Education Centre, 2000), 47.

³⁸ Newton, L.H., *Business Ethics and the Natural Environment*, (Oxford: Blackwell, 2005), p. 220.

³⁹ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2007: The physical science basis. Summary for policymakers*, <http://www.ipcc.ch/SPM2feb07.pdf> (accessed 07.02.2014).

taking the responsibility for the exploitation of finite non-renewable as well as renewable natural resources. This responsibility is the fundamental moral basis for sustainability.

Chittick argues from a Sufi perspective that the concept of responsibility implies that humans were created as Vicegerents on earth and were given knowledge of all things. Their special position and function in creation are referred to as 'trustees' of nature's sustainability⁴⁰. Davies sees responsibility as one of the most valuable tools to develop individuality in Christian education⁴¹. In order to recognise responsibility in relation to ecological sustainability, Sullivan refers to the Rio Declaration of the UN Conference on Environment and Development. This requires support for a precautionary approach to environmental challenges, undertaking of initiatives to observe and promote greater environmental responsibility and the encouragement of the development and diffusion of environmentally friendly technologies by the developers and marketers⁴². Aristotle said that the differences that occur among people in their attainments in knowledge are due to the differences in the knowledge for discharging responsibility. Later philosophers, including Islamic ones, also stressed that discharging of responsibility generates important synergies and that the doom-day will not appear while responsible persons exist.⁴³

Implications for Policy

The paper depicts blueprint of policy framework for attaining educational integrating that could help restore the declining social sustainability of Bangladesh. In recent decades, education policies of Bangladesh have responded to achieving economic objectives which consequently resulted in the degradation of social, ecological and environmental sustainability including the emerging phenomenon of unnatural or human-induced climate change. Hence, the challenge for education policy makers at present is to respond to attaining social and environmental sustainability including a retreat from the increasing consumptive economic culture.

Past initiatives regarding education policy reveal that governments have utilised education as a 'tool' for addressing the long term concerns of the economy. The ongoing degradation of the natural and social environments including climate change and widening economic hardship has led people to believe that the present educational systems and syllabuses utterly lack in offering effective educational integrity for holistic sustainability management⁴⁴.

⁴⁰ Chittick, W.C., *Sufi Path of Love: The Spiritual Teachings of Rumi*, (Albany: State University of New York Press, 1983), pp. 61-63.

⁴¹ Davies, R.E., *An Approach to Christian Education*, (London: The Epworth Press, 1956), p. 36.

⁴² Sullivan, R., *Business and Human Rights: Dilemmas and Solutions*, (Sheffield: Greenleaf Publishing, 2003), p. 35.

⁴³ Ronaldson, D.M. *Studies in Muslim Ethics*, (London: S.P.C.K., 1963), p. 130.

⁴⁴ Harris, Fances, *Global Environmental Issues*, (England: John Wiley and Sons, 2004), p. 226.

There is yet to be 'education' that results in developing people with integrity that can transform people's current destructive values and attitudes to pro-sustainability values and attitudes. The Stern Review and the latest IPCC (2007) also view that education must provide integrated tools to make a change towards a more sustainable way of living⁴⁵.

In sum, a policy is needed to make curriculum largely to be based upon values education in order to develop a sense of critical reflection of one's own lifestyle and its impact on others and the environment. It needs to create awareness of the part we play in the natural world. Unlike conventional education that teaches people to gather information in order to enhance their knowledge, educational integrity is values-laden. It would be a tool to educate the existing generation about social, economic and environmental aspects of sustainable development to facilitate people to be self-reliant in meeting their basic needs and accomplishing spiritual development for personal integrity and happiness of the present without compromising the ability of the future generations to avail the same. Thus, sustainable development can be understood as the totality of the ongoing social, economic and environmental outcomes of development that is sustainable⁴⁶.

The policy on educational integrity must outline how people can consume sustainably and, yet with happiness. The case of Bhutan can be a road directory. The national development policy of Bhutan is to maximize gross happiness than maximize economic growth.⁴⁷ The British Prime Minister David Cameron echoed this in his speech: "It's time we admitted that there's more to life than money and it's time we focused not just on GDP but on GWB – general well-being. Well-being can't be measured by money or traded in markets." Again, "GDP is crumbling as a target – it is already out of date," says Andrew Oswald, professor of economics and behavioural science at the University of Warwick. Oswald was one of the first economists in the country to research what he labels "emotional prosperity."⁴⁸ Perhaps, this is why it is maintained that happiness is an affirmation of personal

⁴⁵ Stern Review, *On the Economics of Climate Change*, (2006),

http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/sternreview_index.cfm (accessed 06.12.2014)

⁴⁶ Brundtland, H., *Our Common Future*, World Commission on Environment and Development, (Oxford: Oxford University Press, 1987), p. 2.

⁴⁷ In Bhutan gross national happiness has been the yardstick to measure the country's prosperity since 1970. Unlike other parts of the world where development is gauged by per capita income, in Bhutan the development index is monitored by a concept, unique to Bhutan only, namely the Gross National Happiness, where country's development is measured in terms of citizen's happiness. GNH Origin. An excerpt from Center for Bhutan studies (www.grossnationalhappiness.com)

⁴⁸ In *The Pursuit of Healthy Happiness* by Shobha Shukla. Published in News From Bangladesh (www.bangladesh-web.com), April 7, 2014. (The author is the Editor of Citizen News Service (CNS) and serves, as the Director of CNS Diabetes Media Initiative (CNS-DMI). She is a J2J Fellow of National Press Foundation (NPF) USA. She has worked earlier with State Planning Institute, UP, India. Email: shobha@citizen-news.org, website: www.citizen-news.org)

perfection through spiritual effort to improve one's contentment with less⁴⁹. As mentioned earlier Gandhi also stresses that "The more I have, the less I am" and vice-versa. Bangladeshis are the poorest yet one of the happiest people on Earth while the Americans the richest, but with least happiness.⁵⁰

Conclusion

In conclusion, an assertion is made how integrity in education would help improve the ecological footprint of a country by way of practicing self-reliant living. The paper makes it clear that educational integrity helps understand nature and connect our society with the norms of nature in terms of sustainable footprint oriented ecological living. Only by dint of the ecologically sustainable footprint, consumption in Bangladesh is very light and stands at only 0.6 ha per capita⁵¹ compared to 2.7 for the world and 1.8 for Asia. Resultantly, Bangladesh is globally recognised as most sustainability-friendly country despite population density in rural and urban areas being among the highest in the world.

The ultimate outcome of educational integrity is to acquire spontaneity for practicing self-reliant sustainability by way of especially tailored education involving the common shared specific values that can develop sustainability, proactive attitudes and actions. This is indispensable as scholars and practitioners affirm values to be the primary component of education. The values constitute a spiritual tool to shape people's proactive attitude towards remembrance of the past, minding the present, and predictions of the future.⁵² Values earnestly deserve to be a mandatory part of foundation education starting at Kindergarten. Williams and Humphrys stress values education as an integral part of the emerging concept of education for sustainability and utterly deserve to be taught at all levels of formal education as well as in the lifelong learning processes.⁵³

The 2005 National Framework for Values Education in Australian Schools⁵⁴ provides the general context for values education at government, non-government and independent schools. The recommended nine values⁵⁵ synergistically can

⁴⁹ Marchetti, A., *Spirituality and the State of Life*, (Milwaukee, WI: Spiritual Life Press, 1963), p. 78.

⁵⁰ taken from: <<http://www.bol-online.net/bnd/index.htm>><http://www.bol-online.net/bnd/index.htm> December 29, 1998. Bangladeshis are world's happiest people - The Asian Age.

⁵¹ http://www.footprintnetwork.org/en/index.php/GFN/page/ecological_footprint_atlas_2008/ (2 March 2011).

⁵² Crate, Susan A. and Nuttall, Mark, *Anthropology and Climate Change – From Encounters to Actions*, (California: Left Coast Press, 2009), p. 97.

⁵³ Williams, M. and Humphrys, G., *Citizenship Education and Lifelong Learning*, (New York: Nova Science Publishers, 2003), p. 145.

⁵⁴ http://www.curriculum.edu.au/values/newsletter_01.htm, accessed on 20 April 2013.

⁵⁵ The nine values are care and compassion, doing one's best, fair go, freedom, honesty and trustworthiness, integrity, respect, responsibility and understanding, tolerance and inclusion.

develop personal integrity to live self-reliantly. Self-reliant lifestyle inherently generates happiness under natural circumstances. This is why Bangladeshi people, who are largely rural and self-reliant, are one of the happiest people on the globe. Bhutan is another example.

During the UN decade of education for sustainability, values education needs to be an independent subject of teaching in order to develop positive attitudes towards sustainable practices and lifestyles. Perhaps this is why Staron et al. (2006) traces values education to be an indispensably supplementary subject of study to accomplish educational integrity; un-fulfilment of which will only support the affluent 20% of the world's population to consuming 80% of the world's resources.⁵⁶ Realistically, 80% of the world's resources should be consumed by 80% of the world's population. This discrepancy and disturbing trend in consumption is not sustainable as 80% of the world's population cannot and should not be expected to survive on only 20% of the world's resources. In conformity with this view, Tal declares that if society is to be transformed in an ecological way, there is a need to transform ourselves first.⁵⁷ Moreover, this is possible by way of educational integrity resulting in universal responsibility that warrants, as Ghandi used to urge people to 'Live simply, so that others might simply live'.⁵⁸ It is also observed: "it is indeed possible to be happy with fewer material goods. People have live and are living happy and fulfilled lives that are deliberately simple, deliberately restrained. Their goal is a quality style of life base on cooperative relationships, appreciation of nature, and celebration of the spirit not on high productivity and consumption".⁵⁹ This finally suggests that the feature of deliberately living simply that essentially cultivates holistic sustainability can only be accomplished by way of educational integrity.

⁵⁶ Staron, M., Jasinski, M., Weatherley, R., *Life Based Learning: A Strength Based Approach for Capability Development in Vocational and Technical Education*, A report on the research project Designing Professional Development for the Knowledge Era, (Sydney: TAFE NSW ICVET, 2006), pp. 20-21.

⁵⁷ Tal, Alon, *Speaking of Earth— Environmental Speeches that Moved the World*, (New Jersey: Rutgers University Press, 2006), p. 141.

⁵⁸ Cummings, C., *Eco-Spirituality: Toward a Reverent Life*. (New York: Paulist Press, 1991), p. 130.

⁵⁹ *Ibid.*, p. 135.

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Selected Publications of IBS

- 1983 S A Akanda edited. *The District of Rajshahi: Its Past and Present*.
- 1991 Abdul Karim. *History of Bengal: Mughal Period*. 2 Volumes.
- 2010 Md. Shahajahan Rarhi. *Index to the Journal of IBS (1976-2009)*.
- 2011 Shahanara Husain. *History of Ancient Bengal: Selected Essays on State, Society and Culture*.
- 2015 *Bangladesh Studies Home and Abroad: Annotated Bibliography Series (Economics, Society, Law, Statistics, Trade and Commerce, and Education)*.
- ১৯৯১ সফর আলী আকন্দ সম্পাদিত। বাঙালীর আত্মপরিচয়।
- ১৯৯২ আবদুল করিম। বাংলার ইতিহাস: মোগল আমল।
- ২০০৯ মাহবুবর রহমান ও স্বরোচিষ সরকার সম্পাদিত। প্রীতিকুমার মিত্র স্মারকগ্রন্থ।
- ২০১০ মাহবুবর রহমান ও স্বরোচিষ সরকার সম্পাদিত। বিশ শতকের বাংলা।
- ২০১২ মাহবুবর রহমান সম্পাদিত। রাজশাহী মহানগরী: অতীত ও বর্তমান। ২ খণ্ড।
- ২০১২ শাহানারা হোসেন। প্রাচীন বাংলার ইতিহাস।
- ২০১৫ স্বরোচিষ সরকার সম্পাদিত। বাংলাদেশের ভাষানীতি ও ভাষা-পরিকল্পনা।
- ২০১৫ স্বরোচিষ সরকার সম্পাদিত। জাগরণ ও অভ্যুদয়।
- ২০১৫ মোহাম্মদ নাজিমুল হক সম্পাদিত। বরেন্দ্র অঞ্চলের ক্ষুদ্র নৃগোষ্ঠীর আচার-অনুষ্ঠান।
- ২০১৫ বাংলাদেশ চর্চা দেশে বিদেশে: সটীক গ্রন্থপঞ্জি সিরিজ (মুক্তিযুদ্ধ, ভাষা, সাহিত্য)।